

(2014) 08 TP CK 0031
In the Tripura High Court
Case No : CRL. REV. P. 42 of 2010
Nanda Lal Banik VsThe State of Tripura

Date of Decision : 18-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 354, 448

Citation : (2014) 08 TP CK 0031

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : D.C. Roy, Advocate for the Appellant; A. Ghosh, P.P, Advocate for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J.—This petition u/s 397 of the Code of Criminal Procedure is directed against the judgment dated 29-03-2010 passed by the learned Additional Sessions Judge, Belonia, South Tripura in Criminal Appeal No. 03 of 2010 whereby he dismissed the appeal filed by the petitioner and upheld the judgment dated 06-02-2010 passed by the learned Judicial Magistrate 1st Class, Belonia, South Tripura in G.R. 362 of 2007 convicting the accused of having committed offences punishable under sections 448 and 354 of the Indian Penal Code(IPC). The accused was sentenced to undergo rigorous imprisonment for 3 (three) months and also to pay fine of Rs. 500/-(rupees five hundred) in respect of each of the offences and in default of payment of fine to undergo simple imprisonment for one month. Both the sentences were to run concurrently.

2. Normally, this Court in exercise of its revisional jurisdiction is very reluctant to interfere in pure findings of fact recorded by the Courts below but in a case where the conviction is based on no evidence or total misreading of evidence, then this Court would be abdicating its functions if it did not interfere.

3. On 16-09-2007, the prosecutrix (PW-1), "R" (name withheld), lodged a complaint in the police station that on 11-09-2007 at about 2 p.m. the accused entered into her house and outraged her modesty by tearing her blouse and

pressing her breasts. It is also alleged that this occurrence was witnessed by the daughter of the prosecutrix and when the daughter raised an alarm, the accused ran away. The main evidence is of PW-1, the prosecutrix. In her statement in Court, she states that about two years earlier the accused entered her house at 10 a.m. He threatened to remove her clothes, i.e. sari, blouse and petticoat and thereafter caught hold of the prosecutrix and tore all her clothes. The prosecutrix raised an alarm and her daughter came to her rescue and forced the accused to leave the house. She has also stated that when the accused entered her house, he was carrying a sickle. She has been confronted with her written complaint in which it is not mentioned that the accused came with a sickle. The version of the prosecutrix in Court is quite different from the version given in the complaint. Whereas in the complaint it is stated that the accused came and tore her blouse and pressed her breasts, but in her statement recorded in Court there is no mention that her breasts were pressed by the accused. Furthermore, in the complaint it was only alleged that the blouse was torn but in the statement in Court there is allegation of the sari and the petticoat being torn also.

4. As far as the child (PW-3) is concerned, I am indeed shocked and surprised to note that this 7 year old child was examined in Court and the Magistrate did not deem it fit or proper to ask some simple questions from the child to test whether the child could understand what the child was saying. The intelligence of a child witness has to be gauged by first testing the child's intelligence by putting some simple questions to her. In any event, this witness has only stated that she saw Nandu uncle (accused) having caught hold of the mother and gagged her and then she asked Nandu uncle to leave the house and he left. In her statement, there is nothing to show that the blouse was torn or any other such occurrence took place. No evidence can be placed on the statement of this child witness.

5. In this case, the FIR was lodged 5 (five) days after the occurrence. Mere lodging of the FIR after a delay of 5 days is not by itself a ground to acquit the accused but the prosecution must give some explanation for the delay. In this case, there is no explanation whatsoever given by the prosecutrix as to why she did not file the FIR immediately.

6. It has been urged that the complainant has stated that she made a complaint to the Panchayat and, therefore, she may not have lodged the complaint immediately. In this behalf, it would be pertinent to mention that this is not what the prosecutrix has stated. She has not stated that because she had lodged a complaint with the Panchayat, she did not lodge a complaint with the police. In any event, there is no proof that she lodged any complaint to the Panchayat because neither any member of the Panchayat has been produced nor any complaint made to the Panchayat has been proved on record. Therefore, in the present case, the prosecution has miserably failed to give any plausible explanation for the undue delay in filing the complaint. Furthermore, the person who wrote the complaint at the instance of the prosecutrix has not been examined. There are contradictions in the complaint and the statement of the

prosecutrix. The prosecution should have examined the person who wrote the complaint but for reasons best known to the prosecution that person has also not been examined. When all these things are taken together, this casts a doubt on the prosecution story and, therefore, the accused is bound to be acquitted.

7. Both the Courts below gravely erred in not taking into consideration the contradictions between the statement of the prosecutrix and the written complaint, the statement of the child witness was relied upon without testing its veracity and lastly, the non-examination of the author of the complaint was not even considered by both the Courts below.

8. Therefore, I have no hesitation in allowing the revision petition setting aside the judgments of both the Courts below as well as the order of conviction and the accused is accordingly acquitted. His bail bonds stand discharged.

9. Accordingly, the revision petition is disposed of.

10. Send down the lower court records forthwith.