

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 137 of 2012

**Kumkum Ghosh
Vs.
Subhas Paul & Anr.**

Judgment on: 15/05/2023

Rai Chattopadhyay, J.

- (1)** In this appeal the appellant/de facto complainant has challenged the judgment and order of the Judicial Magistrate, 4th Court at Howrah, dated 22.12.2011. The judgment was delivered in G.R. Case No. 1006 of 2003.
- (2)** The private respondents have been acquitted by the Court in the trial under Sections 341/506/323/34 IPC, by dint of the impugned judgment. This appeal has been filed to assail the said impugned judgment of acquittal.
- (3)** This appeal has been filed in the year 2012 and pending since then.
- (4)** This appeal has been listed before this Court on 08.05.2023. Since the date of listing of this appeal before this Court, the same has been called on for twice, on each date of Court's functioning.

However, no one has appeared either for the appellant or the State. Thus, in this appeal, it is found that the appellant has had a reasonable and sufficient opportunity of being heard, which he did not avail in spite of the appeal being pending and called on for a considerable period of time.

- (5)** It is also noted that during the time the present appeal has been pending before this Court and called on, no pleader for the appellant has also represented him, in spite of there being sufficient scope for him to appear to represent the appellant. Accordingly it is found that pleader on behalf of the appellant, if there is any, has also not availed the opportunity to represent the appellant in spite of there being sufficient scope and reasonable opportunity for that.
- (6)** Under such circumstance this appeal may be taken up for final determination, which shall not be in contravention and hostility with the provision under Section 384 (1) proviso (a) of the Cr.P.C.
- (7)** On perusal of the record it is also found not necessary to call for the record from the trial Court in G.R. Case No. 1006 of 2003.
- (8)** The factual matrix of the case in brief is that one Smt. Kumkum Ghosh submitted written complaint to the effect that on 10-07-03 at about 12:00 hrs her neighbors Subhas Paul and two others were digging their common passage in front of her house. She and her son protested against such illegal act and the accused

persons became furious and used filthy languages and allegedly assaulted them with lathi etc as a result of which they received serious injury and treated at District Hospital, Howrah. After investigation, charge sheet was submitted under Sections 341/323/506/34 of the I.P.C. and Ld. C.J.M. after taking cognizance against accused person transferred the case to this Court and for trial and disposal. Charge was then framed under Sections 341/323/506/34 of the I.P.C. Trial then commenced.

Defense is a plea of innocence on the ground that a false case has been filed against them owing to previous enmity and grudge over a common passage.

(9) On the perusal of the certified copy of the impugned judgment it appears that the trial Court, in the same, has elaborately and categorically discussed on the evidence available before it, both ocular as well as others. The trial Court has analyzed the same and after through scrutiny, has come to a finding and decision which is a just, reasonable and plausible view, on the basis of the available evidence.

(10) This Court finds no cogent or sufficient reasons to interfere with such plausible decision, arrived at by the trial Court on the basis of the evidence on record. Hence, it is found that there is no sufficient ground for this Court to interfere with the finding of

the trial Court and its decision in the impugned judgment and order. Hence, the appeal merits no success.

(11) Therefore, upon examining the petition of appeal and the copy of the impugned judgment and upon finding that there is no sufficient ground for interfering, CRA 137 of 2012 is dismissed in terms of the provision under Sections 341/506/323/34 of the IPC.

(12) Urgent certified copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)