

**HIGH COURT OF TRIPURA
AGARTALA
Crl.A(J)No.42 of 2024**

1. Sri Tarani Kalai,
Son of Late Kartik Kalai,
Village: Jatanbari, P.S. Nutanbazar,
District: Gomati Tripura

---- **Convict-Appellant(s)**

Versus

The State of Tripura,
Represented by the Secretary,
Department of Home,
Government of Tripura,
Agartala

----**Respondent(s)**

For Appellant(s)	:	Mr. Anjan Kanti Pal, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing and date of delivery of Judgment and Order	:	12.03.2025
Whether fit for Reporting	:	NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

[Amarnath Goud, J]

This appeal is directed against the judgment and order of conviction and sentence dated 28.08.2023 and sentence dated 30.08.2023 delivered by Learned Sessions Judge, Gomati District, Udaipur in connection with S.T.39 of 2021. By the said judgment and order of conviction and sentence Learned Trial Court found the appellant to be guilty punishable under Section 307/341 of IPC and sentenced him to suffer RI for 10 years and fine of Rs.10,000/- in default to suffer further RI for three months under Section

307 of IPC and under Section 351 of IPC. The convict was sentenced to RI for fifteen days and to pay a fine of Rs.200/- in default to suffer further RI for one day and it was further ordered that both the sentences shall run concurrently.

02. Heard Learned Counsel Mr. A. K. Pal appearing for the appellant and also heard Learned P.P. Mr. Raju Datta appearing for the State. In course of hearing Learned counsel appearing for the appellant fairly submitted that in this case Learned Trial Court below has failed to appreciate the evidence on record properly and furthermore there is no independent eye witness of the alleged occurrence of offence excepting the evidence of the victim and as such Learned Trial Court without proper appreciation of the record wrongly found the appellant to be guilty under Section 307 read with Section 341 of IPC. He further submitted that prosecution before the Learned court below has failed to explain as to how the victim sustain injuries. As such in absence of proving of proper injury of the victim there was no scope on the part of the Learned court below to found the appellant to be guilty for the alleged charge punishable under Section 307 of IPC. It was further submitted that charge was not properly framed by the Learned court below and the evidence on record does not justify warrant of conviction against the appellant under Section 307 of IPC and alternatively Learned counsel for the appellant submitted that if it is found the appellant has

committed the offence he may at best convicted under Section 324 of IPC and accordingly urged for dismissal of this appeal.

03. Per contra, Learned P.P. taking part in the hearing submitted that from the materials on record it appears that the accused committed the crime on the alleged day and from the statement of the victim and other corroborating evidence it is crystal clear that he has committed the crime and not only the appellant committed the crime but he caused several infliction of dao blows upon the person of the victim for which she sustained multiple injuries and Learned court below has rightly found the appellant to be guilty and convicted him accordingly and there is no merit in this appeal and urged for dismissal of the appeal with costs.

04. In this case the prosecution was set into motion on the basis of an FIR lodged by one Rajen Kalai alleging inter alia that on 26.11.2020 at about 1.30 p.m. his elder sister Rina Kalai (the victim) went to the pond in the lunga situated in the eastern direction of their home to provide water to the cow that time his maternal uncle (Mama) namely Tarani Kalai resident of Takkum Bari chased his elder sister to assault her and after that his sister returned back to home and informed him. Thereafter when the victim and the informant went towards the lunga to bring their cows that time their maternal uncle Tarani Kalai after seeing his 'Didi' started hacking her 'Didi' indiscriminately by a

sharp-edged dao kept in his hand with the intention of killing his sister. Then on hearing hue and cry he went to save 'Didi' when his maternal uncle chased him with a dao. Thereafter younger maternal uncle Shambhu Kalai injured him by fist-blows. His elder sister sustained grievous injuries to the left ear and fell down on the ground and she sustained grievous bleeding injury on her left hand, head and other parts of the body and her ear fell on the ground due to the infliction of dao blows. After that his father and alongwith his nephew brought his sister to Nutan Bazar hospital in an auto-rickshaw for treatment. Hence he laid the FIR.

05. On the basis of the FIR Nutanbazar PS Case No.37 of 2020 under Section 341/323/326/307/34 of IPC was registered and the I.O. took up the investigation of the case and after completion of investigation the I.O. laid chargesheet against this appellant and his brother Sambhu Kalai for their prosecution before the court. Learned Sessions Judge, Gomati District, Udaipur framed charge against the present appellant under Section 341/326/307 of IPC and against another accused Sambhu Kalai charge was framed under Section 341/323 of IPC. To substantiate the charge before the Learned court prosecution in total has adduced 12 numbers of witnesses and the prosecution has also tendered and relied upon some documents which were marked as exhibits in this case and on conclusion of trial Learned Trial court below found the appellant to be guilty

and convicted him accordingly but acquitted another accused Sambhu Kalai from the charge of this case as prosecution could not place any materials to warrant his conviction in the case. Challenging that judgment this present appeal is filed before this Court. Now let us see the evidence on record.

06. PW-1 Rajen Kalai is the informant of this case. He deposed that the alleged incident took place on 26.11.2020 when his sister Rina Kalai went to their land to bring back the cattle grazing thereon. She was chased by their maternal uncle Tarani Kalai with a dao. She came back home and requested him to accompany her to the field and when they proceeded towards the cattle field and that time the accused started assaulting her sister with the dao. She fell down on the ground. He could not help her as he was also pinned to the ground by Shambhu Kalai who is also their maternal uncle. Tarani Kalai wanted to assault him by dao but he fled away and informed his father who came to the spot. By this time the accused person left the spot. His sister was lying in a pool of blood. They had cut off her ears, hands and had given multiple blows on her head. Then with the help of their nephew Karan Uchoi they took their sister to the Nutan Bazar hospital in an auto and he laid the FIR which was scribed by some other person. He identified the signature on the FIR marked Ext.P.1. It was further submitted that police had seized some blood from as well as some samples of hair of his sister from the spot and one wooden lathi (stick) stained with blood which was with his

sister and a piece of wood which belongs to his sister by a seizure list and this witness signed on the seizure list. The witness identified his signature on the seizure list dated 26.11.2020 marked Exbt.P.2 and the seized lathi was marked as Ext.MO.1.

During cross-examination he stated that he did not say to I.O. that he could not help his sister as he was pinned to the ground by Shambhu Kalai. Nothing more came out relevant.

07. PW-2, Rina Kalai is the victim. She deposed that on the alleged day she went to their land to give water to the cattle grazing thereon. That time her maternal uncle Tarani Kalai chased her with a dao. She came back home and requested her brother Rajen Kalai to accompany her to the field and when they proceeded towards the cattle field that Tarani Kalai and Shambhu Kalai who were hidden inside the jungle started assaulting her with a dao. Shambhu hold her body when Tarani assaulted her. The accused caused injury to her hands, one of her ear and also assaulted her head, neck and her chest. She became unconscious due to the blows given by dao and regained her sense on the way to hospital.

During cross-examination she stated that she did not say to I.O. that Shambhu Kalai hold her while Tarani Kalai assaulted her. Nothing more came out relevant from the cross-examination.

08. PW-3, Nazir Islam deposed that on the alleged day on 26.11.2020 as per dictation of Rajen Kalai he wrote the FIR and identified the FIR marked as Exbt.P1/1.

During cross-examination nothing more came out relevant.

09. PW-4, Dr. Tapan Kumar Das deposed that a per requisition of the police being permitted by MS, GBP Hospital he collected the blood sample and bunch of hair of Rina Kalai who was admitted in the hospital. The witness identified his signature on his collection report marked Exbt.P3 as a whole.

He was declined to cross-examination by the accused.

10. PW-5, Ashim Tripura deposed that he did not see the incident. Later on police came and from the spot seized one ear and some blood stained soil in his presence. He signed as a witness. The witness identified his signature in the seizure list dated 26.11.2020 marked as Exbt.P2/1.

During cross-examination nothing came out relevant.

11. PW-6, Prasanta Das on 17.02.2021 at 1130 hrs SI Jiban Das seized one DVD cassette in his presence. The witness identified his signature in the seizure list marked Exbt.P4. He further stated that the I.O. of this case also seized blood sample of the accused Tarani Kalai from Nutan Bazar hospital. The witness identified his signature on the seizure list dated 05.12.2020 marked Exbt.P5.

During cross nothing came out relevant.

12. PW-7, Prantodh Rudra Paul is the seizure list witness in respect of seizure of blood sample vide seizure list dated 05.12.2020 marked Exbt.P5/1. He further stated that in presence of Magistrate the accused gave a statement that the dao he had used to assault the victim Rina Kalai nearby Baidya Bari English Medium School. He was present that time and he identified the signature on the disclosure statement marked Exbt.P6. He further stated that the I.O. has seized some blood sample of the victim and her hair. The witness identified his signature on the seizure list dated 07.12.2020 marked Exbt.P7.

During cross-examination nothing came out relevant.

13. PW-8, Saddak Hoshen another witness of the seizure and he identified his signature on the seizure list dated 07.12.2020 in respect of seizure of blood sample of the victim and her hair marked as Exbt.P7/1.

During cross nothing came out relevant.

14. PW-9, Rupanjan Das deposed that on 06.12.2020 as per requisition of police as being Deputy Collector and Magistrate of Karbook he went to Nutan Bazzar PS when Tarani Kalai gave a statement before him that he had used dao to assault the victim. He also told that he had thrown away the dao in a bush near Baidya Bari School which can be recovered. The statement was recorded by the I.O. and he signed on the endorsement and the same was recorded

in his presence. The witness identified his signature on the endorsement marked Exbt.P6/1. Thereafter the accused according to this witness led them to Baidya Bari English Medium School from where weapon of offence was recovered which was concealed in a bush on the road side. Police seized the same in his presence by preparing a seizure list and the witness identified his signature on the seizure list marked Exbt. P8.

During cross-examination he stated that after lapse of two years it was not possible on his part to identify the accused. Nothing more came out relevant.

15. PW-10, Dr. Subhankar Nath deposed that on 28.01.2021 he was posted as Deputy Director, DNA Typing Division, SFSL, Tripura and on that day he received 11 exhibits marked as A, A1, B, B1, C, D, E, F, G, H and I from the Biology/Serology Division. The exhibits were forwarded by SDPO, Amarpur in connection with Nutan Bazar PS Case No.37/2020. He conducted DNA test on these three exhibits as per standard protocol given in page 3, 4, 5 & 6 of his report. He gave the result of examination and observation which are as follows:

Result of Examination:- A portion of blood stain cotton of Ext.A (sime amount of blood stain collected from PO), Ext.A1 (swab prepared from blood stain grassed and soil, Exbt. B blood stain collected from PO, Ext. B1 swab prepared from some amount from blood stain grasses and soil collected from PO, Ext C swab

prepared from one wooden lathi seized from P.O. Ext.E (chopped ear of victim Rina Kalai, Ext.F blood sample of accused Tarani Kalai, Ext.G swab prepared from one chopper (dao) and Ext.H blood sample of victim Rina Kalai were subjected to DNA isolation by organic extraction method.

DNA recovered from the above-mentioned exhibit were subjected to multiplex PCR reaction for co-amplification of the 15 STR loci & Amelogenin using AmpF/STR Identifier Plus TM PCR amplification kit. The amplified products along with controls were run on the Automated DNA sequencer. The sizing of the fragments was carried out using Gene Mapper ID software V3.2 with respect to Gene Scan 500 LIZ size standard. The resultant allelic distribution for the studied loci in the different exhibits is shown in the table of Annexure-A.

Observation:- (1) Female genetic profile was generated from Ext.A (2) No alleles has been amplified from Ext. A1 (3) Female genetic profile was generated from Ext.B (4) No alleles has been amplified from Ext.B1 (5) Female genetic profile was generated from Ext.C (6) Female genetic profile was generated from Ext.E (7) Male genetic profile was generated from Ext.F. (8) No alleles has been amplified from Ext.G. (9) Female genetic profile was generated from Ext.H

(10) No alleles has been amplified from Ext.A, Ext.B, Ext.C, Ext.E, Ext. H are matches with each other.

Conclusion:- On the basis of the above observations it is concluded that:- (1) Ext.E (chopped ear of victim Rina Kalai, belongs to Ext.H (blood sample of victim Rina Kalai), (2) Ext.A and Ext.B (some amount of blood stain collected from PO, Ext.C (swab prepared from one wooden lathi seized from PO), (3) Ext.A (swab prepared from blood stained grasses and soil), Ext. B1 (swab prepared from some amount of blood stained grasses and soil collected from PO and Exbt.G (swab prepared from one chopper (dao). It is not possible to draw any opinion but all the blood belongs to human female origin.

The report prepared by him containing nine paged bearing his signature marked Exbt.9.

He was declined to cross-examination by the accused.

16. PW-11 Dr. Milan Bhakta Jamatia deposed that on 26.11.2020 he was posted at NTB rural Hospital and on that day he examined one Rina Kalai aged 26 years admitted with the history of assault with sharp weapon in connection with NTB PS Case No.37 of 2020. On examination he found the below noted wounds:

1. Incised wound measuring 15 cmx1.5 cm x scalp deep, clean cut present over the left parietal region and 3 cm left lateral to mid line.

2. Reddish abrasion measuring 4.5 cm x 1 cm, with swelling incised would scalp tissue deep present over left side of the face in front.
3. Incised wound (debrided) measuring 2 cm x 1 cm x soft tissue deep with clean cut margin present 3 cm above tip of left mastoid.
4. Chop wound with amputation of part of left ear measuring 7 cm x 1 cm cartilage deep margins are regular and clean cut present over left ear pina.
5. Incised wound with following inferiorly measuring 5 cm x 1 cm x soft tissue and clean deep, margins are regular present over the left side of the neck 1 cm below tip of mastoid.
6. Incised wound with falling inferiorly 3 cm x 1 cm x soft tissue and clean deep, margins are regular present over the left side of the neck 1 cm below tip of mastoid.
7. Incised wound 3 cm x 1 cm with soft tissue deep with regular margins and clean cut border present over left side of chin 2 cm below left angle of mouth present vertically.
8. Incised wound measuring 8 cm x 3 cm x muscle deep with regular margins and clean cut present over back and lower one third of right forearm.
9. Chop wound 15 cm x 7 cm x bone deep with regular margins with cutting of underlying muscle, tendon and

bone present over left forearm frontal aspect and back at middle one third of left forearm.

10. Chop wound 10 cm x 5 cm x bone deep with regular margins with cutting of underlying muscle and tendon present over back of left forearm 4 cm below injury No.9.

All the injuries are caused by heavy sharp cutting weapon with sharp edge. The injuries mentioned above can be caused by the dao (MO-2) i.e., shown to him. The injuries mentioned at Sl. Nos. 4, 9 and 10 are grievous in nature caused by sharp weapon. The witness identified his signature on the report marked as Exbt.P10.

During cross-examination he stated that he had personally examined the patient and the injury report does not mention the state of consciousness, blood pressure etc. Nothing came out relevant.

17. PW-12 SI Jiban Ch. Das is the I.O. who laid the chargesheet against the accused. He deposed that on 26.11.2020 he was posted at NTB PS and on that day SI Dhrubajyoti Debbarma received an FIR and registered NTB PS Case No.37 of 2021. The FIR was received by OC, Bapi Debbarma at the spot. The printed FIR form filled up by SI Dhrubajyoti Debbarma. He identified the endorsement by OC in the FIR marked Exbt.P1/2 while that of SI Dhrubajyoti Debbarma marked as Exbt.P1/3 and the printed FIR form containing two sheets of paper marked Exbt.P11. He visited the PO and prepared hand sketch map of the same with

index which are marked as Exbt.P12. He also made some seizures from the spot viz. blood stains collected from the lung, blood stained grass and soil collected from the PO. One wooden lathi stained with blood, some black colour hair of the victim and one piece of human hair also belonging from the victim by preparing a seizure list. The witness identified the seizure list dated 26.11.2020 marked Exbt.P2/2. He further stated that on 26.11.2020 he recorded the statement of Rajen Kalai and Ashim Tripura. On 27.11.2020 he examined one Lalita Kalai and Sukanta Debbarma and on 29.11.2020 he examined one Ananta Tripura. On 05.12.2020 he arrested accused Tarani Kalai and arranged for his medical examination. He also seized the blood sample of the accused collected by the doctor. He identified the seizure list dated 05.12.2020 marked as Exbt.P5/2. He further stated that he recorded the statement of Tarani Kalai in presence of DCM. The witness identified the statement marked Exbt.P6/2. He also seized the dao in presence of the DCM and other witnesses. The witness identified the seizure list dated 06.12.2020 marked Exbt.P8/1. On 07.12.2020 he examined the victim at GBP Hospital. He also collected her blood sample and controlled hair sample for analysis by the FSL. He identified the seizure list dated 07.12.2020 marked Exbt.P7/2. On 09.12.2020 he sent the seized articles to the SFSL for forensic analysis. He collected identity card of the accused Tarani Kalai on 10.12.2020 and also seized the DVD

cassette which records the recovery of dao and statement of accused. The witness identified the seizure list dated 17.12.2020 marked Exbt.P4/2. On 17.12.2020 he examined five witnesses and on 20.12.2020 he examined one witness. On 27.12.2020 he examined the DCM and on 20.02.2021 he examined the scribe. He collected the injury report and FSL report on 20.02.2021. Being prima facie satisfied from the evidence collected by him he filed charge sheet vide NTB PS Case No.3 of 2021 dated 28.02.2021 under Section 341/323/326/307 of IPC against the accused persons namely Tarani Kalai and Sambhu Kalai. The witness identified the chargesheet in form 16 containing 2 pages marked as Exbt.P13.

During cross-examination he stated that he did not mention the name of the owner of the house marked J in his map and witness volunteered that the CD indicates the house belongs to Smt Lalita Kalai. Witness Ashim Tripura is not related to any of the parties. In his disclosure statement Tarani Kalai stated that he was admitted in hospital after the incident. He had not collected any record to that effect from the hospital. Nothing more came out relevant from the cross-examination.

These are the sum and substance of the evidence on record.

18. We have heard both the sides and gone through the evidence on record of the prosecution. From the evidence it appears to us that on the alleged day the

present appellant committed the offence and inflicted multiple injuries to the victim using dao. The appellant during cross-examination could not raise any circumstance to disbelieve the evidence on record of the prosecution. Situated thus, on the face of the evidence on record it appears to us that the prosecution before the Learned court below has been able to prove the charge levelled against the accused appellant. So considering the evidence on record of the prosecution and also the injury report of the victim submitted by PW-11 we are of the considered opinion that Learned court below rightly found the appellant to be guilty and convicted him and as such this present appeal is liable to be dismissed. However, at the time of hearing of argument Learned Counsel appearing for the appellant submitted that the appellant for the first time committed the offence and it is not clear as to why he committed the crime on the alleged day. Since he is a first time offender so Learned counsel for the appellant urged for reducing the punishment imposed upon the appellant. Section-307 of IPC provides punishment upto 10 years which may extend to ten years and shall also be liable to fine and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned. So considering nature and gravity of the offence and also the fact that the present appellant has committed the offence for the first time as there is no adverse evidence on record in this regard the

sentence of imprisonment imposed by Learned Trial Court is reduced to 7 (seven) years from 10 (ten) years and the other mode of punishment will remain as it is.

With this observation this appeal stands partly allowed and disposed of.

Send down the LCRs along with a copy of this judgment and also a copy of this judgment be forwarded to the convict-appellant through Superintendent of Jail, Kendriya Sansodhanagar, Bishalgarh.

JUDGE

JUDGE



**MOUMITA
DATTA**

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