

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Siddhartha Roy Chowdhury**

CRR. 777 of 2010

CRAN 2 of 2021

Biswanath @ Bishu Malik

-Versus-

State of West Bengal & Ors.

**For the Petitioner : Mr. Santanu Das ,
Mr. Sujan Chatteejee.**

**For the Opposite Parties : Mr. Ramdulal Manna,
No.s 3 to 5 Ms. Manju Manna,
Mr. Sayan Mukherjee**

**For the State : Mr. Anowar Hossain , Ms.
Ms. Ratna Ghosh**

Heard & Judgment On : 15th November, 2022.

Challenging the order of acquittal passed by learned
Additional Sessions Judge, Fast Track , 2nd Court, Malda in

Sessions Case No. 81 of 2006 arising out of GR Case No. 1115 of 2002 registered under Section 326/304/34 of the Indian Penal Code, this application has been filed by the petitioner.

Briefly stated on 11th July, 2002 Shri Biswanath Mondal, set the criminal administration of Justice into motion by informing the Officer-in-charge of Gopalganj I.C. That on the aforesaid date at about 8 a.m. an attempt was made by his brother Bhuban Mondal to encroach upon the arable land by the informant. Bhuban Mondal requested some local people to intervene in order to settle the dispute amicably. They agreed to intervene and those persons while they were on their way to the land Sridam Mondal, Dilip Mondal, Dukhu Mondal all sons of Bhuban Mondal hurled bomb causing injuries to Nibaran Mondal, Nagardip Mondal, Namita Mondal and Arati Mondal, Dilip Mondal and Dukhu Mondal. They were sent to hospital and on the basis of such information Kaliachak P.S. Case No. 216 of 2002 was registered under Section 326/34 of the IPC. Subsequently one of the injured persons died in hospital and Section 304 of the IPC was added. Police upon completion of investigation submitted a charge sheet against the accused persons.

On 4th December, 2006 learned trial Court having perused the materials collected in course of investigation framed charge against accused persons under Sections 326/302 of the IPC and 9B of the Explosive Act. Pleading

innocence to the charges the accused persons claimed to be tried.

During trial prosecution examined as many as 20 witnesses. After completion of trial having considered the evidence on record learned trial Court was pleased to hold that the prosecution failed to prove the charges beyond reasonable doubt and with the finding recorded an order of acquittal.

Mr. Sujan Chatterjee, learned counsel representing the petitioners submits that the investigating officer did not discharge his duty properly and learned trial Court also failed to appreciate the evidence in its proper perspective . Mr. Chatterjee submits Nabadwip Mondal , Arati Mondal sustained burn injury and this testimony of PW 14 is actually lending support to the testimony of the victim to the effect that the accused persons hurled bomb and made them injury. Prosecution did not examine the attending Medical Officer of Nibaran Mondal as a result no evidence came as why and with what kind of injury Nibaran was brought to hospital. But from the testimony of prosecution witnesses, particularly the sibling of the deceased it has been established that the accused persons came to the place of occurrence in a group and hurled bomb which struck even Nibaran. According to Mr. Chatterjee learned trial Court ought to have recorded an

order of conviction instead of letting the accused persons go off.

Refuting such contention Mr. Ramdulal Manna submits that it is the settled principle of law that while dealing with an application with a prayer to reverse the order of acquittal Court should tread upon very slowly and in exceptional cases where there are compelling circumstances and if the judgment impugned appears to be perverse then and then only an order of acquittal should be interfered with. To buttress his argument Mr. Manna relied upon a decision of the Hon'ble Supreme Court pronounced in the case of (Nagabhushan -vs- The State of Karnataka) reported in (2021) 2 SCC (CR) 539.

It is further argued by Mr. Manna that the principles on which revisional Court can set aside a judgment and order of acquittal are now well settled and Hon'ble Supreme Court in the case of Ram Briksh Singh & Ors. -vs- Ambika Yadav & anr. recorded the said principle . I have perused both the judgments. In Ram Briksh Singh & Ors , reported in (2004) (7) SCC 665, Hon'ble Supreme Court held "

"The principles on which revisional court can set aside a judgment and order of acquittal passed in favour of the accused are well settled by catena of judgments . The difficulty , however, arises at times about the application of the said principles. It is true that there is a statutory prohibition

contained in sub-section (3) of Section 401 of Criminal Procedure Code from converting a finding of acquittal into one of conviction and what is prohibited cannot be done indirectly as well. The question, however, is has High Court indirectly done what is prohibited.

Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. More than half a century ago, in *D. Stephens v. Nosibolla* (1951 SCR 284+ AIR 1951 SC 196), this court held that revisional jurisdiction when it is invoked against an order of acquittal by a private complainant is not to be lightly exercised, it could be exercised only in exceptional cases to correct a manifest illegality or to prevent a gross miscarriage of justice and not to be ordinarily used merely for the reason that the trial court has misappropriated the evidence on record. In *K. Chinnaswamy Reddy v. State of Andhra Pradesh & anr.* (1963 (3) SCR 412 & AIR 1962 SC 1788) a note of caution was appended so that the High Court does not convert a finding of acquittal into one of conviction by the indirect method of ordering retrial when it

cannot directly convert a finding of acquittal into a finding of conviction in view of specific statutory prohibition. While noticing that it is not possible to lay down the criteria for determining exceptional cases which would cover all contingencies for exercise of revisional power, some cases by way illustration were mentioned wherein the High Court would be justified in interfering with the finding of acquittal in revision. The High Court would be justified to interfere where material evidence is overlooked by the trial Court."

It has become well settled principle of law by several judicial pronouncements that in an exceptional cases where there are compelling circumstances and the judgment passed by learned trial Court appears to be perverse then and then only provision of Section 401 sub-section 3 of Cr P C can be ignored. In the other judgment i.e. Nagabhusan (supra) the Hon'ble Supreme Court held:

" 5.2.2 When the findings of fact recorded by a Court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision , which reads as under :

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding

may also be said to be perverse if it is "against the weight of evidence ", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 3 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P. (2009) 10 SCC 636)."

5.2.3 It is further observed , after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1989) 2 SCC 10. that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

Here in this case though PW 2, PW3 and PW 4 Stated that the accused persons hurled bomb resulting into injury to all the brothers and sisters and mother of deceased Nibaran Mondal and they are getting support from oral testimony of PW 15 learned trial Court , however, refused to accept the said evidence on the ground that in course of investigation nothing came to know to suggest use of explosive substance. No report

was also produced before the learned trial Court to that effect so far Nibaran Mondal the deceased, is concerned, though there was no whisper from any of the prosecution witnesses about use of either any sharp cutting weapon or blunt weapon the Autopsy Surgeon PW 13 found abrasion on the outer aspect of right arm and wound at the right side of the frontal region of with fracture frontal bone. These injuries did not support the prosecution case that the death was caused due to bomb blast.

Under such circumstances, I do not find any reason to hold that the judgment impugned is perverse so as to interfere with the same . On the the basis of the evidence on record learned Court exercised discretion to extend the benefit of doubt to the accused persons and such decision cannot be said to be irrational or perverse.

The criminal revision is , thus , merits no consideration as is disposed of, however without costs.

Let a copy of the judgment be sent to the learned trial Court for information and necessary action.

All parties are to act on the server copy of this order duly downloaded.

Urgent certified copy, if applied therefor be made available upon compliance of requisite formalities.

(Siddhartha Roy Chowdhury, J.)

