

IN THE COURT OF THE SESSIONS JUDGE :::: BONGAIGAON

Sessions Case No. 103(BGN)/2015
U/S 120(B)/328/511 IPC
(Arising out of G.R. Case No. 518 of 2013)

State of Assam

Vs.

1. Sri Tara Miya
2. Sri Ashraful Islam

.....Accused Persons.

PRESENT : Smt. I. Barman,
Sessions Judge,
Bongaigaon.

ADVOCATES APPEARED :

For the State : Smt. J. Barua, Public Prosecutor
For the accused persons : Sri D. S. Hoque &
Sri D. A. Rahman, Advocates.

Date of Argument : 17.07.17

Date of Judgment : 31.07.17

JUDGMENT AND ORDER

1. The prosecution case unveils with the F.I.R dtd. 29.06.13 lodged by Bijit Dadhara (PW9) the then Traffic In-Charge at Bongaigaon with the O/C, Bongaigaon P.S to the effect that on 29.06.13 at round 8:00 P.M when he along with other staffs was on Naka checking duty at old Bongaigaon, they checked the Tata Magic Bearing No.AS-19/C-5575 which was proceeding from Bongaigaon towards North Salmara and then, on being asked from the driver of the vehicle came to know

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that accused Ashraful Islam and Tara Miya hired the vehicle to go to Jogighopa and then during search some suspected articles along with rope, wire etc. were found from the possessions of accused persons and on being enquired he came to know that both the accused persons attempted to commit theft of the vehicle by killing the driver administering him intoxicant.

2. On the basis of the said F.I.R, the O/C, Bongaigaon P.S. registered a case being Bongaigaon P.S. Case No. 328/2013 U/S 120(B)/379/365/511 IPC and launched investigation of the case and on completion of investigation submitted charge sheet against the accused persons Ashraful Islam and Tara Miya U/S 120(B)/328/511 IPC.

3. Accused Tara Miya and Ashraful Islam entered their appearance. They were furnished with all the necessary copies as required u/s 207 CrPC. Then the offence being exclusively triable by the Court of Session, the Learned Sub-Divisional Judicial Magistrate (Sadar), Bongaigaon vide order dtd. 30.09.15 committed the case to the Court of Session, Bongaigaon, being the offense U/S 120(B)/328/511 IPC exclusively triable by the Court of Session.

4. After receiving the case and on appearance of the accused persons, on going through the police report furnished under section 173 CrPC and hearing both sides, having find a prima facie case, charge was framed against the accused persons u/s U/S 120(B)/328/511 IPC. The accused persons pleaded innocence when charge was read over and explained to them and claimed for the trial.

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5. POINT FOR DETERMINATION:

- i. *Whether the accused persons on 29.06.13 at about 9:00 P.M at Purani Bongaigaon committed criminal conspiracy attempting to commit offence of theft of the vehicle bearing No. AS-19/C-5575 (Tata Magic) by taking the vehicle on hire and by administering stupefying tablets to the driver of the vehicle and in such conspiracy jute rope and other articles were found in the possession of the accused persons along with 20 Nos. of tablets branded as "Ativan 2 mg" in two strips containing 10 nos of tablets in each stripe which gave positive test for Lorazepam?*

6. In this case to bring home the charge against the accused persons, prosecution side examined as many as 9 (nine) witnesses. After closing of prosecution evidence, accused persons were examined u/s 313 CrPC. Accused denied all the allegations levelled against them and declined to adduce defence evidence. I have heard argument of both sides and also gone meticulously through the evidence of the witnesses on record.

DISCUSSION, DECISION AND REASONS THERE OF:

7. Mrs. Barua the Id. Public Prosecutor appearing for the state while arguing the case, has submitted that by adducing sufficient evidence coupled with the positive result of F.S.L, established that the accused persons attempted to commit theft of the vehicle by administering intoxicant to the driver of the vehicle.

8. Per contra Mr. D. S. Hoque the Id/defence counsel has

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submitted that the evidence which are available on record are not at all sufficient to establish the case against the accused persons beyond all reasonable doubt.

9. Before evaluating the rival contentions, it would be appropriate to outline a sketch of the evidence on record.

10. PW1 Sabin Ray in his evidence stated that on the day of incident at around 8:30 P.M while he was about to close his shop (tea stall) situated at Bakharapara, Bongaigaon, at that time police checked a tata magic. But he don't know why police checked the vehicle.

11. PW2 Tridib Sutradhar deposed that on 29.06.13 at around 8:30 P.M his driver Ratneswar Boro informed him that his vehicle i.e. Tata Magic No.AS-19/C-5575 has to go to Jogighopa on hire. Accordingly, he along with his brother Gopal Sutradhar, driver Ratneswar Boro and Rajiv Ray accompanied with accused Ashraful Islam and one another proceeded towards Jogighopa but at that time at old Bongaigaon, Hatimotura police caught the vehicle and took to the police station. In the police station police seized one mobile handset, one mobile charger, one rope and driving licence of accused Ashraful Islam vide seizure list Ext.1. He proved his signature in seizure list vide Ext.1(1). He further stated that vide seizure list Ext.2 police seized one mobile, one black coloured plastic bag (Adidas), two strips of Ativan, 2mg tablet containing total 20 nos of tablets and vide Ext.3 police seized tata magic vehicle along with registration certificate, insurance certificate and driving licence of PW2. He proved the samsung mobile as M.Ext.1, Samsung mobile charger as M.Ext.2, rope as M.Ext.3 driving licence of accused Ashraful as M.Ext.4, one Goodve Mobile as M.Ext.5, one black

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coloured Adidas bag as M.Ext.6 and 20 nos of Ativan 2mg tablets as M.Ext.7. During cross, he stated that neither accused Ashraful Islam nor another passenger disturbed them the four occupants of the vehicle. According to him, police seized the articles at thana premises. He also stated that the accused persons threw away the tablets in the vehicle and police took those from the vehicle. He further stated that he did not notice as to whether the strips were empty or not. He also did not know which article was seized from whom.

12. PW3 Ratneswar Boro deposed that on 29.06.13 at around 8:30 P.M while he was standing near his tata magic bearing No. AS-19/C-4680, accused Ashraful Islam and one another coming to him asked for his vehicle to go to Jogighopa on hire. Then, he asked the owner of the vehicle but he refused. Thereafter, he came out from the house of the owner. At that time, his handiman Rajib Ray proposed to ask Tridib Sutradhar (PW2) for his vehicle. Accordingly, on being asked, Tridib Sutradhar agreed. Then he along with Rajib Ray, Tridib Sutradhar and Gopal Sutradhar accompanied with two accused persons proceeded towards Jogighopa. On the way to Jogighopa, at Hitimotura, police checked their vehicle and during search, two mobile handsets, mobile charger, rope, money bag, wire and medicines were seized from the accused persons vide seizure list Ext.1 and 2. He also stated that police also seized the vehicle along with its R/C, insurance policy and D/L of Tridip Sutradhar vide Ext.3. During cross, he stated that the vehicle was seized in the 'thana' but the tablets were seized at the place of occurrence at the time of search. He could not say which article was seized from which of the accused person. He also could not say whether he put his signature in blank paper or in written paper.

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13. PW4 Gopal Sutradhar deposed that on 29.06.13 at around 8:30 P.M, he along with his elder brother Tridib Sutradhar, Rajib Ray and Ratneswar Boro proceeded towards Jogighopa by the vehicle of his elder brother Tridib Sutradhar along with the accused persons who hired the vehicle. On the way, at Hatimotura, police checked their vehicle and during search police seized one samsung mobile handset, mobile charger, rope and driving licence of accused Ashraful Islam from accused Ashraful Islam vide Ext.1. Police also seized one Goodve mobile handset, one black colored Adidas wallet and some tablets vide Ext.2 and vide Ext.3 police seized the tata magic vehicle and its R/C, insurance policy and D/L of Tridib Sutradhar. During cross, he stated that he could not say what article was seized from which of the accused person. According to him, the strips of tablet was empty at the time of seizure which he had seen in the court.

14. PW5 Rajib Ray categorically deposed that on 29.06.13 at around 8:30 P.M, he was cleaning the tata magic bearing No.AS-19/C-4680 at ASTC busstand. At that time, accused Ashraful and one another coming there asked for the vehicle on hire but the owner of the vehicle refused. Then he asked the driver Ratneswar Boro to arrange the vehicle of Tridib Sutradhar and accordingly after arranging the vehicle, he along with Ratneswar Boro, Tridib Sutradhar and Gopal Sutradhar accompanied with accused persons as passengers proceeded towards Jogighopa and at Hatimotura police checked their vehicle. Then, in search, police seized one samsung mobile handset, one mobile charger, rope, driving licence of accused Ashraful Islam vide Ext.1. Police also seized one Goodve mobile, one black coloured plastic wallet and two strips of tablet vide Ext.2. Moreover, police also seized the vehicle

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bearing No. AS-19/C-5575 and its registration certificate, insurance policy and driving licence of Tridip Sutradhar vide Ext.3. According to him, the articles were seized in the police station. He stated that the mobile and driving licence was seized from the possession of accused Ashraful and other other articles were recovered from the vehicles which Ashraful threw away in the vehicle. He could not say which article was seized from whom.

15. PW6 Khargewar Rava deposed that on 29.06.13 he was working as T.S.I at Bongaigaon police station. On that day Traffic In-Charge Bijit Dadhara (PW9) received an information that a party of car lifter attempted to take away a vehicle by hook or by crook from Bongaigaon. On the basis of said secret information, the O/C made the GDE and PW9 accompanied with him and staff were checking the vehicles since 8:00 P.M. During that period at around 9:05 P.M when they checked the vehicle bearing No. AS-19/C-5575 (Tata Magic), came to know that accused Ashraful Islam and Tara Miya hired the vehicle to go to Jogighopa from Bongaigaon but during interrogation both the accused persons gave contradictory versions. Then on suspicion, they searched their body and recovered one samsung mobile handset and charger from accused Ashraful Islam and one Goodve Mobile handset, black coloured Adidas wallet, one rope and two strips of Ativan 2mg tablets containing total 20 tablets from accused Tara Miya. They suspected the tablets to be intoxicant one carried for using to the driver for lifting the vehicle. During cross, he denied that no article was recovered from the possession of the accused persons.

16. PW7 Dr. Dhubajyoti Hazarika deposed that while he was working as Senior Scientific Officer at Directorate of Forensic Science,

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he received a sealed parcel containing two scripts of 10 (ten) tablets each branded as Ativan-2mg marked by him as DN-301/2013(a) and DN-301/2013(b) respectively. He examined the articles following United Nations Drug testing manual and during examination found as follows:-

Ext.DN-301/2013(a) and DN-301/2013(b) gave positive test for Lorazepam and amount of Lorazepam per tablet was found to be 1.92mg and 1.89 mg respectively.

He proved the report as Ext.4. He also stated that the report was forwarded by Director N. N. Bora and Ext.5 is the forwarding letter wherein Ext.5(1) is the signature of Director N.N. Bora. He proved tag M.Ext.8 which he had sent in remnant of the sample. During cross he stated that he does not remember the manufacturers of the tablets. He also does not know whether such tablets are readily available in the medicine stores or not.

17. PW8 S.I. Ajit Kr. Ray the Investigating Officer deposed that on being entrusted to investigate the case, he visited the place of occurrence, arrested the accused persons, sent the seized tablets for F.S.L, collected the report and on finding sufficient materials submitted charge-sheet against the accused persons u/s 120(B)/328/511 IPC. He also proved the GDE No. 921 dtd. 29.06.13 vide Ext.6 which was made on receipt of the secret information. He also proved the sketch map of the place of occurrence vide Ext.7 and charge-sheet as Ext.8.

18. PW9 S.I. Bijit Dadhara deposed that on 29.06.15 at around 5:00 P.M he received an information that some car lifter planned to take away a tata magic by killing the driver. Accordingly, the O/C made the

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GDE No.921 dtd. 29.06.13 (Ext.6) and he along with T.S.I Khargeswar Rava was asked to apprehend the car lifter and to recover the vehicle. Accordingly, they along with staff were on Naka Checking duty and on the basis of information, seeing the tata magic No. AS-19/C-5575, they checked the vehicle. During search of the accused persons, they found some intoxicant tablets, rope, wire, mobile which were seized by him. Thereafter, he brought the accused persons and seized articles to the police station and filed the F.I.R vide Ext.9. He seized one samsung mobile handset with two sims, one samsung mobile charger, one jute rope and DL of Ashraful Islam vide Ext.1. He also seized one goodve mobile, one black coloured plastic bag and 20 nos of Ativan 2mg tablets vide Ext.2 from accused Tara Miya. The tata magic bearing No. AS-19/C-5575 with registration certificate, insurance policy and driving licence of Tridib Sutradhar were seized from Tridib Sutradhar vide Ext.3. During cross, he stated that he seized the articles at the place of occurrence.

19. In this case, it is in the evidence that the accused persons hired the vehicle to go to Jogighopa and during search, police seized some articles. PW2 to PW5 were the occupants of the Tata Magic. They accompanied the accused persons by the vehicle who hired the vehicle to go to Jogighopa. As per evidence of PW2, the accused persons did not disturb them i.e. the other four occupants of the vehicle including himself. According to him, the accused persons threw the tablets in the vehicle from where the same were seized but he did not notice whether the strips were empty. Both PW3 and PW4 could not say which article was seized from whom. But according to PW4, the seized two trips were empty, which he had seen in the court vide M.Ext.7. PW2 also did not

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notice whether the strips were empty or not. While PW2 stated that both the accused persons threw away the strips in the vehicle, PW5 occupant of the vehicle stated that accused Ashraful threw away the tablets. On the other hand, PW6 and PW9 who were on checking duty stated that they recovered the tablets from accused Tara Miya. Investigating Officer only examined the occupants of the vehicle and one Sabin Ray who only stated that police checked the vehicle and except that he knew nothing. The occupants of the vehicle i.e. PW2 to PW5 could not say which article was seized from whom. Though PW6 and and PW9 stated that they found the intoxicated tablets from accused Tara Miya but other seizure witnesses i.e. PW2 to PW5 stated that those were found from the vehicle. On perusing M.Ext.7, it is found empty which is corroborated by the evidence of PW4.

20. That apart though it is the case of the prosecution that the accused persons intending to steal the vehicle by killing the driver, hired the vehicle, but the evidence of PWs show that the owner of the vehicle (PW2) and his brother (PW4) were also accompanying them in the journey. So, it is not believable that with four occupants, only two accused persons could plan to taking away a vehicle. Possessing of mobile handset, mobile charger and wallet is neither unnatural nor doubtful. There is no cogent evidence from whose possession or from whom about 8.5" jute rope and ativan tablets were recovered.

21. There is no evidence establishing intents of the accused to commit theft of the vehicle by administering intoxicant. Had they have such intention, they except driver would not have taken other occupants with them when they hired the vehicle. There is also no evidence for how much money, they hired the vehicle. There is no iota of evidence in the

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APPENDIX

Prosecution witness:

- PW 1 – Sri Sabin Ray
PW 2 – Sri Tridib Sutradhar
PW 3 – Sri Ratneswar Boro
PW 4 – Gopal Sutradhar
PW 5 – Sri Rjib Ray
PW 6 – T.S.I Khargeswar Rava
PW 7 – Dr. Dhubajyoti Hazarika
PW 8 – S.I Ajit Kr. Ray (IO)
PW 7 – S.I. Bijit Dadhara

Defence Witness:

Nil.

Documents exhibited by Prosecution:

- Ext-1 Ejahar.
Ext-2 Seizure list.
Ext-3 Seizure list.
Ext-4 F.S.L report
Ext-5 Letter from directorate of F.S.L to DSP of Police.
Ext-6 Extract copy of Bongaigaon P.S.
Ext-7 Sketch map.
Ext-8 Charge-sheet.
Ext-9 Ejahar

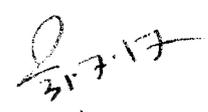
Materials exhibited by Prosecution:

- M.Ext-1 Samsung mobile
M.Ext- 2 One Samsung mobile charger
M.Ext- 3 One jute rope
M.Ext- 4 Driving Licence of accused Ashraful Islam
M.Ext- 5 One Goodve mobile
M.Ext- 6 black coloured plastic Adidas brand money bag
M.Ext- 7 20 nos of Ativan 2mg tablets

Defence Exhibit:

Nil

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(I. Barman)
Sessions Judge,
Bongaigaon