

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE AT SONITPUR,

TEZPUR

Present : Sri Debashish Saikia, A.J.S
Chief Judicial Magistrate,
Sonitpur, Tezpur

G.R. CASE NO 1645/10

U/S 420 IPC

State

Vs.

1. Dipen Gohain accused

Appearances

K Gogoi,

Learned Addl PP

& N Saikia, Asstt PP : For the state

Mr. P. K. Sharma

Ld Counsel : For the accused person.

Date of recording evidence : 10.06.13, 23.06.14, 29.08.14,
31.07.15, 21.06.18, 23.09.18,
27.11.18

Date of Argument : 15.03.19, 21.5.19.

Date of Judgment : 21.5.19.

J U D G M E N T

1. The prosecution case in brief is as follows :

Informant Sri Nilu Chetry lodged an ejahar on 28.08.10 stating *inter alia* that almost five months ago, he after entering into an agreement with the accused purchased an used Indica Car from the accused and out of the agreed amount of Rs150,000/- he paid a sum of rupees Rs. 100,000/- (one lakh) after which the said car was handed over to him. After a few days, police seized his purchased vehicle, and he could learn that the car was not in the name of the accused, and that the accused had sold the said vehicle to him by practicing fraud upon him. The accused prepared sale papers mentioning the

car's registration no. as AR-05/1635, but at the time of handing over the car to the informant he had removed the number plate of the vehicle. Hence, this ejarah.

2) Police on receiving the ejarah registered the same as Dhekiajuli P.S Case No 303/10 U/S 379/420 IPC and started investigation of the same. On completion of investigation, police submitted charge sheet against the accused person U/S 379/420 IPC.

3) Cognizance of the case was taken and process was issued against the accused. On appearance of the accused copy of the case was furnished. Vide order dtd 17.01.12 one of my learned predecessor in chair framed a formal charge u/s 420 IPC, which on being read over and explained, the accused pleaded not guilty and claimed to be tried. Vide the said order the accused was discharged from the charge u/s 379 IPC. Prosecution in order to prove its case examined as many as five witnesses, whereas the defence examined two witnesses. The plea of the accused is that of total denial. In the statement recorded u/s 313 Cr.P.C the accused reiterated the said plea. I have heard arguments forwarded by the learned counsel of both sides.

4) The only point for determination is :

Whether the accused on 30.03.10, not being the registered owner of a TATA Indica car bearing regd. no. AR-05/1635, falsely claimed himself to be the owner of the said vehicle and dishonestly induced the informant Nilu Chetry to enter into an agreement to buy the same for Rs. 1,50,000/- by making payment of Rs. 1,00,000/- on that day and thereby cheated the informant and committed an offence punishable u/s 420 IPC?

DISCUSSIONS DECISIONS AND REASONS THEREOF:

5) Learned defence counsel submitted that the prosecution has miserably failed to prove its case against the accused. It was submitted that the ingredients of cheating u/s 420 IPC is not at all attracted in the case and that the case is a pure civil dispute between the parties for which the accused deserves acquittal. Learned counsel further submits that the required mens-rea was not there while

selling the vehicle to the informant and as such offence u/s 420 IPC is not attracted in the case. Learned defence counsel in this regard relied upon the Apex court decision of **Ajay Mitra Vs State of M.P and others (2003)3SCC1**. On the other hand Learned APP submitted that the prosecution case is proved to the hilt and the accused deserves punishment. In the backdrop of the submissions so made by the learned counsels of both sides it needs to be seen as to whether the prosecution case has succeeded in establishing its case beyond doubt against the accused. For this the evidence led by both the parties needs to be scanned.

6) PW1 Sri Prasanta Boro was examined on 10.6.13. In his evidence he deposed that in the month of August September 2010 he was planning to purchase and used car, and at that time he learnt that Nilu Chetri (PW1) was planning to sell a car and he then went to the house of the informant Nilu Chetry (PW1) to inspect the said vehicle. Reaching the house of the informant he saw the Indica vehicle which was kept ready for sale and he then insisted the informant to show the documents of the car. Informant showed him an agreement which disclosed that the informant had purchased the said car at a price of 100,000/-. While inspecting the Indica vehicle, the same could not be started and as such, he took the vehicle to a garage at Dhekiajuli. On the very same evening they went to meet the local M.P on the said car and while returning they ran out of fuel near Robortolla. Later on after collecting fuel for the car, when they reached the car they noticed that Army personnel's had surrounded his vehicle in order to detain the same and on reaching there they were questioned. The informant was also called and questioned. In the meantime, he came to know that there were some anomalies as regards the ownership of the said vehicle. PW1 further stated that he does not know who is the real owner of the vehicle.

7) PW2 Sri Nilu Chetry, is the informant of this case and in his evidence he stated that the accused was to pay some amount to him and the accused made an agreement with him for selling his Indica Vehicle. As the Indica car was not in a good condition, he with the aid of two other persons took the vehicle to Dhekiajuli for repairing. While returning, their car broke down and army personnel

took them to the army camp and sought documents of the vehicle whereupon he showed the documents to the army personnel. Thereafter, vehicle was handed over to the police and on the next day when he went to the police station and showed the copy of agreement which entered into with the accused, police arrested the accused and seized the vehicle. Later on, he came to know that the owner of the vehicle was a person from Arunachal Pradesh. PW2 further stated that he paid Rs. 102,000/- to the accused for purchase of the vehicle but he did not get back the said amount. PW1 identified his ejahar as Ext.1 whereupon Ext.1(1) is his signature.

8) When put to cross Pw2 admitted that prior to the occurrence he leased a Tata Sumo vehicle to the accused for a period of one year on monthly rent of Rs15,000/- and as per terms of the lease agreement the accused was to pay a sum of Rs120000/- but the accused failed to pay the said amount to him and in lieu of the same he handed over the Indica vehicle with a condition that the accused would be handed over a sum of Rs30,000/- once the registration of the said vehicle is transferred in his name. PW2 however denied the defence suggestion that he paid a sum of Rs102,000/- to the accused for the Tata Indica car, as the said amount has been adjusted with the amount of Rs150,000/- which the accused was to pay him for the Tata Sumo vehicle. PW2 also stated that accused neither asked him to return the vehicle nor refused to hand over the documents. PW2 denied the defence suggestion that he knew that the Tata Sumo vehicle that was given to the accused was handed over to one AmalMedhi on lease. PW2 also expressed his ignorance as to whether the Indica vehicle was registered in the name of Amal Medhi.

9) PW3, Sri Nayan Hazarika, deposed that the incident occurred almost 4-5 years back. His brother in law AmalMedhi purchased a Indica vehicle and after some time Amal kept the said vehicle in his house with an intention to sale the same. Once Amal asked him over phone to hand over the said vehicle to Rafikul Ahmed as Rafikul was entrusted to search for a suitable customer so as to sale the Indica. As Rafikul failed to do the entrusted job his brother in law even filed a case against Rafikul. Pw3 further deposed that one day AmalMedhi asked him to go over to Dhekiajuli P.S with the documents of the Indica vehicle, and

accordingly he went to the P.S and handed over the R/C of the Indica vehicle which was then seized by the police. The Indica vehicle was also recovered by the police.

10) PW4, Sri Amal Medhi deposed that accused sold him an IndicaCar which was registered in the name of one Elora Talukdar for which, he paid an amount of Rs. 1.35 lakh to the accused. After that he took the vehicle to Arunachal and got the vehicle transferred in his name. PW4 deposed that while returning back the vehicle broke down for which the vehicle was taken to the garage of Rafiquefor repair. According to him accused forcibly took away the vehicle from the garage of Rafik for which he approachedMahavairab OP, but the police asked him to settle the matter amicably. PW4 deposed that after about six months he came to know from Dhekiajuli PS that the vehicle was recovered from Borsola and later he took the vehicle in zimma from the court. At that time, there was no number plate in the vehicle, and that he also came to know that the accused had sold the said vehicle to another customer. PW4 also deposed that the vehicle is lying with him at present but the same is not in a running condition.

11) When put to cross PW4 stated that he knew the accused since a long time as a recovery agent and that when a customer fails to pay installments of a vehicle the accused used to recover such vehicles. PW4 also stated that prior to selling the Indica vehicle the accused gave him a Tata Sumo for using the same and accordingly he used the said vehicle and returned the same to the accused, and for using the said vehicle the accused was even paid the demanded amount. Accused also handed him a copy of the R/C of the Sumo which was in the name of one Nilu Chetry. PW4 also stated that the accused had entered into an agreement with him and as per the terms of the said agreement the said Tata sumo vehicle was handed over to him for a period of one year with a monthly rental of Rs15000/-. PW4 also stated that he however after using the said vehicle for a month returned the same to the accused. PW4 however denied the defence suggestion that the vehicle was used by him for a year and that an amount of Rs120,000/- was due to the accused for using the said vehicle for an year. PW4 also denied the suggestion that accused informed him to pay the installments of the Indica vehicle. PW4 also denied that since he owed Rs120,000/- to the

accused he agreed to return the Indica vehicle to NiluChetry. PW4 also denied the defence suggestion that as he himself had handed over the vehicle to Nilu Chetry he himself did not file any case against the accused. PW4 also clarified that thinking the Indica car to be stolen one, as a matter of caution he did not lodge any case against the accused. PW4 also denied the defence suggestion that as he had fraudulently transferred the Indica vehicle to his name, he could not hand over documents of the car to Nilu Chetry.

12) PW5, Md. Anisur Zaman, IO of the case, deposed that on 25.08.10 he was posted at Dhekiajuli PS as Attached Officer. On receiving an ejarah, he was entrusted to carry out the investigation and accordingly, he seized the vehicle and interrogated the driver, Prasanta Bodo and during interrogation, he came to know that Prasanta with a view to purchase the said vehicle from Nilu Chetry took the vehicle to a garage for inspecting the condition of the vehicle and on the way he was apprehended along with the vehicle by the army personnel's. PW5 deposed that NiluChetry later came to the police station and lodged an ezaher against accused Dipen Gohain alleging that accused Dipen Gohain had handed over the said vehicle to him after receiving an amount of Rs1,00,000/- and that the said vehicle was sold to him by practicing fraud upon him. The investigation was carried out and in course of investigation he arrested the accused and seized the agreement papers from him. In course of investigation it came to light that the vehicle stood in the name of one Amal Medhi, and accordingly the R/C of the vehicle was seized. It also came to light that the vehicle was taken away from the possession of Abdul Rafik a garage owner by playing fraud upon him and later sold to Nilu Chetry. He recorded the statement of the informant and witnesses. As in the meantime he received transfer orders, he handed over the CD to SI Jonali Das who completed the remaining investigation and submitted charge sheet against the accused u/s 379/420 IPC. PW5 identified the seizure memo as Ext 2 wherein, Ext. 2(2) is his signature, seizure list as Ext 3 wherein, Ext. 3(2) is his signature the extract copy of GD entry no. as Ext. 4, sketch map as Ext.5 wherein, Ext.5(1) is his signature, and the charge sheet submitted by SI Jonali Das as Ext. 6 wherein, Ext. 6(1) is the signature of SI Jonali Das which is known to him.

13) DW1, Dipen Gohain, the accused has recognized the informant. He deposed that from 2001 to 2010 he had been working as recovery agent with TATA Finance. NiluChetry purchased one TATA Sumo bearing regd. no. AS-12E-0782 from Pankaj Nath who purchased the same by availing finance from TATA Finance. The said Tata Sumo vehicle was handed over to him by NiluChetry under Hire Purchase Agreement and as per terms and conditions he was supposed to pay a monthly installment of Rs. 16,000/- to the informant. Thereafter, he gave the aforesaid vehicle to AmalMedhi on condition of paying a monthly installment of Rs16,000/- and AmalMedhi though used the said vehicle for an year he only paid two installments to NiluChetry and defaulted in payment of the remaining installments. Later, AmalMedhi came and took one Indica vehicle from him for his personal use, the registration number of which was NL-05C/0810, which was purchased by him from one Elora Talukdar through agreement. According to him while handing over the Indica vehicle an agreement was entered between him and AmalMedhi and as per terms AmalMedhi was supposed to pay a monthly installment of Rs 8200/- to Tata Finance and AmalMedhi instead of repaying the instalments got the vehicle transferred in his name by registering the vehicle at Arunachal Pradesh with a new registration number bearing AR051635. DW1 also deposed that he brought back the said vehicle from the garage of Rafikas Amal owed money to him. DW1 also deposed that he handed over the said Indica vehicle to Nilu Chetry as Amal owed Rs120,000/- to Nilu Chetry for using the Tata Sumo belonging to Nilu Chetry. DW1 proved the agreement dated 20.09.09 entered between him and Elora Talukdar as Ext. A wherein, Ext. A(1), A(2) and A(3) are his signatures.

14) DW2, Sri Anuj Kr. Gogoi, State Legal Head of TATA Motors Finance Ltd., Guwahati, deposed that on 25.01.08, Elora Talukdar took a loan amount of Rs. 3,16,000/- from their TATA Motors Finance Ltd., Guwahati to purchase a TATA Indica DLS Model and for that purpose, she made a Contract Loan Agreement with their finance company vide Contract Loan No. 500024L574. The said TATA Indica's engine no was 475IDT16LSZPG2399 and chassis no. was 60018ILSZPG4103. That, the purchaser of the said vehicle after making the registration intimated them with the updates. The regd. No of the said vehicle was NL-05C-0810. According to their records, the loan of the vehicle is not yet

cleared and is still due. As per their policy when a customer settles a loan, and the loan account is finally closed the company issues NOC to the customer and as per records no NOC was issued against the aforesaid vehicle. DW2 proved the contract loan agreement entered by their company with Elora Talukdar as Ext. B. This in nutshell is the evidence available on record.

15) Before delving into the evidence led by the prosecution it would be worthwhile to mention that in order to bring home the charge u/s 420 IPC the following ingredients is required to be established by the prosecution side and the ingredients are as follows i) deception of any person and ii) fraudulently and or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property.

16) It also needs mention that to constitute the offence of cheating it is not necessary that the deception should be by any express words, but it may be by conduct or **implied in the nature of transaction itself**. Similarly it has to be kept in mind that direct proof of dishonest intention in a certain case may not be available, but the same can be proved by circumstances from which reasonable inference can be drawn. It is in the above backdrop the evidence of the prosecution witnesses have to be analysed.

17) Perusal of the evidence led by the prosecution witnesses particularly the evidence of the Informant PW2 Nilu Chetry and evidence of PW4 Amal Medhi together with their cross examination discloses that they all along had dealings with the accused. The cross examination of PW1, PW3 when read along with the evidence of the accused DW1, clearly shows that even prior to the incident in question they had mutual dealings with each other, and the said dealings relates to use of four wheeler vehicles by way of sale under hire purchase agreement or under lease agreements wherein one party hands over a vehicle to the other party in lieu of monthly installments. The dealings between Nilu Chetri (PW1), the accused and also of PW4 regarding a Tata Sumo which had surfaced from the evidence of PW1, PW4 and also of the accused clearly shows the dealings that took place between them.

18) In the instant case the subject matter is one relating to an Indica vehicle which was originally purchased by one Elora Talukdar under finance from Tata Motors Finance LTD which was having a registration number NL 05C 0810. The evidence led in the case particularly the agreement ExtA proved by the accused discloses that the said Elora Talukdar who originally purchased the Indica vehicle in question on finance sold the said vehicle to the accused by way of execution of an agreement without clearing all the installments to the finance company by receiving an amount of Rs 50,000/- from the accused with a further condition that the accused shall undertake to repay the remaining installments (Rs 350,000/-) to the Tata Finance Ltd whereupon the first party i:e Elora Talukdar would transfer the said vehicle in favor of the second party (accused in the instant case) by executing all necessary documents once the accused clears the entire loan amount. From the terms and conditions of Ext A it is clear the accused took over possession of the said vehicle by the aforesaid deed of agreement which in reality appears to be a conditional sale as one of the condition was that if the accused failed to pay six consecutive installments to the finance company the first party would have the right to repossess the said vehicle. Now in the instant case as per the evidence of the informant Pw2, and as per the evidence of the accused it is clear that the accused by violating the terms and conditions of the agreement viz Ext A sold the said vehicle to the informant Nilu Chetry, PW2, knowing well that the said vehicle was not actually in his name since the installments were still due to the Finance company and that Elora Talukdar would execute the sale letter only on clearance of the outstanding dues to the finance company. Again the evidence of PW4 discloses that the accused without clearing the dues against the aforesaid vehicle sold the aforesaid vehicle to him (PW4) after receiving an amount of Rs135,000/- who thereafter transferred the said vehicle in his own name through the DTO of East Kameng District at Seepa in Arunachal Pradesh. Though the accused took a plea that he had given the said vehicle to Amal Medhi for personal use under an agreement and that Amal Medhi surreptitiously transferred the said vehicle in his own name, yet the said plea remains short of proof. Though it was the contention of the accused that as an amount of Rs120,000/- was due to PW2 from Amal Medhi(PW4) for using the Tata Sumo vehicle for a year on account of Amal's failure to pay ten months installment to Nilu Chetry, yet he admitted the

fact that he took the alleged indica car from the garage of one Raffiq and handed over the same to the informant PW2. The fact of handing over the indica car by accused to Amal Medhi at the first instance and the accused receiving an amount of Rs135000/- from Amal Medhi as sale price of the vehicle could not be dislodged by the defence during cross examination of PW4. In fact there was not even a suggestion by defence to PW4 that he had not parted with the said amount of Rs 135000/ against the alleged purchase of the vehicle. The accused had also not denied receiving an amount of Rs135000/- as the sale price from PW4 for the aforesaid Tata Indica car. PW4 even has stated in his evidence that he after purchasing the vehicle from the accused transferred the said vehicle in his name through DTO Sessa Arunachal Pradesh with registration number AR05 1635. The fact that the engine number and chasis number of the aforesaid vehicle which had original registration number as NL 05C-0810 is not in dispute. The fact that the I/O had seized the said R/C of the said vehicle having registration number vide Ext 2 is not seriously disputed by the defence. PW3 also in his evidence asserted that as instructed by his brother in law PW4, he had produced the R/C of the Indica vehicle which was accordingly seized by the I/O. The act of the accused in taking away the aforesaid vehicle from the garage of Abdul Rafiq at which PW4 has kept for repairs without the consent of PW4 has been spoken off by PW4 which also could not be rebutted by the accused. In the instant case though prosecution failed to examine Abdul Rafiq the garage mechanic, the same by itself in my measured view would not affect the substratum of the prosecution case. The act of the accused subsequently in selling the said vehicle to the informant Pw2, at a price of Rs102000/- itself shows the dishonest intention of the accused. The dishonest intention of the accused is very clear as he without being the registered owner of the seized Indica vehicle sold the same to the informant PW2 and the PW2 in course of the said dealing had to part with an amount of Rs 102,000/-. The conduct of the accused in not paying the installments due to the finance company as per the original agreement entered vide Ext-A with Elora Talukdar and then selling the same to PW4 for Rs 135000 for the first time and then again taking back the possession of the said vehicle from PW4 without his consent and then selling it to the informant Pw2 for Rs 150000/- by receiving an amount of Rs 102000/- without disclosing that the said vehicle belonged to someone else clearly shows the dishonest intention of the

accused to siphon money from innocent buyers , who wanted to possess a car .It needs to be remembered that the accused admittedly a recovery agent was fully conversant with the aspects of conditional sale agreement with the original purchaser and cannot claim ignorance of the fact of the sale not having taken effect.

19) The statement made by PW2 in cross examination that the accused owed him an amount of Rs120000/- and that the accused handed over the said vehicle in lieu of the said outstanding amount of Rs120000/- finds reinforcement in the evidence of DW1 that he had given the indica car against the liability of Amal Medhi. The existence of outstanding liability of Rs120000/ to PW2 is admitted. Though he stated that it was due from Amal Medhi but in the same breath he stated that he had secured the TATA Sumo vehicle from informant Nilu Chetry and handed the same over to Amal Medhi for plying. DW1 never spoke of any written or oral agreement between Amal Medhi and the informant for the use of the TATA Sumo. Rather it is the accused who was the one who secured the vehicle and handed it to Amal Medhi and any liability against use of the TATA Sumo was the liability of the accused himself. The act of the accused in handing of the indica car to the informant goes on to show that the accused knowing fully well that he had no right to sale the vehicle, used the same, to escape from the liability of making payment to the informant which existed on account of the using the Tata Sumo vehicle. The admitted fact of giving the indica car to the informant for adjustment towards outstanding liability of Amal Medhi goes on to show that it was in discharge of his own liability he did the same, as it was he who had secured the TATA Sumo from the informant. Further the accused prepared documents for sale of the indica car .The preparation of sale documents coupled with the accused's case of adjustment of liability by handing over the indica car to the informant, making the informant believe that the accused's liability stood discharged causing the informant forego his claim for monies which was otherwise payable to him is a clear indication of accused's malafide intention. This conduct of the accused can be brought within the meaning of dishonest inducement to make the opposite party part with his money though the informant had not directly stated that he was directly induced to part with the sale amount. PW2 has clearly stated that he later came to know that the original owner of the

vehicle was a person from Arunachal Pradesh and this fact has been admitted by DW1 in a way as DW1 had disclosed that Amal Medhi had transferred the vehicle which he had given to him for plying, to his name. The fact of transfer of the registration of the vehicle was known to the accused and despite knowing the fact, his transferring the vehicle to PW2 without proper documents and removal of number plate discloses his clear dishonest mens-rea to defraud a innocent buyer. PW2's evidence to the effect that he had not received back the amount shows that he had suffered a wrongful loss for the above act of the accused. All these acts indisputably leads only to the inference that the accused with a dishonest intention had re-sold the indica vehicle to PW2 knowing very well that the vehicle was not registered in his name. Though it is forthcoming in the evidence that Amal Medhi had allegedly transferred the vehicle in his name but the concerned DTO of Arunachal Pradesh had in his wisdom after verification of documents caused the transfer and said buyer by thinking that he had made a valid purchase had applied for registration which was accordingly granted.

20) Though DW1 testified that Amal Medhi after defaulting in payment of dues to the informant against use of a Tata Sumo had again taken the indica car in reference under agreement of making payment of instalment due to the finance company from the accused , which he claimed to have purchased under agreement from one Elora Talukdar , yet DW1 failed to prove his plea of Amal Medhi taking the indica car on agreement only by proving the said agreement. In fact he failed to even produce the said agreement. Rather his admitted act of giving the vehicle to Amal Medhi only leads to the inference that the vehicle was handed over to Amal Medhi against money. Therefore the act of Amal Medhi transferring the vehicle fraudulently also could not be proved by defence in this case. The ingredients of Sec 420 therefore stands established against the accused and he is accordingly held guilty under sec 420 IPC.

21) I have considered extending the beneficial Provisions of Offenders act to the accused but refrained from doing so considering the nature and seriousness of the offence.

22) Accused is heard on the question of sentence. Accused submits that he be dealt with leniently. Accused submits that he is a driver and has a family to look after. I have considered the above plea vis- a- vis the facts and circumstances of the case. No previous conviction has been proved against the accused. Considering the nature and severity of the offence, and also considering the plea of the accused I am of the measured view that the accused deserves a little leniency.

ORDER

Accused Dipen Gohain is convicted u/s 420 IPC and is sentenced to S.I for 1 year and also to pay a fine of rupees ten thousand (Rs. 10,000/-) i/d to S.I for another three months.

Period of detention already undergone shall be set off as against the term of imprisonment.

Furnished free copy of judgment to the convict/accused.

Seized vehicle be returned to the registered owner in due course with intimation to the Tata Moto Finance Ltd.

Bail- Bond of accused shall remain in force for a period of six months from today.

Given under my hand and seal of this court on the 21st day of May 2019 at Sonitpur/Tezpur.

(Sri D Saikia)
Chief Judicial Magistrate,
Sonitpur, Tezpur

Dictated and corrected by me:-

(Sri D Saikia)
Chief Judicial Magistrate,
Sonitpur, Tezpur

A P P E N D I X

Prosecution witness:

PW1 Sri Prasanta Bora
PW2 Sri NiluChetry
PW3, Sri NayanHazarika
PW4, Sri AmalMedhi
PW5, Md. AnisurZaman

Prosecution exhibit:

Ejahaar as..... Ext.1
Seizure memo as..... Ext 2
Seizure list as..... Ext 3
Extract copy of GD entry no. as..... Ext 4
Sketch map as..... Ext5
Charge sheet as.....Ext. 6

Defence Witness:

Accused DipenGohain.....as DW1.
AnujGogoi As DW2.

Defence Exhibits:

Agreement dated 20.09.09 as Ext. A
Contract loan agreement as Ext B.

(Sri D Saikia)
Chief Judicial Magistrate,
Sonitpur, Tezpur