

<p>IN THE COURT OF JMFC-20, SONITPUR, TEZPUR</p> <p>Present: Sri Vishek Bhuyan, AJS</p> <p>[Date of the Judgment] 21-12-2022</p> <p>[GR Case No: 2812 of 2015]</p> <p>(Details of FIR/ Crime and Police Station)</p>	
Complainant :	STATE OF ASSAM OR Smt. Sunita Devi
REPRESENTED BY	Learned A.P.P Sri Niranjan Saikia
ACCUSED PERSONS	A1 Sri Narayan Singh Gorh S/o- Sri Karan Singh Gorh Vill- Ashurmari, Rakasmari P.S- Dhekiajuli Dist- Sonitpur (Assam) A2 Sri Ajit Mahapatra S/o- Sri Premananda Mahapatra Vill- Betjan Line, Rakasmari P.S- Dhekiajuli Dist- Sonitpur (Assam)
REPRESENTED BY	A.K Saikia, R. Bharali

FORM B

Date of Offence	11.10.2015
Date of FIR.	14.10.2015
Date of Charge-sheet	27.02.2016
Date of charge framed	20.11.2017
Date of commencement of evidence	02.07.2018
Date on which judgment is reserved	NIL
Date of the Judgment	21.12.2022
Date of the Sentencing Order, if any	NIL

Accused Details

Rank of the Accused	Name of 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 438,Cr.P.C.
	A1 Sri Narayan Singh Gorh	NA	16.05.2017	120(B)/387/34 IPC	Acquitted	NIL	NIL
	A2 Sri Ajit Mahapatra	NA	12.05.2017	120(B)/387/34 IPC	Acquitted	NIL	NIL

Form C

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sunita Devi	Other witness (Complainant)
PW-2	Bimal Das	Other witness
PW-3	Karan Singh	Other witness
PW-4	Ram Krishna Dutta	Other witness
PW-5	Francis Tanti	Other witness
PW-6	Rupa Gore	Other witness
PW-7	Bimlal Gore	Other witness
PW-8	Bimal Singh	Other witness
PW-9	Rajesh Khoira	Other witness
PW-10	Dr. Amarjit Kurmi	Medical Officer
PW-11	Jitu Mani Deka	Investigating Officer

B. Defence Witnesses, if any:

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

C. Court Witnesses, if any:

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

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Exhibit 1	FIR
2	Exhibit 1(1)	Signature of Informant
3	PW/Exhibit 1(2)	Signature of I.O.
4	PW/Exhibit 1(3)	Signature of O/C Dhekiajuli
5	Exhibit 2	Search List
6	Exhibit 2(1)	Signature of Rajesh Khoira
7	Exhibit 2(2)	Signature of I.O
8	Exhibit 3	Injury Report
9	Exhibit 3 (1)	Signature of M.O.
10	PW/Exhibit 4	Sketch Map
11	PW/Exhibit 4(1)	Signature of I.O.
12	PW/Exhibit 5	Search List
13	PW/Exhibit 6	Search List
14	PW/Exhibit 6(1)	Signature of I.O.

15	PW/Exhibit 7	Search List
16	PW/Exhibit 7(1)	Signature of I.O.
17	PW/Exhibit 8	Charge Sheet
18	PW/Exhibit 8(1)	Signature of I.O.

A. Defence:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

A. Court Exhibits

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

A. Material Objects:

Sr. No	Material Object Number	Description
NIL	NIL	NIL

CLASS

TEZPUR, SONITPUR

Present :- Sri Vishek Bhuyan, AJS

Judicial Magistrate 1st Class Sonitpur, at Tezpur

(G.R CASE NO.: 2812 OF 2015)

Under Sections 120(B)/387/34 of IPC

State of Assam

- VERSUS -

A1 Sri Narayan Singh Gorh

S/o- Sri Karan Singh Gorh

Vill: Ashurmari, Rakasmari

P.S- Dhekiajuli

A2 Sri Ajit Mahapatra

S/o Sri Premananda Mahapatra

Vill: Betjan Line, Rakasmari

P.S- Dhekiajuli

Dist- Sonitpur (Assam)

-Accused persons.

Appeared

Ld. APP for State : Sri Niranjan Saikia.

Ld. Counsel for Defence : A.K. Saikia, R.Bharali

Charge framed on : 20.11.2017

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Dates of Evidence : 02.07.2018, 25.07.2018,
30.03.2019,13.05.2019,
17.07.2019, 09.02.2021,
16.03.2021, 19.05.2022.

Date of Argument : 18.08.2022.

Date of Judgment : 21.12.2022.

J U D G M E N T

1. The present case arose out of an FIR lodged by informant Smt. Sunita Devi is that on 14.10.2015 she lodged an ejahar to the effect that on 11.10.2015 when her husband Sri Bimal Singh was working at the paddy field, the accused persons came to him and demanded Rs. 30,000/- by that day's evening and upon failure the accused persons threatened that they will kill him. Later on, her husband consumed poison and was shifted to Dhekiajuli hospital. After his release, the accused persons demanded the same. Hence, this case.

2. On receipt of the FIR, officer in charge of Dhekiajuli police station registered a case vide Dhekiajuli P.S. case no. 618/2015 under Sections 120(B)/387/34 of the Indian Penal Code (IPC) and endorsed the case for investigation. Accordingly, investigating officer (I/O) initiated investigation of this case and on completion of investigation, I/O submitted charge sheet against the accused persons under Sections 120(B)/387/34 of the IPC.

3. Thereafter, on basis of the contents of the case diary, FIR, charge sheet and other relevant documents, cognizance was taken of the offence prima facie appeared to have been committed by the accused persons and summons were issued against them.

4. On appearance, accused persons were furnished with copy of relevant documents under Section 207 of the Criminal Procedure Code (Cr.P.C.).

5. On perusal and consideration of the material on record and upon hearing the learned Assistant Public Prosecutor (APP) and the learned counsel appearing on behalf of the accused persons, prima-facie material of offence under Sections 120(B)/387/34 of the Indian Penal Code (IPC) were found against the accused persons and accordingly charge under the aforesaid sections were framed and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. In support of its case, prosecution examined 11 (eleven) number of witnesses and exhibited 8 (eight) numbers of documents. The witnesses were cross-examined by the defence and thereafter the witnesses were discharged.

7. Statements of defence of the accused persons under section 313 Cr.P.C. have been recorded and kept with the

case record. Defence pleas were of complete denial and declined to adduce any evidence.

8. I have perused the material on record and heard the arguments advanced by the learned A.P.P. and the learned counsel appearing for the accused persons.

9. Upon hearing and after perusal of the record, following points are formulated for proper adjudication of this case:

POINTS FOR DETERMINATION :

(A) Point No. 1 : Whether the accused persons on 11.10.2015, in the morning, at Asurmari village (Rakhyasmari) under Dhekiajuli P.S, in furtherance of common intention, agreed to do an illegal act, namely illegally demand money and besides the above said agreement you did some acts, in pursuance of the said agreement to commit the offence of extortion punishable imprisonment for a term of 2 years or upwards and thereby committed an offence punishable under section 120(B)/34 of IPC ?

(B) Point No. 2 : Whether the accused persons on the same day, at same time and at same place, in furtherance of common intention put Sri Bimal Singh in fear of death or

of grievous hurt in order to committing of extortion and thereby committed the offence under section 387/34 of IPC?

PROSECUTION EVIDENCE

Evidence of informant

10. P.W 1 Smt. Sunita Devi states that she is the informant and she knows the accused. The incident took place 4 years from the date of this deposition, at about 10 AM near paddy field. The accused persons demanded money from her husband and also threatened him by saying that they will kill him if he is not able to pay. Out of fear her husband consumed poison and tried to commit suicide. Her husband was admitted to hospital. After being released from hospital the accused persons again came to her house and threatened her husband to pay them the money demanded before. **In her Cross examination** she stated that she put thumb impression on her hazira. She does not know how to read and write Assamese. She also does not know how to sign English, Hindi and Assamese. She deposed that she lodged the ejahar on the day of the incident. She put thumb impression on the ejahar that was filed by her at Rakashmari police station. She does to know who wrote the ejahar. She also does not know the contents

of the ejahar. The ejahar lodged by her is not present in the case record. She further states that her husband consumed the poison at about 4 AM at the paddy field. She also did not witness him consuming the poison. Her husband consumed the poison on the day of the incident.

Evidence of independent witnesses

11. P.W 2 Bimal Das states that the informant as well as the accused persons are his neighbour. He heard that the husband of informant consumed poison. In his **Cross examination** he states that he does not know the time of the incident, he also does not know as to when the husband of the informant drank the poison.

12. P.W 3 Karan Singh states that he does not know the informant neither does he know the accused person. **Cross examination** was declined.

13. P.W 4 Ram Krishna Dutta states that he does not know the informant as well as the accused persons. He further states he does not know anything about the incident. **Cross examination** was declined.

14. P.W 5 Francis Tanti states that he does not know the informant but he knows the accused persons. He does

not know anything about the incident. **Cross examination** was declined.

15. P.W 6 Rupa Gore states that she does not know the informant but she knows the accused Narayan. She does not know anything about the incident. **Cross examination** was declined.

16. P.W 7 Bimlal Gore states that he does not know the informant but he knows the accused standing in the dock, he does not know rest of the accuse person. He does not know anything about the incident. **Cross examination** was declined.

17. P.W 8 Bimal Singh states that he knows the accused persons and the informant is his wife. The incident took place in the year 2015 at about 7-10 AM. When he was ploughing his paddy field the accused Narayan Singh, Ajit Mahapatra came and demanded Rs. 30,000/- from him. And when he told them he could not pay, the accused then threatened him and told him that they will kill him. Due to this, out of fear he drank poison in the paddy field itself. After drinking the poison he went back to his house and his wife took him to hospital. When he recovered and came back to his house the accused persons again came to his house. In his **cross examination** he states that he does not remember the exact date of the incident but it took

place during summer. Police saw the bottle of poison which he drank. At the time of the incident he was ploughing his field alone. At the time of incident Champa Sahini and his mother were present. On the day of the incident he was examined in Dhekiajuli Civil Hospital.

18. P.W 9 Rajesh Khoira states that he does not know the informant but he knows the accused persons present in the court. The incident took place in the year 2015. He states that police came to his house seeking accused Ajit Patro as his father is the Gaon Burah of the village. In his **cross examination** he states that when he signed on the search list he did not know the contents. And he did not go and check for Ajti Patro at his house.

19. P.W 10 Dr. Amarjit Kurmi (M/O) states that on 22.01.2016 at about 9 PM he was posted at Dhekiajuli CHC as Medical and Health Officer. He examined Bimal Singh @ Niranjan of Ashurmari Gaon of Rakshamari out post. At the time of examination there were no external injury present. In his **cross examination** he states that he did not tick the details regarding the relationship of Bimal Singh with Santosh Singh. He also did not fill the required details regarding nature of injury, size of injury, on what part of the body inflicted by what weapon blunt or sharp and age of injury in column No. 1, 2, 3, 4, 6 and 7. In his medical report he noted that the injury as simple as there was the

option of categorizing any injury as simple, grievous or dangerous in the medical report. He further states that there was no basis of categorizing the injury of Bimal Singh as simple as no external injury was observed on his body. He did not examine Bimal Singh for any internal injury. He does not write the brief history as to why Bimal Singh was brought to him for examination. He did not take the left thumb impression of the patient i.e. Bimal Singh. He does not know Bimal Singh personally. There is no mention of any witnesses for identification of Bimal Singh during his medical examination so he cannot confirm the identity of Bimal Singh. He does not treat him for any injury. There was no mention of admit and discharge date in the medical report. In Dhekiajuli CHC there is bed head ticket number for each patient. On the day of examination he did not check the bed head ticket of Bimal Singh. He has mentioned in the medical report that conservative treatment was given to Bimal Singh. In medical terms when a patient is just examined; then it is called conservative treatment. Based on his findings noted in the register book maintained during medical proceeding. He filed the details of Exhibit 3. He did not mention in the medical report that it has been compared with the original. He further stated that it is not fact that he did not examine Bimal Singh i.e. on 22.01.2016. He did not take "stomach content" of Bimal Singh and nothing was sent to FSL for examination.

20. P.W 11 Jitu Mani Deka (I/O) states that on 13.10.2015 he was posted as incharge (I/c) at Raikashmari outpost. ON the day complainant Sunita Devi had filed an FIR and accordingly GD No. had made GD No. 225 dated 13.10.2015. He forwarded the FIR to Dhekiajuli PS and was registered as Dhekiajuli PS Case No. 618/2015 u/s 120(B)/387/34 of IPC. PW/Exhibit 1 (2) is his signature PW/Ext. 1(3) signature of Animesh Das O/C Dhekiajuli. Accordingly, he was endorsed as I.O of the instant case. He recorded the statement of the complainant on 14.10.2015 at the Raikashmari out post. He went to the place of occurrence and recorded statement of other witnesses. PW/Exhibit 4 is the sketch map and PW/Exhibit 4(1) is his signature therein. He could not find the accused person. PW/Exhibit 2 is the search list of Ajit Mahapatra and PW/Exhibit 5 is the search list of the Narayan Singh Garh dated 15.10.2015 and PW/Exhibit 2 (2) is his signature therein. PW/Exhibit 6 is the search list of the Narayan Singh Garh and PW/Exhibit 6(1) is his signature therein. PW/Exhibit 7 is the search list of Ajit Mahapatra and PW/Exhibit 7 (1) is his signature therein. He submitted charge sheet after completion of investigation. He forwarded victim Bimal Singh for recording statement u/s 164 of Cr.P.C. PW/ Exhibit 8 is the charge sheet and PW/ Exhibit 8 (1) is his signature therein. In his **cross examination** he states that the incident happened on

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11.10.2015. He received the FIR on 13.10.2015. The FIR does not mention the reason of delay. GD Entry No. 225 dated 13.10.2015 is not in the case diary. He inspected the place of occurrence on 15.10.2015 at 9 AM. Thereafter, he have not visited place of occurrence. He have not seized any bottle or pot of poison. Hence, no object was sent for forensic examination. No case has been registered against victim Bimal Singh who allegedly consume poison. Victim was sent for medical examination on 21.01.2016. Victim was not sent for medical examination by police. Victim on his own got himself for medical examination. He collected the medical report of the victim on 27.02.2016. The writer of the FIR i.e PW/Exhibit 1 have not been examined by him. There is no specific mentioned of named of the accused persons in the 164 of Cr.P.C statement. In the sketch map i.e. PW/Exhibit 4 does not mention the name of the place of occurrence. He have not mentioned Atul Kundu and Rajkumar Sahini who stay near the place of occurrence. FIR i.e Exhibit 1 doest no mention the time of occurrence of the said incident. He further states that it is not fact that PW 1 Sunita Devi filed an FIR on the date of occurrence which he tried to suppress. It is not a fact that PW 1 Sunita Devi did not state before police that the accused persons threatened and demanded money from PW 1. He states that it is not fact that PW 1 did not state before police that the accused persons threatened to kill PW 1's husband at his home. PW 2 did not state before

police that after he was discharged from the hospital, villagers were come to enquire.

DISCUSSIONS, DECISIONS AND REASONS
THEREOF

21. Upon perusal of the evidence it is seen that there are several lacunae/contradictions in the evidences of the prosecution witnesses.

22. Firstly, the informant as PW-1 stated in her examination in chief the Ext-1 is the ejahar lodged by her and Ext-1(1) is her signature which is signed in Assamese. But it is revealed in her cross examination that she does not know how to read or write in Assamese neither can she read or write in English and Hindi. This is further supported by the fact that she put her thumb impression on her evidence dated 02.07.2018. Hence, there is reasonable doubt as to the fact whether it was the informant who filed the Ext-1 which initiated the case.

23. Secondly, the informant/PW-1 stated in her examination in chief that the incident took place at about 10 AM, but she contradicts herself in her cross examination where it is revealed that the accused drank the poison at 8 AM in the paddy field. The informant herself did not

witness her husband consuming the poison. Furthermore, it is seen from the evidence of the rest of the PWs that none of them saw the victim drinking poison.

24. Thirdly, PW-8/ victim stated in his evidence in chief that he while he was ploughing his paddy field, the accused persons came out of nowhere started demanding him Rs 30,000/- for no reason whatsoever. The fact that someone would demand Rs 30,000/- and threaten to kill if failed to pay out of thin air, appears to devoid of any logic.

25. PW-8 also stated in his evidence in chief that drank the poison in the paddy field soon after being threatened and out of fear, does not seem plausible. As no prudent man will carry a bottle of poison with him when he goes out to plough his paddy field.

26. The victim/PW-8 was taken for medical examination and as per Ext-3 which is the injury report, the victim has sustained simple injury. This is in contradiction with the fact that the neither the victim nor the informant has stated anywhere that the victim was physically assaulted. Furthermore, PW-10/ medical officer who examined the victim revealed in his cross examination that he did not observe any external injury on the body of the victim, and he did also did not examine for any internal injury. Now, PW-8/victim has stated in his examination in chief he was

taken to hospital for treatment on the day of the incident, but no other medical report has been exhibited by the prosecution which points towards the fact that the victim consumed poison. Hence, there is no evidence adduced by the prosecution that proves that the victim drank poison, additionally none of the witness actually saw him drink the poison including the informant/wife of the victim. It is further revealed from the cross examination of I.O as PW-11 that he did not seize any bottle or pot of poison.

27. PW-11/ I.O has stated in his cross examination that the incident occurred on 11.10.2015 but he received the FIR on 13.10.2015 and the prosecution fails to mention the reason for delay. PW-11 also stated that he did not examine Atul Kundu and Rajkumar Sahini who lived near the place of occurrence, hence the investigation of the offence has not been satisfactory as these two potential witnesses could have shed light on the actual facts of the incident.

28. Considering the above thread of discussion it appears to this Court that there exist a lot of lacunas, omissions and contradictions in the prosecution evidence which creates reasonable doubt as to the guilt of the accused persons.

29. As such the prosecution has failed prove that the accused persons have committed the offences u/s 120(B)/387/34 of IPC beyond reasonable doubt.

ORDER

30. In light of the above discussion, the accused persons namely Sri Narayan Singh Gorh and Sri Ajit Mahapatra are acquitted of the charges of offence alleged to have been committed by them u/s 120(B)/387/34.

31. Set the accused persons at liberty forthwith.

32. Bail bond for the accused persons are extended for a further period of six months in view of section 437(A) of the Cr.P.C.

33. Given under the hand and seal of this court on this **21st day of December, 2022** at Tezpur, Sonitpur.

(Sri Vishek Bhuyan)
Judicial Magistrate First Class
Tezpur, Sonitpur.

Appendix

Name of the witness of Prosecution:-

1. P.W-1 : Sunita Devi (Complainant)
2. P.W-2 : Bimal Das
3. P.W-3 : Karan Singh
4. P.W-4 : Ram Krishna Dutta
5. P.W-5 : Francis Tanti
6. P.W-6 : Rupa Gore
7. P.W-7 : Bimlal Gore
8. P.W-8 : Bimal Singh
9. P.W-9 : Rajesh Khoira
10. P.W-10: Dr. Amarjit Kurmi (M.O).
11. P.W-11: Jitu Mani Deka (I.O).

Documents exhibited by Prosecution :-

1. Ext-1 : FIR.
2. Ext-1(1): Signature of the informant.
3. Ext-1(2): Signature of I.O.
4. Ext-1(3): Signature of O/C Dhekiajuli
5. Ext-2 : Search list.
6. Ext-2(1): Signature of Rajesh Khoira.
7. Ext-2(2): Signature of I.O.
8. Ext-3: Injury Report.
9. Ext-3(1): Signature of M.O.
10. Ext-4: Sketch Map.
11. Ext-4(1): Signature of I.O.

12. Ext-5 : Search List.
13. Ext-6 : Search List.
14. Ext-6(1) : Signature of I.O.
15. Ext- 7 : Search List.
16. Ext- 7(1) : Signature of I.O.
17. Ext- 8 : Charge sheet.
18. Ext- 8(1) : Signature of I.O.

Name of the witness of Defence:- Nil.

Documents exhibited by Defence :- Nil.

(Sri Vishek Bhuyan)
Judicial Magistrate First Class
Tezpur, Sonitpur.