



DISTRICT: SOUTH 24 PARGANAS

**IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),
2ND COURT, ALIPORE, SOUTH 24 PARGANAS**

**Present: - Sri Kallol Ghosh (JO Code- WB01262)
Judicial Magistrate (First Class)
2nd Court, Alipore**

Date of delivery of Judgment: 31.12.2025

**AC. Case No. 1051 of 2009
CIS No. Complaint Case No.1051 of 2009
CNR No. WBSP050158802009
TR 659/09**

Ramendra Nath Khara

..... Complainant

-Vs. -

1. Sangita Khara

2. Paresh Dhara

3. Sobhan Dhara

..... Accused person

Offence U/Sec. 447/323/427/506/34 of Indian Penal Code

JUDGEMENT

1. Fact, in nutshell:

1.1 The instant case is under Section 447/323/427/506/34 of the Indian Penal Code. This case was initiated on the basis of the petition of complaint filed u/sec.200 of Cr.P.C. before the Ld. Chief Judicial Magistrate against the accused persons.

1.2 The brief fact of the case as alleged by the complainant in her petition of complaint is that on 31.05.2009 at about 9:00 AM the complainant came to know from a local person that the accused no.1 with the help of accused no.2 and 3 were cutting and bringing down lot of green coconuts which belonged to the portion of



land of the complainant. On getting the information of theft, the complainant rushed to his garden and saw one Ganesh Dutta of the same village who was buying such coconuts. When the complainant started protesting, he was first hit on his right hand and then a blow came down on his head causing severe bleeding injuries. The accused persons threatened if the complainant would come again, he shall be killed. Hearing the scream of the complainant local people came running to his rescue and took him to Budge Budge PS and thereafter, he was taken to Hedia Charial Health Centre for treatment. The police did not register the case as FIR. As such, the instant case has been filed.

1.3 On the basis of the written complaint the court took cognizance of the offences and after examination of the complainant on SA u/s 200 Cr.P.C. process was issued u/s 204 Cr.P.C. for the offences under section 447/323/427/506/34 of IPC against accused persons.

1.4 The accused persons entered their appearance. On perusal of all materials on record and on hearing both sides plea was taken u/s 447/323/427/506/34 of IPC. The substance of accusation was read over and explained to the accused persons to which they pleaded 'Not Guilty' and claimed to be tried. Trial was held. The complainant and other witnesses were examined and cross-examined in full and discharged. Thereafter, accused persons were examined under section 313 Cr.P.C. and they pleaded innocence all throughout. The accused also adduced evidence. Argument was done at length.

1.5 In order to bring home the guilt of the accused persons under sections 447/323/427/506/34 of I.P.C., the complainant banked on the evidence of the following list of witnesses.



2. Witnesses adduced by the Complainant:

- **PW1**- Ramendra Nath Khara, the Complainant;
- **PW2**- Tushakana Khara;
- **PW3**- Paramananda Chakraborty;
- **PW4**- Nikhil Kumar Saha; and
- **PW5**- Dr. Ajit Kumar Sardar.

3. Documents relied upon by the complainant:

- **Exhibit 1**- GDE Extract;
- **Exhibit 2**- Discharge certificate;
- **Exhibit 3**- Carbon copy of injury report; and
- **Exhibit 4**- Prescription slip.

4. Points for Consideration:

4.1 Are the accused persons guilty of the offence punishable under sections 447/323/427/506/34 of I.P.C?

5. Burden of Proof:

5.1 The question on which of the contending parties the burden of proof would lie has to be decided on the relevant provisions of the Evidence Act. **Section 101 of the Evidence Act, 1872** provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

5.2 Section 102 provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

5.3 Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the burden of proof of that fact shall lie on any particular



person. This is a criminal case in nature. The fact-in-issue of this case is whether or not the accused has committed the offence under section 447/323/427/506/34 of Indian Penal Code. According to the cardinal principle of common law countries Criminal Jurisprudence, the prosecution must prove the guilt of the accused persons beyond all reasonable doubt. The accused always has the presumption of innocence in his favour and the rule of evidence which has received judicial sanction is; the prosecution must prove the guilt of the accused and establish all the ingredients of offence with which he is charged. The anvil for testing and interpreting what constitutes 'proof of guilt' in a criminal trial has been formulated by the Hon'ble Apex Court of India. While in civil cases facts may be proved by mere preponderance of probability, but in a criminal trial the prosecution must prove the charge beyond reasonable shadow of doubt. In order to get the answer to such bone of contention, it is to be seen how far the prosecution has been successful in bringing home the charge under section 447/323/427/506/34 of IPC against the accused person through its evidence on record. It is the settled position of the law of evidence that 'one who asserts certain facts must prove the same'. In other words, the burden of proof lies upon the person who is asserting a fact. In as much as the prosecution has brought the charge u/s 447/323/427/506/34 of IPC, the burden of proof lies strictly upon the prosecution to bring home the said charges against the accused in the instant case.

5.4 According to **Section 101 of the Evidence Act, 1872** the general burden of proof is always upon the shoulder of the prosecution. The **Hon'ble High Court of Delhi in Sunil Kr. Sharma vs. State (CBI) 139 (2007) DLT 407, I (2007) BMC 654**, was pleased to observe that there are three well settled cardinal principles of criminal jurisprudence and they are as follows: -



(i) That the onus lies affirmatively on the prosecution from the beginning to the end to prove its case beyond reasonable shadow of doubt and it cannot derive benefit from weakness or falsity of the defense version while proving its own case;

(ii) That in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and

(iii) That the onus of the prosecution to prove its own case never shifts upon the shoulder of the accused person.

5.5. Thus, being guided by this proposition of law, this Court must set out a voyage in the evidence available on record to see whether the prosecution has been able to connect the accused persons with the alleged offence. For giving an answer to this piquant question, it is necessary to ponder the evidence on record and to see whether the evidence is clear and cogent enough to ensure conviction in this case.

6. Argument:

6.1 The Ld. Advocate for the complainant argued strongly. He submitted that the accused persons were directly involved in commission of the alleged crime and as such they should be given appropriate punishment and they should not be acquitted in any circumstances.

6.2 On the contrary, Ld. Counsel appearing for the accused persons had advanced argument in support of acquittal of the accused persons from the alleged charge. It is submitted that there was no involvement in the alleged crime on the part of the accused persons. Therefore, the accused persons should not be found guilty and they are entitled to be acquitted from the alleged charges.

7. Decision and Reasons:



7.1 Now, I am to analyze and assess by taking into account the arguments of both sides, the total evidence and materials on record to arrive at a just decision in the case instant.

7.2 The complainant Ramendra Nath Khara appeared and adduced his evidence as PW1 but before he was cross-examined, he had died. Therefore, the evidence of PW1 cannot be taken into consideration as not being cross examined.

7.3 PW2 is the wife of the complainant. she admitted clearly that she had heard the incident and she also failed to remember from whom she had heard about the incident.

7.4 PW3 is also heard the incident from the complainant himself.

7.5 PW4 is the IO of this case and he filed the GDE extract before the court which has been marked as Exhibit-1. Perusing the extract copy of the GDE, I did not find anything regarding the allegation of assault or otherwise. Rather, it shows that the complainant suffered injury due to a fall.

7.6 PW5 is the doctor who manifestly admitted during cross examination that the injury may be caused by a hard fall on a rough surface. He also stated that regarding the injury he had written whatever had been told by the patient.

7.7 No independent witness was turned up to substantiate the case of the complainant.

7.8 Therefore, the complainant has failed to prove the charge against the accused persons beyond all shadows doubt. So, confusion creeps into my mind as to the constitution of the alleged offences.

7.9 Moreover, the accused number 1 deposed as DW1 and stated an opposite story. It is stated therein that she was not present at the place of



occurrence and she rushed to the spot after hearing from the local people. It is alleged therein that after reaching the spot she had seen the complainant was going back taking coconuts from the common trees of that garden. It is alleged that when she tried to stop him the complainant and Tapan Mondal tried to assault her. It is also stated that she filed a case against the complainant and Tapan Mondal being Case No.956/2009 which was pending before the Ld. JM, 7th Court, Alipore. She stated that after filing of that the complainant filed this counter case. It is also stated that they have a long dispute with the complainant regarding land matters. During cross examination of DW1, the witness was not asked about the alleged assault or other allegations as levelled against her in this case.

7.10 A criminal court stands on facts.

7.11 If factually a criminal case remains improbable then a court cannot accept the complainant's version.

7.12 Considering the evidence of DW1, it appears that there is something missing in the version of the complainant in the written complaint regarding the alleged transaction. The missing link is creating the dubiety in the prosecution case and is creating a doubt that the complainant is not coming up with clean hands.

7.13 When this absurdity in the version of the complaint is pitted against the evidence of DW1, it would transpire that there is another facet to the prosecution version regarding the alleged offence and the same is not in consonance with the prosecution version and hence, the prosecution case stands frangible.

7.14 Therefore, enough doubt in the complainant's case accords benefit to the accused persons.

7.15 In the result, complainant's case fails and the accused persons merit acquittal.



7.16 Hence, it is

ORDERED

7.17 That the accused persons namely **Sangeeta Khara, Paresh Chandra Dhara and Sobhon Dhara are found not guilty** of the charges so framed against them u/s 447/323/427/506/34 of Indian Penal Code and she be acquitted under section 255 (1) of Cr.P.C.

7.18 Let the seized articles, if any, be returned from whom seized after the statutory period of appeal is over, if no appeal is preferred by that time.

7.19 The accused persons are on Court bail. They be discharged forthwith from their bail bonds and set at liberty. Bail bonds shall remain in force for the next six months as per the mandate of section 437A of Cr.P.C.

7.20 Let a soft copy of the judgment be uploaded in the CIS within 48 hrs. from this day as per Rule 121A of the C.R.O of Hon'ble High Court, Calcutta.

7.21 Note in T.R.

7.22 Judgment pronounced in open court, signed and sealed on this the **31st** **day of December, 2025.**

Dictated & corrected by me.

**Judicial Magistrate
2nd Court, Alipore, South 24 Parganas**

Judicial Magistrate
2nd Court, Alipore, South 24 Parganas