

(2024) 06 GAU CK 0002

Gauhati High Court

Case No: Criminal Revision Petition No. 153 Of 2024

Firoj Ali @ Raju

APPELLANT

Vs

State Of Assam And Anr.

RESPONDENT

Date of Decision: June 3, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 207, 313, 386, 397, 401, 401(1)
- Indian Penal Code, 1860 - Section 380

Hon'ble Judges: Robin Phukan, J

Bench: Single Bench

Advocate: P. Boruah, B.B. Gogoi

Final Decision: Disposed Of

Judgement

1. Heard Ms. P. Boruah, learned counsel petitioner and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent No. 1.
2. Legality, propriety and correctness of the judgment and order dated 26.06.2023, passed by the learned Sessions Judge, Sonitpur, Tezpur, in Criminal Appeal No. 01 (S-1)/2020, is impugned in this revision petition under Section 397, read with Section 401 of the Cr.P.C.
3. It is to be noted here that vide impugned judgment and order dated 26.06.2023, the learned Sessions Judge, Sonitpur, Tezpur has upheld the judgment and order dated 22.01.2020, passed by the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur, in G.R. Case No. 249/2011. It is also to be noted here that vide judgment and order dated 22.01.2020, the learned Chief Judicial Magistrate, Sonitpur, Tezpur has convicted the petitioner under Section 380, IPC and sentenced him to suffer simple imprisonment for a period of six months and also to pay a fine of Rs. 500/- and in default, to undergo

simple imprisonment for another fifteen days.

4. The background facts, leading to filing of the present revision petition, are adumbrated herein below:

"On 08.02.2011, at about 6:10 p.m. in the evening, one thief entered into the rented house of Sri Ramani Deka and committed theft of a cylinder. Thereafter, with the help of local people, the thief was apprehended and thief identified himself as Md. Firoj Ali @ Raja, son of Md. Rafisat Ali of Barikachuburi, Tezpur. Thereafter, Ramani Deka had lodged one FIR with the Officer-in-charge of Tezpur Sadar P.S. with a prayer to recover the stolen cylinder.

On receipt of the FIR, the Officer-in-charge of Tezpur P.S. had registered a case, being Tezpur P.S. Case No. 115/2011, under Section 380, IPC and endorsed SI Saidur Rahman to investigate the same. The I.O. then visited the place of occurrence, examined the witnesses, drew the sketch map of the place of occurrence, arrested the accused and forwarded him to the Court. Thereafter, the I.O. had recovered the cylinder and seized the same in presence of witnesses. Thereafter, on completion of investigation, the I.O. submitted charge-sheet against the present petitioner to stand trial in the Court under Section 380, IPC.

Then, the accused appeared before the learned Chief Judicial Magistrate, Sonitpur, Tezpur and then, upon complying with the provision of Section 207, Cr.P.C., the learned Chief Judicial Magistrate, Sonitpur, Tezpur had framed charge against the accused under Section 380, IPC and on being read and explained over the same, the petitioner pleaded not guilty and claimed to be tried. Thereafter, the prosecution side has examined as many as six witnesses, including the I.O. and after closing the prosecution evidence, the learned Chief Judicial Magistrate, Sonitpur, Tezpur had examined the accused under Section 313, Cr.P.C. The accused had declined to adduce evidence in his defence. Thereafter, hearing learned Advocates of both the parties, the learned Chief Judicial Magistrate, Sonitpur, Tezpur had convicted the accused under Section 380, IPC and sentenced him as aforesaid.

Being highly aggrieved, the accused has approached the learned Sessions Judge, Sonitpur, Tezpur by filing an appeal, being Criminal Appeal No. 01 (S-1)/2020, challenging the correctness or otherwise of the judgment and order dated 22.01.2020, passed by the learned Chief Judicial Magistrate, Sonitpur, Tezpur. Thereafter, hearing both the parties, the learned Sessions Judge, Sonitpur, Tezpur, vide impugned judgment and order dated 26.06.2023, in Criminal Appeal No. 01 (S-1)/2020, upheld the conviction and sentence of the petitioner under Section 380, IPC."

5. Being aggrieved, the petitioner approached this Court by filing the present petition and contended to allow the same on the following grounds:

- (i) That, the impugned judgment and order was passed mechanically and without application of mind;
- (ii) That, the learned Courts below had erred both in law and facts;
- (iii) That, the learned Courts below had failed to appreciate the evidence in its proper perspective;
- (iv) That, the alleged stolen cylinder was not recovered from the possession of the present petitioner and there was no eyewitness to the occurrence;
- (v) That, there are material contradictions in the version of the prosecution witnesses for which their version are not acceptable; and
- (vi) That, the prosecution side had failed to examine the I.O. i.e. SI Saidur Rahman, who had conducted investigation.

6. Ms. Boruah, learned counsel for the petitioner submits that after dismissal of the appeal, being Criminal Appeal No. 01 (S-1)/ 2020, by the learned Sessions Judge, Sonitpur, Tezpur, the petitioner was arrested and for last two months and eleven days, he has been languishing in jail hazot. Ms. Boruah, further submits that the prosecution side had failed to establish the charge against the petitioner beyond reasonable doubt, and that there are material contradictions in the version of the prosecution witnesses and that the alleged stolen cylinder was also not recovered and seized from the possession of the present petitioner. Therefore, Ms. Boruah has contended to allow the petition by setting aside both the impugned judgments and orders.

7. Whereas, Mr. B.B. Gogoi, learned Additional Public Prosecutor has supported the impugned judgments and orders and submits that there are sufficient materials to show that the petitioner has committed theft of the cylinder and the same was recovered and seized on being led and shown by the accused, and therefore, Mr. Gogoi has contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned judgment and order, dated 26.06.2023, passed by the learned Sessions Judge, Sonitpur, Tezpur and the judgment and order dated 22.01.2020, passed by the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur and also carefully gone through the records of the learned Courts below.

9. It is well settled by a catena of decisions of Hon'ble Supreme Court that the jurisdiction of revisional court is limited to examine only the legality, propriety and correctness of the impugned judgment and order. But in the case of State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, reported in AIR 2004

SC 4412, Hon'ble Supreme Court has held that Section 401(1), Cr.P.C. enables the revisional court to exercise all powers of Appellate Court (section 386) if necessary, in aid of power of superintendence or supervision for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to regularity of any proceeding.

10. In view of the proposition of law, so laid down in the aforementioned case, and with the aid of power of supervision or superintendence, this court deemed it appropriate to go through the evidence of the prosecution witnesses, so recorded by the learned trial court, only to derive satisfaction as to the correctness, legality or propriety of the impugned judgments and orders and as to the regularity of the proceeding.

11. The record of the learned trial court reveals that it had examined as many as six witnesses and exhibited as many as three documents to bring home the charge under Section 380, IPC. Out of the six witnesses so examined, P.W.1 is the informant Shri Ramani Deka. He testified that the occurrence took place on the day of Saraswati Puja, 2011, in the evening hours and at the relevant point of time, he was at Mahabhairab market. Then, his wife informed him over phone that one man has committed theft of a cylinder from their house and the villagers apprehended the thief. Then, on arriving at home, he found the accused in his house compound being apprehended by villagers. He then lodged the Ejahar (Exhibit-1) with the police station. His evidence also reveals that there were two cylinders at his house and one cylinder was found with the accused and the other one was handed over by the accused to another thief, who accompanied him. Thereafter, police arrived at his house and took the accused to Garowanpatty and from there, police recovered one cylinder and seized the same by preparing seizure list (Exhibit-2). The evidence of this witness remained firm and un-rebutted in cross-examination. It is his categorical version that police seized one of the stolen cylinder recovered from the house of one person in Garowanpatty and one of the cylinder was found with the accused.

12. P.W.2 Smt. Monisha Deka is the wife of the P.W.1. She also testified that the occurrence took place on the day of Saraswati Puja, in the evening hours, when she went to enjoy Puja with one Nomi Deka, keeping her house under lock and key and on returning home at about 5:30 p.m., she found the front side of her house open and also found the accused inside her house and one gas cylinder in his hand. She then raised alarm and then the accused ran away and the local people apprehended the accused on the road. She then reported the matter to her husband who also reported the matter to police station. Then, police came and recovered the stolen cylinder from Garowanpatty. Her testimony remained un-rebutted in cross-examination. She is the eye witness of the occurrence and she found the accused inside her house and her testimony stands corroborated from the evidence of P.W.1.

13. P.W.3 Sri Purna Mahanta is the neighbour of the informant who testified that about three years back, at about 7-7:30 p.m. in the evening, while he was returning home from his duty, then he heard hulla at L.B. Road and also found the wife of Ramani Deka raising alarm about the thief. Then he had seen one thief with one cylinder, going away in one rickshaw, and then, the villagers apprehended him. He also testified that the accused has already taken away the cylinder and kept somewhere else and he came to the police station and police took his signature over seizure list (Exhibit-2).

14. P.W.4 is Md. Munna Hussain who testified that the occurrence took place about three years back in the evening hours and at that time the accused came to his house with one domestic gas cylinder and requested him to allow him to keep one gas cylinder in his house as he had not found gas on that day. Then, his wife allowed him to keep the cylinder by the side of his house and thereafter, the accused left the place and after a while, police came to his house and recovered the seized cylinder vide seizure list Exhibit-2 and Exhibit-2(3) is his signature over the same. He also testified that the accused went to fetch another cylinder and then the villagers apprehended him. The testimony of both P.W.3 and 4 also remained un-rebutted in their cross-examination.

15. P.W.5 Musstt. Hajera Begum testified that about 3-4 years back, the accused took one cylinder to her house and at the relevant time, she was not in her house and her husband was sleeping in her house. Then, the accused with permission from her husband, kept the cylinder in her house, as on that day, he had not found gas. After a while, police arrived at her house and seized the cylinder, vide seizure list (Exhibit-2). This witness also remained firm in cross-examination.

16. P.W.6 is Inspector Dayaram Saikia, who had submitted charge-sheet. He testified that the case was investigated by SI Saidur Rahman and the said SI, having been transferred, he had gone through the case diary and found that the investigation of the case had already been completed and thereafter, he submitted charge-sheet, being Exhibit-3, against the accused to stand trial in the Court under Section 380, IPC and he also confirmed the seizure list (Exhibit-2), vide which SI Saidur Rahman seized the stolen cylinder.

17. Upon appreciation of the aforementioned evidence, so adduced by the prosecution witnesses, the learned Chief Judicial Magistrate, Sonitpur, Tezpur, found that it was the present accused/petitioner who was found inside the house of the informant with one cylinder in his hand and on such count the ingredients of the charge under Section 380, IPC stands proved against the accused and convicted and sentenced him as aforesaid. The learned Sessions Judge, Sonitpur, Tezpur, also in Criminal Appeal No. 01 (S-1)/2020, having appreciated the evidence and hearing the learned Advocates of both the parties, found that the charge under Section 380, IPC stands established against the present petitioner and therefore, upheld the conviction and sentence of the petitioner.

18. In view of the evidence so brought on record of the learned trial court, there appears to be no infirmity or illegality in the finding so recorded by both the learned courts below. The finding so arrived at is backed by material available on the record. It also appears that the occurrence took place on 08.02.2011, at about 6:10 p.m. The FIR (Exhibit-1) was lodged with the police station on the same day, at about 7:45 p.m. The place of occurrence is located at a distance of 1½ kilometre away from the police station and as such, there appears to be no inordinate delay in lodging the FIR also so as to spell inveracity to the prosecution version.

19. Though, Ms. Boruah, learned counsel for the petitioner submits that there is material contradictions in the version of the prosecution witnesses and the seized cylinder had not been recovered from the possession of the accused, yet I find the submission of Ms. Boruah bereft of merit in view of the materials available on the record. The evidence of P.W.4 and 5 are clear and cogent enough to establish beyond all reasonable doubt that the seized cylinder was kept in their house by the petitioner. The seizure list (Exhibit-2) also indicates that the cylinder was recovered from the house of P.W.4 on being led and shown by the present petitioner. Both P.W.4 and P.W.5 unequivocally testified before the learned trial Court that the cylinder was kept in their house by saying that the petitioner had not found gas on that day.

20. Some other contradictions are also here and there, but the same appears to be not on material point. It is apparent from the evidence of P.W.1 that there were two cylinders in his house and the accused had already taken away one cylinder and handed over to another thief and while the accused tried to take the second one the P.W.2 arrived at home and found the cylinder in his hand and on the alarm being raised by P.W.2, her neighbours arrived there and apprehended him.

21. Further, it also appears that the learned trial Court has convicted the petitioner under Section 380, IPC and sentenced him to suffer simple imprisonment for six months and also to pay a fine of Rs. 500/-, in default, simple imprisonment for another fifteen days. It is submitted by Ms. Boruah that the petitioner has already been arrested and serving sentence for last two months and eleven days. It also appears from the record that the occurrence took place long back in the year 2011 and more than thirteen years elapsed since then. There is also no material on the record to suggest that the petitioner had similar antecedent.

22. Thus, having considered the aggravating as well as the mitigating circumstances, as discussed herein above, and also considering the submission of learned Advocates of both the parties, this Court is of the view that the period of sentence which the petitioner has already undergone, would meet the ends of justice.

23. Accordingly, while upholding conviction of the petitioner under Section 380, IPC, this Court is inclined to modify the sentence to the period which he had already

undergone. However, the sentence of fine and the default sentence shall remain the same.

24. In terms of above, this revision petition stands disposed of.

25. The petitioner shall be released from the jail hazot, forthwith, if not warranted in any other case. Send down the record of the learned court below with a copy of this judgment and order.