

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

C.R CASE NO: 03 OF 2017
COMPLAINANT: MD. AMSOR ALI Vs
ACCUSED: MD. MONIRUDDIN AND MD. AJIBUR RAHMAN.

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

C.R CASE NO: 03 / 2017

U/S 379 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. MONIRUDDIN AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: SRI G. SAHU
ADVOCATE FOR THE ACCUSED: MD. ABDUR RAHIM

CHARGE FRAMED ON : 14/11/2018
EVIDENCE RECORDED ON : 05/03/18, 10/04/19, 25/12/19

ARGUMENT HEARD ON : 30/01/2020
JUDGMENT DELIVERED ON : 07/02/2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 27.11.2013 accused Md. Moniruddin and Md. Azibur Rahman along with some other persons, taking advantage of the absence of informant from his house, harvested the crops from the paddy field which was in possession of informant Md. Amsor Ali. The crops were then stocked in the house of accused Md. Moniruddin. The informant on the night of 27.11.2013 itself

came to know about the theft of aforesaid crops by the accused persons. The informant then lodged a complaint petition about the occurrence before the learned District Magistrate, Lakhimpur, North Lakhimpur which was forwarded to the O/C of North Lakhimpur police station for taking action as per law.

2. On receipt of the complaint petition, the O/C of North Lakhimpur police station registered the same as North Lakhimpur P.S Case No. 886/2013. After investigation, I.O of the case submitted final report on the ground that the case is found false. Thereafter, notice was issued to the informant from this court and accordingly the informant appeared before this court and submitted a protest petition vide No. 174 dated 10.01.2017. On the basis of said protest petition, this case was registered as a complaint case and the complainant along with his witnesses were examined u/s 200/202 of CrPC.

3. On the basis of statements made by complainant and his witnesses, and having regard to the materials in the case record, cognizance was taken for the offence punishable u/s 379 of IPC against accused Md. Moniruddin and Md. Azibur Rahman. The complainant examined himself along with two other witnesses at the stage of evidence before charge. On the basis of evidence adduced by complainant, and after hearing both the parties, charge was framed against the above named two accused for the offence punishable u/s 379 of IPC. The charge was then read over and explained to both the accused to which they pleaded not guilty and stood to face the trial.

4. Complainant has examined three witnesses including himself in support of his case, whereas the accused has examined only one witness in support of their defence. The accused persons were examined u/s 313 of CrPC. Their statements are recorded in separate sheets as defence case is of total denial as it reveals from the statements of accused persons and the tenor of prosecution witnesses by defence. I have heard the learned counsels for both the parties.

Upon hearing and perusal of case record, I have framed the following point for determination for the purpose of proper adjudication of the dispute in hand.

5. **POINT FOR DETERMIANTION:**

(i) Whether on 27.11.2013 at about 10.30 AM at Sariabari under North Lakhimpur police station, the accused persons dishonestly took away paddy crops belonging to complainant Md. Amsar Ali from the agricultural field which was in possession of the complainant, without taking the consent of complainant and from out of the possession of complainant, and thereby committed an offence punishable u/s 379 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

6. As regards the aforesaid point for determination, the complainant as PW-1 in his evidence-in-chief has stated that on 27.11.2013, while he was not at his home at that time the accused persons by engaging some other persons harvested the crops from his (PW1's) agricultural field and took away the same. He (PW-1) cultivated paddy crops in his agricultural field measuring 4 bighas 3 katha. The accused persons took away the entire paddy crops standing on the aforesaid field. He came to know about the occurrence from his neighbours in the evening. He then came to know that accused Moniruddin has kept the aforesaid paddy crops in his house.

7. Perusal of evidence deposed by PW-1/complainant as narrated above clearly shows that he is not an eye witness of the alleged occurrence as he was not present in the place of occurrence. As such, the allegations made by PW-1 against the accused persons are totally hearsay and the same cannot be believed unless corroborated by some other reliable evidence. Therefore, let me proceed with the discussion of evidence deposed by PW2 & PW3 to find out as to whether their version is reliable and corroborates the version of PW1.

8. In the above context, perusal of evidence deposed by PW2 & PW3 shows that they have supported the allegation of theft of crops by the accused persons, and have also claimed themselves to be eyewitnesses of the alleged theft. However, though PW-2 has claimed that the accused persons have harvested crops standing over only about 2 bighas of land out of 5 bighas, but as per PW-3 the accused persons have harvested the crops standing over the entire 5 bighas of land. In my opinion, had the occurrence

took place as alleged then the version of PW-2 and PW-3, being eye witnesses, should have been consistent with respect to the quantum of crops which is allegedly taken away by the accused persons. Under such circumstances, the aforesaid inconsistency in the version of PW-2 and PW-3 creates serious doubts as regards the credibility of their statements with respect to theft of crops by the accused persons.

9. Further, the boundary of aforesaid land mentioned by PW-2 and PW-3 in their respective evidence-in-chief is found contradictory. To be more particular, PW-2 has stated that the western side of aforesaid land of informant is bounded by the land of Rajab Ali and the eastern side is bounded by the land of Jamaluddin & Amir Ali. However, as per PW-3, the eastern side of aforesaid land is bounded by the land of Rajab Ali, and the western side is bounded by land of Riazuddin. Again, in his cross-examination, PW3 has stated a different boundary of the aforesaid land i.e., land of Jamaluddin & Amir Ali in the eastern side, and land of Rajab Ali in the western side. The aforesaid inconsistency and contradiction in the version of PW-2 and PW-3 with respect to the boundary of the aforesaid alleged land of informants shows that the PW-2 and PW-3 do not have any proper knowledge about the land which the informant has claimed to be his own land. In that view of the matter, the allegations made by PW-2 and PW-3 with respect to theft of crops by the accused persons from the land of informant, becomes doubtful.

10. In the above context, DW-1 Md. Jamiruddin Ahmed has stated that the place of occurrence measuring 4 bighas 3 kathas and 17 lessa which is situated at dag no. 415 of patta no. 68, belongs to his father. The complainant got 4 bighas 3 kathas and 15 lessa of land in another dag of the same patta. At this juncture, it is necessary to point out that PW2 in his cross-examination has specifically stated that the accused persons earlier used to cultivate crops in the place of occurrence. The foregoing statement of DW-1 and PW-2, if taken together, creates doubt as regards the credibility of the statement of complainant/PW-1 that the place of occurrence, i.e. land of dag no. 415 of Patta No. 68, was in his possession at the time of occurrence.

11. Besides the above, though the complainant in his evidence-in-chief and F.I.R has claimed that the occurrence took place on 27.11.2013, but in his cross-examination the PW-1/complainant has specifically stated that the occurrence took place on 29.11.2001 and he properly remembers the date of alleged occurrence. Therefore, it is clear that the informant has stated two different dates of the alleged occurrence which are not even nearly situated. In my opinion, had the occurrence took place as alleged then the PW-1 would have been able to say the date of alleged occurrence properly. Hence, the aforesaid inconsistency in the version of PW-1 with respect to the date of alleged occurrence creates doubt regarding the credibility of his evidence-in-chief.

12. Before parting with the discussion, I deem it fit to mention here that there is nothing in the case record which can show that any property was seized by the I.O at the time of investigation of this case. In my opinion, had the accused persons committed theft as alleged then the I.O would have been able to seize the allegedly stolen crops which were kept in the house of accused Moniruddin as claimed by the complainant. Therefore, absence of seizure of any such crops by the I.O creates further doubt as regards the credibility of the entire case of prosecution.

13. Considering the entire discussion made above, I find that the witnesses examined by complainant have failed to prove beyond reasonable doubt that the accused persons have committed the offences as alleged.

DECISION: This point is therefore decided in the negative and goes against the prosecution.

ORDER

14. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by complainant have failed to prove beyond reasonable doubts that accused Md. Moniruddin and Md. Azibur Rahman have committed the offence punishable under section 379 of I.P.C as alleged, and as such, the above named accused persons are acquitted of the charge under section 379 of I.P.C on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 07th day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX(A) PROSECUTION EXHIBITS

Exhibit.1 – F.I.R

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Md. Amsar Ali

P.W. 2 – Md. Yunus Ali

P.W. 3 – Md. Kitab Ali

(D) DEFENCE WITNESSES

D.W. 1 – Md. Jamiruddin Amed

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur