(2011) 06 GAU CK 0039

Gauhati High Court (Agartala Bench)

Case No: Criminal Rev. Petition No. 30 of 2003

Sri Uttam Malakar and Sri Tapan Das		APPELLANT
	Vs	
The State of Tripura		RESPONDENT

Date of Decision: June 6, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401, 482
- Penal Code, 1860 (IPC) - Section 354, 365, 511

Citation: (2011) 5 GLR 546

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Advocate: None appears, for the Appellant; P. Bhattacharjee, Addl. P.P., for the Respondent

Final Decision: Dismissed

Judgement

P.K. Musahary, J.
None has appeared for the Petitioners on call without taking any step although the names of the learned Counsel for them have been shown in the cause list. However, I have heard Mr. P. Bhattacharjee, learned Addl. P.P. Tripura ,for the State Respondent.

2. This revision petition has been filed u/s 397/401 of Code of Procedure Code, read with Section 482 Code of Criminal Procedure against the judgment dated 23.6.03 rendered by the learned Additional Sessions Judge in Crl. Appeals No. 16(2)/03 and 17(2)/03 upholding the judgment and order of conviction and sentence dated 10.3.03 passed by the learned Chief Judicial Magistrate, West Tripura, Agartala in Case No. GR.496/2001.

3. The prosecution story, in short, is that, one Smt. Swapna Debnath lodged a complaint with the police of West Agartala Police Station alleging that on 15.6.2001, at around 5.30 p.m. she went to Battala Auto Stand to meet her brother, but as she could not meet her brother after waiting there for a considerable period, she asked a driver of an

auto-rickshaw whether he would take her to Lake Chowmohani. The driver agreed and so she boarded the auto-rickshaw for going to Lake Chowmohani. Another passenger boarded the auto-rickshaw bearing Registration No. TR-01-3878. The auto-rickshaw was proceeding towards a wrong direction and therefore she (informant) asked the co-passenger whether the said road leads to Lake Chowmohani. The co-passenger replied in positive. But after a while the co-passenger, Sri Uttam Malakar caught hold of her hands and touched the other parts of her body and outraged her modesty. In order to save herself, the informant jumped out from the running auto-rickshaw. The local people near the place of occurrence, rushed to her, but in the meantime, the auto-rickshaw left the place at a very high speed.

4. The police registered a crime being West Agartala P.S. Case No. 130/01 u/s 354/365/511 IPC. The investigation resulted into submission of charge sheet against the accused Petitioners u/s 354/365/511 IPC. On the basis of the materials so collected by the police, the learned Chief Judicial Magistrate, West Agartala, framed charge u/s 365/511 IPC against both the accused Petitioners. On being read over and explained, the accused Petitioners pleaded not guilty and demanded trial.

5. After completion of the trial and upon hearing the learned Counsel for the parties, the learned Chief Judicial Magistrate, West Tripura, Agartala vide judgment and order dated 10.3.2003, convicted both the accused/Petitioners u/s 365/511 IPC and sentenced them to suffer simple imprisonment for six months (each). However, charge u/s 354 IPC was not found established against the accused/Petitioners, and ,therefore, no sentence was passed against them u/s 354 IPC.

6. The accused/Petitioners filed separate appeals against the aforesaid conviction and sentence passed by the learned Chief Judicial Magistrate, West Tripura, Agartala. Criminal Appeal No. 16(2)2003 was filed by the accused/Petitioner, Sri Tapan Das, while Criminal Appeal No. 17(2)2003 was filed by the accused/Petitioner, Sri Uttam Malakar. Both the aforesaid appeals were taken Both the appeals were heard together and dismissed by a common judgment delivered by the learned Additional Sessions Judge (Court No. 3), West Tripura Agartala on 23.6.2003. Against the said judgment and order, the accused/Petitioners are now before this Court by filing the present revision petition.

7. The prosecution examined 9(nine) witnesses in all including the prosecutrix and the investigating officer. The victim girl (informant) was examined as PW-7. She stated that she used to work in a private press at Madhyapara, Agartala at the relevant point of time. In her deposition, she has re-affirmed the averments made in the written ejahar, Ext.5. She was thoroughly cross examined by the learned Counsel for the accused/Petitioners. The defense counsel tried to demolish the evidence of the victim girl. By drawing her attention to certain facts which were not stated before the investigating officer during the investigation. The defense counsel tried to prove that the prosecutrix is untrustworthy, unreliable and inconsistent. But in the cross examination, the defense counsel did not put any suggestion that the said accused, Uttam Malakar was not a co-passenger in the auto

rickshaw, in which she was traveling. The defense counsel of Sri Tapan Das, auto-rickshaw driver tried to demolish the evidence of the victim girl by putting the suggestion that it would not be possible on her part to note the registration number of the auto-rickshaw as it went away at a very high speed. It was also suggested to her that the auto-rickshaw bearing Registration No. TR-01-3878 was not the auto-rickshaw she boarded. She had denied all those suggestions and firmly stated that she could note the Registration Number of the auto-rickshaw. From the manner of suggestion put on her, it is found that the defense made an attempt to dislodge the evidence of the victim girl on the identity of the auto rickshaw as well as the identity of the accused/persons. So far the identify of the auto rickshaw is concerned, the owner of the said auto-rickshaw was examined as PW-5 who confirmed in his deposition that during the relevant time, auto-rickshaw was plying along Battala G.B. Road and he came to learn from the Secretary of the auto-rickshaw that the police seized his auto-rickshaw as a girl jumped out from the auto-rickshaw. The aforesaid PW-5 identified the accused, Sri Tapan Das in the dock.

8. The victim girl is a literate lady, who was working in the private press. She was about 18 years and she is expected to be a vigilant active lady. Such a young lady is expected to note down or remember the registration number of the vehicle, where she was molested by a co-passenger while traveling in the said auto-rickshaw and the driver of the said auto-rickshaw did not protest such offending act of the co-passenger. A girl, who is situated in such a position, where her chastity was insecure, in fact when she was molested, she is expected to remember the face of the culprit/culprits and the number of the vehicle. In such a crime against a woman, no eye witness is expected and the defense cannot insist on such eye witness on the incident. The prosecution has to depend on the statement/evidence of the victim girl. From the cross examination, it is not found that that the defense projected a case of enmity between the victim girl and the accused Petitioners for which there was possibility of lodging false FIR against them. That stand has not been taken by the defense. The evidence of the victim girl is to be tested as to whether it is trustworthy and believable. As discussed earlier, the victim''s statement/evidence cannot be disbelieved, inasmuch as, she had firmly stated that she boarded the auto-rickshaw driven by the accused, Sri Tapan Das with one co-passenger, Sri Uttam Malakar who boarded the said auto-rickshaw and molested her while traveling in the said vehicle. Moreover, she had stated that the said auto-rickshaw diverted to a different direction, although the driver of the auto-rickshaw assured her to take her to Lake Chowmohani.

9. The evidence is available to the effect that she jumped out from the running auto-rickshaw. She had fallen on the ground and she was picked up by some people of the near by club. In this regard evidence was tendered by P Ws 1 and 2. She was handed over by the local people to the Officer-in-charge, Battala Outpost, who received the written ejahar from the prosecutrix.

10. I find that charge u/s 365/511 IPC have been well established on the basis of the evidence on record and the learned trial court rightly convicted and sentenced the aforesaid accused/Petitioners, which have been upheld equally rightly by the learned lower appellate court vide impugned judgment and order dated 23.6.03. It needs no interference. Accordingly, I dismiss this revision petition affirming the conviction and sentence passed by the learned courts below.

11. The bail bond stands cancelled. The accused/Petitioners, Sri Uttam Malakar and Sri Tapan Das, shall surrender before the learned Chief Judicial Magistrate, West Tripura, Agartala forthwith to serve the sentence. If they fail to surrender, appropriate steps should be taken against them in accordance with law. Send down the LCR forthwith.