

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Revision Petition.11 of 2010

Sri Budhu Paul alias Pulak Paul,
Son of Harimangal Paul,
Resident of North Santinagar,
P.S. Sonamura, Dist. West Tripura.

..... *Petitioner.*

-Vs -

The State of Tripura.

..... *Respondent.*

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner	: Mr. P K Biswas, Sr. Advocate, Mr. P Majumder, Advocate, Ms. C Bhowmik, Advocate.
For the respondent	: Mr. A Ghosh, Public Prosecutor.
Date of hearing & Judgment	: 19.3.2015.
Whether fit for reporting	: No.

JUDGMENT & ORDER(ORAL)

This criminal revision petition by the accused is directed against the judgment dated 23rd December, 2009 delivered by the learned Additional Sessions Judge, Sonamura, West Tripura in Criminal Appeal No.7(3) of 2009 whereby the learned Additional Sessions Judge dismissed the appeal filed by the present petitioner and upheld the judgment & order, dated 26.08.2009, passed by the learned Sub-Divisional Judicial Magistrate, Sonamura, West Tripura convicting the accused of having committed an offence punishable

under Section 325 I.P.C and sentencing him to undergo rigorous imprisonment for 2(two) years and also to pay a fine of Rs.5,000/- and in default payment of fine to suffer further simple imprisonment for a period of 6(six) months.

2. The prosecution story briefly stated is that on 11th March, 2005 the accused was selling illicit liquor beside a shop at Santi Nagar. The victim Uttam Paul raised objection to his selling country made liquor and thereupon the accused attacked the victim with a 'dao' and caused him an injury. The victim was taken to the Sonamura rural hospital. He was then shifted to the Dr. B R Ambedkar Hospital where he had to undergo treatment but he lost his vision in one eye due to the injury received in the occurrence. Both the Courts below have convicted the accused.

3. The two grounds raised by Mr. P K Biswas, learned senior counsel, are that (i) there is material inconsistency between the medical evidence and the ocular evidence. Whereas the accused and his witnesses stated that he was hit by a dao which is a sharp aged weapon, according to the medical evidence, the injury was caused by a blunt instrument, (ii) the second ground is that the FIR was lodged on 12th March, 2005 even though, as per the statement of the witnesses, the police had reached the spot soon after the occurrence.

4. I shall deal with the second issue first. At the outset I may mention that prior to the establishment of the High Court of

Tripura there was a very unhealthy practice in the State of Tripura that the police would not record an FIR even in a cognizable offence unless a complaint by the victim or one of his family members was made to the police. Though this practice was totally unhealthy and illegal, this Court cannot lose sight of the fact that this was the practice being followed.

5. From the evidence on record, I find that the FIR was lodged on 12th March, 2005 at 12.15 hrs. because it is on that date a written complaint in writing was made to the police by the brother of the injured. Even otherwise, I am of the view that merely because an FIR has been lodged at a later stage is not by itself a ground to acquit the accused. Whenever an FIR is lodged later, then there is a chance of a false case being built up and, therefore, the prosecution evidence has to be scrutinized with greater care and caution and the inconsistencies in the prosecution case can be magnified and the benefit of such inconsistencies has to be given to the accused.

6. As far as the main issue is concerned, in the present case there are two eye-witnesses. One is the victim and one is PW.6. The statements of the other witnesses are not so relevant because they all reached the spot after the occurrence had taken place. As far as the injured victim is concerned, he has stated that on 11th March, 2005 at about 9.30/10.00 p.m he saw the accused selling illicit country made liquor beside the Senior Basic School, Santi Nagar. Some people were consuming liquor at the spot after purchasing the

same from the accused. On seeing this happening, the victim took the drum of illicit liquor from the custody of accused Budhu Paul and threw the liquor on the road. Thereafter an altercation took place and the accused rushed to his house, took out a “Billhook” and struck a blow over the head and left eye of the victim. The victim was taken to the hospital and finally lost vigil in one eye due to the occurrence. The witness identified the accused in Court. This witness also stated that his brother had a shop selling *roti* and vegetables about 2/3 shops away and he named some of the other witnesses as being present in the shop of his brother.

7. PW.6 is the other eye-witness and according to him, he was standing near the shop where the accused was selling country made liquor. The victim raised objection and thereafter an altercation started. The victim caused damage to the drum of the country made liquor and also broke the glasses belonging to the accused. Thereafter the accused reported the matter to the brother of the victim and then an altercation took place when the accused brought out a ‘*lathi*’ from his house and attacked Uttam Paul with the *lathi*.

8. Thus, certain facts which stand established are that the accused was selling country made liquor and there were some people consuming liquor at the shop. It is also an established fact that the victim threw the drum of the liquor and also broke some of the glasses. The victim had no right to take the law into his own hands.

He was not exercising the right of private defence or protecting his property. If he had any grievance against the act of the accused in selling the country made liquor he should have raised such objection with the police but could not have taken the law into his own hands and broke the drum of liquor and the glasses. According to the victim, the accused went to his house and took out a billhook whereas, according to the PW.6, the accused went to his house and took out a lathi. Therefore there is a contradiction in this regard.

9. The accused could not have used the word billhook because that is an English term but in the translation it is mentioned as a 'dao' which is a sharp edged weapon. On the other hand, PW.6 stated what was brought out and what was the weapon of offence was a lathi. There is a difference between a lathi and a dao. The other witnesses who reached the spot after the occurrence are not eye-witnesses but they are material witnesses because they reached immediately after the occurrence. They have also stated that the brother of the victim was complaining that his brother was hit by a dao. It has been stated that when these witnesses reached the spot the accused ran away leaving his dao behind. It has also been stated that the police reached the place of occurrence immediately thereafter. The dao was, however, seized on 18th March, 2005, seven days after the occurrence has taken place and there is not a single word of explanation in the statement of the Investigating Officer why

the dao was seized after 7 days when in fact it was available at the scene of occurrence immediately after the occurrence.

10. Having held so, there can be no merit of doubt that there is some dispute what is the weapon of offence but the question that arises is, whether this by itself is sufficient to acquit the accused or not. The weapon may not have been properly identified or seized but that is only a corroborative piece of evidence. The main evidence is of the victim and the eyewitness and they have both stated that the victim was attacked by the accused. Whether he was attacked by a lathi or by a dao, the fact remains that the accused attacked the victim and caused him a grievous injury which resulted in the loss of his one eye. I am not inclined to accept the recovery of the dao because it is too belated. However, the statement of the witnesses is totally consistent to the effect that the accused had given a blow to the victim.

11. This Court cannot lose sight of the fact that in India the police is in the habit of padding the cases which causes more problems. Probably to make the offence more serious, a sharp edged weapon was introduced whereas what was used was a blunt weapon. Be that as it may, the accused has not been convicted of an offence under Section 326 I.P.C but has been convicted of having committed an offence under Section 325 I.P.C which only relates to causing grievous injury. Therefore, I am not in agreement with Mr. P K Biswas and I am of the view that though the reasoning of the Courts below

may not be strictly correct, it stands proved on record that the injury was caused by the accused and this injury was grievous in nature.

12. Next comes the issue of quantum of sentence. In this regard though this may not be a case of grave and sudden provocation in as much as the accused had the time to go to his house and bring out a lathi or whatever be the weapon of offence but the fact remains that the victim took the law in his own hands, threw the so called illicit liquor on the road and also broke the glasses in which the accused was serving the liquor. So there was some provocation on behalf of the accused and in this view of the matter, I am inclined to reduce the sentence to 1(one) year instead of 2(two) years. The accused is liable to pay a fine of Rs.5,000/- for commission of offence punishable under Section 325 I.P.C and in case of non-deposit of fine the accused shall undergo simple imprisonment for a period of 3(three) months instead of 6(six) months. The fine amount be deposited within 3(three) months from today, if not already deposited. The petitioner is directed to surrender before the learned Sub-Divisional Judicial Magistrate, Sonamura, West Tripura to serve out the sentence.

The petition is disposed of. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu