

(2011) 02 GAU CK 0050

In the Gauhati High Court

Case No : Criminal Rev. Petition No. 15 of 2003

Sri Madhu Sudhan Sarkar

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2011) 02 GAU CK 0050

Hon'ble Judges : Arun Chandra Upadhyay, J

Bench : Single Bench

Advocate : H.K. Bhowmik, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—Heard Mr. HK Bhowmik, learned Counsel, appearing for the petitioner, and Mr. A. Ghosh, learned Additional Public Prosecutor, representing the State respondent.

2. This revision petition is directed against the judgment dated 02.04.2003, passed by the learned Additional Sessions Judge, West Tripura, Agartala, in Criminal Appeal NO.2(1) of 2002, affirming the judgment dated 07.12.2001, passed by the learned Chief Judicial Magistrate, West Tripura, Agartala, in G.R. Case No.692 of 1998, whereby the petitioner was convicted u/s 279 of IPC and was sentenced to suffer RI for 3(three) months and further sentenced to RI for 3(three) months and a fine of Rs.500/-(rupees five hundred), with default stipulation for commission of offence punishable u/s 337 of IPC.

3. The prosecution case, as stated in the FIR, in short, reveals that on 10.08.1998, at about 11.45 am, one Sri Narayan Ch. Deb, lodged a written Ejahar with the Officer In-charge of Amtali Police Station, stating inter alia that in his sweetmeat shop at Sekerkote Bazaar, one Sri Raju Deb had been working. On the same day in between 11.30 am to 12.00 noon, his employee, Sri Raju Deb

had gone out to collect the empty cups of tea from the adjacent shops. At that time a Bishalgarh bound speeding jeep bearing No. TR.01-3492 dashed Raju Deb on Agartala-Bishalgarh main road, resulting in serious bleeding injuries of the victim. Immediately the injured victim was rushed to G.B. Hospital, Agartala, for medical treatment. It was alleged that the accident took place due to negligent and reckless driving of the driver of the offending vehicle.

4. Accordingly, a case was registered under Sections 279/337 of IPC and investigation was launched. On completion of investigation, charge sheet was submitted by the investigating officer. During the trial, the learned trial Court, after recording the evidence of the witnesses, found the accused-petitioner guilty, and accordingly, convicted the accused-petitioner as aforesaid.

5. The accused-petitioner preferred an appeal against the verdict of the learned trial Court before the learned Addl. Sessions Judge, West Tripura, Agartala. The learned appellate Court, after due evaluation of the arguments advanced by the learned Counsel for the accused-appellant, affirmed the conviction and sentence, awarded by the learned trial Court.

6. Mr. HK Bhowmik, learned Counsel, appearing for the revision petitioner, has raised the question of identification of the accused-petitioner, as a driver of the offending vehicle, in the instant case. Learned counsel for the petitioner has pointed out that the learned trial Court as well as the appellate Court, based their finding on the unacceptable evidence of the witnesses to convict the accused-petitioner. Learned counsel for the petitioner has further pointed out that learned appellate Court fully relied on the statement given by a witness u/s 161 Cr.P.C., before the investigating officer during investigation, to convict the accused-petitioner in this case. The fact that the accused petitioner had surrendered the vehicle, in question, at the police station, was also presumed towards complicity of the accused petitioner to convict the accused-petitioner.

7. Learned counsel for the accused-petitioner, drawing the attention of the Court to the evidence of the owner(P.W.9) of the offending vehicle, submitted that the owner has categorically made a statement in his evidence that the offending vehicle was brought to the police station by him. In support of the above statement made by the owner of the vehicle, learned Counsel for the petitioner drew the attention of the Court to the seizure list(Exbt.5), which reveals that the vehicle, in question, was also seized from the possession of the owner, in the police station on 10.08.1998. Apparently, the statements of the investigating officer that the vehicle was brought to the police station by the accused-petitioner, do not find support from the evidence on record.

8. On perusal of the judgments of the learned trial Court as well as the appellate Court, it appears that the identity of the accused-petitioner as the driver of the offending vehicle was ascertained on the basis of a reply communication(Exbt.7), written by the owner(P.W.9) on the body of the letter written by the I/O. The owner of the offending vehicle, (PW.9), in his deposition, stated that the

intimation was given by him to the police on the basis of a letter issued by the police officer to him asking him as to who was the driver of the vehicle, in question. The owner of the vehicle (PW.9) has confirmed that he himself wrote the intimation as sought for by the police on the backside of the communication received from the police. In his cross-examination by the defence, PW.9 clarified that he wrote the intimation given to the police as per the direction of the investigating officer, when P.W.9 visited the police station. PW.9 further confirmed that he was compelled to give the intimation on the backside of the letter in his own handwriting, as otherwise the investigating police officer was not inclined to release his vehicle in custody. Therefore, from the above statement of PW.9, it clearly transpires that the intimation given by P.W.9 is nothing but a statement u/s 161 of Cr.P.C., made by a witness during investigation before the I.O. It is a settled position of law that the statement given by a witness during investigation, cannot be used as a substantive piece of evidence during trial, to base the identity of the accused in the commission of the offence alleged.

9. However, on careful perusal of the analysis made by the learned trial Court as well as the appellate Court, it transpires that the statement given by the owner before the I.O. Exbt."7" was used as a substantive piece of evidence to identify the accused as the sole person responsible for the commission of offence. It may be mentioned here that apart from the statement made by the owner there was no independent eye witness, who had seen the accused-petitioner, driving the vehicle at the relevant time.

10. Submission of bail bond by the owner of the vehicle

on behalf of the accused-petitioner at the time of securing bail on behalf of the accused-petitioner has also been considered as an additional proof of complicity of the accused-petitioner in the alleged crime by the learned trial Court, as well as the appellate Court, to pin-pointedly fix the responsibility upon the accused for having driven the vehicle at the time of causing accident. Learned Court below went ahead to presume that the accused petitioner must have been driving the offending vehicle of the owner at the relevant time, else why the owner would secure his bail. However, to accept such analogy to fix criminal charge on the accused petitioner and to punish him would be as good as accepting an absurd proposition, unacceptable in law. Therefore, the analogy of fixing responsibility of driving the offending vehicle at the relevant time of the accident by the accused petitioner, on the basis of the bail bond furnished by the owner on behalf of the accused, is absolutely not acceptable.

11. On the other hand, there is apparent risk in believing the plain information given by the owner of the vehicle fixing responsibility on the driver of the vehicle in question without further proof in this regard. It may so happen, if the owner was himself driving the vehicle at the relevant time of the accident and having met with the accident, in order to save himself from the wrath of prosecution, he might have given false information to the police putting the blame on the accused. This situation, which is probable in the facts and circumstances of the

case, cannot be ignored. In my considered view the attendant facts and circumstances clearly reveal that complicity of the accused petitioner in the commission of offence as a driver of the offending vehicle in the facts and circumstances is absolutely doubtful.

12. In view of the above discussions it appears that the learned trial Court as well as the appellate Court could not properly appreciate the evidence on records in right perspective and accordingly found the accused-petitioner guilty of offence alleged and subsequently sentenced him as aforesaid.

13. The revision petition filed by the petitioner is accordingly allowed and the judgment dated 02.04.2003, passed by the learned Additional Sessions Judge, West Tripura, Agartala, in Criminal Appeal NO.2(1) of 2002, affirming the judgment dated 07.12.2001, passed by the learned Chief Judicial Magistrate, West Tripura, Agartala, in G.R. Case No.692 of 1998, is hereby set aside and quashed and the accused-petitioner is set at liberty forthwith.

14. The bail bond furnished on behalf of the accused petitioner, stands discharged. Send down the Lower Court Records.