
(2016) 09 TP CK 0001
In the Tripura High Court
Case No : CrI. REV.P. No. 57 of 2012

Sri. Kunja Behari Choudhury

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 401

Citation : (2016) 168 AIC 838

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

Bench : Single Bench

Advocate : Mr. Anupam Pal, Advocate, for the Petitioner; Mr. R.C. Debnath, Addl. P.P, for the Respondent

Final Decision : Dismissed

Judgement

Mr. S.C. Das, J.(Oral) - This revisional application filed under Section 397 read with Section 401 of CrPC is directed against judgment and order of conviction and sentence dated 10.07.2012, passed by learned Sessions Judge, North Tripura, Kailashahar in Criminal Appeal No.7(2) of 2012, where under the learned Sessions Judge upheld the judgment and order of conviction dated 14.03.2012 passed by learned Assistant Sessions Judge, Kailashahar, North Tripura in Sessions Trial case No. S.T.15(NT/K) of 2011 under Sections 304 and 201 of IPC.

2. Heard learned counsel, Mr. Anupam Pal for the accusedpetitioner and learned Addl. P.P., Mr. R.C. Debnath for the State respondent.

3. Prosecution case is that on the intervening night of 01.04.2010 and 02.04.2010, at about 2400/0100 hrs. Sanjoy Barua, deceased victim, a young boy aged about 17 years, along with his cousin brother Maloy Barua(PW4), another young boy aged about 16 years, went out in the neighbourhood for catching/hunting frogs. They went to the backside of the pharmacy shop of the accused Kunja Behari Choudhury at Chawmanu market for hunting of frogs and while Sanjoy was behind a frog to catch it, came in contact with some pieces of

GCI sheets connected with live electric wire drawn from the shop of the accused and got electrocuted. PW4, Maloy Barua tried to rescue him but he also got a shock and then he cried out. Mother of Maloy, the accused and many others came to the spot and Maloy went to inform father of Sanjoy, namely Ashim Barua(PW1) and thereafter Ashim Barua and others came to the spot, shifted Sanjoy to hospital where he was declared dead.

On 02.04.2010 at about 2005 hrs. Ashim Barua, father of Sanjoy lodged an FIR in writing before O/C Chawmanu P.S. and accordingly Chawmanu P.S. Case No.10/2010 under Section 304 of IPC was registered and after investigation charge sheet was submitted against the accused-petitioner.

4. In course of trial learned Assistant Sessions Judge, Kailashahar, North Tripura framed charges against the accused under Sections 304 and 201 of IPC to which the accused pleaded not guilty and claimed to be tried.

5. In course of trial prosecution examined 21 witnesses and also exhibited several documents/materials which were categorically mentioned in the trial court's judgment.

The accused was examined under Section 313 of CrPC and though initially he proposed to give defence evidence but ultimately did not adduce any defence evidence. Defence case is nothing but a denial of the prosecution case.

6. Learned Assistant Sessions Judge found the accused guilty of committing offence punishable under Sections 304-A and 201 of IPC and sentenced him to suffer RI for two years and to pay a fine of Rs.5,000/-, in default of payment to suffer RI for another 3 months for commission of offence punishable under Section 304-A of IPC. For commission of offence punishable under Section 201 of IPC he was further sentenced to suffer RI for 3 months and directed that both the substantive sentences shall run concurrently.

7. Aggrieved, the petitioner preferred Criminal Appeal No.7(2) of 2012 and the learned Sessions Judge by impugned judgment dated 10.07.2012 upheld the conviction under Sections 304-A and 201 of IPC but converted the sentence of imprisonment to sentence of fine only and thereby sentenced the accused to pay a fine of Rs. 60,000/-, in default of payment to suffer SI for six months for commission of offence punishable under Section 304-A of IPC and to pay a fine of Rs.15,000/-, in default of payment to suffer SI for one month under Section 201 of IPC.

8. Aggrieved, the present revisional application is filed.

9. Learned counsel, Mr. Pal appearing for the accusedpetitioner submitted that there is no direct evidence that the accused laid any live electric wire drawn from his shop to the backside of his shop connected with pieces of galvanised sheets and the entire case is based on circumstantial evidence but the chain of circumstances, specially the fact that there was electric wire drawn from the shop of the accused has not been proved at all since no such electric wire was

seized from the shop of the accused nor there was any evidence to show as to how the electric wire was connected with the galvanised sheet pieces in the backside of the shop. Mr. Pal, learned counsel submitted that this is a fit case where this court is required to re-evaluate/re-assess the evidence since the trial court and the appellate court failed to appreciate and evaluate the evidence in its proper perspective. It is candidly submitted by Mr. Pal, learned counsel that the accused had several shop rooms at Chawmanu market, adjacent to each other and in one shop the accused used to run his pharmacy. In the other shops, other tenants were doing business and out of it one was a shop of electric goods. Referring to the evidence of PW21, the I.O., learned counsel submitted that there was clear statement made by I.O. in his cross-examination that the place of occurrence was located just behind the room marked "G" in his hand-sketch map and "G" shop belonged to Alak Saha. That Alak Saha has not been made an accused, whereas the accused-petitioner has been made accused out of assumption and presumption and has been convicted by the trial court and such conviction also affirmed by the appellate court. Mr. Pal, learned counsel candidly submitted that the deceased Sanjoy Barua died due to electrocution. That is proved by the evidence of PW19 but that does not mean that the accused laid the electric wire connected with pieces of galvanised sheets behind the shop and thereby the deceased Sanjoy Barua had died. He has also submitted that the presence of Sanjoy Barua along with PW4, Maloy Barua at such dead hours of night behind the shop of the accused and other shopkeepers also creates lot of suspicion as to why they had gone there and whether the story that they went there for hunting/catching frogs was at all true or that they had gone there with some other ulterior motive to commit theft or otherwise. According to Mr. Pal, the witnesses who have stated about the laying of live electric wire are all relatives of the deceased and no neighbouring shopkeepers supported the case of the prosecution. While there is no eyewitness, the chain of circumstances and the motive behind the offence as alleged, must be proved and otherwise the accused should be given the benefit of doubt.

10. The jurisdiction of the revisional court in my considered opinion is very limited. It has to see correctness, legality and propriety of the finding, sentence or order recorded by the inferior courts and to see the regularity of the proceedings. While exercising jurisdiction under Section 397 of CrPC the High Court as well as the Sessions Judge is not ordinarily required to reassess or re appreciate the evidence. Such power appears to be akin to appellate power exercised by the High Court or Sessions Judge in appropriate cases, yet the High Court or the Sessions Judge is not required to hear the revision case as an appeal and re appreciate/re-assess the evidence as if an appellate court and thereby shall not interfere in the concurrent finding of the trial court and the appellate court. The High Court or the Court of Sessions will interfere only in exceptional cases to prevent flagrant miscarriage of justice.

11. Learned counsel, Mr. Pal submitted that the evidence has not been properly appreciated by both the courts and therefore the judgment and order of

conviction and sentence should be interfered. According to Mr. Pal, since there was no direct evidence of laying live electric wire drawn from the shop of the accused to the backside of the shop i.e. outside the shop with pieces of galvanised sheets, in the absence of seizure of any electric wire or any other relevant material to show that the accused laid such live electric wire to cause harm to anybody, conviction and sentence cannot sustain. The revisional court, according to Mr. Pal can reevaluate and reassess the evidence.

12. In my considered opinion, if the trial court and the appellate court materially appreciate the evidence and arrive at a concurrent finding and the finding to which the trial court and appellate court have arrived assigning reasons is not perverse finding, this court is not ordinarily required to substitute the finding of the trial court and the appellate court with its own view arriving at a different interpretation of the appreciation of fact.

13. It is a settled position of law that revisional jurisdiction cannot be exercised to substitute the views of the revisional court with that of the views taken by the trial court and the appellate court on a question of fact. It is also settled that unless the finding of the trial court and the appellate court is found to be perverse and untenable in law or is based on irrelevant evidence or ignoring relevant evidence, it is impermissible to interfere with the order of the courts below in the exercise of revisional jurisdiction. Even though there might be some error, omission or irregularity in the appreciation of evidence or in the recording of finding of the subordinate courts, the revisional court cannot reverse such finding unless the revisional court is satisfied that failure of justice has occasioned thereby. In my opinion, the revisional jurisdiction has to be exercised where the judgment and/or order occasions failure of justice.

14. Sanjoy Barua died a homicidal death due to electrocution on the alleged date and time and the incident occurred in the backside of the shop of the accused and some other shops attached to the shop of the accused have been proved with overwhelming evidence. The evidence of PW19, autopsy surgeon regarding the cause of death of Sanjoy Barua has not been shaken in any manner.

15. PW4 is an eyewitness of the occurrence. In his deposition he stated that he along with the deceased Sanjoy Barua on the unfortunate night went out to catch frogs in the field and while Sanjoy was about to catch a frog which was running, he got struck with the tin sheets attached to the boundary fencing of the medical shop of the accused. He(witness) tried to rescue him but he too got a severe shock and finding no alternative he raised cry and then the accused Kunja Behari Choudhury and another Sanat Barua rushed to the spot. The accused seeing him there slapped him and beaten with a stick. In the meantime, his mother also arrived there and on the advice of his mother he went to the house of his maternal uncle i.e. PW1 Ashim Barua, father of Sanjoy, and informed him the incident. He inquired the place with the help of torchlight and found that the tin sheets by which Sanjoy got electric shock was connected with the electric wire which was drawn from the shop of the accused.

This material part of evidence of PW4 has not been shaken or destroyed in cross-examination. Except suggestion and denial there is nothing in the cross-examination to discredit the witness in respect of his above statement that the deceased Sanjoy struck with tin sheets which were connected with the electric wire from the shop of the accused.

PW1 is the father of the deceased. He stated that he found two pieces of tin sheets, hanging attached with the fencing of the boundary of the shop of Kunja Behari Choudhury, the accused and the said pieces of tin sheets were having connection with the electric wire drawn from the shop of accused Kunja Behari.

This material part of the statement of this witness also has not been shaken or disturbed in the cross-examination.

PW2 is the nephew of the deceased and the brother of the informant Ashim Barua. He also stated that they found two pieces of tin sheets attached with the boundary fencing which were connected with electric wire drawn from the shop of the accused.

PW3 is another brother of PW1 and he also made the similar statement that he found two pieces tin sheets hanged in the boundary fencing which were connected with electric wire drawn from the shop of the accused, Kunja Behari.

PW5 is the mother of PW4 and she stated that her son told her that Sanjoy got electric shock at the time while he was trying to catch frog near the boundary fencing of the accused and she also found pieces of tin attached with the boundary fencing.

16. The investigating officer i.e. PW21 has proved the hands sketch map wherein he has shown the place of occurrence. It is behind Chawmanu market in the backside of the shop of accused and others. The shopkeepers who were near to the shop of the accused turned hostile. I.O. in his cross-examination stated that the point "G" in the hand-sketch map is the room of Alak Saha and that is a electric shop. The place of occurrence situated just behind the room, marked "G" in the hand-sketch map. The two pieces of GCI tin sheets were seized from nearby in broken condition of the bamboo fencing of the boundary of the structure which situates just behind the room, marked "G" in his hand-sketch map. As per hands sketch map prepared by the I.O., the place of occurrence is "A" i.e. a fencing behind the shops, marked "E", "F", "G", "H" and "I". According to I.O. "G" was the shop of Alak Saha and the place of occurrence "A" is behind "G". But I.O. has not stated as to which one was the pharmacy of the accused but it is in the evidence that the entire building belonged to the accused and he was doing business of medicines and some other tenants were also doing business of other things. The witnesses made specific statement that they found electric wire drawn from the shop of the accused and connected with the tin sheets outside the boundary fencing. I.O. has not indicated which particular shop belonged to the accused though he has mentioned as medical shop in the hand-sketch map. No question was also put from the side of the defence to the

prosecution witnesses that the electric wire or tin sheets were just behind the shop of Alak Saha and not of the accused. The trial court and the appellate court arrived at a concurrent finding after sifting the evidence of witnesses assigning reasons. While the particular aspect in respect of location of the place of occurrence as mentioned in the hand-sketch map of the I.O., was not put to the witnesses who has seen the fact, I think the revisional court should not interfere in the finding of the trial court and the appellate court in respect of appreciation of evidence of that fact.

17. The deceased died due to electrocution which is proved with overwhelming evidence. The place of occurrence is behind the shop of the accused and some other shops, even if we appreciate the hand-sketch map as a whole. If the hand-sketch map is found to be authentic, even then the evidence of direct witness cannot be ignored. The evidence of I.O. cannot supersede or overawe the evidence of other direct witnesses. There is no other circumstance that live electric wire from the electric line accidentally fallen over the boundary fencing and touched the tin sheets hanging with the boundary fencing. No other hypothesis can be drawn. It is true that when a case is based on circumstantial evidence the circumstances together shall form a chain and lead to the only hypothesis of guilt and inconsistent with the plea of innocence. The proved circumstances should, to all moral certainty, exclude the possibility of guilt of any other person than the accused.

18. While the fact that the young boy died due to electrocution and the incident occurred behind the shop of the accused and some other shops of Chawmanu market, for whatever purpose they had gone there, is totally immaterial. The fact that deceased Sanjoy died due to electrocution and the allegation is that the accused connected live electric wire from his shop to some pieces of galvanised sheets attached to the boundary fencing and according to PW4, the deceased struck with the galvanised sheets while running behind a frog and got electrocuted and thereby the chain of circumstances has become complete. All legal inferences have been proved and indubitably connected with factum probandum. I find it difficult to accept the argument advanced by learned counsel, Mr. Pal to arrive at a different finding than that of the finding to which the trial court and the appellate court arrived.

19. It is argued by Mr. Pal, learned counsel that the witnesses who have stated about the electric wire drawn from the shop of the accused are all relatives of the accused and no independent witness corroborated it and therefore their evidence should be discarded. A witness who is a relative of the victim cannot be termed as an interested witness. An interested witness means a person who must have some direct interest in seeing that the accused person is somehow or otherwise convicted either because he has some animus with the accused or for some other reason. Simply because those witnesses who have stated about the fact were relatives of the deceased cannot be termed as interested witnesses since there is nothing to show in their evidence that they had any animosity with the accused

or that they had any other reason to falsely implicate the accused. The evidence of a relative witness cannot be discarded saying that they are interested witnesses. Some of the neighbouring shopkeepers were examined but they were declared hostile by the prosecution but the previous statements of the witnesses has not been properly proved as required by law. So those evidences may be ignored.

20. Mr. Pal, learned counsel also argued that the FIR was lodged after a considerable delay and so adverse inference should be drawn. The incident occurred on the intervening night of 01.04.2010 and 02.04.2010 at midnight. On the following day at about 8.00 PM FIR was recorded. No doubt, there was delay but that delay by itself in the given facts and circumstances of the case cannot be a reason to doubt the entire prosecution case because there is nothing to show that there was scope of embellishment or afterthought.

21. In every cognisable offence it is expected that an FIR is lodged at the earliest. There is no particular time fixed for lodging an FIR. Hence, a delayed FIR cannot be said to be illegal. Of course, a prompt and immediate lodging of FIR is the ideal as that would give the prosecution a twin advantage. At first, it affords commencement of the investigation without any time-loss and in the second it expels the opportunity of any possible concoction for false version. In the present case, the FIR could be lodged on the following day. I.O. would divert the investigation to that effect. It appears that I.O. was informed and inquest report was prepared at 8.30 am on 02.04.2010 and initially a U.D. case under Section 174 of CrPC was registered and investigation was started. The incident occurred at rural area. It was the duty of the I.O. to register the FIR at the first inception itself since the deceased died due to electrocution and that was not a case of an unnatural death otherwise. Anyway, in the given facts and circumstances of the case, I am not at all convinced by the submission of learned counsel, Mr. Pal that for the delayed registration of the FIR adverse inference should be drawn against the prosecution.

22. In view of the discussions made above and in view of the concurrent finding of fact by the two courts below, I am not inclined to interfere with the finding of conviction recorded by the trial court and affirmed by the appellate court. The appellate court already taken a lenient view in respect of punishment and only fine is imposed on the accused. The life of a young man has been taken away because of the act of the accused and so the fine money if realised will be of a little bit of consolation to the parents of the deceased. The judgment and order of conviction and sentence therefore is upheld. The revisional application, therefore, stands dismissed.

23. Send back the L.C. records along with a copy of this judgment.