

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No. 56 of 2011

- 1. Shri Manu Behari Chakma,**
son of Shri Bhabendu Chakma,
- 2. Shri Purnalal Chakma,**
son of Shri Naradmoni Chakma,
- 3. Shri Tarun Chakma,**
son of Shri Fanindra Chakma,

-all are inhabitants of Santipur,
P.S. Pecharthal, District – North
Tripura.

..... **Petitioners**

- V e r s u s -

The State of Tripura

..... **Respondent**

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. H.K. Bhowmik, Advocate.

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing : 10.06.2015

Date of delivery
of Judgment & Order : **28.07.2015**

Whether fit for reporting:

Yes	No
	✓

JUDGMENT & ORDER

As the appeal filed by the petitioners under Section 374(3) of the Cr.P.C. in the court of the Addl. Sessions Judge, North Tripura, Dharmanagar against the judgment of conviction dated 07.12.2010 delivered in GR 273 of 2009 by the Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura failed, this petition

under Section 397 read with Section 401 of the Cr.P.C. has been filed to question the legality of the appellate court judgment dated 02.07.2011 delivered in Criminal Appeal No.01 (01)/2011, whereby the judgment of the trial court convicting the petitioners has been affirmed.

[2] The prosecution case is rooted in the written ejahar (Exbt.1) filed by one Kamala Devi Chakma (Debnath), PW-1 disclosing that on 12.06.2009 at about half past 11 at night, the petitioners dragged her husband out of his hotel and assaulted him with a wooden staff and *'on hearing his scream/alarm, she along with 1/2 persons came out and taken her husband to Pecharthal hospital as he sustained serious injury on his left leg'*. From there, her husband was referred to the RGM hospital, Kailashahar. When the ejahar was filed on 24.06.2009, after 12 days of the occurrence her husband was under treatment in the RGM hospital at Kailashahar. Having received the said ejahar dated 24.06.2009, the Pecharthal P.S. Case No.31 of 2009 under Sections 448/325/34 of the I.P.C. was registered and taken up for investigation. On completion of the investigation as it appears from the record, the final police report charge-sheeting the petitioners was filed, as according to the Investigating Officer a *prima-facie* case had been established from the evidence collected by him. On taking cognizance, the charge under Section 325 read with Section 34 of the I.P.C. and the charge under Section 448 of the I.P.C. were framed against the petitioners to which they pleaded not guilty and claimed to face the trial.

[3] In order to substantiate the charge, the prosecution adduced as many as 7(seven) witnesses including the informant (PW-1), the victim, Sri Sunil Debnath (PW-2), Dr. Shankar Debroy(PW-7), who treated the petitioners in the RGM hospital and the Investigating Officer, Sri Ashim Sarkar (PW-5). In addition, the prosecution introduced 7(seven) documentary evidence including the written ejahar and the injury report (Exbt.7). After recording the evidence led by the prosecution, the petitioners were separately examined under Section 313 of the Cr.P.C. to have their response on the incriminating materials as surfaced in the evidence. Thereafter, the trial court on purported appreciation of the evidentiary materials returned the finding of conviction under Section 325 of the I.P.C. for committing offence of voluntarily causing grievous hurt in furtherance of a common intention. While returning the conviction, the trial court observed as under:

"On my care full perusal on the case record I find that FIR was lodged on 24.06.2009 and the incident took place on 12.06.2009 at night at about 11 p.m. It is also clear from the contents of the complaint petition that on the following day i.e, on 13.06.2009 injured was referred to Kailashahar District Hospital. In this regard the injury report which is exhibited in this case as Exbt-7 I find that on 13.06.2009 patient was admitted in the Kailashahar District Hospital who was under went operation on 17.06.2009 and discharged from the hospital on 23.06.2009. So in such a situation I find nothing wrong to lodge the complaint petition at a volatile stage. According to complaint on the date of occurrence police was informed and in this regard some others witnesses also deposed that police visited the PO on the date of occurrence soon after the incident. There is nothing on record to disbelieve their evidence. It is fact that except the injured there is no eye witness in this case and it is also fact that no witness deposed that on the arrival in the PO they found the accused persons. In such a situation section 6 of the Evidence Act is very much important, because relevancy of which

though not in issue are so connected with the fact in issue as to form part of the same transaction are relevant. Fact which may be proved as part of *res gestae* must be facts other than those in issue but these facts must form part of very transaction and be thus connected with facts in issue. Evidence regarding facts in issue disclosed by a transaction can be given U/S-5 while evidence regarding the same facts which must be connected with the facts in issue in a manner so as to form part of the same transaction can be given U/S-6. A statement in order to be a part of *res gestae* must have been made substantially contemporaneously with the act or immediately after it. So that there is no opportunity for reflection or fabrication.

In the case in hand if we consider the evidence of PW No-1, PW No-3 and PW No-4 than it reveals that hearing halla gulla while they rush to the shed found the injured with his injuries and at that point of time the injured disclosed the name of the accused persons to them. As such I considered that their above evidences are very much formidable in nature and are admissible U/S-6 of the Evidence Act."

[4] The said judgment of conviction as stated was challenged by filing an appeal in the court of the Addl. Sessions Judge, Dharmanagar. By the impugned judgment dated 02.07.2011, the Addl. Sessions Judge, Dharmanagar affirmed the finding of conviction on observing that:

" On account of the clear and convincing evidence stated by the victim and his evidence having received strong corroboration from the rest PWs including the medical evidence of doctor, I am of the opinion that the prosecution case under section 325/34 IPC has been proved against the accused persons namely Purna Lal Chakma, Manobehari Chakma and Tarun Chakma beyond the shadow of doubt. As such I am of the opinion that there is no infirmity in the judgment of the Ld. trial court in so far as he has convicted the accused persons under section 325/34 IPC and so the judgment of the Ld. trial court does not call for any interference in this appeal."

[5] Mr. H.K. Bhowmik, learned counsel appearing for the petitioners has submitted that even though as per statement of

PW-1, the Officer-in-Charge of Pecharthal P.S. visited her house immediately after the occurrence but the case was registered after 12 days. That apart, Mr. Bhowmik, learned counsel has submitted that even the victim could not state in particular, who hit him 'by a hard wooden substance' on his left leg. If keenly the statements of PWs-1 & 2 are collated, it would be apparent that there are some significant variations as regards the transaction immediately after the assault. For not recording the FIR immediately after the occurrence, the possibility of fabricating the fact for implicating the petitioners cannot be ruled out. Thus, the prosecution case is shrouded by serious doubt. Hence, he urged for interfering with the impugned judgment.

[6] From the other side, Mr. A. Ghosh, learned P.P. appearing for the State has vehemently submitted that there is no reason to disbelieve the testimony of PW-2. Immediately after the occurrence, PW-1 and PW-3 visited the place to discover the injured victim whereas PW-4 heard the scream and halla (loud exchange of words). If those pieces of evidences are read together, iota of doubt would not visit the prosecution case.

[7] Thus, the case falls within a short compass whether the victim's testimony is trustworthy or not, in the perspective that there was no eye witness for purpose of corroboration of the victim's statement.

[8] Smt. Kamala Devi Chakma (Debnath), PW-1 is the wife of the victim, Sri Sunil Debnath. She even did not hear the halla on

the night of the occurrence but she was informed by Smt. Labanga Nath (PW-4) that somebody was assaulting her husband and her husband was screaming. Having reported thus, she along with Laxmi Debnath @ Dulal Debnath (PW-3) rushed to the place of occurrence, a passengers shed and found her husband was lying on the floor of the shed. She has stated in the trial that '*on being asked my husband reported us that Punnyalal and others assaulted me by means of Mugur (a wooden shaft)*'. She brought her injured husband in her house with the help of Dulal. The matter was immediately brought to the notice of the Police. The Officer-in-Charge of Pecharthal P.S. had visited in their house and as per his suggestion, they shifted her injured husband to Pecharthal hospital. As her husband suffered fracture injury, he was referred to Kailashahar hospital in which hospital he was treated for 16 days. She has stated as under:

"On the following day of the incident at morning I lodged the complaint in the P.S. which was written by one Biswaparba Chakma. Mentionable that no action was taken based on my complaint dated 13.06.2009, as such on 24.06.2009 I lodged a fresh complaint against Tarun Chakma."

In the cross-examination, PW-1 has admitted that her house is one kilometre away from the place of occurrence. The house of Ratish Sharma (PW-6) is adjacent to the place of occurrence.

[9] The victim, Sri Sunil Debnath (PW-2) has stated that on 12.06.2009 at about 11 pm. he was in his hotel situated at Pecharthal gate. At that time, Purnalal, Banabehari and Tarun

Chakma entered in his hotel and they forcibly taken him out and brought to the nearby shed. They had started assaulting him by a hard wooden substance on his left leg. Due to such assault, he sustained fracture injury. He started shouting for help, then his wife, one Dulal Debnath and Labanga Debnath came to that place. Thereafter, he was brought to his house. The police was informed. As per the suggestion of the police, he was shifted to Pecharthal hospital from where he was referred to Kailashahar hospital. He was treated at Kailashahar hospital till 28.06.2009. The police recorded his statement in his house after he was released from the hospital.

[10] PW-3, Sri Laxmi Debnath @ Dulal has stated that on 12.06.2009 at night about 11.30 pm. when he was taking rest in his rented house one Labanga Debnath (PW-4) came to his house and reported that somebody was shouting. Hearing this, he and PW-1 went out and found the cry was coming from shed on that area. At once, they rushed there and found Sunil was lying on the floor with fracture injury on his left leg. The police was informed. The police visited the house and the alleged place of occurrence was shown to the police. Thereafter, Sunil was shifted to Pecharthal hospital and therefrom to Kailashahar hospital. But he did not disclose from whom he learnt the name of the persons who committed the offence. But in the cross-examination he has categorically stated that the victim did not disclose the name of the accused persons at that time. He has further stated that the police

visited the place of occurrence after 2/3 minutes of their visit. Nothing was recovered from the place of occurrence.

[11] PW-4, Smt. Labanga Nath has stated that about one and half years back at one night at about 11/12 pm when she was sleeping in her house, she heard halla and hearing the same, she opened the back door and went to the adjoining house and asked Laxmi Debnath and also enquired about Sunil. Thereafter, wife of Sunil and Laxmi came out from their house and they rushed to that place. They shifted Sunil to their house and when the police visited the house, the names of the petitioners were disclosed to be the participant in the commission of the assault. She admitted in the cross-examination that as she did not see who assaulted Sunil, she was unable to name the offenders.

[12] PW-5, Sri Ashim Sarkar investigated the case. He has identified the handwriting of the recording officer Sri Sukhes Deb, who registered the FIR. Thereafter, he narrated how he conducted the investigation, prepared the site map, recorded the statements of the witnesses and collected the injury report. Having found the *prima-facie* case established from the materials collected in the investigation, he filed the charge sheet under Sections 448/325 read with Section 34 of the I.P.C. against the petitioners. He has stated in the cross-examination that even though the offenders are identified by an electric bulb but that was not reflected in the statements of the witnesses.

[13] PW-6, Sri Ratish Sharma denied his knowledge about the occurrence whereas PW-7 Dr. Shankar Debroy has stated as under:

"On 13.06.2009 I was a Medical Officer of RGM, Hospital, Kls. on that day I attended one Sunil Debnath in my said hospital who came to the hospital with his history of assault. Patient was under went operation on 17.06.2009 and discharge on 28.06.2009. On my examination I found fracture left Tibia due to hit by blunt and hard substance, it was dangerous in nature, I found the injury was fresh and grievous in nature. On 07.07.2009 as per requisition of police of PTL P.S. in c/w PIL. P. S. Case No.31 of 2009 I prepare this injury report on identification by this witness, the injury report marked as Exbt.7 and his signature in it are marked as Exbt.7/1 (series)."

[Emphasis supplied]

[14] From the appreciation of the evidentiary materials, it appears to this Court that there cannot be any substantive reason not to believe PW-2, the victim inasmuch as immediately after the occurrence, PW-1 and PW-3 located him in the injured condition and he was taken to the Pecharthal hospital and on the following day, he was referred to the Kailashahar hospital. From Exbt.7, the injury report, it clearly appears that the Pecharthal Primary Health Centre referred the victim to the RGM hospital, Kailashahar with history of assault. On 17.06.2009, the victim was operated upon for fracture. It is available from the injury report that such injury was caused by blunt and hard object. The medical opinion and the evidence as to the post-occurrence transaction do not leave any space to disbelieve the testimony of PW-2. As such, this Court is of the opinion that the conviction cannot be interfered. However, for lack of material as to the initiation of the occurrence, the role played by the individual offenders and having regard to the residual

doubt therefrom, the sentence as awarded is required to be modified. The petitioners are sentenced to suffer rigorous imprisonment for 6(six) months and to pay fine of Rs.5,000/- each and in default to suffer further rigorous imprisonment for 3(three) months. It is further directed that if the fine money is realised, the same shall be paid as compensation under Section 357 of the Cr.P.C. to PW-2 without prejudice to his right under Section 357-A of the Cr.P.C. The detention if any, during the pre-trial, trial and the post-trial shall be set off from the sentence.

[15] Having regard to the nature of the offence, this Court has declined to grant any benefit under Section 360 of the Cr.P.C.

[16] Having held so, this petition is dismissed, however subject the modification in the sentence. The petitioners shall surrender in the trial court for suffering the sentence.

Send down the LCRs forthwith.

JUDGE

Sujay