

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P 70 of 2022

Sri Suman Das,
S/o Sri Bishu Das, aged about 29 years.
Resident of West Pilak, Saha Pathar,
PS: Baikhoara, District: South Tripura

---Petitioner(s)

Versus

The State of Tripura

---Respondent(s)

For Petitioner(s)	: Mr. S. Lodh, Adv. Mr. K. Roy, Adv.
For Respondent(s)	: Mr. S. Ghosh, Addl. PP.
Date of hearing	: 18.07.2023
Date of pronouncement	: 21.07.2023
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order

Heard Mr. S. Lodh, learned counsel appearing for the petitioner. Also Heard Mr. S. Ghosh, learned Addl. Public Prosecutor appearing for the state-respondent.

[2] By means of this revision petition, the petitioner has challenged the order dated 05.09.2022 passed by the Ld. Sessions Judge, South Tripura, Belonia in Criminal Appeal No. 14 of 2019 affirming the judgment of conviction and sentence dated 30.03.2019 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia in case No. PRC 249 of 2013 whereby the Ld. CJM, South Tripura Belonia convicted the petitioner for committing offences punishable under Sections 457 and 380 of the IPC and sentences him to suffer rigorous imprisonment for 2 (two) years and to pay a fine of Rs.3000/- and in default of payment of fine he should suffer simple imprisonment for a period of 3(three) months for committing offence punishable under Section 457 of the IPC, and further sentenced him to suffer rigorous imprisonment for 2 (two) years and to pay a fine of Rs.4,000/- and in default of payment of fine, he should suffer simple imprisonment for a period of 4 months for committing offence punishable under Section 380 of the IPC.

[3] The case of the petitioner, in a nutshell, is that on 27th June, 2013 after closure of the Bank business of State Bank of India, Jolaibari Branch, a group of robbers broke into the Branch premises, damaged the Bank Property and had stolen away the server monitor and also tried to break down the Strong

room. On the next day morning the informant came to know about the incident and thereafter a case was lodged.

[4] On the basis of the said FIR, police registered Baikhora PS Case No.32/2013 under Section 457/380/427 of IPC and after investigation finding prima facie case, S.I. Ranjit Kr. Datta filed charge sheet dated 28.09.2013 vide C/S No.50/13 under Section 457/380/427 of IPC against accused Sri Suman Das and under Section 411 of IPC against accused Sri Sajal Das.

[5] After taking cognizance and supplying the prosecution copies to the accused persons charges under Section 457/380/427 of IPC have been framed against accused-appellant Sri Suman Das and charge under Sec. 411 of IPC was framed against accused Sri Sajal Das. The accused denied the charges and claimed to be tried.

[6] The trial court framed the following points for determination:

"(i) Whether on 27.03.2013 at anytime after the hours of Sunset and before Sunrise, the accused committed house-breaking by night by entering into the premises of SBI Jolaibari Branch in order to commit theft, and offence punishable with imprisonment and that he thereby committed an offence punishable U/S 457 of the Indian Penal Code?"

"(ii) Whether on the above mentioned date, time and place, the accused Suman Das committed theft of one Server Computer Monitor from the SBI Jolaibari branch a building used for custody of property and that he thereby committed an offence punishable US 380 of the Indian Penal Code?"

"(iii) Whether on the above mentioned date, time and place, the accused Suman Das committed mischief by causing loss or damage to several articles of the SBI Jolaibari Branch worth Rs.5,000/- (approx) and that he thereby committed an offence punishable U/S 427 of the Indian Penal Code?"

"(iv) Whether on 27.06.2013 at anytime, the accused Sajal Das dishonestly received an retained the Server Computer Monitor belonging to the SBI Jolaibari Branch knowing fully the fact that such property was stolen and that he thereby committed an offence punishable U/S 411 of the Indian Penal Code?"

[7] Having heard the accused and after considering all other aspects of the case, the learned trial court has observed in the following manner:

"Considering thus, I hereby sentence the convict Suman Das to suffer rigorous imprisonment for a term of 02(two) years and also Order him to pay a fine of Rs.3,000/- and in default he shall suffer simple imprisonment for a term of 03(three) months for the offence committed U/S 457 of the Indian Penal Code.

I also sentence the convict Suman Das to suffer Rigorous imprisonment for a term of 02(two) years for the offence committed by him punishable U/S 380 of the Indian Penal Code and also Order to pay a fine of Rs.4,000/- and in default he shall suffer simple imprisonment for a term of 04(four) months.

Both the sentences of the convict Suman Das shall run with concurrent effect and the period if any suffered during investigation and trial shall stand set off.

At the second instance being convicted for the offence U/S 411 of the Indian Penal Code, I thereby sentence the convict Sajal Das to suffer rigorous imprisonment for a term of 01(one) year."

[8] Aggrieved by the said order of conviction dated 30.03.2019, the convict-appellants approached to the court of the learned Sessions Judge, South Tripura, Belonia.

[9] During the trial, prosecution examined as many as seventeen witnesses and they are namely PW-1 Sri Makhan Lal Majumder, PW-2, Sri Biplab Ch. Shil, PW-3, Sri Majojit Debbarma, PW-4 Sri Sujit Datta, PW-5 Sri Haradhan Ch. Sarkar, PW-6 Sri Shyamal Majumder, PW-7 Sri Harendra K. Majumder, PW-8 Sri Tamal Baidya, PW-9 ASI Chingasanu Mog, PW-10 Sri Ratan Chakraborty, PW-11 Sri Nandalal Debnath, PW-12 Inspector Asish Das (R/O), PW-13 Sri Prasant Debbarma, PW-14 Sri Indra Kr. Deb (informant), PW-15 Sri Ganesh Roy, PW-16 Uttam Datta and PW-17 S.I. Ranjit Kr. Datta. The convict appellants were examined under Section 313 of CrPC at which they denied the incriminating materials and also declined to adduce defence witness.

[10] Having examined the PWs and all the incriminating materials in record, the court below has established the petitioner herein Suman Das has committed the theft in the SBI, Joliabari Branch and thereafter he kept the stolen articles like computer server monitor in the house of another accused Sajal Das. Learned trial court has rightly found accused Suman Das as guilty because as per Section 114 of Evidence Act there is presumption in this regard. So far as the guilt of accused Sajal Das is concerned, as per the deposition of PW3 the accused Suman Das identified the house of accused Sajal Das and from the house of Sajal Das computer server monitor and one black colour shirt were recovered. In the Cross of PW-3, has admitted that no one was present in the house of accused Sajal Das. Other witnesses have also not stated anything about the role of Sajal Das and in the CCTV also this accused was not seen. Accused Sajal Das is the uncle of accused Suman Das. There is no evidence to show that Sajal Das was aware about the keeping of stolen articles in his house. But this fact is established that stolen articles were kept by accused Suman Das in the house of accused Sajal Das because on the identification of Suman Das computer server monitor was recovered from the house of Sajal Das and at that time Sajal Das or any of his family were not present. So, the benefit of doubt is given to the appellant Sajal Das and he entitled to acquittal.

[11] Finally the Learned Sessions Judge, South Tripura, Belonia has observed by the order dated 05.09.2022 in the following manner:

"So, in the totality of the evidence of the witness I find no impropriety in the judgment of learned trial court convicting the appellant Sri Suman Das justifying any interference from this Court. But the appeal of appellant Sajal Das is allowed and he is acquitted from the charge framed under Section 411 of IPC and his surety is also discharged from the liability of this case. I find no merit in the appeal of appellant Sri Suman Das. Thus, the appeal is partly allowed in favour of appellant Sri Sajal Das. The convict-appellant Sri Suman Das is hereby directed to surrender before learned trial court within one month from today to undergo the sentence."

[12] Aggrieved thereby, the petitioner herein has approached this court seeking the following relief:

(i) Issue a Rule calling upon the respondents to show cause as to why the impugned Judgment & Order dated 05.09.2022 passed by the Ld. Sessions Judge, South Tripura, Belonia, in Criminal Appeal No.14 of 2019, affirming the judgment of convicting and sentence dated 30.03.2019 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia, in case NO.PRC 249 of 2013 whereby the learned CJM, South Tripura, Belonia convicted the petitioner for committing offences punishable under Section 457 and 380 of the IPC and sentenced him to suffer rigorous imprisonment for - 02(two) years and to pay a fine of Rs.3,000/- and in default of payment of fine he should suffer simple imprisonment for a period of 3(three) months for committing offence punishable under Section 457 of the IPC and further sentenced him to suffer rigorous imprisonment for 2 (two) years and to pay a fine of Rs.4,000/- and in default of payment of fine, he should suffer simple imprisonment for a period of 4 months for committing offence punishable under Section 380 of the IPC, shall not be quashed/set aside.

(ii) Call for the records appertaining to this petition/

(iii) In the interim pass an order staying/suspending the operation/execution of the impugned judgment of convicting and sentence dated 30.03.2019 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia in case No. PRC 249 of 2013 which was affirmed by the Ld. Sessions Judge, South Tripura, Belonia, vide impugned judgment and order dated 05.09.2022 passed in Criminal Appeal No.14 of 2019.

(iv) After hearing the parties be pleased to make the rule absolute in terms of (i) and (iii) above;

[13] Mr. S. Lodh, learned counsel appearing for the petitioner in order to support his contention has placed his reliance on a judgment passed by the apex court in **Ravinder Singh alias Kaku vs. State of Punjab** reported in **AIR 2022 SC 2726**, where the apex court has observed in the following manner:

20. Lastly, this appeal also raised an important substantive question of law that whether the call records produced by the prosecution would be admissible under section 65A and 65B of the Indian Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act. The uncertainty of whether Anvar P.V. vs P.K. Basheer & Ors [(2014) 10 SCC 473] occupies the filed in this area of law or whether Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 lays down the correct law in this regard has now been conclusively settled by this court by a judgement dated 14/07/2020 in Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal [(2020) 7 SCC 1] wherein the court has held that:

"We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V.(supra), and incorrectly "clarified" in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4)."

21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, Oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.

[14] Mr. S. Lodh, learned counsel appearing for the petitioner has also submitted before this court that the learned court below committed serious error in convicting the petitioner on the basis of the video footage which was allegedly copied in a DVD. According to him, there is no certificate under Section 65-B of the Evidence Act, the alleged video footage cannot be taken into consideration, but both the learned courts below failed to appreciate the same and ignoring the mandate of Evidence Act considered the video footage and convicted the petitioner, and the impugned judgment is liable to be interfered with.

[15] It is further submitted by Mr. S. Lodh, learned counsel appearing for the petitioner that the learned courts below failed to appreciate the mandate of Section 110 of the Evidence Act. The prosecution failed to prove that owner of the monitor is State Bank of India. As per Section 110 of the Evidence Act, if anything is found in possession of any person, there is a presumption that he is the owner of the property and to disprove the same, the other side should have proved that he is the owner of that property, but in the instant case when the monitor was found in the house of Sajal Das, unless the prosecution proved that bank authority is the owner of the monitor, they cannot claim that the monitor was stolen by anybody from the bank.

[16] In course of his submission, Mr. Lodh, learned counsel for the petitioner has also drawn the attention of this court stating that the appellate court committed serious error in affirming the conviction and sentence of the

petitioner when the learned appellate court acquitted Sajal Das from the charge under Section 411 of the IPC. The prosecution case is that the property was stolen by the petitioner and he has sold out the same to Sajal Das. When one part of the prosecution case was delivered by the learned courts below, the other part should have been disbelieved but, as the learned first appellate court upheld the conviction and sentence of the petitioner and on the other hand acquitted, Sajal Das, thus, the impugned judgment is liable to be interfered with.

[17] On the contrary, in order to buttress the contention as made by Mr. S. Ghosh, learned Addl. PP, he has drawn the attention of this court to the examination-in-chief of PW-2. For ready reference it is extracted herein below:

On 28.06.2013 I was posted as Customer Assistant, Acting Cash Officer at SBI, Jolaibari Branch, On that day, at about 5.30 am on receipt of a phone call made by Branch Manager namely Sri Indra Kr. Deb I along with two other staffs namely Sri Ganesh Roy and Sri Prasant Debbarma went to the said Bank and noticed that the door of the veranda of the said bank was opened and its lock was broken. We also found that the door of strong room was broken and its lock was also broken. The server monitor of the said bank was also found missing. The papers were also scattered here and there. Subsequently the Branch Manager rang up the O/C BKR PS and narrated the who incident to him. Later on darogababu visited our bank and started investigation. As per the order of the Branch Manager, I displayed the CC TV camera footage to darogababu from which it appeared that a person was trying to break the lock of the main entrance and thereafter he entered into the bank after breaking the lock and reached near the strong room. After that he took a piece of cloth and came at the veranda and after that there was darkness from which it appeared to us that he had pulled down the grip of the electricity connection because of which there was darkness. Subsequently I handed over a CD containing the CCTV camera footage to darogababu. Later on, on the same date at about 1.30 pm at Jolaibari Branch office the IO of this case seized three locks, one iron made blade, one shirt, two white coloured curtains and one VCD disc in my presence by preparing seizure list and thereafter I put my signature on the said seizure list which on identification has been marked as Exbt.1. The seized articles are available in the Court which on identification have been marked as Exbt.M.O-I, M.O-II, M.O-III, M.O.V respectively. I don't know the accused person by face.

[18] Attention has also been drawn to the examination-in-chief of the PW-9, ASI Chingsanu Mog by Mr. S. Ghosh, learned Addl. PP which is extracted herein below:

On .30.06.2013 I was posted as ASI of police at Jolaibari OP. On that day at about 6.15 pm I along with O/C Jolaibari O/P and other police staffs including the staffs of BKR PS went to the house of the accused Sri Suman Das at West Pilak. Thereafter, as per the statement of the said accused person, we recovered one computer monitor from the show-case of his room. We also recovered one black coloured shirt as produced by the said accused person from his house. Subsequently the I/O seized the articles by preparing seizure list in presence of me and thereafter I put my signature on the same. This is my signature on the said seizure list which on identification has been marked as Exbt.5. Exbt. M.O-III is identified by the witness. The accused Sri Suman Das is present today at the dock.

[19] Mr. S. Ghosh, learned Addl. PP has apprised this court that the petitioner herein has also approached this court by way of filing a criminal revision petition being Crl.Rev.P 43 of 2022 which was dismissed by the order dated 05.07.2023 by this court. Learned counsel appearing for the state-

respondent submits before this court that the petitioner herein is a habitual offender who, if set free, can be menace for the society at large.

[20] Having considered the submission as advanced by the counsel for the parties and also having examined the incriminating materials as placed in the case, this court is of the view that the learned counsel for the petitioner has failed to make out his case as the judgment as placed by him has no relevance to the facts and circumstances of the present case. Moreover, it is evident from the record that one computer monitor was recovered from the show-case of the room of the convict-petitioner in pursuance to the corroborations made in the light of CCTV footages of the bank. One black coloured shirt was also recovered from his room which is said to have been worn by the petitioner during the incident. All these seizure from his room indicates that none but he is the sole miscreant who committed the crime. Since the petitioner has failed to make out his case before the courts below, this court has no hesitation to say that in the revision, appreciation of the factual issues are not permissible.

[21] Accordingly, the instant revision petition stands dismissed confirming the judgment of the learned Courts below. As a sequel, miscellaneous applications, if any, shall also stand closed.

JUDGE

Dipak

DIPAK DAS
Digitally signed by
DIPAK DAS
Date: 2023.07.21
18:13:11 +05'30'