

FORM A

In the Court of the Ld. Judicial Magistrate, 3rd Court, Sadar Cooch Behar

**Present: SRI INDRANIL MITRA, JUDICIAL MAGISTRATE
3rd COURT, SADAR, COOCH BEHAR**

Date of Judgment – 3rd Day of August, 2023

Case No- G.R. Case No. – 1215 OF 2022

Details of FIR/Crime and Police Station :-

Kotwali P.S Cooch Behar Case/FIR No. – 811/22 Dated 21.07.2022 u/s 447/427/506/34 I.P.C

Complainant

STATE OF WEST BENGAL

REPRESENTED BY

ASSISTANT PUBLIC PROSECUTOR

ACCUSED

- 1. Gamuruddin Mia S/O Lt. Jala Mia (A1)**
- 2. Hachhen Ali S/O Gamuruddin Mia (A2)**
- 3. Kashem Ali S/O Gamuruddin Mia (A3)**
- 4. Hamidul Islam S/O Hachhen Ali (A4)**

REPRESENTED BY

Ld. Advocate Tania Dey

FORM B

DATE OF OFFENCE	21.07.2022
DATE OF FIR	21.07.2022
DATE OF CHARGE SHEET	16.03.2023
DATE OF PLEA	28.07.2023
DATE OF COMMENCEMENT OF EVIDENCE	01.08.2023
DATE ON WHICH JUDGMENT IS RESERVED	N.A
DATE OF THE JUDGMENT	03.08.2023
DATE OF THE SENTENCING ORDER, IF ANY	N.A

ACCUSED DETAILS

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during trial for purpose of section-428 Cr.p.c
Accused No-1.	Gamuruddin Mia	All accused persons surrendered before the Court on 27.07.2022	All accused persons were released on bail on 27.07.2022	U/S. 447/427/506 /34 OF I.P.C	ALL THE ACCUSED PERSONS ARE ACQUITTED	N.A	N.A
Accused No-2.	Hachhen Ali						
Accused No-3.	Kashem Ali						
Accused No-4.	Hamidul Islam						

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. PROSECUTION

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS,EXPERT WITNESS,MEDICAL WITNESS, PANCH WITNESS,OTHER WITNESS)
PW-1	Sofiar Rahaman	Defacto complainant
PW-2	Motiar Rahaman	Brother of the Defacto complainant

B. DEFENCE WITNESSES IF ANY:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS,EXPERT WITNESS,MEDICAL WITNESS,PANCH WITNESS,OTHER WITNESS)
DW1	NA	

C. COURT WITNESSES IF ANY:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS,EXPERT WITNESS,MEDICAL WITNESS,PANCH WITNESS,OTHER WITNESS)
CW1	N.A	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. PROSECUTION EXHIBITS

Sr. no	EXHIBIT NUMBER	DESCRIPTION
1.	Exhibit-P-1/PW1	Signature of PW 1 on the written complaint / FIR

B. DEFENCE EXHIBITS

Sr. no	EXHIBIT NUMBER	DESCRIPTION
1.	Exhibit-D-1/DW1	NA

C. COURT EXHIBITS

Sr. no	EXHIBIT NUMBER	DESCRIPTION
1.	Exhibit-C-1/CW1	NA

D. MATERIAL EXHIBITS

Sr. no	MATERIAL OBJECT NUMBER	DESCRIPTION
1.	MO1	NA

IN THE COURT OF THE JUDICIAL MAGISTRATE, 3RD COURT,

SADAR, COOCH BEHAR

Dated :- The 3rd Day of August, 2023

Present : Sri Indranil Mitra,

Judicial Magistrate, 3rd Court,

Sadar, Cooch Behar

(J.O CODE – WB 1502)

GR Case No. 1215 OF 2022 (Regd No. 102/22)

STATE

vs.

GAMIRUDDIN MIA AND 3 OTHERS

- Accused Persons

Judgment pronounced on : 3rd Day of August, 2023

**Judgment pronounced by: *Sri Indranil Mitra, Judicial Magistrate,
3rd Court, Sadar, Cooch Behar***

Judgment pronounced under - Sections 447/427/506/34 IPC

J U D G M E N T

1. The instant case was initiated on the basis of a complaint lodged by Safiar Rahaman, the complainant of the case, in the Kotwali P.S. On the basis of the same the police registered the FIR and started Kotwali P.S case No. 811/22 dated 21.07.2022 u/s **447/427/506/34 IPC**.

2. The factual matrix of the case in brief is that on 21.07.2022 at about 7:30 am all the accused persons assembled together and entered into the land of the defacto complainant and destroyed the jute cultivated on the said

land. When the complainant and his younger brother protested, all the accused persons armed with sharp weapons came running at both of them with intention to assault both of them and the complainant and his brother were forced to move back in order to save themselves. The accused persons cut and took away jute crops grown in 1½ bighas of land, as a result of which the complainant sustained financial loss of Rs.30,000/-. Thereafter, the complainant lodged a written complaint (herein after referred to as **FIR**) before the Kotwali P.S. The police registered the same and took up the investigation of the case.

3. The case was endorsed to Samir Roy, ASI of police attached to Kotwali P.S for investigation. The police investigated the case and submitted Charge Sheet before the Court on 16.03.2023 being C.S No. 1125/22 dated 15.08.2022 u/s 447/427/506/34 IPC. Cognizance was taken and the case was transferred to and received in the file of this Court from the Court of the Ld. CJM, Sadar, Cooch Behar on 26.04.2023.

4. The police submitted Charge Sheet against four (04) accused persons namely (1) Gamuruddin Mia, (2) Hachhen Ali, (3) Kashem Ali and (4) Hamidul Islam. The accused persons were represented by the Ld. Counsel and the Ld. APP represented the State. The case proceeded against accused persons and the substance of the accusations were stated to the accused persons on 28.07.2023 as per the provision of Section 251 Cr.P.C to the effect that they have committed offences u/s **447/427/506/34 IPC** to which they pleaded ‘not guilty’ separately and claimed to be tried. The trial, thus, commenced and for the purpose of proving the case the prosecution relied upon two (02) witnesses as **PWs**.

EVIDENCE ON RECORD

5. The prosecution at the trial relied upon the following witness :
1) Sofiar Rahaman, the defacto complainant, as **PW-1** and 2) Motiar Rahaman, as **PW-2**.

6. The prosecution adduced only two (02) witnesses to prove the case. The evidence was closed as from the quality of evidence, further proceeding with evidence in the case found no justification. As such, the evidence was closed. The accused persons were examined u/s 313 Cr.P.C and they pleaded

being innocent. The Ld. Advocate for the defence submits that he will not adduce any defence witness.

POINTS FOR CONSIDERATION

- 1) Has the accused persons committed an offence u/s **447/34 IPC** ?
- 2) Has the accused persons committed an offence u/s **427/34 IPC** ?
- 3) Has the accused persons committed an offence u/s **506/34 IPC** ?
- 4) Has the prosecution able to prove the case beyond the shadow of reasonable doubt?

DECISION WITH REASONS

7. The stage of trial in a criminal proceeding is the most important stage. An effective trial helps in reaching the conclusion of the case. The prosecution is duty bound to prove the allegations against the accused and to establish the relation of the accused with the crime. In criminal proceedings the burden of proof rests upon the prosecution and it is the prosecution who has to prove the case and the guilt of the accused beyond all reasonable doubt. The witnesses produced by the prosecution, their testimonies and the evidence adduced are the material factors in deciding a case.

8. The prosecution in order to prove the case produced and examined the defacto complainant as **PW-1**. At the time of his examination in chief PW-1 deposed that about one or one and half years ago a dispute took place between him and the accused persons over landed property belonging to him. PW-1 deposed that the said land was in the name of his father and measured about 9 bighas and at the time of the incident his father was dead, as such he and his brother Motiar Rahaman were the only legal heirs of his father and inherited the said above mentioned land from his father after his death. PW-1 further deposed that his father sold his elder uncle Gomiruddin Mia 3½ bighas of land out of the 9 bighas, but the land was intact and not demarcated. PW-1 further deposed that after the death of his father his elder uncle claimed from them the said plot of 3½ bighas of land but they refused to hand over the same to his elder uncle and that the said plot of 3½ bighas of land was being cultivated by his elder uncle.

PW-1 deposed that when they refused to hand over the said land to his elder uncle a hot altercation and dispute took place between them and the accused persons. PW-1 stated that he thereafter lodged a complaint before the Kotwali PS and the same was written as per his instructions by one law clerk named Mantu. PW-1 stated that he signed the same after it was explained to him and after understanding it. PW-1 identified his signature on the said FIR and the same was marked as **Exhibit-P-1/PW 1**.

8.1. At the time of his cross examination PW-1 deposed that his father sold the land measuring 3½ bighas to accused Gomiruddin Mia and the said accused claimed from them the said land that was being sold and a misunderstanding took place between them and accused Gomiruddin Mia. PW-1 deposed that out of this misunderstanding he lodged a complaint in the Kotwali PS. PW-1 deposed that he cannot say the contents of the FIR and that at present there are no disputes between him and the accused persons. PW-1 deposed that he has no allegation against the accused persons. PW-1 further stated that he cannot say the dag no., khatian no. of the alleged plot of land.

8.2. The testimony of PW-1 reveals only about the fact of taking place of dispute and hot altercation between him and the accused persons. PW-1 did not reveal any of the facts which establish the offences with which the accused persons were charged. PW-1 also contradicted from the facts stated in the FIR, that is, his previous statement. Such contradiction shakes the credit of the witness and much reliance cannot be placed on his testimony, rather, his testimony is liable to be impeached. Moreover, PW-1 failed to state the contents of the FIR, though he lodged the same. Besides this, PW-1 being the aggrieved person, at the time of his cross examination, PW-1 stated that he has no allegations against the accused persons and that he filed the case out of misunderstanding. Thus, after perusing the entire testimony of PW-1 it can be said that his testimony does not reveal any substantial material against the accused persons and also suffers from contradiction. The testimony of PW-1, therefore, does not connect the accused persons with the charges and allegations and reliance cannot be placed upon his testimony.

9. The brother of the defacto complainant was produced and examined by the prosecution to depose as **PW-2**. During his examination by the prosecution, PW-2 deposed that his father Basiruddin Mia sold 3½ bighas of land in his name to his elder uncle Gomiruddin Mia in the year 2005 and during his father's lifetime he handed over the said land measuring 3½ bighas of land to his elder uncle Gomiruddin Mia. PW-2 further deposed his father handed over the said land to his elder uncle on the very day the sale was executed and after the death of his father, Gomiruddin Mia claimed and demanded four and half bighas of the same plot of land situated behind the property which was sold actually on the earlier occasion by his father. PW-2 deposed that the accused persons forcibly tried to grab the four and half bighas of land in addition to 3½ bighas of land which was sold earlier. PW-2 further deposed that due to their forceful attempt to grab the four and half bighas of land, a hot altercation and dispute took place between them and the accused persons and that the incident took place at about 8.30 am about one or one and half years ago on the said plot of land measuring four and half bighas.

9.1. At the time of his cross examination PW-2 deposed that a misunderstanding took place between his brother and the accused persons over alleged plot of land and out of this misunderstanding his brother lodged a complaint in the Kotwali PS and at present there are no disputes between them and the accused persons. PW-2 deposed that he has no allegation against the accused persons.

9.2 The testimony of PW-2 also reveals the fact of taking place of hot altercation but the testimony of PW-2 does not reveal any other fact against the accused persons which establishes the offences against the accused persons.

10. In order to arrive at the conclusion of the case, the evidence on record must be carefully perused and analyzed. After perusal and analysis of the testimony of the witnesses produced by the prosecution it can be observed that the testimony of the witnesses do not reveal any fact which proves the charges against the accused persons. Both PW-1 and PW-2 reveal about the fact of taking place of a hot altercation and the same is *dehors* the Indian Penal Code. The defacto complainant failed to state the description of the alleged land itself.

Even there are contradictions between PW-1 and PW-2 with regard to the land and both the witnesses stated different facts in their evidence. From the evidence as adduced by the witnesses no substantial material is revealed against the accused persons and therefore the charges against the accused persons do not get established and the points before the Court for consideration are also not established against the accused persons. The witnesses also did not reveal any substantive material through which this Court can come to the conclusion that the accused persons are guilty of committing the offences alleged. Nothing has been seized by the prosecution. The prosecution also failed to produce the I.O of the case to depose as a witness in this case. The prosecution failed to produce any independent or eye witnesses of the offence as alleged.

11. On summing up the testimonies and evidences adduced by the prosecution it is clear that the prosecution is unable to establish the charges against the accused persons and has failed miserably to prove the charges against the accused persons. No material or evidence is revealed by the witnesses produced by the prosecution which goes to connect the accused persons with the allegations. Thus, it is not possible for the Court to point out in clear terms that the accused persons have committed offences with which they were charged.

12. In the backdrop of the above discussion and also upon perusal and consideration of the testimonies of the prosecution witness on record, I am of the opinion that the prosecution has severely failed to prove the case and has been unable to adduce sufficient material to establish the connection of the accused persons with the alleged incident and offence. As such, I am not hesitant to conclude and opine that the prosecution has failed miserably to substantiate the charges alleged against the accused persons and has failed to prove the guilt of the accused beyond reasonable doubt. The burden of proving a criminal case always rests upon the prosecution but the prosecution has been unable to prove the case. As such I am of the opinion that the case of the prosecution has miserably failed to get established and has sunk. The accused persons are, thus, entitled to the benefit of doubt. Therefore, I feel inclined to pass an order of acquittal in the present prosecution case.

13. Hence, it is

ORDERED

that the accused persons namely **(1) Gamuruddin Mia, (2) Hachhen Ali, (3) Kashem Ali and (4) Hamidul Islam** are not found guilty to the accusations **u/s 447/427/506/34 IPC** and accordingly they are **acquitted from the case u/s 255(1) Cr.P.C.**

However, the sureties shall stand discharged after the lapse of a period of six (06) months as per the provision of section 437-A Cr.P.C.

However, it must be noted that the victim shall have the right to prefer an appeal as enshrined under proviso to Section 372 Cr.P.C and, if necessary, avail free legal aid and assistance from the legal services authorities concerned to prefer and prosecute such appeal.

Let a copy of this judgment be sent to the Secretary DLSA, Sadar, Cooch Behar for intimation to the victim as defined u/s 2(wa) Cr.P.C.

Let a copy of this judgment be sent to the District Magistrate, Sadar, Cooch Behar for intimation to the victim as defined u/s 2(wa) Cr.P.C.

BC-I to note in relevant registers.

Typed and corrected by me

Sd/-
Indranil Mitra
Judicial Magistrate, 3rd Court, Sadar,
Cooch Behar
(J.O Code – WB 1502)