

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :: DHEMAJI :: ASSAM

Present: Sri P.A. Choudhury
Chief Judicial Magistrate
Dhemaji

PRC No. 358 of 2020

G.R. Case No. 1286 of 2020 (DMJ)
U/s. 341/392/34 I.P.C.

State of Assam

-Versus-

Sri Rintu Borah
S/o Sri Raju Borah
R/o Vill. Bapuchang
P.S. & Dist. Dhemaji.....Accused

Appearance:

Sri N. Gogoi
Addl. P.P.....For the State

Smti I. Borgohain
Advocate.....For the Accused

Evidence recorded on: 31.12.2020, 08.01.2021 & 22.01.2021

Argument heard on: 18.02.2021

Judgment delivered on: 03.03.2021

J U D G M E N T

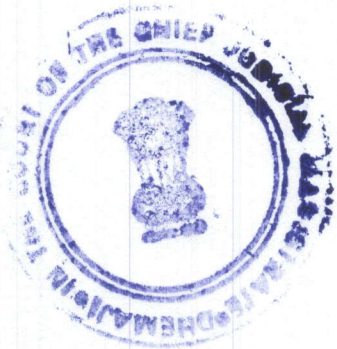
The prosecution case, in a nutshell is that, the complainant, Sri Dulal Gogoi lodged an ejahar before the Officer-in-Charge, Dhemaji Police Station alleging inter-alia that on 15.11.2020 at about 12.30 p.m., he was coming towards Dhemaji and when he was about 200 metres away to reach Telijan Tiniali, two youths on their motorcycle (FZ) waylaid him and forcefully snatched away his mobile phone, wallet by showing him a knife and threatened him to kill. It is further stated in the ejahar that his wallet



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contained Rs. 3,700/- alongwith Voter card, Pan card, Aadhar card in original. The said incident had occurred when the complainant was coming by pushing his motorcycle due to mechanical defects.

2. On receipt of the said ejahar, Dhemaji P.S. Case No. 529/2020, u/s. 341/392 I.P.C. was registered and investigated into. On completion of investigation, Investigating Officer of the case submitted charge-sheet u/s. 341/392/34 I.P.C. against the accused persons namely, Himanta Boruah and Rintu Borah.
3. In pursuant to court processes, accused Himanta Baruah appeared before the Court and was allowed to go on bail, while the co-accused Rintu Borah was produced through video conferencing. Copy was furnished to them. Subsequently, upon hearing both the sides and on finding sufficient materials against the accused persons, charges u/s. 341/392/34 I.P.C. was framed against them. When the ingredients of the said offences were read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.
4. Prosecution side examined 5 PWs, including the Investigating Officer. At this stage, it is to be mentioned here that during the pendency of the trial, the mother of the accused Himanta Boruah filed a petition before this Court, whereby it is stated that his son is in bed-ridden condition and is extremely weak and she also cannot say definitely as to when his son would be in a position to attend the Court. Further, she also stated that his son is admitted in a rehabilitation centre and is undergoing treatment for kidney related disease. As such, this Court split up the case of the accused Himanta Boruah from that of accused Rintu Borah. Accordingly, accused Rintu Borah was examined u/s. 313 Cr.P.C. The plea of the accused was of total denial.
5. I have gone through the evidence carefully, perused the case record and heard the argument of both sides.



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POINTS FOR DETERMINATION:

- (i) Whether on 15.11.2020 at about 12.30 p.m., the accused Rintu Borah wrongfully restrained the complainant at Telijan Tiniali?
- (ii) Whether on the same date and at the same time and place, the accused committed robbery upon the complainant?

DISCUSSION, DECISION AND REASON THEREOF:

6. PW1, Sri Dulal Gogoi is the informant of this case. He stated in his evidence that he knew both the accused persons. Further, he deposed that on 15.11.2020 at about 12.30 p.m., he was coming from his village and going towards Dhemaji on his motorcycle. When he was about to reach Telijan, the tyre of his motorcycle got punctured and he was proceeding by pushing his motorcycle. By that time, accused persons also reached there on their motorcycle and enquired him, as to what had happened to his motorcycle. Then, accused Himanta Boruah came near him with a sharp weapon in his hand and asked him not to shout and thereafter, took away his mobile phone and wallet, containing his voter I/d card, PAN card, other important documents and Rs. 3,700/- in cash. His mobile phone was of M.I. make. Then, he went to a nearby shop, wherefrom he took the motorcycle of one Lukeswar Konwar and went to the Dhemaji P.S. and lodged an ejahar against the accused persons. During investigation, police was able to recover his mobile phone and he took the custody of his mobile phone. However, he did not get his wallet, money and other documents. He also did not get his SIM card inside his mobile phone. Ext.1 is the ejahar and Ext.1(1) is his signature.

7. During cross-examination, PW1 stated that he drafted the ejahar himself. However, he denied the suggestions advanced by the learned counsel that he did not get his wallet and documents and that he had stated to the police that after some time of the incident, he got his wallet and documents on the road. Further, he also denied that the accused did not restrain him and that he brought a false allegation against the accused Rintu Borah.

8. PW2, Sri Anuj Gogoi deposed in his evidence that he did not know the informant as well as the accused persons. Further, he stated that he did not know about the incident. However, on the day of occurrence, police



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from Dhemaji P.S. came to their village and called him. They asked him to accompany them to the house of one Anil Gogoi, situated at Sripani Janakalyan Chariali. When he asked police about their visit, they told him that the son-in-law of Anil Gogoi had committed theft and took away money and mobile phone. Police seized one mobile phone from the possession of wife of the accused Himanta Boruah in his presence and he put his signature on the seizure list. Ext.2 is the seizure list and Ext.2(1) is his signature. However, he cannot say about the seizure of motorcycle from the house of Anil Gogoi. Police also seized one SIM card along with the mobile phone. Mat. Ext.1 is the said SIM card.

9. During his cross-examination, PW2 stated that the mobile phone was not seized from the possession of accused Rintu Borah.

10. PW3, Sri Bhaskar Gogoi deposed in his evidence that he did not know the informant. He knew the accused Himanta Boruah. However, he did not know the co-accused. One night, police came to their house in search of accused Himanta Boruah, who is his brother-in-law. Then, police asked him to put his signature on a piece of paper. Accordingly, he put his signature. Ext.2 is the seizure list and Ext.2(2) is his signature. Ext.3 is the another seizure list and Ext.3(1) is his signature. This witness has not been cross-examined by the learned defence counsel.

11. PW4, Sri Anil Gogoi stated in his evidence that he did not know the informant. He knew the accused Himanta Boruah. However, he did not know the co-accused. On the following day of the incident, police called him to the P.S. and asked him to put his signature on a blank paper. Accordingly, he put his signature. However, he did not know as to why his signature was taken by the police. Ext.3 is the seizure list and Ext.3(2) is his signature. This witness has also not been cross-examined by the learned defence counsel.

12. PW5, S.I. Nekibuddin Ahmed is the Investigating Officer of this case. He deposed in his evidence that on 15.11.2020, he was posted at Dhemaji P.S. as Attach Officer. On that day, one Dulal Gogoi lodged a written ejahar before the O.C., Dhemaji P.S., which was registered as Dhemaji P.S. C/No. 529/20, u/s. 341/392 I.P.C. and the case was entrusted to him for



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investigation. Accordingly, he recorded the statement of the complainant. Thereafter, he visited the P.O., prepared sketch map of the P.O. and recorded statements of other witnesses. In course of investigation, he recovered one mobile phone and seized the same in presence of witnesses. He also seized one motorcycle used in the offence by the accused persons in presence of witnesses. Later, both the mobile phone and motorcycle were given in the zimma of actual owners. He arrested the accused persons and forwarded them to the Court. Subsequently, on completion of investigation, he submitted the charge-sheet against the accused persons namely, Himanta Baruah and Rintu Borah u/s. 341/392 I.P.C. Ext.2 is the seizure list and Ext.2(3) is his signature. Ext.3 is another seizure list and Ext.3(3) is his signature. Ext.4 is the sketch map and Ext.4(1) is his signature. Ext.5 is the charge-sheet and Ext.5(1) is his signature.



13. During cross-examination, the I.O. admitted that at the time of recording the statement of PW1, he did not mention the names of the accused persons, but only mentioned as unknown miscreants. However, he denied the suggestion that he did not visit the place of occurrence and did not prepare the sketch map properly. He also denied that he did not investigate the case properly and falsely submitted the charge-sheet against the accused.

14. In the instant case, there is only one eye witness i.e. the complainant (PW1) himself. He clearly stated that at the time of occurrence, the accused came to the spot along with another accused Himanta Baruah and the said Himanta Baruah by way of showing sharp weapon took away his mobile phone and wallet, containing his voter I/d card, PAN card, other important documents and Rs. 3,700/- in cash. He also warned the complainant not to shout.

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15. Ld. Counsel for the accused argued that the complainant did not mention the name of Rintu Borah in his ejahar. However, this is for obvious reasons. The accused was not known to the complainant and as such he could not mention his name in the ejahar. But in the Court PW1 clearly stated by way of pointing out that the accused Rintu Borah was one of the culprits. Although, Rintu Borah did not show him any sharp weapon or took away

valuables from his possession physically, but he was there along with the other accused (Himanta Baruah). Defence side failed to rebut the evidence of PW1 and he was able to withstand his cross-examination.

16. PW2 stated in his evidence that one mobile phone was seized by police in his presence from the possession of the wife of Himanta Baruah and he put his signature thereon. The Investigating Officer also confirmed that he seized the stolen mobile phone in the course of investigation. From the perusal of the Seizure List i.e. Ext-2, it reveals that it was the mobile phone of the complainant which was stolen by the accused Himanta Baruah at the time of incident. No explanation has been advanced by the defence side as regards the recovery of the mobile phone of the complainant from the possession of the wife of Himanta Baruah. Ld. Counsel for the accused Rintu Borah only confirmed from PW2 that the said mobile phone was not recovered from the possession of the accused Rintu Borah. It is worth mentioning here that there is no dispute as regards the ownership of the recovered/ seized mobile phone. So, admittedly, the seized mobile phone belonged to the complainant and there is lack of explanation regarding its recovery from the house of Himanta Baruah.

17. From the ongoing discussion, this Court is of the opinion that the Prosecution has been able to establish its case beyond all reasonable doubts inasmuch as the complainant could recognize the accused Rintu Borah in the Court and that the robbed mobile phone was recovered from the possession of the wife of the co-accused. We could not expect here multiple eye witnesses as the incident occurred at a lonely place and of course, the accused had also targeted the complainant keeping that in mind. The Investigating Officer seized the FZ motorcycle used by the accused at the time of commission of crime and there is no explanation from the defence side in this regard.

18. Situated thus, I have arrived at the safe conclusion that the case of the prosecution has been well established beyond reasonable doubts. As such, the accused Rintu Borah is convicted for committing the offence u/s- 341/392 IPC.

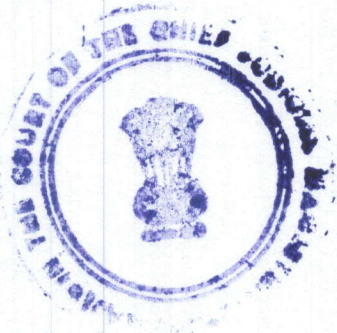


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19. Heard the accused on the point of sentence. It is submitted that the accused is the sole bread earner of the family and he is still very young. Hence prayer is made to take a lenient view while imposing sentence upon him.
20. I am not inclined to extend the benefits of relevant provisions of the Probation of Offender's Act considering the nature of the offence as well as the manner in which the crime had been committed.
21. Accused is thus convicted for committing offence u/s-341/392 IPC and he is sentenced to suffer simple imprisonment for a period of three months for committing the offence u/s-341 IPC and rigorous imprisonment for a period of one year for committing offence u/s-392 IPC. The sentences of imprisonment shall run concurrently. The accused shall also be liable to pay a fine of Rs.5,000/- for committing offence u/s-392 IPC. In default of payment of fine, the accused shall have to suffer simple imprisonment for a period of one month. In the event of non-payment of fine, the sentences shall run consecutively. Period of detention already undergone by the accused to be set off against the sentence of imprisonment.
22. Judgment is pronounced in the open court.
Furnish a copy of the Judgment to the accused free of cost.

Given under my hand and seal of this court on this the **3rd** day of **March**,
2021.

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APPENDIX

LIST OF PROSECUTION WITNESSES:

PW1 : Sri Dulal Gogoi
 PW2 : Sri Anuj Gogoi
 PW3 : Sri Bhaskar Gogoi
 PW4 : Sri Anil Gogoi
 PW5 : S.I. Nekibuddin Ahmed

LIST OF PROSECUTION EXHIBITS:

Ext.1 : Ejahar
 Ext.1(1): Signature of PW1
 Ext.2 : Seizure List
 Ext.2(1): Signature of PW2
 Ext.2(2): Signature of PW3
 Ext.2(3): Signature of PW5
 Ext.3 : Another Seizure List
 Ext.3(1): Signature of PW3
 Ext.3(2): Signature of PW4
 Ext.3(3): Signature of PW5
 Ext.4 : Sketch Map
 Ext.4(1): Signature of PW5
 Ext.5 : Charge-sheet
 Ext.5(1): Signature of PW5
 M. Ext.1: Seized SIM card

LIST OF DEFENCE WITNESSES:

Nil

LIST OF DEFENCE EXHIBITS:

Nil

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