District: Birbhum.

In the Court of the Additional District & Sessions Judge,
Fast Track Court, Dubrajpur, Birbhum.

Present : Molla Asgar Ali,
Additional District & Sessions Judge,
Fast Track Court, Dubrajpur, Birbhum.

Sessions Case No.30/2015
Sessions Trial No. 07/November /2016
State of West Bengal

-Versus-

1) Mangal Das
2) Santu Das
3) Jhantu Das
4) Chatur Das
5) Bam Das
6) Shyam Das and
7) Budhibala Das.

.................Accused Person.

Section of Law:- u/s147/148/323/325 and 308/34 of the I.P.C.

For the Prosecution :- Amlan Chakraborty Ld. A.P.P.

For the Defence :- Sritama Mukhopadhyay Ld. Advocate.

Date of delivery of Judgment the 2nd day of March, 2017

J U D G E M E N T

The Prosecution case in brief is that a complaint u/s 153 (3) of the Cr.P.C. was filed before the Ld. Magistrate Dubrajpur on 21.08.2012 alleging that on 17.06.2012 over the issue of excavating Earth for 1oo days work, a gondogol took place. The complainant

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excavated the Earth but at the time of survey his work, accused sentu Das forbid surveyor to survey his work. At this the complaint raised objection. On the next day about 11 a.m. the accused persons obstructed the complainant Ganesh Das and his wife Asha Das on the way near Durga Temple of Kendula Daspara. At first Sentu Das assaulted the complainant with a iron rod. The complainant sustained injury on his right arm and knee and ankle. Then the other accused persons also assaulted him and his wife with lathi, bricks etc. mercilessly. As a result both of them sustained injuries on the different parts of their body. The victims began to shout, then the witnesses rushed to the spot and rescued them. The complainant was treated in hospital on and from 18.06.2012 to 29.06.2012. The said complainant was sent to the P.S. treating the same as F.I.R.

To base upon the said complaint Dubrajpur P.S. case no. 78/13 dated 16.04.2013 u/s 147/148/149/323/325/308/34 of the I.P.C. was started.

The case was endorsed for investigation. After completion of investigation chargesheet being no. 95/13 dated 28.05.13 u/s 147/148/149/323/325/308/34 of the I.P.C. has been submitted.

Ld. Magistrate taking cognizance committed the case to Ld. District and Sessions Judge, Birbhum.

Ld. District and Sessions Judge Birbhum taking cognizance transferred the case to this court for disposal.

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On the date fixed, on appearance of the accused persons, charge was framed u/s 147/148/323/325 and 308/34 of the I.P.C. against the accused persons when everyone of them pleaded not guilty and claimed to be tried.

As many as 4 (four) witnesses have been examined and cross-examined in full as P.W. 1 to P.W. 4. After closing of the prosecution evidence the accused persons have been examined u/s 313 of the Cr.P.C. when every one of them demanded himself as innocent and declined to adduce any evidence.

POINTS FOR CONSIDERATION

Whether the prosecution has been able to prove the charge beyond reasonable doubt or not.

DECISION WITH REASONS

This is a case u/s 147/148/323/325 and u/s 308/34 of the I.P.C. The prosecution is to prove the case adducing cogent and reliable evidences. It is to see how far the prosecution has been able to do the same.

P.W. 1 Ganesh Das ,the defacto complainant deposed that he along with his wife went to search for their cow at Hetampur and they returned home at about 9.00 to 9.30 P.M. P.W. 1 was obstructed near Durga Mandir. Mangal Das told 'Dhar salake, mar salake'. Then Mangal Das, Sentu Das, Jhantu Das, Chatur Das, Bam Das, Shyam

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Das and Budhibala Das assaulted him mercilessly with fist and blows and lathi.

In the F.I.R. exbt. 1 the plaintiff did not state that he along with his wife went to search their cow. In the complaint he stated that on 18.06.2012 at about 11 a.m. he was obstructed by all the accused persons. But in evidence he deposed that on 17.6.2012 at 9.00 to 9.30 p.m. he was obstructed. In the complaint P.W. 1 stated that he and his wife were assaulted by the accused persons but in evidence P.W. 1 deposed that he was assaulted. In the written complaint it has been stated that over the issue to resist the surveyor by Santunu not to survey the work for 100 days done by P.W. 1, gondogol took place but in evidence P.W. 1 deposed that a concrete dhalai is going on in their village. The materials was not properly given and as such he raised objection but in the written complaint there is no whisper of dhalai road.

P.W. 2 Asha Das w/o P.W. 1 deposed that over the issue of survey for 100 days work done by them a gondogol took place. The accused persons assaulted them. In the written complaint it has been stated that they were assaulted mercilessly and they were treated but the concerned doctor has not been examined in this case. Even any document in support of treatment has not been exhibited.

P.W. 1 and P.W. 2 both are interested witnesses. Their evidences suffers from self-contradiction.

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P.W. 3 Uttam Das and P.W. 4 Lakai Das have been examined. They have been declared hostile.

In short no independent witness is there to corroborate the evidence of P.W. 1 and 2.

Now in the light of aforesaid discussion and going through the entire case records and having regard to the arguments advanced by Ld. counsels of both sides it appears to me that the prosecution case suffers from a number of infirmities and lacunas and as such I am of the view that prosecution has totally failed to substantiate the charge as levelled against the accused persons. Accordingly the accused persons are entitled to acquittal.

Hence,

ORDERED

that the accused persons namely 1. Mangal Das 2.Santu Das 3 Jhantu Das 4. Chatur Das 5. Bam Das 6.Shyam Das and 7. Budhibala Das being found not guilty of the offence punishable u/s 147/148/323/325 and u/s 308/34 of the I.P.C. are acquitted of the charge u/s 235 (1) of the Cr.P.C.

Let the accused persons be set at liberty at once and discharged from their respective bail bonds forthwith.

Dictated & Corrected
by me.

Molla Asgar Ali
Additional District & Sessions Judge
Fast Track Court,
Dubrajpur ,Birbhum

Additional District & Sessions Judge
Fast Track Court,
Dubrajpur ,Birbhum