

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE  
AT NORTH LAKHIMPUR**

G.R CASE NO: 1070 OF 2010  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SMTI. GUNA BORAH

DISTRICT: NORTH LAKHIMPUR  
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 1070 / 2010

U/S 406 OF I.P.C, R/W SECTION 7 OF E.C ACT.

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SMT. GUNA BORAH

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA  
ADVOCATE FOR THE ACCUSED: SRI R. MAHANTA

CHARGE FRAMED ON : 08.03.2018  
EVIDENCE RECORDED ON : 18.07.2018, 06.10.2018, 28.11.2018, 26.12.2018,  
03.09.2019, 14.10.2019, 06.02.2020  
ARGUMENT HEARD ON : 26.02.2020  
JUDGMENT DELIVERED ON : 06.03.2020

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF:**

1. Prosecution's case in brief as it reveals from the FIR is that accused Smti. Guna Borah, who is a duly appointed agent of No. 30 FC Grnat under Nowboicha GPSS Ltd., committed gross violation in distribution of PDS commodities, including misappropriation of PDS commodities like short delivery of APL rice, defying approve scale and tempering actual quantum of issue of SK oil by way of overwriting as well as realisation of higher price from consumers against distribution of PDS commodities as reported by Sri R. K Bhattacharjee, Inspector

of Food Civil supplies and Consumer affair, Lakhimpur, North Lakhimpur (herein after referred to as FCS & CA). The accused has therefore violated the provision of clause 19 of APDA order 1982 as well as the terms and conditions of act 3(A)(i)(ii)(iii)(iv) of the licence granted to her as per provision of the APDA order 1982. The informant Sri Harendra Nath Doley, Deputy Director of FCS and CA, North Lakhimpur, has accordingly submitted an FIR before the OC of Laluk police station.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 137/10 and after investigation I.O of the case submitted charge sheet against accused Smt. Guna Borah for the offences punishable u/s 406 of IPC, r/w section 7 of Essential Commodities Act. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge was framed against the accused for the offences punishable u/s 406 of IPC, r/w section 7 of E. C Act. The charges are then read over and explained to the accused to which she pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined ten witnesses, whereas the defence did not examined any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by the accused and also the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused on or before 27.08.2010, being appointed as an agent of No. 30 FC Grant under Nowboicha GPSS Ltd. was entrusted with distribution of PDS commodities like APL rice, SK oil, etc. and the accused committed misappropriation of the PDS commodities by short delivery, defying Govt. approved scale and tempering actual quantum of issue of SK oil by way of overwriting, and converted such items to her own use, and thereby committed an offence punishable u/s 406 of IPC?

(ii) Whether the accused being the agent of No. 30 FC Grant under Nowboicha GPSS Ltd. committed violation of the conditions of licence granted to her by making wrong entries in the registers maintained by her and by short delivery of PDS commodities defying Govt. scale and tempering actual quantum of issue of SK Oil by way of overwriting as well as realising higher price from consumers against the distribution of PDS commodities in violation of the provision of Public Distribution of Article Order 1982, and thereby committed an offence punishable under section 7(1)(a)(ii) of Essential Commodities Act 1955?

**DISCUSSION, DECISION AND REASONS THEREOF:**

**POINT NO.1 & 2**

6. For the sake of convenience and as because the point no.1 & 2 are interconnected, hence they are taken up herein together for discussion and decision as follows:

7. As regards the aforesaid points for determination, informant Sri Harendra Nath Doley, PW-7, the then Inspector of F&CS, and Sri Ranjit Kr. Bhattacharjee/PW-8 in their respective evidence-in-chief have stated that accused Smt. Guna Borah was an agent of PDS having her fair price shop at Doolahat at the time of occurrence. The aforesaid statement of PW-7 and PW-8 is corroborated by PW-1 Sri Purna Dutta, who is the Chairman of Nowboicha Co-operative society, by stating that the accused was working as an agent of No. 30 PC Grant of Samabay Samity at the time of occurrence. Similarly, PW-4 Sri Ibrahim Sona, PW-5 Sri Rafel Mahali and PW-6 Sri Lila Newar in their respective evidence-in-chief have also stated that the accused is having a fair price shop. In fact, PW-2 Sri Buddheswar Borah, who is the husband of accused, and also PW-3 Sri Jadab Borah, who is the son of accused in their respective evidence have stated that the accused was having a fair price shop at the time of occurrence. Be it mentioned here that there is nothing in the evidence on record which can create any doubt as regards the credibility of the aforesaid statements made by the prosecution witnesses to the effect that the accused was an agent of PDS having her fair price shop at Doolahat. Under such circumstances, it is evident that the materials available in the case record proves that the accused was an agent of PDS (Public Distribution Scheme) and having her fair price shop at Doolahat.

8. As regards the alleged occurrence, informant/PW-7 in his evidence-in-chief has stated that at the time of occurrence, certain allegations were received from public regarding anomalies in the distribution of articles by the accused in her fair price shop. Thereafter, the area officer was entrusted to enquire the matter. Accordingly, area officer Ranjit Kr. Bhattacharjee conducted the enquiry and submitted a report to him/PW-7. In the aforesaid report, it is mentioned that the accused did not properly distributed APL rice and kerosene oil. Also, the accused took more price of the articles than that fixed by government. Thereafter, the matter was formally informed to the Deputy Commissioner and subsequently the licence of accused was suspended as per the direction of Deputy Commissioner. Thereafter, FIR was lodged in Laluk police station about the occurrence.

9. In the above context, the then Inspector of F&CS, Sri Ranjit Kr. Bhattacharjee/PW-8 in his evidence-in-chief has stated that the public of Doolahat submitted written complaint against the accused alleging that the accused did not distributed the actual amount of rice and kerosene oil to the public as per rules and sometimes the accused distributed less quantity and at some other times the accused distributed more quantity of those articles. He then conducted an enquiry and examined the stock register and sale register of the fair price shop of accused. On such examination, he found that the accused did not regularly updated her sale register due to which the stock register was also not updated. Thereafter, he seized one lifting register, kerosene oil stock book, one kerosene oil sale book, APL rice stock & sale book, and AAY stock and sale book. After completion of the enquiry, he submitted his report to Deputy Director of F&CS, North Lakhimpur. At the end of his enquiry, he found that the accused sometimes provided more amount of commodities to the public than that fixed by rules, and at some other times the accused distributed less quantity of articles than that fixed by rules. Exhibit.4 is the report submitted by him in which Exhibit.4(1) is his signature.

10. During investigation, police seized the aforesaid lifting register, kerosene oil stock book, kerosene oil sale book, APL rice stock book, APL rice sale register, AAY rice stock and sale register from him and prepared seizure list. Exhibit.3 is the seizure list in which Exhibit. 3(1), 3(2) and 3(3) are his signatures. Material exhibit (MR 23/10) – 2(A), 2(B), 2(C), 2(D), 2(E), 2(F) and 2(G) are the aforesaid registers which he can see before him in the court. Police also seized the aforesaid complaint petitions made by public and prepared seizure list. Exhibit.1 is that

seizure list in which Ext.1(2) and Ext.1(3) are his signatures. Material Ext. (MR 24/10) – 1(A), 1(B), 1(C), 1(D), 1(E) and 1(F) are the aforesaid complaint petitions which he can see before him in the court.

11. PW-9 Sri Nabin Singh, the then Additional SP of Police, who investigated this case in his evidence-in-chief has stated that during investigation he seized certain documents from the then Inspector of F, CS and CA, North Lakhimpur Sri Ranjit Kr. Bhattacharjee vide Ext.3 seizure list in which Ext.3(4) is his signature. The documents which were seized by him as per Ext.3 seizure list are (1) Lifting Register of Smti Guno Borah dealer of Doolahat Bazar Fair price shop, (2) one Stock Register of Kerosene oil of Smti Guno Borah dealer of Doolahat Bazar Fair price shop, (3) One Sale Register of kerosene oil of Smti Guno Borah dealer of Doolahat Bazar Fair price shop, (4) One Stock Register of A.P.L rice of Smti Guno Borah dealer of Doolahat Bazar Fair price shop, (5) One Sale Register of A.P.L rice of Smti Guno Borah dealer of Doolahat Bazar Fair price shop, (6) One Sale Register of A.A.Y rice of Smti Guno Borah dealer of Doolahat Bazar Fair price shop, (7) One Stock Register of A.A.Y rice of Smti Guno Borah dealer of Doolahat Bazar Fair price shop.

12. PW9 has further stated that, on examination of the aforesaid seized documents, it can be seen that the APL rice was not equally distributed amongst the beneficiaries and 25 kgs of APL rice was left undistributed. Also, there are many other overwriting and corrections made in the entries of the registers. He also seized certain other documents from the then Inspector of FCS and CA, North Lakhimpur, Sri R. K. Bhattacharjee vide Exhibit.1 seizure list in which Ext.1(4) and Ext.1(5) are his signatures. The documents seized vide Ext.1 seizure list are the public complaint petitions. On perusal of the aforesaid petitions, it can be seen that accused Smt. Guna Borah took more money from the beneficiaries than that fixed by rules, and also supplied less quantity of articles. For example, threelitres kerosene oil was supplied per family. Thereafter, he collected the certified copy of licence of fair price shop granted to the accused. The Deputy Director of FCS and CA, North Lakhimpur provided him the aforesaid certified copy of licence. He was also provided with the certified copy of approved scale of distribution of APL rice. He then seized the aforesaid two documents from Deputy Director of FCS and CA, North Lakhimpur. Exhibit.6 is the seizure list in which Ext.6(1) is his signature. Material Exhibit 3(A) is the aforesaid certified copy of approved scale of

distribution of APL rice. Material Ext.3(B) is the aforesaid certified copy of licence of the fair price shop of accused. As per the said licence, the validity of same was upto 31.03.2009.

13. In the above context, the then Chairman of Nowboicha Co-operative society, Sri Purna Dutta as PW-1 in his evidence-in-chief has stated that he has been working as Chairman of Samabay Samity since 2009. He came to know that the then In-charge of DDS, Sri H. N. Doley filed a case regarding anomalies committed by the accused in supply of essential commodities, i.e. rice and kerosene oil to the beneficiaries. Thereafter, the area officer, namely, Sri R. K. Bhatta seized the relevant documents relating to distribution of essential commodities by the accused. He signed the seizure list as a witness. Material exhibit 1(A), 1(B), 1(C), 1(D), 1(E) and 1(F) are the seized documents are the seized documents which he can see before the court. Ext.1 is the seizure list in which Ext.1(1) is his signature.

14. On perusal of the evidence deposited by PW-1, PW-7, PW-8 and PW-9 as narrated above, it is seen that the crux of allegation made against the accused is that certain complaint petitions were received from the public in which it was alleged that the accused, being an agent of F&CS department having fair price shop, committed anomalies in distribution of essential commodities like rice and kerosene oil. On the basis of such allegation, the then Inspector of F&CS, North Lakhimpur Sri R. K. Bhattacharjee/PW-8 conducted an enquiry into the allegations and seized a number of stock registers and sale registers from the aforesaid fair price shop of accused. On completion of the aforesaid enquiry, it was found by PW-8 that the accused did not distributed the essential commodities as per the relevant rules. Thereafter, the enquiry report was submitted to PW-7 who subsequently lodged an FIR before the police. Accordingly, PW-9 started the investigation and seized the aforesaid documents from the custody of PW-8.

15. In my opinion, if he aforesaid allegations made by prosecution witnesses are presumed to be true then the same will attract the offences punishable u/s 406 of IPC, r/w section 7(1)(a)(ii) of Essential Commodities Act. As such, it is necessary to find out whether the aforesaid allegations made by the prosecution witnesses can be believed to form a conclusive opinion against the accused.

16. To proceed with further discussion of the evidence available in the case record so as to find out the credibility as aforesaid, it is seen that the contents of material exhibit 3(B) supports the allegation that the accused was an agent under Nowboicha Samabay Samity Ltd. The material exhibit 3(B) is a certified copy of licence granted to the accused for her agency. It is specifically mentioned in the material exhibit 3(B) licence that the licensee shall maintain daily stock register for the notified articles showing correctly the opening stock on each day, and the quantities received on each day, and the quantities delivered or otherwise removed, and also the closing stock on each day.

17. Now, let me proceed with the discussion to find out whether the accused has maintained the stock register correctly as required by her licence. For that purpose, on perusal of material exhibit 2(B), it is seen that the same contents a certificate showing that the register will be used as stock register of kerosene oil for the aforesaid fair price shop of accused. The certificate contains seal and sign of issuing authority with date as 17.12.2008. In the contents of the aforesaid stock register, it is seen that on 14.01.2009, the stock of kerosene oil was shown as 83 litres and expenses on that day was shown as 83 litres. Therefore, the stock of kerosene oil at the end of 14.01.2009 is shown as nil. In this respect, perusal of material exhibit 2(C) shows that the same also contains a certificate which states that the same will be used as daily sale register for the fair price shop of accused. In the contents of said register, it is seen that on 14.01.2009 kerosene oil was distributed to 39 persons at the rate of 2 litres each, i.e. a total of 78 litres of kerosene oil was distributed on 14.01.2009 by the accused. Therefore, it is clear that the entries made in the stock register and sale register for kerosene oil of the shop of accused is not matching.

18. To be more particular, as per stock register, the accused had 83 litres of kerosene oil at the time of opening her shop on 14.01.2009 and she distributed the entire 83 litres on that day itself. In that view of the matter, it is very much logical that the sale register will show that how the aforesaid 83 litres of kerosene oil were distributed on that day. However, as stated above, the sale register shows that only 78 litres of kerosene oil were distributed to 39 persons at the rate of 2 litres each on 14.01.2009. Under such circumstances, it is evident that the accused violated the terms and conditions mentioned in the licence/ material exhibit 3(B) which was issued to her for the fair price shop. Also, this shows that an amount of

5 litres of kerosene oil remains uncounted by the accused. There is no explanation in the record regarding those 5 litres of kerosene oil. As such, it is evident that the accused has not supplied those 5 litres of kerosene oil to the beneficiaries. This implies that the accused has knowingly not discharged the trust (for supply of the entire stock of kerosene) by not supplying the entire stock of kerosene in violation of the condition of her license or relevant rules and thereby committed criminal breach of trust. Also, such violation attracts the provision of Section 3 of the Essential Commodities Act which is punishable under Section 7 of the said Act.

19. In addition to the above, perusal of material exhibit 3(A), which is a certified copy of approved scale distribution of APL rice, shows that the APL rice for the month of July, August and September 2010 are to be distributed at the rate of 5.496 kGs per FIC for urban and rural areas within Lakhimpur Sub-division. However, in this respect, perusal of material exhibit 2(E) which contains a certificate stating that the same is the daily sale register of APL rice of said shop of accused, shows that no entry is made in the register after the month of July 2010. Also, it is seen that in the month of July 2010, a total of 140 kg of rice were distributed to 20 beneficiaries. Also, eight numbers of such beneficiaries were provided with 10 kGs of rice each and the rest of the beneficiaries were supplied with 5 kGs of rice each. This shows that the distribution of APL rice made by the accused in the month of July 2010 is in clear violation of material exhibit 3(A) order. Besides that, there is no mention of any distribution of APL rice for the month of August and September 2010. Therefore, it is clear that the accused has violated the direction/order issued by the concerned department for public distribution of essential commodities. This, attracts the ingredients of the offence punishable u/s 7(1)(a)(ii) of Essential Commodities Act.

20. Before parting with the discussion, I deem it fit to mention here that the defence while cross-examining the prosecution witnesses has tried to prove by putting a few suggestions that the aforesaid registers were not recovered from the custody of accused. However, the prosecution witnesses have denied those suggestions. Most importantly, PW-2, who is the husband of accused, in his evidence-in-chief has clearly stated that some of the officials of supply department came to the aforesaid shop of accused and seized all the supply related documents of that shop. This makes it clear that the registers were seized from the shop of accused by the officials of FSC & CA. Under such circumstances, I do not find

anything to doubt that the aforesaid registers were seized from the possession of accused.

21. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have proved beyond reasonable doubt that the accused has committed offences punishable u/s 406 of IPC, r/w section 7(1)(a)(ii) of Essential Commodities Act.

*DECISION: Point no.1 & 2 are therefore decided in the affirmative and goes in favour of the prosecution.*

### **ORDER**

22. In view of the discussion made and decision reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have proved beyond reasonable doubts that accused person Smti Guna Borah has committed the offences punishable under section 406 of IPC, r/w section 7(1)(a)(ii) of Essential Commodities Act 1955. As such, accused Smti Guna Borah is held guilty for commission of offence punishable u/s 406 of IPC, r/w section 7(1)(a)(ii) of Essential Commodities Act and accordingly she is convicted for the commission of offence punishable under section 406 of IPC, r/w section 7(1)(a)(ii) of Essential Commodities Act.

23. As the offence committed is with respect to essential commodities which generally has a great impact upon life is partly, hence I am not inclined to release the accused persons under the provision of Probation of Offenders Act as the same will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offence in future.

24. I have heard accused Smti Guna Borah on the point of sentence. The accused person has pleaded mercy as she is about 80 years old and is suffering blood pressure and other ailments. Perusal of case record shows that the accused on 05/02/2017 and 15/05/2018 has submitted certain medical documents which substantiates her plea of age and illness. Therefore, having regard to the age and illness of the accused, and also considering the fact there is nothing in the case record which can show that a great or substantial loss was caused to the public in general by commission of such offences by accused, I am of the opinion that it is a fit case to impose a sentence of imprisonment for less than three months. Under

such circumstances, and having regard to the matter in its entirety, accused Smti Guna Borah is sentenced undergo simple imprisonment for todaytill rising of the court u/s 7(1)(a)(ii) of Essential Commodities Act. The accused is also sentenced to pay a fine of Rupees 12,000/- u/s 7(1)(a)(ii) of Essential Commodities Act, in default to suffer Simple Imprisonment for one month. The accused is also sentenced to pay a fine of Rupees 10,000/- u/s 406 of I.P.C, in default to suffer simple imprisonment for one month.

The documents seized vide M.R No. 23/10, M.R No.24/10 and M.R No. 25/10 shall be released to the custody of person from whom seized after taking proper bond from her on expiry of the statutory period as per law.

This judgment is given under my hand and the seal of this court on this the 06<sup>th</sup> day of March, 2020.

This case is disposed of on contest.

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur