

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, UDALGURI**

C.R. CASE NO. 53/2017

U/S-420 IPC.

Miss. Marsha Dhan.....Complainant.

Vs.

Sri Shishukanta Bhumij.....Accused.

**Present before** : **Kumari Arti, AJS**  
For Complainant : Sri. B. K. Chetry  
For Defence : Sri T.C. Boro  
Date of Evidence : 28.06.18, 24.09.18, 29.10.18,  
10.01.19, 08.03.19  
Date of argument : 11.07.2019  
Date of Judgment : 06.08.2019

**JUDGMENT**

1. Complainant case in brief is that accused had taken Rs. 60,000/- from the complainant by keeping his 12 bighas of land on bandhoki with a promise that he was cultivate the said land and also give 5 mounds paddy to the complainant. He was also entered into an agreement in this regard but he failed to give paddy and also he could not return borrowed money to the complainant. Hence this case.

**Compliance of Sec- 207 Cr.P.C.**

2. Copies of relevant documents were furnished to the accused in accordance with Sec-207 Cr.P.C.

**Offence explanation**

3. During trial particulars of offence u/s-420 Indian Penal Code read over and explained to the accused to which he pleaded not guilty and claimed to face trial.

**Evidence Adduced**

4. Complainant has examined five witnesses. Examination u/s-313 Criminal Procedure Code of accused is recorded as per law and kept with the record.

**Points for determination**

5. (i) Whether the accused could be hold accountable for the offences levelled against him?
- (ii) Whether the prosecution established its case beyond all reasonable doubt?

**Discussion, Decision and Reasons thereof**

1. **PW1** namely, Miss. Marsha Dhan deposed that she is the complainant of this case and she has filed this case against Sishu Kanta Bhumij. The accused kept 12 bighas of land on bandhoki by taking Rs. 60,000/- only with promise to give five mons of paddy. In this regard a deed was executed in the year 2008 and he did not keep his promise. When the accused did not keep his promise then she visited his house on numerous occasions. Sometimes she found him at home and on the other times she did not find him. The accused gave several dates promising her to give the paddy as agreed upon but failed to keep his promise. Whenever she visited his house then his wife and other family members used to scold her and said that they would not give her anything. In this regard a meeting was also held in the village but the accused said that he would not give her paddy. Her father went to the house of accused and asked for the money then he gave written promise to repay the dues and thereafter he did not fulfil this promise. She had no objection to file this case against him and during the trial of that case he promised to pay back the dues but still he could not do therefore she was helpless and she filed the instant complain case in this court.

In cross examination she stated that she has filed one criminal case at the police station over the same facts before filing of this complain case. Police had arrested the accused which was trial and in that case accused was acquitted. It is not a fact that she has filed this case in order to harass the accused.

2. **PW2** namely, Sri Silbanus Orang deposed that complainant is his niece. He can recognize the accused. Complainant mortgaged her 12 bighas land to the accused for Rs. 60,000/- and also on the compromised that accused will give her some produce from the agriculture but as per agreement neither accused returned the money nor paid any agricultural produce to the complainant. When the complainant approached the accused for the money or agriculture produce, he neither returned the money nor the land to the complainant and in returned accused threatened her.

In cross examination he stated that one criminal case over the same facts have been filed by the complainant in the police station and he was witness in that case and same was deposed.

3. **PW3** namely, Sri Nabin Ch. Boro deposed that he can recognize both the parties. Sishu Kanta Bhumij had taken Rs. 60,000/- from the complainant on keeping his land on mortgage to the complainant and he promised that he will keep the same with him for cultivation but later on neither he repaid the money nor he had given any agriculture produce to the complainant. Hence this case was filed. When the complainant approached the accused for money or agriculture produce he did not return anything and assaulted her.

In cross examination he stated that he has seen the transaction between the both parties and he does not remember the date of transaction. There was another case filed by the complainant in the police station before this case. It is not a fact that complainant filed this case in order to harass the accused and he deposed false evidence.

4. **PW4** namely, Sri Mariyanus Larka deposed that complainant is his cousin sister. He was witnessed of monetary transaction when Marsadhan gave money to Shisukanta. The amount of money was Rs.60,000/- which was given to Shisukanta by Marsadhan. Shisukanta Bhumij promised that he would give 60 muns of paddy to Marsadhan and same was not complied, subsequently. Shisukanta gave 18 muns of paddy to Marsadhan in the first year and Rs. 10,000/- at the second year. Thereafter Shisukanta stopped to pay anything to Marsadhan and he will not return the land to Marsadhan. I do not know about the nature of the land of complainant, though complainant told that the land in question is in medi patta.

In cross examination he stated that he has seen the transaction between the both parties and he does not remember the date of transaction. There was another case filed by the complainant in the police station before this case. It is not a fact that complainant filed this case in order to harass the accused and he deposed false evidence.

5. **PW5** namely, Sri. Bhadwa Dhan deposed that complainant is his daughter. Complainant gave money to Sishu Kanta Bhumij for having 12 bighas of land at Rs. 60,000/- on mortgage. Moreover, Sishu Kanta Bhumij told that 5 mons of paddy could be given to complainant for the land taken by him on mortgage to Sishu Kanta. Sishu Kanta failed to give paddy or money to complainant. Complainant gave Rs. 60,000/- to Sishu Kanta Bhumij by executing written

village document. But, when they went to the house of accused to demand money or paddy, Sishu Kanta drove out with abusing by hard words. The said Rs. 60,000/- was given to accused by complainant. Complainant was never kept the said money in bank and for the same reason, they would not be able to give any document to that effect. He does not know whether the land of complainant is medi or not. But, he is father of Marsadhan i.e. complainant.

In cross examination he stated that complainant is her daughter and over the same incident they have filed one more case earlier in the police station against accused and accused was arrested in that case. He was witness in that case and from that case accused was acquitted. Again he filed this case over the same issue.

6. On discussion of five witnesses examined by the prosecution it becomes clear that accused could not be held guilty for the commission of offence as evidence on record was found to be insufficient for holding the accused liable under section 420 IPC as dispute between the parties is totally in civil nature and no any criminal allegation is proved against accused from the materials on record. Therefore prosecution failed to establish its case beyond reasonable doubt.
7. My discussion above propels me to decide both the points for determination in negative. Accordingly the accused is held not guilty for commission of the offences punishable u/s-420 Indian Penal Code.

### **ORDER**

8. Accused **Sri Shishukanta Bhumij is** acquitted of the offence punishable **u/s-420** Indian Penal Code and he is set at liberty. Seizure if any be disposed of in accordance with law.
9. His bail bond shall be in force for six months from the date of judgment delivered.
10. Given under my hand and seal of this court on **06<sup>th</sup>** day of August, 2019.

KUMARI ARTI  
JMFC, Udalguri BTAD, Assam

**APPENDIX**

**COMPLAINANT EXHIBITS:**

NIL

**DEFENCE EXHIBITS:**

NIL

**WITNESSES FOR THE COMPLAINANT:**

P.W.1 .....Miss. Marsha Dhan

P.W.2 .....Sri Silbanus Orang

P.W.3 .....Sri Nabin Ch. Boro

P.W.4 .....Sri Mariyanus Larka

P.W.5 .....Sri Bhadwa Dhan

**WITNESSES FOR THE DEFENCE:**

NIL

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