IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL. REV. P. NO.114 OF 2013

Sri Ramjoy Kumar Reang,
son of late Baishak Rai Reang,
resident of Santirampara (40 families),
P.S. Kanchanpur, District: North Tripura

..... Petitioner

– Vs –

The State of Tripura

..... Respondent

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

For the petitioner : Mr. R. Dutta, Advocate
Mr. A. Acharji, Advocate

For the respondent : Mr. A. Ghosh, P.P.
Mr. J. Debbarma, Advocate

Date of hearing and delivery of judgment & order : **31.03.2016**

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Dutta, and Mr. A. Acharji, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned P.P. and Mr. J. Debbarma, learned counsel appearing for the State.

[2] By means of this petition filed under Section 397 read with Section 401 of the IPC, the petitioner has challenged the judgment and order dated 27.04.2013 delivered in Criminal Appeal

No. 46 of 2012 by the Addl. Sessions Judge, North Tripura, Dharmanagar whereby the judgment of conviction returned by the judgment dated 11.10.2012 by the Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura in case No. G.R. 35 of 2010 has been affirmed even without any modification in the sentence.

[3] The prosecution case in brief is that on the basis of the ejhar received in terms of the order dated 07.06.2012 passed in exercise of power provided under Section 156(3) of the Cr.P.C. by the Sub-Divisional Judicial Magistrate, Kanchanpur, North Tripura, Kanchanpur PS Case No. 08 of 2010 under Section 498(A)/494/34 of the IPC was registered. From the FIR form, it is available that information was received on 01.02.2010. It is apparent from the complaint that the complaint was filed in the court of the Sub-Divisional Judicial Magistrate on 22.01.2010 disclosing that in order to obtain her consent for contracting the second marriage, the complainant PW-1, Mazirung Reang was severely assaulted by the petitioner. Sometimes their three daughters were subjected to physical and mental torture by the petitioner. The petitioner started physical torture, aided by the lady whom he brought as the second wife, on the complainant as well as on her three daughters. Thereafter, one day having failed to bear the torture they had left the house and gone somewhere else without leaving their address. The complainant has also disclosed that the petitioner and that lady have been residing and cohabiting presently as husband and

wife. At the fag end of the complaint, it has been stated clearly as under:

> **“But till date the accused no.1(one) has not yet taken any kind of information of her (the complainant) as well as her 3(three) daughters. For which, today the complainant has filed the instant case in the Hon'ble court of law and delay is caused in filing the ezhar.”**

[4] On completing the investigation, the chargesheet was filed against the petitioner under Section 498(A) and 494 of the IPC to which the petitioner pleaded not guilty. In order to substantiate the charge as many as 10(ten) witnesses were examined including the victim(PW-1), Investigating Officer (PW-10). Victim's daughters namely Ms. Kanika Reang(PW-2), Ms. Sanchita Reang (PW-3) and Ms. Armila Reang (PW-4) and the other witnesses namely Ubaram Reang(PW-5), Rantajoy Reang (PW-6), Smt. Kabita Reang (PW-7), Khowaijoy Reang (PW-8) and Krishiram Reang (PW-9) were also examined in the trial by the prosecution. PW-5, PW-6, PW-7, PW-8 and PW-9 did not disclose anything material for purpose of the case. Even PW-8 was tendered by the prosecution without any examination. After the prosecution evidence was recorded, the petitioner was examined under Section 313 of the Cr.P.C., where he again pleaded his innocence. But he denied to adduce any evidence in his defence. On the purported appreciation of the evidence by the judgment dated 11.10.2012, the petitioner was convicted under Section 498(A) of the IPC and sentenced to suffer rigorous imprisonment for 2(two) years with fine of Rs 10,000/-, in

default to suffer simple imprisonment for 2(two) months. Being aggrieved by that judgment dated 11.10.2012, the petitioner filed an appeal under Section 374(3) of the Cr.P.C. being Criminal Appeal No. 46 of 2012 in the court of the Addl. Sessions Judge, North Tripura, Dharmanagar as it then was. By the impugned judgment dated 27.04.2013, the said appeal was dismissed without any sort of interference. The said judgment is under challenge in this revision petition.

[5] Mr. R. Dutta and Mr. A. Acharji, learned counsel appearing for the petitioner has categorically submitted that the ingredients of Section 498A of the IPC have not been established by the prosecution. The prosecution has failed to establish by evidence that the victim or her daughters were subjected to torture for realising unlawful demand or for that purpose, the petitioner harassed them. Even the prosecution has failed to prove by evidence that the victim was so severely assaulted that she should have committed suicide or she was subjected to grave physical injury or she was harmed mentally or physically. Hence the judgment of conviction as returned by the trial court as well as by the appellate court cannot be sustained and the petitioner is entitled to acquittal.

[6] From the other side, Mr. J. Debbarma, learned counsel appearing for the State has pointed out that from the testimony of PW-1, the victim, it would be apparent that she was badly assaulted by her husband, the petitioner herein. PW-1 has further deposed

that she was throttled and even alleged of inserting burning firewood into her mouth. However, Mr. J. Debbarma, learned counsel has fairly submitted that the statement that has been made in the trial as to throttling or on attempting to kill the victim on inserting firewood into her mouth was not stated to the Investigating Officer. However, Mr. Debbarma, learned counsel did not fail to point out that in the statement as regards the assault, the victim was even not confronted by the defence. PW-2, PW-3 and PW-4, the daughters of the complainant have also corroborated their mother on the material points. Mr. Debbarma, learned counsel has accordingly urged this court to convert the accusation under Section 323 of the IPC in exercise of power as provided by Section 222 of the Cr.P.C. as the assault in the ordinary parlance is synonymous to hurt and that is covered by the second limb of explanation (a) of Section 498(A) of the IPC. To support his contention, he has referred the apex court decision delivered in **Tarkeshwar Sahu vs. State of Bihar(Now Jharkhand)** reported in **(2006) 8 SCC 560** where the apex court after revisiting the previous decisions namely **Lakhjit Singh and Another vs. State of Punjab** reported in **1994 Supp (1) SCC 173** and **Shamnsaheb M. Multani vs. State of Karnataka** reported in **(2001) 2 SCC 577** has observed that such conversion is permissible if it is found that the offence is minor and cognate to each other. For this purpose, in **Tarkeshwar Sahu vs. State of Bihar(Now Jharkhand)** reported in **(2006) 8 SCC 560,** the

following passage from **Shamnsaheb M. Multani vs. State of Karnataka** reported in **(2001) 2 SCC 577** has been approvingly extracted **:**

> **“16. What is meant by “a minor offence” for the purpose of Section 222 of the Code? Although the said expression is not defined is the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-a-vis the other offence.”**

On the basis of the said law as laid down by the apex court, Mr. Debbarma, learned counsel has finally submitted that the assault having been completely proved by the prosecution, for inflicting hurt, even without framing the charge, the petitioner is required to be convicted under Section 222 with adequate and exemplary punishment.

[7] It is further to be noted that Mr. Acharji, learned counsel appearing for the petitioner has also raised a question about the delay that has taken place in filing the First Information Report. According to Mr. Acharji, learned counsel such delay creates serious doubt as to the truthfulness of the version. Moreover, from the penultimate paragraph of the complaint, it surfaces that since the complainant was not taken care due, the complainant and her daughters were persuaded to file the complaint against the petitioner. Be that as it may, since the cognizance was taken of the offence, the bar as provided under section 468 of the Cr.P.C. would

not be applicable as under Section 190(1) of the Cr.P.C, the facts constituting the offence were taken into cognizance by the courts within the prescribed period.

[8] Having regard to that aspect of the matter this court is satisfied that this is a case where without framing the fresh charge and on the basis of the records of the evidence, the petitioner can be convicted under Section 323 of the IPC for causing hurt to the complainant (PW-1).

[9] At this stage, Mr. R. Dutta, learned counsel appearing for the petitioner, has submitted that the petitioner is a Govt. Teacher. Therefore, there may be an observation that his service should not at stake for the conviction that is proposed by the court. In consideration of the perspective and the material facts, the sentence is to be moderated had the conviction been converted under Section 323 of the IPC.

[10] On scrutinizing the records afresh, this court is satisfied that the prosecution has proved that the petitioner has committed an offence punishable under Section 323 of the IPC, beyond reasonable doubt and accordingly the petitioner is convicted under Section 323 of the IPC for causing hurt voluntarily to the complainant(PW-1). The petitioner is, therefore, sentenced to suffer 6(six) months imprisonment with fine of Rs.1000/- (rupees one thousand), in default to suffer further simple imprisonment for 15(fifteen) days. It is needless to mention that, the detention, if

any, suffered by the petitioner during inquiry or the trial, shall be set off in view of Section 428 of the Cr.P.C. The petitioner shall surrender in the trial court to suffer the sentence positively by 07.06.2016.

[11] With this observation and direction, this petition stands disposed of.

Before leaving with the records, this court is of the view that since the petitioner has not been convicted for an offence of moral turpitude this conviction shall not be made instrumental for terminating his service, but the employer shall remain at liberty to take appropriate action for the period of absence.

JUDGE

Moumita