

HIGH COURT OF TRIPURA
AGARTALA
Crl. A. No.24 of 2024

Mst. Swapna Begam,
D/O Habib Ulfa & W/O Mainul Kha,
Resident of Bilashpur, P.S. Kadamtala,
District- North Tripura, Pin-799261

----- Appellant

Versus

- 1. Md. Nurul Kha**
S/O Abdul Kadir,
Resident of South Amtilla,
Word No.6, P.S. Kadamtala,
District- North Tripura, Pin-799261
- 2. Md. Abdul Nur Kha @ Joynal Kha,**
S/O Abdul Kadir,
Resident of South Amtilla, Word No.6,
P.S. Kadamtala, District- North Tripura, Pin-799261.
- 3. Md. Badrul Kha,**
S/O Abdul Kadir,
resident of South Amtilla, Word No.6,
P.S. Kadamtala, District-North Tripura, Pin-799261.

----- Respondents

- 4. The State of Tripura**
Represented by the Secretary, Home Department,
Government of Tripura, Agartala, Tripura(West).

----- Proforma-Respondent

For Appellant(s)	:	Mr. Jayanta Majumder, Adv.
For Respondent(s)	:	Mr. Arjun Acharjee, Adv, Mr. Sudipta Chowdhury, Adv, Mr. Rajib Saha, Addl. P.P.
Date of hearing	:	06.03.2025
Date of delivery of Judgment & Order	:	07.03.2025
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 372 of Cr.P.C. is preferred by the appellant-victim Swapna Begam challenging the inadequate order of

conviction and sentence dated 25.04.2024 delivered by Learned Additional Sessions Judge, North Tripura, Dharmanagar in connection with case No. Crl. A. No.12 of 2023. By the said judgment and order of conviction and sentence, Learned Appellate Court has modified the order of conviction and sentence dated 08.12.2023 delivered by Learned Chief Judicial Magistrate, North Tripura, Dharmanagar in connection with case No.PRC(WP)/124/2022.

2. Heard Learned Counsel Mr. Jayanta Majumder appearing on behalf of the appellant-victim and also heard Learned Counsel, Mr. Arjun Acharjee along with Learned Counsel, Ms. Sudipta Chaudhury appearing on behalf of the respondent-accused persons. Learned Addl. P.P., Mr. Rajib Saha has appeared on behalf of the State.

3. For the sake of convenience, let us reproduce herein below the relevant provision of Section 372 of Cr.P.C. which provides as under:

372. No appeal to lie unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:
[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

Learned Chief Judicial Magistrate, North Tripura, Dharmanagar by the said judgment and order of conviction and sentence found the respondent-accused persons guilty of offence punishable under Section 323 of IPC and sentenced the convict Nurul Kha, Md. Abdul Nur Kha alias Joynal and Md. Badrul Kha under Section 323/34 of IPC to suffer RI for 3 months each and to pay fine

of Rs.1000/- each i.d. to suffer further RI for one week each. That judgment was challenged before the Learned Appellate Court and Learned Appellate Court in Crl. A. No.12 of 2023, as already stated, by judgment dated 25.04.2024 has modified the order of conviction and sentence and only sentenced the convicts Md. Nurul kha, Abdul Nur Kha alias Joynal and Md. Badrul Kha to pay fine of Rs.1000/- each i.d. to suffer rigorous imprisonment for one week each.

4. In course of hearing of argument, Learned Counsel for the appellant, Mr. Jayanta Majumder submitted that on the basis of an FIR laid by one Nur Uddin, Kadamtala P.S. case No.27 of 2022 under Section 498A/342/325/354B/506/34 of IPC was registered and the IO on completion of investigation laid charge-sheet against the respondent-accused persons. Cognizance of offence was taken and during trial, the Learned Trial Court considering the materials on record framed charge under Section 342/354(b)/354/323 read with Section 34 of IPC against all the convicts Md. Nurul Kha, Md. Abdul Nur Kha @ Joynal and Md. Badrul Kha and the same was explained to them to which they pleaded not guilty and claimed to be tried. Finally, the Learned Trial Court found the respondent-accused persons guilty only for the offence punishable under Section 323 of IPC which according to Learned Counsel for the appellant was rightly awarded by the Learned Trial Court. Learned Counsel for the appellant further submitted that surprisingly during investigation, the injury report of the victims were procured by the IO but surprisingly in the charge-sheet, the Medical Officers were not cited as witness and furthermore, even the prosecution also did not take any effort to produce the

Medical Officers who examined the victim which caused serious injustice to the case of the prosecution and furthermore, the Learned Appellate Court in para No.18 came to the observation that prosecution failed to prove any bad conduct of the respondent-accused persons which according to Learned Counsel for the appellant was non-application of mind and unheard. So, Learned Counsel for the appellant fairly submitted to set aside the judgment delivered by the Learned Appellate Court and to uphold the judgment and order of conviction and sentence delivered by Learned Trial Court.

5. On the contrary, Learned Counsel for the respondent-accused persons taking part in the hearing had drawn the attention of the Court referring the contents of the FIR and the evidence on record and submitted that prosecution could not prove the charges levelled against the respondent-accused persons although the Learned Trial Court found the respondent-accused persons to be guilty for the offence punishable under Section 323/34 of IPC and sentenced them to suffer imprisonment with fine and challenging that judgment, the respondent-accused as appellants have preferred the appeal before the Court of Learned Additional Sessions Judge, North Tripura, Dharmanagar but the Learned Appellate Court failed to appreciate the evidence on record properly and uphold the order of conviction against the respondent-accused persons but modified the sentence although the respondent-persons being poor persons have deposited the fine money before the concerned Learned Court. However, Learned Counsel also submitted that there is no merit in the appeal

for enhancement of punishment, so, the appeal filed by the victim as appellant needs to be dismissed henceforth.

Alternatively, Learned Counsel for the respondent-accused persons further submitted that as the respondents are satisfied with the judgment of the Learned Appellate Court so there is no scope to interfere with the judgment of the Learned Appellate Court and urged for dismissal of this appeal.

6. Now let us see the initial FIR on the basis of which the case was registered. The FIR was laid by one Nur Uddin to O/C, Kadamtala PS alleging *inter alia* that on 11.04.2022 at about 14:00 hours at South Amtilla, Bargul GP Ward No.5 under Kadamtala PS, the respondent-accused persons in furtherance of their common intention wrongfully confined the victim (name withheld) by tying her with rope with a chair in her house. The respondent-accused persons also in furtherance of their common intention assaulted her or used criminal force to the victim with the intention of disrobing her to be naked and they also assaulted or used criminal force to the victim to outrage or knowing it to be likely that they would outrage her modesty and they voluntarily caused hurt to the victim. On the basis of the FIR of the informant Nur Uddin, the case was registered under Section 342/325/354B/506/34 of IPC and on conclusion of investigation, the IO laid charge-sheet against the respondent-accused persons.

7. As already stated, charge was framed and prosecution to substantiate the charge has in total adduced seven numbers of witnesses. Now let us discuss the evidence on record of the prosecution adduced before the Learned Trial Court.

PW-1 is the informant of this case. He deposed that the victim of this case is his sister. He further deposed that about nine years back, her marriage was solemnized with Md. Mainul Kha of Bargul and his sister went to her matrimonial home. On 04.11.2022 his brother-in-law Md. Mainul Kha called him at about 2 pm and told that when he returned home from Dharmanagar, that time, he could know from his elder brother that his wife i.e. the sister of the informant had been killed by Md. Nurul kha, Abdul Nur Kha alias Joynal and Md. Badrul Kha and they are the younger brothers of Md. Mainul Kha. On receipt of information, he rushed to the matrimonial house of his sister and on the way he informed the matter to Bargul Club. On reaching the matrimonial home, he found that his sister had been tied with a chair in naked condition. The respondent-accused persons were present there and they had sticks in their hands. He took his sister to Kadamtala Hospital at first and then to Dharmanagar District Hospital for treatment. From Dharmanagar Hospital, he took his sister to Makunda Hospital, Assam. Since then, his sister was residing in his house and he got the complaint petition written by one Sumanta Nath and signed the same. He identified his signature on the complaint petition marked as Exbt.-P1.

During cross-examination, he stated that the distance between his house and the matrimonial house of his sister is about two and half kilometers. The accused persons are five brothers. His sister used to reside separately with her husband in the same house complex with the accused persons. Elder brother of Md. Mainul Kha also used to reside separately in the same house complex with the

accused persons. He laid the complaint petition to the police station when his sister was at Dharmanagar District Hospital. Police examined him in connection with this case. He further stated that he did not say to IO that he found the accused persons to the alleged PO with sticks in their hands. Nothing more came out relevant.

8. PW-2 is the victim. She deposed that the informant of this case is her elder brother and the accused persons are her brothers-in-law. On 11.04.2022 at about 1 pm to 2 pm in her matrimonial house, the accused persons scolded her in connection with a rope. Then they assaulted her, removed her wearing apparels and tied her with a chair with the said rope. They bolted her inside a room of her matrimonial house. Thereafter, she could not remember what had happened. During the incident, her husband was not in home as he was driving e-rickshaw at Dharmanagar. Later on, her husband returned home and rescued her with the help of boys from local club. From the place of occurrence, she was taken to Kadamtala Hospital at first, then to Dharmanagar District Hospital and finally to Makunda Hospital, Assam. From there, her husband took her to a rented house at Sakaibari.

During cross-examination, she stated that her marriage was solemnized about 9 years back. There is no other residential house in the locality where her matrimonial house is situated. For about one year before the day of the incident, she herself and her husband used to reside separately in the same house complex with the accused persons and they were six female members in the said house complex. She could not say the time when her husband returned

home on the day of the incident. Nothing more came out relevant from her cross-examination.

9. PW-3, Md. Habib Ullah is the father of the victim and the informant. He deposed that on 04.11.2022 his son-in-law Md. Mainul Kha called him at about 1 pm and told him that when he returned home from Dharmanagar he came to know that his wife had been killed by Md. Nurul Kha, Md. Abdul Nur Kha @ Joynal and Md. Badrul Kha. They are the younger brothers of his son-in-law. On receipt of such information, he rushed to the matrimonial house of his daughter. On reaching there, he found that his daughter was tied with a chair in naked condition. His son reached there in the meantime with police and local club members. After that, his daughter was taken to hospital and FIR was lodged. His daughter was first taken to Kadamtala Hospital, then to Dharmanagar Hospital and finally to Makunda Hospital, Assam.

During cross-examination, he stated that police examined him. He did not say to police that his son-in-law Md. Mainul Kha called him on 11.04.2022 at about 1 pm and told him that when he returned home from Dharmanagar he came to know that his wife had been killed by the accused persons and he also did not say to police that on arrival to her matrimonial house he found his daughter in naked condition. Also, he did not say to IO that his son had reached the PO with police personnel. Nothing more came out relevant.

10. PW-4, Mst. Saharjaan Bibi is the mother of the informant and the victim. He deposed that on the fourth day of a month last year during continuance of ramjan month at about 2 pm, her son-in-law

called her over phone and told her that his younger brothers had assaulted her daughter. On receipt of information, her son and her husband went to the matrimonial home of her daughter and found her lying on the ground in injured condition. They went there with the help of police and local club members. Then they shifted her daughter to Kadamtala Hospital at first and then to Dharmanagar Hospital. From there, she was referred to Agartala for better treatment, but they took her to Makunda Hospital, Assam. During the incident, her son-in-law was not present in his house as he was driving e-rickshaw at Dharmanagar.

During cross-examination, she stated that she did not go to the PO and Police also examined her.

11. PW-5 is the husband of the victim. He deposed that on 04.11.2022 at about 1 pm there was a quarrel in his house between his wife and sisters-in-law regarding a rope. He was in his house at that time. After sometime, he went out of his house with e-rickshaw. Then he received a call from his wife informing that his sisters-in-law had disturbed her again. He informed the matter to her brother-in-law who is the informant of this case. He went to their house and assaulted his brothers and damaged furniture there. This witness was declared hostile by the prosecution.

During cross-examination, he stated that after filing of the case, his wife used to reside with him and his wife never told him that his younger brothers assaulted her and outraged her modesty.

12. PW-6, Mihir Rh. Nath is the president of Pioneer Youth Club of Amtilla Bargul. He deposed that on 11.04.2022 in the afternoon he

received a call from one Nur Uddin who informed him that his sister had got married in their locality and she was subjected to torture by her in-laws. On receipt of information, he asked Md. Nur Uddin whether he had informed police or not and at about 2 pm on the same day, the witness and the club members went to the matrimonial house of Nur Uddin's sister and found that police had already reached there. He also found Nur Uddin and his father present there. He saw a woman lying on the ground inside the house. Md. Nur Uddin wished to take her to hospital. They pushed the e-rickshaw of that lady's husband near the house. Md. Nur Uddin boarded her in the said e-rickshaw and proceeded towards hospital. He did not see anything else.

During cross-examination, he stated that he entered just one step inside the boundary of the matrimonial house of Nur Uddin's sister and found that lady's husband present there. He had no conversation with that lady.

13. PW-7, Joy Kumar Nath deposed that he is a member of Pioneer Youth Club of Amtilla Bargul. Sri Mihir Rn. Nath is the President. On 11.04.2022 at about 1 pm he saw a message in the WhatsApp group of their club wherein the President told them to go to the matrimonial house of the sister of one Nur Uddin which was situated in their locality and accordingly they went there. On reaching there, they found the police personnel and a lady was required to be taken to hospital and after that, she was taken to hospital but he could not say anything furthermore about the case of the prosecution.

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

14. Prosecution, in this case, apart from those witnesses, failed to produce the IO. No wooden stick could be seized or produced for marking of exhibit in this case. Although one wooden broken chair was seized by the seizure list dated 22.05.2022 but that wooden broken chair was produced for marking of Exhibit in this case. More interestingly, the IO did not cite the Medical Officers who examined the victim on 13.04.2022 and 30.04.2022 as witness in this case i.e. in the charge-sheet also. Even no effort was taken to ensure production of the said witnesses by the prosecution in this case which was the solemn duty of the concerned Prosecutor to move appropriate application to the Court for issuing summons.

15. Learned Trial Court on the basis of evidence on record found the respondents to be guilty under Section 323/34 of IPC and convicted the respondent-accused persons accordingly and after that, as already stated, the respondent-accused persons as convicts preferred appeal and in the appeal, their sentence was modified. Now we are to see as to whether in absence of injury report of the victim there was scope on the part of the Court below to avoid conviction under Section 323 of IPC and also we are also to see as to whether the evidence on record justifies modification of sentence delivered by Learned Appellate Court.

Now if we carefully go through the evidence on record, it appears that just at the time of alleged occurrence excepting the victim no other persons were present. More interestingly, the husband of the victim did not support her case. Although he was declared hostile by the prosecution but from his evidence the prosecution could

not derive any benefit. But from his evidence, it is clear that on the alleged day in his absence, some incident took place. PW-6 and PW-7 only deposed that after collecting information, they rushed to the house of the victim. Although they did not see the victim in injured condition nor they could see the commission of offence by the alleged respondent-accused persons, as such, there is no scope to place any reliance upon the evidence of said three witnesses i.e. PW-5, PW-6 and PW-7.

Now let us see the other part of the evidence on record. Prosecution has produced the informant, his father, mother and the victim of this case. PW-1 is the informant and PW-2 is the victim. PW-3 although in his examination-in-chief made some incriminating evidence against the respondent-accused persons but from his cross-examination, it appears that the statement made by him was first time evidence before the Court. Prosecution failed to explain anything in this regard before the Court. Even the Learned Counsel for the victim-appellant also failed to satisfy the Court as to how their evidences can be believed. PW-4 did not go the PO on that relevant point of time.

Now, apart from those two witnesses, only the evidence of informant and victim remains. The respondent-accused persons thoroughly cross-examined the victim and her brother but their evidences could not be shattered/discredited at any length by the respondent-accused persons. Admittedly, no injury report of the victim could be proved and produced by the prosecution before the

Learned Trial Court. Even no effort was also taken to prove the said documents. The reasons were best known to the prosecution.

The respondent-accused persons failed to counter anything regarding confirmation of sentence under Section 323 read with Section 34 of IPC but they fairly submitted that they have accepted the order of modified sentence delivered by the Learned Appellate Court and urged for dismissal of this appeal as the same does not bears any merit. Since none of the parties have challenged the validity of the order of conviction and sentence, so, without highlighting anything, now we are to see as to whether the sentence imposed by the Learned Appellate Court was proper or not.

In a prosecution under Section 323 of Cr.P.C., proving of injury report is not mandatory in every occasion. In this regard, Hon'ble the Apex Court reported in **(2021) 9 SCC 191** titled as **Lakshman Singh v. State of Bihar (Now Jharkhand)**, wherein in para No.11 last part, observed as under:

"11. * * * * *
However, production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC."

In view of the principle of law laid down by the Hon'ble Apex Court in the aforementioned case, it appears that in absence of proving of injury report by the prosecution, there is no bar to convict any person. Here in the given case, excepting the evidence of PWs-1, 2, 3

and 4 the prosecution, as already stated, could not adduce any other independent witness to support the prosecution case. Even the husband of the victim became hostile to stand and depose on her behalf. At the same time, from the cross-examination part of the PW-1 and PW-2, it appears that the respondent-accused persons, by the trend of cross-examination, have failed to discard/discredit the evidence on record of the said witnesses. Thus, in my considered view, Learned Trial Court rightly convicted the respondent-accused persons but the same has been modified by the Learned Appellate Court. This present appeal was preferred for enhancement of sentence.

16. I have also seen the observation made by the Learned Appellate Court in imposing fine only instead of imprisonment as awarded by the Learned Trial Court. It appears that the Learned Appellate Court without any justified grounds only with the plea that no previous bad record could be established against the respondent-accused persons converted the sentence of imprisonment to the sentence of fine only. From the evidence on record, it appears that the allegation levelled against the respondent-accused persons was no doubt serious. Since the victim and the respondent-accused persons did not oppose anything with regard to the sentence awarded by the Learned Trial Court and the Learned Appellate Court so let us examine as to whether the Learned Appellate Court was justified only by imposing fine without imposing any imprisonment upon the respondent-accused persons.

Here in the given case, the allegation against the respondent-accused persons was no doubt serious. Prosecution to prove the charge only adduced seven witnesses. The IO could not be produced. Even the injury reports of the victim were also not produced or proved and surprisingly the Medical Officers who examined the victim were not cited as witness in the charge-sheet by the IO. Prosecution also did not take any step by approaching to the Court for ensuring attendance of the said Medical Officers. Thus, it appears that there was serious dereliction of duties on the part of the IO and even on the part of the concerned A.P.P. who conducted the case on behalf of the prosecution.

As already stated, out of seven numbers of witnesses PW-5 did not support the prosecution story i.e., the story of the victim. PW-6 and PW-7 could not say anything about the prosecution case. From their evidence, it only transpires that on the alleged day an occurrence took place and they went to the house of the victim i.e. the sister of the informant. On the basis of the evidence of the three witnesses, nothing can be done. Now out of the rest four witnesses, PW-4 is the mother of the informant and victim. She did not go to the PO. She is a *hearsay* witness. So, no reliance can be placed upon her evidence also.

Now if we go through the evidence of the father of the victim, it appears that although in course of his examination-in-chief, he tried to support the version of the victim but during cross-examination, it appears that he did not utter the said facts to the IO of this case. Meaning thereby, for the first time the said witness deposed before

the Court. So, legally there is also no scope to place any reliance upon his evidence.

Now if we go through the evidence of the informant i.e. the brother of the victim, it appears that regarding occurrence of offence probably he could not say the exact date but he tried to support the version of the victim.

The respondent-accused persons could not discredit his evidence and also the evidence of the victim i.e. PW-2 which draws the attention of the Court, the relevant provision of Section 134 of the Evidence Act now Section 139 of BSA which provides as under:

"139. Number of witnesses.- No particular number of witnesses shall in any case be required for the proof of any fact."

From the aforesaid provision also, it appears that to prove a criminal prosecution, it is the quality not the quantity of witness requires to prove the fact of any case. Here in the case at hand, as already stated, the respondent-accused persons failed to discard the evidence of the informant and the victim PW-2. So in my considered view, Learned Trial Court rightly convicted the respondents, found them guilty which has been affirmed by the Appellate Court with modification that instead of imprisonment, the sentence of fine was imposed only.

17. It is also surprising that Learned Trial Court during trial did not take any step to prove the statement of the victim recorded under Section 164(5) of Cr.P.C by calling the Learned Magistrate who recorded the statement. Even the prosecution also did not submit any prayer before the Court to examine the Learned Magistrate who recorded the statement of the victim to prove the contents of the

statement. Even no question was put to the victim regarding confirmation of her signature over the statement recorded under Section 164(5) of Cr.P.C. Thus, it appears that the prosecution also did not apply proper mind to record the evidence of the victim during trial. Similarly, serious lapses were made on the part of the prosecutor who conducted the trial to ensure proper recording evidence of the witnesses before the Court. So, considering the materials on record at this stage, I do not find any scope to interfere with the judgment of the Learned Appellate Court in absence of any material evidence on record. In course of hearing of argument, Learned Counsel for the appellant also failed to satisfy the Court showing any cogent materials to interfere with the judgment delivered by the Learned Appellate Court.

18. In the result, the appeal filed by the appellant is hereby dismissed on contest. The judgment and order of conviction and sentence delivered by Learned Additional Sessions Judge, North Tripura, Dharmanagar dated 25.04.2024 is hereby upheld and accordingly the same is affirmed.

However, before departing my part, it is to be mentioned here that during trial of this case, Learned A.P.P. failed to conduct the case properly. Learned A.P.P. did not submit any prayer to record the evidence of the Medical Officer. Even he did not take any step to prove the injury reports of the victim which were already available on the record. Even the IO also failed to cite the Medical Officers as witness in the charge-sheet. This was a serious lapse on his part. A copy of the judgment and order be communicated to Secretary(Law),

Tripura for sensitizing the Learned Prosecution Counsels so that such lapses may not occur in future.

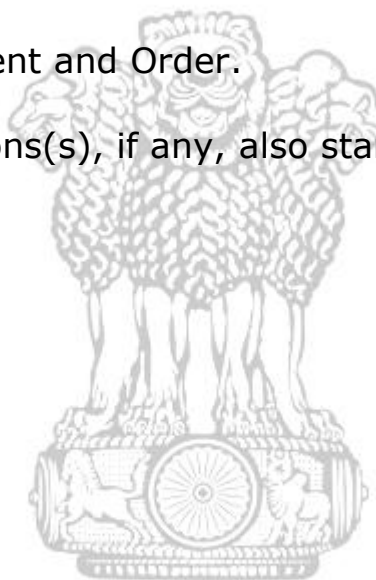
A copy of the judgment also be communicated to DGP, Tripura to direct all the investigating officer to ensure the names of the Medical Officers in the witness list of the charge-sheet so that no case is decided in absence of the evidence on record of the Medical Officers and in absence of the report of concerned Medical Officers in a case like injury.

With this observation, this appeal stands disposed of.

Send down the records of the Learned Courts below along with a copy of this judgment and Order.

Pending applications(s), if any, also stands disposed of.

JUDGE



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