

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

G.R CASE NO: 1094 OF 2018  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI RAJIB DOLEY

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

GR CASE NO: 1094/ 2018

U/S 379/411 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI RAJIB DOLEY

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P  
ADVOCATE FOR THE ACCUSED: SRI D.R. PADI

CHARGE FRAMED ON : 11.07.2018  
EVIDENCE RECORDED ON : 25.07.2018, 06.10.2018, 30.08.2019,  
18.11.2019  
ARGUMENT HEARD ON : 11.12.2019  
JUDGMENT DELIVERED ON : 24.12.2019

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the F.I.R is that on 09.05.2018 at about 2.30 PM, informant Sri Rahul Basumutary went to Bandardewa market with his motorcycle. The informant after arriving at the market parked his motorcycle near the market and went inside for shopping. The informant then saw that accused Sri Rajib Doley committed theft of the aforesaid motorcycle and is taking away the same. The informant then raised hue and cry and chased the accused as a result of which the accused fell down from the

motorcycle. The accused left the motorcycle on the bank of Dikrong River and crossed the river by swimming. However, the villagers of No.2Parbatipur, situated on the other side of the river, caught the accused. The informant then lodged an F.I.R about the occurrence before the I/C of Bandardewa police out-post and the accused was handed over to police.

2. On receipt of the F.I.R, the I/C Bandardewa police out-post forwarded the same to the O/C of Bihpuria P.S. Accordingly, the O/C of Bihpuria P.S registered a case being numbered as Bihpuria P.S Case No. 244/18. After investigation, I.O of the case submitted charge sheet against accused Sri Rajib Doley for the offences punishable under section 379/411 of I.P.C. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charges are framed against the said accused for the offences punishable u/s 379/411 of IPC. The charges were then read over and explained to the accused person to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined seven witnesses; whereas the accused did not adduce any evidence. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by accused and the tenor of cross-examination of prosecution witnesses by defence. 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-

**POINTS FOR DETERMINATION:**

(i) Whether the accused person on 09.05.2018 at about 02:30 P.M at "Budhbazar" under Bihpuria police station, dishonestly took the motorcycle bearing registration No. AS 07 K 1715 from out of the possession of informant Sri Rahul Basumutary without the consent of informant, and thereby committed an offence punishable u/s 379 of IPC?

(ii) Whether the accused person on 09.05.2018 at about 02:30 P.M at Budhbazar under Bihpuria police station, dishonestly received or retained the motorcycle bearing registration No. AS 07 K 1715 knowing or having reason to believe the same to be stolen property, and thereby committed an offence punishable u/s 411 of IPC?

**DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:**

**POINT NO.1 & 2**

5. For the sake of convenience and as because point no.1 & 2 are inter-connected, hence they are taken up herein together for discussion & decision as follows.

6. As regards the aforesaid points for determination, informant Sri Rahul Basumutary as PW-1 in his evidence-in-chief has stated that on 09.05.2018 at about 02:30 P.M, he went to Bandardewa Budh bazar with a Royal Enfield motorcycle registered in the name of his brother Jintu Hazarika. He then parked the motorcycle in front of a pork shop and went inside the market for shopping. At that time the accused took the aforesaid motorcycle and fled away. He heard the sound when the aforesaid bike was started. He then saw the accused starting the aforesaid motorcycle. Thereafter, he along with Azad Islam and Dhruvajyoti Das chased the accused. The accused fell down from the bike on the bank of Dikrong River and then fled away by crossing the river. He and others raised hue and cry due to which the villagers present on the other side of river came to know about the matter and accordingly the Gaonburah of that village along with the villagers detained the accused. The matter was then informed to police. Police then came there and took the accused along with the motorcycle. He then lodged an FIR about the occurrence. Exhibit-1 is that FIR in which Exhibit-1(1) is his signature. Police seized the documents of the aforesaid motorcycle vide Exhibit-2 seizure list in which Exhibit-2(1) is his signature.

7. PW-2 Sri Dhruvajyoti Das in his evidence-in-chief has stated that on 09.05.2018 at about 02:00 P.M, he and the informant and one Azad Islam were present at Bandardewa Budh bazar. At that time he heard hue and cry and saw that the accused is taking away the Royal Enfield motorcycle of informant. He also saw that the informant and said Azad Islam and other people of the market are chasing the accused. The accused after going to some distance left the motorcycle and jumped into the river. The people on the other side of the river came to know about the matter after hearing hue and cry. In the meantime, he/PW2 went to the other side of the river. The people present in the other side of the river detained the accused. Thereafter, police was informed. Accordingly, police came there and took the accused along with the motorcycle. Police seized the motorcycle and its documents. Exhibit-2 is the seizure list in which Exhibit-2(2) is his signature.

8. PW-3 Md. Azad Islam in his evidence-in-chief has stated that on a day in the month of May in the year 2018, he along with the informant went to Budhbazar

Bandardewa in the Royal Enfield motorcycle of informant. The motorcycle was parked near the market after locking its handle. He and the informant went inside the market. At that time the accused opened the lock and started the said motorcycle and took away the same. He heard the sound of that bike and saw that the accused is taking away the bike. The accused after going to some distance fell down with the bike as the same was stuck in sand of the river bank. The accused then left the bike and crossed the said river. He and others then raised hue and cry. The people present on the other side of river came to know about the matter after hearing hue and cry and accordingly they detained the accused. Thereafter, the accused was brought to Bandardewa out-post along with the bike. The bike was seized and he put his signature on the seizure list. Exhibit-3 is the seizure list in which Exhibit-3(1) is his signature.

9. PW4 Sri Narayan Hazarika in his evidence in chief has stated that he knows the informant and accused. About 3 months back on a day in the evening he was present in his house. At that time he heard people shouting "*bike thief, bike thief, the thief has fled by crossing the river*". Thereafter, he went near Dikrong River but did not see anything. After a while the local people detained the accused and brought the accused to his house as he is the village headman (Gaonburah). He then started to inquire about the matter, but the accused tried to flee away by pushing three ladies. However, the leg of accused got stuck in the fence and at that time some people caught hold of the accused. He came to know that the accused crossed the river and was hiding inside a toilet and the people caught him at that time. He then informed the matter to Harmoti police and the police of Harmoti O.P handed over the accused to Banderdewa O.P.

10. On perusal of the evidence deposited by PW-1, PW-2, PW-3 and PW4 as narrated above, it is seen that the crux of allegation made by the said four witnesses is that on 09.05.2018 at about 02:30 P.M, informant went to Banderdewa "Budhbazar" with his motorcycle and parked the same in front of a shop in the said market. Thereafter, the accused stole the aforesaid motorcycle by riding away the same. The informant and others then chased the accused. The accused then left the motorcycle on the bank of Dikrong River and crossed the river by swimming. Thereafter, the villagers present on the other side of the river detained the accused. The accused was then handed over to police. In my opinion, the foregoing allegations, if presumed to be believable, will attract the particulars

of the offence punishable u/s 379 of IPC. Therefore, it is necessary to find out that whether the statements made by PW-1, PW-2, PW-3 and PW4 in their respective evidence in chief as narrated above are believable or not.

11. In a quest to find out the credibility of the versions of aforesaid four witnesses, it is necessary to examine the statements made by them in their cross-examination. To proceed further, it is seen that the PW-1 in his cross-examination has specifically denied the suggestions of defence that he/PW1 did not stated before police that the accused directly took his bike by riding the same from the parking. In this respect, perusal of the evidence in chief of PW1 shows that he did not specifically made any such statement in his evidence in chief. Also, the defence did not specifically confirmed from I.O/PW7 that whether the PW1 made any such allegation in his statement recorded u/s 161 of CrPC. Under such circumstances, it is evidence that the question of contradiction under section 162 of CrPC with respect to the aforesaid suggestion of defence do not arise at all. In that view of the matter, I do not anything in the aforesaid suggestion of defence which can create any adverse impact on the credibility of the evidence in chief of PW1.

12. Further, perusal of the evidence deposed by PW7 A.S.I Tarun Chetry, who investigated this case, shows that the PW1 in his statement u/s 161 of CrPC did not mentioned that he/PW1 parked the motorcycle in front of a pork shop and went inside the market and at that he/PW1 heard the sound when the accused started the aforesaid bike and thereafter he/PW1 along with Azad Islam and Dhruvajyoti Das chased the accused and the accused fell down from the bike on the bank of Dikrong river and the Gaonburah of the village on the other side of the river along with the villagers detained the accused.

13. Learned counsel for defence has argued that the omission of PW1 to mention the aforesaid material allegations in his statement u/s 161 of CrPC is clearly a contradiction as per explanation to Section 162 of CrPC, and as such, the aforesaid allegations made by PW1 being doubtful cannot be believed. At this juncture, I would like to mention that Section 162 of CrPC provides that a witness may be contradicted with respect to his previous statement u/s 161 of CrPC in the manner provided by Section 145 of Evidence Act. Also, as per the explanation to Section 162 CrPC, the omission to state a fact or circumstance by a witness may amount to contradiction if the same appears to be significant and otherwise relevant. Now, as regards the manner of proof of contradictions, Section 145 of Evidence Act

provides that, if it is intended to contradict a witness with respect to his previous statement, then his attention must be called to those part of the previous statement which are to be used for the purpose of contradicting him. To be more particular, the attention of the witness must be drawn to the contradictory part of that previous statement which he made before police and he be asked that whether he did in fact made that statement.

14. Therefore, having understood the manner in which a contradiction is required to be proved, coming back to the case in hand, it is seen that the defence while cross-examining PW1 did not draw his attention to the previous statement u/s 161 of CrPC with respect to such omission. To be more particular, the defence during cross-examination did not asked the PW1 that whether he did in fact mentioned those allegations in his previous statement under section 161 of CrPC. Under such circumstances, it is clear that the defence has failed to prove the aforesaid alleged omission as per the procedure laid down by Section 145 of CrPC. Hence, the only aforesaid statement of PW7/I.O in his cross-examination cannot go to prove the alleged omission/contradiction in the version of PW1. As such, the aforesaid argument of learned counsel for defence cannot be sustained.

15. Again, PW1 in his cross-examination has denied the suggestion of defence that he did not mentioned in his statement before I.O/PW7 that Azad Islam and Dhrubajyoti Das were with him/PW1 while chasing the accused, and when the accused crossed the river at that time the village headman (Gaonburah) detained the accused. Learned counsel for defence argued that the I.O has confirmed that PW1 did not mentioned the foregoing allegations in his statement u/s 161 of CrPC, and hence, the same shall be treated as a contradiction as per Section 162 of CrPC which obviously creates doubt as regards the credibility of the aforesaid allegations made by PW1.

16. In the above context, perusal of the cross-examination of PW7/I.O shows that the PW1 in his statement made before I.O/PW7 did not mentioned that Azad Islam and Dhrubajyoti Das were with him/PW1 while chasing the accused, and when the accused crossed the river at that time the village headman (Gaonburah) alongwith the villagers detained the accused. However, the PW1 in his statement before I.O/PW7 has mentioned that the accused jumped into Dikrong River and crossed the river and thereafter the accused was caught with the help of the villagers of Parbotipur village. Under such circumstances, I am of the opinion that the

allegation that accused was caught by the villagers, is substantially covered in the statement of PW1 recorded u/s 161 of CrPC. Hence, there is no contradiction in the aforesaid statement of PW1 to the effect that the villagers detained the accused.

17. However, it can be seen that the allegation that Azad Islam and Dhruvajyoti Das were with PW1 while chasing the accused, was not mentioned by PW1 in his statement u/s 161 of CrPC. Therefore, the omission to mention the foregoing statement, which is a material part of alleged occurrence, in my opinion is a contradiction as per Section 162 of CrPC which creates doubt as regards the credibility of that statement only.

18. Now, as regards the version of PW2& PW3, perusal of their cross-examination shows that they have specifically denied the suggestion of defence that they did not mention in their statement before I.O/PW7 that they (PW2& PW3) saw the accused taking away the bike by riding the same. In this respect, perusal of cross-examination of PW7/I.O shows that the PW2& PW3 in their respective statements before I.O/PW7 have not mentioned the aforesaid allegation. The omission to mention the foregoing allegation, which is a material part of alleged occurrence, in my opinion is a contradiction as per Section 162 of CrPC which creates doubt as regards the credibility of those statements made by PW2 & PW3 in their respective evidence in chief.

19. Be it mentioned here that the PW7/I.O in his cross-examination has quoted almost the entire evidence in chief of PW2 & PW3 and has stated that the PW2& PW3 have not mentioned those allegations in their respective statements u/s 161 of CrPC. However, it is noticeable that the defence during cross-examination did not draw the attention of PW2 & PW3 to their previous statements with respect to such omission and did not put any question to them suggesting that whether they did in fact mention those allegations in their statements under section 161 of CrPC. Under such circumstances, it is clear that the defence has failed to prove the omission/contradiction as per Section 145 of Evidence Act. Hence, the only aforesaid statement of I.O/PW7 cannot go to prove that there is in fact omission/contradiction in the version of PW2 & PW3. As such, the aforesaid argument of learned counsel for defence cannot be sustained.

20. As regards the version of PW4, it is seen that the PW4 in his cross-examination has denied the suggestion of defence that he/PW4 did not mention

in his statement before police that *after hearing hue & cry he went near Dikrong River but did not see anything. After a while the local people detained the accused and brought the accused to his house as he is the village headman (Gaonburah)*. However, in this respect, PW7/I.O in his cross-examination has confirmed that PW4 has not mentioned the aforesaid allegations in his statement u/s 161 of CrPC. Therefore, the omission to mention aforesaid material allegation in the statement before I.O/PW7, in my opinion, is a material contradiction as per Section 162 of CrPC which creates doubt as regards the credibility of the aforesaid allegations made by PW4.

21. It is also to be noted here that PW4 during his cross-examination has stated that he cannot say as to what occurrence took place at "Budhbazar". This shows that the PW4 do not have any knowledge about the incidents which took place during the alleged theft of motorcycle by the accused at "Budhbazar". Be it noted here that the PW4 in his evidence in chief has also not claimed to have any knowledge about the incident of theft which allegedly took place at "Budhbazar".

22. Now, having regard to the contradictions proved by defence as discussed in the previous paragraphs, I find that the statements made by PW2 & PW3 in their respective evidence in chief that *they saw the accused taking away the motorcycle by riding the same*, are doubtful and cannot be believed. Similarly, the statement made by PW1 that *Azad Islam and Dhrubajyoti Das were with him while chasing the accused*, is doubtful and cannot be believed. Also, the statement made by PW4 that *after hearing hue & cry he went near Dikrong River but did not see anything, and after a while the local people detained the accused and brought the accused to his house as he is the village headman (Gaonburah)*, are doubtful and cannot be believed.

23. However, the aforesaid contradictions, in my opinion, does not create any doubt regarding the credibility of the statements of PW2 & PW3 that they were present in the place of occurrence at the time of occurrence and they saw the remaining part of occurrence except the accused taking away the motorcycle by riding the same. Further, except the aforesaid contradictions, I do not find anything in the cross-examination of PW1, PW2, PW3 & PW4 which can create any doubt regarding the credibility of rest of the statements made by them in their respective evidence in chief.

24. Therefore, after keeping aside the aforesaid doubtful and unreliable statements, and thereaftertaking together the rest of the statements made by PW1, PW2, PW3 & PW4 in their respective evidence in chief, what crystallizes is that on 09.05.2018 at about 2.30 P.M, informant/PW1 Sri Rahul Basumatary went to Bandardewa "Budhbazar" with his motorcycle and parked the same in front of a shop in the said market. The accused then started the aforesaid motorcycle. At that time, the informant/PW1 saw the accused taking away that motorcycle by riding the same. The informant and some other people of that market chased the accused. The informant/PW1, PW2 & PW3 then saw that the accused left the motorcycle on the bank of Dikrong River and jumped into the river and crossed the same by swimming. In the meantime, the PW2 reached the other side of river. Thereafter, the villagers present in the other side of the river caught hold of the accused. The accused and the said motorcycle was then handed over to police.

25. In the above context, PW5 Sri Rahul Mukherjee in his evidence in chief has supported the case of prosecution by stating that on the day of occurrence he went to Bandardewa "Budhbazar" for shopping and at that time the people there caught the accused red-handed while committing theft of a motorcycle. He then came to know about the occurrence from informant. Be it mentioned here that there is nothing substantial in the cross-examination of PW5 which can create any reasonable doubt regarding the credibility of his aforesaid version.

26. Similarly, PW6 Sri Jyoti Prasad Hazarika in his evidence in chief has supported the case of prosecution by stating that on the day of occurrence the informant borrowed his (PW6's) motorcycle bearing registration no. AS 07 K 1715 to go to "Bandardewa market for shopping. Subsequently, the informant told him over phone that the aforesaid bike is being stolen from the market. The informant informed him/PW6 that the informant saw the accused committing theft and taking away the said motorcycle and after going some distance the accused fell down with the bike and then the people thereby caught the accused. Again, the PW7/I.O in his evidence in chief has supported the case of prosecution by stating that the accused and the motorcycle was handed over to police station by informant while lodging the F.I.R.

27. The aforesaid statements made by PW6 & PW7 shows that though have not seen the actual occurrence i.e., the accused taking away the motorcycle, but they have knowledge about the events/incidents which occurred immediately after or

before the alleged occurrence and those events are relevant as per the provision of section 6, 7 & 11 of the Indian Evidence Act, and accordingly, the same supports the case of prosecution.

28. Therefore, considering the entire discussion made above, I find that the witnesses examined by prosecution have proved beyond reasonable doubts that on 09.05.2018 at about 2.30 P.M, informant/PW1Sri Rahul Basumatary went to Bandardewa "Budhbazar" with his motorcycle and parked the same in front of a shop in the said market. The accused then took the motorcycle from that place without the consent of informant. However, the accused after going to some distance fall down with the motorcycle on the bank of Dikrong River and jumped into the river and crossed the same by swimming. Thereafter, the villagers present in the other side of the river caught hold of the accused. The accused and the said motorcycle was then handed over to police.

29. The aforesaid facts clearly show that the aforesaid motorcycle was taken by the accused from out of the possession of informant and without the consent of informant. Also, there is nothing in the evidence on record which can show that the accused took that motorcycle for some genuine reason which can justify that his intention was not dishonest; rather the fact that the accused fled away by crossing the river after falling from the motorcycle suggest that his intention was dishonest, or else he would not have fled away and would have stood to justify his act.

30. At this juncture, let me quote the ingredients of Section 378 of I.P.C which defines theft. As per Section 378 of I.P.C, whoever, intending to take dishonestly any moveable property out of the possession of any person without that persons consent, moves that property in order to such taking, is said to commit theft.

31. Keeping in mind the ingredients of Section 378 of I.P.C as quoted above, coming back to the case in hand, it is seen that the accused dishonestly moved the motorcycle, which is undisputedly a moveable property, in order to take that motorcycle from out of the possession of informant without the consent of informant. Therefore, it is clear that the acts committed by the accused are squarely covered by the provision of Section 378 of I.P.C. Hence, the accused committed an offence punishable under section 379 of I.P.C.

32. Before parting with the discussion, I deem it fit to mention that the accused was also charged under Section 411 of I.P.C as quoted in point for determination

no. 2 as above. As per Section 411 of I.P.C, it is required that the accused dishonestly received or retained the article (motorcycle bearing registration No. AS 07 K 1715) knowing or having reason to believe the same to be stolen property. However, from the discussions made in the previous paragraphs, it is clear that accused took the motorcycle from the place where it is parked. Hence, there arises no question of receiving or retaining the stolen property. Therefore, the ingredients of Section 411 of I.P.C are not attracted in the case in hand.

*DECISION: Point no. 1 is therefore decided in the affirmative and goes in favour of the prosecution. Point no.2 is therefore decided in the negative and goes against the prosecution.*

### **ORDER**

33. In view of the discussions made and decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Rajib Doley has committed the offence punishable under section 411 of I.P.C, and as such, the accused is acquitted from the charge under section 411 of I.P.C on benefit of doubt. However, the witnesses examined by prosecution have proved beyond reasonable doubts that accused person Sri Rajib Doley has committed the offence punishable under section 379 of I.P.C. As such, accused Sri Rajib Doley is held guilty for commission of offence punishable u/s 379 of I.P.C and accordingly he is convicted for the commission of offence punishable under section 379 of I.P.C.

34. As the offence is committed in a public place (market area) and with respect to valuable property (motorcycle), hence I am of the opinion that releasing accused Sri Rajib Doley under the provision of Probation of Offenders Act will portray a very lenient approach of the court and may thereby encourage similar potential offenders and may also create a sense of insecurity amongst the people. Hence, I am not inclined to extend the benefits of Probation of Offenders Act to accused Sri Rajib Doley.

35. I have heard accused Sri Rajib Doley on the point of sentence. The accused person has pleaded his innocence. Considering all aspects, accused Sri Rajib Doley is sentenced to undergo simple imprisonment for a period of 2 (two) years and also to pay a fine of Rupees 5000/- (five thousands) under section 379 of I.P.C, and in default of payment of fine to undergo simple imprisonment for another one month. However, the period of detention already undergone by the accused in this

case shall be set off against the period of sentence of two years as aforesaid. Be it mentioned here that as per case record, accused Sri Rajib Doley was in jail custody in connection with this case from 10/05/2018 to 17/07/2018. The fine of Rupees 5000/-, if paid or realized, be handed over to the informant as compensation.

36. The motorcycle and key seized vide M.R No. 52/2018 and M.R No. 53/2018 be released to the custody of its registered owner. Also, the documents seized vide M.R No. 53/2018 be released to the custody of the person in whose name the documents were issued by the concerned authority.

37. This case is disposed of on contest. Furnish a free copy of the Judgment to the accused.

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur

**APPENDIX**

**(A) PROSECUTION EXHIBITS**

- Exhibit. 1 – FIR
- Exhibit. 2 – Seizure list
- Exhibit. 3 – Seizure list
- Exhibit. 4 – Sketch map
- Exhibit. 5 – Seizure list
- Exhibit. 6 – Zimmanama
- Exhibit. 7 – Charge-sheet

**(B) DEFENCE EXHIBITS**

Nil

**(C) PROSECUTION WITNESSES**

- P.W. 1 – Sri Rahul Basumutary
- P.W. 2 – Sri Dhurbajyoti Das
- P.W. 3 – Md. Azad Islam
- P.W. 4 – Sri Narayan Hazarika
- P.W. 5 – Sri Rahul Mukherjee
- P.W. 6 – Sri Jyoti Prasad Hazarika
- P.W. 7 – ASI TarunChetry

**(D) DEFENCE WITNESSES**

Nil

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur