

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 116 of 2006

Sri Paresh Das

son of late Sadananda Das
resident of village- Salbagan, Purba Aralia,
P.S. East Agartala, District- West Tripura.

... Accused- Petitioner

- Versus -

The State of Tripura

... Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the petitioner : Mr. N. Majumder, Advocate.

For the respondent : Mr. RC Debnath, Additional PP

Date of hearing & delivery

of Judgment and Order : **04.08.2015.**

Whether fit for reporting : **YES / NO**

JUDGEMENT AND ORDER (ORAL)

This criminal revision petition is directed against the judgment dated 27.10.2006 passed by the Additional Sessions Judge, West Tripura, Agartala(hereinafter referred to as the "appellate Court") in Criminal Appeal No. 56(3) of 2005 whereby and whereunder the appellate Court upheld the judgment of the Judicial Magistrate (2nd class), Agartala, West Tripura (hereinafter referred to as the "trial Court") in case No. G.R. 517 of 2002 convicting the petitioner under Sections 323 and 341 read with Section 34 of the Indian Penal Code (for short "IPC") and sentencing him to pay a fine of Rs.250/- for the offence punishable under Section 323 IPC, in default, to suffer R.I. for 15 days and also to pay a fine of Rs.250/- for the offence punishable under Section 341 IPC, in default, to suffer R.I. for 15 days. In the judgment, the trial Court also convicted other three persons but those persons have not come before this Court.

2. Heard Mr. N.Majumder, learned counsel appearing for the petitioner as well as Mr. RC Debnath, learned Additional Public Prosecutor appearing for the State respondent.

3. The prosecution case, in short, is that the informant, Smt. Sabitri Das (PW-1) lodged an ejahar before the East Agartala police station stating *inter alia* that on 15.07.2002 at about 4.00 p.m in the evening her neighbours, namely, Smt. Anu Das, Sri Paresh Das, Sri Ram Krishna Das and Smt. Sabita Das had assaulted her daughter Felon @ Dipa Das and her daughter-in-law Smt. Maya Rani Das and because of the said assault, they had suffered injuries and were hospitalized.

3.a. On receipt of the said ejahar, East Agartala police station registered a case being East Agartala P.S case No. 134 of 2002 under Sections 341/323/34 of the IPC. After investigation, charge sheet was filed against the petitioner herein and other co-accused under Sections 341/323/34 of the IPC.

3.b. It appears from the prosecution case that there was prior enmity between the accused persons and one Ballav Das, husband of the informant Sabita Das regarding ownership of pineapple garden and as a result of said enmity, case and counter case was lodged by the parties and because of the enmity the accused persons had entered into the house of the informant and assaulted her daughter-in-law Smt. Maya Rani Das and when Smt. Felan Das, her daughter tried to intervene she was also hit on her head with a torch light by Sri Ram Krishna Das.

3.c. The trial Court took cognizance of the offence under Section 323 of the IPC read with Section 34 of the IPC against all the four accused persons including the present accused petitioner. All the accused persons were examined under Section 251 of the Cr.P.C wherein all of them pleaded not guilty and claimed to be tried.

3.d. The prosecution examined as many as 11 witnesses including the I.O of the case and the Medical Officer who examined the two victims namely Smt. Maya Rani Das and Smt. Felan @ Dipa Das. After recording of the evidence of the prosecution witnesses, the accused persons were examined under Section 313 of the Cr.P.C who declined to adduce any evidence and pleaded their innocence.

3.e. The trial Court mainly relied upon the evidence of PW-3 (Phalon @ Dipu Das), PW-5(Smt. Soma Debnath) and PW-7(Smt. Maya Rani Das), the victims and also considered the evidence of PW-10 (Dr. Bhagaban Tripathi), Medical Officer and finally convicted the accused persons including the present petitioner and sentenced thereto, as stated supra.

3.f. Being aggrieved by the judgment of the trial Court, the accused petitioner preferred an appeal before the court of Additional Sessions Judge, West Tripura, Agartala. The appellate Court after having heard the learned counsel for the parties and considering the evidences on record upheld the conviction and sentence passed by the trial Court. Hence, the instant revision petition.

4. Mr. Majumder, learned counsel appearing for the accused petitioner while urging for setting aside the judgment of the learned

trial Court as well as the appellate Court would contend that admittedly there was a case and counter case between the parties regarding the ownership of a pineapple garden. He has also referred to the evidence of PW-7 (Smt. Maya Rani Das, the victim) who in her deposition stated that Paresh Das and Ram Krishna Das also entered in their house and all of them assaulted her and as a result she fell down on the ground and hearing her noise her sister-in-law Smt. Felan @ Dipu Das (PW-3) came to rescue her but they also assaulted Dipu Das and Soma Debnath. Paresh Das assaulted Dipu Das by a torch on her head and she sustained bleeding injuries. In her cross-examination, this witness stated that she stated to daroga babu that Paresh Das assaulted Dipu Das by torch but no such statement is found in her previous statement recorded by the I.O under Section 161 of the Cr.P.C. She also stated that Paresh Das lodged two criminal cases against her father-in-law and her husband and others before and after the incident.

4.a. Mr. Majumder also submits that as per seizure list, the broken torch light was seized at the place of occurrence, Purba Aralia, Lenin colony in the courtyard of dwelling hut of the informant whereas PW-6 (Shyamal Das) specifically stated that he has deposited the torch light to the police station on the way to GB hospital. PW-9 (Ratan Das), the seizure witness specifically stated that daroga babu came to their house and seized one torch light in their presence and in his cross examination he has stated that he produced the torch light to daroga babu. Therefore, from the evidence of PW-6 and PW-9, there is doubt regarding the seizure of any torch light from the place of occurrence. He has also stated that

Nitai Pal (PW-8) another seizure witness specifically stated that daroga babu brought the torch light at the time of seizure from the police station when he was ploughing in the field nearby the house of Ballav Das.

4.b. Mr. Majumder further submits that the said torch light was not sent to the finger print expert as to whether the said torch light was used by the present petitioner. He further submits that from the evidence of PW-3 (Dipu Das) it would be evident that at the time of the alleged incident, the neighbouring people also came to their house but none of those independent witnesses were examined. He further submits that PW-10 (Dr. Bhagaban Tripathi) in his cross examination specifically stated that he did not mention the age of the injury in his report. He finally contended that the alleged victims impleaded the present petitioner due to earlier enmity.

5. Mr. Debnath, learned Additional Public Prosecutor clearly submits that regarding the place of seizure of torch light, there is a contradiction. Some of the witnesses stated that they have produced the torch light to the I.O of the case at the police station whereas from the seizure list it appears that the torch light was seized at the place of incident. He further submits that one of the victim stated that it is the accused Ram Krishna Das who has used the torch light to hit the victim, PW-3.

6. This Court has gone through the evidences on record and the judgment passed by the courts below. Conviction of other accused persons though supported by the evidences of the prosecution but regarding the assault upon PW-3, PW-5 and PW-7

by the accused petitioner is not proved beyond reasonable doubt. More so, none of these three witnesses had identified the torch light which was used in the alleged occurrence.

7. Considering the entire facts and circumstances, particularly the seizure of the torch light and use of the same, this Court is of considered opinion that it is a fit case where the accused petitioner should be acquitted on benefit of doubt.

8. Accordingly, the accused petitioner is acquitted from the charge leveled against him, on benefit of doubt.

9. In the result, the revision petition is allowed. As the petitioner is on bail, he is discharged from the bail bond.

Send down the LCRs forthwith.

JUDGE

Saikat