

**IN THE COURT OF THE SESSIONS JUDGE:: DIBRUGARH**

Present: Ms. A. Ajitsaria, AJS, Sessions Judge, Dibrugarh

Date of judgment: 09-02-2022

**Sessions Case No. 56 of 2021**  
FIR No. 43/1998 dtd. 14-09-1998  
Rahmaria PS Case No. 43/1998 u/s 399/402 IPC  
G.R. Case No. 1376/1998

Complainant:	Sri Sambor Gohain.
Represented by	Smt. Runumi Devi, Public Prosecutor.
Accused	Sri Rubul Gohain, S/o- Sri Phuleswar Gohain, R/o- Nadua Gohain Gaon, PS- Chabua, District- Dibrugarh.
Represented by	Sri Dibokh Gogoi, Advocate.

Date of offence	13-09-1998.
Date of FIR	14-09-1998.
Date of Charge sheet	13-09-1998.
Date of Framing of Charges	28-09-2021.
Date of commencement of evidence	12-06-2012.
Date on which judgment is reserved	09-02-2022.
Date of Judgment	09-02-2022.
Date of Sentence Order, if any	Nil.

Rank of the accused	Name of accused	Date of arrest	Date Release on bail	Offences charged with	Whether acquitted or convicted	Sentenced imposed	Period of Detention Undergone during trial for purpose of Sec. 428 Cr.P.C.
Accused No. 1	Sri Rubul Gohain	10-02-2019.	20-02-2019.	399/402 IPC	Acquitted	Nil.	10 days

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

1. The prosecution case, in a nutshell, is that on 14-09-1998, Sri Sambor Gohain, an employee of Mokalbari Tea Estate, lodged an FIR at Rahmaria Police Station stating inter alia, that it had been reported by the night chowkidars of the garden and the village defence party that a gang of miscreants were found to be roaming suspiciously at 9:00 pm on 13-09-1998 at Section No. 13 of Mukalbari Tea Estate. The miscreants had forcibly snatched torchlights from the night chowkidars and quarreled with them. When the chowkidars shouted about the presence of the gang, the VDP on duty rushed there. They chased and apprehended two miscreants, namely, Sri Amiyo Gogoi, Sri Lakhyadhar Konwar and recovered one handmade pipe gun, one toy pistol, two daggers and torch lights of the chowkidars. Accused Amiyo Gogoi confessed that the names of the other accused who had fled were Rubul Gohain and Kokoi Gondhia. Accordingly, FIR was registered as Rahmaria PS Case No. 43/1998 under Sections 399/102 IPC and investigation commenced.

2. In the year 2012, after due investigation, charge sheet was submitted against the accused persons, namely, (i) Sri Amiyo Gogoi @ Bobi, (ii) Sri Lakhyadhar Konwar, (iii) Sri Kalyan Gohain @ Dipen and (iv) Sri Kokoi Gandhia @ Abhijeet, (v) Sri Tanu Konwar and (vi) Sri Rubul Gohain under Sections 399/402 IPC. Accused Sri Tanu Konwar and Sri Rubul Gohain were shown as absconders in the said chargesheet.

3. In the year 2012, offences being Sessions triable was committed by the learned JMFC, Dibrugarh in respect of the accused (i) Sri Amiyo Gogoi @ Bobi, (ii) Sri Lakhyadhar Konwar, (iii) Sri Kalyan Gohain @ Dipen and (iv) Sri Kokoi Gandhia @ Abhijeet. On cognizance being taken, Sessions Case No. 63/2012 [arising out of GR Case No. 1376/1998] was registered. By judgment dated 30.11.2012 all the said

aforesaid 4 accused persons were acquitted in Sessions Case No. 63/2012.

4. Subsequently, accused Rubul Gohain was arrested, forwarded to judicial custody; later enlarged on bail and after observing necessary formalities and the offence being Sessions triable, was committed to the Court of Sessions for trial of accused Rubul Gohain by the learned Judicial Magistrate, 1<sup>st</sup> Class, Dibrugarh.

5. After hearing both sides and on perusal of the police report furnished under Section 173 CrPC, formal charges under Sections 399/402 IPC were framed, read over and explained to the accused Rubul Gohain to which he pleaded not guilty and claimed to be tried. Hence, this trial.

6. In support of the case, the prosecution examined five witnesses. After closure of the prosecution evidence, the accused person was examined under Section 313 of the CrPC. The defence did not adduce evidence. The plea of defence is of total denial.

#### **POINTS FOR DETERMINATION**

- i. Whether the accused Rubul Gohain on 13-09-1998, along with co-accused Sri Amiya Gogoi @ Bobby, Sri Lakhyadhar Konwar @ Lalu and Sri Kalyan Gohain @ Dipen (since acquitted) and accused Tanu Konwar (absconder) had made preparation by being armed with one hand made pipe gun, two daggers and torch lights, for committing dacoity?
- ii. Whether the accused Rubul Gohain on 13-09-1998, along with co-accused Sri Amiya Gogoi @ Bobby, Sri Lakhyadhar Konwar @ Lalu and Sri Kalyan Gohain @ Dipen (since acquitted) and accused Tanu Konwar

(absconder) had assembled for the purpose of committing dacoity?

7. I have carefully examined the evidence on record and heard arguments of both sides.

**DECISION THEREON AND THE REASONS FOR THE DECISION**

8. PW-1, Sri Madan Murah deposed that he did not know the accused persons and had seen the accused first time in the Court. PW-1 stated that he was working as helper for the vehicles owned by Mukalbari Tea Estate. PW-1 further deposed that he used to be on night duty along with other labourers at Mukalbari Tea Estate. On the day of occurrence, about 9-10 years back, there was hue and cry in the Tea Estate regarding presence of thief and people shouted 'thief thief'. He along with others chased the thieves, but could not catch any of them. Defence declined to cross-examine PW 1.

9. PW-2 Sri Santosh Patnayak too deposed that the accused was not known to him and that he had seen the accused, for the first time in the Court. PW-2 further deposed that about 9-10 years back, when he along with Chandan Ghatowar (since deceased), Nandalal (since deceased), Baloram Gowala (since deceased) and Madan Murah were on patrolling duty during night at Mukalbari Tea Estate, they had not seen any untoward incident. Defence declined to cross-examine this witness.

10. PW-3 Sri Soneswar Dutta deposed that he did not know the accused persons and that he had seen the accused for the first time in the Court. PW-3 further deposed that he worked as Chowkidar at Mukalbari Tea Estate. About 10-15 years back, when he along with others were on night duty in the above garden, around 5-6 persons/miscreants arrived and forcibly took away his three battery torch light whereafter he made hue and cry and went home. Defence declined to cross-examine this witness.

11. PW-4 Sri Baba Ram Baruah deposed that on 14-09-1998, he was working as Officer-in-charge of Rahmaria Police Station. On that day, Sri Sambor Gohain, employee of Mokalbari Tea Estate lodged an FIR (Ext. 5) to the effect that on 13-09-1998, the tea garden labourers found some persons roaming suspiciously inside the tea garden and the VDP personnel caught two persons, namely, Amiya Gogoi and Lakhyadhar Konwar, while four others managed to escape. Among the four persons who fled away, two of them were Rubul Gohain and Kokoi Gandhia. PW 4 deposed that one handmade pipe gun, one toy pistol, two daggers were recovered from Amiya Gogoi and Lakhyadhar Kowar. PW-4 further deposed that on receipt of the FIR, Rahmaria PS Case No. 73/1998 under Sections 399/404 IPC was registered and he took up the investigation of the case. PW 4 deposed that during investigation, he visited the place of occurrence, examined the witnesses as well as the complainant/informant. PW 4 stated that at the place of occurrence, he examined Amiya Gogoi and Lakhyadhar Konwar who had been caught by the village defence party. PW 4 further deposed that one meat dao, one toy pistol, one old everyday torch light, one khamti dao and one 2 ½" bore pipe gun were recovered from the aforesaid two accused persons and seized the same, in presence of witnesses vide Seizure List Ext 2 where he signed being Ext 2(1). PW-4 deposed that he seized three bicycles vide Seizure List as Ext 3, where he endorsed his signature being Ext 3(1). PW 4 exhibited the seized meat dao of length 15 ½" as Material Ext. 1 and one toy pistol as Material Ext. 2. PW-4 further deposed that during investigation, accused persons, namely, Kokoi Gandhia and Kalyan Gohain who were till then absconding, were arrested. At that time, two other accused persons, namely, Tonu Konwar and Rubul Gohain could not be arrested/apprehended. PW-4 further deposed that on completion of investigation, he laid chargesheet against the accused Rubul Gohain and Tonu Konwar by showing them as absconders and other accused Sri Amiyo Gogoi @ Bobi, Sri Lakhyadhar Konwar, Sri Kalyan Gohain @ Dipen and (iv) Sri Kokoi

Gandhia @ Abhijeet, under Sections 399/402 IPC being, Ext 4 wherein he signed as Ext 4(1).

12. In cross-examination, PW-4 stated that the incident had occurred on 13-09-1998 and the FIR was lodged on 14-09-1998, however no reason for delay in lodging the FIR was mentioned in the FIR. PW 4 stated that distance between Mokalbari Tea Estate to Rahmaria Police Station was about 3 kilometer and walking distance was about 15 minutes. PW-4 further stated that the informant Sambor Gohain was informed about the incident by the garden chowkidar. However, the name of garden chowkidar or that of VDP personnel had not been mentioned in the FIR. PW 4 stated that the time of seizures had been mentioned in the Seizure-Lists being Ext. 1, 2 and 3. PW-4 denied the suggestion that he had not seized any items/articles in the presence of witnesses. PW-4 further stated that there was no label or tag in Material Ext. 1 and 2 that those were seized in connection with Rahmaria PS Case No. 43/1998. PW-4 further stated that according to law the seized article/item are to be wrapped up and sealed with lah and proper label or identification mark is to be put/applied. PW 4 stated that Material Ext. 1 and 2 were in open condition without any label, etc. PW-4 further stated that he had not produced Ext. 1, 2 and 3 before learned CJM, Dibrugarh though as per Section 102(3), he ought to have reported the seizure before CJM, Dibrugarh. PW-4 denied the suggestion that he had conducted perfunctory investigation and that chargesheet had been laid merely on suspicion.

13. PW-5 Sri Sambor Gohain deposed that he was an employee of Mokalbari Tea Estate, near Dikom, Dibrugarh from 1968 till 2000 and that he retired as Office-in-charge of the said Tea Estate. PW 5 stated that on 14.5.1998 he had lodged an FIR being Ext. 5 at Rahmaria Police Station under his signature being Ext. 5(1). PW-5 further deposed that the members of the village defence party (VDP) had apprehended two persons who were preparing to commit dacoity. Police seized one pipe gun, one toy pistol, dagger and one torchlight which was snatched from

one of the chowkidars of the garden vide Seizure Lists being Ext. 1 and Ext. 2 where he had also signed; his signatures being Ext. 1(1) and Ext. 2(1). PW 5 exhibited the seized dagger as Material Ext. 1 and toy pistol as Material Ext. 2.

14. In cross-examination by defence, PW-5 stated that he had not seen the occurrence or incident. In the FIR (Ext. 5), he had not mentioned the name of the night chowkidar or members of the VDP who had informed him about the alleged incident. PW 5 stated that the two persons who were apprehended by members of VDP were produced before him/PW-5 in the morning of 14-09-1998. PW-5 further stated that he had not mentioned or stated in the FIR, where the apprehended persons were kept during the night of 13-09-1998 till morning of 14-09-1998 when they were produced before him in the office. PW-5 had not asked the apprehended miscreants about the incident and that he had lodged the FIR as per version of the garden chowkidar and the members of VDP. PW-5 further stated since he could not remember the faces of the apprehended miscreants, he was not in a position to identify them. PW-5 further stated that police had not taken or obtained his signatures on Material Ext. 1 and 2, nor could he say whether the said articles were the ones which were seized by the police on 14.9.1998. PW-5 further stated that the apprehended miscreants had not revealed before him that they were preparing to commit dacoity. PW-5 denied the suggestion that no article as mentioned in Seizure-Lists Ext. 1 and 2) were recovered from the apprehended miscreants. PW 5 stated that the articles as mentioned in Seizure-Lists Ext. 1 and 2 were in fact, brought by the night chowkidar and members of VDP before him. PW-5 further stated that as about 14 years had elapsed from the date of incident till the day of his deposition, he could not remember the exact contents of the FIR which had been drafted by him and typed by one of the typists, whereafter he/PW 5 had put his signature on it. PW-5 denied the suggestion that

no incident as alleged in the FIR had taken place and that he drafted the FIR.

15. That the present accused is facing charge for being a part of group of persons who made preparations for committing dacoity and for assembling to commit dacoity. From the nature of the evidence narrated in detailed hereinbefore, it is seen that the present is a case of no evidence at all, in as much as, PW 1, PW 2 and PW 3 have though deposed that about a decade back attempt to commit dacoity was made at Mukalbari Tea Estate but the persons who had come to commit dacoity were chased by them. In context of the present accused, neither of the prosecution witnesses were able to identify him to be one of the person who was present amongst the miscreants. Again, there is nothing in evidence to show that any of the seized materials were recovered from the present accused. Hence, there is nothing on record to establish that the present accused Rubul Gohain in the year 1998 made preparation to or assembled at Mukalbari Tea Estate to commit dacoity.

16. The prosecution has failed to elicit anything incriminating against the accused. In view of the discussion aforesaid, this Court holds that accused, Sri Rubul Gohain, is not guilty of the offence charged and, as such, he is acquitted of the charge under Section 399/402 IPC and set at liberty forthwith.

17. Bail bond of Sri Rubul Gohain shall remain in force for a period six months in terms of section 437 A CrPC.

18. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation under Section 357-A CrPC.

19. Send a copy of the order to learned District Magistrate, Dibrugarh under Section 365 CrPC.

20. The judgment is signed, sealed and pronounced in open Court, in the presence of both sides, on this the 1<sup>st</sup> day of November, 2021.

Sessions Judge,  
Dibrugarh

## **APPENDIX**

### LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

#### **A. Prosecution:**

<b>Rank</b>	<b>Name</b>	<b>Nature of evidence</b> (eye witness, police witness, expert witness, medical witness, panch witness, other witnesses)
PW1	Sri Madan Murah	Ex-Night Chowkider of Mukalbari Tea Estate.
PW2	Sri Santosh Patnayak	Ex-Night Chowkider of Mukalbari Tea Estate.
PW3	Sri Soneswar Dutta	Night Chowkider of Mukalbari Tea Estate.
PW4	Sri Baba Ram Baruah	Investigating Officer.
PW5	Sri Sambar Gohain	Retired employee of Mukalbari Tea Estate.

**B. Defence Witnesses, if any:** Nil.

**C. Court Witnesses, if any:** Nil.

### LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

#### **A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit P-1/PW4	Seizure-List
2	Exhibit 1(1)/PW4	Signature of Sri Baba Ram Baruah.
3	Exhibit P-2/PW4	Seizure-List
4	Exhibit 2(1)/PW4	Signature of Sri Baba Ram Baruah.
5	Exhibit P-3/PW4	Seizure-List
6	Exhibit 3(1)/PW4	Signature of Sri Baba Ram Baruah.
7	Exhibit P-4/PW4	Charge-Sheet
8	Exhibit 4(1)/PW4	Signature of Sri Baba Ram Baruah.
9	Exhibit P-5/PW4	FIR
10	Exhibit 5(1)/PW4	Signature of Sri Sambar Gohain.

**B. Defence:** Nil.

**C. Court Exhibits:** Nil.

#### **D. Material Objects:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	MO1	Meat dao of length 15 ½".
2	MO2	One toy pistol.

Sessions Judge,  
Dibrugarh