

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 65 of 2010

1. **Sri Ahid Miah,**
S/O Sri Arjan Miah,
resident of Muslimpara, Jatanbari,
P.S.- Natun Bazaar, District- South Tripura.
2. **Sri Tahid Miah,**
S/O Sri Arjan Miah,
resident of Muslimpara, Jatanbari,
P.S.- Natun Bazaar, District- South Tripura.

... ***Petitioners.***

- **Versus** -

The State of Tripura

... ***Respondent.***

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

For the petitioner : Mr. HK Bhowmik, Advocate.

For the respondent : Mr. A. Ghosh, PP

Date of hearing & delivery
of Judgment and Order : **25.03.2015.**

Whether fit for reporting : YES / NO

JUDGEMENT AND ORDER (ORAL)

The instant criminal revision petition is filed by the convict petitioners namely Ahid Miah and Tahid Miah against the judgment dated 07.08.2010 passed by the learned Sessions Judge, South Tripura, Udaipura in Criminal Appeal No. 16(3) of 2009 wherein the learned Sessions Judge affirmed the order of conviction under Section 436 read with Section 34 IPC and sentence to each of the petitioners to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each and in default they are to suffer further rigorous imprisonment for one year and if the fine money is realized the same shall be given to the victim-complainant Smt. Ahenara Begam as compensation.

2. Heard Mr. HK Bhowmik, learned counsel appearing for the petitioners as well as Mr. A.Ghosh, learned Public Prosecutor.

3. The prosecution case, in short, is that on 17.10.2008 in the evening police went to the house of the complainant Smt. Ahenara Begum (PW-1) in search of her husband Mithun Miah on the basis of an allegation set by the accused petitioners of committing theft. Police did not find her husband Mithun Miah in the house. Thereafter both the accused persons went to the house of the complainant (PW-1) and threatened her on saying that they would drive out her and her husband from the locality. After that the complainant (PW-1) went to her father-in-law's house which was situated nearby her resident. On that night at about 11 p.m. she heard hue and cry and knowing the fact that there was a fire in her house, she ran to her house and found the accused petitioners were coming from their house. Stating the aforesaid facts she made a complaint in writing to the police of Natunbazaar police station and on the basis of that complaint a police case was registered being Natunbazaar PS case No. 34 of 2008 under Sections 436/34 IPC against the accused petitioners. and after investigation charge sheet was filed under the aforesaid Sections against the accused petitioners.

4. Learned trial Court after receipt of the charge sheet framed charge under Sections 436/34 IPC against both the accused petitioners to which they pleaded not guilty and claimed to be tried.

5. The prosecution, in order to prove its case had examined 8 witnesses in all. The accused petitioners did not adduce any evidence in support of their case.

6. Upon assessment and evaluation of the evidence of the prosecution, learned trial Court convicted the accused petitioners under Sections 436/34 IPC and accordingly sentenced both the accused petitioners, as stated supra.

7. Being dis-satisfied with the judgment of the learned trial Court, the accused petitioners herein preferred an appeal against the judgment of the learned trial Court and in appeal the learned appellate Court affirmed the order of conviction and sentence passed by the learned trial Court. Being aggrieved by the judgment of the learned appellate Court, the accused petitioners preferred the instant revision petition.

8. Mr. Bhowmik, learned counsel for the accused petitioners while urging for setting aside the judgments of both the appellate Court as well as the trial Court would contend that none of the prosecution witnesses made any statement that they have seen the accused petitioners at the time of setting the alleged fire in the house of PW-1. He further submits that both the learned trial Court and the appellate Court relied upon the evidence of PW-2, Sri Joyanal Miah (brother of the complainant) and PW-3, Sri Tara Miah (friend of PW-2). Both the aforesaid witnesses in their statement said that when the house of PW-1 was burning the accused petitioners were found running away from the gate of PW-1. He has also pointed out that from the evidence of PW-2 it would be evident that not only the accused petitioners but other 5/6 persons including the accused petitioners. Mr. Bhowmik, further submits that admittedly the accused petitioners lodged a case of theft against the husband of the complainant (PW-1). Thus, it cannot be ruled out that the instant case is filed against the accused petitioners on the ground of enmity.

9. On the other hand Mr. Ghosh, learned Public Prosecutor in his usual fairness submits that there is no direct evidence against the accused petitioners and it is also admitted fact that both the accused petitioners are the next door neighbor of the complainant (PW-1) and movement in road along with others cannot be ground to involve them with the alleged commission of the offence.

10. This Court has gone through the evidences on record particularly the evidence of PW-2 and PW-3 and it appears that the accused petitioners were found running from the gate of the house of the complainant to their house and other 5/6 persons including women and children were found present in the house of the complainant before going of PW-2. It is also admitted position that the present accused petitioners filed a case against the husband of the complainant. As the accused petitioners are the next door neighbor, they may also come out from their house after seeing the incident of fire in the house of PW-1. Some other persons were also present near the house of the complainant (PW-1). On mere suspicion a person cannot be convicted what has been done in the instant case by the learned trial Court as well as by the learned appellate Court.

11. Considering the entire facts and circumstances particularly the evidence which is available on record, this Court is of considered opinion that the prosecution has failed to prove its case beyond reasonable doubt and, thus the order of conviction and sentence passed by the learned trial Court and affirmed by the learned appellate Court are hereby set aside and the present accused petitioners are acquitted from the charge leveled against them on benefit of doubt.

12. As the accused petitioners are on bail, their sureties are discharged from their bail bond.

13. With the above order, the instant criminal revision petition is allowed. Send down the LCRs forthwith.

JUDGE

Saikat