
(2013) 01 GAU CK 0005
In the Gauhati High Court
Case No : Criminal Appeal No. 62 of 2005

Medda Tripura and Others	Vs	APPELLANT
State of Tripura		RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Citation : (2013) 4 GLT 622

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

Bench : Single Bench

Advocate : P.K. Biswas and Mr. P. Majumder, for the Appellant; D. Sarkar, PP, for the Respondent

Judgement

S.C. Das, J.—The appellants, named above, were found guilty of the charge framed against them u/s 436 of IPC by judgment, dated 19.08.2004, passed by learned Addl. Sessions Judge, Belonia, South Tripura, in case No. S.T. 5 (ST/B) 2004, and they were sentenced to suffer RI for five years and to pay a fine of Rs. 20,000/- (rupees twenty thousand) each, in default of payment of fine, to suffer further SI for two years. Learned Addl. Sessions Judge also directed that the fine money, if realized, should be paid to the victims of the alleged occurrence, i.e., Alo Ch. Tripura, Daitya Tripura, Kishore Tripura and Kasanti Tripura.

Being aggrieved, the convict-appellants, Medda Tripura, Labrai Mog and Kongja Mog, filed the present appeal, praying for setting aside and quashing the judgment and order of conviction and sentence, dated 19.08.2004.

Heard learned counsel, Mr. Pranabasish Majumder for the appellants and learned P.P., Mr. D. Sarkar for the State respondent.

2. Prosecution case is that, a goat belonged to Rejanta Tripura (PW 4) was found missing on 25.03.2003, a Tuesday. The people of the locality went on a search to find out the missing goat and found bloodstains in the surroundings of the house of Medda Tripura of Nabarambari Colony. The neighboured of Rejanta Tripura of Subadhan Para, namely, Daitya Tripura, Alo Ch. Tripura, Kesanti Tripura, Kishore

Tripura, etc., got suspicious about the involvement of Medda Tripura and a meeting was called, where the accused-appellants, Medda Tripura, Labrai Mog and Kongja Mog, were present in the courtyard of Alo Ch. Tripura at Subadhan Para, on 26.03.2003, in the evening. Medda and his companions denied the allegation of theft of the goat and they went away after giving a threat to the residents of Subadhan Para with dire consequence. The residents of Subadhan Para got frightened on the threat given by the accused persons and were guarding their locality. At midnight, the intervening night of 26.03.2003 and 27.03.2003, Medda Tripura, Labrai Mog and Kongja Mog and a few other persons torched the houses of Kishore Tripura (PW 1), Daitya Tripura (PW 2), Alo Ch. Tripura (PW 5) and Kesanti Tripura (PW 8) and set the houses to fire and, as a result all the houses, including all household articles, were burnt to ashes. The residents of Subadhan Para could identify the accused-appellants, Medda Tripura, Labrai Mog and Kongja Mog in the moonlight and when witness, Raimohan Tripura (PW 3), tried to resist the accused persons, he was beaten up by Labrai Mog and, out of fear he took shelter in the jungle.

2.1 On 27.03.2003, in the morning, O/C Baikhora PS received an information from Debbaru DAR camp regarding the fire incident at Subadhan Para and the same was entered in the G.D. Book of the PS and, thereafter, SI Amal Chakraborty, as directed by the O/C of the PS, went to the spot to verify the truthfulness of the information. At about 6.30 am, he reached to the spot and found four dwelling houses of Subadhan Para were completely gutted with all household articles. He prepared a hand-sketch map of the spot, recorded statements of witnesses and also seized some burnt pieces of "chan" grass and bamboo, etc. by preparing seizure list. Thereafter, he returned to PS and at PS, he recorded the statement of PW 1, Kishore Tripura and treated it as FIR and, accordingly, Baikhora PS Case No. 10/2003 under Sections 436/323 of IPC was registered and he started investigation as entrusted by the O/C of the P.S. On completion of investigation, he submitted charge sheet against the accused persons for commission of offence punishable under Sections 436/323 of IPC.

2.2 Cognizance was taken on the basis of the police report and, thereafter, the case was committed to the Court of Addl. Sessions Judge, Belonia, from the Court of learned SDJM, for trial.

2.3 In course of trial, learned Addl. Sessions Judge, Belonia, framed charges against the accused Medda Tripura, Labrai Mog and Kongja Mog for commission of offence punishable u/s 436 read with Section 34 of IPC and u/s 323 read with Section 34 of IPC, to which the accused persons pleaded not guilty and claimed to be tried.

2.4 Prosecution examined as many as ten witnesses, namely:

PW 1, Kishore Tripura,

PW 2, Daitya Tripura,

PW 3, Raimohan Tripura,
PW 4, Rejanta Tripura,
PW 5, Alo Ch. Tripura,
PW 6, Bidanta Tripura,
PW 7, Jogendra Tripura,
PW 8, Smt. Kesanti Tripura,
PW 9, Nirmal Tripura,
PW 10, SI Amal Chakraborty.

2.5 Out of the aforesaid witnesses, PWs 1 to 9 are all witnesses of Subadhan Para and out of them PW 4 is a witness, whose goat was missing and the inhabitants of Subadhan Para suspected that Medda Tripura might have stolen the goat since bloodstains were found in the surroundings of his house. Out of the witnesses, the houses of PWs 1, 2, 5 and 8 were gutted and all the witnesses stated that they found the accused persons to set fire in the houses of the victims. PW 3 stated that he tried to resist the accused persons but he was beaten up. PW 7 is a witness to the seizure of the burnt "chan" grass and bamboo. PW 10 is the IO of the case.

3. Defence case:

On behalf of the accused persons all the prosecution witnesses were cross-examined. After closure of the prosecution evidence, accused persons were examined u/s 313 of Cr.P.C. and, in their turn, they declined to adduce any defence evidence.

Defence case, so far ascertained, was total denial of the prosecution case. Some suggestions were put to the witnesses in course of cross-examination that due to political rivalry they have been falsely implicated in the case.

4. Learned Addl. Sessions Judge, while appreciating the evidence on record, has observed that the incident of theft of goat has been denied by the defence but the incident of mischief by fire in the houses of PWs 1, 2, 5 and 8 has not been denied in the cross-examination and, therefore, it is established that the residential huts, including all household goods and articles and domestic birds and animals of those poor tribals were gutted by fire. Learned Addl. Sessions Judge put implicit reliance on the statements of PWs in respect of identity of the accused persons and, accordingly, held them guilty of committing the offence and sentenced them as aforesaid.

5. It is an undisputed fact that Subadhan Para and Nabarambari are adjacent tribal hamlets and the people of both the localities were closely known to each other. At least, such fact that the accused persons and the witnesses were closely known to each other was not denied in cross-examination of the witnesses.

6. Learned counsel, Mr. Majumder, with all emphasis, has submitted that the alleged incident of arson occurred at midnight and in the FIR it has been clearly stated that the incident occurred at about 12 pm at night and it was a dark fortnight. So, the identity of the accused persons by the witnesses as alleged is doubtful. Referring to the Diary of 1409 B.S., learned counsel, Mr. Majumder, has submitted that on 26th of March, 2003, being a Nabami of dark-fortnight, moonlight was available at around 2.00 am of the night and before that it was completely dark and, therefore, it was not possible on the part of the witnesses to identify the accused persons. The learned trial Judge, submitted Mr. Majumder, was absolutely wrong in relying on the evidence of the witnesses regarding identification of the accused persons as stated by them in the moonlight.

7. Learned P.P., Mr. Sarkar, on the other hand, has submitted that all the witnesses are illiterate poor tribal residing in the extreme interior tribal village, where electricity and other civic facilities were not available. They were accustomed in living in natural climate and atmosphere. They stated that the incident occurred at midnight and it might be between 12.00 pm to 2.00 am at any time. While they made a consistent statement that they could identify the accused persons, being their neighbours, setting fire to their houses, there is no reason to disbelieve them.

8. On going through the deposition of witnesses, it appears that all the witnesses made consistent statement that a goat belonged to PW 4 was missing on 25.03.2003 and the local people went on a search to find out the missing goat on 26.03.2003 and they found bloodstains in the surroundings of the house of Medda Tripura and suspected his involvement in the missing of the goat.

8.1 PW 1, Kishore Tripura called a meeting in the evening of 26.03.2003, where the accused-persons were present but they denied having their involvement in the missing of the goat and on that issue they threatened the witnesses with dire consequences.

8.2 PWs 1, 2, 6, 8 and 9 all made consistent statement that the accused persons set fire to the houses of PWs 1, 2, 5 and 8 and those houses were completely gutted with all household goods and domestic birds and animals. They also made consistent statement that they found the accused persons in setting the fire.

8.3 The statement of PW 1 was recorded as FIR on 27.03.2003 at about 0910 hrs. at Baikhora PS.

8.4 The evidence of PW 10, the IO, clearly reveals that, on receipt of a telephonic information from Debbaru DAR camp, he went to the spot and started investigation of the case, recorded statements of the witnesses, prepared hand-sketch map, seized burnt pieces of bamboo and "chan" grass, etc. and, thereafter, he returned to the PS and recorded the statement of PW 1 as FIR. It is, therefore, clear that after having done the investigation in material part, PW 10, the IO, recorded the statement of PW 1 as FIR, which is clearly hit by Section 162 of Cr.P.C. and, so, Exbt. P1 cannot be treated as FIR. Therefore, we cannot

attach any importance to the statement made in Exbt. 1.

8.5 On going through the oral evidence of PW 1, I find that the incident occurred at midnight. P.Ws. 2, 3, 4 and 5 stated that the incident of arson occurred at night. PW 8 stated that it was dead hour of midnight PW 6 stated that it was at about 12 p.m.

8.6 The categorical statements of the witnesses, who are illiterate tribal of the remote village, makes it clear that the incident occurred at dead hours of night, might be between 12.00 pm to 2.00 am at night at any time. PW 10, the IO of the case stated that on reaching the spot he found four houses were completely gutted with all household articles. The incident of arson has not been denied in cross-examination. There is only denial of involvement of the accused persons. All the witnesses stated that the accused persons set the houses to fire. They also stated that accused persons were accompanied with some others, whom they could not identify. PW 3 stated that he tried to resist the accused persons, but they assaulted him. Other witnesses also corroborated the fact that PW 3 tried to resist but he was beaten up. In cross-examination, PW 3 once stated that he was sleeping when the accused set fire but in the next line he stated that he had seen the accused persons to set fire and after setting fire they went towards north and east. He also stated that he was beaten up by the accused Labrai. This fact is substantially corroborated by the other witnesses. The inconsistency in the statement of PW 3 is of little consequence and cannot be disbelieved as a whole.

9. It is well settled that merely because a portion of the testimony of a witness is not reliable, there is no ground to brush aside the entire evidence. While judging the deposition of rural witnesses, the Court cannot apply the same standard of exactitude and consistency as that for urban witnesses and that even if there is some inconsistency in the evidence here and there, it cannot defeat the justice, if there are clear evidence for making out the guilt of the accused. Minor inconsistency in the statements of witnesses is a guarantee of truth. One cannot expect that the witnesses will come before the Court and will make a statement like a tape recorder.

10. Defence has suggested that because of political rivalry they have been falsely involved in the offence. There is no particular of rivalry stated by the witnesses. Might be the accused persons and the witnesses were supporters of different political party that itself cannot be a ground to falsely involve the accused persons. Obviously, the accused persons were not the only supporters of the rival political group. To make out a case on political ground, something else ought to be shown that some political dispute was prevailing for which false implication might be possible. Under such circumstances, while the witnesses stated that they, being frightened because of the threat given by the accused persons, were in their locality being awakened and found the accused persons setting fire to their houses, cannot be brushed aside.

11. It is an undisputed fact that the tribal hamlets were in the extreme interior

places and it was to be presumed that the people were accustomed in living insufficient light and, so, they might identify the accused persons in the deem moonlight. While they made the consistent statement regarding identity of the accused persons, in my considered opinion, the trial Court rightly relied on their consistent evidence regarding identity of the accused persons.

12. In course of his argument learned counsel, Mr. Majumder referred the cases of Lakshman Prasad Vs. State of Bihar, Hem Raj and Others Vs. State of Haryana, and Arokia Thomas Vs. State of T.N. reported in (2006) 10 SCC 542. I have gone through those decisions, referred by learned counsel, Mr. Majumder, but I find no relevance of the reported case laws in the fact of the present case.

13. In view of the discussions made above, I find nothing to discard the finding of learned Addl. Sessions Judge in arriving at a conclusion that the accused persons committed the offence of arsoning the houses of the witnesses out of their common intention and they were rightly held guilty of committing offence u/s 436 read with Section 34 of IPC.

14. The incident occurred on 26.03.2003. The accused persons were in custody during the course of investigation and trial. So, considering all aspects, I think, rigorous imprisonment for 2 (two) years and a fine of Rs. 15,000/- (rupees fifteen thousand) each may be sufficient punishment for the offence committed by the accused-appellants.

Accordingly, the sentence is reduced. The appellants, namely, Medda Tripura, Labrai Mog and Kongja Mog shall suffer RI for two years and pay a fine of Rs. 15,000/- (rupees fifteen thousand) each, in default of payment of fine, shall suffer further SI for six months. Fine money, if realized, be given to PWs 1, 2, 5 and 8 in equal share. The period of detention in the meantime shall be set off.

15. The appellants shall surrender before the trial Court and shall serve out the sentence.

16. The criminal appeal, accordingly, stands disposed of. Send back the LC records along with a copy of this judgment.