

HEADING OF DECISION IN MAGISTERIAL TRIABLE CASE

In The Court of Sri Samrendra Gandhi, J.M. 1st Class, Banka

Complaint Case No.1271/2004
Trial No.1023/2015

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Present: Sri Samrendra Gandhi
Judicial Magistrate 1st Class,
Banka.

Banka, dated 28th September, 2015.

Jitendra Kumar DasComplainant

Versus

1.Baldeo Das s/o Late Bishan Das, aged about 45 years.
2.Rabri Devi w/o Baldeo Das, aged about 40 years.
Resident of Mauza-Tari,P.S.-Banka,Dist.-Banka.
.....Accused Persons

On 05-03-2005 the court found prima facie case for the offences punishable u/s 379 of the I.P.C. against above named accused persons.

Charge framed for the offence punishable u/s 379 of the I.P.C.

For the complainant:Sri Pramod Kumar Singh, Ld. Counsel.
For the defence:Sri Manohar Prasad Singh, Ld. Counsel.

Judgment

1. The above named trial facing accused persons stand charged for the offence punishable under sections 379 of the I.P.C., to which they pleaded not guilty and claimed to be tried.

2. It is the case of the complainant according to his complaint petition, in belief, is that on 23/08/04 at about 02:00 P.M. on Monday the accused persons cut down a Akasi tree having length of 20 feet and width of 4 feet and took away it to their house and when the complainant forbade them then they told him to flee away from there otherwise they will cut him with axe and further on another day on 02/11/2004 at about 11:00 A.M. the accused persons also cut down four green Akasia trees and when the complainant went to tell them then they assaulted him with fists and slaps. It has been further stated that such trees were planted on the land which belongs to the mother of the complainant namely Gauri Devi and the complainant sustained loss of Rs. 1200/00 due to cutting of the trees by the accused persons.

3.The then learned C.J.M. Banka after hearing the Ld. Counsel for the complainant and after perusing the complaint petition, transferred this case to the court of the then J.M.Banka for enquiry and disposal under section 192 Cr.P.C. and thereafter

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the court recorded the statement of the complainant on S.A. and after examining the enquiry witnesses and on perusal of evidences and materials issued process on 05/03/2005 against the above named accused persons after finding sufficient materials for the offence punishable under sections 379 of the I.P.C. against them. This case record has been received in this court on 12/01/2010 for trial and disposal.

4. After completion of the appearance of the accused persons the Charge for the offence punishable under sections 379 of the I.P.C. was framed and read over and explained to them in Hindi on 19/06/2013 to which they pleaded not guilty and claimed to be tried.

5. Defence version is total denial of the occurrence.

6. Now the only point for determination in this case is whether the complainant has been able to bring home the charge against the accused persons beyond the shadow of all reasonable doubts or not?

Findings

7. In the instant case the complainant has produced and examined altogether four witnesses, out of them PW-1 is Sitabi Das, P.W.-2 is Jageshwar Das, P.W.-3 is Paro Das and P.W.-4 is Jitendra Kumar Das. Neither oral nor documentary evidence has been adduced on behalf of the defence side.

8. P.W.-1 is Sitabi Das, who happens to be the independent and material witness on the fact of this case has deposed in his examination in Chief that the alleged occurrence has taken place on 23/08/04 on Monday at about 2:00 P.M. and he was grazing his cattle on his land where trees were cut down and lying there and he saw that Baldev Das and his wife were present there and they were abusing. He has further deposed that on the another day of the occurrence the accused persons had cut down the trees and on information, the mukhia got seized the trees. He has further deposed that the accused person namely Baldev who had cut down the tree is present in the court.

But this witness has deposed in his before charge cross examination that he does not know the length and width of the tree and there was kasia tree which were dry and green. He has further deposed that the complainant and the accused persons are mausera brothers to each other and they are also his brothers. This witness did not appear before the court for his after cross-examination after giving sufficient opportunity to him to do so.

9. P.W.-2 is Jageshwar Das who happens to be independent and material witness on the fact of this case has deposed in his examination in Chief that the alleged occurrence has taken place on 23/08/2004 on Monday at about 2:00 P.M. and on 02/11/2004 on Tuesday at about 11:00 A.M. He has further deposed that on the first day of occurrence Baldev Das and Rabri Devi cut down the Arkasia tree of Jitender Das, which length is 20 feet and width is 3 feet and when the complainant went to forbid, but Baldev Das did not obey and told to cut with axe. He has further deposed that the mukhia seized such wood and kept it on the door of Baldev Das. He has further deposed that on the another day of occurrence on 2/11/2004 the accused persons cut down four trees of the complainant and the land stands in the name of Guria Devi who is the mother of the complainant. He has further deposed that the accused persons took away the trees to their house and the complainant sustained loss of Rs. 1200/00. This witness has claimed to identify the accused

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persons.

But this witness has deposed in his before charge cross-examination that Baldev Das and Rabri Devi are the uncle and aunt of Jitendra Das. He has further deposed that his house is situated at the distance of 200 feet from the place of occurrence. He has further deposed that he had seen the occurrence and he stayed on the place of occurrence still two hours.

This witness did not appear before the court for his after cross-examination after giving sufficient opportunity to him to do so.

10.P.W.-3 is Paro Das, who happens to be the independent and material witness on the fact of this case has deposed in his examination in Chief that the alleged occurrence has taken place before two years and eight months from today on Monday at about 2:00 P.M. and he was putting fertilizer on his land and Baldev Das was cutting Akasia tree and his wife was present there and the son of Gauri Devi, namely Jitender Das forbade to cut down the tree, but Baldev Das did not obey him then Jitendra Das went to the mukhia then dalpatti seized that tree which length was 20 feet and width was 3 feet. He has further deposed that the land on which the trees were planted stands in the name of Gauri Devi and the cost of the trees is Rs. 1200/00.

But this witness has deposed in his before charge cross-examination that Jitender Das is his grandson and he has not seen the papers of the land.

This witness did not appear before the court for his after cross-examination after giving sufficient opportunity to him to do so.

11.P.W.-4 is Jitendra Kumar Das, who happens to be the complainant, victim and the material witness on the fact of this case has deposed in his examination in Chief that the alleged occurrence has taken place before four-five years from today and the accused persons namely Rabri Devi and Baldev Das cut down his four-five pieces of Akasia trees costing Rs. 1200/00. This witness has identified both the accused persons present in the court.

But this witness has deposed in his after charge cross-examination that he has compromised this case with both the accused persons voluntarily and put his signature on the compromise petition. He has further deposed that no accused person of this case had cut down his aforesaid Akasia trees.

12.From perusal of the evidences of P.W.-1,P.W.-2 and P.W.-3 produced on behalf of the complainant, it transpires that although these witnesses have supported the case of the complainant in their examinations in chief but they did not appear before the court for their after charge cross-examinations and due to which the defence side has got no opportunity to cross examine them after charge hence there is no any evidentiary value of the evidences of these witnesses and these can not be taken into consideration.Further more P.W.-4 who is the complainant, victim and the material witness of this case has although supported the case in his examination in chief, but he has deposed in his after charge cross-examination thathe has compromised this case with both the accused persons voluntarily and put his signature on the compromise petition and no accused person of this case had cut down his aforesaid Akasia trees.Hence it is obvious that the complainant has not proved his case beyond the shadow of all reasonable doubts.

Order

13.Thus this court comes to the conclusion that the complainant has miserably failed to prove his case against the abovenamed accused persons namely Baldeo Das and Rabri Devi beyond the shadow of all reasonable doubts. Hence this court

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finds and holds that the above named accused persons namely Baldeo Das and Rabri Devi are not found guilty for the charge of offence punishable u/s 379 of the I.P.C. Therefore the above named accused persons namely Baldeo Das and Rabri Devi are acquitted from the charge for the offence punishable u/s 379 of the I.P.C. on the basis of benefit of doubt given to them. Accused persons are on bail, as such they and their sureties are discharged from the liabilities of their respective bail bonds.

Typed and corrected by me

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(Samrendra Gandhi) 28/7/15
J.M.-1st Class, Banka
Date-28/07/2015

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