

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

CRR 4124 of 2006

With

CRAN 3 of 2023

Syed Ali Khan

-Versus-

The State of West Bengal.

For the appellant : **Mr. Kallol Mondal, Adv.,**
Mr. Krishan Ray, Adv.,
Mr. Souvik Das, Adv.,
Mr. Anamitra Banerjee, Adv.

For the State : **Mr. Avishek Sinha, Adv.**

Last Heard on : **06.08.2024**

Judgment on : **09.08.2024**

PARTHA SARATHI SEN, J. : –

1. The legality, propriety and correctness of the judgement dated 15.11.2006 as passed by the Learned Additional Sessions Judge, Arambag, Hooghly in connection with Criminal Appeal no.3 of 2006 is the subject matter of the instant application. By the impugned judgment the said First Appellate Court affirmed the judgment of conviction and order of sentence dated 24.04.2006 as passed by Learned Judicial Magistrate, 2nd Court, Arambag, Hooghly in connection with GR Case no.391 of 1997 whereby and whereunder the said trial court found the accused guilty under Sections 323/354 IPC and thus directed him to suffer S.I for one month and to pay a fine of Rs.500/- i.d to suffer further S.I for another

one month for the offence committed by him under Section 323 IPC and also to suffer SI for 6 months and to pay fine of Rs.2000/- i.d to suffer further S.I for two months for the commission of offence under Section 354 IPC.

2. The convict felt aggrieved and thus preferred the instant revisional application.

3. From the trial court record it reveals that the present revisionist was charged under Section 354 IPC for allegedly using criminal force to the victim intending to outrage her modesty and under Section 323 IPC for voluntarily causing hurt to the brother of the victim and also under Section 379 IPC for allegedly committing theft of gold ornaments of the victim. On appreciation of the evidence as adduced by the eight prosecution witnesses both oral and documentary learned trial court found the present revisionist guilty under Sections 323 and 354 IPC and he is thus convicted and sentenced to suffer imprisonment and fine as quoted supra. However, the present revisionist was found not guilty under Section 379 IPC. He is thus acquitted from the said charge.

4. As discussed (supra) in appeal the First Appellate Court upheld the order of the learned trial court.

5. In course of his argument Mr. Mondal, learned advocate for the revisionist submits before this Court that a serious miscarriage of justice has occurred in the aforesaid trial as well as in the appeal since the trial court and the First Appellate Court has failed to appreciate the evidence as adduced by the PWs in accordance with law and the findings of the

trial court vis-à-vis of the First Appellate Court is perverse. It is further argued by Mr. Mondal, learned advocate for the revisionist that both the trial court as well as the First Appellate Court had failed to consider the contradictions in the evidence of the prosecution witnesses as far as charge under Section 354 IPC is concerned and thus the findings of both the courts are arbitrary and not sustainable in law. It is further argued by Mr. Mondal that so far as the charge under Section 323 IPC is concerned both the trial court as well as the First Appellate Court has failed to consider the evidence of doctor who treated the victim after the alleged incident and found no injury on his person and therefore the decision of the learned trial court as well the First Appellate Court with regard to proof of charge under Section 323 IPC is erroneous which calls for interference in exercise of the revisional jurisdiction of this Court.

6. Mr. Sinha, learned advocate for the State contends that while exercising revisional jurisdiction there is little scope to appreciate all the evidence of the prosecution witnesses all over again. It is further submitted that no materials have been placed before this Court to take a contrary decision with regard to the concurrent findings of the trial court and the First Appellate Court. It is thus submitted that it is a fit case for dismissal of the instant revisional application.

7. Before entering into the merits of the instant revisional application this Court proposes to have a look to the law of the land dealing with subject of criminal revision. In this regard reliance can be placed upon a

reported decision of **State of Kerala vs. Puhumana** reported in **(1999) 2 SCC 452** wherein the Apex Court expressed the following view:-

“In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice, but the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

The same view was taken in the reported decision of **Krisnendu Bandyopadhaya – Kaushik Das** reported in **(2012) 1CCrLR (Cal) 411** and **Indrajit Saha Vs. State of West Bengal** reported in **(2011) 3 CCrLR (Cal)90**.

8. Keeping in mind the above proposition of law this Court proposes to have a glance to the trial court record. From the trial court record it reveals that the alleged incident occurred on 19.10.1997 at about 20:00 hours while the written complaint was submitted on 21.10.1997 at 18:05 hours over which the concerned police station started the relevant P.S case by lodging a FIR. From the trial court record as well as from the First Appellate Court record it reveals that at the time of argument attention of

those Courts was drawn with regard to the said delay of almost 48 hours. On perusal of the judgement as passed by the learned trial court it appears that at the time of argument both before the learned trial court as well as before the First Appellate Court it was argued on behalf of the defence that delay in lodging the FIR was not sufficiently explained and thus it raises a question regarding the genuineness of the case of the prosecution.

9. It reveals that the learned trial court discarded such contention by holding that so far as the said delay is concerned the same is the lacuna on the part of the prosecution in conducting the case but not on the part of the complainant. Trial court further held that in our justice delivery system where a person at whose instance criminal case is lodged he/she becomes the tool in the hands of the investigating agencies and later at the hands of the prosecution lawyers who conducted cases on behalf of the State.

10. The First Appellate Court while dealing with the self same point expressed the view that the victim and her brother (informant) who were also the prosecution witnesses are all rustic people and therefore they were not aware as to whether any explanation is required to be given for any sort of delay in lodging the FIR. The First Appellate Court further held that it was the boundant duty of the I.O to take explanation from those witnesses at the time of their examination under Section 161CrPC.

11. In considered view of this Court, the views taken by the learned trial court as well as by the First Appellate Court are completely erroneous. In

order to come to a logical conclusion as to whether the prosecution witnesses are truthful or not the same is to be decided on the basis of the evidence on record and in the event a lacuna is found the same cannot be covered by holding that the informant/victim and/or the other prosecution witnesses have become tool of the prosecution or by saying that it is because of the inefficiency of the I.O such delay cannot be explained.

12. In this regard I propose to place my reliance upon a reported decision of ***State of H.P vs. Gian Chand reported in 2001 (6) SCC 71*** wherein the Hon'ble Apex Court while dealing with the issue of delay in lodging FIR expressed following view:-

“Delay in lodging FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging FIR. Delay has the effect of putting the court to search if any plausible explanation has been offered for the delay and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

The same view was taken in the reported decision of ***Amar Singh Vs. Balwinder Singh and Ors reported in (2003) 2 SCC 518***; and ***Ravinder Kumar Singh and Another vs. State of Punjab reported in (2001) 7 SCC 690***.

13. In view of the discussion made hereinabove this Court thus finds that a complete miscarriage of justice has occurred both at the instance of the trial court as well as by the First Appellate Court in ignoring the non-explanation of delay in lodging the FIR by the informant especially when sufficient materials have been placed before the trial court as well as before the First Appellate Court that the informant, victim and their relatives who are the prosecution witnesses had an inimical relationship with the accused on account of previous matrimonial dispute between the victim and the accused.

14. This Court is well aware that being a revisional court this Court is not supposed to re-appreciate the evidence as recorded before the trial court especially when such appreciation of evidence has been done both by the trial court as well as by the First Appellate Court. However, in the event it is noticed by the revisional court that the decision as arrived at by the trial court as well as by the First Appellate Court is erroneous and/or based on non-consideration of the material evidence, this Court is not powerless in view of the provision of Sections 397/401CrPC. It appears further that both the trial court and the First Appellate Court have considered the ingredients of the Section 354 IPC while appreciating the evidence of the prosecution witnesses and came to a concurrent finding that the accused used criminal force upon the victim intending thereby to outrage her modesty.

15. On perusal of the Exhibit 2 being the written complaint as lodged by the informant (PW2) and the evidence of PW2 as recorded by the trial

court I find that the version of PW2 with regard the alleged illegal act upon the victim is at variance. This Court has also perused the evidence of PW1 being the victim wherein she had stated a complete different mode of action on the part of the present revisionist. PW3 and PW4 who are the alleged eye witnesses to the incident stated something different with regard to the alleged action of the accused on the relevant day and hour at the P.O.

16. This Court considers that had the trial court and the First Appellate Court considered such contradictions in their judgements, their decision would have been otherwise and thus this Court considers that the decisions as arrived by the learned trial court as well as by the First Appellate Court are completely erroneous for which the revisional jurisdiction of this Court can be exercised. As rightly pointed out on behalf of the revisionist that from the evidence of PW1 being the victim it reveals that on the self same night immediately after the alleged incident she lodged the written complaint with the police and such written complaint was written by one of her co-villager Allauddin.

17. Such point was also canvassed before the trial court as well as before the First Appellate Court. However, both the trial court and the First Appellate Court did not consider such part of the evidence by holding that it is nobody's case that any specific case or G.D entry was made on the basis of the said complaint as submitted by the victim and it was not possible on the part of the victim to force any police officer to start any specific case.

18. The reason as assigned by the First Appellate Court is opposed to the established principle of law since the First Appellate Court as well as the trial court ought not to have ignored that there cannot be two FIRs in respect of the self same incident and in the event two FIRS have been lodged mistakenly, the later must merge with the former. In further considered view of this Court both the trial court as well as the First Appellate Court have failed to appreciate the material omission on the part of another victim of the said incident to mention the name of the assailant before the doctor of a government hospital at the earliest opportunity though he was fully conscious then.

19. In view of such, this Court thus finds that the findings of the trial court as well as the First Appellate Court are perverse which cannot be overlooked and the basis of their findings in the aforementioned trial as well as in the appeal are incorrect, improper and erroneous.

20. For the reasons stated hereinabove this Court thus finds sufficient merit in the instant revisional application.

21. Accordingly CRR 4124 of 2006 is hereby allowed. All pending interim applications are also disposed of.

22. Consequently the impugned judgement dated 15.11.2006 as passed by the Learned Additional Sessions Judge, Arambag, Hooghly in connection with Criminal Appeal no.3 of 2006 is set aside.

23. Consequently the judgment of conviction and order of sentence dated 24.04.2006 as passed by Learned Judicial Magistrate, 2nd Court,

Arambag, Hooghly in connection with GR Case no.391 of 97 is also set aside.

24. Consequently the present revisionist is found not guilty under Sections 323/354 IPC in connection with GR case no.391/1997.

25. He is thus discharged from his bail bond and be set at liberty at once if not, wanted in connection with any other case.

26. Department is directed to forward a copy of this judgement to the learned trial court along with the LCR forthwith.

27. Department is further directed to forward a copy of this judgement to the First Appellate Court also at the earliest.

28. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)