

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.20 of 2004

Kunj Kumari Yadav W/o. Shri Chandra Dev Yadav, aged about 23 years, Occupation House Wife R/o. Village Pachira, P.S.-Surajpur, Tahsil Surajpur, Distt. Surguja (CG)

---- Applicant/Prosecutrix

Versus

1. Raghunandan @ Nanku, S/o. Baliram Yadav, aged about 32 years
2. Ramkumar, S/o. Heeralal Yadav, aged about 36 years
(Both are R/o. Village Pachira, P.S. Surajpur, Distt.Surguja (CG))
3. State of Chhattisgarh, Through District Magistrate, Surguja (CG)

---- Respondents

For Applicant:	Mr.Ashok Kumar Shukla, Advocate
For Respondents No.1 & 2:	Mr.Manish Sharma, Advocate
For Respondent No.3/State:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

Sanjay K. Agrawal, J.

20/10/2021

1. Invoking jurisdiction under Section 397 read with Section 401 of the CrPC, this revision has been preferred by the applicant / prosecutrix questioning the judgment of acquittal recorded by the 6th Additional Sessions Judge (F.T.C.), Surajpur on 31.12.2003 in S.T.No.176/2003.
2. As per the case of the prosecution, respondent No.1- Raghunandan/accused assisted accused / respondent No.2- Ramkumar in commission of offence under Section 376(2)(g) of the

IPC. After committal, the Additional Sessions Judge framed the charges for the aforesaid offences against respondents No.1 and 2 and they were prosecuted for the aforesaid offences. Respondents No.1 and 2 entered into trial and denied the guilt. In order to prove the charges against respondents No.1 and 2, the prosecution has examined as many as 11 prosecution witnesses and exhibited 12 documents. On behalf of the defence, Aatma Ram (DW-1) and Kumar Sai Thakur (DW-2) were examined and exhibited 10 documents as Exs.D-1 to D-10 in support of their defence.

3. The trial Court after appreciating oral and documentary evidence available on record by its judgment dated 31.12.2003 acquitted respondents No.1 and 2 herein extending the benefit of doubt holding that the prosecution has failed to prove its case beyond reasonable doubt, against which, this criminal revision has been preferred by the victim / prosecutrix.
4. Mr.Ashok Kumar Shukla, learned counsel for the applicant / prosecutrix, would submit that the trial Court is absolutely unjustified in acquitting respondents No.1 and 2 extending the benefit of doubt whereas the prosecutrix has clearly proved her case beyond reasonable doubt. He would further submit that the prosecutrix (PW-6) and her sister Sita Kumari (PW-8) have clearly proved the fact of gangrape by respondents No.1 and 2 and learned Additional Sessions Judge has acquitted them by recording totally a perverse finding overlooking the material available on record to convict the aforesaid accused persons and the judgment

of acquittal is based on totally irrelevant consideration omitting the admissible evidence available on record and therefore, the judgment of acquittal deserves to be set-aside and the matter be remitted to the trial Court for re-trial / fresh consideration.

5. On the other hand, Mr. Manish Sharma, learned counsel for respondents No.1 and 2, would submit that scope of revision against the judgment of acquittal is extremely limited and would not go beyond the permissible ground as mentioned by the Supreme Court in the matter of Sheetala Prasad and others v. Sri Kant and another¹ and as such, learned Additional Sessions Judge has rightly held that it is the case where no offence has been committed by present respondents No.1 and 2 and even otherwise, benefit of doubt has rightly been extended to them in view of the fact that they have falsely been implicated in crime in question by the prosecutrix. He would also rely upon the judgment of the Supreme Court in the matter of Logendranath Jha and others v. Shri Polai Lal Biswas² (para-7).
6. We have heard learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. In order to judge the correctness of the judgment of acquittal recorded by the trial Court, it would be appropriate to notice the categories exhaustive on which the revisional jurisdiction can be exercised by this Court at the instance of a private complainant,

1 (2010) 2 SCC 190

2 AIR 1951 SC 316

which has been authoritatively laid down by their Lordships of the Supreme Court in Sheetala Prasad (supra) in which, in para-12 their Lordships have laid down the categories on which this Court can exercise the revisional jurisdiction filed at the instance of a private complainant .

8. In the matter of Sheetala Prasad (supra), it has been held that this Court can exercise the revisional jurisdiction (i) where the trial Court has wrongly shut out evidence which the prosecution wished to produce, (ii) where the admissible evidence is wrongly brushed aside as inadmissible, (iii) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (iv) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and (v) where the acquittal is based on the compounding of the offence which is invalid under the law. Their Lordships observed as under:-

“12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant

(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,

(2) where the admissible evidence is wrongly brushed aside as inadmissible,

(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,

(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order

is passed by considering irrelevant evidence and

(5) where the acquittal is based on the compounding of the offence which is invalid under the law.

15. The High Court has further concluded that no offence punishable under Section 324 IPC is committed by the appellants. This finding could have been recorded only in an appeal filed by the appellants. In the face of prohibition contained in Section 401(3) of the Code of Criminal Procedure, it was all the more incumbent upon the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method. Further, the matter is remitted to the learned Additional Sessions Judge for the purpose of passing fresh order of conviction and imposition of sentence on the appellants in the light of what is observed in the impugned judgment.”

9. In Logendranath Jha (supra), the Supreme Court has held that the High Court while dealing with a revision petition by a private party against an order of acquittal cannot interfere to it in absence of error on point of law.

10. Reverting to the facts of the present case in light of aforesaid judgment delineating the scope of interference in the judgment of acquittal recorded by the trial Court, it would appear that learned Additional Sessions Judge while acquitting respondents No.1 and 2 has recorded the following findings:-

(i) That, the statements of the prosecutrix (PW-6) and her sister Sita Kumari (PW-8) are not reliable though petticoat of the prosecutrix was seized and vaginal slides were prepared, but it was not sent for chemical analysis and no semens was found in petticoat of the prosecutrix and it has not been explained by the prosecution and even in the FIR, injury of the prosecutrix was not reported.

(ii) That, the story as projected by the prosecutrix / prosecution has found to be improbable / unnatural.

(iii) That, the prosecutrix is said to have been gangraped in cow shelter, but there is no mark of cow-dunk in petticoat seized from her, which was duly supported by the statement of Dr.Shakuntala Xalxo (PW-2) making the story of gangrape improbable.

11. We have carefully gone through the statements of the prosecutrix (PW-6) and her sister Sita Kumari (PW-8). The prosecutrix (PW-6) has made statement that on 12.9.2002 respondents No.1 and 2 came in back portion of her house where she was collecting cow-dunk and they committed gangrape with her and after sometime, her sister Sita Kumari (PW-8) and mother came on the spot and then the accused persons absconded. After appreciating oral and documentary evidence available on record, the trial Court came to the conclusion that the story as projected by the prosecutrix is improbable as according to the prosecutrix version, she was collecting cow-dunk in back portion of the house, but no mark / impression was found on her petticoat, which was duly corroborated by Dr.Shakuntala Xalxo (PW-2). Similarly, the case of the prosecution is that the offence is said to have been committed at 10 a.m., but no independent witness has been examined and in FIR (Ex.P-7) lodged by her, no injury on the body of the prosecutrix was informed by the prosecution. Learned Additional Sessions Judge has clearly recorded the finding that there is no medical evidence available on record to support the prosecution case. The above-stated findings recorded by learned Additional Sessions Judge are duly supported by material available on record. These findings are neither perverse nor contrary to record.

12. On the basis of aforesaid analysis, we are of the considered opinion that the applicant / prosecutrix has failed to make out a case in terms of para-12 (1 to 4) of Sheetala Prasad's case (supra) to warrant interference in the judgment of acquittal passed by learned Additional Sessions Judge and there is no error of law in the order of acquittal. We do not find any merit in this criminal revision.

13. Accordingly, the criminal revision deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-