

Sr. 08
23-06-2021
Subha.
Court no. 34

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
(Via Video Conference)**

CRR 1199 of 2003

In Re : **Swapan Mondal & Anr.**

.....Petitioners.

In the matter of : An application under Sections 401 and 482
of the Code of Criminal Procedure, 1973.

Mr. Abhra Mukherjee

...for the petitioners.

Mr. Arijit Ganguly

Mr. Sanjib Kumar Dan

...for the State.

The present revisional application has been preferred against the order dated 9th April, 2003 passed by the learned Additional Sessions Judge, Birbhum at Rampurhat in Criminal Appeal No. 7 of 2002 wherein the appellate court was pleased to affirm the judgement and order of conviction and sentence passed by the learned Sub-Divisional Judicial Magistrate, Rampurhat in C. R. Case No. 9 of 1994.

By the said judgement, the learned Sub-Divisional Judicial Magistrate, Rampurhat was pleased to convict the petitioners of offences under Section 341/323 of the Indian Penal Code and sentenced the petitioners to pay a fine of

Rs.500/- each i. d., to suffer simple imprisonment for one month for offence under Section 341 of the Indian Penal Code and a fine of Rs.1000/- each i.d., to suffer simple imprisonment for two months for the offence under Section 323 of the Indian Penal Code.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioners submits that the incident complained of is on 10th January, 1994 and the complaint was filed on 25-01-1994.

According to the learned advocate for the petitioners nowhere in the complaint, the complainant or any of the witnesses narrated the place of occurrence and the witnesses so examined failed to prove the case beyond any reasonable doubt.

A perusal of the judgement of the learned trial court reflects that the prosecution in order to prove its case relied upon Gajal Garai, complainant(PW 3), Chamatkari Garai(PW 4), Janardan Mondal(PW 5), Amitabha Banerjee(PW 2), a surgeon at Rampurhat Sub-Divisional Hospital, Goutamdeb Mukherjee(PW 1), medical officer of Rampurhat Sub-Divisional Hospital.

According to the learned advocate for the petitioners although the complainant was admitted at the hospital on 10-01-1994 and was there till 18-01-1994 but it is revealed from the evidence that at any of point of time, he did not name the accused persons before the doctor, although they were known

to each other. To that effect, learned advocate for the petitioners draws the attention of the court to the relevant observations of the learned trial court that the admitted position which has surfaced in evidence that the present petitioners were his nephews and there were civil and criminal cases between the parties. It has also been observed that about five to seven police cases were filed at the instance of the present petitioners against the complainant.

The learned appellate court erroneously, while considering the point of non-mentioning of the names of the accused persons before the doctor, observed that there is no hard and fast rule that the injured patient must disclose name/names of the assailant/s.

Additionally, learned advocate for the petitioners submits that the three witnesses apart from the doctor who have been examined were the wife and the brother-in-law of the complainant who are interested witnesses and have exaggerated the incident for obtaining sympathy of the court.

Mr. Arijit Ganguly, learned advocate along with Mr. Sanjib Kumar Dan appearing on behalf of the State supports the judgements delivered by the learned trial court and affirmed by the learned appellate court and emphasizes that there is no scope of interference so far as the finding of the courts are concerned.

Further, learned advocate for the petitioners submits that the sentence so imposed by the trial court was

flee-bite sentence and the same cannot be interfered with at this stage.

I have taken into account the submissions of the rival parties and the points raised by the learned advocate appearing on behalf of the petitioners.

On an appreciation of the same, I am of the view that there is force in the submission of the learned advocate for the petitioners so far as the issue of the non-mentioning of the names of the present petitioners are concerned to the doctor and at least at the first instance when the petitioners were known to the complainant as they were relations.

Further, the contention of the learned advocate for the petitioners in the background of the non-mentioning of the names is that there were previous cases between the parties which were both civil and criminal cases and the present petitioners also instituted police cases against the complainant. That being so, a counter-blast to the litigation cannot be ruled out.

Having scrutinized the materials and the observations made by the learned courts below, I am of the view that the evidence which has surfaced in course of the trial are insufficient for coming to a conclusion of guilt so far as the present petitioners are concerned.

Accordingly, the petitioners are acquitted of the charges and the revisional application being CRR 1199 of 2003 is, hereby, allowed.

If the petitioners are on bail, they should be discharged from the bail bonds.

Pending applications, if any, are hereby disposed of.

LCRs, if any, be sent down to the court below.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)