

GAHC010008222011



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

Case No. : Crl.A./157/2011

MANORANJAN MANDAL
S/O LATE HARAN MANDAL, R/O VILL. BAMUNIJHARA, P.O. SILIKHAGURI,
P.S. BIJNI, DIST.CHIRANG, BTAD, ASSAM, PIN-783390

VERSUS

ABHIRAM MANDAL AND ORS
S/O LATE KANTHESWAR MANDAL, R/O VILL. BAMUNIJHORA, P.O.
SILIKHAGURI, PIN-783390

2:BADAL CHANDA

S/O LATE DIGENDRA CHANDA
R/O VILL. NO. 3 BISHNUPUR
P.O. BHOTAGAON
PIN-783390

3:RASHMOHAN DAS

S/O LATE RADHACHARAN DAS
R/O VILL. BISHPANI
P.O. BHOTAGAON
PIN-783390

4:SANTOSH SARKAR

S/O LATE LAKHYAN SARKAR
R/O VILL. NO. 4 DOILONGHAR
P.O. BHOTAGAON
PIN-783390

5:NANI KUMAR ROY

S/O LATE UMAHODAR ROY
R/O VILL. NO. 4 DOI LONGHAR
P.O. BHOTAGAON
PIN-783390

6:GOBINDA DAS

S/O SRI GAURANGA DAS
R/O VILL. BAMNIJHARA
P.O. SILIKHAGURI
PIN-783390

7:HEMANTA MANDAL

S/O LATE SHUKLAL MANDAL
R/O VILL. NO. 4 DOI LONGJHAR
P.O. BHOTAGAON
PIN-783390
ALL ARE UNDER P.S.BIJNI
DIST. CHIRANG
BTAD
ASSAM

Advocate for the Petitioner : MR.K M HALOI, MS B CHOUDHURY, AMICUS CURIAE,MR.U K DAS

Advocate for the Respondent : MR.S C BISWAS, MR.P BISWAS,MR.B CHOUDHURY, ,MRS.S D CHOUDHURY

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant : Mr. K.M.Halo, Advocate
Ms. B.Choudhury, Amicus Curiae

For the respondents : Mr. S.C.Biswas, Advocate

Date of hearing : 20.08.2024

Date of Judgment/ Order : **10.09.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. K.M. Haloi, learned counsel and Ms. B.Choudhury, learned Amicus Curiae, for the appellant. Also heard Mr. S.C. Biswas, learned counsel for the respondents.

2. This appeal has been preferred by the informant/ appellant against the order of acquittal dated 05/07/2011, passed by the learned Sub Divisional Judicial Magistrate (M) Bijni (herein after referred as SDJM), in CR case no. 83/2009 u/s 352/ 506/ 34 IPC.

3. The brief fact of the case is that the informant had a boundary dispute with respondent no. 7, Hemanta Mandal. Taking advantage of this dispute, the respondents made a conspiracy against the informant and organized a meeting and issued notice to him. But the appellant could not appear in the said meeting as there was no mention about the time and venue of the meeting. Thereafter, on 01/02/2009 at about 12 noon, the respondents called another meeting in front of Bamunijhara Kali Mandir field and imposed a fine of Rs. 7500/- on the appellant under threat and pressure. When the appellant expressed his inability to make such payments, he was asked to pay the fine amount by selling his ox, if required. When the appellant approached before the respondents to consider his case, then the respondents forcefully took his signature on a mortgage deed and took the amount of Rs. 7500/- from the mortgagor and misappropriated the same. The respondents threatened the appellant with dire consequences if he dares to approach the police. Ignoring the said threat, the appellant lodged an FIR in Bijni Police station on 06/02/2009 but no case was registered. Finding no

other alternative, the appellant filed a complaint case before the court of Sub Divisional Judicial Magistrate (M) Bijni vide CR. Case no. 83/2009 and cognizance was taken u/s 447/420/506/34 IPC.

4. After taking cognizance, summons were issued to the respondents to face trial and the complainant/ appellant was asked to adduce evidence before charge. Accordingly, the complainant examined four witnesses and charges were framed u/s 352/506/34 IPC. Thereafter, the complainant examined two more witnesses to substantiate his case. At the end of the prosecution evidence, the respondents were examined u/s 313 Cr.PC who however, denied the charge as false but no witness was adduced by the respondents.

5. After hearing the arguments advanced by the learned counsel for the parties and the evidence adduced in the case, the learned SDJM acquitted the respondents as aforesaid.

6. Learned counsel for the appellant has argued that the witnesses examined by the complainant established the prosecution case by corroborating the evidence of each other and proved the case beyond reasonable doubt. But the learned trial court reached into a perverse finding by giving the respondents benefit of doubt which is not tenable in the eye of law.

7. It is further submitted that the learned trial court has failed to appreciate the evidence on record in its proper perspective and acquitted the respondents in whimsical ground as such the order of acquittal is liable to be set aside.

8. It is also the submission of learned counsel for the appellant that from the evidence of all the witnesses, it reveals that the respondents used criminal forces upon the appellant to extort money from him by compelling him to execute a mortgage deed without his consent but the said facts has not been

considered by the learned trial court as a result of which the respondents were acquitted in the case. It is also contended that the learned trial court has put more emphasis on some silly grounds to acquit the respondents which cannot be acceptable in the eye of law.

9. In support of his submission, learned counsel has placed reliance on the following case laws –

- a. *State of Goa vs. Sanjay Thakran and another (2007) 3 SCC 755.*
- b. *Budh Singh and others vs. State of UP (2006) 9 SCC 731.*

10. *Per contra*, learned counsel for the respondents submits that the prosecution case is full of discrepancies and infirmities not inspiring confidence in the mind of the trial court that the respondents were guilty for the alleged offence. Though the cognizance was taken u/s 420/447/506/34 IPC but after examination of some witnesses of the complainant before charge, the trial court framed charge u/s 352/ 506/ 34 IPC. It is further submitted that there was no whisper in the evidence of the witnesses that the respondents used criminal force to the complainant or showed criminal intimidation for commission of the alleged offence.

11. According to the learned counsel for the respondents, the offence committed pertaining to the matter in the year 2009 and after fifteen years, there is nothing to remain to decide the matter which is trivial in nature.

12. In support of his submission, learned counsel has placed reliance on the following case law –

- a. Mallappa vs. State of Karnataka, in criminal appeal no 1162/2011 dated 12/02/2024.

13. I have considered the submissions of the learned counsel for the parties. I have also perused the Judgment of the trial court and the evidence of the witnesses.

14. According to the complainant/ appellant, he had a boundary dispute with respondent no. 7 Hemanta Mandal and regarding this fact, a meeting was called but the complainant failed to attend the said meeting because in the letter, the date and time of the meeting was not clearly mentioned. Therefore, on 01/02/2009, at about 12 noon, another meeting was convened in front of Bamunijhara Kali Mandir and a fine of Rs. 7500/- was imposed on him for not attending the earlier meeting. The further case of the complainant is that the respondents threatened him to make payments even by selling his ox, the only resource for cultivation. It was also alleged that a mortgage deed was prepared by using force in favour of one Govinda Das and obtained signature of the complainant under duress. The money was then paid by Govinda Das on his behalf to one Badal Chandra. Later on, the complainant paid the said amount but the mortgage deed was not returned to him. The other witnesses of the complainant also stated in the same tune by stating that the respondents threatened the complainant/ appellant to put his signature in the mortgage deed.

15. Learned counsel for the appellant stressed his argument on the point that the respondents used criminal force towards the complainant at the time of executing the mortgage deed. Hence, section 352/506 of IPC is attracted here in this case.

16. Section 350 of IPC deals with "*Criminal force*" which is reproduced as follows –

“Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

17. Section 503 defines Criminal intimidation and it is reproduced as follows –

“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

18. On perusal of the aforesaid provisions, it reveals that, in both the sections intention to cause injury is required. However, from the evidence of the witnesses it cannot be ascertained whether there was any intention of the respondents to cause any physical injury to the complainant/ appellant. Only to threaten a person to put his signature on a paper is not sufficient to attract the provisions of Section 352 or 506 IPC.

19. In the case of ***State (through Mapusa Police Station) vs. Pravin Patel***, reported in (2019) 0 Supreme (Bom) 103, it was held that -

“High Court has to bear in mind that presumption of innocence of an accused is strengthened by his acquittal and unless there are strong and compelling circumstances which rebut

presumption and conclusively establish the guilt of the accused, the order of acquittal cannot be set aside unless the order of acquittal is perverse, totally against the weight of evidence and rendered in complete breach of settled principles underlying criminal jurisprudence, no interference is called for with."

20. In ***Hakeem Khan and others Vs State of Madhya Pradesh***, reported in (2017) 5 SCC 719, the Hon'ble Apex Court made a reference to the earlier ruling in the case of Murugesan, reported in (2012) 10 SCC 383. The Apex Court has held that the possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a Court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher Court would not take the view rendered by the subordinate Court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a Court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact whether it is agreed upon or not by the higher Court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial Court cannot be interdicted and that of the High Court supplanted over and above the view of the trial Court.

21. In ***Bhagwan Jagannath Markad and others Vs State of Maharashtra***, reported in (2016) 10 SCC 537, the Apex Court has held that if

the Appellate Court is to reverse the judgment of the trial Court, the reasoning of the trial Court has to be adverted to and reversal of acquittal is permissible only if the view of the trial Court is not only erroneous but also unreasonable and perverse. At the same time, the Appellate Court has full power to review the evidence and to reach at its own conclusion. The Appellate Court can set aside the acquittal if the acquittal is not justified. Of course, the Appellate Court has to consider the fact that the trial Court has the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the acquittal. If two reasonable conclusions can be reached, the Appellate Court should not disturb the finding of the trial Court.

21. In ***K. Venkateshwarlu Vs State of Andhra Pradesh***, reported in (2012) 8 SCC 73, the Hon'ble Apex Court has held that if the view taken by the trial Court is a reasonably possible view, the High Court cannot set it aside and substitute it by its own view merely because that view is also possible on the facts of the case. The High Court has to bear in mind that presumption of innocence of an accused is strengthened by his acquittal and unless there are strong and compelling circumstances which rebut that presumption and conclusively establish the guilt of the accused, the order of acquittal cannot be set aside. Therefore, unless the order of acquittal is perverse, totally against the weight of evidence and rendered in complete breach of settled principles underlying criminal jurisprudence, no interference is called for with it. Crime may be heinous, morally repulsive and extremely shocking, but moral considerations cannot be a substitute for legal evidence and the accused cannot be convicted on moral considerations.

22. In ***Kanhaiya Lal and others Vs State of Rajasthan***, reported in (2013) 5 SCC 655, the Apex Court refused to interfere with the acquittal by

observing that it is very difficult to hold that there are 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions' or 'glaring mistakes', in the order by which acquittal came to be recorded.

23. Applying the aforesaid principles in the matter in hand and under the facts and circumstances of the case, and for all the aforesaid reasons discussed above, this court is unable to agree with the submission of the learned counsel for the appellant/ complainant that the view taken by the learned magistrate in the present case is not a possible view in the matter. Taking into consideration, the restricted parameters in appeal against the acquittal, it is, therefore, not possible to interfere with the acquittal recorded by the trial court.

24. In the result, the appeal is dismissed and disposed of accordingly.

Send back the trial court record.

JUDGE

Comparing Assistant