

Criminal Revision

PRESENT:

THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE

Judgment on 02.09.2010

CRR NO. 3661 OF 2008

Ananda Tantubai

Vs.

The State of West Bengal & Ors.

Points:

Scope of Revision-Whether revision can be entertained when there is no manifest error of law or procedural irregularity or failure of justice- Code of Criminal Procedure, 1973 S.401

Facts:

Father of the victim lodged information with the Police Station alleging that since after marriage of her daughter her in-laws tortured her for want for further dowry. They also threatened to kill her in case of failure to pay a further sum of Rs.10,000/-. Aunt-in-law of her daughter informed him that his daughter was missing. After 5 days her body was found floating in a nearby pond. Trial Court after considering the evidence on record acquitted the accused. Against the order of acquittal the petitioner moved the High Court in revision.

Held:

The learned Trial Judge while recording the order of acquittal considered all the points of law and facts. It cannot be said that there was non-consideration of the materials on record. On perusal of the entire materials on record I find that there is no manifest error of law or procedural

irregularity or failure of justice and, as such, there is no scope of interference in this Revisional Application. Para 24

Cases Cited:

1981 SC 1415 [Ayodhya Dube and others Vs. Ram Sumer Singh]; 2007(2) SCC (Cri) 567 [Baso Prasad and others Vs. State of Bihar]; 2009(2) SCC (Cri) 783 [Dinesh Seth Vs. State of NCT of Delhi]; AIR 1951 SC 196 [D. Stephens Vs. Nossibolla]; AIR 1951 SC 316 [Logendranath Jha & others Vs. Polai Lal Biswas]; AIR 1962 SC 1788 [K. Chinnaswamy Reddy Vs. The State of Andhra Pradesh and another]; AIR 1968 SC 707 [Mahendra Pratap Singh Vs. Sarju Singh and another]; 1973 SCC (Cri) 903 [Akalu Ahir and others Vs. Ramdeo Ram]; 1975 SC 1854 [Pakalapati Narayana Gajapathi Raju and others Vs. Bonapalli Peda Appadu and another]; AIR 1986 SC 1721 [Bansi Lal and others Vs. Laxman Singh]; 2002 SCC (Cri) 1181 [Jagannath Choudhary and others Vs. Ramayan Singh and another]; 2003 SCC (Cri) 1205 [Thankappan Nadar & others Vs. Gopala Krishnan & another]; 2005 SCC (Cri) 276 [Satyajit Banerjee & others Vs. The State of West Bengal & others] and 2008(2) SCC (Cri) 89 [Johar Vs. Mangal Prasad & another

For the Petitioner : Ms. Chandrayee Alam

Mr. Snehasish Banerjee

For the O.P. : Mr. Debasish Roy

Mr. Soumik Ganguly

For the State : Mr. Swapan Kumar Mallick

KALIDAS MUKHERJEE, J.:

1. This application under Section 397/401 Cr.P.C. is directed against the judgment and order of acquittal passed by learned Additional Sessions

Judge, Fast Track Court, Khatra in Sessions Trial No. 3(1) of 2006 arising out of Sessions case No. 3(9) of 2005 under Section 498A/304B/201/34 of the Indian Penal Code.

2. The prosecution case, in short, is that Ananda Tantubai lodged complaint with O.C., Indpur P.S. alleging that on 11th Baisakh, 1410 B.S. his daughter Sumitra was married with Tanu of the same village according to Hindu rites and ceremonies. Whenever Sumitra paid visit to her paternal house, the inmates of her in-laws house ill-treated and committed torture upon her. She was also assaulted by them. At the time of marriage a sum of Rs.1,10,000/- was paid as dowry. In spite of that the sum of Rs.10,000/- was demanded from her. They also threatened her that in case of failure to pay the sum of Rs.10,000/-, they would kill her. On 20.11.2003 at about 5/6 P.M. the aunt-in-law of Sumitra came to the house of the informant and told that Sumitra was missing. The informant searched for her for 4/5 days, but, could not find her out. On 25.11.2003 at about 8/9 A.M. her dead body was found floating in a nearby pond. The information was lodged with the P.S. After receipt of the complaint the Indpur P.S. case No. 40 of 2003 dated 25.11.2003 under Sections 498A/304B/201/34 was started.

3. The charges were framed under Sections 498A/34/304B and 201 of the Indian Penal Code. The accused persons pleaded not guilty and claimed to be tried.

4. The learned Trial Judge upon consideration of the materials on record passed the order of acquittal holding that there was not a single piece of paper to show that the accused persons committed torture upon the victim and demanded further dowry of Rs.10,000/-. It was held that there was no evidence to show that the father of the deceased gave Rs.1,10,000/- to the accused person as dowry. The learned Judge held that the prosecution failed

to prove that the accused persons committed torture or that there was any demand for dowry.

5. The learned Judge held that the death of the deceased was not homicidal and/or suicidal. The learned Judge observed that the Post Mortem report did not clearly indicate that it was an accidental death; the autopsy surgeon mentioned “vagal inhibition”. It was observed that the doctor found no external injury on the person of the deceased even on careful examination by the hand-lens, and under such circumstances, the learned Judge observed that there was no evidence to prove that before her death the deceased was subjected to assault or cruelty by her husband and other inmates of her in-law’s house in connection with the demand for dowry. The learned Judge held that the prosecution case could not prove the charge beyond reasonable doubt and ultimately recorded the order of acquittal.

6. The learned Counsel appearing for the petitioner submits that Sumitra died within six months of her marriage; there was demand for dowry and Sumitra died in her matrimonial home. It is contended that the doctor was not examined and the learned Court below ought to have exercised the powers under Section 311 Cr.P.C. It is submitted that whenever the victim came to her paternal house she used to say about the torture meted out to her in her in-law’s house. It is contended that the victim expressed that she would be killed in her in-law’s house if the sum of Rs.10,000/- was not paid. It is submitted that till five days after death, the accused persons remained silent which was indicative of their guilt. The learned Counsel has referred to and cited the decisions reported in 1981 SC 1415 [Ayodhya Dube and others Vs. Ram Sumer Singh]; 2007(2) SCC (Cri) 567 [Baso Prasad and others Vs. State of Bihar] paragraphs 28 to 30; 2009(2) SCC (Cri) 783 [Dinesh Seth Vs. State of NCT of Delhi]. The learned Counsel submits that

the learned Trial Judge ought not to have interpreted the post mortem report as to the cause of death in absence of the evidence of the doctor. It is contended that the impugned judgment suffers from material irregularity which resulted in miscarriage of justice.

7. The learned Counsel appearing for the O.Ps. submits that the State did not prefer appeal and it is a revisional application at the instance of private complainant. Learned Counsel submits that adequate opportunity was given for examination of the doctor and when the doctor did not turn up, inspite of several adjournments being given, the learned P.P. prayed for closing the prosecution evidence vide order dated 26.3.2008. It is submitted that as regards the demand for dowry the "Lagnapatra" was not submitted and there was no evidence of alleged torture upon the victim. It is contended that the neighbouring persons were declared hostile and it is not the case that the learned Trial Judge brushed aside the evidence of the other P.Ws. being relatives. It is submitted that the learned Trial Judge discussed all the aspects of the case and upon consideration of the materials on record passed the order of acquittal which calls for no interference in this revisional application. The learned Counsel has referred to and cited the decisions reported in AIR 1951 SC 196 [D. Stephens Vs. Nossibolla]; paragraphs 9 & 10; AIR 1951 SC 316 [Logendranath Jha & others Vs. Polai Lal Biswas] paragraph 7; AIR 1962 SC 1788 [K. Chinnaswamy Reddy Vs. The State of Andhra Pradesh and another] paragraphs 4,5,6 and 7; AIR 1968 SC 707 [Mahendra Pratap Singh Vs. Sarju Singh and another]; 1973 SCC (Cri) 903 paragraph 19 [Akalu Ahir and others Vs. Ramdeo Ram]; 1975 SC 1854 [Pakalapati Narayana Gajapathi Raju and others Vs. Bonapalli Peda Appadu and another]; AIR 1986 SC 1721 [Bansi Lal and others Vs. Laxman Singh]; 2002 SCC (Cri) 1181 [Jagannath Choudhary and others Vs. Ramayan Singh

and another]; 2003 SCC (Cri) 1205 [Thankappan Nadar & others Vs. Gopala Krishnan & another]; 2005 SCC (Cri) 276 [Satyajit Banerjee & others Vs. The State of West Bengal & others] and 2008(2) SCC (Cri) 89 [Johar Vs. Mangal Prasad & another].

8. P.W. 1 has stated that Sumitra died within 7/8 months after her marriage. The dead body of Sumitra was floating in a pond situated behind the house of Tanushree and he went there to see the dead body along with other villagers. He has stated that he does not know anything about the matter of dowry etc. He was declared hostile.

9. P.W. 2 has stated that he saw the dead body of Sumitra lying near the edge of the water of the pond. He was declared hostile.

10. P.W. 3 has stated that Sumitra was his sister and she was married to Tanushree Tantubai @ Tanu on 11th Baisakh, 1410 B.S.; social marriage was held and some utensils were presented and father of Tanushree took more than Rs.1,00,000/- from the father of the deceased; after marriage Sumitra lived in his in-law's house with her husband and at times she used to come to their house; all the accused persons inflicted both physical and mental torture upon her sister. He has further stated that an amount of Rs.10,000/- was due and because of such non-payment of money the accused persons used to commit torture upon his sister. He has stated that her sister used to tell all these things at the time of her visit to their house. In the cross-examination he could not say the exact date of committing torture upon her sister and could not also say the date when the demand for Rs.10,000/- was made. He has stated that no complaint was lodged for demand of money or for committing torture. He could not say how many times Sumitra visited their house and on which dates. He has stated that no paper was there to show that his father paid more than Rs.1,00,000/- as

dowry. It is also in his cross-examination that his sister did not tell him anything regarding the matter of her torture.

11. P.W. 4, a co-villager, was declared hostile.

12. P.W. 5 has stated that Sumitra was her grand-daughter; the sum of Rs.1,00,000/-, golden ring and other articles were presented in the marriage of Sumitra with Tanushree; after marriage Sumitra lived in her in-law's house and when she used to pay visit to her paternal house she disclosed about the torture meted out to her and also the threats, if the sum of Rs.10,000/- was not paid. In the cross-examination she could not say the date and year of her torture and also the date when she reported those matters in her paternal house. She could not say the date of demanding Rs.10,000/-. She has stated in her evidence that they could not disclose the matter of her torture to the villagers. But, P.W. 3 the brother of the deceased has stated in cross-examination that they disclosed the fact of torture committed upon Sumitra to the villagers. P.W. 5 has stated that there is no paper to show that the sum of Rs.1,00,000/- was paid to them.

13. P.W. 6 has stated that Sumitra was the daughter of her 'Bhasur'. She could not say the date and year of committing torture upon her and demand for money. She has stated that she did not tell the police that Sumitra told her that they shall kill her in case of non-payment of sum of Rs.10,000/-.

14. P.W. 8 has stated that Sumitra was his daughter. It is in his crossexamination that no "Lagnapatra" was prepared and there is no paper to show that he has paid Rs.1,10,000/- at the time of her marriage. He could not say the date on which they demanded Rs.10,000/- and when her daughter told about such demand. It is in his evidence that the accused persons lodged diary with the P.S. and Sumitra's father-in-law went to Kolkata in search of Sumitra and came to learn that one "Jamai" of Das family took her to

Kolkata. It is in his evidence that from the date of Lakshmi Puja she was out of trace; on that date she came to his house and arranged all for the Lakshmi Puja.

15. P.W. 9 has stated that Sumitra was her niece. It is in his evidence that no complaint was lodged before any authority like police, Panchayat for the torture committed upon Sumitra. He was also present at the time of preparation of inquest report.

16. P.W. 11 has stated that Sumitra was her daughter. It is in her crossexamination that she came to her house last prior to 1/1½ months of her missing on the occasion of her father-in-law's "sradh". It is also in her evidence that she did not see her for this time of 1/1½. The prosecution case is that on the date of Lakshmi Puja Sumitra came to her paternal house and after that she was found missing, but, P.W. 11, that is, the mother of Sumitra has stated otherwise. It is in her evidence that Sumitra did not come to her paternal house for about 1/1½ months prior to her missing. It is in evidence of P.W. 8, that is, the father of the deceased that at the time of preparation of inquest report he did not tell the police that due to torture and demand for money his daughter's death took place.

17. In the case of Ayodhya Dube and others Vs. Ram Sumer Singh (Supra) it has been held that when the Sessions Judge acquitted the accused by ignoring the probative value of F.I.R. and reliable testimony of eye witness and without considering material evidence on record and his judgment was full of inconsistencies and consisted of faulty reasoning, the order of the High Court in revision directing retrial by setting aside acquittal would be justified.

18. In the case of Dinesh Seth Vs. State of NCT of Delhi (Supra) it was held that beating given to the deceased and harassment to which she was

subjected had direct bearing on her committing suicide and the conviction of appellant under Section 498A was sustainable.

19. In the case of Baso Prasad and others Vs. State of Bihar (Supra) it has been held by the Apex Court in paragraph 27 & 28 as follows:-

“27. In some cases, medical evidence may corroborate the prosecution witnesses; in some it may not. The Court, however, cannot apply any universal rule whether ocular evidence would be relied upon or the medical evidence, as the same will depend upon the facts and circumstances of each case. No hard-and fast rule can be laid down therefor.”

“28. It is axiomatic, however, that when some discrepancies are found in the ocular evidence vis-à-vis medical evidence, the defence should seek for an explanation from the doctor. He should be confronted with the charge that he has committed a mistake. Instances are not unknown where the doctor has rectified the mistake committed by him while writing the postmortem report.”

20. The learned Counsel appearing for the petitioner submits that the doctor was not examined and the post mortem report was admitted in evidence (Exhibit – 12). In the post mortem report the doctor noted that there was no external ante-mortem injury even on careful examination by hand-lens and on dissection one haematoma 2.2” X 1.9” was placed over the middle portion of the occipital region of scalp with evidence of vital reaction; it was reddish in colour and incorporated the colour changes due to decomposition.

21. In the case of D. Stephens Vs. Nossibolla (Supra) it has been held by the Apex Court in paragraph 10 as follows:-

“10. The revisional jurisdiction conferred on the H.C. under S. 439, Criminal P.C., is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Govt. has a right

of appeal under S. 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower Ct. has taken a wrong view of the law or misappreciated the evidence on record.....”

22. In the case of Akalu Ahir and others Vs. Ramdeo Ram (Supra) it has been held by the Apex Court in paragraph 10 as follows:-

“10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.”

23. In the case of Bansi Lal and others Vs. Laxman Singh (Supra) it has been held by the Apex Court in paragraph 9 as follows:-

“Even in an appeal against an order of acquittal no interference will be made with the judgment of the trial Court except in rare and exceptional cases where there has been some manifest illegality in the approach to the case or the appreciation of the evidence or where the conclusion of fact recorded by the Trial Judge is wholly unreasonable so as to be liable to be characterised as perverse and there has been a resultant miscarriage of justice. The revisional jurisdiction of the High Court while dealing with an order of acquittal passed by the trial Court is more narrow in its scope. It is only in

glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court, that the High Court is empowered to set aside the order of the acquittal and direct a retrial of the acquitted accused. From the very nature of this power it should be exercised sparingly and with great care and caution.....”

24. Exhibit 11 is the final opinion as to the cause of death. It was submitted by the Assistant Professor, Department of Forensic and State Medicine, Medical College, Bankura. The final opinion was given on perusal of the FSL report which disclosed that no poison could be detected in the viscera of Sumitra. On the basis of the post mortem report and the FSL report the final opinion was that the exact cause of death could not be ascertained due to the advanced nature of decomposition of the dead body which obliterated the superficial injury (if at all present) due to peeling off the epidermis. It was opined that however, death by drowning or to be more specific, death due to vagal inhibition of heart from any cause, could be a possibility in this case. It was further opined that a remote possibility of consumption of an unknown poison which could not be detected during chemical examination, could not be ruled out too. The learned Trial Judge discussed on the point of vagal inhibition and held that there was no evidence to show that soon before her death the deceased was subjected to assault or cruelty by her husband and other members of the in-law's family. The learned Judge held that the omnibus statement of the father, mother, brother, uncle, aunt and other relatives of the deceased were not sufficient to prove the charge against the accused persons. The learned Judge held that the possibility of death having occurred due to some accident by falling into the pond while taking bath could not be ruled out. On perusal of the Lower Court records I find that several dates were fixed for the examination of the doctor, but, ultimately

the prosecution could not produce the doctor for examination and on the prayer of the learned P.P.in-charge the prosecution evidence was closed. The learned Trial Judge while recording the order of acquittal considered all the points of law and facts. It cannot be said that there was non-consideration of the materials on record. On perusal of the entire materials on record I find that there is no manifest error of law or procedural irregularity or failure of justice and, as such, there is no scope of interference in this Revisional Application. The Revisional Application, therefore, stands dismissed.

25. Let a copy of this judgment along with the L.C.R. be sent to the learned Court below immediately.

26. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)

