

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.68 OF 2024**

Sri Benu Debnath and anr.

..... Appellant(s)

Versus

The State of Tripura.

.....Respondent(s)

For the Appellant(s) : Mr. S. Lodh, Advocate.

For the Respondent(s) : Mr. Raju Datta, P.P.

Date of hearing and delivery of
Judgment & Order : 14.05.2025.

Whether fit for reporting : YES/NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)**

This present appeal has been filed against the impugned Judgment of Conviction and Order of Sentence dated 18.11.2024 and 19.11.2024 respectively, passed by the learned Additional Sessions Judge, Khowai Judicial District, Khowai, in Sessions Trial(T-II) 4 of 2021, whereby the learned Additional Sessions Judge, Khowai, convicted the appellants for committing offences, punishable under Sections 323, 456 and 326 of Indian Penal Code, and sentenced them to suffer Rigorous Imprisonment for 6(six) months with a fine of Rs.500/-, in default of payment of

fine they shall suffer Simple Imprisonment for 1(one) month for committing offence, punishable under Section 323 of IPC; and they were further sentenced to suffer Rigorous Imprisonment for a period of 1(one) year with a fine of Rs. 1,500/-, in default to suffer further Simple Imprisonment for 3(three) month for committing offence punishable under Section 456 of IPC; and they were also sentenced to suffer Rigorous Imprisonment for a term of 5(five) years with a fine of Rs.3,500/-, and in default of payment of fine, to suffer further Simple Imprisonment for 6(six) month for committing offence, punishable under Section 326 of IPC.

2. The brief facts of the case are that on 09.08.2019, one Sri Rajat Debnath lodged a written complaint alleging, *inter alia*, that on 08.08.2019, one of his cows damaged some brinjal plants belonging to Benu Debnath. Due to this incident, at around 6:00 p.m. on the same day, Benu Debnath and another individual, namely Paresh Maran Debnath (*i.e., appellant Nos. 1 and 2*), allegedly entered the complainant's dwelling hut and brutally assaulted his mother, Smt. Gita Debnath, with a spade with the intention to kill her, thereby causing grievous bleeding injuries to her right hand, face, and chest. It is further alleged that the appellants also assaulted the

complainant's wife, Smt. Kanan Debnath, with the handle of the spade, causing grievous injuries. When the complainant raised an alarm, the appellants assaulted him and his six year old son, Ayush Debnath, with fists, kicks, and blows. Hearing their cries, villagers arrived, and the appellants fled from the scene. The injured persons were initially taken to Kalyanpur CHC and, considering the critical condition of the mother and wife of the informant, they were referred to AGMC & GBP Hospital, Agartala, for further treatment.

3. On receiving the complaint, the Officer-in-Charge of Kalyanpur P.S. registered Kalyanpur P.S. Case No. 2019/KLN/068 dated 09.08.2019 under Sections 456/325/326/323/307/34 of IPC. After initiating the investigation, both appellants were arrested on 19.06.2020. Upon completion of the investigation, charge sheet No.23 of 2020 dated 29.06.2020 was filed against both appellants under Sections 456/325/447/323/326/307/34 of IPC. By Order dated 06.01.2021, the case was committed to the learned Sessions Judge, Khowai Judicial District. Subsequently, by Order dated 27.01.2021, the learned Sessions Judge transferred the case to the learned Assistant Sessions Judge, Khowai Judicial District, for disposal in accordance with law. Charges were framed under Sections 323/456/427/326/34 of IPC.

4. To establish the case, the prosecution examined 13 (thirteen) witnesses. The appellants did not adduce any witnesses in their defence. Later, as per Order dated 05.07.2024, the case was transferred to the learned Additional Sessions Judge, Khowai Judicial District.

5. After hearing both sides, the learned Additional Sessions Judge, Khowai, vide the impugned Judgment dated 18.11.2024, convicted the appellants as stated above.

6. Heard Mr. Sankar Lodh, learned counsel appearing for the appellants, and Mr. R. Saha, learned Additional Public Prosecutor appearing for the State-respondent.

7. Mr. Lodh, learned counsel appearing for the appellants, submitted that when the appellants approached this Court with a bail petition, it was allowed on the ground that the ingredients of Section 326 of IPC were absent. Therefore, even if the conviction under Sections 323 and 456 IPC is upheld, the impugned judgment does not contain any reasoning for not granting the benefit of probation under the Probation of Offenders Act. He further submitted that the medical evidence, i.e., the depositions of PWs 9, 12, and 13 (Doctors), indicated that the injuries sustained were not grievous in nature and were caused

by blunt objects, not sharp weapons. As per the prosecution's own case, the incident stemmed from a dispute over a cow entering the appellants' garden, which does not amount to a serious or heinous offence justifying application of Section 326 of IPC. Learned counsel also argued that the trial court committed a grave error in not extending the benefit of probation.

To support his said argument, he relied upon paras **2, 11, 26, 29, and 31** of the judgment of the Hon'ble Supreme Court in passed in ***Chellammal and Anr. Vs. State represented by the Inspector of Police [Criminal Appeal No. 2065 of 2025]***, dated **22nd April 2025**. The same is produced here-in-under:-

"2. The two appellants, mother-in-law and husband, respectively, of the deceased were jointly tried⁴ for commission of offences punishable under Section 304-B and [Section 498A](#), Indian Penal Code⁵. The Sessions Judge (Mahila Court), Coimbatore⁶, vide its judgment and order dated 25th May, 2012, acquitted the appellants of the charge under [Section 304-B](#), IPC but convicted them under [Section 498-A](#), thereof. While the 1st appellant was sentenced to a year's rigorous imprisonment, the 2nd appellant was sentenced to two years' rigorous imprisonment. Both the appellants were sentenced to fine too.

11. *Insofar as relevant for the purpose of the present appeal, Section 360, Cr. PC enabling release on probation of good conduct ordains that when any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is Probation Act*

360. Order to release on probation of good conduct or after admonition.—(1) *When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with*

death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

26. On consideration of the precedents and based on a comparative study of Section 360, Cr. PC and sub-section (1) of [Section 4](#) of the Probation Act, what is revealed is that the latter is wider and expansive in its coverage than the former. Inter alia, while Section 360 permits release of an offender, more twenty-one years old, on probation when he is sentenced to imprisonment for less than seven years or fine, [Section 4](#) of the Probation Act enables a court to exercise its discretion in any case where the offender is found to have committed an offence such that he is punishable with any sentence other than death or life imprisonment. Additionally, the non-obstante clause in sub-section gives overriding effect to sub-section (1) of [Section 4](#) over any other law for the time being in force. Also, it is noteworthy that Section 361, Cr. PC itself, being a subsequent legislation, engrafts a provision that in any case where the court could have dealt with an accused under the provisions of the [Probation Act](#) but has not done so, it shall record in its judgment the special reasons therefor.

29. For the foregoing reasons and in the light of the factual matrix, we are unhesitatingly of the opinion that the Sessions Judge and the High Court by omitting to consider whether the appellants were entitled to the benefit of probation, occasioned a failure of justice. Consequently, there was no worthy consideration as to whether the appellants could be extended the benefit of probation.

30. We are conscious that in [MCD](#) (supra), since followed in [State of Madhya Pradesh v. Man Singh](#)²⁵, this Court has held that the report of the probation officer referred to in sub-section (2) of [Section 4](#) of the Probation Act is a condition precedent and, therefore, must be complied with by the trial courts and the high courts. Importantly, it has also been held that the courts may not be bound by such report. In such view of the matter, we need to make appropriate directions.

31. Accordingly, while maintaining the conviction recorded against the appellants but looking to the facts and circumstances, we are inclined to remit the matter to the High Court for limited consideration of the question of grant of probation to the appellants upon obtaining a report of the relevant probation officer. It is ordered accordingly."

Learned counsel contended that the appellants should be granted the benefit of probation in light of the Apex

Court's Judgment as stated above. He submitted that while conviction under Sections 323 and 456 of IPC may be upheld, the appellants should be released on probation upon obtaining the requisite report.. He maintained that conviction under Section 326 of IPC is not applicable in this case.

8. On the other hand, Mr. R. Saha, learned Additional Public Prosecutor, submitted that the prayer of the appellant-counsel regarding Section 326 of IPC may be considered. However, as for the release of the appellants on probation is concerned, the matter should be remanded to the trial court. The trial court may decide on the question of probation after receiving and considering the requisite report

9. Heard and perused the evidence on record.

10. Before arriving at a conclusion, let us examine the depositions of some of the important witnesses.

11. PW-6 Smt. Kanan Debnath deposed that the informant, Rajat Debnath, is her husband, who lodged this case against the accused persons, namely Paresh Debnath and Benu Debnath. PW-6 further deposed that on 08-08-2019 their cow entered the brinjal garden of appellant-Benu Debnath and damaged brinjal trees, and that over this issue, on the same date at about 5:00–6:00 p.m., the appellants, Benu Debnath and

Paresh Debnath, illegally entered their house and damaged the doors and windows of their dwelling hut. PW-6 also deposed that accused Paresh Debnath assaulted her mother-in-law with a spade and that accused Benu Debnath assaulted her with a lathi. PW-6 again deposed that the accused persons also assaulted her and her son, Ayush Debnath, with a lathi. They raised an alarm and, on hearing it, neighbouring people came to their house, whereupon the accused persons fled. The neighbours then shifted them to Kalyanpur PHC for treatment, and from there PW-6, her mother-in-law Gita Debnath, and her son Ayush Debnath were referred to AGMC & GBP Hospital for better treatment. She was discharged on 10-08-2019, and her mother-in-law underwent treatment at AGMC & GBP Hospital for about one and a half months.

12. PW-7 Smt. Gita Debnath deposed that the informant, Rajat Debnath (PW-4), is her son, who lodged this case against Paresh Debnath @ Maran and Benu Debnath. PW-7 further deposed that on 08-08-2019 their cow entered the brinjal garden of Benu Debnath and damaged brinjal trees, and that over this issue, at about 6:00 p.m., the accused illegally entered their house and began abusing her daughter-in-law, Smt. Kanan Debnath (PW-6), with filthy language. Hearing this, PW-7 and

Smt. Kanan Debnath entered their room, but the accused then broke the doors and windows of their dwelling hut. Paresh Debnath assaulted her with a spade and Benu Debnath with a lathi. The accused also assaulted Smt. Kanan Debnath and her grandson Ayush Debnath (PW-8) with a lathi and struck her son with fists and blows. They raised an alarm, neighbours came, and the accused fled. Because of the assault, PW-7 sustained severe injuries to her hands and other parts of the body. Neighbours, including Babul Debnath (PW-3), took them to Kalyanpur PHC, from where PW-7, PW-6, and PW-8 were referred to AGMC & GBP Hospital, where PW-7 was treated for more than a month.

13. PW-8 Master Ayush Debnath stated: "One day Benu uncle and Maran uncle came to our house and assaulted my father Rajat Debnath, my mother Kanan Debnath, and my grandmother Gita Debnath. Maran uncle assaulted my grandmother with a spade and Benu uncle with a lathi." He identified both accused in court. In cross-examination he denied suggestions that no such assault occurred or that he was deposing falsely at his mother's dictation.

14. PW-9 Dr. Abhijit Acharjee deposed that on 08-08-2019 at 9:52 p.m. he attended Smt. Kanan Debnath, brought by her husband with alleged history of physical assault

causing trauma to both elbows. No external injury was found; X-rays of chest and elbows were taken, and orthopaedic consultation showed no bony lesion. The injury was simple and due to blunt trauma. He prepared the injury report (Exbt. 4). In cross-examination he stated such injuries could result from causes other than assault.

15. PW-12 Dr. Sulakshana Mitra deposed that on 17-10-2019 Ayush Debnath visited AGMC & GBP Trauma Centre alleging assault. She found an abrasion on the back below the left scapula; no other external injury was seen. The patient was not admitted but advised to visit Orthopaedics. The injury was slight and could have been caused by a blunt weapon. She prepared the injury report (Exbt. 10). In cross-examination she agreed that a fall on a hard surface could cause such injury.

16. PW-13 Dr. Swarajit Debbarma deposed that on 08-08-2019 Smt. Gita Debnath was referred from Kalyanpur CHC to AGMC & GBP. Examination showed multiple lacerated injuries (1-5 cm) over the chin, right arm, posterolateral right forearm, and puncture on left forearm; fractures of both bones of the right forearm and of the ulna on the left forearm. All were caused by a blunt object. She was discharged on 19-09-2019. He

prepared the injury report (Exbt. 11). In cross-examination he stated such injuries could also result from a fall on a hard surface.

17. After weighing the evidence, we find that the charge under Section 326 of IPC does not hold water. On perusal of the statement of victim, Smt. Gita Debnath, it is found that the alleged weapon as were used for assaulting the victim were one spade and one lathi. However, no cut injury caused by any sharp edged weapon like spade is found to have been indicated by the medical officers in the concerned injury reports. In fact, the medical experts (PWs 9, 12, 13) unanimously describe the wounds as blunt-force injuries. One doctor even admitted that a bad fall on a hard surface could explain the fractures. It is also seen from the record that, the incident stemmed from a dispute over a cow entering the appellants' garden, which does not amount to a serious or heinous offence justifying application of Section 326 of IPC. Because Section 326 of IPC requires both a "*dangerous weapon*" and "*grievous hurt*", and the prosecution failed to prove the same beyond reasonable doubt, the conviction under Section 326 of IPC as awarded by the Court below to the appellants herein in the impugned Judgment is set aside.

18. The eyewitnesses PW-6 (Smt. Kanan Debnath), PW-7 (Smt. Gita Debnath), and PW-8 (Master Ayush

Debnath) whose testimony remained materially unshaken in cross-examination, clearly establish that the appellants, in the heat of a neighbourhood quarrel, unlawfully entered the informant's dwelling hut and caused hurt to the occupants. Their consistent version, corroborated by contemporaneous injury reports, fully satisfies the ingredients of Sections 323 and 456 of IPC. Consequently, the convictions under these two sections as passed by the Court below in the impugned Judgment are affirmed.

19. Once Section 326 of IPC is out of the picture, the heaviest sentence left is a year's jail under Section 456 of IPC. The Probation of Offenders Act says the Court must seriously consider releasing a first-time offender on probation. The same stood un-addressed. Therefore the matter is remanded back to the Trial court to adjudicate the same in the light of the Hon'ble Apex Court Judgment passed in ***Chellammal and anr. Vs. State represented by the Inspector of Police(supra)*** as per procedure and decide the matter in accordance with law.

20. With the above observation and directions, this present appeal is disposed of. As s sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR
SUHANJIT SINGHA
Date: 2025.05.21
13:44:30 +05'30'

