

HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. Pet. No.37/2016

Sri Jogesh Debbarma

..... Petitioner(s).

Vs.

The State of Tripura

..... Respondent(s).

For Petitioner(s) : Mr. P Roy Barman, Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

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29.11.2019

This revision petition is filed by the original accused who has been convicted for offence under Section 354A of the Indian penal Code by the learned Magistrate and his appeal has been dismissed by the Session Court. He is ordered to undergo rigorous imprisonment of 1(one) year in addition to payment of fine.

In brief, the prosecution version was that on 9th March, 2013 the complainant was alone at her house at about 7.30 in the evening. The accused entered her room and first inquired about her parents when she told him that her parents were away the accused grabbed the complainant and started pulling off her clothes. She started screaming upon which her neighbours and later her parents reached there. In the meantime, the accused had fled away. Next day at about 6.30 in the morning, the accused Nos.2 and 3 i.e. the

wife and son of the accused No.1 assaulted the complainant causing injuries. The Courts below acquitted the accused Nos.2 and 3 but convicted the accused No.1 the present petitioner for offence under Section 354A, as noted above.

The complainant was examined as PW.1. She deposed before the Court that on 9th March, 2013 at about 7.00 in the evening she was alone at home. Her parents had gone to a nearby shop. Someone knocked the door, the accused entered the house, after inquiring about her parents and finding that they were not at home and that she was alone, he pushed her down touched her body with evil intention. She raised alarm upon which her sister who lived nearby, rushed there, upon which the accused ran away. Soon her parents came from the market. She narrated the incident to her parents. Later, the accused approached and offered her money to settle the case.

Sister of the complainant Minakshi Debbarma was examined as PW.2. She was residing in the same building. She supported her sister's version. She stated that upon reaching, she found the accused was still there and when she arrived, the accused ran away.

The prosecution also examined the mother of the complainant and some other neighbours. Their evidence is essentially in the nature of *hearsay* evidence and at best points out to what was told to them soon after the incident.

On the basis of such evidence the trial Court accepted the version of the complainant as supported by her sister PWs 1 and 2

respectively but found insufficient evidence to convict the accused Nos.2 and 3 for the later alleged incident of assault. The appellate Court confirmed the decision of the trial Court.

Appearing for the accused learned counsel submitted that there were major contradictions and improvements in the depositions of both the important witnesses. Their evidence, therefore, had to be discarded. The Courts below committed serious error in convicting the accused in face of such unreliable evidence.

On the other hand, learned Public Prosecutor opposed the petition submitting that Courts below have correctly come to the conclusion that the charge against the accused is proved. The inconsistencies in the evidence from the witnesses are not major and cannot be fatal to the prosecution case. Revisional powers of the Court are limited. The revision petition may, therefore, be dismissed.

As noted, PWs.1 and 2 are both eyewitnesses. PW.1 in particular is the victim and complainant. She had described the manner in which the accused had come to her house in the evening hours and upon finding that she was alone at home had physically misbehaved her with clear intention to make further advances. PW.2, who resided in the same building next to the house of the PW.1 had the first opportunity to arrive at the scene of incident. It is true that there are some improvements in the versions of both these witnesses as compared to their police statements. However, the essence of their testimony does not get destroyed. The two

Courts below have found their evidence reliable. In exercise of revisional powers it would not be possible for me to reverse such concurrent findings of facts and set aside the conviction. In the result, the criminal revision petition is dismissed.

However, I find that the incident took place nearly 7(seven) years back. Accused is a sole earning member of the family. Considering such facts the sentence is reduced to rigorous imprisonment for 6(six) months. He shall, however, pay a fine of Rs.10,000/- and in default of payment of fine, he shall suffer simple imprisonment of 3(three) months. He shall pay compensation of Rs.50,000/- to the victim which shall be paid latest by 30th December, 2019.

Time to surrender is allowed up to **30th December, 2019**.

Pending application(s), if any, also stands disposed of.

सत्यमेव जयते (**AKIL KURESHI**), CJ