

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.30 of 2013

Sri Narayan Kanda,
son of late Mangal Kanda,
resident of Village-Demcharra, Chandipara,
P.O. Forest Colony, P.S. Nepal Tilla,
District-Dhalai, formerly 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. N. Das, Advocate

For the respondent : Mr. A. Ghosh, PP

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

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Das, learned counsel for the petitioner who made his submission on 30.03.2016 as well as Mr. A. Ghosh, learned PP appearing for the State, in absence of Mr. R. C. Debnath, learned Addl. PP.

02. By means of this petition filed under Section 397 read with Section 401 of the Cr.P.C., the judgment dated 07.01.2013 by the learned Sessions Judge, North Tripura, Kailashahar delivered in Criminal Appeal No.28(3) of 2012 has been called in question. By the said judgment dated 07.01.2013, the finding of conviction

returned by the learned Assistant Sessions Judge, North Tripura, Kailasahar under Section 324 of the IPC in ST14(NT/K) of 2012 has been affirmed. By the judgment dated 22.08.2012, the Assistant Sessions Judge, North Tripura, Kailashahar convicted the petitioner under Section 324 of the IPC and sentenced him to suffer RI for two years and to pay a fine of Rs.5,000/- payable to the victim as compensation and in default of payment of fine to suffer further RI for three months.

03. By the impugned judgment even though the conviction has been maintained but the sentence has been modified by reducing RI from two years to one year, but enhancing the fine from Rs.5,000/- to 10,000/- under Section 324 of the IPC.

04. The prosecution case, in brief, is that one Calini Darlong lodged a written ejahar to the Officer-in-Charge of Nepaltilla PS disclosing that the petitioner at about 8 a.m. on 20.03.2012 attacked her mother Hilmayee Darlong, PW5, on their own jhum land by a dao and he gave a blow just below her left ear. On hearing her alarm, when her father Thanchunga Darlong, PW4, rushed towards the place of occurrence, the petitioner attacked him with his bow and arrow and her father received severe injury. Her mother was taken to 82 Mile Primary Health Centre. On the basis of the said ejahar, Nepaltilla PS Case No.02 of 2012 under Section 326/307 IPC was registered and taken up for investigation.

05. On completing the investigation, the chargesheet was filed against the petitioner under Section 326/307 of the IPC. On taking cognizance, as the offence punishable under Section 307 of the IPC is exclusively triable by the court of sessions, the police papers were committed to the Court of the Sessions Judge, who in turn transferred the case being ST14(NT/K) of 2012 to the Court of the Assistant Sessions Judge, North Tripura, Kailashahar for conducting trial in accordance with law. The trial court framed the charge against the petitioner separately under Section 307/326 of the IPC, to which the petitioner pleaded innocence and claimed to face the trial.

06. In order to substantiate the charge, the prosecution adduced 11 witnesses including the victims and the investigating officer. They have also admitted in the evidence some documentary evidence including the first information report (Exbt.5) and injury reports (Exbt.3 series and Exbt.4 series) in respect of Thanchunga Darong and Smt. Hilmayee Darlong. From the defence, two witnesses were examined to rebut the evidence as led by the prosecution. After recording the statement of the petitioner under Section 313 of the Cr.P.C., the trial court appreciated the evidence and returned the said finding of conviction.

07. Mr. N. Das, learned counsel appearing for the petitioner has submitted that the prosecution has failed to prove their case beyond reasonable doubt inasmuch as except the injured victim, Hilmayee Darlong, PW-5, nobody had seen the occurrence when

the petitioner had afflicted the blows by a dao on person of PW-5, which is just below the left ear. Strangely enough, even Hilmayee Darlong did not corroborate that the petitioner had attacked Thanchunga Darlong, PW4 with bow and arrow or PW-4 had received injuries by dao and/or arrowshot. As such, on the basis of the related witnesses who immediately rushed to the place of occurrence and said the victim, the findings as returned by the trial court as well as by the appellate court, cannot be sustained.

08. From the other hand, Mr. A. Ghosh, learned PP appearing for the State has submitted that during investigation, the weapon used for causing injury has been seized by preparing the seizure list dated 20.03.2012, Exbt.P/2/1, in presence of the witnesses namely, Vhanlalhila Darlong and Jalin Khumo Darlong. Mr. A. Ghosh, learned PP has submitted that from the reading of the testimonies of the witnesses including PWs 4, 5 and 10, it would be apparently clear that there is no missing link in the prosecution case and the prosecution's case has been squarely proved by adequate evidence. He has further submitted that the defence case of quarrel between the PW-4 and 5 has fallen through miserably as they have not stated who caused the injury on PW-5. Their version is concocted and as such those cannot be relied at all for any purpose.

09. For appreciating the rival contentions, this court has made a short survey of the evidence for a limited purpose to examine whether there is any misreading or whether the findings

are based on non-appreciation, as alleged. PW-1, Smt. Calini Darlong who is the informant has categorically stated that PW 4 and 5, her parents, took shelter at Nepaltilla PS and they were attacked by the petitioner. Her mother received a dao blow nearby the left ear whereas her father received injuries by arrowshot over his left neck. PW-2, Jalin Khumo Darlong was not only the seizure witness but he has also stated that he found his mother-in-law Hiranmoyee Darlong in front of their complex with profuse bleeding. At that point of time, his mother-in-law, PW-5, told him that the petitioner after taking attempts, caused hurt to PW-3 at jhum area. He has stated that the petitioner had caused the injury by way of dao and bow and arrow on persons of her parents-in-law. She has identified the arrow and dao as seized by Exbt.P/2. PW-3, Vhanlalhila Darlong, another seizure witness of weapons by which the injury was caused, has identified the signature of the seizure list and the weapons marked as Exbt.MO1 series. PW-4, Thanchunga Darlong who received injuries as the petitioner attacked him with dao, bow and arrow, has stated that on 20.03.2012, he and his wife Hilmayee Darlong had gone to their jhum land for working. While they were so working, keeping the distance between them suddenly he heard shouting of his wife saying 'bachao' (save me) 'bachao'. Accordingly, he rushed towards her and found that she got cut injury over just below her left ear. She told him that Narayan Kanda (the petitioner herein) caused dao injury. The petitioner shot an arrow from his bow and that struck him just over the left neck. They rushed towards the village

church for saving their life and thereafter they narrated the incident in details to the persons who gathered there. People escorted them to Nepaltilla PS where their daughter Calini Darlong, PW-1, filed the written ejahar. In the cross-examination, he did not deviate from his statement made in the examination-in-chief. Smt. Hilmayee Darlong, PW5 has also stated as under:

"About two or three months back once in the morning myself and my husband Thanchunga had one out for jum land for working. While working there, Nasrayan Kanda came and asked me why I was working over his land and then caused me 'dao' blow over my near left ear resulting injury with heavy bleeding. Receiving 'dao' injury, I made alarm calling upon my husband to save and then I ran towards home and then I was escorted to P/S by my brother and others. Later on, I also found my husband in the P/S being escorted by others and he told me that Narayan Kanda also shoot arrow over his left neck. We stated details to our daughter Kalini and then she made written FIR in the P/S. Later on, we were shifted to 82mile hospital for treatment and there we remained admitted under treatment for about 5/6 days. Accused is present at the dock and identified. Accused is also our neighbour."

10. Roiholiya Darlong, PW-6, has stated that when he asked PW-4 how he received the injury over his left neck, he told him that Narayan Kanda, the petitioner, caused arrow-injury over his left neck. He escorted PW-4, his uncle, to the Nepaltilla PS. Thannura Darlong, PW-7, has stated that suddenly on 20.03.2012 at about 9/10 a.m. PW-5 appeared at their place and he found her with bleeding injury over a place nearby left ear. She narrated the incident saying that the petitioner had caused the dao blow. He was amongst those persons who escorted her to the Nepaltilla PS. He has further stated that after sometime his brother, PW-4, came

to that place. Kajal Deb Roy, PW-8, is the scribe who has stated in the trial that he wrote the ejahar on the dictation of PW-1. Lalthungkhuma Darlong, PW-9, was tendered by the prosecution without examination. Dr. P. N. Darlong, PW-10, is the Medical Officer who treated the injured PWs-4 and 5 in the 82 Mile Primary Health Centre. He has stated that he found the following injuries.

"No.1. Incised cut injury over left side of the neck below ear size 2x3x4 Centimeter caused by sharp cutting weapon and the nature of the injury was grievous.

No.2. Tenderness both scrotum over both caused by blunt object and it was grievous in nature.

Thereafter I also examined Smt. Hrinmony Darlong and found the following injuries over her person.

No.1. Incised own at left side of the face, size 6x2x0.5 centimeter caused by sharp weapon and grievous in nature.

No.2. Lacerated own over left ear size .5x5 centimeter caused by sharp weapon nature slight.

No.3. Hemotoma at head buckets .5x3 C.M. Caused by blunt weapon grievous in nature.

No.4. Abdomen blood injury all over caused by blunt weapon,,, grievous in nature.

No.5. Hemetoma back of chest caused by blunt weapon grievous in nature.

Both the above patient were remained admitted in the hospital under treatment and they were discharged on 25/03/12. I also prepared injury of the above patient in details separately. These are the said report prepared and signed by me. On identification the injury report of Thangchung Darlong is marked Exbt.3 (series) and the injury report of Hrilmony Darlong as Exbt.4 (Series). The injuries sustained by Thangchung Darlong is very much possible to be caused by arrow (Ext. MO.2) and the injuries sustained by Hrilmony Darlong is also very much possible to be caused by Dao (Ext. No.1)."

He has confirmed that by Exbt.MO1 the injuries might be caused. Madan Kr. Chakma, PW-11, was the Investigating Officer and he narrated in the trial how he conducted the investigation on collecting the injury reports and on causing the seizure of the weapons, used in attacking the PWs.4 and 5. As he found a prima facie case for sending for trial and he filed the chargesheet, Exbt.8 series.

11. From the evidence, there is no reason to disbelieve that the petitioner had attacked both PWs.4 and 5 with sharp weapon like dao, Exbt.MO1 series with bow and arrow. The testimony of PW-10 in particular has erased any doubt that the injuries were caused by sharp cutting weapon and on showing him, the dao was seized, Exbt.MO1 series. He has confirmed that such injuries might be caused by that kind of weapon. Dao is a dangerous weapon. It can be used for giving grievous injuries or for killing someone and as such, this court is of the opinion that finding of conviction as returned under Section 324 of the IPC is not liable to be interfered with.

12. In the result, this petition stands dismissed. The petitioner shall surrender within 15.06.2016 in the Court of the Assistant Sessions Judge, North Tripura, Kailashahar (now Unakoti Judicial District) for suffering the sentence as imposed by the impugned judgment and order. It is needless to say that the detention, if any, undergone by the petitioner during inquiry or trial

or thereafter that shall be set off from the sentence under Section 428 of the Cr.P.C.

Send down the LCRs forthwith.

JUDGE

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