

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

C.A. No.11 (1)/ 2011

Appellant : Sri Anil Ch. Roy
- Vs -
Respondent : State of Assam
Represented by the P.P, Dhubri

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri Giasuddin Ahmed, Advocate for the Appellant.
Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 26-02-2013
Date of Judgment : 27-02-2013

J U D G M E N T

This criminal appeal is projected against the judgment and order of conviction passed by the learned S.D.J.M.(S) in connection with G.R. Case No.139/2005, whereby the appellant was convicted U/s.341 of I.P.C. and was sentenced to pay fine of Rs.300/- i/d one month S.I.

2. Being aggrieved and dissatisfied with the aforesaid impugned order, the appellant Sri Anil Ch. Roy, assailed the impugned judgment and order on a numbers of grounds, which are narrated in the memo of appeal.

3. During hearing L.C.R. is called for and also learned counsel of the appellant as well as Public Prosecutor, Dhubri are heard.

4. The story behind the filing of this appeal is narrated here in below:

On 13-06-2005 at 7 p.m. one Jhunu Sarkar along with two young ladies were returning to their house on foot. During their way back, the accused allegedly caught hold her hand and with an evil intention tried to pull her towards his house. Then she and her companions raised alarm. Accordingly, an ejahar before the i/c, Chagolia Out Post under Golakganj Police station was lodged.

5. Golakganj Police Station registered a case and investigated into the same and at the conclusion of the investigation laid charge sheet U/s.341/354 I.P.C.

6. On the appearance of the accused, particulars of offence U/s.341/354 I.P.C. were read over and explained to which he pleaded not guilty and claimed to be tried.

7. As may as 5 (five) P.Ws are examined. One Madan Roy was also examined as C.W-1. Statement of the accused is recorded. Learned trying Magistrate below heard the arguments and accordingly at the conclusion of the trial delivered the impugned judgment and convicted the accused U/s.341 I.P.C.

8. It needs to be mentioned here that in this case appellant faced the conviction U/s.341 I.P.C. Though the offence U/s.354 I.P.C was explained, however, learned trying Magistrate vide the impugned judgment acquitted the appellant from the said offence of law.

9. Being the appellate Court, this Court has to remain confine to see as to whether the ingredients U/s.341 I.P.C. are present or not in the testimonies of P.Ws and whether the trying Magistrate was justified to record the conviction or not?

10. It needs to be mentioned here that Sec. 341 I.P.C. provides the panel provision for the offence of wrongful restrain as incorporated U/s. 339 I.P.C.

11. In order to constitute an offence of wrongful restrain, the following ingredients must be established.

- a) That there is an obstruction.
- b) That the obstruction prevents a person from proceeding in any direction and
- c) That the person so proceeding must have a right to proceed in the direction concerned.

12. For bringing home the charge U/s.339 I.P.C. the prosecution has to establish that the complainant / victim as the case may be has the right as distinguished licence to proceed in a particular direction.

13. Now, it is to be ascertained as to whether the aforesaid ingredients are present in the testimonies of the victim as well as her other P.Ws. Let us have a look at the evidences on record.

14. P.W-1 Tribeni Singha during trial states that on the date of incident and during morning she, Jhunu Prova and Tanu Prova visited the house of the relative situated at Halakura. On that day at about 7 p.m. the aforesaid young ladies were proceeding to their house and at the village Bidyadabri and on the way accused drove a Motor bike and after crossing them stopped his motor bike. Thereafter, all on a sudden he removed a dagger and abused them and also made an abortive attempt to pull Jhunu Prova by catching her hand. Then they raised alarm. Hearing their cries one Madan Roy came out along with torch light. Thereafter, accused released Jhunu Prova and left the place.

15. P.W-2 Mrs. Jhunu Prova Sarkar during trial states that accused got stopped his motor bike and showed one dagger. Thereafter caught hold her hands and abused her and then she raised alarm. Hearing her cries when Madan Roy came along with torchlight, then accused released her hands.

16. P.W-3 Tanu Prova Sarkar narrated the incident in the same manner and tune as that of P.W-1.

17. P.W-4 Sri Anil Kr. Deka and P.W-5 Nizamuddin Ahmed are the I.Os of this case, whose evidences are appearing to be record only.

18. One Madan Roy is examined as the C.W-1. According to him on the date of incident and at the relevant point of time he found that the accused was pulling Jhunu.

19. So these are all about the evidences on record adduced by the prosecution in support of the offence alleged U/s.341 I.P.C

20. Here in this case, it appears that none of the material P.Ws i.e. P.W-1 and P.W-2 or P.W-3 had specifically and categorically deposed that the accused obstructed their path. It is

evident from the deposition of P.W-1 that accused wanted to pull Jhunu Prova by catching hold of her hand. The same was corroborated P.W-3 Tanu Prova Sarkar.

21. On the other hand, the victim Ms. Jhunu Prova Sarkar stated that the accused caught hold of her hand and abused her. The victim himself did not even depose that the accused tried to pull her on the date of incident and at the relevant point of time.

22. For the reason and testimonies of the material P.Ws, it is found that here in this case the circumstances, narrated by the P.Ws have not at all satisfied the ingredients of Sec.339 of I.P.C. But on examining impugned judgment and order of conviction, it is found that the learned trying Magistrate did not discuss the testimonies of P.Ws in the true perspective of the law of the land.

23. For the reason, it is found that here in this case essential ingredients of Sec. 339 I.P.C appear to be lacking. As such, accused ought to have given the benefit of doubt due to the insufficiency of the evidences. Accordingly, accused is acquitted of the offence alleged of on benefit of doubt and set at liberty forthwith.

24. In the result, the appeal has merit. Accordingly, impugned judgment and order of conviction is set aside and appeal is allowed on contest without cost. Judgment is delivered in the open Court. Send back the L.C.R. alongwith a copy of the judgment.

Given under my hand and seal of the Court on this 27th day of February, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri