

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. Rev. P No.28/2018**

**1. Sri Dinesh Chandra Shib ,**  
Son of late Harendra Nath Shib.

**2. Shri Paresh Chandra Shib,**  
Son of late Harendra Nath Shib.

**3. Sri Diptanu Shib,**  
Son of Sri Dinesh Chandra Shib.

**4. Sri Dipen Shib,**  
Son of Sri Dinesh Chandra Shib.

All resident of West Bank of Jagganath Dighi,  
P.S. R. K. pur, District-Gomati, Tripura.

..... **Accused Petitioner(s).**

Versus

**THE STATE OF TRIPURA**

Represented by PP, High Court of Tripura, Agartala.

..... **Respondent(s).**

**BEFORE**

**THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY**

For Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate.  
Mr. R. Saha, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

Date of hearing : 3<sup>rd</sup> March, 2021.

Date of Judgment & Order : **30<sup>th</sup> June, 2021**

Whether fit for reporting : NO.

**JUDGMENT AND ORDER**

**[1]** By means of filing this criminal revision petition, petitioners have challenged the judgment dated 31.05.2018 passed by the learned Sessions Judge, Gomati Judicial District, Udaipur in case No. Criminal Appeal 25(2) of 2016 whereby the learned Sessions Judge affirmed the judgment and order of conviction of the petitioners under Section 323

read with Section 34 IPC passed by the Chief Judicial Magistrate, Gomati Judicial District, Udaipur in case No. PRC (SP) 98 of 2015 while reducing the period of probation of the petitioners from two years to one year.

**[2]** Factual background of the case is as under:

Sri Jatan Shib of Radhakishorepur, Udaipur in Gomoti Judicial District lodged a written FIR with the Officer-in-charge of Radhakishorepur police station at Udaipur alleging, inter alia, that he had a land dispute with the petitioners for which a civil case was pending in the Court of the Civil Judge (Sr. Division) at Udaipur in Gomati Judicial District. The petitioners were constantly pursuing the informant to withdraw the case. The petitioners told him that unless the case was withdrawn, the informant would be implicated in criminal cases and ultimately he would be killed. On 24.05.2015 at about 10 'O' clock in the night, all the petitioners together abused the informant with filthy words. On the following day at about 8.45 'O' clock in the morning the petitioners attacked him with a dao (sharp edge weapon) and assaulted him with fist blows. They also kicked on his body by grounding him. As a result, the informant received injury and pain in his arms, legs, waist and head. On the same day he lodged the FIR against the petitioners.

**[3]** Based on the said FIR R.K.Pur P.S. Case No. RKP 063 under Sections 341 and 323 read with Section 34 IPC was registered against the petitioners and the case was endorsed to Biswajit Das, Sub-Inspector of Police of R.K.Pur police station (PW-8) for investigation.

**[4]** In the course of investigation the crime scene was visited by the investigating officer and a hand sketch map of the crime scene indicating the material locations in a separate index was drawn by the Investigating Officer. The material witnesses including the informant (PW-1) were examined and their police statements under Section 161 Cr. P.C were recorded by the I.O. Sufficient evidence supporting the charges having been collected, the I.O submitted Challan No.54 of 2015 dated 31.05.2015 against the petitioners for trial of the case on the charges of offence punishable under Section 341 and 323 read with Section 34 IPC.

**[5]** Having taken cognizance of offence, the trial Court summoned the petitioners. On their appearance before the Court the substance of accusation was read over and explained to the petitioners in terms of Section 251 Cr. P.C which is as under:

*"The accusation brought against all of you by the prosecution is that on 25.4.15 at about 8.45 hours when the complainant Jatan Shiv was proceeding from his home by riding his motor bike bearing TR03-9866 and reached near your house at west bank of Jagganath dighi at that time all of you in furtherance of your common intention wrongfully restrained the complainant and assaulted him by fist, blows and kicks and at that then hearing his hue and cry his elder brother Tapan Shiv and his mother Ashalata Shiv and other family members came to his rescue at that time you also assaulted the brother of the complainant by a bamboo stick and threatened him as his family members with dire consequences. And by doing such acts you have committed the offence punishable u/ss. 341/323/506 read with Section 34 of IPC and within cognizance of this Court"*

The petitioners pleaded not guilty to the charge and desired to stand the trial.

**[6]** During trial, prosecution examined as many as 8(eight) witnesses including the informant and Investigating Officer and exhibited

as many as 5(five) documents to establish the charges against the petitioners. Among the witnesses examined by the prosecution, PW-1 is the informant, PW-2 Smt. Sumitra Banik Shiv is the wife of the informant. PW-3, Smt. Ashalata Shiv is the mother of the informant. PW-4 Sri Tapan Shiv is the elder brother of the informant. PW-5 Smt. Anamika Shiv is the wife of PW-4 and sister-in-law of the informant. PW-6 Md. Mamataj Uddin Ahammed is a neighbor of the informant, PW-7 Dr. Tamal Sarkar is a Medical Officer who examined the injured informant in the OPD of Tripura Sundari Sub-Divisional Hospital at Udaipur and PW-8, Sri Biswahit Das is the Investigating Officer.

**[7]** After the recording of the prosecution evidence was over, the petitioners were examined under Section 313 Cr. P.C separately. In their reply statements, they simply denied the charge and stated that they were falsely implicated in the case.

**[8]** On appreciation of evidence, the trial Court found the petitioners guilty and convicted them for having committed offence punishable under Section 323 read with Section 34 IPC while acquitting them of the charges of offence punishable under Sections 341 and 506 read with Section 34 IPC. Having found that no previous conviction was proved against the petitioners and they had no criminal antecedents, the trial Court released them on probation of good conduct and placed them under the supervision of a Probation Officer for a period of two years observing as under:

*"In the result, I find, the prosecution failed to prove its case of the offence punishable under Section 341/506/34 of IPC against the accused Sri Dinesh Ch.*

Shib, Sri Paresh Ch. Shib, Sri Dipen Shib and Sri Diptanu Shib and, accordingly, the accused Sri Dinesh Ch. Shib, Sri Paresh Ch. Shib, Sri Dipen Shib and Sri Diptanu Shib are acquitted from the liability of the offence punishable under Section 341/506/34 of IPC.

However, I find, the prosecution has been able to prove its case against the accused Sri Dinesh Ch. Shib, Sri Paresh Ch. Shib, Sri Dipen Shib and Sri Diptanu Shib for the offence punishable under Sections 323/34 of IPC. Accordingly, the accused Sri Dinesh Ch. Shib, Sri Paresh Ch. Shib, Sri Dipen Shib and Sri Diptanu Shib are convicted for offence punishable under Sections 323/34 of IPC.

**Consideration Under Probation of Offender Act, 1958 :-**

Now, I am to consider whether the convict can be given benefits under Probation of Offenders Act, 1958. In this respect, learned counsel for the convicted persons submitted that as the convict Sri Dinesh Ch. Shib is aged about 62 years, convict Sri Paresh Ch. Shib is aged about 58 years and the convict Sri Diptanu Shib is aged only 26 years and there is no material that the accused of this case are habitual offenders the convicted persons are liable to get benefit under the Probation of Offenders Act. Having considered the facts and circumstances of this case and considering the fact that the convict Sri Dinesh Ch. Shib is aged about 62 years, convict Sri Paresh Ch. Shib is aged about 58 years and the convict Sri Diptanu Shib is aged only 26 years and there is no material that the convicts of this case are habitual offenders and one time incident occurred and the offence is punishable under Section 323 of IPC only, I am of the view that the convicted persons are entitled to get benefit of the Probation of Offenders Act, 1958 specially in the fact and circumstances where there is no material with the case record about the previous bad conduct of the convicts. Thus, in my view, the convicted persons may be released on probation of good conduct for two years and the same would meet the ends of justice.

Thus, therefore, I find, in the present case, it is expedient to and it will be proper to release the convicted persons on probation of good conduct instead of sentencing them at once to any punishment on their execution of a bond, with one surety of Rs.10,000/- (Rupees ten thousand) each, to appear and receive sentence when called upon during the period of 2 (two) years and in the mean time to keep the peace and and be of good behaviour.

Accordingly, the convicts namely Sri Dinesh Ch. Shib, Sri Paresh Ch. Shib, Sri Dipen Shib and Sri Diptanu Shib are directed to appear before this court on the next date fixed for executing a bond in view of Section 4 of the Probation of Offenders Act, 1958 and as stated above."

[9] The petitioners assailed the judgment in appeal in the Court of the Sessions Judge at Udaipur in Gomati Judicial District. The learned Sessions Judge re-assessed the entire evidence and by an elaborate judgment upheld the conviction of the petitioners under Section 323 read with Section 34 IPC. The learned Sessions Judge however, reduced the period of their probation from two years to a period of one year directing the petitioners to appear before the trial Court for execution of bond before the Probation Officer in terms of Section 4 of the Probation of Offenders Act, 1958 observing as under:

"10. In view of the above it is seen that there is clear and convincing evidence of the complainant-cum-victim and other Pws about the assault on the complainant and Tapan Ch. Shib by the accused persons and there is clear corroboration of their accounts by the medical evidence of the doctor Pw 7 Dr. Tamal Sarkar who has stated that on 25.04.2015 he examined Sri Jatan Shib and Sri Tapan Shib at TSD Hospital, Udaipur and on examination of Sri Jatan Shib he found mild bleeding injury from the left ear and swelling of left parietal part of the head of Jatan Shib and the injuries were simple in nature. PW. 7 also deposed that on examination of Tapan Ch. Shib he found mild bruise over his left knee joint and the injury is simple in nature. The evidence of PW. 7 is supported by Ext. 2 and Ext. 3, the injury reports of Jatan Shib and Tapan Ch. Shib.

In cross-examination, which is galore, from the side of the defence, no remarkable infirmity in the evidence of the Pws could be elicited and as such there is no reason to disbelieve their evidence so far as the fact of assault on the complainant Jatan Shib and Tapan Ch. Shib by the appellants is concerned.

11. In view of the above, and the clear and convincing evidence of the victims and other Pws and the corroboration of the oral evidence by the medical evidence of PW 7 and the Pws having remained unshaken in cross-examination on material particulars, and the accused persons having acted jointly in a group, I am of the view that the Learned Trial Court has rightly convicted the appellants u/s 323/34 of the IPC and there is no reason to interfere with the order of conviction recorded by Learned Trial Court.

12. So far as the question of probation is concerned, the learned trial court has considered the age and antecedents of the convicts and the facts and circumstances of the case and that there is no material to show that the accused persons are habitual offenders

and further that they have been convicted of offence is punishable under Section 323 of IPC only. Accordingly he has concluded that they are entitled to get the benefit under the Probation of Offenders Act. So, instead of sentencing them at once to any punishment, he has ordered that the convicted persons be released on probation of good conduct for two years on furnishing bond of Rs. 10,000/- with one surety each of like amount.

13. Situated thus, I find no justification to take a different view so as to disturb the findings of the trial court regarding the release of the convicts on probation of good conduct. However, considering all aspects and hearing the learned counsels, I think the period of probation may be reduced from two years to one year.

#### ORDER

14. In the result, the appeal is partly allowed.

The judgment dated 09.05.2016 passed by learned Chief Judicial Magistrate, Gomati, Udaipur in case No. PRC (SP) 98 of 2015 whereby he has convicted the appellants namely Dinesh Chandra Shib, Paresh Chandra Shib, Dipen Shib and Diptanu Shib u/s 323/34 of IPC is hereby upheld.

The period of probation is reduced from two years to one year.

The appellants are ordered to be released on probation of good conduct for 01 (one) year on furnishing bond of Rs.10,000/- with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Gomati, Udaipur.

15. The convicts namely Sri Dinesh Ch. Shib, Sri Paresh Ch. Shib, Sri Dipen Shib and Sri Diptanu Shib are directed to appear before Ld. CJM, Gomati, Udaipur for executing a bond in terms of Section 4 of the Probation of Offenders Act, 1958 as stated above.\*\*\*\*\*

**[10]** As stated the petitioners have challenged the judgment of the Sessions Judge by filing the present petition mainly on the following grounds:

(i) The trial Court as well as the appellate court did not appreciate the inconsistencies appearing in the evidence of the prosecution witnesses and erroneously held the petitioners guilty relying on their evidence.

(ii) The Courts below did not appreciate the medical evidence properly and came an erroneous finding that the injuries sustained by the informant (PW-1) was caused to him from the alleged assault.

(iii) The investigation was completely a shallow investigation. The Investigating Officer could not even identify the place of occurrence where the alleged occurrence actually took place.

**[11]** While arguing for the petitioners, Mr. B. N. Majumder, learned Sr. counsel argued that evidently the informant (PW-1) falsely implicated the petitioners in the present case owing to their long standing property dispute. According to Mr. Nandi Majumder, learned Sr. advocate, all the witnesses belong to the same family who conspired to prosecute the petitioners on false charges of assault and gave false statement before the trial Court in corus to get the petitioners punished. It is submitted by learned Sr. counsel that the Courts below did not appreciate their evidence from the right perspective and arrived at an erroneous conclusion and wrongly convicted and punished the petitioners which needs to be set aside in this criminal revision petition.

**[12]** Mr. Ratan Datta, learned Public Prosecutor on the other hand argued that the concurrent findings of the Courts below based on sufficient evidence do not call for any interference in this criminal revision. According to Mr. Datta, learned P.P, the trial Court having duly considered the facts and circumstances and the age and antecedents of the petitioners rightly released them on probation which was also upheld  
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by the appellate Court and such findings of the courts below should not be disturbed. Learned P.P therefore, urges for dismissal of the criminal revision petition.

**[13]** While arguing in the case, learned counsel representing the parties had taken this court to the evidence of the prosecution witnesses. PW-1, Sri Jatan Shiv is the informant who lodged the written FIR with the police station after the alleged incident of assault. The PW stated in his examination in chief that at the material time he was going to his work place on his motor bike. On the way, the petitioners intercepted him, pulled him down from his bike and assaulted him with fist blows and lathi, as a result of which he received pain and injury. His brother Tapan Shiv who came to save him was also assaulted by the petitioners. Later, the PW received treatment in Tripura Sundari Hospital. According to him, his wife Smt. Sumita Banik Shiv, brother's wife Smt. Lipika Debnath and his mother, Smt. Ashalata shiv and neighbour Md. Momtaz Mia also witnessed the occurrence.

The PW was subjected to an incisive cross examination. In his cross examination he admitted that his family had a property dispute with the petitioners over partition of their ancestral property for which he along with his brother Tapan Shiv filed a partition Suit being TS(Partition) 5/2015 in the court of the Civil Judge (Sr. Division) at Udaipur. It was suggested to the PW that he along with his brother Tapan Shiv entered into the house of the petitioners and assaulted Paresh Shiv and his wife. The PW denied the suggestion.

**[14]** Pw-2, Smt. Sumitra Banik Shiv who is the wife of informant PW-1 stated in her examination in chief that when her husband was going to his work place on his bike the petitioners stopped him in front of their house and assaulted him with lathi and fist blows. Having seen the assault on her husband she raised cry. Her brother in law, Tapan Shiv, sister-in-law Smt. Anamika Shiv and mother-in-law, Smt. Ashalata Shiv arrived at the place of occurrence and they saved her husband from the assault.

In her cross examination, she affirmed the fact that the petitioners assaulted her husband in front of their house when he was going to his work place on his motor bike at the material time. The defence counsel could not extract anything from the PW to embellish her statement made in her examination in chief.

**[15]** PW-3, Smt. Ashalata Shiv, 84 years old mother of the informant also supported the case by saying that when his son Jatan (PW-1) was going to his work place the petitioners stood on his way in front of their house and pulled him down from his motor bike. Thereafter they had assaulted him, as a result of which her son received pain and injury.

In her cross examination, the PW stated that the accused petitioners were also her sons but presently she was living with her son Jatan Shiv (PW-1). She denied the suggestion of the accused petitioners that her son Jatan Shiv was not assaulted by the petitioners. She also denied the suggestion that her son Tapan Shiv did not receive any injury while he came to save his brother Jatan Shiv.

**[16]** PW-4, Sri Tapan Shiv, elder brother of the informant also supported the prosecution case by saying that the petitioners who were his younger brothers, assaulted his brother Jatan Shiv on 25.04.2015 at about 8.30 am when he was going to work place on his motor bike. He tried to save his brother from the assault. At that time the petitioners gave a blow on his back by a wooden file.

In his cross examination, he stated that he and his brother Jatan Shiv filed a partition suit against his petitioner brothers for partition of their ancestral property which was pending in the Court of Civil Judge, (Sr. Division) in Gomati Judicial District. He denied the suggestion of the accused petitioners that they did not assault Jatan Shiv. He also denied their suggestion that they did not assault him while he had gone to save his brother.

**[17]** PW-5, Smt. Anamika Shiv, wife of PW-4 gave similar statement. She stated that his brother-in-law Jatan Shiv and husband Tapan Shiv were assaulted by the accused petitioners in front of their house and she witnessed the occurrence.

In his cross examination, the accused tried to impeach her evidence by giving some suggestions to her. The witness denied the suggestion of the accused petitioners that they did not assault her brother-in-law Jatan Shiv. She also denied their suggestion that they did not assault her husband, Tapan Shiv when he had gone to save his brother.

**[18]** PW-6, Md. Mamtaz Uddain who is a neighbour of the informant as well as of the petitioners supported the prosecution case in his examination in chief by stating that he witnessed the petitioners assaulting the informant and his brother Tapan Shiv in front of their house. He was also cross examined by petitioners at length. It was suggested to him that neither Jatan Shiv nor Tapan Shiv were assaulted by the petitioners. The PW denied the suggestion.

**[19]** PW-7, Dr. Tamal Sarkar attended the injured PW-1 at Tripura Sundati Sub-Divisional Hospital, Udaipur on 25.04.2015 and found mild bleeding in the left ear of the injured and swelling on his head. He recorded the injuries in his report which was exhibited at the trial as Exbt.

3. Statement of the witness is as under:

*"On 25.4.15 I was posted as medical officer at the Tripura Sundari Sub-Divisional hospital, Udaipur. On that day, one patient namely, Jatan Shib was examined in the OPD of Tripura Sundari Sub-Divisional hospital, Udaipur with the history of physical assault. On examination I have found 1. There was mild bleeding from left ear 2. Swelling of left parietal part of the head. The injury were simple in nature. This is the injury report prepared by me which is marked as Exbt.2 as a whole. These are my signatures on the said injury report which is marked as Exbt.2/1 & 2/2 respectively. On the same day, another patient namely, Sri Tapan Shib was examined at the OPD of Tripura Sundari Sub-Divisional hospital, Udaipur with the history of physical assault. On examination I have found 1. Mild bruise over left knee joint. The injury is simple in nature. This is the injury report prepared by me which is marked as Exbt.3 as a whole. These are my signatures on the said injury report which are marked as Exbt. 3/1 & 3/2 respectively."*

The Medical Officer was cross examined by the counsel of the petitioners. It was stated by him in cross examination he did not mention the age of injury in his report. He denied the suggestion of the petitioners

that he submitted a vague report following the request of the Investigating Officer.

**[20]** PW-8 is the Investigating Officer of the case who stated in his examination in chief that in the course of his investigation he visited the crime scene and indicated the material locations in his hand sketch map and index (Exbt.-5). The PW also stated that he recorded the police statements of all the materials under Section 161 Cr. P.C. Having found sufficient materials, supporting the charges, he submitted the charge sheet against the petitioners.

In his cross examination, the Investigating Officer stated that he did not examine retired headmaster, Sachindra Ch. Das who was living in close proximity of the place of occurrence.

**[21]** Having considered the facts and circumstances of the case and the evidence on record, this Court is of the view that the unimpeachable statements of the prosecution witnesses recorded at the trial has clearly established that informant PW-1 was assaulted by his accused brothers at the material time which was witnessed by his wife, elder brother Tapan Shiv, sister-in-law and his mother. Evidently, the informant, PW-1 and his brother Tapan Shiv has a property dispute with their accused brothers over the division of their ancestral property and a case was pending on this issue in the Civil Court which developed a bitter relationship among the brothers. Even the mother (PW-3) came forward to give evidence against her accused sons. There is no reason to disbelieve her evidence. All the prosecution witnesses gave a very

consistent, corroborative and trustworthy evidence against the accused petitioners. The accused petitioners were also given ample opportunity to impeach their evidence by cross examination. The case record would demonstrate that the witnesses were put to incisive cross examination by the counsel of the petitioners but their evidence could not be demolished through such cross examination. Therefore, this Court is of the view that the impugned judgment was passed on proper appreciation of facts, evidence and law and there is no reason to interfere with the concurrent findings of the Courts below with regard to the conviction of the petitioners.

**[22]** In view of the nature of the offence and the age and antecedents of the petitioners and the fact that the informant and the petitioners are full blooded brothers, the trial Court instead of awarding any sentence to the petitioners, extended the benefit of the Probation of the Offenders Act, 1958 to them by allowing their release on probation for a period of two years and placing them under the supervision of the Probation Officer for a period of two years which was modified by the appellant Court by reducing the period of probation from two years to one year. There is no fault in the findings of the appellate Court.

**[23]** Resultantly, the criminal revision petition stands dismissed. The petitioners are directed to appear before the trial Court within a period of two months from today to execute the bond before the Probation Officer and after execution of such bond by them, the trial Court shall place them under the supervision of the Probation Officer for a

period of one year as directed by the appellate Court by the impugned judgment.

**[24]** In terms of the above, the criminal revision petition is disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the L.C record.

**JUDGE**

*Dipankar*



सत्यमेव जयते