

Amar Sardar
v.
The State of West Bengal
(Criminal Appeal No. 5234 of 2024)
12 December 2024
**[B.V. Nagarathna and
Nongmeikapam Kotiswar Singh, JJ.]**

Issue for Consideration

Whether the High Court was justified in affirming the judgment of conviction and sentence passed by the Fast Track Court.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.374 – Whether High Court considered the evidence on record independently thereby sustaining the conviction granted by the Fast Track Court:

Held: While hearing the appeals under Section 374(2) of the Code of Criminal Procedure, 1973, the High Court is exercising its appellate jurisdiction – It is the duty of an appellate court to independently evaluate the evidence presented and determine whether such evidence is credible – High Court must further assess whether the prosecution has established its case beyond reasonable doubt, even if the evidence is deemed reliable – The High Court must be convinced beyond all reasonable doubt that the prosecution's case is substantially true and that the guilt of the accused has been conclusively proven – Mere concurrence with the findings of the Trial Court is insufficient unless supported by a well-reasoned independent justification – As the first appellate court, the High Court is expected to evaluate the evidence including the medical evidence, statement of the victim, statements of the witnesses and the defence's version with due care – Judgment must reflect a proper application of mind to crucial evidence – The analysis of the evidence by the High Court is on the basis of what the Fast Track Court had recorded and arrived at its findings – The same has been reproduced in various sub-paras and consequently, the appeal has been dismissed. – The High Court failed to consider the evidence on record independently thus, impugned judgment is set aside – Matter remanded back to the High Court to reheat the appeal and pass a fresh judgment. [Paras 9-11, 13, 14]

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Case Law Cited

State of Uttar Pradesh v. Ambarish, Criminal Appeal No 446 of 2021; Shakuntala Shukla v. State of Uttar Pradesh [2021] 6 SCR 87 : (2021) 20 SCC 818; State Bank of India v. Ajay Kumar Sood, [2022] 17 SCR 507 : (2023) 7 SCC 282 – referred to.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Mere concurrence with the evidence is insufficient; Considering the evidence independently; Independent reasoning by the High Court; Lack of reasoning; Independent application of mind to crucial evidence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5234 of 2024

From the Judgment and Order dated 15.05.2024 of the High Court of Calcutta in CRA No. 111 of 2019

Appearances for Parties

Ranjan Mukherjee, Anindo Mukherjee, Rameshwar Prasad Goyal, Ms. Aayushi, Advs. for the Appellant.

Srisatya Mohanty, Ms. Astha Sharma, Abhijit Pattanaik, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Leave granted.

2. The appellant herein is aggrieved by the judgment dated 15.05.2024 passed in C.R.A. 111/2019 by the High Court of Calcutta *vis-à-vis* not only on the merits of the said judgment but also the approach of the High Court in considering the Criminal Appeal filed by the appellant herein.

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3. The appellant was charged with offences under Sections 376, 511, 354 of the Indian Penal Code, 1860 (for short "IPC"). The learned Additional District and Sessions Judge, Fast Track, 3rd Court, Howrah by judgment dated 07.01.2019 convicted the appellant herein and sentenced him to rigorous imprisonment for a period of two years with fine of Rs.2,000/- and in default simple imprisonment for a period of one month with regard to Section 354 of the IPC, and also, sentenced him to rigorous imprisonment for a period of seven years with fine of Rs.10,000/- and in default simple imprisonment for a period of three months for the offence punishable under Sections 376 and 511 of the IPC. The sentences are to run concurrently.
4. Being aggrieved by the judgment and sentences imposed by the Fast Track Court, the appellant herein preferred C.R.A. 111/2019. By the impugned judgment, the High Court has dismissed the appellant's appeal and has sustained the judgment of conviction and sentence passed by the Fast Track Court. Hence, this appeal.
5. Learned counsel for the appellant at the outset submitted that on a reading of the impugned judgment, it is apparent that the High Court has not independently considered the evidence on record. As the High Court was considering an appeal against conviction passed by the Fast Track Court, the High Court ought to have considered the evidence on record independently and passed a judgment one way or the other in the appeal; however, instead a reading of the judgment would indicate that the High Court has simply reaffirmed the conviction and sentence imposed by the Fast Track Court in the absence of any independent reasoning given by the High Court.
6. In this regard, learned counsel for the appellant pointedly drew our attention to the various portions of the judgment and contended that the judgment is erroneous owing to lack of any reasoning. He therefore, submitted that impugned judgment may be set aside and relief may be given to the appellant herein.
7. *Per contra*, learned counsel for the respondent-State supported the impugned judgment and submitted that the High Court was after all sustaining the conviction and sentence imposed by the Fast Track Court. Therefore the High Court has considered whether the Fast Track Court was justified in passing a judgment of conviction and imposing the sentences. The High Court has considered the evidence on record and thereafter analysis of the evidence of the Fast Track

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Court and has rightly dismissed the appeal. There is no merit in this appeal and hence, the same may be dismissed.

8. We have considered the arguments advanced at the bar in light of the impugned judgment and perused the material on record. On a perusal of the impugned judgment, we note that the judgment has been sub-divided into the following sub-topics, namely, the Appeal, the Prosecution, the Defence, the Evidence and Analysis of evidence which is based on the Fast Track Court's findings in the matter and thereafter the appeal has been dismissed.
9. While hearing the appeals under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "CrPC"), the High Court is exercising its appellate jurisdiction. There shall be independent application of mind in deciding the criminal appeal against conviction. It is the duty of an appellate court to independently evaluate the evidence presented and determine whether such evidence is credible. Even if the evidence is deemed reliable, the High Court must further assess whether the prosecution has established its case beyond reasonable doubt. The High Court though being an appellate Court is akin to a Trial Court, must be convinced beyond all reasonable doubt that the prosecution's case is substantially true and that the guilt of the accused has been conclusively proven while considering an appeal against a conviction.
10. The necessity of this exercise arises from the fact that a conviction curtails the personal liberty of the accused in the incessant future. Hence, the High Court must provide clear reasons for accepting the evidence on record. Mere concurrence with the findings of the Trial Court is insufficient unless supported by a well-reasoned independent justification. As the first appellate court, the High Court is expected to evaluate the evidence including the medical evidence, statement of the victim, statements of the witnesses and the defence's version with due care.
11. While the judgment need not be excessively lengthy, it must reflect a proper application of mind to crucial evidence. Albeit the High Court does not have the advantage to examine the witnesses directly, the High Court shall, as an appellate Court, re-assess the facts, evidence on record and findings to arrive at a just conclusion in deciding whether the Trial Court was justified in convicting the accused or not. We are also cognizant of the large pendency of cases bombarding our

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courts. However, the same cannot come in the way of the Court's solemn duty, particularly, when a person's liberty is at stake.

12. This Court in **State of Uttar Pradesh vs. Ambarish, Criminal Appeal No 446 of 2021** held that while deciding a criminal appeal on merits, the High Court is required to apply its mind to the entirety of the case including the evidence on the record before arriving at its conclusion. In this regard, we may also refer to the orders passed by this Court in **Shakuntala Shukla vs. State of Uttar Pradesh (2021) 20 SCC 818** and **State Bank of India vs. Ajay Kumar Sood (2023) 7 SCC 282**.
13. No doubt the impugned judgment has neatly sub-titled various aspects of the case, but we find that the independent consideration of the evidence on record is conspicuous by its absence inasmuch as 'paragraphs 5 to 28' record the oral evidence and also list the exhibits which have been produced in the said case; however, the said evidence has not been considered by the High Court so as to ascertain whether the Fast Track Court was justified in passing a judgment of conviction and sentencing the appellant. The analysis of the evidence is on the basis of what the Fast Track Court had recorded and arrived at its findings. The same has been reproduced in various sub-paras and consequently, the appeal has been dismissed.
14. We find that the High Court ought to have considered the evidence on record in light of the arguments advanced at the bar and thereafter ascertained whether the Fast Track Court was justified in passing the judgment of conviction and imposing the sentence. The same being absent in the impugned judgment, for that sole reason, we set aside the same. We remand the matter to the High Court and restore the CRA 111/2019 on the file of the High Court. We request the High Court to rehear the appeal and pass a fresh judgment, bearing in mind the observations we have made above, in accordance with law.
15. The appeal is allowed and disposed of in the aforesaid terms.
16. Learned counsel for the appellant at this stage submitted that the appellant had the benefit of bail before the Fast Track Court as well as during the consideration of his appeal before the High Court. Therefore, this Court may pass an order of suspension of sentence pending disposal of the appeal by the High Court. We do not think at

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this stage, we could consider the said contention, instead, we reserve liberty to the appellant herein to make an appropriate application seeking suspension of sentence, if so advised.

17. It is needless to observe that if such an application is made, the same shall be considered as expeditiously as possible and in accordance with law.
18. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal Allowed.

[†]*Headnotes prepared by:* Gaurav Upadhyay, Hon. Associate Editor
(Verified by: Abhinav Mukerji, Sr. Adv.)