

Form J(2)

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

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**I.A. No. CRAN 1 of 2008 (Old No. CRAN 167 of 2008)
in
CRR 1619 of 2007**

**Sandip Chitrakar @ Barka
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Dipanjan Chatterjee, Adv.,
Mr. Kalyan Kumar Bhattacharjee, Adv.,
Mr. Arun Kumar Ray, Adv.,
Mr. Subrata Biswas, Adv.,
Ms. Reshmi Khatun, Adv.**

For the State : Mr. Sandip Chakraborty, Adv.

**Heard &
Judgment on : 19.05.2022**

Bibek Chaudhuri, J.

The instant criminal revision is directed against the judgment and order dated 17th April, 2007 passed by the Learned Additional Sessions Judge, 8th Fast Track Court at Bichar Bhawan in Criminal

Appeal No. 32/2006, thereby affirming the judgment and order of conviction and sentence dated 27.02.2006 passed by the Learned Metropolitan Magistrate, 7th Court, Calcutta in connection with G. R. Case No. 764/2001.

The petitioner was convicted for committing the offence under Section 354 of the Indian Penal Code and sentence to suffer rigorous imprisonment for one year and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for one month. On the basis of a written complaint submitted by one Mamata Pal on 10th March, 2001 alleging, *inter alia*, that when she was washing her hands under a water tap situated in front of her house, an unknown person came to collect water from the said tap. Over collecting of water an altercation started between the *de facto* complainant and the said unknown person. In the meantime, the accused came to the spot engaged in altercation and amidst such altercation he assaulted her, pulled her hand and outraged her modesty tearing 'Blouse' worn by her. Police registered a case under Section 354 of the Indian Penal Code and after investigation submitted charge-sheet against the accused. In the charge-sheet, the Investigating Officer cited the *de facto* complainant and her two sisters as witnesses beside one John who was not examined during trial.

It is contended by the petitioner that the Learned Trial Court recorded an order of conviction under Section 354 of the Indian Penal Code against the appellant on the basis of the evidence adduced by the *de facto* complainant and her two sisters. According to the petitioner, all the three witnesses are interested witnesses though the *de facto* complainant admitted in her evidence that many local people assembled at the place at the time of occurrence, nobody resisted the accused from outraging modesty of the *de facto* complainant. The prosecution did not cite any of such local disinterested person from the said locality to adduce evidence in support of the prosecution. Therefore, the Learned Trial Judge acted illegally and with material irregularity in relying on the evidence of the interested witnesses.

It is further submitted by the Learned Advocate for the petitioner that the *de facto* complainant in her written complaint stated that the accused outraged modesty of the *de facto* complainant tearing her 'Blouse' but in the evidence she stated that the accused tore the upper portion of her 'Churidar' which she was wearing at the time of occurrence. P.W. 3, on the contrary, stated that the *de facto* complainant was wearing a 'Blouse' at the time of occurrence and the accused tore the said 'Blouse' and outraged her modesty. It appears from the evidence of P.W. 2 that she only stated that the accused pulled the clothes of her sister. The Investigating Officer did not seize

the wearing apparels. Therefore, there was no material before the Court to come to a finding that actually *de facto* complainant's modesty was outraged by the accused.

It is further submitted by the Learned Advocate for the petitioner that in order to establish a charge under Section 354 of the Indian Penal Code it is not necessary for the prosecution to prove culpable intention of the accused. In the instant case, there is absolutely no evidence to show the culpable intention of the accused. Accordingly, the impugned judgment cannot be sustained and the Learned Court of appeal also committed the same mistake while deciding the appeal filed by the petitioner against the judgment and order of conviction and sentence passed by the Learned Trial Court in G.R. 764/2001.

Learned Public Prosecutor-in-Charge, on the other hand, submits that the law of evidence does not say that the evidence of the related witnesses shall be discarded all together. The property of appreciation of evidence suggests that the Court must scrutinize the evidence-on-record very closely to find out as to whether there is any inherent discrepancy in the evidence of the related witnesses. If it is proved that they are interested in the outcome of the case or its final result, the evidence of the related witnesses are subject to close scrutiny.

In the instant case, it is submitted by the Learned Public Prosecutor-in-Charge there is absolutely no suggestion that there was enmity between the *de facto* complainant and the accused before the date of the alleged incident. It is also submitted by him that it is our common experience that generally the neighbours do not want to involve themselves in a criminal case and it is of utmost difficult for the Investigating Agency to collect independent witnesses especially in respect of the offences involving harassment of a woman. It is further submitted by him that the order of conviction and sentence was subject to scrutiny by the Court of appeal and the Learned Additional Sessions Judge, 8th Fast Track Court at Bichar Bhawan dismissed the appeal filed by the petitioner confirming the order of conviction and sentence passed against the accused.

At this stage it has come before this Court to decide as to whether concurrent finding of fact can be disturbed sitting in revisional jurisdiction by this Court or not. It is no longer *res integra* that in exercise of this revisional jurisdiction the Court ought not repreciate the evidence and disturb the concurrent finding of fact reached by two Courts below. It is needless to say that exercising a revisional jurisdiction of finding of fact may be called upon to question when such finding is absolutely perverse. The learned advocate for

the petitioner made any such submission that the finding of the Courts' below on the basis of evidence on record are absolutely perverse and should be outrightly dismissed. In **Chandrababu versus the State: (2015) 8 SCC 774**, the Apex Court had the occasion to consider the scope of revisional jurisdiction of the High Court. The Apex Court observed as follows:-

"We shall dwell upon the issue whether the High Court, in exercise of the revisional jurisdiction, should have adverted to the merits of the case in extenso as the factual matrix would reveal but the learned counsel had dwelt upon in Court on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted certain facts and deduced certain conclusions which, as to whether find, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously and clearly and the revisional jurisdiction should be exercised on a question of law. However, factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically the power is required to be exercised so that

justice is dumb and there is no abuse of power by the Court.”

In **State versus Yelamati: (2001) 10 SCC 728** the Supreme Court was pleased to set aside an order of the High Court where the High Court set aside the order of conviction on the ground of contradictions and discrepancies in evidence without pointing out to a single discrepancy or contradiction. The conclusion arrived at in such a manner without stating any reason thereafter resulted in improper exercise of revisional jurisdiction.

In the instant case the learned advocate for the petitioner has pointed out only one contradiction to the effect that the de facto complainant stated in her written complaint that the accused pulled and tore the blouse of the de facto complainant but in her evidence she stated that the accused tore the upper part of her 'Churidar' (Kamiz). Even assuming that such discrepancy is in the evidence of the prosecution. However, such discrepancy or contradiction does not render the ultimate decision of the Court of trial which was also affirmed by the First Court of Appeal because what is important is as to whether the accused pulled her wearing apparel or not. The evidence of the de facto complainant was corroborated by her sisters. No perverse enmity was suggested against the accused. Under such circumstances, the learned trial Judge came to a conclusion that the

accused is liable to be convicted on finding of fact. The said fact was affirmed by the First Court of Appeal. The impugned order cannot be said to be perverse.

Therefore, this Court does not have the authority in exercising a revisional jurisdiction to come to an alternative finding of fact involved in this case.

For the reasons stated above, I do not find any ground to interfere with the judgment passed by the learned Court of Appeal affirming the judgment and order of conviction and sentence passed by the trial Court.

The instant revision is liable to be dismissed and accordingly the same is **dismissed** on contest, however, without costs.

With regard to sentence, this Court is of the view that during trial or in appeal it has not been proved that the accused is a habitual offender or is involved in some offence. The incident took place over collection of water from a common water tap. Such type of incident is very common in the city of Kolkata where people have to involve in altercation, quarrel, jostling and sometimes free fighting amongst themselves to collect water. Considering the fact that this is the first offence committed by the petitioner, in all fitness of the matter this Court is of the view that for such offence the accused should be kept

under the custody of Probation Officer under the provisions of the Probation of Offenders Act, 1958.

Therefore, in exercise of the power conferred under Section 4 of the Probation of Offenders Act, the petitioner be released on probation of good conduct for a period of one year.

The petitioner is directed to surrender before the trial Court and the trial Court shall place the petitioner under the custody of the Probation Officer for a period of one year. The Probation Officer shall be directed to file quarterly report as to the good conduct of the convict and on consideration of the reports of the Probation Officer, the trial Judge is at liberty to release the accused after the expiry of the said period of probation of one year.

Let a copy of this order be sent to the Court below immediately for information and compliance.

The server copy of this order duly countersigned by the Assistant Court Officer of this Court be handed over to the learned advocate for the petitioner for his compliance.

(Bibek Chaudhuri, J.)