

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.80 of 2010

Sri Pradip Das,
son of late Makhan Das,
resident of Subhash Colony,
P.O. Gandhigram,
P.S. Airport,
Agartala, West Tripura

..... **Petitioner**

- Vs -

The State of Tripura

.....**Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. R. Saha, Amicus Curiae
For the respondent	: Mr. A. Ghosh, Public Prosecutor
Date of hearing and delivery of judgment & order	: 18.02.2015
Whether fit for reporting	: NO

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Saha, learned Amicus Curiae, appearing for the petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the respondent.

02. This revision petition is directed against the judgment and order dated 07.08.2010 delivered in Criminal Appeal No.19(2) of 2010 by the Addl. Sessions Judge, West Tripura, Agartala affirming the judgment and order of conviction and sentence dated 10.05.2010 delivered in GR Case No.739 of 2006 by the Chief Judicial Magistrate, West Tripura, Agartala convicting the petitioner

under Section 324/447 of the IPC. The petitioner has been sentenced to suffer one year's RI with fine of Rs.1,000/- under Section 324 and one month's RI under Section 447 of the IPC.

03. One Biswajit Nama, PW-4 filed a written ejahar to the Officer-in-Charge, Airport Police Station on 26.07.2006 disclosing that on 20.07.2006 Pradip Das, the petitioner herein, Uttam Das and their mother, Smti. Bindu Basi Das raided their house. However, he was not present at the relevant point of time. The petitioner grievously assaulted their father Subal Nama, mother Smti. Santi Nama and sisters namely Tulshi Nama and Mani Nama and they were taken to the hospitals for treatment. An explanation has also been appended to the said written ejahar that for being engaged with the treatment the information could not be lodged to the police station in time. Based on the said ejahar, the Airport PS Case No.46 of 2006 under Section 447/325/324/506/34 of the IPC was registered and taken up for investigation. On completion of the investigation, the police filed the final report chargesheeting the petitioner and two other accused persons under Section 447/324/323/506 read with Section 34 of the IPC. Accordingly, the charge was framed against all the accused persons under those sections by the Chief Judicial Magistrate, West Tripura, Agartala, to which the accused persons pleaded innocence and claimed to face the trial.

04. To substantiate the charge, the prosecution adduced as many as 12 witnesses, including the Doctor who treated the injured namely Dr. Debalina Bhowmik, PW-12, the victims namely Smti.

Santi Nama, PW-2, Sri Subal Nama, PW-3, Smti. Tulsi Nama, PW-6 and Smti. Mani Nama, PW-7. The prosecution has also introduced some documents such as the written ejahar and the injury report in the evidence. After recording the prosecution's evidence the accused persons were separately examined under Section 313 of the Cr.P.C. and they denied the incriminating materials as surfaced in the prosecution evidence as false. After appreciating the evidence the other accused persons were acquitted from the charge on benefit of doubt but the petitioner has been convicted under Sections 324/447 of the IPC and sentenced as stated before.

05. Being aggrieved by that judgment and order dated 10.05.2010 delivered in case No.GR Case No.739 of 2006 the petitioner herein filed an appeal which was however dismissed by the judgment and order dated 07.08.2010 delivered in Criminal Appeal No.19(2) of 2010. The petitioner has challenged that judgment and order dated 07.08.2010 by filing this appeal.

06. Mr. Saha, learned counsel appearing for the petitioner has submitted that from scrutiny of the testimonies of the PWs. 3, 6 and 7, the victims, it would be apparent that when the petitioner entered in the premises of PWs.2, 3, 6 and 7, he had no intention to commit any offence. On the contrary, PW-2 abused and infuriated him by use of provocative language. He, later on, according to the prosecution's case, came back and hit the victims. While presenting this argument, Mr. Saha, learned counsel has also submitted that it would be apparent that the charge has been wrongly framed. The charge at best would have been made under Section 334 of the IPC

which provides that "*Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.*" According to Mr. Saha, learned counsel that whatever the culpable act that the petitioner has indulged in was on grave and sudden provocation given by PW-2.

07. From the other side, Mr. A. Ghosh, learned Public Prosecutor appearing for the State has submitted that Mr. Saha's contention has to be discarded on the face of the record. The hurt was not caused immediately after the abusive language was hurled against him. He took time, ran to his house, came back with weapon in his hand and thereafter hit the victims. Moreover, he is sufficiently mature in age to understand the consequence of such hurt. Mr. Ghosh, learned PP further submitted that the petitioner did not hurt only PW-2 but whoever came forward to protect her, they were also assaulted and as such the theory of grave and sudden provocation cannot be applied in this case in hand. Moreover, Mr. Ghosh, learned PP has succinctly submitted that in a revisional jurisdiction the concurrent finding of fact may not be interfered with, unless it is shown that such findings are entirely perverse and based on no evidence at all. In this case, on a scrutiny of the records it would be apparent that there is no perversity in appreciation of the evidence as made by the courts below. Hence, he urged for no interference.

08. For appreciating the rival contentions as extended by the learned counsel for the parties, this court may take a short journey to the evidence as recorded and that is not for the purpose of re-appreciation but to look into the aspects whether the element of grave and sudden provocation has been appreciated in the perspective as urged by Mr. Saha, learned counsel for the petitioner.

09. There is no dispute that while returning the findings of conviction both the courts below have relied on the victim-witnesses and on the statement of the PW-12, the doctor in particular. As such, the appreciation is restricted to a limited purpose and that would be confined to the oral testimonies of PWs.2, 3, 6, 7 and PW12. PW-2, Smti. Shanti Nama has categorically admitted that when she found the petitioner in her courtyard she 'abused him'. Thereafter, the petitioner went on running to his house and returned with a vojali. He dealt with a blow on her left side of the shoulder at the back and also gave blow on her head and thus she sustained injury and fell down on the ground. The petitioner also kicked her and dealt blow on the wrist of her daughter, Mani Nama, PW-7 and again gave a blow on the palm of Tulshi Nama, PW-6. What is surprising is that she has stated that the petitioner also attempted to give blow on her husband and his shirt was cut by the blow but did not touch the body. PW-3, Subal Nama, husband of PW-2, has given a different story stating that first blow was given on his head. The petitioner also attempted to give blow with vojali but he escaped from that blow and thereafter the petitioner dealt a blow of vojali on the back of his wife (PW-2). He also dealt a blow of vojali on the

palm of Tulshi and Mani, his two daughters. They raised alarm and the petitioner fled away. PW-6, Tulshi Nama, another victim has stated that when the petitioner entered in their house and called his younger sister Puspa who was at the relevant point of time working in the kitchen, she went out and called Uttam Das, brother of the petitioner. At that time an altercation took place between them, the petitioner went out of their house and came back with a vojali. Prabir dealt a blow of vojali on her palm of the right hand. He had also dealt a fist blow on her nose and thereafter the petitioner dealt a blow of vojali on the back of her mother and also on the left hand of her sister Mani Nama. She has further stated that the petitioner had attempted to give blow on her father and a portion of the shirt of her father was cut apart due to that blow. But while she was confronted during her cross-examination regarding the statement she made in the trial that she had informed the IO about the altercation that took between them could not be found in her statement recorded under Section 161 of the Cr.P.C. PW-7, Mani Nama has stated that after the petitioner was making sound on their bamboo fencing, her mother, PW-2 heard that sound and raised alarm. In sequel, Pradip, the petitioner, Uttam and Bindubala, the other co-accused persons, came to their house. Pradip had a vojali in his hand and Uttam and Bindubala had lathis in their hand. Pradip dealt a blow of vojali on her right hand and on her back. She fell down on the ground in their courtyard and lost sense. But the statement made in the trial that the petitioner made sound on the fencing of the kitchen and her mother raised the alarm and

thereafter the petitioner went to his house to bring vojali was not found when confronted by means of the statement recorded under Section 161 of the Cr.P.C. However, PW-8, another victim has stated in the trial that Pradip entered in their house and was calling her. By that her mother, PW-2 was annoyed and there was an altercation. Pradip left the place infuriated and after sometimes came back with a vojali in his hand. He gave blows of vojali on the back of her mother and on the head of her elder sister Tulshi and on the palm of her sister Mani. She had also narrated the culpable acts of the other accused persons.

10. From the testimonies of PW-12, Dr. Debalina Bhowmik it appears that only PW-2 Santi Nama received the following injuries.

***"(i) One incised wound on upper mid back measuring 1 cms X .5 cms X .5 cms.
(ii) Bruise on upper and mid back,
(iii) Small abrasion over lower back,
(iv) Small laceration over right temporal region,
(v) Tenderness and swelling on right arm."***

She had examined PW-2 on 20.07.2006 at about 8.55 p.m. with the history of alleged physical assault. She has submitted the injury report, Exbt.6. She has further stated that she had examined another patient namely Tulshi Nama and on examination, she found one incised wound on left palm measuring 1.5 cm X .5 cm X .5 cm. The patient had the history of bleeding from nose. The nature of injury was simple. The patient also attended with history of assault. The injury report in regard of Tulshi Nama has been introduced as Exbt.7. She has also stated that she had examined Mani Nama having the following injuries.

***"(i) Incised wound on front of forearm, measuring 2.5 cms X .5 cms X .5 cms.
(ii) Abrasion over right upper arm,
(iii) Tenderness over upper back."***

Even though the injuries were simple in nature but according to her those were caused by sharp weapon. But she has admitted in her cross-examination that she has not mentioned anything as regards the nature of the weapon used against her causing those hurts.

11. From reading of those materials, it appears that the petitioner was abused by PW-2 and out of fury he left that place and came back immediately with vojali in his hand and caused injuries to PWs. 2, 3, 6 and 7 allegedly in the same transaction. Other accused persons had also taken part. From the testimony of PW-12, this Court has no hesitation to hold on appreciation of the testimonies of PWs. 2, 3, 6 and 7 that those hurts had been caused by the petitioner. As such, the finding of the conviction under Section 324 cannot be interfered with. But at the same time, the element of the grave and sudden provocation cannot be unceremoniously brushed aside. Merely presence of sudden and grave provocation would not bring the culpable acts under Section 334 of the IPC for the reason that the petitioner had rushed to his house and thereafter came back with a weapon. As he was of a mature age even though he was infuriated and no doubt he was infuriated by that provocation or abusive language but he could not be expected to behave in the way he had behaved for indulging in the culpable act. Thus, the contention of Mr. Saha, learned Amicus Curiae cannot be given any

weightage for converting the charge. But definitely that element would be relevant for purpose of sentence.

12. Having scrutinized the evidence this court is of the further opinion that the finding of conviction as returned under Section 447 cannot be sustained inasmuch as when the petitioner first appeared on the place of occurrence he had no intention to commit any culpable act at all but when he was infuriated by PW-2 by using abusive language, he indulged in the offence. As such, such trespass would not amount to a criminal trespass and accordingly the petitioner is acquitted from the charge under Section 447 of the IPC.

13. Having held so, this Court is inclined to revisit the sentence. According to this Court, the residual doubt from the grave and sudden provocation would require this Court to proportionalise the sentence. In the considered opinion of this Court, the sentence of three months RI would be adequate and accordingly the sentence is interfered with and modified. The petitioner shall undergo RI for three months and if in the meanwhile he has suffered any detention, either in the pre-trial stage or during the trial or in the post-trial stage, that shall be set off from the total term of the sentence. Accordingly, this petition stands partly allowed to the extent as indicated above.

Send down the LCRs forthwith.

Since Mr. Saha, learned counsel has been engaged as Amicus Curiae by this Court, he would receive a fee of Rs.5,000/-

altogether and the Law Department, Government of Tripura is directed to reimburse that fees within two months from the date of submission of the copy of this order along with a bill as would be raised by Mr. Saha, learned Amicus Curiae. A copy of this order be furnished to Mr. Saha, learned Amicus Curiae for doing the needful.

JUDGE

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