

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:
THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 291 of 2012

NALIN KARJEE
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Sourav Chatterjee, Adv.,
for High Court Legal Services Authority

For the Opposite Party : Mr. Imran Ali, Adv.
Ms. Debjani Sahu, Adv.

Hearing concluded on : 16th November, 2022

Judgement on : 16th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and order passed by the learned District and Sessions Judge, Fast Track Court, Alipurduar, Jalpaiguri on 22nd December, 2012 in Criminal Appeal No. 6 of 2008. By the impugned judgement, learned Appellate Court was pleased to affirm the order of conviction passed by learned Additional Chief Judicial Magistrate, Alipurduar in G.R. Case No. 239 of 2006 whereby the petitioner was convicted for committing the offence under Section 354 of the Indian Penal Code and sentenced to suffer simple imprisonment for 18 months and to pay fine of Rs. 2000/- with default clause.

2. Briefly stated, on 13th March, 2006, Smt. Minati Mohanta, wife of Nitya Mohanta set the criminal administration of justice into motion by informing the Inspector-in-charge of Alipurduar Police Station in writing that on 28th March, 2006 at about 8.30/9.00 p.m. her neighbour Nalin Karjee came to her house in search of her husband. As her husband was not present the lady came out of the room when the accused person embraced her and attempted to disrobe her by pulling her sari. She raised alarm, that attracted her husband and with the advent of her husband the accused fled away. The incident was brought to the notice of the Panchayat and Salish was convened but the accused did not attend the Salish.
3. The information since disclosed the offence cognizable in nature Alipurduar P.S. Case No. 55 of 2006 was registered under Section 448/354 of the I.P.C. Police took up investigation which culminated into submission of charge sheet against the accused person under Section 354 of the I.P.C. The accused pleaded his innocence and stood the trial.
4. In order to crown success prosecution examined six witnesses and learned Trial Court having considered the evidence on record was pleased to find the accused person guilty to the charge under Section 354 of the I.P.C. and recorded the order of conviction.
5. The convict made an unsuccessful attempt to get the judgement and order of conviction reversed in appeal before the learned Additional District and Sessions Judge, Fast Track Court, Alipuruar, Jalpaiguri in Criminal Appeal No. 6 of 2008.

6. Mr. Sourav Chatterjee, learned Counsel representing the convict/petitioner, being appointed by the Calcutta High Court Legal Services Committee, submits that learned Appellate Court failed to appreciate the evidence on record by applying his judicial mind rather learned Appellate Court preferred to appreciate the evidence on record through the eyes of learned Trial Court. According to Mr. Chatterjee, admittedly the petitioner before this Court and the de-facto complainant are staying in the same neighbourhood as next door neighbours. It is admitted that subsequent to the alleged incident Panchayat was informed and a Salish took place in the house of Ganga Mohanta. P.W.-4, Montu Mohanta also stated about the Salish that took place on the following day of incident and from his cross-examination it transpires that a document was prepared and executed in the Salish. According to Mr. Chatterjee, learned Counsel, the said document is supposed to contain the maiden narrative about the alleged incident, which was not produced before the learned Trial Court and learned Appellate Court also did not bring the said document on record for consideration. From the oral testimony of P.W.-2, it appears that their children were inside the house at the time of alleged incident. He got attracted by the cry raised by his wife, the children, however, did not react. From cross-examination of P.W.-2, it appears that P.W.-2 told the I.O. that accused person pressed the mouth of his wife by hand and even tried to commit rape upon her. On the night of incident none came to the place of occurrence though P.W.-2 rushed to his house from the house of his neighbour being attracted by the alarm raised of his wife. He took dinner after coming

back home and went to sleep. On the next day he did not do anything and on the third day being accompanied by his elder brother he along with his wife went to the Police Station and informed the police about the alleged incident. On the following day Salish held in their house. Evidence of PW-2 further revealed that a dispute cropped up between him and the accused person over the issue of opening of drain in front of his house.

7. The document prepared during Salish as pointed out by Mr. Chatterjee was not produced before the Court which was a vital piece of evidence particularly in the backdrop of dispute over the opening of drain in front of the house of the de-facto complainant. The husband of the victim rushed to his house, being attracted by the cry of his wife but did not take any pro-active role, a man of ordinary prudence would have taken in such situation. The husband of the de-facto complainant as P.W.-2 unveiled his evil design to saddle the accused person with criminal liability by making statement before the police that an attempt of rape was made by the accused person upon his wife. This statement of P.W.-2 made during cross-examination indicates that he was interested in getting the accused person convicted and he conveniently used his wife P.W.-1 to achieve his goal.
8. In my humble opinion, learned Appellate Court failed to appreciate the evidence on record, from the point of view of human probability which obviously resulted into miscarriage of justice. In my humble opinion, this is a fit case to invoke the inherent jurisdiction in order to reverse the judgment of conviction.

9. Consequently I am of the view that the charge under Section 354 of the I.P.C. against the convict/petitioner cannot be said to have been proved beyond reasonable doubt. Accordingly the judgement passed by learned Appellate Court affirming the judgement of learned Trial Court is hereby set aside. The petitioner is found not guilty to the charge under Section 354 of the I.P.C. The accused person be set at liberty and be released from bail bond.
10. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary action.
11. Parties are to act on the server copy of this judgement.
12. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)