

(2005) 09 GAU CK 0005

Gauhati High Court

Case No: Criminal Rev. P. No. 35 of 1999

Shri Shantanu Chakraborty

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: Sept. 2, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 357, 360
- Penal Code, 1860 (IPC) - Section 325, 326, 376
- Probation of Offenders Act, 1958 - Section 1(3), 4

Citation: (2005) CriLJ 4333 : (2006) GLT 115 Supp

Hon'ble Judges: B.P. Katakey, J

Bench: Single Bench

Advocate: B. Das, S. Chakraborty and D. Chakraborty, for the Appellant; D. Sarkar, Public Prosecutor and A. Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.P. Katakey, J.

This revision petition is directed against the judgment dated 22-6-1999 passed by the learned Additional Sessions Judge," Belonia, South Tripura in " Criminal Appeal No. 11(1) of 1999 dismissing the appeal filed by the revision petitioner by upholding the judgment of conviction dated 18-1-1999 passed by the learned Sub Divisional Judicial Magistrate, Belonia, South Tripura in G.R. Case No. 340 of 1996 convicting the revision petitioner u/s 325, IPC and sentencing him to undergo rigorous imprisonment for 2 years and directing payment of compensation of Rs. 25,000/- in the light of Section 357 of Cr.P.C. to the victim Ratari Baidya, for the loss of his right hand.

2. A criminal proceeding was set in motion pursuant to the first information lodged by Durgacharan Baidya, P.W. 4, father of the injured Ratan Baidya, P.W. 1, alleging that on 25-11-1996 at about 17.30 hours while Ratan Baidya, injured, on way to Belonia town, he had an altercation with the revision petitioner Shantanu Chakraborty, in front of the shop of Subrata Nandi at Bankar on the issue of a hat, while Shantanu threatened him that he will give him a good treatment in future. Thereafter, Ratan Baidya left for Belonia town to participate in a rehearsal of some drama but since the rehearsal was not held he was on way back to his home and at Barikar, Belonia accused Shantanu came from behind and stopped him from proceeding further and suddenly took out a dao (sharp cutting weapon) and gave a dao blow aiming the head of Ratan to which Ratan raised his right hand to resist the dao blow and as a result his right fore hand was struck with the blow and he received severe injury. The accused again gave another dao blow which Ratan resisted by raising his left hand and as a result of which he received severe cut injury on the left hand also and fell down. The Belonia Police Station on receipt of the said FIR registered a case and upon completion of investigation submitted the charge-sheet against the revision petitioner u/s 326, IPC. The charge u/s 326, IPC was accordingly framed by the learned Magistrate and when read over and explained to the accused revision petitioner, he pleaded not guilty and claimed to be tried.

3. The prosecution in order to bring home . the charge against the accused revision petitioner examined as many as 8 witnesses including the victim himself as P.W. 1, Medical Officer of Belonia Civil Hospital, Dr. Subrata Pal as P.W. 2, Shri Sukumar Sarkar, Investigating Officer as P.W. 3, Shri Durga Charan Baidya, the father of the victim, who lodged the First Information Report. As P.W. 4, Sri Srimanta Sarkar, Basudeb Dhar and Shri Rakhal Bhowmik, the neighbouring witnesses as P.W. 5, 6 & 7 and Dr. Jothsnamoy Dutta, Medical Officer of G. B. Hospital, who also examined the victim, as P.W. 8. The learned Magistrate, upon consideration of the evidences, on record convicted the accused revision petitioner u/s 325 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 25,000/- as compensation to the victim in the light of the provision contained in Section 357 of the Cr. P.C. Being aggrieved, the revision petitioner preferred the appeal before the learned Appellate Court, which was, dismissed vide judgment dated 22-6-1999. Hence the present revision petition.

4. I have heard Mr. B. Das, learned senior counsel assisted by Mr. S. Chakraborty, learned counsel appearing on behalf of the petitioner and Mr. D. Sarkar, learned Public Prosecutor assisted by Mr. A. Ghosh, learned State counsel appearing for the respondents.

5. Mr. Das, learned senior counsel, appearing on behalf of the revision petitioner has submitted that the revision petitioner has been convicted for the offence u/s 325, Cr. P.C. solely on the basis of the evidence of P.W. 1 Ratan Baidya, the victim to

whom the injury was caused. According to the learned senior counsel, the P.W. 1 is not trustworthy as he is known to be a criminal and, therefore, the conviction ought not to have been based on the basis of his sole testimony, more so, when other witnesses, who, according to the victim saw the occurrence were not examined by the prosecution. Mr. Das, learned senior counsel has further submitted that since there were serious lapses on the part of the investigating agency, inasmuch, as the victim was examined by the police after long lapse of one year, no conviction can be based on the basis of such perfunctory investigation. It has further been submitted by the learned senior counsel that the provisions of Section 4 of the Probation of Offenders Act, 1958 have not been properly applied in the instant case as the learned Court has refused to give benefit of Section 4 of the Probation of Offenders Act or provision of 360 of the Criminal Procedure Code, solely on the ground that the circumstances of the case and the nature of offence do not warrant giving of the benefit under the said provision of law. According to the learned senior counsel, whether the benefit of Section 4 of the Probation of Offenders Act, 1958 of Section 360 of the Cr. P.C. is to be given to an accused is dependent only on the character of the offenders and his previous conviction, if any, and, therefore, according to the learned counsel, the learned Courts below have failed to exercise the power either u/s 360 of Cr. P.C. or u/s 4 of the Probation of Offenders Act, 1958. It has further been submitted that since the occurrence took place on 25-11-1996 and the revision petitioner is all along on bail during investigation, trial and after conviction, no purpose would be served by sending him to jail after lapse of almost 9 years.

6. Mr. Sarkar, learned Public Prosecutor", Tripura on the other hand, has submitted the status of an injured witnesses is like the prosecutrix in an offence u/s 376, IPC and as because P.W. 1 is the injured witness, his testimony cannot be brushed aside Mr. Sarkar, learned Public Prosecutor has further submitted that the conviction can be based on the testimony of the sole injured witness, if his testimony is trustworthy. In the instant case, according to the learned counsel, P.W. 1 has categorically stated and vividly described the incident as to how and why the revision petitioner gave the dao blow .on the person of the victim, thereby causing the grievous injuries and constituting an offence u/s 326, IPC. According to the learned Public Prosecutor, the ocular version of P.W. 1, victim, was duly supported by the medical evidence adduced by Doctors, namely, P.W. 2 and P.W. 8 and hence, the revisional Court will not interfere with the said finding recorded by the learned trial Courts as well as upheld by the learned appellate Court. Regarding the submission relating to extending the benefit under the provision of Section 4 of the Probation of Offenders Act, 1958, or the provision of Section 360 Cr. P.C., the learned Public Prosecutor, has submitted that since the provision of Probation of Offenders Act, 1958 has been made applicable by the State of Tripura by issuing a notification in terms of the provision contained in sub-section (3) of Section 1 of the said Act, the provision as contained in Section 360 of the Criminal Procedure Code, is not applicable. According to the learned Public Prosecutor, the learned Magistrate

has considered as to whether the accused can be given the benefit of probation of good conduct and having taken into consideration the age, the circumstances of the case, including the nature of offences and the character of offender, learned Magistrate has passed a specific order specifying the ground on which benefit cannot be granted to the revision petitioner and, therefore, the Revisional Court may not interfere with the said finding recorded by the learned trial Court below. It has further been submitted by the learned Public Prosecutor that as because the revision petitioner is on bail, right from the stage of investigation till after conviction, the same cannot be a ground for not upholding the judgment of conviction passed by the learned Court below and for not asking him to serve out the sentence, in the event the revision petition is dismissed by this Court.

7. I have considered the submissions of the learned counsel for the parties and also perused the records of G.R. Case No. 340 of 1996 as well as Criminal Appeal No. 11(1) of 1999.

8. As observed above, the prosecution in order to bring home charge u/s 326, IPC against the revision petitioner examined 8 witnesses, as prosecution witness, which include the first informant Durga Charan Baidya, the father of the victim, the victim himself, as well as the Doctors who examined the victim Ratan Baidya. Ratan Baidya, P.W. 1 in his deposition has vividly described the incident and how and why the dao blows were inflicted on his person by the revision petitioner. It has come out from the evidence of Ratan Baidya P.W. 1, the victim, that the revision petitioner struck a dao blow aiming at his head but when the victim resisted the same by raising his right hand, severe cut injury was inflicted on his right hand. Thereafter, the accused revision petitioner gave another blow which was resisted by the victim by his left hand, for which severe cut injury was also inflicted on the left hand of the victim, as a result of which he fell on the ground. The Doctors, namely, P.W. 2 and P.W. 8 in their deposition have corroborated the injuries described by the P.W. 1 victim, which were found as follows :

"i) One incised wound measuring 3" x 2 x 1/2" over left fore arm;

(ii) One incised wound measuring 3 1/2." x 1A" x "A" just 1" above the right wrist joint cutting all ligaments and muscles of the lower end of the right fore arm."

It is also evident from the medical evidence that the injury in the right fore arm extended to half of flexor surface just above wrist cutting all flexor tendons of fingers except thumb and also cutting carpiradialis and ulnar artery. Doctor has also opined that the injuries were grievous in nature and were caused by sharp weapon and the victim had to be operated upon. The evidence of P.W. 1 victim and the Doctors could not be discredited by the defence during the cross-examination. The version of P.W. 1 victim, has been duly corroborated by the medical evidence of P.Ws. 2 and 8. The story in the FIR lodged by the P.W. 4, to whom the victim had disclosed everything, is also supported by the, evidence of P.W. 1, P.W. 4 and the

doctors evidence i.e. P.Ws. 2 and 8.

9. The learned counsel for the revision petitioner has submitted that the victim being a person of having criminal background, his version cannot be accepted as he is not trustworthy and, therefore, no conviction can be based on his sole testimony. To base the conviction on the sole testimony of the victim i.e. the injured, what is required to be seen whether his evidence is reliable. If it is found to be reliable, the evidence of injured witness cannot be discarded in absence of strong reason. In the instant case both the Courts below found the evidence of P.W. 1 as reliable and, therefore, the conviction was based on his evidence, which was duly corroborated by the evidence of the Doctors on the point of injury sustained by him. Therefore, the contention of the learned senior counsel for the revision petitioner cannot be accepted and hence rejected.

10. The next submission of the learned senior counsel is that the other independent witnesses were not examined by the prosecution and, therefore, the judgment of conviction passed by the learned courts below are required to be set aside. It is a fact that though the victim has named two other persons by stating that at the time of occurrence two other persons were present, they were not examined by the prosecution. In the present day society no person comes forward to depose before the Court or to make statement before the police. As because other eye-witnesses were not examined, it is not that the accused is entitled to acquittal. If the victim's evidence is reliable and trustworthy, the conviction can be based on the sole testimony of such injured witness. The non-examination of other eye-witnesses in the instant case, will not make the prosecution case doubtful, when there is positive evidence of P.W. 1, the injured, on record, which is duly supported by the medical evidence.

11. The third contention of the learned senior counsel is that because of the lapses on the part of the investigating officer to conduct the investigation properly, the accused is entitled to be acquitted. It has already been held by a catena of decisions by the Apex Court that as because there were perfunctory investigations, the accused is (sic) entitled to be acquitted of the offence alleged against him if there are reliable and trustworthy evidence on record. In spite of perfunctory investigation, one can be convicted on the basis of such evidence. In the instant case as held above, the injured Ratan Baidya's evidence found to be reliable and trustworthy, duly supported by the medical evidence and hence, the learned Courts have rightly convicted the revision petitioner on the basis of such testimony. The learned counsel has not argued against the order directing the payment of Rs. 25.000/- by the accused revision petitioner to the victim as compensation in the light of Section 357 of the Criminal Procedure Code.

12. The last submission of the learned senior counsel is that the benefit of Section V Cr. P.C. or Section 4 of the Probation of Offenders Act, 1958, was not given to the revision petitioner by the learned Courts. "below, wrongly. The learned counsel for

the revision petitioner has not disputed the statement made by the learned Public prosecutor that the notification u/s 1(3) of the Probation of Offenders Act, 1958, was issued by the State of Tripura extending the provisions of the said Act in the State of Tripura. This Court in Criminal Revision No. 76 of 2000 (Sri Manindra Gazamer v. State of Assam) decided on 26-5-2005, relying on the decision of the Apex Court in [State through S.P., New Delhi Vs. Ratan Lal Arora,](#) has already held that the provisions of Section 360 of Cr. P.C. shall cease to apply on and from the date when the provision of 1958 Act is made applicable in any State by issuing any notification as required u/s 1(3) of the said Act. Therefore, the provision of Section 4 of Probation of Offenders Act, 1958 shall be applicable in the instant case.

13. Section 4 of 1958 Act, empowers the Court to release certain offenders on probation of good conduct and a duty is cast on the Court to record the special reason for not invoking the provision of the said Act. Such order is required to be passed in respect of a person found guilty of having committed an offence not punishable with death or imprisonment for life and having regard to the circumstances of the case Including the nature of the offence and the character of the offender. Such order can be passed if the Court upon consideration of the same, finds it expedient to release him on probation of good conduct. In the instant case, the learned Magistrate has recorded reasons why such benefit has not been extended. The Magistrate has found that considering the nature of offence and brutality under which the offence was committed, such benefits should not be granted to accused. Since, the learned Magistrate has recorded special reasons for not giving the said benefit, the revisional Court shall not interfere with the same. The Contention of the learned senior counsel for the revision petitioner is that as because a considerable period has elapsed from the date of the occurrence, the revision petitioner may not be asked to serve out the sentence, cannot also be accepted as the accused was found guilty of commission of offence u/s 325, Cr.P.C. The fact that the accused is on bail cannot be a ground for setting aside "the judgment of conviction.

14. In view of the above, I do not, find any merit in the present revision petition to interfere with the judgment of conviction passed by the learned trial Court, which was affirmed by the learned appellate Court, and hence, the same is dismissed. The revision petitioner is directed to surrender before the learned Sub Divisional Judicial Magistrate, South Tripura, Belonia, to serve out the sentence and to pay the compensation.

15. The Registry is directed to send down the records forthwith.