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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

DISTRICT – GOPALGANJ, BIHAR

CASE NO. → G.R. No. 377/2013

(Arising Out of Vijaipur P.S. Case No. - 17/2013)

CIS Reg. No. → 13219/2014

TRIAL NO. – 1185/2021

IN THE MATTER OF

STATE OF BIHAR (through informant Mukhlal Mallah)

..... Prosecution.

Vs.

1. Indrasan Yadav, aged about 70 years, S/O Late Baburam Yadav,
2. Shubh Narayan @ Albela, aged about 40 years, S/O Indrasan Yadav,
3. Suresh Yadav, aged about 30 years, S/O Indrasan Yadav, and
4. Basant Yadav, aged about 25 years, S/O Subhash Yadav

All residents of village Bharpurva, P.S. – Vijaipur, District- Gopalganj.

..... Accused Persons.

Police Station → Vijaipur

F.I.R. No. → 17/2013

U/S → 379 and 387/34 of I.P.C.

COGNIZANCE U/S → 379 and 387/34 of I.P.C.

CHARGE FRAMED → 379 and 387/34 of I.P.C.

DISTRICT – Gopalganj (BIHAR).

Ld. Counsel for Accused persons → Mr. Awashesh Kumar Mishra & Sanjay Kumar,
Advocates.

Ld. Counsel for the Prosecution. → Ld. A.P.O. for the State Mr. Manjay Kumar Madhup.

DATE OF JUDGMENT → 25th day of August, 2021.



PRESENT – SHIV SHRUTIKA (शिव श्रुतिका)

Judicial Magistrate First Class, Gopalganj

State vs. Indrasan Yadav & Others

JUDGEMENT

1. The above named accused persons stand charged for committing the offences of theft and putting the person in fear of death to commit extortion punishable under sections 379 and 387/34 of the Indian Penal Code (hereinafter referred to as IPC) respectively.
2. The prosecution case in nutshell as per the written application of informant Mukhlal Mallah is that the informant has got 1 *katha* land of plot no. 15 and survey no. 241 registered in his name from one Indrasan Yadav on dated 04.10.1999 for ₹ 10,000. Thereafter, he again took ₹ 8000 from the informant and gave possession of the land to the informant. After five years, when informant put 10,000 bricks on the land, accused 1- Indrasan Yadav, 2- Shubh Narayan @ Albela, 3- Suresh Yadav and 4- Basant Yadav deceitfully took away the bricks. The *jamabandi* of the land is in the name of the informant but the accused persons have dispossessed him from the land and are threatening him of life for extortion of ₹ 50,000. Therefore, he filed this application in the police station and prayed for action.
3. On the basis of the written application of the informant, a Vijaipur P.S. Case no. 17/2013 was registered on dated 09.02.2013 under sections 379 and 387/34 of IPC and a formal F.I.R. was drawn thereof against accused 1- Indrasan Yadav, 2- Shubh Narayan @ Albela, 3- Suresh Yadav and 4- Basant Yadav. The investigation of the case was taken up by S.I.-cum-S.H.O. Sri B.P. Alok, who after investigation submitted Charge Sheet no. 079/2013 dated 31.07.2013 under sections 379 and 387/34 of IPC against all the four accused persons. Cognizance was taken by the Ld. Predecessor Court under sections 379 and 387/34 of IPC vide order dated 14.08.2013 against all the four chargesheeted accused persons and were accordingly summoned for trial. After the appearance of the accused persons and compliance of provisions of section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.), charges were framed on dated 29.01.2014 against all the four accused persons under sections 379 and 387/34 of IPC to which they denied and claimed for trial. After prosecution evidence, the statement of the accused persons under section 313 of Cr.P.C. was recorded on dated 10.01.2018 in which the accused persons have pleaded his innocence.
4. The defence case in brief is the denial of entire occurrence and innocence of the accused persons.



POINT FOR DETERMINATION

5. The point for determination in this case is that whether the prosecution has been able to bring home the guilt of the accused persons beyond the shadow of all reasonable doubts. The prosecution has to prove that the accused persons acting under the common intention, committed theft and put the informant in fear of death to commit extortion of ₹50,000.

FINDINGS

6. EVIDENCE ADDUCED IN THIS CASE:

1) Evidence of prosecution:

i. Oral Evidence:

- a) PW-1:- Mukhlal Mallah (Informant)
- b) PW-2:- Vyas Mishra
- c) PW-3:- Praveen Thakur (turned hostile)
- d) PW-4:- Kanhaiya Singh
- e) PW-5:- Brahmadeo Prasad Alok (Investigating Officer)
- f) PW-6:- Jhunjhun Pandey
- g) PW-7:- Rajendra Prasad Srivastava

ii. Documentary Evidence:

- a) Exhibit-1:- Signature of S.I.-cum-S.H.O., Vijaipur, Sri Brahmadev Prasad Alok on the F.I.R.
- b) Exhibit-2:- Jamabandi receipt no. 36775 by employee Suresh Prasad.
- c) Exhibit-3:- Registered sale deed written by Qatib Dinanath Yadav
- d) Exhibit-4:- Registered sale deed.

2) Evidence of defence/accused persons:

i. Oral Evidence:

- a) DW-1:- Murali Manohar Prasad.



ii. **Documentary Evidence:**

- a) **Exhibit -A:-** Signature of the typist Murali Manohar Prasad on pliant no. 26/2013.
- b) **Exhibit -B:-** Signature of typist Murali Manohar Prasad on written statement of plaintiff no. 26/2013.
- c) **Exhibit -C:-** Signature of typist Murali Manohar Prasad on counter claim of plaintiff no. 26/2013.

APPRECIATION OF EVIDENCE

7. P.W.-1, Mukhlal Mohan, who is the informant of this case and was examined on dated 09.07.2015, has stated in his examination-in-chief that the occurrence took place about two and a half year ago at 05:00 p.m. in the evening. When I returned from the market, I saw that accused Indrasan, Albela, Suresh and Basant were taking away bricks from my field. When I objected, they asked for extortion of ₹ 50,000/- and threatened me of life. I got scared and ran from there. They took away bricks of ₹ 10,000/-. I bought this land from Indrasan about 15-16 years ago for ₹ 18,000/- paid in two instalments. I was in possession of the land and had put bricks therein.

In his cross-examination, in para-2, he stated that he got possession of the land on the next day of registration. I was dispossessed from the land about one and a half year ago. Para-3, I had put five trolleys of bricks on the land about four years ago which was bought from the brick kiln of Munna Babu. Accused persons carried away the bricks to their home for the whole night. I had shown the place to the police from where bricks were taken by the accused persons. The accused persons had told the police that they will return the bricks. He further deposed that he don't remember as to when extortion was demanded by the accused persons. Again he says that the extortion was demanded at 07:00 p.m. in the evening at my land and home. Para-4, a civil case is also pending which was filed prior to this case. Lastly, he denies the suggestion that Indrasan Yadav had not registered the land to him and he is giving false evidence.

P.W.-2, Vyas Mishra, who was examined on dated 08.12.2015, has stated in his examination-in-chief that the occurrence took place on 04.10.1999. I had told the police that the land was written by Indrasan Yadav to Mukhlal for ₹ 10,000/-. Registration was done on 04.10.1999.

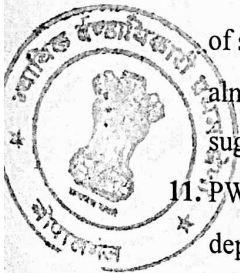


In his cross-examination, in para-2, he deposed that in registration, me and Kanhaiya were witnesses. Para-4, he denies the suggestion that he had told the police that he was witness in the deed. Para-3, I know the family of Indrasan since three years. On 04.10.1999, Indrasan's father was living. Para-6, I have no knowledge about partition between Babulal and Indrasan. Lastly, he denies the suggestion that he is giving false evidence.

9. PW-3, Praveen Thakur was declared hostile by the prosecution and the prosecution has failed to extract anything substantial from him in the cross-examination.
10. PW-4, Kanhaiya Singh, who was examined on dated 23.02.2016, has stated in his examination-in-chief that Indrasan Yadav took ₹ 10,000/- from Mukhlal Mallah in lieu of 1 *kattha* land of plot no. 15 and survey no. 241 and gave the land to Mukhlal after registration. After 5 years, Mukhlal Mallah put 10,000 bricks on the land to construct a house but the bricks were taken away by accused Indrasan, Shubh Narayan @ Albela, Basant and Suresh Yadav at 05:00 in the evening. The land was in possession of Mukhlal. Para-4, when Mukhlal asked to return the bricks and amount thereof, all the accused persons along with Indrasan asked for extortion of ₹ 50,000/- and threatened him of life. Many people including Vyas Mishra, Paras, etc. have witnessed the occurrence.

In his cross-examination, in para-7, he deposed that the bricks were taken in the year 2013. I gave statement to the police after two or four days of the occurrence in 2013. Indrasan is son of Baburam. Baburam died after the registration of the land. Para-8, Vyas Mishra and Kanhaiya went on the date of registration. Indrasan wrote the land to Mukhlal in Mirganj Registration Office. Para-9, the said land is *khatiyani* land of Indarsan. I have heard that an oral partition has taken place between Baburam and Indrasan in the year 1995. Para-10, he denies the suggestion that Indrasan has not sold the land to Mukhlal and being close to Mukhlal, he is giving false evidence. He further deposed that he is a witness in another case also filed by one Ajay. In a case of section 307 IPC, informant Mukhlal is my bailor. Accused persons carried bricks for almost ten hours. Informant gave application in the morning. In para-13, he denies the suggestion that at the time of occurrence, potato crop was grown in the impugned land.

11. PW-5, Brahmadev Prasad Alok, who is the Investigating Officer of the case, has deposed in his examination-in-chief that on dated 09.02.2013, he was posted as S.H.O.



of Vijaipur police station. After taking the charge of the Vijaipur P.S. case no. 17/2013, I proceeded to the place of occurrence for investigation. The place of occurrence happens to be the land bought by informant from Indrasan Yadav in 1999 situated in the village of Harpurwa. The plot no. and survey no. of land are 15 and 241 respectively with an area of 1 *kattha* which is currently in possession of the accused persons. Potatoes are sown in the land. On this land, 10,000 bricks were kept by the informant for construction of house which the accused persons forcibly took away. The details and boundary of the land is as below:-

- North – land of Indrasan Yadav
- South – Mango orchard of Indrasan Yadav
- East – Land of Indrasan Yadav
- West – Brick soling followed by mango orchard of Phulena Baittha

Thereafter, I took the statement of witnesses Vyas Mishra, Kanhaiya Singh, Bholi Singh, Gulabi Devi, Praveen Thakur who have supported the occurrence. In the course of investigation, I found the occurrence to be true and submitted the charge sheet. The formal F.I.R. was written in the hand writing of Vimlesh Sharma on which I have put my signature which has been marked as “Exhibit-1” on identification.

In his cross-examination in para-9, he stated that in para-3 of the case diary, the informant had stated about the fact of life threats, in his re-statement, the informant stated about carrying of 10,000 bricks. I raided accused persons’ house but did not find bricks because bricks were taken in the year 1999. Then he denies the suggestion that the occurrence took place on the date of F.I.R. Para-10, potatoes were sown in the field when I inspected the place of occurrence. Para-12, potatoes were sown in the entire field and there is no boundary on the disputed land. Para-15, he denies the suggestion that he had not taken the statement of witness Praveen Thakur. Para-17, he denies the suggestion that the investigation is flawed.

12. PW-6, Jhunjhun Pandey, has deposed in his examination-in-chief that receipt no. 36775 was issued by employee Suresh Prasad in his handwriting bearing his signature and the same was marked as “Exhibit-2” on identification. Receipt no. 2 was issued by Ajay Prasad in his handwriting bearing his signature and the same was marked as “Exhibit-3” on identification. The original sale deed was executed by Indrasan Yadav in favour



of Mukhlal which was written by scribe Dinanath Yadav in his handwringing is marked as “Exhibit-3”.

In his cross-examination, in para-2, he deposes that the receipts were not issued before him. Para-3, I have not done any work in the sale deed. I cannot tell the date of sale deed. Lastly, he denies the suggestion that he is giving false evidence.

13. PW-7, Rajendra Prasad Srivastava, who is an advocate clerk (ताईद) in the Civil Court, Gopalganj, has stated in his examination-in-chief that the sale deed executed by Indrasan Chaudhary in favour of Mukhlal Mallah was written by scribe Dinanath Yadav which is marked as “Exhibit-4” on identification.

In his cross-examination, in para-2, he deposes that the sale deed was registered in Gopalganj Registration Office in my presence. Para-3, he denies the suggestion that the sale deed was not written in his presence.

14. Thus, the prosecution has adduced total seven witnesses support its case.

15. The defence has adduced one oral evidence to support its case. DW-1, Murali Manohar Prasad, who is a typist in the Civil Court, Gopalganj had deposed in his examination-in-chief that the entire draft of plaintiff no. 26/13 was typed by me on the draft given by advocate Sanjay Kumar. The last page of the draft bears my signature which has been marked as “Exhibit-A” on identification. The written state was also typed by me bearing my signature which has been marked as “Exhibit-B”. The counter claim of the case No. 26/13 was also typed by me bearing my signature which has been marked as “Exhibit-C” on identification.

In his cross-examination, he has stated that he has been typing since 35-36 years. I don't have any knowledge regarding the case.

ARGUMENT



16. Thus, the prosecution has adduced total seven oral witnesses. It has been submitted by the Ld. A.P.O. for the State that almost all the prosecution witnesses have supported the prosecution case. Thus, the prosecution has established the guilt of the accused persons beyond the shadow of all reasonable doubts and hence the accused persons deserve conviction. Per contra, Ld. Counsel for the defence argued that the evidence of

prosecution witnesses have discrepancies. In fact there is a civil land dispute between the parties due to which the informant lodged this false case. The Ld. Counsel of the defence further submits that accused person had given 1 *kattha* land to the informant from his undivided land and he is ready to give him 1 *kattha* land once his share is decided in the title suit. In fact title suit no. 26/2013 has been filed on dated 24.01.2013 in which informant has been made a party and when informant got news about the suit, he lodged F.I.R. on dated 09.02.2013. The informant was never in possession of the land. From perusal of the evidences, no offence under sections 379 and 387 is made out against the accused persons and hence they deserve acquittal.

DISCUSSION, DECISION AND REASON THEREOF

17. Heard the rival submissions and perused the record. Now, on the basis of the documents and evidences available on record, the Court will determine whether the offences of theft and putting the person in fear of death to commit extortion are made out against the accused persons or not. For the sake of convenience, all the charges against the accused persons will be dealt simultaneously under the following heads-

18. **Date, time and place of occurrence:** From perusal of the F.I.R., it appears that there is no mention of date and time of occurrence in the written application by the informant. As per the averments of the F.I.R., accused Indrasan Yadav executed a registered sale deed in favour of informant Mukhlal Mallah on dated 04.10.1999 in lieu of ₹ 10,000/- and later gave the possession of the impugned land after taking another amount of ₹ 8000/-. After five years, when informant put 10,000 bricks for construction of house, the same was deceitfully taken away by the accused persons. Thus, it appears that the occurrence took place after five years of registration of land i.e. 2004. However, the informant Mukhlal Mallah, who has been examined as PW-1 on dated 09.07.2015, has stated that the occurrence took place about two and a half year ago at 05:00 p.m. in the evening. Thus, it implies from evidence of PW-1 that the occurrence took place in about beginning of 2013. Again, PW-2 has stated the date of occurrence as 04.10.1999. PW-4 has stated in his examination-in-chief that the occurrence took place at about 05:00 p.m. in the evening but has not specified any particular date or year. However, in his cross-examination in para-7, he states that the bricks were taken in the year 2013. Further, PW-5 has stated in para-9 of his cross-examination that the bricks were taken



away by the accused persons in the year 1999. PW-3 has turned hostile and PW-6 and PW-7 have not stated anything about date and place of occurrence. Thus, there are major contradictions in the evidence of witnesses regarding date and time of occurrence and prosecution has failed to remove the ambiguity as to the date and time of occurrence.

So far as place of occurrence is concerned, according to F.I.R., the place of occurrence is land in plot no. and survey no. 241 in the village of Harpurwa wherein the informant had kept 10,000 bricks. However, PW-5, who is the investigating officer and had visited the place of occurrence, has stated in his examination-in-chief that when he visited the site, potatoes were sown in the field. In para-10, he further stated that when he visited the place of occurrence, potatoes were sown and there was no sign of keeping bricks in the field. This makes the entire prosecution story suspicious as it is impossible that when 10,000 bricks kept for more than 8 years were removed from a place, no sign of bricks were found at the place. Also, PW-1, first stated in his cross-examination that he doesn't remember the date of demand of extortion but again he says accused asked for extortion at 07:00 p.m. on the impugned land and his house. Thus, such apparent contradictions creates a reasonable doubt regarding date, time and place of occurrence. Thus, it can be concluded that the prosecution has failed to prove the date, time and place of occurrence beyond reasonable doubt.

19. Manner of occurrence: As per the averments of the F.I.R., all the accused persons took away 10,000 bricks from the land written to the informant by accused Indrasan Yadav. They have also dispossessed him from the land and are threatening him of life for extortion of ₹50,000/-. However, as PW-1, the informant narrates a different story stating that when he returned from the market, he saw that the accused persons were carrying bricks and when he objected it, they threatened him of life for extortion of ₹ 50,000/-. But in his cross-examination, he states that he doesn't remember as to when extortion was demanded by the accused persons. PW-4, has stated that when Mukhlal Mallah asked the accused persons to return the bricks, they threatened him of life for extortion of ₹ 50,000/-. Rest of the witnesses have not stated anything about theft of bricks and extortion. Thus, there are apparent contradictions as to manner of occurrence. Thus, taking into consideration the inconsistency and ambiguity in the



manner of occurrence, it can be safely concluded that the prosecution has failed to prove the manner of occurrence beyond reasonable doubts.

20. Injury and injured: Also, to constitute an offence of theft, the movable property must be removed from the possession of the person. However, in the instant case, informant has stated in the written application that the accused persons have dispossessed him from the impugned land. In his evidence also, he has stated in para-2 that he was dispossessed from the land about one and a half year ago. Thus, it is clear that at the time of occurrence, the informant was not in possession of the impugned land and hence, it can be concluded that the offence of theft is not made out against the accused persons. Further, so far as offence of extortion is concerned, in order to constitute an offence of extortion, the following essential ingredients must be present-

- A. intentionally putting a person in fear of injury to himself or to another; and
- B. dishonestly inducing the person so put in fear to deliver to any person, any property or valuable security.

In R. S. Nayak v. A. R. Antulay & Others, (1986), the Hon'ble Supreme Court has held that *for an offence of extortion, fear or threat of fear must be used. A person can be said to be put any person under fear of injury, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future.*

However, in the instant case, apart from oral evidence of informant, prosecution has failed to adduce any other evidence in support of its claim. Hence, it can be concluded that the prosecution has failed to prove that the bricks were taken away from the possession of informant and he was threatened by the accused persons for extortion.

21. Credibility of witnesses and enmity between the parties: PW-3, Praveen Thakur has turned hostile and denied the fact that he has stated anything about this case before police. No considerable point has been brought in by the prosecution while drawing his attention from his statement in case diary. PW-1 is the informant of the case. Further, even though PW-4 has supported the prosecution story in his examination-in-chief but in his cross-examination, he has also deposed as a witness in another case filed by one Ajay and in a case under section 307 IPC against him, informant Mukhlal is his bailor. Thus, it appears that PW-4 is not an independent witness and his evidence can't be relied upon for conviction in absence of corroboration by other independent witnesses.



Rest of the witnesses have not stated anything about offence of theft and extortion.

Hence, a reasonable doubt arises in favour of the accused persons.

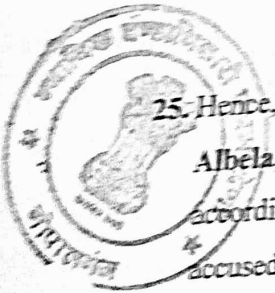
22. **Reason for occurrence:** According to the F.I.R., the reason for occurrence is that the accused Indrasan had written the disputed land to informant in the year 1999 in lieu of ₹ 18,000/-. When informant put bricks on the land, accused persons took away those bricks. However, from perusal of F.I.R. and evidence of informant, it appears that accused persons were in possession the land at the time of occurrence. In para-4, PW-1 has admitted that a civil case is also pending between the parties which was filed prior to this case. Thus, it appears that there exists a dispute between the parties regarding execution of sale deed of the impugned land and it is the main reason of contention. Thus, it can be concluded that there exists a land dispute between parties due to which the instant case was filed.

23. Thus, in the light of the aforesaid discussion and having regards to the facts and circumstances discussed, it can be said that there are apparent contradictions in the evidence of prosecution relating to date, place and time of occurrence, manner of occurrence and injury. Therefore, this Court is of view that there are many lacunae in the prosecution case and prosecution has failed to prove the guilt of the accused persons beyond the shadow of all reasonable doubts and therefore the accused person is entitled to get the benefit of bonafide doubt.

24. Thus, from the perusal of the evidences and materials available on record and in the light of the discussions made above, this Court reaches to the conclusion that the prosecution has failed to establish the charges against the accused persons under sections 379 and 387/34 IPC beyond the shadow of all reasonable doubts.

ORDER

25. Hence, it is therefore ordered that accused 1- Indrasan Yadav, 2- Shubh Narayan @ Albela, 3- Suresh Yadav and 4- Basant Yadav are found and held not guilty and are accordingly acquitted from the charges of section 379 and 387/34 of IPC. Since the accused persons are already on bail, they are also discharged from the liabilities of their respective bail bonds and their sureties are also discharged accordingly.



The judgement is pronounced in the open court under the seal of this Court on this 25th day of August, 2021.

This case is hence disposed of on contest.

Shiv Shrutika
25/08/2021
Shiv Shrutika
(शिव श्रुतिका)
Judicial Magistrate First Class
Gopalganj.

Typed & Corrected by me
Shiv Shrutika
25/08/2021
Shiv Shrutika
Judicial Magistrate First Class
Gopalganj

