

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

G.R CASE NO: 2576 OF 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. AMIR ALI AND ORS.

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

GR CASE NO: 2576 / 2015

U/S 379 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. AMIR ALI AND ORS.

PRESENT: MR. F.U. CHOUDHURY, AJS

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

CHARGE FRAMED ON : 07.06.2017
EVIDENCE RECORDED ON : 30.08.2019 & 07.02.2020

ARGUMENT HEARD ON : 28.02.2020
JUDGMENT DELIVERED ON : 28.02.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 17.11.2015 at about 09:30 P.M while four unknown persons took a cow belonging to informant from his house and were about to put that cow inside a vehicle bearing registration no. AS 07 C 5608, at that time a neighbour of informant saw the occurrence and chased those persons and was able to detain two of those unknown persons. The other two unknown persons fled

away from the place of occurrence. The two persons who were detained, have identified themselves as Md. Amir Ali and Md. Shahjahan Ali. The informant thereafter lodged an F.I.R about the occurrence before the O/C of Laluk police station.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 273/15 and after investigation I.O of the case submitted charge sheet against accused persons Md. Amir Ali, Md. Shahjahan Ali, Md. Saidul Islam and Shariful Islam for the offence punishable u/s 379 of IPC. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge was framed against the above named four accused persons. The charges were then read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined five witnesses, whereas the defence did not examine any witness. The accused persons were 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 persons on 17.12.2015 at about 9.30 PM at NizLaluk village under Laluk police station, dishonestly took a cow belonging to informant Sri Jayanta Rajkhowa from out of the possession of informant without his consent, 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, informant Sri Jayanta Rajkhowa as PW-1 in his evidence-in-chief has stated that about 3 years back on a day at about 10.00 PM, he went to the place of occurrence on being informed by villagers over phone and learnt that while the three accused

persons were taking away his cow on a vehicle at that time the villagers saw the accused persons and stopped them. He saw his aforesaid cow and the aforesaid vehicle in the place of occurrence and identified the cow to be his own cow. Thereafter, police took the aforesaid cow and vehicle to police station. He then lodged an FIR about the occurrence. He also put his signature in the seizure list with respect to the cow and vehicle. Exhibit-1 is the FIR in which Exhibit-1(1) is his signature. Exhibit-2 is the seizure list in which Exhibit-2(2) is his signature.

7. On perusal of the evidence deposed by informant as narrated above, it is seen that the informant has specifically mentioned only about three accused who were present in the court on the day of deposing evidence. Perusal of case record shows that accused Amir Ali, Shajahan Ali and Sahidul Islam were present in the court on the day of deposing evidence by PW-1/informant. Hence, it is clear that the informant/PW-1 has not stated anything about the involvement of accused Shariful Islam in the alleged occurrence. This shows that there is inconsistency in the version stated by informant in the FIR with that of his version deposed in court as PW-1.

8. To be more particular, the informant in the FIR has mentioned that four accused persons are involved in the commission of alleged occurrence, but, on the other hand, while deposing evidence in court as PW-1 the informant has stated that only three accused persons are involved in the commission of alleged occurrence. The number of persons involved in the commission of alleged offence is, in my opinion, a material point of the alleged occurrence. Therefore, such inconsistency with respect to a material point of the alleged occurrence creates serious doubt as regards the credibility of the version stated by PW-1 in his evidence-in-chief.

9. Further, the PW-1 in his cross-examination, has specifically stated that he did not see the persons who tried to take away his cow in the aforesaid vehicle. This shows that the statement made by informant/PW-1 in his evidence-in-chief to the effect that three accused persons were about to take his cow on the vehicle, is totally hearsay and the same cannot be believed unless corroborated by some other reliable evidence.

10. Besides the above, it can be understood from the evidence deposed by PW-1 that he came to the place of occurrence after getting information that the accused persons are detained by the villagers. However, it is noticeable that the PW-1 in his evidence nowhere specifically mentioned that whether he saw any of the accused persons at the place of occurrence after he arrived there. Therefore, it is clear that there is nothing in the evidence of PW-1 which can show that he saw the accused persons in the place of occurrence.

11. In the above context, PW-2 Sri Krishna Konwar in his evidence has stated that at the time of occurrence he came to know from villagers that a cow belonging to informant is stolen away. Thereafter, he put his signature on Exhibit-2 paper on being asked by the villagers. Similarly, PW-3 Sri Papu Konwar in his evidence has stated that he came to know that a cow belonging to informant was stolen away. On the next day of occurrence, police met him on the road and took his signature in Exhibit-2 paper. The PW-4 Sri Pradip Handique and PW-5 Sri Jayanta Phukan in their evidence have stated that they heard from villagers that somebody was caught while committing theft of a cow and was then handed over to police.

12. As such, it is clear that there is nothing in the evidence of PW-2, PW-3, PW-4 and PW-5 which can show that the accused persons took the cow belonging to informant, or that the cow belonging to informant was recovered from the possession of accused persons. There is no incriminating material against the accused persons in the evidence deposed by PW-2, PW-3, PW-4 and PW-5.

13. Considering the entire discussion made above, it is clear that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused persons have committed the offence as alleged.

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

ORDER

14. In view of the discussions made above and the decisions reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Md.

Amir Ali, Md. Shahjahan Ali, Md. Saidul Islam and Shariful Islam have committed the offence punishable under section 379 of I.P.C as alleged, and as such, all the four accused persons are acquitted from the charge under section 379 of IPC on benefit of doubt and they be set at liberty forthwith.

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

The vehicle seized vide M.R No. 129/15 be released to the custody of its registered owner. Also, the bullock seized vide M.R No. 129/15 be released to the custody of informant after taking proper bond as per law.

This judgment is given under my hand, and seal of this court on this the 28th 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

Exhibit.2 – Seizure list

Exhibit.3 – Zimmanama

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Sri Jayanta Rajkhowa

P.W. 2 – Sri Krishna Konwar

P.W. 3 – Sri Papu Konwar

P.W. 4 – Sri Pradip Handique

P.W. 5 – Sri Jayanta Phukan

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur