

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

Present:

The Hon'ble Justice Partha Sarathi Sen

**CRR 2322 of 2004
With
CRAN 1 of 2004 (Old No. CRAN 2094 of 2004)**

**Baidyanath Garai
Vs.
The State of West Bengal**

For the petitioner : Mr. Jayanta Narayan Chatterjee
Ms. Devipriya Mitra
Ms. Sreeparna Ghosh

For the State : Mr. Avishek Sinha

Heard on : 19.09.2024

Judgement on : 19.09.2024

PARTHA SARATHI SEN, J.:

1. The legality, propriety and correctness of the judgment and order dated August 16, 2004 as passed by the learned Additional Sessions Judge, First Track Court, Bankura in Criminal Appeal No. 10 of 2003 is the subject matter of the instant revisional application.

2. By the impugned judgment, the said appellate Court upheld the judgment and order of sentence as passed by the learned Judicial Magistrate, 3rd Court, Bishnupur on March 20, 2003 in G.R. Case No. 28 of 1995 whereby and whereunder the accused persons were found guilty under Sections 353/323 IPC and they were sentenced to suffer R.I. for one year each and to pay fine of Rs. 1,000/- each i/d to surer S.I. for one month for the offence committed by them under Section 353 IPC. However, the learned Judicial Magistrate did not impose any separate punishment of sentence for the offence committed by the accused persons under Section 323 IPC.
3. In course of his submission, Mr. Chatterjee, learned advocate for the revisionist at the very outset draws attention of this Court to the judgments as passed by the learned trial Court as well as by the learned first appellate Court. It is submitted on behalf of the present revisionist that both the learned trial Court as well as the first appellate Court has failed to consider that identification of the present revisionist before the learned trial Court has become doubtful in absence of any T.I. parade which affects the very root of the case.
4. It is further argued by Mr. Chatterjee, learned advocate for the revisionist that both the learned trial Court as well as the learned

first appellate Court has failed to visualize that the present revisionist being a co-accused in the aforementioned G.R. case is not named in the FIR though from the evidence of the prosecution witnesses, it would reveal that the present revisionist and the other co-accused are the principal assailants. It is thus argued that both the learned trial Court as well as the learned first appellate Court has failed to consider that at the earliest opportunity, the name of the present revisionist was not mentioned in the written complaint which really casts a shadow of doubt with the alleged involvement of the present revisionist in the alleged crime which both the trial Court as well as the first appellate Court had failed to consider causing serious miscarriage of justice for which the revisional jurisdiction of this Court may be exercised under Section 397 read with Section 401 Cr.P.C.

5. In his next fold of submission, Mr. Chatterjee, learned advocate for the revisionist further contended that in absence of any cogent material to show that the P.W. 1 on the relevant day and hour visited the P.O. in discharge of his official duty, both the Courts ought not to have come to a finding that P.W. 1 was resisted by the accused persons while he was discharging his official duty. It is further submitted on behalf of the revisionist that the learned trial Court as well as learned first appellate Court did not

appreciate the cross-examination of the P.W. 1 in its proper perspective and, therefore, the conviction as awarded under Section 353 IPC may be set aside.

6. It is further submitted by Mr. Chatterjee, learned advocate for the revisionist that the learned trial Court as well as the learned first appellate Court committed serious error in coming to a finding with regard to the involvement of the present revisionist in the alleged assault of P.W. 1 and, therefore, the finding of the aforementioned two Courts regarding the alleged offence committed under Section 323 IPC is faulty.
7. Placing reliance upon a reported decision in the matter of **Bishan Singh and Another Vs. State** reported in **(2007) 13 SCC 65**, it is submitted that considering the fact that the instant revisional application is pending for a considerable length of time and also considering the fact that during bail, the present revisionist has not violated the condition of bail and also considering the mental agony suffered by the present revisionist for a considerable length of time, leniency may be shown to the present revisionist keeping in mind the spirit of decision of the Hon'ble Apex Court in the case of **Bishan Singh and Another (Supra)**.
8. Per contra, Mr. Avishek Sinha, learned advocate for the State, however, contends that from the evidences of P.W. 1 and P.W. 2, it

would reveal that on the relevant day and hour, the P.W. 1 went to the P.O. in discharge of his official duty and the same was communicated to the present revisionist as well as to the co-accused who is the owner of the grocery shop in question and, therefore, by no stretch of imagination, it can be said that the present revisionist was not aware that P.W. 1 went to the P.O. in discharge of his official duty.

9. Drawing further attention of this Court to the evidence of P.W. 8 being a departmental driver of the office of P.W.s. 1 and 2, it is submitted that from his oral evidence, it would reveal further that P.W. 1 on the relevant day and hour went to the P.O. in discharge of his official duty and thus the learned trial Court rightly invoked the provision of Section 353 IPC while awarding sentence to the present revisionist.
10. It is further submitted by Mr. Sinha, learned advocate for the State that there is little scope for this revisional Court to interfere with the concurrent findings of the guilt of the accused under Section 323 IPC since there is sufficient materials in the trial Court record to come to a conclusion that on the relevant day and hour at the P.O., P.W. 1 was assaulted by the present revisionist and the other co-accused and the evidence of P.W. 1 and P.W. 2

get sufficient corroboration from the evidence of P.W. 8 who is a doctor of a government hospital.

11. It is thus submitted by Mr. Sinha that being a revisional Court, this Court is not expected to interfere with the concurrent finding of guilt and punishment of both the trial Court as well as the first appellate Court.
12. For effective adjudication of the instant *lis*, this Court is at the very outset proposes to look to the provisions of Sections 319, 321, 323 as well as 353 IPC and those are quoted herein below in verbatim:

“319. Hurt. – *Whoever caused bodily pain, disease or infirmity to any person is said to cause hurt.*

321. Voluntarily causing hurt. – *Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.*

323. Punishment for voluntarily causing hurt. – *Whoever except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

353. Assault or criminal force to deter public servant from discharge of his duty. – *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment or either description for a term which may extend to two years, or with fine, or with both.”*

13. Before entering into the merit of the instant *lis*, this Court proposes to look to the settled position of law with regard to the scope of revision under Sections 397/401 Cr.P.C. while dealing with the concurrent findings of convictions.
14. In the reported decision of ***Malkeet Singh Gill Vs. State of Chattisgarh*** reported in **(2022) 8 SCC 204**, the Hon'ble Apex Court expresses the following view:

“Before advertng to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference is really narrow. Section 397 Cr.P.C. vests jurisdiction for the purpose of satisfying

itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or past, and regularity of any proceeding of such inferior court. The object of the provision to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of the individual case. It is also well-settled that while considering the same, the revisional court does not dwell at length upon the facts and evidence of the case to reverse those findings.”

15. Keeping in mind, the aforementioned legislative provisions and the proposition of law as enunciated in the reported decision of ***Malkeet Singh Gill*** (supra), this Court shall make an endeavour to come to a logical finding as to whether there is at all any scope to interfere with the concurrent findings of the learned trial court as well as the learned first appellate court with regard to the proof of guilt of the present revisionist as well as with regard to the sentence as imposed upon him.
16. As discussed supra, Mr. Chatterjee, learned advocate for the revisionist, in course of his submission, was very vocal with regard to the finding of both the courts regarding the proof of guilt of the present revisionist under Section 353 IPC.
17. On perusal of the judgment and order of conviction dated 20th March, 2003, as passed by the learned trial court, it appears to this Court that learned trial court placed its reliance upon the

evidence of PW1 and PW2, as well as upon the Exhibit-1, to come to a conclusion that on the relevant day and hour, PW 1 visited the P.O. in his official capacity for the purpose of inspection and learned trial court also noticed that in the written complaint, PW 1 has disclosed his official designation and had used his official seal.

18. As discussed supra, this Court being a revisional court, is not supposed to act as an appellate court to re-appreciate the evidence as assessed by the learned trial court as well as by the first appellate court. However, on perusal of the cross-examination of PW 1, it reveals to this Court that there was specific cross-examination to that effect on behalf of the accused persons with regard to the alleged visit of PW 1 in his official capacity. It appears to this court that both PW 1 and PW 2 in their respective cross-examinations, though testified that on the relevant day and hour they visited the P.O. in their official capacity, but to the utter surprise of the Court, no document has been exhibited on the part of the prosecution to substantiate that the visit of PW 1 and PW 2 at the P.O. was official.
19. This court has also noticed that in his cross-examination, PW 2 specifically testified that they had attendance register, as well as tour diary, but for the reason best known to the prosecution, no

endeavour was made for seizure of the attendance register, as well as the tour diary, as well as for tendering the same into the evidence by the prosecution witnesses.

20. In considered view of this Court, a serious aspect has been overlooked both by the learned trial court, as well as by the learned first appellate court, which in considered view of this Court causes serious miscarriage of justice, since a patent defect arose in coming to a conclusion that on the relevant day and hour, PW 1 and PW 2 went to the P.O. in discharge of their official capacity.
21. In view of such patent error as noticed by the Court and as discussed supra, this Court considers that the conviction of the present revisionist under section 353 I.P.C. cannot be sustained and is thus hereby set aside.
22. So far as the other charge under section 323 IPC is concerned, this Court finds sufficient, consistent, corroborative evidence with regard to the involvement of the present revisionist in assaulting the victim of the incident and this Court thus finds no scope to interfere with the concurrent findings of the learned trial court as well as the learned first appellate court with regard to the proof of guilt under section 323 IPC.

23. As rightly argued by Mr. Chatterjee, learned advocate for the revisionist that the alleged incident occurred in the year 1995 and the learned trial court passed the impugned judgment on March 20, 2003. In the meantime, almost 30 years have elapsed. This court cannot shut its eyes over the mental agony suffered by the present revisionist on account of the long pendency of the litigation. No material is also forthcoming before this court that the present revisionist has misused the liberty of bail.
24. In view of such, while affirming the conviction of the present revisionist under Section 323 IPC, this Court considers that justice would be sub served, if the present revisionist is sentenced to pay a fine of Rs 1,000/- only without giving any substantive sentence.
25. It is thus ordered that the present revisionist shall deposit the fine amount of Rs.1000/- within three months from the date of passing of this order, failing which he has to suffer simple imprisonment for one month.
26. With the aforementioned observations, the instant criminal revision being **CRR 2322 of 2004** is disposed of along with all pending interim applications.

27. Department is directed to forward a copy of this judgment along with Trial Court Record to the trial court forthwith.
28. Department is further directed to forward a copy of this judgment along with First Appellate Court Record to the first appellate court at the earliest.
29. The learned trial court is hereby directed to issue non-bailable warrant of arrest against the present revisionist, in the event, the fine amount as awarded by this Court is not deposited within the time as mentioned supra and the learned trial court after apprehension of the present revisionist shall send him to the correctional home to suffer the default sentence as awarded by this Court after setting off the period of incarceration already undergone, if there be any.
30. 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.)