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AGARTALA

Crl. Rev. P No.18 of 2017

Shri Tapan Das
son of Late Mahendra Das
village : Bangarpar
P.S.: Radha Kishore Pur
Sub-division: Sonamura
District :Gomati Tripura

……Petitioner(s)

Versus

The State of Tripura.

…….Respondent(s)

For the Petitioner(s) : Mr. S.Bhattacharjee, Adv.

For the Respondent(s) : Mr. Ratan Datta. PP

Date of hearing : 09.10.2020

Date of delivery of Judgment & order : 17.11.2020

Whether fit for reporting :

Yes	No
	√

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Judgment & Order

[**1**] By means of this criminal revision petition, filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (*Cr.P.C. hereinafter*), the convict petitioner has challenged the judgment and order dated 01.04.2017 passed by the learned Sessions Judge,

Gomati Judicial District, Udaipur in Crl. Appeal No. 56(4) of 2015 whereby the learned Sessions Judge affirmed his conviction under Section 353 IPC while reducing his sentence to RI for six months from RI for one year and setting aside his conviction and sentence under Sections 384 and 506 IPC passed by the learned Chief Judicial Magistrate, Udaipur by judgment and order dated 30.09.2015 in case No. PRC 49 of 2013.

[**2**] The brief facts which led to the filing of the present revision petition are as under:

On 27.01.2013 at around 6 O'clock in the morning while Shri Mahendra Das, a Forester, was patrolling in a forest vehicle along with his accompanying forest staff at Bangerpar, Sonamura Chowmuni, to prevent smuggling of forest produce, accused petitioner was found carrying a sawn timber on his bicycle. Seeing the patrolling party, he ran away leaving his bicycle and timber. When the patrolling party was lifting the bicycle and the timber on their vehicle, the accused petitioner returned with his associates namely Sudhangshu Das @ Sudha and Gopal Das and forcibly took away his bicycle and timber from their custody and warned them that if they further enter into their village without permission, they would be killed.

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[**3**] Based on this information, R.K.Pur P.S. Case No.29 of 2013 dated 27.01.2013 under Sections 353, 384 and 506 IPC was registered against the accused petitioner and 02 other accused and the investigation of the case was taken up.

[**4**] Shri Sankar Nag, Sub-inspector of police of R.K.Pur police station carried out the whole investigation of the case and having completed his investigation, he submitted challan No.92 of 2013 dated 31.03.2013 under Sections 353, 384 and 506 IPC against the 3 FIR named accused including the accused petitioner. The jurisdictional Judicial Magistrate, Udaipur, received the charge sheet and took cognizance of offence punishable under Sections 353, 384 and 506 IPC. The trial commenced with the framing of charges under Sections 353, 384 and 506 read with Section 34 IPC against the accused petitioner as well as the other 02 accused. They pleaded not guilty to the charges and claimed trial.

[**5**] During trial, 08 witnesses were examined and 03 documents (Exbt.1- Exbt.3/2) were exhibited on behalf of the prosecution. Separate statement of each of the accused was then recorded under Section 313 Cr.P.C. In

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reply, they pleaded innocence and claimed that the charges were foisted on them.

[**6**] At the conclusion of trial, the learned trial court on appreciation of evidence held the accused petitioner guilty of offence punishable under Sections 353, 384 and 506 IPC and convicted him while acquitting the other 02 accused of all the three charges. After conviction the accused petitioner was sentenced to RI for one year for having committed offence under Section 353 IPC. He was further sentenced to RI for two years under Section 384 IPC and RI for one year for offence under Section 506 IPC and it was ordered that the sentences would run concurrently.

[**7**] In appeal, the learned Sessions Judge by the impugned judgment dated 01.04.2017, affirmed the conviction of the petitioner under Section 353 IPC while reducing his sentence to RI for six months from RI for one year and setting aside his conviction and sentence under Sections 384 and 506 IPC which is under challenge in this criminal revision petition.

[**8**] Challenging the said judgment of the learned Sessions Judge, it is submitted on behalf of the accused petitioner that the learned Sessions Judge erroneously

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affirmed the conviction and sentence of the petitioner under Section 353 IPC without appreciating the evidence. Mr. S.Bhattacharjee, learned counsel appearing for the petitioner argued that with regard to identification of the accused petitioner, no substantive evidence was adduced on behalf of the prosecution and the learned Sessions Judge erroneously affirmed the conviction of the petitioner without appreciating this fact. Further argument on behalf of the petitioner is that in absence of reliable evidence with regard to identification of the accused at the time of commission of offence, his identification by the witnesses at the trial is not acceptable. In support of his contention Mr.Bhattacharjee, learned counsel, has relied on the decision dated 25.11.2016 of this High Court in the case of ***Jalil Miah vs. Md. Nur Mahammad*** in ***Criminal Revision P.41 of 2015***. Further submission on behalf of the petitioner is that the learned Sessions Judge did not appreciate that essential ingredients of Section 353 IPC were not established in as much as there was no proof of assault or use of criminal force. As a result, his conviction under Section 353 IPC was against the law. It was also argued on behalf of the petitioner that prosecution led no evidence to prove that the forest officials were

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discharging their official duty at the alleged time. According to learned counsel of the petitioner, the learned appellate court also ignored this fact. It was further argued by Mr. Bhattacharjee, learned counsel, that the evidence of PW1, PW2 and PW3 would clearly reveal that there was no assault or use of criminal force from the side of the petitioner. There was mere altercation between them for which the petitioner should not have been roped with Section 353 IPC. It was submitted by Mr.Bhattacharjee that in absence of proof of any overt act on the part of the accused to deter a public servant from discharging his duty conviction under Section 353 is wholly erroneous. Learned counsel, therefore, urged the court for setting aside the impugned judgment of the learned appellate court.

[**9**] From the other side, Mr. R.Datta, learned Public Prosecutor argued that case against the petitioner was proved beyond reasonable shadow of doubt in the trial court. As a result, the learned trial judge rightly convicted the petitioner under Section 353 IPC which was affirmed in appeal. It was further argued by learned counsel that the petitioner committed a serious offence by obstructing the public servants in the discharge of their official duty. According to him, learned Sessions Judge after

considering the entire facts and circumstances upheld his conviction and sentenced him appropriately for the offence which does not call for any interference in appeal.

[**10**] To reiterate the facts, 08 witnesses were examined on behalf of the prosecution. Among them, PW-1, Mahendra Das is the first informant who stated at the trial that while patrolling at the material time, he noticed the petitioner carrying a sawn timber in his bicycle. Seeing their vehicle he fled away leaving his bicycle and timber. When his bicycle and timber were being lifted in their vehicle, the petitioner returned with Sudhangshu Das @ Sudha and Gopal Das and started using foul words to them. The accused petitioner and his associates had forcibly taken away the bicycle of the petitioner and timber from the possession of the patrolling party.

In his cross examination, the PW has categorically stated that he had never seen the accused petitioner before the occurrence. Later, the PW came to know about the name and address of the petitioner from the local people. In cross, the PW confirmed that except using foul words to them and saying them that they should not have entered into the area without their permission, the petitioner did not do any other overt act to deter them from discharging their duty.

[**11**] PW-2, Shyamapada Roy, a Forester who was in the patrolling team, repeated the same statement in his examination in chief as well as in his cross examination. Similarly, PW-3 Bahar Chand Miah, PW-4 Matilal Debbarma, PW-5 Subrata Marak, PW-7 Uttam Gope and PW-8 Ajit Debbarma were all forest officials who told at the trial in the same tune that when they were patrolling on 27.01.2013 they noticed the petitioner carrying a sawn timber on his bicycle at Bangerpar at about 6 O'clock in the morning. Seeing their vehicle he fled leaving his bicycle and timber. After a while he returned along with his associates, used foul words to them and forcibly snatched away the bicycle and timber from their possession and thus obstructed them from discharging their duty.

[**12**] PW-6 Sankar Nag conducted the whole investigation of the case. On the basis of the statements of the forest officials who were allegedly present at the place of occurrence, the Investigating Officer submitted the charge sheet against the 03 FIR named accused.

In his cross examination, he stated that all the prosecution witnesses were forest officials and no person from the neighbouring houses was made witness in the

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case. It was also stated by the PW that no bicycle or timber was seized in the case.

[**13**] The essential ingredient of Section 353 IPC is assault or use of criminal force to a public servant with a view to prevent such public servant from discharging his duty. In the instant case there is no allegation of assault. The only allegation against the accused petitioner is that he used foul words to the public servants and snatched away his bicycle and timber from their possession. It is quite improbable that the accused who fled away in fear soon after seeing the forest patrolling party would return immediately and snatch away his bicycle and timber from their possession particularly when the patrolling party was huge in number. In the case of ***Jalil Miah***(supra), which has been referred to and relied upon by learned counsel of the petitioner, the revisionist who faced trial under Sections 353, 332 and 427 read with Section 34 IPC was convicted and sentenced under Section 332 IPC by the learned trial court which was affirmed by the appellate court. While considering his revision petition, this High Court held that mere presence in the assembly of the accused persons without proof of an overt act cannot make him liable to be convicted under Section 332 IPC. Facts are different in the instant case. Here the

accused was not merely present at the crime scene. He allegedly used foul words to the public servants and snatched away his bicycle and timber from their possession. Whatever may be the circumstances in the present case, the prosecution case cannot be said to have been proved against the present petitioner because there is no evidence of assault to the public servants, nor there is any trustworthy evidence with regard to use of criminal force against them. The accusation against the accused petitioner that he was found carrying a sawn timber and after the forest officials had taken the timber into their custody, the petitioner snatched away the timber from their possession by using criminal force is not founded on evidence. Evidently, except exchange of words there is no other allegation of assault or use of criminal force against the accused. Exactly what was said by the accused petitioner is also not stated by any of the witnesses. The allegation that he was found carrying a sawn timber illegally is not also proved against him because no such sawn timber was seized from his possession. The learned Sessions Judge did not take note of the fact that the police station was not far away. Had it been so that the petitioner was carrying an illegally sawn timber on his bicycle, the patrolling party could have immediately

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seized the timber and bicycle with police assistance after it was allegedly snatched away by the accused petitioner from their possession. Apparently, the basic ingredients of Section 353 IPC are not fulfilled in the case and the case against the accused petitioner appears to be absolutely doubtful the benefit of which should be given to him.

[**14**] For the foregoing reasons, the instant criminal revision petition is allowed and the said judgment and order dated 01.04.2017 passed by the learned Sessions Judge which is impugned before this court, is quashed and set aside. The accused petitioner stands acquitted of the charges labeled against him. Since he is on bail, his bail petition stands discharged.

The petition is thus disposed of.

Send back the LC Records.

JUDGE

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Saikat Sarma, P.A