

1
G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 105 of 2012

Under section 394 of I.P.C

Present:-**Sri N. J. Haque, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

Md. Safi Ahmed

S/O:- Md. Abu Taher

R/O:- Ghahi Muslim Gaon

P/S:- Sootea

Dist:- Sonitpur, AssamAccused Person

Advocate appeared:

Mrs. Niva Devi, Addl. P.P..... For the State

Mr. Biraj Nath & Ors, Ld. Advocates.....For the accused person

Evidence recorded on : - 13.11.2014, 12.10.2015, 18.12.2015
& 11.06.2019
Date of Statement of defence : - 13.03.2020
Argument heard on : - 07.11.2020
Judgment delivered on : - 12.11.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that on 14.01.2012 one Sri Gingma Tok, lodged an ejahar before the O/C, of Sootea PS, alleging inter alia that on the same day, when he along with Amit @ Anil Sufi went to Hokajan to search some labours for building construction at Pakke-Kassang and thereafter, some youths came in a bike having police number plate took them to the house of Gaonburah and started assaulting them. It is further stated that the said youths also snatched away their money and looted music system from their Alto vehicle and also threatened them to kill if they declined to hand over the same.

"INVESTIGATION"

2. On receipt of the ejahar, Sootea P.S Case No. 03 of 2012 u/s- 394 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s 394 of I.P.C against the accused person, named, Md. Sofi Ahmed.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s- 207 of Cr.P.C was furnished to the above-named accused person. After hearing both sides, charge of offence u/s-394 of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as 04 (Four) numbers of witnesses including the informant and the investigating officer. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused is examined u/s-313 Cr.P.C and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case:-**

Whether on 14.01.2012 a place called Hokajan accused caused simple hurt to the informant and Amit Sufi and forcibly took away some money and music system of their Alto vehicle out of the possession of the informant and thereby committed an offence punishable u/s 394 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined four numbers of witnesses including informant and the investigating officer.

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

PW-1 Sri Gingma Tok being the informant of this case deposed that he knows the accused of this case and the occurrence took place on 14.01.2012 on Sunday at Hokajan under Sootea PS. He deposed that the accused told him that he would provide labour to him for work at Arunachal Pradesh. Thereafter, he along with his son-in-law Adom Nabam came from Sijhusha with their Alto car to Hokajan. He further deposed that the accused kept him waiting for about one year stating that he would provide labour. As they were waiting in their car, then they saw three motor cycles coming and in the name plate of their motor cycles "police" was written. He also deposed that four other persons came and all the seven persons came and asked to sit one of them in the motor cycle stating that they would take them to police station. Thereafter, they refused to it. He further deposed that two persons set on the rear seat of the vehicle and asked them to go to the police station. After going for a distance, two motor cycles blocked their way and a large number of villagers surrounded them and then they took them to nearby house and kept confined there and started torturing them. Moreover, he deposed that they took their mobile phone and the group of person also taken away Rs. 7000/- from his pocket and Rs. 16,000/- from the pocket of his son-in-law. He deposed that accused Sufi Ahmed was present in the said group of seven persons. Earlier Safi Ahmed took Rs. 5000/- from him to arrange labours to work at Arunachal Pradesh. He deposed that he informed about the incident to his family members and thereafter, his family members rang up the Sootea PS and informed the matter. He deposed that they kept them confined for about 2 ½ hours and thereafter, police personnel of Sootea PS came and rescued them. The said group of seven persons also took away music player fitted inside their vehicle and one dao. Thereafter, he filed the ejahar before Sootea PS. Ext 1 is the ejahar and Ext 1(1) is his signature.

8. PW-1 in his cross examination testified that he knows Safi Ahmed but he never took any labours from Safi Ahmed. He denied the suggestion that he used to take labourer on being supplied by accused Safi Ahmed from various places such as Hokajan, Sengamari and Moni to Arunachal Pradesh. He denied the

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

suggestion that they used to take labours to Arunachal Pradesh and did not make payment to them and also did not allow them to return. He deposed the from Nag Sankar accused Safi Ahmed came with them in their vehicle stating that he had arranged labourers for him. He admitted the fact that he did not specifically stated before the police that Safi Ahmed had taken Rs. 7000/- and Rs. 16,000/- from them but he had stated that Safi Ahmed had arranged those persons who have assaulted them on that day and took their money. He could not recognize the persons who assaulted them on that day. He deposed that he does not know the name of the village headman. He also deposed that he informed his family members over phone and thereafter, his mobile phone was taken away by the group of persons. He denied the suggestion that the group of persons did not take away Rs. 4000/-, Rs. 7000/- and Rs. 16,000/- along with music player and dao from them.

9. PW-2, Sri Aadom Nabam, who is the son-in-law of the informant, deposed that he knows the informant and the accused person of this case and he had seen the accused at the time of incident. He further deposed that the incident took place around 2-3 years back and at the relevant time, when he along with his father-in-law i.e. the informant went for searching labour along with the tractor driver for construction of house; accused Safi Ahmed took them to Kekajan, which was 20 kms away from Sootea. He further deposed that after 10-15 minutes three persons came in a motor cycle (Discover, blue colour) and the name plate of the motor cycles "police" was written and started torturing them and scolded them as to why they came. When they tried to call one of their relatives resides in Itanagar, they took their mobile phone and told them to go to police station. But they refused to go to the police station and when they told them that they did not do any wrong activities, thereafter three persons set on their Alto vehicle and after going for a distance, they told them to stop the vehicle and when they stopped the vehicle, the said persons started assaulting them. He also deposed that they took them to in a nearby house and kept confined there and took their purse along with money. Later, they came to know that the said house where they were kept confined was the house of

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

village headman. They snatched their all goods. He also deposed that after 30 minutes, the Sootea police personnel came and rescued them and took them to police station wherein he identified one person who took his purse from his pocket. Moreover, he deposed when the three persons came in a motor cycle Safi Ahmed was one of them. He deposed that when they went to police station, accused was sitting on the rear sit of the vehicle and thereafter, he started assaulting them. He also deposed that they took them to the house of village headman and kept confined there and snatched away their purse along with money. The accused fled away from the place of occurrence before police came. Thereafter, he lodged the ejahar before the police station. He deposed that their relatives came from Itanagar and took them.

10. PW-2 in his cross examination testified that police interrogated him in connection with this case. He denied the suggestion that he had not stated before the police that "Safi Ahmed told them to sit at Hokajan and then one person took Rs. 4000/- from them as advanced money and Safi went to search the labour. Later, three persons came in a motor cycle and started assaulting them and also snatched away Rs. 16,000/- from and Rs. 7000/- from his father-in-law and thereafter, they took them to the house of village headman and kept confined there and started torturing them." He deposed that Safi Ahmed was in their Alto vehicle. He denied the suggestion that they were not confined in the house of village headman. He deposed that his father-in-law is a contractor and he did not know that his father-in-law took the labours from Sootea.
11. PW-3, Niruma Begum deposed in the evidence-in-chief that she knows the informant of this case. She deposed that the incident took place around 3 (Three) years back and at the relevant time she was preparing meal inside her kitchen and thereafter, two unknown persons ran towards her house and went inside her drawing room and locked inside. At that time, her husband was not at home. She further deposed that the said persons shouted "baideu bosaowk" "baideu bosaowk" and she also heard commotion outside from her house. Thereafter, she called the police and when the Sootea police personnel came to her house, she opened the door. She also deposed that lots of people gathered

**G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)**

at her courtyard. She further deposed that she does not know what was happening. Police interrogated her after two days of the incident. PW-3 in her cross examination testified that she does not know who were chasing the said persons.

12. PW-4, SI Pradip Kumar Nath, who is the investigating officer of this case deposed that on 14.01.2012, he was posted as 2nd Officer at Sootea PS and on that day, an ejahar was received from one Gingma Tok, which was registered as Sootea PS case No. 03/12, u/s 392 of IPC and accordingly, he was entrusted to investigate the case. He deposed that he examined the informant and recorded his statement and thereafter, proceeded to the place of occurrence. He further deposed that he prepared sketch map of the place of occurrence and also examined the witnesses of the case and recorded their statement. She further deposed that on 27.01.2012 he arrested the accused Safi Ahmed and thereafter took custody of him for two days and thereafter, the court remanded him to jail hajot. As in the meantime, he received transfer orders, he handed over the case diary to O/C, who thereafter handed over the same to SI Mahruf Asraf Hussain Ahmed who completed the remaining investigation and submitted charge sheet against the accused u/s 392 of IPC. Ext 2 is the sketch map and Ext 2(1) is his signature. Ext 3 is the charge sheet and Ext 3(1) is the signature of SI Mahruf Asraf Hussain Ahmed.
13. PW 4 in his cross-examination testified that he was entrusted to investigate the case at about 4:30 PM on 14.01.2012. The ejahar was sent to the magistrate on 17.01.2012. He deposed that the other accused persons involved in the case could not be identified. He further deposed that the name of the accused Safi Ahmed was not specifically mentioned in the ejahar. He also deposed that he had not seized anything in the instant case.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

14. In this case the prosecution sets in motion against the accused person as soon as an ejahar lodged by the informant Sri Gingma Tok alleging inter-alia that when he reached at Hokajan with Amit @ Anil Sufi to search out some labour for construction related works at Pakke-Kassang, then some youths came in a

7
G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

bike having police number plate and took them to gaonbourah's house and beaten them seriously and snatched away their money and also looted the key, music system of their Alto vehicle and threatened them to kill.

15. From the accusations initiated by the informant, it disclosed that the informant had not pleaded the names of any person who had allegedly committed the offence and on the basis of that ejarah the investigation was conducted and on completion of the investigation, I/O has submitted charge sheet u/s- 394 of IPC against the accused named Safi Ahmed.
16. The prosecution side of this case has got the burden of prove that on 14.01.2012 accused Safi Ahmed voluntarily caused hurt to the informant named Sri Gingma Tok and Amit @ Anil Sufi in committing robbery. To prove the accusations, the prosecution side presented both ocular as well as documentary forms of evidence.
17. Now, on meticulous perusal of the evidences on record, it disclosed before this court that the prosecution side has examined the informant as PW-1 along with two numbers of independent witnesses and the investigating officer as PW-4. Now, prior discussing the evidences on record, let us try to understand the burden of prove of the prosecution in the light of the settled provisions of law.
18. In **an offence punishable u/s- 394 of IPC**, the prosecution side has got the burden to prove that:-
 - i) The committed or attempted to commit robbery;
 - ii) That accused and anyone else jointly in committing or attempting to commit robbery caused hurt,
 - iii) Hurt was caused voluntarily.
19. **Section- 394 of IPC** postulates and contemplates the causing of harm during commission of robbery or in attempting to commit robbery when such causing of hurt is necessary to facilitate the commission of robbery. Section 394 applies to cases where during the course of robbery voluntary hurt is caused. Hence, it is seen that causing voluntarily hurt appears to be the essential ingredients of committing robbery.

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

20. Now, robbery has been defined in **Section- 390 of IPC** and that enumerates two parts either it may be a theft that becomes robbery or it may be extortion that become robbery under certain circumstances. Theft becomes robbery at the time of commission of theft if any death hurt, wrongful restraint, or fear of instant death or instant hurt caused. Further, the extortion becomes robbery when there is any fear of instant death or instant hurt that induces by the offender to deliver the thing extorted.
21. From the understanding of the aforesaid discussion, it becomes crystal clear that the offence punishable u/s- 394 of IPC integrated theft, extortion and at the time of commission of theft or extortion causing voluntary hurt or fear of instant hurt must be accompanied with.
22. Now, coming to the instant case in hand, it is seen that the informant in his ejahar categorically pleaded that when he along with one Amit @ Anil Sufi went for searching labour, some youths physically assaulted them, forcefully taking them into a house of gaonburah and took away money and music system of Alto vehicle. Further, shown the fear of death if they declined to give their money to those youths. The burden lies upon the prosecution to prove and establish the prime accusations of the ejahar by adducing cogent and trustworthy evidences before this court.
23. On meticulous perusal of the evidences on record, it disclosed before this court that informant Sri Gingma Tok in his evidence testified that the accused Safi Ahmed on 14.01.2012 called him at Hokajan under Sootea P.S and he along with his son-in-law named Adom Nabam went there by their Alto car and the accused kept them waiting for about one hour stating that he would provide labour and when were waiting in their car they saw three motor cycles impending having a plate written police in their motor cycle and those youths asked them to sit in the motor cycle stating that they would take them to police station. They refused it and consequently two persons set on the rear sit of the vehicle and asked them to go to the police station and after going for a distance, two motor cycles blocked their way and a large number of villagers surrounded them. They took them to nearby house and kept confined there

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

and started torturing them. The group of person also taken away Rs. 7000/- from his pocket and Rs. 16,000/- from the pocket of his son-in-law. He also deposed that accused Safi Ahmed was present in the said group of seven persons. He further testified that earlier Safi Ahmed took Rs. 5000/- from him to arrange labours to work at Arunachal Pradesh. Thereafter, his family members rang a call to Sootea PS and police came and rescued them. He also deposed that the said group of seven persons also took away their music player fitted inside their vehicle and one dao.

24. The evidence deposed before this court by PW-1 appears to be contradictory with his own contention as he contended in his ejahar vides Ext-1. Informant (PW-1) in his ejahar did not quote the name of accused Safi Ahmed, which is a material error articulating his evidence to be contradictory in nature. Further, he had not contended in his ejahar that his son-in-law Adom Nabam accompanied him on the date of alleged incident; rather he had stated name of a person called Amit @ Anil Sufi, who had accompanied him on searching labour at Hokajan area on the date of alleged incident. That part of his evidence appears to be fully contradictory with his own version of the ejahar.
25. The settled propositions of law never claimed the ejahar to be a substantive piece of evidence. In **'Ram Kumar Pande vs The State Of Madhya Pradesh AIR 1975 SC 1206,'** the Hon'ble Supreme Court observed that an FIR is not a substantive piece of evidence and it can only be used to corroborate the statement of the maker u/s- 157 of Indian Evidence Act or to contradict it u/s- 145 of Indian Evidence Act. It can only be used for corroboration of contradiction purposes that to when FIR was lodged by a person having direct knowledge about the occurrence.
26. In this case, the informant Sri Gingma Tok himself appears to be a victim and as per the prosecution story, he is having direct knowledge about the occurrence and he himself lodged the ejahar immediately after the alleged occurrence. Hence, to ascertain his credibility the ejahar vide Ext-1 and its contention needs to corroborate his statement or contradict his statement in the light of the ratio or law set by the Hon'ble Apex Court in the aforesaid

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

judgment. The evidence-in-chief of PW-1, it discloses a separate story aiming to implicate the accused in this case with the alleged incident. If the accused Safi Ahmed actually was involved with the alleged incident? The informant ought to have alleged that aspect in his ejahar. The informant not only failed to allege anything against the accused in his ejahar but also contradict the name of the person who actually accompanied him on the date of alleged incident. PW-1 only supported the fact of physical assault and snatching away Rs. 7000/- from him and except that all other facts deposed by PW-1 in his evidence appears to be contradictory with the contentions of the ejahar. He had not pleaded in his ejahar that Rs. 16,000/- snatched away from his son-in-law and he also did not plead that his son-in-law accompanied him on the date of alleged incident. He in his evidence pleaded that some persons coming from opposite direction with motor cycle having police number plate forcefully took them to a house and physically assaulted them but he had not stated the specific name of the persons and regarding the accused he had simply stated in his evidence that the accused was one of the members of those persons and such fact also not contended by him in his ejahar. He during his cross examination admitted that he did not specifically state before the police that accused Safi Ahmed had taken Rs. 7000/- and Rs. 16,000/- from them but he had stated that Safi Ahmed had arranged those persons who had assaulted them and took their money. He cannot recognize of those persons who had assaulted them. Hence, it seen that PW-1 being the informant of this case failed to corroborate his version as he contended in his ejahar. The material omissions disclosed from his evidence and from his previous statement make his evidence to be full with lots of shortcomings which renders his evidence to be doubtful and untrustworthy in nature.

27. Now, coming to the evidence of PW-2, who is the son-in-law of the informant, it disclosed before this court that around 2-3 years back, he along with his father-in-law i.e. the informant went for searching labours and accused Safi Ahmed took them to Hokajan area, which is 20 kms away from Sootea and asked them to wait in a house. After 10-15 minutes, three persons came in a

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

motor cycle and in their bike police name plate was there and those boys started torturing them and scolded them. When they tried to call one of their relatives resides in Itanagar, they took their mobile phone and they sit inside of their car with intend to shift them into the police station. But after some distance, they stopped their bike and physically assaulted them. Thereafter, they were forcefully taken and confined inside the house and also forcefully snatched away their purse along with money. Subsequently, they came to know that the said house was of gaonburah of that village. Thereafter, police came from Sootea and rescued them from there. He also deposed that when the three persons came in a motor cycle Safi Ahmed was presented there and when they were going towards police station accused was with them and accused physically assaulted them by dragging them from the car. Thereafter, on arrival of police accused fled away from there.

28. On meticulous appreciation of evidence of PW-1 and PW-2, it disclosed before this court that PW-2 fully contradicts the version of his father-in-law (PW-1). His father-in-law in his evidence claimed that four persons came there and took them at a distance and physically assaulted them. But his son-in-law as PW-2 stated in his evidence that three persons went there and forcefully tried to shift them into a police station and at a distance they stopped the car and physically assaulted them. PW-1 had not claimed in his evidence that accused Safi Ahmed dragged them from the car and physically assaulted them. PW-2 in his evidence claimed that accused Safi Ahmed physically assaulted them and confined them into the house of gaonburah. As per the evidence of the informant (PW-1) accused had not assaulted them. He only claimed that accused was present with those boys who forcefully shifted them into a nearby house, whereas his son-in-law (PW-2) claimed many things regarding their physical assault by the accused and confining them in a house of gaonburah. The evidence presented by PW-1 and PW-2 appears to be contradictory with each other.
29. PW-3 appears to be an independent witness and as per her evidence the incident took place around 3 (Three) years back and at the relevant time she was preparing meal inside her kitchen and thereafter, two unknown persons

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

ran towards her house and went inside her drawing room and locked inside. At that time, her husband was not present at home and the said persons shouted "baideu bosaowk" "baideu bosaowk". She also heard commotion outside from her house. Thereafter, she called the police and when the Sootea police came to her house, she opened the door and saw lots of people gathered at her courtyard. She further deposed that she don't know about happenings. Hence, it is seen that PW-3 doesn't have any personal knowledge about the incident. The evidence of PW-3 only suggests that on the date of incident informant and his son in law went to her house. But what was the actual state of affairs prior their arrival to her house she does not know.

30. PW-4 is the investigating officer and as per his evidence he was entrusted to investigate the case at about 4:30 PM on 14.01.2012 and the ejahar was sent to the Magistrate on 17.01.2012. He also clarified that the other accused persons involved in the case could not be identified and the name of the accused Safi Ahmed was not specifically mentioned in the ejahar. He has not seized anything in this instant case. Ext 2 is the sketch map and Ext 2(1) is his signature. Ext 3 is the charge sheet and Ext 3(1) is the signature of SI Mahruf Asraf Hussain Ahmed.
31. Furthermore, the informant claimed that the music system along with money snatched away from him and from the Alto Car and investigating officer (PW-4) failed to seize anything from the accused person. If anything snatched away from the possession of the informant, then I/O must have recovered those things from the possession of the accused.
32. On meticulous appreciation of evidences on record, this court finds plentiful contradictions from the evidences of PW-1 and PW-2 regarding the involvement of the accused Safi Ahmed. The contradictions are with regard to the material facts those cannot be overlooked. Shockingly, PW-1 as informant failed to plead anything against the accused in his ejahar and during his evidence simply stated that the four persons who have assaulted them on the date of alleged incident, the accused was present in the said group of persons. But he had not directly deposed anything against the accused that accused had assaulted them

G.R No-105 of 2012
(State of Assam Vs Md. Safi Ahmed)

and snatched away their money from their possession. His son-in-law (PW-2) in his evidence claimed that accused Safi Ahmed dragged them from his car and physically assaulted them.

33. In the result this court finds the evidences of material witnesses to be contradictory and further the evidences of prosecution side failed to establish the essential ingredients of robbery. The evidences being contradictory in nature failed release any confidence upon which the testimonies of witnesses may be relied upon.
34. Therefore, in the light of all the aforesaid discussion, this court is constrained to opine that prosecution failed to prove the charge against the accused person named Safi Ahmed beyond reasonable doubt. Hence, the accused is entitled to get the benefit of doubt and consequent to that the accused is acquitted from the charge u/s- 394 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
35. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 12th day of November, 2020.

(Sri N. J. Haque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

ANNEXURE

1. Witnesses for Prosecution:-

- PW 1: Sri Gingma Tok, the Informant
PW 2: Sri Aadom Nabam
PW 3: Must. Niruma Begum
PW 4: SI Pradip Kumar Nath, the I.O

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

- Ext 1 :- FIR
Ext 1(1) :- Signature of PW-1
Ext 2 :- Sketch Map
Ext 2(1) :- Signature of PW-4
Ext 3 :- Charge Sheet
Ext 3(1) :- Signature of SI Maharuf Hussain Ahmed.

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**