

In the Court of Judicial Magistrate, 1st Court Raghunathpur, Purulia

Present: BASHAR NAWAZ, [J.O Code: WB01449]

[On this 07th day of October, 2024]

[G.R. Case No. 169 of 2022]

CNR NO. WBPU06-0011192022

CIS Registration No. 803 of 2022]

(Arising out of Neturia P.S. Case No. 32 of 2022 dated 17.03.2022)

under section 427/448/34 of I.P.C

Complainant	STATE OF WEST BENGAL THROUGH O/C Neturia POLICE STATION
REPRESENTED BY	LD. APP
ACCUSED	1.Sanjoy Yadav 2. Rajesh Modi 3. Ibrahim Seikh
REPRESENTED BY	Partha Mukherjee

Form B

[directed by the Hon’ble Supreme Court in SUO MOTO WRIT (CRL) NO. (S) 1/2017; IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INADEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS V. THE STATE OF ANDHRA PRADESH & ORS.]

Date of Offence	13.03.2022
Date of FIR	17.03.2022
Date of Charge-sheet	12.06.2022
Date of Plea	18.02.2023
Date of commencement of evidence	25.07.2024
Date on which judgment is reserved	07.10.2024
Date of the Judgment	07.10.2024
Date of the Sentencing Order, if any	ACCUSED PERSON HAS BEEN ACQUITTED

Accused details:							
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 during trial for purpose of Section 428 Cr.P.C.
1.	Sanjoy Yadav	30.03.2022 (surrendered)	30.03.2022	427/428/34 of I.P.C	Acquitted.	NA	NA
2.	Rajesh Modi	30.03.2022 (surrendered)	30.03.2022	427/428/34 of I.P.C	Acquitted.	NA	NA
3.	Ibrahim Seikh	30.03.2022 (surrendered)	30.03.2022	427/428/34 of I.P.C	Acquitted.	NA	NA

Form C

List of Prosecution/ Defence/ Court

Witnesses A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT ITNESS, MEDICAL WITNESS,PANCH WITNESS, OTHER WITNESS)
1.	Hareram Singh	De-facto complainant
2	Partha Sarathi Char	witness
3	Dilip Kumar modi	Witness
4.	Ram Nayan Jaiswaran	witness
5.	Bablu Ray	witness
6.	Sanjib Kumar Simgh	witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW	NIL	NIL

List of Prosecution/ Defence/ Court Exhibits

• Prosecution:

Sr. No.	Exhibit Number	Description
1.	P1	Written complain
2.	P1/1	Signature of PW1 on written complain

• Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

• Court Exhibits:

Sr. No.	Exhibit Number	Description
---------	----------------	-------------

NIL	NIL	NIL
-----	-----	-----

- Material Objects:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

J U D G M E N T

Facts of the case:

The fact of the case in brief is that on 17.03.2022 at 18:25 hrs O/C Neturia PS received a written complaint from one Hareram Singh S/O- Lt. Prasad Narayan Singh of Parbelia Colliery, PS-Neturia, Dist-Purulia, Secretary of Amrakajan Club to the effect that on 13.03.2022 at about 23:30 hrs alleged persons namely (1) Sanjoy Yadav S/O- Fulchand Yadav of Siridhowra (2) Rajesh Modi @ Kallu S/O- Arjun Modi of Parbelia Colliery Uppardhowra and (3) Ibrahim Sekh @ Guddu S/O- Mustak Miya of New colony Parbelia Colliery all under PS-Neturia, Dist-Purulia entered in Amrakajan Club and broken the LED TV. Carrom Board and Sofa Set of said club. Over this Neturia PS Case No-32/2022 Dt.- 17/03/2022 U/S- 448/427/34 IPC has been started.

On completion of investigation charge sheet being number 50 of 2022 dated 12.06.2022 was submitted in this case. The investigating officer after completion of his investigation found prima facie materials against all the accused persons and submitted the charge sheet against the all the accused persons under section 427/428/34 of I.P.C. Then after submission of charge sheet as a progressing action cognizance of the offence was taken against all the accused persons for allegedly committing the aforementioned offences and the case was transferred to this court for trial.

Thereafter on 18.02.2023 after considering the materials available on record section 427/428/34 of I.P.C Act was read over and explain to the all the accused persons named in the charge sheet. The substance of charges so framed was read over and explained to the accused persons to which the accused persons pleaded to be not guilty of committing those offences and they claimed to be tried by this court. As the offences charged with, was triable by this court and was within the jurisdictional domain of this court the trial of this case was initiated by recording the evidences of the prosecution.

Evidence adduced

Six the witnesses have been cross-examined by the learned advocate for the accused person. The investigating officer of this case has not been examined in this case though efforts were taken to secure his presence. However the prosecution has not laid evidence in documentary form.

From the case record it will be axiomatic that charge was framed in the year 2022 and thereafter summons was sent to the witnesses on several occasions. It is also axiomatic from the case record that even after taking gusto efforts appearance of all the witnesses could not be secured. It is worthwhile to mention here that this case is pending since the year 2021 and as per the mandate of Constitution speedy disposal is the fundamental right of the accused person. Moreover the case come under Track 03 as per the Case Flow Management Rules, High Court Rules 2006. Thus it is the indelible duty of this court to hoist the right of the accused persons and to act in accordance with section 309 of the Criminal Procedure Code 1973 read with the Case Flow Management Rules, High Court Rules 2006 as well as the direction of the Hon'ble Supreme Court given in *Hussain and another versus Union of India, 2017[2] AICLR 362 (SC)*. Hence being pioneered by the decision of the Hon'ble Supreme Court the prosecution evidence was

closed and the case was fixed for examination of the accused person under section 313 of the Code of Criminal Procedure, 1973. Considering the judgement of The Hon'ble Apex Court in ***Raj Kumar Singh @ Raju @ Batya Vs State of Rajasthan (A.I.R.2013 S.C 3150)*** the examination of the accused persons dispensed with as there is incriminating material against the accused persons in this case. However In short the sum and substance of the defence is plea of innocence.

Points for Determination

After exhausting the above procedures the case was posted for hearing of arguments. On completion of arguments as per requirement of Section 354 of the Cr.P.C it is the incumbent duty of this court formulate the points for determination and assign reasons for harbouring to any conclusion on those points. After considering every possible facet in this case and considering the materials available the points for determination are arrayed as under:

- 1) Whether the accused committed the offence?
- 2) Whether the accused persons are liable to be convicted under section 427/428/34 of I.P.C.?

Decision with reason

Point number 01 and 02:

Both the points being related with each other is taken up together for discussion and adjudication. Ld lawyer for the accused persons during the course of argument submitted that the prosecution has miserably failed to prove the charges framed against the accused persons and for that reason the accused persons must be acquitted. Ld A.P.P representing the prosecution raised cavil against the contention of ld lawyer for the accused persons and in all his fairness submitted that there are not adequate materials on record against the accused persons.

In order to usher in an apt and sagacious adjudication, the first point that needs discussion is, on whom the burden of proof lies and to what extent that needs to be discharged. In criminal jurisprudence the accused always has a 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, i.e., it must establish all the ingredients of the offence with which he/she is charged. The anvil for testing and interpreting what constitutes 'prove of guilt' in a criminal trial has been formulated by the Honourable Apex Court. While in civil cases facts may be proved by a mere preponderance of evidence, whereas in criminal cases the prosecution must prove the charge beyond reasonable doubt. In AIR 1966 SC 01 it was observed by the Honourable Apex Court on page 3, that:-

"If upon the evidence adduced in the case whether by the prosecution or by the accused a reasonable doubt is created in the mind of the Court as regards one or more of the ingredients of the offence including mens rea of the accused he would be entitled to be acquitted."

Thus from the above discussion and based on the canons of criminal trial that has been formulated by catena of decisions of the Honourable Courts, there is no quandary over the legal proposition that the general burden of proof is always upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence he is entitled to the benefit of doubt. Thus being guided by the above proposition of law; this court must set out a voyage in the evidences available on record to see whether the prosecution has been able to prove the act/occurrences which constitute the offence and whether it has managed to connect the accused persons with such offence.

As already pronounced in this judgment; the prosecution is vested with the

indelible duty to prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that; always rests on the prosecution from the beginning to the end of the trial. In this case the prosecution has been able to adduce only three witnesses. Hareram Singh is the de facto complainant and he has been examined as P.W-01 in this case. P.W-01 in his examination-in-chief he has disclosed incriminating materials against the accused persons but in his cross-examination he has completely deviated from his versions and has manifested the fact that he do not remember anything about this case. Rest of the witness submitted that they do not know anything about this case. It is also palpably clear from his cross-examination that he has deviated from her statements made in his examination-in- chief.

From the above set of facts this Court is thoroughly convinced that the settlement was arrived voluntarily, and this Court has neither any reason nor any rhyme to stand in the way of such compromise. Considering all the aspects and after appreciation of all the materials produced before this Court in the form of oral and documentary evidence, this Court has no other alternative but to hold that the evidence of the prosecution witnesses suffers from material lacuna insofar as against the accused persons. Under such circumstances, the benefit arising out of that lack of evidence should go in favour of the accused persons. This Court has no other alternative but to hold that there is no iota of ingredients to constitute the offence **under section 427/428/34 of I.P.C.** In this Court's opinion, there is no evidence and materials available on record where from an inference of the accused having committed the offence may necessarily be drawn. Thus, element of cruelty be it mental or be it physical; and demand of dowry, is far from being evinced in this case and upon appreciation of the evidences on record, I have no dichotomy to conclude that the prosecution has miserably failed to prove its case and the case of the prosecution is not at all proved beyond reasonable doubt rather it is dubious. It is axiomatic from the evidences on record that this case is an out come of misunderstanding and not commission of a crime, hence do not warrant any intervention of this court. So, in this case the accused persons are not liable to be punished since the charge against them has not been proved by the prosecution. Thus, the above points under determination are therefore answered in the negative.

Hence, it is

ORDERED

that the accused persons, namely **1.Sanjoy Yadav 2. Rajesh Modi 3. Ibrahim Seikh** are found to be not guilty of committing the offence under section 427/428/34 of I.P.C, and they are hereby acquitted of the charges framed against them as per section 255 sub-section (1) of Criminal Procedure Code 1973. They are also discharged from the liability of their respective bail-bonds and set at liberty. The sureties are also discharged. There has been no seizure and hence no order as to seize article is required.

Be it also mentioned here that the victim of this case has a right to prefer an appeal against this order before a competent Court u/s 372 CrPC and can also seek legal assistance for such appeal from District Legal Services Authority.

Copy of this judgment of acquittal be forwarded to Secretary, DLSA, Purulia and District Magistrate, Purulia for necessary information.

Dated: 07.10.024

Judicial Magistrate 1st Court
Raghunathpur, Purulia

Typed and corrected by me;

Judicial Magistrate 1st Court
Raghunathpur, Purulia