

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. 88 of 2016

Sri Suman Debnath,
Son of Sri Sunil Debnath,
Resident of Village-Mohinipur,
PS: Sidhai,
District- West Tripura.

--- Petitioner(s)

Versus

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

---- Respondent(s)

For Petitioner(s) : Mr. S.C. Majumder, Adv.

For Respondent(s) : Mr. S. Ghosh, Addl. P.P.

Date of hearing : 11.12.2020.

Date of pronouncement : 10.02.2021

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

J u d g m e n t & O r d e r

[1] This criminal revision petition has been filed challenging the judgment dated 30.06.2016 delivered by the

Additional Sessions Judge (Court No. 3), West Tripura, Agartala in case No. Criminal Appeal 11 of 2016 affirming the judgment & order dated 14.01.2016 of the learned Judicial Magistrate First Class (Court No.8), West Tripura, Agartala delivered in case No. PRC 362 of 2014 whereby the convict petitioner namely Suman Debnath along with 5 (five) others was convicted and sentenced to pay fine of Rs.400/- each with default stipulation for having committed offence punishable under section 342 of the Indian Penal Code (IPC in short) and further convicted and sentenced to fine of Rs.400/- with default stipulation for offence punishable under section 323 IPC.

[2] Brief facts of the case are as under:

Sri Utpal Debbarma, son of Sri Kartik Debbarma of village-Surendranagar, police station- Sidhai of the West Tripura district lodged an FIR with the officer in charge of Sidhai police station on 01.04.2014 at 09.15 pm alleging that on the previous day convict Uttam Paul called the informant [PW-6] over telephone to come to Jagatpur. When the informant [PW-6] arrived at Jagatpur pursuant to such telephonic call, all the convicts together with the convict petitioner assaulted him with a lathi (stick) and fled from there leaving the injured informant. With bleeding injuries all over his body, the informant started crying for help. Following his cry, people from the

neighbourhood appeared there and brought the injured informant [PW-6] to Mohanpur hospital for treatment. Thereafter, the informant lodged the said FIR at the police station wherein he also alleged that as a result of the assault his left eye was damaged.

[3] Based on his FIR, Sidhai P.S case No. 32 of 2014 under section 325 read with section 34, IPC was registered and the investigation was taken up. During investigation, the investigating officer visited the crime scene on 02.04.2014 and recovered and seized vide seizure list [Exbt.8] a separated branch of tree measuring 2 (two) cubits in length and 3 (three) pieces of bamboo which were allegedly used by the convicts for beating the informant. This apart Maruti Suzuki (Alto K10) vehicle bearing registration No. TR-01A-0469 along with the documents of the vehicle was also seized by the investigating officer vide seizure list [Exbt.10] which was allegedly used by the convicts for transporting the informant from his house to the place of occurrence. The injury report [Exbt.3] was also collected by the investigating officer, hand sketch map [Exbt.7/1] was drawn up and the material witnesses were examined under section 161 Cr.P.C and their statements were also recorded. At the conclusion of trial, he submitted charge sheet No. 21 of 2014 dated 30.05.2014 against the 6 (six) FIR

named accused for having committed offence punishable under sections 342, 323 and 506 read with section 34 IPC.

[4] The learned Additional Chief Judicial Magistrate, West Tripura, Agartala vide order dated 18.06.2014 received the charge sheet and placed the matter before the learned Chief Judicial Magistrate who had taken cognizance of offence punishable under sections 342, 323 and 506 read with section 34 IPC vide order dated 27.06.2014 and then transferred the case to the court of learned Judicial Magistrate First Class at Agartala for trial.

[5] At the commencement of trial, the substance of accusation was read over and explained to the 6 (six) charge sheeted accused including the present petitioner in terms of section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C in short). All accused pleaded not guilty and claimed trial.

[6] During trial, as many as 13 (thirteen) witnesses [PW-1 to PW-13] were examined on behalf of the prosecution and 10 (ten) documents [Exbt.1 to Exbt.10] were exhibited and relied upon. Besides the exhibited documents prosecution also relied on Exbt.MO.1 i.e. the weapon of offence.

[7] At the conclusion of the prosecution evidence, all the 6 (six) accused were separately examined by the learned trial court under section 313 Cr.P.C and their replies were

recorded by the learned trial judge. They pleaded innocence and claimed that the charges were foisted on them. All declined to adduce any witness on their defence.

[8] Having appreciated the evidence and the attending facts and circumstances of the case, the learned trial court vide judgment dated 14.01.2016 held all the accused including the present petitioner guilty of offence under sections 342 and 323 IPC and convicted them. In view of the fact that none of the convicts had any past criminal record, the learned trial court instead of imposing any corporeal punishment on them, sentenced them to fine of Rs.400/- with default stipulation for offence punishable under section 342 IPC and the same amount of fine with default stipulation was also imposed to each of them for having committed offence punishable under section 323 IPC and it was ordered that the whole fine shall be paid to the victim.

[9] In appeal, the learned Sessions Judge by the impugned judgment aforesaid upheld their conviction and sentence without any modification. One of the convicts namely Suman Debnath has challenged the impugned judgment in this criminal revision petition.

[10] Heard Mr. S.C. Majumder, learned counsel appearing for the petitioner as well as Mr. S. Ghosh, learned Addl. P.P representing the State respondent.

[11] Appearing for the petitioner, Mr. S.C. Majumder, learned advocate has argued that the learned courts below did not take into consideration the evidence of PW-5, brother of the informant who clearly stated at the trial that the informant was man-handled by some unknown people in connection with the theft of bicycle. Further submission on behalf of the petitioner is that the courts below did not also appreciate the infirmities appearing in the prosecution evidence and as a result the judgments delivered by them are erroneous and unsustainable. It has been further argued by learned counsel of the petitioner that in view of the fact that there is no past criminal record of the petitioner, he should have been released after due admonition under the Probation of Offenders Act, 1958. On the grounds aforesaid, learned counsel urged for allowing the revision petition.

[12] Mr. S. Ghosh, learned Addl. P.P on the other hand vehemently argued that in view of the consistent, corroborative and trustworthy evidence of as many as 13 (thirteen) witnesses, the concurrent findings of the courts below with regard to the conviction and sentence of the petitioner does not

call for any interference in this revision petition. Further argument on behalf of the prosecution is that the courts below have already shown adequate leniency with regard to sentence and in view of the nature of offence and the manner in which it was committed, the petitioner does not deserve any more leniency. Mr. Ghosh, learned Addl. P.P, therefore, urges the court for dismissing the revision petition.

[13] As noted, as many as 13 (thirteen) witnesses have been examined on behalf of the prosecution. Among them, Smt. Minati Debbarma [PW-1], a resident of Surendranagar, Sidhai was examined by the trial court on 20.03.2015. She stated at the trial that about a year back at about 8/8.30 am, accused convict Shyamal Sutradhar, Atul Sutradhar, Abhijit Sutradhar and Kartik came in her house and enquired about her son Utpal Debbarma. Her son Utpal [PW-6] returned home at 3 O'clock in the afternoon. The PW then told her son that the accused persons namely Atul, Abhijit, Shyamal and Kartik came to the house in the morning and enquired about him. At 5 O'clock in the afternoon, a red colour car came to her house and her son left home in that vehicle. The PW was of the impression that her son was going to somewhere along with his friends. The 4 (four) accused who came to her house in the morning were also seen sitting in that vehicle. Thereafter, at

about 11 pm her injured son was brought back home by the officer in charge of the Sidhai police station and she was told that accused Shyamal, Atul, Abhijit, Nantu, Jhutan and present petitioner Suman Debnath assaulted him and caused his injuries. On the following day she had taken her son to GBP hospital for treatment when he told her mother that the 6 (six) accused assaulted him with a cane stick and among them petitioner Suman Debnath "gave severe assault" to him.

In her cross examination, the PW denied that her son was beaten by the local people after he was caught red handed while committing theft of bicycle.

[14] PW-2 did not witness the occurrence. He simply stated that he heard from others that accused Shyamal Sutradhar and Suman Debnath assaulted the informant.

[15] Parimal Debbarma[PW-3], a day labourer stated at the trial that accused Shyamal Sutradhar and Abhijit Sutradhar along with some others stopped their vehicle on the road which was carrying bricks. They enquired about informant Utpal Debbarma who also used to work as a labour with the PW. Utpal was not there with them at that time. At about 11pm on that day Utpal Debbarma called the PW to his house where he found Utpal lying with injuries all over his body. On enquiry he

told the PW that Abhijit Sutradhar and Shyamal Sutradhar assaulted him.

In cross examination, the PW stated that injured Utpal was his cousin brother.

[16] Sri Amar Debbarma [PW-4] also gave similar evidence. He stated in his examination in chief that on the material date, accused Jhutan Das, Shyamal Sutradhar, Nantu Debnath and Atul Sutradhar enquired about informant Utpal Debbarma when the PW along with other labourers were transporting bricks in a truck.

[17] Sri Mangal Debbarma [PW-5] had come to know from Utpal Debbarma day after the occurrence that he was man-handled by some local people in connection with theft of a bicycle. The PW stated that Utpal did not tell him the names who had actually man-handled him.

[18] Sri Utpal Debbarma [PW-6], the injured stated at the trial that all the 6(six) accused had beaten him with lathi (stick) after tying his hands with rope. They also tied one Abhijit Sutradhar with rope at the same place and started beating him. When Abhijit confessed that he had stolen the bicycle and assured to return the value of the bicycle, the accused persons freed the PW and offered him cold drinks and roti. The PW stated that all the 6 (six) accused joined together

in assaulting him. He also identified them during the trial. The relevant extract of his evidence is as under:

"Near about one year back one day at about 5 p.m. when I came out from my house seeing me a red colour maruti van driven by Nantu (witness points towards accused Nantu Debnath at the dock) stopped beside me and enquired of me about Utpal Debbarma. When I told that I am Utpal Debbarma then Nantu informed me that Uttam Debnath owner of bricks kiln where I worked is asking me to meet him. Nantu also contacted with Uttam Debnath over mobile phone and arranged my talk with him. Uttam Debnath asked me to meet him and to come with that Maruti van. Accordingly I boarded in the maruti van. Driver took me to Manipuri Chowmuhani in a culvert at Panikata where Shyamal Sutradhar, Abhijit Sutradhar, Anil Sutradhar, Suman Debnath and Jhutan Das (witness identified the said accused at the dock by name and face) were waiting there. Nantu Debnath asked me to get down from maruti van.

As soon as I get down all of them tied me with a rope and started assaulting me with 'lathi' (stick). Shyamal Sutradhar was asking me to return to his cycle alleging that I had stolen the same. Shyamal told me that Abhijit Sutradhar told that I had stolen bicycle of Shyamal. After assaulting me they un-tied me and tied Abhijit Sutradhar with a rope and assaulted him. Abhijit Sutradhar confessed that

he had stolen the bicycle and assured to return the value of its then they un-tied Abhijit also. Then Shyamal enquired of me whether I can return home. Then they offered me cold drinks and 'roti' which I refused. Then as per instruction of Suman they informed police alleging theft of bicycle by me."

In his cross examination, nothing could be extracted from him in favour of the defence. The PW denied that he lodged a false case and gave false statement before the court.

[19] Sri Binoy Paul [PW-7] scribed the FIR. He stated at the trial that he wrote the FIR pursuant to the request of the informant [PW-6]. According to him, the whole incident was narrated to him by the informant [PW-6] and thereafter he wrote the FIR.

[20] PW-8 is a seizure witness who signed the seizure list [Exbt.8] after the weapon of offence [Exbt.MO.1] was seized by the police in his presence from the place of occurrence.

[21] PW-9 is the medical officer who attended the injured informant at Mohanpur CHC on 31.03.2014 and found the following injuries on his body:

"1. Lacerated wound of 5cm X 1.5 cm X muscle depth over his left leg, 3 cm below the knee joint.

2. Abrasion 6 in numbers measuring 7CM X 2 CM over his back of chest 10 c.m. below the right spine of scapula.

3. Tenderness over left arm with restricted mobility.

All the injuries were simple in nature and caused by blunt object."

The PW prepared the injury report [Exbt.3] and supported his report during trial in the court.

[22] Sri Bijoy Debnath [PW-10] simply stated that his signature was obtained by police on a piece of paper. He identified his signature but he could not say anything about the contents of the document.

[23] Sri Sanjoy Pan Tanti [PW-11] was produced in court. In his examination in chief he stated that he had no idea about the case. His cross examination was declined. Similarly, Sri Kishore Debnath [PW-12] stated that his signature was obtained by police on a piece of paper and he had no knowledge about the contents of the document. His cross examination was also declined.

[24] Sri Sudip Kumar Das [PW-13] is the investigating officer of the case. He stated that after the case was endorsed

to him for investigation, he carried out the whole investigation of the case and in the course of investigation he examined the material witnesses, collected the injury report, seized the weapon of offence and he had also drawn up hand sketch map with separate index after visiting the crime scene and thereafter he submitted the charge sheet against the accused persons.

[25] Obviously, there is no eye witness to the assault of the informant other than the informant himself. But the evidence of the informant is so consistent and trustworthy that it is quite difficult to discard his evidence with regard to the involvement of the accused persons. Careful reading of his evidence gives an impression that the PW has not made any attempt to conceal anything. He appears to be a very truthful witness who stated in his examination in chief that after assaulting him on the suspicion that he had committed theft of a bicycle, the accused persons came to know from Abhijit Sutradhar that the bicycle was actually stolen by Abhijit alone and thereafter the repentant accused persons offered him cold drinks and roti and they also asked him whether he would be able to return home alone. The consistent evidence of his mother [PW-1] has also given strong circumstantial support to the fact that the accused persons had taken her son in their

vehicle to the place of occurrence where they had assaulted and injured him. The evidence of PW-3 who had seen the informant immediately after the occurrence and came to know from him about the involvement of the accused persons in his assault also lend strong circumstantial support to the prosecution case. The fact that Utpal Debbarma received injuries on the date of occurrence also stands established by the medical report [Exbt.3] and testimony of the medical officer [PW-9].

[26] There is, therefore, no infirmity in the impugned judgment. Resultantly, the revision petition stands dismissed and the case is disposed of.

Send back the LC record.

JUDGE



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