

Party Name : SADEK MIAH & ORS Vs THE STATE OF TRIPURA

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned counsel Mr. D. P. Ghosh, for the petitioners and learned P. P., Mr. A. Ghosh, for the State respondents.

On the prayer of learned counsel of both side the revisional application is taken up for final disposal at the motion stage itself.

The grievance of the petitioners is that they are facing trial in a criminal case before learned SDJM, Sonamura vide case No. GR 58 of 2006.

It is contended by learned counsel Mr.Ghosh, on behalf of the petitioners that at the time of cross-examination of PWs 4 and 7 attention of those witnesses were drawn to some part of the previous statement of those witnesses recorded by I.O., but at the time of cross-examination of the I.O. those parts were not confronted and that was a mistake on the part of the conducting lawyer for which the accused should not be put to suffer.

It is further submitted by Mr. Ghosh learned counsel for the petitioners that contradictions were also not properly recorded. However, those part should be put to the I.O. as otherwise the accused should not get benefit of the same according to law.

Learned P. P. fairly submitted that neither the contradictions were properly recorded drawing attention of the witness to those part of their previous statement nor it was referred to I.O. He has, therefore, prayed for passing an order according to law.

The law regarding recording of contradiction has been well settled by now. There was an earlier revision application in connection with the same case and in that case this court observed that the trial court should follow the procedure settled by the Apex Court in the case of **Tahshildar singh** and by the Gauhati High Court in the case of **Ranjit Sarkar**. I hope in future the trial court will follow the procedure properly.

For fair ends of justice, in my considered opinion, an opportunity should be given to the accused petitioners to cross examine the I.O. only on those part of the contradiction, which was recorded at the time of cross examination of PWs 4 and 7.

Let me clearly specify hereunder the relevant portion of the statement of those witnesses.

At the time of cross-examination of PW 4 the following part of the statement was recorded, which seems to be a contradiction :-

" I have stated to the police that Manu Miah, Chadek Miah and Abu Miah assalted me with a piece of wood and also stated that Bharat Mani, Mukta Manik, Bhadra Manik and Bidhu Manik entered into the swelling hut of Paresh Deb breading the doors and the windows fo the swelling hut of Paresh Deb and also stated that somehow myself saved and while came out I have been assaulted by Abu, Chadek and Manu with a piece of wood. Perused the statement but I do not find any such statement".

At the time of cross-examination of PW 7 the following statement was recorded, which appears to be a contradiction:-

" I have stated to the police that Bharat Mani Noatia and Chadek Miah forcibly entered into my swelling hut breking its doors and windows. Perused the statement of the witness but I do not find any such statement"

It is clear that both the above statements were not referred to the I.O. when I.O. was cross-examined.

So, learned Magistrate is directed to recall the I.O. and allow the defence to cross-examine the I.O. on only the above two contradictions.

No more cross-examination should be allowed. Since it was the fault of the lawyer of the accused in cross-examining the I.O. on the above two aspects, the accused persons should pay a cost of Rs.500/- in the trail court.

In terms of the above, the impugned order dated 27.11.2015 passed by learned SDJM, Sonamura in G.R. No.58 of 2006 is interfered and the revisional application stands disposed of.

Send a copy of this order to the Court of learnd SDJM, Sonamura.