

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, KAMRUP (M)

**G.R. Case No. 1175 of 2011**

u/s 420/468, IPC

State

-vs-

Sri Gauranga Sarkar ..... Accused

**Present: Sri Sarfraz Nawaz, A.J.S.**

Evidence recorded on : 05.11.15  
31.05.16  
06.08.16  
22.11.16  
02.02.17

Arguments heard on : 23.02.17  
06.03.17

Judgment delivered on: 17.03.17

Appearing for the Prosecution : Assistant Public Prosecutor, Sri S. Zahir

Appearing for the Defence : Sri L. K. Rajkonwar

**JUDGMENT**

**1.** The accused person, Sri Gauranga Sarkar, has stood trial for offences punishable under sections 420/468, Indian Penal Code (hereinafter called IPC).

**Allegation**

**2.** Smti Mofida Rabbani initiated the instant case by filing a petition under section 156 (3), Criminal Procedure Code (hereinafter called CrPC) before the Hon'ble Chief Judicial Magistrate, Kamrup stating *inter alia* that she was the absolute owner and possessor of a plot of land covering 1 (one) bigha, 2 (two) katha and 10 (ten) lecha covered by Dag No. 257 of Patta No. 180 of Village Betkuchi under Beltola Mouza. She executed a Power of Attorney in favour of her brother, Md. Majharul Islam. Her brother initiated the process of gifting 3 (three) katha of that land to Sri Gauranga Sarkar. However, the Gift Deed could not be registered as the Power of Attorney was unregistered. But Sri Gauranga Sarkar

fraudulently filled up the incomplete Gift Deed and got the entire land transferred to his name.

### **Information and Investigation**

**3.** The petition under section 156 (3), CrPC was sent to the Officer in Charge of Gorchuk Police Station who registered the same as Gorchuk P.S. Case No. 41/2011 under sections 420/448/506, IPC. The police after investigation submitted charge sheet against the accused person, Sri Gauranga Sarkar under section 420, IPC.

### **Trial**

**4.** Cognizance was taken of the offence and the trial commenced. On appearance of the accused person, copies were furnished to him as per section 207, CrPC and after hearing the prosecution as well as the defence and after considering the materials forwarded with the police report, a charge under sections 420/468, IPC was framed against the accused, Sri Gauranga Sarkar. The charge was explained to him to which he pleaded not guilty and claimed to be tried.

**5.** The prosecution examined the informant, Smti Mofida Rabbani as PW-1, her brother, Md. Majharul Islam as PW-2, Sri Rajib Boro as PW-3 and the investigating officer, Sri Jagat Chutia as PW-4. The prosecution also exhibited the ejahar, the seizure list, the sketch map and the charge-sheet.

**6.** On completion of the prosecution evidence, the accused person was examined under section 313, CrPC. He denied the allegation. The defence examined Sri Pabitra Kr. Das, Junior Assistant, Senior Sub Registrar's Office, Kamrup (M) as DW-1 and exhibited the authenticated copy and the certified copy of the Gift Deed in question.

**7.** I have heard the arguments of the learned counsels for both sides. I have also carefully gone through all the evidence adduced on record.

### **POINTS FOR DETERMINATION**

**8.** Whether the accused person, on 30.09.2009, cheated the informant and her brother by dishonestly inducing the informant's brother to deliver the

documents for preparation of the Gift Deed and thereby committed an offence punishable under section 420, IPC?

**9.** Whether the accused person, on 22.10.2009, forged the Gift Deed intending that it shall be used to cheat the informant and her brother and thereby committed an offence punishable under section 468, IPC?

### **DECISIONS AND REASONS THEREOF**

#### **Prosecution Evidence**

**10.** The informant, Smti Mofida Rabbani, who initiated the prosecution of the accused, came in as PW-1. She has deposed that her father left behind a plot of land covered by Dag No. 257(O)/676(N) and Patta No. 180(O)/166(N) in Betkuchi Village under the Beltola Mouza. She gave her brother Md. Majharul Islam a Power of Attorney for selling the plot of land. Her brother arrived at an understanding with the accused, Sri Gauranga Sarkar for the sale of the land. However, the accused took away a piece of paper required for the registration of the deed. PW-1 has added that as the accused had not brought the money, the registration could not be completed. Subsequently, she came to know that the accused had fraudulently used that piece of paper to show sale of 2 (two) katha and 10 (ten) lecha of her land to him. PW-1 has also stated that as her brother had been dealing exclusively in relation to the land, she did not have further knowledge of the matter. But she has stated that she got an ejahar registered through the court. She has proved her complaint as Ext-1.

**11.** In her cross-examination, PW-1 has stated that her brother had entered into an agreement for sale of the land with the accused in her presence. But she has denied the suggestion that her brother had received the money for the sale. She has also denied the suggestion that her brother had executed a Gift Deed for the land to the accused. But she has admitted that without cancelling the Power of Attorney, she entered into an agreement for sale of the land with Sri Bhaskar Jyoti Das and Sri Dilip Kr. Choudhury.

**12.** The next prosecution witness was the informant's brother, Md. Majharul Islam. He remains the star prosecution witness as all the dealings allegedly

occurred between him and the accused. As PW-2, he has stated that the incident in question occurred in September, 2009. He was given Power of Attorney in respect of a plot of land by his sister. The accused, Sri Gauranga Sarkar was supposed to purchase their 1 ½ (one and a half) bigha *ryoti* land for a consideration of Rs. 45,00,000/- (Forty Five Lakh Rupees). He has added that the accused kept on postponing the payment. So, instead of 1 ½ (one and a half) bigha, he prepared documents for 3 (three) katha. He told the accused that only after he makes the payment of the entire consideration, he would transfer the entire land to him. But as the Power of Attorney given to him was not registered, the entire execution got pending. The Registrar Office staff handed over all the documents to him. It was then that the accused told him that all the money spent in purchasing stamp duty would go in vain. Hence, he gave some of the papers to the accused. A few days thereafter, he managed to get his Power of Attorney registered. He started calling the accused for execution of the Conveyance Deed but the accused did not respond. Subsequently, it came to his knowledge that the accused had got the land conveyed to his name by affixing another stamp paper to the list of papers given to him. The additional stamp paper did not contain his name. Thereafter, both he and his sister filed criminal cases against the accused. PW-2 has added that in the Deed prepared by the accused, only the first page was prepared by him and the rest of the pages were fraudulently prepared by the accused.

**13.** In his cross-examination, PW-2 has stated that the accused had given him Rs. 3,00,000/- (Three Lakh Rupees) as advance as part of the agreement. He gave a money receipt for the same on 23.11.2009. He has denied the suggestion that he already received the entire sum of Rs.45,00,000/- (Forty Five Lakh Rupees) and thereafter executed the Deed of Conveyance in favour of the accused. PW-2 has admitted that on 13.03.2013, his sister entered into an agreement for sale with Sri Bhaskar Jyoti Das and Sri Diip Choudhury in his presence.

**14.** Thereafter, Sri Rajib Boro came to the witness stand. As PW-3, he has stated that the informant, Smti Mofida Rabbani told him that she had given 3 (three) katha of land to the accused, Sri Guaranga Sarkar whereas the accused told him that she had given him 1 ½ (one and a half) bigha of land.

**15.** The investigating officer, Sri Jagat Chutia was summoned to the witness stand as PW-4. He has stated that on 10.02.2011, he was entrusted with the investigation of the instant case. He interrogated the informant and seized all the documents in connection with the instant case. Later, he gave those in zimma to the informant. He has identified Ext-2 as the Seizure List. Thereafter, he proceeded to the place of occurrence. He recorded the statements of the witnesses and prepared the Sketch Map. He has proved the Sketch Map as Ext-3. The accused obtained the benefit of pre-arrest bail and appeared before him. After completion of the investigation, he submitted the charge-sheet which he has proved as Ext-4.

### **Prosecution's Case versus Defence's Plea**

**16.** The learned Assistant Public Prosecutor has argued that the statements of the informant and her brother clearly establish that the accused person cheated them by drawing up a fraudulent Gift Deed for the informant's land. The learned Prosecutor has also argued that the Gift Deed has since been declared null and void by the Hon'ble Civil Judge (Sr. Div.), Kamrup (M).

**17.** Per contra, the defence has taken the plea that the informant and her brother had sold the land to him and he had made full payment for the same. The same is reflected from the statement of the accused recorded under section 313, CrPC. The learned defence counsel has argued that the informant had entered into an agreement with some other persons for the land and has instituted the instant case as coercive measure to pressurize the accused to forsake his claim to the land. The learned counsel has further argued that the Deed of Conveyance was prepared by the accused and PW-2 in presence of the Senior Sub Registrar, Kamrup (M) and there has been no forgery employed in the execution of the same.

### **Defence Evidence**

**18.** The defence summoned Sri Pabitra Kr. Das, Junior Assistant in the Office of the Senior Sub-Registrar, Kamrup (M) as DW-1. He has deposed that Gift Deed No. 12286 was registered on 22.10.2009. As per the Gift Deed, the Power of Attorney holder, Md. Majharul Islam was the donor of the land on behalf of Smti Mofida Rabbani. Also, as per clause (2) in the Gift Deed, the possession of the land had already been granted to the accused, Sri Gauranga Sarkar. He has added that

land measured 1 (one) bigha, 2 (two) katha and 10 (ten) lecha covered by Dag No. 257, Patta No. 180 of Betkuchi village in the Beltola Mouza. DW-1 has exhibited the authenticated copy of the Gift Deed as Ext-A and the Certified Copy thereof as Ext-B.

**19.** In his cross-examination, DW-1 has admitted that on the second page of the Gift Deed, the signature of Md. Majharul Islam is not available.

### **Judicial Determination**

**20.** I have considered the evidence on record- both prosecution and defence- in its entirety. I have also considered the rival pleas of both sides.

**21.** At the outset, let me point out that the Transfer of Property Act has laid down express modes of conveying immovable property between persons. These modes include Sale, Gift, Mortgage, Lease and Exchange.

**22.** Since the Deed of Conveyance involved in the instant case is a Gift Deed, let me reproduce the definition of Gift.

**23.** Section 122 of the Transfer of Property Act defines gift as follows:

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

**24.** Thus, it is clear that in case of a gift, there is no question of consideration changing hands. But it seems that in the instant case, both parties have taken the plea that consideration (or a portion thereof) was paid for the land in question. While the prosecution has claimed that the accused received an advance for the land but later used fraudulent documents to get the land conveyed to his name, the defence has taken the plea that the accused has already paid the entire consideration of Rs. 45,00,000/- (Forty Five Lakh Rupees).

**25.** In either case, I fail to comprehend why a Gift Deed was used for the conveyance of the land. It is in this shady backdrop that I proceed to adjudicate whether the prosecution has been able to establish its case against the accused.

**26.** On perusal of Ext-2, it is seen that the original Power of Attorney executed by PW-1 in favour of PW-2 was seized by the investigating officer (PW-4). However, it is quite apparent that the execution of the Power of Attorney is not in dispute in the case. The defence has not assailed the Power of Attorney as is evident from the suggestions put to both PW-1 and PW-2.

**27.** However, to the prosecution's dismay, the investigating officer never seized the Gift Deed in question. It is this very Gift Deed that the prosecution claims has been forged by the accused person. And yet the investigating officer did not deem it fit to seize the same and have it produced before this court for consideration. This is fatal blow to the prosecution's case as both the offences alleged are entwined with the Gift Deed in question.

**28.** Surprisingly, it was the defence which brought the Gift Deed on record by producing its authenticated as well as certified copies.

**29.** Now, the learned Assistant Public Prosecutor has argued that the Gift Deed in question has already been declared null and void. However, it is worth mentioning here that the prosecution has failed to prove this claim by proving any document (decree or order) that suggests so. Hence, a mere claim to that effect will not suffice. Moreover, even if it is presumed that the claim of the prosecution is true, nullification of the Gift Deed does not imply that it was actually forged.

**30.** Moving on, PW-2, the witness on whose testimony the entire prosecution of the accused is dependent, has claimed that only the first page of the Gift Deed was prepared by him and the rest of the pages were fraudulently prepared by the accused. But on perusal of Exts- A and B, it is seen that all pages containing the terms and conditions of the gift bear the signatures of PW-2. The prosecution has not pleaded that the signatures do not belong to PW-2 nor has the prosecution adduced any evidence that proves that the accused had forged those signatures.

**31.** The only page that does not contain the signature of PW-2 is the second page but that page is only the certificate of purchase of the e-stamp and the same does not have any direct bearing on the conditions of the Gift. It is also worth

mentioning here that Page 1 is also a certificate of purchase of e-stamp and the same has been duly signed by both PW-2, PW-3, the witnesses as well as the Senior Sub Registrar.

**32.** The prosecution has argued that the date of purchase of Page 1 is 30.09.2009 whereas the date of purchase of Page 2 is 22.10.2009. However, let me point out that there is no illegality in the purchase of stamp duties on two dates. Moreover, the significant point to consider is that Page 1 itself shows that the Deed was executed on 22.10.2009 i.e., on the date of purchase of Page 2.

**33.** I have also not lost sight of the fact that at the time of registration of a Conveyance Deed, it is incumbent for both the transferor and the transferee to remain present in front of the Registrar. It is the Registrar who explains the terms and conditions of the Conveyance Deed to the parties who after satisfaction put their signature in his presence. In the instant case, Page 1 of the Gift Deed contains the signature of the accused, PW-2 as well as the Senior Sub-Registrar, Kamrup (M). Page 1 also reflects that the execution of the Deed has been admitted by PW-2. The prosecution has failed to come up with a satisfactory explanation as to how the same occurred. Even if it is presumed that the other pages were drawn up by the accused, the prosecution has failed to explain how the accused bypassed the formalities before the Senior Sub Registrar and managed to secure his signature as well as the signature of the witnesses on Page 1.

**34.** As such, Ext-A and Ext-B stand in stark contrast to the claim of PW-2 that he had only prepared Page 1 of the Gift Deed. They also show that the Gift Deed was duly executed in its current form between PW-2 and the accused. As such, it is perfectly clear that prosecution has failed to bring in any material on record (save the claims of PW-2) that the Gift Deed in question was forged, let alone make the accused culpable for the same.

**35.** As for the probative value of PW-1's allegations in this regard, it is quite clear that her evidence is based on what was narrated to her by her brother (PW-2) who had been handling all the details of the transaction. Moreover, the tenant of the land, Sri Rajib Boro (PW-3) who also happens to be a witness to the Deed could not shed any light on the prosecution's case.

**36.** As for PW-4 (the investigating officer), though he has deposed that he found sufficient incriminating materials against the accused, he has failed to specify what those materials were. As discussed earlier, PW-4 did not even seize the Gift Deed in question.

**37.** Also, the prosecution has not adduced any scientific evidence that can back up its claim in relation to forgery of the Gift Deed.

**38.** Thus, in light of the aforesaid discussion, it is clear that the prosecution has failed to establish the charge that the accused forged the Gift Deed in question.

**39.** It is pertinent to add here that the prosecution has also alleged that the accused cheated PW-1 and PW-2. Now, in order to hold the accused culpable for the same, the prosecution must be able to establish beyond reasonable doubt that the accused dishonestly induced PW-2 to deliver the documents pertaining to the Gift Deed to him.

**40.** On perusal of the evidence on record, it appears that apart from the claims of PW-2 to that effect, there is no corroborative evidence to prove the same. Hence, the uncorroborated claim of PW-2 will have to be taken with a pinch of salt. While I do not discount the possibility of the claim of PW-2 to be true, but the same does not suffice in shouldering the prosecution's burden to establish the offence of cheating beyond reasonable doubt. Accordingly, I deem it justified to give the accused the benefit of doubt.

### **Decisions**

**41.** Considering the discussions made over, I am of the considered opinion that the prosecution has failed to establish beyond reasonable doubt that on 30.09.2009, the accused person cheated the informant and her brother by dishonestly inducing the informant's brother to deliver the documents for preparation of the Gift Deed and thereby committed an offence punishable under section 420, IPC.

**42.** Further, I am of the opinion that the evidence on record does not establish that the accused person, on 14.10.2009 forged the Gift Deed intending

that it shall be used to cheat the informant and her brother and thereby committed an offence punishable under section 468, IPC.

**ORDER**

**43.** Situated thus, the accused person, Sri Gauranga Sarkar, is acquitted of the charge under sections 420/468, IPC and set at liberty forthwith.

**44.** His bail bonds are extended for 6 (six) months from today as per section 437-A, CrPC.

**45.** The custody of the Power of Attorney is made absolute in favour of the informant.

Given in my hand and under the seal of this court on this the 17<sup>th</sup> day of March, 2017.

Typed by Me:

(Sri Sarfraz Nawaz)  
Judicial Magistrate First Class, Kamrup (M)

## **APPENDIX**

Prosecution Witnesses :

PW-1: Smti Mofida Rabbani

PW-2: Md. Majharul Islam

PW-3: Sri Rajib Boro

PW-4: Sri Jagat Chutia

Defence Witness :

DW-1: Sri Pabitra Kr. Das

Prosecution Exhibits :

Ext-1: Ejahar

Ext-2: Seizure List

Ext-3: Sketch Map

Ext-4: Charge-Sheet

Defence Exhibits :

Ext-A: Authenticated Copy of Gift Deed

Ext-B: Certified Copy of Gift Deed.

Judicial Magistrate First Class, Kamrup (M)