

BEFORE THE JUVENILE JUSTICE BOARD, BONGAIGAION

**PRESENT: S. HANDIQUE, PRINCIPAL MAGISTRATE, JJB,
BONGAIGAON**

**MEMBERS:
Mr. D. C. Basak
Mrs. R. Choudhury**

**JJB Case no. 8/13
(u/s 453/380/511 IPC)**

State

v.

Monirul Hoque

For prosecution: Mr. T. Bhowmik, APP

For defence: Mr. S. Alam

**Evidence recorded on: 17-7-14, 5-8-14
Juvenile examined u/s 313 Cr. P.C on: 25-9-14
Arguments heard on: 25-9-14
Judgment delivered on: 25-9-14**

JUDGMENT

1. The prosecution case got initiated in this case on the basis of an FIR filed by Msstt. Ebaran Nessa, w/o Ennus Ali, r/o Kabaitary under Jogighopa P.S. on 26-9-14. The informant alleged in the FIR that on 22-9-12 the accused named Monirul Hoque trespassed into her house by breaking open her wall and stole Rs 50,000/- from her box containing blankets. According to her, she tried to catch the accused but he slipped out of his shirt and fled. The FIR was registered as Jogighopa P.S. Case no. 185/12 and after investigation the charge sheet was filed against Monirul Islam. Meanwhile Monirul Islam had surrendered before the court of Id SDJM, (M), Abhyapuri and he was declared to be a juvenile and forwarded to the Juvenile Justice Board, Bongaigaon. He was released on bail in due course of time. After filing of the charge sheet the juvenile was summoned and necessary copies were furnished to him. The particulars of offence u/s 453/380/511 IPC were explained to the juvenile to which he pleaded not guilty and claimed trial.
2. During enquiry five witnesses were examined. The investigating officer was summoned but due to his non appearance the prosecution evidence was closed as there was no scope for further improvement of the prosecution case. The juvenile was examined u/s 313 Cr. P.C. wherein he denied the incriminating materials put to him. No defence evidence is adduced. Heard arguments from both the sides.
3. The following points for determination have been framed:

POINTS FOR DETERMINATION:

1. Whether the juvenile committed lurking house trespass on 22-9-12 at night in the house of the complainant and thereby committed an offence punishable u/s 453 IPC?
2. Whether the juvenile attempted to steal Rs 50,000/- from the box of the complainant in her house on 22-9-12 at night and thereby committed an offence punishable u/s 380/511 IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF

DECISION ON POINT NO. 1 & 2

4. Both the points are taken up together for convenience of discussion. The allegation against the juvenile is that he entered into the house of the complainant at night and he took out Rs 50,000/- from a box and when the complainant caught him, he slipped out of his shirt and fled. Let us examine the evidence in this respect.
5. **PW1 Ebaran Nessa** is the complainant. She deposed during evidence –in-chief that she got up at about 2 A.M. hearing the cries of her daughter. She then went to the room of her daughter and switched on the bulb. Then her daughter told her that the juvenile has taken out Rs 50,000/- from inside the blanket. According to this witness she then caught the juvenile but he slipped out of his shirt and fled. She also alleged that the juvenile fled after breaking the tarza wall of her house. She exhibited the FIR filed by her as Ext. 1. During cross examination she deposed that the police did not seize any article. She testified that she mentioned in the FIR that the juvenile broke open her wall and trespassed into her house. It transpires that the PW1 testified during trial that the juvenile broke open the wall and fled. So it is not clear as to how he entered or when did the wall got broken. The police did not seize any materials including the broken tarza wall or the shirt which the juvenile left in the house of the complainant. The FIR was lodged after three days but no explanation is given for the delay either in the FIR or during trial.
6. **PW2 Taslima Akhtar** deposed in her examination-in-chief that while she was sleeping and she got up at 2 A.M and saw the juvenile near the box containing blankets. She stated that her mother came in on hearing her cries and caught the juvenile. According to her, the juvenile fled after breaking the wall and also took away Rs 50,000/- from inside the blanket. During cross examination, she stated that she was sleeping with her two sisters at that night. She testified that the juvenile had proposed to her but she refused him and he was persistently proposing her again and again. Unlike her mother she stated that she switched on the bulb. She denied that they filed this case as the juvenile was pestering her with his love proposal.
7. **PW3 Matleb Ali** is known to both the parties. He denied having any knowledge about the incident. **PW4 Naushad Ali Khan** is a neighbour and he deposed that he heard about the alleged theft but he does not know who stole and what. **PW5 Billalur Mandal** deposed that he heard about the alleged theft but he does not know whether any theft was committed in the complainant's house or not.
8. The juvenile stated during his examination u/s 313 Cr. P.C that he and Taslima (PW2) were in love with each other and her family refused his marriage proposal and thereafter lodged this false case.
9. After perusal of the record it transpires that there are only two direct witnesses, viz., PW1 and PW2. As it appears all the family members of the complainant were present at the time of occurrence. But only the complainant and her one of the daughters have been made witnesses in this case. Further there are contradictions between the testimony of PW1 and PW2. PW1 stated that the juvenile slipped out of his shirt and fled. But PW2 has not stated as such. She stated that no shirt was left behind. If the juvenile had left behind his shirt then the

police ought to have seized his shirt from the house of the complainant. On one hand PW1 stated that she switched on the bulb and saw the juvenile but on the other hand PW2 stated that she switched on the bulb. None of the other family members except PW1 woke up and witnessed the incident even if PW2 woke up late at night and screamed. We therefore, find that the prosecution has been unsuccessful in proving the guilt of the juvenile beyond reasonable doubt. Further, the delay in lodging the FIR casts doubts over the prosecution story.

ORDER

10. In view of the above discussions we hold that the offence u/s 453/380/511 IPC is not proved against the juvenile and he is acquitted of the case. He is set at liberty forthwith. His bail bond stands cancelled. Given under the hand and seal of the Juvenile Justice Board, Bongaigaon on 25-9-14.