HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. 35 of 2017

Rajib Dey,
son of Late Ajit Dey,
resident of Village- Jogendranagar,
Bankumari, PS: East Agartala,
PO-Agartala College
District- West Tripura.
Presently residing at Village-Salgarah
PS-R.K. Nagar
District-Gomati Tripura

---- Petitioner(s)

Versus

The State of Tripura,

---- Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Adv.

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

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, the petitioner has challenged the judgment & order dated

15.03.2017 passed by the learned Addl. Sessions Judge, Gomati Judicial District, Udaipur in case number Criminal Appeal 24(02) of 2016 affirming the judgment & order of conviction & sentence dated 27.04.2016 passed by the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur in case number PRC (WP) 246 of 2014 convicting the petitioner alternatively under section 384 IPC or Section 411 IPC and sentencing him to RI for 1 (one) year and fine of Rs.5,000/- with default stipulation for committing the offence.

2. The basic facts necessary for disposal of the case are that Sri Nabadeep Debnath of Chanban, Udaipur, lodged a written complaint with the Officer In Charge of R.K. Pur police station at Udaipur alleging, inter alia, that on 04.12.2014 at around 09.30 am the accused petitioner had trespassed into his home and snatched away the gold chain from the neck of his grandson Raktim Debnath. Following the cry of the child, the neighbouring people appeared and detained the accused petitioner from in front of his house and recovered the gold chain from his possession. The accused petitioner was then handed over to police.

3. Based on his FIR, R.K. Pur P.S. case No. 274 of 2014 under sections 447, 384 & 411 IPC was registered against the petitioner and investigation was taken up.

4. Sri Sankar Nag, Sub Inspector of police of R.K. Pur police station carried out the whole investigation of the case and submitted charge sheet No. 192 of 2014 dated 05.12.2014 against the accused petitioner for committing offence punishable under sections 447, 384 & 411 IPC.

5. The trial court framed charges of offence punishable under sections 447, 384 & 411 IPC against the petitioner. During trial, prosecution examined 6 (six) witnesses including the first informant and introduced 5 (five) exhibits. After the recording of the prosecution evidence was over, the petitioner was examined under section 313 Cr.P.C. In reply, he simply denied the charges and claimed that the charges were foisted on him. He declined to examine any witness on his defence.

6. The learned trial court, on appreciation of evidence, held the petitioner guilty and convicted him alternatively under section 384 or section 411 IPC and sentenced him to RI for 1 (one) year and fine of Rs.5,000/- with default stipulation which is under challenge in this criminal revision petition.

7. I have heard Mr. S. Lodh, learned counsel for the petitioner who has pointed out to some infirmities in the findings of the courts below and urged for setting aside their judgments. I have also heard Mr. S. Debnath, learned Addl. P.P

for the State respondent who has supported the concurrent findings of the courts below and urged for maintaining the conviction and sentence of the petitioner.

8. To reiterate the facts, PW-1 Sri Lal Mohan Debnath who is the first informant of this case told the court at the trial that at about 9 O'clock in the morning on 04.12.2014, the petitioner entered into his house and snatched away the gold chain from the neck of his grandson Raktim Debnath. When the PW came to the spot following the cry of the child, he saw the accused running out. At that time, he raised hue and cry. Following his cry, the neighbouring people started chasing the petitioner and they caught him. After his detention, the gold chain was found in his possession. Thereafter, the matter was reported to police. Police came and arrested the petitioner and also seized the gold chain from his possession which was later released in favour of the PW from court on bail.

9. In his cross examination, PW-1 stated that his grandson was 3 (three) years' old at the time occurrence. The PW also stated that he did not see the accused snatching away the gold chain from the neck of his grandson. He further stated that he did not write in his FIR exactly from where the petitioner was detained by his neighbours. He, however, denied

the suggestion of the accused that he falsely implicated the accused in the instant case.

10. PW-2, Sri Subhash Ch. Bhowmik was present when the villagers detained the petitioner with a gold chain on the material day. He has supported the version of PW-1 and stated that he was getting ready for going to school at the material time when he heard the cry of PW-1 and appeared at the spot where he met the grandchild of PW-1 who told him that his gold chain was stolen away by a person. The neighbours caught the petitioner after chasing him and the gold chain was found in his pocket which was witnessed by PW-2. Police was informed immediately who came and arrested the accused petitioner and also seized the stolen gold chain from his possession.

In his cross examination, the PW stated that the first informant was his relative. He also stated in cross that he did not see the accused stealing the gold chain and he could not say exactly from where he was detained by his neighbours.

11. To the similar effect is the statement of PW-3, Sri Manik Paul who is also a neighbour of the first informant like PW-2. According to PW-3, he was having bath at the material time in his house when he heard his neighbour Sri Lal Mohan Debnath, PW-1 crying. Following his cry the PW came out and saw the petitioner running out. The PW along with others

chased him and detained him. After detention, they searched his body and found the stolen gold chain in his pocket. He told that his name was Rajib Dey. Police was informed immediately. They came and arrested the petitioner and seized the gold chain from his possession.

In his cross examination, the PW admitted that he was not present at the moment when the gold chain was stolen away from the grandson of PW-1. The PW could not also state the exact date of occurrence. He, however, denied the suggestion of the accused that the accused was not chased and detained by the villagers and the gold chain was not recovered from his pocket.

12. Statements of PW-4 and PW-5 are not very relevant because PW-4 simply said that he scribed the FIR pursuant to the dictation of PW-1 and PW-5 said that he accompanied the IO to the place of occurrence where the FIR of PW-1 was received. None of these PWs has any first hand knowledge about the occurrence.

13. PW-6, Sri Sankar Nag, is the investigating officer of this case. He told the court at the trial that on 04.12.2014 at around 10.15 am an information was received at R.K. Pur police station to the effect that a thief was caught at Chanban. The information was recorded at the police station in the general

HIGH COURT OF TRIPURA

diary vide G.D. entry No. 17 dated 04.12.2014 and following the information the PW accompanied by the staff of the police station arrived at the spot where he found that a person was detained by the local people. On interrogation the villagers told him that the person was detained by them while he was running away after stealing the gold chain of the grandchild of Sri Lal Mohan Debnath from his neck. The written FIR was received by the PW at the spot. He arrested the accused petitioner and seized a gold chain from his possession after registration of the case the investigation was taken up by him.

In his cross examination, the PW stated that he reached the spot at 10.25 am, received the FIR at 11.30 am and seized the gold chain from the possession of the accused at 12.30 pm and after seizure of the chain he arrested the accused petitioner at 12.45 pm.

14. The learned trial court, on appreciation of evidence, acquitted the accused petitioner of the charge of section 447 IPC on the ground that none of the PWs had seen him entering into the house of the informant. With regard to his conviction in the alternative either under section 384 or section 411 IPC, the finding of the learned trial court in paragraph 17 of its judgment are as follows:

"Considering all the evidence as discussed above, I find in this case there is no reason to disbelieve the prosecution case and

the evidence of prosecution witnesses specifically where they have given cogent, corroborative and reliable evidence and in cross-examination defence failed to bring any material where from it can be said that the evidence of prosecution witnesses are not believable. Moreover, in this case, there is some omission, contradiction and discrepancies as discussed above but in my view the same is very natural and human error and for which the prosecution case cannot be thrown out. In this case all the prosecution witnesses specifically PW. 1, 2 and 3 deposed about the fact of recovery of stolen chain from the possession of accused and detention of the accused on the spot along with the gold made chain.

Therefore, as per Section 114 illustration (a) of the Indian Evidence Act, 1872, it can be said that the accused either committed the theft or has received the gold made chain knowing the same to be stolen unless the accused has given account for his possession but, in this case, the accused failed to give any account about his possession of the gold made chain and, therefore, it can be inferred and presumed that either the accused committed theft or received the stolen article knowing it to be stolen article.

As regards the submission of learned defence counsel that it is the allegation and evidence of prosecution that the accused snatched away the chain and in case of snatching the chain must have been torn but in this case the said chain is not torn, I am of the view that in respect of snatching from the neck of child it is not allowed necessary that the chain must be torn. As regards the submission of learned defence counsel that P.W.1, P.W.2 & P.W.3 deposed that they have not seen the actual snatching of chain, I am of the view as mentioned above that they are witnesses of the occurrence subsequent to the exact moment of snatching and, for which, the defence would get no benefit."

15. Having recorded the above findings the learned trial judge in paragraph 18 of the judgment concluded as follows:

"……..**Thus, therefore, considering all, I find, the prosecution is able to prove the fact that either the accused**

snatched away the gold made chain from the neck of the grandson of informant or the accused received the stolen gold made chain knowing the same to be stolen property as the said chain was recovered from the possession of accused……"

16. Finally, the learned trial court passed the following order of conviction:

"……However, the prosecution is able to prove the fact that accused committed an offence punishable under section 384 or section 411 IPC and accordingly, the accused is convicted therein by way of alternative conviction."

17. The learned Addl. Sessions Judge in appeal against the findings of the learned trial court found all ingredients of section 411 IPC well established in the case and reached the following conclusion in paragraph 9 of its judgment:

"From the evidence of PW.1 Shri Lal Mohan Debnath (the informant of the case), PW.2 Shri Subash Ch. Bhowmik and PW.3 Shri Manik Paul it is well established that the gold made chain was recovered from the possession of the convict-appellant and also that before its recovery from the possession of convict-appellant it was in the possession of victim, i.e., Raktim Debnath, the grandson of the informant. These two ingredients being proved in the affirmative, the last one that the convict-appellant had the knowledge that the said gold chain was a stolen property is established by the fact that there was no explanation or averments from the convict-appellant that the recovered gold made chain was his own property or that it was not in the possession of the victim immediately before its recovery.

Accordingly, this Court is of the opinion that all the aforesaid three ingredients to bring home the guilt of a person under Section-411 of IPC have been well established in the instant case and have been elaborately dealt with by the Learned Court below in its Judgment and as a corollary this Court has got no option but to

dismiss the instant appeal upholding the impugned Judgment and order of conviction and sentence so passed by the Learned Court below in Case No. PRC(WP) 246 of 2014."

18. Mr. S. Lodh, learned counsel for the petitioner, has argued that the learned trial court erroneously held the petitioner 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. Lodh, learned counsel, alternative conviction of the petitioner either under section 384 or section 411 IPC is not permissible since the ingredients of the offence under section 384 are different from those of the offence under section 411 IPC. Further submission on behalf of the petitioner is that there is no proof that the alleged gold chain belonged to the grandchild of the first informant and that it was stolen from his possession and in absence of such proof the petitioner cannot be held responsible for possessing stolen property and penalized under section 411 IPC. Mr. Lodh, learned counsel, has further contended that in all probability the gold chain would have been torn, had it been snatched away from the neck of the grandchild of the informant. But, the chain was never produced before the learned trial court for inspection which indicates that the accused has been falsely implicated in the case. Further submission on behalf of the petitioner is that even

the eye witnesses who allegedly saw the petitioner being detained by villagers could not say exactly from where he was detained. According to learned counsel, the learned appellate court overlooked these infirmities in the prosecution case and erroneously upheld the judgment of the learned trial court. Learned counsel, therefore, urges the court to set aside the judgments of the courts below.

19. Mr. S. Debnath, learned Addl. P.P, per contra, has argued that the consistent evidence of the prosecution witnesses has clearly established the charge against the petitioner and as such the trial court rightly held him guilty and convicted him alternatively under section 384 or section 411 IPC and appropriately sentenced him which was rightly upheld by the learned appellate court. It is submitted by Mr. Debnath, learned Addl. P.P that the petitioner was caught red handed by the villagers while fleeing with the gold chain of the child and the chain was also found in his possession immediately after the occurrence. It is submitted by Mr. Debnath, learned Addl. P.P that in view of the consistent and corroborative evidence available on record the judgments of courts below do not call for any interference. Learned Addl. P.P, therefore, urges the court for dismissing the instant petition.

20. In so far as the question of conviction in the alternative is concerned, it is not impermissible in law. Such a conviction is provided for in sub section (2) of section 354 of the Code of Criminal Procedure, 1973 which was section 367 in the old Code of 1898 which provides that when the conviction is under the Indian Penal Code and it is doubtful under which of 2 (two) sections, or under which of 2 (two) parts of the same section of the code the offence falls, the court shall distinctly express the same, and pass judgment in the alternative. Section 72 IPC provides that in case of such doubt, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all. Therefore, there is no legal prohibition in respect of alternative conviction if there is evidence fulfilling the ingredients of the offences.

21. In the instant case, the trial court framed alternative charges under section 384 and section 411 IPC. Section 384 IPC provides punishment for the offence of extortion which has been defined in section 383 IPC. From a careful perusal of the prosecution evidence, it would be apparent that none of the witnesses had seen the petitioner taking away the gold chain from the grandchild of the informant. Even the informant in whose house the occurrence

allegedly took place could not say exactly when and how his grandchild parted with the gold chain. As such it could not be ascertained whether the 3 (three) years' old grandchild of the informant was induced to part with his gold chain by putting him in fear of injury which is an essential element of the offence of extortion. In absence of such proof, conviction under section 384 IPC cannot be sustained.

22. With regard to the conviction under section 411 IPC prosecution has led no evidence to prove that the accused petitioner dishonestly received or retained the gold chain knowing or having reason to believe that it was stolen property. The prosecution has led the evidence of 6 (six) witnesses in this case among whom PW-2 & PW-3 are stated to be the eye witnesses. PW-2 stated that he came out of his home following the hue and cry and saw that the petitioner was detained by the local people and one gold chain was found in his pocket. He could not say anything as to when and where and under what circumstances he was detained. He did not also see the petitioner running away with the gold chain. Similarly, PW-3 who is stated to have chased the accused petitioner could not also say exactly from where and how he was detained. Eye witness version of PW-2 & PW-3 who reached the crime of scene at the same time does not match. The object of section

411 IPC is to punish those who dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property. A person from whose possession a lost property is recovered cannot be punished under section 411 IPC unless it is proved that he dishonestly received or retained it knowing or having reason to believe the same to be stolen property. In the instant case, investigation was not directed to gather evidence in this regard. There is no convincing evidence to prove that the petitioner had taken away the gold chain from the possession of the grandchild of the informant. There is no iota of evidence to prove that the accused petitioner dishonestly received or retained it knowing or having reason to believe the same to be stolen property. Even the chain could not be produced during trial for inspection of the court. In these circumstances, the charge under section 411 IPC does not also survive against him.

23. Having carefully gone through the entire evidence as discussed above and the provisions of law involved in the case, this court is not inclined to accept the findings arrived at by the courts below. Resultantly, the impugned judgment and order dated 15.03.2017 of the learned Addl. Sessions Judge, Gomati Judicial District affirming the conviction and sentence of the petitioner under section 411 IPC is set aside and the

revision petition is allowed. The convict petitioner stands acquitted. Since he is on bail, his bail bond stands discharged.

Send back the LC record.

JUDGE

HIGH COURT OF TRIPURA

Rudradeep