

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

CRL.A. No.40 of 2017

Sri Abdul Latif Palwan,

son of late Abdul Ajij Palwan,
resident of Khilpara, P.O. & P.S.
R.K. Pur, Udaipur, District- Gomati

..... Appellant

- V e r s u s -

The State of Tripura

..... Respondent

For the appellant	:	Mr. D.C. Roy, Adv.				
For the respondent	:	Mr. A. Roy Barman, Addl. P.P.				
Date of hearing & delivery of Judgment & Order	:	30.04.2019				
Whether fit for reporting	:	<table border="1"><tbody><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>✓</td></tr></tbody></table>	Yes	No		✓
Yes	No					
	✓					

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel appearing for the appellant as well as Mr. A. Roy Barman, learned Addl. P.P. appearing for the State.

[2] This is an appeal by the convict, namely Sri Abdul Latif Palwan who was charged under Sections 342/325/307 of the IPC and convicted under Sections 342 and 325 of the IPC by the judgment and order dated 29.11.2017 delivered in ST 21(GT/U) of 2015 by the Sessions Judge, Gomati Judicial District, Udaipur. It is to be noted that by the said judgment and order, the

convict, hereinafter referred to as the appellant, has been acquitted from the charge under Section 307 of the IPC. As consequence of the conviction, the appellant has been sentenced to suffer 2[two] years rigorous imprisonment with a fine of Rs.5,000/- under Section 325 of the IPC with default stipulation. Further, the appellant has been sentenced to suffer rigorous imprisonment for 1[one] year under Section 341 of the IPC. It has been observed that the sentences shall run concurrently and the period of custodial detention of the appellant during investigation or the trial shall be set off from the substantive sentence of imprisonment. The appellant was in custody from 28.02.2015 to 02.03.2015. The said judgment and order dated 29.11.2017 is under challenge in this appeal.

[3] The genesis of the prosecution is rooted in the complaint filed by one Mannan Miah Khadim [PW-2] revealing that on 14.12.2018 at about 5.20 o'clock in the evening one Sahara Bibi of their locality had taken his mother, namely Fulmeher Bibi to their house which situate in their neighbourhood. She was beaten by a wooden piece by the appellant with intention to kill her. After having the information of that occurrence, PW-2 rushed to their house and found the victim [PW-1] lying in an unconscious state having bleeding injuries on the head. The victim was immediately transported to the Udaipur District Hospital and

having assessing her condition she was referred to the GBP hospital at Agartala.

Based on the said complaint, R.K. Pur Women P.S. Case No.147 of 2014 under Sections 341/307 of the IPC was registered and taken up for investigation. After completion of the investigation, the final police report was filed against the appellant and his mother namely, Sahara Bibi who called the victim to her house. Having taking cognizance, the police papers were committed to the court of the Sessions against the appellant and other accused person, namely Sahara Bibi. The charge was framed under Sections 325/341/307 of the IPC against the appellant whereas against the other accused, the charge was framed under Section 325 of the IPC. On culmination of the trial, Sahara Bibi was acquitted from the charge having no evidence against her. As stated earlier, the appellant was convicted under Sections 341 & 325 of the IPC. When the charge was read to the accused persons they denied the charge and claimed to face the trial.

[3] In order to substantiate the charge, the prosecution has adduced as many as 5 [five] witnesses including the victim [PW-1] and the medical officer [PW-4] who examined the victim at the District Hospital, Udaipur. After the prosecution evidence was recorded, the appellant was examined under Section 313 of the Cr.P.C. to have his say in response to the incriminating materials

surfaced in the evidence. Thereafter, on appreciation of the evidence, the finding of the conviction as stated has been returned.

[4] Mr. D.C. Roy, learned counsel appearing for the appellant has submitted that the trial court did not consider the provision of Section 360 of the Cr.P.C. for purpose whether the appellant can be provided the benefit under the Probation of Offenders Act. According to Mr. Roy, learned counsel if the transaction and the circumstances are considered, it would be apparent that there was no premeditation and the transaction happened on support of moment and even in the evidence, the reason for breaking out of such incident is not available. Considering the age of the appellant who was 36 years at the time of recording his statement under Section 313 of the Cr.P.C., the sentence may be suspended and the appellant may be released on probation on condition of good conduct. In the alternative, Mr. Roy, learned counsel has submitted that even though there are separate houses in an around the place of occurrence no independent witness was adduced by the prosecution and as such, the conviction totally hinges on the evidence of the victim and her son as well as the medical officer who examined her in the District Hospital at Udaipur. The best evidence according to Mr. Roy, learned counsel, has been withheld. Moreover, the investigation, according to him, was

fairly carried out. For which, which, the conviction has been returned and hence this court may interfere with the judgment of conviction. It may be noted that the prosecution has admitted in the evidence the injury report [Exbt.3], the statement of the victim as recorded under Section 164(5) of the Cr.P.C [Exbt.1] and the hand sketch map of the place of occurrence [Exbt.5].

[5] From the other side, Mr. A. Roy Barman, learned Addl. P.P. appearing for the State has submitted that the prosecution has quite strongly established the charge and therefore, no reconsideration from this court is called for. In addition to that, Mr. Roy Barman, learned Addl. P.P. has taken this court to the testimony of PW-3, Smt. Mampi Das Begam who is the daughter-in-law of the victim who has stated that she saw the appellant assaulting her mother-in-law [the victim] on the roadside by a 'wooden stick'. After seeing that occurrence, she had rushed back to their house and informed the matter to her husband. Mr. Roy Barman, learned Addl. P.P. has strongly resisted the prayer for suspension of the sentence and allow the appellant remain on probation. According to him, this is not a case where this court should exercise its power under Section 360 of the Cr.P.C.

[6] For appreciating the submission made by the learned counsel appearing for the parties, this court would take a short survey of the evidence as recorded in the trial. According to this court, the principal witness is the victim herself.

PW-1, Smt. Fulmeher Bibi is the victim whose statement was earlier recorded by the Judicial Magistrate under Section 164(5) of the Cr.P.C. In the trial, she has stated that Sahara Bibi, the other accused is her close-door neighbour. On 14.12.2014 in the evening at about 6 pm Sahara Bibi called her to her house and she went there. Sahara Bibi was discussing with her about the family dispute between her two sons, namely Abdul Latif Palwan [the appellant] and Abdul Mannan Palwan. At that time, suddenly Abdul Latif Palwan hit her on her back side with a wooden file. She fled away from the spot in order to save her and when she reached near the gate of her house, she lost her sense. She has stated that thereafter she cannot say anything. She regained her sense in the GBP hospital, Agartala. Due to the said assault, she received injuries on her left ear, back side around the neck and also in the jaw. She has further stated that earlier to that occasion, one day she had scolded Abdul Latif Palwan on the issue of throwing one female child of her neighbour, Sanjib Das into a pond. Concerning the incident, one day police produced her in the court of the Chief Judicial Magistrate, Gomati District where she gave statement against him. After this incident as well, her statement was recorded having been produced by the police. The said statement when read over to her in the trial, she admitted that statement [Exbt.1] to be her statement.

In the cross-examination, the defence has pointed out that PW-1 did not make any such statement in respect of the appellant's throwing one female child of Sanjib Das into the pond. Due attention was drawn to her previous statement as recorded under Section 161 of the Cr.P.C. and PW-1 has clearly admitted that no such statement was recorded there. She has denied all suggestions made by the defence, contrary to what she had stated in the examination-in-chief. She stood by her statement as made in the trial. She has also admitted that the appellant had also filed one complaint against her in respect of the said occurrence. Beyond that she had stated nothing.

[7] The informant has deposed in the trial as PW-2 and stated that on 14.12.2012 in the evening when he was watching TV in his own house PW-3, his wife, namely Mampi Das Begam rushed to the house and informed him that his mother [PW-1] was lying on the road in front the house of Uttam Ghosh with bleeding injury on her face. Thereafter, he brought his mother to the District Hospital, Udaipur by a vehicle. From there her mother was referred to GBP hospital at Agartala. After PW-1 regained her sense, she had stated to PW-2 that the appellant had beaten her on the roadside. He has further stated that the information in writing which was filed by him was written by one Kabil Miah Khadim at his dictation. It is to be noted here that Kabil Miah Khadim was not produced by the prosecution.

In the cross-examination nothing could be dented to what has been stated by PW-2 in his examination-in-chief.

[8] PW-3 as pointed out by Mr. Roy Barman, Addl. P.P. has stated that she found her mother-in-law [the victim] lying on the road in an unconscious state. She informed her husband [PW-2] and thereafter, the victim was taken to the hospital. The victim regained her sense after 5/6 days at GBP hospital and she was admitted in the hospital for 15/16 days.

In the cross-examination, nothing of what PW-3 has stated in the trial could be dented.

[9] PW-4, the medical officer, Dr. Niladri Sengupta who examined the victim on 14.12.2014 at the GBP hospital has stated that at that time, the victim was in a semi-conscious state. On examination, he found that there was stitched-wound on the left pinna which appeared to be simple in nature. Blood clot was over the lower gingiva which appeared to be simple and that injury, according to PW-4, is simple in nature. After the x-ray and CT scan of brain were done, it revealed that there was fracture mandible at multiple site and fracture of left temporal bone. Injuries were fresh and finally he gave his opinion that those injuries were grievous in nature. The patient was discharged from the hospital on 24.12.2014 whereas she was admitted on 14.12.2017, meaning the patient was admitted in the hospital for 10 days. He had prepared the report and the said report was

placed in the evidence by him. There was no cross-examination as such which had a value for purpose of appreciating the nature of the injuries that was received by the victim.

[10] PW-5, Smt. Sakuntala Debbarma, one Sub-Inspector R.K. Pur police station having been entrusted by the Officer-in-Charge of the said police station carried out the investigation. She had prepared the site map of crime, examined the witnesses and arranged examination of the victim under Section 164(5) of the Cr.P.C. In the course of the investigation, she collected the injury report. She examined 4[four] witnesses as stated and thereafter, finding a strong *prima-facie* case for commission of offence by the accused persons punishable under Sections 341/325/307 of the IPC, she filed the final police report in the court. In the cross-examination, she was put to certain questions regarding the site map which she had prepared and the location of crime. She has clearly admitted that there is no indication in the CD why she had scratched out the date, written by her in the statement of Fulmher Bibi and other, namely Chakina Bibi, which were recorded under Section 161 of the Cr.P.C. Beyond aspects, no cross-examination was carried out by the defence. No evidence as well, has been adduced by the defence.

[11] Having appreciated the evidence, this court does not find any evidence relating to the wrongful restraint punishable under Section 341 of the IPC which provides that whoever

wrongfully restraints any person shall be punished for that offence of the wrongful restraint as defined under Section 339 of the IPC and hence, the appellant is acquitted from that charge. So far the charge under Section 325 is concerned, it is apparent that in the face of the evidence that unambiguously, the victim has stated that she was beaten up by the appellant with a wooden shaft and she lost her sense when she was fleeing away from the place of occurrence to reach her house and as such, the prosecution has by aid of oral and documentary evidence has proved that the appellant caused the grievous hurt voluntarily. In this regard, it is to be observed that the definition of grievous hurt is not dependent on the medical opinion. In the case in hand, the evidence shows that the hurt falls within the definition of the grievous hurt as provided under Section 320 of the IPC. As it is evident from the injury report as well as the testimony of PW-4 that there was a permanent privation of the bone, this hurt should be brought under the illustration fourthly under Section 320 of the IPC. Therefore, this court does not have any difficulty to hold that the hurt was in the category of the grievous hurt and as such, there is no infirmity in the finding as returned by the trial court. The objection as raised by Mr. Roy, learned counsel appearing for the appellant as regards the related witnesses, this court is of the view that the evidentiary rule is that of exercising extra caution while appreciating the evidence of the related witness but not to discard them unceremoniously.

This court is confronted with a case where the victim has come to the court and her statement is found to be truthful as it completely in tune with the evidence and as such, this court does find it justified to rely on the testimony of PW-1.

[12] Having observed thus, the finding of the conviction, as returned, is affirmed by this court. However, having regard to the circumstances of the case, this court is of the view that the sentence is required to be re-appreciated. However, this court is in agreement with Mr. Roy Barman, learned Addl. P.P. appearing for the State that this is not a case where this court may take recourse to Section 360 of the Cr.P.C. for purpose of invoking Probation of Offenders Act to suspend the sentence and release the appellant on probation. If that is done that will not be the sentence proportionate to the offence. Moreover, the circumstances prove that there was no provocation from the victim and hence, this court is of the view that it would be proportionate that the sentence is reduced to 1[one] year rigorous imprisonment with a fine of Rs.5,000/-, in default of payment of fine, to suffer further simple imprisonment for one month.

Having observed thus, this appeal stands partly allowed.

Send down the LCRs forthwith.

JUDGE

Sujay