

GAHC010003222011



2024:GAU-AS:10580

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Crl.Rev.P./198/2012**

DELOWAR HUSSAIN  
S/O UZIR ALI VILL- TAKIMARI BORBILA  
P.O. TAKIMARI  
P.S. LAKHIPUR  
DIST. GOALPARA  
ASSAM

VERSUS

1. THE STATE OF ASSAM AND ORS.

2: MD MAGRAB ALI  
S/O LT. RAMJAN MUNSHI

3: MD MANNAF ALI  
S/O MD. MAGRAB ALI  
R/O VILLAGE OF 2 and 3,  
P.O. TAKIMARI  
P.S. LAKHIPUR  
DIST. GOALPARA, ASSAM

Advocate for : MR. J AHMED

Advocate for : MR. D. DAS, ADDL. P.P/

**BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 18.07.2024

Date of Judgment : 29.10.2024

**JUDGMENT & ORDER (CAV)**

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

**2.** This is an application filed under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 challenging the impugned Judgment dated 30.09.2009 passed by the learned Sub-Divisional Judicial Magistrate (Sadar) (in short 'SDJM'), Goalpara, Assam in G.R. Case No.862/2006 under Sections 447/506/34 of IPC, whereby the accused/respondent Nos. 2 and 3 have been acquitted.

**3.** The brief facts of the case are as follows:

**3.1.** On 25.09.2006, the present petitioner, as a complainant, filed a complaint case before the learned SDJM, Goalpara, against the present respondents Nos. 2 and 3, alleging, *inter alia*, that he and his father had created a bandh to catch fish on their own land. However, on 12.09.2006, at about 2:30 P.M., respondents Nos. 2 and 3 unduly interfered with the work of the petitioner/complainant and his father, forcibly taking fish valued at Rs. 500/- and threatened to kill them.

**3.2.** On 16.09.2006, the local public held a meeting regarding this event, during which the complainant was separately pressured to marry one Sokina Khatun or pay an amount of Rs. 70,000/-. Consequently, the case was referred

to Lakhipur Police Station for investigation and necessary action, leading to the registration of G.R. Case No. 862/06, registered under Sections 143/447/384/467/506/34 of the IPC. The investigating agency submitted a charge sheet against the accused persons under Sections 447/506/34 of the IPC.

**3.3.** The prosecution examined a total of seven numbers of witnesses to prove the case against the accused persons. However, after hearing the arguments from both parties, the learned SDJM, Goalpara in its judgment dated 30.09.2009, acquitted the accused persons of the charges in G.R. Case No. 862/06 under Sections 447/506/34 of the IPC.

**4.** Being highly aggrieved and dissatisfied with the impugned judgment dated 30.09.2009, passed by the learned SDJM, Goalpara in G.R. Case No. 862/06 under Sections 447/506/34 of the IPC, the petitioner has preferred this revision petition.

**5.** Mr. Ahmed, learned counsel for the petitioner, has submitted that the learned Trial Court did not appreciate the evidence on record in its true perspective, resulting in a wrong decision and the subsequent order of acquittal, which is liable to be set aside and quashed. He further submitted that the occurrences took place on 12.09.2006, and 16.09.2006; however, the complaint was lodged on 25.09.2006. The delay of nine days has been explained in paragraph 3 of the complaint petition, which was subsequently registered as G.R. Case No. 125 dated 05.10.2006, by the Officer-in-Charge of Lakhipur Police Station.

**6.** Moreover, P.W. Nos. 1 to 5 has adduced corroborated evidences, enabling the prosecution to establish the case against the accused persons beyond all

reasonable doubt. However, the learned Trial Court failed to appreciate this evidence in the proper context, arrived at the wrong finding. And hence, the impugned Judgment is not sustainable in law and should be set aside and quashed.

**7.** The learned Trial Court also failed to consider the contention of the charge-sheet, which indicated that the accused persons admittedly threatened the life of the informant, trespassed into the informant's dwelling, and committed theft of fish from the petitioner's land. This aspect was overlooked by the learned Trial Court, which concluded that there were contradictions in the evidence of the PWs, resulting in the acquittal of the accused/respondents.

**8.** Mr. Ahmed, learned counsel for the petitioner, has submitted that the accused/respondents filed a case with false allegations of rape against a minor victim involving the petitioner's brother, solely to harass the petitioner. The complaint in the present case was lodged on 05.10.2006. In an attempt to further harass the petitioner and his brother, another FIR was filed on 16.01.2007, with false and concocted allegations of kidnapping and rape of the minor daughter of the respondent No.2.

**9.** On the other hand, Mr. Das, learned Additional Public Prosecutor has submitted that the learned Trial Court passed the judgment after properly appreciating the evidence on record and considering all aspects of the case. He further submitted that there were sufficient contradictory statements made by the witnesses, which were deemed unreliable. After a thorough assessment of the evidence, the learned Trial Court acquitted the accused/respondents Nos. 2 and 3 vide its impugned judgment dated 30.09.2009. Therefore, he submits that there is no reason to interfere with the impugned judgment passed by the learned SDJM, Goalpara, Assam, in G.R. Case No. 862/2006, under Sections

447/506/34 of IPC.

**10.** After hearing the submissions made by the learned counsels for both sides, it is deemed necessary to assess the evidence on record to arrive at just decision.

**11.** P.W. 1, Delowar Hussain, the complainant/present petitioner, testified that on 12.09.2006, he and his father set up a bandh in their paddy field to catch fish. However, both accused/respondents Nos. 2 and 3 entered their land and stole the fishes. When his father objected, the accused/respondents assaulted them on their premises. As a result, they called a village meeting, which was held at the house of the village headman, Md. Hanif Ali. During this meeting, the accused forced them to sign on a blank piece of paper, demanding that either the complainant marry Morjina or pay Rs. 70,000/-. Since no settlement was reached, he subsequently lodged the ejahar with the police through the court.

However, in his cross-examination, he stated that he did not see the accused persons stealing fish from the pond or land.

**12.** P.W. 2, Ujir Ali, the father of the complainant, testified that he and his son constructed a bandh in their paddy field to catch fishes. However, the accused persons entered their land and stole the fishes. When he objected, an altercation took place between them. He also admitted that both parties lodged complaints with the village headman regarding the incident. During the village meeting, the accused raised the issue of marriage between the present petitioner and one Morijina, after which P.W. 1 lodged the FIR.

However, in his cross-examination, he admitted that no altercation actually took place between the parties.

**13.** P.W. 3, Hanif Ali, P.W. 4, Fazlur Rahman, and P.W. 6, Kutubuddin, also claimed to have been present at the village meeting; however, they did not testify regarding the commission of the offence or the trespass to the land of the complainant/present petitioner.

**14.** P.W. 5, Md. Anijul Haque, the brother of the complainant, testified that the accused persons stole fish from their pond/land by trespassing and also assaulted them.

However, in his cross-examination, he did not provide any statement to the investigating officer regarding the theft of fish by the accused persons.

**15.** P.W. 7 is the Investigating Officer, who, deposed that initially, respondent No. 2, Magrab Ali, attempted to set up a bandh in his own paddy land, but the complainant asked him not to do so, assuring respondent No. 2 that he would receive an equal share of the fishes.

**16.** Moreover, from the evidence of the PWs, it is evident that none of them have stated that they saw the accused/respondents stealing fish from the paddy field or trespassing into the land of the petitioner. Consequently, during the meeting, rather than addressing the allegations of theft, the discussion focused on the complainant's obligation to marry Morjina or to provide her with compensation of Rs. 70,000/-. Thus, the testimonies indicate that there was previous enmity between the parties.

**17.** The learned Trial Court, while discussing the ingredients of Section 447 of the IPC, noted that to constitute trespass under Section 441 of the IPC, the following elements are required:

i). There must be an unauthorized entry into or upon property against the will of the person in possession; or

ii). An authorized entry lawfully obtained, but unlawfully remaining therein; and

iii). Such entry or unlawful stay must be with an intention:-

(a). To commit an offence.

(b). To intimidate insult or annoy the person in possession of the property.

**18.** In the instant case, it is evident that the prosecution could not establish illegal entry into the land of the complainant/present petitioner. Both P.W. Nos. 1 and 2, who are vital witnesses for the prosecution, provided contradictory statements regarding the entry into the complainant's land. Furthermore, there is no evidence that the accused/respondents entered the complainant's land and stole fish from the bandh set up by P.W. Nos. 1 and 2. Rather, the evidence from the Investigating Officer indicates that there was an understanding between P.W. Nos. 1 and 2 and the respondents to share any fish that may enter in their paddy fields, facilitated by a single bandh covering both parties' land.

**19.** Additionally, from the evidence presented, it appears that the respondents previously lodged two cases against the petitioner and his brother, Anizul Hoque (P.W. 5), which are still pending before the Trial Court. This indicates that both parties have a previous enmity and rivalry, resulting in mutual accusations. Overall, the prosecution has failed to establish that the accused/respondents illegally entered the paddy field, stole fish, or threatened P.Ws 1 and 2 with dire consequences, which is necessary to warrant a conviction under Sections 447/506/34 of the IPC.

**20.** The learned Trial Court also discussed the delay in lodging the FIR, noting that the alleged incidents took place on 12.09.2006, and 16.09.2006, while the

FIR was filed on 05.10.2006. There was no satisfactory explanation provided for this delay, despite the incidents occurring on the earlier dates.

**21.** In light of the discussion above, this Court is of the opinion that the learned Trial Court thoroughly examined the evidence presented by the P.Ws and assessed it appropriately. Consequently, the Trial Court arrived at the correct decision by acquitting the accused/respondents Nos. 2 and 3.

**22.** Therefore, considering all the facts and circumstances of the case, this Court finds no reason to interfere with the impugned Judgment dated 30.09.2009 passed by the learned Sub-Divisional Judicial Magistrate (Sadar), Goalpara, Assam in G.R. Case No.862/2006, acquitting the accused/respondent Nos. 2 and 3 under Sections 447/506/34 of the IPC. As a result, I find no merit in this revision petition, and accordingly, it stands dismissed.

**23.** With above observations, this criminal revision petition stands disposed of.

**JUDGE**

**Comparing Assistant**