

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M)
NORTH SHALMARA, ABHAYAPURI

G.R. No. 809 of 2017 U/S 341/323/294/352/34 of IPC

State

-Vs-

1. Ashananda Das

S/O- Sribas Ch. Das

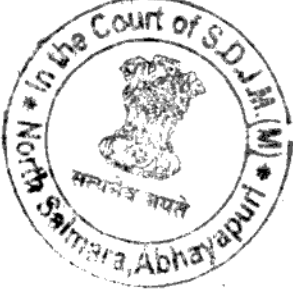
2. Sribas Ch. Das

S/O- Late Manmohan Das

All are from village- Jharpara, Pt. II

P.S.- Abhayapuri, District- Bangaigaon

..... Accused



Present: Shri Nayanjyoti Choudhury, A.J.S.

For the State: M/s. S. BarmanLearned APP

For accused: Mr. A. Hussain...Learned advocate

Date of Evidence: 20-03-19, 07-05-19

Date of argument: 07-05-19

Date of judgment: 07-05-19

J U D G M E N T

1. Brief fact of the case:-

2. The prosecution case in brief is that the informant Mahadev Ghosh on 04-07-17 lodged the FIR before I/C, Lengtisinga OP which was forwarded to O/C, Abhayapuri P.S. alleging that on 03-07-17 at 4 pm while his brother Sahadev was standing on the road he accused uttered obscene words and hit him and pulled his neck with gamocha and as his wife Minati Ghosh went to rescue him they outraged her modesty and hit her applying criminal force and hence the case. The FIR was registered as Abhayapuri P.S. case No. 527/2017 u/s 341/325/294/354/34 of IPC. After investigation police submitted the charge sheet u/s 341/323/294/352/34 of IPC against the accused persons named

Handwritten: 07.05.19
R. D. A. M. (M)
N. Shalmara, Abhayapuri

above. The accused persons named above made their appearance and copies of the relevant documents were furnished to the accused persons. Hence the particulars of offences u/s 341/323/294/352/34 of IPC were explained to the accused to which he pleaded not guilty and claimed to be tried. Prosecution examined three witnesses and exhibited one document. The statement of the accused person was recorded U/S 313 of Cr.P.C. wherein they denied the prosecution case. The accused have not adduced any defense witness.



3. Points for determination:

(a) Whether the accused persons in furtherance of common intention on 03-07-17 at 4 am at Jharpara, Abhayapuri committed wrongfully restraint Sahadev Das and Minati Ghosh?

(b) Whether the accused persons in furtherance of criminal intention on the same date, place and time voluntarily caused hurt to the informant's wife and Sahadev Das?

(c) Whether the accused persons in furtherance of criminal intention on the same date, place and time uttered obscene words to the informant's wife and Sahadev Das?

4. I have carefully gone through the case record and perused the entire evidence on record both oral and documentary. I have heard the arguments and the submissions made by the learned advocates.

5. Discussion of evidence, decisions and reasons thereof:

6. The learned A.P.P. appearing for the state has fairly submitted that there are sufficient evidence in support of the prosecution case. On the other hand the learned advocate for the accused persons has submitted and argued that the prosecution witness has not supported the prosecution case and there is no evidence to show that the accused person is involved with the alleged offence. The learned advocate for the accused person has further submitted that the prosecution has miserably failed to prove the case against the accused person as alleged beyond all reasonable doubt and the accused persons are entitled to get acquitted from the charges levelled against them.

7. Now let us see how far the prosecution has been able to discharge its burden to prove the offence leveled against the accused. PW 1 Mahadev Ghosh deposed that he was the informant and knew the accused. In the year 2017 one day at 4 am some argument took place in between the PW 1 and the accused regarding soil stocked on the road and due to anger lodged the FIR. PW 1 deposed that if the accused are acquitted he had no objection. Ext. 1 is FIR. Ext. 1(1) is his signature. PW 2 Sahadev Ghosh deposed that the informant was his brother and he knew the accused person. In the year 2017 one ay at 4 pm some argument took place in between them and the accused regarding soil stocked on the road and his brother due to anger lodged the FIR. PW 2 deposed that if the accused are acquitted he had no objection. PW 3 Minati Ghosh deposed that informant was her husband and the accused were her neighbors. One year ago one day at 3 pm she was in her house and her husband stocked soil on the road in front of her house as there was water

OL
07-07-17
S.D.J.M. (M)
North Salmara, Abhayapuri



lodging. The accused Ashananda came and pushed PW 2. Then the co accused Sribas Came and an argument took place. Sribass pulled Sahadev with a gamocha and threw him on the road. PW 3 went to rescue but Ashananda pulled her clothes and threw her on the ground. Then the accused left and lodged a case against the informant so the informant lodged this case. PW 3 deposed that Sahadev got injury at his chest, back and arm. PW 3 deposed that police recorded her statement.

8. Now from the evidence of the witnesses it is seen that the witness PW 3 was contradicting the evidence of PW 1 and PW 2. As per the informant and the alleged victim Sahadev as PW 2 no such incident took place as per allegations of the prosecution but as per PW 3 she along with the PW 3 was hit by the accused and her modesty was outraged. In my view if the modesty of any woman is outraged why would her husband remain silent in his evidence. In Kaliram Vs State of Himachal Pradesh [AIR 1973 SC 2773] it was observed under "Another golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and other to his innocence, the view which is favorable to the accused should be adopted". So keeping in mind the evidence of the prosecution witness and other attending facts it is appeared to me that the prosecution has not been able to establish the case beyond all reasonable doubt against the accused persons. Hence in my considered view I hold the opinion that the accused are not guilty u/s 341/323/294/352/34 of IPC

9. Considering the nature of the offence and other attending facts and circumstances of this case the accused Ashananda Das and Sri Bas Das are acquitted.

10. The bail bonds for Ashananda Das and Sri Bas Das shall be in force for six months.

11. Accordingly the case is disposed of on contest under the following order,

D.
27-05-19
T. D. J. H. (M)
Sahasra, Abhayapuri

**ORDER**

In view of the evidence of the witness, the material available with the case record and the argument put forwarded by the Learned A.P.P. and the learned counsel for the accused person I am of the opinion that the prosecution has failed to establish the case against the accused Ashananda Das and Sri Bas Das. Hence the accused Ashananda Das and Sri Bas Das are acquitted. The bail bonds for Ashananda Das and Sri Bas Das shall be in force for six months. The case is disposed of on contest accordingly.

Given under my hand and seal on this 7th day of May 2019 at Abhayapuri.

Dictated and corrected by me

Nayanjoti Choudhury

Sub- Divisional Judicial Magistrate (M)

Abhayapuri

S. D. J. M. (M)

N/Salnara, Abhayapuri

Nayanjoti Choudhury

Sub- Divisional Judicial Magistrate (M)

Abhayapuri

S. D. J. M. (M)

N/Salnara, Abhayapuri

(A) Prosecution Exhibits:

Ext. 1- FIR

(B) Defense Exhibits:

Nil

(C) Witnesses Exhibits:

Nil

(D) Prosecution Witness:

PW1- Mahadev Ghosh

PW 2- Sahadev Ghosh

PW 3- Minati Ghosh

(E) Defense Witness:

Nil

(F) Court Witness:

Nil

Handwritten signature and date: 07.05.20

S. D. J. M. (N)
Balnara, Abhayapuri