

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.129 OF 2006

Shri Adwaitya Debnath,
S/o Lt. Sarbananda Debnath,
Resident of Village Charipasa,
P.S. Panisagar, North Tripura.

.... **Petitioner.**

-- Vrs --

- 1. Shri Kalidas Dey,**
S/o Lt. Satyendra Dey.
- 2. Shri Ajay Dey,**
S/o Lt. Satyendra Dey.
- 3. Subhash Debnath,**
S/o Lt. Nikunja Debnath.
- 4. Sri Sailesh Das,**
S/o Unknown.

**All residents of Charipasa,
P/S Panisagar, Dist. North Tripura.**

... **Respondents.**

- 5. The State of Tripura.**

... **Pro-Respondent.**

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

For the Petitioner : None.

For the Respondents : Mr. A. Ghosh, P.P.

Date of hearing : **06.02.2015.**
& delivery of Judgment
& order

Whether fit for reporting : **No.**

JUDGMENT & ORDER (ORAL)

No representation on behalf of the petitioner.

2. Learned P.P., Mr. A. Ghosh for the State-respondent No.5 is present. There is also no representation on behalf of accused-respondent Nos. 1 to 4.

3. This is a revisional application of the year 2006 directed against the judgment and order of acquittal dated **21.09.2006** passed in Case No.GR 439/2003, by learned SDJM, Dharmanagar relating to an occurrence dated 13.11.2003.

4. Record shows that the case was fixed for hearing on different dates but the petitioner failed to avail the scope of making submission before the Court. On the last occasion, i.e. 17.12.2014 an adjournment was sought on behalf of the petitioner on the ground of personal problem of learned counsel and the case is fixed today with a clear stipulation that there shall be no further adjournment. Under the given circumstances, the case is taken up for disposal on merit in the absence of learned counsel of the petitioner and the learned counsel of respondent Nos. 1 to 4.

5. Heard learned Public Prosecutor at length.

6. Prosecution case is that on 13.11.2003 at about 10-30 p.m. the accused respondent Nos. 1 to 4 armed with dao, lathi etc. trespassed in the house of the petitioner and assaulted his brother Binanda Debnath and his mother Rani Bala Debnath causing injuries on their head, hand and other parts of the body. The petitioner lodged FIR on 14.11.2003 before the O.C., Panisagar P.S. alleging the fact and accordingly Panisagar P.S. Case No.60/03 was registered and after investigation charge-sheet was filed against the accused respondent Nos. 1 to 4.

6.1 Cognizance was taken on the basis of the police report and in due course learned SDJM, Dharmanagar on 04.09.2004 framed charges against respondent Nos. 1 to 4 for commission of offence punishable under Sections 148,149 read with Sections 457,323,325 and Section 506 of IPC. The accused-respondents pleaded not guilty and claimed to be tried.

7. Prosecution in course of trial, examined 11 witnesses including the informant as P.W.1, the victim Rani Bala Debnath as P.W.7 and the victim Binanda Debnath as P.W.10.

8. After closure of the prosecution evidence, accused respondents were examined under Section 313, Cr.P.C. and in their turn they declined to adduce any defence evidence. Defence case is that of denial of the prosecution case.

9. Learned SDJM at the conclusion of trial passed judgment acquitting the accused persons from the charges on benefit of doubt.

10. By filing this revisional application, the informant i.e. P.W.1 challenged the judgment passed by the learned SDJM.

11. I have meticulously gone through the judgment passed by the learned SDJM and the evidence recorded during trial. FIR was lodged by the petitioner (P.W.1) on 14.11.2003 at about 10-30 am regarding the incident occurred on the previous night at about 10-30 pm. In the FIR he named three accused persons namely Kali Dutta, Ajay Dutta and Subhash Debnath. Charges were framed against four accused persons and their names had been mentioned as Ajay Dey, Sailesh Dey, Kalidas Dey and Subhash Debnath. Regarding the title of the accused persons as I find P.Ws 1, 7 and 10 made different statements which contradicts each other.

12. On perusal of the evidence of P.W.7, I find that in her deposition P.W.7 stated that accused Kali Dey, Ajay Dey, Subhash Debnath and Sailendra Das appeared in front of their hut and on seeing them she came out of the hut. At that time accused persons namely Kali Dey was armed with a dao and the other accused persons were armed with lathi and iron rod etc. She further stated that accused Kali Dey struck on her head with a 'dao' and accused Ajay Dey struck on her left hand with a 'lathi' and as a result, she sustained severe injury and became senseless.

In cross examination of this witness it is found that her attention was drawn to her previous statement wherein it was found that she did not make such statement before the I.O.

13. P.W.10 in his examination-in-chief stated that at about 10-30 p.m. accused Ajay Das, Kali Das, Sailendra Das and Subhash Debnath came to their house and started altercation with his mother and accused Ajay Das was armed with a 'lathi' and accused Kali Das was armed with 'dao'. Accused Sailendra Das was armed with iron rod. All the accused persons were abusing filthy language to his mother. Accused Kali Das struck his mother with a 'dao' on her head and accused Ajay Das gave a 'lathi' blow on the left hand of his

mother. He somehow managed to flee away from the kitchen and took shelter in the house of Matilal Debnath. The accused persons followed him and chased him in the house of Matilal Debnath. They assaulted him in the courtyard of Matilal Debnath.

In his cross examination it is found that he did not make the statement before I.O. that Kali Das struck on the head of his mother with a 'dao' and accused Ajay gave 'lathi' blow on her left hand.

14. Matilal Debnath has been examined as P.W.4. Prosecution declared him as hostile. He did not say anything that P.W.10 Binanda Deb took shelter in his house and he was also beaten up there on the night of incident. In the cross examination of P.W.10 it is found that there was theft case against him and this assertion has been supported by P.W.7 that his son Binanda was in custody for a pretty long time in connection with theft case. P.W.4 Matilal Deb stated that about 1½ years back on a certain night at about 10/10-30 p.m. he woke up after hearing hue and cry outside his hut and found about 60 people gathered in his courtyard and also found that Binanda was surrendered by the people. There is no medical evidence to support that P.W.7 and P.W.10 suffered any injury

because of any such assault. The evidence of P.W.7 and P.W.10 has not been supported by any other cogent evidence.

15. Under the circumstances, I am of considered opinion that the trial Court rightly acquitted the accused persons on the benefit of doubt. The revisional application is, therefore, found to be devoid of any merit and hence, it stands dismissed.

16. Send back the L.C.Records along with a copy of this judgment.

JUDGE