

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 1591 OF 2011
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI GOBIN BASUMUTARY
SMTI CHINU DAS

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 1591 / 2011

U/S 387/34 OF I.P.C, R/W SECTION 25(1)(a) of ARMS ACT.

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI GOBIN BASUMUTARY AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI A. J SHARMA

CHARGE FRAMED ON : 03.08.2017
EVIDENCE RECORDED ON : 28.02.2018, 29.03.2018, 31.07.2018,
26.11.2019, 02.05.2019, 05.07.2019,
25.09.2019, 22.11.2019, 04.12.2019 &
07.12.2019
ARGUMENT HEARD ON : 26.02.2020
JUDGMENT DELIVERED ON : 26.02.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 14.11.2011 at about 9.00 AM, somebody called informant Sri Basu Sen from mobile No. 9402909430 and demanded money from the informant and threatened to kill the informant if he fails to meet the demand. The

informant then informed the matter to the Superintendent of Police, North Lakhimpur verbally. Thereafter, on 18.11.2011 two persons came to the house of informant to collect the money and threatened the family members of informant. The informant thereafter lodged an FIR about the occurrence before the O/C of Boginadi police station.

2. On receipt of the F.I.R, a case was registered being numbered as Boginadi P.S Case No. 183/11 and after investigation I.O of the case submitted charge sheet against accused persons Sri Pinku Doimary @ Pranab, Sri Gobin Basumutary and Smt. Chinu Das for the offences punishable u/s 387/34 of IPC, r/w section 25(1)(a) of Arms Act. On receipt of charge-sheet, cognizance was taken and process was issued to the above named three accused but the attendance of accused Sri Pinku Doimary @ Pranab could not be procured due to which the case against him was filed vide order dated 04.10.2016. The case then proceeded against the accused Sri Gobin Basumutary and Smt. Chinu Das. Copies of relevant documents were furnished to said two accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge was framed against the said two accused for the offences punishable u/s 387/34 of IPC, r/w section 25(1)(a) of Arms Act. The charges were then read over and explained to both the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined twelve witnesses, whereas the defence did not examined any witness. Accused Sri Gobin Basumutary was examined u/s 313 of CrPC. His statements are recorded in separate sheets and tagged with the case record. The examination of accused Smt. Chinu Das u/s 313 of CrPC was dispensed with finding no incriminating materials against her. Defence case is of total denial as it reveals from the statements made by accused Sri Gobin Basumutary and also the tenor of cross-examination of prosecution witnesses by defence. I have heard both sides and considered the documents available in the case record.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. POINTS FOR DETERMINATION:

(i) Whether both the above named accused persons on 14.11.2011 at about 9.00 AM and on 18.11.2011 at about 9.00 PM, in furtherance of their common intention, in order to commit extortion, have put or attempted to put informant Sri Basu Sen and his wife in fear of death or of grievous hurt, and thereby committed an offence punishable u/s 387/34 of IPC?

(ii) Whether in the year 2011 both the above named accused persons along with the absconding accused Sri Pinku Doimary were in possession of one 7.65 mm auto pistol No. 110, USA made with one black coloured magazine without any licence in violation of section 5 of Arms act 1959, and thereby committed an offence punishable u/s 25(1)(a) of Arms Act?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:**POINT NO. 1 AND 2:**

6. For the sake of convenience and as because point no. 1 and 2 are interconnected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, informant Sri Basu Sen as PW-2 in his evidence has stated that at the time of occurrence one unknown person called him over phone and demanded Rs. 2,00,000/- (rupees two lakhs) and also threatened that he will face difficulty if he fails to pay the money. The said unknown person called him several times to demand money. He then approached police and lodged FIR. Ext-2 is that FIR in which Ext-2(1) is his signature. Similarly, PW-1 Sri Satyanarayan Sharma in his evidence has stated that on the day of occurrence he found a letter lying on the main gate of his shop. The aforesaid letter was addressed in the name of his shop and money was demanded from his shop by that letter. He then received phone call through which money was demanded from him. Police seized the aforesaid letter from him and prepared seizure list. Again, PW-3 Smt. Dipa Sen, who is the wife of informant, in her evidence has

stated that at the time of occurrence somebody caller her husband over phone and demanded money.

8. Now, on perusal of the evidence deposited by PW-1, PW-2/informant and PW-3/informant's wife, it is seen that though they have supported the allegations of demand of money and threat to the informant over phone, but they have not stated anything about the identity of the person who demanded money from the informant or gave such alleged threat to the informant. In fact, PW-1 and PW-2 in their respective cross-examination have specifically stated that accused Chinu Das did not made the aforesaid demand call. Also, PW-3 has specifically stated that she do not know that who made the aforesaid demand call to the informant. As such, it is clear that there is nothing in the evidence of PW-1, PW-2 and PW-3 which can show that accused Sri Gobin Basumutary and Smt. Chinu Das are involved in the making of alleged demand call to the informant and giving threat to the informant. Therefore, let me proceed with the discussion of evidence deposited by other witnesses to find out that whether there is any incriminating material against the above named two accused.

9. In the above context, PW-12 Sri Rudra Kt. Hazarika (Retired ASI of Police), who investigated this case, in his evidence-in-chief has stated that during investigation he learnt that some articles are kept hidden in the house of accused Sri Gobin Basumutary. Accordingly, on 25.11.2011 he along with co-accused Pinku Doimary and Moina Das went to Kaupatoni village and recovered one 7.65 mm auto pistol No. 110, USA made, from the house of accused Gobin Basumutary on being led and shown by co-accused Pinku Doimary and Moina Das. Thereafter, he seized the aforesaid pistol and prepared seizure list. Ext-6 is the seizure list in which Ext-6(2) is his signature.

10. From the statements made by PW-12 in his evidence-in-chief as aforesaid, it is seen that he has allegedly seized a pistol from the house of accused Sri Gobin Basumutary. The aforesaid allegation made by PW-12, if presumed to be true, in my opinion, will attract the offence punishable u/s 25(1)(a) of Arms Act. Therefore, it is necessary to find out whether the aforesaid statement of PW-12 can be believed or not. In this respect, perusal

of Ext-6 seizure list shows that three persons are named therein as witnesses in presence of whom the aforesaid pistol was allegedly seized. One of the said seizure witness, namely, Smt. Dayawati Basumutary, as PW-11 in her evidence-in-chief has stated that about 10 years back on a day in the night hour, police came to her house and took her son/accused Sri Gobin Basumutary from her house. She do not know that why her son was taken by police. In Ext-6 paper, the Ext-6(1) is her signature. She do not know that why she signed the Ext-6 paper. The aforesaid signature was taken by police in police station. In her cross-examination, PW-11 has stated that Ext-6 paper was blank at the time when she had put her signature on that paper.

11. From the statement made by PW-11/seizure witness, it is clear that she has not at all supported the case of prosecution as regards the seizure of pistol from the house of accused Gobin Basumutary. Further, the other two witnesses named in Ext-6 seizure list cannot be examined as their attendance could not be procured before the court by prosecution inspite of repeated efforts to serve summons upon them. Under such circumstances, it is clear that the prosecution has failed to produce any independent witness to show that the aforesaid pistol was seized from the possession of accused Sri Gobin Basumutary.

12. Besides the above, it is rightly pointed out by learned counsel for defence at the time of argument that the pistol seized vide Ext-6 was admittedly (admitted in cross-examination of PW-12) not sent to an expert to get opinion as to whether the seized article is actually an arms or ammunition within the meaning of Arms Act.

13. In addition to the above, though PW-12 in his evidence-in-chief has stated that he came to know from secret sources that accused Smt. Chinu Das is involved in the commission of the alleged offence, but he has not stated specifically that from what source he got such information and what evidence he got against accused Smt. Chinu Das regarding her involvement in the commission of alleged offences. Therefore, in the absence of any admissible evidence against accused Smt. Chinu Das, it cannot be said on the basis of the aforesaid sole statement of PW-12 that said accused was actually involved in the commission of alleged offences.

14. Moreover, PW-12/I.O has admittedly not made any effort during investigation to find out that in whose name the mobile number mentioned in the FIR is registered. As such, there is nothing to show that the aforesaid mobile number belongs to either of the two accused.

15. Before parting with the discussion, I deem it fit to mention here that PW-4 Md. Nizamuddin @ Nizam Ali, PW-5 Nirmul Dey, PW-6 Sri Dharmaraj Upadhaya, Pw-7 Sri Haren Ayengia, PW-9 Sri Kusharam Saikia and PW-10 Sri Samidhar Kaman in their respective evidence have not stated any incriminating material against accused Sri Gobin Basumutary and Smt. Chinu Das. Also, though PW-8 Sri Moon Das in his evidence has stated that he learnt that accused Smt. Chinu Das was apprehended in connection with this case for demanding money from informant, but in his cross-examination, PW-8 has stated that he cannot say who demanded money from the informant. As such, it is clear that the version stated by PW-8 is contradictory and the same cannot be believed.

16. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that accused Sri Gobin Basumutary and Smt. Chinu Das have committed the offences as alleged in the FIR.

DECISION: This point is therefore decided in the negative and goes against the prosecution.

ORDER

17. In view of the discussions made above and the decisions reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Gobin Basumutary and Smt. Chinu Das have committed the offences punishable under section 387/34 of IPC, r/w section 25(1)(a) of Arms Act as alleged, and as such, the accused person are acquitted of the charges under section 387/34 of IPC, r/w section 25(1)(a) of Arms Act of IPC on benefit of doubt and they be set at liberty forthwith.

The articles seized vide M.R No. 68/11, 69/11, 70/11, 71/11, 72/11, 73/11, 74/11 and 75/11 shall be kept in the P.I Malkhana until further order

as the same may be required for trial of co-accused Sri Pinku Doimary @ Pranab against whom the case is kept filed. Be it mentioned here that the articles mentioned in exhibit – 4 seizure list vide M.R No. 74/11 are not produced before this court as the same are in the custody of Learned Court at Dhemaji district as stated by PW-12/I.O. Also, the articles mentioned in serial no.1 & 2 of exhibit – 2 seizure list vide M.R No. 73/11 are not produced before this court as the same are not allegedly submitted by the I.O.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 26th day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

- Exhibit.1 – Seizure list
- Exhibit.2 – FIR
- Exhibit.2 – House search and seizure list
- Exhibit.3 – Seizure list
- Exhibit.4 – Search and seizure list
- Exhibit.5 – Seizure list
- Exhibit.6 –Seizure list
- Exhibit.7 – Sketch map
- Exhibit.8 – Seizure list
- Exhibit.9 – Seizure list
- Ext. 10 – Seizure list
- Ext. 11 – House search and seizure list

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

- P.W. 1 – Sri Satya Narayan Sarmah
- P.W. 2 – Sri Basu Sen
- P.W. 3 – Smt. Dipa Sen
- P.W. 4 – Md. Nizamuddin @ Nizam Ali
- P.W. 5 – Sri Nirmal Dey
- P.W. 6 –Sri Dharmaraj Upadhaya
- P.W. 7 – Sri Haren Ayengia
- P.W. 8 – Moon Das
- P.W. 9 – Sri Kushara Saikia

P.W. 10 – Sri Samidhar Kaman

P.W. 11 – Smt. Dayawati Basumutary

P.W. 12 – Sri Rudra kt. Hazarika (I.O)

(D) DEFENCE WITNESSES

NIL

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur