

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

G.R CASE NO: 2907 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI GOPAL CHETRY AND
SRI BHAKTA BAHADUR CHETRY.

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

GR CASE NO: 2907 / 2016

U/S 420/34 OF IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI GOPAL CHETRY AND ANR

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI M. HAZARIKA

CHARGE FRAMED ON : 04.04.2019
EVIDENCE RECORDED ON : 12.06.2019,17.08.2019, 31.10.2019,
03.02.2020
ARGUMENT HEARD ON : 02.07.2020, 11.11.2020
JUDGMENT DELIVERED ON : 11.11.2020

JUDGMENT

PROSECUTIONS CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that the father's name of informant Sri Dambaru Bahadur Chetry is Samser Bahadur Chetry and the mother's name of informant is Late Chandramaya Chetry. After the death of informant's mother, his father married another four wives out of which only Smt. Dheva Mogor @ Chandramaya is alive. Informant's father was an employee in Assam Rifles and he expired in the year 2009. Thereafter, said

Smt. Dheva Mogor impersonated herself as informant's mother Chandramaya Chetry by forging documents with the help of accused Gopal Chetry and Bhakta Br. Chetry and thereby misappropriated an amount of Rs. 5,00,000/- (rupees five lakhs) belonging to informant's father and also the family pension since the year 2016. The informant has therefore lodged an FIR about the occurrence before the I/C of Silonibari police out-post.

2. On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 1157/16 and after investigation I.O of the case submitted charge sheet against accused persons Sri Gopal Chetry and Sri Bhakta Br. Chetry for the offences punishable u/s 420/406/34 of IPC. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge was framed against both the above named accused persons for the offence punishable u/s 420/34of IPC are read over and . The charge was then read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial. Be it mentioned here that the case diary did not revealed sufficient incriminating materials for the offence u/s 406 of IPC due to which no formal charge was framed for that section against the above named accused.

3. The prosecution in support of its case examined seven witnesses, whereas the defence did not examined any witness. The accused persons were examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused persons and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

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

5. POINTS FOR DETERMINATION:

(i) Whether the accused persons in furtherance of their common intention, in the year 2016, cheated informant Sri Dambaru Br. Chetry by dishonestly inducing him to deliver his mother's family pension amount and other monitory benefits to them; or by dishonestly inducing the concerned

Government department officials to deliver informant's mother's pension amount and other monetary benefits to them, and thereby committed an offence punishable u/s 420/34 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

6. As regards the aforesaid point for determination, informant Sri Dambaru Br. Chetry as PW-1 in his evidence-in-chief has stated that his mother Chandramaya is the first wife of his father Samser Br. Chetry. After marrying his mother, his father married four more wives. His mother Chandramaya Chetry expired in the year 1970. The last and fifth wife of his father is Smt. Dheva Mogor. His father married said Dheva Mogor in the year 1995 and at present she is the only living wife of his father as the previous four wives have already expired. His father was an employee of Assam Rifles and used to get pension after retirement. As such, on the death of his father, his mother Chandramaya Chetry was entitled to get family pension. However, in the year 2016 he came to know from the accused persons that they along with said Smt. Dheva Mogor have misappropriated the family pension of his mother Chandramaya Chetry. He also came to know from the accused persons that said Smt. Dheva Mogor introduced herself as Chandramaya before the Assam Rifles office and thereby obtained the family pension. He then lodged an FIR against the accused person. Exhibit 1 is the FIR in which Exhibit 1(1) is his signature. During investigation, police seized one certificate and one joint photograph of his father & mother from him. Exhibit 2 is the seizure list in which Exhibit 2(1) is his signature. Material exhibit- 1 is the aforesaid certificate and Material Exhibit - 2 is the aforesaid photograph. Accused Bhakta Br. Chetry is his own brother (i.e. the son of Chandramaya Chetry) and accused Gopal Chetry is the son of said Bhakta Br. Chetry.

7. From the evidence deposed by PW-1/informant as narrated above, it is seen that he/PW1 allegedly came to know from the accused persons that Smt. Dheva Mogor impersonated herself as Chandramaya Chetry in the Assam Rifles office in order to get the pension. Therefore, it is clear that PW1 has himself not seen said Smti Dheva Mogor impersonating as Chandramaya Chetry. As such, the aforesaid allegation deposed by PW1 is clearly secondary evidence and the same cannot be believed unless corroborated by some other

reliable evidence. It is worth mentioning here that the aforesaid allegation of PW1 even do not get any corroboration from the statements made by the accused persons during their examination u/s 313 of CrPC. Moreover, none of the other witnesses examined by the prosecution have anywhere claimed that they have seen Smti Dheva Mogor impersonating herself as Chandramaya Chetry in the Office of Assam Rifles. Hence, it is clear that the aforesaid allegation made by PW1 is not reliable and cannot be believed.

8. Besides the above, there is nothing else in the evidence deposed by PW-1 which can specifically show that the accused persons dishonestly induced the informant to deliver his mother's pensionary benefits to Smt. Dheva Mogor.

8. Further, it is clear from the evidence of PW-1 that his mother died in the year 1970, and as such, his mother predeceased his father. Thereafter, his father married another three women and lastly Smt. Dheva Mogor in the year 1995. His father ultimately expired in the year 2009. Now, it is generally observed that the pension rules of most of the government departments require that the wife of an employee must be living at the time of death of that employee in order to get family pension in her name. In the case in hand, it is clear that the mother of informant, namely, late Chandramaya Chetry expired in the year 1970 i.e., much prior to the death of informant's father. As such, it appears that informant's mother may not be eligible to get family pension as she predeceased her husband. In that view of the matter, the question of cheating as alleged does not arise at all.

9. It is also important to add at this juncture that the prosecution has not produced any document or examined any official witness to specifically prove that the family pension of Late Samser Bahadur Chetry was granted in the name of informant's mother Late Chandramaya Chetry. In fact, there is no document or specific evidence to show that informant's father Late Samser Bahadur Chetry was actually an employee of Assam Rifles and on the death of said Samser Bahadur Chetry his family was granted pension by the Assam Rifles.

10. Before parting with the discussion, I would like to mention here that PW2 Sri Bom Bahadur Chetry, PW3 Smti Bina Chetry @ Rina, PW4 Sri Sudarshan

Payeng, PW5 Sri Laal Bahadur Mallah, and PW6 Sri Lakhi Gohain in their respective evidence have also failed to mention specifically that how the accused persons cheated the informant. There is nothing new in their evidence except what has been alleged by PW1 in his evidence.

11. Considering the above discussion, it is evidence that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused persons have cheated the informant or the authority of Assam Rifles in order to get family pension as alleged.

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

ORDER

12. In view of the discussion made above and the decision 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 Gopal Chetry and Sri Bhakta Br. Chetry have committed the offences punishable under section 420/34 of I.P.C as alleged, and as such, the above named accused persons are acquitted of the charges under section 420/34 of I.P.C on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused persons 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 11th day of November, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

Exhibit.1 – F.I.R

Exhibit.2 – Seizure list

Material Exhibit.1 – Certificate

Material Exhibit.2 – Joint photograph

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Sri Dambar Bahadur Chetry

P.W. 2 – Sri Bom Bahadur Thapa

P.W. 3 – Smt. Bina Chetry @ Rina

P.W. 4 – Sri Sudershan Payeng

P.W. 5 – Sri Lal Bahadur Mallah

P.W. 6 – Sri Lakhi Gohain

P.W. 7 – Sri Shiva Prasad Bonia

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur