
(1993) 05 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Revision No. 7 of 1988

Sudip Ghosh and Others

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 28-05-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 148, 149, 324, 326

Citation : (1993) 2 GLR 187

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : M. Kar Bhowmi, for the Appellant; M. Nath, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N.G. Das, J.—This revision petition is directed against the judgment of the District & Sessions Judge, North Tripura at Kailashahar dated 30th January, 1988 whereby learned Sessions Judge up-held the judgment and order of conviction of the Petitioners rendered by Judicial Magistrate, 1st Class, Kamalpur in case No. G.R. 100 of 1985 convicting the Petitioners u/s 148 and 324 of I.P.C. and sentenced to undergo rigorous imprisonment for a period of I (one) year under each count with a direction that both the sentences shall run consecutively.

2. I have heard Mr. M. Kar Bhowmik, learned Counsel appearing on behalf of the Petitioners and Mr. M. Nath, learned Public Prosecutor appearing on behalf of the State of Tripura.

3. The incident which has given rise to this present criminal proceedings occurred on Assam Agartala Road at a place called Betbagan on 4th day of June, 1985 at about 10 p.m. The prosecution case is that on the aforesaid date and time Shibnath Malsum (P.W. 1) was returning to Agartala in a vehicle bearing No. T.R.L. 3391 and there were a few more passengers including Pravananda Kalai (P.W. 20) in that vehicle. But as soon as the vehicle reached at a place called

Betbagan an unlawful assembly consisting of 100/150 persons armed with deadly weapons stopped the vehicle and caused injuries on the person of Shibnath Malsum (P.W. 1) and Pravanda Kalai (P.W. 20) by means of sharp cutting weapons. Shibnath Malsum, however, somehow escaped from the clutch of the assailants and ran towards his house but as he reached near the house of one Sambhuran Hrangkhwal he fell on the ground unconscious. At that time one Abhiram and Ramapada brought him to the house of Biswa Kumar Malsum where police officer Bhubatosh Talukdar (P.W. 13) came and on seeing the injuries on the person of Shibnath Malsum sent him to Kulai Primary Health Centre for treatment.

4. On the following day Maladhar Malsum who is the elder brother of Shibnath Malsum lodged an F.I.R. with O.C. Ambasa P.S. alleging that on the aforesaid date and time when his brother Shibnath Malsum was returning to the house in a vehicle some miscreants assaulted him causing injuries on his person, on the basis of this written complaint O.C., Ambasa P.S. registered a case u/s 148/149/326 of I.P.C. being Ambasa P.S. Case No. 5(6)85 against some unknown persons and endorsed the case to Sub Inspector Shri J.C. Das for investigation. After the investigation was over, O.C. submitted the charge-sheet for prosecution of the Petitioners and some other accused persons for commission of the offence Under Sections 148/149/324 of I.P.C.

5. Learned Sub Divisional Judicial Magistrate, Kamalpur by his order dated 7.4.86, took cognizance of the offences u/s 148/149/324 of I.P.C. against the present 5 Petitioners and thereafter framed 2 (two) distinct charges, one u/s 148 of I.P.C. and another u/s 324 read with Section 149 of I.P.C. Learned Judicial Magistrate, 1st class, Kamalpur also framed a separate charge u/s 324 of I.P.C. against Petitioners Shri Chandan Sana.

6. The charges were read over and explained in Bengali to the accused Petitioners who pleaded not guilty and claimed to be tried.

7. In order to bring home the charges, the prosecution examined as many as 22 witnesses and also exhibited some documentary evidence. The accused-persons led no evidence in support of their defence. However, their defence is a total denial of the prosecution case.

8. Learned Judicial Magistrate, however, after appreciation of the evidence held the Petitioners guilty u/s 148 and 324 of I.P.C. and awarded the sentences as mentioned above. Learned Sessions Judge also found no infirmity in the judgment of the learned Judicial Magistrate and accordingly upheld the conviction.

9. At this stage it would be convenient to refer very briefly the findings of* evidence recorded by the trial court and the conclusion reached by the learned Sessions Judge. The trial court found the witnesses namely Shibnath Malsum (P.W. 1), Maraud Ali (P.W. 14), Jagdishwar Sharma (P.W. 15) and Pravanda Kalai (P.W. 20) as eye witnesses to the occurrence. He mainly placed reliance upon the

evidence of these witnesses and made the finding of conviction. Similarly learned Sessions Judge also held that P.W. 1 could identify the accused Petitioners by the head light of the truck. Learned Sessions Judge placed reliance upon the evidence of P.W. 14 and P.W. 15.

10. But Mr. Kar Bhowmik, learned Counsel appearing for the Petitioners has, at the very out set, argued that the findings arrived at by the courts below were perverse as both the courts mis-appreciated the evidence and hence this Court can enter into the evidence. But Mr. Nath, the learned Public Prosecutor has submitted that the High Court in revision cannot embark upon re-appreciation of evidence. It is true that ordinarily it is not open for the High Court to interfere with the concurrent findings of the courts below specially by re-appreciating the evidence in its revisional jurisdiction. But in special or proper cases where it is found that the courts below gravely mis-appreciated or mis-conceived the evidence the High Court in my opinion will go into the whole evidence.

11. In the case of Queen Empress v. Chagan Dayaram and Anr. 14 Bom. 331 Criminal Revision Hon^{ble} Justice Birdwood held

...this Court can, in the exercise of the revisional jurisdiction, examine the records of cases for the purpose of satisfying itself as to the correctness or propriety as well as the legality of any finding, sentence or order; and where there are very exceptional grounds for its interference, it will, in the interests of justice, exercise the powers of a court of appeal, in dealing with them. Queen Empress v. Shekh Saheb Budrudin; Nobin Krishna Mookerji v. Rassick Lall; Bhawoo Jivaji v. Mulji Dyal.

A similar view is also found in AIR 1953 Patna page 513 wherein under para 10 of the judgment it was held

Usually the High Court is averse to consider question of facts upon an application in revision, but, in suitable cases, it is not only right but it is the duty of the court, if the ends of justice require, to go into facts.

In the case of Ramsani and Ors. Accused Applicants v. Emperor through Drighijai Singh, Complainant-Respondent reported in AIR 1943 Oudh page 444 was observed

Ordinarily the High Court will not interfere with a finding of fact in revision but a finding of fact can be interfered with in exceptional circumstances in revision such as where it is based on a misreading of the evidence in the case.

12. After hearing the arguments of learned Counsel of both the parties I have considered the case at great length and in the interest of justice I have thought it desirable to go into the whole of the evidence which supports the decisions at which the courts below have arrived. P.W. 1 stated that there was darkness at the time of occurrence but he could identify the accused-persons by the head-light of the vehicle. Learned Sessions Judge held that evidence of P.W. 1 was corroborated by P.W. 14 Mamud Ali and P.W. 15 Jagneswar Sharma (driver). I

give below the english rendering of an extract of P.W. 14 from the examination-in-chief.

On detaining the vehicle they asked to kindle light, Halla started. I lost my sense.

Similarly the english rendering of an extract from the evidence of P.W. 15 is given below:

On detaining the vehicle they asked me to kindle the inside light. I did not kindle the light.

No sooner had I stopped the vehicle than I put off the head light as well as inside light.

13. It would, therefore, be quite apparent from the evidence P. Ws. 14 and 15 that head light or light in the cabin of the vehicle were put off by the driver as soon as he stopped the vehicle. So the statement of P.W. 1 that he could identify the assailants by the head light of the vehicle cannot be accepted.

14. It is next argued by learned Counsel for the Petitioners that the F.I.R. on the basis of which the present case was started lost its spontaneity and no reliance can be placed on it as delay of lodging the F.I.R. has not been explained at all. In the instant case it would be apparent from the F.I.R. that Maladhar Malsum (P.W.2) who is the brother of Shibnath Malsum (P.W.1) lodged a written complaint with O.C., Ambasa P.S. on the following day alleging that his brother was assaulted by some unknown persons. Admittedly the occurrence took place on the night of 4.6.85 at about 10/10.30 p.m. The prescribed form of F.I.R. shows that complaint was received by O.C., Ambasa P.S. on 5.6.85 at 10.20 hours. This prescribed form of F.I.R. further shows that the place of occurrence is at a distance of about 2 k.m. from the P.S. So it is clear from the F.I.R. that the complaint was lodged after about 12 hours of the incident. Mr. Kar Bhowmik, therefore, argued that no reliance can be placed on this ejahar as the prosecution has not assigned any reason whatsoever as to why the ejahar was lodged after 12 hours of the occurrence.

15. In Thulia Kali Vs. The State of Tamil Nadu, The Supreme Court held:

First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the stand point of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances to which the crime was committed the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and

consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

When an occurrence is not reported for more than 20 hours after the occurrence even though the police station is only two miles from the place of occurrence it is unsafe to base conviction upon the evidence.

16. In this context it has also been argued by Mr. Kar Bhowmik that no reliance can be placed on the testimony of P.W. 1 by reason of the fact that it would be apparent from the evidence of P.W. 2 that he lodged the complaint after having discussion with P.W. 1. It is true that P.W. 2 Maladhar Malsum who lodged the ejhar stated in his deposition that on the night of 4.6.85 when his brother Shibnath Malsum (P.W.1) was brought to the house with injuries on his person he asked his brother how he sustained the injuries. According to him, P.W. 1 in reply simply told him that a few person of Dalubari caused the injuries on his person. It is not understandable why P.W. 1 did not disclose the names of the assailants to his brother who was to come to the P.S. for lodging the ejahar.

17. The third contention canvassed at the Bar by learned Counsel for the Petitioners is that the Petitioner were not properly examined u/s 313 of Code of Criminal Procedure. It is submitted by Mr. Kar Bhowmik that the trial court did not explain all the incriminating circumstances to the Petitioner's and as such the courts below committed gross error of law in placing reliance upon some circumstantial evidence which were actually not put to the Petitioners during examination u/s 313 of Code of Criminal Procedure. On examination of the records I find that the learned trial court mainly put one broad question to the accused-Petitioners. It cannot be gain said that the object of Section 313 of Code of Criminal Procedure is to place before the accused the facts and circumstances appearing against him in the evidence in simple language in order to enable him to give his explanation against each of those incriminating evidence or circumstance and thus help him in showing his innocence. This duty is cast upon the court which must take care to put all the relevant circumstances appearing in the evidence to the accused. Failure to put to the accused distinctly and separately each material circumstance and evidence appearing against him amounts to a serious irregularity and when a particular circumstance against the accused is not put to him u/s 313 of Code of Criminal Procedure the prosecution cannot be permitted to rely on that circumstance.

18. As already stated, the learned Magistrate put only one broad question to the accused Petitioners. The learned Magistrate, did not explain to the accused Petitioners that head light of the truck was kindling at the time when the occurrence took place and that it is by means of this head light of the truck they could be identified.

19. So, in view of all the infirmities pointed out above this revision petition is allowed. The order of conviction and sentence of the Petitioners Under Sections 148 and 324 read with 149 of I.P.C. are quashed. The Petitioners are on bail.

They need not surrender. Their bail bonds are cancelled and sureties are discharged.