

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A_

Crl. Rev. P. No.30 of 2023

Sri Babul Chandra Debnath Petitioner

_V_E_R_S_U_S_

The State of Tripura Respondent

Connected with
Crl. Rev. P. No.31 of 2023

Sri Trilokesh Sinha Petitioner

_V_E_R_S_U_S_

The State of Tripura Respondent

Crl. Rev. P. No.33 of 2023

Sri Tapash Datta Petitioner

_V_E_R_S_U_S_

The State of Tripura Respondent

For Petitioner(s) : Mr. Deep Chaim Kabir, Advocate.
Mr. A. Bhattacharjee, Advocate.
Mr. S. Lodh, Advocate.
Mr. S. Majumder, Advocate.
Ms. V. Poddar, Advocate.

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

Whether fit for reporting : **YES**

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_J_U_D_G_M_E_N_T_

25.07.2024

Heard Mr. Deep Chaim Kabir, learned counsel, Mr. A. Bhattacharjee, learned counsel and Mr. S. Lodh, learned counsel appearing for the petitioners. Also heard Mr. R. Datta, learned Public Prosecutor, appearing for the respondent-State.

[2] All these petitions are consolidated for disposal by a common judgment inasmuch as the controversy is structured on facts which resemble. The present petition has been filed against the dismissal of criminal appeal passed by the learned Sessions Judge, South Tripura Belonia by the impugned judgment and order dated 17.05.2023 in connection with Criminal Appeals No.1 of 2022 and others whereby and whereunder, the learned

Sessions Judge was kind enough to uphold the judgment and order of conviction and sentence dated 09.12.2021 passed by the learned Judicial Magistrate, 1st Class Belonia South Tripura in case No. PRC (WP) 94 of 2016 whereby the present petitioners were sentenced to suffer SI for 2 years for the offence punishable under Section-353 read with Section-34 of IPC and to suffer SI of two months and also to pay a fine of Rs.500/- i.e. to suffer further SI for 10 days for commission of offence punishable under Section-447 read with Section-34 of IPC and the prayer of the petitioners for setting aside the conviction and sentence has been rejected without considering the issues in the correct perspective.

[3] The facts in brief are that on 02.09.2015 w.e.f. 0900 hours the complainant Sri Sudip Kumar Paul, the then SDPO, Belonia along with staffs were performing law and order duty at Belonia Court premises in connection to 24 hours All India Strike called by the Left supported Trade Unions [CPI(M)]. In the first floor of Court buildings at Judges chamber office rooms, the complainant noticed around 4/5 persons suspected to be CPI (M) supporters were shouting upon the Court staff and restraining them in attending work and demanded go out from the office and made hot altercation with the officials.

[4] The learned District & Sessions Judge, South Tripura, Belonia on hearing the loud voices in the corridor, came out and they had confrontation with the District & Sessions Judge and also abused him. On arrival of the Complainant and O.C, Belonia, P.S., the said suspected picketers were made to move down through the nearest shortcut staircase from the spot of the said Court building and further joined with the unlawful assembly in front of the Court premises where a huge number of men/women picketers of CPI (M) assembled in support of All India Strike (Bharat Bandh). Therefore, the complainant lodged the *suo moto* complaint against 4/5 unknown miscreants for creating disturbance in the Court.

[5] On the basis of the FIR, police registered Belonia P.S. Case No. 2015/BLN/113 under Sections-448/353/506/34 of IPC and after

investigation finding prima facie case, S.I. Sankar Saha filed charge-sheet dated 10.05.2016 vide C/S No. 20/2016 under Sections-448/353/506/34 of IPC against accused Sri Tapash Datta, Sri Trilokesh Sinha and Sri Babul Ch. Debnath. After taking cognizance and supplying the prosecution copies to the accused persons charges under Sections-447, 353 and 332 read with Sections-34 of IPC have been framed against accused Sri Tapash Datta, Sri Babul Ch. Debnath and Sri Trilokesh Sinha. The accused persons denied the charges and claimed to be tried.

[6] During trial, prosecution examined as many as twenty-two witnesses and they are namely; PW-1, Sri Jhuman Das (victim), PW-2, Sri Satyabrata Das, PW-3, Sri Bimal Chakma, PW-4, Sri Dipankar Majumder, PW-5, Sri Basudeb Pal, PW-6, Sri Dilip Debnath, PW-7, Sri Ashish Das Gupta, PW-8, Sri Bijan Pal, PW-9, Sri Mrinal Dey, PW-10, Sri Sudip Kr. Paul, the then SDPO, Belonia (complainant), PW-11, Sri Swapan Sarkar, Inspector of police (RO), PW-12, Sri Ruhidas Pal, the then District & Sessions Judge, South Tripura, Belonia (victim), PW-13, Sri Sankha Subhra Pal, PW-14, Sri Sourav Pal, PW-15, Smt. Suchitra Sen Gupta, PW-16, Md. Amir Hossain, PW-17, Kulsum Bibi, PW-18, Sri Nipu Datta, PW-19, Sri Shib Sankar Majumder, PW-20, Sri Badal Pal, PW-21, Sri Rabi Ranjan Bhomwik (victim) and PW-22, Sri Sankar Saha, S.I. of police (Investigating Officer). The convict-petitioners were examined under Sec. 313 of Cr.P.C., at which they denied the incriminating materials and inclined to adduce defence witness and they adduced one witness namely Sri Goutam Sen as DW-1.

[7] In view of the above and having gone through the material evidence on record, the learned Court below has observed as under:

“[41] So, based on the above depositions, this court finds that learned trial Court has rightly given the judgment and there is no scope for any interference. Accordingly, I upheld the judgment passed by learned trial Court.

[42] So, in the totality of the evidence of the witnesses I find no impropriety in the judgment of learned trial Court justifying any interference from this Court. I find no merit in the appeals. Thus, the appeals are dismissed. The convict-

petitioners are hereby directed to surrender before learned trial Court within one month from today to undergo the sentence.”

[8] Mr. D. Chaim Kabir, learned counsel appearing for the petitioners in support of his case has submitted that the judgment and order of conviction and sentence passed by the learned Court below which was subsequently upheld by the learned Sessions Judge, South Tripura, Belonia suffers from illegality, impropriety and irregularity and as such, the conviction and sentence is required to be set aside. The facts elicited in cross-examination were not at all considered by the learned trial Court below and hence the order of conviction is liable to be set aside.

[9] The discrepancies between the statement of the witnesses, yet this fact were not at all considered by the learned trial Court below. The revision petitioners did not enter into the Court premises and no one has identified them. So the informant has not named the accused in the FIR and the learned Court below did not appreciate the same. The staff of the Court cannot be treated as public servant because they were found gossiping and not on their respective seats and same was not appreciated by the learned Court below. The manner of investigation is disputed as the procedure adopted by the prosecution is random in choosing of the witnesses from the charge-sheet list for proving the case of the prosecution the same was not appreciated and as such, the order of conviction and sentence passed by the learned Court below is liable to be set aside.

[10] The witnesses who have identified the accused have not corroborated each other and the maximum witnesses are hearsay witness on the point of identification. The learned Court below accepted the evidence of the prosecution witnesses in totality whereas discarded the cross-examination of same those witnesses without discussing it by holding that the defence could not discredit the prosecution witnesses and could not elicit anything to dislodge their evidence. There is embellishment, concoction, addition and improvement in the evidence of some vital witnesses. The prosecution could not prove the essential ingredients assault and criminal force. The Section-353 and Section-447 of IPC are not proved and as such,

the order of conviction and sentence passed by the learned Court below is liable to be set aside.

[11] Learned counsel has mainly argued on the point of law and he has also categorized the witnesses in three sets in his argument. One set of witnesses are from the Court as well as police officials, another set is of independent witnesses and defence witness.

[12] Learned Counsel appearing for the petitioners has argued that the learned trial Court below erred both in law and in facts while appreciation in evidence on record. It is further contended that the learned Court below failed to marshal the evidence in its proper perspective. While discussing the evidence of witnesses accepted the examination-in-chief portion of evidence but disbelieved the cross-examination made by the defence without assigning any reason or legal grounds for disbelieving the cross-examination part of the evidence and thereby caused serious miscarriage of justice.

[13] Learned counsel has argued on the point that the prosecution could not prove the essential ingredients 'assault' and 'criminal force'. So, the Section-353 and Section-447 of IPC are not proved. However, learned trial Court has convicted the petitioners. He submits that Court is a public place and anyone can enter in the Court premises. So, there is no any question of criminal trespass. Learned counsel has also argued that there are contradictions in the depositions of PW-9, PW-1, PW-10, PW-12, PW-21 and PW-18. He submits that this is a fit case to allow the petition by setting aside the judgment of learned trial Court.

[14] He further argued that the incident happened but the question, what happened and who was there. Selected evidence being placed. The independent witnesses i.e. investigating officer says they could not identify the accused. PWs-16, 17 and 19 who was forcibly tendered with submission, recorded of the Public Prosecutor that he was gained over. Other independent witnesses deliberately excluded.

[15] The investigating officer admits that he did not try and collect the attendance register of the Court staff and also admits that there was no reason in the case diary why he recorded their statements. Delayed recording of PW-18 who was examined much later wherein, he was ostensibly on leave though no records or statement exist in this regard. The statement of PW-18 was manufactured and was completed contradicted with the statements of PWs-10 and 11. His version of standing in front of the SJ contradicts everyone else including PWs-9, 10, 12 and 20. The Sessions Judge told the investigating officer to record his statement only after all the staff statements were recorded. The investigating officer says even on second attempt he was unable to take the statement and finally recorded the statement on 03.09.2015.

[16] The best evidence of learned Sessions Judge's report to this Court never made available. The SP was not examined regarding the conversation with the learned Sessions Judge and information given to him. Best circumstance of press video footage was never made available. The investigating officer admitted that the identification of the accused persons were not confirmed except by the Court staffs. Admittedly, no Test Identification parade was ever held those who knew the accused never identified them and those who did not know them said they came to know their names from others.

[17] He prayed to take a lenient view and allow the petition and set aside the impugned judgment. The learned counsel appearing in other petitions have adopted the argument. In support of his case, learned counsel appearing for the petitioners has placed reliance on some decisions of the Hon'ble Apex Court and one of them is *Amrik Singh v. State of Punjab*, reported in (2022) 9 SCC 402, *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)*, reported in (2005) 5 SCC 258 and *Sukhwant Singh v. State of Punjab*, reported in (1995) 3 SCC 367.

[18] On the contrary, Mr. R. Datta, learned Public Prosecutor submits that in this case the informant has corroborated his FIR and other

eye witnesses have also seen the petitioners at the spot. In this case the main victim is the Court and other victims are the then District Judge and court staff namely Sri Jhuman Das and Sri Rabi Ranjan Bhowmik. Learned P.P. argued that the petitioners intentionally entered in the Court premises to pressurize the court for not functioning on 02.09.2015 and they wanted to give message in the society that all the institutions in the State have to run under the control of their party.

[19] The presence of the accused persons with other picketers in front of the Court has been admitted by the defence by adducing defence witness. Even the independent witnesses have also seen these petitioners in front of the Court. The petitioners along with their picketers gathered in front of the Court before Court time with motive to obstruct the functioning of the Court on the date of offence that is why they entered in the Court and threatened the then District & Sessions Judge and some of the officials.

[20] He also submits that the petitioners are political known figure in the area, so they can be easily identify by the local staff of the court who were present in the Court premises at the time of incident. The witnesses like, PW-1, PW-7, PW-10, PW-18, PW-2, PW-5, PW-6 and PW-21 identified the accused persons in the Court. Other witnesses have also supported the case of the prosecution and there is no doubt on the deposition of the witnesses. So, he submits that the prosecution has been able to prove the case against the petitioners beyond reasonable doubt and learned trial Court has passed the judgment as per law and there is no ground to interfere with the finding of learned trial Court. Hence, the present petition should be dismissed.

[21] In support of his case, learned P.P. also placed reliance on some decisions of the Hon'ble Apex Court in *State Rep. by Dey. Supdt. of Police, CBI v. V. Jayachandra @ Ezhu Viral and Others*, reported in (1997) 10 SCC 70, *Birbal Nath v. State of Rajasthan and Others*, reported in 2023 SCC Online SC 1396, *Raju Manjhi v. State of Bihar*, reported in (2019) 12 SCC 784, *Communist Party of India (M) v. Bharat Kumar and Others*,

reported in (1998) 1 SCC 201, *Raj Kumar v. State of Himachal Pradesh*, reported in (2008) 11 SCC 76, *Harivadan Babubhai Patel v. State of Gujarat*, reported in (2013) 7 SCC 45, *Sadayappan alias Ganesan v. State represented by Inspector of Police*, reported in (2019) 9 SCC 257, *Malkeet Singh Gill v. State of Chhattisgarh*, reported in (2022) 8 SCC 204 and *Hebsur Rehaman v. State by Hunsur Town Police Station in Crl. P. No.5287 of 2022*.

[22] Heard both sides.

[23] The evidence of PWs-1, 12, 21, 7, 2, 5, 6, 10, 18 are relevant to appreciate the prosecution's case. The evidence of PW-12, Sri Ruhidas Pal, the then learned District & Sessions Judge, South Tripura, Belonia it is found that, on 02.09.2015 as like other days before 10 a.m. he along with his Personal Guard, Sri Mrinal Dey (PW-9) and his Orderly, Sri Asish Das Gupta (PW-7) entered into the court premises and he noticed that two staff of his court namely Sri Jhuman Das (PW-1) and Sri Rabi Ranjan Bhowmik (PW-21) were sitting under the Banian tree of the court. He asked them to come inside the office. Thereafter he entered into his Official Chamber and was talking with his Orderly and P.G. and when it was around 10.15 a.m., at that time one of his staff Nipu Datta (PW-18) came running to him and informed that some picketers came and were threatening the staff of the court. Hearing this, he came out of his Chamber to enquire about the matter and then he saw 6/7 picketers outside of his Chamber who were threatening the staff such as Jhuman Das (PW-1), Rabi Ranjan Bhowmik (PW-21) and others.

[24] Then he asked them as to what happened and then among the picketers, three persons came towards him and out of them one having black complexion told him ***"stooge (chamcha) of the then Hon'ble Chief Justice Mr. Deepak Gupta and told him if he is a judge and whether he adjudicate cases and if he has the guts asked him to adjudicate him,"*** to which he [Mr. Ruhidas Pal, District & Sessions Judge] informed that there is an order of Hon'ble High Court to run the Court even on the day of strike to which that

person became furious. At that time, his staff Jhuman Das and Rabi Ranjan Bhowmik asked those persons not to misbehave with him telling that he is a District Judge to which one of the picketers told him that he knows very well that he is a Judge. At that time he was given guard by his P.G. PW-12 also deposed that out of those persons, one person threatened Jhuman Das and Rabi Ranjan Bhowmik and told them to leave the Court. Meanwhile, SDPO, Sudip Pal (PW-10) and O/C, Belonia P.S. (PW-11) came there and took away those persons. Then he returned back to his Official Chamber and informed the S.P., South Tripura about the incident. PW-12 further deposed that due to the misbehaviour of those persons, *he was disheartened*. After the incident he find that most of the staff of the court left the court.

[25] Thereafter, with one of his staff namely Bijan Pal (PW-8) and with his P.G. he performed his court works by passing formal orders. He also reported the incident to the Hon'ble High Court of Tripura. On the following day, from Jhuman Das, Rabi Ranjan Bhowmik he came to know that the person having black complexion who misbehaved with him whose name was Tapash Datta and the name of rest two persons were Trilokesh Sinha and Babul Debnath. PW-12 has identified the accused Tapash Datta in the dock.

[26] Now the evidence of PW-1, Sri Jhuman Das, who is the eye witness and one of the victims of this case. He has deposed that on 02.09.2015 he was posted as Bench Clerk in the Court of the then learned District & Sessions Judge, Sri Ruhidas Pal (PW-12). On that day a 24 hours strike was called by CPI(M). He came to the Office on that day at about 9.30 a.m. and was talking with Rabi Ranjan Bhowmik (PW-21). At about 9.50 a.m. learned Sessions Judge came along with his Orderly and P.G. and other security. After he entered the Chamber, they were sitting outside and was talking. At that time, three persons came there and threatened them to leave the Court as a strike was called on that day.

[27] He also deposed that when they were threatening them, one of the staff namely *Nipu Datta informed the matter to the Sessions Judge and when he came out to enquire the matter, one person among the three*

namely Tapash Datta ran towards the Sessions Judge with an acrimonious gesture and said that if the Sessions Judge was the 'Chamcha' of the Hon'ble the then Chief Justice Mr. Deepak Gupta. At that time, one staff Rabi Ranjan Bhowmik came and asked Tapash Datta not to behave with a judge like that and at that time another person among the three, Trilokesh Sinha tried to throttle Rabi Ranjan Bhowmik.

[28] He also deposed that, learned Sessions Judge informed them that it was the Order of the Hon'ble High Court of Tripura to perform work on that day and at that *Tapash Datta tried to physically attack the Sessions Judge, but the P.G. Mrinal Kanti Dey intervened and another person among the three Babul Debnath dashed and pushed them* and sent them out of the Court and stopped them from performing their works. He also deposed that he knew Tapash Datta as he was a local leader and later on he came to know the names of other two persons from the Orderly of learned Sessions Judge namely Asish Das Gupta. The witness also identified the accused persons by face in the Court.

[29] PW-2, Sri Satyabrata Das is a Court staff and he is also a local resident of Belonia Town. His evidence shows that, on 02.09.2015 he was posted as Bench Peon in the Court of learned Civil Judge (Jr.Division)-cum-J.M. 1st Class, Belonia and on that day a 24 hours strike was called by CPI(M). At about 10 past 10 a.m. when he tried to enter the Court, he was stopped by some picketers in front of the Court, but somehow he entered the Court and found that a hue and cry was going on in front of the chamber of the then learned District & Sessions Judge. He went there and found some of the court staffs namely Jhuman Das (PW-1), Bimal Chakma (PW-3), Dilip Debnath (PW-6), Rabi Ranjan Bhowmik (PW-21) and the then learned District Judge (PW-12) were present and some of the picketers were arguing with them. *"The picketers asked whether they were the 'Chamcha' of Hon'ble the then Chief Justice Mr. Deepak Gupta and asked them as to why they were performing duty and abused them."* Thereafter, he left and

informed the matter to other staffs. The witness identified the accused persons by face.

[30] PW-5, Sri Basudeb Pal has deposed that on 02.09.2015 he was posted as P.S. -IV, attached with the then learned Sessions Judge and on that day a 24 hours strike was called by left front party. At about 10.30/10.35 am ***“he came to the Court and was restrained by the picketers and accordingly, he returned.”*** Later on, he came to know from Mrinal Dey, P.G. of the then learned Sessions Judge that, Trilokesh Sinha, Tapash Datta and Babul Ch. Nath misbehaved with the then Sessions Judge and called him a stooge of the Hon’ble Chief Justice Mr. Deepak Gupta. The witness identified the accused persons before the Court.

[31] PW-6, Sri Dilip Debnath is the local resident of Belonia Town and he has also corroborated the other witnesses in his deposition. He deposed that on 02.09.2015 he was posted as Bench Peon in the Court of learned Chief Judicial Magistrate, Belonia. On that day a 24hours strike was called by CPI(M). ***“There was an instruction from Hon’ble High Court to perform the duty of the Court on that day. Accordingly, at about 10 a.m. he came to the Court and some of the party supporters of CPI (M) entered the Court and abused Jhuman Das and Rabi Ranjan Bhowmik as to why they were performing duty and also physically harassed them. At that time, the then learned Sessions Judge, Sri Ruhidas Pal came out to inquire the matter and the accused persons threatened him and called him as stooge (Chamcha) of the then Hon’ble Chief Justice Mr. Deepak Gupta. He also deposed that, they tried to attack learned Sessions Judge, but the SDPO intervened.”*** At that time P.G. of learned Sessions Judge namely Sri Mrinal Dey and Orderly, Sri Asish Das Gupta was also present. At that time, he was present in front of the Nazarat and the incident took place in front of the Court of the learned Sessions Judge. Among the picketers he found Tapash Datta, Trilokesh Sinha and Babul Ch. Nath. He also identified the accused persons in the Court.

[32] PW-7, Sri Asish Das Gupta was the then Orderly of learned District & Sessions Judge, South Tripura, Belonia, Sri Ruhidas Pal (PW-12). He is a local resident of Belonia town. Let us see what he deposed relating to this case. He deposed that on 02.09.2015 All India Strike was called by a political party. On that day at about 10 a.m. the then learned Sessions Judge, Ruhidas Pal, P.G. Mrinal Dey (PW-9) and he entered the Court. *“At about 10.15 a.m. Nipu Datta (PW-18) went and informed them that some of the picketers are harassing Court staff Jhuman Das (PW-1) and Rabi Ranjan Bhowmik (PW-21). At that, the then learned Sessions Judge came out of his Chamber and inquired the matter and at that Tapash Datta, who was among the picketers, called the then learned Sessions Judge a ‘Chamcha’ (stooge) of the then Hon’ble Chief Justice Mr. Deepak Gupta. At that the picketers became acrimonious and asked the staff to leave and not to perform duty. At that the SDPO intervened. After the incident the then learned Sessions Judge asked them that they may leave.”* He also deposed that there were many other picketers whom he could not identify. The witness identified the accused persons before the Court by name and face.

[33] Now, we shall discuss the evidence of PW-9, Sri Mrinal Dey, who was the P.G. of the then learned District & Sessions Judge, Sri Ruhidas Pal (PW-12) at the time of incident. He deposed that on 02.09.2015 a 24 hours strike was called by a political party. At about 9.50 a.m. the then learned District & Sessions Judge, his orderly Asish Das Gupta (PW-7) and he came to the Court. *At about 10.15 a.m. one Group-D staff of the Court namely Nipu Datta (PW-18) informed the then learned District & Sessions Judge that some of the persons were threatening the office staffs to leave the Court. At that, learned District & Sessions Judge and he came out to see what happened and one person asked the District Sessions Judge as to why he was attending Court and as to whether he was the stooge (Chamcha) of the then Hon’ble Chief Justice Mr. Deepak Gupta and he also tried to physically assault the then Sessions Judge, but he (PW-9) intervened. He also deposed that on the next day he came to know that name of that person was Tapash Datta* and he came to know it from staff of

the court Jhuman Das (PW-1), Asish Das Gupta (PW-7) and Rabi Ranjan Bhowmik (PW-21). He further deposed that when the staff Rabi Ranjan Bhowmik protested to such ill-behaviour, another person who was fair skinned and was having bleached hair, threatened the staff and also pushed him. Later on, he came to know that the name of the person was Trilokesh Sinha. Another person pushed the other staff of the Court and dragged them outside the Court. Later on, he came to know that the name of that person was Babul Debnath and he came to know their names on the next day from other staffs. He also identified the accused persons in the Court.

[34] Now, we shall go through the evidence of PW-10, Sri Sudip Kumar Pal, the then SDPO, Belonia, South Tripura. He is the complainant of this case. He has deposed that on 02.09.2015 a 24 hours strike has been called by CPI (M) political party and accordingly on that day since morning he along with Inspector Swapan Sarkar and other staffs were performing law and order duty in the Belonia town area and as a part of their police arranged duty, he around 9.45 a.m. escort the then learned District & Sessions Judge, Belonia. Thereafter, he, O/C, Belonia P.S. and other staffs performing their duty in the main gate of District & Sessions Judge Court premises.

[35] PW-11, Sri Swapan Sarkar, Inspector of police has deposed that, in the year 2015 he was posted as O/C, Belonia P.S. On 02.09.2015 the then SDPO, Belonia lodged a suo moto complaint to him and accordingly he have registered the same. He identified the registering note in the complaint petition which bears his signature and official seal as exhibit-1/2. He also filled up the printed form of FIR and he identified the same which has been marked as exhibit-2 (as a whole). According to him, on 02.09.2015 a 24 hours strike has been called by CPI(M) and accordingly on that day since morning he along with the then SDPO, Belonia and other staffs were performing law and order duty in the Belonia town area and as a part of their police arranged duty, ***“he escorted learned CJM, Belonia as well as learned J.M. 1st Class, Belonia to the Court. At that time some picketers tried to enter into the Court complex and he restrained them. He also deposed that***

when it was around 10.15 am, he was being informed that SDPO called him as there was some dispute going on in the Court of learned District & Sessions Judge, Belonia. He immediately rushed towards the Court of learned District & Sessions Judge, Belonia” and after reaching there from a distance he noticed that some people were moving through the upstairs which is near the Chamber of learned District & Sessions Judge. He sensed that something wrong has happened, then he tried to chase those persons but he could not trace them out. Thereafter, he returned to the spot and saw that SDPO and learned District & Sessions Judge are having some interactions. Thereafter, after sometime he left the place.

[36] After a sometime around 10.15 to 10.20 a.m. they heard a loud noise coming from the veranda of learned District & Sessions Judge Court. Immediately, along with O/C, moved towards the corridor through the shortcut staircase of the Court of learned Judicial Magistrate 1st Class and reaching on the first floor he saw from a distance some picketers were restraining the court staff to joint their court work. The picketers also argued with learned District & Sessions Judge, Ruhidas Pal. On seeing him and O/C, the picketers moved from there taking the way of the nearest staircase. He immediately thought for the safety of learned District & Sessions Judge and shifted him in his chamber safely. Finding the importance of the matter, he lodged a *suo moto* complaint to the O/C, Belonia P.S. regarding the incident. He identified two accused persons (Babul Ch.Nath and Tapash Datta) in the dock by face. He also proved his petition of complaint and his signature thereon as exhibit-1 and 1/1 respectively.

[37] PW-18 is Sri Nipu Datta, who first time informed PW-12, the then learned District & Sessions Judge about the nuisance of the picketers towards the staff members. PW-12, PW-1, PW-21 have also admitted in their depositions that this witness informed PW-12 about the entering of 5/7 persons in the Court building. *PW-18 has deposed that on 02.09.2015 he was posted as Day Guard in the Court of the learned District & Sessions Judge and on that day at about 8 a.m. he opened the door of the court*

rooms for the sweepers to clean. From 8.30 a.m. to 9 a.m. the picketers of CPI (M) started to gather in front of the gate of the Court. On that day there was a strike called by CPI(M). At about 9.45 to 9.50 a.m. the then learned District & Sessions Judge, Ruhidas Pal came to the Court along with his P.G. and police security and entered his Chamber. At that time, he came and was sitting in the veranda of the first floor of this Court building.

[38] At that time Rabi Ranjan Bhowmik (PW-21) and Jhuman Das (PW-1) were with him and at that time 5 to 7 persons came in the corridor of the first floor of the building and threatened Jhuman Das and Rabi Ranjan Bhowmik to leave the Court. At that, he went to the Chamber of learned District & Sessions Judge and informed him the same and accordingly the then learned District & Sessions Judge came out. Seeing him (the then learned District & Sessions Judge) the picketers approached towards him. *PW-18 then rushed down stair and informed the police about the same and again came back to the first floor and found they were misbehaving with the then learned District & Sessions Judge.*

[39] Thereafter, he (PW-18) and the police personnel stood in front of the learned Sessions Judge and police brought those picketers out from there. *PW-18 also deposed that the picketers called the then learned District & Sessions Judge as the stooge of the then Hon'ble Chief Justice Mr. Deepak Gupta and asked as to why the court work was being performed on that day. PW-18 further deposed that he knows those picketers by face who were present on that day and misbehaved with the then learned District & Sessions Judge. He came to know their names from Asish Das Gupta (PW-7) and Dilip Debnath (PW-6) that their names were Tapash Datta, Trilokesh Sinha and Babul Debnath. He deposed that, thereafter the then learned Sessions Judge asked them to leave from there. PW-18 has identified the accused persons by face.*

[40] Now, we shall focus our attention to the evidence of another eye witness Sri Rabi Ranjan Bhowmik, PW-21. He is also one of the victims of this case. He has deposed that on 02.09.2015 he was posted at Belonia

Court as LDC, attached with the Judicial Section. On that day, he came to the Office at 9.30 a.m. He was alone sitting under the beneath of a tree. After 15/20 minutes, Jhuman Das (PW-1) joined him. After about 5/10 minutes later the then District & Sessions Judge, Ruhidas Pal came to the Office along with his P.G. and Orderly. Thereafter, he went to his Chamber and they were sitting in a chair in the corridor. Thereafter, order staff namely Nipu Datta came to the Office and at 10 a.m. other staffs also came to the Office.

[41] He also deposed that when they were sitting in the corridor, at that time 7/8 picketers entered into the Office and asked them what they were doing here in a strike. In reply they told them as today is the working day, so they came here to perform duty. Again they warned them whether they will go to their home or not and if not then they will face consequences. On hearing hue and cry, the then learned District & Sessions Judge came out of his Chamber to enquire the matter. They had gone to the District Judge and the picketers also followed them. At that time the picketers asked the then learned District & Sessions Judge what he was doing in a strike. He (PW-21) told the picketers that he is their District Judge, on being heard, the *accused persons became aggressive and told him that he knows him so he should not make him know that he is a District Judge. He asked loudly that if you are a Judge, judge him and he also told the District Judge that the District Judge is a stooge (Chamcha) of the then Hon'ble Chief Justice Mr. Deepak Gupta.* While the picketers cordoned the District Judge, the P.G. of the then District Judge namely Mrinal Dey came forward and saved him. Thereafter, considering the situation, the District Judge told them to go back their home. He also deposed that the picketers pushed them to leave the court. Later on he came to know the name of the picketers namely Tapash Datta, Babul Debnath, Trilokesh Sinha from Asish Das Gupta. He identified all the accused persons in the Court.

[42] In support of his case of the petitioners, learned counsel appearing for the petitioners has placed reliance on some decisions of the

Hon'ble Apex Court and one of them is *Amrik Singh v. State of Punjab*, reported in (2022) 9 SCC 402, wherein the Court held thus:

“14. Now so far as the conviction of the accused on the PW1 – eye-witness identifying the accused in the Court Room and non-conducting the TIP is concerned, while appreciating the said aspect the averments in the FIR which was given by PW1 eye-witnesses are required to be referred to. It may be true that as per the settled position of law the FIR cannot be encyclopedia. However, at the same time when no TIP was conducted the first version of the complainant reflected in the FIR would play an important role. It is required to be considered whether in the FIR and/or in the first version the eye-witness either disclosed the identity and/or description of the accused on the basis of which he can recollect at the time of deposition and identify the accused for the first time in the Court Room?

15. Having gone through the FIR on the identity of the accused it is stated as under:

“I was driving the scooter and Gian Chand was sitting behind me. When we were at link road shaterwala from Fazilka A bohar G.T. road about 1-11/2 kilometer ahead, three young persons reached with us on a scooter from the backside, out of them, two clean shaven young persons having ages of 30-35 year and one Sikh (sardar) who had tied a (Thathi) a piece of cloth having the age of about 30- 32 years, who was sitting in the middle was having a 12 bore gun of small barrel all these three young persons while reaching with us tried us to stop. When we did not stop then a clean-shaven young person who was sitting on the rear seat of the scooter thrown chilly powder on our faces and eyed with his hand as a result of which we could not see and we stopped our scooter being helpless a and opened our eyes after placing hand on the eyes. In the meantime these young persons stopped their scooters ahead of our scooter and came forward to snatch our scooter. We tried to prevent them, in the meantime, a Sikh Youngman fired a shot at Gian Chand in a strength way with his 12 bore gun hitting him on the chest as a result of which he fell down on the ground.”

Thus, from the aforesaid it is seen that except stating that the accused were three young persons out of which two were clean shaven and the one Sikh (sardar) who had tied a (Thathi) having the age of 30-32 years no further description had been given by the complainant – PW1. Nothing has been mentioned in his first statement that he had seen the accused earlier and that he will be able to identify the accused.

16. In light of the above, the deposition of PW1 in the Court and his identifying the accused for the first time in the Court is required to be appreciated. In the examination-in-chief, PW1 has stated as under:

“When at about 1-30 p.m. when we had covered a distance of about eight k.m.s from G.T. road and were going on the link road of Shaterwala, three young persons came from our back side on a scooter. They tried to stop us but we did not stop. They over took our scooter and put chillies powder in my eyes. That chilly powder entered in my right eye and I had to stop my scooter. After rubbing the eye I opened the same. Gain Chand alighted from my scooter.”

* * * * *

“Out of three young persons, two young boys tried to snatch my scooter. Gian Chand came parallel to me and tried to prevent those boys from snatching the scooter. One of those boys fired a shot at Gian Chand which hit him at his chest on the seat of heart. All the three said young persons are the accused who are present in the court today (witness has pointed towards one of the accused as the person who had fired at Gian Chand and that accused has disclosed his name as Amrik Singh). The accused who is standing on one side had put the chili powder in my eyes (the name of the accused pointed out by the witness has been disclosed as Subhash Chand).”

21. Even applying the law laid down by this Court in the aforesaid decisions and looking to the facts narrated hereinabove, we are of the opinion that it would not be safe and/or prudent to convict the accused solely on the basis of their identification for the first time in the Court.”

[43] Another case in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)*, reported in (2005) 5 SCC 258, wherein the Hon’ble Apex Court held thus:

“29. The learned counsel for the petitioners also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case as PW 1. He, however, did not support the prosecution. The prosecution never declared PW1 "hostile". His evidence did not support the prosecution. Instead, it supported the defence. The accused hence can rely on that evidence.

30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan*, JT (2000) 7 SC 549. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

31. In the present case, evidence of PW1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to police in which police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, accused can rely on that evidence.”

[44] Another case in *Sukhwant Singh v. State of Punjab*, reported in (1995) 3 SCC 367, wherein, the Hon’ble Apex Court observed as under:

“19. In *State of U.P. v. Jaggo* which has been referred to and relied upon by the prosecution and the trial court for adopting the procedure of tendering PW4 and PW5 for cross examination only in our opinion, has not been properly appreciated and has been misapplied. That judgment cannot be read to lay down, as a matter of legal proposition, that a witness can be "tendered" for cross-examination even without there being any examination in chief. If there

is some earlier statement of the witness recorded by a competent court or an affidavit filed in the trial court and the witness testifies to the correctness of that earlier statement at the trial, it (in certain cases of witnesses of a formal nature) as noticed earlier be permissible to tender him for cross-examination after he is sworn to the correctness of the earlier statement, because in that even that earlier statement is treated as the examination-in-chief of the witness but that is not the same thing as tendering a witness for cross-examination only, without there being any examination-in-chief on the record. In Jaggo's case (supra) a Bench of this court was considering the question whether the mere presentation of an application by the prosecution to the effect that a certain witness had been "won over" was conclusive of the allegation that he had been so "won over" and the prosecution was therefore relieved of its obligation to examine him at the trial. The proposition was negatived and it was in that context, that this court observed:

"On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness has been won over. In such a case Ramesh could have been produced for cross-examination by the accused. That would have elicited the correct facts. If Ramesh were an eye-witness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence."

20. The Division Bench, therefore was considering a peculiar fact situation in that case and even in that context it was observed that the witness "could have been produced for cross-examination by the accused" and that "the accused were entitled to test his evidence." The observations of the Division Bench in Jaggo's case, therefore, do not support the view that a material witness can be "tendered" for cross-examination only. The observations from a judgment of this Court cannot be read in isolation and divorced from the context in which the same were made and it is improper for any Court to take out a sentence from the judgment of this Court, divorced from the context in which it was given, and treat such an isolated sentence as the complete enunciation of law by this Court. The judgment in Jaggo.v (supra) has in our opinion been misappreciated and that judgment cannot be interpreted as a sanction from the Supreme Court to the prosecution to adopt the practice of tendering a witness for cross-examination only, without there being any examination-in-chief, in relation to which the witness has to be cross-examined. All that the judgment In Jaggo's case (supra) emphasizes is that the mere ipsi dixit of the prosecutor that a particular witness has been won over is not conclusive of that allegation and the Court should not accept the same mechanically and relieve the prosecutor of his obligation to examine such a witness. It was for this reason suggested by the Bench that where the prosecution makes such an allegation, it must keep the witness in attendance and produce him to enable the defence to cross examine such a witness to test his evidence as well as the allegations of the prosecution and bring out the truth on the record. After the coming into force of the Criminal Procedure Code, 1973, which replaced the Code of 1998, recording of evidence in commitment proceedings have been totally dispensed with and section 299 of that Code has been emitted. Consequently, the course suggested by some of the High Courts in the earlier quoted judgments regarding tendering of a witness for cross-examination who had been examined in the committal court, is also no more relevant or available.

The Jaggo's case, which was decided when the Code of 1898 was operating in the field could not, therefore, be pressed into service by the trial court while dealing with the instant case tried according to the Code of 1973. Thus, considered it is obvious that the trial court, wrongly permitted the prosecution to tender PW4 and PW5 for cross-examination only. Both PW4 and PW5 were, according to the prosecution case itself, eye witnesses of the occurrence and had removed the deceased to the hospital. Their evidence was, of a material nature which was necessary for the unfolding of the prosecution story. The effect of their being tendered only for cross examination amounts to the failure of the prosecution to examine them at the trial. Their non-examination, in our opinion, seriously affects the credibility of the prosecution case and detracts materially from its reliability.”

[45] In the above witnesses the evidence of District Judge and the staff of the Court have been discussed along with the informant and O/C, Belonia P.S. All the witnesses who came to the Court on 02.09.2015 for discharging their duties have fully corroborated each other. There are some local staff also who have been examined as PW-2, PW-6, PW-7, PW-8. In the cross PW-6 has admitted that he knew the accused persons. The defence has admitted in the cross of informant and other court staff that the petitioners are the local leaders and well known in the society. PW-22 the I/O of this case has also admitted in cross that during his investigation it has been revealed that the court staff identified the accused persons. So, the dispute raised by the defence about the identity of the petitioners cannot be accepted as the maximum court staffs who have been examined have corroborated the fact about the identity of the petitioners. Although learned defence counsel has tried to draw some contradictions, but those contradictions are not found material one for shaking the credibility of the witnesses.

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[47] Learned counsel has disputed that the charge framed under Sec. 447 and 353 read with Sec. 34 of IPC are not proved in this case because the Court is a public place and anyone can enter into the Court. He also relied on the judgments mentioned in Para-9 in Sl. No. 16, 17 & 18. As there is allegation of criminal trespass and assault or apply of criminal force to deter public servant from discharge of duty against the convict-petitioners, this Court refers the relevant provision of Sections-441, 350, 351, 447, 353, 332 and 34 of IPC, which reads as under:

“441. Criminal Trespass._Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

350. Criminal force._Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

351. Assault._Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

447. Punishment for criminal trespass- Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three month, or with fine which may extend to five hundred rupees, or with both.

353. Assault or criminal force to deter public servant from discharge of his duty- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to

prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

332. Voluntarily causing hurt to deter public servant from his duty- whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

34. Acts done by several persons in furtherance of common intention- When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

[48] In view of above discussions this Court is of the view that the case of the prosecution is that charges have been framed under Sections-445/332 and 353 of IPC and trial has been taken place by the Court below. As many as 22 PWs and one DW have been examined and exhibited some relevant documents and at the end accused persons were examined under Section-313 of Cr. P.C. Considering the case in its entirety, the learned Court below has discharged the accused persons from the charge levelled against them under Section-323 and convicted under Section-447 and 353 of IPC. Aggrieved thereby, the petitioners have preferred an appeal which was subsequently dismissed by the learned Appellate Court and hence, the present petition is filed before this Court.

[49] Learned counsel appearing for the petitioner while reading over the evidences of all the PWs-1 to 22 and DW-1, has pointed out certain discrepancies, additions and the omissions made before the Court below at the time of their depositions and also placed reliance to ventilate the factual scenario in the light of the map which has been enclosed and marked as Exbt.3 by drawing attention of this Court towards the staircases and also pointed out rooms under the category of ‘A’ and further submitted that it is a case where the accused persons were present in front of the Court but he did not enter into the Court premises and he did not behave with the Court’s

staffs nor with the District Judge discharge and other officers to attract Sections-447 and 353 of IPC and relied upon judgments i.e. *Amrik Singh v. State of Punjab*, reported in (2022) 9 SCC 402, *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)*, reported in (2005) 5 SCC 258 and *Sukhwant Singh v. State of Punjab*, reported in (1995) 3 SCC 367 on the point of identification parade and other points. The learned counsel in his arguments condemned the attack on the institution but at the same time prayed to reduce the sentence and impose only fine by taking lenient view.

[50] Learned P.P. on the other hand opposes the same and contended that it is a heinous crime where the accused persons are liable for sentence and the concurrent findings of both the Courts below needs to be upheld since the scope of revision is very limited for interference. He also read over the relevant portions of the evidence such as PW-1 and PW-12 and other and also placed reliance on many judgments of the Hon'ble Apex Court i.e. *State Rep. by Dey. Supdt. of Police, CBI v. V. Jayachandra @ Ezhu Viral and Others*, reported in (1997) 10 SCC 70, *Raju Manjhi v. State of Bihar*, reported in (2019) 12 SCC 784, *Communist Party of India (M) v. Bharat Kumar and Others*, reported in (1998) 1 SCC 201, *Raj Kumar v. State of Himachal Pradesh*, reported in (2008) 11 SCC 76, *Harivadan Babubhai Patel v. State of Gujarat*, reported in (2013) 7 SCC 45, *Sadayappan alias Ganesan v. State represented by Inspector of Police*, reported in (2019) 9 SCC 257, *Malkeet Singh Gill v. State of Chhattisgarh*, reported in (2022) 8 SCC 204 and *Hebsur Rehman v. State by Hunsur Town Police Station*, in case No. Crl. P. No.5287 of 2022, which is also very relevant to the facts and circumstances of the case and contends that the petitioners need to be punished.

“PW-1, Sri Jhuman Das, who is the eye witness and one of the victims of this case. He has deposed that on 02.09.2015 he was posted as Bench Clerk in the Court of the then learned District & Sessions Judge, Sri Ruhidas Pal (PW-12). On that day a 24 hours strike was called by CPI(M). He came to the Office on that day at about 9.30 a.m. and was talking with Rabi Ranjan Bhowmik (PW-21). At about 9.50 a.m. learned Sessions Judge came along with his Orderly and P.G. and other security. After he entered the Chamber, they were setting outside and was talking. At that time, three persons came there and threatened them to leave the Court as a strike was called on that day.

He also deposed that when they were threatening them, one of the staff namely Nipu Datta informed the matter to the Sessions Judge and when he came out to enquire the matter, one person among the three namely Tapash Datta ran towards the Sessions Judge with an acrimonious gesture and said that if the Sessions Judge was the 'Chamcha' of the Hon'ble the then Chief Justice Mr. Deepak Gupta. At that time, one staff Rabi Ranjan Bhowmik came and asked Tapash Datta not to behave with a judge like that and at that time another person among the three, Trilokesh Sinha tried to throttle Rabi Ranjan Bhowmik. He also deposed that, learned Sessions Judge informed them that it was the kind Order of the Hon'ble High Court of Tripura to perform work on that day and at that Tapash Datta tried to physically attack the Sessions Judge, but the P.G. Mrinal Kanti Dey intervened and another person among the three Babul Debnath dashed and pushed them and sent them out of the Court and stopped them from performing their works. He also deposed that he know Tapash Datta as he was a local leader and later on he came to know the names of other two persons from the Orderly of learned Sessions Judge namely Asish Das Gupta. The witness also identified the accused persons by face in the Court."

" PW-12

PW-12: On 02.09.15 I was posted as District and Sessions Judge, South Tripura, Belonia. On that day, as like other days before 10'00 a.m I along with my P.G Mrinal Dey and my orderly Asish Das Gupta entered into the Court premises and I noticed that two staff of my court namely Jhuman Das and Rabi Ranjan Bhowmik were sitting under the banyan tree of the court. Then I asked them to come inside the office. Thereafter I entered into my official chamber and were talking with my orderly and P.G and when it was around 10'15 a.m, at that time one of my staff Nipu Datta came running to me and informed that some picketers came and were threatening the staffs of the court. Hearing this, I came out of my chamber to enquire about the matter. Then I saw 6/7 picketers outside my chamber who were threatening the staffs such as Jhuman Das, Rabi Ranjan Bhowmik and others. Then I asked them as to what happened. Then among the picketers, three persons came towards me and out of them one having black complexion told me stooge (chamcha) of the then Hon'ble Chief Justice Mr. Dipak Gupta and told me if I am a judge and whether I adjudicate cases and if I have the guts asked me to adjudicate him, to which I informed that there is an order of High Court to run the Court even on the day of strike to which that person became furious. At that time, my staff Jhuman Das and Rabi Ranjan Bhowmik asked those persons not to misbehave with me by telling that I am a District Judge to which one of the picketers told him that he knows very well that I am a judge. At that time I was given guard by my P.G. Out of those persons, one person threatened Jhuman Das and Rabi Ranjan Bhowmik and told them to leave the Court. Meanwhile, SDPO, Sudip Pal and O/C, BLN P.S came there and took away those persons. Then I returned back to my official chamber and informed the S.P, South Tripura about the incident. Due to the misbehaviour of those persons, I was dishearten. After the incident I find that most of the staffs of the Court left the court. Thereafter with one of my staff namely Bijan Pal and with my PG 1 performed my court works by passing formal orders. I also reported the incident to the Hon'ble High Court of Tripura. On the following day, from Jhuman Das, Rabi Ranjan Bhowmik I came to know that the person having black complexion who misbehaved with me whose name was Tapash Datta and the name of rest two persons were Trilokesh Sinha and Babul Debnath.

Witness identified the accused Tapash Datta at the dock. Witness could not identify the rest two accused persons though they are present at the dock.”

[51] In *State Rep. by Dey. Supdt. of Police, CBI v. V. Jayachandra @ Ezhu Viral and Others*, reported in (1997) 10 SCC 70, wherein, the Hon’ble Apex Court observed thus:

“11. The only point which now survives for our consideration is whether the prosecution has established the offences punishable under Sections 353 and 437, both read with Section 34 IPC. the officers of the c.g.s. Vivek and INS Kirpan who were insisting upon boarding m.v. ‘Yahata’ were performing their duty as they bona fide believed that they had a right to do so. They were demanding boarding and the accused were refusing the same. The firstly denied that the officers of the Public Armed Vessels of the Government of India, had any right to intercept or inspect their vessel as it was sailing on high seas beyond 200 nautical miles from Indian baseline. Thereafter they also stated that they had not denied inspection of their vessel but had only insisted for a neutral umpire. Though the accused had stated that they were unjustly forced to take their vessel near the Madras Sea Coast we do not find any evidence or even suggestion in the cross-examination of the prosecution witnesses that either c.g.s. Vivek or INS Kirpan had threatened to use Madras Coast. As regards what happened in the morning of 16.1.93 the defence of the accused was that none of the accused had fired at the Indian Naval vessels when they were making an attempt to board their vessel. The evidence of PW9, PW12, PW13, PW14 and PW22 is to the effect that at about 10.00 A.M. they had started the operation for boarding M.V.’YAHATA’ and INS Kirpan with a view to divert the attention of the accused. There was retaliatory fire from m.v. ‘Yahata’. PW22, the Captain of INS Kirpan has clearly stated in his evidence that in spite of his direction to M.V.’YAHATA’ to bring all their men to fore-peak without arms and ammunitions and explosives. They came to the aforesaid fore-peak fully armed. He has also stated that he had noticed ‘RPG LAUNCHER’ was being trained by the accused against his ship. He has also stated that when he fired warning shots to make them surrender and divert their attention for facilitating the boarding operation there was retaliatory fire from M.V.’YAHATA’ . Nothing has been brought out in the cross-examination of this witness which would create any doubt regarding his credibility and reliability of his version. His evidence has been disbelieved by the learned Designated Judge on the ground that if really the occupants of M.V.’YAHATA’ had in intention to resist boarding by using fire arms they would not have obeyed the Kirpan to sail towards Madras Coast. The learned Judge has also disbelieved his evidence because there was no mention of retaliatory fire from M.V.’YAHATA’ in the complaint, Exhibit P-1 given by PW1 who was then the Captain of INS Savitri and also because PW1 and PW12 (the Caption of c.g.s. Vivek) had not stated anything about the retaliatory fire in their evidence before the court. The learned Judge failed to appreciate that it was decided that INS SAVITRI was to be used only as a full-fledged hospital vessel in case there were casualties. It is, therefore, quite likely that he had not noticed retaliatory fire M.V.’YAHATA’. Significantly, he had also not stated in his complaint anything about the warning shots fired by c.g.s. Vivek and INS Kirpan, though admittedly, such shots were fired. Therefore, on the basis of the

omission in the complaint, Exhibit P-1 it was not proper to discard the evidence of PW22. It is quite likely that PW1 and PW12 did not notice the retaliatory fire from M.V.'YAHATA' because of their respective positions and because they were engaged in doing their jobs. PW9 has supported PW22 but the learned Judge discarded his evidence as this witness had not stated before the police that he had seen any projectile emerging from M.V.'YAHATA'. Having carefully gone through the evidence of this witness we find that it was not put to him that he had not so stated before the police. What he has stated in cross-examination is that he had noticed splash of water on the right side of INS Kirpan and he had also seen the projectile emerging from M.V.'YAHATA'. The only suggestion put to this witness was that he had merely suspected firing from M.V.'YAHATA' on the basis of splash water near INS Kirpan. The learned Judge therefore, not right in discarding the evidence of this witness who has clearly supported the evidence of PW22 on this point. PW13 was the Commanding Officer of INS SD BT. 56. He has also stated that there was retaliatory fire from M.V. 'YAHATA' when he was on the deck. He has further stated that seeing the retaliatory fire he ducked down otherwise he would have been hit. What this witness has stated in his cross-examination is that "I did not specifically state in my statement to the C.B.I. Officers that on seeing firing shots from 'M.V. YAHATA' I ducked down but I stated that I heard 'Phat-Phat' sound from 'M.V. YAHATA' and ducked down which according to me is the same thing as seeing firing from the 'M.V. YAHATA'." Evidence of this witness has been disbelieved on the ground that it was not likely that the occupants of M.V.'YAHATA' would have ventured to fire at the Indian Naval ships and also because this witness had not specifically stated before the police that the shots which were fired by the Indian Naval ships were warning shots only. These reasons can hardly be regarded as good reasons for discarding his evidence. So also, it was not proper to discard the evidence of this witness because PW14 who was also on INS SD BT. 56 did not say anything in his evidence regarding retaliatory fire from M.V.'YAHATA'. From his evidence it clearly appears that he was not even present when the briefing session for the boarding operation was conducted. Therefore, it is quite likely that he was assigned some other function and was busy with his own work when M.V.'YAHATA' had fired in retaliation. There is nothing on record to show that he was with PW13 or on the deck when M.V. 'YAHATA' had indulged in retaliatory fire.

12. We have perused the evidence of PW9, PW13 and PW22 closely on this point and we find no reason to disbelieve the same. The reasons given by the learned Designated Judge for not believing this part of the prosecution evidence are not at all proper and sufficient. We, therefore, hold that the prosecution has satisfactorily established that the accused had used criminal force against the Indian Naval Officers while they were performing their duty and that was done with an intention to prevent or deter them from discharging their duty. They are, therefore, held guilty of having committed the offence punishable under Section 353 IPC read with Section 34 IPC."

[52] Another case in *Birbal Nath v. State of Rajasthan and Others*, reported in *2023 SCC Online SC 1396*, wherein the Hon'ble Apex Court held thus:

“20. No doubt statement given before police during investigation under Section 161 are “previous statements” under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to “contradict” such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.

21. The contradictions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot lose sight of the fact that PW-2 Rami is an injured eye witness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination in chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross examination by the defence. Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. In *Rammi v. State of M.P.* (1999) 8 SCC 649, this Court had held as under:

“24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non- discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

[53] Another case in *Raju Manjhi v. State of Bihar*, reported in (2019) 12 SCC 784, wherein the Hon’ble Apex Court held thus:

“15. As regards the claim of appellant that non-identification of the accused by the witness would not substantiate the prosecution case, admittedly no prosecution witness has identified the accused appellant which does not mean that the prosecution case against the accused is on false footing. As a general rule, identification tests do not constitute substantive evidence. The purpose of identification test is only to help the investigating agency as to whether the investigation into the offence is proceeding in a right direction or not. In our view, non-identification of the appellant by any prosecution witness would not vitiate the prosecution case. It is evident from the confessional statement of the accused that at the time of occurrence he and another accused Rampati Manjhi were guarding outside the informant’s house while

other accused were committing dacoity inside. We do not think that there is any justification to the argument that as none of the prosecution witnesses could be able to identify the appellant, he cannot be termed as accused. In our view, such non-identification would not be fatal to the prosecution case in the given facts and circumstances.”

[54] Another case in ***Communist Party of India (M) v. Bharat Kumar and Others***, reported in (1998) 1 SCC 201, wherein the Hon’ble Apex Court held thus:

“3. Mr. Kapil Sibal, learned senior counsel appearing for the appellant, has contended that the impugned order of High Court dated 10.09.1996 has not only resulted in manifest injustice meted out to the appellant but the same is patently illegal, improper and unjustified. Mr. Sibal has contended that the law is well settled about the scope of supervisory jurisdiction of the High Court under Article-227 of the Constitution of India and inherent jurisdiction under Section-482 of Criminal Procedure Code and this Court has clearly indicated that such jurisdiction is extremely circumscribed.

17. The learned Attorney has also drawn attention to the statement of PW-2 Pandurang Raghunath Kale. The said witness deposed to the following effect:

“Then he (SDM) told me that he had taken charge of the place and he will not allow the stall to be removed. I again told SDM not to cause obstruction and allow us to do our work. Then he told me not to wait here. At that time SP Shri Jog and Rao also came. They also told me to go away.

18. Our attention has also been drawn to the statement of PW-6, Babu Gangaram Suryavanshi. The said witness has stated:

I am working as Municipal Engineer in Jalgaon Municipal Council. On 03.07.1993 at 7.30am as usual our Encroachment Squad went to remove the encroachment. Shri V.V. Suryavanshi, Assistant Engineer and Shri S.L. Patil, Junior Engineer also went to the spot. At around 10.30 am, I got the message that Baban Baheti had opposed the squad in removing the encroachment and SDM and police had come to the spot and they are obstructing the removal of the encroachment. SDM has said that he had taken charge of the place and will not allow the encroachment to be removed. He told him to go away from the spot along with his staff. Complainant also asked the collector why he was not allowing the encroachment to be removed. Complainant asked all of us to remove the encroachment. We all, staff and Municipal Councilors, started removing the encroachment. Then the complainant exhorted to remove the stall but the Collector did not allow the stall to be removed. A very large crowd had gathered there. The Collector said do not bother about anyone, put everyone in the van.”

[55] Another case in ***Raj Kumar v. State of Himachal Pradesh***, reported in (2008) 11 SCC 76, wherein the Hon’ble Apex Court held thus:

“10. In *State of Orissa v. Nakula Sahu* it was held that the High Court should not have interfered with the concurrent findings recorded by the trial Court

and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the trial Court or the Sessions Judge.”

[56] In *Harivadan Babubhai Patel v. State of Gujarat*, reported in (2013) 7 SCC 45, the Hon’ble Apex Court observed thus:

“20. In the case at hand, the factum of information related to the discovery of the dead body and other articles and the said information was within the special knowledge of the present appellant. Hence, the doctrine of confirmation by subsequent events is attracted and, therefore, we have no hesitation in holding that recovery or discovery in the case at hand is a relevant fact or material which can be relied upon and has been correctly relied upon.

24. In *State of H.P. v. Gian Chand* it has been opined that (SCC p.81 para-14)

“14.....non- examination of a material witness is not a mathematical formula for discarding the weight of the testimony available on record, howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court leveled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution.”

The three-Judge Bench further proceeded to observe that the court is required first to assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted upon though there may be other witnesses available who could also have been examined but were not examined.

26. In *Dahari and others v. State of Uttar Pradesh*[16], while discussing about the non-examination of material witness, the Court expressed the view that when he was not the only competent witness who would have been fully capable of explaining the factual situation correctly and the prosecution case stood fully corroborated by the medical evidence and the testimony of other reliable witnesses, no adverse inference could be drawn against the prosecution. Be it noted, the Court also took note of the fact that during the cross-examination of the Investigating Officer, none of the accused persons had voiced their concerns or raised any apprehension regarding the non-examination of the material witness therein.

27. In the case at hand, it was A-1 who had announced that he was taking the deceased to the house of Gulia. On a search being conducted, nothing has been found from the house of Gulia. There has been no cross-examination of the Investigating Officer about the non-examination of Gulia. On the contrary, it was A-1 who had led to the discovery of the dead body and other articles. Thus, when the other evidence on record are cogent, credible and meet the test of circumstantial evidence laid down in *Sharad Birdhichand Sarda v. State of Mararashtra*[17] *State v. Saravanan*[18], *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*[19] and further reiterated in *Jagroop Singh v. State of Punjab*[20], there is no justification to come to hold that the prosecution has deliberately withheld a witness that creates a concavity in the concept of fair trial.

28. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under Section 313 CrPC except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. (See *State of Maharashtra v. Suresh*[21]). In the case at hand, though number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him.”

[57] In *Sadayappan alias Ganesan v. State represented by Inspector of Police*, reported in (2019) 9 SCC 257, wherein the Hon’ble Apex Court observed as under:

“13. Criminal law jurisprudence makes a clear distinction between a related and interested witness. A witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. The witness may be called “interested” only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. [See: *Sudhakar v. State*, (2018) 5 SCC 435].”

[58] In *Malkeet Singh Gill v. State of Chhattisgarh*, reported in (2022) 8 SCC 204, wherein the Hon’ble Apex Court has observed as under:

“10. Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two Courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate Court and the scope of interference in revision is extremely narrow. Section 397 of Criminal Procedure Code (in short ‘CrPC’) vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

[59] In *Hebsur Rehaman v. State by Hunsur Town Police Station in Crl. P. No.5287 of 2022*, the Hon’ble High Court of Karnatak observed thus:

“7. Having heard the arguments and on perusal of the complaint, where the alleged incident occurred on 01.02.2019 but the FIR was registered on 27.02.2019. The complaint reveals that on 1.2.2019, when the complainant came to Mini Vidhana Soudha, Hunsur for discharge of her official duty, this

petitioner along with others said to be protested in front of mini Vidhana Soudha and obstructed from entering into the mini Vidhana Soudha and thereby, prevented the Authority from discharging the official duty. Hence, they committed the alleged offence under Section 353 of IPC. Though learned counsel submits that there was no criminal force as defined under section 350 IPC or an assault as defined under section 351 IPC to attract above offence and further submits that, except allegation of conducting protest, there is no CCTV footage. The police during the investigation examined as many as five eye- witnesses apart from the complainant and other witnesses, who have corroborated the statement of the complainant and one among them is the driver of the complainant, who has stated that, he learnt that, accused persons formed a group and were protesting in front of the entrance gate of Mini Vidhana Soudha and thereby obstructing entry of officials into the office and on NC: 2024:KHC:11606 knowing the said fact, the complainant went there and on her enquiry, it was learnt that, SDPI was holding protest without obtaining prior permission of any concerned departments and thereby obstructed officials from entering the office and discharging their official duties.

8. The petitioner and other accused also said to have abused in filthy language and protested. The police registered FIR under Section 353 of IPC for obstructing the public servant and showing the criminal force. Therefore, it cannot be said that there is no offence under Section 353 of IPC is made out. If at all no evidence is available regarding commission of offence during trial, accused persons may seek discharge but have not made out a case for quashing the criminal proceedings. Therefore, I am of the view, the petition deserved to be dismissed.”

[60] During the course of argument, learned counsel appearing for the petitioners has placed before this Court reliance from the contents which and the same has been enclosed and further on the same incident which occurred on 02.09.2015 in respect of Sabroom Court premises which was factually in a much worse situation then the present case at hand where the learned Court has confirmed the sentence in criminal revision No.29 of 2020 aggrieved thereby matter has been preferred to the Hon’ble Apex Court and the Hon’ble Apex Court confirmed the conviction but reduced the punishment and prayed for the same.

[61] Admittedly, on 02.09.2015 CPI(M) has called for a Bharat Bandh and the accused persons along with several other were also there in front of the Court premises and obstructing the ingress and egress of the people and also requested the business establishments in the vicinity upon their request, they have closed and in the process they have obstructed the employees entering into the premises and at one point of time they have

entered into the premises which is evident from the evidences of PWs.1, 2, 5, 6, 10, 12, 18 and 21 and also ***“they have made an attempt to attack the District Judge and in the process they attempted to throttle the neck and abuse the District Judge saying stooge (chamcha) of the then Hon’ble Chief Justice Mr. Deepak Gupta and told him if he is a judge and whether he adjudicate cases and if he has the guts asked him to adjudicate him”***. Further they restrained the staff from functioning of Court. For proper understanding, it would be proper to extract the meaning of ‘Strike’ -

“Strike: Means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.”

“Bandh: as per Oxford dictionary it is a general strike.

[62] Though the Court premises are a public place but it does not mean that any person would enter into the Court premises and move freely according to his will and wish. Reasonably presumed that if a person enter into the Court premises, he is attending any Court work or communicate his lawyer in such case, his movement should obviously confined to the place of restriction i.e. the Court hall and obviously there will be no restrictions for entering into the advocates’ bar or using public conveniences. It is the fundamental right of every citizen to get justice. But, the act of the petitioners in depicting the citizens and restraining the judicial function is anti-constitutional.

[63] As it is evident from the sketch map that the accused persons have entered the area where they were not suppose to and this Court feels that it is a restricted zone where the accused persons have entered and more so, when it is a period of ‘Bandh’ the accused persons following the dictate of their party, cannot create a pressure upon the litigants/employees and see that the Court is became un-function. It is not open for any political party or its followers to infringing the fundamental rights of the citizens and to make the Court un-functional.

[64] Section-353 IPC has ingredients of Section-349, 350 and 351 along with Section-21 of IPC. It has not been disputed before learned trial Court that on 02.09.2015 was not the working day for the Court and for the functioning the Court, the District Judge along with other staff came to the Court on their official time. So, although learned counsel Mr. Kabir has disputed that the Court staff will not be treated as public servant cannot be accepted because the officers of the Court and staff attended the Court for discharging their duties in the Court. Although learned counsel has disputed that Section-447 and 353 of IPC are not being proved. But by reading cumulatively the sections of the IPC mentioned above this court easily finds that all the essential ingredients of these two sections are found fulfilled. The judgments relied by the petitioners' side on this point has different facts and circumstances from the case at hand.

[65] Interestingly, the independent witnesses as discussed above, have noticed the petitioners with other picketers in front of the Court on the road on the given date and time. PW-13 saw that picketers were in front of the Court and they were not allowing the court staff to enter into the Court. He heard hue and cry inside the first floor of the Court premises. Similarly, PW-14, PW-15, PW-16 have also corroborated PW-13 on this point. PW-17 noticed that some persons were talking loudly and he got frightened. The depositions of these independent witnesses are very much relevant under Section-6 of the Indian Evidence Act as *res gestae*. Even the DW-1 has admitted that he saw the accused persons out of the Court and he also saw the supporters of the strike outside of the Court and they were making slogan. The independent witnesses have corroborated each other about the presence of the accused persons in front of the Court with their supporters and the defence has also admitted this fact. The witnesses from the Court have noticed these three petitioners in the Court building when the petitioners were threatening and arguing with the staff and learned District Judge. At that time hue and cry came from the Court which was heard by the independent witness. So, the presence of the petitioners in the Court building is established.

[66] No doubt it appears that the petitioners, as it is admitted by the defence that the petitioners are known figure and leader of a known political party gathered in front of the Court with their supporters with a motive to stop the functioning of the Court works for giving message in the society that the strike was fully successful. The strike was called by left supported Trade Unions. The supporters gathered in front of the Court where there is no any market or other trade related works are conducted. However, the petitioners along with their supporters assembled in front of the Court and the petitioners along with their some supporters entered in the Court and tried to obstruct the functioning of the Court.

[67] In this case the actual victim is the District Court along with the officers and staff. The petitioners were well aware about the presence of District Judge in his chamber that is why they directly entered in that particular portion of the building where the District Judge has his chamber and Court. The petitioners wanted to pressurize the highest officer of the Court (the then District & Sessions Judge) to close the functioning of the Court. A Court is a temple of justice and its functioning is dealt by separate rules and regulations independent from the other wings of the Government institutions. The petitioners on 02.09.2015 wanted to close the door of this temple illegally and for this they entered into the Court premises and started to threatened staff and directly approached District Judge for their illegal demand. In a civilized society where we are governed by rule of law, one cannot be permitted to impose his ideology by applying illegal means and methods in duress. So, considering the entire evidences on record, this court is of the opinion that there is no merit in the petitions.

[68] Even in the 313 examinations when specific question were post from question No.1 to 145 invariably the petitioners except denying the same has not explained in their defence. Question No.144 when specific question was asked by the Court whether he has anything to explain to which, he answered that on 02.09.2015 have not entered into the Court premises, Belonia, South Tripura. The said answer is also incorrect when

listed in the light of depositions of above witnesses. For the purpose of reference the relevant question may be extracted hereunder:

Q. No.144. Do you have want to say anything more in this regard?

Ans: On 02.09.2015 I did not enter into the Court premises, Belonia, South Tripura.”

[69] If we go by the word restricted area it is to say that if a person is invited in a house it does not mean that the invitee is permitted to move freely and enter into the private areas of the owner’s house like bedroom, kitchen, puja area. It is obvious that the invitee’s movement though he is invited is only limited to the areas like drawing room and living room but he cannot barge into the private areas.

[70] The petitioners have abused in filthy language and protested. FIR has been registered under Section-353 of IPC for obstructing the public servant and showing the criminal force. Therefore, it cannot be said that there is no offence under Section-353 of IPC is made out. In the matter like this where strike/bandh is called by a political party and large gathering is present restraining the people from entering the Court and not allowing staff and Judges to perform the judicial work, the situation causes to the judiciary as a surprise and shock and any minor discrepancies commit be given utmost importance enabling the accused persons to go free, due to benefit of doubt or any omissions or improvement in the version of prosecution evidence. Admittedly, there was a strike, persons trespassed, they restrained the functioning of Court proceedings, they misbehaved with District Judge and staff and they were identified. Therefore, prosecution has proved its case beyond reasonable doubt against the accused.

[71] The Apex Court in Special Leave to Appeal (Crl.) No(s). 12069/2022 in an identical incident occurred on the same day i.e. on 02.09.2015 in District & Sessions Court, Sabroom, Tripura State, the Apex Court has confirmed the conviction of accused persons and punished.

[72] Therefore, this Court is of the view, the present petition deserved to be dismissed. The judgments cited by the learned counsel

appearing for the petitioners have no relevance in the facts and circumstances of the present case for the discussions made above.

[73] In the background of the evidences discussed, admittedly there was strike in front of the Court premises. It is seen from the evidences of the other witnesses that the accused persons have entered into the Court premises and also as per the evidence of the PW-12 the accused persons the manner in which they behaved causing threat to the independency of the judiciary and obliterate the majesty of the Judiciary, this Court views the matter seriously and holds that it needs no interference in the findings arrived at by the learned Courts below.

[74] It is also seen that as against concurrent findings, the scope of revision is also very limited and the counsel for the petitioners made all attempts to re-appreciate the evidences and to draw the discrepancies in favour of the accused and sought for benefit of doubt, which is not possible. Accordingly the revisions fail.

[75] The Criminal Revision Petitions for the discussions made above are liable to be dismissed. Accordingly, the present petitions stand dismissed. As a sequel, miscellaneous application pending, if any, shall stand closed.

T. AMARNATH GOUD, J

A. Ghosh

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