

**IN THE COURT OF MISS NIDHI GOVIND RAO,
JUDICIAL MAGISTRATE SECOND CLASS,
BETTIAH, WEST CHAMPARAN (BIHAR)**

SUDAMA BEEN V/S KARIMAN BEEN
Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)

FORM - A

IN THE COURT OF JUDICIAL MAGISTRATE SECOND CLASS	
PRESENT- MISS NIDHI GOVIND RAO,	
JUDICIAL MAGISTRATE SECOND CLASS	
Sudama Been V/S Kariman Been	
Date of Judgment- 10.07.2026	
Complaint case no. 1652 (C)/ 2002	
CIS No.- CRI- (P)1652/2013	
(Charged u/s.- (323,379,427/34 of I.P.C.)	
INFORMANT/ COMPLAINANT	Sudama Been, S/O Lt. Nath Raut, r/o Ranipakadi, P.S.-Bettiah Mufssil, District -Bettiah, West Champaran)
REPRESENTED BY	Ld. Advocate Ashish Kumar Verma
ACCUSED PERSON	1. Kariman Been S/O Lt. Ramdyal Been 2. Ramdhari Been S/O Lt. Seeta Ram Been
REPRESENTED BY	Ld.Advocate Shree Kaushal Kishor Rai Ld. Advocate Shree Brijesh Jha

FORM B

Date of Offence	05.06.2012
Date of FIR/Complaint	07.06.2013
Date of Chargesheet	
Date of Charge frame/ Substance of Accusation	06.02.2017

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Date of Commencement of Evidences	30.01.2018
Date on which Judgment is reserved	02 .07.2026
Date of the Judgment	10 .06.2026
Date of the Sentencing Order, if any	----

Accused Details

R a n k o f A c c u s e d	Name of Accused	Date of Arrest	Date of Release d on Bail	Charg es frame d u/s.	Whethe r Acquitt ed Or Convict ed	Senten ce Impos ed	Period Of Detenti on Under gone during Trial for purpose of Section 428, Cr.P.C
1.	Karima n Been	1/10/201	1/10/20	323 379,4	Acquit	<u>N/A</u>	<u>N/A</u>

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SUDAMA BEEN V/S KARIMAN BEEN
Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)

2.	Ramdhari Been	1/10/201 5	1/10/20 15	323 379 427/3 4	Acquitt ed	N/A	N/A
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FORM - C

Prosecution/Defence/Court Witness :-

A- Prosecution Witness :-

Sr. No.	Name	Nature of witness
1.	Thagiya Devi	Hearsay Witness

B- Defence witness:-

Sr. No.	Name	Nature of witness
1.	N/A	N/A

C- Court witness:-

Sr. No.	Name	Nature of witness
1.	N/A	N/A

List of Prosecution/Defence/Court exhibit :-

A- Prosecution Exhibit :-

c	Exhibit no.	Desription
1.	N/A	N/A

B:- Defence Exhibit :-

Sr. No.	Name	Nature of witness
1.	N/A	N/A

C- Court Exhibit :-

Sr. No.	Name	Nature of witness
1.	N/A	N/A

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Judgment

1. The above named accused persons stand charge for committing offence punishable under section 323,379,427 /34 of the Indian Penal Code 1860.
2. The case of the complainant, as per the complaint petition in brief is that, the accused had trespassed into the complainant's orchard and were attempting to lode a Semal tree which they had cut down in 6-7 pieces with the intent to steal and lode into a bullock cart, when the complainant, accompanied by witnesses, arrived at the spot and confronted them. Upon being questioned, the accused began hurling filthy abuses at the complainant and assaulted him. While fleeing the spot they threatened that they would return at any time to take away the cut pieces of the tree. In the course of assault, the accused snatched a gold locket worth rupee 7000 from the complainant's neck. The complainant reported to the local police station, but no action was taken then a writte application was also submitted to the S.P., but no action was taken.
3. On the basis of complaint petition, statement of complainant Sudama Been on oath, and deposition of inquiry witnesses, the Ld. court of judicial magistrate first class, Bettiah, summon to the accused persons namely (1).Kariman Been (2). Ramdhari Been on 06/03/2014 to face trial for committing the offences punishable under section 323,379,427/34 IPC. Thereafter, the Court proceeded to record before charge evidence on 23/11/2015.
4. Before charge evidence was closed on 04/01/2017 and on the basis of evidence available on record, charge was framed against the above-named accused persons.
5. Charge was framed under section 323,379,427 read with section 34 of Indian penal code 1860 on 06/02/2017 and read over and explain to the aforesaid accused persons in Hindi, to which he pleaded not guilty and claim to be tried.
6. One of the accused in the case, Ramdhari Been, passed away on 01/05/2020, during trail. As his death certificate was on record, his name was expunged from the trial proceeding.

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Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

7. Thereafter, on after charge evidence was order to be closed and on 03/09/2025, statement of accused persons under section 313 of the Code of Criminal procedure (hereinafter called as Cr.P.C.) was recorded on 26/05/2026. In their statement the accused persons claimed to be innocent while being examined before the Court for the purpose of enabling all the accused persons to explain any circumstance appearing in evidence against him and denied all the allegations levelled against him.

8. The version of defence is the complete denial of the alleged occurrence and innocence of the accused. Defence voluntarily preferred not to be lead any evidence in their defence. Defence evidence was closed on 19/06.2026. thereafter, the matter was fix for arguments.

9. Heard the Ld. Counsel of the above named accused persons. Complainant is not present before the court since long time so his chance to being hear is close by the Court.

POINTS FOR DETERMINATION

10. Now, the point for the determination is that, whether the complainant has been able to prove the charges levelled against the accused persons beyond the shadow of all reasonable doubts ?

- Whether the accused persons on 05/06/2012 at 11.00 a.m. at Awaraiya Tola (Rani Pakadi) Bettiah P.S.- Bettiah Mufassil West Champaran, voluntarily caused hurt to complainant Sudama Been and thereby committed an offence punishable under section 323 IPC?
- Whether the accused persons on 05/06/2012 at 11.00 a.m. at Awaraiya Tola (Rani Pakadi) Bettiah P.S.- Bettiah Mufassil West Champaran, intending to take dishonestly a certain movable property namely a Semal tree worth Rupee 20,000 out of the possession of the complainant Sudama Been without his consent and moved it in order of such taking and thereby committed an offence punishable u/s 379 of IPC?
- Whether the accused persons on 05/06/2012 at 11.00 a.m. at Awaraiya Tola (Rani Pakadi) Bettiah P.S.- Bettiah Mufassil West Champaran, accused are causing mischief and thereby causes loss

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SUDAMA BEEN V/S KARIMAN BEEN

**Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

or damage to the amount of fifty rupee or upwards, which is punishable u/s 427 of IPC?

- They were causing these offences in the furtherance of common intention to all ?

FINDINGS AND DECISION THEREON

11. The complainant got examine two witnesses in the before charge evidence stage namely (1). Thagiya Devi (2). Sudama Been as PW1, and PW2. Only Thagiya Devi wife of complainant is turn up for her examination after charge when call upon to do so remaining witnesses never turn up, once call upon after framing of charges to be further cross examined. No other oral or documentary evidence has been adduced. Further, no oral and documentary evidence brought forth by the defence as well. Hence, the only question that remain before the court is whether the evidence of complainant is sufficient and complete, linking all the direct and circumstantial evidence to prove the guilt of the accused beyond reasonable doubts.

12. In a complain case, the complainant has to be prove the case beyond the shadow of all reasonable doubts. In a warrant triable case the complainant has also adduce the evidence after the charge are framed, if call upon to do so. However, in this present case only complainant wife come before the court after charge as PW 01 to be further cross examined. The defence could not an opportunity to cross examined other complainant's witness, further due to which it shall be prejudiced if the evidence lead by such witness in their examination in chief would be read in. Hence, it is the evidence brought forth by the complainant as PW 01 that need to be discussed. Upon being examination in chief, PW1 stated that, the incident took place five year ago. The accused cut down two Sisam tree from our field. When we confronted them, they assaulted us, and Kariman Been snatched away my locket, which was worth 5000 (five thousand) rupees.

13. Upon being cross examined, she stated that accused are our pattidars. The joint property was not divided, accused are also claim on the property on which Sisam tree was situated. We live separately, each of us cultivates the land currently in our possession. My husband not sell any land.

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JUDICIAL MAGISTRATE SECOND CLASS,
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**SUDAMA BEEN V/S KARIMAN BEEN
Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

14. In her after charge further cross examination she stated that, I am not know how many cases are ongoing between two parties, nor do I know how much land is under dispute. In para 2 of her cross examination she said, when she reached to the place of incident Kaliya Been, Shivshankar Been, Chandeshvar Been, Mohan Been and other were there. In para 6 of her cross examination she said, the dispute has arisen regarding the felling of a Semal tree, the accused lay claim to it, and we lay our own claim. In para 7 she said that, the land on which the Semal tree stands has not been partitioned. In para 8 she said that, they have their own possession on this land when she came to the in-laws house. In para 9 she said that she not know about any partition suit is filed. In para 12 she said that when she reached at the spot then Kaliya Been, Shivshankar Been, Mohan Been etc has told that the tree cut down on Wednesday evening. I did not see the tree being cut down. In para 13 she said, when she reached her husband had fallen towards the road. He was not bleeding, and he was conscious. He told about his injuries and complained of pain in his head and neck, but he not consulted any doctor. Land is Kahtiyani or documentary she did not know. She did not tell about area of the disputed In para 16, she said that, she could not tell about Khata and Khesra of the disputed land. In para14 she said that she did not go to the police station because accused are filed a case in police station.

15. Thereafter, no other witnesses are examined on behalf of the complainant. Ld. Counsel on behalf of the defence has also not produced any oral or documentary evidence. However, his oral submission was that the case has been instituted in year 2013 and since then ample opportunity has been given to the complainant yet the case has not been proved beyond the shadow of the reasonable doubt.

ARGUMENTS AND REASONING

16. Heard the Ld. Counsel on behalf of the accused person and complainant at length. It has submitted on behalf of the defence that false and concocted case has been filed by the complainant against the accused person. PW1 admitted in their examination that, the complainant and the accused are pattidars and there has been no formal partition between the two and they live separately. This case has been filed to harass by the complainant. It was further submitted that the only wife of complainant has been examined and no other witnesses has come to

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Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

support of the complainant, despite the offence as alleged taking place in public. The offence has not been proved beyond the shadow of reasonable doubt. As, such, the accused persons deserve acquittal.

17. Let us now examine whether the complainant has made out its case under section 323 IPC. For offence under section 323 IPC the complainant shall prove the following ingredients :-

- (a). The accused caused bodily pain, disease or infirmity to the person.
- (b). The accused did so with the intention of causing hurt or with the knowlagde that the hurt was likely to be caused, and
- (c). The hurt was caused voluntarily.

Now, herein, in paragraph no.5 of the cross examination of PW-01, the witness stated that, when she reached the place of occurrence there 10-15 people were there. In para 13 she said, when she reached her husband had fallen towards the road. He was not bleeding, and he was conscious. He told about his injuries and complained of pain in his head and neck, but he not consulted any doctor. It is evident from the witness's statement that she did not personally see the incident occurs, her testimony based on what she heard from the others. This statement is a hearsay and not admissible in evidence because it is against the rule of best evidence. The evidence available on record is not sufficient to the prove the guilt of the accused beyond reasonable doubt under section 323 IPC as well.

18. Coming to the charge levelled against the accused for offence punishable under section 379 of IPC. Let us examine whether complainant has been able to prove the offence of the theft under section 379 of IPC beyond the shadow of reasonable doubt. In order to establish section 379 of IPC, the complainant had to prove following ingredients of the offence :-

- (a) Dishonest intention to take property.
- (b). The property must be movable.
- (c). Taking property out of possession without concent.
- (d). property must be moved.

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SUDAMA BEEN V/S KARIMAN BEEN

**Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

The complainant alleged that accused A1 and A2 cut the Semal tree in intention to steel and put into a bullakcart. The most important ingredient to be proved in the first place is that the complainant was in the possession of the Semal tree. Only when the complainant was in possession of the tree, that it can be taken out of his possession without his consent. PW-01 stated in his examination in chief, accused are our pattidars. The joint property was not divided, accused are also claim on the property on which Sisam tree was situated and her further cross examination paragraph-6 she said that the dispute arises over felling of a Semal tree. In paragraph-7 of the further cross examination she said that, the land which the Semal tree situated has not been partitioned. In paragraph 12 of further cross examination she said that, Kaliya Been, Chandeshvar Been, Mohan Been, Shankar Been were said to her, tree was cut down on Wednesday evening, further she stated, I did not see it being cut.

It is evident from the aforementioned evidence that there are contradiction in the witness's testimony, during examination-in-chief, she speaks about a Sisam tree, whereas during cross examination, she refers to a Semal tree. As per para-7 of the cross examination it is clear that the land which Semal tree was situated is a joint property of accused and complainant. Thus, complainant has failed to establish his possession of the Semal tree. Therefore, the prosecution has failed to prove the charge under section 379 of IPC beyond the shadow of reasonable doubt.

19. Now, coming to the charge levelled against the accused for committing offence of mischief causing damage to the amount of fifty rupees punishable under section 427 of IPC. As per section- 427 IPC :-

- The accused must have the intention and knowledge to commit an act that may cause loss and damage to the person or the property.
- There must be loss or damage caused to the person.
- The value of loss and damage must be rupees fifty or upwards.

The main ingredient of the offence of mischief is intention to cause damage or wrongful injury to the public or an individual by accused. It was already been analyse that the complainant has failed to establish possession over the disputed Semal tree. The tree was located on the joint property. PW-01 said in para-16 of her crosss examination, land is

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JUDICIAL MAGISTRATE SECOND CLASS,
BETTIAH, WEST CHAMPARAN (BIHAR)**

**SUDAMA BEEN V/S KARIMAN BEEN
Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

Khatiyani or documentary she did not know, she could not tell about Khata and Khesra of the disputed land. It is evident from this statement that the land was in the joint possession of the accused and the complainant, and the accused did not intend to cause wrongful loss or damage to the complainant. Therefore, the prosecution has failed to prove the intention for charge under section 427 of IPC beyond the shadow of reasonable doubt.

20. complainant of the case is under legal obligation to prove each and every ingredient of the offence alleged to be committed by the accused person beyond reasonable doubt. Evidence adduce should be such as to point at nothing but the guilt of the accused. In the present case, the complainant had failed to discharge its onus. The evidence available on the record is not sufficient to prove the guilt of the accused beyond reasonable doubt.

21. In the result and for the forgoing reason, it is hereby, ordered that :-

Order

22. This court finds and holds that the accused person namely **1. Kariman Been (A1)**, is **not guilty** for the offence charged under section 323,379,427 of IPC for the want of evidence and benefit of doubt, and accordingly, accused person stands **Acquitted** from the aforesaid charge levelled against him.

The accused person is put to their liberty. The bail bond of accused persons shall remain in force for six months as per provision of 437 A of Cr.P.C.

O/C directed to recall the process issued by the court against the accused person (if any) and deposit the record in the record room within stipulated period. Accordingly, the case stands Disposed of.

This judgment comprises a total of 10 sheets. The judgment has been dated and pronounced in the open Court in the presence of accused persons, under my hand and seal of this Court on this the 10th day of July 2026.

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Complaint Case No. - 1652 (C)/2013
(CIS No.- CRI (P)- 1652/2013)**

Nidhi Govind Rao

Judicial Magistrate Second Class
Bettiah, West Champaran

Typed and corrected by me,

Nidhi Govind Rao
Judicial Magistrate Second Class
Bettiah, West champaran
Date - 10/07/2026