
(2012) 01 GAU CK 0055
In the Gauhati High Court
Case No : Criminal Appeal No. 41 of 2004

Shri Mouli Bhusan Bhattacharjee	Vs	APPELLANT
Sri Chitta Ranjan Debnath and Others		RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 313, 378
Penal Code, 1860 (IPC) — Section 143, 149, 453, 506

Citation : (2012) 01 GAU CK 0055

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : D. Chakraborty, for the Appellant; P. Bhattacharjee, Assistant Public Prosecutor, representing State-respondent No. 5 and Mr. S.K. Laskar, R. Datta, A. Das, Advocates for the respondent Nos.1-4, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra

1. This appeal, filed u/s 378 of the Code of Criminal Procedure, is directed against the judgment and order of acquittal dated 30.04.2004, passed by the learned Addl. Chief Judicial Magistrate, Agartala, West Tripura, in Case No. CR. 2238/2002.

2. A complaint was filed by the appellant against the respondent Nos.1, 2, 3 and 4, alleging that on 12.06.2002 at about 11:30/12:00 hours the respondent Nos.1-4 aided by some other unknown persons trespassed into the building which was under dispute. It has been alleged in the complaint that the respondent Nos.1-4 and their collaborators were armed with dagger and revolver. They broke the lock of the building and entered into the room and occupied the same. They threatened the appellant of dire consequences if he had offered any resistance.

The appellant initially filed information to the police station but the police refused

to take any cognizance of the matter. Consequently, the complaint as stated was filed and cognizance was taken by the learned Chief Judicial Magistrate under Sections 143, 453 read with Section 149 and 506 of the Indian Penal Code. Thereafter, on recording the statement u/s 200 Cr.P.C., process was issued and the accused appeared and thereafter the charge was framed under those sections to which the respondent Nos.1-4 and another person namely, Sri Shakti Sarkar pleaded not guilty and claimed to be tried.

3. The appellant herein adduced as many as five witnesses to prove the charge against those persons. The complainant as PW.1, deposed before the court the contents of the complaint and stated that there is a dispute regarding share of the land. He, during cross-examination, categorically stated that the Civil Court had passed an order restraining the appellant not to change the nature and character of the suit property. He further stated that the accused persons namely, Sri Chitta Ranjan Debnath, Sri Uttam Debnath, Sri Nikhil Sarkar and Sri Khokan Karmakar entered into his shop on 12.06.2002. That shop was not constructed by him, PW.1 deposed. PW.1 admitted that the co-sharers are not involved in this case. He also admitted that there is a tenancy agreement as entered with Sri Chitta Ranjan Debnath and Sri Biswa Ranjan Bhattacharjee for the disputed shop. He further admitted of executing similar other deeds of tenancy in regard to other shops as one of the co-sharers. PW.1 also admitted that he did not file any petition for violating the said interim order as stated.

4. P.W.2 being the daughter of the complainant, stated nothing to corroborate to the allegations as made by the PW.1. She deposed that the accused persons and others threatened them of dire consequences. PW.3 is a photographer who took some photographs of the disputed shop and he did not divulge anything of material consequence. Similarly, PW.4 being an employee of that photographer (PW.3), did not divulge anything. PW.5 is the wife of PW.1, who stated that she saw the accused persons and another Shakti Sarkar in breaking the lock of their joint property shops which were situated on the western side of the road. In cross-examination, she stated that PW.1 is not the sole proprietor of the disputed shops. When PW.5 was confronted with regard to execution of the tenancy agreement, she stated that she had no knowledge.

5. After examining the accused persons u/s 313 Cr.P.C., the impugned judgment and order dated 30.04.2004 was passed by the learned Addl. Chief Judicial Magistrate, Agartala, West Tripura, in Case No. CR.2238/2002, holding that the charge has not been proved beyond reasonable doubt inasmuch as the evidence of the complainant suffers from want of corroboration.

6. I have appreciated the evidence on record afresh to find whether there is any infirmity or illegality in the impugned judgment and order.

The complainant has miserably failed to prove the charge as brought against the respondent Nos.1-4 and it appears the complaint has been filed with regard to dispute which is entirely a dispute in civil nature and cognizance could not have

been taken by the learned Chief Judicial Magistrate, West Tripura, Agartala, of the complaint.

7. Be that as it may, in absence of evidence regarding right of the complainant over the disputed shop as well as for lack of corroboration of his allegation of culpable acts as alleged, the learned trial court has rightly acquitted the respondent Nos.1-4 herein. No interference whatsoever is warranted in the appeal.

8. The appeal being devoid of any merit is accordingly dismissed.

The Lower Court Records be sent down forthwith.