

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS :

DIBRUGARH

PRESENT : Smti. Zohra Yasmin, A.J.S.,

Judicial Magistrate First Class,

Dibrugarh

Advocate for the Prosecution : Sri. M. Dutta, A.P.P.

Advocate for the accused : Sri. G.R. Rai, Smti. J. Kour

G.R. Case No. 266 of 2011

State of Assam

-VS-

Sri. Putola Ahmed

Md. Jalil Ali

Sri. Raju Bhuyan

Sri. Pinter Kerketta Accused Persons

Under Section 379 IPC

Charges framed on16/06/2017.

Evidence recorded on 06/10/2021 & 03/12/2021.

Arguments heard on 21/12/2021.

Judgment delivered on 28/12/2021.

J U D G M E N T

- 1) The prosecution story in brief is that on 02/02/2011 an Ejahar was lodged by the informant Sri. Rajib Sonowal, Site in-charge of Indo Power Projects Limited alleging that Indo Power Projects Limited has issued materials to M/S Mascot Power for execution of Rural Electrification works under Rajiv Gandhi Grameen Vidyutikaran Yojana in Khowang Gaon Panchayat under Moran Block. On 01/02/2011 M/s. Mascot Power has informed that 10 KVA DTR were found missing from village named Bukahula. Hence, the ejahar was lodged by the informant.
- 2) On receipt of the Ejahar, Khowang P.S. Case no. 24/2011, U/S 379 of the Indian Penal Code was registered. Upon completion of the investigation, the police submitted charge-sheet against the accused person namely Sri. Putola Ahmed, Sri. Rajuu Bhuyan, Sri. Pinter Kerketta, Md. Jalil Ali and Sri. Nashib Bhuyan under the above mentioned section of law.
- 3) Upon receiving summons, the accused person appeared before the court. Upon perusal of the case record and after hearing both the sides on the point of charge and on finding prima facie materials against the accused persons formal charges under Sections 379 of IPC was framed and explained to them to which they pleaded not guilty and claimed to be tried. Vide order dated 03.03.2017 the case was filed against the co-accused person Sri. Nashib Bhuyan on the basis of the proclamation and attachment report issued against him. Thereafter, the case proceeded against the four accused persons Sri. Putola Ahmed, Sri. Raju Bhuyan, Sri. Pinter Kerketta and Md. Jalil Ali.

- 4) In support of the case, the prosecution has examined three witnesses.
- 5) After the prosecution evidence was over, the accused persons was examined under Section 313 Cr.P.C. wherein they have denied the prosecution case and also declined to adduce any defence evidence.
- 6) I have heard the arguments of both sides.
- 7) Considering the materials on record and after hearing the arguments of both sides, the following points are taken as points for determination-

POINTS FOR DETERMINATION-

- (i) Whether the accused persons on 01.02.201 committed theft of the 10 KVA DTR from Bukahula Village and thereby liable to be punished under Section 379 IPC?

DISCUSSION, DECISION AND REASONS FOR DECISION:

- 8) Let me discuss the evidence of the prosecution witness for arriving at a definite conclusion as regards the points for determination. PW 1, Sri. Dina Munda. He has deposed in his evidence-in-chief that he does not recognized the accused persons and he does not know about informant. PW1 also submitted that he does not know anything about the incident and police did not asked anything about the incident.
- 9) Cross examined was declined by defence side.

- 10) PW 2, Sri. Birsa Munda. He has deposed in his evidence-in-chief that he does not recognize the accused persons and he does not know about informant. PW2 also submitted that he does not know anything about the incident.
- 11) Cross examined was declined by defence side.
- 12) PW 3, Sri. Mohan Sena Sinha. He has deposed in his evidence-in-chief that in the year 2011 he was posted as an attached officer at Khowang Police station. He was Sub Inspector. On 02/02/2011 informant Sri. Rajiv Sonowal (Site In-Charge) at Indo Project at Bokahula Gaon, Khowang, lodged a written ejahar at police station that some person had stolen transformer from the above mentioned site. The O.C. of the concerned P.S. entrusted him with the investigation of the case on 02.02.2011. On the same day he recorded the statement of the informant. Also visited the place of occurrence and recorded the statements of witnesses Sri Dina Munda, Sri Birsa Munda, Lulu Munda and Bimal Munda. He also drew a sketch map of the place of occurrence. On the same day he searched godown of iron scrap of Sri Chandra Hazarika but found nothing. In the mean time, PW3 was transferred and he handed over the case diary to the O.C. concerned. Exhibit 1 is the charge-sheet and Exhibit 1(1) is the signature of Phooladhar Sangmai which he can identify. Exhibit 2 is the Sketch Map drawn by PW3 and Exhibit 2 (1) is his signature.
- 13) PW3 in his cross examined stated that the date of offence is not mentioned in the ejahar. He has admitted that he seized nothing in connection with this case. Besides this, PW3 has denied the suggestion that

he did not record the statements of any of the witnesses in connection with this case.

- 14) The informant of the case could not be found and his evidence was dispensed with vide order dated 05.10.2018 by my Ld. predecessor.
- 15) It is one of the cardinal principle in a criminal case that the prosecution must prove the guilt of the accused beyond all reasonable doubt. In this instant case, the prosecution has not been able to prove the case against the accused persons beyond all reasonable doubt under Section 379 IPC; as such the accused person is acquitted of the charge under Section 379 IPC and he is set at liberty.

ORDER

- 16) The accused persons Sri. Putola Ahmed, Sri. Riju Bhuyan, Sri. Pinter Kerketta and Md. Jalil Ali are acquitted from the offences under Section 379 IPC in this case and they are set at liberty forthwith.
- 17) The bail bond of the accused persons are extended for six months from today as per the provisions of Section 437A CrPC.
- 18) The case is disposed of on contest without cost.

Given under my hand and seal of this court on this 28th day of December, 2021 at Dibrugarh.

SMTI. ZOHRA YASMIN
JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH

APPENDIX

PROSECUTION WITNESSES:

- 1) PW1 Sri. Dina Munda
- 2) PW2 Sri. Birsa Munda
- 3) PW3 SI Sri. Mohan Sena Sinha

PROSECUTION EXHIBITS:

- 1) Exhibit 1- Charge Sheet
- 2) Exhibit 1(1)- signature of the I.O.
- 3) Exhibit 2- Sketch Map
- 4) Exhibit 2(1)- signature of the I.O

DEFENCE WITNESSES:

None

DEFENCE EXHIBITS:

NIL

SMTI. ZOHRA YASMIN
JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH