
(2011) 01 CAL CK 0094
In the Calcutta High Court
Case No : C.R.R. No. 2666 of 2006

Mangali Haldar and Another

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401(3)
Penal Code, 1860 (IPC) — Section 164, 376(2), 511

Citation : (2011) 01 CAL CK 0094

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Sumanta Chakraborty and Kartik Kumar Ray, for the Appellant;
Siladitya Sanyal and Sanjit Kumar Dawn, for the Opposite Party Nos. 2 and 4 and
Swapn Kumar Mallick, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—On the day of Swaraswati Puja victim along with her two friends, one of whom was Nagari, went out to see Swaraswati idol. After sometime her friends left her. She was alone. She met one of the villagers known as Krishna, PW-7 and asked for his help. Krishna advised her to avail the van rickshaw of Nikhil. She accordingly boarded the rickshaw. On the way Shashi boarded the rickshaw. Sadhan started walking in front keeping pace with the rickshaw. Nikhil took the rickshaw to a high land. All three together dragged the victim to the said high land. They stripped bare the victim and ravished her. According to the victim, she sustained bleeding injury on her private parts. The accused pressed her breast. Victim became senseless. Blood was oozing out of private parts. The accused took her to her house and asked her not to disclose the incident to anyone. She met her mother in the house, asked for a glass of water and then went for sleep after taking water. Next day she disclosed the incident to Ratna (PW-5) and Basanti (PW-2), who, in turn, narrated the incident to Mangoli (PW- 3). According to the victim and her parents, they initially lodged the complaint to the Panchayat. After being refused justice they approached the

Police and lodged the complaint. The police arrested Nikhil, Sadhan and Sashi. The police also got the victim examined by the Doctor being PW-6. The accused were charged-sheeted under Sections 376(2)(g)/511 of the Indian Penal Code. All the accused persons pleaded not guilty and faced trial. The learned Assistant Sessions Judge, Cooch Bihar, after considering the evidence on record, held the accused guilty of the offence and convicted all of them. The three accused were imposed punishment of rigorous imprisonment for five years coupled with a fine of Rs. 1,000/- each and in default, to suffer simple imprisonment for one month.

2. Being aggrieved and dissatisfied with the judgment and order of the Assistant Sessions Judge, three accused / convicts preferred an appeal before the learned Sessions Judge, Cooch Bihar. The learned Sessions Judge re-appraised evidence and came to a finding that the prosecution miserably failed to establish the case against the accused. He allowed the appeal and acquitted the convicts by setting aside judgment and order of the learned Assistant Sessions Judge, Cooch Bihar, hence, the revisional applications by the de-facto complainant, being the mother of the victim.

3. Mr. Sumanta Chakraborty, learned Counsel appearing for the revisionist, contended as follows:

i) The learned Assistant Sessions Judge was convinced with the evidence that led by the prosecution particularly, through the victim and her parents. Such unimpeachable evidence was overlooked by the learned Sessions Judge.

ii) The learned Sessions Judge failed to appreciate that detailed Medical Examinations would of no assistance as there would be hardly any possibility of finding any sign of rape. He erred in relying on the Medical Evidence while acquitting the convicts.

iii) It was settled law that the victim's statements narrating the incident of rape was sufficient enough to sign the judgment of conviction. The learned Sessions Judge failed to appreciate the same.

4. While elaborating his argument, Mr. Chakraborty took the evidence that led by the prosecution. He contended that there might be little anomaly in the version of the victim and her parents, however, they were consistent on the happening of the incident, which was rightly appreciated by the learned Assistant Sessions Judge. Hence, the learned Sessions Judge ought not to have upset the finding of the First Court.

5. In support of his contention, Mr. Chakraborty relied on the following decisions:

i) Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay,

ii) State of Rajasthan Vs. Shri Narayan,

iii) Madho Ram and Another Vs. The State of U.P.,

iv) 2000 5 Supreme 204 (State of Tamil Nadu v. Ravi)

v) 2005 8 Supreme 165 Vishnu @ Undrya v. State of Maharashtra)

vi) 2006 4 Supreme 313 (Om Prakash v. State of Uttar Pradesh)

6. While opposing the application on behalf of the accused / convicts, Mr. Shiladitya Sanyal, learned Counsel, contended as follows:

i) There was substantial discrepancy in the version of the complainant, which would automatically create suspicion in the mind of the Court.

ii) In a case of single rape, there might not be any injury. However, in a gang rape injury was obvious. Such injury was not found by the Doctor while examining the victim.

iii) There was substantial anomaly in the version of the victim and her parents, which would automatically lead to suspicion.

iv) The conduct of the victim and her parents would not support the case of the prosecution.

7. While elaborating his argument, Mr. Sanyal contended that the victim was allegedly ravished by three accused. She initially stated through her mother before the Police that after outraging her modesty the accused did not proceed any further to commit rape. As she started crying they left her at her house. However, during trial there was substantial improvement when the victim as well as her parents confirmed that the accused had conducted rape on her. Mr. Sanyal also contended that it was unusual that a minor girl would suffer such heinous torture and would come back to her home and would go for sleep without making any complaint to her parents. On the next day she also did not tell anything to her parents and narrated the incident to her neighbours, the PW-2 and 5. The mother deposed that she had gone to the Doctor and brought medicine, which had been given to the victim. Mother stated that they had initially approached the Panchyat Pradhan whereas father did not say so. Mr. Sanyal further contended that it was unusual for the father to go for fishing after hearing the incident. He further contended that Ratna PW- 5 deposed that the victim was not the real daughter of her parents. Highlighting anomalies Mr. Sanyal contended that the learned Sessions Judge rightly re-appraised the evidence and acquitted the convicts. Such decision was not available for review by this Court.

8. Opposing the applications on behalf of the State, Mr. Swapan Mallik, learned Counsel contended that the scope of revisional application was limited. The evidence was re-appraised by the Court of Appeal. There was no scope for a second appeal. The Revisional Court could not be turned out to be a Court of Appeal to re-appraise the evidence again. Mr Mallik also commented on the delay in lodging the FIR.

9. Replying to the contention of the Respondent, Mr. Chakraborty contended that for ends of justice, the revisional Court should treat this application as an appeal. According to him, since the order impugned was an order of reversal, it was

possible to treat this application as an appeal. He contended that for ends of justice this Court should upset the decision of the learned Sessions Judge and restore the conviction granted by the First Court.

10. I have considered the rival contentions as also the precedents cited at the Bar. Section-401 of the Code of Criminal Procedure empowers the High Court to revise any order of the inferior Court passed in its Criminal Jurisdiction. Sub-Section 3, however, restricts the High Court's power to the extent that an order of finding of acquittal could not be changed to conviction. Sub-Section 4 provides that if an appeal is maintainable and is not brought, no proceeding by way of revision would be allowed at the instance of a party, who could have filed the appeal. The combined reading of Sub-Sections 3 and 4 would suggest that finding of acquittal could not be changed into conviction and the revisional Court is not entitled to entertain a party, who is otherwise entitled to prefer an appeal. Mr. Chakraborty tried to contend that the revisionist was not entitled to prefer an appeal. His only remedy was by way of revision. Because of the restrictions under Sub-Section 3 this Court should convert the same into appeal. The argument is not intelligible to me. State was only entitled to prefer an appeal. State did not choose to file appeal. Mr. Mallik made it categorically clear that State was happy with the judgment of the learned Sessions Judge. The instant incident occurred much prior to amendment wherein the de-facto complainant had been given power to prefer appeal with the leave of the Court. Such provision, in my view, cannot be given retrospective effect. Thus, I do not wish to venture to find out whether a second appeal would be maintainable or not in view of amendment. Hence, the application for revision would have to be considered within the parameters so prescribed u/s 401.

11. I have examined the Lower Court records. If we look to the complaint, we would find that the mother being PW-3 lodged the complaint after about 22 days of the incident. As per her complaint, it was a case of attempt to rape. She justified the delay on the ground that her husband had informed the Pradhan and Neighbours. Pradhan lingered the process. The accused started threatening the victim and her parents. Hence, the complaint was delayed. At the time of trial, victim and/or her parents improved their vision. According to them, rape was committed. As per the statement made u/s 164 by the victim, Krishna advised her to go back to her home by availing Nikhil's rickshaw van. Krishna did not support the statement. The victim also stated that Shashi covered her face whereas Sadhan was following the rickshaw. According to her, Nikhil scuffled her when she shouted. Nikhil abused her with filthy language. Nikhil did "nasty thing". She became "semi senseless". At that stage, Sadhan advised that she should be sent back home. Nikhil threatened her with dire consequence if she would disclose the incident to others. If we closely look to the statement, we would find that neither Sadhan nor Shashi raped her. There was no direct allegation of rape against Nikhil. She only stated that Nikhil "did nasty thing". At the time of trial, she improved her case a lot. She directly accused all the three for raping her. She also stated that blood was oozing from her private parts. This

was substantial improvement and would amount to graver offence for which the accused were never charged. Curiously enough, the learned Assistant Sessions Judge did not believe her and as such the charge was not modified. Coming back to the parents, I find that the father, after coming to know all the incident, did not go to the Pradhan's house and went out for fishing. The mother however, stated that her husband went to the house of Pradhan on the following day which was contrary to the evidence of the father.

12. The allegation, in my view, is highly suspicious. Such suspicion is strengthened when I look to the conduct of the parents. It was unusual for a father to go out for fishing after hearing the incident that her daughter was subjected to such heinous torture.

13. Question now remains, why the victim or her parents would tell lie unnecessarily to accuse the convicts. The answer was given by the victim and her parents themselves and corroborated by PW-2 being a neighbour. There was previous enmity between the victim's family and Sadhan's family on the issue of passage. The victim stated during her deposition, "The house of accused Sadhan is situated to the adjacent of her house. Previously, we had to egress from our house through the road of Sadhan. The aforesaid road was closed by Sadhan's family". "PW- 2 Basanti corroborated the victim by saying, "a dispute was taken place in between the Nagen Haldar and Sadhan's family about the blockade of road".

14. The reason for acquisition is thus clear. The Assistant Sessions Judge possibly overlooked this aspect.

15. The learned Sessions judge re-appraised the evidence in a right direction. The High Court being a revisional Court cannot re-appraise the evidence again and come to a different finding. I am only competent to look into the infirmities, if any, appearing in the judgment impugned which would amount to flagrant in justice or patent illegality. The present case does not pass through such test successfully.

16. The application fails and is hereby dismissed.

17. There would be no order as to costs.

18. Urgent xerox certified copy will be given to the parties, if applied for.