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In Re: Monoranjan Manna Alias Mintu Manna

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Court : Kolkata

Decided On : Mar-11-1994

Reported in : (1994)1CALLT424(HC)

Judge : Amal Kumar Chatterjee and ;Satya Narayan Chakraborty, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 313, 397, 401, 464; ; Indian Penal Code (IPC), 1860 - Sections 324 and 326

Appellant : In Re: Monoranjan Manna Alias Mintu Manna

Advocate for Pet/Ap. : D.K. Sengupta and ;Pratik Kr. Bhattacharyya, Advs.

Disposition : Application dismissed

Judgement :

1. This revisional application seeks to set aside an appellate order affirming the conviction of the petitioner by a learned Trial Judge under Section 326 I.P.C. on the apparently substantial ground that Section 313 Code of Criminal Procedure has not been complied with as the learned Trial Judge did not put to the petitioner during the examination under Section 313 Cr. P.C., the evidence regarding the alleged permanent disfiguration of face suffered by the victim Manindra as a result of acid throwing by the petitioner. The learned Advocate for the petitioner has tried to bolster his point by relying upon the decision in Sarada's Case : 1984 CriLJ1738 .

2. The judgment of the learned Trial Judge reveals that there were several eye witnesses to the incident of acid throwing by the petitioner and it has not been urged by Mr. Sengupta, the learned Counsel for the petitioner, that these evidence were not pointed out to the petitioner under Section 313 Cr. P.C. Thus we can proceed on the assumption that such evidence were duly put to the petitioner during his examination under Section 313 Cr. P.C. and either he had no explanation to offer or the explanation given by him was not acceptable. Thus the fact of acid throwing has been proved and the nature or the extent of injury suffered by the victim is relevant only for a finding whether the petitioner was liable to be convicted under Section 324 I.P.C. or under Section 326 thereof. In such situation, even though the evidence regarding permanent disfiguration of face was not pointed out to the petitioner in his examination under Section 313 Cr. P.C. it cannot, in our opinion constitute a ground for setting aside the judgment or for any revisional interference unless it is shown that the petitioner has been' prejudiced in any way resulting in failure of justice. In Sarada's case (supra) prosecution tried to bring home the charge only by circumstantial evidence and several circumstances were not put to the accused in the examination under Section 313 Cr. P.C. with the result that he had no opportunity to offer explanation if any, and thus the chain was broken and their Lordships held that those circumstances could not be used against him. This cannot be regarded as an authority for any general proposition that even where the guilt of an accused is proved by unassailable direct evidence duly pointed out to him under Section 313 Cr. PC, the revisional Court would interfere if some evidence, to determine the particular section of the Penal Code which should be applied, was not pointed out in the examination under Section 313 Cr. P.C. as in the case before us, unless the accused is shown to have been prejudiced resulting in failure or miscarriage of justice. The case before us at its worst is one of inadequate compliance with the provisions of Section 313 Cr. P.C. the effect of which has been laid down by the Supreme Court in Moseb Kaka Chowdhury and Anr v. The State of West Bengal, : 1956 CriLJ940 which has not been reviewed so far and is good law to this date. In that case, their Lordships observed that a judgment cannot be set aside merely by reason of inadequate compliance with Section 342 'Cr. P.C (Corresponding to Section 313 of the present Code of Criminal Procedure) unless clear prejudice was shown and further

it was up to the accused or his Counsel in such cases to satisfy the Court that in adequate compliance has resulted in miscarriage of justice. Their Lordships declined to interfere with a conviction under Section 304 I.P.C. although it was found that the examination under Section 342 was absolutely perfunctory. Their Lordships quoted with approval another decision of the same Court in K.C. Mathew v. State of Travancore Kochin : 1956 CriLJ444 where, on the question of prejudice, it was observed that only person who can really tell the Court whether he was prejudiced was the accused and if there was real prejudice he would at once state the facts and leave the Court to judge their worth and further the Court was entitled to conclude that a person who deliberately withheld the fact within his knowledge and refused to give the Court, the assistance which was its right and due, had nothing of value which he could disclose and if he disclosed anything it would it once expose the hollowness of his cause. In the instant case, although the plea of omission to state material evidenc in the examination under Section 313 Cr. P.C. was taken in the Court below, not a word was whispered as to how the appellant was prejudiced by it. Indeed, the evidence of several witnesses who spoke of permanent disfiguration of face was not even challenged in the cross-examination before the learned Trial Judge. In such circumstances, we are firmly of the opinion that no revisional interference is called for on the ground under consideration.

3. The learned Advocate for the petitioner has also stated that in the charge which was framed by the learned Trial Judge, the nature of the injury suffered by the victim namely, permanent disfiguration of face was not mentioned, which was said to be a materials defect. We find no merit in this contention for more than one reason'; in the first place, the charge did disclose that grievous hurt, which includes permanent disfiguration of face, suffered by the victim was mentioned and secondly, no omission or error in the charge can render invalid any finding, sentence or order of a competent Court unless it has occasioned a failure of justice as laid down in Section 464 of the Code of Criminal Procedure. We have already pointed out that there was no question of any failure of justice, in the instant case and as such, we do not find any merit in this ground also.

4. The learned Advocate for the petitioner Mr. Sengupta with his usual fairness has stated that rest of the grounds relate to findings of facts concluded by both the Courts below which in our view cannot constitute any ground for revisional interference.

For reasons indicated above, the instant application is dismissed in limine and the petitioner is directed to forthwith surrender before the learned Trial Judge.

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