Criminal Revision

Present: The Hon'ble Justice S.P. Talukdar
Judgment on: 18.05.2010.
C.R.R. No. 3287 of 2007
Sri Khagendra Nath Dutta
Vs.
Sri Sauvik Hazra & Anr.

Point:

PROOF, REASONABLE DOUBT: Minor discrepancies and marginal mistakes whether demolish a prosecution case-Credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny-Whether it is required to proof beyond reasonable doubt or not beyond all doubt-Interference in revision whether permissible- Code of Criminal Procedure, 1973 S. 401

Facts:

The present petitioner, as defacto complainant, lodged a written complaint alleging that his daughter, Poulami Hazra, got married to Sauvik Hazra He was informed over phone that his daughter, Poulami, had committed suicide. He being accompanied by others rushed to the matrimonial home of Poulami and came to know that Poulami had been taken to People's Meditreat Pvt. Ltd. Nursing Home. They rushed to the said place and came to know that Poulami had committed suicide by hanging. The O.P. No. 2, being his son-in-law, used to torture Poulami – both physically and mentally, for her failure to do domestic work. On the basis of such complaint, the police authority started a case and after completion of investigation submitted charge sheet under Sections 498A/306 of I.P.C. The husband,however, pleaded not guilty and claimed to be tried and faced the trial.Learned Trial Court after taking into consideration all such evidence by the impugned judgment held the accused person not guilty of the offence under Sections 498A/306 of

I.P.C. The accused person was acquitted accordingly Being aggrieved by such judgment and order of acquittal, the defacto complainant, as petitioner, approached this Court with the instant revisional application.

Held:

A Court of revision can also intervene in the event of faulty reasoning. While clearly holding that in absence of manifest illegality, a Court of revision should not set aside an order of acquittal in response to a revisional application, it is possibly necessary to emphasize that the principles cannot be rigid or compartmentalized. After all, law is not arithmetic and two plus two do not necessarily make four – either in law or, perhaps, in life. But the ultimate aim of a Court is to ensure that the cause of justice is not frustrated. **Para-20**

True, minor discrepancies and marginal mistakes cannot demolish a prosecution case. Credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. It cannot be disputed that truth may sometime suffer from infirmity when projected through human process. And, what is required is proof beyond reasonable doubt and not beyond all doubt. **Para-42**

There may be some evidence reflecting occasional teasing of the victim by her husband. As referred to earlier, there had been an incident where act of the accused led to breaking of the victim's conch-shell. But there is no evidence to the satisfaction of the judicial conscience of the Court to the effect that such 'misconduct' could be said to be 'abetment' for commission of suicide.

Para-43

Cases Cited:

Hydru Vs. State of Kerala-------2004) 13 SCC 374).

Thankappan Nadar & Ors. And Gopal Krishnan & Anr------- (2002) 9 SCC 393

Bansi Lal & Ors. And Laxman Singh------ 1986 SCC (Cri) 342

Bindeshwari Prasad Singh @ B.P. Singh & Ors. And State of Bihar (now Jharkhand) & Anr------ 2002 SCC (Cri) 1448

Johar & Ors. Vs. Mangal Prasad & Anr.---------- (2008) 2 SCC (Cri) 89.

Shakson Belthissor And State of Kerala & Anr., ------JT 2009 (8) SC 617

Bhaskar Lal Sharma & Anr. And Monica------ (2010) 1 SCC (Cri) 383

State of Andhra Pradesh And Madhusudhan Rao----- (2009) 3 SCC (Cri) 1123.

Soban Raj Sharma And State of Haryana------ 2008 (3) Supreme 89

Soban Raj Sharma And State of Haryana------ 2008 (3) Supreme 89

Anil Kumar Choulia, Santosh Kumar Choulia & Parul Bala Choulia Vs. Sitesh Chandra Lahiri,------- 2004 CWN 930).

Rajbabu & Anr. And State of M.P-------- 2008 (5) Supreme 666

Mahendra Singh & Anr. And State of M.P------ 1995 SCC (Cri) 1157

Bishnu Chakraborty & Anr. And The State of W.B------- (2007) 1 C.Cr.LR (Cal) 714.

Surajmal Banthia & Anr. And The State of West Bengal, -----C.Cr.LR (Cal) 530

State of West Bengal And Orilal Jaiswal & Anr------ 1994 CRI.L.J. 2104

Ram Briksh Singh & Ors. And Ambika Yadav & Anr------ (2004) 7 SCC 665 Mahendra Singh & Anr. And State of M.P------ 1995 SCC (Cri) 1157

Bishnu Chakraborty & Anr. And The State of W.B------ (2007) 1 C.Cr.LR (Cal) 714.

Surajmal Banthia & Anr. And The State of West Bengal----- 2003 C.Cr.LR (Cal) 530 State of West Bengal And Orilal Jaiswal & Anr------ 1994 CRI.L.J. 210.

For the Petitioner : Mr. Sudipto Moitra,
Mr. Bibhasaditya Chakraborty.

For the Private O. : Mr. Sekhar Basu,
Mr. Joymalya Bagchi,
Mr. Avishek Sinha,
Mrs. Isita Chatterjee.

The Court:

Learned Assistant Sessions Judge, 3rd Court, Howrah, by judgment and order dated 19th July, 2007 acquitted the accused, being O.P. No. 1 from charges under Sections 498A/306 of the Indian Penal Code. Being aggrieved by such judgment of acquittal, the defacto complainant, as petitioner, filed the instant revisional application.

2. The backdrop of the present case may briefly be stated as follows:-

The present petitioner, as defacto complainant, submitted a written complaint on 9th February, 2006 at about 18:55 hours. It was submitted therein that his daughter, Poulami Hazra, got married to Sauvik Hazra and such marriage took place on 17th November, 2005 and it was duly solemnized according to Hindu rites and customs. On 8th of February,2000 at about 18 hours, he was informed over phone that his daughter, Poulami, had committed suicide. He being accompanied by others rushed to the matrimonial home of Poulami and came to know that Poulami had been taken to People's Meditreat Pvt. Ltd. Nursing Home. They rushed to the said place and came to know that Poulami had committed suicide by hanging. The present petitioner, as complainant, alleged that the O.P. No. 2, being his son-in-law, used to torture Poulami – both physically and mentally, for

her failure to do domestic work. He claimed that Poulami even requested them over telephone to take her back from her matrimonial home. He was informed by Poulami over phone that on 3rd of February, 2006, her husband, Sauvik, assaulted her at noon resulting in breaking of her conch. The complainant, thus, alleged that continuous physical and mental torture upon his daughter, Poulami, compelled her to bring her life to an end.

3. On the basis of such complaint, the police authority started a case and after completion of investigation submitted charge sheet under Sections 498A/306 of I.P.C.

4. Learned Court by order dated 13th October, 2006 framed charge under Sections 498A/306 of I.P.C. against accused Sauvik. He, however, pleaded not guilty and claimed to be tried and faced the trial.

5. Prosecution in order to establish the guilt of the accused person examined as many as 17 witnesses and also relied upon as many as 23 exhibits.

6. Learned Trial Court after taking into consideration all such evidence by the impugned judgment held the accused person not guilty of the offence under Sections 498A/306 of I.P.C. The accused person was acquitted accordingly and was directed to be released from his bail bond.

7. Being aggrieved by such judgment and order of acquittal, the defacto complainant, as petitioner, approached this Court with the instant revisional application.

8. Mr. Sudipto Moitra, appearing as learned Counsel for the petitioner, while reading the impugned judgment in between the lines, submitted that the learned Trial Court could not have had any justification for insisting upon the evidence of any other witness. According to him, parents are the best witnesses in a case of alleged domestic violence. After all, relatives or the members of the family of the husband cannot normally be expected to substantiate the prosecution case.

9. Attention of the Court was invited to the fact that except the husband, being O.P. No. 2 of the victim, since deceased, no other member of the family had been implicated. It was submitted that this by itself reflects the complainant's regard for truth and speaks about the genuineness of the grievances.

10. Mr. Moitra then submitted that learned Trial Court was largely swayed by the facts that there had been no statement at the time of inquest by any member of the family and that there had been no mark of injury in the body of the victim. Leaned Trial Court also took into consideration that there had been delay of 24 hours in intimating the police. On behalf of the petitioner it was then submitted that in the event of glaring perversity, an order of acquittal can very well be set aside and if even one reasoning offered suffers from perversity, it can demand setting aside of the judgment.

11. In response to this, Mr. Sekhar Basu, appearing as learned Counsel for the private opposite party, submitted that the cardinal principle of criminal jurisprudence that an accused must be presumed to be innocent does not deserve to be diluted. He contended that when two views are possible, one that is favourable to the accused need be accepted. It was submitted that this Court cannot afford to ignore the fact that the learned Trial Judge had the privilege of experiencing the

demeanour of the witness. It was emphatically submitted that judgment does not suffer from any sort of perversity so as to justify interference. Mr. Basu also contended that judgment and order under challenge does not suffer from any infirmity which, even in the interest of public justice, demands any manner of interference.

12. While dealing with a revisional application against a judgment and order of acquittal, it can be said that the Court certainly has its inherent restrictions. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court. (**Ref: Hydru Vs. State of Kerala, (2004) 13 SCC 374**).

13. In **Thankappan Nadar & Ors. And Gopal Krishnan & Anr., as reported in (2002) 9 SCC 393**, the Apex Court held that in a revision application filed by the defacto complainant against the acquittal order, the Court's jurisdiction under Section 397 read with Section 401 Cr.P.C. is limited. The law as enunciated by the Supreme Court does not empower the Court exercising the revisional jurisdiction to reappreciate the evidence.

14. In the case between **Bansi Lal & Ors. And Laxman Singh, as reported in 1986 SCC (Cri) 342**, the Apex Court held that the revisional power of the High Court is much more restricted in its scope. It was then held that even in an appeal the appellate court would not be justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on appreciation of evidence.

15. Deriving support and strength from the decision of the Supreme Court in the case between **Bindeshwari Prasad Singh @ B.P. Singh & Ors. And State of Bihar (now Jharkhand) & Anr., as reported in 2002 SCC (Cri) 1448**, Mr. Basu submitted that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified in interfering with the finding of acquittal. The Apex Court in the said case held that in view of sub-section (3) of Section 401 Cr.P.C., the High Court could not convert a finding of acquittal into one of conviction directly. Thus, it could not do so indirectly by the method of ordering a retrial. The High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. The Apex Court in the said case further held that 'it is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of the Supreme Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 Cr.P.C. in an appeal against acquittal by a private party.'

16. It is settled law that while dealing with the revisional application under Sections 397 and 401 of Cr.P.C., this Court has a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severely restricted, particularly when it arises from a judgment of acquittal. It is not permissible to substitute one possible view by another possible view. (**Ref: Johar & Ors. Vs. Mangal Prasad & Anr., (2008) 2 SCC (Cri) 89**.

17. It is no wonder that Mr. Moitra in order to justify the petitioner's seeking redressal before this Court by way of filing a revisional application derived inspiration from the decision of the Apex Court in the case between **Ayodhya Dube & Ors. And Ram Sumer Singh, as reported in AIR 1981 SC 1415**. The Apex Court in the said case justified the order of the High Court in revision directing retrial by setting aside acquittal in view of the Sessions Judge ignoring the probative value of F.I.R. and reliable testimony of eye-witnesses and acquitting the accused without considering material evidence on record.

18. In the case between **Ram Briksh Singh & Ors. And Ambika Yadav & Anr., as reported in (2004) 7 SCC 665**, the Apex Court held that the revisional court can set aside an order of acquittal and remit the case for retrial where the trial court overlooking material evidence has passed the order. Overlooking of evidence in relation to certain relevant circumstances warrants the remand of the case to the trial court for retiral.

19. The law in this regard is rather very well settled. Ordinarily, a revisional application as against an order of acquittal can only be entertained when there is manifest illegality resulting in grave miscarriage of justice. If the Court of revision finds that the judgment and order under challenge suffers from glaring perversity, it will be within its right to set aside the order of acquittal.

20. A Court of revision can also intervene in the event of faulty reasoning. While clearly holding that in absence of manifest illegality, a Court of revision should not set aside an order of acquittal in response to a revisional application, it is possibly necessary to emphasize that the principles cannot be rigid or compartmentalized. After all, law is not arithmetic and two plus two do not

necessarily make four – either in law or, perhaps, in life. But the ultimate aim of a Court is to ensure that the cause of justice is not frustrated.

21. It is possibly neither desirable nor necessary for a Court to be a prisoner of precedent. No doubt, the law must be certain. Yes, as certain as may be. But it is necessary that it must be just too.

22. In this context, it may be interesting to refer to the comments made by Lord Denning on precedent, which is :-

"If lawyers hold to their precedents too closely, forgetful of the fundamental principles of truth and justice which they should serve, they may find the whole edifice comes tumbling down about them. They will be lost in 'The codeless myriad of precedent. That wilderness of single instances.' The common law will cease to grow. Like a coral reef it will become a structure of fossils."

23. Professor T.B. Smith of Edinburgh University said :

"Why should a court, which in the past clearly refused to be strictly bound by precedent (and has subsequently tied its own hands) not resume the earlier and more equitable practice? It is astonishing to observe the most eminent legal minds of the country reacting to the prison of precedents (of precedents which they recognize as unjust) like a child who has shut himself in a room and screams to be let out – presumably by the legislature."

24. On behalf of the petitioner it was submitted by Mr. Moitra that every piece of evidence must be read in its context.

25.On the other hand, on behalf of the private opposite party/accused person it was submitted that the cardinal principle of criminal jurisprudence is that an accused must be presumed to be innocent. It was further submitted that when two views are possible, law demands that the one which favours the accused should be accepted.

26. As mentioned earlier, emphasis was laid on behalf of the private opposite party on the fact that learned Trial Court had the privilege of observing the demeanour of the witnesses and this significant aspect does not deserve to be ignored.

27. Before proceeding further, it is necessary to deal with the observation made by the learned Trial Court while finding the accused person not guilty of the offences under Sections 498A/306 of I.P.C. The relevant extract reads :-

"……Barring a casual statement that Sauvik tortured Poulami physically and mentally and broke her conch, there is nothing in evidence to establish that Sauvik perpetrated physical and mental torture on Poulami amounting any abetment to commit suicide."

28. True, this Court in response to a revisional application is not expected to reevaluate the evidence on record. But reference to such evidence may sometime be unavoidable in order to examine the manner in which the Trial Court has dealt with the same. In order to constitute an offence under Section 498A of I.P.C., the prosecution has to establish that the victim lady was

subjected to cruelty by her husband or the relative of the husband. The explanation to Section 498A of I.P.C. reads as follows :-

"*Explanation*. – For the purpose of this section, "cruelty" means –

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

29. Section 306 of I.P.C. lays down that "if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 107 of the I.P.C. is reproduced as follows :-

"**107. Abetment of a thing.** – A person abets the doing of a thing, who –

First. – Instigates any person to do that thing; or

Secondly. – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. – Intentionally aids, by any act or illegal omission, the doing that thing.

Explanation 1. – A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

30. Mr. Basu referred to the decision in the case between **Shakson Belthissor And State of Kerala & Anr., as reported in JT 2009 (8) SC 617**, while submitting that there is no satisfactory evidence on record so as to establish that there had been any harassment upon the victim lady by her husband with a view to coerce her to meet any unlawful demand for any property.

31. In the case between **Bhaskar Lal Sharma & Anr. And Monica, as reported in (2010) 1 SCC (Cri) 383**, the Apex Court held that for proving offence under Section 498A of I.P.C., the prosecution must make allegation of harassment to the extent so as to coerce the victim lady to meet lawful demand of dowry, or any wilful conduct on part of accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health.

32. Mr. Basu contended that harassment simpliciter is not cruelty and in this context, he sought to derive inspiration from the decision of the Apex Court in the case between **State of Andhra Pradesh And Madhusudhan Rao, as reported in (2009) 3 SCC (Cri) 1123**.

33. MR. Basu, in fact, went a state further while submitting that if a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society, those were not expected to induce an individual to commit suicide. In this context, he referred to the decision of the Apex Court in the case between **Soban Raj Sharma And State of Haryana, as reported in 2008 (3) Supreme 89**. It was submitted that more active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 of IPC.

34. It is well settled that mere allegation of cruelty without anything more by way of corroboration, is insufficient to prove the offence of abetting of suicide under Section 306 of IPC in accordance with the definition of abetment in Section 107 of the IPC. (**Ref: Anil Kumar Choulia, Santosh Kumar Choulia & Parul Bala Choulia Vs. Sitesh Chandra Lahiri, 2004 CWN 930**).

35. It was contended on behalf of the opposite party/accused that the mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband. The Apex Court in the case between **Rajbabu & Anr. And State of M.P., as reported in 2008 (5) Supreme 666**, held that the Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

36. Thus, as submitted by Mr. Basu, there must be some foundation before any presumption under Section 113A of the Indian Evidence Act can be drawn.

37. In course of submission, reference was also made to the decision of the Apex Court in the case between **Mahendra Singh & Anr. And State of M.P., as reported in 1995 SCC (Cri) 1157**, while explaining what would constitute abetment within the scope and ambit of Section 107 of IPC.

38. Mr. Basu placed reliance upon a decision in the case between **Bishnu Chakraborty & Anr. And The State of W.B., as reported in (2007) 1 C.Cr.LR (Cal) 714**. In the said case it was observed by this Court that in order to constitute an offence under Section 306 of IPC, it is not enough for the prosecution to establish that the victim was subjected to some harassment. It is necessary to establish that the instigation was the proximate cause for commission of suicide. Thus, mere instigation or any vague allegation of torture or harassment does not necessarily lead to constitute an offence under Section 306 of the Indian Penal Code.

39. A Division Bench of this Court in the case between **Surajmal Banthia & Anr. And The State of West Bengal, as reported in 2003 C.Cr.LR (Cal) 530**, held that mere general statement of torture, ill-treatment and demand of more money, ornaments and valuables cannot attract an offence under Section 306 of IPC.

40. No doubt, there must be proof of direct or indirect act of incitement to the commission of suicide in cases of alleged abetment of suicide.

41. In course of submission, Mr. Moitra referred to the decision of the Apex Court in the case between **State of West Bengal And Orilal Jaiswal & Anr., as reported in 1994 CRI.L.J. 2104**. In the instant case, the evidence of physical and mental torture of the deceased has come from the mother, elder brother and other close relations. Such depositions by close relations, who may be interested in the prosecution of the accused, need not be discarded simply on score of absence of corroboration by independent witness. Whether the evidence of interested witness is worthy of credence is to be judged in the special facts of the case.

42. True, minor discrepancies and marginal mistakes cannot demolish a prosecution case. Credibility of testimony depends on judicial evaluation of the totality and not isolated scrutiny. It cannot be disputed that truth may sometime suffer from infirmity when projected through human process. And, what is required is proof beyond reasonable doubt and not beyond all doubt.

43. So far the present case is concerned, there may be some evidence reflecting occasional teasing of the victim by her husband. As referred to earlier, there had been an incident where act of the accused led to breaking of the victim's conch-shell. But there is no evidence to the satisfaction of the judicial conscience of the Court to the effect that such 'misconduct' could be said to be 'abetment' for commission of suicide. Moreover, on careful analysis of the entire relevant facts and materials, I do not think that there had been any glaring perversity so as to justify interference.

44. As such, the application, being C.R.R. No. 3287 of 2007, fails and be dismissed. Interim order, if any, stands vacated.

Criminal department is directed to supply certified copy of this judgment, if applied for, as expeditiously as possible.

(S.P. Talukdar, J.)