

G.R No-2760 of 2014
(State of Assam Vs Md. Aizul Islam @ Haque)

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

G. R. Case No. 2760 of 2014

Under section 379/411 of I.P.C

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

State of Assam
-Vs-
Md. Aizul Islam @ Haque
S/O:- Late Ali Hussain
R/O:- Katonigaon
P/S:- Thelamara
Dist:- Sonitpur, AssamAccused

Advocate appeared:

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

Mr. Babul Borthakur, Ld. Advocate.....For the accused person

Evidence recorded on	:- 29.03.2016, 09.06.2016 & 15.12.2017
Date of Statement of defence	:- 18.11.2020
Argument heard on	:- 18.11.2020
Judgment delivered on	:- 18.11.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that one Md. Hazarat Ali lodged an ejahar before the O/C, of Thelamara PS on 16.11.2014, alleging inter alia that on 25.10.2014 some unknown miscreant had stolen 02 no's of batteries of Auto from his Auto garage. He also alleged that on the next day, on secret source, he came to know that above named accused person have committed the said theft.

"INVESTIGATION"

2. On receipt of the ejahar, Thelamara P.S Case No. 87 of 2014 u/s- 379/411 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- 379/411 of I.P.C against the accused person, named, Md. Aizul Islam.

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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- 379/411 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 4 (Four) numbers of witnesses including the informant. 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 are:-**
- (i.) Whether on 25.10.2014 at Katonigaon the accused intending to take dishonestly movable property i.e. two numbers of batteries out of the possession of the informant- Hazarat Ali without his consent, stolen those batteries and thereby committed an offence punishable u/s 379 of IPC?
 - (ii.) Whether on the same place and time the accused dishonestly received or retained two numbers of batteries knowing the same to be the stolen property and thereby committed an offence punishable u/s 411 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined four numbers of witnesses. I have carefully travelled through the testimonies of each witness in the back drop of the entire case. PW-1 being the informant of this case deposed that he knows the accused persons. He deposed that the incident took place in the year 2014 and

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on the day of incident, 02 no's of batteries were stolen from his garage situated in his courtyard. He also deposed that one battery had already been stolen from his garage prior to the incident. He further deposed that he suspected the accused to be the said miscreant but exactly could say about it. Then, he put a person behind the accused to follow. Moreover, he deposed that after one month of the alleged incident, when the accused went to the market to sell the said batteries in his bike, he immediately informed the police about the same. Thereafter, police apprehended the accused along with the batteries. He identified his ejahar as Ext-1 and Ext-1(1) is his signature. He further deposed that he did not recover the other stolen batteries. He also deposed that the accused used to steal from their village prior to the incident. Ext-2 is the seizure list and Ext-2(1) is his signature.

8. PW-1 in his cross examination testified that he lodged an ejahar in connection with the theft which occurred prior to this incident but he did not mention any name of the person in his earlier ejahar. He deposed that he did not lodge the ejahar on the very day of this incident. He also deposed that on being suspicion, he informed the O/C of concerned PS about the accused and after one month of the incident police apprehended the accused and later, he lodged the ejahar. He further deposed that he was not present at the time of arrest of the accused. The incident took place at night. He deposed that his house is just adjacent to the house of the accused. He also deposed that he was not aware of the theft on the very day of alleged incident but on the next day, when he went near his vehicle he found that the battery of the said vehicle was missing. He admitted the fact that he had not mentioned any description and details of the stolen battery in his ejahar. He took zimma of the said battery. He also deposed that he had not seen whether the accused drove his motor cycle or not. He denied the fact that the accused had not committed any theft of the battery.
9. PW-2, Md. Billal Uddin deposed that he knows the informant as well as the accused person of this case. He deposed that the incident took place in the year 2014-2015 and one day, the informant informed him regarding the theft of his battery and when he along with the informant went to the police station he found the accused at the police station. He further deposed that he did not know who committed the theft of the battery. He does not have personal knowledge about the alleged incident. PW-2 in his cross examination

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testified that the battery of the informant had already been stolen prior to this incident. He admitted that fact that he had not seen the alleged incident.

10. PW-3, Md. Yunus Ali, VDP Secretary of Katoni gaon village deposed that he knows the informant as well as the accused of this case. He deposed that the incident took place around one year back and one day after the incident, the concerned O/C Sir called him at the police station being the VDP Secretary and informed him that they apprehended the accused in connection with the theft of some batteries. He admitted that fact that he did not know who had committed the theft of battery.
11. PW-4, Md. Ramjan Ali deposed that he do not know anything about the alleged occurrence. He deposed that he only heard that an incident of theft took place in respect of the battery of the Auto of his brother Harzat Ali, who is the informant of this case.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

12. In this case prior discussing the evidence on record, let us appreciate the prime accusations of prosecution side. The prosecution sets in motion against the accused as soon as one ejahar lodged by the informant alleging stolen of two no's of batteries from his garage and consequent to that after conclusion of investigation charges under section-379/411 of IPC framed against the accused. Considering the nature of charges framed against the accused the prosecution side has got burden to prove that on the date of incident the accused committed theft of two batteries from the garage of the informant or the accused retained the stolen batteries knowing the same to be stolen. In this case to substantiate the allegations the prosecution side examined as many as four numbers of witnesses and out of which PW-1 is the informant.
13. On meticulous perusal of his evidence, this court finds that PW-1 himself not witnessed the alleged incident and it his suspicion upon which he has lodged the ejahar against the accused and other three independent witnesses heard about the incident and they don't have any personal knowledge about the incident. It is crystal clear from the evidences on record that prosecution side failed to adduce any direct or circumstantial evidence to prove the alleged stolen of batteries from the garage of the informant.
14. Further on painstaking inspection of the evidences on record, it unveil before this court that as per the ejahar the date of alleged incident is on 25.10.2014 and the ejahar was lodged on 16.11.2014 and there is no explanation of delay in lodging the ejahar. The

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prosecution side even failed to explain that inordinate delay during the time of adducing evidence before this court. The un-explained delay in lodging ejahar makes the case of prosecution weaker and doubtful.

15. The contention of the ejahar itself make known that the ejahar was lodged on the basis of the suspicion against the accused person and consequently after almost one month from the date of alleged incident one battery allegedly recovered from the possession of the accused person. But whether the said battery recovered from the possession of the accused actually belongs to the informant of this case that was not clarified by the prosecution side. More also there is no proof or evidence presented by the prosecution establishing the fact that the recovered battery from the alleged possession of the accused is the battery which was stolen from the possession of the informant as the informant himself during the cross examination admitted that he failed to give any proper description of the battery in his ejahar. The prosecution side even failed to adduce any authentic evidence to prove the alleged seizure of the battery from the possession of the accused.
16. In this case the material allegation that levelled against the accused is stolen of two numbers of batteries from the Auto garage. As there is no description given in the ejahar regarding the stolen batteries, so it is very hard to ascertain that the battery which was allegedly recovered from the possession of the accused belongs to the informant. PW-2, PW-3 and PW-4 don't have any personal knowledge about the alleged incident and they only heard about the stolen of battery of the informant.
17. On meticulous perusal of the cross examination part of the informant (PW-1), it disclosed that his another battery had already been stolen prior to this incident and regarding the same he lodged an ejahar but he did not mention any name of any person in his earlier ejahar. Later, on being suspicion, he informed the O/C of concerned PS about the accused and after one month of this incident police apprehended the accused and he lodged the ejahar. He admitted the fact that he had not mentioned any description and details of the stolen battery in his ejahar. He admitted that he had not seen whether the accused drove his motor cycle or not. Hence, from the evidence of PW-1 this court is unable to make any inference that may raise finger against the involvement of accused with the alleged theft of battery. The prosecution side even failed to adduce any single evidence to substantiate

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the fact of retaining the stolen article by the accused. There is no cogent evidence found on record which may prove that the battery which was recovered, actually belongs to informant and in absence of any proof of such fact, it is hardly possible for a court to decide that accused actually retained any stolen article.

18. To sum up the evidences on record this court finds that evidences adduced before this court by the prosecution not appears to be fully reliable and further none have witnessed the alleged incident. The prosecution even failed to adduce any specific trustworthy evidence to establish the fact of recovery of one battery from the possession of accused. The I.O even failed to make any investigation in respect of identifying the battery with the alleged stolen batteries of informant. The one months of delay in lodging ejahar further makes the case of prosecution after thoughts.
19. Therefore, in the light of all the aforesaid discussion, I am of the opinion that prosecution has failed to prove the charges against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charge u/s- 379/411 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
20. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 18th day of November, 2020.

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

ANNEXURE

1. Witnesses for Prosecution:-

PW 1: Md. Hazrat Ali, the Informant

PW 2: Md. Billal Uddin

PW 3: Md. Yunush Ali

PW 4: Md. Ramjan Ali

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1 : FIR

Ext 1(1): Signature of PW-1

Ext 2: Seizure List

Ext 2(1): Signature of PW-1

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
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