

01.02.2023
Item No. 01
BR

CRR 2524 of 2008

In the matter of: Sisir Kumar Saha & Ors.

Mr. Sandipan Ganguly, Sr. Advocate,
Mr. D. Chatterjee for the petitioner

Mr. Arijit Ganguly,
Ms. Sujata Das for the State

This application under Section 401 /482 of the Criminal Procedure Code is the expression of displeasure of the petitioners over the judgment passed by learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan in Criminal Revision No. 9 of 2008, thereby affirming the judgment and order of conviction as well as sentence passed by learned Metropolitan Magistrate, 15th Court in GR Case No. 1204 of 1996.

Briefly stated on 29th July, 1996 at about 6.30 a.m. Smt. Rita Saha opened the door of her room and the accused person started assaulting her with fist and blows and abused her in filthy language. Having found her sister being assaulted, Sumita Saha, sister of Smt. Rita Saha, and her mother intervened and both of them were also assaulted by the accused persons. They went to Marawari Relief Society Hospital to manage the injuries they sustained being assaulted by the accused persons. Police was also informed. Pursuant to the information given to police Jorabagan P.S. Case No.111 dated

29th July, 1996 was registered. Police took up investigation which culminated into submission of charge sheet. The accused persons stood trial, expressing their innocence while they were examined under Section 251 of the Cr PC. Learned trial Court having considered the evidence, both oral and documentary, was pleased to hold that the accused persons had committed offence within the meaning of Section 323/114 of the Indian Penal Code and recorded an order of conviction under Section 255 (2) of Cr P C, sentencing the accused persons to suffer simple imprisonment for one month each and also to pay a fine of Rs. 200/- with a default clause. The petitioners made an unsuccessful attempt by preferring a criminal revision before the learned 6th Fast Track Court of Additional Sessions Judge, Bichar Bhavan.

Assailing the impugned judgment, Mr. Sandipan Ganguly, learned senior counsel submits that the impugned judgment is nothing but manifestation of misreading of evidence. Learned trial Court failed to appreciate the fact that the prosecution did not examine the husband of the victim who was in the house. The material witness, thus, was withheld by the prosecution for which learned trial Court ought to have drawn adverse presumption. It is further submitted that the victim and the accused persons are staying in the same house. Over the issue of keeping the stool on the passage the incident to be popped up. The only flaw on the part of the accused persons was that they wanted the stool to be removed from the

passage, in view of the direction of Hon'ble High Court upon the parties not to obstruct the passage. The complainant and her sister did not agree to listen to the accused persons and the accused persons informed the police station about such incident. Learned trial Court ought to have considered this factum that police was informed about the unruly behaviour of the de facto complainant and her family members before the de facto complainant informed police. The injuries found by the Medical Officer of Marwari Relief Society Hospital were sustained by the victim because of push and pull that took place at the time of the incident among the parties involved in dispute. Mr. Ganguly further submits that the incident took place in the year 1996 and the accused persons over the period of nearly 27 years have become senior citizens. They have been carrying the anxiety of this criminal proceeding for a considerable period of time. Taking into consideration all such circumstances, an order of acquittal may be recorded by the Court reversing the order passed by learned trial Court affirmed by learned 6th Fast Track Court, Bichar Bhavan, Calcutta. True it is that the accused persons and the victim are family members, and precise, they cousins and aunt. Considering the evidence of victim as well as the de facto complainant, I am of the view that they were at the receiving end on the date of incident. At least there is nothing on record to show that the victims were the aggressors. They have stood the test of cross-examination and they are getting support from the medical

report. Therefore, I do not find any cogent reason to interfere with the order of conviction. However, keeping in mind the nature of offence, in absence of any material to suggest that the parties are still maintaining an inimical relationship, and considering the social status as well as agony of the petitioners who have been shouldering the anxiety of the criminal proceeding for more than 25 years, I am inclined to interfere with the sentencing part. In my humble opinion ends of justice would be met if the petitioners are sentenced to pay fine of Rs. 5,000/- each instead of serving out sentence of one month which I accordingly do.

Ms. Sujata Das, learned counsel representing for the State with all fairness submits that considering the age of the lis and age of the petitioners as well sentence imposed by learned trial Court may be altered to the sentence of fine instead of imprisonment. If fine is realised, Rs. 3000/- out of Rs. 5000/- is to be given to the victims as compensation.

With this observation the criminal revision is disposed of.

Copy of this order be sent down to the learned trial Court for information and necessary action.

Urgent certified copy, if applied therefor, be supplied upon compliance of usual formalities.

(Siddhartha Roy Chowdhury, J.)