

IN THE COURT OF THE LEARNED JUDICIAL MAGISTRATE, 3rd COURT,
BARRACKPORE,
NORTH 24 PARGANAS.

PRESENT: SHRI NIRNAYA TAMANG,
JUDICIAL MAGISTRATE,
3rd COURT, BARRACKPORE,
NORTH 24 PARGANAS.

G.R. CASE NO- 3530/11

T.R. NO- 290/12

IN THE MATTER OF:

State

Vs.

1. Tanmoy @ Totan Dey
2. Surojit Nandi
3. Tarun Guchait and
4. Subhasis Saha Accused.

DATE OF DELIVERY OF JUDGMENT: 12 DAY OF FEBRUARY, 2015.

J U D G M E N T

A brisk venture into the factual aspects of this case is undergone in order to appreciate the case in its proper perspective. This is a case u/s 341/323/379/34 of the Indian Penal Code (IPC)

The case gains its first breath from a written complaint filed by the defacto complainant namely Shiva Kumar Jaiswal against the accused persons named above to the effect that on 27/11/11 afternoon, the above named accused persons detained him and five of his friends at Moria Bagan More on Bipin Ganguly Road under Dum Dum P.S by placing one motor cycle bearing number WB V /1009 and assaulted him, the driver and his friends and also looted sum of Rs. 14000/- and other documents by placing firearms and hence the case.

The I/O of this case upon completion of the investigation submitted a chargesheet under sections 341/323/506/379/34 IPC against the accused persons above named in compliance with section 173 (5) of the CrPC. On receipt of the charge sheet, the then Ld. A.C.J.M., Barrackpore took cognizance of the offence and after complying the provisions of section 207 CrPC transferred the case along with the accused persons to this court for trial and final disposal.

Accordingly, on consideration of the materials on record and on hearing the Ld. A.P.P and the Ld Counsel for the defence charge was framed against the above named accused persons u/s 341/323/379/34IPC, the contents of which were read over and explained to the accused persons to which each claimed to be NOT GUILTY and claimed to be tried and hence the trial.

Be it herein mentioned that the case against the accused Kaushik Dey @ Lala Papu was filed for ever vide order dated 15/11/14.

Out of the 6 Prosecution witnesses named in the chargesheet, only 3 witness including the defacto complainant were examined as P.W.1, P.W 2 and P.W. 3 and thereafter , the further evidence of the Prosecution was closed as per the submission of the Ld. APP. Thereafter, as nothing incriminating surfaced against the accused persons, their examination u/s 313 of the Code of Criminal Procedure is dispensed with and that they declined to produce any witnesses from their side. Thereafter the arguments at length were heard both from the side of the Prosecution as well as from the side of the accused.

The defence case is the denial of the prosecution allegation and plea of innocence.

POINTS FOR CONSIDERATION

1. *WHETHER THE ACCUSED PERSONS HAVE COMMITTED THE ALLEGED OFFENCES OR NOT?*
2. *WHETHER THE PROSECUTION HAS BEEN ABLE TO PROVE THE COMMISSION OF SUCH OFFENCES BY THE ACCUSED PERSONS BEYOND REASONABLE DOUBT?*

DECISION WITH REASONS

ANALYSIS OF THE EVIDENCE ON RECORD

P.W.-1 Sri Shiva Kumar Jaiswal that is the defacto complainant during his examination-in-chief has stated that she had filed the case against the above named accused persons and that he does not want to proceed with the case. Although he has identified his signature in the written complaint, being marked as Ext. 1, yet he has also stated that he does not know the contents of the complaint due to lapse of time

During his cross-examination, he has also stated that he does not have any grievances against the accused persons and that he does not have any objection if the accused persons are acquitted from this case. Further he has stated that his evidence is voluntary and without any fear or pressure from any corner.

PW 2 Santosh Kumar Shaw and P.W 3 Sagar Prasad Gupta during their examination-in-chief have stated they do not recollect any incident and that they have recited the lines of the complainant made during his cross-examination.

From the thorough study and scrutiny of the evidence on record and also in the light of the arguments put forward by the Ld. APP in Charge and the Ld. Counsel for the defence, this Court finds that the vital witnesses examined at the behest of the prosecution has failed to utter incriminating materials against the accused persons. That the defacto complainant and the other witnesses have failed in totality to set forth the allegations leveled by PW 1 against the accused persons. That they have in totality failed to set for their accusations against the accused persons. These material facts are enough to declare that the prosecution has miserably failed to prove the charge against the accused persons. Accordingly, both the points for determination are decided in negative against the prosecution.

Hence,

it is

ORDERED

that the accused persons namely Tanmoy @ Totan Dey, Surojit Nandi, Tarun Guchait and Subhasis Saha are found "Not Guilty" for the commission of the offences under section 341/323/379/34 IPC and are thus ACQUITTED from this case as per section 248(1) Crpc.

The accused persons as well the sureties are hereby discharged from their respective bail bond liabilities.

The articles on zimma to be permanent after the statutory period is over.

Typed & corrected by

NIRNAYA TAMANG
JUDICIAL MAGISTRATE
3RD COURT, BARRACKPORE,
NORTH 24 PARGANAS.

NIRNAYA TAMANG
JUDICIAL MAGISTRATE,
3RDCOURT, BARRACKPORE
NORTH 24 PARGANAS.

GR 3530/11

Order Dated: 12/02/15

All accused persons on C/B are present.

As nothing incriminating surfaced against the accused persons, their examination u/s 313 of the Code of Criminal Procedure is dispensed with and that they declined to produce any witnesses from their side

The case record is now taken up for Argument.

Heard both sides.

Later:

Accordingly Judgment is made ready in 1 separate sheets containing pages 1 to 2 and is duly signed and sealed and is Pronounced in Open Court in presence of all the accused persons,. Let the Judgment be kept with the Record.

Operating part of the Judgment is as under:

Hence,

it is

ORDERED

that the accused persons namely Tanmoy @ Totan Dey, Surojit Nandi, Tarun Guchait and Subhasis Saha are found "Not Guilty" for the commission of the offences under section 341/323/379/34 IPC and are thus ACQUITTED from this case as per section 248(1) Crpc.

The accused persons as well the sureties are hereby discharged from their respective bail bond liabilities.

The articles on zimma to be permanent after the statutory period is over.

Typed & corrected by Me:

NIRNAYA TAMANG
JUDICIAL MAGISTRATE
3RD COURT, BARRACKPORE,
NORTH 24 PARGANAS.

NIRNAYA TAMANG
JUDICIAL MAGISTRATE,
3RDCOURT, BARRACKPORE
NORTH 24 PARGANAS.

Examination of the Accused

The examination of sukanta mondal

My name is sukanta mondal

My father's/husband's name is Nemai Mondal

I am by religion Hindu , by occupation

My home is at Mouza *Hazra Lane under Noapara P.S*

District N 24 Parganas

I reside at

Have you heard the evidence of the Prosecution Witnesses?

Ans:

Listen on the basis of the evidence adduced by the de-facto complainant and other witnesses, I am going to ask you some questions which you are not bound to answer. Remember, that the answer given by you may be used in favour or against you to arrive at the just decision in this case or in any other inquiry or trial against you. Did You understand?

Ans:

P.W. 1 Smt. Anindita Mondal during her examination-in-chief has stated she has filed this case against you and has proved the written complaint being marked as Ext. 1 as a whole?

Do you have any thing to say regarding this?

Ans:

Do you want to adduce any evidence from your side?

Ans:

Do you wish to say anything else?

Ans:

(Signature or mark of the accused.)

(Signature of the Magistrate)

The above examination was taken in my presence and hearing, and contains a full and true account of the statement made by the accused.

(Signature of the Magistrate.)

Examination of the Accused

The examination of Subrata Mondal

My name is subrata mondal

My father's/husband's name is Nemai Mondal

I am by religion Hindu, by occupation

My home is at Mouza *Hazra Lane under Noapara P.S*

District N 24 Parganas I reside at

Have you heard the evidence of the Prosecution Witnesses?

Ans:

Listen on the basis of the evidence adduced by the de-facto complainant and other witnesses, I am going to ask you some questions which you are not bound to answer. Remember, that the answer given by you may be used in favour or against you to arrive at the just decision in this case or in any other inquiry or trial against you. Did You understand?

Ans:

P.W. 1 Smt. Anindita Mondal during her examination-in-chief has stated she has filed this case against you and has proved the written complaint being marked as Ext. 1 as a whole?

Do you have any thing to say regarding this?

Ans:

Do you want to adduce any evidence from your side?

Ans:

Do you wish to say anything else?

Ans:

(Signature or mark of the accused.)

(Signature of the Magistrate)

The above examination was taken in my presence and hearing, and contains a full and true account of the statement made by the accused.

(Signature of the Magistrate.)

Examination of the Accused

The examination of Rakhi mondal

My name is rakhi mondal

My father's/husband's name is Nemai Mondal

I am by religion Hindu , by occupation

My home is at Mouza *Hazra Lane under Noapara P.S*

District N 24 Parganas I reside at

Have you heard the evidence of the Prosecution Witnesses?

Ans:

Listen on the basis of the evidence adduced by the de-facto complainant and other witnesses, I am going to ask you some questions which you are not bound to answer. Remember, that the answer given by you may be used in favour or against you to arrive at the just decision in this case or in any other inquiry or trial against you. Did You understand?

Ans:

P.W. 1 Smt. Anindita Mondal during her examination-in-chief has stated she has filed this case against you and has proved the written complaint being marked as Ext. 1 as a whole?

Do you have any thing to say regarding this?

Ans:

Do you want to adduce any evidence from your side?

Ans:

Do you wish to say anything else?

Ans:

(Signature or mark of the accused.)

(Signature of the Magistrate)

The above examination was taken in my presence and hearing, and contains a full and true account of the statement made by the accused.

(Signature of the Magistrate.)