

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 75 of 2009

Petitioner :

Sri Tapas Debnath,
S/o. Sri Haradhan Debnath of Dimatali, P.S-P.R.
Bari, Dist.-South Tripura.

By Advocate :

Mr. D.C. Roy, Adv.

Respondent :

The State of Tripura,
Represented by the Secretary, Department of
Home, Government of Tripura, Agartala.

By Advocate :

Mr. R.C. Debnath, Addl. P.P.

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **9th February, 2015.**

Date of Judgment & Order : **4th March, 2015.**

Whether fit for reporting :

Yes	No
	✓

J U D G M E N T & O R D E R

This criminal revision is directed against the judgment dated 20th June, 2009 delivered by the learned Additional Sessions Judge, Belonia, South Tripura in Criminal Appeal No.12 of 2009 whereby he dismissed the appeal of the petitioner and upheld the judgment of the Judicial Magistrate, First Class, Belonia, South Tripura convicting the accused under Section 448 read with Section 354 IPC. The accused has been sentenced to undergo imprisonment of one year under Section 354 IPC and to pay fine of Rs.500/- in

default whereof he was to undergo rigorous imprisonment for one month. With regard to the offence punishable under Section 448 IPC the accused has been awarded similar sentence of one year rigorous imprisonment, fine of Rs.500/- and in default of payment of fine further R.I for one month. Both the sentences were ordered to run concurrently.

[2] The prosecution story in brief is that on 03.05.2007 at about 12 noon the victim along with her sister was alone in their house. The accused entered the house and asked the victim for drinking water. When the victim was handing over the glass of water to the accused, he caught hold of the victim, hugged her and the victim raised an alarm. On hearing the alarm the neighbouring people came to the spot and the accused fled away from the spot.

[3] At the outset I may say that no case under Section 448 IPC is made out. There is no allegation that the petitioner forcibly entered the house or entered the house surreptitiously or by force. He came to the house with the knowledge of the victim and her sister and asked for a glass of water. Till that stage there is no allegation of any criminal *mens rea*. Therefore, I am clearly of the view that no offence under Section 448 IPC was made out.

[4] However, as far as offence under Section 354 IPC is concerned, the prosecutrix and her sister have fully supported the prosecution case and it appears that when the victim was handing over the glass of water to the accused he caught hold of her hand. When the accused caught hold of her hand the victim slapped him and thereafter her allegation is that the accused tried to hug her. The sister of the victim who was present in the house has not

been examined. But the other neighbours have supported the victim. But they are not eye witnesses to the incident.

[5] P.W-8, Pintu Sarkar reached the spot immediately after the occurrence and according to him when he reached the spot the victim and the accused was scuffling and thereafter the accused ran away.

[6] I am in agreement with both the Courts below that the case of the victim is reliable. It appears that the accused caught hold of the hand of the victim. She, however, slapped him and thereafter it was not that the accused tried to hug her but there appears to have been a scuffle between the two of them. Though it is not proved, suggestions have been made that the victim and the accused were known to each other prior to the occurrence and were friends. Therefore, though the accused may be guilty of having committed an offence punishable under Section 354 IPC, I am of the view that the offence in the facts of this case is not of such a serious nature and the punishment should be reduced accordingly.

[7] In view of the above discussion, the petition is partly allowed. The conviction on the accused under Section 448 IPC is set aside, but his conviction under Section 354 IPC is upheld. The petitioner is a young man who was aged about 21 years at the time of the occurrence. More than seven years have elapsed and it would not be proper to send him to jail. Therefore, I feel that ends of justice shall be served in case the petitioner is directed to deposit a fine of Rs.5,000/- and in default of payment of fine shall undergo rigorous imprisonment for 6(six) months. In case the fine is deposited, the same shall be paid to the victim.

[8] Petition is disposed of in the aforesaid terms.
Send down the LCRs forthwith.

CHIEF JUSTICE