

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRA 208 of 2016

Mrinalini Mandal
-Vs-
Swapan Kumar Mandal & Ors.

For the appellant: Mr. Jagabandhu Mondal, Adv.,
 Ms. Amrita Chel, Adv.

For the State: Mr. Narayan Prasad Agarwal, Adv.,
 Ms. Subhasree Patel, Adv.

Heard on: November 17, 2021.

Judgment on: December 24, 2021.

BIBEK CHAUDHURI, J. : –

1. This is an appeal again acquittal filed by the defacto complainant, one Mrinalini Mandal assailing the judgment and order of acquittal dated 4th June, 2015 passed by the learned Judicial Magistrate, 2nd Court at Contai, Purba Medinipur in CR Case No.102 of 2005.

2. One Mrinalini Mandal (hereinafter described as the complainant-appellant) filed a complaint before the learned Sub-Divisional Judicial Magistrate at Contai, stating, inter alia, that on 13th January, 2005 at about 8 am the accused persons, namely, Swapan Kumar Mandal, Tapan Kumar Mandal and Tarun Kumar Mandal with some unknown persons

being armed with deadly weapons like Lathi, Katari, rope etc formed an unlawful assembly and trespass into the land of the defacto complainant situated at plot No.694 and 392 within mouza Chattabheri which she inherited from her father. The accused persons illegally cut and took away 30 numbers of bamboos from the bamboo grove of the defacto complainant to the house of accused No.1 Swapan Kumar Mandal. The brothers of the defacto complainant-appellant raised protest against such illegal act of the accused persons but they abused them in filthy language and tried to assault them. The defacto complainant stated further that the price of the said bamboos was approximately Rs.1500/-. The defacto complainant is an assistant teacher of a local nursery school and on the date and time of occurrence she was busy with Saraswati Puja performance at her school. The witnesses informed the incident to her. She lodged a complaint before the local Panchyat. The Panchyat tried to settle the dispute amicably but the accused persons refused to accede to proposal of settlement given by the local Panchyat members. On 28th February, 2005 the defacto complainant sent a complaint under registered post to the Officer-in-Charge, Contai P.S but the police did not take action against the accused persons. The accused No.1 is a Sub-Inspector of Police attached to Kolkata Police and being a Police Officer he was spear-heading all sorts of illegal act against the complainant. It is further stated by the complainant that she filed series of writ petitions in this Court for recording her name in the record of rights in respect of the disputed plots in question and this Court time to time passed several

orders in favour of the complainant directing the Block Land and Land Revenue Officer to record the name of the defacto complainant in respect of the said property but it was not done on the date of filing of the complaint.

3. On the basis of the said complaint the learned Sub-Divisional Judicial Magistrate, Contai took cognizance of offence against the accused persons and sent the case record to the 2nd Court of the learned Judicial Magistrate at Contai for inquiry and trial. The learned Magistrate on initial inquiry and after obtaining a report under Section 202 of the Code of Criminal Procedure, vide order dated 17th May, 2008 issued process against the accused persons under Section 147/447/379/506/34 of the Indian Penal Code.

4. The accused persons/private respondents duly appeared before the court. Witnesses on behalf of the complainant were examined before charge and on the basis of the evidence on record charge under Section 147/447/379/506/34 of the Indian Penal Code was framed against the respondents on 30th September, 2010. Finally, the learned Magistrate disposed of CR Case No.102 of 2005 vide judgment dated 4th June, 2015 and the accused persons were acquitted from the charge. Hence the appeal at the instance of defacto complainant.

5. It is found from the lower court record that in order to bring him the charge against the accused persons, complainant examined three witnesses. Amongst them the defacto complainant deposed during trial as PW1, PW2 Nandadulal Mandal and PW3 Uttam Kumar Mandal are the

two brothers of the defacto complainant. No other person was examined in support of the complaint.

6. It appears from the evidence of PW1 Mrinalini Mandal on 13th January, 2005 at about 8.30 am when she was present in her school on the occasion of Saraswati Puja the accused persons entered into the disputed land being armed with katari and other weapons and took away 30 numbers of bamboos to the house of accused No.1. It is further ascertained from the evidence of PW1 that the disputed land of plot appertains to eastern portion of plot No.694 and western portion of plot No.392 measuring about 88 ½ decimal of land of mouza Chattabheri. The witness further stated that she inherited the said plot from her father. She came to know about the incident from her brother, namely, Nandadulal Mondal and others. She lodged a GD entry at Contai P.S lodging the said incident and informed the matter to the local Panchyat. The Panchyat arranged amicable settlement but the accused person were not ready to accept the proposal of amicable settlement by the Panchyat. In cross examination PW1 admitted that the accused persons are her nephews. It is further admitted by her that the disputed plot was not recorded in the names of her father or grand-father or her. It is stated by her that she became the owner of the said plot by virtue of a deed executed by her grand-father in favour of her. Undisputedly at the time of incident she was not present at the place of occurrence. PW1 further admitted in her evidence that in order to record the land in dispute in her name she filed a case before the West Bengal Land Reforms and Tenancy Tribunal. The

said tribunal passed an order directing BL and LRO to see as to whether the dispute is owned by the defacto complainant or not. The witness further admitted that she filed a writ petition before this Court under Article 226 of the Constitution of alleging, inter alia, that the BL and LRO did not record the disputed land in her name.

7. PW2 Nandadulal Mandal and PW3 Uttam Kumar Mandal corroborated the evidence of PW1 in their examination-in-chief. They claimed that they were the eye witnesses of the occurrence. It was admitted of both of them that they filed many cases before the tribunal as well as this Court for correction of record of rights in respect of the disputed land but till the date of their cross examination, the disputed land was not recorded in their name.

8. The learned Magistrate acquitted the accused persons on the following grounds:-

- i) The dispute between the complainant and the accused persons is essentially civil in nature.
- ii) Both the defacto complainant and the accused persons claimed right of ownership over the disputed land and the defacto complainant failed to produce any documentary evidence in support of her claim of ownership over the disputed land.
- iii) The defacto complainant failed to produce and examine any independent witness in support of her case. The defacto complainant and her two brothers who deposed

during trial of the case were highly interested witnesses and the relation between the parties was inimical. In view of such circumstances the trial court did not want to place reliance on the evidence of the defacto complainant and the witnesses.

- iv) Therefore, according to the learned Magistrate the case was not proved beyond reasonable doubt.

9. Mr. Jagabandhu Mondal, learned Advocate for the complainant as appellant submits that the learned Magistrate failed to consider the evidence of the witnesses on behalf of the complainant during trial of the case and discarded their evidence on the ground of interestedness. It is contended by the learned Advocate for the appellant that the defacto complainant and her brothers being PW2 and PW3 stated on oath that the disputed plot was in their possession on the date of commission of the alleged offence, the accused persons formed unlawful assembly with some other unknown persons and being armed with lathi, katari, rope etc trespassed into the said land and cut away 30 numbers of bamboos. The defacto complainant and other witnesses stated the names of the villagers who saw the incident. According to the learned Advocate for the appellant, it was the duty of the trial court to issue summons upon the independent witnesses and examine them to unearth the truth. Similarly, the learned Magistrate had the duty to issue summons upon the local Panchyat member who tried to settle the dispute between the parties. Learned court below failed to take such step during trial of the case.

10. Above argument advanced by the learned Advocate for the appellant is misconceived in view of the fact that in a complaint case, it is the duty of the complainant to produce the list of witnesses before the trial court with a prayer for issuance of summons by filing requisites. I have carefully examined the lower court record as well as the orders passed by the learned Magistrate. I did not find any requisition being made by the complainant to examine any witness other than PW2 and PW3. Therefore, submission made by the learned Advocate for the appellant putting responsibility upon the trial court for non examination of the independent witness cannot be accepted in the instant case.

11. Placing reliance on the decision of the Hon'ble Supreme Court in **Allarakha K. Mansuri vs. State of Gujarat** reported in **2002 (1) Supreme 622** it is submitted by the learned Advocate for the appellant that where the decision taken by the trial court was uncalled for, not based upon facts of the case or legal evidence tendered in the case and was the result of conjectures, imagination and hypothesis, the High Court is always justified in re-examining the whole evidence and convicting the accused. It is submitted by the learned Advocate for the appellant that the learned trial judge committed gross error in holding dispute between the parties essentially a civil dispute and refused to hold the accused guilty on surmise and conjecture. When the witnesses unequivocally stated that land in question was owned by PW1 and the accused persons cut away 30 numbers of bamboos from the bamboo grove, there was no reason to disbelieve the evidence of the witnesses on behalf of the prosecution.

12. On the same score the learned Counsel for the appellant refers to another decision of the Hon'ble Supreme Court in the case of **Bhagwan Singh & Ors. vs. State of M.P** reported in **2002 (2) Supreme 567**.

13. It is further submitted by the learned Advocate for the appellant that the learned Magistrate was not justified in accepting minor discrepancies as material contradictions in the case and by making suspicious approach to evidence of witnesses by resorting to conjectures. According to him, assessment of evidence by the learned Magistrate was altogether unreasonable and the order of acquittal ought to be reversed.

14. Mr. Jagabondhu Mondal next refers to Full Bench decision of the Madras High Court in the case of **State vs. Veerappan & Ors.** reported in **AIR 1980 Madras 260**. It is held by the Hon'ble Supreme Court in the said report that acquittal of the accused only on the ground of non-production of evidence of prosecution is not permissible.

15. He also refers to some other decisions of the Hon'ble Supreme Court:-

- i) **AIR 1989 Supreme Court 1445 (Arun Kumar vs. State of U.P).**
- ii) **AIR 1981 Supreme Court 1442 (State of U.P vs. Sahai).**
- iii) **AIR 1988 Supreme Court 1998 (State of U.P vs. Anil Singh).**

The above decisions are not relevant under the facts and circumstances of the instant appeal and accordingly this Court is of the view that it is not necessary to discuss the ratio decided in the aforesaid judgments.

16. Long and short of the allegation made by the complainant against the accused persons is that they cut 30 numbers of bamboos from the bamboo grove belonging to the defacto complainant and took them away to the house of the accused No.1. The alleged incident took place on 13th February, 2005 and the petition of complaint was filed on 3rd May, 2005. There is absolutely no explanation of inordinate delay in lodging the complaint. It appears from the evidence on record that both the defacto complainant and the accused persons had rival claims over the disputed land. Under such circumstances, it was the bounden duty of the defacto complainant to prove ownership of the land in question before the trial court. The defacto complainant failed to produce the deed by virtue of which she claimed to be the owner of the disputed land or the record-of-rights in respect of the property in question. In the absence of such documents, ownership of the appellant is held not to be proved. It is contended by the learned Advocate for the appellant that after the evidence being closed but before the date of delivery of judgment, the appellant produced all documents in support of ownership over the disputed land in the trial court but the court did not consider the said document. It is needless to say that a trial court cannot look into any document and take judicial notice of the same without the document

being proved in evidence by marking the same as exhibit. The defacto complainant had the right to pray before the Court for re-examination of the witnesses on behalf of the complainant under Section 311 of the Code of Criminal Procedure but she did not take any such step during trial of the case. At this stage the court of appeal also cannot look into it and there is no other alternative but to hold that the learned trial judge rightly recorded an order of acquittal for non-production of documentary evidence by the complainant during trial of the case.

17. In **Chandrappa vs. State** reported in **(2007) 4 SCC 415**, the Hon,ble Supreme Court laid down a following guidelines which should be bear in mind in dealing with an appeal against acquittal.

“1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that

every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

18. Thus, the court of appeal would be slow in altering the judgment of acquittal passed by the learned trial judge and if two views are possible from the evidence on record, the view that is favourable to the accused shall be accepted by the court of appeal.

19. I have carefully perused the impugned judgment and order of acquittal. In my considered view I do not find any illegality in the impugned judgment and there is no reason of interference against the judgment passed by the learned Magistrate, 2nd Court at Contai in CR Case No.102 of 2005.

20. For the reasons stated above the instant appeal fails.

21. The judgment and order of acquittal passed by the learned court of appeal is affirmed.

22. The appeal be dismissed on contest however, without cost.

23. Let a copy of this judgment be sent to the court below along with the lower court record.

(Bibek Chaudhuri, J.)