

**In the Court of Additional Sessions Judge,
(Redesignated) Court, Bankura**

Present : *Smt. Madhuchhanda Bose,*
Additional Sessions Judge,
(Redesignated) Court, Bankura

Tuesday, the 06th day of February, 2018

Criminal Appeal No.01 of 2018

1. Kakali Sengupta

.....Petitioner/Appellant

Vs

1. Muktipada Sengupta
2. Babai Sengupta
3. Abhishek Sengupta
4. The State of W.B.

.....O.Ps/respondents

Application U/s 378 of the Criminal Procedure Code

For the petitioners : Shri Purnananda Banerjee(Ld. Advocate)

For the State respondents : Shri Dilip Kumar Mukherjee(Ld. P.P. in charge)

J u d g m e n t

Being aggrieved and dissatisfied with impugned order and judgment dtd.07.08.17 passed by Ld. J.M., 6th Court, Bankura in Complain Case no.211/2011 filed for the offence punishable U/s 447/448/323/354/506/34 of I.P.C. whereby Ld. Court below was pleased to acquit the respondents / accused persons from the case, the instant case has been filed.

Initially, the case was filed as a revision before the Ld. District Judge, Bankura, who then was pleased to transfer the same to this

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court for disposal. After receiving the case record, this Court converted the revision case into appeal since against the order of acquittal appeal lies.

Grounds of Appeal

1. That the Ld. Court below committed mistake in passing in order of acquittal :
2. That the observation made by the Ld. Court below is absolutely misconceived :
3. That the Ld. Court below failed to appreciate the evidence accused by the witnesses :
4. That the Ld. Court below failed to differentiate the criminal proceeding with the civil dispute.

On the above grounds, appellant prayed for setting aside the impugned order.

Points of Consideration

Now this court has to consider the following points for proper adjudication of this case:

1. Whether the Ld. J.M., 6th Court, Bankura is justified in passing the impugned order by acquitting the respondents against the charge labelled against them ?
2. Whether there is any scope to interfere in the observations of the Ld. J.M., 6th Court, Bankura which has been embodied in the impugned judgment and order dtd.07.08.17 ?

Decision with reasons

Both the points are taken up together for consideration and discussion. On perusal of the L.C.R., I find that appellant filed a written complaint in the Court of Ld. C.J.M., Bankura stating inter alia that on 01.08.11 at about 07:00 / 07:30 a.m., one goat of respondents came to

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the courtyard of appellant and ate away a small mango plant. At this, appellant stated to respondents as to why they kept the goat as their pet when they could not control the goat. Hearing this, the respondents entered the courtyard of appellant and started assaulting her. Respondent no.02 sat on the chest of appellant and respondent no.03 kicked her. Then, respondent no.02 assaulted appellant with fists and blows and pressed her breast. He also abused her in filthy languages. When appellant raised hue and cry, her husband and other people came to P.O and seeing them the accused persons fled away. Hence the case.

After examining the appellant and her witnesses on S.A., Ld. C.J.M. was pleased to take cognizance of the offence and thereafter, issued summons to respondents. Respondents were brought into record and thereafter, the case was transferred to Ld. 6th J.M., Bankura for trial. After receiving the case record, Ld. 6th J.M. examined the respondents U/s 251 of Cr.P.C and as respondents pleaded not guilty, trial started. After completion of trial, Ld. Court below was pleased to acquit the respondents.

The appellant deposed as P.W.01. From her evidence, I find incident took place on 01.08.11 at about 07:30 p.m. Both of the respondents came and ate the mango tree planted by appellant. P.W.01 stated that she then, asked respondents to look after the goat. Then, the respondents entered her house and abused her. Respondent no.01 instigated his sons for which they pushed P.W.01 on ground. Respondent no.01 pressed her breast and outraged her modesty and the other accused persons assaulted her by fists and blows. When P.W.01 fell down on the ground, respondent no.01 sat on her person and pressed her breast. When she shouted for help, Santosh Pramanik, Namita Pramanik, Bijoy Chatterjee and her husband rushed to P.O and saved her. P.W.01 also alleged that respondent no.02 took a big stone to kill her for which she sustained bodily pain. She admitted that she has enmity with the accused persons for a long time.

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From her cross-examination, I find that husband of P.W.01 and respondent no.01 are full blood brothers. It appears that both parties have dispute relating to paternal property. She stated that she went to P.S. on 01.08.11 and submitted a written complaint. He also stated that co-villagers came and rescued her. She also stated that two brothers of her husband, reside in their house. From her cross-examination, I also find that Lalita Pramanik used to run a shop of snacks near her house where incident took place and she was at her shop when the incident took place. She stated that her husband lodged written complaint at P.S. She denied to the suggestion that no such incident took place as stated by her.

From written complaint and evidence of P.W.01, I find that the incident took place on 01.08.11. The written complaint was lodged on 29.08.11. It is stated that the matter was informed to P.S but to no effect. But no documents have been filed by P.W.01 to show that they have lodged complaint earlier before P.S. If P.S did not pay any heed to the written complaint of P.W.01, appellant could have filed a petition before Ld. C.J.M. U/s 156 (3) of Cr.P.C. In absence of any such steps, I am constrained to say that no explanation has been given for the delay in lodging the complaint. In the written complaint it has been alleged that respondent no.02 sat on the chest of appellant and respondent no.01 assaulted her with fists and blows and pressed her breast but while adducing evidence she only stated that respondent no.01 pressed her breast. From her evidence, it is clear that there is enmity between the two parties.

Lalita Pramanik deposed as P.W.02. She stated that a small mango plant of appellant was eaten by the goat of the accused persons to which appellant began to abuse the owner of the goat. Then, the accused persons came to the house of appellant and pushed her. P.W.02 stated that one Paltu fell on the body of appellant and pressed her breast. She demanded that she witnessed the incident. She also stated that Santosh, Bijoy and husband of appellant were present at the P.O.

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In cross-examination, she stated that on the day of her evidence, appellant took her to her Lawyer who instructed her about the statement to be stated before the Court. She also stated that one Dhiren Pramanik also rushed to P.O. She also stated that nobody assaulted appellant by stone. She also stated that there is dispute between the two parties regarding property.

From cross-examination of P.W.02, it is evident that she is a tutored witness. She was briefed by Ld. Lawyer for appellant as to what statement she should say before Court. P.W.02 demanded that she witnessed the incident but according to complain case and evidence of P.W.01 after the incident, Santosh, Namita and Bijoy Chatterjee rushed to P.O. There is no statement of P.W.01 that Lalita Pramanik was present at the P.O and witnessed the incident. P.W.01 stated that respondent no.01 outraged the modesty of her whereas P.W.02 stated that one Paltu fell on the body of P.W.01 and pressed her breast. P.W.01 stated that she was assaulted by respondent no.02 with a stone but P.W.02 stated that no such incident took place.

So, the evidence of P.W.02 cannot be relied upon. If the evidence of P.W.02 is to be relied then the evidence of P.W.01 cannot be relied upon.

One Diptipada Sengupta deposed as P.W.03. He is the husband of P.W.01 and he stated that on 01.08.11 at about 07:00 / 07:30 a.m., one goat entered their house for which P.W.01 started to yell. Then, the respondents came and started to assault P.W.01. Respondent no.02 pound blows upon P.W.01 and respondent no.03 pushed P.W.01 on ground. P.W.03 stated that respondent no.01 touched the breast of P.W.01. He categorically stated that he was quite a far away from her house and his wife narrated the incident.

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From his cross-examination, it appears that there is dispute between both the parties regarding paternal properties. He admitted that he did not witness the incident.

So, I find that P.W.03 also did not witness the incident and he heard about the same from his wife but P.W.01 stated that when she shouted for help, her husband came and rescued her.

P.W.01 stated that Santosh Pramanik, Namita Pramanik and Bijoy Chatterjee all rushed to P.O after hearing her hue and cry but none of these above witnesses are examined. I have already discussed that evidence of P.W.02 cannot be relied upon. P.W.03 did not see the incident. The evidence of P.W.01 did not corroborate with any other witness nor her evidence itself is trustworthy. I have already mentioned earlier that no explanation has been given as to why there was delay in lodging the F.I.R. From the evidence, it is evident that there is dispute between two parties regarding paternal property. The other brothers who reside with the family of P.W.01 did not depose in this case. So, considering all aspects, it can be considered that the instant case has been filed by appellant out of family dispute and enmity. The judgment passed by Ld. Trial Court does not call for any interference.

As a result, appeal fails.

C.F. paid is correct.

Hence it is

Ordered

that the instant appeal being no.01/18 be and the same is disallowed on contest but without cost.

The impugned order and judgment dtd.07.08.17 passed by Ld. J.M., 6th Court, Bankura in Complain Case no.211/2011 filed for the

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offence punishable U/s 447/448/323/354/506/34 of I.P.C. is hereby affirmed.

Let the copy of this order be sent to Ld. J.M., 6th Court, Bankura, for his / her information and necessary action.

***Dictated & Corrected
by me***

Addl. S.J ® Court, Bankura

***Additional Sessions Judge,
(Redesignated) Court, Bankura
06.02.2018***