Ananta Bhowmik Vs Prafullya Mondal and Others

Court: Calcutta High Court

Date of Decision: May 20, 2011

Acts Referred: Penal Code, 1860 (IPC) â€" Section 302, 34, 498A

Citation: (2011) 2 Crimes 629

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Debabrata Acharya and Prabir Addya, for the Appellant;Milon Mukherjee and Biswajit Manna for O.P. Nos. 2 to 5, for the Respondent

Judgement

Kanchan Chakraborty, J.
This revisional application has been filed by Ananta Bhowmik, the de-facto complainant in Balurghat police

station case No. 53 of 1999 dated 11.2.1999 challenging the legality, validity and propriety of the judgment and order of acquittal dated

22.7.2003 passed by the learned Additional District and Sessions Judge, Dakshin Dinajpur at Balurghat in Sessions Case No. 25/2001 (Sessions

Trial No. 11/01) whereby the opposite parties/accused were acquitted from the charges under Sections 498A/302/34 of the Indian Penal Code.

2. That Balurghat police Station Case No. 53/99 dated 11.2.1999 was initiated by the Petitioner against the opposite parties alleging therein that

Amita Mondal, daughter of de-facto complainant Ananta Mondal was given marriage with opposite party No. 2 Dilip Mondal in the year 1991. In

their wedlock, one female child was born. After birth of the said female child Amita was subjected to cruelty in her matrimonial house by the

opposite parties who demanded cash of Rs. 20,000/-, television sets and other articles. She was beaten frequently by them for that purpose.

Opposite party Laksmi Mondal instigated her to commit suicide by taking poison. Opposite party Anil Mondal had beaten her in presence of her

husband opposite party Dilip Mondal. Amita, since deceased, informed everything to her elder sister Anita and their father Ananta Bhowmik.

Ananta Bhowmik was asked by opposite party Dilip to pay him Rs. 13,000/- within two/three months. Ananta upon receiving such phone call, had

been to the house of opposite party and paid Rs. 5000/-. On 11.2.1999, at about 5 P.M. Ananta Bhowmik came to know that Amita sustained

burn injury and was admitted in Balurghat hospital. Upon his reaching there, he came to know from Anita that the opposite parties sprinkled

kerosine oil on her body and put her on fire. Ananta lodged one FIR with Balurghat police station on 11.2.1999 without delay and, accordingly,

the case stated. Anita Mondal died on 25.2.1999 at 1.50 A.M. The investigation ended in a charge-sheet under Sections 498A/302/34 of IPC

against all the opposite parties. The learned Trial Court framed charges under Sections 498A/302/34 of IPC against all the opposite parties who

pleaded not guilty and claimed to be tried. Hence, the trial commenced. In all, 28 witnesses were examined on behalf of the prosecution. Some

documents, such as, seizure lists, letters written by Anita, the FIR, the inquest report, dying declaration, death information, FIR in respect of

unnatural death, post mortem report, hospital record, injury report and sketch map of the place of occurrence were admitted into evidence and

marked Exs. on behalf of the prosecution. No witness was examined on behalf of the defense nor any document was filed and admitted into

evidence on behalf of the defense. Upon consideration of the evidence on record, oral and documentary, the learned Court found that the

prosecution failed to bring home the charges leveled against the opposite parties and, accordingly, recorded their acquittal. The de-facto

complainant Ananta Bhowmik has come with this application for revision of the judgment impugned on the following grounds:

a) that the learned Court failed to appreciate the evidence its proper perspective;

b) that the learned Court failed to appreciate the dying declaration made by the deceased;

c) that the learned Court failed to take note of the evidence of P.W. 18 i.e. the Deputy Magistrate and Deputy Collector and independent

witnesses deposed in Court supporting the prosecution case that the deceased made dying declaration to the effect that the opposite parties

sprinkled kerosene oil and set her on fire;

d) that the learned Court failed to consider that the deceased was subject to cruelty in her matrimonial house and that there was a constant demand

of cash money and kinds from the opposite party side;

e) that the learned Trial Court erred in placing much reliance on Ex. 13 in order to discard the evidence of independent witnesses;

f) that the judgment and order being bad in law, are liable to be set aside.

3. The points to be decided in this revision application are whether the judgment and order under challenge are sustainable in law and whether this

is a proper case where this Court should exercise its revisional jurisdiction and thereby set aside the judgment impugned and direct retrial/rehearing

of the case.

4. Mr. Acharya, learned Counsel appearing on behalf of the Petitioner has made manifold contention. The main thrust of his contention is that the

learned Court ought to have accepted the dying declaration i.e. Ex. 7 recorded by Deputy Magistrate on 12.2.1999 and that the learned Trial

Court ought to have believed the statements of witnesses who visited hospital upon receiving the news of admission of the deceased with burn

injuries to the effect that injured Anita made a dying declaration that her husband Dilip sprinkled kerosene oil on her and set her on fire. He also

contended that the learned Court failed to appreciate the contents of the letters written by Anita which were marked Ex. 2 series.

5. Mr. Milon Mukherjee, learned Counsel appearing on behalf of the opposite parties No. 1 to 5 contended that the learned Court appreciated the

evidence in its proper perspective. There was no incorrectness, illegality and impropriety in the judgment impugned. The learned Court has not also

overlooked any relevant/material evidence or put unnecessary importance on any irrelevant/immaterial evidence to justify recording of order of

acquittal. Mr. Mukherjee reminded this Court the consistent view of the Hon''ble Apex Court in the matter of exercising revisional power by the

High Court when an order of acquittal is challenged and invoked by a private party. Mr. Mukherjee contended that the since judgment impugned is

not suffering from any patent illegality and incorrectness, this Court should refrain from interfering into it and must not pass an order of

retrial/rehearing of the case.

6. I have carefully gone through the entire judgment under challenge as well as the oral and documentary evidence placed before the learned Trial

Court. The case of the prosecution is based on circumstantial evidence. There is no direct evidence, whatsoever, against the opposite parties in

respect of offence u/s 498A and 302 of IPC.

7. It is admitted position that Anita died on 25.2.1999 at 1.50 A.M. in Balurghat hospital because of burn injury. The post mortem report and

inquest report as well as dead certificate altogether confirms that fact. It is also admitted position that the incident alleged had taken place in her

matrimonial house where the opposite parties had been residing together with Anita. Anita died within seven years from the date of her marriage

with opposite party Dilip. It is also stated by some of the witnesses that Anita disclosed to them that her husband Dilip set her on fire after

sprinkling kerosene oil on her body. Some letters written by Anita were admitted into evidence and marked Ex. on behalf of the prosecution. One

dying declaration recorded by Deputy Magistrate was also admitted into evidence and marked Ex. on behalf of the prosecution. All these factors

altogether apparently appears adverse to the opposite parties and in favour of the prosecution. Since, there is no direct evidence of the incident of

inflicting cruelty and committing murder of Anita by setting her on fire, prosecution was to depend entirely on circumstances mentioned above. It is

settled principle of law that while a case is based on circumstantial evidence, each and every circumstance is to be established to the hilt and all the

circumstances are supposed to be linked with each other in order to form a chain which irresistibly and unmistakably lead to the only conclusion

that the none but the opposite parties/accused committed the offence.

8. I find that the learned Trial Court has taken note of each and every fact available before it in course of trial. Even the learned Court admitted a

xerox copy of dying declaration and marked the same as Ex. 7 without as certaining as to whether the original was missing or not traceable. The

learned Court also taken all the letters which were marked Ex. 2 series into consideration. It is in fact, not the case where the learned Court

ignored the material and relevant evidence. It is also not the case where the learned Court put emphasise on immaterial/irrelevant evidence in order

to justify order of acquittal.

9. The dying declaration alleged to have been recorded by Deputy Magistrate which has been marked Ex. 7 if considered to be the dying

declaration of the deceased, it can safely be said that the same can not be accepted. Within four corners of the Ex. 7 it has not been spelt out that

what was the mental and physical condition of the declarant. It does not bear signature or LTI of the declarant. It does not bear any certificate to

the effect that the contents of the same was read over and explained to the declarant for her verification. The Ex. 15 i.e. injury report handed over

by the Medical Officer to the officer-in-charge of Balurghat Police Station shows that the condition of the patient was very poor. Although, she

was conscious but in agony. The Ex. 13 i.e. the record of IN-PATIENT shows that Anita sustained 90 percent burn injury and her dying

declaration was supposed to be recorded as early as possible. The Ex. 13 read with Ex. 15 together indicates that the condition of Anita, physical

and mental, when she was admitted in the Balurghat hospital was not good enough. She was admitted at 05.30 hours on 11.2.1999. The Ex. 7

was recorded at 11.45 A.M. i.e. about six hours after admission of Anita. No doubt, within this six hours, condition of Anita obviously

deteriorated. Therefore, it was essential for the Deputy Magistrate to take note of mental and physical fitness of the declarant at the time of

recording her declaration. That has not been done at all. I find that the learned Trial Court has rightly discarded the said dying declaration i.e. the

Ex. 7. I find that the learned Court taken the oral testimonies of the prosecution witnesses into consideration while discussing the alleged oral dying

declaration made by Anita to them. I find that the witnesses failed to reproduced the exact dying declaration of Anita. There are major

discrepancies in their statement regarding making of dying declaration to them by Anita in hospital. Some of the witnesses in course of their

examination and cross-examination expressed their doubt as to whether Anita was in sense or not at that time. The FIR which was lodged by the

Petitioner Ananta Bhowmik (Ex. 5) indicates that Anita stated to Ananta that all the opposite parties/accused poured kerosene oil on her and set

her on fire. If so, the dying declaration purported to have been made by Anita in hospital before the witnesses can not be accepted simply because

according to the witnesses she stated that her husband Dilip alone poured kerosene oil and set her on fire. She did not mention the name of other

opposite parties. I find that the learned Court while discussing the alleged oral dying declaration on 11.2.1999 detected major discrepancy. There

was no staff attached to the hospital present at the relevant time. The attending Doctor was not also in the scene. No one could say what was the

mental and physical state of Anita at the relevant time. The P.W. 1, 21 and P.W. 25 negated the possibility of making of such dying declaration in

the absence of any hospital staff or the Doctor. Therefore, it can not be said that learned Trial Court failed to appreciate the evidence or ignored

the material and relevant portion of evidence of the prosecution.

10. Again, the letters allegedly written by Anita which were marked Ex. 2 series disclosed that the deceased Anita was not happy and her husband

Dilip who used to ill treat her even assaulted her. The Ex. 2 series, if are read minutely, do not disclose any allegation as to the fact that the

opposite parties including Dilip ever created pressure on the deceased for dowry either in cash or in kind. I find that the learned Trial Court came

to a conclusion upon scrutinising the Ex. 2 series that the deceased was a frustrated unhappy house wife and had no intention to remain alive.

Learned Court has also gone a step ahead and accepted the fact that the opposite party Dilip was the cause of her unhappiness. But, this fact

alone does not necessarily established that the opposite parties inflicted cruelty on the deceased within the meaning of Section 498A of IPC and

that they caused murder of Anita. In fact, there is no reason for the opposite parties to cause murder of Anita. The prosecution failed to establish

that there was a constant demand of the opposite parties of dowries and inflecting torture on the deceased for not fulfilling of demand of dowry. In

absence of such a specific case, the offences u/s 498A IPC can not possibly be attracted. Even if the alleged oral dying declaration is believed, it

indicates that Anita was caused to death by Opposite party Dilip only because she failed to pump water because of her ill health. If so, the death of

Anita had no connection with any demand of dowry. The reason for setting Anita set on fire and causing her death as stated by her in her alleged

dying declaration does not appear to be practicable and believable. The learned Court has dealt with the matter elaborately from all possible angles

and found that the prosecution failed to establish the case beyond reasonable doubt.

11. It is settled principle of law that the High Court is empowered to set aside the order of acquittal and direct a retrial of the acquitted accused

only in glaring case of injustice resulting from some violation of fundamental principles of law by the trial Court. The consistent view of the Hon''ble

Apex Court in this regard was followed since 1951 till this date. Hon''ble Court in Bansi Lal and Others Vs. Laxman Singh, reiterated its earlier

decisions in D. Stephens Vs. Nosibolla, , Logendra Nath Jha and Others Vs. Shri Polailal Biswas, and K. Chinnaswamy Reddy Vs. State of

Andhra Pradesh, and observed that the revisional power is not to be likely exercised when invoked by a private complainant and it should be

exercised in exceptional cases where the interest of justice required interference for the correction of manifest illegality or the prevention of gross

mis-carriage of justice. The Hon''ble Court observed further that this jurisdiction is not ordinarily be invoked merely because the lower Court has

taken a wrong view or mis-appreciated the evidence.

12. In Sheetala Prasad and Others Vs. Sri Kant and Another, , Hon''ble Court was pleased to lay down the instances where High Court may

exercise its revisional jurisdiction justifying setting aside an order of acquittal. It was observed by the Hon''ble Court that in the following cases, the

High Court may exercise such jurisdiction:

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 still 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;

e) Where acquittal is based on compounding of offence which is invalid under the law;

13. In the instant case, the Trial Court has not shut out evidence which the prosecution wished to produce nor the Court wrongly brushed aside

any admissible evidence as inadmissible. Rather, the learned Court admitted evidence which is inadmissible. The learned Court had jurisdiction to

try the case. The acquittal is not based on compounding of offence also. Mr. Acharya, learned Counsel appearing for the Petitioner contended that

the learned Court overlooked material evidence. I find that the said contention is not correct. Learned Court, in my estimate, has taken all the

relevant evidence/issues and discussed elaborately. It is not also correct to say that the learned Trial Court passed the order of acquittal by

considering irrelevant evidence.

14. This Court while exercising its revisional jurisdiction is not supposed to usurp the jurisdiction of an Appellate Court and re-appreciate evidence

on record which is exclusive domain of Appellate Court. When it is found that the learned Trial Court has taken entire evidence on record in its

true perspective and was not oblivious of material evidence while recording acquittal, this Court should not and must not set aside the same by

exercising its revisional jurisdiction in view of the principle laid down by the Hon''ble Apex Court in the decisions mentioned earlier. There is no

violation of fundamental principle of law by the learned Trial Court. There is no patent wrong or error of law and fact which has otherwise caused

irreparable injury. In such a case, this Court should not exercise its revisional jurisdiction and set aside the order of acquittal and direct retrial of

acquitted accused.

15. In view of the facts above, the revisional application fails.

16. It stands dismissed and is disposed of.