

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,  
DIBRUGARH :: ASSAM.**

G.R. Case No. 3489/18 (PRC 658/2018)

U/S 380 IPC

**State of Assam**

**-Vs-**

**Sri Rana Mitra.....Accused**

***PRESENT :A.K. BARUAH, LL.M. AJS.***

***Chief Judicial Magistrate,***

***Dibrugarh.***

**APPEARANCE :**

Advocate for the Prosecution	: Miss D. Gogoi, Asst. P.P
Advocates for the Defence	: S. Thakur, Advocate.
Date of evidence	: 06.02.2019, 08.04.2019, 15.10.2019, 12.02.2020
Date of argument	: 26.04.2021.
Date of judgement	: 10.05.2021.

## **J U D G M E N T**

- 1.** The case of the prosecution in brief is that, on 17.09.2018, at about 11-11.30 AM, one miscreant criminally entered into the residence of the complainant and stole away his bicycle and fled away. The complainant namely Shri Kakul Bezboruah lodged one FIR before the Amolapatty Police Out Post regarding the incident.
  
- 2.** On the basis of the FIR lodged by the complainant, a case being Dibrugarh P.S Case No. 1471 of 2018 was registered under Section u/s 380 IPC. Police conducted investigation into the case and filed charge sheet against the accused person namely Sri Rana Mitra, under section U/S 380 IPC.
  
- 3.** The accused appeared in this case. Copies were furnished to him under section 207 Cr PC. Considering the material on record and hearing both the sides, charge under section 380 IPC was framed against the accused person, to which, the accused pleaded not guilty and claimed to be tried.
  
- 4.** During the trial of the case, the prosecution side examined 9 ( nine ) P.Ws. in this case. The defence plea is of total denial. The defence did not adduce any evidence. The statement of the accused was recorded u/s 313 Cr PC.
  
- 5.** I have heard the learned counsel for the accused and learned Asst. P.P for the State. Having heard both sides and after perusing the materials on record, the following

point for determination is framed by this court for the just decision of the case:-

**6. POINT FOR DETERMINATION :-**

i. Whether on 17.09.2018, the accused dishonestly took away the bicycle of the complainant from the residence of the complainant, which is used for human dwelling, without the consent of the complainant?

**DECISION AND REASON FOR THE DECISION :-**

7. PW1:- (**Kakul Bezboruah**) has deposed in his evidence that he is the complainant of this case. He knows the accused person. Last year, in the month of September, the accused had stolen away his bicycle from the premises of his house. *Later on, police recovered the bicycle from the possession of the accused, which was kept by him in his rented house.* He lodged one FIR regarding the incident. PW 1 identified the FIR as Ext 1 and his signature as Ext.1(1). The face/picture of the accused was recorded in the CCTV footage as CCTV was fitted outside his house. PW 1 identified the seizure lists as Ext.2 & Ext.3 and his signatures as Ext.2(1) & Ext.3(1) respectively.

In his cross examination, he/PW1 deposed that he did not mention the name of the accused

in his FIR/Ext.1. He mentioned in the FIR that he would mention the name of the thief as and when he could indentify that person. Later on, he lodged another FIR with the video footage of the accused. He has not seen the second FIR on the day of his evidence in the court. He has also not seen the video footage of the accused on the day of his evidence in the court. On the day of his evidence, he has not seen the purchase memo of his bicycle in the court. He denied the suggestion that as he has no bicycle, hence, he has not seen the purchase memo of his bicycle in the court on the day of evidence. He did not mention the color, chassis number i.e., description of the bicycle in the FIR. He does not know how and where police took the bicycle to the police station. He denied the suggestion that the accused did not steal his bicycle. *He denied the suggestion that the video footage of the accused person was later on tampered with.* The video footage of the accused is not displayed in the court. He denied the suggestion that his bicycle was not recovered from the accused and he filed false case against the accused.

- 8. PW2:- (Smti Taru Bordoloi)** has deposed in her evidence that the complainant is her son. She knows the accused person as he used to come to

their shop/house to do Xerox copy of his document. When the bicycle of her son was stolen away, she identified the accused in the CCTV footage of their house premises on the day of the incident, to be the person who took away the bicycle.

In her cross examination, she further stated that she did not personally see the actual occurrence except the CCTV footage. She did not see each and every person who used to visit their shop/house. She cannot mention the date and time when the accused visited their shop/house. She denied the suggestion that she has deposed falsely as directed by her son. She denied the suggestion that she did not see any CCTV footage of the accused.

- 9. PW3:- (Dipak Kr. Bezbaruah)** has deposed in his evidence that the complainant is his son. He knows the accused person as he used to come to their shop/house to do Xerox copy of his document. When the bicycle of his son was stolen away, he identified the accused in the CCTV footage of their house premises on the day of the incident to be the person who took away the bicycle.

In his cross examination, he deposed that he did not personally see the actual occurrence

except the CCTV footage. He did not see each and every person who used to visit their shop/house. He cannot mention the date and time when the accused visited their shop/house. He denied the suggestion that he has deposed falsely as directed by his son. He denied the suggestion that he did not see any CCTV footage of the accused.

- 10. PW4:- (Putul Baruah)** has deposed in his evidence that he knows the complainant as well as the accused person from the date of the occurrence. The complainant informed the police station that one bicycle was stolen from their house and *the stolen bicycle was later on recovered from the accused. He was present at the time of recovery. PW 4 identified the seizure list as Ext.3 and his signature as Ext. 3(2).*

In his cross examination, he further stated that the accused resided in the same locality of the complainant. The complainant had a cafe shop in the same locality in the name of IT Solution. He does not know whether the accused used to visit the cafe or the house of the complainant. He has not seen the CCTV footage video in the court on the day of the evidence. He cannot say if the complainant filed any document of ownership of his bicycle. *He denied the suggestion that the accused himself handed over the bicycle from his*

*house.*

**11. PW5:- (Padmanabh Patgiri)** has deposed in his evidence that he knows the complainant as well as the accused person of this case. The complainant informed the police station that one bicycle was stolen from their house and *the stolen bicycle was later on recovered from the accused. He was present at the time of recovery. PW 5 has identified the seizure list as Ext.3 and his signature as Ext.3(3).*

In his cross examination, he further stated that the accused resides in the same locality of the complainant. The complainant had a cafe shop in the same locality in the name of IT Solution. He does not know whether the accused used to visit the cafe or the house of the complainant. He has not seen the CCTV footage video in the court. He cannot say if the complainant filed any document of ownership of his bicycle. *He denied the suggestion that the accused himself handed over the bicycle from his house.*

**12. PW6:- (Bipasa Gogoi)** has deposed in her evidence that the complainant is her husband. She does not know the accused person. But later on, she saw the face of the accused in the CCTV footage. In the year 2018, on the day of the Biswakarma puja

at about 11 AM, some persons had stolen away one bicycle from the verandah of their house. *Later on, in the CCTV camera footage, they saw that the accused had taken away the bicycle from their compound.*

In her cross examination, she denied the suggestion that they did not file any document to prove their ownership over the bicycle. The accused resided in the same locality. *She denied the suggestion that the CCTV footage of the accused is a fake video.* She has not seen that CCTV footage in the court on the day of her evidence. She does not know whether the accused used to visit their shop. She denied the suggestion that her husband lodged false case against the accused.

- 13.** P.W.7:- (**Artish Kumar Deori**) has deposed in his evidence that he does not know the complainant. He knows the accused person who was a tenant in his house. About 4 months before, he put his signature on a paper as asked by police at the police station. PW 7 has identified the seizure list as Ext.2 and Ext.2(2) as his signature.

In his cross examination, he further stated that he does not know about the facts of this case. He does not know why he put his signature on Ext.2.

**14.** P.W.8:- (**Usha Deori**) has deposed in her evidence that she does not know the complainant. She knows the accused person who was a tenant in her house. About 1 year before, she put her signature on a paper as asked by police at the police station. PW 8 has identified the seizure list as Ext.2 and Ext.2(3) as her signature.

In cross-examination, PW8 deposed that-she does not know about the facts of this case. She does not know why she put her signature on Ext.2.

**15.** P.W.9:- (**Palash Ranjan Das**) has deposed in his evidence that on 17.09.2018, when he was working as an ASI in Amolapatty O.P., one Kakul Bezbaruah filed one FIR in their police station. On the basis of the FIR, a case was registered and he was entrusted with the investigation. Being entrusted with the investigation, he examined the complainant at the police station and he seized one CCTV footage from the complainant. PW 9 identified the seizure list as Ext.3 and Ext.3(4) as his signature. Thereafter, he recorded the statement of the seizure witnesses. On the same day, he went to the place of occurrence, drew a rough sketch map and examined some witnesses. Ext.4 is the rough sketch map and Ext.4(1) is his signature as identified by PW 9. From the

witnesses, he could know that the accused person who appeared in the CCTV footage was a resident of Chiring Chapori, Dibrugarh. On the next day, he went in search of the accused and conducted search in the house of the accused and recovered the stolen bicycle. Accordingly he seized the stolen bicycle. PW 9 identified the seizure list as Ext.2 and Ext.2(4) as his signature. He also examined the seizure witnesses at the P.O. Thereafter, he brought the accused person along with stolen bicycle to the police station. Thereafter, he examined the accused person and found sufficient materials against the accused, he arrested the accused and forwarded him to Hon'ble Court for necessary action. On completion of his investigation, he submitted his case dairy to SI N. K. Baruah and SI N. K. Baruah filed charge sheet in this case. PW 9 has identified the charge sheet as Ext.5 and Ext.5 (1) as his signature.

In his cross examination, he further stated that the name of the accused was not mentioned in the FIR. There is no mention of description of the stolen bicycle, for example color is not mentioned in the FIR. He did not seize any ownership document/purchase memo of the alleged stolen bicycle. There are no eye witnesses in this case. The CCTV footage of the incident was not displayed before the court. The camera of

CCTV footage is not seized by him. He did not examine Prasanta Bordoloi and one Thakur as shown in Ext.4. He did not seize any document of the stolen bicycle in respect of price. He denied the suggestion that the price of the alleged bicycle is less than Rs.2,000/-. He denied the suggestion that no such incident took place as he alleged in this case. He denied the suggestion that he did not investigate the matter properly and filed charge sheet without any justified ground.

**16** From the above discussion, I have found the following:

a) From the above discussion of evidence ,I have found that as per the evidence of PW1, PW2, PW3 and PW6 , they identified the accused in the CCTV footage of the complainant when the accused had stolen away the bicycle of the complainant from his compound on the day of the incident.

Now, as per the submission of Id. APP, the case of the prosecution is proved from the CCTV footage as deposed by the PWs. Again, as per the submission of the Id. Counsel of the accused , the case of the prosecution is not at all proved by the evidence on record as the alleged CCTV footage was neither produced in evidence nor proved as per law.

In the case of **Tomasao Bruno& Anr. Vs. State of UP,( Criminal Appeal No. 142 of 2015)** the hon'ble Supreme Court of India held that Sec65A provides that

contents of electronic records may be admitted as evidence if the criteria provided in Section 65 B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by section 65 B of the Evidence Act. Sub-section (1) of section 65 B makes admissible as a document ,paper print out of electronic records stored in optical or magnetic media produced by a computer , subject to the fulfillment of the conditions specified in sub-section(2) of section 65 B.

In **Naresh SamadhanBhange Vs. State of Maharashtra, The hon'ble Bombay High Court** held that as per sec 65A of the Evidence Act, the contents of electronic records may be proved in accordance with the provisions of sec65B . As per sec 65B, if the print out etc prepared from the original electronic records, then there should be certificate about the genuineness . In that case ,except the print out of CCTV camera, there is no other evidence certifying under sec 65B of the Evidence Act.

In this instant case the prosecution neither produced the printout of the CCTV camera nor proved the genuineness of alleged CCTV footage as per sec 65B of the Evidence Act. Hence, in the light of above two case laws, I hold that the evidence of alleged CCTV footage as disclosed by PW1, PW2, PW3 and PW6 cannot be admitted against the accused in view of non compliance sec 65 B of the Evidence Act.

- b) From the evidence of PW1, it appears that his stolen bi-cycle was recovered by police from the possession of the accused. PW1 identified the seizure list vide which the stolen bi-cycle was recovered from the accused as Ext2. On perusal of Ext2/Seizure list, I have found that as per the seizure list/Ext2, the stolen bi-cycle of the complainant was seized or recovered from the possession of the accused. PW4 and PW5 deposed in their respective evidence that the stolen bi-cycle was later on recovered from the accused. Again, PW7 and PW8 being seizure witnesses, exhibited the seizure list /Ext2 vide which the stolen bi-cycle of the complainant was recovered from the accused.

From the above discussion of evidence, I hold that from the evidence of the above PWs and from the seizure list /Ext2, it is proved beyond all reasonable doubt that the stolen bi-cycle of the complainant/ PW1 was seized/ recovered from the possession of the accused.

On perusal of the FIR/ Ext1 which was duly exhibited by PW1 , it appears that the incident of theft of the bi-cycle took place on 17-9-2018. Again, as per the seizure list/Ext2, the stolen bi-cycle of the complainant was seized/recovered from the possession of the accused on 18-9-18 at 7AM. Hence, soon after the theft of the bi-cycle of the complainant on 17-9-18, the same was found in possession of the accused on 18-9-18 at 7AM and at the same time, the accused failed to account for his possession of the stolen bi-cycle of the complainant/PW1 on 18-9-18.

Therefore, I am of the view that the accused of this case was found in possession of the stolen bi-cycle of the complainant soon after the theft of the same and he failed to account for such possession and hence, I presume under section 114 of the Evidence Act that the accused committed theft of the bi-cycle of the complainant on the day of the incident.

- 17.** Considering the above findings, I hold that from the evidence on record as discussed above it is proved that on 17.09.2018, the accused dishonestly took away the bicycle of the complainant from the residence of the complainant, which is used for human dwelling, without the consent of the complainant.
- 18.** In the result, I have found the accused guilty u/s 380 IPC. Hence, I convict him u/s 380 IPC.
- 19.** Considering the facts and circumstances of the case and nature of the offence, I am not inclined to invoke the provisions of the Probation of Offender's Act in to the case.
- 20.** I have heard the convict as to the sentence to be passed against him, he has pleaded for mercy stating that he was in jail in this case for many days and if he is again sent to jail, his whole poor family will suffer during these days of pandemic.

**21.** Considering all the aspects of the case and hearing the convict, I sentence the convict to undergo simple imprisonment for the period already undergone in hajot and to pay a fine of Rs 1000/- (one thousand) in default to undergo simple imprisonment for 6 months u/s 380 of IPC. The period already undergone in hajot shall set off against the period of sentence.

Let free copy of the judgment be furnished to the convict.

Let the seized material which was seized vide MR Nos. 0271/18, 0272/18 be returned to the complainant in due course of time.

The bail bond will be in force for 6 (six) months from today.

Given under my hand and seal of this court on this day of 10<sup>th</sup> May, 2021.

(A K Baruah)

**Chief Judicial Magistrate,  
Dibrugarh**

## **Appendix**

### Prosecution Witness :-

PW1 :- Sri Kakul Bezboruah.

PW2:- Smti Taru Bordoloi.

PW3:- Sri Dipak Kr. Bezbaruah.

PW4:- Putul Baruah.

PW5:- Padmanath Patgiri.

PW6:- Bipasha Gogoi.

PW7:- Artish Kumar Deori.

PW8:- Usha Deori.

PW9:- Palash Ranjan Das.

Defence witness :- None

### **Exhibits :-**

#### Prosecution exhibits :-

Exhibit 1:- FIR.

Exhibit 2:- Seizure List.

Exhibit 3:- Seizure List.

Exhibit 4:- Rough Sketch Map.

Exhibit 5:- Charge-sheet.

Defence exhibits : - None

Court witness :- None.

Court exhibits :- None.

**CJM Dibrugarh.**