

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Revision Petition.40 of 2011

1. Shri Islam Uddain alias Islam Ali
S/o Late Mishir Ali.

2. Md. Akbar Ali,
S/o Md. Jalil Miah.

3. Md. Atikul Islam,
S/o Late Siddek Ali.

All are inhabitants of Rowa,
P.S. Panisagar, District - North Tripura.

..... *Petitioners.*

-Vs -

The State of Tripura.

..... *Respondent.*

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioners : Mr. H K Bhowmik, Advocate.

For the respondent : Mr. R C Debnath, Addl. P. P.

Date of hearing & Judgment : 06.4.2015.

Whether fit for reporting : Yes.

JUDGMENT & ORDER(ORAL)

This criminal revision petition is directed against the judgment dated 30th April, 2011 delivered by the learned Additional Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No.13(3) of 2010 wherein he has interfered in the sentence passed by the learned Assistant Sessions Judge, North Tripura, Dharmanagar(*trial Court*). It appears that he wanted to reduce the sentence but in fact what he has done is convicted the accused who

had only been admonished and released on probation by the Trial Court.

2. The case of the prosecution is that when the victim Mantu Debnath had gone along with the accused and some other persons they suddenly attacked him. In cross-examination the victim stated that he does not know why the accused persons assaulted him. However, he first stated that he did not know who was Sharifa Khatun. In the next breath he stated that Sharifa Khatun had filed a case against him. Suggestion has been put to him that he made an attempt to outrage the modesty of Sharifa Khatun and he was attacked by a mob and he stabbed one Ainuddin who tried to resist him. The next suggestion put to him is that he received injuries in the scuffle. The investigating officer in cross-examination has stated that during investigation it was revealed that accused Mantu Debnath attempted to outrage the modesty of one Sharifa Khatun and that time the accused persons assaulted him to prevent him from commission of the offence. It is also fact that Sharifa Khatun had filed a case against him.

3. It is urged by Mr. H K Bhowmik learned counsel for the petitioners that the accused have wrongly been implicated and the complainant has filed a false case only with a view to counter the case filed by Sharifa Khatun. It may be true as urged by Mr. Bhowmik that the accused tried to outrage the modesty of Sharifa Khatun. This Court is not commenting on that matter because that case is not

pending before this Court. Assuming that this version of the accused is correct the question that arises is, did the accused have any right to take the law into their own hands? Though a suggestion has been put to him that the victim stabbed one Ainuddin there is no proof of the same. Therefore, I find no error of law in the assessment made by both the Courts below.

4. This Court in revisional jurisdiction cannot re-appreciate the evidence but can only interfere if it comes to the conclusion that the finding arrived at is perverse or finding which no reasonable person could have arrived at or where the finding is based on no evidence or based on total misreading of evidence. In this case it cannot be said that the findings of both the Court below are perverse. Therefore, on merits, I do not agree with Mr. Bhowmik.

5. However, coming to the question of sentence, it is apparent that the learned appellate Court did not even understand what is the difference between separate types of sentences. The accused persons were granted the benefit of the Probation of Offenders Act, 1958 but each one of them was directed to pay compensation of Rs.5,000/- The learned trial Court vide a reasoned judgment instead of sentencing the three convicts to any punishment released them on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958 after due admonition. He also directed that in terms of Section 5 of the Probation of Offenders Act, 1958 each of the victims would be liable to pay compensation of

Rs.5,000/- to the victim. The learned appellate Court found that this amount was harsh and needed to be reduced. In my view, this finding is totally incorrect because award of Rs.5,000/- as compensation was quite reasonable. However, since nobody has challenged this portion of the order of the learned Assistant Sessions Judge I cannot interfere with the same.

6. Be that as it may, the effective order passed by the appellate Court who happened to be the Additional Sessions Judge reads as follows :

“In the result the order of conviction recorded by the learned trial Court u/s 323 IPC against the appellants is upheld. However, the order of compensation of Rs.15,000/- by the learned trial court is hereby set aside and the convict appellants are hereby sentenced to fine of Rs.1,000/-(one thousand) each for the offence u/s 323 IPC i.e. to suffer simple imprisonment for one month each.”

What the learned appellate Court has done is to virtually set aside the order of probation and sentenced the petitioners to pay a fine of rupees one thousand each and in default thereof to undergo imprisonment for one month. This cannot be permitted. Once a person is released on probation he is not a convict in the eye of law.

7. No party had challenged the order of grant of probation. As this Court cannot interfere in the reduction of the compensation the appellate Court could not have virtually enhanced the sentence because if the persons are convicted and sentenced to pay fine then

they will be convicts for rest of their life and will be debarred from getting government jobs and other facilities which they would be entitled to if the benefit of Probation of Offenders Act is given.

8. It appears to me that the learned Additional Sessions Judge did not even understand the provisions of the Probation of Offenders Act, 1958 and what was the effect of the order. It is obvious that what he wanted to do was to reduce the compensation payable from Rs.5,000/- per accused to Rs.1,000/- per accused, but what he has actually done is now convicted the accused and sentenced them to pay fine. Therefore, the judgment & order passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar, is set aside. The order of the learned trial Court releasing the petitioners on probation is upheld. However, the compensation payable in terms of Section 5 of the Probation of Offenders Act, 1958 shall be Rs.1,000/- only and not Rs.5,000/-.

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

CHIEF JUSTICE

Sukhendu