

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CRR 777 of 2000

**Santu Majhi
Vs.
The State of West Bengal**

For the petitioner : Mr. Malay Bhattacharyya

For the State : Ms. Avishek Sinha

Heard on : 20.08.2024

Judgement on : 20.08.2024

PARTHA SARATHI SEN, J.:

1. The legality, propriety and correctness of the judgment dated 15.12.1999 as passed in Criminal Appeal No. 3 of 1998 by the learned Additional Sessions Judge, 3rd Court, Bankura is the subject matter of the instant revisional application.
2. By the impugned judgment, the first appellate Court while dismissing the said appeal, affirmed the judgment dated 31.01.1998 as passed by the Judicial Magistrate, 2nd Court

Bishnupur, Bankura whereby and whereunder the said trial Court found the present revisionist guilty under Sections 354/326 IPC and thus sentenced him to suffer S.I. for six months for the offence punishable under Section 354 IPC and the accused is further sentenced to suffer S.I. for one year for the offence punishable under Section 326 IPC.

3. It is pertinent to mention herein that while disposing the said appeal and while passing the impugned judgment, the first appellate Court not only affirmed the judgment which was impugned before him and at the same time, he enhanced the sentence of the convict to the extent that the convict is to suffer R.I. for one year and to pay fine of Rs. 2,000/- i/d to suffer S.I. for two months for the offence committed by him under Section 354 IPC. The first appellate Court further enhanced the sentence of the convict to the extent to suffer R.I. for three years and to pay fine of Rs. 3,000/- i/d to suffer S.I. for three months for the offence committed by him under Section 326 IPC.
4. In course of his argument, Mr. Bhattacharyya, learned advocate for the revisionist at the very outset draws attention of this Court to the provision of Section 386 of the Code of Criminal Procedure which deals with the powers of the appellate Court. It is argued by Mr. Bhattacharyya, that under Section 386(b) read with two provisos of the Cr.P.C., the appellate Court is not entitled to

enhance the punishment without serving any notice upon the appellant and without giving any opportunity of showing cause against such enhancement.

5. It is submitted by Mr. Bhattacharyya that on perusal of the impugned judgment as passed by the learned first appellate Court, it reveals that neither any notice was served by the first appellate Court for the enhancement of the punishment nor the appellant/convict was given sufficient opportunity of showing cause against such enhancement and in not doing so serious miscarriage of justice has occurred for which this Court may exercise its power under Section 397 read with Section 401 Cr.P.C.
6. It is further argued by Mr. Bhattacharyya that while disposing Criminal Appeal No. 3 of 1998, learned first appellate Court failed to consider that before the learned trial Court, the prosecution witnesses have miserably failed to bring home the charges as against the accused since the said first appellate Court failed to hold that in absence of any corroborative independent piece of evidence, the evidence of P.W. 2 ought not to be believed by the trial Court. It is further argued by Mr. Bhattacharyya that the first appellate Court has failed to appreciate that the alleged eyewitnesses to the alleged incident as has been mentioned in the

deposition of P.W.s 1 and 2 did not support the case of the prosecution.

7. It is thus submitted that for non-consideration of the material evidence which are in favour of the accused person, a gross illegality and/or irregularity occurred which hits the very root of the case. Mr. Bhattacharyya thus submits before this Court that it is a fit case for allowing the instant revisional application thereby setting aside both the impugned judgment as well as the judgment as passed by the learned trial Court.
8. Per contra, Mr. Sinha, learned advocate for the State submits before this Court that being a revisional Court, this Court is not expected to reappraise the evidence of the prosecution witnesses all over again unless it has been shown that in the impugned judgment, the first appellate Court has failed to consider some material evidence which he ought to have considered as well as the first appellate Court was persuaded with some irrelevant materials having got no connection with the finding of the guilt of the accused.
9. Mr. Sinha, however, in his usual fairness agrees that before enhancing sentence, the appellate Court ought to have issued notice to the appellants and ought to have given a chance of showing case against such enhancement. Mr. Sinha thus submits

that the instant revisional application may be disposed of by keeping the sentence as awarded by the learned trial Court intact.

10. On perusal of the entire materials as placed before this Court and after giving due consideration over the submissions of the learned advocates for the contending parties, it appears to this Court that on receipt of a written complaint from the informant (P.W. 1), the concerned Police Station started a P.S. Case and on conclusion of investigation, charge-sheet was submitted against the accused and the learned trial Court framed charges under Section 326/354 IPC against the accused. While passing the judgment dated 31.01.1998, the learned trial Court found the evidence of P.W. 1 (informant) and the evidence of P.W. 2 (the victim) trustworthy.
11. The said trial Court further noticed that the evidence of P.W. 8 who is the doctor and who treated the victim immediately after the incident also supports the evidence of the victim and the injury report prepared by him immediately after the occurrence of the alleged incident also supports the versions of the P.W. 1 and P.W. 2. The learned trial Court also noticed that the injuries as found by P.W. 8 in the person of the victim (P.W. 2) occurred on account of the alleged assault by the accused as has been described by P.W. 2 in her testimony and the said trial Court also noticed that

at the earliest opportunity the name of the assailant was taken by the victim (P.W. 2) before P.W. 8.

12. This Court also finds that while passing the judgment dated 31.01.1998, learned trial Court correctly applied the settled principle of evaluating the evidence of an injured witness and at the same time assigned cogent reason for not accepting evidence of some prosecution witnesses who according to the prosecution were the eyewitnesses to the incident but subsequently, turned hostile.
13. On perusal of the impugned judgment as passed by the first appellate court it appears that the first appellate court duly appreciated the oral evidence of the of the prosecution witnesses vis-à-vis the exhibited documents. The first appellate court also noticed that there is no illegality and/or irregularity on the part of the trial court in appreciation of the evidence and the first appellate court also noticed that learned trial court has correctly reached to a conclusion with regard to the alleged guilt of the accused.
14. On comparative study of the judgment dated 31.08.1998 as passed by the learned trial court as well as the impugned judgment before this Court it does not transpire that the appreciation of evidence as has been made by the trial court as well as by the first appellate court are not in accordance with law.

It further does not transpire to this Court that both the trial court as well as the first appellate court reached at a conclusion with regard to the alleged guilt of the accused persons on the basis of some materials not available in the record but both the courts below have concurred that the prosecution witnesses laid sufficient evidence that on the fateful night the modesty of the P.W. 2 was violated at the instance of the present revisionist and the accused is the assailant who caused injury to the person of the victim and the nature of injury as noticed by the learned trial court as available in the Exhibit – 4 duly attracts the provision of Section 326 IPC.

15. In absence of any illegality and irregularity in the finding of the both the trial court and the first appellate court this Court finds no cogent reason to interfere with two such concurring judgments. It also does not transpire to this Court that in arriving to the conclusion of the guilt of the accused under Sections 326/354 IPC both the trial court as well as the first appellate court caused any injustice to the present revisionist resulting from some violation of fundamental principle of law regarding appreciation of evidence.
16. However, as rightly pointed out by Mr. Bhattacharya, learned advocate for the revisionist as well as by Mr. Sinha, learned advocate for the State that the first appellate court prior to passing an enhanced sentence ought to have given notice to the

appellant before him and the appellant should have been given adequate opportunity to show-cause as to why the enhanced sentence would not be imposed upon him.

17. This Court thus finds that while disposing the said appeal the first appellate court did not adhere to the provision of Section 386 Cr.P.C. and thus the sentence as awarded by the first appellate court cannot be held to be justified and the same is required to be set aside.
18. In view of the discussion made hereinabove, the instant revisional application succeeds in-part.
19. Consequently, the judgment and order of sentence dated 31.01.1998 as passed by learned Judicial Magistrate, 2nd Court, Bishnupur in G.R. case no. 10 of 1994 is hereby affirmed.
20. Consequently, the enhanced punishment as awarded by the learned Additional Sessions Judge, 3rd Court, Bankura as passed in Criminal Appeal no. 3 of 1998 is hereby quashed.
21. Consequently, the impugned judgment dated 15.12.1999 as passed in Criminal Appeal No. 3 of 1998 as passed by the learned Additional Sessions Judge, 3rd Court, Bankura is modified to the extent indicated above.
22. Consequently, the order of bail and the bail bond as furnished by the present revisionist stands hereby cancelled and is recalled.

23. The revisionist, Santu Majhi is directed to surrender before the learned trial court with 45 days from the date of passing of this judgment before the learned trial court to serve the remaining part of his sentence, failing which learned trial court is directed to issue non-bailable warrant of arrest against the present revisionist for his apprehension.
24. Accordingly, the revisional application being **CRR 777 of 2000** is disposed of.
25. Department is directed to send down the L.C.R. along with a copy of this judgment to the learned trial court forthwith.
26. Department is further directed to forward a copy of this judgment to the first appellate court for his record.
27. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)