

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

G.R CASE NO: 125 OF 2011  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI GOKUL DAS & ANR

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

GR CASE NO: 125 OF 2011

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI GOKUL DAS & ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P  
ADVOCATE FOR THE ACCUSED: MRS. J. DEVI

CHARGE FRAMED ON : 07/01/2017  
EVIDENCE RECORDED ON : 15/12/17, 31/07/18, 24/09/18

ARGUMENT HEARD ON : 03/04/2019  
JUDGMENT DELIVERED ON : 03/04/2019

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the FIR is that on 31.01.2011, informant Sri Padmeswar Borkotoki, who was the then Head Constable of Nowboicha police out-post, got information from reliable sources that some persons came to Jokiachuk Gaon, Nowboicha in order to sell fake gold. Accordingly, the informant along with his police staff went to Jokiachuk village at about 2.30 A.M in the night and thereafter caught the accused persons named in

the F.I.R and found a metallic piece of about 6 inch length which looks like gold, from the possession of accused persons. The informant came to know from reliable sources that the accused persons were about to sell the aforesaid fake gold to some innocent person for wrongful gain. The informant thereafter brought the accused persons along with the piece of fake gold to Nowboicha police out-post and then lodged an F.I.R against the accused persons in that respect.

2. On receipt of the F.I.R, In-charge of Nowboicha 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. 45/2011. After investigation, I/O of the case submitted charge sheet against accused Sri Gokul Das and Sri Bibhisan Das for the offences punishable under section 420/511/34 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, charge is framed u/s 420/511/34 of IPC against the above named accused persons. The charges are 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 three witnesses whereas the accused did not examine any witness in support of his defence. The accused persons are examined u/s 313 CrPC. Defence case is of total denial as it reveals from the statements made by accused u/s 313 of CrPC and the tenor of cross-examination of prosecution witnesses by defence. I have heard the arguments of 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 on 01.02.2011 at about 2.30 AM, the accused persons in furtherance of their common intention, attempted to cheat innocent persons of Jokiachuk village, and in such attempt the accused persons arrived at Jokiachuk village with a piece of fake gold in order to dishonestly induce such innocent persons to deliver money in exchange of such 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 Pulin Borah in his evidence-in-chief has stated that at the time of occurrence he went to Jokiachuk village and saw the accused persons waiting there. He then conducted search and found a gold boat about 5 inch in length and 4 inch in breadth. Accordingly, he and his staff apprehended both the accused persons and brought them to police station. The piece of gold was seized by police and he/PW-1 signed in the seizure list as witness. Ext-1 is the seizure list in which Ext-1(1) is his signature. Material Ext-1 is the piece of gold which was seized vide Ext-1 seizure list. It is found that the piece of gold was actually fake gold and accordingly a case was filed against the accused persons by the informant.

6. PW2 Sri Subhan Gogoi in his evidence in chief has stated that he knows the informant. He do not know the accused persons. On a day about 4-5 years back, police took his signature. Exhibit – 1 is the seizure list in which exhibit – 1(2) is his signature. Cross-examination of PW2 was declined by defence.

7. PW-3 Sri Padmeswar Borkotoki in his evidence-in-chief has stated that he is the informant. At the time of occurrence he along with his police staff went to Jokiachuk village on getting information that some persons came to that village to sell fake gold. After arriving at Jokiachuk village he saw that 6-7 persons are trying to flee away. At that time, he and his staff caught hold of some of those persons. Accused Gokul Das was there and a piece of gold resembling the structure of a boat was found wrapped in a cloth and tied to the waist of said Gokul Das. Accused Sri Bibhishan Das was also there and was apprehended by his (informant's) police staff. Thereafter he along with police staff brought the above named two accused to police out-post and handed over the accused to the In-charge of police out-post. Subsequently, he lodged an F.I.R about the occurrence. He also put his signature in the seizure list. Ext-1 is that seizure list in which Ext-1(3) is his signature. Ext-2 is the FIR lodged by him in which Ext-2(1) is his signature.

8. At the time of argument, learned counsel for defence submitted that the independent witness examined by prosecution has not supported the case of prosecution. Also, the PW-1 and PW3/informant examined by prosecution have failed to prove that the accused persons were about to cheat any particular person, or that the accused persons were about to sell that fake gold to any

particular person. Learned counsel for the defence has therefore prayed for acquittal of the accused persons.

9. On going through the evidence deposited by PW-1 and PW-3 as narrated above, it is seen that at the time of occurrence the PW-1 and PW-3 along with other police personal allegedly detained the accused persons in Jokiachuk village and seized a piece of fake gold. In this respect, perusal of the case record shows that the prosecution has not taken any steps for examination of the aforesaid seized metal by any expert in order to ascertain as to whether the seized metal is actually gold or not. Further, evidently PW-1, PW-2 and PW-3 examined by the prosecution are not Government recognized expert. Hence, they cannot testify the actual composition of the seized metal. As such, the statement of PW-1 and PW-3, that the seized metal is actually a fake gold, in my opinion, cannot be taken into consideration and cannot be relied upon to form a concrete opinion against the accused persons.

10. Besides the above, the evidence available in the case record nowhere specifically shows that the accused persons were about to sell the seized metallic piece to any third person as alleged. In fact, PW-3/informant has failed to say specifically that to whom the accused persons were about to sell the seized piece of metal. Hence, it is clear that the evidence on record, even if presumed to be true, do not satisfactorily show that the accused persons have deceived any particular person by projecting the seized piece of metal as gold and were about to take money dishonestly from such deceived person in exchange for that piece of metal.

11. Moreover, though PW-1 and PW-3 have alleged that the material exhibit-1 i.e., the piece of metal, was seized from the possession of accused Gokul Das, but in this respect PW-2 Subhan Gogoi, who is the seizure witness, in his evidence has not supported the case of prosecution. PW-2 has simply stated that police met him about 4 to 5 years back and took his signature. Also, accused Sri Gokul Das during his examination u/s 313 of CrPC has specifically denied the seizure of any such fake gold from his possession. Under such circumstances, the allegation made by PW1 & PW2 regarding seizure of material exhibit -1 from the possession of accused Sri Gokul Das becomes doubtful and cannot be relied upon.

12. 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 offence as alleged.

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

### **ORDER**

13. 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 doubt that accused Sri Gokul Das and Sri Bibhisn Das have committed the offences 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 article seized vide M.R No. 148/2014 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 03<sup>rd</sup> 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 – F.I.R

Material Ext. 1 – Piece of fake gold

Exhibit. 2 – Seizure list.

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

P.W. 1 – Pulin Borah

P.W. 2 – Padmeswar Borkotoki

P.W. 3 – Subhan Gogoi

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur