

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. A NO.03 OF 2013

Sri Abdul Chhalam,
S/O Late Abdul Jabbar,
Resident of Fulbari Kandi,
P.S. Kailashahar,
District-Unakuti-Tripura.

..... Appellant

- *Vs* -

1. Shri Dilder Hussain@ Dulu
S/O Md. Manohar Ali

2. Shri Sahajan Hussain @ Saju
S/O Md. Manohar Ali

Both are inhabitants of
Fulbari Kandi, P.S. Kailashahar,
District-Unakuti-Tripura.

..... Accused respondents

3. The State of Tripura.

..... Respondent

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. H.K. Bhowmik, Advocate

For respondent Nos.
1 and 2 : Mr. A. Pal, Advocate,

For respondent No.3 : Mr. R.C. Debnath, Addl. P.P.

Date of hearing & delivery
of Judgment & order : **10.04.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

This appeal against acquittal preferred under proviso to Section 372 of CrPC is directed against judgment and order of acquittal dated 02.02.2013 passed by learned Sessions Judge, North Tripura, Kailashahar in Criminal Appeal No.30(4)/2012, whereunder the learned Sessions Judge set aside the judgment and order of conviction and sentence dated 19.10.2012 passed by learned Chief Judicial Magistrate, North Tripura, Kailashahar in Case No.G.R.495/2010.

2. Prosecution case, in short, is that on 16.12.2010, at about 1.30 AM of the night, the informant, Abdul Chhalam(PW2) was sleeping in his residential hut at village Fulbari Kandi under Kailashahar P.S. and he woke up hearing sound of breaking the locking system of almirah of his room and on being woke up he found accused, Dilder Hussain alias Dulu and Sahajahan Hussain alias Saju in the room by the light of CFL bulb lighting his room and at that time accused, Dilder Hussain was trying to assault him with a sharp cutting weapon and to save himself he covered his body in the quilt and he cried for help. Hearing his cries, his wife, daughter, brother and sister-in-law, etc. came out of their hut and in the meantime the accused persons left his house with clothes, a C.D. machine, some C.D. cassettes, and ₹2,000/- in cash. It is also the case of the prosecution that the wife, daughter, brother and sister-

in-law of the informant also identified the accused persons while they were going away from the house of the informant.

2.1. Narrating the fact PW2, the informant, Abdul Chhalam lodged FIR on 27.12.2010 before O/C Kailashahar P.S., and accordingly, Kailashahar P.S. Case No.228 of 2010 under Sections 457 and 380 of IPC was registered and after investigation police submitted charge sheet against both the accused petitioners for commission of offence punishable under Sections 457 and 380 read with Section 34 of IPC.

2.2. Cognizance was taken on the basis of the police report and in course of trial learned Chief Judicial Magistrate framed charges against the accused persons for commission of offence punishable under Section 457 read with Section 34 of IPC and also under Section 380 read with Section 34 of IPC to which both the accused pleaded not guilty and claimed to be tried.

2.3. In course of trial prosecution examined eight witnesses. Defence cross-examined the prosecution witnesses but in their turn accused persons adduced no defence evidence. Defence case is that of a denial of the prosecution case. It is suggested that the informant has got enmity with accused on the issue of a plot of land and out of that enmity they have been falsely implicated in the case.

2.4. Learned Chief Judicial Magistrate by impugned judgment dated 19.10.2012 found both the accused persons guilty of the offence charged against them and sentenced them to suffer RI for four years under Section 457 read with Section 34 of IPC and also sentenced them to pay a fine of ₹5,000/-, in default of payment to suffer SI for five months. Again for commission of offence punishable under Section 380 of IPC, learned Chief Judicial Magistrate sentenced the accused persons to suffer RI for four years and to pay a fine of ₹5,000/-, in default of payment to suffer SI for five months. Both the sentences were directed to run concurrently.

3. Aggrieved, the accused-respondents preferred Criminal Appeal No.30(4) of 2012 before the learned Sessions Judge, Kailashahar, North Tripura and learned Sessions Judge by judgment and order dated 02.02.2013 allowed the appeal and set aside the judgment and order of conviction and sentence. Hence, the present appeal is filed by the informant(PW2) Abdul Chhalam challenging the judgment and order of acquittal under proviso to Section 372 of CrPC.

4. Heard learned counsel, Mr. H.K. Bhowmik for the appellant, Mr. A. Pal for accused-respondent Nos.1 and 2 and learned Addl. P.P., Mr. R.C. Debnath for the State respondent No.3.

5. It is argued by learned counsel, Mr. Bhowmik that the evidence of PW2 who is the star witness of the prosecution has been corroborated by PWs 3 and 4 who are no doubt relatives of

the informant but their evidence has not been shaken in any manner in the cross-examination and the learned Sessions Judge discarded the evidence of PWs 2, 3 and 4 simply because they are relatives and further inviting some insignificant lapses in the evidence. He has also submitted that PWs 6 and 7 are independent witnesses who visited the house of the informant on the following morning of the night of occurrence to whom PW2, the informant narrated about the occurrence and also disclosed the names of the accused persons and thereby the prosecution case has been proved which was rightly accepted by the learned Chief Judicial Magistrate, whereas, the learned Sessions Judge failed to appreciate the consistent evidence of those witnesses and arrived at a wrong finding of acquittal.

5.1. Regarding the delay in the lodging of the FIR it is submitted by learned counsel, Mr. Bhowmik that the informant gave explanation in the FIR stating that delay was caused for there was an attempt to have a compromise and that has been stated in the evidence of PW2. Since there was an explanation given by the informant about the delay in lodging the FIR, the prosecution case should not be thrown overboard simply on the ground of delay in lodging the FIR. He has also submitted that there are some other minor discrepancies in the evidence and defects in the investigation but those are not touching the very foundation of the prosecution case and therefore those should be ignored and the judgment and order of acquittal passed by the learned Sessions Judge should be

set aside and the order of conviction and sentence passed by the learned Chief Judicial Magistrate should be upheld.

5.2. On the other hand, appearing on behalf of respondent Nos.1 and 2, learned counsel, Mr. Pal has submitted that the evidence of witnesses does not inspire any confidence. PWs 2, 3, 4 and 5 are all relatives of PW2, the informant. According to PW3, 30/40 local people gathered on the night of the occurrence itself but none of them has been examined. PWs 6 and 7 are hearsay witnesses and their evidence has no value. If such an incident had at all occurred, the informant, i.e. PW2 would lodge the FIR on the very following day itself but no such FIR was lodged and that has left lot of scope of improvement to prepare a cooked up story in involving the accused-respondents, who had inimical relation on land property issues with the informant. He has also submitted that though it is stated that the C.D. cassettes, etc. were left in the courtyard by the accused persons but nothing was seized and no electric bulb also seized to prove that at the time of alleged occurrence there was an electric bulb lighting the room and thereby the informant could identify the accused persons. It is the submission of Mr. Pal, learned counsel that a bare reading of the evidence of prosecution witnesses makes it apparently clear that they made parrot like statements of a cooked up story and no prudent man can place any confidence on the statements of the witnesses.

5.3. Learned Addl. P.P., Mr. Debnath appearing on behalf of the State respondent No.3 has submitted that the appellate Court rightly appreciated the evidence and arrived at a finding of acquittal and he supports the judgment passed by the learned Sessions Judge.

6. The informant-appellant, Abdul Chhaham and the respondent-accused persons, Dilder Hussain and Sahajahan Hussain are neighbours of each other. The incident occurred after midnight at about 1.30 AM on 16.12.2010. Admittedly, the FIR was lodged on 27.12.2010. PW2, the informant put an explanation in the FIR that the matter was informed to the village '*matabbars*' and they were pursuing the matter and therefore there was delay in lodging the FIR. In his evidence also PW2 stated that there was delay in lodging the FIR as initiative was taken to compromise the matter. What was the initiative taken for compromise has not been elaborated in the evidence of PW2. The other witnesses did not utter a single word about the delay in lodging the FIR. Police also did not divert investigation to ascertain the delay in lodging the FIR. PWs 6 and 7 who appear to be independent witnesses have not uttered a single word that there was any attempt for a compromise. The reason for the delay therefore has not been explained to satisfy the Court.

7. Delay in filing FIR by itself cannot be a ground to doubt the prosecution case as a whole and to discard it. Law has not fixed

any time for lodging the FIR. A prompt and immediate lodging of the FIR is ideal since the scope of concoction in a prompt FIR is less. There is less scope of embellishment or afterthought. While in the present case FIR was lodged after eleven days, in a case of theft, a reasonable explanation must come with some piece of evidence and a bare statement that delay was caused for there was an attempt of compromise cannot suffice. The investigation could not commence immediately after the occurrence to seize the property which alleged to have left by the miscreants and also there was no evidence could be collected about the alleged entry holes made by the thieves. In the present facts and circumstances of the case delay in lodging the FIR is fatal for the prosecution and therefore the judgment passed by the learned Sessions Judge cannot be said to be altogether without any cogent reason.

8. PWs 2, 3, 4 and 5 are all close relatives. PW3 is the daughter of PW2. PW4 is the sister-in-law of PW2 and PW5 is the brother of PW2. While such a dreaded burglary was committed in the house of the informant(PW2), definitely there was huge hue and cry raised and according to PW3, 30/40 local people came to the house of the informant on that night but no such person has been examined as witness who came to the house of the informant hearing the cries. PWs 6 and 7 are the witnesses came on the following morning to whom PW2 allegedly stated about the occurrence. They did not come to the house of the informant on the night of occurrence. PW6 is a resident of about a kilometer away

from the house of the informant. There is nothing in the evidence of PW7 as to what was the reason that he did not come to the house of the informant on that night. The evidence of PW2, i.e. the informant and PWs 3, 4 and 5 do not inspire confidence to that extent of believing the prosecution story as narrated. If 30/40 people gathered in the house of the informant on the night of the occurrence itself, they would definitely find out the respondent-accused persons who are next door neighbours of the informant but to that effect there is no evidence. The prosecution case, therefore, is doubtful and learned Sessions Judge, in my considered opinion, has rightly evaluated the evidence on record and directed an order of acquittal. Since the prosecution case is found to be doubtful the accused-respondents were entitled to get benefit of doubt and they have been rightly acquitted by the learned Sessions Judge.

9. The appeal, therefore, is found to be devoid of merit and hence stands dismissed.

10. Send back the L.C. records along with a copy of the judgment.

JUDGE