

Criminal Appeal Case No. 01/19

IN THE COURT OF SESSIONS JUDGE, BAKSA:.....:AT MUSHALPUR

Present: Mr. A. Rahman, L.L.M, A.J.S,
Sessions Judge, Baksa

CRIMINAL APPEAL NO. 01/19

1. Kandarpa Das
2. Anamika Das
3. Manik Das

.... Accused/Appellant

-versus-

Maheswar Das and State of Assam

..... Respondent

Appearance:

For the appellants : Mr. S. Ali, Learned Advocate

For the respondent : Mr. R. Chetry, Learned Public Prosecutor, Baksa

Date of hearing : 12.01.2021.

Date of judgment : 22.01.2021.

J U D G M E N T

1. This instant appeal has been preferred u/s 374 Cr.PC by the appellants/accused challenging the judgment and order dated 02.11.2017 passed by Smt. K. R. Deka, learned Additional Chief Judicial Magistrate, Nalbari in C.R Case No. 504/15. By the impugned judgment, learned Magistrate convicted the accused/appellants u/s 447/506 IPC and sentenced them to fine of Rs. 5,000/- (five thousand) each u/s 447 IPC with a default stipulation of 15 (fifteen) days simple imprisonment for each and they were also convicted u/s 506 IPC and

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sentenced to fine of Rs. 500/- (five hundred) each with a default stipulation of 15 (fifteen) days simple imprisonment.

2. Initially the appeal was preferred before the court of Hon'ble Sessions Judge, Nalbari. Subsequently, after creation of district judiciary in the district of Baksa the record was transferred to this court for disposal.

3. The case of the prosecution in brief is as follows- Complainant Maheswar Das lodged the complaint before the court of learned Additional Chief Judicial Magistrate, Nalbari to the effect that on 27.08.2015 at 5pm, he along with his sister in law Suniti Das (brother's wife) and his co-villagers Pradip Das and Jayanta Das were gossiping in front of his house. Accused No. 1 Kandarpa Das in a drunken condition, came by bicycle and uttered verbal abuses and he intentionally hit Suniti Das. When the informant and the co-villagers raised protest, the accused was outraged and he verbally abused them. After about ten minutes, accused Kandarpa Das along with his father Manik Das and Anamika Das came and entered into his boundary. They verbally abused the complainant and his sister in law. Besides, accused Anamika Das with a chappal in her hand chased the complainant. Kandarpa Das and Manik Das threatened to cut the neck of complainant and his son Bijoy Das. Hence, this case.

4. The case was transferred to the court of learned Additional Chief Judicial Magistrate, Nalbari. Learned Magistrate, after examining the witnesses u/s 200 Cr.PC and the contents of the complaint, took cognizance of the case u/s 294/279/448/506 IPC against the accused persons. On appearance of the accused persons, the offences under said sections of IPC were read over and explained to the accused persons to which they pleaded not guilty.

5. During the course of trial, complainant side examined altogether five witnesses. On closure of the evidence of complainant side, the accused persons were examined u/s 313 Cr.PC. The defence plea was of total denial and the accused persons declined to adduce defence evidence.

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6. Learned Magistrate having heard arguments advanced by both sides and appreciating the evidence, passed the impugned judgment and order of conviction. Learned Magistrate acquitted the accused persons u/s 279/294 IPC. Against the said acquittal, of course no cross appeal was filed by complainant.

7. I have heard Mr. S. Ali learned counsel for the appellant as well as Mr. R. Chetry learned advocate for the state respondent. None appeared on behalf of the private respondent. I have also very meticulously and carefully perused the records of C.R Case No. 504/15, the ground of the impugned judgment and the grounds of appeal.

8. Mr. S. Islam appearing on behalf of the accused/appellant submitted that learned Magistrate failed to appreciate the evidence in the proper prospective and wrongly convicted the accused/appellants u/s 447/506 IPC resulting travesty of justice. Learned Counsel submitted that the evidence of PW-2 Pradip Chandra Das, PW-3 Jayanta Das and PW-4 Suniti Das clearly proves that prior to the alleged occurrence, Anamika Das lodged the case against Bijoy Das who is the son of complainant Maheswar Das and the instant criminal case was filed as a counter blast to the case which was already filed by the accused side.

9. On the other hand, Mr. R. Chetry learned public prosecutor supporting the impugned judgment, submitted that learned Magistrate properly appreciated the evidence and rightly convicted the accused persons u/s 447/506 IPC and as such impugned judgment of conviction and order does not require any interference and the appeal is required to be dismissed.

10. From the perusal of the complaint and the evidence of the impugned judgment, it becomes clear that case of the complainant relates to two occurrences. One was at 5 pm and another about ten minutes later in the evening of 27.08.2015.

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11. Learned Magistrate acquitted the accused persons u/s 294/279 IPC on the ground that the complainant could not prove the offences against the accused persons allegedly occurred at about 5 pm on 27.08.2015. So, this appellate court will confine upon the incident that allegedly occurred after ten minutes of the first occurrence on 27.08.2015.

12. PW-1 Maheswar Das is the complainant. PW-4 Suniti Das is his sister in law. PW-2 Pradip Chandra Das, PW-3 Jayanta Das and PW-5 Rohini Kr. Pathak are the witnesses of this case. However, PW-5 is not a listed witness which is clear from Exbt.1 complaint.

13. PW-1 deposed that after ten minutes of the first occurrence at 5 pm on 27.08.2015, accused Kandarpa Das, Anamika Das and Manik Das came altogether to assault him after crossing the front side of his homestead boundary. Kandarpa Das prepared to assault him and accused Anamika Das having removed her chappal wanted to assault him. Accused Kandarpa Das threatened to cut neck of him and his son Bijoy Das. He has confirmed that Exbt.1 is the complaint lodged by him. In cross-examination, he has admitted that occurrence took place on 17th August and he lodged the case before the court on 1st September. He also did not call upon any village sitting over the occurrence.

14. PW-2 also deposed almost in the similar line of PW-1. He also stated that no village sitting was held in connection with the occurrence.

15. PW-3 Jayanta Das stated that after about ten minutes of the occurrence, Anamika Das, Kandarpa Das and Manik Das came to the house of PW-1. Accused Kandarpa Das and Anamika Das chased PW-1. Accused Kandarpa Das also threatened PW-1 and his son Bijoy to cut their necks. Accused Anamika Das chased PW-1 with a chappal. During his cross-examination, he clearly stated that accused Anamika lodged the case against Bijoy alleging outraging of her modesty about few days prior to the occurrence of this case. PW-1 also did not call any

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village bichar over the occurrence. At the end of the cross-examination, he stated that he came to the court and PW-1 paid his bus fair.

16. PW-4 Suniti Das deposed almost in verbatim with PW-1. She stated that after ten minutes of the first occurrence, accused persons came in front of their homestead boundary and hurled abusive language to her, PW-1 and other members. Moreover, accused Kandarpa also threatened PW-1 and Bijoy Das to cut their necks. Thereafter, they left. In her cross-examination, she has clearly stated that accused Anamika lodged the case against Bijoy Das who is the son of PW-1 alleging outraging her modesty about 2-3 days back from the occurrence.

17. PW-5 Rohini Kr. Pathak also deposed the same thing what have been deposed by PW-1 and PW-4. Therefore, the statement of PW-5 is not recorded here in detail.

18. Now from the scrutiny of the evidence, it is clear that prior to the filing of the instant complaint case, Anamika already had filed a case against Bijoy Das, the son of PW-1 for allegedly outraging her modesty prior to few days back from the alleged occurrence of the instant case. Thus, it emerges from the evidence that there was already personal enmity between the family members of PW-1 and the accused persons.

19. The occurrence as per Exbt.1 arose on 27.08.2015. It is surfaced from the evidence that PW-1 did not call upon the village sitting. Although he has mentioned in Exbt.1 that the delay in lodging the complaint was due to the fact that he was expecting to resolve the matter from the village sitting. Surprisingly, in the foregoing evidence of the witnesses, it has been clearly proved that no village sitting was called. There is a delay of four days in lodging Exbt.1 complaint by PW-1 before the court. This delay remains unexplained which causes serious doubt on the veracity of the prosecution case coupled with existing enmity between the parties.

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20. In the teeth of the above discussion, this appellate court finds that the prosecution failed to prove the offence u/s 447/506 IPC against the accused persons beyond reasonable doubt. As such, they are entitled to acquittal on benefit of doubt.

21. Accordingly, the appeal stands allowed by setting aside the impugned judgment and order of conviction passed by learned Additional Chief Judicial Magistrate, Nalbari.

22. Return the records of C.R Case No. 504/15 along with a copy of this judgment to learned Chief Judicial Magistrate, Baksa for information.

23. The judgment is declared and delivered in the open court under my hand and seal on this **22nd January, 2021**.

Dictated and Corrected by :

Mr. A. Rahman,
Sessions Judge,
Baksa, Mushalpur