

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: HON'BLE JUSTICE KRISHNA RAO

CRR/3/2025

Smt. Laxmi Roy

... Petitioner

Vs

The State

... Respondent

For the petitioner : Mr. Gopala Binnu Kumar

For the State : Mr. Sumit Karmakar

Heard on : 03.07.2025

Judgement on : 09.07.2025

KRISHNA RAO, J.

1. The petitioner has filed the present revisional application challenging the judgement passed by the learned Additional Sessions Judge, North and Middle Andaman, Mayabunder in Criminal Appeal No. 11 of 2023 dated 23.08.2024 wherein the judgement of conviction passed by the learned Judicial Magistrate First Class, North and Middle Andaman, Mayabunder in GR Case No. 283 of 2011 dated 07.09.2022 was affirmed. The learned Magistrate had convicted the petitioner for the offence under Section 324 of the Indian Penal Code and sentence to undergo simple imprisonment for six months and for the offence under Section 147 of the IPC for simple imprisonment for two months and also

convicted and sentence to pay fine of Rs. 500/- each for the offences punishable under Section 342, 504 and 506 of the IPC.

2. The case of the prosecution is that on 25.05.2011 the victim/*de facto* complainant was going to provide food to her parents, who were working at the construction site at Smith Islands, and when she reached near the house of Maharani Mondal, the daughter of Deepak Baroi namely Sangita Baroi stated abused in filthy language and told her not to use their land as path and in reply she told to her that all basti peoples are using path why she is not allowing to use path and she went. In the evening at 3:45 P.M. when she was going to collect utensils and reached near the house of Maharani Mondal, she found that Shivani, Sandhya, Laxmi Roy, Ashish Bhaskar and Bhiran Baroi were standing on the road and on seeing the victim Ashish Bhaskar abused in filthy languages and told that it is a good time to tide her with betel nut tree and kill her. On hearing Shivani, Sandhya, Laxmi have catch hold of her hair and taken beside the betel nut tree and assaulted her Ashish Bhaskar and Dhiran Baoi tied her hand with betel nut tree and Sandhya inflicted tooth bite in her fore arm. It is further case of the prosecution that the victim cried for help and hearing hue and cry of the victim, the peoples from the neighbouring area came to the place of occurrence, but in the mean time the accused persons fled away from the place of occurrence. Subsequently, the victim was taken to hospital for treatment and on the basis of statement made by the victim police of

PS, Diglipur Registered the FIR No. 49 of 2011 dated 25.05.2011 under Section 147/149/342/324/504/506 of IPC.

3. On completion of investigation the police has submitted the charge sheet being No. 59 of 2011 dated 11.06.2011 under Section 147/149/342/324/504/506 of IPC against the accused persons namely Ashish Bhaskar, Shibani Howlader, Sandiya Goldar, Laxmi Roy and Deben Baroi.

4. Learned Magistrate has convicted all the accused persons for the offence under Sections 324/342/147/504/506 of the IPC but out of the five accused persons only three accused persons have preferred an appeal against the judgement of conviction passed by the learned Magistrate including the petitioner herein. Now only the petitioner has preferred the present application against the judgement passed by the learned Additional Sessions Judge dated 23.08.2024.

5. Mr. Gopala Binnu Kumar, learned advocate representing the petitioner submits that neither in the FIR nor in the charge sheet or during the evidence led by the prosecution there is no specific allegation that the petitioner has assaulted or committed any offence against the victim. He submits that the learned Magistrate without considering the evidence has convicted the petitioner for the alleged offences.

6. Mr. Kumar submits that the learned Magistrate has convicted the petitioner for the offence under Section 324 of the IPC, but there is no allegation or any materials on record to establish that the petitioner has cause any hurt to the victim. He submits that as per allegations in the

FIR the victim was assaulted and tied with the betel nut tree with the towel (gamcha) but other than the evidence of the victim none of the witnesses have stated that victim was tied with the betel nut tree with the help of towel (gamcha). He submits that there is no evidence on record to prove that the petitioner has committed any offence.

7. Mr. Kumar submits that only the allegation made by the victim that the accused persons have abused the victim, but there is no specific language uttered by victim either in the FIR or during her evidence to establish that the petitioner has abused the victim in filthy language. It is also not proved that the petitioner has threatened the victim with dire consequences.

8. Mr. Kumar submits that there is no evidence against the petitioner for any of the alleged offences but without considering the same petitioner has been convicted for the aforesaid offences. He further submits that the case was initiated in the year 2011 and was disposed of by the judgement of conviction on 07.09.2022 i.e. after the period of eleven years, but the learned Magistrate while convicting the petitioner failed to consider that the petitioner is entitled to the benefit under the provisions of Probations of Offenders Act as there is no allegation brought on record that the petitioner is a habitual offender or during the pendency of the present case, the petitioner has committed any offence.

9. Mr. Kumar submits that the learned Magistrate has not considered that the petitioner is a lady and the alleged offences are not

heinous offence. He submits that the learned Magistrate ought to have consider the provision of Section 4 of the Probation of Offenders Act, by releasing on probation imposing any conditions. In support of his submissions he has relied upon the judgement in the case of ***Ved Praksah vs. the State of Haryana*** reported in ***(1981) 1 SCC 447***, ***State of Haryana vs. Prem Chand*** reported in ***(1997) 7 SCC 756*** and ***State of Karnataka vs. Muddappa*** reported in ***(1999) 5 SCC 732***.

10. *Per contra*, Mr. Sumit Karmakar, learned Public Prosecutor submits that to prove the case against the accused persons, the prosecution has examined all together fourteen witnesses, out of fourteen witnesses PW-1 is the victim/*de facto* complainant and PW-2 to PW-6 are the eye witness of the said incident and all the witnesses have categorically stated that the accused persons have confined the victim/*de facto* complainant and have tied the *de facto* complainant with the betel nut tree and have assaulted and abused the victim, due to which the victim has sustained injury. Mr. Karmakar submits that the injury report proves that the victim has sustained injury. He submits that it is the specific case of the prosecution that all the accused persons have assaulted the victim and abused the victim and as such relying upon the evidence by the prosecution on record the learned Magistrate has properly convicted the accused persons.

11. Mr. Karmakar has drawn the attention of this Court to the statement of PW-1, PW-2, PW-3, PW-4 and PW-5 and submitted that the said witnesses have categorically stated that the accused persons

have abused in filthy languages to the victim and assaulted the victim by tying the victim in the betel nut tree with the help of towel and when the victim has shouted, on hearing the hue and cry of the victim the neighbours came to the place of occurrence and on seeing the same, the accused persons fled away from the place. Mr. Karmakar submits that villagers are the witnesses who have supported the case of the prosecution which proved that all the accused persons have involved in the said incident. Mr. Sumit Karmakar submits that the learned Magistrate has convicted all the accused persons and the order of the conviction passed by the learned Magistrate was duly affirmed by the learned Additional Sessions Judge at Mayabunder and as such there is no scope for this Court to interfere with the concurrent finding arrived by both the courts.

12. Mr. Karmakar further submits that the learned Magistrate before convicting the petitioner for the alleged offences have also given the reasons as to why the learned Magistrate has not invoke the provisions of the Probations of Offenders Act by giving benefit to the petitioner under the Probations of Offenders Act, and as such the petitioner is not entitled to be released under the provisions of Probations of Offenders Act.

13. Heard the learned counsels for the respective parties, perused the judgement passed by the learned Magistrate, the judgement passed by the learned Additional Sessions Judge and the materials on record.

14. The Police of PS, Diglipur has initiated the case against the petitioner and four other accused persons on the complaint made by the victim that she was wrongly confined and have been abused with filthy language and have assaulted the victim. As per the evidence of the PW-1 i.e. the victim, on 21.05.2011 at first when she was proceeding to provide food to her parents working at road side construction of Smith Island, and when she reached near house of Maharani Mondal, Sangita Baroi abused her in filthy language. In the evening at 3:45 P.M. when she was going to collect utensils and reached the same place the accused persons including the petitioner have started abusing her in filthy languages and have assaulted mercilessly and tied her with the betel nut tree with the help of towel. As regards allegation of assault and abuse all the witnesses have stated in their statement, but with regard to tying of the victim with the betel nut tree with the help of towel has not been stated by any of the witnesses. It is specific evidence of the victim that the accused Sandhya Golder inflicted tooth bite on her left hand. The police has invoked Section 324. Section 324 of the IPC reads as follows:-

“324. Voluntarily causing hurt by dangerous weapons or means. – Whoever , except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

15. Section 324 provides voluntarily causing hurt by dangerous weapons or means. In the present case it is the specific evidence of the PW-1 that Sandhya Golder inflicted tooth bite injury on the left hand of the victim. The injury report is marked as exhibit-4. As per the injury report a bite mark on the left lower and of the forearm near wrist joint was found. The doctor has opined that the injury cause to the victim is simple. When there is a specific case of the victim that the accused Sandhya Golder has inflicted injury by tooth bite and there is no allegation against this petitioner that this petitioner has used any weapon or any other means to cause injury to the victim but the police has submitted charge sheet against the petitioner for the offences under Section 324 of the IPC and the learned Magistrate has also framed charged for the offence under Section 324 of the IPC, but during the evidence this Court did not find any allegation against this petitioner for the offence under Section 324 of the IPC. Without considering the said aspect, the learned Magistrate has convicted the petitioner for the offence under Section 324 of the IPC. The learned Magistrate has also framed charges for the offence under Section 149 of the IPC, but no conviction was given against the petitioner or any of the accused for the offence under Section 149 of the IPC. The police has also not invoked Section 34 of the IPC. Considering the above this Court finds that injury was inflicted upon the victim due to tooth bite of the accused Sandhya Golder and there is no evidence on record that this petitioner has used any weapon or any means due to which the victim has sustained injury.

The only allegation against the petitioner that the petitioner has caught hold of the hair of victim and slapped to the victim. Considering the above this Court did not find any material on record against this petitioner for the offence under Section 324 of the IPC but has committed an offence under Section 323 of the IPC.

16. The learned Magistrate has also convicted the petitioner for the offence under Section 342 of the IPC which reads as follows:

“342. Punishment for wrongful confinement. – Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

17. It is the case of the victim that the accused persons have tied the victim with the betel nut tree with the help of towel. This evidence has not been corroborated by any of the witnesses. There is no evidence that the petitioner has wrongfully confined the victim. As per the evidence of the prosecution witnesses on hearing the hue and cry the neighbours reached near the place of occurrence and on seeing the same accused persons fled away, but none of the witnesses have stated that the victim was wrongfully confined by the petitioner. If the evidence of victim is believed that she was tied with betel nut tree with gamcha (towel) but no towel (gamcha) is seized by the police. The site plan is marked as Exhibit 3 and in the site plan the place of occurrence is not shown that the incident was occurred near the betel nut tree. The Investigating Officer has shown betel nut tree far from place of occurrence. There is no evidence that some body came there and open

towel from betel nut tree. Considering the above this Court finds that no case is proved against the petitioner for the offence under Section 342 of the IPC.

18. Section 504 of the IPC reads as follows: -

“504. Intentional insult with intent to provoke breach of the peace. – Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

19. As per the case made out by the prosecution the accused persons have abuse the victim in filthy languages and have assaulted the victim. Neither the victim nor any of the witnesses have stated in there evidence that the petitioner had intentionally insult the victim with the intent to provoke breach of peace. It is the specific case of the prosecution that all the accused persons have abused and assaulted the victim. It is not the case of the prosecution that either in the FIR or in the charge sheet or during the evidence before the court that the petitioner has intentionally insult the victim or provoke any persons to breach of peace. The ingredients of Section 504 requires (1) Intentionally insulting a person and thereby giving provocation to him (2) The person insulting must intend or know it to be likely that such provocation will cause him to break the public peace or to commit any other offence. It is necessary that the insult should be delivered to the person insulted with the intention that he may be there and then provoked to commit an offence but where there is no provocation, no offence under Section 504 is made out. Considering the above this

Court finds that the prosecution failed to prove the case against the petitioner for the offence under Section 504 of the IPC.

20. Section 506 of the IPC reads as follows:-

“506. Punishment for criminal intimidation. – Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;”

21. In the FIR it is alleged that on seeing the victim the accused Ashish Bhaskar has started abusing in filthy languages and stated that she should be tied with the betel nut tree and to kill her. Accordingly, Shibani Howlader and Sandiya Goldar and the petitioner have assaulted her and Ashish Bhaskar and Deben Baroi have tied her hand with the betel nut tree and Sandhya Golder inflicted tooth bite in her hand. Though the said allegation is made in the FIR, but during the evidence in the Court, the victim who was examined as PW-1 stated that the accused person have started abusing in filthy languages and have assaulted by tying her with betel nut tree with the help of towel.

22. This court find that the victim and other witnesses have stated that the accused persons have caught hold of the victim and seeing the neighbours the accused persons fled away from the place of occurrence. Considering the above this Court find that the accused persons including the petitioner herein have used some force against the victim to cause harm to the victim and it is also the case of the victim that the accused persons have threatened the victim thus the learned Magistrate has rightly convicted the petitioner for the offence under Section 506 of the IPC.

23. Neither the learned Magistrate nor the learned Additional Sessions Judge have considered the evidence of the witnesses properly. Both the learned Court failed to appreciate that no hurt was caused to the victim due to the act of the petitioner. The learned Magistrate has not convicted the petitioner for the offence under Section 149 of the IPC. The learned Magistrate as well as learned Additional Sessions Judge has also failed to consider the ingredients of Section 342 as well as 504 of the IPC against the petitioner as there is no evidence on record to prove that the petitioner has wrongfully confined the victim or has intentionally insult the victim or provoke for any breach of peace.

24. It is true that the Court is slow while interfering with the concurrent finding of the two courts. In the revisional jurisdiction the Court cannot evaluated the evidence led by the parties but if the Court finds that the learned Trial Court and appellate court have not properly considered the evidence on record in that case in sitting in the revisional jurisdiction the Court can interfere with the concurrent finding, if it is found that the concurrent finding is perverse. In the present case this Court find that learned Magistrate had convicted all the accused for the same offence but have not considered the evidence on record properly whether all the accused persons are liable to be convicted for the same offences. Learned Magistrate has also not taken into consideration the role played by each and every accused persons in the said incident.

25. In view of the above this Court finds that there is no evidence on record against this petitioner for the offence under Section 342/504/147 of the IPC and accordingly the petitioner is acquitted for the offence under section 342/504/147 IPC. But this Court find that there is sufficient evidence against the petitioner for the offence under Section 323/506 of the IPC and as such this Court is not interfere with the conviction of the petitioner for the offence under Section 506 of the IPC and conviction under Section 324 is modified by convicting the petitioner under Section 323 IPC.

26. Though the learned Magistrate has given reasons as to why the learned Magistrate has not invoked the provision of Probation of Offenders Act by giving benefit to the petitioner. Now this Court finds that the petitioner is not guilty for the offence under section 324/342/504/147 of the IPC, but this Court find that the petitioner has committed an offence under Section 323/506 of the IPC. Thus this Court find that the case has been initiated in the year 2011 and the petitioner has regularly appeared before the learned Trial Court and it is not the case that the petitioner is habitual offender or the petitioner has committed any offence during the pendency of the present case. This is the only case against the petitioner. Thus taking into consideration that the case was initiated in the year 2011 and the petitioner has faced the trial till 2022 and there is no case is pending against the petitioner or the petitioner is not a habitual offender, thus in my view the petitioner is entitled to get the benefit of Section 4 of the Probation of Offenders

Act. Accordingly, the petitioner is released on probation for a period six months on furnishing bond of Rs. 1000/- (Rupees one thousand only) with the satisfaction of the learned Judicial Magistrate First Class, Mayabunder with the direction to the petitioner to keep peace and good behaviour within the said period and the probation officer shall file report before the learned Judicial Magistrate with a period of six months and on receipt of the report, learned Magistrate shall pass appropriate order if report of the probation officer is satisfactorily.

27. CRR/3/2025 is disposed of.

(KRISHNA RAO, J.)