

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 161 of 2005

Sri Mrityunjoy Das,
S/O Late Haricharan Das,
resident of Dwarikapur,
P.S.- Kalyanpur, District- West Tripura.

... **Petitioner.**

- **Versus** -

The State of Tripura

... **Respondent.**

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

For the petitioner : Mr. P. Dutta, 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 instant revision petition is filed against the judgment dated 13.09.2005 passed by the learned Sessions Judge, West Tripura, Agartala in Criminal Appeal No. 20(2) of 2005 where under the learned Sessions Judge modified the conviction of the petitioner from Section 325 IPC to that of Section 335 of IPC and also modified the sentence from 3 (three) years Rigorous imprisonment to 1 (one) year Rigorous imprisonment.

2. Heard Mr. P. Dutta, 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 20.08.2001 at about 11.30 a.m. the accused petitioner Mrityunjoy Das called the victim Satyaranjan Banik (PW-7) from his shop and took him to the house of the victim where the accused petitioner suddenly hurled a blow on the head of aforesaid Satyaranjan Banik with a wooden file causing grievous injury on his person and when Satyaranjan Banik fell on the ground the accused petitioner again assaulted him with the said wooden file. As a result, Satyaranjan Banik sustained injuries on his head and other parts of the body. He was immediately shifted to Jirania hospital and from there to GB hospital where he was treated as an indoor patient for about four months. Nirmal Banik, the elder brother of the victim reported the matter to the Jirania Police Station in writing on the basis of which Jirania Police Station case No. 80 of 2001 under Section 325 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 325 IPC to which the accused petitioner pleaded not guilty and claimed to be tried.

5. To bring home the charge the prosecution examined as many as 11 (eleven) witnesses including the official witness. None has been examined on behalf of the accused petitioner.

6. The learned Chief Judicial Magistrate, after full trial held the accused Mrityunjoy Das guilty for commission of offence punishable under Section 325 IPC and, accordingly, sentenced him to suffer rigorous imprisonment for 3 (three) years by his judgment dated 29.03.2005.

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. 20(2) of 2005. The learned appellate Court posted the case on 30.08.2005 for argument but when the case was taken up for hearing neither the learned counsel for the accused petitioner nor the learned Public Prosecutor were found on call for which the learned Sessions Judge posted the case on 13.09.2009 for delivery of the judgment.

8. Considering the memo of appeal and the evidences on record, the learned appellate Court modified the order of conviction and sentence, as stated supra.

9. Mr. Dutta, 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 in 2005.

10. Mr. RC Debnath, learned Additional Public Prosecutor also conceded to the said submission of Mr. Dutta, learned counsel for the petitioner.

11. It appears from record that the accused and the victim are closely related and on the date of occurrence there was a quarrel between the victim Satyaranjan Banik and his wife (PW-8) and, thereafter, the accused called the victim from his shop and took him to his house where he hurled a blow on his head with a bar causing bleeding injuries on his head. The evidence of PW-7 is corroborated

by PW-8 as well as PW-9, the Medical Officer. The Medical Officer in his deposition has stated that he found lacerated wound 2 cm x 2 cm on posterior side of left elbow with joint fracture of ulna, haematoma 4 cm x 4 cm and lacerated injuries measuring $\frac{1}{2}$ cm x $\frac{1}{2}$ cm, compound fracture in the lower $\frac{1}{3}$ rd and middle $\frac{1}{3}$ rd junction of right ulna. One inch long stitched wound over the head and other injuries on his person were also found by the Medical Officer.

12. The learned appellate Court in his finding stated inter alia that from the evidence on record it reveals that the relation between the victim and his wife (PW-8) was strained and for mal-treating by PW-7 (victim) she lodged complaint to the panchayat. It is also revealed as admitted by the victim himself in his evidence that in the morning of the day of occurrence on 20.08.2001 there was a quarrel between the victim and his wife. So, it appears that PW-7 (victim) maltreated his wife (PW-8) and a quarrel took place in the morning between PW-7 and PW-8 and getting such information the accused, brother of PW-8 came to the house of the victim and it seems that the accused petitioner was excited hearing the quarrel between the victim and his wife and out of provocation he assaulted the victim. So, such assault though voluntary and caused grievous hurt on the person of the victim does not come under the purview of Section 335 of IPC and in view of that the learned appellate Court modified the order of conviction and sentence passed by the learned Chief Judicial Magistrate, West Tripura, Agartala, as stated supra.

13. The State has not preferred any appeal against the judgment of the learned appellate Court.

14. It appears from Section 335 of IPC that for an offence committed under the aforesaid Section punishment shall be imprisonment of either description for a term which may extend to four years or with fine which may extend to Rs.2000/- or with both.

15. 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 society and stamp out criminal proclivity as the same is the object of law at the time of imposing the sentence. The court has to keep in mind under what circumstances the accused committed the offence, what was his age at the time of offence and what is his age now and ultimately when he is going to suffer the sentence and the 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 which 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.

16. 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. Their Lordships of the Supreme Court in the case of **B.G. Goswami v. Delhi Administration**, reported in **1974 Cri LJ 243**, 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**.

17. 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 2005, 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, as ordered by the learned appellate Court. Accordingly, this Court is of

considered opinion that the same should be modified and reduced to a sentence of fine of Rs.2000/-. Accordingly, it is ordered.

18. The accused petitioner shall deposit the aforesaid fine money of Rs.2,000/- (rupees two thousand) only within a period of 2 (two) months from today before the learned trial Court i.e. Chief Judicial Magistrate, Agartala, West Tripura and if the aforesaid amount is deposited within time then the learned Chief Judicial Magistrate, 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.

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

20. It is made clear that if the aforesaid fine money is not deposited within time then the learned Chief Judicial Magistrate, 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.

21. Send down the LCRs forthwith.

JUDGE

Saikat