

G.R no. 420/2015

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, NALBARI

G.R No. 420/2015

u/s 393 I.P.C

State of Assam

-Vs-

(I) Ainal Ali @Haque,

(ii) Faijul Haque,

(iii) Maidul Islam

(iv) Mostafa Ali.....Accused(s)

PRESENT: D.M. Hussain, A.J.S.

ADVOCATES APPEARED:

For the state : Mr. A. Barman, Ld. A.P.P,

For the accused : Mr. Jitendra Nath Medhi, Ld. Advocate,

Dates of evidence : 05/06/15, 04/08/15, 04/11/15, 31/05/16, 05/07/16,
09/04/19 & 19/06/19.

Date of argument : 15/07/19.

Date of judgment : 29/07/19.

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the 'ejahar' dated 22/03/15 filed by informant S.I Abul Kalam Azad is that he along with his staff were engaged in night patrolling duty from 11 pm of 21/03/15 to 6 am of 22/03/15. At about 3:20 am of 22/03/15, they

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stopped one Maruti Van bearing registration no. AS-01-F-9350 coming from Pub-Adabari towards Loharkatha and on search - found two numbers of iron 'siprang'. Accuseds Ainal Ali, Maidul Islam, Mostafa Ali and Faizul Haque who were inside the Maruti van on interrogation failed to give any suitable reply as to why they carried the 'siprang' and from the driver of the Maruti van Md. Najir Ali, they came to know that the accused persons forcefully boarded the vehicle at Pub-Adabari and wanted to go towards Loharkhata. On inquiry it was found that the accused persons were not doing work anywhere and they were going with preparation for committing 'dacoity' or ATM theft.

2. The said 'ejahar' was received and registered as Mukalmua P.S case no. 91/2015 u/s 399 I.P.C dated 22/03/15. After completion of investigation charge-sheet no. 59/15 dated 28/03/15 was submitted against the accused persons namely Ainal Haque, Maidul Islam, Mostafa Ali and Faizul Haque u/s 399 I.P.C. Copy was furnished to the accused persons. The case was committed to the Hon'ble Court of Sessions, Nalbari. The Id .Asstt. Sessions Judge, Nalbari vide order dated 22-04-2015 in Sessions case no. 44/2015 remanded back the case holding that section 399 IPC was not attracted and finding prima facie materials u/s 393 I.P.C charge was framed under section 393 IPC and its particulars were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. **POINTS FOR DETERMINATION:**

Whether the accused persons on 22/03/15 at about 3:20 am, near Mukalmua P.S attempted to commit robbery of ATM and thereby committed an offence punishable u/s 393 I.P.C?

4. **DISCUSSION, DECISION AND REASONS THEREOF:**

The prosecution side examined eight (8) witnesses. The defence declined to adduce any evidence. The statement in defence of the accused persons u/s 313 Cr.P.C were recorded wherein they took the plea of innocence and false implication. I have heard the arguments advanced by learned counsels of both the sides and also

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perused the evidence available on record, my findings with reasons are as follows:

5. PW 1 S.I Abul Kalam Azad who is the informant deposed that he know the accused persons. He had night patrolling duty from 11 pm of 21/03/15 to 6 am of 22/03/15 under Mukalmua P.S jurisdiction. He was accompanied by CRPF personnel and P.S staff. While on duty at about 3:20 am, they stopped and searched one Maruti van bearing registration no. AS-01-F-9350 at Adabari which was coming from Pub-Adabari and during search they found four persons and two numbers of iron 'siprang'. Upon interrogating the driver they came to know that the four persons had forcefully boarded his van. When they questioned the persons about the iron 'siprang', they replied that they were returning in a vehicle after work at Agyathuri but the vehicle developed some snag and so they came on foot and boarded the Maruti van at Pub-Adabari. Later the persons failed to answer regarding the registration number of the vehicle, its owner and their place of work. After having suspicion on the replies of the persons they seized two numbers of iron 'siprang' in presence of witnesses and brought the persons to police station. The persons failed to give convincing answer when being interrogated at the P.S. Two of the persons stated that they could show the vehicle, the owner and their place of work upon being questioned and the other two persons answered in negative. He along with his staff took two of the apprehended persons to Agyathuri and they pointed towards a truck standing on the left side of the road at Amingaon. The truck driver and its handyman stated that they had never met the two persons and neither worked with them upon being questioned. The nearby people also stated that they had never seen the persons working in or near the area and failed to recognize them. They recorded the statement of the nearby people. Thereafter, they returned to P.S along with the two persons and lodged ejahar against them suspecting that they came for theft/dacoity of ATM. He was accompanied by a 'Sipahi' namely Isim Ali.

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6. PW 1 in his cross-examination deposed that he did not knew the accused persons prior to apprehending them and filing ejahar. He had not written the ejahar by himself. The name of the writer of the ejahar is not mentioned. They searched the vehicle on suspicion. He recorded the statement of driver of the vehicle. He investigated the case till filing of the ejahar. He recorded the statement of the accused persons. The accused persons were not able to prove that they did 'hazira' work. The vehicle was on its way to Boroliyapar for purchasing fish. On the day of incident no activity of ATM theft or dacoity took place. He investigated the case on his own and filed the ejahar. He did not investigated the case after filing the ejahar.

7. PW 2 Ashraf Ali deposed that he does not know the informant and the accused persons. He does not know anything about the incident. He did not heard anything about the incident.

8. PW 2 in his cross-examination deposed that police did not recorded his statement. Police took his signature in a blank paper. He does not know why police took his signature.

9. PW 3 Najir Ali deposed that he knew the informant and the accused persons. The incident took place at about 3:30 - 4 am. He was on his way to Boroliyapar to purchase fish and he saw the accused persons at Adabari char chowk. He was going in a Maruti van. The accused persons signalled him to stop the car. After he stopped the van the accused persons asked him if he could take them to Loharkatha to which he agreed. While he was coming with the accused persons and crossed the Adabari bridge, the informant asked him to stop the car. He stopped the car and police along with the informant interrogated him. The informant asked him about the accused persons. The police asked the accused persons to get down from the car and started to search the car. Police recovered one 'siprang' from the accused. Thereafter, police took them to P.S along with the car. Police released him after one day. Police suspected the accused persons to be thieves and confined them. According to his knowledge the accused persons does 'mistri' work. Police seized two numbers of 'siprang'.

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10. PW 3 in his cross-examination deposed that the accused persons did not forcefully boarded his car. The accused persons before boarding his car told him that they were returning after work from Doletola village and were waiting after not finding any vehicle. He agreed to carry the accused persons after knowing the situation of the accused persons. When he saw two numbers of 'siprang' and asked the accused about the same, they stated that they were returning after doing 'mistri' work. Police confined them out of suspicion. According to his knowledge the accused persons were telling the truth. There was no ATM at the place where he met the accused persons.

11. PW 4 Sultan Mahmud deposed that he know the informant. He know the accused persons. The incident took place on 21/03/15 at about 3:30 am. At that time he was on patrolling duty at Adabari. While doing duty, one maruti van was coming from Guwahati side. He was doing duty along with Sub-Inspector Abdul Kalam Azad and CRPF party. U.B.C Isim Ali was also doing duty with him. They signalled the Maruti van to stop and searched the same and found two numbers of 'siprang' inside the car. The accused persons during interrogation stated that they were returning from work.

12. PW 4 in his cross-examination deposed that he cannot say the name of the accused persons. The driver of the Maruti van was interrogated by the Sub-Inspector. He does not know what was asked. The accused persons stated that they went for doing 'mistri' work and were returning back after work. The accused persons stated that they used the 'siprang' for work purpose. He does not know anything else. The accused persons were caught on suspicion. Police did not recorded his statement.

13. PW 5 Isim Ali deposed that he know the informant. The incident took place on 21/03/15 at about 3:30 am. He was doing checking duty at Adabari. He was accompanied by S.I Abul Kalam Azad, Home Guard Sultan Mahmud and CRPF party. Two persons were coming in a Maruti van from Guwahati side. The car stopped upon being signalled. On search two numbers of 'siprang' were recovered from the

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car. The accused persons on being interrogated stated that they were returning after cutting earth and were working under a 'thikadar'. The accused persons were brought to P.S as the driver of the car stated that the accused boarded the car forcefully. The accused persons were brought to P.S along with the car. The accused persons narrated the name of the 'thikadar' on being asked. He does not know the name of the 'thikadar'. Next day they were taken to Guwahati. The 'thikadar' stated that he did not know the accused persons. The ejahar was lodged against the accused on suspicion of ATM theft. He put his signature when the I.O seized the 'siprang'.

14. PW 5 in his cross-examination deposed that he does not know the name of the accused persons. He does not know the colour of the Maruti van. The car had four passengers. He did not questioned the accused persons. He found two numbers of 'siprang' inside the car. The 'siprang' was not in the hands of anyone. He does not know the name of 'thikadar' whom they interrogated. The 'siprang' was inside the car. They apprehended the accused persons at about 3:30 am. On that day no incident of ATM theft took place. The accused persons stated that they did labour work. For going to Loharkatha one has to come through that direction. They seized the 'siprang' from the car. He does not know who was the driver of the car.

15. PW 6 Ajit Das who is the I.O deposed that on 22.03.15 he was working as Attached Officer at Mukalmua P.S. The S.I of Mukalmua P.S Abul Kalam Azad lodged ejahar at Mukalmua P.S which was registered as Mukalmua P.S case no. 91/15 u/s 399 I.P.C. He was endorsed to investigate the case on 22.03.15. Sri. Abul Kalam Azad seized iron 'siprang' from the P.O and recorded the statement of witnesses. He recorded the statement of the accused persons at the P.S and arrested them and forwarded them to court from where they were remanded to judicial custody. He submitted charge-sheet against the accused persons namely Aainal Haque, Maidul Islam, Mustafa Ali and Faizul Haque for offence u/s 399 I.P.C.

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16. PW 6 in his cross-examination deposed that he did not visited the P.O. He did not prepared the sketch map. He did not recorded the statement of witnesses. Four accused persons were handed over to him. Najir Ali who was the driver of the vehicle was not handed over to him. The vehicle was also not handed over to him. He has not recorded statement of Abul Kalam Azad. The statement of witnesses were recorded by Abul Kalam Azad. He does not know who endorsed Abul Kalam Azad to investigate the case.

17. PW 7 Dilip Das deposed that he does not know the informant and the accused persons. Police brought some persons to his house and asked him whether those persons work in his vehicle. He told police that those persons are not working in his vehicle and he does not know them personally. Police recorded his statement.

18. PW 8 Debajit Das deposed that he does not know the informant and the accused persons. Police brought some persons and asked him whether those persons work in his vehicle. He told police that he does not know the accused persons and they does not work in his vehicle.

19. Section 390 IPC defines Robbery and provides —In all robbery there is either theft or extortion. When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted. Explanation.—The offender is said to be present if he is sufficiently

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near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

20. Section 393 IPC provides the punishment for attempt to commit robbery.

21. It appears that the informant / PW 1 admitted that two numbers of 'siprang' was seized and the ejahar was lodged against the accused persons suspecting that they came for theft/dacoity of ATM. He admitted that on the day of incident no activity of ATM theft or 'dacoity' had taken place. PW 2 deposed that he does not know anything about the incident. He had not heard anything about the incident. Police took his signature in a blank paper, he does not know why police took his signature. PW 3 deposed that the accused persons did not forcefully boarded his car. The accused persons before boarding his car told him that they were returning after work from Doletola village and were waiting after not finding any vehicle. He agreed to carry the accused persons after knowing the situation of the accused persons. When he saw two numbers of 'siprang' he asked the accused persons about the same and they stated that they were returning after doing 'mistri' work. Police confined them out of suspicion. PW 4 admitted that the accused persons stated that they went for doing 'mistri' work and were returning back after work. The accused persons stated that they used the 'siprang' for work purpose. The accused persons were caught on suspicion. PW 5 deposed that on search two numbers of 'siprang' were recovered from the car. The accused persons on being interrogated stated that they were returning after cutting earth and were working under a 'thikadar'.

22. On appreciation of the testimony of witness and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

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23. The accused persons namely Ainal Ali @Haque, Faijul Haque, Maidul Islam and Mostafa Ali are found not guilty u/s 393 I.P.C and hence, acquitted and set at liberty forthwith. Bail bonds shall remain in force for a further period of six months.

Given under my hand and seal of this court on this 29th day of July, 2019.

Addl. Chief Judicial Magistrate
Nalbari

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APPENDIX

Prosecution witness:

PW 1- Abul Kalam Azad (Informant),

PW 2- Ashraf Ali,

PW 3- Najir Ali,

PW 4- Sultan Mahmud,

PW 5- Isim Ali,

PW 6- Ajit Das (I.O),

PW 7- Dilip Das,

PW 8- Debajit Das

Prosecution Exhibits:

Ext 1 - Ejahar,

Ext 1(1) - Signature of informant,

Ext 2 - Seizure list,

Ext 2(1) - Signature of Najir Ali,

Ext 2(2) - Signature of Sultan Mahmud,

Ext 2(3) - Signature of Isim Ali,

Ext 3 - Charge-sheet,

Ext 3(1) - Signature of I.O,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Addl. Chief Judicial Magistrate,
Nalbari

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29/07/2019

ORDER

Accused Ainal Ali @Haque, Faijul Haque, Maidul Islam and Mostafa Ali are present

Judgment is pronounced and delivered in open court.

On appreciation of the testimony of witness and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

The accused persons namely Ainal Ali @Haque, Faijul Haque, Maidul Islam and Mostafa Ali are found not guilty u/s 393 I.P.C and hence acquitted and set at liberty forthwith Bail bonds shall remain in force for a further period of six months.

Hence, the case stands disposed of.

Addl. Chief Judicial Magistrate,
Nalbari