

In the Court of Additional Chief Judicial Magistrate, Tehatta

Present: Gourab Sen (J.O Code 01090)

A.C.J.M

Tehatta, Nadia.

GR Case No-1322/2022

T.R. No.1615/2022

State

Vs.

- 1. Sukumar Das,**
- 2. Ashoke Das @ Sujan,**
- 3. Abhijit Das.....Accused Persons.**

Offence: Under Section: 447/323/354/34 IPC

Charge: Not Guilty.

Finding : Not Guilty.

Sentence or Order : Accused persons are
acquitted u/s 248(1) of Criminal Procedure Code.

Judgement delivered on-26th day of July, 2023

JUDGEMENT

- 1.** The defacto complainant Usha Rani Das lodged FIR before Palashipara P.S. alleging that on 19-05-2022 at around 6:00 p.m the accused person illegally entered into the house of the defacto complainant and abused with filthy languages and when the defacto complainant raised objection to the same then the accused persons assaulted the defacto complainant with bamboo on her body. When her daughter Sefali Das tried to save her from the hands of the accused persons the accused

persons also assaulted her with fists blow. Thereafter one Bhagabati Das tried to save them from the hands of the accused persons, the accused persons also assaulted her with fists blows. When the defacto complainant raised hue and cry, local para people came to the spot and rescued her from the hands of the accused persons. Thereafter, they were taken to Palashipara Hospital for their medical treatment.

On the basis of the FIR lodged by the defacto complainant Palashipara Police Station initiated a specific case bearing no.181/2022 dated 19.05.2022 U/S 448/323/325/354/34 of IPC.

2. On appearance of the accused persons, copies of relevant prosecution records was furnished to them in compliance of the provision u/s 207 of Criminal Procedure Code.

3. The substance of the accusation u/s 447/323/354/34 of IPC was read over and explained in Bengali to the accused persons on 20.07.2023 to which the accused persons pleaded not guilty and claimed to be tried.

4. The Prosecution in order to prove its case against the accused persons examined the defacto complainant Usha Rani Das as PW-1, Bhagabati Das as PW-2 and Sefali Das as PW-3.

5. The evidence of prosecution was closed on 20.07.23 After closer of the prosecution evidence, the accused persons were questioned u/s 313 of Cr.P.C. They denied all the incriminating particulars in evidence against them. No defence witness was adduced inspite of opportunities provided for.

6. **Points for determination:**

Heard the argument address by Ld. A.P.P. and the defence counsel. Ld. A.P.P. submits that prosecution has proved its case beyond all reasonable doubts for which the accused person should be convicted. On the other hand Ld. Defence Counsel submits that prosecution has measurably failed to prove its case and the accused person is entitled to be acquitted.

Whereas the case of the prosecution, defence taken by the accused and evidence led in this case, the points arise for consideration are as follows :

1. Whether on 19-05-2022 at around 6:00 p.m the accused persons illegally entered into house of the defacto complainant and also assaulted daughter of the defacto complainant and one Bhagabari Das with fists blows and also tried to outrage of modesty ?
2. Whether the accused persons are liable to be convicted for the alleged offence?

8. **DECISION WITH REASONS:**

Both the points are taken up together for consideration.

In criminal case burden is always upon the Prosecution to prove or to establish the case against the accused persons beyond reasonable doubt by adducing valid and cogent evidence and if the Prosecution fails to do so then, accused persons cannot be held guilty in the alleged offence. Benefit of doubt always goes in favour of the accused persons.

In Noor Aga Vs. State of Punjab reported in (2008)16 S.C.C. 417 the Hon'ble Supreme Court held :

“58. ... An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the

standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is 'beyond all reasonable doubt' but it is 'preponderance of probability' on the accused."

The concept of 'reasonable doubt' is explained by justice Cookbur, as follows: " it is business of the prosecution to bring home the guilt of the accused to the satisfaction of the minds of the jury : but the doubt to the benefit of which the accused is entitled to must be such as rational thinking, sensible man fairly and reasonable entertain, not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle skepticism. There must be doubt which a man may honestly and conscientiously entertain."

The Hon'ble Supreme Court again in State of Madhya Pradesh Vs. Dharkole @ Govind Singh and others reported in (2004)13 S.C.C 308 held that doubts would be called reasonable if they are free from a zest of abstract speculation and that reasonable doubt is not an imaginary, trivial or a nearly possible doubt; but a fair doubt based on reason and common sense. 'Reasonable doubt must grow out of the evidence in the case or from the lack of it as opposed to mere vague apprehension.'

Way back in 1973 let justice V.R. Krishna Iyar in the case of Shibaji Sahab Rao Bobade and others Vs. State of Maharashtra (AIR1973 S.C.2622) has held that "in an anxiety to apply the jurisprudential presumption of innocence of an accused, court should not for get to moderate the same by a pragmatic need to make criminal justice potent and realistic.'

Another golden thread which runs through the web of the administration of justice in Criminal Cases is that if two views are

possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

Keeping in mind the aforesaid position of law we shall examine the evidence adduced by the witness and also the materials on record and see in view of the nature of offence alleged to have been committed by the accused whether prosecution has proved its case beyond all reasonable doubt.

The Prosecution in order to prove its case against the accused persons examined PW-1 the defacto complainant Usha Rani Das deposed that 1 year back in the morning when she was working in her house. The accused persons along with some para people came to their house to discuss in respect of property. The accused persons were also present there at the time of incident. There was a hot altercation took place and a scuffle for which herself, her daughter Sefali and Bhagabati Das down on the ground and received sustained injury. They all were treated at Palashipara Hospital

PW-2 Bhagabati Das deposed that 1 year back in the morning when she was working in her house. The accused persons along with some para people came to their house to discuss in respect of property. The accused persons were also present there at the time of incident. There was a hot altercation took place and a scuffle for which herself, her mother and sister Sefali down on the ground and received sustained injury. They all were treated at Palashipara Hospital.

PW-3 Sefali Das deposed that 1 year back in the morning when she was working in her house. The accused persons along with some para people came to their house to discuss in respect of property. The accused persons were also present there at the time of incident. There was a hot

altercation took place and a scuffle for which herself, her mother and sister Bhagabati down on the ground and received sustained injury. They all were treated at Palashipara Hospital.

No other witness was examined by the prosecution in this case.

On analyzing entire evidence, a doubt is created regarding actual happening of the incident as claimed by the defacto complainant. The general principal of criminal jurisprudence is that the prosecution has to prove its case beyond all reasonable doubt and the benefit of every reasonable doubt should go to the accused.

On the basis of evidence in record the guilt of the accused persons is not proved beyond all reasonable doubt and the accused persons are entitled to get the benefit of doubt. Hence, the prosecution has failed to prove the points and points no.1 and 2 are decided against the prosecution.

9. Hence, it is,

ORDERED,

that the accused persons namely **Sukumar Das, Ashoke Das @ Sujan and Abhijit Das** are found not guilty of offence under section 447/323/354/34 of I.P.C and they are acquitted under section 248(1) Cr.P.C and set at liberty. The bail bonds are cancelled and sureties are discharged from their respective liabilities.

Note in register.

Dictated & Corrected by me

Sd/- G. Sen

Addl. Chief Judicial Magistrate
Tehatta, Nadia.

Sd/- G. Sen

Addl. Chief Judicial Magistrate,
Tehatta, Nadia.