

**THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No. 58 of 2010

1. Aniruddha Das,
Son of Sri Arun Kanti Das.
2. Sri Nandalal Das,
Son of Sri Arun Kanti Das.
3. Sri Nepal Das,
Son of Lt. Abhoy Charan Das.

All are resident of Vill- Darang, P.O. & P.S. - Kamalpur,
District- Dhalai Tripura.

.....Petitioners

- V E R S U S -

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

.....Respondent.

**B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA**

For the petitioner	: Mr. D. C. Roy, Advocate.
For the respondent	: Mr. R. C. Debnath, Addl.P.P.
Date of hearing & delivery of judgment and order	: 01.08.2015
Whether fit for reporting	: NO.

Judgment and Order (Oral)

This revision petition has been filed by the convict petitioners against the judgment dated 13.05.2010 passed by the Ld. Additional Sessions Judge, Kamalpur, North Tripura in Crl. A. No. 3 of 2010 whereby and whereunder, the learned Additional Sessions Judge dismissed the appeal and upheld the order of conviction

under Section 323 of the IPC and sentence to pay a fine of Rs. 500/- each in default to suffer SI for 3 months passed by the learned Sub-Divisional Judicial Magistrate, Kamalpur, North Tripura in G.R. Case No. 180 of 2010.

[2] Heard Mr. D. C. Roy, learned counsel appearing for the petitioners as well as Mr. R. C. Debnath, learned Addl. P.P. appearing for the State respondent.

[3] Prosecution case, in short, was that on 07.07.2009 the informant Smt. Milan Das lodged a written ejahar with the Officer In-charge Kamalpur P.S to the effect that on that day at about 12.30 p.m. accused persons i.e the convict petitioners, namely, Nandalal Das, Aniruddha Das and Nepal Das forcefully entered into her house and dragged her out from the house in absence of other family inmates and brought her on the road and assaulted her by fist, blows and kicks etc. She also alleged in the ejahar that the accused persons i.e. the convict petitioners also torned her wearing apparels and tried to commit rape on her, but at that time, Nihar Ranjan Das came. So, the accused persons (the convict petitioners) left from the place of occurrence. Thereafter, the informant was brought to Kamalpur Hospital and she took treatment there.

[4] On receipt of the written ejahar, police started investigation and finally filed charge sheet against the

convict petitioners under Sections 448/354/325/34 of IPC. The learned Trial Court taking cognizance of the offence proceeded for trial. In the trial, prosecution has adduced 9 witnesses and also relied upon some documents which were exhibited and marked as Exbts-1 to 7 in this case.

[5] On completion of examination of the prosecution witnesses, the learned Trial Court examined the convict petitioners under Section 313 of the Cr.P.C. wherein, the convict petitioners denied the allegations and pleaded as innocent. The accused persons desired to adduce witnesses in support of their defence. Accordingly, they have adduced two witnesses in support of their defence and they have examined two witnesses and produced two judgments which were exhibited as Exbt-A series and Exbt-B series.

[6] Thereafter, hearing argument of both sides, learned Trial Court arrived at the conclusion that the convict petitioners have committed offence under Section 323 of the IPC and convicted them under the said section and sentenced them to pay fine of Rs. 500/- each and in default to suffer S.I. for 3 months as stated supra. Learned Trial Court has acquitted the convict-petitioners from the charge under Section 354 of the IPC.

[7] Being aggrieved by the judgment of the learned Trial Court, the convict petitioners have preferred an appeal

before the learned Addl. Sessions Judge, Kamalpur. The learned Addl. Sessions Judge after hearing both the parties, upheld the order of conviction and sentence passed by the learned Trial Court and directed the convict appellants i.e. the convict petitioners for surrendering before the court of learned S.D.J.M., Kamalpur on or before 11.06.2010 for making payment of fine money and in default to suffer S.I. as per the judgment of the learned Trial Court. It is also stated that if the fine money is realized, then the same should be paid to the victim-informant by way of compensation. Hence this revision petition.

[8] Mr. Roy, learned counsel appearing for the convict petitioners submits that both the learned Trial Court and the learned Appellate Court committed error while discussing the evidence on record and also the exhibited documents from which it would be evident that there was enmity between the informant and the convict petitioners.

[9] On the other hand, Mr. Debnath, learned Addl. P.P. appearing for the State respondent while supporting the judgments of both the learned Trial Court as well as the learned Appellate Court would contend that even if the enmity was there, then also the convict petitioners has no right to assault the informant and the prosecution by way of

evidence established its case and proved that the informant was assaulted by the present petitioners.

[10] This Court has gone through the evidence of the victim Smti. Milan Das who is the informant of this case as well as the evidence of PW-2 Sri Nibaran Das, who is the husband of the informant.

[11] PW-1. Smti. Milan Das, deposed that on 16th Asad at about 12 noon all the accused persons entered into her dwelling hut with a view to commit an offence and started assaulting her and when she raised alarm the accused persons forcefully brought her outside the hut and all of them severely assaulted her to different parts of her body. As a result, she sustained severe injury and lost her sense and the neighboring persons rescued her and thereafter she was admitted in the hospital for a period 6 days. During cross she deposed that when she raised alarm none appeared to her house.

[12] PW-2, Sri Nibaran Das, the husband of the informant who has stated that on 07.07.2009 in the morning he left his residence at 10 a.m. keeping his wife therein and when he returned back in the afternoon, that time, from the wife of Bhanu Das he came to know that accused persons severely assaulted his wife and she was brought to the hospital and accordingly, he rushed to the

hospital at Kamalpur and found his injured wife. During cross he was confronted with the statement that he came to know that fact of incident from the wife of Bhanu Das, but the same was not found in the statement made to I.O. He also deposed that his wife regained her sense in the night. Again he was put under suggestion that he did not hear anything from the wife of Bhanu Das.

[13] PW-3, Sri Mantu Das was declared hostile by prosecution.

[14] PW-4, Smti. Malati Das deposed that on the alleged day she was taking bath at her house when she heard some shouting from the house of informant and accordingly, she proceeded to her house and found that the accused persons, namely, Aniruddha, Nepal and Nandalal Das were assaulting her (informant) by fist and blows. At that time, their relative Nihar Ranjan Das raised alarm, but the accused persons did not adhere to his request and due to assault, the victim lost her sense to the place of occurrence and she was brought to the hospital.

[15] PW-5, Sri Lalit Das deposed that he heard that accused persons assaulted the victim. During cross he deposed that he is an adjacent neighbor of the informant and his wife and other family members were present in the residence at the time of incident.

[16] PW-7, Dr. Chandan Debbarma is the Medical Officer who examined the victim. He has stated that during examination victim sustained injury on her chest, both legs and scalp, back of chest and abdomen with swelling and redness which were simple in nature. The other witnesses of the prosecution are not necessary for discussion.

[17] DWs 1 and 2 in their statement deposed that on the alleged day they performed their job under REGA as labourer and apart from them, Pradesh Das, Milan Das, Mantu Das, Malati Das and Nepal Das were also present and the name of the husband of Milan Das is Nibaran Das who belongs to Darang. The accused Nepal Das also performed job under REGA with them.

[18] The learned Trial Court relying upon the evidence of PWs 1, 4 and 7 convicted the accused persons under Section 323 of the IPC and acquitted them from the charge leveled against them under Section 354 of the IPC.

[19] The learned Appellate Court has also considered the evidence on record and perused the judgment of the learned Trial Court and held that the learned Trial Court has elaborately discussed the evidence of both sides and thereafter, recorded the findings with proper appreciation of evidence. Considering the evidence on record this Court found that PWs 1 and 4 are the eye witnesses of the

incident and it is also admitted position that the informant was hospitalized just after the alleged incident. According to this Court neither the Trial Court nor the Appellate Court committed any wrong.

[20] In the result the revision petition is dismissed and the convict petitioners are directed to surrender before the Court of S.D.J.M., Kamalpur, North Tripura within 1 month from today for making the payment of fine of Rs. 500/- each and in default to suffer S.I. for 1 month instead of 3 months. Fine money if released, from the convict petitioners shall be paid to the victim-informant by way of compensation.

[21] Send down the LCRs with copy of this judgment and order.

[22] With the above directions and observations, this criminal revision petition is, disposed of.

JUDGE

A.Ghosh.