

HIGH COURT OF TRIPURA
AGARTALA

Crl.A.(J) 3 of 2024

Sri Prem Mohan Tripura @ Gheerasa

---Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Mr. Haribal Debnath, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	11.02.2025.
Whether fit for reporting	:	No

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

Judgment & Order (Oral)

(T. Amarnath Goud, J)

This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 07.11.2022, passed by the learned Sessions Judge, Dhalai Judicial District, Ambassa, in case No. S.T.(Type-1) 12 of 2022 convicting the appellant under Section 326/307 of the Indian Penal Code, and sentencing him to suffer rigorous imprisonment for 7(seven) years and to pay a fine of Rs.10,000/-, in default of payment of fine to suffer further rigorous imprisonment for a period of 6 (six) months for the offence punishable under Section 326 of the IPC, and also sentenced him to suffer rigorous imprisonment for a period of 10 (ten) years and to pay a fine of Rs.10,000/- for the commission of offence punishable under Section 307 IPC, in default to suffer further rigorous imprisonment for 6(six) months, with a direction that both the sentences shall run concurrently.

[2] The factual backdrop of this case is that one Shri Dhana Ranjan Tripura, Son of Late Porchan Tripura of Mani Bhadra Para, Longtharai RF V/C, PS-Dhumacherra, District- Dhalai Tripura lodged an written Ejahar with the officer-in-charge of Dhumacherra Police Station to the effect that on 13.02.2022 at about 2100

hours at Mani Bhadra Para accused Prem Mohan Tripura, Son of Late Jiban Singh Tripura of 43 Miles, Tripura Basti, PS- Mungiakami, District- Khowai Tripura suddenly attacked and assaulted his wife namely, Smt. Charansri Tripura (hereinafter referred as victim) with a 'Takka/ Dao' with intend to kill her while victim refused to come back at 43 Miles under Mungiakami PS in the house of accused. As a result, the victim suffered grievous bleeding injury on her neck and right hand middle finger while she was trying to protect herself. Immediately, the victim was taken to Dhumacherra PHC for treatment from where victim was referred to Kulai District Hospital for better treatment.

[3] On receipt of the written Ejahar of the complainant, Shri Lakshabir Jamatia (Sub-Inspector of Police) being the officer-in-charge of Dhumacherra Police Station registered Dhumacherra Police Station case No. 2022 DMC 002, dated 14.02.2022 for the commission of offence punishable under Section 326/307 of the Indian Penal Code (hereinafter referred as IPC) against the accused Prem Mohan Tripura and endorsed the case for investigation to Shri Debananda Tripura, Sub-Inspector of Police.

[4] During investigation, the Investigating Officer visited the place of occurrence and prepared hand sketch map of the place of occurrence with separate index. Investigating officer also examined the available witnesses and recorded their statement under section 161 of Cr.P.C. and arrested the accused. During investigation, Investigating Officer also seized the weapon of offence in presence of witnesses under a proper seizure list. On 21.02.2022 the victim along with her son appeared at police station after discharging from Kulai District Hospital and Investigating Officer examined both the witnesses and recorded their statement under section 161 of Cr.P.C. Investigating Officer also collected injury report of the victim from the Kulai District Hospital as well as Dhumacherra PHC and ultimately, on completion of, investigation

being prima facie satisfied submitted charge-sheet against the accused Prem Mohan Tripura for the commission of offences punishable under Section 326/307 of the IPC

[5] Upon receipt of the aforesaid charge-sheet and on perusal of the same, cognizance of the offence punishable under Section 326/307 of the IPC was taken by learned Sub- Divisional Judicial Magistrate, Longtharai Valley, Dhalai Judicial District on 06.04.2022 against the accused Prem Mohan Tripura.

[6] Copies of the incriminating documents were supplied to the accused person in compliance with the provision of section 207 of Cr.P.C on 13.04.2022.

[7] Upon hearing both sides on the point of framing of charges and being prima-facie satisfied, charges under Section 326/307 of the IPC were framed against the accused Prem Mohan Tripura. Contents of the charges were read over and explained to the accused person in Bengali language in open Court to which he pleaded not guilty and claimed to be tried in open Court.

[8] To prove its case, the prosecution examined 15 witnesses and submitted documentary evidence. The accused did not produce any defense witnesses. After examining the evidence and hearing arguments, the Trial Court passed the impugned judgment on 07.11.2022, convicting and sentencing the appellant.

[9] Aggrieved by the conviction and sentence, the appellant filed this appeal seeking to set aside the impugned judgment.

[10] It is contended by the counsel for the appellant that PW-2, Smt. Chandrasree Tripura i.e. the victim, deposed at the trial that after taking dinner both the victim and the appellant were smoking 'hokka' and at that time as the victim refused to come back with the appellant, a hot altercation took place between them on that issue and then suddenly the appellant assaulted her with takkal which means that there was a provocation on behalf of the victim which prompted the appellant to commit the alleged

offence. Further, it was alleged by the victim that the appellant was a habitual drunker and he did the said act under influence of liquor.

[11] From the aforesaid evidences, it is clear that the appellant had no intention to kill the victim. For argument sake, if it is admitted that the appellant dealt a takkal blow on the victim, it was done by the appellant out of rage as the victim refused to come to his house and as there was a provocation. As such, the ingredient of Section 307 IPC is totally absent in the instant case, but the learned court below failed to appreciate it. The appellant is also been convicted under Section 326 of the IPC for causing grievous hurt to the victim, as in the instant case there was provocation on the part of the victim towards the appellant, the exception as provided under Section 335 of the IPC will attract in sentencing the accused under Section 326 of the IPC, but the learned court below miserably failed to take it into consideration during appreciation of evidence. The appellant is convicted and sentenced under both the sections i.e. Section 326 and 307 of the IPC for committing the said offence, is not permissible in law.

[12] On the other hand, learned PP appearing for the state-respondent has contended before this court that the impugned order is apt and proper and needs no interference from this court and further prayed to dismiss the appeal.

[13] Heard learned counsel for the parties.

[14] Having considered the facts and circumstances of the case, the nature of the injury inflicted, and the antecedents of the accused, this Court finds that while the offense under Section 326 IPC is serious, mitigating factors must be considered. The accused has shown remorse, cooperated during the trial, and has no prior criminal record. Furthermore, the injury, though grievous, cannot be seen leniently and the appellant cannot be set free for commission of such act. Since the matter has reached to this court, shutting eye for considering the future aspect of the appellant cannot be denied as well.

[15] In view of the above, considering principles of proportionality and reformatory justice, the sentence of 10 years' imprisonment is modified to 5 years. Other aspects of the impugned judgment as passed by the Court below shall remain unchanged.

[16] The appeal is allowed to the extent indicated above. Any interim orders are vacated, and pending applications, if any, are closed.

[17] It is needless to mention here that a copy of this order be marked to the Superintendent, Kendriya Sansodhanagar, Bishalgarh, at the earliest.

B.Palit, J

T. Amarnath Goud, J



Dipak

**DIPAK
DAS**

Digitally signed by
DIPAK DAS
Date: 2025.02.14
14:41:44 +05'30'