

**G.R.CASE NO. 865/2014**

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS, DIBRUGARH, ASSAM**

**G.R.CASE NO. 865/2014**

(U/S- 380 IPC)

**Present: Smti. Sanskrita Khanikar, A.J.S.  
Judicial Magistrate First Class,  
Dibrugarh**

**State**

- VS -

**Sri Atul Gogoi @ Babul**

S/O - Late Lakhi Gogoi

R/O - Borpathar Digholia Gaon

P.S. - Borbaruah

Dist - Dibrugarh, Assam

.....Accused person

Advocate for the Prosecution : Learned Smti. Lakshmi  
Mohan

**G.R.CASE NO. 865/2014**

Advocate for the Defence : Learned Sri Naren Gogoi  
Evidence recorded on : 20-04-2016, 01-10-2019  
Argument heard on : 04-12-2021  
Judgment delivered on : 14-12-2021

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

**1.** The prosecution case as stated in the F.I.R. dated 08-04-2014 lodged by the informant, namely, Sri Manoj Gogoi is that on 07-04-2014 at around 5 A.M. some person committed theft of the spare wheel of his vehicle being a TATA D.I. 207 bearing registration no. AS06/AC/5424 which was parked at his residence at Borpothar Komargaon. He came to know through some sources that one Sri Atul Gogoi, a resident of Borpothar Dighalagaon stole the said spare wheel of his aforesaid vehicle. The value of the stolen spare wheel is about Rs. 17,000/- approx. He further mentioned in the said F.I.R. that the said Sri Atul Gogoi is a habitual offender of the locality. He could not file the F.I.R. earlier as he was busy for the Lok Sabha elections on the date of the occurrence.

**2.** A case was registered at Borbaruah P.S. subsequent to the lodging of this F.I.R. Upon completion of investigation, the police submitted charge-sheet against the accused person, namely, Sri Atul Gogoi for

commission of offence u/sec 380 of the Indian Penal Code (hereinafter referred to as I.P.C.).

**3.** The accused persons stood for trial. Copies of the relevant documents were furnished to the accused persons as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). Upon perusal of the charge-sheet and the materials on record, prima facie grounds were found to presume that the accused persons committed offence u/se 380 IPC and accordingly, charge u/sec 380 IPC was framed, read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

**4.** Prosecution in order to prove its case and to nail the guilt of the accused person has examined as many as 3 (three) witnesses, namely, Sri Manuj Gogoi being the informant as PW-1, Sri Taneswar Gogoi as PW-2 and Sri Nabin Borah as PW-3.

The prosecution also took aid of 1 (one) document being the ejahar as Exhibit 1.

After recording the prosecution evidence, the statements of the accused persons were recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused persons claimed innocence. The defence adduced no evidence.

**5.** I have heard the arguments from both sides and perused the entire evidence on record.

**6.** THE POINT FOR DETERMINATION

Whether the accused, namely, Sri Atul Gogoi, on 07-04-2014 at about 5:00 a.m. committed theft of a spare wheel of the vehicle owned by the informant at his house which is used for human dwelling and for custody of property and thereby committed an offence punishable u/sec 380 of the IPC?

DISCUSSION, DECISION AND REASONS THEREOF

**7.** PW-1 being the informant deposed in his evidence that the accused person is known to him. He stated that the incident occurred towards the end of April month of the year 2014. He is the owner of a TATA D.J. vehicle bearing registration no. AS06AC5424. On the day after the incident, he found that a spare wheel of his said vehicle was missing. He later heard from his driver and one of his workers that on the night before the incident, the spare wheel was kept on its usual spot. They also informed him that on the day of the incident, the accused was seen moving around near the vehicle of the PW-1. The accused sometimes used to work with his vehicle and he heard from his driver and one of his workers that sometimes, if the PW-1 failed to pay him in time, he used to threaten about stealing the parts of his vehicle. According to the PW-1, the accused is a common suspect

in the thefts which occurred in the locality. The stolen spare wheel of his vehicle was not recovered. His statement was recorded by the police. He proved Exhibit 1 as the ejahar lodged by him by identifying Exhibit 1(1) as his signature thereon.

During his cross-examination, he stated that he used to use his aforesaid vehicle for business purposes. Three of his staff members were managing the vehicle. But the workers were changed after every one or two months. The accused started working for him about a week before the incident. He could not remember if any payment from him was due to the accused. The accused resides near his residence. The aforesaid vehicle was locked and kept in the residential campus of the PW-1/informant. Prior to this incident, the accused never committed theft of any parts from his vehicle. The value of the stolen spare wheel is about Rs. 17,000/-. It was never recovered by the police. The police did not inform him as to against whom the charge-sheet was filed. He denied the defence suggestion that he lodged this case against the accused as a payment of Rs. 500/- from him was due to the accused. He also denied the defence suggestion that he deposed falsely in the Court.

**8.** PW-2 in his evidence deposed that the informant is his elder brother. The accused is also known to him. He knows about the filing of this case but is unaware of its

facts. At the time of the occurrence, he was out of station. Though he was informed over the phone about the said incident by his family members, he does not have any personal knowledge about the same.

His cross-examination was declined by the defence.

**9.** PW-3 deposed in his evidence that the informant is known to him as he used to work as the informant's employee. The accused is also known to him as he was a co-employee of the informant. The informant/PW-1 is a sand/earth/brick supplier and owned a D.I. Truck. In the morning following the day of the occurrence, he was informed by the informant/PW-1 that the spare tyre of his truck was stolen. Suspecting the accused of committing the theft of the said spare tyre, the informant/PW-1 lodged an F.I.R. against the accused. thereafter, he was called to the police station by the police and his statement was recorded and he was made a witness in this case.

During his cross-examination, he stated that he does not know at what time the occurrence took place. He does not know if the accused was entitled to any payment from the informant/PW-1.

**10.** I have heard the arguments of the learned Asst. Public Prosecutor representing the State and the learned defence counsels representing the accused persons.

**11.** Now, the stage has been set to appreciate the evidence on record in the light of the essential ingredients of the offence alleged to have been committed by the accused persons.

**12.** In order to establish the offence u/sec 380 IPC, the prosecution has to satisfy the following ingredients in the act of the accused:

- i) The accused committed theft
- ii) That such theft was committed in any building, tent or vessel; and
- iii) That such building, tent or vessel was used as a human dwelling or used for the custody of property

At the onset, it is pertinent to note that there are no eye-witnesses in the instant case. None of the PWs have seen the accused persons committing the theft in the place of occurrence and none of them deposed anything regarding the involvement of the accused persons in any manner with the instant case. The informant/PW-1 as well as the I.O./PW-7 had categorically deposed that in the C.C.T.V. footage, the faces of the accused were not at all clearly visible or recognisable. Besides, the pendrive being the Material Exhibit A has not been proved in the Court as per due procedure of law. Although the stolen articles were recovered, there is no evidence on record that the same had been recovered from the possession of the accused

persons. None of the PWs deposed anything regarding wherefrom or from whose possession the stolen articles were recovered. From the cross-examination of the PW-7 being the I.O. as well as on perusal of the Exhibits 1 and 3, it transpires that the measurements of the said 2 ply boards and the wooden door are not tallying with one another. Resultantly, it transpires that the act of the accused persons is bereft of the essential elements of the offence u/sec 380 IPC.

It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the case of the prosecution and there is ample scope of reasonable doubt as to the factum of the occurrence alleged. In the absence of any cogent evidence, I am not inclined to hold the accused persons guilty u/sec 380 IPC.

**13.** Situated thus, I am constrained to hold that the prosecution has failed to establish the guilt of the accused person, namely, Sri Atul Gogoi @ Babul u/sec 380 IPC beyond all reasonable doubt. As such, the point of determination is answered in the negative in favour of the above named accused person.

**ORDER**

**14.** In view of the decision made above, the accused, namely, Sri Atul Gogoi @ Babul is acquitted of the charge of the offence under section 380 IPC and set at liberty forthwith.

His bail bond shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

The case is disposed of on contest.

Given under my hand and the seal of this Court on this 14<sup>th</sup> day of December, 2021 at Dibrugarh.

Typed by: Self

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh

**APPENDIX**

**A. Prosecution witnesses:-**

- i) Sri Manuj Gogoi being the informant as PW-1
- ii) Sri Taneswar Gogoi as PW-2
- iii) Sri Nabin Borah as PW-3

**B. Defence witnesses:- Nil**

**C. Prosecution exhibits:-**

- i) The ejahar as Exhibit 1

**D. Defence exhibits:- Nil**

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh