

**HIGH COURT OF TRIPURA
AGARTALA
CRL. REV P NO.13 OF 2021**

1. **Sri Swapan Dey,**
Son of Sri Kanu Dey,
Resident of Muhuripur,
R.F. P.O.- Muhuripur,
P.S. Baikhora, District- South Tripura.

2. **Sri Rajib Dey,**
Son of Sri Kanu Dey,
Resident of Muhuripur,
R.F. P.O. Muhuripur,
P.S. Baikhora, District- South Tripura.

..... **Petitioner(s)**

Vs.

The State of Tripura.

..... **Respondent(s)**

For the Petitioner(s) : Mr. P.S. Choudhury, Advocate.

For the Respondent(s) : Mr. S. Ghosh, Addl. P.P.

Date of hearing and delivery of
Judgment & Order : 29.03.2023.

Whether fit for reporting : YES/NO.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER(ORAL)

This present criminal revision petition has been filed under Section 401 read with Section 397 of the Code of Criminal Procedure against the Judgment dated 25.02.2021 passed by the learned Sessions Judge, South Tripura, Belonia in

Criminal Appeal No.13 of 2018 affirming the judgment of conviction and order of sentence dated 24.05.2018 passed by the Court of learned Judicial Magistrate 1st Class, Belonia, South Tripura in case No.PRC 273 of 2011 convicting the petitioners under Sections 447/326/34 of IPC and sentenced them to suffer Rigorous imprisonment for 2(two) months for the offence punishable under Section 447 read with Section 34 of the IPC and further sentenced them to suffer R.I of 2(two) years and to pay a fine of Rs.5,000/-each for the offence punishable under Section 326 read with Section 34 of IPC with default stipulation.

2. The brief fact of this present revision petition is that on 05.07.11 at around 10 a.m. the accused persons namely Swapan Dey and Rajib Dey encroached upon the land of the informant Narayan Ch. Sen and tried to occupy it and on seeing this when the informant raised objection, then a hot altercation took place between them and suddenly both the accused persons attacked the informant with 'dao' and 'lathi' due to which he sustained severe bleeding injury on his left hand and Subsequently he was shifted to Baikhora PHC for treatment. Thereafter, the informant lodged FIR.

3. Based on said FIR, police registered Baikhora P.S. Case No. 56/2011 under Sec. 447/326/34 of IPC and after investigation finding prima facie case, S.I. Gopal Chakraborty

submitted charge sheet dated 23.09.2011 vide C/S No. 67/11 under Sec. 447/326/34 of IPC against accused Swapan Dey and Rajib Dey.

4. After taking cognizance and supplying the prosecution copies to the accused persons, charges under Section 447 and 326 read with Section 34 of IPC have been framed against accused Swapan Dey and Rajib Dey. The accused persons denied the charges and claimed to be tried.

5. During trial prosecution examined as many as 11 witnesses and thereafter the accused-appellants were examined under Section 313 of Cr.P.C., at which they denied the incriminating materials, but adduced two defence witnesses in support of their defence. After evaluating the prosecution evidence, learned trial Court convicted both the accused Swapan Dey and Rajib Dey under Section 447 and 326 read with Sec. 34 of IPC and sentenced them as indicated above.

6. Being aggrieved and dissatisfied with the order of conviction and sentence passed by the learned Judicial Magistrate 1st Class, Belonia, South Tripura, dated 24.04.2019, the accused-petitioners filed an appeal before the learned Sessions Judge, South Tripura Belonia vide Criminal Appeal No.13 of 2018. The learned Sessions Judge, South Tripura, Belonia after hearing the argument of both sides dismissed the

appeal preferred by the accused herein vide judgment dated 25.02.2021 and affirmed the order of conviction and sentence passed by the learned Trial Court.

7. Being aggrieved by and dissatisfied with the judgment dated 25.02.2021 passed by the learned Sessions Judge, South Tripura Belonia, the petitioners have preferred this present revision petition praying for the following reliefs:-

- " i) Admit the revision petition.*
- ii) Call for the records of case No.PRC 273 of 2011 from the Court of learned Judicial Magistrate 1st Call, Belonia, South Tripura and also the records of Criminal Appeals No.13 of 2018 from the Court of learned Sessions Judge, South Tripura, Belonia;*
- iii) Issue Notice upon the respondent;*
- iv) Suspend the order of conviction and sentence passed by the learned Courts below and release the accused petitioners on bail till final disposal of the revision petition;*
- AND*
- v) After hearing both the sides, set aside the impugned orders of conviction and sentence dated 25.02.2021 passed by the learned Sessions Judge, South Tripura, Belonia in Criminal Appeal No.13 of 2018 affirming the judgment of conviction and order of sentence dated 24.05.2018 passed by the Court of learned Judicial Magistrate, 1st Class, Belonia, South Tripura in Case No.PRC 273 of 2011 and set the petitioners at liberty;"*

8. Heard Mr. P.S. Choudhury, learned counsel appearing for the petitioners as well as Mr. S. Debnath, learned Addl. P.P. appearing for the State-respondent.

9. Mr. P.S. Choudhury, learned counsel appearing for the petitioners submits that the finding of the learned Courts below are based on mere surmise, conjecture, and supported by evidence. Though the defence had adduced two witnesses on their behalf who had categorically deposed that the wife of the

informant had told that the informant had received injuries while cutting the jungles, but the learned Trial Court did not place any reliance upon the evidence of the defence witnesses and, as such, the learned Courts below has committed an error. All the prosecution witnesses' statements are contradictory to each other. The Doctor who was examined by the prosecution as P.W.-11, opined that the injuries were simple in nature and the same does not constitute any offence punishable under Section 326 of the IPC. Stating thus, learned counsel appearing for the petitioners prayed to allow this instant revision petition.

10. Mr. S. Ghosh, learned Addl. P.P. appearing for the State-respondents submits that the Judgment and order passed by the Court below is just and proper and needs no interference.

11. Heard both sides and perused the evidence on record.

12. Now let us discuss some important witnesses.

12.1. PW-1, Smt. Maru Bala Sen deposed that, on 05.07.2011 at about 10/11 a.m. she and her husband, Sri Narayan Ch. Sen, were present in the house, at that time accused Swapan Dey and Raju Dey entered their house armed with 'dao' and 'lathis' .On hearing the hue and cry of her husband she rushed to the spot and found that her husband was lying beside the temple and the accused persons dragged

him at the side of the temple. She also saw that both the accused Swapan Dey and Raju Dey were chopping the hand of her husband with 'daos' due to which the left hand of her husband was partially amputated from the joint and there was profuse bleeding from his hand. On seeing her and her brother Dibyendu Bhowmik, PW-3, who was also accompanied with her, the accused persons got frightened and managed to escape from there. Thereafter her husband was taken to Muhuripur PHC by Babul Basu, PW-4, Priya Rn. Basu, PW-9 from there he was referred to GBP hospital, Agartala, and on going to GBP hospital her husband made a visit at Baikhora P.S.

During cross-examination, she stated that her brother Dibyendu Bhowmik is a resident of Nalua which is situated 25 miles away from her house. She admitted that one rubber garden is there on the northern side of her house and that four houses are located on the four corners of her land and that the house of the accused persons is on the western side of the road which runs by the western side of her house. She also admitted that she did not state to the I/O that she was busy performing Bipad Nashini Puja and that her husband and brother Dibyendu Bhowmik were watching TV in the room. Learned defence counsel further brought to light some omissions of this witness in her police statement that she did

not state to I/O that her husband was in hot altercation with the accused persons and she and her brother did not take note of the fact the statement that accused Swapan Dey and Rajib Dey dragged her husband behind the puja house and chopped with a '*dao*' on her husband's hand.

12.2. PW-2, Smt. Rinku Sen (Biswas) is the daughter of the informant. According to her, on 05.07.2011 at about 10 a.m. she was returning home taking a shortcut way which connects her father's house. On reaching in front of her father's house, she heard an alarm from her father and immediately rushed to the spot and found that accused Swapan Dey was chopping her father with a '*dao*' on his hand and the accused Rakesh Dey and Rajib Dey were also standing there armed with '*dao*' and '*lathi*' in their hands. Meanwhile, her mother and one Dibyendu Bhowmik reached the spot and they all saw that her father was seriously injured and blood was profusely coming out from his hand. Due to the chopping on his left hand with the '*dao*' by the accused Swapan Dey and Rajib Dey, the left hand of her father was partially amputated from the joint and his father also received '*dao*' blow injuries on his back. Thereafter Laxmi Dey, Uma Dey, Dipak Biswas and Sahdan Biswas, and other local people came there and her father was shifted to Muhuripur PHC by herself, Dibyendu Bhowmik and

Priya Ranjan Basu from where her father was referred to GBP hospital, Agartala and admitted therein for a period of one and half months. Then her father was further referred to Chennai hospital since the left hand of her father was precarious. She further deposed that at present the condition of her father's left hand is pathetic and he is unable to perform his regular work with this hand.

During cross-examination, she admitted that her own house is located on the northern side of her parent's house and the school of her son is on the western side of her house which is at a distance of 2 k.m. from her house, but she cannot recall the name of the villagers who came at the spot.

12.3. The evidence of PW-3, Sri Dibyendu Bhowmik is the brother-in-law of the informant and his evidence shows that on 05.07.11 at about 10 a.m. he was present in his sister's house Maru Bala Sen, his sister (PW-1) and his sister was busy in arranging Bipad Nashini Puja and his elder brother-in-law i.e. the informant-cum-victim was behind the house doing some works. At that moment he heard a mourning sound of the informant and hearing the hue and cry, immediately, he rushed to the spot along with his sister (PW-1) and saw that accused Swapan Dey and Rajib Dey were armed with '*lathis*' and '*dao*'. Swapan Dey struck with a '*dao*' on the left hand of the

informant and Rajib Dey was standing there with '*lathi*' and '*dao*' in his hand. At that moment his niece Rinku Sen (Biswas), PW-2 also came there running from the other side of the house and seeing all of them both the accused got frightened and escaped from the spot and they saw that the left hand of the informant was partially dis-jointed due to the chopping by '*dao*' and there was immense oozing of blood from the hand of the informant. The informant also received '*dao*' blows on his back and soon after that 2/3 people came to the spot and bandaged the left hand of the informant with a *gamcha*, then he (PW-3) along with the younger brother of his niece took the informant to Muhuripur PHC. But the doctor seeing the condition of the informant referred him to GBP hospital, Agartala, and further that on the way to GBP hospital, they visited to Baikhora P.S. and report the matter. He also stated that in the GBP hospital, the informant underwent treatment for one and a half months, and from there the informant received treatment in Chennai. He also identified both the accused persons in the dock.

12.4. PW-4, Sri Babul Basu being the son-in-law of the informant deposed that on being informed by Priya Ranjan Basu (PW-9) he visited the informant at Muhuripur PHC and he had seen the left-hand of his father-in-law was bandaged by

Gamcha. He also heard that the accused herein has assaulted the informant.

12.5 Both the P.W.-5 and P.W.6, saw the informant left hand of the informant was bandaged with a piece of cloth and there were blood stains on it.

12.6. P.W.-7 while cutting grass from her cow show the accused running from the spot and also heard the alarm of the informant.

12.7. PW-8, Sri Narayan Ch. Sen is the informant-cum-victim of this case. He deposed that, on 05.07.11 at around 10 a.m., he was in his house along with his brother-in-law Dibyendu Bhowmik and his wife Maru Bala Sen was doing puja in the room and when he was doing his daily work in the house, at that time accused-Rajib Dey and Swapan Dey entered in his house to which he raised an objection. Both the accused who were armed with '*lathi*' and '*dao*' assaulted him. Accused Rajib Dey has given several lathi blows on his body and accused Swapan Dey pulled him down on the ground and hit him with the sharp side of a '*dao*' on the back of his body and he has also dealt a '*dao*' blow on his left wrist due to which his left wrist was partially amputated from the joint and it was in hanging position from which blood also came out profusely. Then he raised an alarm and cried for help. His wife and

brother-in-law came to the spot and in the meanwhile, his daughter Rinku Biswas also came to the spot, and seeing all of them both the accused escaped from the spot. Thereafter his brother-in-law with the help of an Auto rickshaw took him to Muhuripur PHC and in the PHC stitches were given to him and was referred to GBP hospital. Then after hiring a Maruti van being accompanied by Babul Basu and Dibyendu Bhowmik they visited GBP hospital but on the way to GBP hospital they went to Baikhora P.S. and reported the matter in writing which was prepared by one Balan Chakraborty as per his dictation and he proved his signature in the FIR as exhibit-2. According to him, he was treated at GBP Hospital for a period of 45 days, and on release from the GBP hospital, Agartala he made a private visit to Vallore hospital for treatment. He further added that he is unable to perform his daily work with his left hand.

During cross-examination, he admitted that a counter case is filed against him by Tapash Dey for assaulting Rajib Dey and Swapan Dey which was numbered as G.R. 272/11 and is pending before Court. He also admitted that he stated to the I/O that there is a dispute with the accused persons in respect of land for 15 /20 years. He also admitted that the P.O. is surrounded by the houses of people and there were members inside those houses on the alleged date and time and the house

of Minu Shil is located on the southern side and the house of Tapan Dey, Manik Sen, Mana Sen, Pradip Sen located on the western side, house of Uma Dey and Laxmi Dey is on the southern side.

12.8. Dr. Santanu Das (Medical Officer) was also examined in this case as PW-11, and according to him, on 05.07.11 being posted as M.O. at Muhuripur PHC, at around 10.45 a.m. he examined the victim Narayan Sen who was brought by his daughter Smt. Rinku Biswas with history of alleged physical assault on his left wrist and back by his neighbor at around 30 minutes back. On examination he found three types of injuries; (I) Chop wound on the left wrist which is grievous injury by heavy sharp weapon, (ii) Incised wound on right scapular area which is simple in nature caused by heavy sharp pointed weapon, (iii) Lacerated wound on right ear lobule which is simple in nature caused by blunt weapon. He also proved the injury report as exhibit-4 and his signature in the report as exhibit-4/1.

During cross-examination, he admitted that he did not give any information to the P.S. or that he cannot say whether the patient party has informed the P.S. or not and that he cannot give the final opinion of the patient.

13. The defence also adduced two witnesses in support of their claims which are as follows:-

13.1. DW-1, Smt. Uma Dey deposed that about two and half years back at around 10 a.m. she went to the field for grazing her cattle and at that time she heard hue and cry of the wife of the informant. Accordingly, she rushed to the house of the informant and saw the hand of the informant was bandaged and his wife told her that her husband had received the injury when he went to cut the jungle. Subsequently, the wife of the informant called a person who was working nearby the house, and thereafter the informant was put in an Auto rickshaw and removed to the hospital.

13.2 DW-2, Laxmi Dey deposed that about two and half years back at around 11 a.m she went to the field for grazing her cattle, and at that time she heard a loud noise of the wife of the informant. Accordingly, she visited the house of the informant and saw the hand of the informant was bandaged by a piece of cloth, and subsequently, the wife of the informant called two persons who were working nearby the house. She also deposed that on asking the wife of the informant, she told her that while the informant cutting the jungles he had received injuries on his left hand and thereafter the informant was put in an Auto rickshaw and removed to hospital.

14. Heard both sides and perused the evidence on record.

15. As seen from the record, most of the witnesses who in the early instance came to know about the said incident or saw the incident were related witnesses to the informant. Further as seen from their evidence, there are lot of contradictions in their deposition. Further, the defence had adduced two witnesses on their behalf who had categorically deposed that the wife of the informant had told that the informant had received injuries while cutting the jungles but the same was not taken into consideration.

16. P.W. 11, that is the Doctor who examined the informant-victim stated in his findings that he found 3(three) types of injuries (I) Chop wound on the left wrist which is grievous injury by heavy sharp weapon, (ii) Incised wound on right scapular area which is simple in nature caused by heavy sharp pointed weapon, (iii) Lacerated wound on right ear lobule which is simple in nature caused by blunt weapon. If this evidence is read properly it is seen that injuries are mostly simple in nature.

17. In terms of the above discussion, this Court is of the view that the offence as alleged to be committed by the accused herein has not been established beyond the shadow of

doubt. Accordingly, this present revision petition stands allowed and the impugned Judgment and order of conviction as passed by the Courts below are set aside. Their bail bond, if any, be discharged forthwith.

18. As a sequel, staying if any if vacated, pending application(s), if any, stands closed.



suhanjit