

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction**

Present :

The Hon'ble Justice Partha Sarathi Sen

CRR 1601 of 2006

Nidam Chandra Roy & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioner : Ms. D.P. Mitra

For the State : Mr. Avishek Sinha

Heard & Judgment on : 13th August, 2024.

Partha Sarathi Sen, J.

1. The legality, propriety and the correctness of the judgement dated 29.04.2006 as passed by the learned Additional Sessions Judge, Fast Track Court, Dinhata in Criminal Appeal no. 18 of 2005 is the subject matter of the instant criminal revisional application. By the impugned Judgement the said First Appellate Court affirmed the judgement dated 16.08.2005 as passed by learned Judicial Magistrate, Dinhata in G.R. case no. 149 of 1996 whereby and whereunder the accused persons namely; Nidam Ch. Roy, Sridam Cr. Roy, Rabi Ray, Ubash Barman, Srikanta Roy, Swapan Roy and Gopal Chandra Roy were convicted for the offence punishable under Sections 143/448/354 IPC and the said convicted persons are thus sentenced to pay a fine of Rs. 500/- each in default to suffer S.I. for 15 days for the

offence committed by them under Section 143 IPC. The said convicts were further sentenced to pay a fine of Rs. 500/- each in default to suffer S.I. for 15 days for the offence committed by them under Section 448 IPC and further the said convict were further sentenced to suffer R.I. for six months and also to pay fine of Rs. 100 in default to suffer simple imprisonment 30 days for the offence committed by them under Section 354 IPC.

2. For effective adjudication of the instant revisional application the manner in which the present revisionists came to be prosecuted before the learned Trial Court is required to be discussed in a nut shell.

3. One Nishi Kanta Roy, lodged a written complainant dated 4.5.1996 with the Officer-in-charge of Sitai Police Station alleging that on 3.5.1996 at about 2.30 A.M. the present revisionists after forming an unlawful assembly and being armed with deadly weapons came to his house in search of his son Hemanta and thereafter forcibly entered into his house breaking the doors and windows and at that time they outraged the modesty of his wife and the two daughters of the informant. They used filthy languages, assaulted them and threatened to murder his son Hemanta.

4. On the basis of such written complaint the said police station started a P.S. case. Investigation was taken up and on conclusion of the same charge sheet was submitted under Sections 143/427/354/325/506 against the accused persons.

5. After submission of charge sheet learned Trial Court after taking cognizance examined the accused persons under Section 251 of the Code of Criminal Procedure and when the substance of accusation was read over and explained to the

accused persons they pleaded their innocence and claimed to be tried.

6. Trial Court records reveals that in order to bring home the accusations, the prosecution has examined ten witnesses in all and some documents have been exhibited on their behalf. Before the learned Trial Court the defence has not adduced any evidence but from the trend on cross-examination of the defence and from the answers as given by the accused persons in their respective examinations under Section 313 Cr.P.C., it reveals the defence case is based on clear denial and false implication.

7. As discussed(supra) learned Trial Court on appreciation of the evidence of the prosecution witnesses, both oral and documentary came to a finding with regard to guilt of the accused persons under Sections 143/448/354 IPC and awarded punishment to the convicts as discussed hereinabove.

8. The First Appellate Court on appreciation of the entire materials as placed before him found no justification to interfere with the order impugned before him and thus affirmed the said order, giving rise to the present revisional application.

9. Ms. Mitra, learned Counsel for the revisionist at the outset draws attention of the Court to the evidence of the prosecution witnesses as the recorded by the Trial Court. It is submitted that both the learned Trial Court as well as First Appellate Court had failed to appreciate the evidence of the prosecution witness in its proper prospective and therefore a series of miscarriage of justice occurred for which this Court may exercise its power of revision under Section 397 read

with Section 401 Cr.P.C. It is further submitted by Ms. Mitra, learned Counsel for the revisionist that the prosecution witnesses have adduced evidence with regard to the alleged trespass by breaking upon the doors and windows of the house of the informant but in course of investigation no such seizure took place which has been overlooked by the Trial Court as well as by the First Appellate Court causing serious illegality in arriving to the finding of the alleged guilt of the accused persons. It is further submitted Ms. Mitra, learned Counsel for the revisionist that from the materials as available from Trial Court records it reveals that in a case under Section 302 IPC the present accused persons have been acquitted which allegedly arose in the same series of transaction which both the Court below have also overlooked. It is thus submitted it is fit case for allowing the instant revisional application.

10. Per contra Mr. Sinha, learned Counsel for the State submits before this Court that there is little scope to interfere with the two concurrent judgements as passed by the learned Trial Court as well as by the learned Appellate Court with regard to the guilt of the accused persons while sitting in a Court of revision. Mr. Sinha, learned Counsel for the State in his usual fairness submits before this Court that being a revisional Court this Court is not supposed to re-appreciate the evidence as recorded by the learned Trial Court unless it is shown that the appreciation evidence by the Trial Court as well as by the First Appellate Court is such which is contrary to the settled principles of law and/or is based on non-consideration of the available materials in the Trial Court record.

11. This Court has meticulously gone through entire materials of the learned Trial Court as well as the First Appellate Court. This Court has perused the evidence of the prosecution witnesses and the judgements as passed by the Trial Court as well as First Appellate Court.

12. It appears to this Court that while writing the judgement dated 16.8.2005 learned Trial Court rightly found that so far as the accusations under Section 143/448 IPC are concerned the evidence of the prosecution witnesses are very much consistent. Learned Trial Court also noticed that apart from the alleged victims of the alleged incident (PW -1,2 and 3), the other prosecution witnesses namely; P.W.-4, who is the son of the P.W-1 and P.W.-5 and 6 who happened to be co-villagers of the victims duly supported the case of the prosecution so far as the accusation under Sections 143/448 IPC are concerned. In absence of any illegality and/or irregularity in appreciation of such evidence as has been done by the Trial Court and as has been affirmed by the First Appellate Court, this Court finds no reason to interfere with the finding that the present revisionist are guilty of the offence under Sections 143/448 IPC,

13. So far as the alleged offence under Section 354 IPC is concerned this Court propose to look to Section 354 IPC and the same is reproduced hereunder in verbatim :-

"354. Assault or criminal force to woman with intent to outrage her modesty - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one

year but which may extend to five years, and shall also be liable to fine."

14. Keeping in mind the afore-mentioned legislative prohibition If I look to the evidence of the P.W.-1,2 and 3 as recorded by the learned Trial Court it appears that the versions of the aforesaid three prosecution witnesses vary from each other inasmuch as P.W-1 in her examination-in-chief stated that the accused persons on the relevant day and hour pulled both her two daughters Madhavi and Archana. From the evidence of P.W.-2 however it reveals that it is the version of P.W.2, that on the fateful night the accused pulled the hands of herself and her sister.

15. P.W.3 being the another alleged victim stated that the accused persons made an attempt to pull her and her sister (P.W.2) out of their house. So far as the independent witnesses being P.W.5 and P.W.6 are concerned, P.W.5 says the accused persons pulled out Madhabi out of her house forcibly. P.W.6 however, said that accused persons tried to take the daughters of the informant out of their house.

16. It is pertinent to note that the learned trial court as well as the first appellate court not only overlooked the aforementioned contradictions and at the same time the said courts fail to come to a finding as to how and in what way the modesty of victims of the alleged incident was outraged at the instance of the present revisionist on the fateful night and hour. This Court finds no whisper in the evidence of the prosecution witnesses to the effect that the alleged act of the accused persons tantamounts to interference with their privacy or modesty which attracts the penal provision of Section 354 IPC.

17. In view of such, this Court considers that the appreciation of evidence so far as the accusation under Section 354 IPC as allegedly committed by the accused persons is not proper and in the event the same is not interfered with that will cause gross mis-carriage of justice.

18. Accordingly, the instant revisional application succeeds in part.

19. The present revisionists are thus found not guilty under Section 354 IPC in connection with GR Case No. 149 of 1996 as disposed of by the learned Judicial Magistrate, Dinhata. However, their sentence under Section 143/448 IPC remain unaltered.

20. The present revisionist are, thus, directed to deposit the fine amount as awarded by the learned trial court for the offence committed by them under Section 143/448 IPC within 45 days from today after surrendering before the learned trial court failing which learned trial court is hereby directed to issue non-bailable warrant of arrest against the present revisionists for their apprehension and for taking them into custody to suffer default sentences as awarded by the learned trial court.

21. Department is directed to send down the LCR along with a copy of the judgment to the learned trial court forthwith. Department is further directed to forward a copy of the judgment to the first appellate court for its record.

22. Learned trial court is directed to act on the server copy of this order.

23. Liberty to communicate.

24. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen J.)

Sg/T.B.