

DISTRICT SONITPUR, IN THE COURT OF THE C. J. M. AT TEZPUR, ASSAM:::~::~:

Present:- Sri S. K. Daar,

C.J.M. Tezpur.

G. R. Case No. 1705/11
U/S 380 I.P.C.

State of Assam.....Compltt.

-Vs-

Sri Prahlad Das.....Accused.

Date of recording evidences:- 21-12-11,

01-02-12, 23-03-12 and 23-05-12.

Date of argument:- 13-6-12.

Date of judgment:- 13-6-12

ADVOCATE APPEARED

For the state:- Ms. R. Chakraborty, Ld. Addl.

Public Prosecutor.

For the accused:- Mrs. L. Bora, Ld. State

Defence Counsel.

J U D G M E N T

The brief of the prosecution's case is that on 10-08-11 at about 2-30 P.M. (after noon) the accused committed theft of a mobile hand set of the informant's daughter from the house.

Alleging as above the informant Sri Niranjana P.W. 1) lodged a written ejakar (Ext. 1) on that very day before the O.C. Daekiajuli P.S. On that basis the O.C. of the said P.S. registered a regular police station case and endorsed the same for investigation. Police investigated the case and upon completion of investigation laid charge sheet against the accused U/S 380 I.P.C. with the accused in custody and forwarded the same to this court. Receiving the case record in charge sheet this court retained the case record in this court for disposal and furnished copies of the prosecution documents to the accused. As the accused was not represented by any Advocate so invoking jurisdiction U/S 304 Cr.P.C. Mrs. L. Bora, Advocate, Tezpur Bar Association was appointed as an Advocate to defend the accused in this case at state's expenses. Thereafter hearing both the sides and also going through the materials in the case record a charge U/S 380 I.P.C. was framed. Charge so framed and particulars of offence embodied in the charge were read

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over and explained to the accused to which he pleaded not guilty and claimed to be tried.

During trial the prosecution side examined in all five P.Ws. including the I.O. and the informant and exhibited the ejahar. Defence side took full scope for cross examination. Upon closure of prosecution evidence the statements of the accused were recorded U/S 313 Cr.P. C. wherein he *denied* the materials against him and declined to adduce evidence in defence. The defence case is one of simple confession of guilt.

Heard argument advanced by both the sides.

Point for determination:-

Whether on 10-08-11 at about 2-30 P.M. (after noon) the accused intending to take dishonestly removed a mobile hand set from the house in possession of the informant without his consent in order to such taking ?

Discussion, decision and reasons therefor:-

In any criminal case the eye witness testimonies of evidence weigh the most in determining the fact in issue. This is a criminal case and as such direct evidence or eye witness evidence weigh the most in determining the point in hand. It may be noted here that in any criminal case an accused is presumed to be innocent unless and until the guilt in relation to the charge(s) is proved by the prosecution side beyond all reasonable doubt. For determination of the point in hand as well as to determine whether or not the accused is guilty of the offence charged U/S 380 I.P.C. let us now scrutinize the evidences of the P.Ws. in the case record.

P.W. 1 Sri Niranjana Topmo is the informant of the case. Evidence he has given direct account of the occurrence. According to him on the date of occurrence when he was playing game in his mobile handset the accused entered into the other room of his house and ran away with the mobile hand set of his daughter which was lying over a table. He also stated that he raised alarm and chased the accused but the accused managed to fled away biking on a cycle. He further more stated that later the accused was apprehended by the public and handed over to the police. He proved the ejahar vide Ext. 1 and his signature thereon vide Ext. 1(1). In cross examination the direct evidence of the P.W. 1 that he saw the accused removing the mobile hand set of his daughter couldnot be dislodged and there is also

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nothing in the case record to disbelieve the eye witness account of the P.W. 1.

The Ext. 1 ejakar was lodged soon after the occurrence. Prompt lodging of the Ext. 1 rules out the probability of coining a false story against the accused. Though it is argued by the defence side that the accused has been falsely implicated, there is nothing in the case record to show that the P.W. 1 had any ground to falsely implicate the accused. There must be reasonable ground on the part of the P.W. 1 to falsely implicate the accused and it is the duty of the accused to bring in record such ground. But in this case no such ground exists to even presume that P.W. 1 had any axe to grind against the accused. Moreover, the P.W. 1 is an eye witness and completely corroborated the contents in the Ext.1 which fortifies his credibility as a reliable witness.

P.W. 2 Pradip Soy, P.W. 3 Raphael Sonad and P.W. 4 Heran Tiro are those P.Ws. who saw the accused being apprehended by the public on the very day of occurrence and when asked the accused confessed the fact of theft of a mobile hand set from the house of the P.W. 1. The fact that accused was apprehended by the public soon after the occurrence is supported by the P.W. 5 Hari Ch. Saikia (I.O. of this case) who found the accused detained at the place of occurrence on the very date of the occurrence. The admission of guilt by the accused before the P.W. 2, 3 and 4 is an extra judicial confession in the eye of law and is admissible in law. This extra judicial confession may be relied upon as an aid to the eye witness testimonies of the P.W. 1.

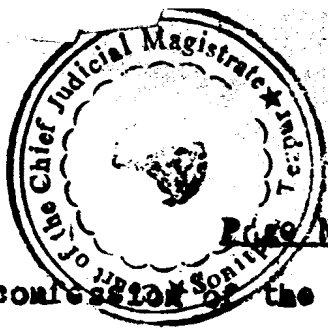
Ld. Advocate for the accused submitted that since the mobile hand set has not been recovered and seized from the possession of accused it cannot be believed that the accused committed theft of any mobile hand set and hence submitted for acquittal. It is fact of the case that no mobile hand set is recovered from the accused but that fact alone doesnot establish the innocence of the accused. It is there is case record that after committing the offence the accused threw away the hand set in a jungle/pond and even after search the same could not be recovered. So non recovery of hand set does not brush aside the eye witness testimonies of the P.W. 1.

So relying upon the testimonies of the P.W. 1 and

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the extrajudicial confession of the accused before the P.W. 2, 3 and 4 I am left in no hesitation to arrive at a conclusion that the prosecution has been successful to prove the fact that the accused removed a mobile hand set from the house of the P.W. 1 without his consent and his subsequent conduct of running away from the place of occurrence or throwing away the booty reflects his dishonesty in removing the booty. As such the point in hand is decided in the affirmative.

For affirmative decision of the point in hand the accused is held guilty of the offence charged U/S 380 I.P.C. and accordingly the accused stands convicted under that section of law.

The perusal of the case record shows that the convict has been in jail hasot continuously w.e.f. 11-08-11 till date. The booty is a mobile hand set and its value has not come in record. No previous conviction against the convict is proved in the case record. Considering all these aspects I am of the view that benefit of Probation of Offenders Act 1958 be extended to the convict.

Hence extending the benefit of section 3 Probation of Offenders Act 1958 the convict is released after due admonition.

Given under my hand and seal of this court on this the 12th day of June 2012 at Tezpur.

Typed by me:-

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Chief Judicial Magistrate
Sonitpur, Tezpur

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Chief Judicial Magistrate
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