
(2016) 01 TP CK 0020
In the Tripura High Court
Case No : Crl. Rev. P. 52 of 2012

Kanu Debnath and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 313
Penal Code, 1860 (IPC) — Section 323, Section 325, Section 34, Section 379, Section 392

Citation : (2016) 01 TP CK 0020

Hon'ble Judges : Utpalendu Bikas Saha, J.

Bench : Single Bench

Advocate : A.K. Banerjee, Advocate, for the Appellant; A. Ghosh, PP, for the Respondent

Final Decision : Partly Allowed

Judgement

Utpalendu Bikas Saha, J.—1. The instant criminal revision petition is filed against the judgment dated 06.07.2012 passed by the learned District & Sessions Judge, West Tripura, Agartala in Criminal Appeal No. 3(1) of 2011 wherein the learned Sessions Judge upheld the conviction of the petitioners for committing offence punishable under Sections 323/34 of the Indian Penal Code, set aside the order of sentence passed by the learned Judicial Magistrate, 1st class, Agartala, West Tripura to suffer R.I for one year and upheld the sentence of paying the fine money of Rs. 1,000/- each, in default to suffer S.I for two months.

2. Heard Mr. A.K. Banerjee, learned counsel appearing for the petitioners as well as Mr. A. Ghosh, learned Public Prosecutor.

3. The prosecution case, in short, is that on 10.03.2009, the Officer-in-Charge, Sidhai police station received a complaint filed by one Smt. Subhagi Rabidas which was forwarded by the learned Chief Judicial Magistrate, West Tripura, Agartala treating the complaint as FIR under Section 156(3) of the Criminal Procedure Code. The complainant Smt. Subhagi Rabidas has alleged in her

complaint inter alia that on 02.02.2009 at about 8.00 pm, a meeting was held in the Matai School, Sidhai as called by Sri Bijoy Nayak and Nakshatra Debbarma and others on the issue of breaking sacred Ghat on the occasion of Saraswati puja. While the meeting was going on, the convict petitioners namely Sri Kanu Debnath, Sri Benu Debnath, Sri Bhanu Debnath, Sri Ranu Debnath, Sri Subhas Roy, Sri Sushen Roy, Sri Amar Debnath, Sri Ranjan Debnath and Sri Biplab Roy assaulted her sons, namely, Ranjit Rabidas and Kanulal Rabidas resulting which both of them sustained injuries on their person. Ranjit Rabidas had to be shifted to Katlamara Primary Health Centre where he was treated as indoor patient for two days. Though the informant Smt. Subhagi Rabidas initially lodged verbal complaint with the Officer-in-Charge, Sundartilla Outpost but no effective action was taken by the Officer-in-Charge. Hence, she filed the instant complaint before the learned Chief Judicial Magistrate, West Tripura, Agartala seeking for justice.

4. Upon receipt of the complaint, the Officer-in-Charge, Sidhai police station registered a police case being Sidhai PS case No. 17 of 2009 under Sections 325, 379, 34 of the IPC and investigation was duly initiated.

5. After completion of the investigation of the case, the police submitted charge sheet against the petitioners under Section 325, 392, 34 of the IPC.

6. Upon receipt of the charge sheet, the learned Chief Judicial Magistrate, West Tripura, Agartala took cognizance of the offence under Sections 325, 392, 34 of the IPC and transferred the case record to the learned Judicial Magistrate, 1st class (Court No. 4), Agartala, West Tripura for disposal according to law.

7. Learned Judicial Magistrate, 1st class(Court No. 4), Agartala, West Tripura after receiving the case record and observing all formalities framed charges under Sections 325, 392, 34 of the IPC against all the petitioners. The contents of the charges were read over to the petitioners to which they pleaded not guilty and claimed to be tried.

8. In order to prove the case, the prosecution has examined as many as 10 witnesses and also proved some documents which were duly marked as exhibits. The petitioners were duly examined under Section 313 of the Cr.P.C. to which they pleaded innocence and false implication. The petitioners did not adduce any evidence to disprove the charges. The case of the petitioners is of totally denial.

9. The learned trial Court after hearing the argument of the parties convicted the petitioners under Section 323/34 of the IPC and sentenced to suffer R.I for one year each and to pay a fine of Rs. 1,000/- each only, in default to suffer S.I for two months.

10. Being aggrieved by and dis-satisfied with the judgment of the learned trial Court, the petitioners preferred an appeal before the learned Sessions Judge, West Tripura, Agartala and the said appeal was registered as Criminal Appeal No. 3(1) of 2011. The learned Sessions Judge after hearing the parties affirmed the order of conviction but modified the sentence to the extent, as stated supra.

11. Mr. A.K. Banerji, learned counsel appearing for the petitioners in his usual fairness submits that the prosecution has proved its case and thus he will not argue on merit. His only prayer is to modify the sentence being the petitioners are very poor and that the incident was occurred in the year 2009.

12. On the other hand, Mr. A. Ghosh, learned Public Prosecutor submits that the order of sentence affirmed by the learned Sessions Judge is just and proper and thus no interference is called for.

13. According to this Court when the prosecution has proved its case beyond reasonable doubt, the Court should not compromise with the findings of the Court below so far conviction is concerned. But regarding sentence, the Court has to consider many aspects at the time of exercising its discretion that it has to protect society and stamp out criminal proclivity as the same is the object of law at the time of imposing the sentence. The court has also to keep in mind that in what circumstances the accused committed the offence, what was his age at the time of offence and what is his age ultimately when he is going to suffer the sentence and social background of his family, i.e. whether anybody is dependent on him or not and whether the crime committed by him was planned one or occurred due to certain situation arose at the moment. The learned counsel appearing for the petitioner does not question the order of conviction.

14. This Court has gone through the impugned judgment. According to this Court, it would not be proper for this Court to interfere with the order of conviction. Thus, the order of conviction passed by the learned trial Court is accordingly upheld.

15. Now, let us come to the question of sentence passed by the learned appellate Court as well as the submission of the learned counsel of the petitioner. Their Lordships of the Supreme Court in the case of B.G. Goswami v. Delhi Administration, reported in , 1974 Cri LJ 243, observed as under,-

"Now the question of sentence is always a difficult question requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In

the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same".

The aforesaid case was also considered by the Apex Court in *Ramesh Kumar Gupta v. State of M.P.* reported in , 1995 SC 2121.

16. In view of the above, this Court is of considered opinion that it is not necessary for this Court to discuss the evidences on record as from the evidence it is established that the prosecution has proved its case beyond reasonable doubt.

17. On the question of sentence, we have heard the learned counsel for the parties and considering the entire facts and circumstances, this Court is of considered opinion that it would meet justice if the sentence of fine as affirmed by the learned appellate Court, is modified to the extent of payment of fine Rs. 500/- each instead of Rs. 1,000/- each and in default of payment of fine the petitioners shall suffer S.I for one month. Accordingly, it is ordered.

18. As the petitioners are on bail, their bail bond shall stand discharged only after deposit of the fine money which shall be deposited within one month. In the event of realization of fine money of Rs. 4,500/-, Rs. 2,250/- each shall be paid to both the victims namely Kanulal Rabidas and Ranjit Rabidas after following the necessary procedure. If the fine money is not deposited within the aforesaid time, then the learned trial Court shall take all necessary steps in accordance with law so that the petitioners shall suffer the sentence, as ordered by this Court.

19. With the above order, the instant criminal revision petition is partly allowed.

20. Send down the LCR's forthwith with a copy of this judgment for information and doing the needful.