

12.07. 2022
item No.12
n.b.
ct. no. 34

CRR 639 of 2006

**Badal Miya @ Saiyedul Hassain @ Saidul
Vs.
State of West Bengal & Anr.**

Mr. Debapratim Guha,
Mr. Rajiv Lochan Chakraborty
.....for the Petitioner

Mr. Bidyut Kr. Roy,
Ms. Ratna Ghosh
.....for the State

Mr. Guha, learned advocate appearing for the petitioner submits that the Learned Trial Court by ignoring the evidence has acquitted the private opposite party no.2 in a heinous offence under Section 302 of the Indian Penal Code. According to the learned advocate, it was not possible for the original accused who was named in the FIR, to singly commit the said offence without the aid of the accused/private opposite party. It has also been pointed out that the evidence of prosecution including the eleven witnesses including P.W.1 being the eye witness to the incident, who saw in his own eyes regarding the series of incidents which occurred and led to the death of the victim/deceased. There are corroborations in respect of the incident which happened, the previous enmity, the intention and motive for commission of the alleged offence.

It would be apposite to state that in this case the police authorities after submission of charge sheet relied upon twelve

witnesses and in course of the trial, eleven witnesses were examined on the side of the prosecution, one witness was examined by defence and the court also examined one witness for certain clarifications.

Mr. Guha, learned advocate submits, in spite of overwhelming evidence appearing in the case records, the learned trial Court wrongly appreciated the same and ignoring the relevant factual aspects, arrived at his conclusion of acquittal.

Mr. Roy, learned advocate appearing for the State leaves it to the Court for deciding the issue.

I have considered the basic foundation on which the Learned Trial Court after appreciation of the evidence arrived at its finding. The crucial issue by which the Learned Magistrate arrived at his finding is that P.W. 1, who was an eye witness to the incident, although in his statement under Section 161 of the Code of Criminal Procedure implicated the private opposite party/accused but there was no utterance before the Learned Judicial Magistrate of the said witness under Section 164 of the Code of Criminal Procedure. Accordingly, on the foundation of such approach of the witness, the learned Magistrate was of the opinion that the defence case as brought out in evidence in respect of sharing of the property assumes importance and thereafter arrived at his conclusion that in a case of a heinous offence, it is the duty of the prosecution to prove the case beyond reasonable doubt, which the prosecution has failed to prove in this case. Other attending circumstances have also been pointed out by the Learned Trial Court while arriving at his finding of acquittal.

I have considered the judgment delivered by the Learned Trial Court. In the present revisional application, this court while exercising the revisional jurisdiction cannot substitute its own views or the alternate views possible until and unless the finding of the Learned Trial Court is such that grave injustice has been caused or there has been miscarriage of justice. It is also settled proposition of law that if alternative view is possible, the higher court will not ordinarily substitute its own views with that of the finding which has been arrived at by the trial court until and unless there is abuse of the process of law in any manner.

In view of the aforesaid, I am of the opinion that there is no scope for interference in the present case, having regard to the materials, which are appearing in evidence as also the finding of the Learned Trial Court.

Accordingly, CRR 639 of 2006 is dismissed.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)