

IN THE COURT OF MUNSIFF CUM JUDICIAL MAGISTRATE FIRST CLASS::TIHU
DISTRICT: NALBARI

PRC Case No. 72/19
U/S. 420 IPC

State of Assam

-vs-

1. Smti. Karabi Bhattacharjya

w/o Pranab Saikia

Vill: Tihu Town, Ward no. 1.

PS. Tihu

Dist. Nalbari Accused person

Present: Sri Anurup Bordoloi, AJS
Munsiff cum JMFC, Tihu.

Advocates appeared:

For the State : Mr. P. Barman, A.P.P.

For the Defence: P. Sarma, P. Kakati, D. Haloi, L. Sarma, D. Haloi Advs.

Dates of Evidence: 30.07.19, 28.08.19, 13.09.19, 09.10.19, 30.11.19, 21.12.19,
22.12.20

Date of Argument: 11.01.21

Date of Judgment: 11.01.21

J U D G M E N T

1. Prosecution's case in brief, is that on 13.10.18, Sri Satyajit Talukdar, Bipul Kr. Chakravarty, Madan Ch. Sarma, Pulin Kalita, Ramen Ch. Barman, Jiten Sarma, Manju Talukdar, Nilakshi Sarma, Pratibha Das and Sanatan Baishya lodged an Ejahar before the Officer-in-Charge, Tihu P.S. alleging inter-alia that the above named informants had individually purchased plots of land from the alleged accused Karabi Bhattacharjya at Barbari village. At the time of purchasing the lands the accused person permitted the informants to use the 10 (ten) feet wide road in front of their lands which connects to the Tihu Feder road and the existence of the said road has also been mentioned in their respective sale deeds. The informants repaired the said road by filling earth and sand gravel and they were also using the said road. However, the

alleged accused and her husband constructed a tin gate in front and a wall on the back side of the said road and restricted the informants from using the same. Hence, the case.

2. On receipt of the Ejahar, Tihu P.S. Case No. 176/18 u/s 420 I.P.C. was registered and investigated into. The I.O submitted the charge-sheet only against the accused Karabi Bhattacharjya.

3. On appearance before the court, necessary copies were furnished to the accused person and finding prima facie materials against the accused person, charge under section 420 IPC was framed and then same was read over and explained to the accused to which she pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution side examined as many as 17 (seventeen) witnesses. The accused person was examined u/s 313 Cr.P.C wherein she took the plea of denial. Defence examined no witness.

5. I have heard the arguments of the learned counsels for both the sides at length, gone through the case record and perused the evidence carefully.

POINTS FOR DETERMINATION ARE:

6. (i) *Whether the accused person, cheated the informants by dishonestly inducing them to purchase the lands on some consideration by allotting them a 10 (ten) feet wide road for the ingress and egress to their respective lands which was also mentioned in their sale deeds, and thereby committed an offence punishable u/s 420 IPC?*

DISCUSSION, DECISION AND REASONS THEREON:

7. Before going to decide the points for determination, let me describe the evidence in brief. *In his examination-in-chief* P.W.1/informant, Satyajit Talukdar, deposed that he had lodged the case against the accused Karabi Bhattacharjya and her husband on 11.10.18. He further deposed that he had purchased 1(one) Katha land from one Jun Deka and started enjoying possession over the said land. Thereafter, when PW 1 went to the electricity department for electricity connection, the accused persons rebuked him and threatened him of dire consequences. One night, the accused persons constructed a wall on the back side and a tin gate on the front side of the disputed road. PW 1 also deposed that when he had purchased the said plot of land from Jun Deka, the existence of the said road was mentioned in the sale deed and accordingly PW 1 along with others were using the said road. PW 1 further deposed that Jun Deka had purchased the said plot of land from the accused

and PW 1 purchased the same from Jun Deka. Ext 1 is the ejahar and Ext 1(1) is the signature of PW 1, Ext 2 is the seizure list and Ext 2(1) is the signature of PW 1.

8. *In his cross-examination*, PW 1 stated that he had not purchased the said land from the accused Karabi Bhattacharjya. The Dag no. and Patta no. of the land bought from Jun Deka is 285 (two hundred and eighty five) and 149 (one hundred and forty nine) respectively. PW 1 did not purchase any separate land for the road. PW 1 does not remember the Dag and Patta Nos. of the land which belonged to the accused. On 25.6.16, the accused had filed a case u/s 144 CrPC stating that PW 1 along with others were trying to dispossess her from her land and the ADM, Nalbari decided the case in favour of the accused. Being aggrieved, PW 1 filed a revision before the Hon'ble District and Sessions Judge, Nalbari and on 11.07.19, the Hon'ble Sessions Judge dismissed the revision and upheld the order of the ADM, Nalbari. PW 1 further stated that he had not filed any civil case regarding the said land. PW 1 denied that the accused had not sold any land to him for the road. It is not a fact that the accused had not obstructed the road by constructing a tin gate and a wall. It is not a fact that PW 1 has personal grudges against the accused person and as such PW 1 has filed many cases against the accused person.

9. *In his examination-in-chief* P.W.2, Satya Nath Das, deposed that he knows the informant and the accused person. He further deposed that his son-in-law Robin Malakar had purchased a plot of land measuring 1 (one) K 5 (five) L from the accused and the existence of the 10 (ten) feet wide road is also mentioned in that sale deed. However, the accused has blocked the said road.

10. *In his cross-examination*, PW 2 stated that his son-in-law is in possession of the purchased land. PW 2 does not know the dag and patta numbers of the said land. PW 2 further stated that his son-in-law has not purchased any separate land for the road. He also does not know the dag and patta numbers of the land which belonged to the accused person. It is not a fact that accused has not blocked the road. Police did not seize the said sale deed.

11. *In his examination-in-chief*, PW 3, Samin Ch. Talukdar, deposed that he knows the informant and the accused person. He further deposed that his wife Manju Talukdar had purchased a plot of land measuring 1 (one) Katha from Jayanta Kalita and they were using the 10 (ten) feet wide road which connects to the Tihu Feder road for the purpose of earth filling in their land. However, in the year 2015, the accused person blocked the road.

12. *In his cross-examination*, PW 3 stated that he is in possession of the purchased land. The land which belongs to the accused person has a different Dag and Patta number. PW 3 heard that the accused person is in possession of the 10 (ten) feet wide road. PW 3 further stated that he had not purchased any extra land from the accused person for the road.

13. *In his examination-in-chief*, PW 4, Harish Kalita, deposed that he knows only the informant Satyajit Talukdar and also the accused person. PW 4 further deposed that he does not know anything about the incident. Ext 3 is the seizure list and Ext 3(1) is the signature of PW 4. Defence declined to cross-examine this witness.

14. *In his examination-in-chief*, PW 5, Dipak Pathak, deposed that he knows only the informant Satyajit Talukdar and also the accused person. He further deposed that the informant Satyajit Talukdar had purchased a plot of land from Jun Deka and apart from that he does not know anything about the incident. Defence declined to cross-examine this witness.

15. *In his examination-in-chief*, PW 6, Rahul Sarma, deposed that he knows only the informant Jiten Sarma and also the accused person. He further deposed that he does not know anything about the incident. Defence declined to cross-examine this witness.

16. *In his examination-in-chief*, PW 7, Akshay Bharali, deposed that he knows the informants and the accused persons. He further deposed that he does not know anything about the incident. Defence declined to cross-examine this witness.

17. *In his examination-in-chief*, PW 8, Jiten Sarma, deposed that he is one of the informants of this case who had lodged this case against the accused person on. 13.10.18. He further deposed that he had purchased a plot of land from the accused person and that the sale deed reflects the existence of a 10 (ten) feet wide road. But the accused person has blocked the said road for which PW 8 along with others are facing problem. Ext 2 is the seizure list and Ext 2(1) is the signature of PW 8, Ext 1 is the ejahar and Ext 1(2) is the signature of PW 8.

18. *In his cross-examination*, PW 8 stated that the ejahar was initially lodged by PW 1 and later PW 8 signed on a separate sheet and tagged the same with the ejahar. PW 8 is in possession of 1 (one) K 5 (five) L land and he had not purchased any separate land from the accused for the said road. The land of PW 8 is at Barbari village under Dag no. 1 (one) and Patta no. 286 (two hundred and eighty six). PW 8 does not know the dag and patta nos. of the land which belong to the accused person. PW 8 further stated that the accused person has also filed a case against PW 8 and

PW 1 on the ground that PW 8 and others are forcefully trying to take possession of her land. PW 8 further deposed that ADM, Nalbari passed an order declaring the possession of the accused over the 10 (ten) feet wide road. PW 8 filed a Criminal Revision against the order of the ADM, Nalbari wherein the Hon'ble District and Sessions Judge, Nalbari dismissed the revision and upheld the order of ADM, Nalbari. PW 8 also stated that he did not file any civil case against the accused claiming right and title over the said 10 (ten) feet road. It is not a fact that accused did not block the road which goes to the land of PW 8. PW 8 got possession of the land from the accused. It is not a fact that PW 8 and other informants have forcefully tried to get possession of the accused's land and when they did not succeed, they filed this case.

19. *In his examination-in-chief*, PW 9, Dulal Ch. Das, deposed that he knows the informant and the accused person. He further deposed that his wife Prativa Das had purchased a plot of land from the accused person. As per the sale deed there is a 10 (ten) feet wide road from Tihu Feder road to the plot purchased by his wife. But the accused person has blocked the said road. Ext 4 is the seizure list and Ext 4(1) is the signature of PW 9. PW 9 also deposed that he does not remember when he put his signature on the seizure list.

20. *In his cross-examination*, PW 9 stated that he doesn't remember the Dag and Patta nos. of his land but he is in possession of his land. PW 9 also does not know the dag and patta nos. of the said road. PW 9 had not purchased any separate land for the road. PW 9 knows that the accused has filed case against Jiten Sarma, Satyajit Talukdar and Bipul Chakravarty alleging that they tried to dispossess the accused from her land. However, PW 9 does not know the outcome of that case.

21. *In his examination-in-chief*, PW 10, Siris Ch. Sarma deposed that he only knows the informant Bipul Chakarvarty, Satyajit Talukdar and Madan Sarma. He also knows the accused person. PW 10 further deposed that he had purchased a plot of land from the accused and there was a road from Tihu Feder road to the house of accused but the accused has blocked the road. PW 10 does not know why the accused has blocked the road.

22. *In his cross-examination*, PW 10 stated that he does not know the dag and patta nos. of his land but he is in possession of the same. He had not purchased any separate land for the road. He does not know the dag and patta nos. of the land where the accused resides. PW 10 does know the dag and patta nos. of the road which goes to the campus of the accused. It is not a fact that the accused has not blocked the said road.

23. *In her examination-in-chief*, PW 11, Pami Brahma, Circle Officer, Tihu deposed that she knows the informants and the accused person. About 2 (two) years ago, the informants made a complaint before her that the accused had restrained them from using the 10 (ten) feet wide road which the informants were using for developing their lands which had been purchased from the accused and the existence of the road is also mentioned in their respective sale deeds. PW 11 further deposed that on field examination she found a sand gravel road and few under-construction houses. After a few days, PW 11 again received a complaint that this time, the accused has blocked the said road. On field inspection, PW 11 found that a wall has been erected on the back and a tin gate on front of the said road.

24. *In her cross-examination*, PW 11 stated that he does not remember the dag and patta nos. of the said plots of land. PW 11 does not know the terms and conditions of the sale deeds executed between the informants and the accused. The I.O. did not seize any document relating to the disputed plot of land. PW 11 further deposed that land acquisition has not been done for declaring the said road as a public road. PW 11 did not receive any proposal from the Municipal Authorities or any public authorities for declaring the said road to be a public road. She does not know the dag and patta numbers of the land which belongs to the accused person. PW 11 further deposed that if any higher authority passes any order or judgment, then the same is communicated to the Circle Officer.

25. *In his examination-in-chief*, PW 12, Akon Pathak, deposed that he knows informant Satyajit Talukdar but does not know the other informants. He also knows the accused person. A few months ago, PW 12 heard that a dispute had taken place between the informants and the accused person regarding the said road. PW 12 further deposed that as per his knowledge, the said road falls on the land of the accused.

26. *In his cross-examination*, PW 12 stated that land acquisition is done to acquire private lands by the government and prior to land acquisition PW 12, being a Lat Mandal, has to submit a report with regard to the measurement of the land, compensation, etc. to the government. Being Lat Mandal of the Town Lat, PW 12 does not have any knowledge of the land acquisition of that particular road. As per his knowledge, there is no public road over the land of the accused.

27. *In his examination-in-chief*, PW 13, Bhabani Sarma, deposed that he knows the informants Satyajit Talukdar, Bipul Kr. Chakravarty and Pulin Sarma. He knows the other informants by their appearance but does not know their names. About 1 (one)

year ago, the informants filed a complaint at the Tihu Circle Office that the accused had blocked a 10 (ten) feet wide road from the feder road which goes to the lands of the informants. PW 13 further deposed that when he went for inspection, he found that there was a 10 (ten) feet wide road from the feder road till the house of the informants but there was no obstruction on the road. Again, when PW 13 re-inspected the road after one month he found a wall on the back side and a tin gate on the front side of the road.

28. *In his cross-examination*, PW 13 stated that police did not seize any official document from him. He does not know the dag and patta numbers of the land where the accused resides as well as of the lands of the informants. The road is within the campus of the accused person. There was no land acquisition with regard to the said road. As per official records, there is no public road in dag nos. 9 (nine) and 10 (ten) of Patta no. 140 (one hundred and forty) of Tihu Town, ward no. 1 which belong to the accused person. PW 13 does not know the terms and conditions of the sale deeds executed between the informants and the accused. PW 13 does not know whether the said road is a private property of the accused or not.

29. *In his examination-in-chief*, PW 14, Bipul Kr. Chakarvarty, deposed that he is one of the informants in the case. In the year 2014, the wife of PW 14 had purchased a plot of land from Madhusudon Kalita. Thereafter, the accused blocked the road which was being used for ingress and egress to their land. Ext 1 is the FIR and Ext 1(3) is his signature, Ext 5 is the seizure list and Ext 5(1) is his signature.

30. *In his cross-examination*, PW 14 deposed that Nilakshi Barman is his wife and that his wife did not purchase any land from the accused person. On 04.6.16, the wife of PW 14 lodged an ejahar against the accused for blocking the road and the case was registered as GR 73/16 in this Court and that the accused was acquitted in that case. PW 14 also stated that they did not prefer an appeal against the said judgement of acquittal. PW 14 signed on the seizure list at the time of lodging the FIR. It is not a fact that the accused did not sell any such road to them and that the accused did not block the said road.

31. *In his examination-in-chief*, PW 15, Gopal Talukdar, deposed that he knows the informants Jiten Sarma, Pulin Kalita, Satyajit Talukdar, Manju Talukdar but does not know the other informants. He also does not know the accused person. PW 15 further deposed that his father-in-law had purchased a plot of land from the accused but the accused later blocked the road which was being used for the ingress and egress to their land. Ext 2 is the seizure list and Ext 2(3) is his signature.

32. *In his cross-examination*, PW 15 stated that he himself did not witness as to who had blocked the road and when it had been blocked. He does not know how many cases are pending with regard to the said road. Police took his signature on Ext. 2 as a witness.

33. *In her examination-in-chief*, PW 16, Pratibha Das, deposed that she is one of the informants and she had lodged this case against the accused Karabi Bhattacharjya in the year 2014-2015. PW 16 further deposed that she had purchased a plot of land measuring 1 (one) K 5 (five) L land from the accused but the accused has blocked the 10 (ten) feet wide road which leads to her land. Ext 1 is the ejahar and Ext 1(4) is her signature.

34. *In her cross-examination*, PW 16 stated that she is in possession of her land measuring 1 (one) K 5 (five) L. She does not remember the dag and patta numbers of the said land. She does not know the dag and patta nos. of the 10 (ten) feet wide road and no separate sale deed has been executed for the said road. She has not filed any civil case seeking decree from the Court for using the said road.

35. *In his examination-in-chief*, PW 17, Kanak Sarma/IO, deposed that on 13.10.18 he was at Tihu PS. On that day Satyajit Talukdar filed an ejahar before the O/C Tihu PS and the case was registered and endorsed to PW 17 for investigation. Accordingly, PW 17 went to the place of occurrence, drew the sketch map, seized few documents and recorded the statements of witnesses. During investigation, PW 17 came to know that the accused committed fraud by selling lands to some people showing them the 10 (ten) feet wide road that can be used for ingress and egress to their purchased land respectively and later blocked the said road. Thereafter, PW 17 submitted charge-sheet only against accused Karabi Bhattacharjya u/s 420 IPC. Ext 5 is the sketch map, ext 5(1) is his signature, Ext. 6 is the charge-sheet and Ext. 6(1) is his signature, Ext 2 is the seizure list and Ext 2(4) is his signature, Ext 4 is the seizure list and Ext 4(2) is his signature, and Ext 3 is the seizure list and Ext 3(2) is his signature. PW 17 gave away the zimma of all the seized articles.

36. *In his cross-examination*, PW 17 stated that he had seized a few original sale deeds and later gave away the zimma of the same. The persons who had executed the sale deeds were already in possession of their lands. The house and land of the accused is marked a "C" in the sketch map and Ext 5, the 10 feet wide road is marked as "W". "A", "B" and "C" marked in the sketch map falls within the land of the accused. There are house of other persons on both sides of the road. PW 17 has no knowledge if there is any public road at the end of the 10 (ten) feet wide road. PW 17

did not find any document which reveals that the accused had sold any separate land for the road.

37. Sec 420 IPC reads as "Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

38. Bare reading of the provision reveals that the essentials of sec 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and (iii) mens rea of the accused at the time of making the inducement.

39. In the instant case, PW 1/informant deposed that he had purchased a plot of land from one Jun Kalita and not from the accused person. PW 3 deposed that his wife had purchased the land from one Jayanta Kalita. PW 14 deposed that his wife had purchased a plot of land from one Madhusudan Kalita. As such, the element of cheating by the accused does not seem to be attracted against PW 1, PW 3 and PW 14. PW 4, PW 5, PW 6 and PW 7 deposed that they do not know anything about the incident. PW 2, PW 8, PW 9, PW 15 and PW 16 deposed that they purchased land from the accused but the accused later blocked the 10 feet wide road.

40. Now, the question arises whether the accused cheated PW 2, PW 8, PW 9 and PW 15 by blocking the 10 feet wide road which was meant for the ingress and egress by the informants to their respective lands purchased from the accused even after the existence of the said road was also mentioned in their respective sale deeds. The PWs admitted that they are in possession of the land which they purchased from the accused person. They also admitted that they have not purchased any separate land for the road. Perusal of the case record reveals that the prosecution side failed to produce or exhibit any such sale deeds before the court as claimed by the PWs. The testimony of the circle officer, Lat Mandal and Kanango deposed as PW 11, PW 12 and PW 13 wherein they deposed that no proceedings of land acquisition has taken place in respect of the said 10 feet wide road. PW 12 and PW 13 deposed that as per official records the said road falls within the boundary of the accused and that there is no public road on the land of the accused. I have also perused the cross-examination of

PW 8 wherein he admitted the fact that ADM, Nalbari passed an order declaring the possession of the accused over the 10 (ten) feet wide road. PW 8 filed a Criminal Revision against the order of the ADM, Nalbari wherein the Hon'ble District and Sessions Judge, Nalbari dismissed the revision and upheld the order of ADM, Nalbari. PW 8 also stated that he did not file any civil case against the accused claiming right and title over the said 10 (ten) feet wide road. Thus, it is clear that the accused has not blocked any public road and the construction made by the accused (also admitted in her statement u/s 313 CrPC) is not illegal, being made within her own boundary. This court finds it difficult to ascertain that the accused committed fraud by not letting the informant/purchasers of land from using the road in the absence of the sale deeds. This court holds the view that the actual terms and conditions are required to be perused under which such sale had been executed and whether the informants/buyers are entitled to use the said road as per the sale deeds. To the prosecutions dismay, it failed to adduce any such sale deeds executed between the accused and the buyers/informants.

41. What appears from the record is that the accused sold lands to the informants and they have been given possession of the same accordingly. The alleged offence of cheating in the instant case with regard to the road could only be determined after perusal of the sale deeds. In the absence of any cogent evidence, it cannot be presumed that the accused committed fraud. Being so, the benefit of doubt definitely goes in favour of the accused. Thus, the accused Karabi Bhattacharjya deserves acquittal u/s 420 IPC.

ORDER

42. In view of the conclusion made above, I hold the accused person not guilty of the offence u/s 420 IPC and hence, she is acquitted of the offence u/s 420 IPC. The accused is set at liberty forthwith.

43. The bail-bond of the accused person shall remain in force for a period of six months from the date of this order.

44. The judgment is delivered in the open Court in presence of the accused person and her learned Counsel.

Given under my hand and the seal of this court on this 20th day of January, 2021.

(Anurup Bordoloi)
Munsiff cum JMFC, Tihu

Typed by me,

(Anurup Bordoloi)
Munsiff cum JMFC, Tihu

:APPENDIX:

1. Prosecution witnesses:

- PW 1 - Satyajit Talukdar
- PW 2 - Satya Nath Das
- PW 3 - Samin Ch. Talukdar
- PW 4 - Harish Kalita
- PW 5 - Dipak Pathak
- PW 6 - Rahul Sarma
- PW 7 - Akshay Bharali
- PW 8 - Jiten Sarma
- PW 9 - Dulal Ch. Das
- PW 10 - Siris Ch. Sarma
- PW 11 - Pami Brahma
- PW 12 - Akon Pathak
- PW 13 - Bhabani Sarma
- PW 14 - Bipul Kr. Chakarvarty
- PW 15 - Gopal Talukdar
- PW 16 - Pratibha Das
- PW 17 - Kanak Sarma

2. Prosecution exhibits:

- Ext 1 – Ejahar
- Ext 2 – Seizure List
- Ext 3 – Seizure List
- Ext 4 – Seizure List
- Ext 5 – Seizure List

3. Defence witness: Nil

4. Defence Exhibits: Nil

5. Court Witness: Nil

Munsiff cum JMFC, Tihu