

(2012) 01 GAU CK 0078
In the Gauhati High Court
Case No : Criminal Rev. P. No.56 of 2004

Sri Pravat Giri

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 07-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 380

Citation : (2012) 01 GAU CK 0078

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : A. Banerjee and Mr. G. Debnath, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Judgement

S.C. Das

1. This criminal revision petition u/s 482 of Cr.P.C. is directed against the judgment and order dated 11.06.2004, passed by learned Sessions Judge, West Tripura, Agartala in Criminal Appeal No.11 (1) of 2004, whereby the learned Sessions Judge affirmed the judgment and order of conviction and sentence dated 30.12.2003, passed by learned Chief Judicial Magistrate, West Tripura, Agartala, in G.R. case No. 76 of 2002. Learned Chief Judicial Magistrate found the accused-petitioner guilty of committing offence punishable u/s 380 of IPC and sentenced him to suffer RI for one year.

2. Heard learned counsel, Mr. A. Banerjee, appearing for the petitioner, and learned Addl. P.P., Mr. A. Ghosh, appearing for the State respondent.

3. It is submitted by learned counsel, Mr. Banerjee that there is no eye witness of the occurrence. Prosecution case is based on the recovery of the alleged stolen briefcase from A.D. Nagar Home Guards HQs and there is no statement of the accused, recorded by the I.O. and no evidence leading to discovery. Under such circumstances, the findings of the trial court as well as the first appellate court

were wrong and the accused may be given the benefit of doubt.

4. Learned Addl. P.P., Mr. Ghosh in his usual fairness has frankly submitted that if PWs.4 and 5 are believed there is a case that the accused might have committed the offence but it is a fact that the ingredients of Section 27 of the Evidence Act, regarding leading to discovery is not there.

5. The revisional Court is to see the correctness, legality and propriety of the judgment/order, passed by the inferior court and to see the regularity of the proceeding. It is not required to relook the evidence on record and re-appreciate it unless it is shown that the findings, so given by the trial Court and the first appellate court, were perverse.

6. In the present case, it is submitted that there is no evidence leading to discovery and there is no eye witness of the occurrence. Learned Addl. P.P., Mr. Ghosh has frankly admitted that no eye witness is there. He has submitted that PW.4 stated that the accused, in presence of police officers, admitted his guilt and that PW.5 stated that the accused had taken out the briefcase from A.D. Nagar Home Guards HQs. but evidence, leading to discovery, as required u/s 27 of the Evidence Act, is not there.

7. In view of the submission made by the learned counsel of both the parties, I have gone through the evidence on record. It is amply proved that the briefcase, containing money and other articles of the informant, Ranjit Kumar, was stolen from the security guards barrack in the quarters of AIG (Operation), Sri Rakesh Ranjan, on 05.02.2002, at any time before 10.00/10.30 pm. The said suitcase/ briefcase was recovered by police subsequently from A.D. Nagar Home Guards HQs. PW.1, the informant, in his deposition stated thus:

The police thoroughly interrogated all the security personnel deployed in the house of A.I.G (Operation). After interrogation police arrested my companion T.S.R. Jawan, Sri Prabhat Giri, who was also deputed in the house of A.I.G (Operation) for performing security guard duty. On the following day evening, the police recovered the V.I.P. suit case along with a sum of Rs.14,500/- out of Rs.18,000/-, clothings and also the certificates from the possession of Prabhat Giri which he reported to have concealed in a homeguard barrack at A.D. Nagar. The police brought Prabhat Giri along with recovered stolen articles to the quarters complex of A.I.G.(Operation) and on the request of the police I identified the stolen articles as mine.

8. PW.4 stated thus--

...Out of suspicion, a security Guard namely, Prabhat Giri was detained by us and the incident was reported to the Police. After arrival of the Police, the said Prabhat Giri was interrogated by the Police when he admitted that he had committed the theft of money including the VIP Suit Case from the Barrack. One staff of the neighbouring quarters namely, Uttam reported us that he saw Prabhat Giri on the previous night going away with a VIP Suit Case from the

quarters of Rakesh Ranjan.

9. PW.5 stated thus:

On 6-2-2002 I was posted at A.D. Nagar Home Guard H.Q. as Home Guard. On that day at around 6/6-30 p.m. Darogababu came to A.D. Nagar Home Guard H.Q. alongwith Home Guard Prabhat Giri where Prabhat Giri handed over a Brief Case to Darogababu which he kept concealed in Barrack Number 1. Then Darogababu brought myself, another Home Guard Uttam Majumder and Prabhat Giri to the Quarters of Rakesh Ranjan, A.I.G. of Police at Shyamali Bazar alongwith the stolen brief case. After arrival in the Quarters of A.I.G., Darogababu opened the V.I.P. Suit Case after taking key from the informant Ranjit Kumar, a security guard and Rs.14,500/- and some papers were found inside the V.I.P. suit case....

10. It may be mentioned here that altogether nine witnesses were examined and out of them PW.1 is the informant, whose suitcase was stolen. PW.4 is only the material witness, who has deposed before the Court as reproduced above. PWs. 2, 3 and 8 are the labourers working in that quarter and there is nothing material in their depositions. PW.6 is tendered by the prosecution and PW.7 is a police officer, who simply registered the case. PW.9 is the I.O. of the case. In the deposition of PW.4, the name of one Uttam has transpired, said to be an eye witness but he was not examined.

11. Let us now see the deposition of the PW.9. In his deposition, PW.9 stated thus:

....I seized one locked VIP suitcase (sky colour) measuring 20" from H.G. Head quarter, A.D. Nagar by preparing a seizure list in present of wits. and the same was recovered as per confessional statement of the accused. This is the seizure list prepared by me and it bears my signature marked Exbt.3/1 and 3/2 respectively. After recovery of that VIP suitcase myself along with other witnesses came to the quarters of Rakesh Ranjan and after taking key of the said VIP from the owner, Ranjit Kumar unlocked the said VIP. That after unlocking the said VIP cash amounting Rs.14500/-, some papers, a small bag were found inside the said VIP.

12. Admittedly, PWs.1, 4, 5 and 9 are the material witnesses. PW.1 stated nothing incriminating against the accused. PW.4 stated that the accused admitted the theft before the police officer, when he was interrogated. Since such admission made before the police officer, it is not admissible according to law. It bears no evidential value. PW.5 stated that Prabhat Giri handed over the briefcase to "Darogababu", which he kept concealed in the barrack. PW.9 stated that he seized the briefcase on recovery, as per the confessional statement of the accused. So the evidence of PWs. 5 and 9 are in contradiction regarding recovery. No confessional statement of the accused was recorded. There is also no extrajudicial confession before any person except PW.4, but that was in presence of police and that was not admissible. The ingredients of Section 27 of

the Evidence Act, regarding recovery of the suitcase, also not proved since the statement of the accused was not recorded and there is no evidence that the accused led the I.O. and other witnesses to the recovery of the suit case and the suitcase was accordingly recovered, observing procedure prescribed by law. Under such circumstances, the accused is entitled to get the benefit of doubt.

Accordingly, I hold that the accused should be given benefit of doubt, and, he is accordingly acquitted from the charge, levelled against him on benefit of doubt. The order of conviction and sentence passed by learned Chief Judicial Magistrate, West Tripura, Agartala, which was affirmed by learned Sessions Judge, is set aside. The seized suitcase/briefcase along with all articles be handed over to the informant as already decided by the trial Court.

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