

THE HIGH COURT OF TRIPURA AGARTALA

Crl. Rev. P. 67 of 2010

Sri Abinash Paul,
S/O Late Amulya Paul
Of Nalkata (82 miles),
P.S. Manu, Dhalai, Tripura.

.....petitioner

VERSUS

The State of Tripura
To be represented by
the Ld. Public Prosecutor
Gauhati High Court, Agartala Bench.

.....respondent

B E F O R E **THE HON'BLE MR. JUSTICE U.B. SAHA**

For the petitioner	: Mr. P Roy Barman, Adv.
For the respondent	: Mr. RC Debnath, Addl. PP.

Date of hearing and delivery of Judgment & Order	: 11.03.2015.
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Whether fit for reporting	: NO
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JUDGMENT & ORDER (ORAL)

This revision petition is directed against the judgment dated 23.08.2010 passed by the learned Sessions Judge, North Tripura, Kailashahar in Criminal Appeal No. 8(2)/2010 wherein the learned Sessions Judge set aside the conviction and sentence passed by the learned trial court under Sections 325/341 of the IPC and convicted the petitioner under Section 323 IPC and sentenced him to suffer RI for six months and to pay a fine of Rs. 500/-, i.d. to suffer SI for one month.

2. The prosecution case in short is as follows:

On 15.01.2009 at about 8.30 p.m. while victim Swapan Deb was returning to his house from 82 Miles market, accused-petitioner beat him with an iron rod and as a result, the victim sustained grievous injury and was hospitalized. After investigation, police submitted charge sheet against the accused-petitioner under Sections 341/325 IPC.

3. Cognizance of the offence was taken by the learned Chief Judicial Magistrate, North Tripura, Kailashahar and thereafter, the case was transferred to the court of the learned Judicial Magistrate, First Class, Kailashahar who after trial convicted the accused-petitioner under Sections 325/341 IPC and sentenced him to suffer RI for two years and to pay a fine of Rs. 5,000/-, i.d. to suffer SI for five months for commission of offence under Section 325 IPC and to suffer SI for one month and pay a fine of Rs. 500/-, i.d. to suffer SI for five days for commission of offence under Section 341 IPC.

4. Being aggrieved and dissatisfied with the judgment and order of conviction and sentence, the accused-petitioner preferred appeal before the learned Sessions Judge, North Tripura, Kailashahar on the ground that the findings of the learned trial court were erroneous and not supported by evidence and that the order of conviction and sentence was passed without proper appreciation of the evidence.

5. The learned appellate court, after hearing the parties modified the order of conviction and sentence passed under Section 325/341 IPC and finally convicted the petitioner under Section 323 IPC

and sentenced him to suffer RI for six months and to pay a fine of Rs. 500/- i.d. to suffer SI for one month.

6. Mr. Roy Barman, learned counsel appearing for the convict petitioner in his usual fairness submits that he has nothing to submit regarding the order of conviction under Section 323 IPC but according to him the order of sentence passed by the learned appellate court is required to be modified from a sentence of imprisonment to a sentence of fine as Section 323 of the IPC prescribes sentence of one year or a fine which may extend to Rs. 1000/- or with both.

7. Mr. Ghosh, learned PP submits that nothing remains for this Court to interfere with the order of conviction. However, he left the matter to this Court so far as the sentence is concerned.

8. This Court has gone through the evidence on record and it appears from the evidence that the prosecution has well proved its case so far as conviction under Section 323 is concerned. Therefore, the order of conviction under Section 323 IPC is upheld.

9. Now let us examine the question of sentence. As the alleged offence was committed in the year 2009 and presently the petitioner is on bail, it would not be proper to send him back to jail after so many years. Considering the entire facts and circumstances, the order of sentence is modified to the extent of fine of Rs. 1,000/- for commission of offence under Section 323 of IPC, i.d. to suffer SI for two months. The fine money shall be deposited by the petitioner with the trial court, i.e. Judicial Magistrate, First Class, North Tripura, Kailashahar within a period of two months from today and if the fine money is

deposited the same shall be paid to the victim, Sri Swapan Deb. If the fine money is not deposited within the stipulated period then trial court shall take all necessary steps to take the petitioner in custody to suffer the sentence as passed by this Court.

10. As the petitioner is on bail, his bail bond shall stand discharged on his depositing the fine money with the trial court within the stipulated period.

11. With the aforesaid order, the instant criminal revision petition is partly allowed. Send down the LCR.

JUDGE

lodh