

HIGH COURT OF TRIPURA

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Crl. Rev. P. No.57 of 2022

Sri Biswajit Bhattacharjee

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura

.....Respondent

For Petitioner(s) : Ms. R. Purkayastha, Advocate.

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

HON'BLE MR. JUSTICE T. AMARNATH GOUD

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04/10/2023

Heard Ms. R. Purkayastha, learned counsel appearing for the petitioner also heard Mr. S. Debnath, learned Addl. P.P. appearing for the respondent.

[2] The present petition has been filed to examine the legality, validity and propriety of that part of the impugned judgment and order dated 30.07.2022 passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur in connection with Crl. Appeal No. 20(2) of 2018 whereby and whereunder, the learned Appellate Court has illegally and arbitrarily upheld the impugned judgment of conviction dated 15.06.2018 under Section-468 of IPC passed by the learned Trial Court in Case No. PRC. No.170 of 2012.

[3] The brief facts of the prosecution story as unfolded during the trial are that on 19.08.2012 at around 1410 hours the informant namely Shri Biswa Sarkar, S/O – Shri Anil Sarkar of Dalak, P/S – Birganj, Amarpur lodged a complaint before the O/C, Birganj PS to the effect that on 29.04.2012 the informant along with his pregnant wife namely Smti Purnima Das (Sarkar) visited the chamber of one doctor namely Dr. Subhendu Debbarma at Amarpur Hospital who advised them for some blood and urine test. Then few days later the informant & his wife had gone to Ramthakur Pathology owned by one Biswajit Bhattacharjee, S/O-Dulal Kanti Bhattacharjee of Sankarpalli, Hospital Chowmuhani for the clinical examination of blood and urine of the informant's wife. On 09.06.2012 the informant collected the report from such pathology and visited the chamber of said doctor on 19.08.2012 wherein the informant came to know that the report was a fake one. Then subsequently informant had gone to another pathology for clinical examination of blood of his wife and there also he came to know that the earlier report was fake.

[4] After hearing the learned counsel appearing for the parties, the learned counsel below has observed as under:

“27. In the result, the instant appeal is hereby partly allowed.

28. The Judgment of conviction of the appellant passed by the learned trial Court in Case No. PRC 170 of 2012 under Sections 468 of IPC is hereby upheld but the sentence of conviction under Section 471 of IPC is hereby set aside.

29. The appellant is directed to surrender before the learned trial Court within one month from this date to serve the sentence. Needless to say that the period of detention already undergone by the appellant shall be set off.

30. The appeal is thus disposed of on contest.

31. The Judgment is announced in the open Court.

32. Enter the result in the relevant Register.

33. Record be consigned to the District Record Room after the expiry of appeal period.

34. Send back the LC Record along with a certified copy of this Judgment.”

[5] Being aggrieved by and dissatisfied with the same, the petition has preferring the present revision petition before this Court for reconsideration.

[6] Ms. R. Purkayastha, learned counsel appearing for the petition has submitted that the findings of the learned Courts below are perverse, illegal and unreasonable in law and facts and as such not tenable in the eye of law and liable to be set aside. The learned Courts below by way of non-reading and improper appreciation of the evidences and the facts and circumstances of the case arrived at absolutely illegal, wrong and unwarranted findings causing grave miscarriage of justice to the petitioner. As such the impugned judgments are not tenable in the eye of law and liable to be set aside.

[7] PW-1-Sri Biswa Sarkar, during cross-examination stated that he did not submit the prescription where Dr. Debbarma advised for blood investigation, he further stated that in the ejahar registration number was written by Uttam Nag i.e. PW-2. He further stated that he conducted investigation of blood of his wife from Hospital but he did not adduce those documents. So, by analyzing the evidence it will show that PW-2 wrote the FIR and PW-1 lodged the same allegedly after comparing the report given by the petitioner with the report of PW-2, but the report from the Pathology of PW-2 has not been produced before the Court or seized by the investigating officer.

[8] Moreover, PW-1 lodged the FIR on 19-08-2012 at 14.10 hrs and as per version of PW-2 on the same date he collected the blood and on the same date he delivered the report and from such point a doubt comes that when PW-2 collected the sample of blood and how within a short spell of time he delivered the report on the same date to PW-1. From analyzing the evidence of PW- 1 & 2 it is crystal like clear that the PW-1 with the aid and instigation of PW-2 lodged the FIR and there is no other evidence on the record to show that the report of blood group allegedly given by the petitioner is fake but, the learned Courts below failed to appreciate the same.

[9] PW-4 Smti Purnima Das (Sarkar) during cross examination stated that she did not produce the prescription given by the doctor and she also failed to produce any cash memo of Ramthakur Pathology. She further stated that she cannot say on which date she visited the Chamber of Dr. Debbarma. As such, by analyzing the prosecution witnesses it reveals that the prosecution has failed to prove beyond any reasonable doubt that firstly, the alleged report (Exbt. 5) was supplied by the petitioner to the informant and secondly, that the blood group report, which was allegedly given by the petitioner was not proper. Hence, the impugned judgment convicting the petitioner is illegal and not sustainable in the eye of law.

[10] The Prosecution also failed to produce any document/ register etc. or any direct evidence to prove the delivery of the report (Exbt-5) by the petitioner. Hence, the charge levelled against the petitioner has not been proved beyond any reasonable doubt, but the learned Courts below failed to appreciate the same.

[11] It has been further submitted that the informant (PW-1) deposed before the Court that his wife gave blood sample to another Pathology namely Maa pathology and obtain blood test report from said Pathology. The I.O. of the case on 21-08- 2012 seized the blood examination report of PW-4 from the possession of Uttam Nag (PW-2). Now if the informant collected the blood test report from the pathology of the Appellant then how the I.O. of the case seized the said report from the possession of PW-2, namely Sri Uttam Nag. So, the prosecution case is doubtful but, the Ld. Courts below failed to appreciate the same.

[12] On the contrary, learned Addl. P. P. argued that the learned Court below has rightly passed the judgment after taking into consideration all the evidences on record. Learned Addl. P. P. further argued that PW Nos.2, 6 & 8 are the independent witnesses who were corroborated the informant on the material aspects as such their evidences have great importance in deciding the matter.

[13] In view of above, this Court is of the opinion that the Appellate Court ought to have been come to a conclusion that the proceeding before the learned Court below was vitiated by non-affording the natural justice to the petitioner as there was no specific documentary evidence to prove the allegations leveled against the petitioner. The B-positive certificate is a crucial certificate which is the subject matter of present case but the same has not been placed on record nor seized. In the absence of any specific documents, adverse inference cannot be drawn against the accused petitioner.

[14] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case against the petitioner. It is settled proposition of law that the charge framed against the accused-person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. This Court has no hesitation to say that in the revision, appreciation of the factual issues is not permissible.

[15] In terms of the above, the present petition stands allowed setting aside the findings arrived at by the learned courts below. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

JUDGE

A. Ghosh

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