

07.06.2022
Court No.42
Item No.41
sss

**CRR 954 of 2004
(With LCR)**

In Re.: An application for special leave to appeal under Section 401 read with Section 482 of the Code of Criminal Procedure 1973.

And

In the matter of : **Rana Ghosh and Anr.**

Vs.

The State

Mr. Prabir Majumder,
Mr. Snehansu Majumder.

... For the Petitioners.

In the instant Criminal Revision, judgment and order dated 24th March, 2004 passed by the learned Sessions Judge, Nadia in Criminal Appeal No. 1 of 2003 affirmed the order of conviction and sentence passed by the learned sub-divisional Judicial Magistrate, Krishnanagar in GR Case No. 148 of 1987 (TR No. 298 of 87) thereby convicting the accused for committing offence under Section 323/379/341 of the IPC and sentencing him to suffer rigorous imprisonment for 3 months for the offence under Section 323 of the IPC and also to suffer rigorous imprisonment for 6 months for the offence punishable under Section 379 of the IPC and also sentencing him to pay fine of Rs.500/- for the offence under Section 341 of the IPC.

Prosecution case in brief is that on 13th January, 1987 at about 4.00 P.M one Surjya Kanta Saha along with one Nemai Chandra Pramanick, Nikhil Pramanick and Nibaran Pramanick were returning to their house from Tehatta P.S. They were wrongfully restrained by the petitioners and one Mahadeb Ghosh on the road

and accused Rana assaulted Surjya Kanta on his head by an iron rod causing bleeding injury. Accused Mahadeb and Sukhen assaulted Surjya Kanta by lathi. Surjya Kanta raised hue and cry which attracted his daughter, namely, Anila Saha when he reached the place of occurrence she was assaulted by Sukhen with the help of a lathi. Local people assembled at the place of occurrence and saved the injured persons. A complaint was lodged against the petitioners at Tehatta P.S which gave rise to FIR Case No. 6 dated 13th January, 1987.

Police submitted charge sheet against the accused persons. The accused persons faced trial and finally they were convicted and sentenced in the manner as stated above. The said order of conviction and sentence was affirmed by the learned Sessions Judge, Nadia in Criminal Appeal No. 1 of 2003.

In the instant Criminal Revision, the learned Advocate for the petitioner submits that both the learned Courts below failed to appreciate the evidence on record. The learned Courts did not consider that the prosecution failed to examine any independent witness. Secondly, conviction was based on the testimony of the interested witnesses. It is the case of the de facto complainant that the petitioners allegedly committed theft of a bicycle but during investigation the Investigating Officer could not recover and seized the stolen bicycle. There are inherent infirmities in the evidence of the witnesses which the learned Courts below failed to consider. It is specifically stated by the de facto complainant that at the time of occurrence large number of local people assembled at the place of occurrence and they saved the injured persons from the hands of the

accused persons. However, no such local people was examined during trial of the case. Therefore, the impugned judgment is perverse and ought to be reversed under the revisional jurisdiction of this court.

Having heard the submission made by Mr. Majumder, learned Advocate for the petitioner, I like to record at the outset that the evidence on record was considered, appreciated and the charge was adjudicated upon on the basis of such evidence on record by the Trial Court as well as the First Court of appeal. At this stage, exercising the revisional jurisdiction, this court cannot re-appreciate the evidence on record and alter the concurrent offence of both the Courts below. It is not submitted by Mr. Majumder, learned Advocate for the petitioners that the impugned judgment was altogether perverse. On perusal of the impugned judgment, I do not find any perversity. It is not the law that the evidence of interested witnesses shall be discarded altogether. The principle of appreciation of evidence directs the court to take a cautious approach while scanning the evidence of interested and related witnesses. It is the duty of the court to separate the grains from the chaff. Both the courts below carefully scanned and weighed the evidence on record and came to a finding that the accused persons/petitioners had committed the offence for which they were charged. Therefore, I do not find any reason to interfere with the order of conviction passed by the Trial Court and affirmed by the learned Sessions Judge in Criminal Appeal No. 1 of 2003.

With regard to sentence, this court is of the view that the incident took place on 13th January, 1987. The Trial Court's

judgment was passed on 8th October, 2002. The said judgment was affirmed by the learned Sessions Judge on 24th March, 2004. More than 18 years have elapsed from the date of passing of the judgment by the First Appeal court. During this long period, the petitioners suffered much agony and trauma and contested the instant criminal revision. Considering such long pendency of the case, this court is of the view that no fruitful purpose will be served if the accused persons/petitioners are directed to suffer rigorous imprisonment for the offence punishable under Section 379 and 323 of the IPC. The petitioners are not habitual offenders. A long standing enmity was going on between the parties. The allegation against the petitioners is that they committed theft of some amount of musur pulses. For such offence, rigorous imprisonment does not seem to be proportionate to the crime.

For the reasons stated above, the order of sentence is modified in the following manner.

The petitioners are directed to pay a fine of Rs.500/- each in default to suffer simple imprisonment for 3 months for the offence under Section 379 of the IPC. The petitioners are further sentenced to pay fine of Rs.500/- each in default to suffer simple imprisonment for 3 months each for the offence under Section 323 of the IPC. The sentence of fine awarded by the learned SDJM for committing offence under Section 341 of the IPC stands affirmed.

The petitioners are directed to surrender before the Court of the learned Chief Judicial Magistrate at Krishnanagar within three weeks from the date of communication of the order to pay fine amount, in default to suffer imprisonment as directed by this court.

Let a copy of this order be sent to the Court of the learned Chief Judicial Magistrate, Krishnanagar for information and compliance by way of realization of fine amount in default sentence of imprisonment. The instant revision is thus disposed of on contest.

(Bibek Chaudhuri, J.)