
(2010) 03 GAU CK 0032

In the Gauhati High Court

Case No : Criminal Rev. Petition No. 77 of 2010

Musstt. Habiza Bewa

APPELLANT

Vs

Asharful Alom Paramanik and Another

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 354, 376, 448, 511

Citation : (2010) 2 GLD 726 : (2010) 6 GLR 894

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : B. Sinha and R. Islam, for the Appellant; V.S. Singha, Assistant Public Prosecutor, Assam and A. Mannaf, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—I have heard Mr. B. Sinha, learned Counsel for the petitioner, and Mr. VS. Singha, learned Additional Public Prosecutor, Assam. I have also heard Mr. A Mannaf learned Counsel, for the accused-opposite party No. 1.

2. By judgment and order, dated 10.6.2009, passed, in GR Case No. (SSM) 149/2007, as the learned Judicial Magistrate, Dhubri, has acquitted the accused-opposite party No. 1, Ashraful Alam Paramanik, of the accusations made against him of offences having been committed under Sections 448 and 354, IPC, this revision has been filed by the informant-petitioner.

3. The case against the accused-opposite party herein, as unfolded at the trial, may, in brief, be described thus: On 17.6.2007, at about 2 a.m., when the prosecutrix went outside her house to attend to nature's call, accused Ashraful entered into the house of the prosecutrix and hid himself in the room of the prosecutrix. As soon as the prosecutrix entered into her room, accused hugged her and gagged her mouth with cloth in order to commit rape on her. The minor daughter of the prosecutrix, however, woke up and saw, in the light of a torch, the accused running out of the room. On hullah being raised by the prosecutrix

and her daughter, their co-villagers gathered, they were told by the prosecutrix and her said daughter about the incident and the name of the accused involved in the incident. A salisha (i.e., a meeting for settlement of disputes) was called, but the accused did not appear there. The prosecutrix, therefore, lodged a written information. Based on this information, a case under Sections 376/511, IPC was registered against the accused-opposite party No. 1. However, on completion of investigation, police laid charge-sheet against the accused under Sections 448/354, IPC.

4. On appearance of the accused, when the particulars of offences under Sections 448 and 354, IPC were explained to the accused, he pleaded not guilty thereto.

5. As many as seven witnesses, including the investigating officer, were examined by the prosecution. The accused Was, then, examined u/s 313, Code of Criminal Procedure. In his examination aforementioned, the accused denied to have committed the offence(s) as alleged to have been committed by him, the case of the defence being a mixed plea of that of total denial and of the accused having been falsely implicated due to grudge, which the prosecutrix has had with the accused. On conclusion of the trial, the learned trial Court acquitted the accused of the offences aforementioned. Hence, this revision by the prosecutrix-informant.

6. While considering this revision, what needs to be pointed out, at the very outset, is that according to the evidence of the prosecutrix (PW 1), she went out of her house to attend nature's call by keeping the door of the house open and, on coming back to her house, when she lied down on the bed, a person caught hold of her on her bed, kissed her and pressed her breasts. It is in the evidence of the prosecutrix that as she was struggling to free herself from the grip of the person, who had been behaving in the said manner, both of them fell down from the bed and, then, her daughter (PW 3) lighted a torch and, in the focus of the torch, she could see that it was accused Ashraful.

7. Broadly in tune with the evidence of her mother (PW 1), prosecutrix's daughter (PW 3) has deposed that on the night of the occurrence, she, suddenly, woke up on hearing some sound and she found her mother not present on her bed, she lighted a torch and, in the focus of the torch, she could see accused hugging her mother and, on raising hulla, accused fled away from the scene.

8. Close on the heels of the evidence of PW 1 and PW 3, PW 2, PW 4 and PW 5, who are neighbours of the prosecutrix, have deposed that on the night of the occurrence, they, on hearing hulla, raised from the house of the prosecutrix (PW 1), went to her house and they were told by the prosecutrix that somebody had entered into her house with bad intention and, on being asked by him as to who the man was, PW 1 told them that she could not identify the person, who had entered into her house.

9. As far as PW6 is concerned, his evidence is that on the night of the

occurrence, he was guarding his paddy field and, on hearing hulla, he went to the house of the prosecutrix (PW 1), where he found the prosecutrix weeping along with her daughter (PW 3) and, on being asked by him (PW 6), both the prosecutrix and her daughter told him (PW 6) that accused Ashraful had entered into their house.

10. Learned Counsel for the prosecutrix has submitted that the learned trial Court has committed serious error in acquitting the accused inasmuch as there is cogent evidence on record proving entry of the accused into the house of the prosecutrix and his act of outraging her modesty. The learned Counsel for the prosecutrix has also submitted that acquittal of the accused-opposite party would, if not interfered with by this Court, cause serious miscarriage of justice.

11. From a close scrutiny of the evidence of PW 2, PW 4 and PW 5, as already indicated above, what clearly transpires is that according to them, the prosecutrix (PW 1) told them that an unidentified man had entered into her house. In fact, the evidence of PW 4 shows that on being further asked by him, the prosecutrix told him that somebody had entered into her house, but, on being asked about the identity of the said person, she replied by saying that she could not identify the miscreant. In the light of the evidence, so given by PW 2, PW 4 and PW 5, when the evidence of PW 1 and PW 3 is carefully scrutinized, what transpires is that even according to PW 1 and PW 3, they could not have recognised the miscreant, had PW1's daughter (PW 3) not lighted the torch. The torch, in question, was, however, not seized by the investigating officer nor is there any explanation offered, in this regard, by the prosecution. On the other hand, the cross-examination of the prosecutrix and her daughter shows that the defence case has been that the accused had been falsely implicated, in the case, for a past incident, wherein the accused had levelled allegations of theft against the prosecutrix. In fact, the prosecutrix's daughter (PW 3) has admitted, in her cross-examination, that when the prosecutrix was working as a cook in a school, the accused, who happened to be the president of the said school, had alleged that prosecutrix had stolen rice meant for the students. Hence, the possibility of the accused-opposite party having been falsely implicated could not have been ruled out, particularly, when the evidence of PW 2, PW 4 and PW 5 clearly shows that the prosecutrix told them, on the very night of the occurrence, that an unknown person had entered into her house and that she could not identify the person, who had so entered into her house.

12. I may pause here to point out that though PW 5 has deposed that on reaching the house of the prosecutrix, he found the prosecutrix and her daughter crying and when asked by him, the prosecutrix told him that Ashraful had entered into her house, it may, now, be pointed out that while corroborating the evidence of PW 1 and PW 3, PW 6 has contradicted the evidence of PW 2, PW 4 and PW 5.

13. The question, therefore, is as to how far the learned trial Court could have believed PW 6. In this regard, it is of utmost importance to note that in her

evidence, the prosecutrix never stated that she had told PW 6 that it was the accused, who had entered into her house. Thus, the evidence given by PW 6 that prosecutrix had told him that Ashraful had entered into her house is nothing but hearsay. This apart, PW 6 had, admittedly, not told the investigating officer, when his statement was recorded, that the prosecutrix had told him the identity of the person, who had entered into her house. Thus, the evidence of PW 6 could not have been believed and has not been rightly believed by the learned trial Court. If the evidence of PW 6 is rejected as wholly unreliable, as I do, the evidence of PW 1 and PW 3 cannot be relied upon, when their evidence stands contradicted by the evidence of PW 2, PW 4 and PW 5 as regards the identity of the person, who had entered to the house of PW 1 and PW 3. When prosecution leads two sets of evidence contradicting each other and when such contradicting evidence is not reconciled or reconcilable, the benefit of such a situation has to be given to the accused. In the case at hand, the prosecution has adduced two sets of evidence, one given by PW 1, PW 3 and PW 6, and the other, given by PW 2, PW 4 and PW 5. While the evidence of PW 1, PW 3 and PW 6 shows that identity of the miscreant, who had entered into the house of PW 1, was known to them and the miscreant's name was told by PW 1 and PW 3 to their neighbours including PW 6, the evidence of PW 2, PW 4 and PW 5 shows that PW 1 and PW 3 had not recognized the person, who had entered into their house. Apart from these two irreconcilable versions of the occurrence, it is equally important to note that the evidence given by PW 6 that he had been told about the identity of the miscreant is nothing but hearsay and, above all, the omission, on the part of PW 6, to tell the police, during investigation, that on the night of the occurrence itself, he had been told about the name of the accused by PW 1 and PW 4, no reliance could have been placed on his subsequent exaggerated evidence given, at the trial, to the effect that PW 1 and PW 3 had told him that the miscreant, who had entered into their house, was accused Ashraful.

14. At any rate, when in the circumstances aforesaid, the learned trial Court has acquitted the accused-opposite party by giving him benefit of doubt, this Court, in exercise of its revisional jurisdiction, cannot, and shall not, substitute its views in place of the learned trial Court's view, which is reasonable and plausible. Situated thus, this Court is clearly of the view that acquittal of the accused-opposite party does not suffer from any infirmity, legal or factual, and his acquittal does not call for any interference by this Court in exercise of its revisional jurisdiction and/or in exercise of its inherent powers.

15. This revision is, therefore, not admitted and the same shall accordingly stand dismissed.

16. With the above observations and directions, this revision shall stand disposed of.