

IN THE COURT OF SESSIONS JUDGE AT GOALPARA.

**Present: T.K. Bhattacharjee, A.J.S.,
Sessions Judge, Goalpara**

Criminal Appeal No. 05/2018.

Lasima Akhtar Appellant-complainant.

-Versus-

1. Saddam Hussian,

2. Abdur Rezzak,

3. Abdur Sukur,

4. Joynal Abedin,

5. Hazarat Ali,

6. Mohammad Ali Respondents-accuseds.

Appearance:

Mr. N. Z. Sheik, Advocate For appellant.

Mr. A. Hussain, Advocate For respondent.

Date of Argument: 06.06.2019.

Date of Judgment: 07-06-2019

-J U D G E M E N T-

1. This appeal has been preferred against the judgment of acquittal dated 29.07.2017 passed by the learned Ld. Additional CJM, Goalpara in connection with G.R. Case No. 739/12 u/s 147/447/294/354/149 of the IPC vide which the respondents/ accused persons of the said G.R. case were acquitted after trial.

2. The brief facts of the complaint case is that a complaint was lodged on 11/04/2012 by appellant-complainant in the court of the Ld. CJM, Goalpara

stating inter alia that the accused persons trespassed into her compound armed with weapons and forming an unlawful assembly and assaulted her, tore her clothes etc.

3. In view of the complaint that was filed, C.R. Case No. 448/12 was registered and forwarded to Lakhipur P.S. for investigation and accordingly, G.R. Case no. 759/12 was registered and subsequently, a charge-sheet was filed against the accused persons u/s 147/447/294/354 of the IPC sending them up for the purpose of trial and the case was taken up by the Ld. Lower Court which proceeded with the case and subsequently, the particulars of offences were explained to the accused persons u/s 147/447/294/354/149 of the IPC vide order dated 05/02/2014 to which they pleaded not guilty and claimed to be tried and accordingly, the trial commenced and after the trial was completed, the learned court below acquitted the accused persons by the impugned order and judgment dated 29/07/2017.

4. Being highly aggrieved and dissatisfied with the aforesaid judgment and order of acquittal, the appellant (complainant) preferred the instant appeal on the grounds set forth in the memo of appeal.

5. The connected LCR was called for in this context from the learned court below and it was perused very carefully and the learned counsel of the respondents was only heard as the Ld. Counsel for the appellant remained absent without any steps for a number of dates.

6. In the course of argument, the learned counsel for the accused-respondents submitted that the accused persons were rightly acquitted by the Ld. Lower Court after considering the evidence on record and as such, the impugned judgment and order of acquittal is not required to be interfered with in any manner but rather the appeal is required to be dismissed.

7. In view of the arguments of the learned counsel for the respondent, it is felt necessary to carefully scrutinize the entire materials available before me and determine the following:-

Point for determination:

8. Whether the learned court below was correct in acquitting the accused persons u/s 147/447/294/354/149 of the IPC in connection with G.R. case no. 739/12 ?

DISCUSSION, DICISION AND REASONS:

9. On perusal of the entire case record including the connected documents and also the judgment and order dated 29.07.2017 passed by the learned court below, it is found that the said court came to the finding that the prosecution could not bring home the charges against the accused persons due to lack of corroboration of the witnesses.

10. The testimony of the PW-1, the appellant/complainant, reveals that she had filed the complaint, the Ext.-1, in the court on the following day of the occurrence and even though the Lakhipur P.S. is only half kilometer away from the house of the complainant she did not visit the police station on that day and on perusal of the Ext.-1 it is found that the delay in lodging the case was not explained. Further, the Ext.-1 is silent regarding the offence u/s 294 of the IPC and from the Ext.-1 it appears that the complainant was assaulted with a dagger on her neck but, as per the testimony of the complainant she had sustained injuries in the finger of her left hand which fact is also not supported by any other credible testimony. Moreover, the complainant failed to prove possession of the disputed land. Apart from that the P.W.-3 who was an eye witness merely saw an altercation and the P.W.-2 and P.W.-4 did not see the occurrence. The P.W.-5 was the son of the complainant and the P.W.-6 was the sister of the complainant who were inter-state witnesses and moreover, nothing was seized in connection with this case even though the complainant claimed that her clothes were torn during the occurrence. No documents were exhibited by the complainant in support of her claim and from a thorough examination of the materials available before me, I am of the opinion that the learned lower court took up all the disputed points for determination, had made discussion on the evidence on record, appreciated the evidence on record in its proper perspective and finally arrived at the decision that the guilt of the accused persons u/147/447/294/354/149 of the IPC could not be established beyond

reasonable doubt. It may be mentioned in this context that the Hon'ble Gauhati High Court had observed in its decision reported in 2008(1) GLJ(NOC) 112 that if there is the slightest of doubt in the mind of the court after going through the evidence on record with respect to the involvement of the accused in the alleged offence then it becomes the duty of the court to acquit the accused of the charges leveled against him and therefore, taking into account all the facts and circumstances of this case, I am of the opinion that there is no reason to interfere with the decision and findings of the learned Lower Court.

11. In the result, the appeal stands dismissed but without any cost.

Send back the LCR to the Ld. Lower Court with a copy of this judgment.

Given under my hand and the seal of this court on this the 7th day of June/2019.

Dictated and Corrected by me:

(T.K.Bhattacharjee)
Sessions Judge,
Goalpara.

Sessions Judge, Goalpara