

GR CASE NO: 1555/2008
PROSECUTOR: STATE OF ASSAM
ACCUSED: SHRI KARUNA BARMAN & ANR

DISTRICT: SONITPUR

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

GR CASE NO 1555/2008

(arising out of Rangapara PS Case No 157/2008)

U/S 380 r/w 34 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: 1.) SRI KARUNA BARMAN

2.) SRI DIPAK MONDOL@ DIPUL

PRESENT: Ms Meenakshi Sarmah, AJS

Judicial Magistrate First Class

Tezpur

APPEARED:

ADVOCATE FOR THE PROSECUTION: SHRI J ADHIKARI, Asst PP

ADVOCATE FOR THE ACCUSED: SHRI S DAS & SHRI B BARTHAKUR

CHARGE FRAMED ON: 19/09/2014

EVIDENCE RECORDED ON: 8/12/2014, 22/01/2015 & 1/04/2015

ARGUMENT HEARD ON: 18/04/2015

JUDGMENT DELIVERED ON: 5/05/2015

TYPED BY ME: M SARMAH, AJS
JMFC, TEZPUR

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J U D G M E N T

1. The prosecution in this case was set in motion by lodging of an ejahar with the Officer in Charge of the Rangapara Police Station on 11/9/2008 by Shri Dhiren Ch Das (**hereafter referred as informant**) to the effect that on 7/09/2008 at night one, Dipak Mondol and Phalo Mondol had stolen away 53 pieces of tin sheets from the Balipara Awakh Griha.
2. The police upon receipt of the ejahar registered Rangapara Police Station case no: 157/2008 under section 380 of the Indian Penal Code (IPC) and started investigation in the case. Upon completion of the investigation, the police submitted chargesheet against the accused persons namely; Sri Karuna Barman, Md Sahed Ali, Shri Dipak Mondol @ Dipul and Sri Bishnu Mondl @ Phalu under section 380 IPC.
3. It would be pertinent to mention herein that the accused persons Md Sahed Ali and Dipak Mondal @ Phalu could not be found and were declared absconders; after which the case was filed against them.
4. The remaining accused persons, Sri Karuna Barman and Sri Dipak Mondol @Dipul (**hereafter referred as accused persons**) was called upon to enter trial and accordingly the said accused persons appeared and the copies of the relevant documents were furnished to them. The formal charge under section 380 r/w 34 IPC was framed against the accused persons and the same was read over and explained to them, to which they pleaded not guilty and claimed to be tried.

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5. The prosecution in support of its case examined as many as five witnesses and exhibited five documents; whereas the defence declined to adduce evidence.
6. Since there were no incriminating materials against the accused person Dipak Mondol @ Dipul his examination under section 313 CrPC was dispensed with. The accused Sri Karuna Barman was examined under section 313 CrPC.
7. Upon the case set up by the prosecution I have framed the following point for determination in this case in order to arrive at a definite finding as regards the matter in dispute-

(i.) Whether the accused persons on 7/9/2008 at night committed theft of 53 pieces of tin sheets from a dwelling house at Balipara in furtherance of their common intention and thereby committed offence under section 380 r/w 34 IPC?

8. I have heard the learned Asstt P.P and the learned counsels on behalf of the aforesaid accused. The learned counsels for the accused persons had prayed to acquit the accused persons as there are no materials against them.

DISCUSSION, DECISION AND REASONS THEREOF:-

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9. Now let me discuss the materials on record and try to arrive at a definite finding as regards the point for determination.
10. The prosecution has examined as many as five witnesses in support of its case including the investigating officer.
11. **PW 1, Sri Manab Das** had deposed in his evidence that he had seen the accused Karuna Barman in a police jeep around 7 years back. He had further stated that the police had seized tin sheets in connection with this case. He proved Exhibit 1 as the seizure list.
12. **PW 2, Arman Ali** had deposed that around 7-8 years back the police had called him to the police station and had taken his thumb impression. But he is doing not remember why his signature was taken.
13. **PW 3, Sri Dhiren Chandra Das** had stated in his evidence that tin sheets were stolen from the office of the ASEB, Balipara. Thereafter a person named Rakhal Das who had expired now had only informed him about the alleged theft and had given him the names of the thieves; however he had never seen the thieves himself. He proved Exhibit 2 as the ejahar lodged by her. He also proved Exhibit 3 as the seizure list.
14. **PW 4, Sri Bolobhodra Hazarika** had stated in his evidence the same thing in his evidence as that of PW 3. He had proved Exhibit 3 as the seizure list but has no idea what was seized since the police did not show him what was seized. He also proved Exhibit 1 as the seizure list.
15. **PW 5, Jiaur Rahman Khan** is the investigating officer of this case and his evidence is merely formal in nature.

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16. It is pertinent to mention that the prosecution had made several attempts to procure the attendance of Rakhal Das but all the attempts had turned futile and considering the long pendency of the case his evidence was dispensed with.

17. On perusal of the evidences on record, it is seen that there are clear cut contradiction in the Exhibit 2 and what has been stated by PW 1 who is the informant of this case. PW 1 had stated the specific names of the accused person in Exhibit 2 whom he alleged to have committed the theft of tin sheets. But if one look into the evidence of PW 1 it is seen that he had clearly admitted that the names of thieves were given by a person name Rakhal Das who was the one who had informed him about the alleged offence . He had no other idea to the fact that when and how the offence had taken place since he was not present at the time of incident. In fact PW 1 had clearly admitted in his evidence that the police had written the ejahar and he has no idea to the fact as to what is written in it. He has only signed Exhibit 2 as he was told to do so. PW 1 had stated that with regard to the Exhibit 3 he has no idea from where the police had seized the tin sheets and whether the stolen tin sheets were actually the one which was seized since no description is there.

18. Thus what has come from the evidence of PW 1 is that he had only filed this case for the sake of filing. He has no idea who had committed the alleged incident. He had only given the name of the accused persons on the basis of what had been stated to him by one Rakhal Das. Personally PW 1 had no knowledge about the manner of incident.

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19. PW 2 who also works with the informant in the same office had also clearly admitted that it was on the initiative of one Rakhil Das that the said case had been filed. Though he proved Exhibit 1 and Exhibit 3 as the seizure list but he has no idea what was seized since nothing was shown to him. Therefore the evidence of PW 2 itself shows that he has no idea and has no knowledge about the manner of incident. He has only given evidence on the basis of what he had heard. As such his evidence holds no weight so as to prove the guilt of the accused persons.

20. With regard to accused Karuna Barman the only thing that has been stated for him is that he was seen in the police jeep by PW 1 but he is not aware why and for what reason the said accused was in the jeep. After perusing the evidence of the said witness, it cannot be presumed that the said accused is connected in this case just because he was seen in the police jeep.

21. After considering the entire evidence on record, I am of the considered view that there is nothing on record which would remotely suggest that the accused persons are connected in this case. The instant case had been filed only on the instigation of one Rakhil Das and the prosecution had failed to examine him as a witness in this case in spite of several efforts made by them to procure his attendance. Therefore since the prosecution had failed to examine the said Rakhil Das as such it cannot be understood as to why and for what reason the said person had stated the name of the accused Deepak Mandal @ Dipul to be connected in this case.

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22. Thus from the above discussion made above I am of the view that there are many discrepancies in the evidences of the witnesses including the informant of this case who knows nothing material about the case. Also after perusing the materials on record, I am of the considered opinion that there are major lacunas in the investigation of this case which have led to serious loopholes in his case. And the **cardinal principle of criminal law is that "a person is presumed to be innocent unless proved guilty"**. Therefore duty is cast upon the prosecution to prove the guilt of the accused persons beyond reasonable doubt. Therefore on the basis of the above discussions, I am of the considered view that the prosecution had miserably failed to prove the charges leveled against the accused persons.

23. **DECISION:** The prosecution has failed to prove that the accused persons have committed the offence of theft in furtherance of their common intention at that relevant point of time as alleged in the ejahar, as such the point for determination is answered in the negative, and in favour of the accused persons.

ORDER

24. In view of the discussions made above and the decision reached in the foregoing points for determination it is held that the prosecution has failed to prove the charges against the accused person namely Karuna Barman and Dipak Mondol @Dipul; as such the accused persons are

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acquitted from the charges under section 380 r/w 34 IPC and are set at liberty.

25. The bail bond of the accused persons and their surety shall remain in force for six months from today.

26. The case is disposed of on contest without cost.

Given under my hand and seal of this court on this 5th day of May, 2015 at Tezpur.

(Meenakshi Sarmah)

Judicial Magistrate First Class,

Sonitpur, Tezpur.

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APPENDIX

PROSECUTION EXHIBITS

1. SEIZURE LIST
2. EJAHAR
3. SEIZURE LIST
4. CHARGESHEET
5. SKETCH MAP

DEFENCE EXHIBITS

NONE

COURT EXHIBITS

NONE

PROSECUTION WITNESSES:

- 1.) SHRI MANAB DAS
- 2.) ARMAN ALI
- 3.) SHRI DHIREN CHANDRA DAS
- 4.) SRI BOLOBHODRO HAZARIKA
- 5.) JIAUR RAHMAN KHAN

DEFENCE WITNESS

NONE

COURT WITNESSES

NONE

(Ms Meenakshi Sarmah)

Judicial Magistrate First Class,

Tezpur, Sonitpur.

TYPED BY ME: M SARMAH, AJS
JMFC, TEZPUR