
(2007) 01 GAU CK 0020
In the Gauhati High Court

State of Tripura

APPELLANT

Vs

Chanu Das @ Chan Mohan Das and Others

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 120B, 302, 34

Citation : (2007) 1 GLT 761

Hon'ble Judges : Mutum B.K. Singh, J;A.H. Saikia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard the learned Counsel for the parties.

2. This criminal appeal has been directed against the judgment and order of acquittal dated 23.12.99 passed in S.T. sharp and penetrating weapons. On getting Case No. 96/WT(A)/90 by the learned Addl. Sessions Judge, West Tripura, Agartala acquitting all the five respondents who were charged under Sections 120(B)/114/302/34 IPC.

3. A brief narration of the prosecution case would be necessary in order to examine the legality and correctness of the impugned judgment and order by which all the accused-respondents were acquitted. On 04.06.1990 at about 10.20 P.M. at night, the respondent No. 1, Chanu Das, Sub-Inspector of Police, East Agartala Police Station along with his wife and two minor children including Tushar Das, P.W. 34 after witnessing the evening show at Chittra Kotha Cinema Hall located at the heart of the Agartala town, was coming on a rickshaw on their way home and Chanu Das got down from the rickshaw in front of the Agartala Police Station to attend to his night duty at the Police Station asking the rickshaw puller, P.W. 3, Pradip Malakar to carry his family as indicated above to their house located at Dhaleswar Natun Palli, Agartala. After about 10-15 minutes later the rickshaw puller, P.W. 3 rushed to the police station and informed that while he reached at Madhya Banamalipur at the western side of the Central Jail, Agartala,

suddenly, three unknown youths stopped the rickshaw and asked the rickshaw puller to give a match box and meanwhile one of them pulled-down the wife of Chanu Das, namely Putul Rani Das (since deceased) and immediately thereafter all the miscreants attacked her and started assaulting her stabbing on her person with sharp and penetrating weapons. On getting that information, ASI, Pradip Bhattacharjee, P.W. 1 with the police party rushed to the place of occurrence and on the way near Lai Bahadur Club found few members of public were carrying Putul Rani Das (since deceased) by a rickshaw with bleeding injuries on her person. While they rushed to the G.B. Hospital, the Doctor, attending the emergency, examined the body of Putul Rani Das (since deceased) and declared her as dead.

4. P.W. 1, Pradip Bhattacharjee, ASI, lodged an FIR with the East Agartala Police Station and on the basis of the said FIR, a case was registered as East Agartala PS. Case No. 7(6)/90 u/s 302/34 IPC and accordingly investigation ensued.

5. In the course of investigation, the police arrested as many as six persons including all the five respondents herein along with one Palu Debnath who died during trial and as such the trial proceeded against all the five respondents.

6. During the trial, the prosecution examined as many as 46 witnesses. On the other hand, 2 witnesses were examined on behalf of the respondents. Out of those 46 prosecution witnesses, P.Ws. 13, 14, 17, 19, 21, 22, 23, 27, 34, 37 and 41 were declared to be hostile. Barring those who were being declared hostile as mentioned above, the prosecution emphatically placed reliance on the remaining witnesses including the confessional statements made by the respondent No. 2, Samir Chakraborty and Dibyendu Saha, respondent No. 4.

7. After hearing the learned Counsel for the parties and also on proper appreciation of the testimony of those witnesses as well as taking into consideration of the confessional statements which were later on retracted by both the respondent 2 and 4, the learned Addl. Sessions Judge by impugned judgment and order dated 23.12.99 acquitted all the 5 respondents holding that the prosecution failed to establish the charges against them beyond any shadow of reasonable doubt.

8. The learned Public Prosecutor, assailing the findings of acquittal, has strenuously contended that the learned Judge failed to appreciate in true perspective the testimony of the witnesses so adduced by the prosecution, particularly, P.Ws. 3, the rickshaw puller, Pradip Malakar and the son of the deceased Shri Tushar Das P.W. 34 though this witness was declared hostile. It has also been argued that the evidences of P.Ws-2, 5, 6, 7 and 40 were also not considered in his proper perspective by the learned Judge though they had unequivocally deposed that there was strained relationship between Putul Rani Das (since deceased) and the respondent No. 1 who led an immoral life developing illicit relationship with women. According to the prosecution, though, admittedly there was no eye witness to the occurrence, it was abundantly clear

from the evidence emerged from the deposition of those abovementioned witnesses that all the five respondents in a organized manner killed the deceased Putul Rani Das and the prosecution proved the case against all of them beyond reasonable doubt.

9. Per contra, the learned Counsel appearing for the respondents, has submitted that the entire testimony of those witnesses recorded by the prosecution was thoroughly and adequately examined by the learned Judge and ultimately he found that no one of those witnesses had ever indicted those respondents and accordingly, the learned Judge was justified and correct including that the prosecution failed to prove the case beyond any shadow of reasonable doubt.

10. In the backdrop of such submissions of the rival counsel for the parties, we would like to take up the re-appreciation on those witnesses whose depositions were being not at all considered, as alleged by the prosecution, by the learned Trial Court.

11. P.W. 3, rickshaw puller, Pradip Malakar categorically deposed that while he was on the way to carry the deceased Putul Rani Das along with her two sons to their house on his rickshaw, his rickshaw was intercepted by three unknown persons who pulled down the deceased from the rickshaw and assaulted her with sharp and penetrating weapons and the same was reported immediately to the Police Station where he arrived by rushing from the place of occurrence.

12. After going thorough the deposition of this witness, it would appear that he never mentioned the names of the respondents and also he even could not identify any of the respondents involved in the incident.

13. Coming to the evidence of P.W. 34 Sri Tushar Das, who happened to be the son of the deceased Putul Rani Das and respondent No. 1, a student of Class III at the time of incident, deposing in the year 1998 at the age of 17 years, stated that on the day of occurrence while they along with their mother was carrying by P.W. 3, the rickshaw puller on way to their house, suddenly 4-5 miscreants stopped the rickshaw in front of the house of her mother's sister and pulled down his mother. Seeing that he fled away from the place of occurrence and informed the matter to the other persons. He also accompanied with those persons to the place of occurrence. Having reached the place of occurrence he found that his mother was lying in a pool of blood in injured condition. This witness was declared hostile by the prosecution.

14. That being the position, in our considered opinion, the deposition of those witnesses lacked the evidentiary value and the same cannot be accepted to be convincing evidence for conviction of the respondents.

15. Now let us closely examine the depositions of other witnesses as claimed by the prosecution for being ignored by the learned Trial Judge and those are namely, P.Ws. 2, 5, 6, 7 and 40.

16. On careful perusal of the testimony of those witnesses, it is revealed that all

those witnesses were in unison projected a case of illicit relationship of the respondent No. 1 with the women on various times at various places, and the same has, it appears, hardly any nexus with the commission of the offence charged against the respondents. However, categorical statement of those witnesses was that the respondent No. 1 might have killed late Putul Rani Das. After going through those evidences, we can unhesitatingly come to the conclusion that the depositions of those witnesses are not at all trustworthy, believable and without any basis to which no reliance can be placed.

17. The Supreme Court in a significant decision in a case reported in *Gajanan Vs. State of Maharashtra*, dealing with the scope of appreciation of evidence in an appeal against acquittal in paragraph-5 held that once the Trial Court gave cogent and sufficient reasons to acquit the appellant, the High Court should not have interfered with such order of acquittal, more so, when the reasons given by the Trial Court were neither perverse nor even unreasonable.

18. Paragraph-5 may be quoted for ready reference as under:

The Trial Court gave cogent and sufficient reasons to acquit the appellant. The High Court should not have interfered with such order of acquittal, more so when the reasons given by the Trial Court were neither perverse nor even unreasonable. The High Court did not dispel the reasons given by the Trial court while upsetting the order of acquittal. Though, no distinction is made regarding powers of the High Court in dealing with appeals against acquittal as well as against conviction and it has full power to review all the evidence and arrive at independent findings, nonetheless the High Court should be rather slow to interfere with the findings of the Trial Court, unless the same are perverse or otherwise unreasonable. Judicial, approach in dealing with a case of appeal against acquittal has to be cautious, circumspect and careful....

19. In an another case of *Subash Chander Vs. Krishan Lal and Others etc. etc.*, the Apex Court in paragraph-12 categorically opined that when there was no evidence on the basis of deposition of witnesses against the accused persons warranting their conviction and sentence, acquittal of the said accused persons deserved no interference.

20. In the instant case, we can safely hold that the findings of the Trial Court suffered from no perversity nor were those unreasonable. On scrupulous scrutiny of the impugned judgment of acquittal, we do find that the same was a well merited order of acquittal that merits no interference. We are also in full agreement as regards the appreciation of evidences of those witnesses of the prosecution named above whose depositions do not warrant conviction for the offence u/s 302/34 IPC. What can be unequivocally gathered from the proper appreciation of the evidence of those witnesses is that nobody had ever deposed against the respondents indicting them with enough materials so as to rope them in Section 302/34 IPC.

For the forgoing reasons, observations and discussions, we are of the view that,

there is no merit in this appeal and the same stands dismissed.