

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : CR 2210 of 2008

Shri Kachu Roy.....Complainant

-vrs-

1. Shri Sudhir Ranjan Roy
2. The B. D. O., Agamani Dev. Block.
(Shri Bhaskar Jyoti Mohanta)

.....Accused Persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution---- Md. A. Rezzak, Shri P. Chakravorty & S. Nahar

For the defence----- Md. A. Latif & Md. M. A. Zaman

Evidence recorded on : 26.9.12 & 28.01.13

Argument heard on : 29.4.13

Judgment delivered on : 13.5.13

Penal law involved : u/s 409/420 IPC

J U D G M E N T

1. This complaint was lodged on 19.11.08 by one Shri Kachu Roy to the effect, *inter alia*, that his mother-in-law namely Gandhamayee Roy was selected for allotment of a house under the Indira Avas Yojana (for short, "Yojana") under the Agamani Development Block (for short, "Block") for the year 2006-07 and accordingly an amount of Rs.27,000/- was sanctioned for that purpose. On death of Gandhamayee in 2005, the complainant & his wife Smti Malancha Bala Roy approached the accused persons who then assured them that the sanction & allotment would be transferred in the name of said Malancha. The accused persons also took signatures/thumb-impressions of Malancha on some official forms & blank sheets of paper but ultimately did not act as they promised. On 02.11.08, when Malancha approached them again, they flatly refused to construct any house for her. The Complainant later learnt that the accused persons embezzled the entire amount sanctioned for that matter. Hence this complaint.

2. My learned predecessor examined of the complainant & his witness u/s 200/202 CrPC and took cognizance of the offences punishable u/s 406/420 IPC vide. order dated 06.8.09. On appearance of the accused persons in response to the summons issued, the complainant examined (in-chief) three witnesses u/s 244 CrPC. The charges u/s 409/420 IPC was then framed against and read over & explained to the accused persons by my learned predecessor, after hearing both sides, to which the accused persons pleaded not guilty and claimed to be tried, as the order dated 23.11.12 shows. The three PWs were, thereafter, cross-examined by the defence and the complainant did not express any willingness to adduce further evidence. The accused person were examined u/s 313 CrPC ; they denied the allegations and declined to adduce any evidence. I have heard the argument of both sides at length.

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3. The **points for determination** in this case, given the charges framed by my learned predecessor, are :

(i) Whether the accused persons being the public servants in the capacity of the Secretary, Ranpagli GP and the BDO, Agomani Block, misappropriated Rs.27,000/- which was sanctioned for building a house for Gandhamayee Roy under the Yojana for the year 2006-07 and thus committed an offence punishable u/s 409 IPC ;

(ii) Whether the accused persons cheated the complainant & his wife Malancha and thereby dishonestly induced Malancha to put signatures/marks on some official forms & blank sheets of paper which could be converted into valuable securities and thus committed an offence punishable u/s 420 IPC ;

And, if so, what punishment the accused persons deserve.

Decision & reasons therefor :

4. Already noted, the prosecution has examined three witnesses in this case out of whom PW-1 Shri Kachu Roy is the complainant, PW-2 Smti Malancha Roy is his wife and PW-3 Md. Azimuddin Sheikh was a Member of the concerned GP.

5. PW-1 deposed to the effect that accused Shri Sudhir Ch. Roy was the Secretary, Ranpagli GP, and accused Shri Bhaskar Jyoti Mohanta was the B.D.O., Agamoni Block, in the year 2006-07. In that year, a house worth Rs.27,500/- was sanctioned to PW-1's mother-in-law namely Gandhamoi Roy and accused Sudhir told PW-1 that the same would be allotted in the name of his wife (PW-2). Accused Sudhir then took signatures on blank sheet/s of paper but later refused to allot the house. During cross-examination PW-1 disclosed *inter alia* that he did not see any document of the alleged sanction.

6. PW-2 testified to have learnt from accused Shri Sudhir Ch. Roy that in the year 2006-07 a house was sanctioned under the Yojana in the name of her mother Gandhamai Roy but the accused person did not allot the house.

7. PW-3 Md. Azimuddin Sheikh claimed to have been a Member of the Ranpagli G.P. and deposed to the effect that in the year 2006-07 a house was sanctioned under the Yojana in the name of Gandhamayee Roy as he (PW-3) saw in the list but the same was not allotted to PW-1&2 though they tried for it.

8. The PWs deposed orally that a house was granted in the name of Gandhamoyee under the Yojana but the complainant has not produced any document to prove the alleged grant. It is highly improbable that such grant would be made in favour of a person who admittedly died prior to it. In fact, this oral evidence of the PWs is fully hit by Sec.92 of the Evidence Act in my considered opinion, because, such grant is "required by law to be reduced in the form of a document". PW-1 claimed that accused Sudhir took signatures of PW-2 on blank sheet/s of paper [vide. Point No.(ii) above] but PW-2 herself is silent about it. There is absolutely no evidence on records to show that the accused persons misappropriated any amount which is the essence of the charge u/s 409 IPC [Point No.(i)] vide. the decision of the Hon'ble High Court in Shri Rashi Charan Deb Barma -Vrs- State of Tripura reported in MANU/GH/0341/2010 (Para : 8-10).

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9. The occurrence of refusal on the part of the accused persons to construct the house, as alleged, admittedly took place on 02.11.08 whereas the complaint was lodged on 19.11.08 i.e. after more than a fortnight. The complainant has not come up with any explanation for the delay.

10. Situated thus, I am of the considered opinion that the prosecution has failed to its case beyond reasonable doubts and, hence, I acquit the accused persons of the charge u/s 409/420 IPC and direct that they be set at liberty forthwith. Their bail-bonds shall stand discharged on expiry of six months from today vide. 437-A CrPC.

Typed & corrected by me and given under my hand and seal of the Court on this 13th Day of the Month of May in the Year 2013.

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Addl. Chief Judicial Magistrate,
Dhubri : Assam