

**IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR.**

GR CASE NO.2609/2018
U/S 379 IPC.

PRESENT:
SMT. SWEETY BHUYAN
Judicial Magistrate 1st Class
Lakhimpur, North Lakhimpur.

PARTIES:

STATE OF ASSAM

Vs

SRI GOPAL TANTI

..... **ACCUSED PERSON**

Appearance:

For the State: MR. JANGKI DOLEY

For the accused person: MR. BULU MONI DAS
(LD. LEGAL AID COUNSEL)

Dates of Evidences: 03.10.2019, 16.10.2019,
25.11.2019

Date of Argument: 07.12.2019

Date of Judgment: 07.12.2019

JUDGMENT

1. The accused person, namely, Sri Gopal Tanti, Son of Late Motilal Tanti, R/o village: Showkham, Saboti, Police Station- North Lakhimpur, District - Lakhimpur, here in this case has been put to

trial to answer the charges for the offence Punishable under Sections 379 of IPC.

- 2.** The brief facts of the prosecution case is that on 17.10.2018 the cow of the informant was left for grazing on the other bank of the Kakoi Rajgarh River and in the evening when he went to bring the cow, he did not find her there, and as such, he searched for the cow and later on, he came to know that the accused stole the cows from the field. Hence, the case, and the same was registered as Boginadi Police Station Case No.182/2018 under Section 379 of the Indian Penal Code against Sri Gopal Tanti and four other persons named in the ejahar. The Investigating Officer submitted Charge Sheet against both the accused person, namely, Sri Gopal Tanti, under Sections 379 of the Indian Penal Code.
- 3.** After appearance of the accused Sri Gopal Tanti, the copy of the relevant document was furnished to him.
- 4.** On going through the materials on record, this court is of the opinion that there is sufficient grounds to presume that the accused person has committed an offence under Section 379 of the Indian Penal Code, which this court is competent to try and adequately punish. Accordingly charge under the said Section is framed and the particulars of the said offences are read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- 5.** In support of the case, the prosecution has adduced 5 PWs including

the informant. The statement of the accused person was recorded under Section 313 Cr.P.C. and he stated that all the allegations are false against him and denied to adduce the evidence in his support.

6. After perusing the case record and hearing both sides the following point for determination was framed:

POINTS FOR DETERMINATION

(i) Whether the accused person, on 17.10.2018 (time not mentioned) on the other bank of the river of Kakoi Rajgarh, intending to take dishonestly the cow of the informant which was left for grazing in the said place, out of the possession of the informant without his consent and moved it in order to such taking, and thereby committed offence under section **379** IPC?

DECISIONS AND REASONS FOR DECISION:

7. I have heard the argument from both sides.
8. The informant stated in his ejahar that on 17.10.2018 the cow of the informant was left for grazing on the other bank of the Kakoi Rajgarh River and in the evening when he went to bring the cow, he did not find her there, and as such, he searched for the cow and later on, he came to know that the accused stole the cows from the field.
9. The informant alleged that the accused stole his cow. In his evidence as PW1, he deposed that while he was searching for his

stolen cow, one person informed him that a thief was apprehended alongwith a cow and was handed over to the police and thereafter, he went to the police outpost, where he saw his cow and the police showed him the accused to be the thief.

- 10.** The PW2 stated in his evidence that on the day of the incident, he saw some people were taking a cow somewhere and he heard that the cow was stolen by some thief, who was handed over to the police and thereafter, he informed the same to the police.
- 11.** The PW3 stated in his evidence that on the day of the incident, he saw large gathering of people and the cow of the informant was caught by the people, which was stolen. He does not know anything about the theft. The police took away the cow as well as the thief, who was apprehended by the villagers. He does not remember who the thief was.
- 12.** The PW4 stated in his evidence that he heard that there was a cow theft in his village and he heard that the people apprehended the thief.
- 13.** From the above evidences, it can be known that none of the witnesses saw the accused stealing the cow. Even the informant saw the accused in the Police Station. The PW2 admitted in his cross-examination that he saw other people chasing the cow, but he did not see the accused and he does not know who is connected the case. The PW3 admitted in his cross-examination that he only saw gathering of people and he did not see the thief. That the people did

not tell him who the thief was and that he will not be able to say whether the accused is connected with the theft or not. The PW4 admitted in his cross-examination that he does not have personal knowledge about the incident. Even the Investigating Officer in his cross-examination as PW5 admitted that he did not arrest the accused red handed with the cow. Hence, it can be seen that the evidence of the witnesses does not prove beyond reasonable doubts that it was the accused who stole the cow. No doubt the accused was apprehended by the villagers and handed over to the police but that does not prove that he is the thief.

14. From the nature of the evidences of the prosecution, web of doubts are created to the fact that whether the accused is the thief or not. As such, on the basis of such evidences, it cannot be held that the accused is the thief. As such, the prosecution has miserably failed in proving the guilt of the accused beyond all reasonable doubts under Sections 379 of the Indian Penal Code and thereby making him not guilty under the said section.

(Contd....)

ORDER

As this court finds the accused person, namely, **Sri Gopal Tanti**, not guilty of the offence u/s **379** of the Indian Penal Code, the accused person is acquitted of the charges u/s **379** of the Indian Penal Code.

The accused person is set at liberty forthwith.

The judgment is pronounced in the open court.

The case is disposed of accordingly on contest.

The zimma of the cow, which is given to the owner, i.e., the informant is hereby made absolute.

Given under my hand and the seal of this court on this the 7th of December, 2019 at North Lakhimpur.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)

APPENDIX

Prosecution witnesses

1. PW1: NUR SALAM ALI
2. PW2: SAHABUDDIN ALI
3. PW3: RITUL ALI
4. PW4: ENUS ALI
5. PW5: ASI KRISHNA CHAUHAN

Defence witnesses

Nil.

Documents exhibited by the prosecution

1. EXT.1: EJA HAR
2. EXT.2: SEIZURE LIST
3. EXT.3: SKETCH MAP
4. EXT.4: CHARGESHEET

Documents exhibited by the Defence

Nil.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

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Kumar Gaurav (Stenographer)