

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

G.R CASE NO: 420 OF 2014
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI BIJU HAZARIKA AND
MD. ULLAH ALI

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

GR CASE NO: 420 / 2014

U/S 379/511 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI BIJU HAZARIKA AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI TORIT DUTTA

CHARGE FRAMED ON : 04.08.2018
EVIDENCE RECORDED ON : 26.12.2018, 05.03.2019

ARGUMENT HEARD ON : 27.01.2021
JUDGMENT DELIVERED ON : 27.01.2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 20.03.2014 at about 6.00 A.M, accused Sri Biju Hazarika committed theft of one goat belonging to informant Sri Akan Saikia and another two goats belonging to Sri Bimal Gogoi and Diganta Patgiri of Kesashal village and took away the aforesaid three goats in a tempo vehicle. The informant then chased the aforesaid accused and with

the assistance of VDP and villagers caught hold of the said accused and handed him over to police. However, the tempo vehicle could not be traced out. The informant then lodged an FIR about the occurrence before the O/C of North Lakhimpur police station.

2. On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 214/2014 and after investigation I.O of the case submitted charge sheet against accused persons Sri Biju Hazarika and Md. Ullah Ali for the offences punishable u/s 379/511 of IPC. 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 both the accused and the particulars of offence punishable u/s 379 of IPC are read over and explained to both the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined four witnesses, whereas the defence did not examined any witness. The examination of accused persons u/s 313 of CrPC was dispensed with finding no specific incriminating materials against them. 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-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons on 20.03.2014 at about 6.00 AM committed theft by dishonestly taking away three goats from Kesashal village in a tempo vehicle bearing registration No. AS 07 C 1778 without the consent and out of the possession of the owners of those goats, and thereby committed an offence punishable u/s 379 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO. 1:

6. As regards the aforesaid point for determination, perusal of the evidence deposited by informant Sri Akan Saikia as PW-1 shows that though he has alleged that a person took his (PW1's) goat from the place of occurrence in a tempo vehicle, but he/PW-1 did not specifically revealed the identity of that person. To

be more specific, PW-1/informant in his evidence-in-chief has nowhere specifically stated that the persons who took his aforesaid goat are the accused persons of this case. As such, there is no specific incriminating material against the accused persons in the evidence deposited by PW1/informant.

7. Further, it is stated by PW-1 that he raised hue and cry in the place of occurrence and thereafter the members of VDP chased the aforesaid tempo vehicle and managed to caught hold of both the persons present in that tempo vehicle along with the stolen goats. In this context, PW-2 Sri Pradip Gohain, who is the Secretary of VDP, in his evidence has corroborated the version of PW-1/informant by stating that he along with other members of VDP have chased the tempo vehicle and subsequently found that the aforesaid goat is kept tethered in Napamua village. Thereafter, police came there and seized the goat and the same was handed over to informant after being identified by informant.

8. From the above evidence, it is seen that though PW1 has alleged that the members of VDP have caught the accused persons along with stolen goat, but the PW2, who is the Secretary of VDP, has not corroborated such allegation of PW1/informant. The PW2 has nowhere specifically stated that he along with the VDP members have caught hold of the accused persons alongwith the stolen goat. In fact, the PW2 has not even stated that from whose possession the aforesaid stolen goat of informant was recovered by the VDP. The PW2 in his cross-examination has further added thathe did not saw the occurrence. As such, there is nothing in the evidence of PW-2 which can show that the stolen goats were recovered from the possession of accused persons, or that the accused persons are connected with the commission of theft of those goats.

9. In the above context, PW-3 Sri Bimal Gogoi has supported the case of prosecution by stating that two of his goats along with one goat belonging to informant were stolen away from near the road at the time of occurrence. However, the PW-3 has nowhere specifically stated that who committed theft of the aforesaid goats. On the contrary, PW-3 has stated that he did not see that who took the aforesaid goats and he did not saw the occurrence. This shows that the PW-3 do not have any direct knowledge about the identity of the persons who committed the theft. Be it noted here that the PW-3 is a seizure witness but in his cross-examination he has stated that he did not read the contents of

Exhibit-2 seizure list at the time of signing the same. This shows that the PW-3 do not have proper knowledge that from whom the goats were seized.

10. Similarly, though PW-4 Sri Diganta Patgiri came to know about the theft but he did not see that who committed theft. As such, it is clear that there is nothing in the evidence of PW-4 to show that the accused persons are involved in the commission of aforesaid theft.

11. Before parting with the discussion, it is important to mention here that the I.O in Exhibit - 2 seizure list has simply mentioned that the aforesaid three goats were seized from the possession of VDP. As such, it is clear that the contents of Ext.2 seizure list do not provide any material which can directly connect the accused persons to the aforesaid occurrence.

12. Considering the above discussion, it is clear that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused persons have committed the offence of theft as alleged.

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

ORDER

13. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused persons Sri Biju Hazarika and Md. Ullah Ali have committed the offence under section 379 of IPC as alleged, and as such, the said accused persons are acquitted of the charge under section 379 of IPC and they be set at liberty forthwith.

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 27th day of January, 2021.

The case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**PROSECUTION EXHIBITS:**

Exhibit.1 – FIR

Exhibit.2 – Seizure list

DEFENCE EXHIBITS:

NIL

PROSECUTION WITNESSES:

1. PW-1 – Sri Akan Saikia
2. PW-2 – Sri Pradip Gohain
3. PW-3 – Sri Bimal Gogoi
4. PW-4 – Sri Diganta Patgiri

DEFENCE WITNESSES:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur