

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV.P. No.102 of 2007 &
CRL. REV.P. No.103 of 2007

CRL. REV.P. No.102 of 2007

Petitioner:

Smt. Marani Nama,
wife of late Pulin Nama of
Hichachara, Belonia,
P.S. Baikhora, South
Tripura

By Advocate :

Mr. S. Sarkar, Advocate.

- V e r s u s -

Respondent :

- 1. Sri Dilip Dutta,**
son of Sri Atul Dutta of
Hichachara, Belonia,
P.S. Baikhora, South
Tripura
- 2. Smt. Namita Dutta,**
wife of Sri Dilip Dutta of
Hichachara, Belonia,
P.S. Baikhora, South
Tripura
- 3. The State of Tripura,**
represented by the
Secretary, Department of
Home, Government of
Tripura,

By Advocate :

Mr. A. Ghosh, P.P.
Mr. R.R. Dutta, Advocate

CRL. REV.P. No.103 of 2007

Petitioner :

- 1. Sri Dulal Nama,**
son of late Manmohan Nama

2. Sri Ranjit Nama,
son of late Pulin Nama,

All are residents of
Hichachara, Belonia, P.S.
Baikhora, South Tripura

By Advocate :

Mr. S. Sarkar, Advocate.

- V e r s u s -

Respondent :

The State of Tripura

By Advocate :

Mr. A. Ghosh, P.P.

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Date of hearing : **07.11.2014**

Date of delivery of
Judgment & Order : **22.01.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

Having met with a situation that two sets of accused persons committed different categories of offence in the same transaction and two separate police cases were registered and investigated and on completion of the investigation, the police reports chargesheeting the respective accused persons were filed. But the said case and counter case were not tried separately. Eventually, against the respective judgments of conviction and acquittal, as would be elaborated

in the latter part of this judgment, two revision petitions under Section 397 read with Section 401 of the I.P.C. have been preferred being Crl. Rev. P. No.102 of 2007 by Smt. Marani Nama, against the judgment and order dated 30.06.2007 passed in Criminal Appeal No.09(2) of 2007 by the Addl. Sessions Judge, Belonia, South Tripura on setting aside the judgment of conviction and order of sentence passed by the Judicial Magistrate, Belonia, South Tripura in case No. GR 90 of 2006, and another criminal revision being Crl. Rev.P. No.103 of 2007 by Sri Dulal Nama and Sri Ranjit Nama, against the judgment and order dated 30.06.2007 passed in Criminal Appeal No.10(2) of 2007 by the Addl. Sessions Judge, Belonia, South Tripura whereby the judgment of conviction and order dated 17.05.2007 delivered in case No.GR 89 of 2006 by the Judicial Magistrate, Belonia, South Tripura has been affirmed against the revisional petitioners, but all the accused persons, the revisional petitioners in Crl.Rev.P. No. 102 of 2007 and Crl.Rev.P. No. 103 of 2007 have been acquitted from the charge under Section 323 of the I.P.C. resulting in the acquittal of the revisional petitioners in Crl. Rev. P. No.102 of 2007 but against the said judgment and order dated 30.06.2007 delivered in Criminal Appeal No.10(2) of 2007 neither the State nor the defecto complainant has preferred any further action and as such, so far the acquittal of the revisional petitioner in

Crl.Rev.P. No. 102 of 2007 is concerned, it has reached to its finality.

[2] There is no dispute that the trial for GR case No.89 of 2006 and GR case No.90 of 2006 were not taken up simultaneously but it appears that the appeals from the respective judgments of the trial court were heard simultaneously by the Addl. Sessions Judge, South Tripura, Belonia.

[3] Mr. S. Sarkar, learned counsel appearing for the petitioner in Crl. Rev. P. No. 102 of 2007 has submitted that for not holding the trial simultaneously of those cases, the accused respondents have taken the advantage thereof as the fact as regards to the transaction of the offence could not be appreciated by the trial court in its totality. Mr. Sarkar, learned counsel has further submitted that even though the arguments were heard together, the trial did not take place simultaneously. For buttressing his submission in this regard, he has referred to the records of the trial court to show that there is no order to hold the trial simultaneously. But this Court finds that by the order dated 09.11.2006 the trial court passed the order, *inter-alia*, that:

"On the other hand, learned defence counsel submitted that in respect of the same incident the accused persons also instituted a case against the complainant and others vide case No.GR 89 of 2006 which is also pending before this Court for trial.

Therefore, he prayed for analogous trial of both the cases.

Heard. Considered.

Prayer for Ld. APP is allowed.

Issue fresh summons upon the rest witnesses including Dr. J.S. Reang, MO Jolaibari PHC through the CMO, South Tripura, Udaipur.

This Court has no knowledge about the case No.GR 89/06. Therefore, the instant case may be fixed on 16.11.2006 for passing necessary order in respect of the prayer of the learned defence counsel.

Fix 16.11.2006 for order."

On 16.11.2006, the following order was passed by the trial Judge:

"Both the accused on bail are present. Ld. APP is present.

Heard both sides in respect of petition filed on behalf of the accused.

Considering all pleas I find no merit on the petition filed on 09.11.2006 as the case GR 89/06 is also pending before this Ld. Court at the stage of PWs.

Hence, this petition is rejected.

Issue fresh summons upon the remaining witnesses immediately.

To 21.12.2006 for examination of rest witnesses.

[4] In this regard, Mr. Sarkar, learned counsel has referred a decision of the apex court in **Sudhir vs. State of M.P.**, reported **(2001) 2 SCC 688** regarding the salutary practice of trial and disposal of the cases by the same Court and on pronouncing the judgment on the same day when two

criminal cases related to the same transaction. The apex court in **Sudhir vs. State of M.P.** has held as under:

"8. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called 'case and counter-case' by some High Courts and 'cross-cases' by some other High Courts. Way back in the nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (*Goriparthi Krishtamma, In re : 1929 MWN 881*) that 'a case and counter-case arising out of the same affair should always, if practicable, be tried by same court; and each party would represent themselves as having been the innocent victims of the aggression of the other.'

9. Close to its heels Jackson, J., made an exhortation to the then legislature to provide a mechanism as a statutory provision for trial of both cases by the same court (vide *Krishna Pannadi v. Emperor: AIR 1930 MAD 190*). The learned Judge said thus:

'There is no clear law as regards the procedure in counter-cases, a defect which the legislature ought to remedy. It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished.'

10. We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross-cases shall be tried by the same court, can be summarised thus: (1) It staves off the danger of an accused being convicted before his whole case is before the court. (2) It deters conflicting judgments being delivered upon similar facts. (3) In reality the case and the counter-case are, to all intents and purposes, different or conflicting versions of one incident.

11. In fact, many High Courts have reiterated the need to follow the said practice as a necessary legal requirement for preventing conflicting decisions regarding

one incident. This Court has given its approval to the said practice in *Nathi Lal vs. State of U.P* : 1990 Supp SCC 145. The to be followed in such a situation has been succinctly delineated in the said decision and it can be extracted here:

"2. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other.

[5] In **Sudhir vs. State of M.P.**, the apex court has approved the practice to be followed in such a case as enunciated in **Nathi Lal vs. State of U.P : 1990 Supp SCC 145**. In **Nathi Lal vs. State of U.P**, it has been enunciated that where there are cross cases, those cases must be tried by the same Judge one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross case and after recording all the evidences he

must hear the arguments but reserve the judgment in that case. The same Judge must thereafter dispose of the matters by two separate judgments. What has been further held in **Nathi Lal vs. State of U.P : 1990 Supp SCC 145** is that in deciding each of the cases, the trial Judge can only rely on the evidence recorded in the particular case. The evidence recorded in the cross case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in the particular case, without being influenced in any manner by the evidence or arguments placed in the cross case but both the judgment must be pronounced by the same learned Judge one after the other in the same day.

As such, this Court does not find any infirmity in the procedure that has been followed by the trial Judge or the appellate Judge and hence that objection raised by Mr. S. Sarkar, learned counsel cannot find any favour from this Court.

[6] Mr. A. Ghosh, learned P.P. appearing for the State has submitted that there is no infirmity in the finding of conviction. Moreover, even if another version may probably emerge from the evidence, the order of acquittal cannot be interfered with, inasmuch as the petitioner in CrI. Rev. P. No.102 of 2007 has failed to show any perversity in the finding based on which the appellate court interfered the judgment of

the trial court and passed the order of acquittal. Mr. Ghosh, learned P.P also submitted that even on appreciation of the evidence, this Court cannot return any finding of conviction in view of the prohibition engrafted in Section 401(3) of the Cr.P.C. which reads as under:

Nothing in this section shall be deemed authorize a High Court to covert a finding of acquittal into one of conviction.

[7] By filing the revision petition being Crl. Rev. P. No.103 of 2007 the petitioners namely, Dulal Nama and Ranjit Nama has challenged the judgment of the appellate court confirming their conviction under Sections 447 and 324 of the I.P.C.

[8] Mr. S. Sarkar, learned counsel appearing for those petitioners has submitted that the said finding of the conviction is liable to be interfered with inasmuch as there is no evidentiary material substantiating the charge against the petitioners under Sections 447 and 324 of the I.P.C.

[9] Mr. Ghosh, learned P.P. appearing for the State however has defended the judgment and order dated 30.06.2007 delivered in Criminal Appeal No.10(2) of 2007.

[10] For purpose of appreciating the rival contentions raised by the learned counsel for the parties, it would be proper

to make a survey of the evidence as placed by the prosecution on record.

Dilip Datta, PW-1 who lodged the FIR stating that the accused persons namely, Dulal Nama, Ranjit Nama and Marani Nama on 03.04.2006 at about 9.30 in the morning when his wife went to cut some bamboo, the accused persons attacked his wife with dao and axe. When he approached toward that place he was hit by a lathi. Based on that written ejahar, Baikhora P.S. case No.19 of 2006 under Sections 447 and 326 of the I.P.C. was registered. They were in the different places out of fear. It is apparent that the informant (PW-1) did not disclose who wielded what weapon. However, in the trial he has stated that when he rushed to the place of occurrence after hearing the cry of his wife, he found Ranjit Nama giving a blow by an axe on her head and when he tried to rescue his wife from their clutches, Dulal Nama gave a dao blow on his left hand. Simultaneously Ranjit Nama gave a lathi blow on his left hand. As a result, both of them sustained bleeding injuries. Milan Datta and Khokan Datta shifted them to Jolaibari hospital. On the same day, he filed the written ejahar to the Baikhora P.S., as stated. According to him, they were treated for six days in the hospital as indoor patients. In his presence one dao, one axe, one full shirt and one towel were seized by the police and he put his signature on the seizure list.

In the cross-examination he failed to say the jote number and plot number where the occurrence took place. The statement that he made in the examination-in-chief that while she returned to his house after cutting a bamboo, at that time the accused persons entered in his house and assaulted them was not found in the written ejahar when he was shown the written ejahar. Even in the cross-examination he has admitted that the bamboo bush is situated about 50 yards from the house of Marani Nama and the said land was being possessed by Marani Nama.

[11] Namita Datta (PW-2) has stated in the trial that she went to the bamboo bush for cutting one bamboo when the accused persons rebuked her in filthy language. She returned to her house after cutting one bamboo. Then the accused person with dao and axe entered in their house and assaulted them by dao and axe. As a result of which, she sustained bleeding injuries. After hue and cry when her husband came to the place of occurrence, Dulal gave a dao blow on his left hand and Ranjit gave a lathi blow on his head. They were taken to the Jolaibari hospital and from there, they were taken to Belonia hospital. He affirmed that Milan, Bhulan and Kalpana who arranged their transportation to the hospital were alive.

In the cross-examination, she could not find the statement that Dulal Nama gave her a dao blow and Ranjit

Nama gave a lathi blow on the head of her husband in her statement recorded under Section 161 of the Cr.P.C.

[12] Smt. Hiru Datta (PW-3) was examined in the trial, who stated that the accused persons came to the house of PW-2 and assaulted PW-2 by dao and axe. As a result, she sustained injuries. She was also witness to the seizure of two daos and one axe and some wearing apparel (Exbt.MO.1 series). Her presence in the place of occurrence was seriously contested by the defence.

[13] Goutam Datta (PW-4), has stated that the accused persons assaulted PWs-1 and 2 by means of axe and dao. He has stated in the trial that when PW-1 tried to rescue his wife Dulal Nama gave a dao blow on the left hand of Dilip and Ranjit Nama gave a lathi blow on his hand. As a result of which, they sustained bleeding injuries. But in the cross-examination he has admitted that he did not tell Darogababu 'Dulal Nama gave a dao blow on the left hand of Dilip'.

[14] Khokan Patari (PW-5) has stated that he appeared in the house of the informant (PW-1) on 03.04.2006 having been called and he found there *'the wife of Dilip Datta was sitting in the courtyard and Marani Nama was lying in the courtyard and one cloth was tied on the hand of Dilip. On being asked Dilip told me that he was assaulted by the accused persons.'*

In the cross-examination, he has stated that "*Dilip and his wife went to her bamboo bush for cutting bamboo at that time she raised objection while they brought her to their house holding her hair and also assaulted her.*" He admitted that he did not see the occurrence but heard it from the persons.

[15] Dr. J.S. Reang (PW-6) has stated that after examining the injured Dilip Datta and Namita Datta, he found the following injuries:

"1. One incised wound, near left elbow, measuring 1 cm X 1 cm, round in shape.

2. One incised wound in the skull in the left side frontal bone, measuring 1" length.

According to my opinion, these injuries are simple in nature and caused by both sharp cutting and blunt weapon.

After examining the victim Smt. Namit Datta, I found one small wound round in shape measuring 1 cm X 1 cm in the skull in the right parital region, one haematoma, in that area and according to my opinion this injury is simple in nature and caused by blunt weapon."

In the cross-examination, PW-6 has made an important observation that it is a fact that if those injuries were caused by a blow of axe and dao, the nature of such injuries might have been more than skin- deep injury.

[16] Gouranga Patari (PW-7) on hearing the hue and cry in the house of the informant, he rushed there and found that

some persons were shifting Marani Nama towards hospital and Dilip Datta was armed with lathi and dao and Namita Datta was sitting in their house. He has also stated that there was dispute over the property.

[17] Nanigopal Sarkar (PW-8) is the scribe and he stated nothing beyond writing of the ejahar.

[18] Manoranjan Sarkar (PW-9) has stated that he found few women pouring water on the head of Marani Nama and he came to know that Marani Nama was assaulted by Dilip Datta over a dispute on cutting the bamboos from a bamboo bush. Thereafter, she was brought to the hospital.

[19] Swapan Sarkar (PW-10), the in-charge of Baikhora Police Station, has stated that he registered the police case against the accused persons and thereafter he endorsed the case for investigation. On taking the charge of investigation, he visited the place of occurrence and examined witnesses. He has narrated briefly as regards the seizure, arrest of the accused persons, collection of the injury report from the Jolaibari PHC.

In the cross-examination, he stated that:

'During investigation on Tahashil verification I came to learn that the owner of the disputed land belonged to one Jatindra Bhowmik under plot No.3326 and 3328 and under the possession of one Pulin Nama measuring 20 satak of land. But it is not possible on my part to ascertaining whether said Bambo bush is situated within that 20 satak land or not. During investigation Dilip

Datta did not able to show any proof/documents in regard to the ownership of said Bamboo Bush Jatindra Bhowmik is not alive."

He has further stated that the possession of the land on which the bamboo bush was standing was with one Pulin Nama, husband of Marani Nama.

[20] On evaluation of the evidence, it appears that on the first instance PW-1 did not tell anything regarding the execution of the offence. In the trial, he has stated that when his wife was returning after cutting the bamboo, the accused persons attacked her and when he went to rescue her, he was also attacked by the accused persons with sharp cutting weapons. His statement that his wife was attacked by dao and axe etc. did not find any support from the medical report. The statement of PW-1 in this regard has been replicated by PW-2. Those statements thus cannot be believed. Moreover, the Medical Officer has categorically stated that the injuries were not caused by dao or axe. Apart that, the persons, who transported Dilip Datta and his wife from the place of occurrence to the hospital were not examined. The story of the assault by dao or axe has been repeated by PW-3 who has not given any explanation how he was present at the place of occurrence. Similarly, PW-4 cannot be believed for the same reason as he narrated the self-same story of PWs-1 and 2. In the cross-examination, he failed to standby his own statement

by stating that he did not tell the investigating officer that Dulal Nama gave a dao blow on the left hand of Dilip. PW-5 in particular, has debased the versions of PWs-1 and 2. So far the statement of PW-6, the Medical Officer is concerned, it has entirely made the prosecution story unbelievable. PW-7 did not support the prosecution case, rather his statement which remained unchallenged has taken out the element of veracity from the prosecution's case. The same can be safely stated about the statement of PW-9. Therefore, it is apparent on the face of the records that the prosecution has failed to substantiate the charge beyond reasonable doubt. Thus, it is required that the impugned judgment and order is interfered with and set aside. It is accordingly ordered. In the result, the petitioners are acquitted from the charge on benefit of doubt. Crl. Rev. P. No.103 of 2007 stands allowed.

[21] So far Crl. Rev. P. No.102 of 2007 is concerned, it is as well apparent from the records that PW-3, Marani Nama raised objection against cutting of bamboo from the bus under her possession. There was scuffle with Namita Datta and thereafter, at the intervention of Dilip Datta, it aggravated and she was assaulted. After sometimes, she was shifted from the place of occurrence. PW-1 Sukla Nama has stated that the accused persons, Dilip Datta and Namita Datta assaulted Marani Nama, the victim with dao and lathi. Similarly, PW-2 stated that he heard about that occurrence. PW-3, the victim has further

stated that Namita Datta caught hold of her hair and dragged her to their house and she sustained grievous injury. PW-4, Dulal Nama has stated that on hearing hue and cry when he approached to the place of occurrence he found the victim, Marani lying in the courtyard of Dilip Datta. PW-5, Ranjit Nama, the son of the victim stated that he found her mother lying unconscious on the road in front of the accused persons. PW-6, Arun Bhowmik is the scribe. PW-7 Putul Nama, has also corroborated that Marani Nama was lying with injuries in the yard of Dilip Datta, the accused and thereafter, they shifted her to the Jolaibari hospital. PW-8, Gouranga Patari only has stated in the trial that he found Marani Nama being transported to the hospital in the injured condition and Dilip Datta and Namita Datta sitting in their house with lathi and dao. PW-9, Khokan Patari, a member of the Gaon Panchayet has also stated that he saw a bandage in the hand of Dilip Datta and found Marani Nama lying in their courtyard. PW-10, Tarubala Sarkar, an independent witness who stated that he saw Dilip Datta and Namita Datta dragging Marani Nama towards their house. PW-11, Swapan Sarkar registered the Bhaikhora P.S case No.20 of 2006 under Sections 341,447 and 323 of the I.P.C., on 03.04.2006 on the basis of the written ejahar filed by Marani Nama (PW-2). PW-12, Mahitosh Majumder has stated how he conducted the investigation. He collected the injury report of the victim from Jolaibari PHC. In the cross-examination, he has

categorically stated that the bamboo bush was under the occupation and possession of the husband of Marani Nama. It appears that no medical report though collected has been submitted for admission in the record of the evidence. There is no witness except PW-3 who saw the occurrence. The prosecution has definitely proved that Marani Nama, the victim was dragged to the yard of accused persons. But there is no evidence beyond the statement of PW-3 to substantiate the charge under Sections 341/323 of I.P.C. Apart that, there is no element of voluntariness which is sine qua non for the offence causing hurt to someone. 'Voluntary causing hurt' has been defined under Section 321 as under:

Whoever does any act with the intention or thereby causing hurt to any person, or with knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person, is said 'voluntarily cause hurt'.

[22] It appears that during the scuffle, PW-3 received some hurt. But it does not appear that there was intention to cause hurt but for such act, out of fury, has caused some injuries to PW-3.

[23] On evaluation of the evidences, this Court does not find that the elements required for substantiating the charge under Section 341 or under Section 323 of the I.P.C. are established by the prosecution beyond reasonable doubt. Therefore, no interference is called for.

[24] In the result, the Crl.Rev.P. 102 of 2007 stands dismissed.

Before parting with the records, it is to be observed for the reason that the case and the counter case which led to these revision petitions, this Court would have ordinarily disposed these cases by separate judgments but the same has not been avoided as this Court would appreciate the evidence for disposing the common question raised in the revision petitions.

Send down the LCRs forthwith.

JUDGE

Sujay