

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**CRA 9 of 2019**

***Shankar Bhim & Anr.***

***-vs.-***

***The State of West Bengal***

For the Appellants : Mr. Arindam Jana,  
Mr. Bikram Banerjee,  
Mr. Sudipta Dasgupta,  
Mr. Sutirtha Nayek

For the State : Mr. Abhra Mukherjee,  
Mr. Dipankar Mahato,

Heard on : 19.07.2022 & 03.08.2022.

**Judgment on : 05.08.2022**

**Tirthankar Ghosh, J:-**

The present appeal has been preferred against the judgment and order of conviction and sentence dated 06.12.2018 passed by the Learned Additional Sessions Judge, 3<sup>rd</sup> Court, at Tamluk, Purba Medinipur in Sessions Trial No. 01(12)2017 wherein the learned trial Court was pleased to convict the appellants under Section 354 of the Indian Penal Code and Section 323/34 of the Indian Penal Code and sentenced them as follows:

- 1) For the offence under Section 354 of the Indian Penal Code the appellants were sentenced to suffer Rigorous Imprisonment for one year and fine of Rs.2,000/- in default to suffer Simple Imprisonment for three months.
- 2) For the offence under Section 323/34 of the Indian Penal Code the appellants were sentenced to fine of Rs.1,000/- each, in default to suffer Simple Imprisonment for one month.

The genesis of the case relates to Nandakumar police station case no. 13 dated 26.03.2016 under Sections 341/447/323/354/376/511/506/34 of the Indian Penal Code. FIR was registered pursuant to an application under Section 156(3) of the Code of Criminal Procedure being filed by Madhumita Ghora (PW1). The sum and substance of the allegations were to the effect that on 14.12.16 at about 10.00 am when the informant's husband was not at home the accused persons namely, Shankar Bhim, Chandan Bhim, Putul Bhim and Shilu Bhim entered in the betel garden for damaging it. On seeing such conduct the informant protested when Shankar and Chandan Bhim attacked her by abusing filthy languages and forcefully pushed her on the ground. It has been alleged that the accused persons took off her wearing apparels by tying her mouth and pressed her breasts in lustful condition for tempting her. At this stage the informant un-tied the cover of her mouth and started shouting when the witness Pratima Ghora, Sukumar Ghora and Meghnad Ghora came to her rescue. However, the accused persons slapped, kicked, punched and pressed her neck in order to kill her. The accused

persons also snatched away the gold pala valuing Rs.8,000/-. The informant was treated at Khejurbera B.P.H.C. and lodged a General Diary with the Nandakumar Police Station but the police authorities did not take any action.

On the basis of the aforesaid complaint Nandakumar Police Station case no. 13 dated 26.03.2016 was registered for investigation and on completion of investigation charge-sheet was submitted under Section 341/447/323/354/376/511/506/34 of the Indian Penal Code. The learned trial Court framed charges under Section 323/354/376/511/379/34 of the Indian Penal Code. The prosecution in order to prove its case relied upon 6 witnesses which included PW1, Madhumita Ghora, informant; PW2 Meghnath Ghora, husband of PW1; PW3 Kanchani Ghora, sister-in-law of PW1; PW4, Sukumar Ghora, relation of PW1; PW5, Pratima Ghora, sister-in-law of PW1 and PW6, S.I. Samar Mishra, Investigating Officer of the case.

The prosecution in order to prove its case relied upon 6 documents which included Ext.1, signature in the written complaint; Ext.2, seizure list; Ext.3, statement of the victim under Section 164 of Cr.P.C.; Ext.4, Formal FIR; Ext.5, rough sketch map with index and Ext.6 series, three injury reports.

PW1 in her examination-in-chief deposed that she filed the complaint in Court. The same was prepared after she narrated the facts to her advocate and after understanding the contents of the same she signed it. She identified all the accused persons namely, Shankar Bhim, Chandan Bhim, Putul Bhim and Shilu Bhim and stated that they are her brother-in-law and their wives. She

narrated that the incident took place in the month of February at about 10.00 am and there was dispute regarding landed property amongst her husband and his brothers and with the accused persons. On the relevant date the accused persons entered their betel garden in order to destroy it and when she raised objection and asked them to go away Chandan Bhim and Shankar Bhim tried to outrage her modesty and started quarrel with her. They also assaulted her on different parts of her body and during the scuffle she lost her 'pala' valued at Rs.8,000/- which was snatched away. She received injury at her belly and chest and she was treated at Khejurberia Hospital. She further deposed that she gave her garments to the police authorities who seized the same and further stated that her blouse was torn at the time of assault. She also identified her signature in the statement under Section 164 of the Code of Criminal Procedure. In her cross-examination she stated that her family is involved in a land dispute with the accused persons, to that effect civil cases are pending between the parties.

PW2, Meghnath Ghora, is the husband of PW1, who deposed before the Court that the incident took place at about 10.00 am two and half years ago when the accused persons went to cultivate a joint land. His wife raised objection. However, the said accused persons entered into quarrel and altercation and neighbours asked him to file a case. He also deposed that the accused persons also initiated a case against them which is pending and they have also filed a civil suit.

PW3, Kanchani Ghora, is the sister-in-law of PW1. Who stated that the incident took place two and half years ago at about 10.00 am and the accused persons forcefully entered into their paddy field and started planting when PW1 raised objection and the accused persons started quarrelling with her. In cross-examination she admitted that the accused persons filed the case regarding the same incident and there is also a civil case which is pending between the parties.

PW4, Sukumar Ghora also deposed that the incident took place about two and half years ago when the accused persons forcefully planted paddy in their field and PW1 raised objection the accused persons quarrelled with her.

PW5, Pratima Ghora is also sister-in-law of PW1 she also the stated that the incident took place two and half years ago at about 10.00 am when the accused persons forcefully planted paddy in their field and PW1 raised objection they started quarrelling with her, as a result of assault she received abrasion and pain. PW1 was treated at B.P.H.C. and after that she filed the present case.

PW6, S.I. Samar Mishra is the Investigating Officer of the case.

Two documents are also relevant for the purpose of adjudication of the present case. Firstly, the statement of Madhumita Ghora before the Medical Officer of Khejurberia B.P.H.C. appearing in her injury report marked as Ext.6/2 wherein she stated that she was beaten by Chandan Bhim, Shankar Bhim, Angur Bhim, Sathis Bhim by hand and fist it was also stated in the

injury report that she was kicked over her abdomen and as such she is suffering from pain. The report also reflects that the injury is simple with no external injuries are seen.

PW1 in her statement before the learned Judicial Magistrate under Section 164 of Cr.P.C. (Ext.3) stated that on 14.02.2016 Chandan Bhim and Shankar Bhim assaulted her and their wives at that time assisted them. Her wearing apparels were torn and they tried to torture her. However, when her husband, brother and sister-in-laws arrived they fled away.

Mr. Arindam Jana, learned Advocate appearing for the appellants submits that the appellant were family members and over the self same incident the appellants have also initiated a case which is pending and there are disputes relating to a landed property for which a civil case is also pending between the parties. It is submitted that the present case was initiated with a ulterior motive for wrecking vengeance and each of the witnesses have narrated contradictory versions of the incidents which cannot be relied upon to convict the present appellants.

Mr. Abhra Mukherjee, learned Advocate appearing for the State has supported the judgment delivered by the learned Trial Court and submitted that the testimony of PW1 is believable and the injury reports itself speaks regarding the assault being inflicted. Learned Advocate submitted that there is no scope for interference with the order of conviction so passed by the learned Trial Court and as such the same should be affirmed.

I have assessed the evidence in this case and I find that out of the 6 prosecution witnesses except the complainant none had narrated the story regarding the offence of outraging the modesty being inflicted upon the PW1. Now if the evidence of PW1 is taken into account her allegations in the petition of complaint, her statement under Section 164 of the Code of Criminal Procedure, her statement before the doctor as is reflected from the injury report (Ext.6/2) and her deposition before the Court, I find that the same are contradictory to each other and her allegations in the application under Section 156(3) of the Code of Criminal Procedure regarding disrobing her and pressing her breast are exaggerated with a view to registration of the case. The said allegation is absent in her deposition before the Court as also in her statement under Section 164 of the Code of Criminal Procedure as also in the statement before the doctor.

Accordingly, I am of the considered view that the offence under Section 354 of the Indian Penal Code as alleged has not been made out in this case to hold the present appellants guilty of the said offence. As such the order of conviction and sentence so passed under Section 354 of the Indian Penal Code is set aside.

However, there is consistent version that PW1 was assaulted by fist and blows which is also corroborated in the injury report. Thus the order of conviction and sentence under Section 323 of the Indian Penal Code passed by

the learned Additional District and Sessions Judge, 3<sup>rd</sup> Court, Tamluk, Purba Medinipur is hereby affirmed.

The appellants are directed to comply with the direction of the learned trial Court forthwith.

Accordingly, CRA 9 of 2019 is partly allowed.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Tirthankar Ghosh, J.)**