

GAHC010160792011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./28/2011

RATUL DAS
S/O SRI KHAGEN DAS R/O DEKACHUBURI, P.O. DEKARGAON, DIST.
SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MRS.M MANDAL, MS. A LALA,MR. B CHAKRAVARTY,MS.R
CHAKRABORTTY,MR.A NATH,MR.R P SARMAH

Advocate for the Respondent : PP, ASSAM, ,,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER(CAV)

Date : 29-08-2024

Heard Mr. B. Chakravarty, learned counsel for the petitioner. Also heard Mr.
B. Sarma, learned Additional Public Prosecutor for the State.

2. The petitioner has preferred this application u/s 397/401/482 Cr.P.C. against the Judgment and Order dated 15/12/2010 passed by the learned Additional Sessions Judge (FTC) Sonitpur, Tezpur in Criminal Appeal No. 13 (S-3)/2008 arising out of GR Case No. 179/2007 dismissing the appeal and affirming the Judgment and order dated 27/06/2008 passed by the learned Assistant Sessions Judge, Sonitpur, Tezpur in Sessions Case No. 155/2007, whereby the accused/petitioner was convicted u/s 376 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500/- in default simple imprisonment for fifteen days.

3. The prosecution case in brief is that an FIR has been lodged on 05/02/2007 in Mahabhairav Police Station stating *inter alia* that on the same day, at about 8:30 p.m., the accused/petitioner committed rape on the sister of the informant in the house of one Amrit Boro while they were invited to attend the Shradha ceremony of his father.

4. On receipt of the compliant, a case was registered vide Tezpur P.S. Case No. 79/2007 u/s 376 IPC and investigation was initiated. After completion of investigation, police submitted a charge sheet against the accused/petitioner under the aforesaid section of law. Accordingly, charge was framed u/s 376 IPC which was read over and explained to the accused/petitioner to which he pleaded not guilty and claimed to be tried.

5. To substantiate the case, the prosecution examined eight witnesses but the accused/petitioner did not adduce any witness in support of his case. The

learned trial court after considering the evidence on record, convicted the accused/petitioner as aforesaid which was affirmed by the Additional Sessions Judge on appeal.

6. Learned counsel for the petitioner has argued that the learned trial judge has erred in law as well as in facts while passing the impugned judgment of conviction and as such the same is liable to be set aside. The trial judge has placed reliance on the testimonies of PW-1 the mother of the victim, PW-2 the brother of the victim and PW-3 the victim herself and they are the interested witnesses. The trial court has failed to appreciate the vital contradictions and material omission on the part of PW-1, PW-2 and PW-3 and as such, the judgment and the order passed by the learned trial judge is perverse and is liable to be set aside.

7. It is further submitted that the learned trial judge has failed to appreciate the facts that the so called occurrence took place at a social gathering in the house of PW-4 and except PW-1, PW-2 and PW-3, no other witnesses have supported the prosecution case, thereby raising a genuine and bonafide doubt about the truth of the alleged incident.

8. According to learned counsel for the petitioner, the learned trial court has failed to appreciate the fact that it is quite impossible to commit the alleged offence of rape in a bathroom measuring 3 x 3 in size that too without any injury on the body of the victim or of the accused/petitioner and as such, the Judgment of conviction is liable to be set aside.

In support of his submission, learned counsel for the petitioner has placed reliance on the following case laws –

- a. (2009) Legal Eagle (SC) 989 (Musaaddin Ahmed vs. State of Assam)
- b. (2008) 15 SCC 133 (Rajoo and Ors. vs. State of M.P.)
- c. (2010) 1 GLT 731 (Diganta Majumdar vs. State of Assam)

9. Per contra, learned Additional Public Prosecutor has submitted that this Court has limited power to consider the concurrent findings of two courts in the matter of revision. The trial court as well as the appellate court has considered evidence of all the witnesses including the victim and discussed about the incident meticulously and the lacuna in the investigation i.e., non examination of the neighboring people or the non seizure of wearing apparel of the victim etc. Under such backdrop, the learned trial judge has rightly convicted the accused/petitioner and which was affirmed by the appellate court which needs no interference by this Court in revision.

10. The main thrust of the argument involves in this case is that at the time of occurrence, the victim did not raise any alarm. The conduct of the victim shows that she was consenting party for the commission of alleged rape on her. In reply, the learned Additional Public Prosecutor has pointed out that at the relevant time the accused/petitioner gagged her mouth and he threatened her

with dire consequences for which she could not scream. In the case in hand, the victim is an unmarried lady and as per evidence of the witnesses, she is a psychiatric patient and which was not denied by the accused/petitioner. In that situation, no parents in Indian society would implicate any person on false allegation of rape on their daughter as she may not be considered to be married by any other person. There is no allegation made by the accused/petitioner that any enmity is prevailing between the petitioner and the family member of the victim for which the false FIR had been lodged in the case.

11. It is well settled principle of law that the inherent powers as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. [Vide: Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460)].

12. It is also well settled principle of law that the findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible evidence. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide: Rajinder Kumar Kindra v. Delhi Administration AIR 1984 SC 1805; H.B. Gandhi & Ors. v. Gopi Nath & Sons 1992 supp. (2) SCC 312; Triveni Rubber & Plastics v. Collector of Central Excise, Cochin AIR 1994 SC 1341; Gaya Din (D) thr. Lrs. & Ors. v. Hanuman Prasad (D) thr. Lrs. & Ors. AIR 2001 SC 386; Aruvelu & Anr. And Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary (2009) 10 SCC 636).

13. In the case of ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand & Others***, reported in (2004) 7 SCC 659, the Apex Court has been observed that:

"22. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 401 Cr.P.C. Section 401 Cr.P.C. is a provision enabling the High Court to exercise all powers of an Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 Cr.P.C. confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 Cr.P.C. conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 Cr.P.C., read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

14. In ***Krishnan & Another v. Krishnaveni & Another***, reported in **(1997) 4 SCC 241**, the Supreme Court observed as under:

"1. Exercises of the revisional power by the high court under Section 397 read with Section 401 is to call for the records of any inferior

Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of judicial Magistrate are inferior criminal courts to the sessions judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e. to examine the correctness, legality or propriety of any finding sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the high Court merely conserves the power of the high Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice."

15. In ***State of Orissa vs. Nakula Sahu***, reported in **(1979) 1 SCC 328**, it was held that the High Court should not have interfered with the concurrent findings recorded by the trial court and the Sessions Judge in exercise of revisional jurisdiction when there was no error on fact or law arrived at by the

trial court or the Sessions Judge.

16. In ***State of Kerala vs. Puttumana Illah Jathavedan Namboodiri***, reported in ***(1999) 2 SCC 452***, it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

17. Taking into account the totality of facts and keeping in mind the ratio of the aforesaid judgments and the reasons recorded and discussed as above, this Court does not find any perverse finding into the judgment of the trial court or the appellate court, which is to be corrected in the revisional power of this Court.

18. In view of the above, the criminal revision is dismissed and disposed of accordingly. The accused/petitioner is directed to surrender before the learned trial court on or before 30.09.2024 to serve out the sentence.

19. Send back the trial court record.

JUDGE

Comparing Assistant