

(2012) 08 GAU CK 0066

In the Gauhati High Court

Case No : Criminal Revision Pet. No. 94 of 2004

Kanu Das & Ors.

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Criminal Procedure Code, 1973 — Section 313, 397, 401

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 401

Citation : (2013) 2 GLR 460 : (2012) 4 GLT 956

Hon'ble Judges : S.C.Das, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioners: Mr. A.C. Bhowmik, Sr. Advocate , Mr. A. Bhowmik?? Advocate appeared for the Respondent: Mr. A. Ghosh, Addl. PP, Advocates appearing for Parties

Judgement

S. C. Das, J.—This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment and order dated 18.08.2004 passed by learned Additional Sessions Judge, Khowai, in Criminal Appeal No. 23(4)2002 whereby and whereunder the learned Additional Sessions Judge affirmed the judgment and order of conviction and sentence dated 08.10.2002 passed by learned SDJM, Khowai in case No. GR 177 of 1996.

2. Learned SDJM found the appellantpetitioners guilty of committing offence punishable under Sections 447 & 323 of IPC and sentenced them to suffer S.I. for 1 (one) year 3 (three) months and to pay a fine of Rs. 1500/ in default of payment of fine money each of them is to suffer S.I. for 3 months. The learned Additional Sessions Judge, Khowai, while affirming the conviction reduced the sentence to the extent that they shall suffer R.I. for 3(three) months under Section 447 of IPC and shall suffer R.I. for 1 (one) year and to pay a fine of Rs. 1000/each in default of payment to suffer S.I. for 3(three) months under Section 323 of IPC and that the sentences shall run concurrently.

3. It is submitted by learned counsel, Mr. A. Bhowmik that learned SDJM as well

as learned Additional Sessions Judge, Khowai, committed serious error in appreciating the evidence and arrived at a wrong finding. He has also submitted that the learned SDJM would give the benefit of Section 360 of Cr.P.C. or the Probation of Offenders" Act to the appellantpetitioners but no finding was recorded to that effect. He has also pointed out that no hearing was given to the petitioners on the question of sentence and therefore, their right to be heard on being found guilty, has been curtailed.

4. Learned Addl. P.P., Mr. A. Ghosh with his usual fairness, submits that it was proper for the courts below to afford opportunity to the appellantpetitioners of being heard on quantum of sentence and as such the judgment of the learned Magistrate cannot be said to have legally sound. That point was also ignored by the appellate court.

Learned Addl. P.P., Mr. Ghosh left the matter for consideration of the court.

5. I have gone through the judgment passed by the learned SDJM, Khowai as well as the learned Addl. Sessions Judge, Khowai.

While exercisingjurisdiction under Section 397 read with Section 401 of Cr.P.C., this court is to see the correctness, legality and propriety of judgment or order passed by an inferior court or regularity of a proceeding before such court. This court is not required to reappraise the evidence to arrive at a contrary finding which the trial court and the appellate court would take but failed to take.

6. On going through the records, the fact of the case, so far noticed, is that on 11.09.96 at about 3/4 p.m., the appellantpetitioners along with two others trespassed in the paddy land of the informant (P.W.2) for harvesting ripe paddy to which the informant raised protest and at that time, the petitioners along with others assaulted P.Ws 2,3 and 4 and another Nepal Das causing multiple injuries.

P.W.2 after the incident lodged the FIR and the police case was registered and ultimately charge sheet was filed against the petitioners and two others for commission of offence punishable under Sections 447,324 and 326 of IPC.

In course of trial, 4 witnesses were examined. Considering the evidence of P.Ws. 2, 3 and 4, learned SDJM found the appellantpetitioners guilty of committing offence under Sections 447 and 323 of IPC and sentenced them as aforesaid.

7. On perusal of the L.C. records, I find that upon a dispute on a piece of land which was alleged to have cultivated by the informant (P. W.2), the alleged incident occurred. P. W.2 himself in his deposition admitted that the accused persons filed a case claiming the plot of land as their land, hi the evidence of P.Ws 2, 3 and 4 it appears that there was an incident of assault between the two groups but in respect of the allegations that the accused persons were the aggressors, there is no independent evidence except that of P.Ws 2, 3 and 4 who are the members of the same family. The incident alleged to have occurred at mid day where the neighbourers would have gathered but none was examined. P. W. 1, the Medical Officer who has been examined, did not support the

prosecution case in respect of any injury alleged to have suffered by P. Ws 2, 3 and 4. I.O. also was not examined. Virtually, except the oral statements of P. Ws 2, 3 and 4, there is no evidence of any independent witness to support the prosecution case.

8. The serious infirmity noticed in the record is that, the learned SDJM while found the accused persons guilty, did not afford any opportunity to the convicts of hearing on sentence. Section 248(2) of Cr.P.C. prescribes thus:

" Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law." This is a warrant trial case instituted on a police report. Learned Magistrate while found the accused petitioners guilty of committing offence punishable under Section 447; 323 of IPC, did not proceed in accordance with the provisions of Section 325 or Section 360 of Cr.P.C. Therefore, the learned Magistrate was bound to hear the convict accused persons on the question of sentence and then to pass order of sentence upon them according to law. Learned Magistrate has given good bye to the mandatory procedure prescribed by law and consequently taken away the statutory right of the accused persons to be heard on the mitigation of sentence.

This is a serious lapse in the case, for which alone a judgment is liable to be set aside. This serious infirmity even has not been noticed by the learned Addl. Sessions Judge while hearing appeal. A very valuable right of the accused of being heard on sentence has been curtailed, which cannot be legally permitted. On this ground alone, the judgments and orders passed by both the inferior courts are liable to be interfered.

9. The next infirmity, as I find is that, the learned SDJM mechanically examined all the accused persons under Section 313, Cr.P.C. in one sheet of paper, generally putting the questions in English. It is not understood whether the accused persons could understand the meaning of the questions put to them or not. It seems, in a mechanical process, learned SDJM, as if, in the form of rituals, examined the accused persons under Section 313, Cr.P.C. with a view to somehow observe the procedure prescribed by law. Such mechanical examination has no sanction of law. On this ground also the judgment is liable to be interfered.

10. The third infirmity so far noticed, is that, the learned SDJM did not record any reason as to why the accused persons were not afforded the benefit of Section 360, Cr.P.C. or the benefit of Probation of Offenders Act while found the appellantpetitioners guilty of committing offences punishable under Sections 447/323 of IPC. Learned Additional Sessions Judge has, however, considered this aspect and cautioned the trial court for future, but the learned Additional Sessions Judge also failed to give the opportunity to the convictappellants.

11. In view of the discussions made above, the serious infirmities on record, the

revisional application is allowed. The judgment and order of conviction and sentence passed by the learned SDJM, Khowai and affirmed by the learned Addl. Sessions Judge, Khowai, is set aside and quashed.

12. Send back the L.C. record along with a copy of the judgment.

13. This Criminal revision petition accordingly stands disposed of.