

(2014) 01 TP CK 0007
In the Tripura High Court
Case No : Criminal Rev. P. No. 39 of 2007
Sri Sanjoy Sur VsThe State of Tripura

Date of Decision : 16-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 397, 401
Penal Code, 1860 (IPC) — Section 34, 379, 380, 457, 511

Citation : (2014) 01 TP CK 0007

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : G.S. Bhattacharji, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—Heard Mr. G.S. Bhattacharji, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned P.P. for the State. By this petition filed u/s 397 read with Section 401 of the Cr.P.C., the legality of the judgment and order dated 09.02.2007 delivered in Criminal Appeal No. 43(3)/2006 by the Sessions Judge, South Tripura, Udaipur has been called in question. By the said judgment, the Sessions Judge has affirmed the judgment and order of conviction and sentence dated 22.07.2006 delivered in case No. G.R.67 of 2005 by the Chief Judicial Magistrate, South Tripura, Udaipur.

2. In the complaint filed by the Executive Engineer, Rural Development Division, Udaipur, South Tripura namely Sri Sibapada Chakraborty it had been disclosed that the petitioner and another accused person namely Sanjoy Guha had stolen UPVC & GI pipes from the R.D. stockyard. But when alarm was raised by the night guards, they left the materials namely UPVC & GI pipes and fled away from the place of crime.

3. On the basis of the said complaint dated 01.03.2005, R.K. Pur P.S. case No. 62 of 2005 under Sections 379/34 of the I.P.C. was registered and taken up for investigation. On completing the investigation, the charge sheet was filed against both the accused persons and the charge was framed by the Chief Judicial

Magistrate, South Tripura, Udaipur under Sections 457/380 read with Section 511 and 34 of the I.P.C. to which the petitioner and the other accused person pleaded total innocence and claimed to face the trial.

4. To substantiate the charge, the prosecution has adduced as many as 10 witnesses including the informant, Sri Shibapada Chakraborty (PW-7), two night guards namely, Sri Mahadeb Roy (PW-6) and Sri Abinash Dutta (PW-9), the two neighbouring witnesses namely, Sri Sridam Debnath(PW-2) and Sri Balaram Debnath (PW-3) and the store keeper namely, Sri Pradip Chakraborty (PW-4).

5. On recording the depositions of the prosecution witnesses and on admitting the documents on evidence, both the accused persons were separately examined u/s 313 of the Cr.P.C. when they have asserted again their total innocence. Thereafter, on scrutinizing the purported testimonies in the evidence, the Chief Judicial Magistrate, South Tripura, Udaipur has passed the judgment and order of conviction and sentence, whereby the petitioner has been convicted under Sections 457/380 read with Sections 511/34 of the I.P.C. The petitioner has been sentenced to suffer rigorous imprisonment for 1(one) year for committing offence punishable u/s 457 of the I.P.C. and to suffer further rigorous imprisonment for 1(one) year for committing offence punishable u/s 380 read with Section 511 of the I.P.C.

6. Being aggrieved by the said judgment and order dated 22.07.2006 passed by the Chief Judicial Magistrate, South Tripura, Udaipur, the petitioner and the other accused person had preferred an appeal in the Court of the Sessions Judge, South Tripura, Udaipur being Criminal Appeal No. 43(3)/2006. The said appeal has been dismissed by the impugned judgment and order dated 09.02.2007. The appellate court has affirmed the findings of the Chief Judicial Magistrate, South Tripura, Udaipur and does not interfere with the sentence for the reasons stated therein.

7. Mr. G.S. Bhattacharji, learned counsel appearing for the petitioner has submitted that there is no legal identification of the petitioner for linking him with the commission of offence. The judgment and order of conviction and sentence has been entirely passed on surmise and as such, it is required that this Court should interfere with the judgment and order of conviction and sentence.

8. From the other side, Mr. A. Ghosh, learned P.P. appearing for the State has fairly acceded to the submissions as advanced by Mr. G.S. Bhattacharji, learned counsel appearing for the petitioner holding that the identification of the petitioner made for the first time in the dock by PW-9 cannot be relied for returning the conviction in the circumstances of the case.

9. For purpose of appreciation of the rival contentions as projected by the learned counsel for the parties, it would be apposite that a short survey of the evidence as led by the prosecution is taken up by this Court. It appears that PW-7, Sri Sibapada Chakraborty, the Executive Engineer, Rural Development Division, Udaipur, South Tripura had lodged the first information report stating

that he had got the names of the accused persons from their night guards, posted in the R.D. stockyard at the relevant point of time i.e. about 3.30 am. of 01.03.2005. In the first information report, he did not disclose the name of the night guards. However, he had given the registration number of the Maruti Van which had been allegedly used for carrying out the offence. The F.I.R. is the Exbt. 3. When PW-7 was examined he had given the name of the night guards as Madhab Roy (PW-6) and Abinash Datta (PW-9) but in the cross-examination, he had admitted that he did not provide the names of the night guards in the first information report. He had also admitted that the investigating officer did not interrogate him in connection with that case.

10. The other official witness namely Sri Asish Manik (PW-8) has stated that the night guards told him that they had found 2(two) persons committing theft in the R.D. store-yard and they could identify the said two persons by the electric light. He has also stated that when the alarm was raised by the night guards, the neighbouring people namely, Sri Sridam Debnath (PW-2) came to the spot. According to his testimony, the night guards had informed him the names of the accused persons i.e. Sanjoy Sur and Sanjoy Guha, who were alleged of committing theft on the said day and time in the R.D. store-yard. Thereafter, he had informed the entire matter to PW-7 for taking necessary action whatsoever. When the stock register was seized by the investigating officer, he stood as the witness of the seizure. But in the cross-examination, surprisingly, he has also stated that "the Night Guard did not tell me that they could identify themselves the said 2 (two) persons". Thereafter, he has voluntarily stated that the night guards came to know the names of the said two accused persons by the aid of one Sridam Debnath (PW-2), a person from the neighbourhood.

11. Before appreciation of the oral testimonies of PWs-2, 6 & 9, it would be convenient if the statement made by the store keeper namely, Pradip Chakraborty (PW-4) is weighed. PW-4 has narrated how the stock register was seized by the investigation officer. That apart, he has made a categorical statement that "the accused persons fled away by the said Maruti Van leaving the plastic pipe and as such I did not get any shortage of plastic pipes."

12. Even though the prosecution case was initially that some UPVC & GI pipes were stolen from the R.D. stockyard but after investigation and after recording of the statement made by PW-4, the charge sheet was filed under Sections 380/511 read with Section 34 of the I. P.C. against the two accused persons. For their trespass in the stockyard, a separate charge u/s 457 of the I.P.C. was framed.

13. What has indubitably appeared that PWs-2, 6 & 9 are the most vital witnesses of the prosecution case inasmuch as PW-3 is the another neighbouring witness, who has heard the occurrence from PW-2. It has been established by the prosecution that PW-6 and PW-9 were the night guards posted in the R.D. store-yard at the alleged day and time.

14. PW-6 namely Sri Mahadeb Roy has stated that they (he and PW-9) had

raised alarm shouting "thief! thief!" Responded to that, two neighbouring people had reached to the place of crime. Out of whom, one was Sridam Debnath (PW-2) and another was his brother. Sridam Debnath had identified one of the two accused persons who were taking away the plastic pipes. He called him "Mana". However, he had identified both the accused person by name in the dock stating that they were the persons whom he had seen at the place of crime. But he has admitted in the cross-examination that he did not disclose the names of the accused persons when the investigation officer had recorded his statement u/s 161 of the Cr.P.C. He had further asserted that "at the time of occurrence I saw the faces of the said 2 (two) persons but did not know their names." PW-6 has admitted that he did not state to the investigation officer that he had noted down the registration number of the maruti vehicle.

15. PW-9, the another night guard namely, Sri Abinash Datta has stated that he could not identify the persons who were suspected to have been involved in the attempt of theft of the pipes. Sridam Debnath (PW-2) had rushed to the place of crime and Sridam had identified one of the two persons. Sridam had identified the other accused person namely, Sanjoy Guha at the place of crime.

16. PW-2 has also corroborated the statement of PW-9 and has submitted that he could only identify the other accused person by the aid of the electric light and also by the street light. According to him, the one person he could identify was Sanjoy Guha, the other accused person. The other witnesses are the formal witnesses of seizure or the hearsay witnesses. As such, their testimonies do not form any basis for identification of the accused persons.

17. The only evidence that stands against the present petitioner is that, PW-6 has identified him during trial when he was in the dock. Whether on the basis of such identification, the question remains to be responded, the petitioner can be convicted. On meticulous appreciation of the testimony of PW-6, it would appear that he could not state the name of the accused persons to the investigating officer at time of recording his statement u/s 161 of the Cr.P.C. but in the dock he has identified them by their names. Such identification, therefore, is definitely shrouded by serious suspicion and cannot be relied for returning the judgment of conviction against the petitioners. Since by this revision petition, the present petitioner alone has approached this Court against the impugned judgment and order, on appreciation of the evidence so recorded during the trial, such identification would appear untenable for returning the finding of conviction against the petitioner. As such, the petitioner is entitled to get benefit of doubt. Having held so, the impugned judgment and sentence so far it is concerned with the present petitioner, namely, Sri Sanjoy Sur is interfered with and quashed. He is acquitted from the charge on benefit of doubt. The bail bond is discharged.

Accordingly, this criminal revision petition is allowed and disposed of.

Send down the LCRs forthwith.