
(2009) 10 CHH CK 0043
In the Chhattisgarh High Court
Case No : Criminal Revision No. 396 of 2002

Geeta Upadhyay	Vs	APPELLANT
Surendra Kumar and Another		RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 341, 506B, 509

Citation : (2010) 1 CGLJ 296

Hon'ble Judges : Pritinker Diwaker, J

Bench : Division Bench

Advocate : Ashok Swarnkar, for the Appellant; Manoj Paranjape and Pankaj Shrivastava, P.L. for State for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J.—With the consent of the parties the matter is heard finally.

2. The Applicant has preferred this revision petition against the judgment dated 22.4.2002 passed by Additional Sessions Judge, Janjgir, in Criminal Appeal No. 213/2000 reversing the judgment of Conviction passed by the trial Court on 4.12.2000 passed in Criminal Case No. 404/2000. The trial Court by its judgment had convicted the accused/Respondent No. 1 herein for the offences punishable under Sections 341, 509 and 506-B of the Indian Penal Code and sentenced to undergo simple imprisonment for one month with fine of Rs. 300 u/s 341, simple imprisonment for three months with fine of Rs. 500 u/s 509 and rigorous imprisonment for one year with fine of Rs. 1000 u/s 506-B of the Indian Penal Code. The lower Appellate Court however reversing the findings recorded by the trial Court, acquitted him of all the offences levelled against him.

3. Counsel for the Applicant submits that while acquitting the non Applicant No. 1 the lower Appellate Court has committed a grave illegality in re-appreciating the overall evidence available on record which is not permissible under the provisions of law. He submits that the findings of acquittal recorded by the lower Appellate

Court are based on the ground that there was delay on the part of the Applicant in lodging the FIR, that the statements of the witnesses related to the Applicant cannot be believed, that no independent witnesses have supported the case of the prosecution though the incident is said to have taken place in a public place and that the Investigating Officer in the case has not been examined. He submits that even if there are some lacunae as pointed out by the lower Appellate Court looking to the act attributed to him accused/non-Applicant No. 1 should not have been acquitted because the offence alleged against him was so heinous in nature that a young woman has suffered not only tremendous humiliation but mental trauma as well. He submits that the findings recorded by the Appellate Court in paragraph 9 onwards of its judgment are not based On the material available on record and instead of re-appreciating the evidence, it should have maintained the judgment of conviction passed by the trial Court.

4. On the other hand counsel for non Applicant No. 1 supporting the impugned judgment submits that while deciding the appeal the lower appellate Court was fully empowered to re-appreciate the evidence available on record as the scope u/s 378 of the Code of Criminal Procedure is wide enough to do so. He drew the attention of this Court to paragraphs 9,10 and 15 to 17 of the impugned judgment where teamed lower appellate Court has threadbare considered the entire evidence and dealt with all the points considered by the trial Court. According to him the findings recorded by the lower appellate Court are not perverse and therefore the same cannot be interfered with in this revision. In support of his argument he placed reliance on the decisions of the Apex court in the matter of Bheru Lal and Ors. v. State of Rajasthan AIR 2009 SCW 5142 and that in the matter of State of M.P. v. Munshi Singh and Ors. AIR 2009 SCW 5508 and submits that the order of acquittal can be interfered with only when it suffers from perversity and that the appellate Court's power being of wider ramification, very much permit for re-appreciation of the evidence.

5. Heard counsel for the parties and gone through the material available on record thoroughly.

6. A bare perusal of the judgment of the lower appellate Court reveals that a threadbare scrutiny of the evidence and other material available on record coupled with the legal provisions has been undertaken by it. Statement of the Applicant has been disbelieved by the lower appellate Court mainly on the ground that there was inordinate delay in lodging the FIR. In this case the first incident is said to have taken place on 15.12.1990 and the other one about which a reference has been given by the complainant has taken place on 15.1.1991. Though these two incidents have taken place in a public place the report of the same has been lodged only on 25.9.1991 vide Ex. P-1. There is no explanation on the part of the Applicant for the inordinate delay in lodging the FIR. Further the statement of such Applicant has been disbelieved by the lower Appellate Court on the ground that both the incidents have taken place in a public place in the presence of number of persons yet neither the Applicant has

made any attempt to raise her voice nor has she called anyone for help. None of the independent witnesses has supported the case of the Applicant. Other witness examined by the Applicant is Smt. Subhadra PW-3 and even this witness has not supported the version of the Applicant. This witness has categorically stated that she was not aware of the first incident dated 15.12.1990 and likewise that which had taken place in January 1991. Learned lower appellate Court in paragraph 10 of its judgment has discussed the statement of this witness comparing it with the statement of the Applicant and has rightly come to the conclusion that the statement of the Applicant is unbelievable. Contention of the counsel for the Applicant that the Court below has erred in law while acquitting the accused/non Applicant No. 1 on another ground that Investigating Officer has not been examined, cannot be accepted because no reason has been assigned by the prosecution as to why the Investigating Officer was not examined. In paragraph 17 of its judgment learned lower appellate Court has rightly held that the prosecution has utterly failed to prove its case in accordance with law.

7. Aforesaid discussion of the facts of the case and the other material available on record impels this Court not to accept the contentions of the Applicant because nothing has been placed before this Court to substantiate as to how the report was not lodged promptly. The only reason assigned by the Applicant is that after the incident she had gone to the house of her sister namely Shivkumari and therefore the report could not be lodged promptly. Even the prosecution has not examined the sister of the Applicant namely Shivkumari nor the complainant herself has stated as to for how long she stayed with her sister and why the report could not be lodged while she was with her sister.

8. Thus in view of the aforesaid factual and legal position this Court is not inclined to interfere with the judgment impugned. Accordingly, the revision being baseless is liable to be dismissed. It is accordingly dismissed.