

**HIGH COURT OF TRIPURA
AGARTALA
Crl. A. No.19 of 2023**

1. Sri Asim Das

S/O Late Matilal Das.

2. Smt. Sujata Das

W/O Shri Asim Das

Both are residents of Nandannagar,
S.D.O. Chowmuhani, Debnathpara,
P.S - New Capital Complex,
District - West Tripura.

----- Convict-Appellants

Versus

The State of Tripura

(Represented by the Secretary),
Department of Home,
Government of Tripura,
Agartala.

----- Respondent

For Appellant(s) : Mr. S. Lodh, Adv,
Mr. S. Majumder, Adv.

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

Date of hearing : 29.11.2024

Date of delivery of
Judgment & Order : 30.11.2024

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 374 of Cr.P.C. is filed challenging the judgment and order of conviction and sentence dated 18.08.2023 delivered by Learned Additional Sessions Judge (Court No.2), West Tripura, Agartala in connection with case No.S.T.(T-I) No.51 of 2016. By the said judgment and order of conviction and sentence, Learned Additional Sessions Judge has found the appellant namely Shri Asim Das and Smt. Sujata

Das as guilty for commission of offence punishable under Section 326 read with Section 34 of IPC and sentenced them to suffer RI for 2(two) years each and both the convicts were also sentenced to pay fine of Rs.5000/- each for commission of the said offence punishable under Section 326 of IPC i.d. to suffer further RI for 6(six) months each and it was further ordered that in the event of realization of fine, the same shall be paid to the victim Amal Shome Bhowmik i.e. PW-5.

2. Heard Learned Counsel Mr. S. Lodh along with Learned Counsel Mr. S. Majumder appearing for the appellants and also heard Learned P.P., Mr. Raju Datta representing the State-respondent.

3. In course of hearing of argument, Learned Counsel for the appellant first of all drawn the attention of the Court and submitted that the Learned Trial Court initially framed charge against the convicts-appellants under Section 323/326/307 of IPC read with Section 34 of IPC but on conclusion of trial, Learned Court below convicted both the appellants under Section 326 of IPC read with Section 34 of IPC and accordingly convicted them. But considering the materials on record, according to Learned Counsel for the appellants, there was no scope to found the appellant to be guilty for the offence charged punishable under Section 326 of IPC.

Learned Counsel further submitted that on the alleged day, another case was filed by one of the convict Sujata Das to O/C, NCC P.S. and on the basis of that case, East Agartala

Women PS case No.30/14 under Section 448/354(b) of IPC was registered and as per law both the cases were supposed to be tried together by the Learned Court below but the Learned Court without conducting joint trial only conducted the trial of the case laid by the informant Shyamal Shome Bhowmik which was not permissible in the eye of law.

Learned Counsel further submitted that prosecution by the oral evidence on record failed to satisfy the ingredients of offence as laid down in Section 320 of IPC but the Learned Court below without considering the ingredients of Section 320 of IPC found the appellants guilty under Section 326 of IPC for which the interference of the Court is required.

Learned Counsel further submitted that if both the cases could be tried together by the same Court in that case the actual picture could come out as to how the victims sustained injuries in the case.

Learned Counsel also submitted that the medical evidence on record are also contradictory to each other and does not satisfy the ingredients of offence punishable under Section 326 of IPC. So, the judgment of the Learned Court below suffers from infirmities.

He further submitted that although according to prosecution, two persons were sustained injuries by the act of the appellants but here in the case, the prosecution only produced and proved the injury report of the victim Amal Shome Bhowmik but failed to prove injury report of another alleged

victim Shikha Deb Roy i.e. the sister of alleged Amal Shom Bhowmik. So, the allegation of the prosecution was nothing but a false and concocted story and on the basis of materials on record, there was no scope to presume the appellants to be guilty for the alleged offence punishable under Section 326 of IPC and as such, Learned Counsel for the appellants urged for allowing this appeal by setting aside the judgment of the Learned Court below.

Alternatively, Learned Counsel for the appellants further submitted that, if for any reason, this Court finds the appellant to be guilty for any other offence, in that case, in view of the principle of law laid down by this Court in connection with Crl. Rev. P. No.31 of 2011 dated 18.07.2014 urged for releasing both the convicts on probation in view of the provisions of Probation of offenders Act and Learned Counsel in support of his contention referred few citations which would be discussed later on.

4. On the other hand, Learned P.P. representing the State respondent countering the submissions made by Learned Counsel for the appellants submitted that Learned Court below after appreciating the evidence on record rightly and reasonably found both the appellants to be guilty and convicted them accordingly and there is no scope to presume the appellants to be innocent with the alleged charge and relying upon the evidence of PW-1, Sikha Deb Roy (victim), PW-2, Shyamal Shome Bhowmik (informant) and PW-5, Amal Shome Bhowmik (victim), Learned P.P. submitted that there is no scope on the

part of this Court to interfere with the judgment delivered by Learned Court below and urged for dismissal of this appeal upholding the judgment and order of conviction delivered by Learned Court below.

5. I have heard arguments of both the sides at length and also gone through the judgment delivered by Learned Trial Court below. After hearing both the sides, here in this case, this Court is to decide as to whether the judgment and order of conviction and sentence delivered by Learned Trial Court below under Section 326 of IPC read with Section 34 of IPC is sustainable or not in the eye of law.

As already stated, Learned Trial Court at the time of framing of charge framed charge under Section 323/326/307 of IPC read with Section 34 of IPC against both the appellants but on conclusion of trial, found the appellants guilty for the offence charged under Section 326 of IPC read with Section 34 of IPC and accordingly convicted them.

6. This case was registered on the basis of an FIR laid by one Shyamal Shome Bhowmik i.e. the brother of the victims to O/C, NCC P.S. alleging inter alia that on 06.05.2014 in the morning at about 7 am, his younger brother Amal Shome Bhowmik at SDO Chomuhani went to the residence of his elder sister, Sikha Deb Roy and on arrival therein, he could know that his elder sister went to her another residence situated to the northern side and thereafter at about 7:30 am, the victim Amal Shome Bhowmik went to that house that time the accused Asim

Das, Sujata Das and Rakhal Sarkar armed with deadly weapons caused hurt to his brother and elder sister. His brother sustained severe injury to his head and abdomen and his sister also sustained bleeding injury. The inhabitants of that area brought them to GBP Hospital and considering the seriousness of his brother, he was admitted in the Hospital immediately and as his condition was deteriorating so he was shifted to ILS Hospital. It was further submitted that his sister Sikha Deb Roy also admitted in GBP Hospital. It was further asserted that the accused Asim Das and Sujata Das have been forcefully occupied another residence of his elder sister to the northern side of her residence. Hence the FIR was laid.

7. Accordingly, on the basis of the FIR on 06.05.2014, O/C, Agartala N.C.C P.S. registered the case and the case was endorsed to the I/O and on completion of investigation, the I/O laid charge-sheet against the both the appellants and on the basis of another FIR laid by one of the appellant Sujata Das that the victim Amal Shome Bhowmik outraged her modesty so another case was lodged to O/C, N.C.C. P.S. and as the offence was relating to offence against women so the matter was referred to O/C, East Agartala Women P.S. Accordingly, East Agartala Women P.S. case No.30/14 under Section 448/354(b) of IPC was registered.

8. To substantiate the charge, prosecution in this case has adduced in total 13 nos. of witnesses and prosecution also relied

upon some documents which were marked as Exhibits in this case.

The defence case was that of total denial of the allegation of the prosecution and as such, the appellants in course of their examination under Section 313 of Cr.P.C. were pleaded as innocent and they desired to adduce witness in support of their defence. Accordingly, both the appellants were examined and cross-examined as DW-1 and DW-2.

Since both the appellants were convicted under Section 326 of IPC and Learned Counsel for the appellant in course of hearing of argument challenged the maintainability of conviction under Section 326 of IPC against the appellants. So, it would be convenient if the synopsis of the evidence on record is narrated herein below.

9. PW-1 is the one of the victim, Sikha Deb Roy. She deposed that on 06.05.2014 accused Asim Das, Sujata Das and Rakhal Sarkar entered into her land at S.D.O. Chowmuhani under N.C.C. P.S. and while they tried to raise bamboo fencing encroaching her jote land that time she herself and brother Amal Shome Bhowmik went there and when they raised protest, they attacked her and her brother armed with axe and 'boti dao'. She was assaulted by Asim Das by fist and blows and Sujata Das struck several blows with 'boti dao'. As a result of which, she sustained several bleeding injuries on her face and other parts of the body. She was admitted in the GBP Hospital and took treatment therein. The accused also assaulted her brother Amal

Shome Bhowmik. Asim Das struck several blows over different parts of the body of her brother and Sujata Das also struck several blows with 'boti dao' to her brother for which he received severe bleeding injury on his person. He was admitted in ILS Hospital and undergone treatment therein. Police on 10.05.2014 seized an axe from an abandoned place belongs to others. She identified her signature on the seizure list which was marked as Exbt.-1 and identified the seized axe which was marked as Exbt.-M.O.1 and identified both the accused persons.

During cross-examination, she stated that Asim Das and Sujata Das are husband and wife by relation. She further stated that the house of Amal Shome Bhowmik and Shyamal Shome Bhowmik are situated at a distance about half kilometer from her house. She could not say from where the 'axe' was recovered by police. Further stated that her brother received severe cut injury over his head and other parts with 'boti dao' and axe and Sujata Das strike blow with a 'boti dao' to her brother Amal Shome Bhowmik.

10. PW-2, Shyamal Shome Bhowmik is the informant. He deposed that on 06.05.2014 in the morning he was at his residence. That day, one Apu Bhattacharjee reported him over phone that accused Asim Das and wife Sujata Das entered into the land of his sister Sikha Deb Roy tried to raise bamboo fencing and encroaching her land and there was every apprehension of hot altercation and untoward incident and accordingly he rushed to the spot and found accused Asim and

his wife Sujata already attacked his brother Amal Shome Bhowmik and also noticed accused Ashim Das strike out repeated blows with axe and Sujata Das to assault his brother with a 'boti dao'. On seeing the incident, he raised alarm. Upon hearing his shouting, the accused persons Asim and Sujata Das fled away through the brick soiling road approaching towards the north of the said house along with the axe and the boti dao and his sister, Sikha Deb Roy also received injury. Thereafter, both of them were taken to hospital and his brother was shifted to ILS Hospital. He laid the complaint to O/C, GBP outpost which was prepared by him in his own handwriting and identified the ejahar which was marked as Exbt.-2 and his signature was marked as Exbt.-2/1. For more than a month, his brother had undergone treatment at ILS Hospital.

During cross-examination, he stated that his brother had some dispute with accused Asim Das. Also stated that he heard that there was a negotiation between the accused and his brother-in-law to sale the land on which the incident occurred with the accused person. He further admitted that Sujata Das lodged a case against his brother Amal Shome Bhowmik over the said incident which take place on 06.05.2014 in the morning. Sujata Das was also arrested by police.

11. PW-3, Subrata Sarkar deposed that at about 3-4 years back one day in the morning Shyamal while going to his sister's house at Noagaon informed them that a dispute was going on between his sister Sikha Deb Roy and his brother Amal Shome

Bhowmik with accused Asim and Sujata over a land dispute. That time, he was returning back to home and thereafter he rang to said Shyamal Shome Bhowmik who reported that his brother Amal Shome Bhowmik received injury and he was brought to GBP Hospital. He thereafter rushed to GBP Hospital and found Amal Shome Bhowmik in unconscious stage and the wounds over his head and belly were dressed and primary medical aid was given. Later on, he talked with Shyamal Shome Bhowmik at GBP Hospital and could know that over the land dispute, Amal was severely beaten by the accused Asim Das and his wife Sujata Das and as a result of their physical assault, Amal received severe cut injury over his head and belly.

12. PW-4, Dr. Damodar Chatterjee is Medical Officer. He deposed that on 06.05.2014, he was posted as Assistant Professor, Department of Surgery MS2 Unit 2 AGMC and GBP Hospital. On that day, Amal Shome Bhowmik was admitted in MS2 through emergency block of the GBP Hospital with a history of head injury and polytrauma followed by physical assault. In course of examination, he found: (1) incised wound over the right upper abdomen measuring about 10 cm x 1 cm x 1 cm and (2) incised wound 2 cm x 1 cm x 1 cm over left parietal region. The injuries were simple and fresh in age and they were caused by sharp cutting weapon. During his examination, he stated that the patient was unconscious and as per C.T. scan report, there was sub arachnoid subdural haemorrhage and it was considered to be a grievous one. He referred the patient to ILS Hospital,

Agartala for further treatment on 06.05.2014. He issued the preliminary report which was prepared by him and identified his report which was marked as Exbt.-3 and his signature was marked as Exbt.-3/1 series. Further stated that the internal haemorrhage which was detected after C.T. scan of brain may be caused by a sharp edge of an 'axe' as well as by the blunt end of an 'axe'.

During cross-examination, he stated that he prepared the injury report of Amal Shome Bhowmik as per hospital bed head ticket on 28.06.2014.

13. PW-5, Amal Shome Bhowmik is another victim. He deposed that on 06.05.2014 in the morning, his sister informed him over phone that accused Asim and Sujata accompanied by few labourers entered into the land of his brother-in-law, tried to encroach the land by raising boundary fencing over the land of his sister and accordingly, he rushed therein and found the accused persons with the help of some labourers were raising boundary fencing. He requested Asim Das not to raise any fencing as this is a land dispute and a case has already been lodged with NCC P.S. He failed to make them understand. Suddenly, Asim Das became furious and attacked him from back and struck out several blows with an axe on his head for which he received severe bleeding injury and fallen on the ground. Accused Sujata Das attacked with a 'boti dao' from front side and struck out repeated blows. He tried to resist her but failed to save. He received severe cut injury on his belly, right elbow and

right palm. He caught hold of his belly otherwise intestine would have come out. Later on, he went to GBP Hospital riding on the motor bike of one Banty Chakraborty and attended emergency. He lost sense and he regained sense after one and half months. He undergone treatment at GBP Hospital and from there, he was taken to ILS Hospital and at the time of accident, his sister was present with him and when his sister tried to save him. That time, she was also beaten by the accused persons.

During cross-examination, he stated that at the time of accident he did not see his brother Shyamal Shome Bhowmik either on the spot or any other place adjacent to the spot. He further submitted that he saw accused Asim Das only on the date of the accident but prior to the accident, he was not known to him.

14. PW-6, Manik Lal Deb, SI of police. He deposed that on 06.05.2014 , he was posted as Sub-Inspector of police, N.C.C. P.S. and after receipt of written ejahar of Shyamal Shome Bhowmik, he registered N.C.C. P.S. case No.43 of 2014 under Section 326/34 of IPC. He identified his endorsement with signature on the ejahar which was marked as Exbt.-2/2. He filed up the printed FIR form in his own hand writing which beared his signature and identified the printed FIR form which was marked as Exbt.-4 and his signature which was marked as Exbt.-4/1. After that, he handed over the case docket to O/C, Inspector Subrata Chakraborty who endorsed this case for investigation to SI Ratan Chakraborty.

15. PW-7, Laxmi Debnath deposed that about 2 years and 6 months back on a day in the morning, while she was busy with her household works, that time, she noticed Sikha Deb Roy and Sujata Das engaged in quarrel over vacant land. Later on, she could know that Amal Shome Bhowmik sustained injury on his person but she could not say as to how he sustained injury. She was declared hostile by the prosecution and her portion of statement was marked as Exbt.-5 subject to proof by IO.

16. PW-8 deposed that on 10.04.2014, she went to collect firewoods from an adjacent area where she noticed an axe lying there in a bush in an abandoned place then she informed the matter to her husband. Her husband reported the matter to police and police came and seized the axe fitted with wood marked under a seizure list in presence of her and her husband. She identified her signature on the seizure list which was marked as Exbt.-1/1 but she could not identify the axe. She was also declared hostile by the prosecution and her portion of statement was marked as Exbt.-6 subject to proof by IO.

17. PW-9, Tarani Kumar Debnath deposed that on 10.05.2014 in the morning, his wife went to an adjacent vacant land for collection of firewood where she noticed an axe was lying there in the bush over the abandoned place. She informed the matter and knowing the same, he rushed to the spot and also found an axe lying there in the bush which was later on seized by police. He identified his signature on the seizure list which was marked as Exbt.-1/2 and identified Exbt.-MO1. He

was declared hostile by the prosecution and his portion of statement was marked as Exbt.-7 subject to proof by IO.

18. PW-10, Dipen Shil deposed that on the alleged day he was present in his shop of carrying articles at Nandannagar in the morning probably at about 6:30 am and at about 7:30 am he received one telephonic information from one Shyamal Shome Bhowmik that at SDO Chowmuhani his brother Amal Shome Bhowmik was lying on the earth with injured condition and he requested him to go there and accordingly, he arrived to the PO. On arrival to the spot, save and except blood stained earth he did not find any other thing. By this time, the victim was shifted to hospital. He was also declared hostile by the prosecution and his portion of statement was marked as Exbt.-8 subject to proof by IO.

During cross-examination, he stated that he has good relation with Amal Shome Bhowmik and Shyamal Shome Bhowmik.

19. PW-11, Ratan Chakraborty is IO who laid charge-sheet against the accused. He identified the hand sketch map of the PO marked as Exbt.-9 as a whole and identified the index marked as Exbt.-10 as a whole and identified the seizure list in respect of seizure of 'axe' marked Exbt.-1/3 and identified another seizure list dated 13.05.2014 in respect of seizure of collection of blood sample of Amal Shome Bhowmik and identified the same which was marked as Exbt.-11. He confirmed Exbt.-6, 7 and 8.

During cross-examination, he stated that during the part of his investigation it did not reveal to him that whether Sujata Das had laid any case against Amal Shome Bhowmik or not. He also could not say when Sujata Das was released on bail from the Court.

20. PW-12, Dr. Angshuman Borah deposed that on 06.05.2014 he was posted at ILS Hospital. On that day, one patient namely Amal Shome Bhowmik aged 38 years was admitted in the hospital with a history of head injury and poly trauma following physical assault. The said patient was brought to ILS Hospital from GB Hospital on that day at 12:05 pm with a history of loss of consciousness. After examination, he found (i) Stitched lacerated injury over left parietal scalp approximately 5 cm in his head brain abdomen limbs and it was grievous in nature caused by heavy sharp weapon. (ii) Lacerated injury 0.5 cm later cantus of right eye and also he found another cut injury in right subcostal region approximately 12 cm x 1 cm and multiple abrasion in both upper limbs. Thereafter he submitted his report on 09.06.2014 and identified the report which was marked as Exbt.-12 as a whole.

21. PW-13, Samir Kanti Das deposed that on 18.04.2015 he was attached to N.C.C. P.S. as SI of police and on that day, this case was reendorsed to him for completion of investigation and during investigation he examined witnesses Sikha Deb Roy and Amal Shome Bhowmik and recorded their statements and

collected the report of SFSL and on completion of investigation, he laid charge-sheet against the appellants.

During cross-examination, he stated that during investigation it did not reveal to him as to whether accused Sujata filed one case against Amal Shome Bhowmik at East Agartala Women PS or not.

22. As already stated, the appellants were examined in this case as DWs-1 and 2.

DW-1, Sujata Das deposed that she is the accused of this case and apart from her, this case was lodged against her husband and another Rakhal Sarkar who expired during investigation and the alleged accident took place on 06.05.2014. On that day, Amal Shome Bhowmik came to her house in the morning at about 7 to 7:30 am in search of her husband when she was with her baby in the house and no other person. She told him that her husband is not in the house as he has gone to school of his daughter for giving her in the school. That time, Amal Shome Bhowmik attacked her and caught her neck when her baby was in her lap, he opened her dress and torned her blouse and snatched her baby and thrown away on the floor. He also pushed her on the floor. She was crying for safety when she used 'Dao' against Amal Shome Bhowmik as he was trying to commit rape at that moment. He ran away from his house and she came out of his house by crying keeping her baby in her lap. The neighbouring people came and appeared therein. The family members of her father also came to the spot. She came to

N.C.C. P.S. leaving her baby with her brother. She informed the matter to N.C.C. P.S. Police took her to GBP Hospital for medical checkup. Thereafter, they took her to the East Agartala Women P.S. and accordingly, she laid one FIR and the police also laid charge-sheet in that case vide C.S. No.52 of 2014 and she identified the certified copy of said case in total 14 sheets which were marked as Exbt.-A to Exbt.-A(xiii) on identification. She further stated that she had no personal enmity with Amal Shome Bhowmik. In 2014, they had an agreement to purchase a land from the sister-in-law of Amal Shome Bhowmik namely Sajal Deb Roy. Sri Sajal Deb Roy handed over the possession of the land after getting the consideration money but the registry of the land could not be completed as Sajal Deb Roy had no khatian in his name. Sajal Deb Roy took the amount of the land from them as he was ill at that time and assured that he will register the sale deed after getting the khatian and recovered from illness. One meeting was called in the club namely Metropolitan club, SDO Chowmuhani regarding payment of consideration money in the presence of Chandramohan Sarkar, Sudarshan Dey, Chitta Sarkar, Naba Gopal Majumder(Secretary of Club), Sajal Deb Roy admitted that he has taken the amount of the land value but the registry will be made later on. Total 4 meetings were called for the purpose. The rate of the land has become higher now. So, Amal Shome Bhowmik had prepared a plan with Sajal Deb Roy not to get the land registered.

During cross-examination by the prosecution, she stated that the disputed land is under her possession and she has got no registered sale deed in her favour. Nothing more came out relevant.

23. Similarly, DW-2, Asim Das another appellant stated that Sujata Das is his wife. He in his examination-in-chief tried to support the version of DW-1 in his examination-in-chief.

During cross-examination by the prosecution, he stated that he was not the eye-witness of the incident happened with his wife and the house of sister of Amal Shome Bhowmik was situated 700-800 meters away from his house. Nothing more came out relevant.

24. From the evidence on record, it appears that the appellant also admitted the fact of injury of the victim Amal Shome Bhowmik. Learned Trial Court below at the time of delivery of judgment relied upon the evidence of the prosecution ignoring the evidence of the appellants and found the appellants guilty punishable under Section 326 of IPC. The offence 'grievous hurt' has been defined in Section 320 of IPC. For the sake of convenience, I would like to mention herein below the definition of 'grievous hurt' as mentioned in Section 320 of IPC which is as follows:

"320. Grievous hurt.- The following kinds of hurt only are designated as "grievous":

First.- Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

25. Since in this case, charge was framed under Section 326 of IPC so let me also discuss the relevant provision of Section 326 of IPC which reads as under:

"326. Voluntarily causing grievous hurt by dangerous weapons or means.- Whoever, except in the case provided for by Section 335, voluntarily cause grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

26. Here in the case at hand, I have discussed the evidence on record of the prosecution as well as the appellants in detail as stated above. From the evidence on record, it appears that although the appellant Sujata took the plea that the accused tried to outrage her modesty but she in support of her contention could not produce any independent witness to substantiate her allegation and DW-2, her husband in course of his examination specifically stated that he was not present to the PO as alleged by his wife at the time of alleged incident. So, legally there is no scope to place any reliance upon her evidence. Thus, *prima facie* it appears that the appellants by the DWs could not

broken/dismantle the prosecution allegation. Now, from the evidence of the victims as well as the informant and also from the evidence of medical officers, it appears that regarding injury there is no dispute on record. Now, from the injury report of the victim, Amal Shome Bhowmik opined by two separate doctors, it appears that the evidence of both the medical officers are contradictory to each other to some extent. Since the charge was framed under Section 326 of IPC so simply on the basis of oral evidence on record, there is no scope to come to a definite finding under Section 326 of IPC in absence of medical evidence on record. And since the medical evidence on record as stated above, are to some extent contradictory to each other so it appears that the prosecution has failed to prove the charge beyond reasonable shadow of doubt against the appellants under Section 326 of IPC.

27. Learned P.P. in course of hearing of argument although tried to draw the attention of the court that due to causing of hurt, victim Amal Shome Bhowmik has become disabled but that oral evidence does not match with the injury reports of the medical officer submitted and proved by the prosecution in this case and from the oral/documentary evidence on record, it appears to me that the prosecution has failed to satisfy the ingredients of grievous hurt as laid down in Section 320 of IPC.

28. In course of hearing of argument, Learned Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2003) 9 SCC 426 (State of M.P. v.**

Mishralal (Dead) & Ors.) wherein in para No.8. Hon'ble the Apex Court observed as under:

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case :1990 Supp SCC 145. The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.

Referring the same, Learned Counsel submitted that since there was case and cross-case so it was the duty of the Learned Court below to try both the cases at the same time to avoid conflict in decisions since there was admission from the side of the victim Amal Shome Bhowmik that a specific case was registered but in this regard, it is submitted that as raised by Learned Counsel for the appellants at this stage, no such plea was taken before the Learned Trial Court by the appellants earlier. So, in absence of joint trial it cannot be said that the trial was vitiated and the appellants were prejudiced as submitted by Learned Counsel for the appellants.

29. Learned Counsel also relied upon another citation of the Hon'ble Supreme Court of India reported in **(2005) 3 SCC 260** (Mathai v. State of Kerala) wherein in para Nos.14 and 15 Hon'ble Apex Court observed as under:

14. "Grievous hurt" has been defined in Section 320 IPC, which read as follows:

"320 Grievous Hurt - The following kinds of hurt only are designated as "grievous":

First .- Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly - Permanent privation of the hearing of either ear.

Fourthly - Privation of any member or joint.

Fifthly - Destruction or permanent impairing of the powers of any members or joint.

Sixthly - Permanent disfigurement of the head or face.

Seventhly - Fracture or dislocation of a bone or tooth.

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

15. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

Referring the same, Learned Counsel for the appellants submitted that prosecution in this case has failed to prove the ingredients as mentioned in Section 320 of IPC. So, the judgment of the Learned Court below suffers from infirmities for which the same is liable to be interfered with.

30. Learned Counsel for the appellants also further drawn the attention of the Court referring another citation of this High Court in connection with case No. **Crl. Rev P. No.4 of 2019 (Sri Dipak Bhowmik v. The State of Tripura)** wherein this Court in para Nos.38 and 39 observed as under:

"[38] Evidently, the accused gave the blow on the victim in the fits of anger. From the evidence of the prosecution witnesses, it would appear that the attack on the victim was not a premeditated attack.

Quite evidently, the focus of the torchlight held by the victim fell on the face of the accused which made him agitated. Hot exchange of words took place between the accused and the victim and in the fits of anger he attacked the victim with a sharp edged weapon. Even though the evidence suggests that provocation preceded the occurrence but whether such provocation was grave within the meaning of section 335 of IPC cannot be determined in absence of the exact words used during such altercation between the accused and the victim.

39. But, considering the injuries suffered by the victim it cannot be said that the victim suffered „grievous hurt” within the meaning of section 320 IPC. However, there is no doubt that hurt of the victim was caused by the accused by means of a dangerous weapon and as such the conviction of the accused petitioner is altered to that under section 324 IPC.”

Referring the same, Learned Counsel submitted that since the prosecution has failed to satisfy the ingredients of Section 320 of IPC and since there is admission on the part of the one of the appellant that she dealt 'dao' blow on the person of victim Amal Shome Bhowmik, so the appellants can be convicted in some other provision of IPC but not under Section 326 of IPC.

31. So, after going through the aforesaid citations as referred by Learned Counsel for the appellants and also after going through the evidence on record of the Learned Court below as well as the judgment delivered by Learned Trial Court below and after appreciating the arguments voiced by Learned Counsels, it appears that prosecution before the Learned Trial Court below has failed to prove the charge levelled against the appellants under Section 326 of IPC read with Section 34 of IPC but the prosecution by adducing evidence on record has been able to prove the charge levelled against the appellants under Section 324 of IPC read with Section 34 of IPC for which in my considered view, both the appellants are liable to be convicted

under the provision of Section 324 of IPC in view of provision provided under Section 222(2) of Cr.P.C. in place of Section 326 of IPC.

32. In the result, the appeal filed by the appellants is hereby partly allowed with modification that both the appellant are hereby convicted under Section 324 read with Section 34 of IPC in place of Section 326 of IPC and accordingly, the convict Asim Das shall suffer RI for a period of 1(one) year and with fine of Rs.5000/- i.d. to suffer further RI for 3(three) months and the convict Smt. Sujata Das shall suffer RI for 6(six) month with fine of Rs.5,000/- i.d. to suffer further RI for 1(one) month. Fine money, if realized, be given to the victim, Amal Shome Bhowmik as compensation. The judgment and order of conviction and sentence dated 18.08.2023 delivered by Learned Additional Sessions Judge (Court No.2), West Tripura, Agartala in connection with case No.S.T.(T-I) No.51 of 2016 is hereby modified to that extent as stated above. The period of detention, if any, undergone by the appellant-convicts during trial or investigation be set off under Section 428 of Cr.P.C. Both the convicts shall surrender before the Learned Court below immediately to serve out the sentence. The case is thus disposed of on contest.

Send down the LCR along with a copy of this judgment.

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

JUDGE

SABYASACHI
BHATTACHARJEE
Digitally signed by SABYASACHI
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