

(2014) 02 TP CK 0017

In the Tripura High Court

Case No : Crl. Rev. P. 90 of 2005

Sri Paritosh Das and Sri Santosh Das VsThe State of Tripura

Date of Decision : 25-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Penal Code, 1860 (IPC) — Section 379

Citation : (2014) 02 TP CK 0017

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : H.K. Bhowmik, Advocate for the Appellant; R.C. Debnath, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Deepak Gupta, C.J.—This Revision petition is directed against the judgment dated 02.06.2005 delivered by the learned Session Judge, West Tripura, Agartala in Criminal Appeal No. 40(4) of 2003, whereby he dismissed the appeal of the present petitioners and upheld the judgment dated 20.09.2003 passed by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in G.R. Case No. 691 of 1999, whereby the petitioners were convicted of having committed an offence punishable u/s 379 IPC and sentenced to undergo rigorous imprisonment for one year for the commission of the said offence.

2. The prosecution story in brief is that on 24.09.1999 the accused persons stole one red coloured ox belonging to the informant Sri Adhir Rudra Paul, PW 9 and when they were taking the ox through the Adarini Tea Estate they were accosted by certain villagers who asked them from where they have got the ox and they could not give satisfactory reply. The villagers then took the ox and the accused persons to the Damdamia market. At this market the owner of the ox appeared and, thereafter, the matter was reported to the police. Thereafter FIR was lodged and the accused persons were convicted after trial. Their appeal was also dismissed.

3. Aggrieved by the aforesaid judgments, this petition had been filed. The main

grounds raised are that no seizure memo has been produced with regard to the seizure of the ox in question and secondly that the Pradhan of the gram panchayat or the elderly person before whom the ox was produced by the villagers who had apprehended the same have also not been examined in the witness box.

4. I have heard Sri HK Bhowmik, learned counsel for the petitioners and Mr. RC Debnath, learned PP appearing for the State. I have also gone through the evidence on record.

5. PW 1 Kajal Halder, PW 2 Nirmal Sarkar, PW 4 Babul Nama and PW 5 Kshitish Halder have stated that they were part of the group of villagers who saw the accused coming with a red ox through the Adarini Tea Estate. They asked the accused from where they have got the ox and the accused replied that they had purchased the ox from Lembucherra market. The villagers asked the accused to show them any proof of such transaction but the accused could not produce any proof and, therefore, these villagers apprehended the accused as well as the ox and took both the accused as well as the ox to the elderly members of the village sitting in the market. In the mean time the informant, PW 9 arrived and claimed that the ox belonged to him and, thereafter, the two detained persons i.e. the accused along with the ox were handed over to the police of the Lembucherra outpost by the elder members of the market.

6. PW 9, Adhir Rudra Paul who is the owner of the ox has identified the ox, as belonging to him. He also states that he owned two oxen and he had left them for grazing on a tilla land near Adarini tea estate. In the afternoon at about 1.00/1.30 p.m. he received information that some unknown persons have been apprehended in the market with the red ox belonging to him. Hearing this news he immediately went to Damdamia market and found his ox tethered to a tree. He also found two persons i.e. the accused who had been apprehended and who were stated to be the persons who had stolen the ox. Thereafter PW 9 states that the Pradhan told him to handover the two miscreants and the stolen ox to the O/C Lembucherra outpost. PW 9 also states that on the same day he lodged a written ejahar with the O/C East Agartala police station (Exhibit 1).

7. PW 8, Birendra Debnath was the ASI, Incharge of the outpost at Lembucherra on 24.09.1999. According to him on that day at about 4.30 p.m. the gaon pradhan of Damdamia along with 14/15 villagers came to the outpost with two persons (the accused and an ox). The villagers as well as the gaon pradhan reported that the said two persons had been apprehended for stealing an ox. He thereafter entered this fact in the GD book at Serial No. 600. According to him he also seized the said stolen ox and a seizure list was prepared in the presence of the witnesses. Both the apprehended persons were seriously injured and, therefore, he sent them for treatment to the GB hospital. PW 8 also states that he released the ox on bail the next day. In cross examination PW 8 states that in the seizure report he did not mention from whose possession the ox was seized by him.

8. The defence of the accused is that they had refused to pay puja subscription and hence the villagers had lodged a false case against them. It has also been urged that neither the seizure list been produced nor PW 8 has stated the name of the persons from whom the ox was seized. It has also been urged that PW 8 has not stated that the informant was present along with the pradhan and the villagers.

9. This court is exercising revisional jurisdiction u/s 397 Cr.P.C. in revisional jurisdiction this court does not normally go into questions of fact and evidence is not to be re-appreciated. Only if there is total misreading of evidence or the courts below have arrived at a finding of fact which no reasonable person can arrive at, can this court interfere in revisional jurisdiction. I have however gone through the entire evidence and from the evidence it is apparent that the accused were apprehended with an ox. That ox and the accused were taken to the Damdamia market. At the market the owner of the ox also arrived at about 1.30 or 2.00 pm. The matter was reported at the police outpost at about 4.30 pm. The informant has clearly stated that he was told by the pradhan and the villagers that he should report the matter to the police and go to the Lembucherra outpost.

10. No doubt the seizure list should normally have been produced in court but in the present case I find that the owner identified the ox, as belonging to him and he has not been subjected to cross examination on this issue. No suggestion has been put to the informant (PW 9) that he did not visit the Lembucherra outpost. It is thus obvious that the ox was handed over by him along with other villagers to the Lembucherra outpost. The ox is a living being and not an inanimate object. Obviously the police could not keep the ox in its custody for a long length of time and, therefore, in the circumstances of the case PW 8 was fully justified in releasing the ox to its true owner, the very next day. I find nothing illegal in that and the whole evidence clearly proves beyond doubt that the ox was stolen by the accused. Therefore, I uphold their conviction u/s 379 IPC.

11. Coming to the issue of sentence, I find that the occurrence took place on 24.09.1999. Almost 15 years have elapsed. The accused have faced criminal trial and these proceedings for almost 15 long years. They were mercilessly beaten by the villagers as is apparent from the statement of PW 8 and were sent to the hospital thereafter by him. Therefore, I am of the considered opinion that at this stage to send the petitioner behind bars would be a travesty of justice.

12. I, therefore, while upholding the conviction, modify the sentence and each of the accused is sentenced to pay a fine of Rs. 2,000/- each, and in default of payment of fine to undergo simple imprisonment for 3 (three) months each. The fine be deposited within 2 (two) months from today.

13. Criminal Revision petition is disposed of.

Send down the LCRs forthwith.