

**(2014) 07 TP CK 0016**

**Tripura High Court**

**Case No:** Crl. A. No. 67 of 2010

Dipesh Kanda VsThe  
State of Tripura

Vs

APPELLANT

RESPONDENT

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**Date of Decision:** July 10, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 374
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 34, 380, 411, 436, 454

**Citation:** (2014) 07 TP CK 0016

**Hon'ble Judges:** S. Talapatra, J

**Bench:** Single Bench

**Advocate:** A. Das, Advocate for the Appellant; A. Ghosh, P.P, Advocate for the Respondent

**Final Decision:** Dismissed

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**Judgement**

S. Talapatra, J.

Heard Mr. A. Das, learned counsel appearing for the appellants as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the state.

2. This is an appeal by the convicts u/s 374 of the Cr.P.C. By the judgment and order of conviction and sentence dated 30.08.2010 passed by the Addl. Sessions Judge, North Tripura, Kamalpur, in Case No. S.T.27(NT/KMP)/2009, the appellants have been convicted u/s 380 of the IPC and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 3,000, in default thereof, to suffer simple imprisonment for six months. Being aggrieved by the said judgment and order of conviction and sentence, this appeal has been preferred by the appellants.

3. On the basis of a written ejahar filed by one Khoka Kharia, PW. 7, where it was disclosed that on 11.02.2009 at the wee hour of night, the hut of the informant was set

ablaze and a sum of Rs. 70,000 of various denominations were in the hut, closeted in a briefcase. It has been reported that the other documents like Insurance Pass Book, Bank Book, Voter ID Card etc. had been gutted by the fire. On 14.02.2009 the police was first informed about the incident, but according to PW. 7, no case was registered. But, when some villagers suspected the appellants and detained them, the police was apprised by the ejahar stating that the appellants confessed that they had committed the theft on 11.02.2009 by taking away the briefcase alongwith the money and leaving all the documents in the hut and, thereafter they set the hut ablaze.

4. Based on the said ejahar, Kamalpur P.S. Case No. 17/2009, under Sections 454/380/436/411 of the IPC was registered and taken up for investigation.

5. Before the ejahar was submitted, immediately after detention of the appellants and since the police was informed and one Sub-Inspector of Police, namely Badal Laskar, PW. 10, rushed to the place where the appellants were detained. PW. 10 had brought the appellants in the police station and, thereafter he was entrusted with the investigation. According to PW. 10, after the appellants were arrested they had disclosed in the police custody that some of the stolen materials have been concealed. The appellant No. 2, namely Babadhan Tanti led the police to his house and from a place nearby a ring-well, he dugged out a sum of Rs. 18,700 in presence of Umakanta Gowala, PW. 5 and Budharam Munda, PW. 6. When the police visited the place where the appellants were detained, PW. 10, the Investigating Officer, at the instance of the villagers had recovered and seized a sum of Rs. 14,900 of various denominations from the appellant No. 1, Dipesh Kanda, by preparing a seizure list in presence of Rathin Debbarma, PW. 1 and Bimal Singha, PW. 2.

6. There is no direct evidence to the occurrence except the extrajudicial confession and the evidence of leading to discovery to link the appellants to the offences as alleged. However, after the investigation was complete, the police filed the chargesheet against both the appellants under Sections 454/380/436/411 of the IPC. On taking cognizance, the case was committed to the court of the Addl. Sessions Judge, North Tripura, Kamalpur, who framed the charge under Sections 454, 380, 436 read with Section 34 of the IPC and Section 411 of the IPC. To the charges, the appellants pleaded not guilty and claimed to face the trial.

7. In order to substantiate the charge, the prosecution adduced as many as 10 witnesses, including the seizure witnesses as stated, the informant and the Investigating Officer. The prosecution has also introduced in the evidence as many as 12 documents including two seizure lists, Exbts. 1 and 2.

8. Mr. A. Das, learned counsel appearing for the appellants has submitted that there are two sets of witnesses in respect of the extrajudicial confession. One set of witnesses have stated that the extrajudicial confession has been made in presence of the police officer and the other set of witnesses have stated that the extrajudicial confession have

been made in their presence before the police arrived at the place where the appellants were detained by the villagers. He has further submitted that the said extrajudicial confession may not be admitted in the evidence as the collective of the villagers, in the name of interrogation had extracted that confession. As such, that confession cannot be stated to be a voluntary one. If that was made in presence of the police officers, he has further contended, that it is well-settled law that any statement made in presence of the police officer is inadmissible in evidence. As regards the leading to discovery, Mr. Das, learned counsel has strenuously argued that there is no record in the evidence to show that such disclosure was made by the appellants. As such, the discovery as shown by the prosecution is stage-managed and the prosecution can derive no benefit out of that.

9. From the other side, Mr. A. Ghosh, learned Public Prosecutor appearing for the state has candidly admitted that there is no record that the appellant No. 2, namely Babadhan Tanti had voluntarily or otherwise disclosed anything leading to the discovery of some money as digged out by him. However, Mr. Ghosh, learned Public Prosecutor has not failed to point out that PW. 10 has categorically stated that such statement had been made to him while the appellant No. 2, Babadhan Tanti was in the custody. Later on, on the basis of the said disclosure statement, the appellant No. 2 led the police where he had concealed the stolen money and, thereafter in presence of the witnesses those stolen money was exhumed by the appellant No. 2.

10. For appreciating the submissions as made by the learned counsel for the parties, a brief recourse to the evidence would be required.

11. Rathin Debbarma (PW. 1) and Bimal Singha (PW. 2) had stated that they were witnesses to the seizure of Rs. 14,900 from the appellant No. 1, Dipesh Kanda.

PW. 1, Rathin Debbarma has stated that, Dipesh Kanda, the appellant No. 1, at the time of interrogation on 20.02.2009 by the villagers in his presence, had confessed that he had committed the theft and at that point of time he was having Rs. 9,500. The appellant No. 1 has further stated that the appellant No. 2 alongwith him had also committed the said theft. He has also confessed that both of them set the hut of PW. 7 ablaze. Even though PW. 1 was not a witness to the seizure of a sum of Rs. 18,700 at the instance of the appellant No. 2, Babadhan Tanti, but he has stated that at the time of said discovery, he was present there.

12. Similarly, the other witness, namely Bimal Singha, PW. 2 has stated that he had observed certain change in the life-style of the appellants after the incident of fire. He has also corroborated that, on interrogation by the villagers, Dipesh Kanda admitted that he alongwith Babadhan Tanti had committed the theft of money from the house of Khoka Kharia (PW. 7). On making such confession, the appellant No. 1 brought Rs. 9,500 from his house and produced the same to the villagers. Thereafter, the villagers had handed over the said money to PW. 7 and, the Manager of the Garden informed the police station regarding that incident. On interrogation by the police, Dipesh Kanda, the appellant No. 1

had also produced Rs. 14,900 alongwith a Mobile set from the house of one Danurjoy Tanti to the police. The police seized those materials in presence of the villagers by preparing a seizure list, which had been duly identified by PW. 2 and marked as Exbt. 2.

13. PW. 10, Badal Laskar, the Investigating Officer has stated that both the appellants were interrogated by the police. During investigation, Babadhan Tanti, the appellant No. 2 had confessed that some amount of money and the briefcase were concealed by him in a hidden place. Thereafter, on that day itself i.e. on 20.02.2009, Babadhan Tanti, the appellant No. 2 led the police to his house where he had concealed that money. After reaching to his house, Babadhan Tanti had digged earth near a ring-well of his house in presence of some persons of the locality and produced a sum of Rs. 18,700 to the police. Thereafter, PW. 10 had seized the said money by preparing the seizure list, which was marked as Exbt. 10. In the cross-examination, PW. 10 has, however, stated that "I have not recorded the statement of accd. Babadhan Tanti before recovery of money & brief case. Accd. persons were shown arrest at 1425 hrs. on 20.2.09." PW. 10 has also confirmed that he had seized Rs. 14,900 and Rs. 18,700 from the appellants.

14. From the seizure list, Exbt. 3, it would be apparent that at the time of seizing the sum of Rs. 18,700, Budharam Munda (PW. 6) and Umakanta Gowala (PW. 5) were present at the place of seizure.

15. Budharam Munda (PW. 6) has confirmed that he was present when Babadhan Tanti had produced a sum of Rs. 18,700 by digging earth near the ring-well and handed over the same to the police officer and he had identified his signature on the seizure list and the seized money which were marked as Exbt. M.O. 1 series.

16. Umakanta Gowala (PW. 5) has stated that "On that day Daroga and Police staff brought Babadhan in our village and in my presence and others Babadhan has produced Rs. 18,700/- by digging earth from a place near to his well. Babadhan handed over the said money Rs. 18,700/- on counting to police and police seized the said amount by preparing seizure list and I put my signature on it. The signature of witness is marked as Exbt. 3. Total 26 Nos. of Rs. 500/- denomination of notes and 57 Nos. of Rs. 100/- denomination of notes produced by Babadhan after digging earth." The said seized money was also identified by PW. 5.

17. PW. 7, Khoka Kharia, the informant is another vital witness as his hut was allegedly gutted by the appellants. He has stated the fact almost in terms of his written ejahar. He had identified the briefcase, which was seized by the police officer at the instance of Babadhan Tanti, the appellant No. 2.

18. It is to be noted that, on appreciation of the evidence, the trial court had returned the finding of conviction only u/s 380 of the IPC and, for lack of evidence the appellants were acquitted from the other charges.

19. The law has been substantially developed as to the leading to discovery. There is no provision in Section 27 of the Evidence Act, which obliged any police officer to record the disclosure statement. No doubt, it is a safer recourse for a police officer to record such statement so that the part of the statement by which the disclosure is made can be properly used against the accused person. But, simply for not recording any such disclosure statement the fact of disclosure or leading to discovery by the accused cannot be erased entirely from the evidence. The requirement of admitting such evidence is well-settled by now. The conditions which are required to be satisfied for admitting any piece of evidence relating to disclosure is that such statement has to be made by the accused in the custody and, by dint of the said statement the stolen articles or the other materials linked with the offence were discovered at the instance of the accused persons who made such discovery.

20. In the present case, what has surfaced is that the appellant No. 2, Babadhan Tanti had made the disclosure statement at the police custody while he was arrested in connection with Kamalpur P.S. Case No. 17/2009 and by virtue of the said statement, the police was led by Babadhan Tanti to the place where the stolen materials were concealed by him and in presence of the witnesses the accused Babadhan Tanti had dugged out the said stolen money. The evidence is overwhelming and the court has to believe such evidence leading to the discovery at the instance of Babadhan Tanti, the appellant No. 2. From Dipesh Kanda, the appellant No. 1, some money amounting to Rs. 14,900 was recovered at his instance. What has been surprisingly noted by this court is that neither of the appellants, despite their exclusive knowledge of that money in their possession has made any attempt to explain how they had possessed such money. Thus, the prosecution has successfully proved the charge against the appellants. As such, this court does not find any infirmity in the finding of conviction u/s 380 of the IPC. But, while re-assessing the sentence, this court finds that both the appellants are at their young age.

21. Considering all the aspects of the matter, this court is of the opinion that it would be adequate if the appellants are sentenced to suffer rigorous imprisonment for 1(one) year with a fine of Rs. 5,000 (rupees five thousand) each and, in default, to suffer further simple imprisonment for 6(six) months for commission of offence u/s 380 of the IPC. Accordingly, the sentence is modified. Subject to the modification made in the sentence, this appeal stands dismissed.

22. The appellants are before the Court as non-bailable warrants were issued and the police has produced them. Thus, the appellants be sent to the prison for suffering the remaining part of the sentence. It is to be noted that if the appellants suffered any imprisonment during the pre-trial, the trial stage or even in the appellate stage, that period of imprisonment shall be set off from their sentence.

23. The Registrar (Judl.) is directed to issue the custody warrants accordingly.

Send down the LCRs forthwith.