

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO. 45 OF 2011

PETITIONER :

Sri Ranjan Rudra Paul,
S/O. Sri Chanu Rudra Paul,
Resident of Vill.-Tuichindrai,
P.S. Teliamura,
District - West Tripura,

BY ADVOCATES :

Mr.S. Kar Bhowmik,
Mr.S. Roy,
Mr.S. Sarkar,

- *vs* -

RESPONDENT :

The State of Tripura,

BY ADVOCATE :

Mr.R.C.Debnath,
Addl. P.P.,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing & delivery of
Judgment & order : **24.09.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

By filing this revisional application, the petitioner challenged judgment and order dated 28.03.2011 passed by learned Additional Sessions Judge, Khowai, West Tripura in Criminal Appeal No.08 of 2010, whereunder the learned

Additional Sessions Judge upheld the judgment and order of conviction and sentence dated 22.11.2010 passed by the learned Judicial Magistrate(Ist Class), Khowai, West Tripura in case No. G.R. 209 of 2008.

2. Heard learned counsel, Mr. S. Kar Bhowmik for the petitioner and learned Additional P.P., Mr. R. C. Debnath for the State-respondent.

3. The prosecution case is that on 18.09.2008 minor daughter of Smti. Purnima Kalai(Saha), aged about four years, (name kept withheld) went to her neighbours' house, where the accused petitioner picked up her, took her in a room and after removing her wearing sucked her breast and also bitten her breast with teeth causing injury, for which she was taken to hospital and P.W.2, Smti. Purnima Kalai(Saha) lodged the FIR on the date of occurrence itself before the O/C, Teliamura P.S. and accordingly, police registered a case under Sections 354 and 323 of IPC and after investigation submitted charge sheet against the accused.

4. Learned Judicial Magistrate(Ist Class) in course of trial framed charges against the petitioner for commission of offence punishable under Sections 354 and 324 of IPC, to which he pleaded not guilty and claimed to be tried.

5. Prosecution examined 11 witnesses including the victim minor girl and also proved certain documents including medical report of the victim girl. After closure of the

prosecution evidence, the accused was examined under Section 313 of Cr.P.C. and in his turn the accused declined to adduce any defence evidence. Defence case is denial of the prosecution case.

6. Learned Judicial Magistrate(Ist Class) found the accused guilty of the charge framed against him and sentenced him to suffer S.I., for two years and to pay a fine of Rs.1000/-, in default of payment to suffer further S.I. for one month for commission of offence punishable under Section 354 of IPC and also sentenced him to suffer S.I. for six months for commission of offence under Section 323 of IPC.

7. Aggrieved, the accused petitioner preferred Criminal Appeal No.08 of 2010 in the Court of learned Additional Sessions Judge, Khowai and by impugned judgment dated 28.03.2011 the learned Additional Sessions Judge dismissed the appeal and hence, this revisional application.

8. While exercising the power of revision, this Court is to see the correctness, legality and propriety of the judgment and order passed by the Courts below and the irregularity of the proceeding before such inferior Courts. This Court is not ordinarily required to re-appreciate the evidence unless there is perversity in the appreciation of evidence.

9. I have meticulously gone through the impugned judgment passed by the learned Judicial Magistrate(Ist Class) and the learned Additional Sessions Judge. I have also gone

through the evidence recorded by the trial Judge in the course of trial.

10. Learned counsel, Mr. Kar Bhowmik has submitted that the victim was a child of four years at the time of alleged occurrence. He has fairly submitted that injury on her chest has been proved by oral and medical evidence adduced. But the identity of the accused petitioner is doubtful since the victim being a small girl stated that apart from the accused, she called another person also as her "Je". Therefore, it is submitted by learned counsel, Mr. Kar Bhowmik that identity of the accused is doubtful.

11. Learned Additional P.P., Mr. Debnath, has submitted that the accused was identified by the victim immediately after the occurrence and it is in the evidence on record that the accused also admitted that he sucked the breast of the baby.

12. On perusal of the evidence of PW5, i.e., the victim girl, I find that she has clearly identified the accused in the Court while she gave evidence. So, I find nothing to suspect the identification of the accused by the victim at the time of occurrence. Other witnesses consistently corroborated the victim regarding identity of the accused. So, I find no force in the submission of learned counsel, Mr. Kar Bhowmik.

13. The next argument advanced by learned counsel, Mr. Kar Bhowmik is that the informant, i.e., the mother of the victim child, and the accused, are co-villagers and closely

known to each other. After the incident there was a village meeting held on 30.08.2010 and the matter was compromised in the presence of village Pradhan and other elderly people and in that compromise the accused was exonerated from the allegation. A copy of that compromise petition has been annexed with the revisional application. In addition thereto, submitted learned counsel, Mr. Kar Bhowmik that PW2, Smti. Purnima Kalai(Saha), the informant also sworn an affidavit before the Notary Public at Khowai on 20.06.2011, wherein she stated that the matter has been amicably settled at the intervention of the well-wishers of both parties and she has no grievance against the accused. Copies of those compromise petition and affidavit are annexed with the revisional application.

14. The copy of the compromise petition and the affidavit show that the meeting for the compromise was held on 30.08.2010 and the affidavit was sworn on 20.06.2011. The judgment of the trial Court came on 22.11.2010, but admittedly no compromise petition was filed before the trial Court. Leaned counsel, Mr. Kar Bhowmik further submitted that the case has become non-compoundable because of the finding of learned Additional Sessions Judge and hence, though there was a compromise between the parties, but no compromise petition could be filed.

15. As I find charge was framed under Sections 354 and 324 of IPC. Since the offence, under which the accused was

charged, was not compoundable, it is submitted that no compromise petition was filed. However, it is candidly submitted by learned counsel, Mr. Kar Bhowmik that there was a compromise between the accused petitioner and the informant, i.e., the mother of the victim child and so, the Courts below would consider the fact in view of such compromise.

16. Learned Additional P.P. has submitted that there is no scope of considering the resolution of the village meeting at this stage since it was not produced before the trial Court and no evidence was led.

17. It is admitted by Mr. Kar Bhowmik, learned counsel of the petitioner that neither any compromise petition was filed nor the resolution of the village meeting was produced before the trial Court regarding the compromise. Though learned counsel, Mr. Kar Bhowmik has submitted that the fact of compromise was stated in the Memo of appeal filed before the learned Additional Sessions Judge, but after meticulous examination I find that no such ground was taken in the Memo of appeal. Since there was no compromise petition filed by the parties either before the trial Court or before the appellate Court under Section 320 of Cr.P.C., at this stage while hearing the revisional application simply on the basis of the annexed copies of those compromise petition and affidavit this Court cannot take any action regarding alleged compromise.

18. Mr. Kar Bhowmik, learned counsel for the petitioner has submitted that the trial Court though framed the charge under Sections 354 and 324 of IPC, but found the accused guilty under Sections 354 and 323 of IPC and accordingly sentenced him for both counts of the offence. He has candidly submitted that the State did not prefer any appeal against the finding of learned trial Judge, but even without issuing a show cause notice learned Additional Sessions Judge converted the finding under Section 323 of IPC to one under Section 324 of IPC, but kept the sentence same. That finding of the learned Additional Sessions Judge is contrary to the provisions prescribe by law and, therefore, liable to be interfered.

Learned Additional P.P., Mr. Debnath has fairly submitted that the finding of the learned Additional Sessions Judge modifying the punishment under Section 323 to Section 324 of IPC was not correct since there was no appeal filed by the State.

19. It is an admitted position that there was no appeal preferred by the State challenging the finding of the learned Judicial Magistrate(Ist Class). It is also an admitted position that no show cause notice also was issued by the learned Additional Sessions Judge. In the absence of an appeal filed by the prosecution challenging the finding of the trial Judge, the appellate Court had no authority to convert a punishment in a minor section to a finding in a major penal section. It is true that learned Additional Sessions Judge kept the sentence same,

still, the finding converting the penal provision from a minor to a major offence was not permissible and hence, such finding of the learned Additional Sessions Judge is not tenable in law and accordingly, the finding of the learned Additional Sessions Judge modifying the punishment recorded under Section 323 of IPC by the learned trial judge to one under Section 324 of IPC is set aside.

20. Mr. Kar Bhowmik, learned counsel for the petitioner has submitted that taking into account that there was a compromise between the parties and further taking into account that the accused petitioner and the family of the victim are co-villagers and they are living in a cordial atmosphere, the accused petitioner may be given the benefit of Section 360 of Cr.P.C. or that of the provisions of the Probation of Offenders Act.

21. The trial Court as well as the appellate Court has assigned sound reason for not giving the benefit of probation to the accused petitioner. The accused petitioner being an elderly person molested a minor child of four years. It appears from the evidence on record that the victim baby used to call the accused petitioner as "Je", i.e., "Jetho" (elder brother of father), whereas the accused being an elderly person did something which is quite unnatural. Therefore, I think it will not be proper to give the benefit of Probation of Offenders Act or that of the Section 360 of Cr.P.C to the accused petitioner.

22. However, considering the submission of learned counsel of both side and considering the fact and circumstances, I think a reduced sentence shall serve the purpose. Accordingly, for commission of offence punishable under Section 354 as well as Section 323 of IPC, the convict petitioner is directed to suffer simple imprisonment of two months and to pay a fine of Rs.1,000/-, in default of payment to suffer further S.I. for one month.

23. Subject to reduction of sentence as aforesaid, the revisional application stands dismissed. The accused petitioner is directed to surrender before the Court below within 30(thirty) days from today to serve out the sentence.

24. Send back the lower court records along with a copy of this judgment and order.

JUDGE