

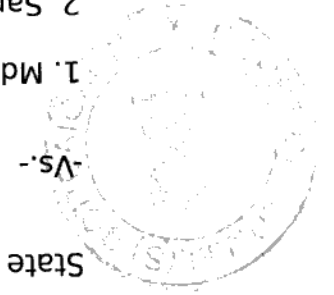
Sub-Divisional Judicial
Magistrate (General)
Bongaigaon

Evidence recorded on : 13-06-13, 13-08-16, 22-11-16, 27-12-17
 Arguments heard on : 29-12-17
 Judgment delivered on : 29-12-17

For prosecution : Shri S. K.Nath, Ld. A.P.P.
 For defence : Mr. S. Sarkar, Ld. Advocate.

In appearance

1. Md. Nur Islam Mandal
 2. Sarat Das.....Accused persons.



State -Vs-

MGR case No. 222/04
U/S- 468/472/34, I.P.C.

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE(S),
BONGAIGAON
PRESENT: DR. N.C. BHUYAN, AIS

JUDGMENT

1. The case of prosecution in brief is that on 02.10.2004, one Safur All lodged an ejarah before the Officer-in-charge of Manikpur Police Station, alleging that on 02.10.14 at 12:30 PM acting on secret information, he along with S.I-Pranab Kr. Saikia with 14th Assam Battalion conducted search in the house of Abed All and apprehended Abed All and Nur Islam, and also recovered different types of seals of different offices/ institutions and organizations of different districts and blank forms of mark-sheet, Admit Cards, Transfer/Leaving certificates, progress reports of High School, H.S. School etc. and also recovered some forms of blank birth certificates, PRC, etc. which were seized as per seizure list. During preliminary investigation, the accused persons revealed that they issued fake certificates, mark-sheets and other certificates and sold to the persons of different districts of Assam. Thereby, the accused persons were involved in different forgery, fraud by making fake documents and cheated the people of Assam and therefore, the accused persons were handed over to police for taking legal action and hence, the case.
2. On receipt of the FIR, O/C, Manikpur P.S. registered a case vide No. 57/04, u/s 468/472 IPC and the matter was duly investigated into.
3. On completion of the investigation, I/O submitted charge-sheet against accused Md. Nur Islam, Sarat Das and Abed All. In due course, the accused persons appeared before the Court and they were allowed to go on bail. Copies were furnished and the charge u/s 468/472/34 I.P.C. were framed and read over and explained to the accused persons and to which they pleaded not guilty and claimed to be tried. On 22-06-10, the case was abated against accused Abed All as he died on 04-01-10.
4. In support of the case of the prosecution, six PWS are examined. Accordingly, the prosecution evidence was closed. The accused

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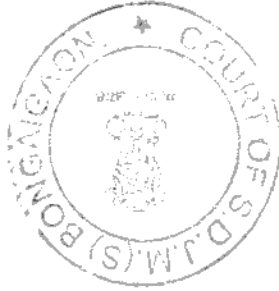


7. The PW1 (Safur Ali) deposed that on 02.10.2014, he was working as Attached Officer at Barpeta PS. On that day, acting on special information he along with his colleague S.I-Pranab Kr. Saikia and some members of the battalion went to the house of accused Abed Ali of Dhubari village under Manikpur PS and conducted search in his house. Later on, they arrested Abed Ali and Nur Islam. PW1 also identified the accused person Nur Islam. From the house of Abed Ali they recovered various seals of various offices, various schools/organizations and blank mark-sheets, admit cards, transfer/leaving certificates, progress reports of High school and higher secondary school and some blank birth certificates and blank PRC forms etc. All these things were seized. On being interrogation,

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Ali)

DISCUSSION, DECISION AND REASONS THEREOF

5. Whether accused persons Md. Nur Islam Mandal and Sarat Das on 0210-04 at about 12:30 PM forged a document, intending that it shall be used for the purpose of cheating in furtherance of their common intention and, thereby, committed an offence punishable under Section 468/34 IPC?
6. Whether accused persons Md. Nur Islam Mandal and Sarat Das on the same day and time made counterfeit seal for making an impression, intending that the same shall be used for the purpose of committing any forgery in furtherance of their common intention and, thereby, committed an offence punishable under Section 472/34 IPC?



POINTS FOR DETERMINATION

persons Nur Islam Mandal and Sarat Das were examined u/s 313 Cr.P.C. Heard the arguments of both sides.

both the accused persons stated that they sold fake certificates, mark-sheets, etc. after preparing the same and thereby cheated the people of Assam. Accordingly, both the accused persons were handed over to the Manikpur P.S. and the ejarah was lodged against them. PW1 also stated that he handed over the seized documents to the Manikpur P.S. in presence of witnesses.

8. During cross-examination of PW1 stated that when he conducted search within the jurisdiction of Manikpur P.S, he did not inform the Manikpur P.S and also did not take any help from the Manikpur P.S. SI-P.K.Saikia and some members of 14 APBN with him. He does not know members of the names of the members. About 6/17 members from 14th APBN with him. He did not see the seized articles in the Court.

9. PW 1 also stated that he did not give complete description of the house from which he recovered the documents, which were later on seized by him. The seized articles were recovered from one plastic bag, kept under the bed of the said house. He did not mention whether the handle of the rubber stamps were made of plastic or mettie. There were 8 rounds of seals as per the seizure list when he searched in the house of Abed Ali. He called Phanindra Das, Samaruddin of Dhubri village and Satyajit Ghosh from Bowbari village and they put their signatures as witnesses. He prepared the seizure list in the house of Abed Ali. At the time of seizure of the articles only Abed Ali and Nur Islam were present in the house. In connection with the said search, the SP- Barpeta communicated to SP, Bongaigaon, and accordingly, he conducted search. He lodged the ejarah at Barpeta. He sent the ejarah, case-diary and seized articles along with escort to Manikpur P.S from Barpeta P.S. The house of Dhawa Ali is situated to the northern side and one field and road is situated towards the southern part. The house of Phanindra Das is situated to the eastern side and the house of Akkel Ali is situated to the western side. After the arrest Abed Ali and Nur Islam, they were taken to

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Barpeta PS. After going through the C/D it was found that the seized articles along-with both the accused persons were brought to the Manikpur PS. Both the accused persons were only detained but not arrested. After reporting at Manikpur PS they went to Barpeta PS. He did not mention in the CD about the distance from the house of Abed All to the house of Nur Islam. PW1 denied the suggestions given by the defence.

10. PW2 (Phanindra Ch. Das) deposed that he knows the informant as well accused Nur Islam. The incident took place 6/7 years back in the afternoon while he was tying bullock, Police called him and said to him that they arrested Abed All and Nur Islam. When he was asked to put his signature, he put his signature.

11. During cross-examination PW2 stated that police did not record his statement and he does not know why Nur Islam was arrested.

12. PW3 (Satyajit Ghosh) deposed that he knows Nur Islam. When he was coming from market in 2004, he saw police and police called him and then he saw Nur Islam and Abed All were arrested. Police took his signature.

13. During cross-examination of PW3 stated that the police did not record his statement and police only asked him about his name and address. He does not know why the accused persons were arrested.

14. PW4 (Samaruddin) deposed that he knows accused Nur Islam. The incident took place about 10/11 years back while he was coming to house, he saw Nur Islam was arrested. Police asked him to put his signature.

15. During cross-examination PW4 stated that he does not know why the accused person was arrested. Police did not record his statement.



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16. PW5 (Amrul Sk.) deposed that he does not know the informant but he knows the accused. About many years back when he was going to Patiladoha Market, Police asked him to put his signature and he put his signature. He does not know about the incident.

The cross-examination of PW5 was declined by defence.

17. PW6 (Balen Basumatary) deposed that he knows the informant. He does not know the accused person. The incident took place in 2004. On one particular day, police came to their office and showed him some seals of SDO Civil, Bijni and asked him whether any seal from their office was missing. He said no to the police and when he compared the seal, produced by police with the seal of their office, he found that seal produced by police did not belong to their office.

18. In cross-examination PW6 deposed that he does not know the exact date when police came to their office. He also has forgotten the name of the police who came to their office. He also did not remember how many seals were brought by police on that day. He also did not know what police did with those seals.

19. Ld. A.P.P. during argument argued that the house of accused Abed All was raided on the basis of the confidential information and different stumps as well as seals and blank mark sheet, admit card of high school and higher secondary school were recovered from the house of Abed All.

20. Ld. A.P.P. has also stated that PW6 during his examination stated that when police came to their office i.e. Civil SDO office and asked him whether any seal from their office was missing. He stated that no seal was missing from their office. It shows that the seal and stumps, recovered from the house of Abed All were manufactured for the purpose of creating forged document, because blank mark sheet, admit card were recovered from the house of Abed All.

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follows:

26. Section 465 of Indian Penal Code defines punishment for forgery as

**and shall also be liable to fine";
either description for a term which may extend to seven years,
punishable with imprisonment for life, or with imprisonment of
instrument, knowing the same to be counterfeit, shall be
such intent, has in his possession any such seal, plate or other
would be punishable under section 467 of this Code, or, with
shall be used for the purpose of committing any forgery which
instrument for making an impression, intending that the same
25. "Whoever makes or counterfeits any seal, plate or other**

punishable under section 467 as follows:

24. On the other hand, section 472 of Indian Penal Code defines Making
or possessing counterfeit seal, etc., with intent to commit forgery

**and shall also be liable to fine";
purpose of cheating, shall be punished with imprisonment of
document of electronic record forged shall be used for the
down that "whoever commits forgery, intending that the
the relevant legal provision. Section 468 of Indian Penal Code lays
23. For clear understanding of the instant case, we have gone through**

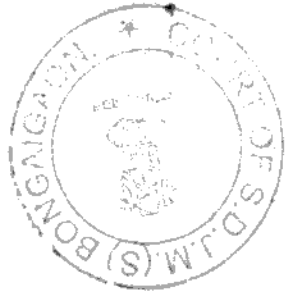
punished.

22. **Ld. Defence Counsel also argued that even if something was seized
by the police from the house of Abed Ali, Abed Ali has already died and
for the act of Abed Ali, the two other accused persons cannot be**

21. **On the other hand, during argument Ld. Defence Counsel argued
that the main accused Abed Ali has already died.**

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27. "Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

28. On perusal of the evidence on record, it is found that though, PW1 stated that on the day of the search in the house of Abed Ali, he arrested Abed Ali and Nur Islam, nowhere, it is stated that accused Nur Islam was found with some documents or that some documents were seized from the possession of Nur Islam.

29. On perusal of the evidence on record, it is found that PW1 during his cross-examination stated that at the time of the search Phandra Das and Samarudding were present and they put their signature in the seizure list. These Phandra Chandra Das and Samarudding were examined by the prosecution as PW2 and PW4 respectively. Both PW2 and PW4 have not corroborated PW1 in material particular.

30. On the other hand, nowhere, it is mentioned in the FIR that any seized articles was recovered from the possession of Nur Islam and Sarat Das. Moreover, PW2, PW3, PW4 and PW5 nowhere mentioned neither in their examination-in-chief nor in cross-examination that something was seized in front of them by the police. Moreover, that none of the PWs i.e. PW2, PW3, PW4 and PW5 stated anything which is implicating in nature against the accused persons.

31. Moreover, it is admitted by the prosecution and the defence that accused Abed Ali has already been died. It is also found that PW1 during his evidence did not state anything about accused Sarat Das to the effect that he found Sarat Das with any forged document or any document.

32. Hence, prosecution has been failed to prove the guilt of the accused beyond reasonable doubt, by adducing some cogent evidence.

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Magistrate (Senior)
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Sub-Divisional Judicial Magistrate (S),
Bongaigaon, Judicial
Magistrate (Sadar)
Bongaigaon

(Dr. N.C. Bhuyan)

Delivered by




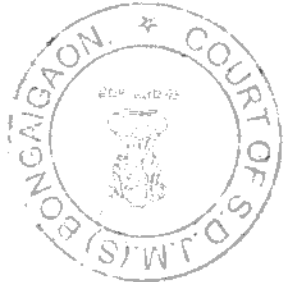
December, 2017.

Given under my hand and seal of this Court on this 29th day of

- 35. The case is disposed of on contest.
- 34. Judgment is pronounced in the open Court.
- 33. In view of above, I am of the opinion that the prosecution side has failed to prove the case. In result, the accused is acquitted from the charges u/s 468/472/34 I.P.C and set them at liberty. The bail bonds shall remain in force till next six months.

ORDER


 (Dr. N.C. Bhuyan)
 Sub-Divisional Judicial Magistrate(S),
 Bongaigaon.
 Sub-Divisional Judicial
 Magistrate (Sadar)
 Bongaigaon



None.

Documents exhibited by Defence:

None.

Witnesses examined by Defence:

None.

Documents exhibited by Prosecution:

- | | | |
|-----|---|-------------------|
| PW1 | - | Satur Ali |
| PW2 | - | Phanindra Ch. Das |
| PW3 | - | Satyajit Ghosh |
| PW4 | - | Samaruddin |
| PW5 | - | Amrul Sk. |
| PW6 | - | Balen Basumatary |

Witnesses examined by Prosecution:

APPENDIX
MGR case No. 222/04