

(2015) 01 TP CK 0027
In the Tripura High Court
Case No : Criminal Appeal No. 01 of 2013

Rakhal Mog and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 313, 372, 391
Penal Code, 1860 (IPC) — Section 147, 148, 149, 427, 447

Citation : (2015) 01 TP CK 0027

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

Bench : Single Bench

Advocate : R. Datta and R. Das, for the Appellant; R.C. Debnath, APP, B.N. Majumder, P. Saha, R. Saha and D.J. Saha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This Criminal appeal under proviso to Section 372 of Cr.P.C. is directed against the judgment and order of acquittal, dated 29.09.2012, passed by learned Addl. Sessions Judge, Belonia, South Tripura in Criminal Appeal No. 9 of 2012 where-under the learned Addl. Sessions Judge set aside the judgment and order of conviction and sentence dated 07.06.2012 passed by learned SDJM, Belonia, South Tripura in case No. GR 442 of 2008.

2. Heard learned Counsel Mr. R. Datta for the appellants and learned Additional Public Prosecutor Mr. R.C. Debnath for the State-respondent No. 1 and learned counsel Mr. B. Nandi Majumder for the respondent Nos. 2 to 5.

3. Prosecution case is that Rakhal Mog and Rajendra Tripura were the owner of 2.92 acres of land recorded in khatian No. 95, plot No. 103,166,165 and 168 of Mouja Shibpur under Muhuripur Tehasil Kachari, Sub Division- Belonia, which they purchased from Surjya Prasad Tripura, S/o Naradmani Tripura and they along with the appellants Palash Baidhya and Indra Debnath planted rubber plants about 1.46 acres of land out of total 2.92 acres of land and the rubber plants so grown were about 3 years old. On 05.09.2008 at about 11-30/12-00

a.m. forest officials/staffs from Belonia Forest Range Office and Kakalia Forest Range Office along with labourers trespassed into the land of the appellants and some other adjoining lands belonged to other persons and cut down the rubber plants grown by the appellants and as a result, the appellants suffered loss of about Rs. 50,00,000/-.

4. On 06.09.2008, the appellant Rakhal Mog filed a written complaint in the Court of SDJM, Belonia alleging the fact and the learned SDJM sent the complaint to the O.C., Belonia P.S. for investigation and report and accordingly, Belonia P.S. Case No. 189/2008 under Sections 147,148,149,447 and 427 of IPC was registered and after investigation I.O. submitted charge-sheet against accused respondent Nos. 2 to 5 and two others for commission of offence punishable under Sections 447,427 of IPC on the basis of which cognizance was taken and trial was taken up in the Court of learned SDJM against the accused respondent Nos. 2 to 5 and two others.

5. In course of trial, the accused respondents were examined under Section 251 of Cr.P.C. for commission of offence punishable under Sections 447,427 of IPC to which they pleaded not guilty and claimed to be tried.

6. Prosecution examined 12 witnesses in support of their case and proved 8(eight) items of documents which were exhibited during trial.

7. After closure of the prosecution evidence accused persons were examined under Section 313 Cr.P.C. and in their turn they declined to adduce defence evidence.

8. Learned SDJM at the conclusion of trial found the accused respondent Nos. 2 to 5 guilty of committing offence punishable under Sections 447 and 427 of IPC and sentenced them to pay a fine of Rs. 500/- each in default of payment to suffer S.I. for 15 days under Section 447 of IPC and further sentenced them to suffer R.I. for one month under Section 427 of IPC. He has also directed the accused respondent Achinta Dutta and Braja Gopal Debbarma to pay a sum of Rs. 30,000/- each and accused respondent Prantosh Das and Bishnupada Das to pay a sum of Rs. 20,000/- each as compensation to the appellant-victims.

9. Aggrieved, the accused-respondents preferred Criminal appeal No. 09/12 in the Court of learned Addl. Sessions Judge, Belonia and in course of hearing of that appeal, learned Addl. Sessions Judge on the application made by the accused-appellants allowed additional evidence to be given by the accused-appellants under Section 391 of Cr.P.C. and in course thereof, the appellants examined one Bimalendu Roy, a retired Forest Officer as D.W. 1 and also examined the accused-appellant Achinta Dutta as D.W. 2 and proved four items of documents.

10. Learned Addl. Sessions Judge allowed the appeal and set aside the judgment and order of conviction and sentence on the ground that prosecution could not prove the ownership and possession of the complainant and his companion in the

land and hence acquitted the accused persons from the charges.

11. Felt aggrieved, the appellants filed the present appeal under proviso to section 372 of Cr.P.C.

12. It is submitted by learned counsel Mr. Ratan Dutta for the appellants that all the prosecution witnesses stated the material fact that Forest Officials along with labourers trespassed in the land belonged to P.Ws 1 and 7 namely Rakhal Mog and Rajendra Kumar Tripura where they planted rubber plants along with P.Ws 2 and 3 and all those plants were cut down by the forest officials and the labourers engaged by them. The defence could not controvert the evidence of the prosecution witnesses and hence trial Court rightly convicted the accused persons. Learned Addl. Sessions Judge while considering the appeal filed by the accused convicts wrongly arrived at a conclusion that prosecution could not prove the ownership and possession of the land where rubber plants were grown by the appellants and hence, the judgment and order of acquittal passed by the learned Addl. Sessions Judge is liable to be interfered and set aside. He has also submitted that oral evidence of P.W. 10, the Tehasildar of locality has amply proved the ownership and the oral evidence of all the witnesses proved the possession of the appellants in the land of khatian No. 95.

13. Learned Addl. P.P. appearing for the State respondent No. 1 has supported the judgment passed by the learned Addl. Sessions Judge and has further submitted that the appeal has no merit.

14. Learned counsel Mr. B. Nandi Majumder appearing for the respondent Nos. 2 to 5 has submitted that the forest officials did not enter into the Jote land of the appellants and that they have cleared the forest land and a false case was instituted against them.

15. The alleged incident occurred on 05.09.2008 at about 11-30/12-00 a.m. P.Ws 1 to 9 are all claimed to be eye witnesses of the occurrence. They made categorical statement that forest officials of Belonia Forest Range Office and Kakalia Forest Range Office numbering 10/12 persons along with about 40 labourers armed with fire arms boarded in two vehicles arrived at Shibpur village i.e. in the plot of land where the appellants grown rubber plants and some other lands belonged to P.W. 5 and P.W. 8 etc. and those forest officials defying protest of the appellants and other growers cut down the rubber plants which were about 3 years old. This factual aspect of the evidence has not been shaken in cross examination or otherwise. I.O. during investigation collected the title deeds in the name of appellant Rakhal Mog and Rajendra Kumar Tripura and also the khatian in the name of the previous recorded owners but those documents were released on bail keeping photocopy thereof and at the time of trial, photocopies were proved as Exbt. 8 series to which the defence raised objection since the original were not placed and the prosecution failed to produce the original documents. However, such non production of original documents cannot shake the basic version of the P.Ws that the forest officials trespassed into their jote

land and cut down the rubber plants grown by them. The finding of the learned Addl. Sessions Judge that the ownership and possession of the appellants were not proved cannot be accepted as a proper finding since the learned Addl. Sessions Judge has failed to appreciate the consistent oral evidence of the witnesses in this regard.

16. The prosecution was supposed to prove that the accused respondent Nos. 2 to 5 along with others were practically present at the time when the rubber plants grown by the appellants were cut down. The incident occurred on 05.09.2008 at about 11-30/12-00 p.m. P.W. 1, the informant in his deposition stated that on the date of occurrence itself he went to Belonia P.S. but the police officer advised him to file complaint in Court and therefore, on the following day through a lawyer he filed a written complaint which has been proved as FIR.

17. It is an admitted position that the FIR was written by a lawyer as per the statement of P.W. 1 Rakhal Mog and it is also an admitted position that at the time of recording FIR, other eye witnesses were present. In the contents of the FIR it is clearly written that the names of the accused persons will be transpired at the time of investigation that means no name of accused was given in the contents of the FIR. However, at the bottom of page 2 of the typed FIR there is a hand written note that the complainant came to know name of two accused persons namely Surabuddin Sheik and Achinta Dutta. It is, therefore, evident that the complainant while making the complaint before the SDJM, Belonia on 06.09.2008 could not name as to who were the forest officials and labourers cut down the rubber plants grown by him. It is apparent that he has mentioned the name of Surabuddin Sheikh and Achinta Datta at the bottom of the FIR though there is contrary statement in the contents of the FIR that those two names he came to learn. All the eye witnesses admitted the fact that they had talks with the complainant Rakhal Mog in the spot as well as after the incident and so it is clear that if the witnesses knew the names of the accused respondents, Rakhal Mog would definitely state in the FIR the names of accused-respondents in the contents of FIR itself which was lodged on the following day of the incident. It is, therefore, evident that naming of the accused persons subsequent to the lodging of the complaint is an afterthought. Under such circumstances, the prosecution case against the present accused-respondents is doubtful because of their naming by the witnesses for the first time at the time of trial. Accused-respondents at the time of trial were identified by some of the witnesses but whether they were forest officials or labourers nothing stated. Regarding the overt act, P.Ws 2 and 3 stated that accused-respondents also cut the rubber plants but other witnesses did not make any specific statement. A careful perusal of the deposition of all the witnesses makes it abundantly clear that they made a generalized statement that forest personnel accompanied with labourers trespassed in the land of the appellants and cut down the rubber plants but regarding involvement of the accused-respondents particularly, there is no reliable evidence except such general statement which is also found to be an afterthought and therefore, the criminal Court cannot act on such evidence which

is clearly an afterthought and an order of acquittal was justified.

18. In view of the discussion made above, I find no merit in the appeal and the appeal is accordingly dismissed.

19. Send down the L.C. records along with the copy of this judgment.