
(1967) 01 GAU CK 0006
In the Gauhati High Court

Aribam Chhatradhwaja Sharma

APPELLANT

Vs

Nambam Luhindra and Another

RESPONDENT

Date of Decision : 19-01-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 441, 447, 506

Citation : AIR 1968 Guw 26 : (1968) CriLJ 189

Hon'ble Judges : C. Jagannadhacharyulu, C.J

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, C.J.—This is a Criminal Revision Petition filed u/s 439 Cr.P.C. to revise the judgment dated 12.1.1966 of the Additional Sessions Judge, Manipur, in Criminal Appeal 33/25 of 1965 allowing the same and acquitting the respondent and setting aside his conviction by the Judicial Magistrate-II in Criminal Case 22 of 1964 u/s 447 I.P.C. and the sentence to pay a fine of Rs. 300 or in default to suffer rigorous imprisonment for 2 months.

2. P. W. 4 (A. Chhatradhwaja Sharma) the complainant filed Criminal Case 22 of 1964 before the Judicial Magistrate-11, Manipur Under Sections 447 and 506 I.P.C. against the respondent (Nambam Luhindro Singh alias Mohendra Singh) on 15.5.1964 alleging that he purchased an - "ingkhoh" (residential site) covered by Patta No. 87/34 (old) corresponding to 87/213 (New). I.W.T. from P.W. 1 (Ningthouiam Sanaton Singh) under Ext. A/1, registered sale deed dated 31.7.1963 for Rs. 2,700, that P.W. 1 delivered possession of the site to P.W. 4. (the complainant) on the same day and that the latter had been in possession and enjoyment of the same. P.W. 4 further alleged in the complaint petition that in the morning of 14.5.1964, he went to the site to lay foundation to construct a house, that he found a wooden "Jatra" post erected by the respondent, that on enquiry P.W. 4 learnt from the respondent that the respondent erected the "Jatra" post, that the respondent refused to remove it and threatened to assault P.W. 4 and that, thus, the respondent is guilty of the offences Under Sections 447 and 506 I.P.C.

3. The Judicial Magistrate-II, Manipur, tried the case and held that this is a clear case of criminal trespass by the respondent who entered into the site with an intention" to intimidate P.W. 4 and to prevent him from laying the foundation stone. He, therefore, convicted the respondent u/s 447 I.P.C. and sentenced him to pay a fine of Rs. 300 or in default to undergo R.I. for 2 months. He, however, acquitted the respondent of the charge u/s 506 I.P.C.

4. The respondent carried the matter in appeal in Criminal Appeal 33/25 of 1965 on the file of the Court of the Additional Sessions Judge in Manipur. The latter held that there is a civil dispute between P.W. 1, the vendor and the respondent, that the dominant intention of the respondent was to take possession of the site by erecting a "Jatra" post, that intimidation, insult or annoyance were only the casual result and, that therefore, his conviction u/s 447 I.P.C. is not sustainable. He, therefore, allowed the appeal and set aside the conviction and sentence. Hence the present revision petition.

5. The vendor, P.W. 1 (Hingthoujaro Sanaton Singh) and the respondent (Nambam Luhindro Singh alias Mohendra Singh) are uterine sons of P.W. 2 (Kombi Devi) born to her by different husbands. The mother of P.W. 2 was Tourangbam Ningol Chongtham Ongbi Tombinacha Devi. The site in dispute belonged to her. The evidence of P. Ws. 1 and 2 - (Ningthoujam Sanaton and Kombi Devi) shows that the deceased Tourangbam Ningol Chongtham Ongbi Tombinmacha Devi filed an application for mutation of the site in the name of P.W. 1 as she gifted the site to him and that, accordingly, mutation was effected in the name of P.W. 1. P.W. 1 sold the site to P.W. 4 under Ext. A/1, registered sale deed dated 31.7.1963 for Rs. 2,700. Ext. A/2 shows that mutation with respect to the site was effected in the name of P.W.4 Ext. A/3 (revenue receipt) shows that P.W. 4 paid the land revenue for the site. Thus, Exts. A/1 to A/3 show that P.W. A/1 has been in possession and enjoyment of the site after he purchased it. There is also the oral evidence of P.Ws. 1 and 2 which shows that the mother of P.W. 2 was in possession of the site until she gifted it to P.W. 1 and that P.W. 1 was in possession of it after it was gifted to him. It was suggested to P.W. 1 and 2 in their cross-examination by the learned Counsel for the respondent that they prevailed upon Tongbram Ningol Chongtham Ongbi Tombimacha Devi to put her thumb mark on the application for mutation of the site in favour of P.W. 1, as she was senile. They denied the suggestion. The evidence of P.Ws. 1 and 2 further shows that the respondent was never in possession of the site. The evidence of P.W. 3 (Ningthoujam Irabot Singh) shows that the respondent was never in possession of the site, that P.Ws. 2 and 4 went to him in the afternoon of 14.5.1964 and complained to him that the respondent erected a "Jatra", that P.Ws. 1 to 4 went to the disputed site, that they found the respondent on it, that the respondent threatened to kill P.W. 4 if he entered into the site and that the respondent refused to remove the "Jatra". P.W. 4's evidence shows that he was growing some plants on the site with the help of P.W. 2.

6. Thus, P.W. 1 was in possession of the site before he sold it to P.W. 4 and P.W. 4

was in possession of it after he purchased it.

7. The case of the respondent is that the "Chintamani bone" of his deceased grand-mother is with him, that he too performed the obsequies of the deceased and that he entered into his own site and not into the site of P.W. 4. It appears that there is a custom in Manipur of preserving "Chintamani bone" to be immersed in Nawadeep, the birth place of Lord Chaitanya. So, the respondent claims that he is also an heir of his deceased grand-mother. But there is no evidence to show that he raised any objection when the site was mutated either in the name of P.W. 1 or in the name of P.W. 4. The only occasion when the respondent asserted his alleged civil right to the site in question was when P.W. 4 stored stones on the site for construction of a house, about ten months after P.W. 4 purchased the site and obtained possession of it.

8. Section 441. I.P.C. runs thus:

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

The dominant intention of the respondent in erecting a wooden "Jatra" post has to be gathered from the evidence and the circumstance of the case. Intention is a state of mind. It cannot be proved as a fact. So, the dominant intention can only be inferred from the facts which are proved, vide *Nagendra Kumar Vs. Etwari Sahu and Others*, , *Teeka and Others Vs. State of Uttar Pradesh*, , *Mathuri and Others Vs. State of Punjab*, , and *Phul Kumari Vs. Sheodahin Tiwary and Another*, In the present case the dominant intention of the respondent was evidently to intimidate P.W. 4. to cause alarm to him to prevent him from laying any foundation to construct the house on the site and to coerce him to come to terms. If the respondent felt that he too has title to the site, he should not have taken the law into his own hands. He should have taken lawful proceedings against P.W. 4. As such, the respondent is guilty of the offence u/s 447 I.P.C. The trial court acquitted him of the charge u/s 506 I.P.C. on the ground that there is no sufficient evidence of intimidation against the respondent. The lower appellate Court held that in such a case the charge u/s 447 I.P.C. for trespass with intention to intimidate also-fails. The reasoning of the Court below will be correct, if really there was no intention, on the part of the respondent to intimidate the petitioner by committing the trespass. But, the evidence on record and the circumstances are otherwise. It is, however, not necessary to convict the respondent for criminal intimidation u/s 506 I.P.C. also, as he is convicted u/s 447 I.P.C. for criminal trespass with intent to intimidate P.W. 4. The judgment of the lower Court is not correct. It is, therefore, set aside.

9. The sentence of fine of Rs. 300/-imposed by the Judicial Magistrate-II is. however, very severe. It is reduced to Rs. 100/-.

10. In the result, the Criminal Revision petition is allowed and the judgment of the Court below is set aside and the conviction of the respondent u/s 447 I.P.C. is restored. The respondent is sentenced to pay a fine of Rs. 100/- or to suffer rigorous imprisonment for one month in default.