

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P 110 of 2007

Sri Gunendra Choudhury,
S/O Lt. Gopal Chandra Choudhury,
Resident of Village-Jambura,
P.S- Khowai, District-West Tripura

... Petitioner

- Versus -

- 1. Sri Suman Debnath,**
S/O Sri Rakhal Debnath,
Resident of Madhya Jambura,
P.S.- Khowai, District- West Tripura.
- 2. Sri Rakhal Debnath,**
S/O Lt. Chandra Kumar Debnath,
Resident of Madhya Jambura,
P.S.- Khowai, District-West Tripura.
- 3. Sri Manik Debanth,**
S/O Lt. Jatindra Debnath,
Resident of Madhya Jambura.
P.S.- Khowai, District- West Tripura.
- 4. Sri Manmohan Debnath,**
S/O Lt. Chandra Kumar Debnath,
Resident of Madhya Jambura,
P.S.- Khowai, District-West Tripura.
- 5. Sri Ripan Debnath,**
S/O Lt. Nitai Debnath,
Resident of Madhya Jambura,
P.S.- Khowai, District-West Tripura.
- 6. Sri Kapil Debnath,**
S/O Lt. Nitai Debnath,
Resident of Madhya Jambura,
P.S.- Khowai, District- West Tripura.
- 7. Sri Biswajit Debnath,**
S/O Lt. Kalicharan Debnath,
Resident of Madhya Jambura,
P.S.- Khowai, District-West Tripura.
- 8. The State of Tripura.**

Respondents

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the Petitioner : Mr. D. Bhattacharji, Advocate.
For the State Respondents : Mr. R. C. Debnath, Addl. P.P.
For the Pvt. Respondents : Mr. N. Das, Advocate
Date of hearing & delivery
of Judgment and Order : **29.06.2015**
Whether fit for reporting : **YES / NO**

JUDGEMENT AND ORDER (ORAL)

The instant petition is filed by the petitioner informant against the judgment and order dated 17.07.2007 passed by the learned Addl. Sessions Judge, West Tripura, Khowai in ST (WT/K) 25 of 2007 whereby and whereunder the learned Addl. Sessions Judge acquitted all the accused respondents.

2. Heard Mr. D. Bhattacharji, learned counsel appearing for the petitioner as well as Mr. N. Das learned counsel appearing for the accused respondents. Also heard Mr. R. C Debnath, learned Addl. PP for the State.

3. The prosecution case, in short, is as follows:

On 08.10.2005 at about 3 a.m., while the informant PW1 was sleeping with his wife and children, suddenly he heard the low voice of some persons to the north of his house and when he woke up and placed his ear on the door, he heard the low voice of Suman Debnath, Rakhai Debnath, Manik Debnath and others. Then he called his son Imphal Chowdhury and daughter Smt. Anindita Chowdhury and when they opened the door, they noticed that the roof of 'Gola Ghar' made of polythene and 'Dhari' was burning and

at the same time they also noticed that Suman Debnath, Rakhal Debnath, Manik Debnath, Manmohan Debnath, Ripan Debnath, Kapil Debnath and Biswajit Debnath were running away from their residential complex. They raised alarm and after hearing alarm, the neighbours came and extinguished the fire.

4. It is further stated that the informant purchased 10 (ten) gandas of Nal land from Late Nitai Debnath on payment of Rs.45,000/- but said Nitai Debnath did not execute the registered deed of sale. The accused persons, being the relatives of Nitai Debnath, caused fire in his houses with a view to dispossess him from his dwelling hut and hence this case.

5. Upon receipt of the FIR, the police registered the case and after completion of the investigation submitted the charge sheet. Accordingly, the case was committed to the court of the learned Additional Sessions Judge, Khowai being the same is a sessions triable case. The learned Addl. Sessions Judge, after hearing the parties framed charges against all the seven accused respondents under Section 436 read with Section 34 of the IPC. The accused pleaded not guilty and claimed to be tried.

6. Prosecution examined as many as 13 witnesses, including the Investigating Officer, to establish his case and also produced some documents which were admitted as Exhibit 1 to 7 and Exhibit MO 1 series.

7. Defence did not adduce any oral evidence but during cross examination, attention of the witnesses was drawn to some

portion of the respondents' 161 statements which were marked as exhibits A to F.

8. Learned trial court after considering the evidence on record and examining the accused persons under Section 313 CrPC acquitted all of them on benefit of doubt.

9. Mr. Bhattacharji while praying for setting aside the impugned judgment would contend that the learned trial court failed to consider the evidence on record, particularly the evidence of PW1, PW2, PW3 and PW12.

10. On the other hand, Mr. Das, learned counsel, appearing for the accused-respondents submits that the learned trial court rightly acquitted the accused respondents as the prosecution failed to establish its case. He further submits that it would be evident from the evidence of PW1 & PW2 that they are admittedly blind, therefore, there was no scope for them to identify the accused persons by way of seeing. They stated in their deposition that they could identify the accused persons hearing their low voice but fact remains that in their 161 statement they did not disclose the said fact of hearing of low voice. Thus, identification by way of hearing low voice was for the first time stated in the court which cannot be admitted as evidence. He further submits that the PW3 and PW12 also disclosed the names of the accused persons for the first time in the court.

11. As the whole prosecution case is based on these four witnesses, it would be proper for this court to discuss about their evidences. Accordingly, the same is discussed hereinbelow:

11.1 PW1, Sri Gunendra Chowdhury, is the informant of the case. In his deposition he deposed that on 08.10.2005 in the night while he was sleeping in his house along with his family members he heard the sound of breaking of fencing in the northern side. He also heard the voices of his neighbours namely, Suman Debnath, Rakhal Debnath, Manik Debnath, Manmohan Debnath, Ripan Debanth, Kapil Debnath and Biswajit Debnath. He woke up his wife who also heard their voices. As per their call, the maid servant Supriya Bala Sarkar, daughter Anindita Chowdhury and son Imphal Chowdhury woke up and opened the door of the house and saw that all the above named accused persons were setting fire in his "Gola Ghar". On raising alarm neighbouring people came and with their help the fire was extinguished. The petitioner is blind and his wife is also blind but she can see little bit by her one eye. The informant stated the incident to the police in his house when he was asked to file a written complaint. The informant narrated the entire facts to one Sanju Malakar of Singicherra who reduced the same in writing and the said complaint was submitted to the police station. Later on, it was found that the police officer did not record their statements for which the informant submitted five numbers of affidavit before the Court. In the years 1999, 2000 and 2001 Nitai Debnath took Rs. 45,000/- from him by executing three hand notes to sell 10 gandas of land and in this connection there was a dispute between the informant and the accused persons, who are the relatives of the said Nitai Debnath.

In his cross, he admitted that in the complaint he did not state that the "Gola Ghar" was attached to his dwelling hut.

Attention of this witness was drawn to his 161 statement wherein also the above statement is not available. He also admitted that he did not state in his complaint that his maid servant and daughter had seen the accused persons setting fire but he stated so to the police.

11.2 PW 2, Smt. Maya Rani Das, is the wife of the complainant. She deposed that she also heard the low voice of the accused persons and on their alarm the maid servant and their children woke up and saw some of the accused persons armed with Dao, Ballam and lathi while some were setting fire and they also threatened them to come out from the house.

In cross, her attention was drawn to her 161 statement and hearing of low voice was also not found. Attention was also drawn to her 161 statement to which she denied to have given statement to police that the accused persons along with others came to their house to extinguish fire (Exbt A). The alleged facts of setting fire by some persons was also not corroborated by affidavit executed by her (Exhibit 1 series). This witness also deposed that she heard the low voice of the accused persons but her above statement was also not supported by her 161 statement.

113. PW3, Smt. Anindita Chowdhury deposed that she along with maid servant and brother woke up on being called and by opening the door she saw that some miscreants namely, Suman Debnath, Manik Debnath, Biswajit Debnath, Ripan Debnath and Kapil Debnath were setting fire while Rakhil Debnath, Manmohan Debnath armed with Dao and Ballam threatened her not to raise hue and cry. Attention of this witness was drawn to her 161

statement with regard to setting fire by five persons and two persons armed with weapons but the said statement was not found in her 161 statement as well as in her affidavit.

11.4 PW 12, Imphal Chowdhury is the son of the informant who is an eye witness of the occurrence. He deposed that he saw the accused persons running from their residential complex after setting fire. He also stated that at that time Durga Puja Pandal was under construction near their house and people from that side came and extinguished the fire. He also identified the affidavit submitted by him (Exhibit 2).

In cross he stated that he did not state to the police that the accused Biswajit Debnath, Suman Debnath, Ripan Debnath, Rakhal Debnath and others came to their house to extinguish the fire. The above statement being found in 161 statement was marked as Exhibit F which was later confirmed by the IO. Attention of this witness was drawn to his 161 statement with respect to his deposition that the accused persons were seen running away after setting fire but no such statement was found in his 161 statement.

12. In the instant case, after the order of acquittal the accused are to be treated as innocent. More so, there are so many contradictions in the deposition of PW1, PW2, PW3 and PW12. Moreover, the alleged fact is also not corroborated by their deposition which was submitted before the trial court. The independent witnesses i.e. PW4, PW5, PW8 and PW9 also did not support the testimony of the aforesaid PWs.

13. In **Ram Das Vs. State of Maharashtra, (1977) 2 SCC 124 : AIR 1977 SC 1164; Tota Singh & Anr. V. State of Punjab, AIR 1987 SC 1083** and **Narinder Singh Vs. State of Punjab, 2000 CrL. L.J. 3462** , the Apex Court noted that if the evaluation of the evidence by the trial court does not suffer from any manifest error or perversity and the main grounds on which it has passed its order are reasonable and plausible, the High Court should not disturb the order of acquittal even if another view is possible.

14. In view of the aforesaid discussion, it can be said that ordinarily an appellate Court should not interfere with the judgment of acquittal unless a gross miscarriage of justice is committed by the learned trial court. In the instant case it cannot be said that the learned trial court committed any error while acquitting the accused after appreciating the evidence on record.

15. According to this Court, where two views are plausible regarding involvement of the accused, the view which favours the accused should be accepted and the learned trial court has already acquitted the accused-respondents on benefit of doubt. Thus, it would not be proper for this Court to convict the accused setting aside the order of acquittal.

16. In view of the above, the instant revision petition is dismissed being devoid of merit and the order of the learned trial court is maintained.

Send down the lower court records forthwith.

JUDGE