

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

G.R. Case NO. 539/2015

U/s 379/411 IPC

State of Assam

-Vs-

- 1. Sri Jatin Borgohain**
- 2. Shri Raju Borgohian**
- 3. Shri Bhai Chetia..... Accused.**

PRESENT : Smti. Rani Boro.

***Chief Judicial Magistrate,
Dibrugarh.***

APPEARANCE :

Ld. Advocate for the Prosecution : Smti. G. Phukan,
Addl. P.P.

Ld. Advocate for the Defence : Mr Ranjit Phukan.

Date of evidence : 05.03.2019, 04.06.2019,
27.08.2019.

Date of argument : 07.12.2021.

Date of judgment : 07.12.2021.

J U D G M E N T

- 1.** The criminal law were stated in motion with filing of FIR against three named accused persons Raju Borgohain, Shri Jatin Borgohain and Shri Bhai Chetia alleging that on 02/03/2015, at about 3.30 A.M, the accused persons were apprehended by Dibrugarh Police while they were carrying 12 drums of 2500 liters each, condensate Oil in their vehicle bearing No. AS-06-AC-8347. The said accused persons had caused lost to the public property and through their act of theft brought danger to life and property of the general public. After this the informant lodged FIR, calculating the value of the stolen condensate Oil @ of Rs 1,02,500/- for necessary action before O/C, Dibrugarh P.S.

- 2.** After receiving the FIR, O/C Dibrugarh P.S. registered a case as Dibrugarh P.S. case No. 164 of 2015 under section 379/285 IPC R/W section 3 of the Prevention of Damage to Public Property Act and R/W section 23 of the Petroleum Act 1934. In the meantime, the accused persons were forwarded to the judicial custody and later on, were released bail vide order dated 15.05.2015 on completion of their statutory period of detention. After filing of charge sheet the case record was kept in the file of this Court and summon were

issued to the accused persons. Accused entered appearance and were allowed to remain on bail. Copy were furnished to them. Charge under section 379/411 IPC was framed against the accused. The charge was read over and explained to the accused person to which, they pleaded not guilty and claimed to be tried.

- 3.** Prosecution in this case since 05th March/2019 examined only three witnesses. After closure of the prosecution evidence, the case remained fixed for statement of the accused persons. However, due to impact of Covid 19 (Coronavirus) the proceeding could not be continued and today, when the case is fixed for statement of the accused persons under section 313 Cr PC, it is found that there exist no materials against the accused persons for recording of their statements under section 313 Cr PC. Their statement were thus dispensed with and argument were heard. Judgment is pronounced in the light of the evidence on record of PW1, PW2 and PW3.

- 4.** I have heard both sides and also perused the materials and evidence on record. This case is of the year 2015 and accused has been facing trial since then. Having heard both sides and after perusing the materials on record, the following points arises for determination in this case.

5. Points for determination

- I. Whether the accused persons on 02.03.2015, at about 3.30 AM, committed theft of 2500 liters each of 12 drums condensate Oil for wrongful gain and whether they retained/received the stolen property i.e., the condensate Oil knowing fully well that they are stolen property and hence, liable to be punished u/s 379/411 IPC?

DECISIONS, DISCUSSIONS AND REASONS THEREOF.

6. PW1 (Shri Khageswar Baruah) who is the informant of this case deposed in his evidence that he does not know the accused persons. In the year 2015, he was working as a Security Officer. Condensate Oil was taken away from the Duliajan Oil field area so he lodged FIR as Exhibit 1. Police seized one vehicle carrying the condensate Oil vide exhibit 2.

In his cross-examination, PW1 deposed that he does not know from where Oil and the vehicle was recovered and also, does not know what is written in exhibit 2.

7. PW2 (Shri Junaram Mohan) also deposed that he does not know the accused persons and does not remember

the facts of this case though he admitted exhibit 2(2) as his signature. However, he also deposed that what is written in exhibit 2 is not known to him.

- 8.** PW3 (Shri Sashi Rajak) the last prosecution witness closed to the heels of PW1 and PW2 also does not know the accused persons. He admitted his signature on exhibit 3 the seizure list. But during cross-examination, he further admitted that he does not know the content of exhibit 3 nor thus he know about the facts of this case.
- 9.** From the above quality of evidence of PW1, 2 and 3, it is crystal clear that all the witnesses have no knowledge about the accused persons or their involvement in the alleged crime. PW2 and PW3 have no idea about the facts of this case. Though they are witnesses in the seizure list exhibit 2 and 3, the complainant who was security Officer at the time of lodging of FIR, the Officer has not stated anything incriminating against the accused persons. He simply deposed that police has seized one vehicle carrying condensate Oil from where the Oil was recovered and vehicle was recovered he has no knowledge.
- 10.** Thus, prosecution though has levelled section 379 IPC theft of condensate Oil against the accused persons and also section 411 IPC i.e., retaining and stolen property by the accused. But from the evidence of

three witnesses it is very much clear that the prosecution has miserably failed to prove that it was the accused persons who committed theft of the property or that they are the receiver/retainer of the stolen property of the condensate Oil.

- 11.** In the light of the above discussions, the accused **Shri Raju Borgohian, Shri Jatin Borgohain and Shri Bhai Chetia** are acquitted of offence U/s 379/411 IPC and set at liberty forthwith as prosecution has failed to prove its case beyond reasonable doubt.

The bail bonds shall remain in force for 6 (six) months from today.

Judgment is prepared in separate sheets and tagged with the case record.

Given under my hand and seal of this court on this 07th day of December, 2021.

(Smti. Rani Boro)
Chief Judicial Magistrate,
Dibrugarh.

Appendix

Prosecution Witness :-

PW1 :- Shri Khageswar Baruah.

PW2 :- Shri Junaram Mohan.

PW3 :- Shri Sashi Rajak.

Defence witness :- None

Exhibits :-

Prosecution exhibits :-

Exhibit 1 :- FIR.

Exhibit 2 and 3 :- Seizure Lists.

Defence exhibits : -None

Court witness :- None.

Court exhibits :- None.

CJM, Dibrugarh