

IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, DIBRUGARH

Present: Smti. Rituparna Sarmah, AJS.

.....
G.R 2020/16

Under section 379/34 IPC

State

.....Prosecutor

V

- 1. Sri Tiku Robi Das**
- 2. Sri Paban Robi Das**
- 3. Sri Suraj Robi Das**

..... Accused persons

.....
Evidence recorded on : 21.07.17, 21.07.18, 13.09.18,
15.02.20, 06.03.21

Arguments heard on : 15.12.21

Judgment delivered on : 18.12.21

.....

Appearing for the Prosecution : Ms. L. Mohan.

Appearing for the Defence : Mr. I. Haque.

.....

JUDGMENT

1. The brief facts of the prosecution's case is that on 24.07.16 Md. Sadik Ahmed had lodged an *ejahar* before the In-Charge of Gabharupathar P.S alleging *inter alia* that on 23.07.16 two cows of him was stolen. Upon search, he found the cows in the house of Aftab Ali. On being asked, Aftab Ali informed him that he bought the cows from two boys of tea garden. That the informant caught that two boys and came to know from them that four other persons are also associated with the offence. Hence this case.
2. On the basis of the said *ejahar*, a case was registered as Dibrugarh P.S. case number 573/16 under section 379/34 IPC and A.S.I Girish Pathir was entrusted to investigate the case. On completion of the investigation, the Investigating Officer (hereinafter referred as I.O.) submitted the charge sheet against the accused persons Sri Raja Urang, Sri Pradip Robi Das, Sri Tiku Robi Das, Sri Paban Robi Das and Sri Suraj Robi Das under section 379/34 IPC. However inspite of several attempts, the attendance of the accused persons Sri Raja Orang and Sri Pradip Robi Das could not

be secured. As such vide order dated 23.03.18 the case was split up against the Sri Raja Orang and Pradip Robi Das and a supplementary case record was opened against them. The instant case proceeded only against the remaining accused persons.

3. Cognizance was accordingly taken. On appearance by the accused persons the copies of relevant documents of the case were supplied to them in compliance of section 207 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C). A formal charge was framed u/s 379/34 IPC. The contents of the charge was read over and explained to the accused persons. On being asked they pleaded not guilty and claimed to be tried.
4. During trial the prosecution has examined as many **6 [six]** witnesses. The accused persons are examined under section 313 CrPC. The accused persons denied all the allegation leveled against them and also denied to adduce evidence on their behalf.
5. I have heard the argument put forwarded by the learned Assistant Public Prosecutor and the learned Defence Counsel. Thoroughly perused the case record.
6. Upon such hearing and perusal I have framed the following points for just decision of the case.

POINT FOR DETERMINATION

7. Whether the accused person on 23.07.16 dishonestly taken two cows from the possession of the informant in furtherance of common intention and thereby committed an offence punishable under section 379/34 IPC?

DISCUSSION, DECEISION AND REAONS THEREOF

8. **P.W-1, Saddique Ahmed** is the informant of this case. He identified the accused person. That one relevant day of the year 2016 his two cows were stolen from his house. His maid informed him that, the cows were in the house of one Aftab Ali. As such, P.W-1 along with V.D.P of that village went to the house of Aftab Ali in search of the cows. Upon being questioned, Aftab Ali informed him that one cow is there with him but he had slaughtered the other cow. Aftab Ali informed him about the thieves who had stolen the cows. Accordingly, V.D.P party caught the accused persons and handed them over to the police. On the next day P.W-1 had lodged the ejahar. Ext-1 is the ejahar and Ext-1(1) is his signature. Ext-2 is the seizure list and Ext-2(1) is his signature. Ext-3 is the zimma nama and Ext-3(1) is his signature. In cross-examination P.W-1 he denied the suggestion put forwarded by Id. defence counsel.

9. **P.W-2 is Md. Inamul Hussain.** He deposed in his evidence that he had only heard the names of the accused persons. That the incident took place in the year 2016. At that time he was the VDP Secretary. The informant told him that two cows were stolen from his possession and as such he went with the informant in search of the cows. That they saw the cow in the house of Avtar Ali. On being questioned, he informed them that he got the calf and the cow from the accused persons and two other persons. Avtar confessed before them that he had already slaughtered the bullock which he received from the accused persons but he has the cow and the calf in his possession. As such, they handed over the calf and the cow to the police of Gabharu Pathar Outpost. Ext-2 is the seizure list and Ext-2(2) is his signature.
10. In cross-examination P.W-2 stated that the informant is his cousin. Further P.W-2 admitted that he had signed the exhibits at the Police Station.
11. **P.W-3 is Md. Hazarat Ali.** He knows the informant but could not identify the accused person. That one relevant day of the year 2016 when he was going to his shop he saw a crowd in front of Chaulkhowa Masjid. He came to know that something was stolen. However he does not know as to who had stolen what. His cross-examination was declined.
12. **P.W-4 is Md. Salamuddin Ahmed.** He knows the

informant but could not identify the accused person. He deposed that he doesnot know anything about the incident. Ext-2 is the seizure list and Ext-2(3) is his signature. In cross-examination, he doesnot know as to why his signature was taken on Ext-2.

13. **P.W-5 is Md. Nawaz Ali.** He knows the informant but could not identify the accused person. He deposed that before three to four year ago he came to know that two cows were stolen from the house of informant. Apart from that, he doesnot know anything about the incident. His cross-examination was declined.

14. **P.W-6 is the I.O Sri Girish Ch. Patil.** He deposed in his evidence the routine manner of investigation taken up by him. He deposed in his evidence that the accused persons and one cow were handed over by village people. He seized the cow in presence of them. Ext-2 is the seizure list and Ext-2(4) is his signature. Ext-3 is the zimma nama and Ext-3(2) is his signature. Ext-4 is the sketch map and Ext-4(1) is his signature. Ext-5 is the charge sheet and Ext-5(1) is his signature. In cross-examination, P.W-6 admitted that the name of the persons who caught the accused person and handed them over to him is not mentioned in the case diary. He also stated that in the seizure list, the place of seizure is mentioned as Chawlkhowa. P.W-6 also admitted that he had not examined the persons whose names were mentioned in the sketch map.

15. Now, let us go through the relevant provision of law with regard to the instant case in hand. To establish an offence u/s 379 IPC the prosecution has to prove that the accused person with an dishonest intention had taken the movable property out of the possession of any person without that person's consent and moved that property in order to such taking.
16. In that backdrop, now let me appreciate the evidence on record. From the evidence on record of the instant case it appears there is no direct independent witness who saw that the accused persons stolen the cows. In fact, it appears that the evidence of the informant itself is hearsay in nature. P.W-1 & P.W-2 also, deposed that they found the stolen cow in the house of Aftab Ali. Upon being questioned Aftab Ali informed them that he got the cows from the alleged thieves i.e. the accused person and P.W-1 acted on that. As per section 60 of Indian Evidence Act, heresay evidence per se is not admissible.
17. P.W-1 also deposed that V.D.P party went to the accused persons, caught them and handed them over to the police. However his version is not corroborated by P.W-2 i.e. the VDP Secretary. He deposed that he only handed over the cow to the police. P.W-3 and P.W-4 also failed to support the prosecution's story.
18. Now, in this case P.W-1 and P.W-4 are the seizure witnesses. However they also failed to state that the cows

were seized from the accused person. P.W-1 stated that he found the cows in the house of Aftab Ali and P.W-4 stated that he does not know anything about the incident. Now the P.W-6 i.e. the I.O stated that the village people caught the accused persons as thieves and handed them over to police. However, he admitted in his cross-examination that he had not examined any of those persons. Thus it appears that the prosecution has miserably failed to establish the guilt of the accused persons.

19. Now, it is a settled position in law that in criminal cases the prosecution has to prove its case against the accused person beyond reasonable doubt. Conviction of a person cannot be based on suspicion. However, from the evidence on record of the instant case it appears that the prosecution has failed to bring any cogent evidence on record to prove beyond reasonable doubt that the accused persons had committed an offence u/s 379/34 IPC As such the accused persons are not found guilty and is liable to be acquitted.

ORDER

20. Accordingly, the accused persons Sri Tiku Robi Das, Sri Paban Robi Das and Sri Suraj Robi Das acquitted of the offence under section 379/34 IPC and set at liberty forthwith.

21. The bail bond for the accused persons shall be in force for further period of six months in light of section 437-A CrPC.
22. The custody of the vehicles and documents are hereby made absolute in favour of the registered owners thereof.
23. The judgment is delivered and operative part of the judgment is pronounced by me in the open Court today.

Given under my hand and seal of this court on this 18th day of December, 2021.

Typed by me.

(SMTI RITUPARNA SARMAH)

Judicial Magistrate First Class, Dibrugarh

APPENDIX

PROSECUTION EXHIBITS:

1. Ext-1: Ejahar
2. Ext-1(1): Signature of P.W-1
3. Ext-2 : Seizure list
4. Ext-2(1): Signature of P.W-1
5. Ext-2(2): Signature of P.W-2
6. Ext-2(3): Signature of P.W-4
7. Ext-2(4): Signature of P.W-6
8. Ext-3 : Zimmanama
9. Ext-3(1): Signature of P.W-1
10. Ext-3(2): Signature of P.W-6
11. Ext-4: Sketch map
12. Ext-4(1): Signature of P.W-6
13. Ext-5: Charge sheet
14. Ext-5(1): Signature of P.W-6

DEFENCE EXHIBITS:

NIL

PROSECUTION WITNESSES:

1. P.W-1: Saddique Ahmed
2. P.W-2: Md. Inamul Hussain
3. P.W-3: Md. Hazarat Ali
4. P.W-4: Md. Salamuddin Ahmed
5. P.W-5: Md. Nawaz Ali
6. P.W-6: Sri Girish Ch Patir

GR 2020/16

DEFENCE WITNESSES:

NONE

(SMTI RITUPARNA SARMAH)

Judicial Magistrate First Class, Dibrugarh