

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. -3686 of 2018****IN THE MATTER OF****Md. Mahfuj Alam @ Md. Maifuz Alam****Vs.****The State of West Bengal & Ors.**

**For the petitioner : Mr. Sabir Ahmed, Adv.,
Mr. Abfur Rakib, Adv.**

**For the State : Mr. Prasun Kumar Dutta, Adv.,
Md. Kutubuddin, Adv.,
Mr. Santanu Deb Roy, Adv.**

Judgment on : 20.01.2023

Subhendu Samanta, J.

This is an application u/s 482 read with section 401 of the Code of Criminal Procedure against a judgment and order dated November 22, 2018 passed by the learned Additional Sessions Judge, 1st court Sealdah, District South 24 Parganas in connection with Criminal Appeal No. 33 of 2018 arising out of a Judgment and Order dated May 16th 2018 passed by Learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas in connection with GR Case No. 71 of 2016 u/s 324/114 of the IPC.

The brief fact of the instant criminal revision is that the present petitioner being the de facto complainant has lodged one written complaint against the opposite party Nos. 2, 3 and 4 with the Officer in Charge Tangra, Police station on March 03, 2016 thereby alleging the commission of offence punishable u/s 324/114 of IPC. On the basis of which Tangra Police Station Case No. 63 of 2016 dated 3rd March, 2016 was started. The written complaint (FIR) contended that on 03.03.2016 at about 10.30 a.m. the tenant of petitioner namely Md. Islam (O.P. 2), Md. Ashiq (O.P. 3) and Md. Sadeb Khan (O.P. 4) had been installing one door at the common passage and on that issue a quarrel had taken place and suddenly O.P. has assaulted petitioner with iron hammer and he sustained bodily injury on various part of his body and thereafter he was taken to N.R.S Hospital for treatment.

After completion of investigation the charge sheet has been submitted against the opposite parties. The trial was conducted by the Learned ACJM, Sealdah, wherein 08 witnesses were examined and several documents were exhibited during trial. After completion of trial Learned ACJM, passed his judgment on May 16, 2018 with a finding that the necessary ingredients of offence u/s 324/114 of IPC are not proved and the accused persons (OPs) were acquitted from their charges.

Being aggrieved by the said judgment the petitioner preferred an appeal before the Learned Additional Sessions Judge, Sealdah, which was registered as Criminal Appeal No. 33 of 2018. After hearing the parties the Learned Additional Sessions Judge, Sealdah passed the impugned judgment and thereby dismissed the appeal and affirmed the judgment and order passed by the Learned ACJM, Sealdah.

Hence this revision.

Learned Advocate appearing for the petitioner submitted before this court that Learned Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. The statement of PWs was not specifically scanned and considered by the Learned Judge,

for which the order of acquittal was passed. He further pointed out that the fact of assault inflicted by the present OP 2 to 4 has been sufficiently proved by the PWs. It has also been proved before the learned Magistrate that petitioner sustained bodily injury. The fact of FIR has sufficiently corroborated by the oral evidence of PWs there are no reason to disbelieve the fact of the FIR case instead of which the impugned judgment passed by both the Learned Courts are palpably erroneous. During the examination of the accused persons (Ops) u/s 313 Cr.P.C before the Learned Magistrate, they failed to show any satisfactory explanation regarding their involvement in the alleged incident thus the fact of the FIR cannot be disbelieved. The Learned Sessions Judge has failed to overview the evidences adduced before the Learned ACJM, Sealdah and passed the impugned judgment in a slipshod manner. He further argued that the order of acquittal passed by Learned ACJM, Sealdah and order of appeal passed by the Learned Additional Sessions Judge, affirming the order of acquittal is palpably illegal and liable to be set aside.

Learned Advocate appearing on behalf of the State submits that the impugned order passed by the Learned Sessions Judge suffers no illegality or impropriety. He further argued that there is no scope by this revisional court to hear the matters which can only heard at second appeal. He again argued that the Learned ACJM, Sealdah, as well as the Learned Additional Sessions Judge, Sealdah, has passed the impugned order with proper perspective. So, there is no scope to interfere.

Heard, the learned Advocates perused the materials on record also perused the evidences of PWs which was annexed along with petition.

During the course of argument, Learned Advocate appearing for the petitioner cited some decision in support of his contention. They are **2007 SCC ONLINE CAL 478,(2008) 12 SCC 173 and (2021) 9 SCC 191.**

Paragraph 14,21, 22 of the judgment of our Hon'ble Court reported in **2007 SCC ONLINE CAL 478,** has formulated the scope of revisional court

regarding the interference of any judgment passed by the trial court. Para 14,21, 22 are set out as follows-

14. In the ruling reported in 2002 Calcutta Criminal Law Reporter(SC) at page 643 it has been held that the object of the revisional jurisdiction as envisaged under Section 401 was to confer upon Superior Criminal Courts a kind of paternal and supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order or on the other hand in some underserved hardship to individuals. The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If, however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the court could interfere in the interests of justice. Where the Court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice, interference cannot be had in exercise of revisional jurisdiction. It was further held that in the case that power under Section 401 Cr.P.C. is not to be lightly exercised but only in

21. *When the best available evidence is withheld, there is legal duty of the presiding Officer of the Court of his own, independent of the parties, to take an active role in the proceeding to find out the truth and administer justice. In a situation like this it is the duty of the Court to discharge its statutory functions whether discretionary or obligatory according to law in dispensing justice. It must be borne in mind that in order to enable the Court to find out the truth and arrive at a just decision the salutary provisions of Section 311 of the Code are enacted and if the judgment is rendered on incomplete and inconclusive presentation of facts, the ends of justice would be defeated.*

22. *The Court has to take a participatory role in a trial and Section 311 of the Code and Section 165 of the Indian Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials to playing an active role in the evidence collecting process. The purpose of the trial is to find out the truth and prevent miscarriage of justice. The court cannot show indifference or adopt an attitude of total aloofness where there is serious dereliction of duty on the part of the prosecution agency to prevent miscarriage of justice and find out the truth fair trial is essentially needed and for that the power conferred by Section 311 of the Code is to be exercised by the Court when the situation so demands.*

The Hon'ble Supreme Court in **(2008) 12 SCC 1730** has pointed out that the non-examination of Public Witnesses by the differences given rise to an adverse interference against the prosecution and there is no rule to

disbelieve the testimony of relative of the victims if it is found they are otherwise trustworthy. Para 7 of the judgment of Hon'ble Apex Court [(2008) 12 SCC 173] is set out herein-

7. We are not impressed with the argument. Though it is true that the incident having taken place near the market around 6 p.m. on 17-7-1988, the prosecution should have attempted to secure public witnesses who had witnessed the incident, but at the same time one cannot lose sight of the ground realities that the members of the public are generally insensitive and reluctant to come forward to report and depose about the crime even though it is committed in their presence. In our opinion, even otherwise it will be erroneous to lay down as a rule of universal application that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of a relative of the victim, which is otherwise creditworthy, cannot be relied upon unless corroborated by public witnesses.

The judgment of Hon'ble Supreme Court reported in (2021) 9 SCC 191 has formulated that *the weight of evidence of injured witnesses cannot be discarded. The deposition of injured witness should be relied upon unless there are strong rounds for rejection of his evidence on basis of major contradictions and discrepancies.*

I have considered the judgments of Hon'ble Apex court as well as the scope of this revisional court in considering the final judgment of trial court and 1st Appellate Court to ascertain their views whether they are illegal or improper in the eye of law.

In passing the impugned judgment, Learned ACJM, Sealdah, has scanned evidences of PWs including the evidence of the petitioner (PW1, injured).

In scanning the evidence of PW 1 he is a view that the evidence of petitioner is not at all reliable which suffer material contradictions. He is also a view with the written complaint does not reflect to any particular person to be assailant and the evidence of petitioner is not trustworthy. Perused the PWs also perused the FIR.

The petitioner in his deposition stated the name of Md. Islam to be the sole assailant. The other eye witnesses i.e. PW 2 and PW 5 including the witnesses who reached soon after the incident, that is PW 3, PW 4 stated the name of Md. Ashiq to be the assailant.

The Dr. who examined as PW 7 deposed that one blunt injury on the back side of the head of victim is found thus it is crystal clear that the single blow has been inflicted upon the victim (petitioner). The evidence of petitioner regarding his injury, is weighty and trustworthy but his evidence is not corroborated by the evidences of other PWs. It is very unsafe in this case to hold that who is the actual assailant. In that score benefit of doubt is always with the accused persons thus I find, the findings of Learned ACJM Sealdah regarding the fact that the evidence of PW 1 is not trustworthy, is justifiable.

Learned Sessions Judge in passing his impugned judgment is of view that the petitioner (injured) himself destroyed his case. In the facts and circumstances of this case if any one goes to believe the evidence of PW 1 the other evidences of PW 2 to PW 6 hold to be disbelievable, on the other hand if the evidences of PW 2 to PW 6 is taken to be correct; then the statement of the petitioner before the Court during his deposition appears to be faulty.

Considering the entire circumstances I find the charge of offence punishable u/s 324/114 against the present opposite party can only be

proved if there is any trustworthy evidence before the Court of law. The petitioner may have suffered bodily pain due to the incident but it is very much uncertain who is the actual assailant of this case. This is the cardinal principle of law that if there are two views are possible then the view supporting the defence would always be acceptable.

Considering the entire circumstances and considering the materials on record I find no infirmity in the impugned order passed by the Learned Court below. There is no scope to interfere with the impugned order hence, the criminal revision is liable to be dismissed.

CRR is dismissed.

Pending connected CRAN applications if any, is also disposed.

Any order of stay passed by this Court during the continuation of the CRR is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)