

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. NO.36 OF 2009

Smt. Basanti Deb,
Wife of Sri Paresh Chandra Deb,
Resident of Village-Mohanvog,
P.S. Melaghar, District-West Tripura

..... *Petitioner*

- *Vs* -

- 1. Sri Sadek Miah,**
S/O Md. Karmat Ali,
- 2. Taher Miah,**
S/O Late Sona miah,
- 3. Bhadramanik Noatia,**
S/O Sri Chandra Mani Noatia,
- 4. Sri Nirmal Noatia,**
S/O Sri Aghore Ch. Noatia,
- 5. Sri Jamal Miah,**
S/O Sri Malek Miah,
- 6. Sri Bidhu Manik Noatia,**
S/O Sri Ananta Kr. Noatia,
- 7. Sri Rafique Miah,**
S/O Late Keramat Ali,
- 8. Sri Anwar Hossain,**
S/O Sri Ohid Ali.
- 9. Sri Bharat Mani Noatia,**
S/O Late Budhi Kr. Noatia,
- 10. Sri Abdul Khaleque,**
S/O Late Keramat Ali,
- 11. Sri Tapan Deb,**
S/O Sri Prafulla Ch. Deb,
- 12. Sri Keshab Deb,**
S/O Late Suresh Ch. Deb,

13. Sri Manu Miah,
S/O Late Amjad Ali,

14. Sri Swapan Deb,
S/O Prafulla Ch. Deb,

15. Sri Abdul Malek,
S/O Late Keramat Ali,

16. Sri Prasanta Kumar Jamatia,
S/O Sri Keshab Jamatia,

All are residents of Mohanbhog,
P.S. Melaghar, District-West Tripura.

17. The State of Tripura.

..... *Respondents*

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

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Ms. A. Banik, Advocate

For the respondents : None

Date of hearing & delivery
of Judgment & order : **24.04.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

This revisional application under Section 397 read with Section 401 of CrPC is directed against judgment and order of acquittal dated 23.03.2009 passed by learned Sub-Divisional Judicial Magistrate, Sonamura, West Tripura in case No. G.R. 58 of 2006.

2. Heard learned senior counsel, Mr. A.K. Bhowmik for the petitioner. None appeared for the respondents.

3. Prosecution case is that on 10.04.2006 at about 1130 hrs., Nirmal Ghosh(PW2), Ayub Ali(PW3) and Dilip Ghosh(PW4) along with 10/15 others came to the house of the petitioner Smt. Basanti Deb at village Mohanbhog under P.S. Melaghar to drink water and at that time the accused-respondent Nos.1 to 16 along with others(total 25/30 persons) forming an unlawful assembly armed with lathi, etc., trespassed in the house of the petitioner, Smt. Basanti Deb, broken open the door and windows of eastern viti hut and assaulted Nirmal Ghosh, Ayub Ali and Dilip Ghosh and others in the house causing severe injury to their persons. The petitioner Smt. Basanti Deb tried to resist the accused persons but at that time she and her daughter-in-law were also assaulted by the accused-respondents.

4. Narrating the fact the petitioner Basanti Deb(PW6) lodged an FIR at Melaghar P.S. on the very date of the occurrence at about 4.30 PM and accordingly O/C Melaghar P.S. registered Melaghar P.S. Case No.14 of 2006 under Sections 147, 148, 149, 323 and 307 of IPC and an investigation was taken up.

4.1. On completion of investigation, O/C Melaghar P.S., Inspector Debasish Debbarma submitted charge sheet against the

accused-respondents for commission of offence punishable under Sections 147, 148, 149 and 323 of IPC.

4.2. Cognizance was taken on the basis of the police report and in course of trial learned SDJM, Sonamura on 04.01.2008 framed charges against the accused-respondents No.1 to 16 for commission of offence punishable under Sections 148 and 323 read with Section 149 of IPC and all the accused persons pleaded not guilty and claimed to be tried.

5. In the course of trial prosecution examined eight witnesses. Out of them, PWs 2 to 5 are all injured victims of the occurrence. PWs 6 and 7 are the owner of the house where the alleged incident occurred and out of them PW6 is the informant of the case. PW1 is a seizure witness and PW8 is the I.O. of the case.

5.1. After closure of the prosecution evidence, accused-respondents were examined under Section 313 of CrPC and in their turn they declined to adduce any defence evidence. Defence case is that on 10.04.2006 a strike was called by Congress(I) political party. The alleged victims and others belonged to Congress(I) party and they were picketing at Mohanbhog bazar in support of the strike. One Swapan Deb, a shopkeeper of the market had opened his shop and the alleged victims along with others assaulted that Swapan Deb for which a criminal case was instituted against the alleged victims and thereafter the alleged victims in collusion with PW6, the petitioner Basanti Deb, the informant of the case,

instituted a false case against the accused-respondents who all are supporters of CPI(M) political party.

5.2. Learned SDJM at the conclusion of trial by the impugned judgment acquitted the accused persons on benefit of doubt and set them at liberty.

6. The State did not prefer any appeal against the judgment and order of acquittal and so having felt aggrieved the *de facto* complainant *i.e.* the informant of the police case Smt. Basanti Deb(PW6) preferred the revisional application.

7. Learned senior counsel, Mr. Bhowmik appearing for the petitioner has submitted that the judgment passed by learned SDJM is no judgment in the eye of law. According to Mr. Bhowmik, learned senior counsel, the trial Judge discarded the evidence of all the injured eyewitnesses of occurrence on flimsy ground without application of mind and just picking up some negligible inferences from cross-examination.

7.1. It is contended by Mr. Bhowmik, learned senior counsel that what the injured witnesses stated in their examination-in-chief has not at all been appreciated and since it is a case of non-appreciation of evidence in its proper perspective the revisional Court may interfere in the judgment and remand the case to the

trial Court for fair appreciation of the evidence and pass a fresh judgment.

7.2. It is also contended by Mr. Bhowmik, learned senior counsel that PWs 2, 3 and 4 are the injured witnesses who were assaulted by the accused persons severely and on the date of occurrence itself they were shifted to G.B. Hospital for treatment and I.O. collected the injury report from G.B. Hospital which was placed on record but at the time of trial, medical officers were not called as witness though the medical officers were listed as prosecution witness in the charge sheet. According to Mr. Bhowmik, learned senior counsel, the medical officers should be examined for fair ends of justice and the evidence should be appreciated.

8. A revisional Court is to see the correctness, legality and propriety of the judgment and order passed by an inferior Court and to see the regularity of the proceedings. Ordinarily the revisional Court is not required to re-examine and re-appreciate the evidence unless it is found that there was total non-appreciation of the evidence on record or that inadmissible evidence has been appreciated while passing the judgment/order challenged in the revisional application.

Here in this case, learned senior counsel has contended that there is total non-appreciation of the evidence of eyewitnesses who were injured witnesses. May be all the accused-respondents

were not involved in the offence but whose names have been disclosed by the witnesses they cannot escape punishment. According to learned senior counsel, the trial Court discarded the evidence of the injured witnesses without application of mind at all.

9. I have gone through the evidence and material on record with a view to ascertain whether there was non-appreciation of the evidence by the learned Magistrate. It appears that immediately after the alleged occurrence PW6, the petitioner herein, lodged the FIR at Melaghar P.S. and police took up investigation. It is also in the evidence on record that PWs 2, 3 and 4 were referred to G.B. Hospital, Agartala immediately after the occurrence and they were admitted in the hospital. PW4 also stated that he also attended G.B. hospital and he was discharged after primary aid. PWs 2 to 5 are the injured witnesses.

10. An injured witness is a star witness of the occurrence. I am quite astonished to read the judgment passed by learned SDJM and I find that the evidence of the injured eyewitnesses has been discarded by learned SDJM without proper appreciation of the evidence and it shows non-application of his mind to the evidence on record. Further as I find by order dated 06.06.2008, summons were issued to C.S. listed witness Nos.8 and 9 who were the medical officers examined the victims but on the following date, *i.e.* on 27.08.2008 the evidence was closed and nothing has been reflected why C.S. listed witness Nos.8 and 9, *i.e.* the two medical

officers have not been examined. While the medical report is on record and the medical officers were listed as witness it was the duty of the learned Magistrate to secure attendance of those two witnesses and examine them for fair ends of justice. Non-examination of those two witnesses was not justified at all. Learned A.P.P. prayed for closing the evidence without examination of those witnesses and the Court also mechanically closed the evidence without taking any step for procuring attendance of those two witnesses.

11. Further, having a careful examination of the deposition of witnesses I find that during cross-examination of PWs 4 and 6 defence made attempt to contradict the witnesses with their previous statement but the contradiction has not been recorded by learned Magistrate as per the procedures prescribed by law. Learned Magistrate has not followed the settled position enunciated by the apex Court in the case of **Tahsildar Singh & Anr. v. The State Of Uttar Pradesh** reported in **AIR 1959 SC 1012** and various judgments of this Court on the issue. The Division Bench of the Gauhati High Court in which myself was also in the Bench, in the case of **Ranjit Sarkar v. State of Tripura** reported in **2013(1) GLT 709** has elaborately discussed the law regarding recording of contradiction while recording deposition in criminal cases. The trial Courts should follow the law laid down by the apex Court in the case of **Tahsildar Singh(supra)** and by this Court.

Learned Magistrate failed to draw the attention of the witnesses to their previous statements and did not record the response of the witnesses rather he himself has perused the previous statements and recorded his view which is not permissible by law.

12. Since I am of considered opinion that it is a case of non-application of mind to the evidence on record and mis-appreciation of the evidence, I think this Court in exercise of its revisional jurisdiction should interfere in the judgment.

13. Accordingly, the impugned judgment and order dated 23.03.2009 passed by learned SDJM, Sonamura is set aside. The case is remanded back to the trial Court.

14. Learned SDJM after receipt of the case record back should secure attendance of the accused persons and thereafter issue notice to C.S. listed witness Nos.8 and 9, *i.e.* the two medical officers, secure their attendance and shall examine them and also allow the defence to cross-examine PWs 2 and 6 in respect of their previous statements if the defence so desires and thereafter examine the accused persons afresh under Section 313 of CrPC, record defence evidence, if any, and then after hearing both side should pass a judgment afresh. The entire process should be completed within six months from today.

15. Send back the L.C. records along with a copy of this judgment.

JUDGE