

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS, 2nd COURT,
BARRACKPORE, NORTH 24 PARGANAS
PRESENT SMT. SAYANTANI DE TARAFDER
JO Code- WB01493
[GR Case No. **4507/21**]
[CIS Reg.**4507/21**]
T.R. No. 834/26
(Arising out of Naihati P.S. Case No.234/21 dated 4.6.21)
Under Sections 448/323/354/354A/354B/384/452/506/120B/34 of the Indian Penal
Code
Date of Judgment- 29.6.26

Complainant	STATE OF WEST BENGAL
REPRESENTED BY	Ld. APP Mr. Satyabrata Nag
ACCUSED	1. Tanushree Sadhukar (A1). 2. Sayan Sadhukar (A2)
REPRESENTED BY	Ld. Advocate.

Date of Offence	:	28.04.21
Date of FIR	:	4.6.21
Date of Charge Sheet	:	31.07.21
Date of substance of accusation (Charge)	:	29.06.26
Date of commencement of Evidence	:	29.6.26
The date on which judgment is reserved	:	29.6.26
Date of Judgment	:	29.6.26
Date of sentencing order, if any	:	NA

FORM B

Accused Details :

The rank of the Accused	Name of the Accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention on Undergone during Trial for purpose of section 428, Cr.P.C.
A1 to A2	1. Tanushree Sadhukar (A1). 2. Sayan Sadhukar (A2)	NA	24.06.21	448/323/354/354A/354B/384/452/506/120B/34 of IPC	Acquitted	N/A	N/A

Form C

List of Prosecution /Defence/ Court Witnesses

A. Prosecution :

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Jui Banerjee	De facto complainant

Fact of the Case-

This instant case has been registered on the basis of the complaint lodged by Jui Banerjee W/O- Late Tapash Banerjee of 6 no. Bijoynagar, Dhankal, under PS-Naihati , Dist. North 24 Parganas before the court. On the basis of the said complaint, Naihati P.S. Case No.234/21 dated 4.6.21 under Sections 448/323/354/354A/354B/384/452/506/120B/34 of the Indian Penal Code was started. After proper investigation, police submitted charge Sheet no. 395/21 dated 31.07.21 against the accused persons namely, Tanushree Sadhukar and Sayan Sadhukar under Sections 448/323/354/354A/354B/384/452/506/120B/34 of the Indian Penal Code.

The Prosecution case in brief is that on 28.04.21 at around 7.00 AM the accused persons wrongfully entered into the house of the complainant, assaulted her with fist, blows

and kicks, abused her with filthy languages and threatened her with dire consequences and confined her and tried to outrage her modesty. As a result of which he sustained grievous injury and on the basis of these incidents, the prosecution case was started.

This case was transferred to this Court for trial Charge under Sections 448/323/354/354A/354B/384/452/506/120B/34 of the Indian Penal Code was framed against the accused persons and the substance of accusation was read over to the accused persons to which they pleaded not guilty and claimed to be tried. Prosecution produces 02 witness in support of its case.

The accused persons were examined U/Sec 313 of Cr.P.C and they did not adduce any defense witness. Now it is the time to enter into the evidence on record.

Documentary Evidence

Sl No.	Particulars of documents	Date of admission	Marked as
1	Signature of the defacto complainant, PW-1 namely Jui Banerjee W/O-Late Tapas Banerjee upon the court complaint.	29.6.26	Exhibit – P1 series

Oral evidence:

P.W. 1: P.W.1 is Jui Banerjee, i.e the defacto complainant of this case. During her examination in chief stated that she had lodged this case against the accused persons. Then she stated that she had lodged this case due to some misunderstand and dispute took place between her and the accused persons. She cannot remember exactly what had happened on that day.

During her cross-examination she specifically stated that she does not have any allegations against the accused persons at present as the dispute between her and the accused persons has now been amicably resolved. She further stated that he does not want to proceed with this case further.

POINTS OF DETERMINATION

1. Whether prosecution has been able to prove their case beyond reasonable doubt by producing cogent evidence?
2. Whether the accused persons are liable to be convicted or not?

DECISION WITH REASON

Both the points of determination are taken up together for the sake of convenience.

After scrutinizing the material on record it appears to this Court that prosecution has failed to prove the accusations against the accused persons. Prosecution has examined only 1

witness. After perusal of the deposition of the witness it appears to this Court that there is no sufficient ground to prove the allegation against the accused persons. There is no material of incriminating nature on record to ascertain the guilt of the accused persons beyond reasonable doubt. After perusal the deposition of PW1 , it appears to this Court that there is no sufficient ground to prove the allegation against the accused persons.

After perusal of the deposition of the witness (PW1) it appears to this Court that he was unable to state any details of the alleged incident or any particulars of incident, happened with him during his reexamination. Moreover, as per the contents of the FIR the defacto complainant was assaulted by the accused person. However, this Court finds not a single piece of proof in support of claim of any bodily injury as alleged therein. Thus, the prosecution has not been able to fix liability upon the accused persons beyond reasonable doubt. Moreover, facts of offence as stated in the FIR appears to be of vague nature which cannot in any way be held as infliction of assault in absence of any allegation of specific nature or tentative time or period during which a person is treated as such.

Thus there appears to be gross discrepancy between the allegations levelled in the FIR and the oral testimonies of all the witnesses. Thus, there is nothing on record to prove even the contents of the complaint petition. Besides, mere allegation of physical assault without any insight into the details of the same is not adequate to hold the accused persons liable of the offence alleged against them.

Thus there is no sufficient ground to prove the allegation against the accused persons. The prosecution has failed to produce any further cogent and trustworthy witness who may have even proved any criminality.

In the instant case, upon analysis of the materials on record taking into consideration the factum of absence of any substantial evidence corroborating the case for the prosecution, it appears that, there is no probability of the case ending in conviction.

In the case of **Satish Mehra vs. Delhi Administration & Anrs , 1996(9) SCC 766**, the **Hon'ble Supreme Court** held that “ *in case where there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial for the purpose of formally completing the procedure to pronounce the conclusion on the future date*” .

In this case, the de facto complainant as well as the victims had admitted during cross-examination that the dispute between him and the accused persons has now been amicably resolved because of which he does not have any allegation against the accused persons at present. In the case of **Ram Lal vs. State of J&K (1999(2) SCC 213)**, the **Hon'ble Supreme Court** had observed that “ *when as offence is declared non-compoundable by law, it cannot be compounded even with the permission of the Court. However, the Court may take the compromise into account while delivering judgment. In this case, the parties are relatives of one another and they have amicably resolved their dispute.*”

PW1, i.e the defacto complainant had failed to remember what had happened on the date of the alleged incident and also stated that due to some dispute and misunderstanding she had lodged this case. In this context of grossly erroneous testimony adduced by one of the most significant witnesses for the prosecution, the observation by the Hon'ble Supreme Court in the case of ***State of Rajasthan v. Smt. Kalki and Another; (1981) 2 SCC 752***, needs to be mentioned, wherein it was observed that *“in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are —material discrepancies so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses”*. Therefore, there arise doubt regarding the credibility of the witness and the evidence adduced by her as PW1 and thus cannot be considered as a cogent evidence.

The prosecution had failed to adduce evidence of any independent witness who were allegedly present at the time of the alleged incident. In this context the observation made in the case of **Harijana Thirupala And Ors. v. Public Prosecutor, High Court of A.P., Hyderabad**, is pertinent to be mentioned. It was held that *“the trial court took a right view that non-examination of independent witnesses seriously impaired credibility of the prosecution case”*.

The witness did not utter a single word about the incident that whether the accused persons had caused hurt to the victim or wrongfully restrained her or tried to outrage her modesty, wherefrom it appears that prosecution has failed to establish that the accused persons had committed any offence either u/s 354/341 IPC or section 325 IPC.

Thus in view of the above discussion, there is no sufficient ground to prove the allegations against the accused persons as no evidence could be brought before this Court by the Prosecution regarding the alleged incident. The ingredients of the offence punishable under section 448/323/354/354A/354B/384/452/506/120B/34 of I.P.C is not established by any credible evidence. In such circumstances, this court has no other way but to hold the accused persons innocent and accordingly acquit the accused persons from the accusation of this case.

Hence, it is,

ORDERED

that the accused persons namely Tanushree Sadhukar and Sayan Sadhukar are found not guilty of the offence punishable under Sections 448/323/354/354A/354B/384/452/506/120B/34 of the Indian Penal Code and they are hereby acquitted from the instant case u/s 248 (1) of Cr. P.C.

The bail bonds of the above mentioned accused persons shall remain in force for a period of 06 (six) months from the date of this Judgment as per the provision of section 437A of Cr.P.C.

The record shows that nothing was seized in this case.

Victim has a right to prefer an appeal against this judgment under section 372 CrPC, if necessary they may avail free legal aid from the appropriate legal services authority to institute and prosecute such appeal.

In compliance to the solemn order dated 29.3.22 passed by the Hon'ble Division Bench in CRA 266 of 2020 with CRA 01 of 2020 (Sabitri Bhunya Vs The State of West Bengal and others).

Let a copy of this judgment be sent to District Magistrate, North 24 Parganas and SDLSA, Barrackpore for due intimation to the victim as defined under section 2 (wa) of the Code of Criminal Procedure.

The case is disposed of on contest.

Note in Trial Register as well as in Case Information System.

Dictated & Corrected by me.

(Sayantani De Tarafder)

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

(Sayantani De Tarafder)

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas
JO Code- WB01493