

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

**G.R. No. 3148/15**

U/s 379 IPC R/w Section 3(2)(b) of PDDP Act.

**State of Assam**

**-Vs-**

- 1. Sri Modan Deka**
- 2. Shri Raju Borgohain..... 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 Dinesh Saikia and.  
Mr Bakhtawar Hussain.

Date of evidence : 25.10.2019, 21.12.2019,  
17.12.2021.

Date of argument : 17.12.2021.

Date of judgment : 17.12.2021.

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

- 1.** The case of the prosecution in brief is that on 05.11.2015, the informant Shri Tilak Saikia of Oil Security Department, lodged an FIR, before the Duliajan Police Station stating inter-alia, that on the same day, at about 3.40 AM, when he along with his Associates were doing patrolling duty at No. 2 OCS, near Madhapur Tinali, they saw one Tata Xenon vehicle bearing No. AS-06-AC-8347, coming towards them. They give them signal to stop, but the vehicle did not stop and drove away at high speed. They immediately chased the vehicle and after travelling to a distance, the vehicle loss control and fell down from the road nearby. The driver and his colleague ran away from the place of occurrence and the patrolling party on inspection found 9 (nine) drums of capacity 200 liters and also found a total of 1800 liters condensate Oil whose value was Rs 35,000/- approximately. The said condensate Oil was taken out from the pipe line of No. 2 OCS Oil field secretly for the purpose of sale and on preliminary enquiry, accused Modan Deka was found to be involved in this case. Hence, the case.
- 2.** On the basis of the FIR, lodged by the informant, O/C, Duliajan P.S registered a case as Duliajan P.S case no. 523 of 2021 U/S 379 IPC R/W Section 3(2)(b) of PDDP Act. Police conducted investigation into the case and filed charge-sheet against the accused Shri Madan Deka and

Shri Raju Borgohain, under section 379 IPC R/W Section 3(2)(b) of PDDP Act.

3. Accused appeared in this case. Copies were furnished to them under section 207 Cr PC. Considering the materials on record and on hearing both sides, a prima facie case under section 379 IPC R/W Section 3(2)(b) of PDDP Act is found against the accused. Charge under section 379 IPC R/W Section 3(2)(b) of PDDP Act is framed accordingly. When the charge is read over and explained to the accused, the accused persons pleaded not guilty and claimed to be tried.
4. During trial, prosecution side examined 8 (eight) witnesses in this case. The prosecution submitted to close the prosecution's evidence. On submission, evidence was closed. As no material has been found against the accused, statement of accused recorded under section 313 Cr PC were dispensed with.
5. I have heard the learned counsel for the accused and learned Addl. P.P for the State. Having heard both sides and after perusing the materials and evidence on record, the following points arises for determination in this case.
6. **Points for determination**

- I. Whether on 05.11.2015, at about 3.40 AM, accused committed theft of 180 liters of condensated oil belonging to Oil India Limited, Duliajan along with 9 (nine) numbers of plastic gallons which were carried in a "Tata Xenon" vehicle bearing registration No. AS-06-AC-8347 and thereby, committed an offence punishable u/s 365 IPC?
- ii. Whether on the same date, time and place, accused committed theft of 1800 liters of condensated oil belonging to Oil India, which were extracted by committing mischief by cutting and damaging the Oil pipes which is a public property?

**DECISIONS, DISCUSSIONS AND REASONS THEREOF.**

7. PW1 deposed that he knows the complainant, but do not know the accused persons. That he does not remember about the facts of this case. Exhibit 1 is the seizure list and exhibit 1(1) is his signature.
8. PW2 deposed that he is the complainant of this case and he does not know the accused persons. On 05-11-2015, when he was on patrolling duty as Security Guard of OIL, near OCS-2 area, Duliajan. Then at about 3.40 AM, they noticed a TATA Xenon was carrying 9 (nine) drums of condensate oil.

Then they asked the driver of the vehicle to stop the vehicle, but the accused persons fled away from the place after leaving the vehicle. Then they informed the matter to police and police seized the vehicle along with stolen condensate oil. Then he lodged one FIR in the police station. Ext.2 is the FIR. Ext.2(1) is his signature. Ext.1 is the seizure list. Ext.1(2) is his signature.

In his cross-examination, PW2 deposed that he does not know who was the driver of the offending vehicle and who had stolen the condensate oil. He does not know from where the condensate oil was brought by the accused.

- 9.** PW3 deposed that he knew the informant of this case, but he does not know the accused Madan Deka and Raju Borgohain. That he was working as a Security Gaurd in OIL, Duliajan and at the time of incident, in the year 2015-2016, he was working still as a Security Gaurd in OIL. He was on patrolling duty with the informant, one night after 12 AM; they found a vehicle standing on the road and on searching the same, they found some drums, what was inside the drum he does not know. They brought the vehicle along with the drums to the police station and handed it over to

police.

- 10.** PW4 deposed that he knew the informant who was Inspector in OIL Security Department Duliajan. That he does not know the accused Madan Deka and Raju Borgohain. That he had gone for patrolling with Tilak Saikia. At what time and on what day, he went with Tilak Saikia, he does not remember now. They caught a xenon vehicle. The vehicle which was found was the place of Oil Collecting Station near Madhabpur. There were drums in the vehicle, but how many drums are there he had forgotten now. Except the drums what else were there in the drums, he has not seen.
- 11.** PW5 deposed that he knew the informant of this case who was Security Officer of OIL, Duliajan. That he does not know the two accused persons standing in the dock today. About in the year 2015 the incident happened, exactly what was the year of incident, he has forgotten now. They found during patrolling that an abandon vehicle met with an accident near the Dehing Bridge. They then handed the vehicle with the drums to the police station later they came to know that there was some oil in the drums. They did not find any

person in the vehicle.

- 12.** PW6 deposed that he does not know the informant of this case as well as the accused persons standing in the dock today. He was the VDP member of Mohmari Area, where the OIL department has planted an indirect heater. He does not remember anything about this case. It was only OIL, Department who comes and check them whether they are on duty or not. That he does not remember if he was ever questioned by the police in connection with this case.
- 13.** PW7 deposed that he does not know the informant of this case, nor the accused persons standing in the dock today. He does not remember if he was ever questioned by the police in connection with this case. He was the VDP Secretary of Mohmari Area.
- 14.** PW8 deposed that he does not know the informant of this case. He knew the accused Madan Deka but he does not know the other accused present in the dock today. The accused Madan Deka is his neighbour. He does not remember if he was ever questioned by the police in connection with this case. That he has never given his statement to the

police.

- 15.** This case is charge sheeted and later on, charge was framed against the accused Modan Deka and accused Raju Borgohain under section 379 IPC R/W Section 3(2)(B) of PDDP Act. Altogether eight witnesses were examined from the side of the prosecution. The informant is the main witness of this case who as PW2 deposed that on 05.11.2015, when he was doing patrolling duty as security guard of Oil, at about 3.40 AM, a Tata Xenon vehicle carrying nine drums of condensate oil was noticed. The driver was alleged to stop, but the accused persons fled away leaving the vehicle so the matter was informed to police who seized the vehicle and the condensate oil and he lodged FIR in the police station. From his evidence, it is clear that the vehicle was found to have been carrying nine drums of condensate oil. When they stopped the vehicle the accused fled away leaving the vehicle. The same witness PW2 however made it clear during cross-examination that he does not know who was driver of the offending vehicle and who has stolen the condensate oil. He also does not know from where the condensate oil was brought by the accused. The other witnesses of this case PW1, does not know anything about the facts of this case and PW3, 4, 5, 6, 7 and 8 all supported the fact that this case was lodged by PW2 Tilak Saikia. On that night, patrolling was going on

and they found the vehicle in an abandoned state with drums inside it. What was in the drum witnesses have no idea and they also do not know anything about the facts of this case. PW6, 7 and 8 also does not remember if they were ever questioned by the police in connection with this case. The fact of production of the vehicle and drums to the police station is though stated by the witnesses, but all the witnesses however, made it clear that who the persons involved in this case, they have no idea.

- 16.** From the entire evidence on record, it is clear therefore that though there are allegations of theft of 9 drums of condensate oil in the vehicle at No. 2 OCS, Duliajan yet, there are no incriminating materials that it was the accused persons who committed the theft of oil for their wrongful gain. There are also no materials in the evidence of 8 prosecution witnesses against accused that they have committed any mischief by causing damaged to the Government by stealing and causing loss to the Oil Department, Duliajan by their Act of stealing Government property.

### **ORDER**

In view of the above discussion, I have therefore found accused **Shri Modan Deka and Shri Raju Borgohain to**

**be not guilty of offence** U/s 379 IPC R/W Section 3(2)(b) of PDDP Act and set at liberty on benefit of 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 17<sup>th</sup> day of December, 2021.

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

## **Appendix**

Prosecution Witness :-

PW1 :- Shri Monuj Hazarika.

PW2 :- Shri Tilak Saikia.

PW3:- Shri Utpal Gogoi.

PW4 :- Shri Mohan Phukan.

PW5 :- Shri Bikul Chetia.

PW6 :- Shri Kushal Pathak.

PW7 :- Shri Biswanath Deka.

PW8 :- Shri Pranjal Dutta.

Defence witness :- None

Exhibits :-

Prosecution exhibits :-

Exhibit 1 :- Seizure List.

Exhibit 2 :- Ejahar.

Defence exhibits :- None

Court witness :- None.

Court exhibits :- None.

**CJM, Dibrugarh**