

GR CASE NO: 558 of 2013

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR**

GR CASE NO: 558 of 2013

Under Section 379 IPC

State

-Versus-

-

Hobibur Rahman

.....Accused Person

**PRESENT : Sri Jayanta Kumar Saikia, AJS
Judicial Magistrate, First Class
Lakhimpur, North Lakhimpur.**

ADVOCATES APPEARED-

FOR THE PROSECUTION : Sri Debajit Dutta Borah.

FOR THE ACCUSED : Smt. M.D Gohain Baruah

CHARGE FRAMED ON : 12.06.2018

EVIDENCE RECORDED ON: 01.08.2018, 31.12.2018

26.03.2019

S/D RECORDED ON : 02.04.2019

ARGUMENT HEARD ON : 03.04.2019

JUDGMENT DELIVERED ON: 29.04.2019.

JUDGMENT

- 1.** The prosecution case in brief as reveals in the FIR is that on 17.04.2013, at about 3 pm, the informant Sri Chandeswar Roy along with his colleagues caught the accused person, Md Hobibur Rahman red handed, while he was committing theft of iron materials from NGAKG Rail Way Construction Company's site and handed him to the police. Hence, he lodged the instant case.
- 2.** On receipt of the ejahar, the I/C Harmoti Out Post vide Harmoti Out Post GDE no- dated 17.04.2013, forwarded the same to the O/C, Laluk Police station for registering a case under proper section of law. The Officer-in-charge, Laluk Police Station on receipt of Ejahar registered Laluk P.S. Case No. 72/2013 under section 379 of IPC and endorsed the concerned IO for investigation. After completion of the investigation, the concerned I.O. submitted charge sheet against accused person, Md. Hobibur Rahman under Section 379 of IPC.
- 3.** In due course, the accused person appeared before the Court on receipt of summon and the copies of relevant documents were furnished to him as per section 207 of CrPC. Having found a prima facie case against the accused person under Section 379 of IPC, charge is framed against the accused person under section 379 of IPC, which is read over and explained to the accused person vide order dated 12.06.2018, to which he pleaded not guilty and claimed to be tried.
- 4.** The prosecution, in support of its case, examined 04 (four) witnesses including the Investigating Officer.
- 5.** The accused person is examined under section 313 of Cr.P.C. wherein all the incriminating evidence was put to the accused person. During his examination, he denied his culpability in the alleged offences. Defence side examined no witnesses.
- 6.** I have heard the arguments advanced by the learned Asstt. Public Prosecutor and the Defence Counsel at length and perused the material on record.

POINTS FOR DETERMINATION:-

7. Upon hearing both sides and on perusal of the record, the following points for determination are framed:
- (i) Whether on 17.04.2013 at about 3 pm from NGAKG Railway Line Construction, situated at Tunijan Bahbari, under the jurisdiction of Laluk police station, the accused person intending to take dishonestly some iron materials out of the possession of the employee of the company NGAKG, Railway Construction Company, without his consent, moved it in order to such taking and thereby committed an offence punishable under section 379 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

8. I have carefully gone over the evidence on record and have also given thoughtful considerations to the rivalry submissions made by both sides. Now, let me proceed to appreciate the evidence on record to reach at a just decision.
9. The evidence of PW1, namely, Sri Chandeswar Roy, the informant of the case reveals that the accused person was seen by him in the year-2013 in connection with this case. The incident occurred in the year-2013 and at that time, he was working in a company as a clerk/Mohori. A construction work of a Railway line was going on at Tunijan. On the day of the incident, he was at his duty. Some of his employees informed him that a few Railway materials were got stolen from their site. At that time, he saw one person, (pointing to the accused in the dock) was riding his cycle, carrying a bag and on suspicion, they searched his bag. He deposed that they found their stolen materials in that bag. They informed the police over phone and the police came to the spot. They handed over the accused person to the police. Thereafter, he lodged the FIR at Harmoti Police

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Outpost. Exhibit-1 is the FIR and Exhibit-1(1) is his signature. The police seized the stolen materials by preparing seizure list. Exhibit-2 is the seizure list and Exhibit-2(1) is his signature. The police recorded his statement.

- 10.** The evidence of PW2, namely, Sri Dhaniram Saikia reveals that he knows the informant, namely, Sri Chandeswar Roy. He was also an employee at his site at Harmutty under the same contractor. He deposed in his examination-in-chief that he saw the accused person in the police station on the day of the incident. He deposed that on 17.03.2013, Sri Chandra Roy informed him that the accused person stole some of their construction materials and he informed the matter to the police station. He deposed that he was on duty as a Supervisor under contractor, Sri Narendra Maheshwari at Harmutty overbridge. He further deposed that he saw the materials at the police station and he put his signature as a seizure witness. Exhibit-2 is the Seizure list and Exhibit-2(2) is his seizure list. He deposed that he has no knowledge from whom the said materials were recovered.
- 11.** In his cross-examination, PW2 deposed that he has not seen with his own eyes who had stolen the said articles from the site. He deposed that he does not know from where the police recovered the said articles.
- 12.** The evidence of PW3, namely, Sri Bharat Neog reveals that he knows the informant, namely, Sri Chandreswar Ray. His house is situated near his house and he used to purchase betel nut from his shop. He deposed that he can identify the accused person. He deposed in his examination-in-chief that he saw him on the day of the incident. He deposed that the incident occurred in the year 2013 at about 3 pm near the Harmutty Bogori Over bridge. He was at his house. He deposed that the place of occurrence is situated at a distance of 200 meter from his house. He deposed that the Harmutty Police, Sri Umesh Bora visited his house and called him to the place of occurrence. He saw that the police caught the accused person with a bag (Basta), which was contained with iron materials.

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He learned from police that the accused person committed theft of the iron materials. He deposed that the police seized the iron materials by preparing seizure list. **Exhibit-2** is the seizure list. He put his signature there as a seizure witness. Exhibit-2(3) is his signature. The police recorded his statement.

13. In his cross-examination, PW3 deposed that at the time of alleged recovery of the iron materials, he was at his residence and the police called him latter on from his residence to the place of occurrence. He deposed that he has not seen with his own eyes from whom the iron materials were seized. He deposed that he put his signature on the seizure list as per the direction of the police.

14. PW4, namely, ASI Umesh Borah, is the Investigating Officer of the case who was posted as ASI at Harmutty outpost under the jurisdiction of Laluk Police station on 17-04-2013. In his evidence he has said about investigation of the case. His evidence reveals that the then In Charge SI Ajit Kumar Bhuyan of Harmutty Out Post received an information from the informant, namely, Sri Chandreswar Ray from his site, the accused person Md Habibur Rahman committed theft of iron materials and the thief was caught red handed. He deposed that on receipt of the information, the then In-charge Ajit Kumar Bhuyan made GD Entry No 266 dated 17-04-2013 and directed him to proceed to the place of occurrence. He reached the place of occurrence along with other police stuff and found that the employee of the Rail Company in which the informant worked, caught the accused person Md Habibur Rahman along with a bag containing iron pieces. Thereafter, he prepared seizure list in presence of available witnesses and seized the iron materials. **Exhibit-2** is the seizure list and Exhibit-2(4) is his signature. He has also taken the signature of the accused person Md Habibur Rahman from whose possession the items were seized. Exhibit-2 (5) is the signature of the accused person who put his signature in front of him. He has prepared the Sketch Map. **Exhibit-3** is the sketch map and Exhibit 3(1) is his signature. The seized items were identified by the informant Sri Chandreswar Ray. He

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deposed that he has also taken his signature on the seizure list. He deposed that he has recorded the statements of the witnesses, namely, Sri Chandreswar Ray, Sri Dhaniram Saikia, Sri Bharat Neog and Sri Bipul Nath under section 161 CrPC. He deposed that he has taken the accused person and the seized materials to the Harmutty Outpost. The informant Sri Chandreswar Ray lodged an Ejahar against the accused person Md Habibur Rahman. On receipt of the same, then In-Charge Ajit Kumar Bhuyan forwarded the same vide GD Entry No 269 dated 17-04-2013 to the then O/C Laluk police station for registering a case under proper section of law with information that already he entrusted him with the investigation of the case. On receipt of the same, O/C Laluk Police station registered Laluk PS Case No 72 of 2013 under section 379 of IPC. He has already recorded the statements of the informant and other witnesses. Finding prima facie materials against the accused person Md Habibur Rahman, he arrested him and forwarded him to the Ld Eleka Magistrate with a prayer for police remand. As per the direction of the court, the accused person was in police remand for a period of two days. Thereafter, he forwarded him to judicial custody. After completion of the investigation, he found prima facie materials against the accused person, Md Habibur Rahman under section 379 of IPC and he submitted charge sheet No 63 of 2013 dated 31-05-2013 against the accused person Md Habibur Rahman under section 379 of IPC. **Exhibit-4** is charge sheet. Exhibit 4 (1) is his signature.

- 15.** Now, in his cross-examination, PW4 (I.O) stated GD Entry no is kept blank in the note dated 17.04.2013, scribed on the back of the FIR i.e Exhibit-1 which is exhibited as Exhibit-A. It is also found that the place of occurrence as per the Sketch Map i.e Exhibit-3 and the place of recovery and seizure as per the seizure list i.e Exhibit-2 is the same.
- 16.** On perusal of Exhibit-2, which is the seizure list, it is found that the place of seizure is at No-1 Bagori Baligaon. In Exhibit-3 i.e Sketch Map, it is found that the place of occurrence is at No-1

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Bagori Baligaon. But, the informant (PW1), seizure witnesses PW2 and PW3 are deposing that the materials were seized at the Harmutty Out Post. The evidences of PW2 and PW3 are not consistent with the prosecution story that the materials were seized from the accused person at the place of occurrence.

17. From the evidences of PW1, PW2 and PW3, it appears that the alleged stolen articles were seized at the police station. Admittedly, PW2 and PW3 were not present at the time when the accused person was alleged to be caught red-handed. PW2 and PW3 have not seen from whom the alleged stolen articles were recovered nor who had committed the theft of the alleged stolen articles.

18. It is also found that PW2 is also an employee of that company, where the informant (PW1) was working as a Supervisor. PW1 (informant) himself deposed that their iron materials had been being stolen for a few days from the site and the contractor (his employer) rebuked him in this connection. No cycle was seized in this case, though it was alleged by PW1 (informant) that the accused person was seen carrying those articles by a cycle. The police has not handed over the custody of the seized articles to the informant (PW1) nor the informant (PW1) has submitted any record or document to the police or before the court for verification and to show that those articles belong to his company or those are from his site. It is also found that the seized articles were old, rust and scrap iron materials and such type of rusted iron, scrap materials used to be kept in scattering on different areas of the site. Those articles are kept in a distance from the new useful articles. In the light of these evidences, I have no hesitation to held it is very much essential for the prosecution side to prove that the informant (PW1) or the company were the owner or possessor of the iron materials seized in connection with this case.

19. Now, it is seen that by cross-examining PW1 (informant), the defence side has brought out that the seized articles were neither identified by the informant (PW1) nor those were produced before the court. None has come forward to claim custody of the seized

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articles. The seizure witnesses had admitted that they were not present when the alleged stolen materials were recovered. None of the witnesses had seen that the accused person had committed the alleged offence. These are the serious lacuna due to which, the prosecution side failed to inspire confidence in their story.

20. In the light of the above discussions and reasons thereof, I am of the considered opinion that the prosecution side has failed to bring home the guilt of the accused person under offence under section 379 of IPC.

ORDER

In the light of aforesaid discussion and reasons thereof, I am of the considered opinion that the prosecution side failed to prove its case against the accused person beyond reasonable doubt.

Accordingly, the accused person, Md Hobibur Rahman is acquitted of the offences under section u/s 379 of IPC and he is set at liberty forthwith.

The bail bonds of the accused person and his surety shall remain in force for a period of 6 months from today as per amended CrPC.

The I.O shall dispose the seized articles as per law.

Given under my hand and seal of this court on this 29th day of April, 2019.

Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur

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APPENDIX

PROSECUTION EXHIBITS:

- Exhibit-1: F.I.R.
- Exhibit-2: Seizure list
- Exhibit-3: Sketch map.
- Exhibit-4: Charge-sheet.

DEFENCE EXHIBITS

NIL

PROSECUTION WITNESSES

- PW-1 : Sri Chandeswar Ray (informant)
- PW-2 : Sri Dhaniram Saikia
- PW-3 : Sri Bharat Neog.
- PW-4 : ASI Umesh Borah (I.O).

DEFENCE WITNESSES

NONE

MATERIAL EXHIBITS

NIL

Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur