

GAHC010002362012



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Appeal No. 1/2012

Srimati Champa Marak,
Wife of Sri Mangal Singh Marak,
Village Gohalkona, P.S.-Boko,
District- Kamrup (Assam).

.....Appellant.

-Versus-

1. Mr. Medhi Marak,
Son of Late Erlin Marak.
2. Mr. Ardi Nath Marak.
3. Mr Wintnesh Marak,
4. Mr. Walash Marak,

All are residents of Village,
Gohalkona, P.S.-Boko,
District-Kamrup (Assam).

.....Respondents.

Advocates for the appellant: Mr M Talukdar,
Advocate for the respondents: Mr S R Rabha,

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of hearing : 07.12.2023

Date of Judgment : 07.12.2023

JUDGEMENT AND ORDER (ORAL)

Heard Mr M Talukdar, learned counsel for the appellant and Mr S R Rabha, learned counsel for the respondents.

2. This appeal is preferred by the complainant-appellant herein, Smt Champa Marak, under Section 378 of the Code of Criminal Procedure ('CRPC', for short), challenging the Judgment and Order dated 08.07.2011, passed by the learned JMFC, at Guwahati, in connection with Complaint Case No. 4470^c/2007, registered under Sections 447/427/506/34 of the Indian Penal Code, 1860 ('IPC', for short).

3. The genesis of the case was that the appellant filed a complaint petition before the learned CJM, Kamrup, alleging *inter alia* that she is the President of a Self Help Group, "Silrim" and by virtue of her office, all the documents and articles, viz. weaving machine, sewing machine of the said Self Help

Group were in her custody. However, on 07.05.2007, at about 4:00 pm, the respondents, Medhi Marak, Ardi Nath Marak, Wintnesh Marak and Walash Marak, armed with Jathi, Jung etc. trespassed into the appellant's house and assaulted her. They threatened her with dire consequences and snatched away her Saving Bank Account of the said Self Help Group, 4 (four) proceeding books, cash of Rs. 3,500/-, 4 (four) sewing machines and forcefully took her signatures on blank papers. They also damaged and destroyed the weaving house of the said Self Help Group.

4. The complainant was examined under Section 200 CrPC. It had transpired from the complainant's statement that a Police case was lodged in connection with the same incident and further proceeding of the complaint case was stayed. The Police Report was called for, but no such report was received. The trial Court then proceeded with the complaint case and took cognizance of offences under Sections 447/427/506/34 IPC against the respondents. On appearance, the offences under the aforementioned sections of law were explained to the respondents and they pleaded not guilty and claimed to be tried.

5. To connect the respondents with the crime, the complainant adduced

the evidence of three witnesses and the respondents adduced the evidence of two witnesses. On the incriminating evidences, projected through the evidence of witnesses, the statements of the respondents were recoded under Section 313 CrPC and the tenor of their answers reveals the plea of total denial.

6. The learned trial Court delineated the following points to decide the case:-

I. Whether the accused viz. Medhi Marak, Ardinath Marak, Wintnesh Marak and Walesh Marak, in furtherance of common intention, on 07.05.2007, at around 4:00 PM committed criminal trespass by entering into the house of the complainant and caused criminal intimidation, as alleged?

II. Whether the accused persons also committed mischief by damaging and destroying the weaving house belonging to the Self Help Group named 'Silrim' to the tune of property worth more than Rs. 50/- (Rupees Fifty)?

7. On the contrary, the defendants had taken the plea that the

complainant had misappropriated the money from the Self Help Group and in order to save her skin she had slammed a false case against the respondents.

8. To decide this present appeal, the evidence is once more re-appraised.

9. The complainant, Smt Champa Marak deposed as PW-1 that, on 07.05.2007 at about 4/5 pm, the respondents armed with dao, lathi, jung etc. entered into the appellant's house and took away four proceeding books, one Savings Bank Accounts Book, one machine (spinning machine), Rs. 3,500/-. They verbally abused her and compelled her to affix her signature on a blank paper. They also destroyed the weaving house. She lodged an FIR with the Police, but as the Police took no steps, the complaint case was lodged.

10. She has admitted in her cross-examination that she lodged the FIR after 1/2 weeks of the incident. She has admitted in her cross-examination that due to anomalies in the funds of the Self Help Group, a meeting was called by the Gaonburah (village headman).

11. PW-2, a Chowkidar, Sri Grandson Marak deposed that on 07.05.2007, the accused took away tin sheets, proceeding pass book and cash of Rs. 3,500/- from the weaving house of the complainant (appellant). He witnessed

the incident. The accused (respondents) were armed with dao etc.

12. In his cross-examination, he has admitted that the appellant's house is about 1 km away from his house. The neighbouring boys informed him about the incident. His wife is the Secretary of Self Help Group. He lodged the FIR with the Police after one or two weeks of the incident. He denied any knowledge about his wife's and the appellant's involvement regarding the anomalies of the funds relating to the Self Help Group, but he has admitted that the villagers had arranged a meeting relating to the anomalies of the funds of the Self Help Group. He was also present in the meeting. The meeting was arranged after the respondents had forcefully taken away articles from the complainant's (appellant's) house. He has also admitted that his wife along with the appellant had made a hand note assuring to return the funds misappropriated by them (PW-2's wife and the present appellant). He has also admitted in his cross-examination that a case was lodged against his wife and the present appellant, as they had failed to return the money.

13. PW-3, Smt Herolish Marak is the wife of PW-2. She deposed that on 07.05.2007, at about 04:00 pm, the respondents entered into the complainant's (appellant's) house and took away tin sheets, pass book and

Rs. 3,500/-. She witnessed the incident. The respondents also assaulted her and the complainant (appellant), Smt Champa Marak. Then, the complainant (appellant) lodged the FIR with the Police, relating to this incident.

14. She has admitted in her cross-examination that Smt Champa Marak (appellant), was the President of the Self Help Group and she was the Secretary. The wives of the respondents were also the members of the Self Help Group. She never kept records of transactions of the Self Help Group. The funds of loans of the Self Help Group, amounting to Rupees two lacs were always under their control. Monthly audits are also held regularly. They have informed the other members relating to the transactions of the Self Help Group. The Passbook of the Self Help Group was in the name of the President and the Secretary. Both, she along with the President dealt with the transactions of the Bank and the Self Help Group. On the complaint of the other members that the President and the Secretary have not informed the members about the transaction, a public meeting was held. In the meeting, they failed to provide any records relating to the transactions and funds of the Self Help Group. The other members lodged an FIR against the President and the Secretary with the Police at Boko Police Station.

15. In the case at hand, it is an admitted fact that a case was registered relating to misappropriation of funds against PW-1 and PW-3. The PW-1-appellant herein, was the President of the Self Help Group, whereas the PW-3 was the Secretary. PW-2 and PW-3 have also admitted that the members of this Self Help Group raised their voices against the anomalies of funds of the 'Silrim' Group. It is also admitted by PW-2 and PW-3 that the FIR relating to the present incident was lodged after 1/2 weeks.

16. In his cross-examination, PW-2 has deposed that he was in his house, when the incident had occurred and his house is about 1 km away from the informant's house. Thus, it has been rightly held by the learned trial Court that it is not possible that the PW-2 and PW-3 have witnessed the incident, as their house is a kilometer away from the place of occurrence. The other major discrepancy in the evidence is that the FIR was lodged about a week back. Several reports were called from the Police relating to the FIR, allegedly lodged by PW-1, relating to the present incident of mischief and criminal trespass, but no report was received from the Police. There is no explanation relating to the delay in lodgment of the FIR, which the appellant had failed to bring on record. The complaint was lodged as late as on 06.04.2009, whereas the incident occurred on 07.05.2007. The evidence of PWs-1, 2 and

3 does not inspire confidence.

17. The learned trial Court has held that-

“If he was at his home when the incident took place he could not have seen the incident for himself as stated. Moreover, if he on being informed, reached the place of occurrence and witnessed the same as stated, then there is high probability of other villagers also witnessing said incident, but there is no evidence to its effect on record. Even if it is believed for argument sake, same does not prove that accused persons had damaged or destroyed the weaving house as alleged. Likewise, evidence of P.W. 3 also does not support the prosecution case to prove the offence of mischief committed by the accused as alleged. In view of above, as evidence of P.W. 1 is not corroborated by any other prosecution witness, and as already discussed above that evidence of P.W. 1 in exclusion to any corroborating evidence does not infuse confidence, same is not relied on. Accordingly prosecution failed to prove beyond all reasonable ground that accused persons had committed the alleged offence of committing mischief and hence not found guilty of committing the offence punishable under Sections 427/34 IPC.”

18. The evidence of the witnesses, DW-1, Sri Winnerson R Marak and DW-2, Smti Carolina Sangma, clearly reveals that a meeting was held by the villagers relating to the anomalies of the Self Help Group and the appellant,

PW-1 was the President and PW-3 was the Secretary of the Self Help Group. In the meeting, anomalies were detected by the public and both the President and Secretary assured that Rs. 89,916/- (Rupees Eighty Nine Thousand Nine Hundred and Sixteen) would be returned within the month of September by them (appellant and PW-3). The DWs-1 and 2 have stated that the respondents have not committed any offence as alleged.

19. Considering the conduct of the PW-1- appellant herein, as reflected by the evidence of the witnesses, PWs-2 and 3, and DWs-1 and 2, it is held that the evidence of PW-1 is not worthy of credence. The evidence of PWs-2 and 3 is also found to be unreliable and thus, the respondents cannot be held guilty of the offence of criminal trespass as well as of mischief. There is no evidence that the respondents committed criminal intimidation by threatening the appellant with dire consequences.

20. In view of my foregoing discussions, it is thereby held that this appeal is devoid of merits and is hereby dismissed.

21. Send back the LCR.

JUDGE

Comparing Assistant