

GR Case No: 2395/2014
PROSECUTOR: STATE OF ASSAM
ACCUSED: PRAKASH HARA & ANR

DISTRICT: SONITPUR

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

GR CASE NO 2395/2014

(Arising out of Tezpur PS Case No 1126/2014)

U/S 380 r/w 34 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: 1.) SRI PRAKASH HARA

2.) FIRUJ ALI@RAJU

PRESENT: Ms Meenakshi Sarmah, AJS

Judicial Magistrate First Class

Tezpur

APPEARED:

ADVOCATE FOR THE PROSECUTION: SHRI J ADHIKARI, Asst PP

ADVOCATE FOR THE ACCUSED: SRI NK MISHRA, LAC & SRI SK SHARMA

CHARGE FRAMED ON: 24/12/2015

EVIDENCE RECORDED ON: 19/2/2015, 31/03/2015 & 10/04/2015

ARGUMENT HEARD ON: 6/5/2015

JUDGMENT DELIVERED ON: 18/5/2015

TYPED BY ME: MS M SARMAH, AJS
JMFC, TEZPUR

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J U D G M E N T

1. The prosecution in this case is launched by lodging of an ejahar with the Tezpur PS on 27/9/2014 to the effect that on 25/9/2014 at about 7:30 -8:30 pm some unknown thieves had stolen the Lenovo Laptop from the residence of Sri Nitumoni Dihingia (*hereafter referred to as informant*).
2. The police upon receipt of the ejahar registered Tezpur Police Station case no: 1126/2014 under section 380 of the Indian Penal Code (IPC) and started investigation in the case. The I/O then visited the place of occurrence, examined the witnesses, caused arrest of the accused, recovered the stolen goods and thereafter forwarded the accused persons to the court. Then on completion of investigation the I/O filed charge-sheet against the accused persons to stand trial in the court U/S 380 IPC.
3. The 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. Thereafter after hearing the learned counsels for both the parties 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.
4. The prosecution in support of its case examined as many as six witnesses and exhibited five documents; whereas the defence declined to adduce evidence.

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5. Since there were incriminating materials against the accused persons they were examined under section 313 CrPC. The defence case of total denial as it had appears from the statements of the accused persons recorded under section 313 CRPC.
6. 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 25. 9. 2014 at about 7:30 PM had committed theft of one Lenovo laptop from the house of the informant in furtherance of their common intention and thereby committed theft under section 380 read with 34 IPC?

DISCUSSION, DECISION AND REASONS FOR THE

DECISION:

7. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.
8. ***PW 1, Sri Nitumoni Dihingia (hereafter referred as PW 1)*** had stated in his evidence that he had seen the accused Prakash Hara in the lock-up. He further stated that on 24 or 25th September, 2014 that alleged incident took place at around 7:30 PM when he was in his shop at Baroholia. Thereafter his elder sister called him up and informs him that she is not finding the laptop which was kept in their bed. Then when reach home he saw a bamboo was lying near the window and the mud marks of the bamboo were clearly seen in the bed sheet. Then he

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presumed that the laptop was taken out through the window. Thereafter on the next day he went the police station to lodge this case. However, after one month of the alleged incident he got a call from the police station that some persons were caught and stolen goods were recovered from them. He proved Exhibit 1 is the ejahar lodged by him.

9. In his ***cross examination*** by the learned Counsel of the accused Prakash Hara, PW 1 had stated that at 7:45 PM his elder sister called him to inform that she is not finding the laptop in the house. Further he stated that he saw the accused Prakash Hara in the lock-up along with others. He also admitted that he has no the detail idea for what reasons and for which case the other people were there in the lock-up. Further he admitted that he has no suspicion on any person who must have stolen his laptop. He also stated that he has no idea from whom the police had recovered his laptop. He also stated that after getting the information about his laptop from the police, he got Zimma of the laptop from the Court. He also stated that he has not stated before the police that the laptop was taken out with the help of a bamboo stick and mud marks a bamboo was left in the bed sheet.
10. In his cross-examination by the learned Counsel of the accused Firuj Ali, PW 1 has stated that he had not mention to the police about the exact details of his laptop; he has only mention about the brand of the laptop to the police.
11. ***PW 2, Sri Nirmal Chandra Dihingia*** has stated in his evidence that on September 2014, when he was at his shop at Baroholia his son inform him that their laptop was stolen from their house. Further he stated that when he reached home he saw the laptop was missing from the bed. Thereafter his son lodged an ejahar. However after one and a half month of the alleged theft, the said laptop was recovered and they got back the laptop from the police station through a court order.
12. In his ***cross-examination***, PW 2 had stated that police got their laptop and handed over to them. However he has no knowledge from where the police have recovered since many stolen goods where recovered by the police.

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13. **PW 3, Amir Hussain** has stated in his evidence that he know that accused Firuj Ali since they belong to the same village. He does not know the other accused Prakash Hara; however he had seen him along with Firuj Ali. He further stated that the alleged incident took place around 2 months back when the accused persons brought a laptop to him and told him that they had some monetary problem as such they want to mortgaged the said laptop. Thereafter he kept the laptop for 10 days for an amount of Rs.1700. However after 10 days the police came along with the accused Prakash Hara and then he came to know that it was a stolen laptop. Thereafter police had seized the laptop from him.

14. In his **cross examination** by the defence counsel's, PW 3 had stated that one of the accused persons came to mortgage the laptop to him. He had also made a mortgage document in connection with that. He also stated that the police had taken the mortgage document from him and also took his signature. However he is had no knowledge about the real owner of the laptop; since he knew the accused Firuj Ali he thought the laptop must belong to him. He further stated that he took signature of both the accused persons while making the mortgage agreement. He further stated that since the accused persons insisted that they are facing financial difficulties so he did not asked for the original document relating to the laptop; he only took the laptop from the accused persons thinking that the laptop belong to them. As such, he has no knowledge whether the laptop was stolen one or not. He further stated in his cross examination that the accused Prakash Hara was present when the police came to seize the stolen laptop from him. He also admitted that the laptop was seized from his house.

15. **PW 4, Md Ataur Rahman** had stated in his evidence that he know the accused Firuj Ali but do not know the other accused Prakash Hara. He further stated that around 3 to 4 months back, while he was at his neighbour Abdul Chacha's house,

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one police personnel came and both of them to the house of Amir Hussain , where already two police personals where present. Thereafter the police told him that since were taking away the laptop from the house of Amir Hussain they want his signature in a document. He proved exhibit 2 as the search and seizure list. He further proved Exhibit 3 as seizure list.

16. In his cross examination PW 4, had stated that he along with other persons went to the house of Amir Hussain. He also admitted that the police had made them witnesses while taking of the laptop. However he has no knowledge about the fact that whether the laptop was in working condition or not. He also stated that Amir Hussain has a mobile accessory shop; but he does not know whether laptop repairing is done in that shop or not. He also stated that whose laptop was taken away from the house of Amir Hussain. He further stated that he have only given signature while the laptop was seized, but has no other knowledge about anything.
17. **PW 5, Rafikul Islam** has stated in his evidence that he know the accused Firuj Ali but do not remember the other accused Prakash Hara. He further stated that around 8 months back, when he went to Mahabhairab OP, with regard to some stolen computer or laptop, police had taken his signature. However he has not seen any stolen laptop computer. He proved Exhibit 3 as the seizure list.
18. In his **cross examination**, PW 5 has stated that he went to the police station along with his friend, to release a boy named Zakir. He further stated that the said boy was arrested by the police as he had purchased some laptop or computer. However he do not know from whom the laptop or computer was perches and also do not know anything about the document and what was written in the document which he had signed. Since he is not aware of anything as such he has no idea whether it was the laptop or a computer or a mobile.

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19. **PW 6, Sri Bhaben Chandra Barman** is the investigating officer of this case. He had stated in his evidence that on 26. 9. 2014 while he was posted as ASI in Mahabhairab OP, on that day he received a written ejahar from one Sri Nitumoni Dihingia . Thereafter the said ejahar was received by the officer in charge of the Tezpur police station, and he was entrusted with the investigation of this case. Thereafter on 26. 9. 2014, on taking up the investigation of this case he went to the place of occurrence and prepared the sketch map. Thereafter on 22.10. 2014 he arrested the accused Prakash Hara and forwarded him to the Chief Judicial Magistrate, Tezpur. Thereafter on 19.10. 2014, he had seized one Lenovo laptop on being led by the accused Prakash Hara and on 21.10. 2014 he seized a mortgaged document from the house of Amir Hussain at Balichapori. Thereafter, after investigation he submitted charge sheet against the accused persons under section 380 IPC. He proved exhibit 4 as the charge sheet. He proved Exhibit 5 as the sketch map. He further proved exhibit 2 as the search and seizure list. He proved Exhibit 3 as the seizure list.

20. In this **cross examination**, PW 6 had stated that the officer-In-charge of the Tezpur PS, did not register the case although, on 26. 9. 2014, he was entrusted with the investigation of this case by the in charge of the OP. He further stated that in Exhibit 1 there are no specific names or suspected names of the accused persons who must have been alleged in the theft. He further admitted in his cross examination that he had seized the Laptop from the house of Amir Hussain on being led by the accused Prakash Hara; whom he had kept in the lock-up. He also admitted that only on the basis of the allegations and statements of Amir Hussain he has arrested the accused persons. He also admitted that he had not submitted the mortgage document seized in connection with this case along with the case record. He also stated that he has not mentioned for what and by whom the mortgage certificate was given. He also admitted that he had not seized any articles from the accused persons. He also stated that none of the witnesses has

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stated in the evidences that the said accused persons have committed the said theft. He denied the fact that he had filed the chargesheet against the accused persons without any proper investigation and only relying totally upon the statement of Amir Hussain.

21. On perusal of the above evidences on record it has come out clear that the informant was not present at the time when the theft had taken place in his house. As such there is no question of the informant knowing about the fact that the aforesaid accused persons have only committed the alleged theft of the Lenovo laptop from his house. He has filed this case only in order to inform the matter to the police so that some investigation can be done in this regard. Same goes with the evidence of PW 2, who was also not present at the time when the theft had taken place in his house. Further PW 1 has stated that he had seen the accused Prakash Hara only in the lock-up but in his cross examination he had clearly admitted that he has no idea about the fact as to whether the said accused person Prakash Hara had actually committed theft of the laptop from his house; since there were other persons also there in the lock-up. Therefore in my opinion, the evidence of PW 1 does not hold much importance in this case. He had filed this case only as a matter of intimation to the police station.

22. Thus, the entire case of the prosecution rests on circumstantial evidence since there is no single eye witness to alleged incident. The most important factor in this case which is to be taken into consideration is that how the Lenovo laptop had been recovered from the possession of PW 3 Amir Hussain. The investigating officer has stated in his evidence clearly that he had recovered the laptop on being led by the accused Prakash Hara. This version of the investigating officer cannot be disbelieved because it is not possible for any Investigating authority to recover any stolen goods without being led by the accused persons on the basis of whom they make any search and seizure. In this case it is only because the said

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accused Prakash Hara led the investigating officer that the stolen laptop of the informant could be recovered. Further PW 3 had also stated that the accused Prakash Hara was present at the time when the police seized the laptop from his house. In this regard I would like to discuss ***Section 27 of the Indian Evidence Act, 1872*** elaborately which provides that –

Section 27 – How much of information received from accused may be proved – Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of the police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

On a plain reading of the above section of law it has come out clear that in order to apply section 27 of the aforesaid Act, four conditions must be satisfied, –

- (i.) The person must be accused of an offence;***
- (ii.) He must be in the custody or deemed to be in the custody of the police officer;***
- (iii.) a fact must have been discovered; and***
- (iv.) the discovery must have been in consequence of information received from the accused.***

23. Thus, on the basis of the above understanding of the law together with the perusal of Exhibit 2 and the evidence of the investigating officer and that of PW 3, it has

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come out clear that the accused Prakash Hara had only leaded the police to the house of PW 3 Amir Hussain who had then seized the laptop from the house of PW 3 on 19. 10.2014. The evidence of PW 3 further strengthen this fact since he had clearly stated in his evidence that the accused Firuj Ali along with the other co accused Prakash Hara had come to his house to mortgage the said laptop. However since he knew the accused Firoj Ali, who happens to belong to his village he had mortgage the laptop for Rs.1700/- and also executed a document wherein he had taken the signatures of the accused persons. However he had no idea whether the said laptop brought by the accused persons was a stolen one or not. From the evidence of the said witness PW 3 it has come out clear that the accused persons have only brought the said Lenovo Laptop to PW 3 because there is nothing adverse in his evidence to disbelief or doubt him.

24. Moreover PW 4 Md Ataur Rahman who stays nearby the house of PW3 Amir Hussain had also clearly indicated in his evidence that they were brought to the house of PW 3 and the police have taken his signature in a document while seizing the laptop from the house of PW 3. Even though PW 4 had not stated of the presence of the accused persons at the time of seizing of the laptop, but in my view that is not to be taken into account because there is every chance is that he might not know whether any accused person have lead the police or not.

25. But the question now arises from where the accused person got the laptop. Since the informant had lodged the ejahar only as a matter of information after he found that his laptop was missing from his house on the date of the alleged theft that is on 25/9/2014, as such there is no question of the informant knowing about the fact that who had stolen the laptop. However on perusal of the case record along with Exhibit 2, it has come up clear that the informant was given the Zimma of the aforesaid laptop after proper identification and necessary formalities through a Court order; the said laptop being the one which had been recovered from the house of PW 3 after it was being given in mortgage to PW 3 by the accused

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person. Thus, recovery of the stolen laptop on being led by the accused person and the same being given to zimma to the informant after proper verification and identification thereby completes the whole chain of circumstantial evidence.

26. Further just because PW 4 has stated that he is not aware whether a laptop or a mobile or a computer was seized that in itself does not diminish the evidence of PW 3 and PW 6. Further in my opinion, evidence of PW 4 holds no importance because he knows nothing about the alleged theft. Moreover in my opinion, the most important thing to be considered in this case is the recovery of the stolen laptop and the said laptop identified to be the laptop of the informant; as such the question of non-submitting the mortgage certificate is just a minor discrepancy.

27. Thus, on the basis of the above discussion, I of the considered view that the entire chain of circumstantial evidence is complete in this case thereby indicating to the guilt of the accused persons in this case. The fact that the stolen laptop was recovered on being led by one of the accused person who along with the other accused had mortgage the laptop and the same fact being stated by PW 3 with whom the mortgage agreement was made and further the same laptop being the same laptop which was given in Zimma to the informant after proper identification and necessary formalities thus thereby completes the whole chain of circumstantial evidence.

28. Moreover there is nothing adverse in the cross examination of PW 3, which could make his version of evidence not believable. Neither he has any previous enmity with the accused persons nor does he have any vested interest in this case. Rather PW 3 who does not knew the accused Prakash Hara but he had clearly identified him accompanying the accused Firuj Ali when both of them came to mortgage the laptop. So there is no question of disbelieving him as such.

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29. Lastly, it is the duty of the prosecution to reveal the circumstances which led the prosecution to apprehend the accused persons in such type of cases where there are no eye witnesses to the occurrence. However in this case the prosecution has lead cogent evidence to link the accused persons with the commission of the alleged offence.
30. In view of the above discussions it is held that prosecution had successfully proved the case beyond reasonable doubt that the accused persons namely, Shri Praksh Hara and Firuj Ali had committed the theft of Lenovo laptop from the house of the informant.
31. ***DECISION:*** The accused persons namely, Shri Prakash Hara and Firuj Ali@Raju had committed the offence under section 380 r/w 34 IPC.
32. I am not inclined to extend the benefits of the provision of Probation of Offenders Act, 1958 to the accused persons namely, Shri Prakash Hara and Firuj Ali@Raju because they have committed an offence which had caused economic loss to the society.
33. I have heard the accused persons on the point of sentence and accused Prakash Hara has stated that he is of young age and lack maturity and only child of his parents and he was not aware about his actions. With regard to the accused Firuj Ali, he had stated that he has a family with children so his condition should be considered since he is the sole bread owner of the family.
34. Thus considering the aggravating as well as the mitigating factors in this case, I deem it fit and proper to sentence the accused persons to simple imprisonment for six months and further sentence them to pay fine of Rs.1000/- each and in default to undergo simple imprisonment for another 15 days.

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ORDER

35. In view of the discussions made above and the decision reached in the foregoing point for determination the accused persons namely, Shri Praksh Hara and Firuj Ali@Raju are convicted under section 380 r/w 34 IPC and they are sentenced to undergo simple imprisonment for six months under section 380 r/w 34 IPC and further to pay fine of Rs.1000/- each and in default to undergo simple imprisonment for another 15 days.
36. The period of detention already undergone by the accused persons is to be set off.
37. Furnish a free copy of the judgment to the accused persons namely, Shri Praksh Hara and Firuj Ali@Raju.
38. The bail bond of the accused and their sureties shall remain in force for six months from today as per section 447A CrPC.
39. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 18th day of May, 2015 at Tezpur.

(Ms Meenakshi Sarmah)
Judicial Magistrate First Class
Tezpur, Sonitpur.

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APPENDIX

PROSECUTION EXHIBITS

1. EAHAR
2. SEARCH AND SEIZURE
3. SEIZURE LIST
4. CHARGESHEET
5. SKETCH MAP

DEFENCE EXHIBITS

NONE

COURT EXHIBITS

NONE

PROSECUTION WITNESSES:

- 1.) SHRI NITUMONI DIHINGIA
- 2.) SRI NIRMAL CHANDRA DIHINGIA
- 3.) AMIR HUSSAIN
- 4.) MD ATAUR RAHMAN
- 5.) RAFIKUL ISLAM
- 6.) SRI BHABEN CHANDRA BARMAN

DEFENCE WITNESS

NONE

COURT WITNESSES

NONE

(Ms Meenakshi Sarmah)
Judicial Magistrate First Class,
Tezpur, Sonitpur.

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