

Chandra Kanta Debnath and Others

Vs

State of Tripura

Criminal Appeal No. 291 of 1976

(G. L. Oza, D. P. Madon JJ)

08.01.1986

JUDGMENT

OZA, J. -

1. This Criminal Appeal No. 291 of 1976 has come to this Court by special leave granted by this Court against the judgment passed by the High Court of Assam and Nagaland dated February 12, 1976 in Criminal Appeal No. 15 of 1971.
2. That the appellants were made accused persons in Sessions Trial No. 45 of 1970 on the facts that one Smt. Pramada Bala Ghosh (PW 1) lodged an FIR before officer-in-charge Kamalpur Police Station on June 21, 1968 stating therein that on June 21, 1968 approximately at about 5 a.m. about 50 to 60 persons entered into the sweetmeat shop of her younger brother Goshtha Behari Ghosh and they took away various articles mentioned in the FIR and also assaulted her and some of the employees. It was further alleged that she could recognise only Chandra Kanta Debnath and that she would be able to identify others if she sees their faces. It was further alleged that the said persons dismantled the shop by cutting down the posts and Chandra Kanta Debnath poured kerosene oil in the fencing and the roof of the shop. It was also mentioned in the FIR that the miscreants left the scene of occurrence at about 6.30 a.m. Shri N.K. Barman who was in-charge of the Kamalpur Police Station on that day, registered an offence under Section 147/148/436/380 of Indian Penal Code and started investigation of the case. After investigation the said police officer submitted a charge-sheet under Sections 395/397 IPC against accused (1) Chandra Kanta Debnath, (2) Sishu Ranjan Paul, (3) Suresh Chandra Bhowmik, (4) Ranjit Debnath, (5) Harimohan Debnath, (6) Pyari Mohan Deb Barma, (7) Prahlad Debnath, (8) Sukumar Dey, (9) Harendra Debnath, (10) Shyam Charan Debnath, (11) Lal Mohan Debnath, (12) Patindra Deb Barma, (13) Rakhil Chandra Sil, (14) Rasendra Sangma, (15) Jogesh Debnath and (16) Sunil Deb. The police also submitted a charge-sheet under Section 412 IPC against the accused Chitta Ranjan Debnath alias Chitta Bhowmik, Chandra Kanta Debnath, Sishu Ranjan Paul and Suresh Chandra Bhowmik.
3. After recording the evidence of witnesses the Committing Magistrate committed the 16 accused persons for trial to the Court of Sessions under Section 395 and also committed accused Chandra Kanta Debnath under Section 436 IPC.
4. The prosecution case at the trial was that (PW 5) Goshtha Behari Ghosh has a sweetmeat shop and a tea stall at Dulubari Gate and he used to run the said shop with the help of his employee and sister Smt. Pramada Bala Ghosh (PW 1). On June 21, 1968 at about 5 or 5.30 a.m. some persons numbering about 50 to 60 came, armed with lathis, bows and arrows and some of them entered the shop. It was alleged that the accused Chandra Kanta Debnath asked PW 1 and other employees of

PW 1 to get out of the shop as the said persons refused to come out. Chandra Kanta Debnath assaulted some of the persons of the shop and directed his men to remove the furniture. After doing so, the shop was pulled down and it was alleged that Chandra Kanta Debnath set fire to the shop. It was further alleged that the said miscreants left the place at about 6.30 a.m.

5. All the accused persons pleaded not guilty and Chandra Kanta Debnath took a specific plea that he was the owner of the land as well as of the house where PW 5 carried on his tea shop. The case of the accused was that he purchased the possessory right of the land from one Manai Sardar in the year 1365 B.S. equivalent to 1958 and he started a sweetmeat shop and tea business which he conducted for some years. Thereafter he let out the said shop with the furniture and utensils to one Manoranjan Dey who after doing the business for some time left the shop handing over the possession to Chandra Kanta Debnath. Thereafter Chandra Kanta Debnath let out the said shop with the furniture and utensils to Sukumar Ghosh and this Sukumar Ghosh continued his business for some time. Thereafter Subal Ghosh, elder brother of Goshtha Behari Ghosh, (PW 5) took lease of the said shop with all the furniture and utensils of Chandra Kanta Debnath at a rental of Rs 1000 per year. As Subal did not pay the rent according to the agreement, a Panchayat meeting took place where Subal and Goshtha Behari Ghosh agreed to give out the house and remove their own articles to the club premises and some to the house of Nani Saha. In pursuance of the agreement in Panchayat the roof of the house was dismantled and next day Chandra Kanta Debnath went to get the rent from Goshtha and Subal, they, however told him that the rent would not be paid. It is stated that Chandra Kanta Debnath also produced some documents before the trial Court to establish his case. The prosecution examined 20 witnesses.

6. The learned trial Court after recording evidence found that the charge against accused Chandra Kanta Debnath under Section 436 was not at all established and he was falsely implicated for this charge and, therefore, acquitted him. The learned Assistant Sessions Judge also acquitted all the accused persons from the charge under Section 395. Against this judgment of acquittal passed by the Assistant Sessions Judge on July 30, 1971 the State Government preferred an appeal before the Judicial Commissioner, Tripura but the said appeal came before the High Court and was registered as Criminal Appeal No. 15 of 1971. The learned Judges of the High Court heard the appeal against acquittal. During the hearing of this appeal the learned Advocate General of Tripura who was appearing for the State did not press for conviction of the accused Chandra Kanta Debnath under Section 436 IPC and the High Court, therefore, considered only the case against the rest of the accused persons under Section 395 IPC. It also appears that the learned Advocate General before the High Court frankly conceded that there was no evidence to warrant conviction against the accused persons : (1) Hari Mohan Debnath, (2) Prahlaad Debnath, (3) Rakhil Chandra Sil, (4) Chitta Ranjan Debnath alias Chitta Bhowmik. Accordingly, the High Court did not examine the cases against these accused persons. The High Court by its judgment dated February 12, 1976 convicted the present appellants under Section 395 IPC allowing the appeal preferred by the State against these person. However, the other accused persons were acquitted. Chandra Kanta Debnath has been sentenced to undergo rigorous imprisonment for five years and pay a fine of Rs 1000, in default, to suffer RI for six months. The other petitioners have been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs 100 each, in default, to suffer RI for one month. Special leave petition was filed by all the convicted persons but when it came up for hearing, petitioner 7 had not surrendered and hence his petition was rejected and of the rest was accepted. Hence this appeal is for petitioners except petitioner 7.

7. It was contended by the learned counsel appearing for the appellants that the learned Assistant Sessions Judge in his judgment considered the evidence in detail and came to the conclusion that no

offence is established against the accused persons. This judgment of acquittal was set aside by the High Court and it is contended that in the judgment of the High Court there is no discussion at all of the evidence which was considered in great detail by the learned Assistant Sessions Judge and merely by enumerating the evidence the learned Judges of the High Court set aside the acquittal in favour of the present appellants and convicted them of the charges levelled against them. It was contended that the High Court could alter an acquittal into conviction only after discussing and considering the evidence considered by the Sessions Court, and reasons for rejecting evidence.

8. The learned counsel read through the judgment of the Assistant Sessions Judge and after discussing the evidence in detail brought to our notice the manner in which the evidence was discussed. The learned Assistant Sessions Judge after considering the evidence came to the conclusion that Chandra Kanta Debnath had purchased the possessory right of the land in question from Manai Sardar in the year 1365 B.S. equivalent to 1958 and thereafter he purchased 7 gandas and 2 karas of land of Manai Sardar in the year 1966 and then he started a sweetmeat shop and tea business and after doing his business for some time the said shop along with all the furniture and utensils was given over to one Manoranjan, Manoranjan left the shop handing over possession to Chandra Kanta and Chandra Kanta let out the said shop with all the furniture and utensils to one Sukumar Ghosh who carried out the business for some time and thereafter Subal Ghosh, elder brother of Goshtha Ghosh took lease of the said shop with all the furniture and utensils of Chandra Kanta at a rental of Rs 1000 per year. This appears from a document filed in the case. Sukumar Ghosh from whom Goshtha Ghosh (PW 5) claimed to have purchased the land along with the house appeared in this case as PW 15 and this witness admitted in his cross-examination that he took the leases of the said house from accused Chandra Kanta by executing a document in his favour and he also identified his signature on the document which is Ex. 'D-10'. This witness also stated that Chandra Kanta had purchased the land from Manai Sardar and one Manoranjan was doing business in the said house. The other prosecution witness also supported this stand taken by the accused Chandra Kanta and the learned Assistant Sessions Judge, therefore, found that the stand taken by the accused Chandra Kanta finds support from the prosecution evidence itself and it is with this finding that the learned Assistant Sessions Judge proceeded to examine the prosecution witnesses about this incident. The learned Judge also found that along with the First Information Report, the list of articles was not submitted and although according to the prosecution this list was sent on June 23, 1968, two days after the incident but from the evidence the learned Judge found that this list was sent much later.

9. The learned Assistant Sessions Judge examined the evidence of each one of the prosecution witnesses in detail and discarded their evidence.

10. The learned Judge also considered the question of identification of the articles and after examining all the circumstances came to the conclusion that the identification is without any substance. The learned Assistant Sessions Judge, therefore, came to the conclusion that the prosecution has not been able to establish the offence against the accused persons.

11. The High Court, while considering the appeal in its judgment had considered one of the findings arrived at by the trial court and that is about the bona fide belief of title to the property but it did not consider the conclusion reached by the trial court on the basis of examination of prosecution evidence to the effect that out of the two versions that is prosecution and defence the version given out by the defence is established by evidence in the case. Only by considering the question of bona fide belief of title Hon'ble Judges constituting the Bench felt that it is not sufficient to negative the prosecution evidence for an offence under Section 395 although the learned Judges did not come to

the conclusion that the finding reached by the trial court about the property and its title is not correct.

12. The High Court in its judgment had observed that the Advocate General who appeared for the State against acquittal did not press for conviction under Section 436 and, therefore, that question has not been considered in the judgment.

13. The learned Judges have omitted to consider that the defence version which was accepted by the trial court about the possession of property was that in a Panchayat the possession has been given and the only question was for removal of articles which according to the findings reached by the learned trial court belonged to the appellants themselves. This aspect of the matter has not at all been considered but the learned Judges only considered what has been stated by prosecution witnesses in their examination-in-chief, in support of the prosecution case.

14. After reproducing what has been stated by the witnesses the learned Judges only observed that the Assistant Sessions Judge (the trial court) has not discarded the testimony of all these witnesses and it has also been observed that there are no sufficient and adequate reasons for disbelieving the evidence of these prosecution witnesses. The learned trial court after considering the evidence in detail discarded the testimony in respect of assault or injury. It also discarded the testimony of any use of force. The learned trial court also held that the articles recovered have not been identified and there is no material to hold the articles to be belonging to the complainants and apart from it in the context of accepting the defence version where the accused persons were expected to remove the articles which belonged to them. The evidence about removal of articles is of no consequence at all but unfortunately the learned Judges of the High Court have omitted to consider this aspect of the matter.

15. The learned trial court which had the opportunity of seeing the witnesses considered the evidence in detail and for the reasons stated discarded the testimony. The learned Judges of the High Court brushed aside the conclusion reached by the trial court only by saying that the learned Assistant Sessions Judge appears to be fastidious or unrealistic when the learned trial Judge appears to be fastidious or unrealistic when the learned trial Judge examined the evidence on the basis of the statement made by witness himself. Similarly, about the injury, the learned Judges drew the inference that the hurt was minor and, therefore, needed no treatment, and, therefore, examination by doctor was not necessary. Unfortunately, the learned Judges while interfering with an acquittal recorded by the learned trial Judge ought to have considered the reasons which weighed with the learned trial court. This question has come up for consideration in this Court on number of occasions and in *Bava Hajee Hamsa v. State of Kerala* ((1974) 4 SCC 479 : 1974 SCC (Cri) 515), the law laid down in *Bhim Singh Rup Singh v. State of Maharashtra* ((1974) 3 SCC 762 : 1974 SCC (Cri) 238) has been quoted with approval. It reads :

The age-old controversy with regard to the width and scope of the powers of the appellate court in an appeal against an order of acquittal must be taken as settled by the decision of this Court in *Sanwat Singh v. State of Rajasthan* ((1961) 3 SCR 120 : AIR 1961 SC 715 : (1961) 1 Cri LJ 766). It was held therein that the appellate court has full powers to review the evidence upon which the order of acquittal is founded and that the different phrases used in some of the judgments of this Court like "substantial and compelling reasons", "good and sufficiently cogent reasons", and "strong reasons", were not intended to curtail the undoubted power of the appellate court to review the entire evidence and to come to its own conclusion in an appeal

against acquittal. It was, however, emphasised that in exercising this power the appellate court, while dealing with an order of acquittal, should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but it must express its reasons in its judgment which led it to hold that the acquittal is not justified. Following this decision, this Court in Ramaphupala Reddy v. State of A.P. ((1970) 3 SCC 474) held that to the tests laid down in Sanwat Singh case ((1961) 3 SCR 120 : AIR 1961 SC 715 : (1961) 1 Cri LJ 766) may be added another that the appellate court must bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal. Therefore, "if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the findings of the trial court".

Examining the matter from this point of view, we have no hesitation in coming to the conclusion that the learned Judges of the High Court did not examine the reasons which weighed with the learned trial court.

16. It is thus clear that the conclusion reached by the learned High Court could not be maintained for the reasons stated above. This appeal is allowed. The conviction and sentence passed against the appellants are set aside and they are acquitted of the charges levelled against them.

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