
(2007) 08 PAT CK 0164

In the Patna High Court

Case No : Criminal Revision No. 317 of 2001

Suryadeo Narain Bhagat

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 401
Penal Code, 1860 (IPC) — Section 120B, 304B, 347, 366, 380

Citation : (2007) PLJR 767

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Alok Kumar Sinha and S.R.C. Pandey, for the Appellant; Gopesh Kumar for the State and None for the O.P., for the Respondent

Final Decision : Dismissed

Judgement

Ghanshyam Prasad, J.—This revision application has been preferred against the judgment of acquittal of opposite party recorded by the 1st Addl. Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 70 of 1994. Opposite party No. 2 is the father-in-law of the petitioner/informant and other opposite party are associates or relation of opposite party No. 2. Lalita Devi, daughter of opposite party No. 2 was the wife of the petitioner.

2. The petitioner filed a complaint case in the court of the Chief Judicial Magistrate, Vaishali at Hajipur against the opposite party which was sent u/s 156(3) of the Code of Criminal Procedure to the Vaishali police station. The police registered a case bearing Vaishali P.S. Case No. 176 of 1991. After investigation the police submitted charge-sheet under Sections 366, 347, 380, 498 and 120B of the Indian Penal Code against the opposite party.

3. The prosecution case, in short, is that the marriage of the petitioner was solemnized on 7.6.1990 with Lalita Devi and thereafter both began to live happily as husband and wife. However, later on the father of Lalita Devi wanted to remarry her daughter with another person. Accordingly, opposite party No. 2

and his other family members on false pretext took away Lalita Devi and got her second marriage performed on 7.4.1991 with opposite party No. 7, Machhu Bhagat. The petitioner on 7.6.1991 lodged a case against opposite party vide Vaishali P.S. Case No. 176 of 1991 and also recovered Lalita Devi. Further case is that thereafter the opposite party on 23.8.1991 as well as on 24.8.1991 came to the house of the petitioner and approached him for compromise of the case. They also met and talk to Lalita Devi. On the next day in the morning Lalita Devi was found absent from the house alongwith ornaments and other articles. The petitioner went to his Sasural and searched his wife but the house was found locked.

4. Lalita Devi was also made accused but she did not face trial as according to opposite party she is dead.

5. In course of trial the prosecution examined as many as 17 witnesses. Several documents were also exhibited on behalf of the prosecution.

6. On the other hand, the defence in denial of the occurrence examined witnesses and also produced large number of documents.

7. Learned lower court after careful consideration of the oral as well as documentary evidence of both the parties as also the circumstances acquitted the opposite party.

8. In course of submission the learned counsel for the petitioner has challenged the judgment in question and submitted that the learned lower court has not properly appreciated the oral evidence of the prosecution witnesses which materially affected the decision. It is further submitted that faulty reasons have been assigned which is not sustainable in the eyes of law. For above submission, learned counsel has relied upon a decision of the Apex Court reported in Ayodhya Dube and Others Vs. Ram Sumer Singh, .

9. It is well settled law that the revisional jurisdiction operates within narrow limits. It can not appreciate the evidence and take a contrary view and reverse the findings of acquittal into conviction unless there is manifest error of law and gross miscarriage of justice as a result of misappreciation of the evidence on record. The court is not competent to record a different finding by supplying its own reason while examining illegality and propriety of the order.

10. The power of revisional jurisdiction has been explained by the Apex Court in a decision reported in Jagannath Choudhary and Others Vs. Ramayan Singh and Another, . In paragraph 9 of the judgment it has held as follows:

"Incidentally the object of the revisional jurisdiction as envisaged u/s 401 was to confer upon superior criminal court a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of (sic or) apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some underserved

hardship to individuals (see in this contest the decision of the Court in Janata Dal vs. H.S. Chowdhary.) The main question which the High Court has to consider in an application in revision is whether substantial justice has been done. If however, the same has been an appeal, the applicant would be entitled to demand an adjudication upon all questions of fact or law which he wishes to raise, but in revision the only question is whether the Court should interfere in the interests of justice. Where the court concerned does not appear to have committed any illegality or, material irregularity or, impropriety in passing the impugned judgment and order, the revision cannot succeed. If the impugned order apparently is presentable, without any such infirmity which may render it completely perverse or unacceptable and when there is no failure of justice interference cannot be had in exercise of revisional jurisdiction."

11. In the decision cited by the learned counsel the Apex Court upheld the order of the High Court for retrial after referring the findings of the High Court in order to show that the findings of acquittal recorded by the lower court was perverse and based on gross misappreciation of evidence in violation of accepted cannons for appreciating evidence. Therefore, it is apparent that the above decision is in full conformity with the scope of revisional jurisdiction as described in the case of Jaganath Choudhary (supra).

12. So far as present case is concerned I have carefully gone through the oral and documentary evidence of the prosecution as well as the defence evidence. This court is of the view that the findings recorded by lower court on the basis of the material available on record no contrary opinion can be formed. There is no question of misappreciation of evidence by the lower court.

13. The material available on record clearly go to show that the petitioner had lodged case against the opposite party in order to save his skin from the case lodged earlier by the opposite party No. 1 against him u/s 304B of the Indian Penal Code. The police case lodged by the petitioner bearing Vaishali P.S. Case No. 75/1991 also ended in acquittal of the opposite party.

14. Learned counsel for the petitioner also failed to show any illegality, impropriety in the findings arrived at by the learned court below which attracts this Court to envoke revisional jurisdiction in order to reverse the decision of the learned lower court. In the result, I find no merit in this revision application and accordingly this application is dismissed.