

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

G.R CASE NO: 3067 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. RUSTAM ALI & ANR

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

G.R CASE NO: 3067 / 2016

U/S 420/511/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. RUSTAM ALI & ANR

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: MD. J.H. BORA

CHARGE FRAMED ON : 19/01/2018
EVIDENCE RECORDED ON : 11/06/18, 18/12/18, 08/02/19

ARGUMENT HEARD ON : 09/04/2019
JUDGMENT DELIVERED ON : 09/04/2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R is that on 29.11.2016 at about 10.30 AM, informant Sri Nityananda Baruah, ASI of Police, got secret information that two persons from Bongalmara area came to Rangchali area to sell fake gold. Thereafter, the informant along with In-charge of Khelmati police out-post and other staff arrived at Hatilung-Rangchali road and conducted a search operation. At that time, the informant and his staff suspected the accused persons who were coming from Rangchali on a motorcycle bearing registration number AS

07 F 2846. The informant then recovered an idol made of suspected fake gold from the possession of accused Md. Rustam Ali. The aforesaid idol was then seized. It is suspected by the informant that the accused persons brought the aforesaid idol made of fake gold with the intention to sell the same to somebody by cheating. The informant thereafter lodged and FIR about the occurrence before the In-charge of Khelmati police out-post.

2. On receipt of the F.I.R, the I/C of Khelmati out-post forwarded the same to O/C North Lakhimpur P.S for registration of a case. Accordingly, the O/C North Lakhimpur P.S registered a case being numbered as North Lakhimpur P.S Case No. 1212/16. After investigation, I.O of the case submitted charge sheet against accused Md. Rustam Ali and Md. Saiful Islam for the offence punishable under section 420/511/34 of I.P.C. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge is framed against the accused persons for the offence punishable under section 420/511/34 of I.P.C. The charge was 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 accused persons did not examine any witness in support of his defence. The accused persons were examined under section 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused u/s 313 or CrPC 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 persons on 29.11.2016 at about 10.00 AM, in furtherance of their common intention, attempted to cheat some person, and in such attempt the accused persons arrived at Rangchali area with an idol made of fake gold so as to deceive some person and dishonestly induce such deceived person to deliver money for that fake gold, and thereby committed an offence punishable u/s 420/511/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

5. As regards the aforesaid point for determination, PW-1 Sri Ananda Saikia (Traffic police of North Lakhimpur branch) in his evidence-in-chief has stated that at the time of occurrence he along with other police staff under the leadership of ASI Sri Nityananda Baruah detained the accused persons while the accused persons were going through the place of occurrence on a motorcycle and thereafter recovered an idol made of metal resembling gold from the possession of accused Md. Rustam Ali. Thereafter, both the accused along with the motorcycle were brought to Khlemati police out-post. The aforesaid idol was then seized. Exhibit-1 is the seizure list in which Exhibit - 1(1) is his signature.

6. PW-2 Md. Azimuddin Ahmed (Home Guard) in his evidence-in-chief has stated that at the time of occurrence he along with the informant and Sri Ananda Saikia went to Hatilung Rangchali area and recovered a golden idol which was wrapped in a "Gamusa" and tied to the waist of accused person. Thereafter, both the accused persons along with the motorcycle, on which the accused persons came to the place of occurrence, were brought to Khelmati police out-post. The aforesaid golden idol and the motorcycle were then seized. Exhibit-1 is the seizure list in which Exhibit-1(1) is his signature. During his cross-examination, PW-2 has stated that the aforesaid idol was seized from the possession of accused Md. Saiful Islam.

7. PW-3 Md. Sofi Ali, i.e. the seizure witness, in his evidence in chief has stated that he do not recognize the accused persons. About one year ago, a police personnel from Khelmati police out-post called him to the said police out post and informed that a goldsmith is detained by them (police). Thereafter police took his signature in the seizure list, i.e. Exhibit-1 in which Exhibit-1(1) is his signature. PW-3 in his cross-examination has stated that he put his signature on a blank paper and police did not produce any article before him.

8. PW-4 Sri Nityananda Baruah (ASI of Police) in his evidence-in-chief has stated that he knows accused Md. Saiful Islam but he do not recognize the co-accused. About one year back, while he was posted at Khelmati police out-post he got information that accused Md. Saiful Islam and another brought a fake gold idol for sale. Thereafter, he along with his staff went to Hatilung area and conducted search operation. Accordingly, he detained accused Saiful Islam and another. He recovered one fake gold idol from the possession of said accused and also the motorcycle used by the accused persons. Thereafter, he handed over the custody

of accused persons and the seized idol along with motorcycle to the In-charge of Khelmati out-post. He then lodged an FIR about the occurrence.

9. During his cross-examination, PW-4 has stated that the aforesaid idol was not sent to Forensic laboratory for examination. He do not know that of which metal the aforesaid idol is actually made.

10. PW-5 Mohidhar Taye (the then I/C of Khelmati police out-post) in his evidence-in-chief has stated that at the time of occurrence he along with the informant and his staff arrived at the place of occurrence and found the accused persons under suspicious circumstances. Thereafter, he and his staff searched the accused persons and found one golden coloured idol. He also found a motorcycle which was used by the accused persons to travel to that place. The motorcycle as well as the golden coloured idol was seized in presence of witnesses by ASI Sri Nityananda Baruah. Thereafter, he and his staff came back to Khelmati police out-post along with the accused persons and seized articles.

11. At the time of arguments, learned counsel for the defence submitted that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the idol in question from the possession of any of the accused persons. It is also argued by learned counsel for defence, that even if it is presumed to be true that the idol was not made of gold and that the same was seized from the possession of accused persons, then also such simple fact of seizure cannot be an offence as because the prosecution has failed to prove beyond reasonable doubt that the accused persons were about to sell the same to somebody else by representing the same as gold.

12. Now, on going through the evidence deposited by the prosecution witnesses as narrated above, it is seen that at the time of occurrence PW-1, PW-2, PW-4 and PW-5 have allegedly detained the accused persons at Hatilung area and thereafter recovered an idol made of fake gold. As regards the aforesaid seizure, it is specifically stated by PW-1 that the idol was found tied to the waist of accused Ruistam Ali and was accordingly recovered. However, as per PW-2 and PW-4/informant, the said idol was recovered from the possession of accused Md. Saiful Islam. Again, PW-5/I.O in his evidence has not specifically mentioned that from whose possession the aforesaid idol was recovered. It is important to note here that PW4/informant did not even recognize the co-accused Rustam Ali.

13. From the above evidence, it is apparent that there is material contradiction in the statement of prosecution witnesses as regards the identity of accused from

whom the aforesaid idol was seized. In my opinion, had the occurrence took place as alleged then the PW1, PW2, PW4 & PW5, who claimed themselves to be present together in the place of occurrence and also to have recovered the aforesaid idol, should have been able to say consistently the name of accused from whom the idol was allegedly seized. As such, the aforesaid contradiction creates serious doubt as regards the alleged seizure of the aforesaid idol from the possession of accused persons. Moreover, the failure of PW4/informant to recognize co-accused Md. Rustom Ali creates serious doubt as regard the alleged presence of said accused in the place of occurrence. Also, the aforesaid doubt is further confirmed by the statement of PW-3 Md. Sofi Ali, i.e. the seizure witness, who failed to identify the accused persons and also failed to say specifically that what article was seized vide exhibit – 1 seizure list.

14. In addition to the above, it is also seen that there is material inconsistency in the statements of prosecution witnesses as regards the place of alleged seizure. To be more particular, as per PW-5 the alleged seizure of idol was made in the place of occurrence in presence of witnesses, whereas, as per PW1, PW2 and PW3 the aforesaid idol was seized in police station. Such inconsistency, being related to a material part of the alleged occurrence creates serious doubts as regards the alleged seizure of aforesaid idol from the possession of accused persons. Moreover, the accused persons during their cross-examination u/s 313 of CrPC have specifically denied the seizure of aforesaid idol from their possession.

15. Therefore, considering the above discussion, I am of the opinion that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that aforesaid idol was seized from the possession of accused persons.

16. Besides the above, there is nothing in the evidence on record which can show that the accused persons were going to sell the aforesaid idol to any person. Also, prosecution has not properly proved any report from forensic expert to show that the seized article is not actually made of gold. Under such circumstances, in my opinion, even if the alleged seizure of idol from the accused persons is presumed to be correct then also such simple fact of seizure of the idol from the possession of accused persons cannot be understood to constitute an offence punishable u/s 420 of IPC or attempt thereof. As rightly argued by the learned counsel for defence, simple possession of an idol cannot be an offence under section 420 of I.P.C unless & until it is proved beyond reasonable doubt that the

accused persons were about to sell the same to somebody else by falsely representing the same to be made of gold.

17. Considering the entire discussion made above, it is evident that the witnesses examined by the 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

18. 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 Md. Rustam Ali and Md. Saiful Islam have committed the offence punishable under section 420/511/34 of I.P.C as alleged, and as such, the said accused persons are acquitted of the charge under section 420/511/34 of I.P.C on benefit of doubt and they be set at liberty forthwith.

The articles seized vide M.R No. 426 of 2016 be destroyed in due course of time as per law.

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 09th day of April, 2019.

The case is disposed of on contest.

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur

APPENDIX

(A) **PROSECUTION EXHIBITS**

- Exhibit.1 – Seizure list
- Exhibit.2 – F.I.R
- Exhibit.3 – Charge Sheet

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

- P.W. 1 – Sri Ananda Saikia
- P.W. 2 – Md. Azimuddin Ahmed
- P.W. 3 – Md. Sofi Ali
- P.W. 4 – Sri Nityananda Baruah
- P.W. 5 – Sri Mohidhar Taye

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur