

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE:

UDALGURI: ASSAM

Sessions Case No. 90/2019

(Arising out of G.R. Case No. 666/2019)

U/S 341/397 IPC

PRESENT : Shah Syed Ahadur Rahman, AJS

Committed by:- Addl. CJM, Udalguri.

Charge framed on:-18-02-2020.

State of Assam

-Vs -

1. Suleman Ali

2. Asmot Ali

3. Habijul Rahman and

4. Nur Muhammad.....Accused persons.

Date of Recording Evidence on- 05-03-20: 19-12-20: 18-01-21:
20-03-21: 14-09-21.

Date of Hearing Argument on --- 01-12-2021.

Date of Delivering the Judgment on – 01-12-2021.

Appearance:

Advocate for the State----- Mr. B.K. Chetry, Learned A.P.P.

Advocate for the Accused persons--Mr. T.C. Boro, Learned
Advocate.

JUDGMENT

1. This is an unfortunate incident which led to the filing of an ejahar by Md. Mahmudur Rahman S/O Lt. Abdul Matin resident of village Kacharibhetitop under Orang P.S. in the district of Udalguri, Assam, on 17-07-2019, before the Officer-in-Charge of Orang P.S. in which it has been stated that he is into vegetable business and in respect of this he hired a Bolero Pick Up vehicle bearing Registration No. AS 27C 4791 from Silapathar and the owner of the said vehicle is Azizur Rahman and the driver was Jabirul Hoque, were coming on 16-07-2019, to his residence then near Dhupgaon, Puran Silbori connecting road near Orang, five unknown persons were standing by keeping their mouth covered and the said miscreants at about 10.20 pm at night confronted the vehicle-in-question and overtook the vehicle from behind and confronted the complainant and as a result the vehicle was stopped and the said miscreants forcefully dragged him out and by injuring the complainant on the belly by a sharp weapon took away Rs. 85,000/- (Eighty five thousand), mobile, ATM cards and after that they fled away and when the complainant made hue and cry people gathered at the place of occurrence. Hence this case.

2. After receipt of the ejahar, O/C Orang P.S. registered a case vide Orang P.S. Case No. 60/19 under Section 341/397 IPC and started investigation. After completion of investigation, police submitted charge sheet against the accused persons Md. Suleman Ali, Md. Asmat Ali @ Laita, Md. Habijul Rahman and Mur Mahammad under Section 341/397 IPC.
3. On 18-12-2019, the committal Magistrate after complying the provision of Section 207 Cr.P.C. committed the case record to the Court of Sessions as charge sheeted Section 341/397 IPC is exclusively triable by the Court of Sessions.
4. Thereafter, the Hon'ble Court of Sessions transferred the case record to this Court on 21-12-2019 for disposal.
5. After hearing both the parties, the then Asst. Sessions Judge, Udalguri vide order dated 18-02-2020, and after going through the relevant materials and upon hearing both the parties found a prima facie case, framed charges under Section 341/397 IPC to which the accused persons pleaded not guilty and claimed to stand trial.

6. Prosecution examined as many as nine witnesses also accused persons were examined under Section 313 Cr.P.C. and on being asked accused persons denied to adduce any defence evidence.

7. **Points for determination:**

- (i) Whether accused persons on 16-07-19, at about 10.20 pm wrongfully restrained the informant when they were coming back to their home?
- (ii) Whether accused persons on the same date and time had also committed robbery or dacoity with an attempt to cause death or grievous hurt to the informant and also snatched away a cash amount of Rs. 85,000/- a mobile handset and an ATM card from the informant?

DISCUSSION, DECISION AND REASONS

THEREOF:

8. I have heard the contentions of the learned counsel appearing for the State as well as the learned defence counsel appearing for the accused person.

9. **Argument by Prosecution:-** Learned Addl. P.P. Mr. Chetry for the State has argued that the complainant has specifically identified the accused persons and it

appears from the evidence that the accused persons took away Rs. 85,000/- (Eighty five thousand) and also took away one Samsung mobile handset and an ATM card and thereafter the accused persons fled away from the scene. On the evidence of mere PW1, the Court can convict the accused persons and as such, the accused persons deserve punishment according to law.

10. **Argument by Defence:-** On the other hand, learned counsel Mr. M. Basumatary for the accused has stated that this case is not proved against the accused persons as PW2 has specifically stated that he does not know as to why his signature was taken on the seizure list and PW2, PW3 have not implicated the accused persons in the commission of this offence. There is no iota of evidence against the accused persons as such, the accused persons deserve acquittal from this case.
11. Before appreciating the arguments put forwarded by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidence adduced by the prosecution.
12. PW1 is Md. Mahmudur Rahman has stated in his evidence that he is the complainant and he knows the accused persons. On 26-07-2019 at about 10 pm at

night, the incident had happened. On the day of the incident PW1 went to Silapathar to sell off the vegetables on a truck, while coming back at about 10 pm at night, to his residence, then at Chutiapara nearby Orang PW1 saw four/five persons waiting in a motorcycle and all the accused persons present today were waiting there. After crossing 50 meters the accused persons confronted the truck from the front side and accused Asmat Ali took away the key of the vehicle from the driver and the other accused persons demanded money from PW1 and injured PW1 by striking on his belly by a dagger. The accused persons also threatened him with death. Accused persons took away Rs. 85,000/- (Eighty five thousand) and also took away one Samsung Mobile handset and an ATM card and then PW1 made hue and cry and the nearby people gathered and after that the accused fled away. Nearby people informed the police and police arrived at the scene and took away PW1 to hospital. Ext.1 is the ejahar. Ext.1 (1) is the signature of PW1. Police seized one handkerchief and black Dupata and took PW1's signature. Ext.5 is the seizure list. Ext.5(1) is his signature.

13. In his cross-examination, PW1 has stated that at the relevant time Azizur Rahman was with him and one

driver but he does not remember the name of the driver. PW1 filed the ejahar on the next day. He has further stated that in the ejahar he did not mention that accused persons (name mentioned) threatened PW1 and took away Rs. 85,000/- (Eighty five thousand). He has also stated that in ejahar he has written that about 4/5 persons, their faces covered and he saw them on the relevant day and that portion is only written in the ejahar. Police recorded his statement and before police PW1 has stated that he could not recognize the accused as the accused persons faces were covered with cloth but PW1 stated before the police that he described the description of the accused persons. Police called PW1 to the police station and asked PW1 to identify the accused persons. He has denied the suggestion that the accused persons were not involved in this case and he has deposed falsely.

14. PW2 is Md. Ramjan Ali has stated in evidence that he knows the complainant as well as the accused persons. On the day of the incident, police called him and asked him to hand over the motorcycle of his brother Jahurul Islam. PW2 then put his signature on the seizure list. Ext.2, Ext.3 and Ext.4 are the seizure lists. Ext.2(1), Ext.3(1) and Ext.4(1) are his signature thereon.

15. In cross-examination, PW2 has stated that he does not know as to why the O/C of the police station called him and no statement was given to him for calling to him of the police station. PW2 is not aware as to why his signature was taken in the seizure list.
16. PW3 Ajay Basumatary has stated in evidence that he does not know complainant as well as the accused persons. PW3 has only stated that he has heard that on the relevant day a Dacoity case took place on a truck but he does not know who has committed the Dacoity. PW3 is declared hostile as prayed by the prosecution.
17. In his cross-examination by the prosecution he denied the suggestion that he made statement before the police that he saw four persons confronted a truck and they were taking something and the four persons took away Rs. 85,000/-. Defence declined to cross-examine PW3.
18. PW4 Sri Dhanti Konwar has stated that he knows the complainant as well as the accused persons. The incident has happened in the last year in the month of July. At that time he was on duty at Orang P.S. When someone rang up O/C of the P.S. namely Sri Gagan Ch. Deka, then he proceeded to the place of occurrence

alongwith O/C and at the place of occurrence they saw the accused persons coming in a Maruti Car of red colour and they apprehended the accused persons and brought them to police station and mobile phones were found with them. Police seized the money and his signature was taken in the seizure list. Ext.2, 3, 4 and 6 are the seizure lists. Ext.2(2), 3(2), 4(2) and 6(1) are his signatures. Police also seized one red colour of Maruti car, mobile phones and seized money. In his cross-examination, he has stated that the accused persons were apprehended after two days of the happening of the incident. There were three persons in a Maruti car but he could not say their dresses of the said people. PW4 has stated that he put his signature on Ext.2 the seizure list on 23-07-2019 at the police station itself but he does not know as to why the mobile phones and Maruti car was seized and in what case these articles were seized.

19. PW5 Bhabesh Deka stated in evidence that about 8/9 months ago he was at his residence and at about 10 to 10.30 pm at night he heard hue and cry outside his residence and saw complainant making hue and cry and he was informed by the complainant that someone took away the key of Bolero Pick Up van and took away some money. Police questioned him about this incident.

In cross-examination PW5 has stated that many people gathered before he came to the place of occurrence and PW5 did not see the accused persons at the place of occurrence. Further the complainant did not tell PW5 as to who has taken away the key of the Bolero Pick Up van and also the money.

20. PW6 Khalilur Rahman has deposed in evidence that he knows the complainant and accused persons Suleman Ali is his own brother. PW6 also knows accused persons Asmat Ali and Habijul Rahman but does not recognize the accused Nur Muhammad. About one year ago police took his brother Suleman Ali and PW6 then proceeded to the police station and police asked him to put signature on a paper and he put his thumb impression on a paper. Police did not show him any articles. The seized motorcycle belongs to accused Suleman Ali. Ext.6 is the seizure list in which he put his thumb impression. In his cross-examination, PW6 has deposed that when the police took his thumb impression police did not show him any articles.

21. PW7 Kudus Ali has stated in evidence that he knows the complainant as well as the accused persons and they are from the same village. About one year ago police called PW7 and asked him to put his signature.

He then put his thumb impression. Ext.5 is the seizure list. In his cross-examination, PW7 has stated that he does not know as to why the police took his thumb impression.

22. PW8 Sirajul Haque has stated in evidence that he does not know the complainant but knows the accused persons. Police called PW8 from his residence and took him to residence of the one of the accused persons. One dacoity took place in a vehicle and police seized it and he put his signature. Ext.5 is the seizure list. Ext.5(1) is his signature thereon. In his cross-examination, PW8 has stated that he does not know anything about the incident.

23. PW9 is Dr. Saurav Kr. Barman. In his evidence he has deposed that on 17-7-2019, he was working as M&HO at Orang Civil Hospital. On that day at about 1:30AM, he examined Md. Mahmudur Rahman aged 35 years who was escorted by UBC 180 Rupeswar Nath of Orang PS. On examination he found the following- cut injury of size (1 x .5 x 2 cm) over abdomen, nature of injury is simple and pain on right knee. Ext-7 is the medical report and Ext-7(1) is his signature. In cross-examination, PW9 had stated that though he gave his opinion that the injury is cut injury, but the injury

suffered is simple injury caused by blunt weapon. He had mentioned in his report Ext-7 the registered number of victim as has been mentioned in Ext-7. Such injury may be caused by falling on the surface.

24. **Appreciation of evidence**:- Thus appraisal and appreciation of evidence, it appears from the evidence of PW1 that though he has stated in chief-examination that he knows the accused persons but in cross-examination, he has specifically stated that in the ejahar he has written that about 4/5 persons were present and their faces were covered and he saw them on the relevant day and PW1 has also stated before police when his statement was recorded that he could not recognize the accused persons as the accused persons faces were covered with cloths and therefore, the identity of the question of the accused persons is doubtful.

25. On the other hand, PW2 Md. Ramjan Ali only happens to be a seizure witness and in his cross-examination, PW2 has staed that he does not know as to why the O/C of the police station called him and no articles were shown to him and he is not aware as to why his signature was taken in the seizure list and it is apparently clear that he is not aware of the happening

of the incident. PW3 Ajay Basumatary has stated in evidence that though he has heard on the relevant day a dacoity took place on a truck but he does not know who has committed the dacoity. PW3 was though declared hostile but in cross-examination by the prosecution when prosecution has only put suggestion to PW3 that he made a statement before the police that PW3 saw four persons confronting a truck and they were talking something and the four persons took away Rs. 85,000/- (Eighty five thousand) which is denied by PW3 and defence did not cross-examine PW3.

26. PW4 Dhanti Konwar has stated in cross-examination that he does not know as to why the mobile phones and Maruti car were seized and in what case those articles were seized by the police. Even though he is a constable and at the relevant time he was on duty at Orang police station. As because he does not know anything, in which case these seizures were made therefore his evidence is discarded.

27. On the other hand, PW5 Bhabesh Deka, PW6 Khalilur Rahman, PW7 Kuddus Ali and PW8 Sirajul Hoque have stated in evidence and from their evidence it appears that all these witnesses were not eye witnesses and they have only heard about the

happening of the incident and PW6 happens to be a seizure witness. PW7 also happens to be a seizure witness and PW8 also happens to be a seizure witness and they do not know as to why the police took their signatures on the seizure list and they do not know anything about the incident.

28. On perusal of the evidence of PW9 Doctor Saurav Kumar Barman though he has given his opinion that injury is cut injury inflicted upon the complainant and injury suffered is simple injury caused by blunt weapon. But from the evidence available on records it appears that who caused the cut injury is not to be found if we look into the evidence of all witnesses as such it creates a doubt as to which of the accused persons gave a dagger blow to the complainant.

29. Above being the discussions, it has been decided that prosecution has failed to bring the ingredients of offence U/S- 341/397 IPC against all the accused persons beyond all reasonable doubt and accordingly accused persons are acquitted.

30. Situated thus the points for determination are decided in the negative and against the prosecution.

ORDER

31. In the result, the accused persons Md. Suleman Ali, Md. Asmot Ali, Md. Habijul Rahman and Nur Muhammad are found not guilty under Sections 341/397 I.P.C., and acquitted of charges from the aforesaid sections, and set at liberty forthwith.
32. The term of bail bonds of accused persons are extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
33. The seized materials, if any, be disposed of in accordance with law.
34. Let a copy of the judgment be sent to the learned District Magistrate, Udalguri for his information as provided in section 365 Cr.P.C.
35. Let the case record be consigned to record room after completing the formalities.
36. Send back the original case record of GR Case No. 666/19 to the court of learned Chief Judicial Magistrate, Udalguri, with a copy of the Judgment, forthwith.

37. Judgment is signed, delivered and pronounced in the open court today the 01st day of December, 2021.

Dictated & corrected by me

(S.S.A. Rahman)
Asstt. Sessions Judge
Udalguri.

(S.S.A. Rahman)
Asstt. Sessions Judge
Udalguri.

APPENDIX:

A) Prosecution witnesses:

- i) PW1 Mahmudur Rahman.
- ii) PW2 Ramjan Ali.
- iii) PW3 Ajay Basumatary.
- iv) PW4 Dhanti Konwar.
- v) PW5 Bhabesh Deka.
- vi) PW6 Khalilur Rahman.
- vii) PW7 Kudus Ali.
- viii) PW8 Sirajul Hoque.
- ix) PW9 Dr. Saurav Kumar Barman.

B) Defence witness: Nil.

C) Exhibits:

- i) Ext.1 Ejahar.

- ii) Ext.2 Seizure list.
- iii) Ext.-3 Seizure list.
- iv)Ext.4 Seizure list.
- v)Ext.5 Seizure list.
- vi)Ext.6 Seizure list.
- vii)Ext.7 Medical report.

D) Material Exhibits: Nil.

Asst. Sessions Judge,
Udalguri.