

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 629 of 2007
Shristi Dhar Dey
-Vs-
State of West Bengal

For the Appellant : Mr. Soumik Ganguly
Ms. Chandana Chakraborty

For the State : Mr. Tanmoy Kumar Ghosh
Mr. Arindam Sen

Heard on : 13.12.2022

Judgment on : 03.02.2023

Ananya Bandyopadhyay, J. :-

1. The appeal is preferred against the judgement and order dated 27.06.2007 passed by Judicial Magistrate, 6th Court, Bankura in complaint case no. – 257 of 2006 acquitting the accused persons of the charge under Section 323 and 379 of IPC.
2. The appellant filed a complaint under Section 323/325/379/506/34 against the respondent on 29.08.06 before the Court of Ld. CJM, Bankura. Cognizance was taken and the case was transferred to the Court of 6th JM, Bankura.

3. The complaint precisely stated the daughter of the complainant to have purchased 0.16 acre of land under dag no. 571 at Demurari, Gopinathpur, Mouja in the district of Bankura. The land was demarcated with a boundary wall. The respondent abused the complainant's daughter and threatened her to dismantle the boundary wall if his claim of Rs.20000 was not complied with. The complainant and his daughter refused to pay the said amount. Subsequently on 22.06.06 at about 4pm, the complainant and his daughter found the boundary wall to have been demolished. The daughter of the complainant lodged a diary at Bankura P.S on 23.03.06 vide J.S.G.D.E no. 1388/06 dated 23.06.06. The police did not take any action on such written complaint. On 19th August, 2006, the accused Ajoy Banerjee threatened to kill the complainant in case the claimed amount as aforesaid was not paid to him in the presence of Shri Saktipada Dey and Dhiraju Garai at the land of the complainant's daughter. On opposition, the said Ajoy Banerjee assaulted the complainant and snatched a sum of Rs.700 from the pocket of his shirt and fled from the place disregarding the resistance of the other two persons. The complainant went to the Bankura P.S along with the two aforesaid persons where the concerned officer-in-charge advised

them to file a case at the Court. Accordingly, the complainant filed the petition before the Court.

4. The Ld. Trial Court being satisfied that the complainant made out a prima facie case on his examination, issued summons accordingly.
5. The accused appeared before the Court on 11.01.2007. Charge was framed under Section 323/379 of the IPC on 25.04.2007 to which the accused pleaded not guilty and claimed to be tried.
6. The Ld. Advocate Mr. Soumik Ganguly for the appellant submitted the Trial Court erred to appreciate the depositions of PW1 and 2 which were sufficient to prove the offence under 323 and 379 of the Indian Penal Code. The Trial Court did not consider the scuffle to have taken place between the appellant and opposite party no.1 who snatched Rs.700 from the petitioner and considered the initial deposition of PW1 and his evidence adduced before the framing of charge to be at variance without corroboration from PW2. PW2 was the eye witness to the incident and his testimony should not have been discredited. Accordingly, the order of acquittal should be set aside and the opposite party no. 1 should be convicted under Section 323/379 of Indian Penal Code.

7. The Ld. Advocate Mr. Tanmoy Ghosh for the State submitted that the appellant failed to produce any document relating to the written complaint lodged at the Bankura Police Station. The evidence of the witnesses did not corroborate with each other. Moreover, the amount of money alleged to have been stolen was unspecific. The Ld. Trial Judge rightly acquitted the opposite party no. 1 and the appeal shall be dismissed.
8. PW1, the appellant did not cite the exact reason of dispute with opposite party no.1. During his cross examination PW1 stated to have heard the opposite party no.1 having a tea stall. Opposite party no.1 was not the adjacent owner of the land belonging to the daughter of the complainant to initiate threat and assault. He further stated "*no diary was lodged in respect of this incident*", contrary to his statement in his complaint stating that his daughter has lodged a written diary at P.S Bankura as aforesaid. On 19.10.2006, the appellant stated that on inquiry concerning the broken boundary wall, Ajoy Banerjee entered into a heated conversation with him, assaulted him and snatched away Rs.700 from his pocket. He did not inform this matter to the police station and came directly to the Court along with Saktipada Dey and Raju Garai for relief. PW2 Saktipada Dey on

02.12.2006 stated of a dispute between Ajoy Banerjee and the complainant, thereafter found Ajoy Banerjee to flee. Later on he was told by the complainant that Ajoy took away Rs.600/700 from his pocket. Thereafter, they went to the Bankura P.S to inform the matter and police advised them to go to Court. Raju Garai was not examined. The theft of Rs.600/700 from the pocket of the complainant is a hearsay on the part of PW2 being informed by the complainant. There are inconsistencies with regard to the date of incident as well prevarication in the versions of PW1 and PW2 which did not corroborate with each other.

9. In the opinion of this Court, The Ld. Trial Judge had rightly acquitted the respondent/opposite party no. 1 and accordingly the appeal is dismissed.
10. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
11. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)