

HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P.No.34 of 2023

Sri Bidhan Sabdakar,
son of Sri Rakhal Sabdakar,
resident of East Hurua, P.S. Dharmanagar,
District-North Tripura

-----Petitioner(s)

Versus

The State of Tripura

-----Respondent(s)

For Petitioner(s)	:	Mr. Sankar Bhattacharjee, Adv. Ms. J. Jamatia, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing	:	27.05.2024
Date of delivery of Judgment & Order	:	30.05.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order

This Criminal Revision Petition is preferred challenging the judgment dated 27.04.2023 passed by Learned Sessions Judge, North Tripura, Dharmanagar in connection with Case No. Criminal Appeal 14 of 2022. By the said judgment, Learned Sessions Judge, North Tripura, Dharmanagar has uphold the judgment and sentence dated 31.10.2022 passed by Learned Chief Judicial Magistrate, North Tripura, Dharmanagar in connection with Case No.PRC(WP)56 of 2016 under Section 326 of IPC.

2. Heard Mr. Sankar Bhattacharjee, Learned counsel assisted by Ms. J. Jamatia, Learned counsel appearing for the petitioner as well as Mr. Raju Datta, Learned P.P. appearing for the State-respondent.

3. At the time of hearing, Mr. Sankar Bhattacharjee, Learned counsel appearing for the petitioner submitted that though there is a concurrent finding in the judgment and sentence passed by both the Courts below but the prosecution before the Learned Court below has failed to prove the charge beyond reasonable doubt against the petitioner and furthermore, the evidence of Medical Officers suffers from infirmities. More so, Section 27 of the Evidence Act was not complied with by the prosecution in respect of recovery of the alleged weapon of offence i.e. Dao. Lastly, Learned counsel for the petitioner submitted that one material witness i.e. the wife of the complainant was not cited as witness by the prosecution in this case to prove the charge against the petitioner. So, according to Learned counsel for the petitioner, the judgment passed by the Learned Court below suffers from infirmities and prayed for allowing this petition by setting aside the judgment and order of sentence of the Learned Court below.

4. On the other hand, Mr. Raju Datta, Learned P.P. appearing for the State-respondent submitted that this is a case where the prosecution has been able to prove the charge leveled against the accused. According to Learned P.P., as alleged by the Learned counsel for the petitioner in course of examination-in-chief of PWs-1 & 2, they very specifically stated that they found accused-petitioner inside the house with Dao and thereafter, in presence of witness, the said weapon of offence was seized by IO. Furthermore, there was no cross-examination from the side of the petitioner regarding presence of accused inside the house with Dao on that relevant point of time. So, according to Learned P.P., the submission of Learned counsel for the petitioner cannot be accepted.

5. Learned P.P. further submitted that in support of his defence, the accused has adduced 2(two) numbers of witnesses but surprisingly, those witnesses did not whisper anything regarding the alleged occurrence of offence, so, the burden shifts upon the accused to prove that he was innocent. More so, the petitioner by the trend of cross-examination of witnesses of the prosecution could not raise any doubt to disbelieve their evidence. So, finally, Learned P.P. prayed for dismissal of this petition, rather he submitted that the Learned Court below at the time of delivery of judgment has shown lenient view since the charge under Section 326 was duly proved and imposed lesser punishment.

6. I have heard arguments of both the sides. Now, before coming to the conclusion of this petition, let us revisit the evidence on record of the prosecution. In this case, the prosecution was set into motion on the basis of an FIR laid by the informant/victim to O/C, Dharmanagar P.S. vide Police Case No.2016 DMN 0022 dated 15.04.2016 under Section 326 of IPC and the case was endorsed to S.I. Suman Saha for investigation who after completion of investigation, laid charge-sheet against the petitioner. Before the Learned Court below formal charge under Section 326 of IPC was framed to which he pleaded not guilty and claimed to be tried.

7. During trial, the prosecution to substantiate the charge has adduced in total 9(nine) numbers of witnesses and relied upon some documents which were marked as exhibits in this case.

8. PW-3, Sri Rakhal Sabdakar is the informant of this case. He deposed on oath that he is the complainant of this case. Accused Bidhan Sabdakar is his son. About 6 months back one day at about 3 pm his

wife started quarrel with him in his house on the issue of cooking. That time, his wife has abused him with filthy language. After sometime, his son who was there in the house had attacked him with a dao and chopped his left hand. He started shouting seeking help and having heard of his shouting his neighbour Gopesh Sabdakar had informed the fire service personnel and after sometime, fire service personal came and took him in the hospital and his son left away. After two days from the occurrence of offence, he laid the FIR at Dharmanagar P.S. which was scribed by one person as per his narration. He has undergone treatment at Dharmanagar and thereafter at Agartala.

During cross-examination, he stated that he was unable to say who had written the FIR and the contents of the FIR was read over to him and after that he put his signature. He further stated that his house is about sixteen cubits away from the house of one Kalpana Das. There is no house in between his house and the house of one Kalpana Das and his house is about thirty two cubits away from the house of Gopesh Sabdakar. He is having three sons and one daughter. His wife filed a case of cruelty against him. Nothing more came out relevant.

9. PW-1, Sri Gopesh Sabdakar deposed that the informant Rakhal Sabdakar was known to him and he was his neighbour and the petitioner Bidhan Sabdakar is the son of the complainant/informant. About six months back at about 2.45 pm which he was at his house, that time, he heard shouting from the house of the complainant and accordingly, he came out and went near the house of the complainant/informant and saw that the left hand of the complainant was chopped off and he was bleeding profusely. He also seen the accused Bidhan Sabdakar inside the house with a dao in his hand.

Having seen that, he became afraid and rushed to his house. He picked up his mobile phone from his house and came out with a view to call fire service personnel and when he came out with the mobile phone that time, he found that the accused already went away. He informed the matter to Purba Huruwa Panchayet Prodhan namely Basu Das over mobile phone who being heard the matter, reported the same to Fire Service Personnel. After sometime, fire service personnel came with their vehicle and had taken the injured to Dharmanagar Hospital with that vehicle.

During cross-examination, he stated that he is well acquainted with the complainant and his family members. He could not say as to whether the wife of the complainant had filed any case against him or not. He further stated that he did not say to IO that he came out with his mobile phone and informed the prodhan about the incident. Nothing more came out relevant.

10. PW-2, Smt. Junuri Sabdakar deposed that the informant Rakhal Sabdakar is known to him and was a adjacent neighbour. Accused Bidhan Sabdakar is the son of the complainant. About six months back on a day about 2.45pm while he was at his house, that time, he heard some shouting of the complainant saying that the accused Bidhan Sabdakar had chapped off his hand with dao. Having heard that, she came out of his house and went to the house of the complainant and found that the left hand of the complainant was chapped off and he was bleeding profusely and also seen the accused Bidhan Sabdakar inside the house with a dao in his hand. After sometime, the accused fled away from the house and thereafter, fire service personnel came and shifted the injured to the hospital.

During cross-examination, she admitted that often quarrel took place in the house of the complainant. Nothing more came out relevant.

11. PW-4, Smt. Kalpana Mashya Das deposed that the complainant is her neighbour and the accused Bidhan Sabdakar is the son of the complainant. On 11.04.2016 at about 2.30-3 pm while she was taking bath, she heard hue and cry of the complainant and having heard that, she went to the house of the complainant and found that the accused was trying to assault the complainant with dao and while the complainant was trying to protect him, the dao blow has blended his left hand and resulting which, his left hand was chapped off. After that, the complainant had taken shelter in her house when neighbour Gopesh Sabdakar also came. After sometime, she heard that fire service personnel came and shifted him in the hospital.

During cross-examination, she stated that she did not say to IO that she has seen the accused trying to assault the complainant. Further, she stated that she stated to IO that the complainant with his chapped hand had come down to her house and the complainant is her uncle.

12. PW-5, Sri Sandip Kr. Deb deposed that on 11.04.2016, he was posted as Fireman in the Dharmanagar Fire Service Station. On that day, at about 03.20 pm, they went to East Huruah on receipt of a phone call about an accident. They went there and found that a person's hand was severed and the same was lying on the ground. The people gathering at the PO put the victim to their vehicle. When they could know that his son severed his hand, they brought the victim to Dharmanagar Hospital and handed over him to the medical authority. He

further stated that he went to the spot with his colleague fireman and the driver of their vehicle. Police personnel also came there that time.

During cross-examination, he could say from which phone number they receive the call. Also could not say on the basis of which G.D. no they went to the PO. He did submit any extract of GDE to police. Nothing came out relevant.

13. PW-6, Anjan Sabdakar deposed that he know the informant Rakhal Sabdakar and the accused person. He could not say anything about the prosecution case. Thus, his attention was drawn to the seizure list dated 22.04.2016 when he admitted that the seizure list bears the signature and identified his signature marked Exbt.1/1. He was confronted with the statement recorded by IO under Section 161 of Cr.P.C. which he denied.

During cross-examination he stated that his signature was obtained by a police officer but he could not say as to why the signature was obtained.

14. PW-7, Naresh Sabdakar deposed that about 2 years back one day he returned to his house around 04.00pm from the house of his daughter at South Huruah. On returning back to home, he came to know that accused Bidhan Sabdakar had cut down the hand of informant Rakhal Sabdakar. He went to see Rakhal Sabdakar to hospital and also found that the left hand from the wrist was disfigured and after few days of the incident police officials accompanied with the wife of informant recovered one dao from the ditch of their locality which was used by the accused in cutting the hand of informant. He witnessed the recovery of dao. Said dao according to him was belonging to accused. He further stated that the said dao was seized by the police preparing the seizure

list. He identified his signature on the seizure list marked Exbt.1/2 and identified the seized dao marked as Exbt. MO-1.

During cross-examination, he stated that he did not say to IO that he came to know about the incident after returning home from the house of his daughter.

15. PW-8, SI Suman Saha is the IO who laid charge-sheet against the accused. He deposed that on 15.04.2016 he was posted at Dharmanagar PS as an SI of police. On that day, this case was endorsed to him for investigation. He further stated that printed FIR form was filled up by O/C which bears his signature and identified the printed FIR form which was marked as Exbt.2. Endorsement along with signature of OC in the written complaint stands marked as Exbt.3 on identification. He further stated that in course of investigation he visited PO, prepared hand sketch map with index and identified the hand sketch map and index which were marked as Exbt.4 and 5 respectively. He also examined the available witnesses and recorded their statements under Section 161 of Cr.P.C. He further stated that he collected the injury report of the injured Rakhal Sabdakar from Dharmanagar hospital. He also arrested the accused Bidhan Sabdakar on 22.04.2016 around 16.45 hours. During interrogation accused stated that he had thrown away the dao which was used in causing injury to the injured in ditch at East Huruah. Accordingly, he went there taking the accused and recovered the dao from the said ditch in presence of witnesses. He identified the seizure list which was marked as Exbt.1 and finally, he laid charge-sheet against the accused.

During cross-examination, he deposed that the FIR was received on 15.0.2016 at about 22.43 hours. The written complaint does

not bear the date of occurrence. During investigation, he did not ascertain the scribe of written complaint. He further stated that the reason for delay in lodging the complaint was not mentioned in the printed FIR form and also he did not mention the names of owners of the dwelling houses indicated as 'D', 'E' and 'G' in the hand sketch map. He did not examine the son and wife of the informant and also he did not record the disclosure statement of the accused before recovery of the seized dao.

16. PW-9, Dr. Ashish Kr. Sen deposed that on 11.04.2016 at about 04.20 pm being the Senior Medical Officer, Dharmanagar hospital, he examined one Rakhal Sabdakar who was brought to hospital with the history of assault. On examination, he found total amputation of left hand at the level of left wrist joint. The injury was severe in nature caused by sharp weapon. The patient was referred to AGMC Agartala on 12.04.2016 and thereafter he laid the report and identified the report which was marked as Exbt.6.

During cross-examination, he stated that he did not mention the age of injury in his report.

17. From the evidence on record, it appears that the accused-appellant by the trend of cross-examination could not raise any doubt to disbelieve the evidence of the witnesses of the prosecution because if we see the evidence of the victim i.e. PW-3 and other independent witnesses i.e. PW-1, PW-2 and PW-4, it appears that just after the occurrence they saw the accused with dao in his hand and found the victim in injured condition and his left hand from wrist was amputated. The medical evidence also clearly stated about the injury of the victim. Since PW-1, PW-2 and PW-4 stated that they saw the accused with dao

in his hand inside the house and later on said dao was recovered at the instance of accused and the accused during cross-examination of the same witnesses i.e. PW-1, PW-2 and PW-4 did not utter any single word denying presence of accused-appellant inside the house with dao in his hand and also fleeing away of the accused from the place of occurrence after the incident. Some minor contradictions were emerged from the evidence of the witnesses but those witnesses according to me are not fatal for the decision of this case. Furthermore, as already stated, in course of examination, the accused totally denied the prosecution allegation and desire to adduce two witnesses. Accordingly, two witnesses were adduced by the accused in support of his defence.

18. DW-1, Anil Sabdakar during his examination stated that the informant was an ill-tempered person and used to torture his wife, daughter and son under influence of alcohol and earlier people of their locality used to solve their family dispute but due to his bad conduct, people of their locality failed to resolve their issues but he could not say anything about the case of the prosecution.

During cross-examination, he deposed that he was the full blooded brother of mother of the accused Bidhan Sabdakar and his house is situated at a distance of half kilometer from the house of the informant. They did not file any case against the informant with the allegation that he used to cause torture his wife, daughter and son under influence of alcohol nor submitted any document to the Court to substantiate that Police detained and took the informant away on some occasions on their complaints. He deposed that the wife of the informant filed case against him.

19. Similarly, DW-2, Sunil Sabdakar also deposed in the same manner like DW-1. He also could not say anything about the case of the prosecution.

During cross-examination, he stated that he is the full blooded brother of mother of accused Bidhan Sabdakar and witness Anil Sabdakar is his full blooded brother. He also could not say anything that whether any case was filed against the informant on the allegation that he quarreled with his family under the influence of alcohol.

20. From the evidence on record, although it appears that the accused is a man of bad character but in support of that, they could not adduce any documentary evidence, so, no reliance can be placed upon their evidence. Rather, it appears that they are the brothers of the mother of the accused appellant and mother of the accused also filed a case against the informant. They are interested witnesses. So, it is apparent that some previous dispute was going on amongst the informant and his wife and son but from that part of evidence, the accused petitioner in this case could not derive any benefit to substantiate that the accused petitioner was innocent and he had been falsely implicated in this case.

21. Situated thus, it appears that both the Courts below rightly delivered the judgment and found the appellant to be guilty for the charge punishable under Section 326 of IPC. So, considering the materials on record and after hearing arguments of both the sides, I do not find any scope to show any lenient view upon the petitioner of this case. Thus, it appears that there is no scope for this Court to interfere with the judgment delivered by Learned Sessions Judge, North Tripura, Dharmanagar in connection with Case No. Criminal Appeal 14 of 2022.

22. In the result, the petition filed by the petitioner is hereby dismissed on contest being devoid of merit. The judgment and order of sentence dated 27.04.2023 delivered by Learned Sessions Judge, North Tripura, Dharmanagar in connection with Case No. Criminal Appeal 14 of 2022 is hereby upheld and accordingly, it is affirmed. The accused-petitioner, if he is on bail, be asked to surrender before the Learned Trial Court immediately to serve out the sentence.

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

Pending application/s, if any, also stands disposed of.

JUDGE

Digitally signed by SABYASACHI
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