

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV.P. NO. 47 OF 2006

1. Sri Uttam Paul,
2. Sri Malay Paul,
3. Sri Swapan Paul

- All are sons of Late Mahesh Paul of
village Baruakandi, P.S. Dharmanagar,
Dist.-North Tripura,

..... Petitioners.

- Versus -

The State of Tripura,
Represented by Home Secretary,
Government of Tripura,
Agartala.

..... Respondent.

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

For the petitioner : Mr. A.C.Bhowmik,
Mr. D.C.Roy,
Advocates,

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

Date of hearing : 09.03.2015.

Date of delivery of
Judgment and Order : **12.03.2015.**

Whether fit for reporting : **No.**

JUDGEMENT AND ORDER

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment and order of conviction and sentence dated 22.04.2006 passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No.42(4) of 2005, whereunder the learned

Additional Sessions Judge dismissed the appeal filed by the appellant-petitioners with modification of sentence passed by learned SDJM, Dharmanagar dated 18.11.2005 in Case No. G.R. 138 of 2004, under Section 326 read with Section 34 of IPC.

2. Heard learned counsel, Mr. D. C. Roy for the petitioners and learned Additional P.P. Mr. R. C. Debnath for the State-respondent.

3. The prosecution case is that on 18.05.2004 in the evening (at about 07-00/07-30 pm) PW3, Milan Paul, the victim, was returning to his house at village Baruakandi after purchasing some grocery goods from the shop of his elder brother, Manik Paul (PW5), the informant. PW8, Charitra Paul was also accompanying the victim, Milan Paul, while on way to home. When they reached near the house of accused-petitioners, all the accused-petitioners armed with Dao, Lathi, Kirich (a sharp pointed weapon) attacked Milan Paul on the road and assaulted him causing bleeding injuries. Accused Malay Paul at first struck a blow with a sharp weapon on the back of his shoulder and companion of Milan Paul, namely, Charitra Paul tried to restrain the accused-petitioners. Having been attacked, the victim Milan Paul tried to flee away towards his house raising alarm, but the accused persons restrained him and accused Malay Paul stabbed him with a Kirich on his abdomen and Uttam Paul and Swapan Paul also beaten up him striking Dao and Lathi blows. As a result, he fell down on the road and the neighbourers came there and

shifted him to Dharmanagar hospital, wherefrom he was shifted to Kailashahar hospital and he was under treatment at Kailashahar hospital till 28.05.2004. When Milan Paul was attacked and was assaulted, Charitra Paul (PW8) fled away from the spot and informed Manik Paul (PW5), the brother of Milan Paul and others and they all rushed to the spot.

4. On the date of occurrence itself PW5, Manik Paul lodged FIR before O/C, Dharmanagar P.S. alleging the fact of assault and accordingly, O/C, Dharmanagar P.S. registered Dharmanagar P.S. Case No. 55/2004 under Section 326 read with Section 34 of IPC and took up investigation of the case. During investigation, I.O. examined all material witnesses and collected injury report of the victim and thereafter submitted charge sheet against the accused petitioners, on the basis of which cognizance was taken and in course of trial, learned SDJM on 07.06.2005 framed charge against the accused-petitioners for commission of offence punishable under Section 326 read with Section 34 of IPC, to which the accused petitioners pleaded not guilty and claimed to be tried.

5. In course of trial, prosecution examined 9 witnesses to prove the charge. Defence cross-examined the prosecution witnesses, but in their turn accused persons did not adduce any defence evidence. Defence case is nothing but denial of the prosecution case.

In the cross-examination of the victim, PW3, it was suggested that on 18.05.2004 at about 08-00 pm the victim Milan Paul entered in the kitchen of Shibani Paul and that there was a scuffling between the accused and Swapna Paul and Shibani Paul and at the time of scuffling he fell on a boti dao and received the injuries.

6. Learned SDJM at the conclusion of trial found the accused petitioners guilty of the charge framed against them and accordingly sentenced them to suffer R.I. for three years and to pay a fine of Rs.3,000/- each, in default to suffer R.I. for six months.

7. Aggrieved, the accused petitioners preferred Criminal Appeal No. 42(4) of 2005 and the learned Additional Sessions Judge by impugned judgment dated 22.04.2006 upheld the judgment and order of conviction but reduced the substantive sentence to R.I. for two years in place of R.I. for three years and the fine was maintained.

8. Hence, this revisional application.

9. Learned counsel Mr. Roy, appearing for the accused-petitioners has submitted that according to the prosecution, PW3, the victim Milan Paul was returning home along with PW8, Charitra Paul. But PW8 did not support the victim about the occurrence and hence, the trial Court as well as the appellate Court failed to properly appreciate the evidence and, therefore,

the judgment and order of conviction and sentence cannot sustain. He has also submitted that the finding of the Courts below that the victim suffered grievous injury is not justified since he was hospitalized only for 10 days. It is also submitted that it was evening at the time of occurrence and how the victim and other witnesses identified the accused persons has not been clearly stated and so, identity of the accused persons remains doubtful and the accused petitioners are entitled to get benefit of doubt.

10. Learned Additional P.P., on the other hand, has submitted that the victim's evidence is corroborated by the evidence of the Medical Officer and other witnesses. The accused-petitioners out of their common intention with a previous plan attacked the victim while he was passing through the road in front of their house and inflicted grievous injuries on the person of the victim, PW3, and the trial Court as well as the appellate Court fairly considered the evidence on record which do not deserve any interference. It is also submitted by learned Additional P.P. that a very lenient view has been taken about punishment and no interference is called for.

11. The revisional application is directed against concurrent finding of the trial Court and the appellate Court. A revisional Court is not required to re-appreciate the evidence unless the finding is perverse or that some material evidence has

not been considered or that inadmissible evidence has been taken to consideration by the lower Courts.

12. In the present case FIR was lodged on the date of occurrence itself immediately after the occurrence. The victim, PW3, categorically stated that when he reached near the house of accused persons, the accused persons namely, Uttam Paul, Swapan Paul and Malay Paul restrained him on the road and accused Malay Paul dealt him a blow with an arm like Dao on the back of his shoulder. Charitra Paul tried to resist Malay Paul. While Malay Paul took attempt to give the second blow, Charitra Paul fled away. He managed to run in front of his house, but the accused persons, Uttam Paul, Swapan Paul and Malay Paul restrained him again and accused Uttam Paul and Swapan Paul gave him blows with Dao and Lathi and accused Malay Paul stabbed him with a Kirich on his stomach. The above statement of the victim has not been shaken in cross-examination except that the particular blow inflicted by the accused persons has not been stated in his previous statement.

13. It is in the evidence on record that the victim was shifted to Dharmanagar hospital, wherefrom he was shifted to Kailashahar district hospital and he was under treatment at Kailashahar district hospital from 19.05.2004 to 28.05.2004. PW6 in his deposition stated that he examined Milan Paul on 19.05.2004 at Kailashahar hospital, who was referred from Dharmanagar hospital and Milan Paul was admitted with multiple

injuries and history of assault. On examination he found the following injuries :

"(1) Lacerated injury – 1" x 1/3" x 1/4" above the elbow joint, left upper arm.

(2) Incised looking wound – 2" x 1/2" x 1/4" over anterior aspect of left shoulder joint.

(3) Incise looking wound - 1" x 1/4" x 1/4" over right shoulder region (anterior aspect).

(4) Penetrating wound – 1/2" x 1/3" x abdominal cavity depth over right iliae fossa."

He has also stated that Injury Nos. 1, 2 and 3 were simple in nature, but Injury No.4 was grievous. Injury No.1 was caused by blunt object and Injury Nos. 2, 3 and 4 were by sharp cutting weapon. He has further stated that on 20.05.2004, under G.A., exploratory laparotome by right mid-paramedian incision, abdomen open. A sealed wound over right hepatic flexure of colon detected. Fluid and gas found coming out from the parietal cavity. Toiling done and abdomen closed leaving a drain. The patient was discharged on 28.05.2004. He denied the suggestion that on a sudden fall over a boti dao such injury can be caused. On question by the Court he stated that such injury cannot be caused in a scuffling.

14. PW3, the victim stated that accused Malay Paul inflicted an injury with a sharp weapon on the back of the shoulder and I find that Injury No.2 was inflicted on the anterior aspect of the left shoulder. He has also stated that accused Malay Paul struck a blow with a Kirich, a sharp pointed weapon on his

abdominal cavity and Injury No.4 shows that in the abdominal cavity there was a penetrating wound measuring ½" x 1/3" x abdominal cavity depth and so the injuries sustained by the victim supported his oral evidence. Other witnesses materially supported PW3.

15. PW8, Charitra Paul, in his deposition stated that he was accompanying Milan Paul while on way back to their house and when they reached near the house of Milan Paul some miscreants suddenly attacked on Milan Paul. On seeing the said attack he ran away to the house of Manik Paul and told the incident to Manik Paul. He saw the accused persons running with weapon like lathi. He could not identify the accused persons. The rest of his statement is hearsay in nature and, therefore, has no evidentiary value. Though PW3 stated that Charitra Paul tried to resist Malay Paul, but PW8, Charitra Paul, did not support it. PW3 stated that Charitra Paul fled away from the spot, which is corroborated by PW8, Charitra Paul. Therefore, the submission of learned counsel, Mr. Roy that PW8 did not support the victim at all cannot be accepted. Might be PW8, Charitra Paul being a neighbour hesitated to depose the entire incident what had happened, but the part what he stated, it corroborates the evidence of the victim.

16. Defence in course of cross-examination of PW3 only put a suggestion that the victim, PW3, entered in the kitchen hut of Shibani Paul and that there was a scuffling between him and

Swapna and Shibani. Mere suggestion has got no evidentiary value unless there is some evidence in support thereof. There is no other iota of evidence that on 18.05.2004 at about 08-00 pm the victim Milan Paul entered into the kitchen of Shibani and there was any such incident. All the witnesses categorically stated that the incident occurred on the road when Milan Paul was on way to his house along with Charitra Paul and at that time accused persons armed with deadly weapons attacked Milan Paul and caused the injuries.

17. Prosecution case clearly indicates that there was a previous meeting of mind and a pre-arranged plan of all the accused petitioners to assault the victim. The reason behind has not been brought on record. There is no defence story that there was any altercation or quarrel between the victim Milan Paul and the accused petitioners, which resulted the incident. In the absence of any such evidence on record, it is crystal clear that the accused persons with a previous meeting of mind and a pre-arranged plan, having armed with deadly weapons, attacked the victim Milan Paul on the road and inflicted severe injuries on his person.

18. The incident occurred at about 7/7-30 pm on the road near the house of the accused persons and the victim. It is in the evidence on record that they are close neighbours. So, the close neighbours can easily identify each other even if there is no light. Regarding the question of identity there was no cross-

examination of the victim or other witnesses. I find no force in the argument advanced by learned counsel, Mr. Roy on the point of identity of the accused persons.

19. The Medical Officer found four injuries on the person of the victim. The victim stated that he suffered multiple injuries due to assault. Injury No.4 was grievous in nature which has been categorically stated by the Medical Officer. Such opinion of the Medical Officer regarding the nature of injury has not been shaken in any manner in the cross-examination or otherwise. Therefore, it is amply proved that the victim Milan Paul suffered grievous injury because of assault by deadly weapon and so, the Courts below rightly held the accused persons guilty of committing offence punishable under Section 326 read with Section 34 of IPC.

20. The trial Court, as I find, considered the aspect of giving benefit of Section 360 of Cr.P.C. or the benefit of the provision of Probation of Offenders Act, but declined to extend the benefit since grievous injury was caused with a previous meeting of mind and pre-arranged plan and the dangerous weapons were used. The appellate Court also recorded its observation referring to the decision of **State of Madhya Pradesh V. Ghanshyam Singh**, reported in **AIR 2003 SC 3191** and held that there should not be undue sympathy to the accused persons, who committed the offence in a pre-planned manner and caused grievous injuries.

21. I concur with the finding of the Courts below. In the given facts and circumstances of the case, the accused petitioners do not deserve the benefit of Section 360 of Cr.P.C. or that of Section 4 of the Probation of Offenders Act. They should serve out the sentence.

22. The revisional application accordingly, stands dismissed.

23. Send back the lower Court records along with a copy of this Judgment.

JUDGE