

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS ::::: BAKSA,
MUSHALPUR**

PRESENT: *Binod Prasad, A.J.S*
J.M.F.C., Baksa, Mushalpur

New GR Case No- 554/2018
Old GR Case No-1035/2017
Simla P.S.Case No-
100/2017

U/S- 447/294/354 IPC

State
-Vs.-
Sadhu Ram DasAccused

For the Prosecution : Mrs. Nalini Medhi & Richa Swargiary, Asst. Public
Prosecutor
For the Accused : Chandan Malakar, Learned Legal aid Counsel
Date of Evidence : 06-08-2018, 08-10-2018, 22-10-2018
Date of Argument : 05-11-2018
Date of Judgment : 09-11-2018

J U D G M E N T

1. Prosecution's case, in brief, is that informant Kongkana Das lodged an Ejahar with the O/C of Simla P.S. to the effect that on 23-11-2017 at about 10-00 p.m. at night the accused Sadhu Ram Das asked the informant to open the door and rebuked the informant using filthy language. It is stated in the Ejahar that the accused stabbed in the fencing of the house of the informant with a "Dao". It is further stated that the accused damaged the scooty of the informant. It is also alleged that the accused used to throw stones on the roof of the house of the informant and he also tried to attack

the informant with “Dao” and Axe. The informant also stated in her Ejahar that the accused often tried to rape the informant. Hence this case for taking necessary action.

2. Upon receipt of the Ejahar/F.I.R, the Officer-in- Charge of Simla Police Station registered the case vide its P.S. Case No. 100/2017 u/s 447/294/376/427/511 I.P.C. The accused was arrested and forwarded to the Jail Hajot. Earlier this case was tried by the Court of SDJM(S), Bajali Pathsala, but after constitution of Baksa Court, this case was transferred to this court.
3. Upon completion of investigation the I/O submitted the charge sheet under section 447/294/354 I.P.C. against the accused person namely Sadhu Ram Das. After taking cognizance of the matter legal aid counsel was appointed for the accused as the accused expressed his inability to engage a lawyer of his choice.
4. The necessary copies u/s 207 of Cr.P.C. were supplied to the accused person. After hearing both side charge u/s 447/294/354 of I.P.C. were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. During evidence, prosecution examined 5(five) witnesses, including the informant and I/O. The statement of the accused person u/s 313 of Cr. P.C. was recorded wherein he denied the allegation levelled against him and he also declined to adduce any evidence.
6. I have heard the argument of the learned defence counsel and the learned Asst. P.P. I perused the case record and scrutinized the evidence on record.

POINTS FOR DETERMINATION

7. After considering the relevant documents and after hearing the defence and the prosecution I find that the following points are to be determined in this case:
 - 1) Whether the accused person on 23-10-2017 at 10-00 p.m. committed criminal trespass by entering into the premises of the informant and thereby committed an offence punishable under section 447 IPC?

- 2) Whether accused person on the same date and time abused the informant with obscene language to the annoyance of others and thereby committed an offence punishable u/s 294 I.P.C.?
- 3) Whether on same date and time the accused person tried to outrage the modesty of the informant and thereby committed an offence punishable u/s 354 IPC?

DISCUSSION DECISION AND REASON THEREOF

8. PW-1 Kongkona Das who is the informant deposed in her evidence that the accused is the brother of her husband and incident occurred on 23-10-2017. PW-1 deposed that at the time of occurrence the accused broke the wall (Ber) of her house and abused her using obscene language. PW-1 deposed that the accused also broke her scooty and damaged the same. PW-1 also deposed that sometimes the accused showed her obscene gestures and he also threw stones on the roof of her house. Ext-1 is the Ejahar and Ext-1(1) is the signature of PW-1.
9. In her cross examination PW-1 stated that presently they are residing over the land of the father of the accused and her husband. She also stated that on the day of occurrence there was none at home except the mother in law of the informant. PW-1 further stated that the accused did never assault her physically. PW-1 further stated that she had not seen the accused striking her scooty.
10. PW-2 deposed in her evidence that the incident occurred in the year 2017 at 10-00 pm at night and at the time of occurrence the accused rebuked the informant using filthy languages and broke the wall (Ber) of the house of the informant. Pw-2 further stated that she heard that the accused also damaged the scooty of the informant. Ext-2 id the Seizure list and Ext-2(1) is the signature of PW-2.
11. In her cross examination PW-2 stated that she had not witnessed the occurrence and she does not know anything about the occurrence. PW-2 also expressed her ignorance as to how the scooty got damaged.

12. PW-3 deposed in her testimony that one year ago the informant called her over phone and told PW-3 that the accused damaged the scooty of the informant. In her cross examination PW-3 stated that she had not witnessed the occurrence.
13. PW-4 deposed in his evidence that he heard that on the day of occurrence a quarrel took place between the accused and the informant. In his cross examination PW-4 stated that he had not witnessed the occurrence.
14. PW-5 I/O A.S.I. Noor Mohammad deposed in his testimony that on 24-10-2017 he was posted at Simla P.S. as attached officer and on that day one Kankana Das lodged an Ejahar against the accused. Accordingly the I/O, after entrusted with the investigation of the case, visited the P.O., drew sketch map, seized the scooty and after arresting the accused forwarded him to the Court. After completing the investigation PW-5 handed over the CD to the O/C S.K. Laskar. Thereafter O/C S.K. Laskar, after perusing the CD, submitted the charge sheet against the accused Sadhu Ram Das u/s 447/294/354 IPC. Ext-2(2) is the signature of PW-5 in the seizure list. Ext-3 Sketch Map and Ext-3(1) is my signature. Ext-4 is the charge Sheet and Ext-4(1) is the signature of O/C Sanjay Kr. Laskar which is identified by PW-5.
15. In his cross examination PW-5 stated that the house of the informant and the accused are situated on the same plot. PW-5 also stated in his cross examination that the quarrel took place when the accused asked for his share in the property.

APPRECIATION OF EVIDENCE

16. Now, having perused the entire evidence on record, it seen that no independent witness has been supported the case of the prosecution. The independent witnesses have clearly stated in their evidence that they did not witness the occurrence as alleged by the informant (PW-1) in her Ejahar but only heard about that. So it will not be proper to rely solely on the evidence of the PW-1 (informant) without corroboration from other independent witnesses.
17. To bring home an offence U/S 294 I.P.C, the prosecution is to prove that:

1. The accused did any obscene act in any public place, or
 2. Sang, recited or uttered any obscene songs, ballad or words in or near any public place and
 3. That the aforesaid act or acts caused annoyance of others.
18. The pre-requisite of Section 294 of IPC speaks that the utterance of obscene words must have been done in public place and such occurrence must have caused annoyance to others. A vague or general statement in the FIR and in evidence that the accused showered obscene words is not enough to constitute an offence under Section 294(b). It is necessary to state the words uttered by the accused. The complaint or the FIR, as the case may be, shall contain the words spoken to by the accused, which, according to the prosecution, would attract the offence under Section 294(b) of the Indian Penal Code.
19. In this case neither the informant nor the witnesses have stated in their evidence the exact obscene words uttered by the accused. The allegation of abusing informant with filthy languages is mentioned in the Ejahar only but the PWs including the informant have not stated in their evidence that the accused persons used filthy language or obscene words uttered by the accused. Here in this instant case the exact obscene words have not been proved as per the discussion made above. Thus, the ingredients of section 294 of the I.P.C. remained far from proof.
20. The offence under section 447 IPC requires the following:
- (i) Entry into or upon property in the possession of another;
 - (ii) (ii) If such entry is lawful then unlawfully remaining into such property;
 - (iii) Such entry or unlawful remaining must be with intent-
 - (a) To commit an offence, or
 - (b) To intimidate, insult, or annoy any person in possession of the property

21. Though the informant alleged that the accused trespassed into her house premises but in her cross examination the informant herself admitted that the house of the accused and the informant are situated on the same plot. Which means the informant and the accused resides in the same boundary and thus the question of trespass into the house premises of the informant does not arise.
22. At the same time, I am also of the humble opinion to hold that the prosecution has failed to produce any cogent evidence to show that the accused persons assaulted the victim with intent to outrage her modesty. If the depositions of the independent witnesses are given a close look, it can be seen that there is no whisper of evidence to the effect that the accused persons tried to outrage the modesty of the informant. Though the informant as PW-1 in her evidence stated that sometimes the accused showed her obscene gestures but PW-1 failed to make it clear as to when, where and what kind of gestures the accused used to show to the informant. It is seen that the allegation brought by the informant is vague in nature. Hence Section 354 IPC is not attracted here. That apart the PW-5 i.e. I/O in his cross examination stated that during investigation he also found that the quarrel between the informant and the accused took place when the accused asked for his share in the property. Thus it appears that there is property dispute between the parties and this fact also casts shadow upon the prosecution's case.
23. From the totality of the facts I hold that there is no cogent evidence to show the involvement of the accused persons in committing the offence. So, I am of the opinion that it is a fit case where the accused person is entitled for benefit of doubt. There is no just and cogent evidence against the accused person to hold him liable under the sections he is charged with. Therefore in the absence of any evidence on record I am of the considered opinion that the Prosecution failed to establish the guilt of the accused person beyond all reasonable doubt and therefore the accused person should be acquitted of the offences charged with.

ORDER

24. In view of the discussions made above and the decisions reached, it is held that the prosecution has failed to prove the charges against the accused person as such the accused/UTP namely, Sadhu Ram Das is acquitted from the charges under section 447/294/354 IPC and set at liberty forthwith.

Given under my hand and the seal of this Court on this 9th day of November, 2017.

Typed by me:

(BINOD PRASAD)
Judicial Magistrate 1st
Class
Baksa, Mushalpur

APPENDIX

Prosecution witness :

P.W.1 Kongkona Das
P.W.2 Rupathi Medhi
P.W.3 Sarala Das
P.W.4 Bipul Das
P.W.5 A.S.I. Noor Mohammad

Defence witness : Nil.

Prosecution document:

Ext-1 Ejahar
Ext-1(1)..... Signatures of PW-1
Ext-2 Seizure List
Ext-2(1)..... Signatures of PW-2
Ext-3 Sketch Map
Ext-3(1)..... Signatures of PW-5
Ext-4 Charge Sheet

Defence document : Nil.

Defence witness : Nil.

(BINOD PRASAD)
Judicial Magistrate 1st Class
Baksa Mushalpur