

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, UDALGURI, BTR,
ASSAM**

G.R Case No. 84/13

Under Section 394/34 of IPC

State of Assam

-Vs-

Sri Umesh Deka and Another.... Accused Persons

Present : Ms. Karabi Das, A.J.S

Judicial Magistrate First Class,

Udalguri,BTR, Assam

For The Prosecution :

Sri A Paurel Assistant Public Prosecutor For The State

For The Defence

.....Advocate for the Accused

Offence Explained on : 15.12.18

Evidence Recorded on: 12.2.19, 29.3.19, 20.5.19, 26.11.19, 7.1.20, 26.8.21, 20.9.21,
25.10.21

Argument Heard on : 7.12.21

Judgment Delivered on: 21.12.21

JUDGMENT

THE BRIEF FACTS OF THE PROSECUTION CASE

1. On 21.1.13 the informant **Jobed Ali** lodged an FIR at the Kalaigaon PS alleging that on 20.1.13 at around 5.00 pm while his driver was driving his Sumo Gold vehicle and reached Kalaigaon, the accused persons threatened his driver by showing him a revolver. The accused persons took away his vehicle and also physically assaulted the driver.

INVESTIGATION

2. On receipt of the FIR Police registered a case being Kalaigaon PS Case No. 2/13 under Section 394 IPC. After completion of the investigation the Police submitted charge-sheet in terms of Section 173(2) Cr.P.C against the accused persons viz., Umesh Deka, Chandan Basumatary, Tatu Gabo and Md. Dhan Ali, who was shown as an absconder under **Section 394 IPC**. Vide order dated 23.1.16 passed by the learned CJM, Udalguri, accused Dhan Ali was declared as an absconder.
3. Cognizance of the offence under **Section 394 IPC** was taken against the accused persons namely Sri Umesh Deka, Sri Chandan Basumatary Sri Tatu Gabo and Md. Dhan Ali by the learned CJM, Udalguri, under Section 190 (1)(b) Cr.P.C and thereafter the case was transferred to this court for trial in view of Section 192(1)(b) Cr.P.C.

APPEARANCE OF THE ACCUSED PERSONS

4. Summons were issued to the accused persons named above by my learned predecessor, however, as the accused persons namely Tatu Gabo and Dhan Ali did not appear the case record was split up vide order dated 30.10.18, passed by my learned predecessor and the case proceeded against the accused persons namely Chandan Basumatary and Umesh Deka. They were furnished with the copies of the relevant documents in compliance with Section 207 of the Cr.PC. The case was filed against the accused persons namely Dhan Ali and Tatu Gabo vide order dated 30.10.18.

SUBSTANCE OF THE ACCUSATION AGAINST ACCUSED PERSONS

5. Thereafter, charge under Section 394/34 IPC was framed against the accused persons to which they pleaded not guilty and claimed to be tried.

WITNESSES EXAMINED

6. The prosecution examined 9(nine) witness and exhibited 5(five) documents in order to prove its case.
7. At the conclusion of the prosecution evidence, the accused persons were examined under Section 313 CrPC and all the incriminating materials were put to them to which they denied. The accused persons refused to adduce evidence.
8. I have heard the arguments advanced by both the sides. The case record is also perused alongwith the depositions on record.

9. Upon perusal of the case record and after hearing both sides, the following Point for Determination is framed.

Point for determination

Whether the accused persons namely Umesh Deka and Chandan Basumatary on 20.1.13 at around 5.00 pm at Kalaigaon, in furtherance of their common intention voluntarily caused hurt to the driver of the informant while committing robbery and thereby committed an offence punishable under Section 394/34 of the Indian Penal Code ?

EVIDENCE OF THE WITNESSES OF THE PROSECUTION

10. The entire prosecution evidence at a glance may be put forward. The evidence of the Prosecution Witnesses (Pws) are as follows:
- i. PW-1(Informant) stated in his examination-in-chief that he could not recognize the accused persons. He further deposed that in the year 2013 his Sumo Gold vehicle was stolen by the accused persons while his driver was returning from Kalaigaon. The said vehicle was stopped by some unknown persons who took away his vehicle from its driver (PW-2). He stated that police recovered his vehicle from Itanagar, Arunachal Pradesh. In the cross-examination PW-1 stated that he signed the seizure list at the police station.

- ii. PW-2 stated in his examination-in-chief that about seven years ago he was driving the Tata Sumo belonging to the PW-1. On the day of the occurrence when he reached Kalaigaon, on the way three persons assaulted him physically and took away the said vehicle. In the cross examination PW-2 stated that he could not identify those persons who took away his vehicle as they covered their faces with clothes.
- iii. PW-3 stated in his examination-in-chief that in the year 2013 one driver (PW-2) entered into his house looking for a mobile phone in order to inform his owner about the theft of the vehicle. He further stated that later on, the owner of the vehicle came to his house and took the driver with him. He does not have any knowledge about the incident, as stated by him. In the cross - examination PW-3 stated that he does not have any knowledge as to who took away the vehicle.
- iv. PW-4 stated in his examination-in-chief stated that during the course of the investigation he seized one Sumo vehicle from Itanagar, Arunachal Pradesh from the possession of accused Tatu Gabo. He proved the seizure lists Ext-2 & Ext-3 and his signatures Ext-2(2) and Ext-3(1). He also proved the sketch map which is Ext-4 and his signature which is Ext-4(1). In the cross - examination PW-4 stated that he recovered the vehicle only from the possession of accused Tatu Gabo.

- v. PW-5, PW-6, PW-7 and PW-9 did not investigate this case. Their cross-examinations were declined on the prayer of the learned defence counsel.
- vi. PW-8 stated in his evidence that he submitted the charge-sheet against the accused persons namely, Umesh Chandra Deka, Chandan Basumatary, Tatu Gabo and Dhan Ali under section 394 IPC. He proved the charge-sheet(Ext-5) and his signature Ext-5(1). In the cross -examination PW-8 stated that he did not seize anything in connection with this case.

Discussion on the Point for determination

Whether the accused persons viz., Umesh Chandra Deka and Chandan Basumatary on 20.1.13 at around 5.00 pm at Kalaigaon, in furtherance of their common intention voluntarily caused hurt to the driver of the informant while committing robbery and thereby committed an offence punishable under Section 394/34 of the Indian Penal Code?

11. Section 394 IPC provides as follows:

“ **S.394. Voluntarily causing hurt in committing robbery.**—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life or with

rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

12. In the instant case Pw2, the driver of the Pw1 is a vital witness as he is the victim of the alleged offence. However, Pw2 deposed in his cross-examination that he was unable to recognize those persons who assaulted him as they covered their faces with clothes. Even in his examination-in-chief he failed to recognize the accused persons. Hence, it appears that the Pw2 could not identify the accused persons as the offenders.
13. The testimonies of Pw1 and Pw3 are hearsay as they got the knowledge about the alleged offence from the Pw2.
14. Pw4-Pw9 are official witnesses. Pw4 (I.O) stated that he seized the Sumo vehicle from the accused Tatu Gabo. In his cross-examination as well, Pw4 categorically stated that, he recovered the Sumo vehicle, only, from the accused Tatu Gabo.
15. Hence, it appears that none of the witnesses deposed anything about the role of the accused persons in the commission of the alleged offence and the recovery of the vehicle was also not made out from their possession.
16. Keeping in view the totality of the evidence, it is apparent that the evidence on record is quite inadequate to establish the prosecution case. The prosecution evidence does not inspire enough confidence to prove the guilt of the accused persons beyond a reasonable doubt.

17. **Decision : Situated thus, the Point for Determination is decided in negative.**

ORDER

1. In view of the above discussions and the decision, it is held that the prosecution failed to prove the case against the accused persons viz. **Umesh Deka and Chandan Basumatary** under **Sections 394/34 IPC** beyond a reasonable doubt.
2. Hence, in view of the above discussion, the accused persons viz. **Umesh Deka and Chandan Basumatary are acquitted** of the charges under **Sections 394/34 IPC**.
3. Bail bond is cancelled and the bailor is discharged.

Signature

(Ms. Karabi Das)

Judicial Magistrate First Class,

Udalguri, BTR, Assam

APPENDIX
PROSECUTION EXHIBITS:

Ext-1 is the FIR.

Ext-1(1) is the signature of PW-1.

Ext-2 is the seizure list.

Ext-2(1) is the signature of PW-1.

Ext-3 is the seizure list.

Ext-3(1) is the signature of PW-4.

Ext-4 is the sketch map.

Ext-4(1) is the signature of PW-4.

Ext-5 is the charge sheet.

Ext-5(1) is the signature of PW-8.

DEFENCE EXHIBITS:

NIL

WITNESSES FOR THE PROSECUTION:

P.W.1Md. Jobed Ali

P.W.2Babul Ali

P.W.3.....Sanjib Daimari

P.W.4.....SI Himangshu Jyoti Gohain

P.W.5.....Rtd. SI Amarjyoti Baruah

P.W.6.....Rtd. SI Daneswar Deka

P.W.7.....SI Umesh Bordolai

P.W.8.....SI Mahendra Nath

P.W.9.....Rtd. SI Dilip Kr. Hazong

WITNESSES FOR THE DEFENCE:

NIL

Signature

(Ms. Karabi Das)

Judicial Magistrate First Class,

Udalguri, BTR, Assam