

GR Case No-933 of 2016

JUDGMENT

- 1** The prosecution case sets into motion on filing a F.I.R, by the informant, Sri Kiran Das, alleging that on 24.06.2016, at Chukuliboria, his white colour cow and a cow of his neighbor namely, Sri Upen Chutia were stolen by an unknown person. It is further alleged that he came to know that one Sri Tilak Saikia, S/O Sri Debo Saikia, was involved in that commission of theft. Hence, he lodged this case.
- 2** The Officer-in-charge, North Lakhimpur Police Station, on receipt of Ejahar registered North Lakhimpur P.S. Case No. 388/2016 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, Sri Tilak Saikia 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 by the then Learned SDJM(S), Lakhimpur, North Lakhimpur, vide order dated 26.08.2016, to which he pleaded not guilty and claimed to be tried.
- 4** The prosecution, in support of its case, examined 11 (eleven) 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 Learned Legal Aid Counsel at length and perused the material on record.

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POINTS FOR DETERMINATION:-

7. Upon hearing both sides and on perusal of the record, the following point for determination is framed:

(i) Whether on 24.04.2016 at night, under the jurisdiction of Laluk police station, the accused person, committed theft of one cow from the possession of the informant, Sri Kiron Das and another cow from the possession of Sri Upen Chutia in the village Chukulibhoria 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. In the instant case, the prosecution side marshaled evidence of (11) eleven witnesses including the investigating officer. The prosecution case is that the accused person has committed theft of two cows, one belongs to the informant, Sri Kiran Das and the other one belongs to Sri Upen Chutia and transported it to some other place with dishonest intention.

9. The evidence of the informant, Sri Kiron Das reveals that in the night of 3rd Bohag, in the year 2016, his white cow was missing from his house. Later on, he heard that the accused person sold his cow to a person in Silonibari Balting. Later on, he lodged the instant FIR. Thereafter, he lodged the FIR at Harmoti Police Outpost. Exhibit-1 is the FIR and Exhibit-1(1) is his signature on the FIR.

10. On perusal of the cross-examination of PW1, it is found that the evidence of PW1 does not bear much weight in favour of the prosecution case. His cross-examination clearly shows that he has not seen the accused person stealing his cow nor he saw the accused person along with his cow. His cow was also not recovered from the possession of the accused person. From the testimony of the PW-1, it is learned that his evidence is just hearsay evidence. It is also found that the accused person

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is his nephew. The Defence side failed to explicit anything regarding their suggestion that informant has animosity towards the accused person. Now, let us proceed to the other evidences on record to see how far they support the prosecution case.

11. Another victim of the case, as reveals in the FIR i.e Exhibit-1 is Sri Upen Chutia and he is examined as PW2 in this case. The evidence of **PW2**, namely, Sri Upen Chutia reveals that he knows the informant and the accused person. He deposed in his examination-in-chief that on the night of 3rd Bohag, in the year 2016, his cow and the cow of the informant were stolen from their respective houses. He deposed that on the next day, they came to know in the village Silonibari that the accused person committed theft of their cows and he found his cow at Silonibari. In his cross-examination, PW2 deposed that Police recorded his statement during investigation. His cross-examination reveals that he did not see the cows being stolen and nor he saw that the accused person was stealing the cow of the informant. It is also found from the evidence of the PW2 that his evidence is also hearsay evidence only. But, his evidence reveals that he found his cow at Silonibari.

12. The evidence of **PW3**, namely, Sri Moniram Konwar also supported the deposition of PW2 that the cow of PW2 was recovered at Silonibari. His evidence reveals that he knows the informant and the accused person. On 16.04.2016, at night, he came to know that two cows, one cow belong to the informant and another cow belongs to Sri Upen Chutia were missing from their houses. So, he went to Silonibari along with the informant and Upen Chutia and brought back the cow of Sri Upen Chutia but could not find the cow of the informant. He heard that the accused person stole the said two cows. In his cross-examination, PW3 deposed that he did not see the accused person stealing the said two cows. He denied the other suggestions levied by the defence side.

13. The evidence of **PW4**, namely, Sri Jiten Gogoi reveals that he knows the informant and the accused person. His evidence reveals that he came to know on 16.04.2016, at night, a cow of the informant and a cow of Sri

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Upen Chutia were missing from their houses. So, on the next day, the informant and Upen Chutia went to Silonibari and found the cow of Sri Upen Chutia with the accused but could not find the cow of the informant. In his cross-examination, PW4 deposed that he did not see the cows being stolen. He deposed that he did not see the accused person stealing the said two cows. He deposed that he did not state in his statement to police that the informant and Sri Upen Chutia went to Silonibari and found the cow of Sri Upen Chutia with the accused person but could not find the cow of the informant. He denied the other suggestions levied by the defence side. The evidence of PW4 also does not have much weight as he has neither witnessed the alleged incident of theft nor he has witnessed the recovery of the cow. His evidence reveals that he stated in his statement to police that they suspected the accused person committed the theft of the said cows and as such, they handed over the accused person to the police.

14. From the evidence of PW1 (informant), PW2 (victim), PW3 and PW4, it is found that all these witnesses are hearsay witnesses and their evidences do not bear much significance in the eye of law to prove the guilt of the accused person. However, evidences of PW2 and PW3 confirms that one of the stolen cows, which belongs to the PW2, namely, Sri Upen Chutia was recovered from a place named Silonibari.

15. Regarding the recovery of the cow, the evidence of PW5 is very important, who turns out to be a star witness in this case. The evidence of **PW5**, namely, Md. Soydur Rahman reveals that he does not know the informant and he knows the accused person. It is also learned from his evidence that about seven to eight months ago, he along with Md. Sukur Ali brought one cow (each) from the accused person and subsequently police went to the house of Md. Sukur Ali and seized the cow, which he brought from the accused person. The cow which he bought from the accused person was already slaughtered and eaten away by the villagers. He further deposed that later on, he came to know that one person from Sukuliboria was the owner of the said two cows. He brought the said cow

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from the accused person vide a challan. Exhibit-2 and Exhibit-3 are the seizure list and Exhibit-2(1) and Exhibit-3(1) is his signatures on the said seizure lists. His cross-examination reveals that the seized challan was not produced before him in the court. It is also found that he does not know what is being written on Exhibit-2 and Exhibit-3. The content of Exhibit-2 and Exhibit-3 were not read out to him. It is also found that he has not seen the alleged incident of theft.

16. It is found that **PW6**, Md. Sukur Ali supported the deposition of PW5 that he purchased a cow from the accused person. He knows the accused person. He deposed in his examination-in-chief that about seven to eight months ago, he bought one cow from the accused person for a sum of Rs.3500/- (three thousand five hundred) vide a voucher and after three days police came to his house and told him that the said cow was stolen cow and seized the same and the said voucher vide Exhibit-2. Exhibit-2(2) is his signature on the said seizure list. In his cross-examination, PW6 deposed that he has not seen the said voucher in the court. He deposed that he does not know what has been written on Exhibit-2. He denied the other suggestions levied by the defence side.

17. It is also found from the evidence of **PW7**, namely, Sri Sarbeswar Chutia, who is a relative of the accused person that one morning in the month of April, 2016, the cows of the informant and Sri Upen Chutia were missing and subsequently, they took the accused person to Pahumora area and found that the cow of the informant was already slaughtered and police recovered the cow of Sri Upen Chutia. He deposed that he came to know that the accused person committed theft of the said two cows. In his cross-examination, PW7 deposed that he did not see the cow being stolen. He deposed that no stolen cow was recovered from the possession of the accused person.

18. Md. Joynal Uddin, President of VDP, Khagori Gaon, was examined as **PW8** in this case. His evidence reveals that about four to five months ago, I/C Silonibari Outpost told him over phone that stolen cows were in the house of Md. Sukur Ali and Soydur Rahman in Khagarigaon and when he

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searched for stolen cows, he found a cow in the house of Md. Sukur Ali. He came to know that the cow in the house of Md. Soydur Rahman was already slaughtered. He further deposed that he came to know that Md. Sukur Ali and Md. Soydur Rahman bought the two said cows from the accused person. Police seized the said cow and the vouchers by which, Md. Soydur Rahman and Md. Sukur Ali purchased the cows. Exhibit-2 and Exhibit-3 are the seizure lists and Exhibit-2(3) and Exhibit-3(3) are his signatures on the said seizure lists. In his cross-examination, PW8 deposed that he did not see the cow being stolen. He deposed that no stolen cow was recovered from the possession of the accused person and such cows was available everywhere. He deposed that he has not seen the said vouchers in the court. He deposed that he has not seen the seized cow in the court. He deposed that he does not know what has been written on Exhibit-2. He denied the other suggestion levied by the defence side.

19. PW9, namely, Md. Muslim Uddin, a retired School teacher and a co-villager of Md. Sukur Ali (PW6) also supported that the cow was recovered from the house of Md. Sukur Ali and it was identified by the informant at the house of Md. Sukur Ali in the presence of him and other police personals. His evidence reveals that about 1 ½ years back, at about 2:30 pm, when he was present at his house, the police visited his house and inquired him that whether he knows the fact that Md. Sukur Ali, one of his co-villagers, purchased a cow. Thereafter, he went to the house of Md. Sukur Ali along with the police personals and the informant. The informant identified the cow kept in the premises of Md. Sukur Ali. On inquiry, Md. Sukur Ali said that he purchased the cow and showed his receipt. He deposed that the police brought the cow and Md. Sukur Ali to the North Lakhimpur Police Station. On inquiry, Md. Sukur Ali said that he purchased the cow from the accused person, Sri Tilak Saikia. Exhibit-2 is the Seizure list and Exhibit-2(4) is his signature. Exhibit-3 is the Seizure list of the receipt and Exhibit-3(3) is his signature. In his cross-examination, PW9 deposed that he cannot not say the exact date and time of the alleged incident. He deposed that the cow was

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recovered from the house of Md. Sukur Ali. He deposed that he does not know, who is the owner of the stolen cow. He deposed that police brought him to the police station. He deposed that he does not know the content of Exhibit-2 and Exhibit-3. He deposed that the receipt is not produced before this court. He deposed that he does not know about the alleged incident.

20. While judging the veracity of the evidences of PW6, PW7, PW8 and PW9, as to whether the witnesses are telling, the truth or not, it is found that they have corroborated the evidences of each other to the extent that the seized cow of Sri Upen Chutia was recovered from the house of PW6, who has purchased the same in good faith from the accused person and he acquired a receipt of the cow proving his purchase. But, the said voucher which was seized vide Exhibit-3 i.e Seizure list was not produced and exhibited in this court as a Material exhibit. However, in my considered opinion, this lacuna will not go to the root of the matter as PW9, PW8 and PW6 have corroborated each other to these facts that the seized cow of Sri Upen Chutia was recovered from the house of PW6, who has purchased the same in good faith from the accused person and he acquired a receipt of the cow proving his purchase.

21. The evidence of **PW-10**, namely, ASI Phul Kr. Barman, who is the Investigating Officer of the case, reveals that he was posted as ASI at Lilabari outpost under the jurisdiction of North Lakhimpur Police station on 25-04-2016. On that day, the informant Sri Kiran Das filed an ejahar at North Lakhimpur Police station. He deposed that on receipt of the same, the then O/C lodged North Lakhimpur Police station Case no-388 of 2016, under section 379 of IPC and sent to Lilabari Outpost endorsing him for pre-step investigation. Exhibit-4 is the endorsement order and Exhibit-4(1) is the signature of then O/C Sri Prafulla Kr. Bora, which he knows and identifies his signature. He deposed that the police handed over the accused person to police. On inquiry, the accused sold the cow to someone and the accused person lead them to the place, where the cattle was sold. He further deposed in his examination-in-chief that he along

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with other police staff and I/C Silonibari Outpost, Sri Nikhil Rajkhowa and the accused person visited the house of Md. Sahedur Rahman and Md. Samar Ali, Khagorigaon under Silonibari Outpost as per information provided by the accused person. Thereafter, they recovered a cow from the house of Md. Samar Ali as identified by the accused. He seized the cow by preparing seizure list in presence of available witnesses, Md. Sukur Ali, Md. Mushlim Uddin, Md. Joinal Uddin and Md. Sahedur Rahman. Exhibit-2 is the seizure list and Exhibit-2(5) is his signature. He also seized the sale receipt of the cow. Exhibit-3 and Exhibit-3(4) is his signature. He deposed that he gave zimma of the cow to one Sri Upen Chutia. Exhibit-5 is the zimma-nama and Exhibit-5(1) is the signature of Sri Upen Chutia, who put his signature in front of him. He prepared the Sketch Map. Exhibit-6 is the Sketch Map and Exhibit-6(1) is his signature. He deposed that he has recorded the statements of the witnesses, namely, Sri Upen Chutia, Sri Moniram Konwar, Sri Jitan Gogoi, Sri Sarveswar Chutia under section 161 CrPC. He deposed that on 25.04.2016, he recorded the statement of the informant under section 161 of Cr.PC on that day. He deposed that the accused person was arrested and forwarded to the court vide arrest memo. **Exhibit-7** is the arrest memo and Exhibit-7(1) is his signature. Thereafter, he submitted the C/D to the I/C Lilabari Outpost, Sri Raju Duwara. In his cross-examination, PW-10 deposed that there is no written note from the public that public has detained the accused and handed over to police. He deposed that the owner of the cow visited the place of occurrence along with them and Sri Upen Chutia unidentified the cow at the alleged place of occurrence. He admitted the fact that there is no written note on the seizure list nor on any other documents that Sri Upen Chutia identified the alleged stolen goat. He deposed that Sri Upen Chutia was not made a seizure witness in the Seizure lists i.e Exhibit-2 and Exhibit-3. He deposed that the receipt of sale of the cow was not produced in the case nor with record. He deposed that he has not mentioned any date on the Sketch map i.e Exhibit-6. He deposed that the cow was not in the possession of the accused at the time of seizure. He deposed that

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PW1 has not stated in his statement recorded under section 161 of Cr.PC that he has heard that the accused person sold the cow at Chilonibari Baliting. He deposed that PW1 has not stated in his statement recorded under section 161 of Cr.PC that the accused sold the cow at Chilonibari and he found his cow at Chilonibari. He deposed that PW3, namely, Moniram Konwar has not stated in his statement recorded under section 161 of Cr.PC that he went to Silonibari along with the informant and Upen Chutia and brought back the cow of Sri Upen Chutia but could not find the cow of the informant. He deposed that PW3, namely, Moniram Konwar has not stated in his statement recorded under section 161 of Cr.PC that he heard the accused stole the said two cows. He deposed that PW4 has not stated in his statement recorded under section 161 of Cr.PC that Sri Upen Chutia went to Silonibari along with the informant and found the cow of Sri Upen Chutia with the accused person but could not find the cow of the informant. He denied the other suggestions levied by the defence side.

22. The evidence of **PW-11**, namely, SI Raju Duwara reveals that on 25.04.2016, NLPS Case No-388 of 16, which was registered u/s 379 of IPC on receipt of ejahar lodged by Sri Kiran Das alleging one of his cows was stolen along with the cow of another Sri Upen Chutia on 24.04.2016. They suspected that one Sri Tilak Saikia from Chukuliboria gaon committed theft of those cows. He deposed in his examination-in-chief that the I.O ASI Phul Kumar Barman submitted investigation report and C/D to him in connection with that case after completion of the investigation. After finding prima facie material against the accused person Sri Tilak Saikia u/s 379 of IPC, he submitted charge-sheet no-216/16 dated 31.05.2016 against the accused person Sri Tilak Saikia u/s 379 of IPC. **Exhibit-8** is the charge-sheet and Exhibit-8 is his signature. In his cross-examination, PW-11 deposed that no date was mentioned on the Sketch map i.e Exhibit-6. He deposed that there is no official seal of him in Exhibit-8 i.e Charge-sheet. He denied the other suggestions levied by the defence side.

23. At this juncture, I would humbly put my reliance on the observation made by Hon'ble Supreme Court of India in [Tahir v. State \(Delhi\)](#),

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(1996) 3 SCC 338, dealing with a similar question, it was held by the Honourable Supreme Court that: "*Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.*"

In the light of the aforesaid observations made by Honourable Supreme Court, it can be rightfully held that the conviction can be based on the testimonies of official witnesses who were part of the investigation made provided that they are reliable and trustworthy. It already discussed that, in the factual situation on hand , there is nothing on record to discredit the testimonies of official witness. It reveals from the seizure list that the seizure witnesses PW9, PW8, PW6 and PW5 have supported fact that the cow was recovered from the house of PW6.

24. There is nothing found in the cross examination of these witnesses i.e PW9, PW8, PW6 and PW5 that the said witnesses have any axe of grudge against the accused person. In this regard, there is no explanation found in the statement of the accused person recorded under section 313 Cr.PC that any motive of false implication on behalf of informant to falsely implicate him in this case. It is seen that defence side has not taken any plea nor tried to prove existence of any enmity of these witnesses with the accused in order to satisfy the Court that they might had falsely or with ulterior motive or for any previous grudge, implicated the accused in this case.

In view of the above evidence on record, this Court has come to the conclusion that the prosecution has been able to establish the case against the accused Sri Tilak Saikia.

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Order

In the light of aforesaid reasons and discussion, it is held that prosecution side has established the case against the accused Sri Tilak Saikia, beyond all reasonable doubts and he is found guilty of offence punishable under section 379 of IPC and he is convicted accordingly.

I have considered the applicability of section 3 & 4 of The Probation of Offenders Act, 1958 or section- 360 of the Code of Criminal Procedure, 1973 to the convict. Considering the nature of offence and the nature of the property involved and the conduct of the accused, I hold that it is not a fit case to grant him the benefit of probation.

I have heard the convicted person on the point of sentencing. He pleaded for mercy and asks for leniency considering the fact that he is the only bread earner of his family.

The offence for which the accused is convicted is under section 379 of IPC which is punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

Considering the overall facts and circumstances of the case, the convict is punished with rigorous imprisonment for one and half (1 ½) year (eighteen months) and with a fine of Rs 1,000/- (One thousand only). In default of payment of fine he will undergo simple imprisonment of 20 days (twenty days).

It is also made clear that the sentence in this case shall run concurrently with previous sentence of the accused, if any by any court, under section 427 Cr.P.C.

Benefit of section 428 Cr.P.C, be also given to the convict and period of undergone by him till date of this case shall be set off against the term of imprisonment imposed on him on conviction.

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The I.O. shall dispose of the seized property in due course of time as per provision of law.

Copy of this judgment and order be given to the convict free of cost immediately under due acknowledgment.

Given under my hand and seal of this court on this 22nd day of April, 2019.

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

Typed by Steno Gr.III
Debashis Bhuyan

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APPENDIX

PROSECUTION EXHIBITS:

- Exhibit-1: F.I.R.
- Exhibit-2: Seizure list
- Exhibit-3: Seizure list
- Exhibit-4: Endorsement order.
- Exhibit-5: Zimma-Nama
- Exhibit-6: Sketch Map
- Exhibit-7: Arrest Memo
- Exhibit-8: Charge-sheet

DEFENCE EXHIBITS

NIL

PROSECUTION WITNESSES

- PW-1 : Sri Kiron Das (informant)
- PW-2 : Sri Upen Chutia
- PW-3 : Sri Moniram Konwar.
- PW-4 : Sri Jiten Saikia
- PW-5 : Md. Soydur Rahman
- PW-6 : Md. Sukur Ali
- PW-7 : Sri Sarbeswar Chutia
- PW-8 : Md. Joynal Uddin

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PW-9: Md. Mushlim Uddin

PW-10: ASI Phul Kumar Barman (I.O)

PW-11: SI Raju Duwara (I.O)

DEFENCE WITNESSES

NONE

MATERIAL EXHIBITS

NIL

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