

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 66 of 2010

Sri Abdurak Miah @ Abdul Haque,
S/O Mafijuddin,
resident of village- Bhati Abhoynagar, Agartala,
P.S.- West Agartala, District- West Tripura.

... **Petitioner.**

- **Versus** -

The State of Tripura

... **Respondent.**

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

For the petitioner : Mr. Somik Deb, Advocate.

For the respondent : Mr. RC Debnath, Addl. PP

Date of hearing & delivery
of Judgment and Order : **27.02.2014.**

Whether fit for reporting : YES / NO

JUDGEMENT AND ORDER (ORAL)

The petitioner has filed this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure for quashing/setting aside the judgment and order dated 13.07.2010 passed by the learned Sessions Judge, West Tripura, Agartala in Criminal Appeal No. 13(1) of 2010 affirming the judgment of conviction and order of sentence dated 11.02.2010 passed in case No. G.R. 313 of 2008 by the learned Judicial Magistrate, 1st class, Agartala, West Tripura wherein the petitioner was convicted under Sections 448 and 324 of IPC and sentenced to suffer simple imprisonment for six months for commission of offence punishable under Section 448 IPC and also to suffer simple imprisonment for one year for commission of offence punishable under Section 324 IPC and both the sentences would run concurrently.

2. Heard Mr. Somik Deb, learned counsel appearing for the petitioner as well as Mr. RC Debnath, learned Additional Public Prosecutor.

3. The prosecution case, in short, is that on 15.04.2008 at about 6.00 a.m. the accused petitioner conjointly entered into the house of the informant Smt Umarani Das and threatened to withdraw the case pending in the Court but the informant did not agree to the proposal and as such the wife of the accused petitioner caught hold of the complainant while their daughter and son also caught her and the accused petitioner attacked the husband of the complainant namely Haradhan Chandra Das with dao blow on the head. As a result, Haradhan Chandra Das sustained bleeding injuries. He was immediately shifted to hospital. The matter was reported to the West Agartala Police Station in writing on the basis of which West Agartala Police Station case No. 76 of 2008 under Sections 325/34 IPC was registered.

4. After investigation and following all necessary formalities, police filed charge sheet against the accused petitioner for commission of offence punishable under Section 448/324 IPC and the Investigating Officer also prayed to discharge the other three accused persons. Learned Judicial Magistrate, 1st class, Agartala, West Tripura on receipt of the charge sheet framed charge against the accused petitioner Abdurrok Miah @ Abdul Haque for commission of offence punishable under Section 448/324 IPC.

5. To bring home the charge the prosecution examined as many as five witnesses including the official witness. None has been examined on behalf of the accused petitioner.

6. The learned Judicial Magistrate, 1st class, Agartala, West Tripura after full trial held the accused Abdurok Miah @ Abdul Haque guilty for commission of offence punishable under Section 448/324 IPC and, accordingly, sentenced him to suffer simple imprisonment for six months for commission of offence punishable under Section 448 IPC and also to suffer simple imprisonment for one year for commission of offence punishable under Section 324 IPC by judgment dated 11.02.2010.

7. Being aggrieved and dissatisfied with the said judgment, the accused petitioner filed an appeal before the learned Sessions Judge, West Tripura, Agartala which was registered as Criminal Appeal No. 13(1) of 2010. Upon hearing the learned counsel for the parties, the learned appellate Court maintained the order of conviction and sentence passed by the learned trial Court in his judgment dated 13.07.2010. Being aggrieved by and dissatisfied with the judgment of the learned appellate Court, the accused petitioner preferred the instant revision petition.

8. Mr. Somik Deb, learned counsel for the petitioner submits that he has nothing to say regarding the order of conviction but it would be proper to modify the sentence as the petitioner is on bail since the filing of the revision petition.

9. Mr. RC Debnath, learned Additional PP also conceded to the said submission of Mr. Deb, learned counsel for the petitioner.

10. This Court has gone through the evidence of the prosecution witnesses mainly PW-1, the informant, PW-2, the victim. On going through the evidence on record, this Court is of the considered opinion that the petitioner was rightly convicted by the trial Court affirmed by the appellate Court.

11. According to this Court when the prosecution has proved its case beyond reasonable doubt the Court should not compromise with the findings of the Court below so far conviction is concerned. But regarding sentence, the Court has to consider many aspects at the time of exercising its discretion that it has to protect the society and stamp out criminal proclivity as the same is the object of law at the time of imposing the sentence. The court has also to keep in mind that in what circumstances the accused committed the offence, what was his age at the time of offence and what is his age ultimately when he is going to suffer the sentence and social background of his family, i.e. whether anybody is dependent on him or not and whether the crime committed by him was planned one or occurred due to certain situation arose at the moment. The learned counsel appearing for the petitioner also did not question the order of conviction. It would not be proper for this Court to interfere with the order of conviction. Thus, the order of conviction passed by the learned trial Court is accordingly upheld.

12. Now, let us come to the question of sentence passed by the learned appellate Court as well as the submission of the learned counsel of the petitioner. In ***B.G. Goswami v. Delhi Administration***, reported in **1974 Cri LJ 243**, their Lordships of the Supreme Court has observed as under,-

“Now the question of sentence is always a difficult question requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same”.

The aforesaid case was also considered by the Apex Court in ***Ramesh kumar Gupta v. State of M.P.*** reported in **1995 SC 2121**.

13. As the learned counsel of the petitioner did not raise any objection regarding the order of conviction, it is not necessary on the

part of this Court to discuss regarding the evidence on record as the same has already been recorded by the learned trial Court as well as by the appellate court.

14. After scrutiny of the evidence on record, this Court is of the considered opinion that there is no wrong in the impugned order so far the order of conviction is concerned. Thus, the order of conviction is affirmed. However, as the petitioner is on bail and the instant revision petition was filed in the year 2010, it would not be proper to send the accused again in jail. Rather, it would meet justice if the sentence is modified to the extent of fine instead of imprisonment. Accordingly, this Court is of considered opinion that the same should be modified and reduced to a sentence of fine. Accordingly, it is ordered.

15. The accused petitioner shall pay a fine of Rs.4,000/- (rupees four thousand) only for commission of offence punishable under Section 324 IPC and Rs.1,000/- (rupees one thousand) only for commission of offence punishable under Section 448 IPC, in total Rs.5,000/- (rupees five thousand) only and the said fine money shall be paid within a period of 2 (two) months from today before the learned trial Court i.e. Judicial Magistrate, 1st class, Agartala, West Tripura and if the aforesaid amount is deposited within time then the learned Judicial Magistrate, 1st class, Agartala, West Tripura shall pay the said amount to the victim as compensation. With the above order, the instant criminal revision petition is disposed of.

16. As the petitioner was earlier on bail, his bail bond shall be discharged after deposit of the fine money.

17. It is made clear that if the aforesaid fine money is not deposited within time then the learned Judicial Magistrate, 1st class, Agartala, West Tripura shall take all steps for taking the accused petitioner into custody to suffer the order of sentence passed by the learned appellate Court.

18. Send down the LCRs forthwith.

JUDGE

Saikat