

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRL REV P 64 OF 2014

Md. Aktar Hossain,
son of late Jharu Mia,
of Village Jharjaria (Uttar Chelagang),
P.O. & P.S. Natunbazar, Amarpur,
District : Gomati, 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. S. Bhattacharji, Advocate

For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing and
judgment & order : 31.08.2016

Whether fit for reporting : NO

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Bhattacharji, learned counsel appearing
for the petitioner as well as Mr. R.C. Debnath, learned Addl. P.P.
appearing for the state.

2. This is a petition under Section 397 read with Section
401 of the Cr.P.C. questioning the judgment dated 21.07.2015,
delivered in Criminal Appeal No. 41(4) of 2013 by the Sessions

Judge, South Tripura, Udaipur [as it then was] which affirmed partly the judgment of conviction by the trial court dated 13.09.2013 delivered in GR 139 of 2010 under Section 442/457/324 of the IPC. The appellate court interfered the judgment of conviction and returned the finding of conviction under Section 442/324 of the IPC. The sentence was also modified from rigorous imprisonment to 2(two) years with a fine of Rs. 10,000/- under Section 324 of the IPC by modifying the sentence from rigorous imprisonment of 3(three) years with a fine of Rs.5000/- under Section 324 of the IPC. So far the sentence under Section 452 is concerned that remained unmodified.

3. The prosecution case in brief is that on 14.10.2010 at about 2 a.m. [at night] the petitioner entered into the dwelling hut of Narayan Debnath and assaulted his wife Smt. Ahalladi Debnath with knife and also by acid. Ahalladi Debnath sustained bleeding injuries and also suffered acid injury. She cried out and the petitioner fled away. Neighbouring people informed the Natun Bazar P/S and the victim was taken to Natun Bazar Hospital for treatment. On the basis of the said information, Natun Bazar P/S Case No. 28 of 2010 under Section 448, 457 and 324 of the IPC was registered and taken up for investigation. Having the investigation completed by filing of the charge-sheet No. 22/2010 under Section 448/457/324. Taking cognizance, the charge was framed by the Judicial Magistrate, first class, Amarpur under Section 452/457 of the IPC and under Section 324 of the IPC against the petitioner separately. The petitioner pleaded innocence

and pleaded to face the trial as he denied the materials as considered for framing the charge.

4. To substantiate the charge as many as 10 witnesses including the victim, Smt. Ahalladi Debnath (PW-6) and her husband Sri Narayan Debnath (PW-5). After recording of the prosecution evidence, the petitioner and another accused who had also faced the trial was examined under Section 313 of the Cr.P.C. when the petitioner again advanced his plea of innocence.

5. On the purported appreciation of the evidence, the trial judge returned the finding of conviction under Section 452, 457 and 324 of the IPC against the petitioner by the judgment dated 13.09.2013 delivered in GR 139 of 2010. However, the co-accused Md. Jamal Miah was acquitted on benefit of doubt by the said judgment. As the petitioner felt aggrieved by the said judgment, he filed an appeal under Section 374(3) of the Cr.P.C. in the court of the Sessions Judge, South Tripura, Udaipur [as it then was] being Criminal Appeal No. 41(4) of 2013. The said appeal was partly allowed by the judgment dated 21.07.2014. Now the decision has been challenged in this petition. However, by the said judgment, the conviction under Section 324 and 452 of the IPC was maintained with modification in the sentence as stated.

6. Mr. S. Bhattacharji, learned counsel appearing for the petitioner has fundamentally raised two grounds of objection viz. (1) there is no medical evidence in regard to the injuries suffered

by PW-5 and PW-6 and (2) that the basic ingredients of Section 452 of the IPC has not been proved by the prosecution as there is no evidence regarding preparation for crime before trespassing into the hut of PW-5.

Based thereon Mr. Bhattacharji, learned counsel has strenuously argued for acquittal of the petitioner from the charge under Section 324 of the IPC and Section 452 of the IPC as the prosecution has failed to prove the charge beyond reasonable doubt.

7. Mr. R.C. Debnath, learned Addl. P.P. appearing for the state has vehemently confronted the submission made by Mr. Bhattacharji, learned counsel for the petitioner contending that PW-5 and PW-6 were the injured witnesses and it is not probable that at that deep hour of night, the people are expected to be around the place of occurrence. He has further submitted that immediately after the occurrence, several witnesses came to the place of occurrence and they have stated that they found PW-5 and PW-6 in an injured condition. As such, there is no reason why the finding of conviction be reversed. According to him, the evidence of the prosecution has to be appreciated having due regard to the special circumstances under which the transaction of crime has taken place. If those circumstances are taken care of, there cannot be any doubt that PW-5 and PW-6 were attacked by the petitioner on the dead night. Thus he opposed the prayer for acquittal.

8. For appreciating the rival contentions as surfaced, this court deems it apposite to have a short survey of the evidence recorded by the trial court. PW-1, Shri Nikunja Debnath is a co-villager of PW-5, Shri Narayan Debnath. On hearing hue and cry immediately after the occurrence from the house of PW-5, he rushed to the place of occurrence and found bleeding injury on the hand of PW-6. He has stated that the neighbours like Idhan Miah and Md. Amir Hossen also came in the house of PW-5. When he had asked PW-5 what happened he could not 'properly explain about his bleeding'. After sometimes, the police officer came to the place of occurrence and the police officer in his presence seized the wearing apparel of PW-6. He identified his signature on the seizure list. No cross examination was carried out on any of the statement or regarding his presence in the place of occurrence. PW-2, Shri Subal Bhowmik is also another co-villager who has deposed in the trial almost replicating the version of PW-1. PW-3, Md. Babul Miah has also confirmed that on 13.10.2010 hearing hue and cry he rushed to the place of occurrence and found PW-6 was lying in a senseless condition. There was a cut injury in the left hand. Inside the house, there was fire and smoke was emitting from the dwelling house of PW-5. He has also asserted that he saw a knife lying on the bed of Narayan Debnath along with one bottle of acid. On their information the police came to the place of occurrence. This witness was however declared hostile as he had not substantially supported the case of the prosecution. As such, even though the defence cross examined

him but his statement is substantively deviant and accordingly, the prosecution could not take any advantage of this statement. PW-4, Md. Nazir Islam has described nothing substantive. PW-5, Narayan Debnath, as stated earlier, is the husband of PW-6, Smti. Ahalladi Debnath. PW-5 has stated that on the day of occurrence, at deep night, when he was sleeping with his wife he noticed the scuffling between the petitioner and his wife. When he caught Akhtar Hossen the petitioner Jamal Miah, the co-accused who was acquitted, entered in that hut. The petitioner gave him a blow with knife while Jamal Miah was spraying acid from the bottle. When they raised hue and cry both the accused persons according to PW-5 fled away from the place. He has stated that there was altercation on the preceding day of occurrence with Jamal Miah, the said co-accused. He had admitted the ejahar in the evidence on identifying the thumb impression. He was confronted whether he had stated to the police officer that he caught the petitioner. PW-5 could not find such statement in his previous statement as recorded under Section 161 of the Cr.P.C. he has admitted that he and his wife were brought to Natun Bazar hospital for treatment. Even he denied the suggestion that PW-6 had an illicit relation with the petitioner. PW-6, Smt. Ahalladi Debnath has stated differently that the scuffle had taken place between her husband and Akhtar Hossen. Suddenly, Akhtar Hossen gave a blow with one knife on her hand and she sustained severe bleeding injury. During that time only, the petitioner had thrown 'something' from one bottle over our person and she felt burning sensation. In the

cross-examination she has admitted that the petitioner's wife namely Shymala Bibi lodged one case against her son. In the cross examination, she denied all the suggestions made to dislodge her statements in the examination-in-chief. PW-7, Sri Gobinda Debnath has also stated in the trial that he was called in by his son-in-law to inform about the occurrence. He immediately went to the place of occurrence, the house of PW-5. He saw their PW-6 lying on the verandah in an injured condition. He has also stated that he saw one cut injury on the left hand of Smti. Ahalladi Debnath. The police officer seized the wearing apparel (saree) and he was the witness of such seizure. He identified both the material object and his signature in the trial. PW-8, Md. Idhan Miah after hearing the hue and cry appeared there and found PW-6 in an injured condition. He was witness to the seizure of one knife and one bottle. PW-9, Md. Amir Hossen had almost replicated the statement of PW-8. PW-10, SI Sadhan Majumder is the investigating officer and he has given a brief description how he conducted the investigation by making seizure of various material objects. He had identified the seized material (saree). Even though he has stated that he collected the injury report of the victim Smt. Ahalladi Debnath and Shri Narayan Debnath but he has not stated anything whether he has submitted the injury reports with the police papers or not. Those reports are part of the evidence.

9. Having appreciated thus, this court is of the view that on the night of 13.10.2010, even though there was a scuffle inside

the house of PW-5, but the prosecution has failed to prove that during the scuffle PW-5 and PW-6 received any injury or the petitioner or the other co-accused sprayed the acid from the seized bottle. There is no dispute that PW-10 did never send the bottle with the liquid inside for Forensic examination, nor did he send the so called blood-stained saree for chemical examination to ascertain the blood, which had been located in the seized saree of PW-6. Even though, one knife had been seized from the place of occurrence but that was not also examined to find out the existence of blood and for matching with the blood in other samples.

Hence, this court is inclined to accept the contention of Mr. Bhattacharji, learned counsel appearing for the petitioner that there is no ingredient of Section 324 of the IPC. Accordingly, the petitioner is acquitted from the charge as framed under Section 324 of the IPC on benefit of doubt. However this court is satisfied there is cognate materials of Section 323 of the IPC and hence without framing any formal charge, in exercise of the powers of the court under Section 222 of the Cr.P.C., the petitioner is convicted under Section 323 of the IPC for giving hurt to PW-5 and PW-6. Having confronted thus, the petitioner is sentenced to suffer one month's imprisonment. This court is of the further view that there is no ingredients of Section 452 of the Cr.P.C. as there is no evidence as to preparation for commission of offence or to commit that offence, the petitioner along with the co-accused had trespassed into the house of PW-5. Thus, the

petitioner is also acquitted from the charge under Section 452 of the IPC but from the cognate materials as proved by the prosecution, the petitioner is liable to be convicted under Section 448 of the I.P.C. as this court finds that there is adequate material to hold that charge as proved.

10. Having convicted the petitioner in exercise of powers under Section 222 of the Cr.P.C. without framing a formal charge, the petitioner is sentenced to suffer one month rigorous imprisonment for committing the offence under Section 448 of the IPC. Both the sentences shall run concurrently. The detention of the petitioner in connection with this case, shall be set off from the substantive sentence.

11. Having held thus, this revision petition stands partly allowed.

Send down the LCRs forthwith.

JUDGE

Sabyasachi.B