

GR CASE NO: 648/2008
PROSECUTOR: STATE OF ASSAM
ACCUSED: MD JULPHUL ALI

DISTRICT: SONITPUR

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

GR CASE NO: 648/2008

U/S 224 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD JULPHUL ALI

PRESENT: Ms. MEENAKSHI SARMAH, AJS

JUDICIAL MAGISTRATE FIRST CLASS,

SONITPUR, TEZPUR.

APPEARED:

ADVOCATE FOR THE PROSECUTION: SHRI J ADHIKARI, Asst PP

ADVOCATE FOR THE ACCUSED: MD M ISLAM

OFFENCE EXPLAINED ON: 9/12/2013

EVIDENCE RECORDED ON: 25/03/2014, 16/9/2014, 28/10/2014 &

9/4/2015

ARGUMENT HEARD ON: 24/04/2015

JUDGMENT DELIVERED ON: 18/5/2015

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

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JUDGEMENT

1. The case of the prosecution, in brief, is that on 28/4/2008 at about 3:10 P.M. the accused person Md Julphul Ali (*hereafter referred to as accused*) absconded from the Tezpur Court premises when he got a hint that his prayer for previous bail had been rejected in GR Case No 307/2006.
2. On receipt of the said information, Tezpur P.S. Case No. 305/2008 was registered and the same was taken up for investigation by SI Sri G Borah. The I/O then visited the place of occurrence and recorded the statement of witnesses. After completion of the investigation, chargesheet was filed against the accused person U/S 224 IPC.
3. Copies of all the relevant documents were furnished to the accused person. Particulars of offence punishable U/S 224 IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. The examination of the accused under section 313 CrPC was done. The defence case is of total denial as evident from the statement of the accused as recorded under section 313 CrPC.
4. The prosecution in support of its case examined four witnesses; whereas the defence declined to adduce any evidence.
5. Upon the case set up by the prosecution I have framed the following points for determination in this case in order to arrive at a definite finding as regards the matter in dispute-

(i.) *Whether the accused person on 28/4/2008 at around 3:10 pm escaped from the custody in which he is lawfully detained and thereby committed offence U/S 224 IPC?*

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DISCUSSION, DECISION AND REASONS THEREOF:

6. I have gone carefully through the entire evidence and the materials on the record.
7. ***PW 1, Sri Khitikanta Sarma*** who is the informant of this case had stated in his evidence that on 28/4/2008 while he was working as a Bench Assistant in one of the Court room of the Tezpur Court the accused person gave a petition for previous bail in GR Case No 307/2006 in which NBWA was pending against him. However at about 3:10 pm when the accused got a hint that his petition must have been rejected, he absconded. Thereafter he had informed the said matter to the concerned Presiding Officer. He proved Exhibit 1 as the ejahar lodged by him.
8. ***PW 2, Mafzul Ali*** had the same thing in his evidence like that of PW 1, but he further stated that when he called the accused person, he did not find him and later on he heard that the accused had absconded.
9. ***PW 3, Suria Begum*** had stated in her evidence that on the date of the alleged incident while she was sitting along with PW 1, who was the bench assistant of the concerned court where she was doing her duty, she heard that an accused of the said court had absconded while he was being brought from custody in police escort.
10. ***PW 4, Sri Giridhar Borah*** is the investigating officer of the case and his evidence is merely formal in nature.
11. Before discussing the evidences on record, I would like to like to discuss in a nutshell Section 224 of the IPC which states,-

224. Resistance or obstruction by a person to his lawful apprehension: Whoever intentionally offers any resistance or illegal obstruction to the law apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in

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which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Thus from a plain reading of the above section it is clear that in order to held a person liable under this section it is duty of the prosecution to prove that escape was from the custody in which the person escaping has been detained legally. Further the prosecution also has to show that the person has been arrested, only then the question of custody will arise.

12. Thus on the basis of the above understanding of the law point involved in this case and after scanning the evidences on record specially that of the PW 1 who is the principal witness of this case, it has come out clear that the accused person was neither arrested nor detained in the case for which he had given prayer for previous bail. PW 1 has stated in Exhibit 1 that the accused person after getting the hint that his petition is rejected had absconded and he had well maintained the same stand in his evidence. But nowhere in his evidence had he stated that the said petition of the accused had been rejected and that was informed to him in open court. In fact PW 1 had clearly admitted in his cross examination that he has no idea if the accused had gone to call his lawyer. Further PW 1 has also admitted in his cross examination that there was no peon or police at that time in the court. If that is so, then the question of custody does not arise because there is nothing on record to show that the accused person had been arrested so as to be held in custody.

13. On the other hand PW 2 had stated that he had called the accused but did not find him. However nowhere in the evidence of PW 1 it is seen that he had asked PW 2 to call the accused. In fact PW 1 had stated that there was no peon at that time in the Court. Moreover PW 2 had clearly stated in his evidence that he had later on heard that the accused had absconded; thus diminishing his own evidence.

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He had no where stated in his evidence that the accused person was arrested in connection with any case or had been in lawful custody.

14. Further PW 3 had stated a complete different story that she had heard that an accused of the said Court while being brought from police escort had absconded. Neither PW 1 nor PW 2 had stated anything which would remotely suggest that the accused person was bought from custody. Thus the evidence of PW 3 cannot be believed upon.

15. Thus on the basis of the above evidences on record, it has come out clear that none of the witnesses have corroborated their version of incident. All have stated different aspect of the incident and the benefit of this goes to the accused person.

16. As such in view of the discussions made above it is held that the prosecution has failed to prove that the accused person has committed the alleged offence of escaping from lawful detention or custody at the relevant time as alleged in the ejahar.

17. **DECISION:** The prosecution has failed to prove that the accused person have committed the alleged offence of escaping from lawful detention or custody at the relevant time as alleged in the ejahar; as such the point for determinations is answered in the negative and in favour of the accused person.

ORDER

18. In view of the discussions made above and the decision reached in the foregoing issues it is held that the prosecution has failed to prove the charges against the

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accused person; as such the accused person Md Julphul Ali is acquitted of the charges under section 224 IPC and he is set at liberty forthwith.

19. The bail bond of the accused person and his surety shall remain in force for another six months from today.

20. 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.) SKETCH MAP
- 3.) CHARGESHEET

DEFENCE EXHIBITS

NONE

COURT EXHIBITS:

NONE

PROSECUTION WITNESSES

- 1.) SRI KHITIKANTA SARMA
- 2.) MAFZUL ALI
- 3.) SURIA BEGUM
- 4.) SRI GIRIDHAR BORAH

DEFENCE WITNESSES

NONE

COURT WITNESSES

NONE

(Ms Meenakshi Sarmah)

Judicial Magistrate First Class,

Tezpur, Sonitpur

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