

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

G.R CASE NO: 1589 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI SENKA MUNDA AND ANR

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

GR CASE NO: 1589 / 2017

U/S 379/429 OF I.P.C, r/w SECTION 8 OF ASSAM CATTLE
PREVENTION ACT 1950

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI SENKA MUNDA AND ANR

PRESENT: MR. F.U. CHOUDHURY, AJS

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

CHARGE FRAMED ON : 28/07/2017
EVIDENCE RECORDED ON : 02/06/18, 08/08/18, 07/01/19, 29/05/19
03/08/19, 10/01/20
ARGUMENT HEARD ON : 27/11/2020
JUDGMENT DELIVERED ON : 27/11/2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 04.06.2017, the villagers of Kuhiarbari village and Rupohi Rajgarh village along with the VDP President of both the villages went to the house of accused Senka Munda on getting a secret information and found that the above named accused along with others are slaughtering a cow inside the homestead of said accused. Thereafter, the villagers caught hold of the above named accused but the rest of them fled away.

Accordingly, police officials of Chauldhowa police out-post were called upon and the above named accused along with a slaughtered cow was handed over to police. The villagers thereafter lodged an FIR about the occurrence before the In-charge of Chauldhowa police out-post.

2. On receipt of the F.I.R, a case was registered being numbered as Boginadi P.S Case No. 125/17. After investigation, I.O of the case submitted charge sheet against accused persons Sri Senka Munda and Sri Bikash Sangha for the offences punishable u/s 379/429 of IPC, r/w section 8 of Assam Cattle Prevention Act 1950. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charges were framed against the accused persons in separate form for the offences punishable u/s 379/429 of IPC, r/w section 8 of Assam Cattle Prevention Act 1950. The charges were read over and explained to the accused to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined nine witnesses, whereas the defence did not examined any witness. The accused persons are examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused persons 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-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons on 04.06.2017 at about 12.00 AM in the night at Kuliarbari village under Boginadi police station, dishonestly took away one cow belonging to Smt. Filisita Kheria from out of her possession and without her consent, and thereby committed an offence punishable u/s 379 of IPC?

(ii) Whether the accused persons on 04.06.2017 at about 12.00 AM in the night at Kuliarbari village under Boginadi police station, committed mischief by killing a cow belonging to Smt. Filisita Kheria, and thereby committed an offence punishable u/s 429 of IPC?

(iii) Whether the accused persons on 04.06.2017 at about 12.00 AM in the night at Kuliarbari village under Boginadi police station, slaughtered a cow belonging to

Smt. Filisita Kheria without any certificate and thereby committed an offence defined u/s 6 of Assam Cattle Prevention Act 1950, which is punishable u/s 8 of that Act?

DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO. 1, 2 AND 3

6. For the sake of convenience and as because point no. 1, 2 & 3 are inter-connected, hence they are taken up herein together for discussion & decision as follows.

7. As regards the aforesaid points for determination, PW-1 Sri Manoj Hazarika in his evidence-in-chief has stated that at the time of occurrence he heard from villagers that a cow has been slaughtered in Khori line garden area. Thereafter, he went to the place of occurrence, i.e. the homestead of accused persons, and saw many people gathered there.

8. PW-2 Sri Dilip Saikia in his evidence-in-chief has stated that at the time of occurrence he came to know that a cow from his village went missing. Thereafter, he went to the house of accused Senka Munda and saw that police and many people have gathered there. He then came to know that somebody has slaughtered that cow.

9. PW-4 Sri Bhadreswar Bhuyan in his evidence-in-chief has stated that on the day of occurrence he was informed by VDP President Dilip Saikia and Member Manoj Hazarika that a cow has been slaughtered in the house of a person. Thereafter, he went to the house of a person with surname 'Munda' at Khori line of his village. He then saw a cow slaughtered in that place, but nobody was present there. He then informed the matter to Chauldhowa police out-post.

10. PW-5 Smt. Filisita Kheria in her evidence-in-chief has stated that about 2 years back her cow was stolen away. After a few days she was informed by VDP that her cow was found at Kuliarbari. She immediately went there and saw that the cow was slaughtered in the house of accused Senka Munda. She then went to the police station.

11. PW-6 Sri Pintu Dusad in his evidence-in-chief has stated that about 1 ½ years back a cow belonging to Smt. Filisita Kheria was stolen away. After a few

days, he came to know that the aforesaid cow was found in a slaughtered condition by the accused persons.

12. On perusal of the evidence deposed by prosecution witnesses as narrated above, it is seen that except PW-7 no other witness has specifically stated that who committed the theft of aforesaid cow. There is nothing in the evidence of aforesaid witnesses (except PW-7) which can specifically show that the accused persons have committed theft of the cow or slaughtered the cow as alleged. In fact, PW-2 and PW-4 in their respective cross-examination have stated that they do not know that who committed theft of the cow and who has slaughtered the cow. Again, PW-1 in his evidence-in-chief has specifically stated that he heard that a person belonging to Muslim community of Chauldhowa area has slaughtered the cow. As such, it is clear that the PW-1, PW-2 and PW-4 have not at all implicated the accused persons to be involved in the alleged occurrence.

13. Similarly, PW-5 in her cross-examination has stated that she did not see her aforesaid cow being stolen away or being slaughtered. As such, it is clear that the PW-5 do not have any specific knowledge about the person who allegedly committed theft and slaughtered that cow.

14. As regards the aforesaid version of PW-6, it is seen that though he has stated in his evidence-in-chief that he heard from other persons that the above named two accused have committed theft of the aforesaid cow, but in his cross-examination, PW-6 has stated that he do not know that who committed theft and slaughtered the aforesaid cow. He also does not know that whether the accused persons are actually involved in the commission of theft of the aforesaid cow. He does not know the name of aforesaid persons from whom he heard that the accused persons are involved in the theft of said cow. The foregoing statements made by PW-6 clearly show that he do not have any actual knowledge regarding the involvement of accused persons in the commission of alleged offences. Also, the statement made by him regarding the involvement of accused persons in the commission of theft is clearly hearsay evidence and the same cannot be believed unless corroborated by some other reliable statement.

15. Besides the above, PW-3 Sri Gopal Kalita and PW-8 Sri Kartik Baraik have not stated any incriminating material against the accused persons. Also, PW-7 Sri Sukhen Changmai, who being the Veterinary Doctor, conducted post-mortem

examination of that cow and has simply stated the findings of such examination in his evidence. However, there is nothing in the evidence of PW-7 which can even remotely show the involvement of the accused persons in the commission of alleged offences. Similarly, I.O/PW-9 Sri Dina Nath Mili in his evidence has simply described the steps taken by him during investigation of this case and there is nothing specific in his evidence which in itself can prove that the accused persons have committed the offences as alleged.

16. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused persons have committed the offences as alleged in the FIR and as mentioned in the aforesaid points for determination.

DECISION: Point no.1, 2 & 3 are therefore decided in the negative and goes against the prosecution.

ORDER

17. 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 prosecution have failed to prove beyond reasonable doubts that accused Sri Senka Munda and Sri Bikash Sangha have committed the offences punishable under section 379/429 of IPC, r/w section 8 of Assam Cattle Prevention Act 1950, as alleged, and as such the above named accused persons are acquitted of the charges under section 379/429 of IPC, r/w section 8 of Assam Cattle Prevention Act 1950 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.

This judgment is given under my hand, and seal of this court on this the 27th day of November, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**Prosecution Exhibits:**

Exhibit.1 – FIR

Exhibit.2 -

Prosecution Witnesses:

1. PW-1 – Sri Manoj Hazarika
2. PW-2 – Sri Dilip Saikia
3. PW-3 – Sri Gopal Kalita
4. PW-4 – Sri Bhadreswar Bhuyan
5. PW-5 – Smt. Filisita Kheria
6. PW-6 – Sri Pintu Dusad
7. PW-7 – Sri Sukhen Changmai
8. PW-8 – Sri Kartik Baraik
9. PW-9 – Sri Dina Nath Mili

Defence Witnesses:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur