HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. 26 of 2017

Smti. Mallika Debnath,
wife of Sri Nikunja Debnath,
resident of Village- Tepania,
Udaipur, P.O- Udaipur, PS: R.K. Pur,
District-Gomati Tripura

---- Complainant/Petitioner(s)

Versus

1. The State of Tripura
   Represented by Secretary cum
   Commissioner, Home Department
   Govt. of Tripura, New Capital Complex
   P.O.-Lichubagan, P.S-West Agartala
   District-West Tripura
2. Sri Mantu Karmakar
   son of Late Aswini Karmakar,
   resident of Village-Tepania, Udaipur
   P.O-Udaipur, PS: R.K. Pur,
   District-Gomati Tripura
3. Sri Chandan Debnath
   son of Late Hare Krishna Debnath
   resident of Village-Futamati, Udaipur
   P.O-Udaipur, PS: R.K. Pur,
   District-Gomati Tripura
4. Sri Narayan Datta
   son of Late Jagabandhu Datta
   resident of Village-Tepania, Udaipur
   P.O-Udaipur, PS: R.K. Pur,
   District-Gomati Tripura
5. Smti. Bijali Majumder (Karmakar)
   wife of Sri Kiran Karmakar
   resident of Village-Tepania, Udaipur
   P.O-Udaipur, PS: R.K. Pur,
   District-Gomati Tripura

---- Respondent(s)

HIGH COURT OF TRIPURA
सत्यमेव जयते

For Petitioner(s) : Mr. A. Acharjee, Adv.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.
Mr. S. Mahajan, Adv.

Date of hearing : 19.10.2020

Date of pronouncement : 17.11.2020

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

J u d g m e n t & O r d e r

1. By means of this criminal revision petition filed under section 397 read with section 401, Cr.P.C, the complainant petitioner has challenged the judgment & order dated 02.03.2017 passed by the learned Sessions Judge of Gomati Judicial District at Udaipur in Case No. Criminal Appeal 13(1) of 2016 affirming the judgment & order dated 20.01.2016 passed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur in Case No. PRC (SP) 29 of 2014 whereby the learned Chief Judicial Magistrate acquitted the accused respondents from the charges of sections 448 and 323 IPC.

2. The prosecutions story, briefly stated, is that the complainant (PW-2) filed a written complaint in the court of

learned Chief Judicial Magistrate at Udaipur on 11.12.2013 alleging, inter alia, that on 19.11.2013 some miscreants of her locality tried to encroach her Jote land and in order to achieve the target they assaulted the complainant and caused damage to the boundary fencing of the said land. For redress, she lodged a complaint with the Officer in Charge of R.K. Pur police station on 20.11.2013. In retaliation, the accused respondents, armed with deadly weapons, again entered into her land on 21.11.2013 at about 11 am and started felling her trees. While the complainant raised objection, they assaulted her and outraged her modesty. Following her hue and cry, the neighbouring people appeared and seeing them the accused respondents fled away.

3. The learned Chief Judicial Magistrate forwarded her complaint to the Officer in Charge of R.K. Pur police station at Udaipur for investigation and based on the complaint R.K. Pur P.S. case No. 411 of 2013 under sections 447, 448, 323, 354, 427 & 506 read with section 34 IPC was registered and the case was taken up for investigation.

4. Sri Kapil Paul, Sub Inspector of police of R.K. Pur police station having completed the investigation filed charge sheet No. 358 of 2013 dated 28.12.2013 against all the 04

(four) FIR named accused respondents under sections 448 & 323 read with section 34 IPC.

5. Based on the charge sheet, cognizance of offence punishable under sections 448 & 323 read with section 34 IPC was taken by learned Chief Judicial Magistrate and the trial proceeded. All the accused pleaded not guilty to the charges leveled against them and claimed a trial.

6. During trial, oral evidence of 6 (six) witnesses including the complainant was adduced and 5 (five) documents (Exbt.1 to Exbt.5/1) were exhibited on behalf of the prosecution. At the closure of prosecution evidence, separate statement of each of the accused respondents under section 313, Cr.P.C was recorded by the learned trial court. In reply, each of the accused respondents pleaded innocence and claimed that the charges were foisted on them. They declined to adduce any witness on their defence. At the conclusion of trial, the learned trial judge returned the finding of acquittal of all the accused respondents from each of the charges brought against them. In appeal by the complainant, the learned Sessions Judge affirmed the findings of the learned trial court. Hence, the complainant being petitioner has filed the

instant criminal revision petition challenging the concurrent findings of the courts below whereby the accused respondents have been acquitted of the charges.

7. I have heard Mr. A. Acharjee, learned counsel appearing for the complainant petitioner as well as Mr. S. Debnath, learned Addl. P.P. appearing for the State respondent and Mr. S. Mahajan, learned counsel appearing for the accused respondents.

8. The statement of PW-1 Dulal Debnath, a neighbour of the complainant, is not relevant because he did not support the prosecution case at the trial as a result of which he was declared hostile at the instance of the prosecution and he was cross examined by the learned Asst. P.P. Nothing could be extracted from him in favour of the prosecution through such cross examination. In his cross examination by learned defence counsel, the PW stated that he always used to leave home in the early morning for his work place and return in the evening.

9. The statement of PW-2, complainant, is very relevant. She stated at the trial that the incident occurred on 21.11.2013 at 11am when she was sitting at the corridor of her house along with her son. 03 (three) accused respondents namely Chandan Debnath, Bijali Majumder (Karmakar) and Mantu Karmakar entered into her house and attacked her. As

stated by her, she was also 'wrongfully restrained' by the accused respondents in a field. The relevant extract of her evidence is as under:

"I am the complainant of this case. The incident occurred on 21.11.2013 at 11am. At that time I along with my son was sitting on the corridor of our house and at that time accused Chandan Debnath, Bijali Majumder (Karmakar) and Mantu Karmakar entered into my house and attacked upon me and the accused persons also wrongfully restrained me in a field. Informing the above mentioned fact, I filed this case which was written as per my say."

10. In her cross examination, she admitted that she had a land dispute with accused respondent Mantu Karmakar and Chandan Debnath who filed a case against her on the ground that she forcibly occupied their land on the basis of a false purchase deed. She also stated in her cross examination that on 19.11.2013 the jurisdictional tehsilder visited the disputed land for demarcation when she along with her son raised objection and thereafter with police assistance the demarcation was done. She, however, denied the suggestion of the accused respondents that they did not attack her. She also denied that she filed this case only with a view to grab the land of the accused respondents.

11. PW-3 Ajay Debnath is the son of the complainant. Supporting the statement of his mother he told the court at the trial that all the 04 (four) accused respondents attacked his

mother in their house on 21.11.2013 at about 11 am and when his uncle came to save his mother, they chased his uncle.

In his cross examination, he admitted that there was a long standing land dispute among them. He, however, denied the suggestion of the accused that his mother filed a false case against the accused persons.

12. The statement of PW-4 Jiban Debnath is of no use. When he denied to have any knowledge about the prosecution case, he was declared hostile at the instance of prosecution.

In his cross examination by learned Asst. P.P. he denied to have made any statement to police during investigation. When he was cross examined by the accused respondents he told that he had no knowledge about any incidence between the parties.

13. PW-5 is the investigating officer of this case. According to him, he submitted the charge sheet on the basis of materials collected by him during investigation.

It was stated by him in his cross examination that he did not examine any independent witness. He denied the suggestion of the accused that his investigation was perfunctory.

14. PW-6 Animesh Paul scribed the ejahar which is Exbt.1/2. He simply stated that he wrote the ejahar following

the dictation of the complainant and after taking down her statement he got it signed by her. In cross, he denied that the ejahar was his own version.

15. The learned trial court, having appreciated the evidence, found the accused respondents not guilty of the charges brought against them and by his judgment and order dated 20.01.2016 acquitted all of them. In appeal, the learned Sessions Judge found various contradictions in the prosecution evidence and affirmed the decision of the learned trial court. The learned Sessions Judge having placed reliance on the decision of the Apex Court in **State of Rajasthan Vs. Naresh** reported in **(2009) 9 SCC 368** was of the view that no miscarriage of justice occurred and no perversity was done by the learned trial court in acquitting the accused respondents. Therefore, he declined to interfere with the judgment of the learned trial court and recorded the following findings in his judgment dated 02.03.2017:

"5) It is settled position of law that unless there has been gross miscarriage of justice or perversity done by the learned trial court in acquitting the accused respondents, such order of acquittal should not be disturbed, for the golden thread which runs through the web of criminal administration of justice rests on the presumption of innocence of the accused which is further fortified by the acquittal of the accused by the Trial Court. In *State of Rajasthan V. Naresh, (2009) 9 SCC 368*, at the page 375, Hon'ble Supreme Court was pleased to laid down as follows:

"In Chandrappa v. State of Karnataka, (2007) 4 SCC 415, at page 432, this court observed as under:

"42 ……In our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge: (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence his further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

Situated thus, it is held that there is no merit in the appeal and accordingly, same is dismissed."

16. Mr. A. Acharjee, learned counsel for the complainant petitioner has argued that the learned trial court erroneously held the accused respondents not guilty without appreciation of evidence and as such the findings of the learned appellate court upholding the judgment of the learned trial court warrants interference in revision. According to Mr. Acharjee, learned counsel of the complainant petitioner, the trial court as well as the appellate court failed to appreciate that the evidence of the complainant (PW-2) with regard to the charges of criminal trespass and commission of assault on her was sufficiently corroborated by the evidence of her son (PW-3) on the basis of which the trial court should have convicted the accused respondents under sections 448 & 323 IPC. It is further submitted on behalf of the complainant petitioner that the investigating officer (PW-5) clearly stated that PW-1 & PW-4 who turned hostile at the trial gave police statements to him supporting the prosecution case and in view of such evidence of the investigating officer, the trial court as well as the appellate court should not have acquitted the accused respondents from the charges brought against them. Finally, it is submitted on behalf of the complainant petitioner that all the accused respondents should be convicted by setting aside the judgments of both the courts below.

17. Mr. S. Debnath, learned Addl. P.P appearing for the State respondent fairly submits that the court may take appropriate decision, as it deems fit and proper, after consideration of the records and the submissions made on behalf of the parties.

18. It is submitted on behalf of the accused respondents that the learned courts below after proper appreciation of evidence found the accused respondents not guilty and as such the concurrent findings of the courts below does not call for any interference. It is, therefore, urged on behalf of accused respondents for dismissal of the instant revision petition.

19. In revisional jurisdiction, High Court can interfere with the order(s) under challenge only when it is brought to the notice of the court that it is perverse or wholly unreasonable or that relevant materials were not considered for arriving at the decision which, unless interfered with, would cause gross miscarriage of justice. While considering the scope of revisional jurisdiction of the High Court, the Apex Court in **State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri** reported in **(1999) 2 SCC 452** held as follows:

"5.....In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or

propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice……."

20. In a later decision in **Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke** reported in **(2015) 3 SCC 123,** the Apex Court about the revisional jurisdiction of the High Court observed as follows:

"14……Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non- consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

21. With regard to the ambit of power of the High Court under section 401, Cr.P.C. the Apex Court in **Vimal Singh Vs. Khuman Singh & Anr.** reported in **(1998) 7 SCC 223** held that the *High Court in its revisional power does not ordinarily interfere with the judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure*. Observation of the Apex Court in the said judgment in this regard is as follows:

"9. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 403 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial……."

22. Having carefully gone through the entire evidence as discussed above and the provisions of law involved in the case and the law laid down by the Apex Court in the decisions cited above, this court is of the view that the trial court made an in depth analysis of the evidence on record before arriving at the conclusion. After considering the entire evidence on record and the submissions made on behalf of the parties, the trial court found the accused respondents not guilty and passed an order of acquittal. In appeal, the learned Sessions Judge reassessed the entire evidence and pointed out to the contradictions and shortcomings appearing in the prosecution evidence and affirmed the judgment of the learned trial court. The evidence discussed in the preceding paragraphs would show that there was a long standing land dispute between the parties which has been admitted by the complainant (PW-2) and her son (PW-3) which resulted in case and counter case between the parties and developed an inimical relationship between them. The complainant stated in her complaint (Exbt.1/2) that all the 04 (four) accused respondents assaulted her in her house whereas at the trial she (PW-2) told the court that 03 (three) accused attacked her in her house. Her son (PW-3) stated in his cross examination that his uncle also witnessed the occurrence when he came to save his mother.

But, the uncle was not brought to court to support their case. Moreover, the 02 (two) neighbours of the complainant who allegedly witnessed the occurrence did not also support her case. All these shortcomings of the prosecution case were reflected in the judgment of the trial court as well as in the judgment of the learned appellate court. It is evident that the complainant could not prove her case against the accused respondents by adducing convincing evidence as a result of which the courts below acquitted them of both the charges.

23. For the forgoing reasons, this court is not inclined to interfere with the judgments of the courts below. Resultantly, the criminal revision petition stands dismissed and the case is disposed of accordingly.

Send back the LC record.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते