



IN THE COURT OF JUDICIAL MAGISTRATE, 2nd COURT
BALURGHAT, DAKSHIN DINAJPUR,

Present : SOUVIK DUTTA
Judicial Magistrate, 2nd Court
Balurghat, Dakshin Dinajpur,
(JO Code- WB01533)

Date of Delivery of Judgment: September 24th, 2024.

CNR-WBDD02-005389-2023
GR Registration No. 1795/2023 (Manual GR No. 1192/2013)
TR No. 260/2024

Arising out of Balurghat Police Station Case No. 707/13 dated 12.08.2013, registered for investigation into commission of offences punishable under sections 341/326/379/506/34 of the Indian Penal Code, 1860.

Complainant:	State of West Bengal
Represented By:	Shri Debasish Karmakar, Ld. APP
Accused:	Chotan Mahanta, Shankar Mahanta.
Represented By:	Shri Soumyadip Goswami, Ld. Advocate

Date of Offence	12.08.2013
Date of First Information Report	12.08.2013
Date of Charge sheet	31.12.2013
Date of Framing of Charge/Plea	04.04.2024
Date of Commencement of Evidence	09.05.2024
Date on which Judgment is reserved	05.09.2024
Date of Judgment	24.09.2024
Date of Sentencing Order, if any,	NA

Accused Details:

Rank of Accused	Name of Accused	Date of arrest	Date of release on Bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428 CrPC
A-1	Chotan Mahanta	13.08.2013	27.08.2013	Sections 341/323/379/506 /34 of the Indian Penal Code, 1860.	Acquitted	NA	NA
A-2	Shankar Mahanta	13.08.2013	27.08.2013	Sections 341/323/379/506 /34 of the Indian Penal Code, 1860.	Acquitted	NA	NA

List of Prosecution / Defense / Court Witness:

A. Prosecution Witness

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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PW 1	Chaya Das	Informant/de-facto complainant
PW 2	Bikram Das	Other witness

B. Defense Witness, if any,

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
NIL	NIL	NIL

C. Court Witness, if any,

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
NIL	NIL	NIL

List of Prosecution / Defense / Court Exhibits:

A. Prosecution:

Srl. No.	Exhibit Number	Description
1.	Exhibit P1-PW1	The written complaint.

B. Defense:

Srl. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibit:

Srl. No.	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Srl. No.	Exhibit Number	Description
NIL	NIL	NIL

J U D G M E N T

Factual Matrix:-

The present case is one where the accused persons are on trial for purported commission of offences punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860.

The genesis of the instant case lies in a written complaint dated 12.08.2013 lodged by one Chaya Das addressed to the Inspector in Charge of Balurghat Police Station.

Consequently, Balurghat Police Station Case No. 707/13 dated 12.08.2013, was registered for investigation into commission of offences punishable under sections 341/326/379/506/34 of the Indian Penal Code, 1860, against the accused persons on trial and another.



A brief summary of the allegations as contained in the written complaint is given hereunder:

On 12.08.2013 at about 3:00 pm., the son of the informant, namely Bikram Das, had gone to sell lottery tickets and then the accused persons obstructed him and demanded money from him. When the informant's son denied to pay them, the accused persons physically assaulted him by brick and rod and consequently the informant's son received injuries. The accused persons also stole Rs. 1,600/- cash and a mobile phone from him and fled from the spot.

Upon completion of investigation, the investigating officer submitted charge sheet in this case being Charge Sheet No. 842/13 dated 31.12.2013 under sections 341/323/379/506/34 of the Indian Penal Code, 1860, against the accused persons on trial and another.

In course of pendency of the case record, the charge sheeted accused no. 3 namely Gopal Mahanta had expired and he was filed forever in connection with the instant case, as per order dated 11.08.2022 passed by the Ld. Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat.

Subsequently, on 21.08.2023, the Ld. Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat, was pleased to transfer the case record before this court for trial and disposal.

On 04.04.2024, charge was framed against the accused persons on trial, in accordance with section 240 of the Code of Criminal Procedure, 1973, for commission of offences punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860. Contents of charge were read over and explained each of the accused persons to which they each pleaded not guilty and claimed to be tried. Hence the trial commenced.

In course of the trial before this court, the prosecution has been able to adduce 2 (two) witnesses in total, the evidence brought on record shall be discussed hereinafter in detail.

The accused persons were subsequently duly examined under section 313 of the Code of Criminal Procedure, 1973 in accordance with law. At this stage, the accused persons stated before this court that they would not adduce any Defence Witness in the trial of the present case. Hence, the record proceeded towards the stage of argument and arguments were duly heard by this court from the prosecution as well as the defence.



Discussion of the evidence adduced in course of the trial of the present case:-

In course of trial, to prove its case, the prosecution has been able to examine two (2) witnesses arrayed in the charge sheet, as follows:-

Prosecution Witness

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW 1	Chaya Das	Informant/de-facto complainant
PW 2	Bikram Das	Other witness

:- Points for Consideration :-

a) Whether the prosecution has able to prove their case against the aforesaid accused persons beyond all and/or any reasonable doubt?

b) Whether the accused persons are guilty of commission of offences punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860?

Decisions With Reasons

Now, this court is to analyse, assess and take into account the total evidence and materials on record to come to a clear decision of the case.

In course of the trial of the present case, the prosecution has been able to adduce 2 (two) witnesses to support its case. In terms of exhibits, the following materials were exhibited on behalf of the prosecution:

Exhibit Number	Description
Exhibit P1-PW1	The written complaint.

PW 1 namely Chaya Das, the informant/de-facto complainant of this case, stated during her examination in chief inter alia that in the year 2013 she lodged a written complaint at the police station against 3 accused persons and then she stated further that 2 accused persons are present and one has died. PW 1 stated further that at present the dispute has been settled.

During cross examination by the defence, the PW 1 stated that she has no objection if the accused persons are acquitted from this case.



PW 2 namely Bikram Das, stated during his examination in chief inter alia that Chaya Das is his mother and she filed the complaint at the police station about 10/12 years prior to the date of deposition, against the accused persons. PW 2 further stated that the accused persons are local persons and he wants to withdraw the case and that none had forced him.

The defence declined to cross examine the PW 2.

Upon perusal of the testimonies of the prosecution witnesses, it is seen that such testimonies have not supported or corroborated the prosecution's case against the accused persons. The testimonies of PW 1 and PW 2 are vague in nature and they have not stated anything which would lead to a conviction of the accused persons for commission of the offences purported to have been committed by them.

It is a settled position of law that the prosecution's case must stand on its own legs and not merely rely on conjectures or surmises or even on the deficiencies of the defence of the accused. A story or theory based on speculation cannot be the basis of a conviction of an accused person. The testimony of the prosecution witnesses are not sufficiently reliable and thus do not inspire confidence of this court in convicting the accused persons.

It has also been a settled proposition of law that while considering the criminal case and adjudicating any offense, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt and the same must not rest upon probabilities or improbabilities. In this respect, this court would like to place reliance upon the decision reported in AIR 2016 SC 679 wherein the Hon'ble Supreme Court has been pleased to have held: *"18. We have carefully heard both the parties at length and have also given our conscious thought to the material on record and the relevant provisions of law. The question for our consideration is whether the prosecution evidence establishes beyond reasonable doubt the commission of the offences by the accused-appellants..."*

In another case before the Hon'ble Supreme Court of India, i.e. in Gangadhar V. State of M.P., reported in (2020) 9 SCC 202, the Hon'ble Court was pleased to have held thus, *"... Conviction could not be based on a foundation of conjectures and surmises to conclude on a preponderance of probabilities, the guilt*



of the appellant without establishing the same beyond reasonable doubt."

In Anand Ramachandra Chougule V. Sidarai Laxman Chougala and Ors., reported in 2019 SCC OnLine SC 974, the Hon'ble Supreme Court was pleased to have held as follows:

"The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt."

The Hon'ble Supreme Court was further pleased to have held in Anand Ramachandra Chougule (supra) that, *"The fact that a defence may not have been taken by an accused under Section 313, Cr.P.C. again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422, this Court observed:*

"28...When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabalise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."

There seems to be no material or cogent story which attracts a case against the accused persons. The prosecution witnesses failed to corroborate the prosecution's case and as such the prosecution has failed to prove the guilt of the accused beyond a shadow of reasonable doubt. Therefore, it appears that there is no material on record from which it can be said that the accused persons are guilty of the offenses as booked. Given the facts of the case, this court is convinced that the prosecution has failed to make out any case against the accused persons. Accordingly both the questions are answered, against the prosecution, in negative.



From an appreciation, consideration and analysis of the above evidence deposed by the prosecution witnesses, it is clear that there is no evidence or material on record that is sufficient to convict the accused persons for commission of offence punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860.

Thus, the prosecution has failed to prove its case satisfactorily against the accused persons beyond any shadow of reasonable doubt. No evidence has been brought on record by the prosecution to conclusively prove that the accused persons committed any of the offences as alleged.

It is therefore held that this Court does not find any sufficient incriminating material against the accused persons in order to convict the accused for commission of the offence punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860. No evidence has been adduced or brought on record that proves or suggests that the accused persons on trial in this case committed the offence punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860.

This Court therefore holds that the essential ingredients to connect the accused persons with the offence punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860 are absent in the present case.

In fact, the prosecution has failed to bring home any iota of evidence to constitute the offences, including the ingredients of such offence punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860.

All the points are thus answered in the negative.

In the result prosecution case fails and the accused persons stand acquitted.

Hence, it is

ORDERED

That the accused persons namely **Chotan Mahanta, Shankar Mahanta** are found not guilty of committing the offence punishable under sections 341/323/379/506/34 of the Indian Penal Code, 1860 and they are hereby acquitted as per section 248(1) of Code of Criminal Procedure, 1973.

The accused persons are present in court along with the learned advocate representing them. Operative portion of the judgement is pronounced in open court in their presence. The bail



bonds already furnished by the accused persons in this case shall be treated as bail bonds under section 437A of the Code of Criminal Procedure, 1973, in statutory compliance thereof.

The case record is directed to be consigned to the DRR following the modalities of law.

A copy of this judgement and order is directed to be sent before the office of the District Magistrate for his information and necessary action with regard to the right of appeal of de-facto complainant/victim through DLSA.

D/C by me

Souvik Dutta
Judicial Magistrate, 2nd Court
Balurghat, Dakshin Dinajpur