

In the Court of the Additional Sessions Judge, Dinhata, Cooch Behar.

Present :– Sri Pushpal Satpathi ,
Addl. Sessions Judge,
Dinhata.

Criminal Appeal No. 01 (D) of 2016

Prafulla Kumar Roy Appellant /Convict.

-Versus -

State of West Bengal

Respondent

Dated , Dinhata the 11th day of November, 2016

**An Appeal Under Section 374 of Code of Criminal
Procedure,1973.**

J U D G M E N T

This Criminal Appeal under section 374 of Code of Criminal Procedure,1973 (hereinafter referred to as Cr.P.C) is directed against the impugned judgement and order dated 30-07-2016 passed by the Court of the Ld. Additional Chief Judicial Magistrate, 2nd Court, Dinhata, in G.R. Case No. 110/2011 arising out of Dinhata P.S Case No. 94/2011 dated 04-02-2011 u/s 447/325/379/34 of I.P.C. 1860.

The factual matrix of the prosecution case in a nutshell is that one Basanti Roy lodged a written complaint at Dinhata P.S alleging that on 04-02-2011, at about 4 P.M, the present appellant and his wife, due to previous enmity, entered into her bamboo grove and began to cut bamboos. At that time her son, namely, Manish Roy entered there and resisted the accused persons. After that the accused persons beat her son with lathi and caused hurt to him. Hearing shouting of her son, she went to the spot and the accused persons also beat her with lathi. The accused persons also snatched away her golden earrings weighing about four anas amounting to Rs. 5,000/-. The accused persons also took away ten

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bamboos. Herself and her son were taken to Dinhata SD hospital and they were admitted in the hospital.

On the basis of the written complaint, Dinhata P.S Case No. 94/2011 dated 04-02-2011 u/s 447/325/379/34 of the IPC was registered against the present appellant and his wife Suniti Roy which culminated into submission of charge sheet u/s- 447/325/34 of I.P.C. against them. Subsequently both the charge sheeted accused persons were examined u/s 251 of the Cr.P.C. and the substance of accusation u/s 447/427/323/34 of the IPC were read over and explained to both the accused persons who pleaded not guilty and claimed to be tried. Subsequently trial commenced.

The Ld. Trial Court below after perusing the evidence-on-record adduced by the prosecution and examining the accused under section 313 of the Cr.P.C. at the conclusion of trial found the present appellant guilty of commission of offence punishable u/s- 323 of IPC and convicted and sentenced him to suffer simple imprisonment for one month. The Ld. Trial Court below was pleased to acquit the other co accused Suniti Roy from the charge u/s 447/427/323/34 of the IPC.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 30-07-2016 passed by the Court of the Ld. Additional Chief Judicial Magistrate, 2nd Court, Dinhata, in G.R. Case No. 110/2011 arising out of Dinhata P.S Case No. 94/2011 dated 04-02-2011 u/s 447/325/379/34 of the IPC, the appellant has preferred this appeal on the following amongst other grounds:-

- 1) the Ld. Court below erred both in law as well as in facts.
- 2) the Ld. Court below misconstrued and misconceived the provision of law and as such it is liable to be set aside.
- 3) the charge framed against the accused/appellant is not according to law and as such the whole trial has been vitiated.
- 4) the judgment is one sided and as such the said judgment should be set aside.

5) the prosecution case is not corroborated by any independent witness and evidence by the police personnel is itself contradictory and unbelievable.

6) the Ld. Court below did not consider the evidence of the independent witness and came to a wrong conclusion and as such it is liable to be set aside.

7) the Ld. Court below did not consider the provision of section 360 of the Cr.P.C.

8) the accused/appellant is a very poor rickshaw van puller and he is the only earning member of the family and if he be in jail, his family members will suffer starvation.

The Ld. lawyer for the appellant has contended that there was dispute between the complainant party and the accused party relating to partition of land and bamboo grove. The place of occurrence is also not ascertained. All the witnesses are interested relation witnesses and no reliance can be placed upon their testimony. The weapon of offence has not been seized by the investigating officer. Concluding his argument the Ld. Defence Counsel has prayed for acquittal of the present appellant by setting aside the impugned judgment and order of conviction and sentence so passes by the Ld. Trial Court below. On the other hand Ld. Additional PP submits that the judgment impugned is well reasoned and does not call for any interference by this Court.

I have gone through the petition of appeal and the grounds noted therein. I have bestowed by anxious consideration upon the materials-on- record. Heard the Ld. Additional PP and the Ld. Defence Counsel at length. On bare perusal of the judgment impugned I find that the Ld. Trial Magistrate came to a specific finding that there are some inconsistencies between the evidence given by PW-1 and PW-4. Though PW-1, the de facto complainant, deposed about the beating of her and her son by both the present appellant and his wife but PW-4, her son who was

hospitalized after being beaten, deposed about beating by the present appellant only. Quite astonishingly, the Ld. Trial Magistrate without assigning any cogent reason, though acquitted other co accused Suniti Roy, the wife of the appellant, but convicted and sentenced the present appellant u/s 323 of the IPC rendering the judgment a perverse one. No substantial material is forthcoming to distinguish the case of the present appellant from that of the other co-accused, both are similarly situate so far as evidence-on -record is forthcoming, if the co-accused is entitled to be acquitted of the charge, same analogy/yardstick should also follow in the case of the present appellant. I also find from the record that the place of occurrence of the commission of the offence is not ascertained in the instant case. Though PW-1 has deposed about the infliction of beating at two places viz. bamboo grove and her house but PW-4 has deposed about the infliction of beating in his house. Again PW-7, the attending doctor who examined the victim PW-4, has stated that the patient did not disclose him the names of the assailants. He also opined that such type of injury can occur due to falling over hard substance. The definition of '*hurt*' contemplates causing of pain by a person to another and it is not necessary that there should be visible injury caused on the person of the victim. In the instant case the medical papers though marked as exhibit-3 (collectively) is not sufficient to bring home the charge against the appellant u/s 323 of the IPC in view of inconsistent ocular evidence of the prosecution witnesses. PWs- 2, 3 & 6, the independent neighboring witnesses did not support the prosecution case even. Section 361 and 360 of the Cr.P.C on being read together would indicate that in any case where the Court could have dealt with an accused u/s 360 of the Cr.P.C or under the provision of Probation of Offenders Act and yet does not want to grant the benefit of the said provision then it shall record in its judgment specific reasons for not having done so vide *Chandrasekhar Vs State (2000) 9 SCC 245*. The implication of section is wherever possible an accused will have to be dealt with under the provisions of Section 360 of

the Cr.P.C or under the provisions of the said Act except for specially recorded reasons. While awarding sentence to first offender, family back ground and history, past social behaviour and present situation of the offender must be considered vide *Dilbag Singh Vs. State of Punjab AIR 1979 SC 680*. The reasons assigned by the Ld. Trial Magistrate in not releasing the appellant u/s 360 of Cr.P.C or under the Probation of Offender Act cannot be termed as adhering to the peremptory nature of section 361 of the Cr.P.C in view of the said ratio of the Hon'ble Apex Court. On this score also the impugned judgment so assailed cannot be sustained. In view of such factual incongruity and procedural irregularity, applying the ratio that in the event of any doubt as to the guilt of the accused the benefit will go to the accused, I am of the opinion that time has ripen to confer such benefit to the present appellant and thus, he deserves to be acquitted.

Before parting I must say that the findings arrived at by the Ld. Trial Court below in acquitting the present appellant from the charge u/s 447/427 of the IPC is well founded and does not call for any interference by this Court.

In the result, Criminal Appeal Succeeds.

Hence, it is

O R D E R E D

That the Criminal Appeal No. 1(D) /2016 is hereby allowed. The impugned judgment and order passed by the Ld. Additional Chief Judicial Magistrate, 2nd Court, Dinhata, dated 30-07-2016 in GR Case No. 110/2011 is hereby set aside. The accused, Prafulla Kumar Roy is found not guilty for the commission of offence punishable u/s-323 of IPC. He is acquitted from this case. He be set at liberty at once.

He is discharged from his bail bonds and surety is also discharged from his bail bond.

Let a copy of this order along with the LCR be sent down to the Court of the Ld. Additional Chief Judicial Magistrate 2nd Court, Dinhata, for information and necessary action.

Dictated & corrected.

Additional Sessions Judge,
Dinhata.

Additional Sessions Judge,
Dinhata