

**THE HIGH COURT OF TRIPURA  
AGARTALA**

**CRL. REV. P. 111 of 2006**

1. **Sri Nidhu Bhusan Nath**  
S/O late Nirode Ranjan Nath
2. **Sri Nirmal Nath**  
S/O late Nirode Ranjan Nath
3. **Sri Nihar Ranjan Nath**  
S/O late Nirode Ranjan Nath

All are resident of village-Radhapur,  
P.S.- Dharmanagar, District- North Tripura.

... ***Convict-Petitioners.***

- **Versus** -

**The State of Tripura**

... **Respondent.**

**For the petitioners** : Mr. B. Deb, Advocate.

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

**CRL. REV. P. 123 of 2006**

1. **Sri Dilip Nath**  
S/O Ananta Nath
2. **Sri Makhan Nath**  
S/O Ananta Nath

Both are resident of village-Radhapur,  
P.S.- Dharmanagar, District- North Tripura.

... ***Convict-Petitioners.***

- **Versus** -

**The State of Tripura**

... **Respondent.**

**For the petitioners** : Mr. P.Saha, Advocate.

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

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

Date of hearing & delivery

of Judgment and Order : **15.07.2015.**

Whether fit for reporting : **YES / NO**

### **JUDGEMENT AND ORDER (ORAL)**

These revision petitions are filed by the petitioners namely Nidhu Bhusan Nath, Nirmal Nath, Nihar Ranjan Nath, Dilip Nath and Makhan Nath challenging the judgment and order dated 24.08.2006 passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar (hereinafter referred to as the appellate Court) in Criminal Appeal no. 14(2) of 2006 where-under the learned Additional Sessions Judge affirmed the order of conviction and sentence passed by the learned Sub Divisional Judicial Magistrate (hereinafter referred to as the trial Court), North Tripura, Dharmanagar convicting the petitioners under Sections 326/342 of the IPC and sentenced the petitioners Nirmal Nath, Nihar Ranjan Nath, Nidhu Bhusan Nath, Dilip Nath and Makhan Nath to suffer rigorous imprisonment of six months for commission of offence under Section 342 of the IPC and petitioner Nirmal Nath to suffer two years rigorous imprisonment and also to pay a fine of Rs.1,000/- in default of payment of fine to suffer further rigorous imprisonment for 2 months for the offence under Section 326 of the IPC and other petitioners were sentenced to suffer rigorous imprisonment for two years and also to pay a fine of Rs.1,000/- each in default of payment of fine to suffer further rigorous imprisonment of two months of each convicts for the offence punishable under Section 326 of the IPC read with Section 149 of the IPC. The punishment awarded for all the offences shall run concurrently.

2. Heard Mr. B.Deb and Mr. P.Saha, learned counsel appearing for the petitioners as well as Mr. RC Denath, learned Additional Public Prosecutor appearing for the State respondent.

**3.** As both the revision petitions arise out of the common judgment passed by the learned Additional Sessions Judge and learned Sub Divisional Judicial Magistrate, North Tripura, Dharmanagar, these revision petitions are taken up together for disposal.

**4.** The brief facts of the prosecution case is, that on 25.06.2004 at night around 11.00 p.m Sri Ashoke Debnath (PW-4) came to the gate of his house to close the same. On that point of time the accused persons namely Nidhu Bhusan Nath, Nirmal Nath, Nihar Ranjan Nath, Dilip Nath and Makhan Nath appeared there armed with deadly weapons like axe, dao and lathi. The above named accused persons tried to take him by force from his house and while Ashoke Debnath tried to resist them by holding fencing of the boundary, one accused chopped his leg with an axe and another accused gave a dao blow causing bleeding injury. Thereafter the accused persons took him by force to the house of accused Nirmal Nath, which is nearby the house of the victim. At that time he raised hue and cry and on hearing his cry, his brother Sudhir Nath, Sanat Nath and his nephew Rupam Nath came out to the place of occurrence and rescued him from the house of accused Nirmal Nath. They took him to Dharmanagar Sub Divisionsl hospital and he was admitted there.

**4.a.** Sri Rupam Nath (PW-1) submitted a written ejahar in the Dharmanagar police station on the basis of which S.I. S.K. Bhowmik, O/C Dharmanagar police station registered a police case bearing no. 70 of 2004 under Sections 342/326/34 of the IPC. S.I. S.Bhattacharjee (PW-8) took up the investigation and after

completion of the investigation submitted charge sheet against the five accused persons for commission of offence punishable under Sections 342/326/34 of the IPC.

**4.b.** The learned trial Court took cognizance of the offence and framed charge against all the accused persons under Sections 342/326 of the IPC read with Section 149 of the IPC. To substantiate the charge and to prove its case, the prosecution examined as many as eight witnesses and exhibited some documents i.e. signature of PW-1 in the FIR, injury report of the victim, hand-sketch map. After completion of the prosecution evidence, the accused petitioners were examined under Section 313 of the Cr.P.C and on call they adduced evidence by examining two defence witnesses.

**4.c.** It appears from the trend of the cross examination of the prosecution witnesses and the evidence of the defence witnesses that the defence case was mere denial and that Sri Ashok Debnath, the injured of this case, according to the defence sustained injury due to blow of axe by the mother of the accused Nirmal Nath and accused Nihar ranjan Nath to save DW-1 while Ashoke Debnath tried to outrage her modesty.

**4.d.** The learned trial Court after considering all the evidences and exhibited documents, convicted the accused petitioners and sentenced them, as stated supra.

**4.e.** Being aggrieved by and dis-satisfied with the judgment of the learned trial Court, the accused petitioners preferred an appeal before the learned Additional Sessions Judge, North Tripura, Dharmanagar and learned appellate Court after hearing the parties and considering the evidence of record upheld the order of

conviction and sentence passed by the learned trial Court. Hence, these revision petitions.

5. Mr. Deb, learned counsel appearing for the petitioners in Crl Rev.P 116 of 2006 would contend that both the learned trial Court as well as the appellate Court failed to appreciate the evidence while convicting the petitioners and upholding the same. He also submits that even according to the prosecution, the alleged offence was occurred at about 11.00 p.m. at night on 25.06.2004 but none of witnesses except the victim stated how they could identify the accused persons. The victim Ashoke Debnath (PW-4) in his evidence stated that he could identify the accused persons Nirmal Nath and Makhan Nath armed with axe and dao respectively with the help of electric light on the road but in the handsketch map and its index (Exbt. 4 series) there is no indication of electric light or lamp post on the road.

He further submits that Sri Uttam Debnath (PW-3) in his cross examination stated that Pritilata and Archana Nath (DW-1) were found in the western vitti hut and the victim was found in the eastern vitti house. PW-4 also stated about another house in the southern vitti but in the handsketch map there is no mention regarding the eastern and western vitti house. Index 'A' of the handsketch map showing the PO is in fact in the northern vitti and index 'C' and 'D' are the kitchen room and dwelling hut in the southern vitti. Therefore, the story that the victim was found in the eastern vitti house of the accused is wholly baseless.

He has further submitted that the victim himself stated that he was assaulted with a blow of axe and dao on the road when the

accused persons were carrying him to their house but in the hands sketch map, the I.O of the case did not show where the road is and actually where is the P.O.

He again contended that though admittedly accused Nirmal Nath was arrested on the date of the alleged occurrence from his house but there was no attempt from the side of the investigating authority to recover the dao and axe, alleged weapons of offence from the house of the accused and non-seizure of the alleged weapons of offence also creates doubt regarding the prosecution case. He further contended that PW-1(Sri Rupam Debnath), PW-2(Sri Sanat Debnath), PW-3(Sri Uttam Debnath) and PW-5(Sri Sudhir Chandra Debnath) are all nephew and brothers of PW-4, the victim respectively. Thus, being they are the interested witnesses, their evidence should be disbelieved.

Mr. Deb, also submits that though PW-1 in his cross-examination stated that the house of Ramesh Nath, Ranjan Nath, Ananta Nath and Rukhini Nath are situated at a considerable distance from the house of the accused Nirmal Nath but none of those independent witnesses were examined.

**5.a.** Mr. Saha, learned counsel appearing for the convict petitioners of Criminal Revision petition 123 of 2006 adopted the argument made by Mr. Deb and prayed for setting aside the judgment of the learned appellate court as well as learned trial Court

**6.** Mr. Debnath, learned Additional Public Prosecutor while supporting the judgment of the learned trial Court as well as the appellate Court would contend that as the defence did not cross examine the witnesses about the source of their identification for that

reason they did not disclose the source though he admitted that the alleged occurrence took place at about 11.00 p.m at night on 25.06.2004. He also submits that the victim (PW-4) in his deposition has specifically stated that he could identify the accused Nirmal Nath and Makhan Nath with the help of electric light on the road but mere non-mentioning of the electric lamp post in the hands sketch map itself would not create any doubt regarding the identification. He further submits that when the direct evidence against the accused petitioners are available from the evidence of PW-4 (victim) and PW-1, PW-2 and PW-3, then mere non-seizure and non-production of the weapons used in the commission of the offence would not help the accused petitioners

**7.** Before visiting the submission of the learned counsel appearing for the parties, it would be proper to discuss the evidence of the prosecution witnesses.

**7.a.** PW-1, the informant is the nephew of the victim PW-4. In his deposition, he stated that on hearing hue and cry he came out from his house and went in front of the house of PW-4, the victim and saw that the accused petitioners namely Nidhu bhusan Nath, Nirmal Nath, Nihar ranjan Nath, Makhan Nath and Dilip Nath were carrying his uncle Ashoke Debnath by force to the house of the accused Nirmal Nath and they took PW-4 in a room of accused Nirmal Nath where he along with some others went to the house of Nirmal Nath and saw him armed with axe and accused Makhan Nath was armed with dao.

In his cross, this witness also confronted with the statement made in his ejahar where he did not state that the accused persons

were dragging this uncle towards the house of the accused Nirmal Nath and that accused Nirmal Nath was armed with axe and accused Makhan Nath was armed with dao. Thus, the evidence of this witness that he saw accused Makhan Nath and Nirmal Nath dragging his uncle towards the house of the accused and that accused Nirmal Nath and Makhan Nath were armed with axe and dao respectively are nothing but improvement than that of the ejahar. The ejahar was also not written by PW-1. It was reduced into by another person who was not examined by the prosecution.

**7.b.** PW-2, Sri Sanat Debnath, elder brother of the victim in his evidence stated that he saw the accused petitioners namely Nirmal Nath, Nidhu bhusan Nath, Nihar ranjan Nath, Dilip Nath and Makhan Nath were carrying forcefully the victim Ashoke Debnath towards the house of accused Nirmal Nath. He further adduced that while Ashoke Debnath tried to resist the accused petitioners by holding the fencing, accused Nirmal Nath gave an axe blow on the leg of Ashoke Debnath and thereafter accused persons took him to the house of accused Nirmal Nath and he was again beaten inside the house of the accused Nirmal Nath.

In his cross examination, he denied the suggestion of the defence that Pritilata Nath, mother of the accused Nirmal Nath did assault with axe blow to Ashoke Debnath to save her daughter-in-law namely Archana Nath (DW-1) while Ashoke Debnath was committing rape on her.

**7.c.** PW-3, Sri Uttam Debnath, nephew of the victim also stated in the same line like PW-2. This witness in his cross examination

stated that Pritilata Nath and Archana Nath were in the western vitti hut.

**7.d.** PW-4, the victim in his deposition stated that while he was closing the gate of his house at about 11.00 p.m, the accused persons namely Nidhu Bhusan Nath, Nirmal Nath, Nihar Nath, Dilip Nath and Makhan Nath tried to carry him forcefully outside of his house. He tried to resist them by holding fencing but one of the accused gave him a blow on his leg with an axe and another accused had also dealt him with a blow of dao as a result of which he sustained severe bleeding injury and failed to resist the accused persons. The accused persons thereafter took him to the house of accused Nihar Nath. On the electric light he noticed that accused Nirmal Nath was armed with axe and Makhan Nath was armed with dao. He cannot recall in respect of arms equipped by other accused persons. He further added that he raised alarm and on hearing the same his brother Sudhir Nath (PW-5), Sanat Nath (PW-2) and nephew Rupam Nath (PW-1) and Uttam Nath (PW-3) came there and rescued him.

In his cross examination, he admitted that he has stated to the I.O that he was assaulted with blow of axe and dao but he did not state that he was assaulted with a blow of axe and dao on the road. In his cross examination, he also admitted that in his previous statement, he did not state that his brother Sudhir Nath and Sanat Nath rescued him from the hut of the accused. This witness denied the suggestion of the defence that the mother of Nihar ranjan Nath gave him axe blow to save Archana Nath (DW-1).

**7.e.** PW-5, Sri Sudhir Nath, another brother of the victim in his deposition stated that he was accused Nirmal Nath, Nihar ranjan Nath, Nidhu bhusan Nath, Makhan Nath and Dilip Nath in the dwelling hut of the accused Nirmal Nath. He also deposed that he saw Nirmal Nath was armed with an axe. He has also stated in the deposition that Maina Biswas (DW-2) and other villagers also came to the PO but none of those villagers were examined by the prosecution.

**7.f.** PW-6, Dr. Prabir Chandra Datta, is the medical officer who treated the victim at Dharmanagar hospital. In his deposition, he has stated that on 26.06.2004 he examined one injured patient namely Ashoke Debnath who was admitted in the hospital and on examination he found the following injuries: (i) sharp cut injury over left side knee joint measuring 1 ½ " x ½ "x1/2 ", simple in nature caused by sharp cutting weapon; (ii) fracture over the left patella grievous in nature caused by sharp cutting weapon; (iii) sharp cut injury measuring 1 ½ "x ¼ "x ¼ " inner part of right thigh, simple in nature caused by sharp cutting weapon.

In his cross examination, he has stated that injury no.(ii), fracture over the left patella, grievous in nature may be cause on falling on the sharp cutting substance.

**7.g.** PW-7, Sri Harendra Debnath did not say anything new then what has been stated by other witnesses.

**7.h.** PW-8, Sri Subhrangshu Bhattacharji, is the Investigating Officer of the case. In his cross examination he stated that he did not ask the informant who wrote the ehajar. In his cross examination, he

has also admitted that he did not seize anything from the PO and he also did not seize any blood or wearing apparels from the P.O.

**7.i.** DW-2, Smt. Maina Biswas, in her deposition stated that while she was proceeding towards the house of Nirmal Nath and found Ashoke Debnath, the victim on the road near the house of the accused Nirmal Nath and he told that he was coming from the house of the accused Nirmal Nath. She also stated that she saw him with bleeding injury and he told her that he was assaulted by the mother of the accused Nirmal Nath. Presence of this witness is not denied by the prosecution.

**7.j.** Archana Nath was examined by the defence as DW-1 and she stated in her deposition that victim Ashoke Debnath came to their house and inquired about her husband and her mother-in-law. They were not present in the house at that time. She was in her hut alone and Ashoke Debnath pulled her saree and she raised alarm. Hearing her cry, her mother –in-law came to her room and tried to resist Ashoke Debnath from outraging her modesty. At that time victim Ashoke Debnath pushed her mother-in-law on the ground and tried to flee away then her mother-in-law found an axe nearby her hut and she struck Ashoke Debnath with that axe on his leg. Receiving the injury, victim Ashoke Debnath fled away from their house.

In her cross examination, she stated that she did not make any complaint anywhere against the victim Ashoke Debnath for pulling her saree though on that night daroga babu came to her house.

**8.** Admittedly, there is a story and counter story. Prosecution witnesses are admittedly close relatives of the victim and their

evidence has to be cautiously examined by the Court. PW-1 and PW-3 in their evidence though stated that they have identified the accused petitioners at around 11.00 p.m but did not disclose how could they identify the accused petitioners at night at around 11 p.m PW-4 in his evidence stated that he could recognize the accused petitioners with the help of electric light on the road but admittedly in the handsketch map there is no indication of the street light. All these witnesses including PW-4 stated that PW-4 was injured by accused Nirmal Nath and Makhan Nath with the help of axe and dao respectively but the axe and dao were not seized and due to non-seizure of those weapons used in the commission of offence also create some doubt. In a

**9.** In a catena of decisions, it was held that the weapons of offence are required to be produced at the trial to facilitate the trial Court to arrive at definite conclusion that those weapons were used by the accused persons so that the accused persons can be connected with the crime. Admittedly, there was no cross examination from the side of the defence regarding the source of identification of the accused persons but fact remains that one of the witnesses i.e the victim in his statement stated that he could identify the accused persons with the help of electric light but the prosecution did not try to ascertain as to whether there was any street light in that locality and as to whether there was any light at that moment.

**10.** There is no doubt that the witnesses were relatives to the victim and they should not always be disbelieved that they would try to punish the actual culprits. But in the instant case, it is very difficult

to rely upon those witnesses particularly as they did not disclose the source of the identification of the accused persons at night about 11.00 p.m. preparation of site plan relating to an offence is not mere formality and the omission to show some vital things like the electric post on the road cannot be said to be a mere lapse on the part of the investigating agency. In ***Sunil Kundu & ors. vs. State of Jharkhand***, reported in ***AIR (SCW) 2278***, the Apex Court considered regarding non-preparation of the seizure list and lapse of the Investigating Officer and held that “ the investigating officer admitted that no seizure list of the clothes of the deceased was made. Blood group of the deceased was not ascertained. No link is established between the blood found on the seized articles and the blood of the deceased. It is difficult to make allowance for such gross lapses. Besides the evidence of eye witnesses does not inspire confidence. Undoubtedly, a grave suspicion is created about the involvement of the accused in the offence of murder. It is well settled that suspicion, however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused”.

**11.** There is no doubt that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the depreciable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging the perpetrators of crimes. But in the instant case, according to the prosecution, the victim was injured with the help of an axe and dao and the weapons were not admittedly seized and produced before the learned trial Court and not only that the investigating officer of the case also did not explain

why he did not seize the weapons allegedly used in the offence though he went to the place of occurrence on that night itself and arrested one of the accused. Non-preparation of the site plan showing the street light and non disclosure of the source of identification of the accused persons also create doubt regarding the identification of the accused persons by the victim (PW-4) and other witnesses.

**12.** In view of the above discussion, the judgment of the learned appellate Court dated 24.08.2006 as well as the judgment of the learned trial Court dated 02.05.2006 are set aside and all the accused petitioners are acquitted from the charge leveled against them on benefit of doubt.

**13.** As all the accused petitioners are on bail, they are discharged from their bail bond.

**14.** In the result, both the revision petitions are allowed. Send down the LCRs forthwith.

**JUDGE**

*Saikat*