

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

Crl.Rev.P. No.06 of 2023

Sri Biplab Roy

.....Petitioner

_V_E_R_S_U_S_

Sri Rajib Krishna Sharma and Others

.....Respondents

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate. Mr. D. Ray Chaudhury, Advocate.
For Respondent(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. R. Datta, P.P. Mr. H. K. Bhowmik, Advocate. Mr. K. Nath, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_J_U_D_G_M_E_N_T_ [ORAL]

02.08.2024

The present application has been filed under Section-397 read with Section-398 and Section-401 of Cr. P.C., 1973 for revision of the judgment dated 5th March, 2022 passed by the learned Addl. Sessions Judge, Agartala, West Tripura in Criminal Appeal No.14 of 2019 dismissing the appeal and upholding the judgment and order of acquittal dated 1st February, 2019 passed in PRC (WP) No.159 of 2017 under Sections-341/342/384/323/506(1)/34 of IPC.

[2] The facts in brief are that, the petitioner lodged an FIR against the respondent No.1 to 3 and others which was registered as A.D Nagar PS Case No. 2016/ADN/057 under Section 341/342/384/325/506/34 IPC. After completion of the investigation, Investigating Officer submitted charge-sheet against the respondents No.1 to 3 and one Sri Bidhan Das under Section 341/342/384/325/506/34 IPC. The learned Judicial Magistrate First Class, No.8, Agartala, West Tripura after completion of trial passed Judgment & Order of acquittal dated 01.02.2019 acquitting the No.1 to 3 and one Sri Bidhan Das from the charges under Section 341/342/384/325/506(1)/34 IPC No.1. The State of Tripura preferred an appeal u/s 378(2) of Cr.P.C before the learned Additional Sessions Judge, Agartala, West Tripura against the aforesaid judgment and order of acquittal dated 01.02.2019. The learned Appellate Court by a Judgment dated 05.03.2022 dismissed the appeal and affirmed the Judgment & Order of acquittal passed by the Ld. Trial Court.

[3] Hence this revision petition has been preferred before this Court by the petitioner herein for redress.

[4] Heard both sides.

[5] During argument learned counsel for the respondents has defended the judgment and order so passed by the trial court. The learned counsel further referring to the evidence of PW-8 has contended that the incriminating part in the evidence of PW-8 is that the respondent No. 1 had assaulted the victim with a key chain on the back side of his head but such statement was not supported by the PW-9 who is the sole accompanied person of the informant at the time of alleged incident. It is further continued that the incriminating part as referred to above were neither narrated in the FIR nor stated by the informant to the police while making statement.

[6] In addition to such argument learned counsel further referred para 45 of a judgment of this Court reported in (2021) 1 TLR 259 titled as **Saptam Sarkar VS Sita Sarkar & Another** wherein it has been held thus:

“.....In an appeal from the judgment and order of acquittal, the appellate court could not have disturbed the finding of acquittal inasmuch, while deciding an appeal against the acquittal even though the power of appellate court is no less than the power exercised while hearing appeals against conviction and it can proceed to appreciate the evidence afresh, but one significant difference is that an order of acquittal will not be interfered with by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible.....”

[7] Learned counsel for the respondents further relied on a judgment of Hon'ble Apex Court reported in (2007) 4 SCC 415 titled as *Chandrappa & Others VS State of Karnataka* wherein at para 42 the Hon'ble Court has laid down certain general principles regarding powers of the appellate court while dealing with an appeal against acquittal.

[8] Learned counsel for the petitioner herein, however, contended that the trial court has not appreciated the evidence on record properly and therefore, the order of acquittal so recorded by the trial court is perverse, unjustified, unreasonable and arbitrary. Learned counsel further added that the evidence of PWs 8, 9 and 15 clearly proves the charges and as such the order of acquittal so passed by the trial court may be set aside and thereby the respondents may be convicted for the charges as framed by the trial court. Learned counsel appearing for the State has adopted the submission so placed by learned counsel petitioner.

[9] This Court has carefully gone through the evidence on record. From the record it emerges that the informant (PW-8) is the victim and PW-9 (Sri Anand

Singh Thakur) is the sole accompanied person of the informant while the informant was subjected to alleged harassment and assault leading to the charges framed. Therefore, suffice it to refer to the evidence of PWs-8 and 9. This Court is of the opinion that only incriminating part in the evidence of PW-8 is that he was assaulted by the respondent No. 1 with a key chain. Such statement so made in the examination-in-chief admittedly were not made either in the FIR or while making the statement to the police. Such evidence can, therefore, be held to be subsequent development in the prosecution case. It also reveals from the PW-9 who was the sole accompanied person of the informant did not say anything to show that the informant was assaulted by any one of the respondents in the manner as stated by the PW-8 (informant).

[10] Having observed the discussions made by both the Courts below, I am of the considered opinion that the judgment and order of acquittal so passed by the learned trial court and upheld by the learned Appellate Court do not suffer from any perversity or illegality and thereby, do not call for any interference. Accordingly, the present revision petition stands dismissed. As a sequel, miscellaneous application, pending if any, shall stand closed.

T. AMARNATH GOUD, J

A. Ghosh

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