



GAHC010218932012

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## **THE GAUHATI HIGH COURT**

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **Crl.Rev.P. 53/2012**

Md. Mainul Islam

Son Of Late Hazi Mohammed Majaid Ali R/O Vill- Moinagram

P.O. Kanaibazar Under Patharkandi P.S In The District Karimganj,

Assam

.....petitioner

### **VERSUS**

The State Of Assam And Ors.

2. Sofiur Rahman Talukdar

Son Of Jalaluddin Talukdar R/O Moriomnagar

Goalpara

P.O. Goalpara

Pin- 783101 P.S. Goalpara

Dist. Goalpara

Assam.

3. Mukaddes Ali

Son Of Jamat Ali R/O Rupnagar

Goalpara

P.O. Goalpara



Pin- 783101  
P.S. Goalpara  
Dist. Goalpara  
Assam

.....respondents

**:: BEFORE ::**

**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHOUND**

For the Petitioner : Mr. K. Sarma

For the Respondent : Mr. H. Das

Date of Hearing : **17.11.2022**

Date of delivery of

Judgment and Order : **29.11.2022**

**JUDGMENT & ORDER (CAV)**

1. Heard Mr. K. Sarma, learned counsel for the petitioner as well as Mr. H. Das, learned counsel appearing for the respondents.
2. This revision petition is filed under Section 397/401, read with Section 482 of the code of Criminal Procedure, 1973 (Cr.P.C for short). Revision is preferred against the judgment and order dated 24.10.2021 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Goalpara in connection with G.R. Case No. 1253/2008, arising out of Goalpara Police Station Case No. 325/2008.

3. The judgment and order is impugned, on the grounds that the trial Court has erred by acquitting Sofior Rahman Talukdar and Mukaddes Ali (hereinafter referred to the respondent nos. 2 and 3 respectively). It is averred that the trial Court has erroneously held that charge under Section 448 of the Indian Penal Code (IPC for short) was not proved. The trial Court has failed to appreciate the evidence on record in its proper perspective, keeping in view the provisions of Sections 441/442 of the IPC. The trial Court ignored the clinching and corroborating evidence of the prosecution witnesses clearly implicating that the respondents had entered into the complainant's office room within the nursing home campus, armed with lathi and other weapons and snatched away the almirah keys and thereafter looted cash from the drawers. The trial Court has failed to appreciate that Sections 441 and 442 IPC are interrelated. It has been held erroneously that there is no evidence of criminal trespass or wrongful intention to constitute an offence under Section 447 of the IPC.

4. Per contra, the learned counsel for the petitioner Md. Mainul Islam has reiterated the recitals of the revision petition while placing his argument in the Court. It was submitted that the trial Court had an opportunity to watch the demeanour of the prosecution witnesses in Court, and to assess their credibility.

5. The learned counsel for the respondents has submitted through his

argument that the trial Court has properly adjudicated the case and the judgment rendered by the learned trial Court does not require interference. He has referred to the decision of Hon'ble Supreme Court in ***State of Uttar Pradesh Vs. Wasif Haider and Ors.*** reported in ***(2019) 2 SCC 303.***

6. The genesis of this case was that on 17.11.2018, the informant/petitioner lodged an FIR with the police at Goalpara police station stating that on that day at about 11.30 A.M. both the respondents forcefully entered into his room, snatched away the almirah keys and also keys of drawers containing cash. An FIR was lodged and it was registered as Goalpara P.S. Case No. 325/2008, under Sections 448/358 of the Indian Penal Code and the Investigating Officer (I/O in short) embarked upon the investigation.

7. After completion of investigation, charge-sheet was laid against the respondents No. 2 and 3 under Sections 448/34 IPC.

8. On appearance of the respondents, particulars of offence under Sections 448/34 IPC was read over and explained to them and they abjured their guilt and claimed to be tried. During trial, the prosecution side examined 6(six) witnesses including the I/O. On conclusion of trial, the statements of the respondents were recorded under Section 313 Cr.P.C, to enable them to explain about the evidence against them and they denied their complicity.



9. Now, the only question that falls for consideration before this Court is the legality and propriety of the findings of the trial Court.

10. In a revision, appreciation of factual issues are not required. The scope of this provision is to set right a patent defect or an error of jurisdiction of law or the perversity which has crept in the proceeding. To decide on the legality and propriety of the findings of the trial Court, it is necessary advert to the judgment and findings of the trial Court. The poignant point is that whether the trial Court has erred by acquitting the accused/respondents.

11. The informant is Md. Mainul Islam and he was working as a Managing Director at the Seven Sisters Nursing Home (Medical Service Limited). He has testified as P.W.-2 that on 17.11.2008 at about 11.30 A.M. both the respondents and their associates barged into his office and snatched away the almirah keys, keys of the tables, two computers and pen drives and pulled him (pw-2) out of the office. He then lodged the FIR marked as Exhibit-1. He has identified his signature marked as Exhibit-1(1). The police seized the keys which were snatched away from him, as well as the steel almirah bookshelf vide seizure list Exhibit-2. He proved his signature on the seizure list as Exhibit-2(1). He has admitted in his cross-examination that the respondent no. 2, Sofior Rahman Talukdar was a share holder of the Seven Sisters Nursing



Home as well as the Managing Director of the same hospital prior to his (PW-2's) posting in the hospital as Managing Director.

12. Dr. Abul Hussain, PW-1 has testified that on the evening of 17.11.2008, while he was on duty at Seven Sisters Nursing Home Private Limited, Goalpara, both the respondents along with 10/12 of their associates barged into the Nursing Home and pushed and shoved the informant and brought him out of the room of the Managing Director. They snatched away the keys from PW-2. He (P.W-1) took the informant (PW-2) to the police station. He has admitted in his cross-examination that the respondent no. 2, Sofior Rahman Talukdar had been serving as Managing Director till the year 2006. Sofior Rahman is also a share holder of the Seven Sisters Nursing Home Private Limited, Goalpara and the shares have not been withdrawn till date. He has testified in his cross-examination that the informant had been serving as Managing Director from the year 2006 and he (PW-1) has been serving as Managing Director of the Seven Sisters Nursing Home, since the month of November, 2007. PW-1 has admitted in his cross-examination that the sign board of their nursing home reflects that their nursing home is a unit of "Eskimo", an NGO. At that point of time, the respondent no. 3 Mukaddes Ali was the Secretary of "Eskimo". The police seized the keys and articles from the room of the Managing Director and at that time respondent No. 3, Mukaddes Ali was present.

13. Hafizur Rahman has testified as PW-3 that on 17.11.2008, he was working as Accountant at Seven Sisters Nursing Home. In the year 2008 at about 11/12 forenoon, he was at the accountant's desk in the hospital when Sofior Rahman (respondent no. 2), Sahanur Sikdar and others, armed with lathi etc entered into his room and took away the keys of the cash boxes. He tried to resist, but they threatened to assault him and as he was terrified and he handed over the keys. Then Sofior Rahman Talukdar drove him out of the nursing home.

In his cross examination, he has admitted that the respondent No. 2 Sofior Rahman was the Managing Director of the Seven Sisters Nursing Home, since April, 2005. No appointment letter was issued to him at the time of his appointment. The respondent no. 2, Sofior Rahman had been managing the accounts of the Seven Sisters Nursing Home. He has admitted about a dispute in the Seven Sisters Nursing Home on the day of the incident.

Sri, Dipanjan Das has testified as PW-4 that about four years ago, he was serving as a cashier at Seven Sisters Nursing Home. The incident occurred about 4 years ago (from 30.05.2011). At about 10.00 A.M. one ward boy informed him about the quarrel inside the Managing Director's (informant's) office. Later, he heard about the quarrel from Dr. Abul Hussain (since

deceased) and he saw the Managing Director going out of his room.

14. Dewan Abdus Salam has testified as PW-5 and he denied any knowledge about the incident. The I/O Arfan Khan has testified as PW-6.

15. The learned trial Court held that the respondent no. 2 Sofior Rahman being the share holder and Ex-Managing Director had every right to enter into the nursing home. His entry into the nursing home does not tantamount to house trespass.

The respondents were charged under Section 448 IPC. To be penalized under Section 448 IPC, house trespass has to be proved.

It was held that no eye-witnesses were present and the evidence of PW-1 and 2 that the respondents entered and pulled out PW-2 from the room of the Managing Director was not substantiated. The learned trial Court held that the respondent did not snatch away the keys from the informant as the keys were found by the police in the Managing Director's room.

The learned Trial Court acquitted the respondents holding that the evidences are contradictory.

16. I record my concurrence to the findings of the trial Court. It is not disputed that the respondent no. 2 was a Managing Director of the nursing home. At the time of the incident, he was a share holder of the nursing home.



Thus, his entry into the nursing home does not tantamount to criminal trespass or house trespass. PW-1 has stated that the respondents pushed and shoved the informant, whereas, the informant testified that the respondents pulled him out of the Managing Director's room. On the contrary, the accountant, PW-3 testified that Sofiur Rahman and Sahanur Sikdar along with their associates armed with lathi etc entered into his (PW-3's) room and took away the keys of the cash boxes. He tried to resist, but they had threatened to assault him (PW-3) and then he handed over the keys. Evidence of PW-1 depicts that PW-2 was pushed and shoved while PW-2 stated that he was pulled out of his room. On the contrary PW-3 appears to be the aggrieved. He stated nothing about the informant being pushed or shoved. The place of occurrence has not been properly described by PW-3. The place of occurrence described by PW-1 is contradictory to the place of occurrence described by PW-3. PW-3 has not attributed any overt act to the respondent no. 3. PW-3's evidence is not substantiated by the evidence of PW-1 and PW-2. They have not stated that the respondent no. 2 threatened to assault PW-3. The respondent no. 3 is Mukaddes Ali and it is not disputed that Mukaddes Ali was also the Secretary of 'Eskimo' and the Seven Sisters Nursing Home is also a unit of 'Eskimo'. So the entry of the respondent no. 3 into the nursing home cannot be held to be criminal trespass unless and until both the respondent no. 2 and respondent no.

3 entered into the nursing home with intent to commit an offence, or insult or annoy the informant. The contradictions in the evidence lends a benefit of doubt to both the respondents. The prosecution has failed to prove beyond a reasonable doubt that the respondents assaulted PW-2 or annoyed him or insulted him.

17. The I/O, PW-6 has testified that he prepared the sketch map of the place of occurrence. He has proved his signature on the sketch map as Exhibit-3(1). A scrutiny of the sketch map reveals that A and B, on the sketch map denotes Managing Director's room and C is the entrance and E is the interior of the hospital. Both, A and B were shown as places of occurrence. It is not clear from the sketch map if 'A' was the place of occurrence or whether 'B' was the place of occurrence. The evidence of PW-1 and 2 depicts that the place of occurrence is the Managing Director's room and the evidence of PW-3 depicts that his (PW-3's) room was the place of occurrence. Snatching away pen drives, keys of cash boxes etc is an offence which comes under the description of criminal assault. Shoving a person or pulling him out of the room also tantamounts to criminal assault described under Section 351 IPC. Except the evidence PW-1 and PW-2, the evidence of other witnesses does not at all implicate that the respondent no. 2 and respondent no. 3 committed an offence of criminal assault. Moreover, the respondents were not tried for the offence of criminal assault. They were

charged under Sections 448/34 IPC and the trial proceeded under the aforesaid sections of law. The evidence of PW-3 exonerates the respondent no. 3. His evidence depicts that Sofiur Rahman accompanied by Sahanur Sikdar and other people armed with lathi entered into his (PW-3's) room and took away the keys of the cash boxes. His evidence is contradictory to the depositions of PW-1 and PW-2 because PW-1 and PW-2 have not stated that the respondent no. 2 was armed with lathi or other weapons. PW-4's evidence is hearsay evidence. He was serving as a cashier. He heard about the quarrel inside the Managing Director's office and then he saw the Managing Director storming out of his room. His evidence does not at all implicate that the respondents are complicit. PW-5 denied any knowledge about the incident.

18. It is amply clear that the alleged incident occurred inside the hospital and the employees of the hospital did not come forward to adduce evidence against the respondents. Moreover, the place of occurrence is not clearly mentioned on the sketch map. The investigation was also conducted in a slipshod manner. The other miscreants who accompanied the respondent nos. 2 and 3 were not even named by the informant (PW-2) and PW-1. Both PW-1 and PW-2 chose to name only the respondent no. 2 and 3. It is also not clear, if the other miscreants who allegedly accompanied the respondent nos. 2 and 3 were known to PW-1, 2 or 3.

19. To prove an offence of house trespass, criminal trespass has to be proved.

House trespass is described under Section 442 IPC, which reads:-

*“Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".*

20. House trespass also includes criminal trespass, which is described under Section 441 IPC, which reads:-

*“ 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".*

21. In the instant case, the evidence is fraught with contradictions. The contradictions in the evidence of PW-1, PW-2 and PW-3 casts a shadow of doubt over the veracity of their evidence.

22. The I/O, PW-6 has identified the seizure list as Exhibit-2. The seizure list depicts that the keys of the Managing Director’s room, tables and bookshelf and

keys of the accounts branch and steel almirah were seized from Sofiur Rahman (Respondent no. 2). On the contrary PW-2 has testified that keys, steel almirah and bookshelf were seized from him.

23. Recapitulating the entire evidence, it is held that the evidence of PW-1 and 2 is not substantiated and corroborated by the evidence of the other witnesses. The cross-examination of PW-1 and 2 clearly depicts that the respondents had every right to enter into the Seven Sisters Nursing Home. It has not been proved beyond reasonable doubt that the informant was solely in possession of the hospital property or that the informant was the sole custodian of the property. Here the respondent no. 2 was a share holder and the respondent no. 3 also had a right of entry into the property being a Secretary of 'Eskimo'. The Evidence of PW-3 does not at all implicate that the respondent no. 3 is complicit. The evidence of other witnesses also does not implicate that the respondent nos. 2 and 3 are complicit. It is to be borne in mind that the incident occurred in the hospital property. The witnesses failed to identify the other 10-12 individuals who allegedly accompanied the respondent nos. 2 and 3 into the Managing Director's office. The evidence of PW-1 and PW-2 is not corroborated and substantiated by the evidence of PW-3 and PW-4. On the contrary, the evidence of PW-4 depicts that he saw the Managing Director going out of his room. Unlike PW-2, PW-4 has stated that PW-2 went out of his room. The

evidence of PW-2 that he was forced out of his room was not substantiated by the evidence of other witnesses.

24. Rivalry between the respondent no. 2 and the informant is fathomable from the evidence, but the evidence falls short to prove this case beyond reasonable doubt. The contradictory statements of the witnesses, extends a benefit of doubt to the respondents.

25. The learned counsel for the respondent relied on the decision of the Hon'ble Supreme Court in State of Uttar Pradesh Vs. Wasif Haider and Others, wherein, it has been observed that:-

*"23. This Court in kailash Gour V. State of Assam, has held that:-*

*"44. The prosecution, it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless of whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases."*

The Hon'ble Apex Court passed an order of acquittal of the respondents (Wasif Haider and Others) on benefit of doubt, as the prosecution had failed to prove the case against the respondents beyond reasonable doubt due to defective investigation.

26. In the present case, the evidence is ridden with contradictions. It is held that the prosecution has failed to prove beyond reasonable doubt that the respondents, along with 10 or 12 other men marched into the Managing Director's office to insult or annoy PW-2 or PW-3, or they entered into the office with intent to commit an offence. It is held that the prosecution has failed to prove beyond reasonable doubt that the respondents committed any offence after entering into the Seven Sisters Nursing Home. The respondents' entry into the nursing home does not tantamount to criminal trespass. In view of my foregoing discussions regarding the contradictory statements of the witnesses, it is held that the benefit of doubt must be bestowed upon the respondents.

27. On the cumulative effect of the evidence of the witnesses, I find no impropriety in the judgment of the trial Court justifying any interference from this Court.

28. In terms of the above, the present petition is rejected as the revision is devoid of merits. As a sequel, miscellaneous applications pending, if any, shall stand closed.

29. Send back the LCR. Surety stands discharged.

***JUDGE***

**Comparing Assistant**