

**IN THE HIGH COURT OF TRIPURA
A G A R T A L A**

**CRL. A. No. 20 of 2014 &
CRL. A. No.22 of 2014**

CRL. A. No. 20 of 2014

Appellant:

The State Co-operative Bank Ltd.,
to be represented by its Branch
Manager, Dharmanagar Branch,
District – North Tripura,
PIN - 799250

By Advocate :

Mr. Debasish Roy, Mr. D.C. Kabir &
Mr. P.K. Pal, Advocates

V e r s u s

Respondents :

- 1. Sri Sanjib Nath,**
son of Sri Sudhir Ranjan Nath,
resident of Village & P.O.
Dewanpasha, P.S. Dharmanagar,
District – North Tripura
- 2. The State of Tripura,**
represented by the Public Prosecutor

By Advocate :

Mr. A. Ghosh, P.P.
Mr. S. Kar Bhowmik, Advocate

CRL. A. No. 22 of 2014

Appellant:

The State Co-operative Bank Ltd.,
to be represented by its Branch
Manager, Dharmanagar Branch,
District – North Tripura,
PIN - 799250

By Advocate :

Mr. Debasish Roy, Mr. D.C. Kabir &
Mr. P.K. Pal, Advocates

V e r s u s

Respondent :

- 1. Sri Sujit Kr. Roy,**
son of late Sitesh Ch. Roy, resident
of Thana Road, P.S. Dharmanagar,
District – North Tripura
- 2. The State of Tripura,**
represented by the Public Prosecutor

By Advocate :

Mr. A. Ghosh, P.P.
Mr. D.C Nath, Advocate
Mr. S. Kar Bhowmik, Advocate

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Date of hearing : **22.04.2015**

Date of delivery of Judgment & Order : **30.04.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

As these appeals arise from the common judgment and order of acquittal dated 04.08.2014 and from the same police report case (PRC) being GR. 311 of 2013 culminating to the trial on the common charge framed on 13.09.2010 under Sections 409/477-A/109 of the I.P.C against all the accused persons, the respondents herein, they are taken up together for purpose of disposal by a common judgment and order.

[2] After the trial, the accused persons namely, Sri Raju Ranjan Bhattacharee, Sri Sachindra Chandra Roy, Sri Jyoti Prakash Chakraborty had been convicted under Sections 409/109/477-A/120-B of the I.P.C. and other accused persons Sri Bidhu Bhusan Ghosh, Sri Gopal Datta, Sri Benulal Roy, Sri Biplab Dhar Choudhury, Sri Amitava Adhikari, Sri Sujit Kumar and Sri Sanjib Nath had been conviction under Section 109 read with Section 409 and 120-B of the I.P.C. and they were sentenced as consequence of the conviction. All those convicts filed separate appeals being Criminal Appeals No.10 of 2014, 11 of 2014, 12 of 2014, 13 of 2014, 14 of 2014, 15 of 2014, 17 of 2014, 18 of 2014, 19 of 2014 and 20 of 2014 in the court of the Addl. Sessions Judge, North Tripura, Dharmanagar and those appeals were being heard together. As stated, all these appeals arise out of one judgment of the trial court but all on a sudden the appellate court segregated Criminal Appeal No.12 of 2014 filed by Sanjib Nath and Criminal Appeal No.20 of 2014 filed by Sri Sujit Kr. Roy and passed the impugned judgment dated 04.08.2014 in those appeals by acquitting the respondent No.1 in the Criminal Appeals herein. These appeals have been filed by the victim of the offence namely, Tripura State Cooperative Bank Ltd. under proviso to Section 372 of the Cr.P.C.

[3] Mr. Debashis Roy, learned counsel appearing for the appellants has submitted that for such segregation and disposal, the prosecution has suffered serious prejudice as all

the accused persons are in the web of the crime or abetting the principle crime. This nature of segregation strikes at the very purpose of the common trial. If the web is broken, the other accused persons would take undue advantage from the finding on acquitting the accused respondents herein. The impact would be far more worse in the prosecution case. Hence, for procedural fairness to ensure the justice it warrants that the impugned common judgment is interfered with by this Court.

[4] Mr. S. Kar Bhowmik, learned counsel appearing for the accused respondents has laid two pronged resistance against the submissions made by Mr. Roy, learned counsel appearing for the appellants. According to Mr. Kar Bhowmik, learned counsel these appeals are not maintainable under proviso to Section 372 of the I.P.C. inasmuch judgment and order passed in the criminal appeal can only be challenged in the revision, not by another appeal. He has further submitted that since there is no cogent evidence against the accused respondents, by segregating those appeals, the appellate court did not cause any predicament or prejudice to the prosecution. By a reasoned order, it has been held that the finding of conviction against the accused respondents is wholly unjustified and devoid of any evidence.

[5] Having regard to the submissions of the learned counsel as well to the records, this Court finds that all those

appeals were being heard by the Addl. Sessions Judge, North Tripura, Dharmanagar together. On 24.07.2014, the Addl. Sessions Judge, North Tripura, Dharmanagar passed identical orders. After hearing the argument on 24.07.2014 the appeals were fixed for written argument on 30.07.2014. It appears further from the order dated 30.07.2014 that the written argument had been filed by the prosecution and the appeals were fixed for judgment. In Criminal Appeal No.11 of 2004, the order was passed as under:

Today all the 10 Criminal Appeals bearing No. Criminal Appeal No. 10 of 2014, Criminal Appeal No. 12 of 2014, Criminal Appeal No. 13 of 2014, Criminal Appeal No. 14 of 2014, Criminal Appeal No. 15 of 2014, Criminal Appeal No. 17 of 2014, Criminal Appeal No. 18 of 2014, Criminal Appeal No. 19 of 2014, Criminal Appeal No. 20 of 2014, are taken up for hearing.

The prosecution has submitted written argument supplying copy thereof to the other sides.

Fix on 19.08.2014 for Judgment.

[6] Similarly, in Criminal Appeals No.14 of 2014, 15 of 2014 and 19 of 2014, having observed identically, the date for judgment was fixed on 19.08.2014. In some other cases such as Criminal Appeals No. 10 of 2014 and 13 of 2014 having observed identically by the order dated 30.07.2014 the date for judgment was fixed on 08.08.2014. So far the Criminal Appeals No.12 of 2014 and 20 of 2014 are concerned, the date for judgment was fixed on 04.08.2014. It would be apparent from the orders dated 30.07.2014 passed by the Addl. Sessions

Judge that he has given no reason for segregating the appeals which were being heard together. It is for averting any conflict between the judgments and prejudice, when a criminal trial is disposed by a common judgment and if the appeals filed therefrom are noticed by the appellate court, those are ordinarily to be heard together and disposed by a common judgment. This procedure is followed so that decision in one of the appeals, does not become compulsive for the decision in the other case. Whether the offences allegedly committed by the accused would be tried in a common trial is determined at the stage of framing the charge, if in series of acts so closely connected to form the same transaction, more offences than one are committed by the some person, if any charged with, are tried at one trial for every such offence. In Section 220 of the Cr.P.C. provides as under:

If several acts of with one or more than one or by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by anyone or more of such acts.

[7] Here is a case where the charge was framed against all the appellants along with other appellants, whose appeals are yet to be decided, for the combination of the offence and as such, the trial was common. The trial court was absolutely correct in holding a common trial against the accused persons.

[8] There cannot be any amount of doubt that the same principle so far the procedure is concerned ought to have been followed by the appellate court by deciding the appeals by a common judgment. The segregation of the appeals for purpose of judgment is not only left unreasoned by the appellate court but it has created apprehension of prejudice or compulsion in the decision of the remaining appeals. To this Court, the segregation appears to have been prompted by the unacceptable consideration and not in the interest of justice. Hence, the impugned judgments and orders of acquittal dated 04.08.2014 are interfered and set aside. The appeals being Criminal Appeal No. 12 of 2014 and Criminal Appeal No.20 of 2014 are remanded to to the court of the Sessions Judge, North Tripura, Dharmanagar for deciding all the 10 appeals as aforestated by a common judgment as expeditiously as possible. This Court has not for obvious reasons expressed any opinion on the merit of the objections raised on those appeals.

This Court has on the face rejected the objection raised as to the maintainability of the appeals under proviso to Section 372 of the Cr.P.C. inasmuch as bare reading of the said proviso would reveal that the victim has been given right to file appeal against any order of acquittal or of inadequate sentence or compensation passed by the appellate court. The legislature has carefully engrafted the words in the said proviso providing that the victim has right to prefer an appeal against any order

passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation in appeal and as such, appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. The words 'passed by the court' acquitting the accused or for convicting for a lesser offence or imposing inadequate compensation shall mean and include even the appellate court acquitting or convicting for a lesser offence or imposing inadequate compensation. If from that court, appeal lies to the court of the Sessions, the appeal by the victim from an order of that nature shall lie to the court of Sessions. If from that court, the appeal lies to the High Court, the appeal by the victim from an order of that nature shall lie to the High Court.

[9] Having held so, the appeals stands allowed. The Registry is directed to send down the records without delay.

JUDGE

Sujay