

Criminal Revision

Present: The Hon'ble Justice Ashim Kumar Roy

Judgment On : 23-03-2010

C.R.R. No. 99 of 2010

***Prodip Barman
versus
The State of West Bengal & Anr.***

POINTS :

Recall of witness----Accused Petitioner facing trial under Section 366A and 376 of the Indian Penal Code----Prosecution's application for recall of witness for identification of accused for bringing documents into record-----Witness not identifying the accused before, whether recall necessary----Indian Penal Code, S366A,376.

FACTS:

The present Petitioner has been facing his trial under Sections 366A/376 of the Indian Penal Code before the Learned Additional District & Sessions Judge, Fast Track 1st Court, Dinhata, Cooch Behar. During the trial and after examination of 13 prosecution witnesses was over including the Investigating Officer of this case, an application under Section 311 of the Code of Criminal Procedure was moved at the behest of the prosecution with a prayer for recalling of the victim girl, P.W.10, for re-examination on the point of identification of the accused as well as for bringing some documents into record.

The victim girl was examined on July 15, 2009, and during her examination-in-chief she did not identify the present petitioner as the particular accused person, who committed the offence against her and on the other hand in her cross-examination she admitted that the accused person was not present in Court.

HELD:

Since, during the trial the accused/petitioner was not identified by her and having regards to the fact the victim girl in her cross-examination categorically admitted the accused was not present in Court, although the Petitioner was very much present in dock, her re-examination on recall, for his identification, is not at all called for, far less for just decision of the case.

Accordingly, the order impugned so far that relates to recalling of the victim girl for her re-examination for identification of the accused stands set aside. However, this Order will not preclude the prosecution to exhibit the Registration Certificate of the West Bengal Board of Secondary Education in question in accordance with law.

PARAS----4&5

For Petitioner : Mr. Sanjib Dutta
For State : Mr. Tirthankar Ghosh

THE COURT:

1. The present petitioner has been facing his trial under Sections 366A/376 of the Indian Penal Code before the Learned Additional District & Sessions Judge, Fast Track 1st Court, Dinhata, Cooch Behar. During the trial and after examination of 13 prosecution witnesses was over including the Investigating Officer of this case, an application under Section 311 of the Code of Criminal Procedure was moved at the behest of the prosecution with a prayer for recalling of the victim girl, P.W. 10, for re-examination on the point of identification of the accused as well as for bringing some documents into record. The petitioner being aggrieved by such order has moved the instant criminal revision.

2. Heard Mr. Sanjib Dutta, Learned Counsel appearing on behalf of the petitioner as well as Mr. Tirthankar Ghosh, Learned Counsel appearing on behalf of the State. Perused the Lower Court Records and the other materials on record.

3. Now, having gone through the Lower Court Records, I find that the victim girl as P.W. 10 was examined on July 15, 2009 and during her examination-in-chief she did not identify the present petitioner as the particular accused person, who committed the offence against her and on the other hand in her cross-examination she admitted that the accused person was not present in Court. The relevant portion of her evidence is quoted below; "I disclosed before the police at Taprai village that one Biswajit had taken me to Guwahati and that the person had disclosed his identity as a major of B.S.F. Biswajit Roy about whom I have spoken is not present in court today."

It further appears from the perusal of the order sheets, relating to the Sessions Trial, that on particular day, that is, on July 15, 2009 the present petitioner, the alleged accused was very much present in Court and Hajira was duly filed on his behalf. It is true that any Court at any stage of the trial may recall and re-examine any person already examined if evidence appears to be invoked at the behest of the prosecution to fill up any lacuna in its case.

4. In this case the prosecution wanted to re-examine the victim girl on recall for identification of the present petitioner as the particular accused who committed the offence, against her. Since, during the trial the accused/petitioner was not identified by her and having regards to the fact the victim girl in her cross-examination categorically admitted the accused was not present in Court, although the petitioner was very much present in dock, her reexamination on recall, for his identification, is not at all called for, far less for just decision of the case.

Accordingly, the order impugned so far that relates to recalling of the victim girl for her re-examination for identification of the accused stands set aside. However, this order will not preclude the prosecution to exhibit the Registration Certificate of the West Bengal Board of Secondary Education in question in accordance with law.

This criminal revisional application, thus, stands disposed of.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)