

HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 57 of 2007

1. Sri Kartik Debnath,
son of Sri Indramohan Debnath
2. Sri Paltan Dey,
son of Sri Mintu Dey
3. Sri Bhajan Sarkar,
son of Sri Bhagirath Sarkar

all residing at Village North Maheshpur, P.S. Jatrapur, West Tripura.

.....convict Petitioners

- Vs -

1. The State of Tripura
2. Smti. Shikha Chakraborty,
daughter of late Manindra Ch. Chakraborty,
resident of Hospital Quarters,
Sonamura
P.S. Sonamura
West Tripura

.....Respondents

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

For the petitioners : Mr. H. Debnath, Advocate
 For the respondent No.1 : Mr. A. Ghosh, PP
 For the respondent No.2 : None
 Date of hearing and delivery : **31.01.2014**
 of judgment & order
 Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. H. Debnath, learned counsel appearing for the petitioners whose conviction has been affirmed by the impugned judgment and order dated 10.05.2007 delivered in

Criminal Appeal No.7(1) of 2007 by the Addl. Sessions Judge, Sonamura, West Tripura. The Sub-Divisional Judicial Magistrate (SDJM), Sonamura, by the judgment and order dated 06.03.2007 delivered in C.R. 374 of 2003 has convicted the petitioner Nos.2 and 3 under Section 379 of the IPC and all the petitioners under Section 323 of the IPC. It has been directed that the petitioners would suffer RI for the period of six months and to pay a fine of Rs.1000/- under Section 323 and in default thereof to suffer SI for 15 days. The petitioners No.2 and 3 for their conviction under Section 379 of the IPC were sentenced to suffer RI for one year and to pay a fine of Rs.3000/- each, in default thereof to suffer SI for one month each. The petitioners herein carried out an appeal under Section 374(3) of the Cr.P.C. being Criminal Appeal No.7(1) of 2007.

02. By the impugned judgment delivered in the said appeal, the judgment of conviction by the Sub-Divisional Judicial Magistrate, Sonamura under Section 379 of the IPC against the petitioner Nos.2 and 3 has been interfered with and set aside. But the conviction under Section 323 of the IPC against the petitioners has been maintained and even no modification in the sentence was considered.

03. Mr. Debnath, learned counsel for the petitioners has submitted that from the bare reading of the testimony of PW-2 it would reveal that PW-2 has not stated the truth in the trial. His allegation was mainly against Paltan Dey, the petitioner No.2 and

Bhajan Sarkar, the petitioner No.3. Even the involvement of the other accused was squarely disbelieved by the trial court and they were acquitted from the charge. Mr. Debnath, learned counsel for the petitioners has further submitted that against the petitioner No.1, Kartik Debnath there is no allegation that he had assaulted PW-2, the victim of the case. PW-1, Smti. Sikha Chakraborty has narrated in the trial what she had heard from PW-2 namely Parbati Sankar Chakraborty whereas PW-3 namely Smti. Dipti Chakraborty has not witnessed any part of the occurrence. However, PW-1 has stated that she had taken her husband, PW-2 to the hospital locating him in the injured condition. The other two witnesses namely Sibu Ch. Das and Dipankar Ghosh though were examined by the trial court but they did not state anything against the petitioners. Mr. Debnath, learned counsel for the petitioners has vehemently submitted that the complainant has failed miserably to prove the commission of offence punishable under Section 323 of the IPC as well. As such, the petitioners deserve acquittal from the charge.

04. From the other side, Mr. Ghosh, learned PP appearing for the State has submitted that there cannot be any reason to disbelieve the oral testimonies of PW-2 and PW-3 and as such no interference in the impugned judgment and order is called for.

05. On appreciating the submissions of the learned counsel for the parties and re-visiting the evidence as led by the prosecution it has appeared that the petitioner Nos.2 and 3 had

assaulted PW-2 but there is no tangible evidence against the petitioner No.1. Even from the testimony of PW-2 no overt act can be attributed to the petitioner No.1. In view of this, the petitioner No.1 is acquitted from the charge under Section 323 of the IPC and his bail bond is discharged. But the conviction of the petitioner No.2 and 3 under Section 323 of the IPC has to be maintained inasmuch as cogent evidence of causing hurt voluntarily to the victim has been placed by the prosecution against them. Accordingly, their conviction is affirmed. However, this Court would like to modify the sentence. The sentence is converted to a fine of Rs.1,000/- each to be paid by the petitioners No.2 and 3, in default they shall suffer simple imprisonment of 1(one) month each. Such fine shall be paid by the petitioners No.2 and 3 within one month from today in the court of the Sub-Divisional Judicial Magistrate, Sonamura.

Accordingly, this appeal is partly allowed.

Send down the LCRs forthwith.

JUDGE

MB