

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

C.R.R. No. 1795 of 1993

Daityaraj Dhara

Vs.

The State of West Bengal

Mr. Mainak Bakshi, Adv. :for the Petitioner

Mr. Prasun Dutta, Adv,

Ms. Narayan Prasad Agarwal ,Adv, :for the Respondents

Heard on : 10.12.2021

Order on : 14.12.2021

PREFACE

This revisional application u/sec. 401/482 of the Code of Criminal Procedure is directed against the judgment and order dated 31st July, 1993, passed by the Ld. Session Judge, Bankura, in Criminal Appeal NO. 01/1993, dismissing thereby the appeal, preferred by the accused petitioner assailing his order of conviction, dtd.30.01.1993, passed by the Ld. Sub-divisional

Judicial Magistrate in G.R.case no.391 of 1997, in connection with Sonamukhi P.S. case no. 06, dtd. 25.12.1987 u/sec. 457/354 of the Indian Penal Code and sentence of two years rigorous imprisonment and fine of RS. 2000/- I/d to suffer further R.I. for 3 months, for the offence u/sec. 457 of the IPC and the sentence of rigorous imprisonment for six months for offence u/sec 354 of the Indian Penal Code and both the sentence were directed to run concurrently.

FACTS IN BRIEF

2. The law was put into motion by one Paresh Nath Khamrui, who lodged a written complaint at Sonamukhi P.S., for the incident happened on 15.12.1987 at about 0.2 hours. It is alleged that, the accused into the dwelling house of Paresh Nath Khamrui in his absence and outraged the modesty of her wife. Hearing hue and cry, neighbours rushed to the spot and apprehended accused petitioner in the room of the victim. The accused/petitioner was brought to

the local Kalitala but no action was taken due to absence of the victim's husband. The accused was handed over to his brother Nilkamal Dhara. On the next day, the de-facto complainant returned home but in the mean time the victim consumed poison and later she died in the hospital on the next day. Police took up the investigation and submitted charge-sheet u/sec. 457/354 IPC.

Accordingly charge was framed and 15 witnesses were examined.

According to the defence case, the victim was killed by her husband and a criminal case alleging theft of a pump machine of Ganesh Dhara, father of the accused/petitioner, was initiated against the witnesses of this case.

APPRECIATION OF EVIDENCE BY THE LD. TRIAL COURT &

FIRST APPELLATE COURT

3. Evidence was discussed elaborately in terms of facts alleged in this case by the Ld. Trial court. It has also been discussed

regarding P.W.2 to P.W.5 and P.W.8 TO P.W.10 , who were made accused in a criminal case for lifting a pump machine of Ganesh Dhara, the father of accused/petitioner alleging the non-payment of fine of RS. 4000/- imposed by those witnesses upon the accused in the night of the alleged occurrence, for which a separate case was pending over that issue. Trial Court did not find any proximity between the case in hand and that of the defence. Entire incident alleged to have been committed by the accused petitioner was duly corroborated by the witnesses, which remained unshaken during their cross-examination.

DECISION WITH REASONS

4. Ld. Advocate appearing on behalf of the petitioner submitted that, prosecution could not establish the reason of death of the alleged victim and harped on the string of delay in lodging F.I.R. It is further submitted that the witnesses were inimical and their evidence cannot be relied upon in coming to any conclusion in

favour of the prosecution. That apart it is submitted that one ten years old child was not examined in this case. Entire prosecution case was focused on the statement of victim before her husband before she died. Again it is argued that, prosecution failed to prove any ingredient within the meaning of sec. 457 IPC.

Per contra, Ld. Advocate on behalf of the state fully relied on the judgment of the Trial Court and that of the First Appellate Court.

5. The object of revisional jurisdiction is to confer upon the superior court a kind of paternal or supervisory jurisdiction. And the idea is to correct the miscarriage of justice, which may arise from various caused such as:-

1. misconception of law,
2. irregularity of procedure,
3. neglect of proper precautions,
4. apparent harsh treatment.

The revisional jurisdiction can be exercised only in exceptional cases, where the interest of public justice, requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the Law or mis appreciated the evidence on record. The High Court would be justified in interfering :-

Where Trial Court has wrongly shut out evidence, or where material evidence has been overlooked by the Trial Court or the Court of Appeal or where the acquittal had been based on a compounding offence not permitted by law, or where the Appellate Court has wrongly held evidence admitted by the Trial Court to be admissible.

Here in our case, I have gone through the judgments of Trial Court and that of the Appellate Court and I found all the defence cases were elaborately discussed in terms of evidence on record.

6. Ld. Advocate on behalf of the accused/petitioner mainly focused on the evidence of the inimical witnesses.

It is axiomatic that, credibility of the eye witness cannot be rejected on account of merely on the ground that there was enmity between the prosecution party and the accused. In this regard, I would like to refer a case of **Ramashish Rai vs. Jagdish Singh**, reported in **(2005)10 SC 498**, wherein the Hon'ble Court observed as follows:

“The requirement of the Law is that, the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable, their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. A duty is cast upon the Court to examine the testimony of inimical witnesses with die caution and diligence.”

7. After careful scrutiny of the judgment of the Ld, Trial Court and that of the Ld. Appellate Court I find that, both the Ld. Court,

examined the testimony of those witnesses with extreme care and diligence. Besides, all other defence cases were dealt with utmost caution and diligence.

The cause of death o the victim was taken up by the Ld. Trial Court and Appellate Court but it was decided that, factum of death had no bearing with the case of prosecution. I find no reason to differ with the said view in terms of evidence of record.

From the discussion of the evidence in the judgment passed by the Ld. Trial Court & the Ld. First Appellate Court, I do not find any irregularity or illegality far to speak of perverse.

8. Therefore, I find hardly any scope to interfere with the judgment passed by the first Appellate Court, in exercising jurisdiction under Section 401/482 of the Code of Criminal Procedure.

9. Now, with regard to sentence Ld. Advocate on behalf of the petitioner/accused submits that quantum of sentence

may be reduced to the period of sentence already undergone by the accused /petitioner. This is the incident happened more than 30 years back and it is not the prosecution case that petitioner/accused is habitual offender. Therefore I am of the considered view that the period already undergone by the accused/ petitioner is sufficient when accused/ petitioner has been suffering from mental agony because of sentence pending for about 27 years.

10. In the aforesaid view of the matter, the period of sentence is being reduced to the period already undergone by the accused/petitioner but he will pay fine of Rs. 2000 in default he would be directed to suffer rigorous imprisonment of 3 months as directed by the Ld. Trial Court. Accordingly, accused/ petitioner is directed to deposit fine amount by 31st January, 2022. Ld. Trial Court is requested to accept the fine, if so tendered by the petitioner/accused.

11. With the aforesaid observation the instance revisional application being no. 1795 of 1993 stands allowed in part specially for the reasons of long pendency of the case and the nature of offences.

12. Department is directed to communicate this order to the concerned Ld. Trial Court. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]