

GAHC010161702011



2024:GAU-AS:11770

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

Case No. : Crl.Rev.P./426/2011

KAMINI KUMAR SARMA
S/O LT. HARI KANTA SARMA R/O KENDUGURI, UDAYGIRI, NARENGI, P.S.
NOONMATI, DIST. KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.B CHOUDHURY, MR.D SARMAH

Advocate for the Respondent : , PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

26-11-2024

1. Heard Mr. B. Chakraborty, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State.
2. The present petition is filed under Sections 397 & 401 read with Section 482 of the

Code of Criminal Procedure, 1973 assailing the judgment and order dated 12.08.2011 passed by the learned Additional Sessions Judge, Kamrup, Guwahati in Criminal Appeal No. 42/2009 by which the conviction and sentence passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati in G.R. Case No. 3737/2005 dated 09.06.2009 was modified and the petitioner was directed to pay a fine of Rs. 5,000/- only and in default of payment of fine, to undergo simple imprisonment for 2 (two) months inasmuch as the learned Chief Judicial Magistrate, Kamrup, Guwahati while convicting him under Section 354 IPC, sentenced him to undergo simple imprisonment for 6 (six) months and also to pay a fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment for another 2 (two) months.

3. The brief facts of the prosecution case is that on 26.07.2005, an FIR was lodged before the Noonmati Police Station by the victim alleging that on 23.07.2005, while she along with her mother went to the clinic of the petitioner at Forest Gate to get her horoscope examined and in the name of horoscope examination, she was taken inside the consultation room of the clinic and the petitioner had outraged her modesty by putting his hand in her private parts.

4. Accordingly, Noonmati P.S. Case No. 186/2005 corresponding to G.R. Case No. 3737/2005 under Sections 342/354 IPC was registered. After completion of the investigation, charge-sheet was filed under Section 342/354 IPC.

5. As the petitioner pleaded not guilty, the trial commenced and the prosecution adduced four witnesses. The petitioner was examined under Section 313 CrPC and one defence witness was also examined. After conclusion of the trial, by judgment and order dated 09.06.2009, the petitioner was convicted under Section 354 IPC and was sentenced to undergo simple imprisonment for a period of 6 (six) months and also to pay a fine of Rs. 5,000/- and in default of payment of fine, to undergo for further imprisonment of two months.

6. Being aggrieved, the petitioner preferred an appeal which was registered as

Criminal Appeal No. 42/2009 and the learned Additional Sessions Judge, Kamrup, Guwahati by its judgment and order dated 12.08.2011 though affirmed the conviction, however, modified the sentence by sentencing him to pay a fine of Rs. 5,000/- in default of payment of fine, to undergo simple imprisonment for two months.

7. Mr. Chakraborty, learned counsel for the petitioner referring to the evidence of the victim argues that there is material contradiction in the statement of the informant and from her statement, nothing is discernible even too remotely suggest that any offence of Section 354 IPC was committed. However, both the Courts below have committed perversity in relying on such evidence and convicted the petitioner.

8. Per contra, Mr. Sarma, learned Additional Public Prosecutor, Assam submits that both the Courts below have concurrently held the petitioner guilty for commission of offence under Section 354 IPC inasmuch as the evidence of the victim remains unshaken and therefore, this Court in exercise of its revisional power, may not interfere with such concurrent findings of fact .

9. I have given anxious consideration to the arguments advanced by the learned counsels for the parties and also perused the material available on record.

10. It is true that object of revisional power of this Court under Section 397 or 401 is to set right a patent defect or an error of jurisdiction or of law. Such power can be exercised where the decision under challenge is grossly erroneous, there is non-compliance of provisions of law, the finding recorded is based on no evidence and the material evidence is ignored or judicial discretion is exercised arbitrarily or perversely or such decision has resulted in miscarriage of justice. It is equally well settled that a revisional jurisdiction of the High Court should not be exercised in a routine manner.

11. The Hon'ble Apex Court in **Chandra Babu vs State** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law. However, when factual appreciation is involved, then it should be exercised in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to

be exercised so that justice is done and there is no abuse of power by the Court.

12. Taking note of the aforesaid settled propositions of law, this Court has also perused the evidence led by the prosecution, more particularly, for the reason that the learned counsel for the petitioner has urged that there is perversity in such findings.

13. The victim was examined as PW-1 and she has described in her evidence how she went to the clinic of the accused/petitioner and how the accused/petitioner tried to outrage her modesty. According to her, in the name of the treatment, some oil were poured in her nose and the door was kept closed and after pouring the oil, the astrologer/the petitioner asked her to touch his body and thereafter, he undressed himself and also asked the victim to open her clothes. She also alleged that he had touched her private parts.

14. During the cross-examination, she had affirmed that though she herself did not write the FIR, she read the same. She had also reaffirmed that the accused/petitioner touched her private parts. She had denied the suggestion of the defence that she had falsely lodged the case. She was candid in saying that she also visited the clinic of the petitioner earlier. However, the accused/petitioner did not misbehave with her on earlier occasions. There is nothing to disbelieve or suggest anything that the victim had falsely deposed before the Court inasmuch as her deposition remained unshaken during the cross-examination, rather the conduct of the accused inside the room was re-affirmed by her during her cross-examination. In such a situation, there cannot be any eye-witness inasmuch as it is well settled that in such a case, if the victim's evidence is of sterling quality, a person can be convicted on the basis of the sole testimony of the victim. Both the learned Courts below found the testimony of the victim to be trustworthy and this Court is also in agreement with such findings.

15. Therefore, the aforesaid backdrop, this Court is in total agreement with the findings recorded by the learned Trial Court below and the Appellate Court, which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above,

the learned Trial court and the Appellate Court below had duly appreciated the evidence and conclusion arrived at on the basis of appreciation of such evidence, cannot be termed as the said decision as a perverse decision. Accordingly, this Court finds no merit in this criminal revision petition and the same stands dismissed.

16. LCR be returned back.

JUDGE

Comparing Assistant