

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

CRL.REV.P. No.33 of 2021

Sri Braja Kumar Jamatia alias Palu, S/O- Shri Vhrigu Mohan Jamatia, of
Krishna Vatha Para, P.S.-R.K. Pur, Udaipur, Gomati District, Tripura.

..... Petitioner(s)

V E R S U S

The State of Tripura.

.....Respondent(s)

For Petitioner(s) : Mr. D. Datta, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : *13th February, 2023.*

JUDGMENT & ORDER(ORAL)

Heard Mr. D. Datta, learned counsel appearing for the
petitioner and also heard Mr. S. Debnath, learned Additional Public
Prosecutor appearing on behalf of the respondent-State.

[2] The instant petition has been filed by the petitioner under
Section 397 read with Section 401 of Cr.P.C. against the judgment dated
03.05.2021 passed by the learned Sessions Judge, Gomati District, Udaipur
in Criminal Appeal No.15 of 2019 whereby the learned Sessions Judge
dismissed the appeal filed by the petitioner upholding the judgment dated
06.04.2019 passed by the learned Chief Judicial Magistrate, Gomati
District, Udaipur in PRC(WP) No.36 of 2017 whereby he convicted the

accused-petitioner under Section 379 of the Indian Penal Code (IPC, for short) and sentenced him to suffer R.I. for 2(two) years and to pay a fine of Rs.10,000/- in default thereof to suffer S.I. for a further period of 3(three) months.

[3] Brief facts are as under :

The prosecution case, in brief, is that on the intervening night of 08/09.04.2016 at about 2 am when the informant opened the door she found some unknown miscreants in undercover mask standing outside her door. She was all alone in her house and out of apprehension she tried to close the door but the miscreants forcefully opened the door and threatened her to keep quiet or else they would kill her. They literally forced her to hand over the keys of almirah and subsequently took away cash of Rs.1,00,000/- and also tried to eradicate her gold jewellery which she was wearing. They also took away her Nokia mobile phone and two torchlight and one bank passbook of Tripura Gramin Bank. Immediately after the incident, the informant filed the FIR.

[4] On the basis of the FIR, a case was registered vide R.K. Pur P.S. case No.34 of 2016 under Sections 457/392 of IPC against the unknown persons. Subsequently, the investigation was started and after completion of investigation, the Investigating Officer filed charge sheet dated 22.02.2017 under Sections 457/392/34 of IPC. After taking

cognizance, charges were framed against the petitioner to which he denied the charges and claimed to be tried.

[5] The learned Chief Judicial Magistrate, Gomati District, Udaipur vide judgment dated 06.04.2019 although acquitted the other accused persons but convicted the petitioner herein under Section 379 of IPC and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs.10,000/- for offence under section 379 of IPC. In default of payment of fine, the convict had to suffer simple imprisonment for a further period of three months.

[6] The petitioner preferred a Criminal Appeal No.15 of 2019 against the judgment dated 06.04.2019 passed by the learned Chief Judicial Magistrate, Gomati District, Udaipur before the learned Sessions Judge, Gomati District, Udaipur. The learned Sessions Judge after hearing counsel for the respective parties and on appreciating the records dismissed the appeal filed by the petitioner and upheld the judgment of conviction and sentence dated 06.04.2019. The learned Judge observed that the judgment of the learned trial Court was based on correct appreciation of the evidence and materials on record and found no reason to interfere with the same. The operative portion of the judgment reads as follows :

“In the light of the above, I am of the opinion that the judgment of learned Trial Court is based on correct appreciation of the evidence

and materials on record and there is no reason to interfere with the same in this appeal. In the result, the appeal is dismissed being devoid of merit. The judgment of conviction and sentence dated 06.04.2019 passed by the Ld. Chief Judicial Magistrate, Gomati Udaipur in case No. PRC(WP) 36 of 2017 is hereby upheld.”

[7] Being aggrieved and dissatisfied with the judgment of the courts below, the petitioner filed this present revision petition seeking the following reliefs :

- “(i) Admit this revision petition;
- (ii) Call for the records;
- (iii) Issue notice upon the respondent;
- (iv) After hearing of this parties and on perusal of the evidence on record be pleased enough to set aside/quashed the impugned judgment dated 03.05.2021 passed in Criminal Appeal No.15 of 2019 by the Ld. Sessions Judge, Gomati District, Udaipur whereby Ld. Appellate Court dismissed the appeal and upheld the judgment and order dated 06.04.2019 passed by the Ld. Trial Court whereby Ld. Trial Court convicted the petitioner U/S 379 of IPC and sentencing him to suffer rigorous imprisonment for a term of two years and to pay fine of Rs.10,000/- in default of payment of fine the convict has to suffer S.I. for further period of three months.”

[8] Mr. D. Datta, learned counsel appearing for the petitioner contends that from the prosecution witnesses, especially P.Ws 9 and 10, it transpires that whereas P.W.9 has stated that he obtained the seized mobile phone from one Smt. Birendra Bhakti Jamatia, on the other hand P.W.10 stated that he purchased the mobile phone from one Braja Kumar Jamatia and police seized the said mobile phone from his maternal uncle. So, there are clear contradictions between the versions of the two prosecution witnesses. He further contends that there are discrepancies in the depositions of the other prosecution witnesses also and asserts that the

petitioner is not liable for any offence punishable under Section 379 of IPC. Subsequently, he prays for setting aside the judgment dated 03.05.2021 passed by the learned Sessions Judge, Gomati District, Udaipur in Criminal Appeal No.15 of 2019 whereby the learned Sessions Judge dismissed the appeal filed by the petitioner and upheld the judgment dated 06.04.2019 passed by the learned Chief Judicial Magistrate, Gomati District, Udaipur in PRC(WP) No.36 of 2017.

[9] On the other hand, Mr. S. Debnath, learned Additional Public Prosecutor vehemently opposed the submissions of the learned counsel for the petitioner contending that the courts below have not committed any error in passing the judgment as the same was based on correct appreciation of evidence and materials on record which calls for no interference. Accordingly, he prays for dismissal of the present revision petition filed by the petitioner.

[10] After hearing the learned counsel for the respective parties, this Court finds that this is not a case of any interference. The counsel for the revision petitioner argued on the point of evidence that has already been appreciated by the original side in the appellate Court as well as by the trial Court and the scope for revision is very minimal and the counsel has not made out a case for interfering in the revision jurisdiction. Resultantly, this instant revision petition is dismissed and the judgment dated 03.05.2021

passed by the learned Sessions Judge, Gomati District, Udaipur in Criminal Appeal No.15 of 2019 is hereby confirmed upholding the judgment and order of sentence dated 06.04.2019 passed by the learned Chief Judicial Magistrate, Gomati District, Udaipur in PRC(WP) No.36 of 2017.

[11] Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak/Dipesh



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