

IN THE HIGH COURT OF TRIPURA
AGARTALA

Crl.Rev.P. No.75 of 2011

1.Sri Gulap Babu Singha,
2. Sri Pulin Singha,

- both are sons of late Chandra Singha,
Village- Jalai, P.S. Kailashahar,
District : North Tripura

..... Petitioners

-VERSUS-

The State of Tripura

.....Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. Samarjit Bhattacharji, Advocate
For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing,
judgment & order : 19.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. Samarjit Bhattacharji, learned counsel
appearing for the petitioners as well as Mr. R.C. Debnath, learned
Addl. Public Prosecutor appearing for the State.

2. As the appeal filed by the petitioners, being Criminal Appeal No. 8(3)/2011 in the court of the Sessions Judge, North Tripura, Kailasahar has been dismissed by the judgment and order dated 17.09.2011, this revision petition under Section 401 read with Section 397 of the Cr.P.C. has been preferred to question the same. It is to be noted that, the Chief Judicial Magistrate, North Tripura, Kailasahar, by the judgment dated 05.08.2011 has convicted the petitioners under Section 323 read with Section 34 of the I.P.C and sentenced them to suffer one year rigorous imprisonment with fine of ₹500 each, in default of payment of fine, to suffer simple imprisonment for fifteen days. The appeal, being Criminal Appeal No.8(3)/2011 was carried out against the said judgment of conviction dated 05.08.2011.

3. The genesis of the prosecution is rooted in the written ejahar filed by Smt. Purnima Singha (PW.3), which disclosed that on 21.09.2007, about 7.00 am in absence of her husband, the petitioners, in furtherance of their previous dispute entered in their house and attacked them with intention to kill. They used spade and iron rod and gave blow on the head of her daughter, namely Nilima Singha by the spade and also gave blow on her by the rod. They also did not spare her elder daughter. She was pushed on the ground and was assaulted. Her daughter Nilima Singha was seriously injured and she was taken to the RGM

hospital, Kailashahar. There were swollen injuries over her and her elder daughter's body.

4. Having received the written ejahar dated 21.09.2007, Kailasahar P.S. Case No.157 of 2007 under Sections 325/326/34 of the IPC was registered and taken up for investigation. On completion of the investigation, the final police report charge-sheeting the petitioners under Section 323/34 of the IPC was submitted in the court of the Chief Judicial Magistrate, North Tripura, Kailasahar, who having taken cognizance, in the course of the proceeding, read out the statement of accusation against the petitioners under Section 323/34 of the IPC, to which they pleaded innocence and claimed to face the trial. Thus the trial commenced.

5. In order to substantiate the accusation, the prosecution adduced as many as seven witnesses including the victim and the Investigating Officer. Even though, PW.1, Nilima Singh was treated in the RGM hospital, Kailasahar, no medical records or injury report has been introduced in the evidence. Neither the medical officer who treated her was adduced as the witness. After recording the prosecution evidence, the petitioners were examined under section 313 of the Cr.P.C., when they reiterated their innocence.

6. Mr. Samarjit Bhattacharji, learned counsel appearing for the petitioners has submitted that neither the spade nor the iron rod, which were used for causing hurt on the victims, was seized by the Investigating Officer, namely Haripada Debbarma (PW.7) nor the best evidence of hurt i.e. medical records was introduced in the records of evidence. Thus the prosecution withholding the best evidence made a venture to prove the accusation by the oral testimonies. Mr. Bhattacharji, learned counsel has submitted that there are serious discrepancies which would emerge if the testimonies are keenly read and therefore, it can safely be held that the prosecution could not prove the accusation beyond reasonable doubt.

7. Mr. Bhattacharji, learned counsel, in the alternative has submitted that considering that the petitioners are the close relatives of the victim, the sentence may be converted into fine. He has also submitted that the benefit of Section 360 of the Cr.P.C. may also be extended to the petitioners as no previous criminal antecedents have been placed on record.

8. Mr. R.C. Debnath, learned Addl. Public Prosecutor appearing for the state, has submitted that what is required to prove the accusation under Section 323 of the IPC, is to establish that the victim had received bodily pain, but for that no medical records need not be produced. He has urged this court to go

through the testimonies of PWs. 1, 2 and 3 in particular, as according to him those have substantively proved the accusation beyond reasonable doubt.

9. For appreciating the rival submissions made by the learned counsel for the parties, this court, for a limited purpose would make a short survey of the evidence to assess whether the accusation has been proved beyond reasonable doubt. This court is not oblivious that both the courts below are in concurrence in returning the finding of conviction.

10. PW.1, Nilima Singha has categorically stated that the petitioners by entering into their house started abusing her mother by using dirty language. They took two nos. of spade from their house and assaulted her mother with a spade, which she resisted by her hands. Then the petitioner No.1, Gulap Babu Singha gave a blow of spade on her head through its sharp edge. On receiving the injury, she became senseless. Due to the said incident, initially she had been treated for eight days at the Kailasahar hospital and after discharge, she had to be admitted again in the hospital. In the course of the cross-examination, she could not find any specific statement that Gulap Babu Singha gave a blow with a spade on her head. But there was a general statement that the petitioners had assaulted them. She has

admitted that there was previous dispute over the distribution of land and cultivation of that land.

11. PW.2. Sukhamoni Singha is the political aide of the mother of the victim (PW.1) i.e. another victim, PW.3. He has stated that at about 7.00 am one day about two years back hearing cries from the house of PW.3, he rushed there and noticed that Gulap Babu Singha and Pulin Singha were causing hurt to Nilima Singha by pressing her head and her mother was raising cries for help. Then his two sons appeared and managed to restrain the accused persons. He also noticed that blood was oozing out from the head of Nilima (PW.1). Then he advised them to arrange for treatment of Nilima. He also heard that the elder daughter of the informant also received injury. Thereafter, by an auto rickshaw the informant, alongwith her two daughters were sent to the hospital. At the relevant point of time, PW.2 was the panchayet member of the same gram panchayet where PW.3 was pradhan and both were from the same political party. In the cross-examination, the contradiction as sought to be recorded, indicated that PW.2 has made the statement that he had seen the accused persons assaulting Nilima.

12. But the manner of recording the contradiction is entirely in defiance to the procedure as laid down under Section 162 of the Cr.P.C. read with Section 145 of the Evidence Act. At

that stage, the trial court had no business to make any comment. While recording the contradiction, it was the duty of the trial court to follow the procedure. If the defence on the basis of the statement made in the examination in chief and for a very limited purpose, intends to record in the cross-examination the part of the statement in contradiction to the statement made to the police officer or in the ejahar or in the statement recorded by the Magistrate that be shown by the defence to the witness and the court shall only record the response of the witness and wherever necessary the relevant part of the statement, if it is an omission amounting to contradiction. At that stage, no court shall record any observation as to whether such statement is there or not. PW.2 has also stated that Purnima Singha (PW.3) was not assaulted on that day.

13. PW.3, Smt. Purnima Singha, who lodged the written ezahar, has given the background of the dispute which had proliferated the bad blood between the two families i.e. the family of the petitioners and that of PW.3. According to her, as she was the Pradhan of Jalai panchayet, the petitioners came to her to realise ₹10,000 for purpose of construction of a building. As they were not entitled to such benefit she refused them, which ignited anger in them and they started abusing her in filthy language. While she was washing her mouth alongwith her daughter Nilima

(PW.1), without any provocation, Gulap Babu Singha and Pulin Singha, her two brothers-in-law, armed with the spade gave a blow with the sharp edge on the head of her daughter and as a result her daughter, Nilima sustained bleeding injuries on her head. At that time, Pulin Sinha, the petitioner No.2, who was also armed with an iron rod, gave blow on her head with the iron rod. She sustained swelling injury. Thereafter, both of them dragged her and her daughter, Nilima by pulling their hair towards the northern viti i.e. the hut of the accused persons from the southern viti where they used to stay. She has also admitted that the courtyard of their house was used by both the accused persons and herself. The accused persons, the petitioners herein then caused hurt to them. She has given a different version of what has been given by Sukhamani Singha (P.W.2), who has stated that on hearing the cries he entered in the house of the petitioners and the informant, but the informant (PW.3) has stated as under :

"Thereafter, I along with my injured daughter came out and three we met with one, the then Panchayet Member Sukhamani Singha and I informed him about the incident. Thereafter, we arranged an auto and both myself and my daughter went to the house of Santi Sinha, the President of Nari Samiti and alongwith her we went to Kailashahar P.S. and submitted one ejahar."

She has further stated that the ejahar was written as per the fact supplied by her. She identified the written ejahar (Exbt.1) and also stated that she and Pratima were treated in the Kailashahar hospital as an indoor patient for two days whereas Nilima was treated for some more days as an indoor patient in the hospital. In the cross-examination, she has admitted that she did not mention in the ezahar that Golap Babu Singha used abusive language against her.

14. Certain omissions have been identified through her cross-examination, such as, that the petitioners by pulling their hair dragged them towards their houses, or Pulin Singha caused hurt by iron rod etc. She has volunteered in the cross-examination that she was allowed to cultivate the land for one year and thereafter the accused persons did not allow her to cultivate the land. She has also admitted that she got one kani of land from the accused persons by virtue of a settlement that was reached in a proceeding under the Domestic Violence Act.

15. PW.4, Smt Malina Singha did not state about the assault, but she has introduced the episode of dragging them towards their houses. She has stated that she rushed to resist the accused persons and managed to stop the accused persons from causing further hurt to her mother. She has further stated that the accused persons injured her mother and sister Nilima. She

saw that blood oozing out from the head of Nilima. She has stated that Pulin Singha caused hurt to her mother's head by an iron rod. When the local persons came, with their help, her mother and sisters were taken to the hospital, but her statement is also visited by some improvement as she stated in the cross-examination that she could not recollect whether she stated to the police that the accused persons dragged her mother and sister towards their hut and caused hurt to them.

16. PW.5, Mago Singha and PW.6, Krishnamani Singha, have stated that they know nothing about the case.

17. PW.7, Haripada Debnath is the Investigating Officer, who narrated shortly how he had conducted the investigation, recorded the statement of the witness and also prepared the hand-sketch map. He has also stated that he collected the injury reports of Purnima Singha and Pratima Singha, but those injury reports were not introduced in the evidence.

18. PW.4 is clearly an interested witness. Hence, the statement of PW.4 is shrouded by a serious doubt, whether she was at all nearby or she appeared in the place of occurrence when the transaction of the alleged offence took place. As such, the entire prosecution case is based on the testimonies of PWs.1 and 3.

19. From the appreciation of the testimonies, it appears that the petitioners definitely caused bodily pain to PW.1. But, this court cannot believe the statements of PW.3, as PW.2 who is a close companion of PW.3, has categorically stated that PW.3 did not receive any injury and on that part the prosecution, there was no response on that statement.

20. Having regard to the entire evidence in the perspective and to the principles of *falsus in uno* and *falsus in omnibus* having not accepted in our country, this court is adequately authorised to segregate the chaff from the grain. Having closely scrutinized the record of evidence, that too, with sufficient amount of caution, this court finds the truth in the testimony of PW.1. If her statement is believed, in exclusion of the portion those are little bit elaborated, it can be safely held that the petitioner No.1 committed an offence of giving bodily pain constituting the hurt punishable under Section 323 of the IPC. But, so far the role of Pulin Singha is concerned, it still remains under doubt for the reason that PW.1 has stated that Pulin Singha gave assault by spade to her mother, which she resisted through hand. But PW.3 never stated that there was an attempt from Pulin Singha to give her a blow by spade rather she has stated that Pulin gave her a blow by the rod. The use of 'spade' or 'rod' is indicatively smudged, but PW.1 has

categorically stated and which has been corroborated by PW.3 that, Gulap Babu Singha gave the blow by the spade with its sharp edge on the head of PW.1 and she was injured.

21. As such, this court, on giving the benefit of doubt, is of the opinion that the accusation against Pulin Singha has not been proved beyond reasonable doubt. Therefore, he is acquitted from the accusation under Section 323 of the IPC on benefit of doubt. So far the impugned judgment and order as related to Pulin Singha, the petitioner No.2 is concerned, is set aside and quashed.

22. But, this court is satisfied that Gulap Babu Singha has caused bodily pain to PW.1 and, therefore, he is liable to be punished under Section 323 of the IPC. But having regard to the nature of the transaction and the previous dispute etc., this court is of the opinion that the sentence is required to be modified as awarded by the Sessions Judge, North Tripura, Kailashahar by the impugned judgment and accordingly, the petitioner No.1, Gulap Babu Singha is sentenced hereunder to suffer 1(one) month's simple imprisonment with a fine of ₹1,000 (rupees one thousand), in default to suffer further simple imprisonment for 15(fifteen) days.

23. This court has considered all the aspects and thereafter decided that he is not entitled to get the benefit as provided under Section 360 of the Cr.P.C. for releasing him on probation under Section 4 of the Probation of Offenders Act.

24. Having held so, this petition stands partly allowed.

Send down the LCRs forthwith.

JUDGE

Roy/Dipesh