

02.08.2024
item No.16
BPG

CRA 208 of 2019

**Gani Sk. & Anr.
-Versus-
The State of West Bengal**

Mr. Apalak Basu.
Ms. Sanghamitra Mridha
.... For the Appellants.

Mr. Debasish Roy, Id. PP,
Ms. Faria Hossain
Ms. Baisali Basu
....For the State.

The present appeal has been preferred against the judgment and order of conviction and sentence dated 19.09.2018 and 20.09.2018 passed by the learned Additional District and Sessions Judge, 3rd Court, Tamluk, Purba Medinipur, in Sessions Trial no. 01(11)/2016 wherein the learned trial court was pleased to convict the appellants namely, Gani Sk. & Subhankar Mondal under Sections 328/394/397/34 of Indian Penal Code and sentenced as follows:

“So, for ends of justice, in the instant case in my considered view would be sufficiently met if the convicted accused, for his conviction u/s. 328 of IPC is sentenced to suffer rigorous imprisonment for 5(five) years and shall also pay a fine of Rs.5000/-.

for his conviction u/s. 394 of IPC is sentenced to suffer rigorous imprisonment for 5(five) years and shall also pay a fine of Rs5000/-.

for his conviction u/s. 397 of IPC is sentenced to suffer rigorous imprisonment for 7(seven) years”.

Without going into the details of the case and the order relating to finding of guilt, this Court on perusal of the paper book

is of the opinion that the examination of both the accused persons under Sections 313 of the Cr.P.C was not in compliance with the intention of the legislature as the circumstances which were confronted to the accused persons in the form of six questions cannot be held to be as satisfying the conditions of “all incriminating circumstances appearing against the accused” were made available to them for answering.

Thus, as there has been non-compliance of Section 313 of the Cr.P.C., I do not intend to enter into the merits of the case as well as the evidence which has been placed by the prosecution in course of trial. However, on this issue there cannot be an acquittal and accordingly the present case is remanded back to the learned trial Court to be commenced from the stage of section 313 of Cr.P.C.

Consequently, the judgement and order of conviction and sentence dated 19.09.2018 and 20.09.2018 is set aside.

Learned trial court will in respect of the evidence of each of the witnesses confront the accused persons with the incriminating materials appearing against them while recording the examination under section 313 of Cr.P.C. and thereafter deliver its judgment.

The appellants are on bail. They will continue on the same bail till 15th September, 2024. In case the appellants do not appear before the learned Additional District and Sessions Judge, 3rd Court, Purba Medinapur, within the aforesaid time frame, the trial court would initially issueailable warrant and fix 7 days’ time and thereafter proceed in a week’s gap for exhausting harsher process of law.

The learned trial court is directed that efforts be taken to conclude the examination under Section 313 of Cr.P.C. within a period of 30 days from the date of appearance of the accused persons and thereafter within a month deliver its verdict in respect of the case being Sessions Trial no. 01(11)2016.

With the aforesaid observations CRA 208 of 2019 is disposed.

Department is directed to send back the Lower Court Records immediately to the learned trial court. A copy of the judgment be forwarded to the learned trial court for immediate action.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)