

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 89 of 2007

Sri Amar Nath,
S/O late Dayal Nath,
resident of village- Uptakhali,
P.S.- Panisagar, District- North Tripura.

... **Petitioner.**

- **Versus** -

The State of Tripura

... **Respondent.**

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

For the petitioner : Mr. H. Debnath, Advocate.

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

Date of hearing & delivery
of Judgment and Order : 30.06.2015.

Whether fit for reporting : YES / NO

JUDGEMENT AND ORDER (ORAL)

The instant revision petition is filed by the convict petitioner Sri Amar Nath under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 10.05.2007 passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No.7(1) of 2007 where- under the learned Additional Sessions Judge upheld the order of conviction passed under Section 326 of the Indian Penal Code sentencing him to suffer R.I for 3 years and to pay a fine of Rs.10,000/- in default to suffer further R.I for 1 year.

2. Heard Mr. H. Debnath, learned counsel appearing for the convict petitioner as well as Mr. RC Debnath, learned Additional Public Prosecutor appearing for the State respondent.

3. The prosecution case, in brief, is that on 20.01.2006 at noon Smt. Kalpana Nath (PW-6), wife of the informant Sri Jaladhar Nath (PW-1) went to the house of the accused petitioner to return the mirror which she purchased from his wife. As soon as the victim (PW-6) reached in front of the gate of the house of the accused, his wife started quarreling with the victim. At that time the accused petitioner, Amar Nath was working in the courtyard with a dao. When the victim(PW-6) and the wife of the accused petitioner was quarreling with each other, the accused Amar Nath suddenly came there and struck the victim with a dao on her head and back side. As a result, the victim sustained severe injury on her face, eye and on the back side. The daughter of the victim, Smt. Sampa Nath (PW-2) was also present at the place of occurrence and she took her mother (PW-6) to their house where the victim became senseless. Hearing hue and cry of PW-2 and PW-6, their neighbours (PW-8 and PW-9) came to their house and took the victim to Dharmanagar Sub Divisional hospital. From the said hospital, the victim was shifted to RGM hospital, Kailasahar where her left eye was removed. On the following day of the occurrence, PW-1, husband of the victim submitted ejahar to the Officer-in-Charge, Panisagar police station.

3a) On the basis of the said ejahar, a police case was registered being Panisagar PS case No. 3 of 2006 under Sections 448/326 of the IPC. On completion of the investigation the I.O of the case Sri Maniklal Dey (PW-11) submitted charge sheet against the accused petitioner Amar Nath under Section 326 of the IPC.

3b) Upon receipt of the charge sheet, the learned Sub Divisional Judicial Magistrate, Dharmanagar (hereinafter referred to

as the trial Court) took cognizance of the offence and framed charge against the accused petitioner for committing offence punishable under Section 326 of the IPC to which the accused petitioner pleaded not guilty and claimed to be tried.

3c) To prove the charge, the prosecution examined as many as 11 witnesses including the Investigating Officer and also proved some documents which were marked as Exbt.1, Exbt.2,Exbt.6 series, Exbt. MO-1 (dao) and Exbt. MO-2. Defence did not examine anybody in support of his case and declined to adduce any evidence.

3d) After recording of the evidence, the learned trial Court examined the accused petitioner under Section 313 of the Cr.P.C which was of total denial. The learned trial Court after considering the evidence on record and after hearing the learned counsel for the parties, convicted the accused petitioner under Section 326 of the IPC and sentenced him to suffer R.I for 3 years, as stated supra.

3e) Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence imposed by the learned trial Court, the convict petitioner has preferred an appeal before the learned Additional Sessions Judge, North Tripura, Dharmanagar which was registered as Criminal Appeal no. 7(1) of 2007. The learned Additional Sessions Judge after examining the judgment and after hearing the learned counsel for the parties dismissed the appeal upholding the order of conviction and sentence passed by the learned trial Court. Hence, this revision petition.

4. Mr. Debnath, learned counsel appearing for the convict petitioner while urging for setting aside both the judgments of the

appellate Court and the trial Court would contend that both the courts below has failed to consider the evidence of PW-5 (Dr. Kiransankar Chakraborty) and PW-10 (Dr. Satyajit Paul). According to him, both the witnesses made different statements regarding the injuries. PW-5, the Medical Officer who first examined the victim found two cut injuries whereas PW-10 found two cut injuries and one penetrating injury on the left eye with crush injuries. Thus, according to him, the learned trial Court should disbelieve these two witnesses. Moreover, PW-2 being the daughter of the victim is the interested witness and thus her deposition has to be disbelieved. He finally contended that the alleged assault was caused by the accused due to provocation from the side of the victim, PW-6.

5. On the other hand, Mr. RC Debnath, learned Additional PP appearing for the State respondent while supporting the judgment of both the learned appellate court and the trial Court submits that both the courts below has rightly convicted the petitioner as due to his assault the victim sustained grievous injuries and lost her one eye. He also submits that there was no quarrel between the accused and the victim. More so, admittedly the victim woman was without any arms in her hand.

6. Before appreciating the submission of the learned counsel appearing for the parties, it would be proper for this Court to examine the evidences on record as well as the findings of the courts below.

7. Out of the 11 witnesses examined by the prosecution, PW-2 (Smt. Sampa Nath) and PW-3 (Sri Ajit Nath) are the eye witnesses and PW-1 (Sri Jaladhar Nath) is the informant who heard about the incident from his wife, the victim (PW-6) and his daughter (PW-2).

PW-3 and PW-4 (Sri Ranu Debnath) are the neighbouring people who heard about the incident and also witnesses of seizure of the weapon of offence and discharge certificate of the victim.

8. PW-5, is the doctor of Dharmanagar hospital who found (i) cut injury on face extended from middle nose to left eye measuring 10" x 1/2" x 1" caused by sharp cutting weapon and (ii) fresh sharp cut injury on left side of back measuring 6" x 1" x 1/2". According to PW-5 the nature of injuries is grievous and due to injury the left eye was completely damaged and nasal bone was found fracture and injury no.(ii) was simple, caused by sharp cutting weapon.

9. PW-6 (Smt. Kalpana Nath) is the victim. She corroborated the contentions made by her husband in his complaint regarding assault etc.

10. PW-7 (Sri Sunirmal Debnath) is the scribe of the complaint petition.

11. PW-8 (Sri Shibendra Debnath) and PW-9 (Smt. Mina Rani Nath) are husband and wife and neighboring people of the place of occurrence who also went to the place of occurrence just after the incident and found the victim sustained injuries and was crying. These witnesses sent PW-2 to her father (PW-1) at Uptakhali market to bring him in home.

12. PW-10 (Dr. Satyajit Paul) is the medical officer of RGM hospital, Kailasahar. In his deposition, he stated that on 20.1.2006 he attended the injured Kalpana Nath (PW-6) at hospital and found the following injuries- (i) one cut injury 2" x 1/2" x bone depth from left lateral canthus of left eye extended laterally, nature of injury

was simple caused by sharp cutting weapons. (ii) cut injury measuring 6" x 1" x bone depth with injury to bone, size from ½" above right angle of mouth to midial canths of left eye through bridge of the nose. Injury was severe caused by sharp cutting weapon (iii) penetrating injury of left eye with crush injuries of orbital bones and protrusion of ocular structures. The injury was severe caused by penetrating sharp pointed weapon.

13. PW-11 (S.I Maniklal Dey) is the investigating officer who conducted the investigation and he has narrated how he has completed the investigation.

14. It appears from the evidence of the witnesses that the defence case was that the injury of the victim was caused by PW-1, the informant incourse of quarrel between the husband and the wife. It is also suggested that when PW-1 attacked his victim wife, she rushed to the house of the accused Amar Nath and she has fallen on the dao in the courtyard of the accused and thereby sustained injury. The aforesaid suggestion was denied by all the witnesses.

15. This court finds from the evidence of PW-1, PW-2 and PW-6 that the victim Kalpana Nath sustained injury on her face covering nose, eye as well as back side. The ocular evidence is also supported by the medical evidence, as given by the medical officers, PW-5 and PW-10.

16. The learned trial Court has rightly considered the evidences on record and came to a conclusion that it is in no way possible to sustain two injuries, one on the front side of the body i.e. face and other on the back side i.e. by falling on a dao. PW-10 (Dr.

Satyajit Paul) also stated in his evidence that it is most likely that the injuries sustained by the victim has been caused by sharp cutting weapon like dao.

17. The argument of Mr. Debnath, learned counsel appearing for the convict petitioner is that the evidence of PW-2 cannot be relied upon as she is the most interested witness being daughter of the victim was also considered by the learned appellate Court and the learned appellate Court very rightly held that the relation would not conceal actual culprit and make allegations against an innocent person.

18. This court has also considered the evidence of the medical officers (PW-5 and PW10) who had examined the victim and also deposed regarding the injuries. There is no vital contradiction in the evidence of the medical officers. In fact, both the medical officers in their evidence expressed their opinion that the nature of injuries caused to the victim is grievous in nature.

19. In view of the above discussion, this court is of considered opinion that neither the trial Court nor the appellate Court committed any error while convicting the accused petitioner under Section 326 of the IPC as there is no infirmity, irregularity and illegality in the findings of the courts below, I am of the opinion that no interference is called for.

20. Now, let me consider regarding the order of sentence passed by the learned courts below. The offence under Section 326 of the IPC is punishable with imprisonment with life or with imprisonment of either description for a term which may extend to 10

years and shall also be liable to fine but the learned trial Court imposed the sentence of R.I for 3 years with a fine of Rs.10,000/- and the learned appellate Court upheld the same. According to this Court, minimum sentence was awarded but as the State did not prefer any appeal, this court is not modifying the sentence.

21. In the result, the appeal is dismissed. As the convict petitioner is on bail, he shall surrender before the learned Sub Divisional Judicial Magistrate, Dharmanagar, North Tripura i.e. the trial Court within a period of 1 (one) month from today for suffering the sentence, awarded by the learned trial Court and affirmed by the learned appellate Court. If the convict petitioner fails to surrender within the aforesaid period of 1(one) month, then the learned trial Court shall take all necessary steps for taking the convict petitioner in custody for suffering the sentence.

22. Send down the LCRs forthwith.

JUDGE

Saikat/Sabyasachi