

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 438 of 2008

Jogendra Nath Bhuinya

Vs.

Bhabatosh Maity & Ors.

For the Appellant : Mr. Prabir Kumar Mitra,
Ms. Ariba Shahab.

Heard on : 29.06.2022

Judgment on : 11.08.2022

Shampa Dutt (Paul), J.:

The appeal under Section 374(2) of the Code of Criminal Procedure is against an **order of acquittal** passed by the Ld. Chief Judicial Magistrate, Purba Medinipur at Tamluk by a judgment and order dated 24.03.2008 in complaint case no. CR 518 of 2002 under Sections 147/447/379/427/149 of the Indian Penal Code acquitting the four accused persons/opposite parties.

Vide order dated 08.07.2008 this Court had granted special leave to appeal.

The appellant's/complainant's case against accused/opposite parties in short is as follows:-

On 10.05.2002 (corresponding to 26th day of Baisakh, 1409 B.S.) at around 9.00 a.m. the accused persons namely Bhabatosh Maity, Nandalal Khaskil, Ratan Barman and Sagar Maity being armed with lathi, gainty/gainti etc. entered into the house of Jogendra Nath Bhuinya and asked the complainant to stop further construction of the kitchen and they also abused Jogendra Nath Bhuinya in filthy languages. The accused persons also threatened the complainant with dire consequences and demolished the construction raised by Jogendra Nath Bhuinya and took away 500 bricks, 20 bags of cement, tools of the Mason and also took away articles worth of Rs. 4000/-.

The complainant reported the incident to the Officer-in-charge of Nandakumar P.S. But due to the inaction of the police lodged a complaint in the court of Additional Chief Judicial Magistrate, Tamluk on 13.05.2002.

After examining the complainant and taking cognizance, process was issued against the accused persons for offence under Section 147/447/379/427/149 of IPC on 30.10.2006 on taking evidence before charge.

Contents of charge was read over and explained to each of the accused persons to which they pleaded not guilty and claimed to be tried.

On conclusion of trial the Ld. Magistrate by the impugned judgment and order dated 24.03.2008 acquitted the accused/opposite parties as aforesaid.

In course of trial the complainant examined six witnesses in support of their case.

The appellant's/complainant's case on appeal is that the Ld. Magistrate failed to appreciate the facts and circumstances of the case and illegally passed an order of acquittal in respect of the accuseds. The Ld. Magistrate wrongly relied upon the delay of three days in filing the complaint and without considering the evidence on record as put forward by the complainant and other witnesses erroneously passed an order of acquittal, which being bad in law is liable to be set aside and on considering the evidence on record in the proper prospective the accused/opposite parties are liable to be convicted as charged.

Ld. Lawyer appearing for the accused/opposite parties have taken the plea of innocence and being falsely implicated and have submitted that the Ld. Magistrate rightly passed the order of acquittal under reference and as such the said judgment and order under appeal is liable to be affirmed.

Evidence on record

Prosecution witness no. 1 Jogendra Nath Bhuinya is the complainant in this case. In his evidence before charge, this witness has stated that the incident in this case took place on **10.05.2002** at about 9.00 a.m. and by naming the accused persons stated that the accuseds came to his dwelling house and damaged his brick-built kitchen with weapons causing loss of Rs. 4500/-. This witness further stated that the accused/opposite parties took away five bags of cement, bricks, apparatus used by the Mason. On being cross examined after charge this witness reiterated his case as stated in the written complaint but stated that he suffered a loss of Rs. 400 and Rs. 1000 (which is in contradiction to his evidence before charge wherein he stated that he had suffered a loss of Rs. 4500/-). The complainant is an employee of the Jail Department and PW 2 is his brother. This witness has admitted on being cross examined that the accused persons/opposite parties have filed a **civil suit** in respect of plot no. 1600 in the 3rd court of Civil Judge (Junior Division), Tamluk being **T.S. No. 63 of 2002**. He has further stated that he has got two decimals in plot no. 1628 (disputed property and the place of occurrence). That he took permission from the concerned authority for conversion of plot no. 1628 from pond to bastu but **has not filed the said document** in court and has denied that the accused persons resisted him as by making the said construction he was blocking the drainage system of plot no. 1600.

Prosecution witness no. 2 Gyanendra Nath Bhuinya is the brother of the complainant. This witness has corroborated the evidence of PW 1. On being cross examined this witness has stated that the disputed plot being no. 1628 is a pond and that he has 1/6th share therein. The complainant also has 1/6th share therein. This witness has further stated that at the time of incident there were 32 to 40 persons at the P.O. whose name he cannot say. This witness has denied that there is no kitchen on plot no. 1628.

Prosecution witness no. 3 Duryodhan Baroi and **Prosecution witness no. 4 Farid Ali** do not know either the accuseds or about the case.

Prosecution witness no. 5 Narendra Nath Dolui. This witness knows the parties to this case and has supported the case of the complainant. On being cross examined it has come before the court that this witness was working in the house of the complainant on the southern side a 'Khal' as helper to the Mason.

Prosecution witness no. 6 Biswajit Sasmal knows the parties to this case and has corroborated the case of the complainant. This witness on being cross examined could not say anything about the incident in the case.

Analysis of evidence

From the oral evidence as recorded the following facts have emerged:-

- (1) Admittedly there is a civil suit (filed in the same year as the incident in this case) filed by the accused persons against the complainant.**
- (2) The disputed plot no. 1628 (place of occurrence) is admittedly a pond.**
- (3) No documents has been filed in respect of the complainant's case that the said plot had been converted from a pond to a bastu.**
- (4) No documents filed to show the purchase of the articles by the complainant for construction of the kitchen which allegedly the accused persons demolished, nor any seized articles of the alleged destroyed construction.**
- (5) No documentary evidence.**
- (6) No sanctioned plan from any authority for construction of the kitchen has been produced by the complainant before the court.**
- (7) There are no independent witnesses in this case. PW 2 is the brother of the complainant and PW 5 is the helper of the Mason who allegedly was constructing the kitchen. PW 3, 4 know nothing about the case nor do they know the accuseds.**
- (8) PW 6 is also neighbor of the complainant but he could not say anything specific about the case.**

Conclusion

Considering the discussion as above, this court finds that the complainant could not produce a single document in support of his case that he was constructing a kitchen, not even any cash memo or otherwise showing purchase of bricks, cement etc. and that admittedly the accused persons have filed a civil suit against the complainant for which the complainant prima facie may have a grudge and also taking into consideration that admittedly the disputed property is a pond as admitted by the complainant, and no documents produced before the court to show that it has been converted into bastu, this court finds that the Ld. Magistrate rightly considering the facts and circumstances and the evidence on record in the absence of documentary evidence came to the right findings that the complainant could not prove the charge as framed against the accused persons beyond all reasonable doubt and the Trial Court rightly acquitted the accused persons/opposite parties of the charge under Section 147/447/379/427/149 of the Indian Penal Code.

The judgment of the Supreme Court cited in AIR 1976

Supreme Court, 989 is relied upon, where in the court held:-

“Where two views on the evidence are reasonably possible, one taken by the trial Court and the other reached by the High Court, in the absence of any material irregularity, manifest error or illegality, the High Court in appeal against acquittal should not interfere with the order of acquittal, merely because it thinks that

it would sitting as a trial Court, have taken the other view of the evidence.”

In view of the said facts and materials on record the judgment and order of acquittal in respect of the accused/opposite parties is hereby affirmed.

The appeal for setting aside the order of acquittal is accordingly dismissed.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)