Haridas Ghosh.

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SooperKanoon Citation : sooperkanoon.com/920221

Court : Kolkata

Decided On : Jul-07-2011

Judge : Kanchan Chakraborty, J.

Acts : Indian Penal Code (IPC), - Sections 498A, 302, 34; Code of Criminal Procedure (CrPC) . - Section 401, 482

Appeal No. : C.R.R.3404 of 2009.

Appellant : Haridas Ghosh.

Advocate for Def. : Mr. Kazi Safiullah; Mr. Prasanta Kr. Das. Advs

Advocate for Pet/Ap. : Mr. Sandipan Ganguly; Mr. Debangan Bhattacharjee. Advs

Judgement :

1. The legality, validity and propriety of the judgment and order dated 21st July, 2009 passed by the learned Additional Sessions Judge, Fast Track, 3rd Court, Paschim Midnapore in S.T. No.LXIII/June/2007 whereby the opposite parties No.2, 3 and 4 were acquitted from the charge under Sections 498A/302/34 of the Indian Penal Code, has been challenged in this revision.

2. One Haridas Ghosh lodged an F.I.R. in the Goaltore Police Station, Paschim Midnapore on 3.4.2006 alleging therein that her sister Archana died due to burn injuries caused by her husband, Tarun Karak who set her on fire after pouring

kerosin oil on 1.4.2006.

3. It was also alleged that the opposite party Tarun Karak being drunken, used to misbehave with the victim and there was discontents between them and as a result, an altercation had taken place between them on the fateful date. The opposite party Tarun Karak poured kerosin oil on her body and set her on fire. As a result, Archana died with 90% burn injury on 5th April, 2006 in the N. R. S. Medical College and Hospital at Calcutta.

4. The opposite parties were arrayed to face the trial under Sections 302/34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced. The learned Trial Court recorded evidence as many as 21 witnesses, admitted some documents into evidence and marked exhibits on behalf of the prosecution. Upon consideration of the evidence on record, oral and documentary, the learned Trial Court found that the prosecution failed to bring home the charges levelled against the petitioners. Accordingly, the order impugned was passed and thereby the opposite parties were acquitted from the charges.

5. Haridas Ghosh, the elder brother of victim Archana has come up with this application challenging the legality, validity and propriety of the order mainly on the following grounds;

a) that the learned Court failed to appreciate the evidence on record in its proper and true perspective;

b) that the learned Court ought to have believed the oral testimonies of P.W.6 and P.W.16 who had categorically stated that the victim made a declaration in their presence that the opposite party No.1 Tarun Karak poured kerosin oil followed by an altercation and set her on fire;

c) that the learned Court erred in categorizing the P.W.6 and P.W.16 as interested witnesses;

d) that the judgment being otherwise bad in law, is liable to be set aside.

6. Mr. Ganguly, learned Counsel appearing on behalf of the petitioner contends that the learned Court ought to have believed the evidence of P.W.6 and P.W.16 who have categorically stated in course of examination in Court that the victim reported them that the opposite party No.1, Tarun Karak set her on fire after pouring kerosin oil on the fateful date. The fact that the victim died because of 90% burn injuries has also been established. Therefore, according to Mr. Ganguly, the learned Trial Court should have given much stress on this part of evidence but ignored to do so.

7. Mr. Kazi Safiullah, learned Counsel appearing for the private opposite parties contends that the judgment being well reasoned is not required to be upset by this Court in exercising revisional jurisdiction. He submits further that the evidence of P.W.6 and P.W.16 has not been believed by the Court after giving proper reasons which cannot be thrown away.

8. I have carefully gone through the judgment impugned.

9. There was no eye witness to the incident alleged. P.W.1, i.e., the brother of the victim who lodged the F.I.R., the P.W.2, the mother of the victim and the P.W.3, the father of victim did not make any statement in course of their examination in court that the opposite party Tarun Karak was in a habit of harassing the victim in drunken condition. P.W.1, i.e., the defacto complainant received the information and had been to the Midnapore Medical College and Hospital on the very date. The P.W.1, P.W.2 and P.W.3, the brother, mother and father, respectively, of the deceased have not stated that the victim made any declaration to the effect that the opposite party Tarun Karak poured kerosin oil on her body and set her on fire as a result of an altercation on the fateful date.

10. I find that the learned Trial Court has taken very evidence into consideration thoroughly. The evidence of P.W.6 and P.W.16, i.e. Annarani Ghosh and Debasish Ghosh who are elder sister and cousin of the victim, stated that while they visited the victim Archana in hospital, she reported them that there was an altercation in between herself and her husband on the last night and as a result, her husband, opposite party No.2, Tarun Karak poured kerosin oil on her person and set her on fire.

11. The P.W.6 and P.W.16 visited the victim on 3rd April, 2006.

12. The P.W.1, P.W.2 and P.W.3 visited the victim immediately after receiving the information in the Midnapore Medical College and Hospital, i.e., prior to visit of P.W.6 and P.W.16. At that time, the victim did not disclose that fact to them. The P.W.21, the I.O. of the case had been to the hospital and met the victim on 4th April and 5th April, 2006 but he found that the victim was not in a condition to speak. The P.W.10, Dr. Gautam Mitra, who examined the victim as an indoor patient on 2.4.2006 found that the victim was not in a condition to speak on that date.

13. I find that the learned Trial Court was not convinced with the evidence of P.W.6 and P.W.16 for the simple reason that the victim was found not in a condition to speak on 2.4.2006, 4.4.2006 and 5.4.2006, but was found in a condition to speak only on 3.4.2006, if the evidence of P.W.6 and P.W.16 is to be believed. That was not found convincing to the learned Trial Court.

14. On careful appraisal of the evidence on record, I find that there is no convincing evidence to the effect that the victim was in a condition to speak, mentally and physically, after her admission in the hospital. The role of other opposite parties in the alleged incident has not been disclosed by any of the witnesses. I find that the learned Trial court has taken entire evidence into consideration and passed the order impugned.

15. It is settled principle of law that only in glaring cases of error on the part of the Trial Court in fundamental principles of law, High Court may interfere into an order of acquittal in exercise of revisional jurisdiction when invoked by a private party. In fact and in substance, I find that no such error of fundamental principle of law has been made by the learned Trial Court necessitating interference of this Court in the order impugned and passing of an order of retrial of the acquitted accused/re-hearing of the matter.

16. In Sheetala Prasad & Ors. v. Sri Kant & Ors., reported in A.I.R.2010 SC 1140, the Hon’ble Apex Court set out the following cases where the High Court may interfere into an order of acquittal by exercising revisional jurisdiction invoked by a

private party:-

a) where the trial court has wrongly shut out evidence which the prosecution wished to produce;

b) where the admissible evidence is wrongly brushed aside as inadmissible;

c) where the trial court has no jurisdiction to try the case and has till acquitted the accused;

d) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and

e) where the acquittal is based on the compounding of the offence which is invalid under the law.

17. On perusal of the judgment impugned as well as the evidence on record, I find that the learned Trial Court has not shut out evidence which the prosecution wished to produce. The learned Court has not brushed aside the admissible evidence as inadmissible. The learned Court has not also overlooked material evidence and put importance on immaterial and irrelevant evidence in order to record the order of acquittal. That being the case, I find that it does not appear to be a fit and proper case where the judgment impugned requires to be upset by this Court in exercise of its revisional jurisdiction.

18. Accordingly, the revisional application fails. The judgment passed by the learned Trial Court is upheld.

19. This revisional application is, thus, disposed of.

20. There will, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be given to the learned Advocates of the parties upon compliance of necessary formalities.