

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::::: BONGAIGAON.

GR CASE No. 530/2012.
U/Ss.447/448/427/506/34 IPC.

State of Assam

-Vs-

- 1. Sri Ram Ratan Sarkar.**
- 2. Sri Ananta Sarkar.**
- 3. Sri Niranjan Sarkar.**

Present: Sri A.U. Ahmed, AJS
Chief Judicial Magistrate,
Bongaigaon.

Name of the informant:

Sri Sushil Ch. Sarkar,
Son of Late Taron Sarkar,
Vill-Chouraguri,
PS& Dist.- Bongaigaon.

Advocates appeared:

For the Prosecution: *Mr. T. Bhowmick, Assistant PP.*
For the Defence: *Mr. D. A. Rahim.*

Argument heard on: ***10.06.2013.***

Judgment pronounced and delivered on: ***12.06.2013.***

J U D G M E N T

1. The prosecution case in brief is that on 10.09.2012, the informant filed a written complaint before this Court stating inter-alia that he is the Pattadar of a plot of land measuring 2B-0K-11L covered by Patta No. 270 & Dag No.252 situated at village Chouraguri under Bijni Revenue

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Circle. On 05.05.2012 on application Revenue Circle Officer, Bijni along with his staff made measurement of the land belonged to the complainant and demarcated its boundary with concrete posts in presence of accused persons but the accused persons did not allow him to take possession of his land as demarcated by the Revenue Circle Officer, Bijni. Again on 31.05.2012 on application measurement of the Patta land in question belonged to him was measured and handed over to him after due demarcation. On 08.09.2012 the accused persons illegally forcibly entered into the area of his land and announced that demarcation made by the Revenue Circle Officer, Bijni was not proper and as such they would occupy the same and accordingly the accused persons jointly entered into his land and while he raised objection the accused persons assaulted him and his son Sri Bimal Sarkar with lathi. The said complaint was forwarded to the O/C, Bongaigaon PS for registering a criminal case and on receipt of the written complaint, Bongaigaon PS registered a criminal case under sections 447/448/323/506/34 IPC and started investigation. On completion of investigation, the charge-sheet was submitted under sections 447/448/427/506/34 IPC against the accused persons. Hence the prosecution case has come up.

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2. On completion of appearance of the accused persons, copy was supplied to them. The particulars of the offence U/Ss.447/448/427/506/34 IPC is duly explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. During trial, prosecution has examined as many as 4(four) prosecution witnesses. Accused person has been examined U/S.313 CrPC. On the other hand, defence has also examined 3(three) witnesses. The plea of defence is of total denial.

4. : **POINT FOR DETERMINATION** :

(a) Whether the accused persons have committed the offence U/Ss.447/448/427/506/34 IPC?

5. : **DECISION AND REASONS THEREOF** :

I have very carefully gone through the marathon argument duly advanced by the Ld. Lawyers of the both sides. Now, let us see the evidence on record.

6. PW1 is the informant who has stated in his testimony that he has 2B-11L land in the village Chouraguri and the accused persons did not vacate the said land.

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Thereafter he got his land demarcated by the Lat Mondal by posting pillars and fencing on the boundary. One day in the morning at 5 O'clock he saw the accused persons to have entering into his boundary with lathi, daa and starting breaking door and fencing of the house. Thereafter he fled away and took shelter in his daughter-in-law's house. Ext1 is the complainant Ext1(1) to 1(3) are his signatures. From the cross-examination of PW1 it has become crystal clear that he purchased a plot of land measuring 2B-11L about 15/20 years back and at the time of taking possession he could not take possession of 24½ L land out of 2B-11L and since then the said land has been in the possession of the accused

persons. PW1 also clearly stated that at the time of purchasing the land the person from whom the informant purchased 2B-11L of land did not handed over possession of 24½ L out of 2B-11L.

7. PW2 is Sri Sukhi Nath Sarkar who has stated in his testimony that the occurrence took place in the year of 2012 and the informant purchased a plot of land measuring from one Khagendra Nath Bhowmick. After purchasing the land the informant got the land demarcated by a Mandal but the accused persons did not accept the demarcation made by

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Revenue Circle Officer. Thereafter again the informant got the land demarcated. That demarcation was also accepted by the accused persons. The accused persons entered into house campus by breaking his fencing given on boundary. The accused persons broke the fencing and door of the house of the informant. Coming to the PO he found the accused persons coming out from the housed campus of the informant.

8. PW3 is Sri Bimal Sarkar who is the son of the informant. According to him the occurrence took place on 15.09.12 at 5:00 AM. One day before the occurrence his father constructed fencing on the boundary. On the day of the occurrence the accused person broke the said fencing and entered into their house campus and broke door of the house. Seeing the accused person armed with dao he fled away from the house through the backdoor.

9. PW4 is Smt. Mayarani Sarkar who is the wife of the informant. According to her the occurrence took place about one year back at 5:00 AM. On the day before the occurrence the informant constructed fencing on boundary. At the time of occurrence the accused person broke the said fencing and door of their house.

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10. There is no evidence on record showing that accused persons assaulted any persons. Evidence of PW2 to PW4 does not show that the accused persons entered into the house of the informant.

11. DW1 is Mano Ranjan Sarkar who is the brother of the informant. DW2 is Sri Baneswar Ray and DW3 is Kartik Das. DW1 has stated in his cross-examination that the informant has more than two bighas land and same has been being possessed by the informant since he purchased which took place about 15 years back. He also admitted that on the day before the occurrence boundary fencing was erected in his presence before the police. According to measurement the boundary fencing was erected in the land which was under possession of the accused person. On completion of measurement made by the Mandal the informant got some land from the possession of the accused person. On the day of the occurrence the accused person took the said fencing and put the same in the earlier place.

12. DW2 has stated in his testimony that one day before the occurrence the informant encroached some land of the accused person and erected boundary fencing

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thereon. The said encroached land was being possessed and enjoyed by the accused person since his birth. DW3 is Sri Kartik Das whose evidence clearly shows what took place on behalf of the occurrence. He has stated that the disputed land has been being possessed and enjoyed by the accused persons since his birth and still same is under their possession. On the day before the occurrence in presence of Mandal from the revenue office and police the demarcation of the land between the informant and the accused persons were properly demarcated and accordingly on instruction of the police and Mandal the informant erected fencing on the boundary and on the day of the occurrence the accused persons took the said fencing away and put the same on its earlier place.

- 13.** The informant marked as PW1 has admitted in his cross-examination that he had purchased a plot of land measuring 02B-11L but his owner did not hand over possession 24½ Lechas at the time of purchase. He has further admitted that while he had purchased the land measuring 02B-11L, the disputed land was under possession of the accused person and the same has been still under possession of the accused persons. It has become crystal

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clear that there was/is a civil dispute in respect of the land measuring 24½ Lechas which is admitted at present under possession of the accused person. This criminal court cannot say anything in respect of the land measuring 24½ Lechas.

The Civil court is the competent court to take decision who is the actual owner of the land measuring 24½ Lechas.

14. It is evident that on direction of proper authority the informant erected fencing on the boundary. No person is allowed to law in his hand. There is no material on record for fastening the accused persons under section 506 IPC. There is also no evidence on record showing that the accused persons entered into the house of the informant. There is corroborative and supportive evidence on record that the accused persons entered into the land of the informant and removed the posts and fencing erected on boundary on instruction of police and revenue authority. It has become crystal clear that the accused persons took law in their hands.

O R D E R

15. In the result, I find the accused persons guilty under sections 447/434/34 IPC and accordingly they are convicted.

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16. On the point of sentence the accused persons are heard. Accused Niranjan Sarkar who is a person of 65 years old and rest accused persons are his sons. There is a land dispute between the informant and the accused persons. Considering nature of the case, I am of the opinion that the accused persons are entitled to get the benefit laid down U/S.360 of the CrPC. **Accordingly, instead of sentencing them at once to any punishment, the accused persons are ordered to be release on their entering into a bond of Rs. 5000/-(Rupees Five Thousand) each for 2(two) years to appear and receive**

sentence when called upon during such period. They are also directed to keep the peace and be of good behavior in the mean time. Let a copy of this order be sent to the O/C, Bongaigaon PS for keeping strict vigilance on the accused persons. Let a copy of the Judgment be furnished to the accused persons at free of cost. The Judgment be up-loaded in the official web-site. Accordingly, the case is disposed of on contest.

17. The Judgment is pronounced and delivered in the open Court on this **12th June, 2013** under my hand and seal of this Court.

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(Sri A.U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**

Dictated and corrected by me.....

(Sri A. U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**

:A P P E N D I X:

The Prosecution examined:

1. **PW1- Sri Sushil Ch. Sarkar.**
2. **PW2- Sri Sukhi Nath Sarkar.**
3. **PW3- Sri Bimal Sarkar.**
4. **PW4- Smt. Maya Rani Sarkar.**

The Prosecution exhibited:

1. **Ext1- Complaint.**

The Defence examined:

1. **DW1- Sri Manoranjan Sarkar.**

2. DW2- Sri Banerwar Ray.

3. PW3- Sri Kartik Das.

The Prosecution exhibited: **Nil.**

(A. U. Ahmed)
Chief Judicial Magistrate
BONGAIGAON.
