

G.R CASE NO: 5142 OF 2010
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SHRI SON BARMAN & ANR

DISTRICT: KAMRUP
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL
MAGISTRATE, (S),II, KAMRUP

GR CASE NO: 5142/ 2010
U/S 379 IPC

PROSECUTOR: STATE OF ASSAM
VERSUS
ACCUSED: SHRI SON BARMAN & ORS

PRESENT : YUSUF AZAZ, SUB DIVISIONAL JUDICIAL
MAGISTRATE, (S),II, KAMRUP

ADVOCATE FOR THE PROSECUTION: SHRI M. ALI

ADVOCATE FOR THE ACCUSED: SHRI R. KAKOTI

EVIDENCE RECORDED ON: 25/10/2010, 10/5/2011, 27/9/2011,2/6/2012

ARGUMENT HEARD ON: 26/7/2012

JUDGMENT DELIVERED ON:7/8/2012

JUDGMENT

1. The prosecution in this case was launched by the lodging of an ejahar with the Officer in Charge of the Noonmati Police Station on 12/7/2010 by the informant, Shri Yusufuddin Ahmed, the Constable of Noonmati Police Station to the effect that he alongwith some other police personnel were on patrolling duty at night and that at

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YUSUF AZAZ, SUB- DIVISIONAL JUDICIAL MAGISTRATE, (S), II, KAMRUP.

G.R CASE NO: 5142 OF 2010
PROSECUTOR: STATE OF ASSAM Vs
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about 1:00AM in the night they found the accused persons alongwith a Auto Van bearing registration no: AS01C/ 3307 at Narengi Tinali. They (police personnel) stopped there and found that the said Auto Van carried rods and when asked to account for the said iron rods, the accused persons confessed before them that they had stolen it. The police personnel thereafter brought the said rods and the accused persons to the police station and lodged this ejahar.

2. The police upon receipt of the ejahar registered Noonmati Police Station case no: 264/ 2010 under sections 379 of the Indian Penal Code (IPC) and started investigation in the case. Upon completion of the investigation, the police submitted chargesheet against the accused persons namely, Shri Son Barman and Shri Kamal Roy under section 379 IPC.
3. The accused persons were called upon to enter trial and accordingly the accused persons appeared and the copies of the relevant documents were furnished to them.
4. It would be pertinent to mention herein that the formal charge was not framed against the accused persons and my learned predecessor in office proceeded to record evidence in the case and accordingly the evidence of the prosecution witnesses were recorded. I had today framed the formal charge against the accused persons to which they pleaded not guilty and claims to be tried. I had also asked the accused as well as their counsel if they would like the prosecution to examine the witnesses once more so that they could get a chance to cross examine them on the face of the fact that the charge is framed against them today, to which the accused persons as well as their counsel submitted that they would not like to examine the witnesses again and that the evidence already recorded would suffice, because they proceeded in the trial knowing fully well as to what was the charge against them. In view of the above I proceed to write the judgment.
5. The prosecution in support of its case examined as many as five witnesses; whereas the defence declined to adduce evidence.
6. The defence case is of total denial as is revealed from the statement of the accused persons recorded under section 313 CrPC and also from the trend of cross examination.

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G.R CASE NO: 5142 OF 2010
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SHRI SON BARMAN & ANR

7. Upon the case set up by the prosecution I have framed the following point for determination in this case in order to arrive at a definite finding as regards the matter in dispute-

(1) Whether the accused persons have committed theft of iron rods by dishonestly removing the same from its original owner and thereby committed offence under section 379 IPC?

8. I have heard the learned A.P.P and the learned counsels on behalf of the aforesaid accused persons. The learned APP has contended that the prosecution has proved its case beyond reasonable doubt as such the accused persons are required to be convicted; whereas the learned counsels for the accused persons have contended that the prosecution has failed to examine even a single eyewitness to the alleged occurrence; as such the accused persons are liable to be acquitted.

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

9. Now let me discuss the materials on record and try to arrive at a definite finding as regards the point for determination.

POINT FOR DETERMINATION NO.1: Whether the accused persons have committed theft of iron rods by dishonestly removing the same from its original owner and thereby committed offence under section 379 IPC?

The prosecution has contended that the aforesaid accused persons committed the offence of theft and in support of its case the prosecution examined as many as four witnesses to the alleged occurrence.

10. The PW1, Shri Yusufuddin Ahmed is the informant in this case and he had lodged the ejahar. The PW1 has identified the ejahar lodged by him in this case and the same is marked as exhibit 1. The PW1 has deposed that he alongwith some other police personnel were on patrolling duty at night and that at about 1:00AM in the night they

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G.R CASE NO: 5142 OF 2010
PROSECUTOR: STATE OF ASSAM Vs
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found the accused persons alongwith a Auto Van bearing registration no: AS01C/ 3307 at Narengi Tinali. They (police personnel) stopped there and found that the said Auto Van carried rods and when asked to account for the said iron rods, the accused persons confessed before them that they had stolen it. The police personnel thereafter brought the said rods and the accused persons to the police station and lodged this ejahar. The accused persons are the driver and the handyman of the said Auto Van respectively.

11. The perusal of the evidence of the PW1 does not reveal as to who was the owner of the said rods. In order to establish that the said rods were stolen articles, the burden lies upon the prosecution to show that the said rods belonged to some other persons and that the said rods were removed dishonestly without the consent of the said owner.
12. In the instant case at hand neither the PW1 nor the other witnesses examined by the prosecution has stated as to who was the owner of the said rods. The prosecution has failed to examine the owner of the said rods or for that matter to identify as to who was the owner of the said rods.
13. The witness, Shri Kamal Kakati (PW2), Shri Jatin Boro (PW3) were the other two police personnel who were on patrolling duty at that time and they have supported the version of the PW1. The aforesaid witnesses have not stated anything as regards the identity of the owner of the said rods.
14. The witness, Shri H.K Kalita (PW4) and Shri Nageswar Kalita (PW5) are the investigating officers in this case and they have also deposed nothing as regards the ownership of the said rods.
15. The perusal of the above materials on record shows that the investigation was carried on in this case in a shoddy manner, because the investigating officer has not at all investigated as to who was the owner of the said rods. The investigation regarding the ownership of the said rods was the sine qua non for establishing the charge against the accused persons.
16. The accused persons were examined under section 313 CrPC and they had admitted that the police arrested them from Narengi Police

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G.R CASE NO: 5142 OF 2010
PROSECUTOR: STATE OF ASSAM Vs
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Station and they had stated that they are the carriers and that the said rods belonged to one Contractor and they merely carried the said rods and as they did not know the correct address, they stopped at the Narengi Tinali to ascertain the address when the police came and arrested them. The accused persons denied that the said rods were stolen articles.

17. The explanation of the accused persons are plausible because the Auto Van is generally used to carry goods and moreover the conduct of the accused that they did not run away at the sight of the police and the fact that they were standing on the road suggests that they did not had guilty mind.

18. In view of the above discussion it is held that the prosecution has failed to prove that the said rods were stolen articles; as such it is held that the prosecution has failed to prove the charge of theft against the accused persons.

19. It is held that the prosecution has failed to prove that the accused persons have committed the offence of theft.

20. DECISION: The prosecution has failed to prove that the accused persons have committed the offence of theft as such the point for determination is answered in the negative, in favour of the accused persons.

ORDER

21. In view of the discussions made above and the decision reached in the foregoing point for determination it is held that the prosecution has failed to prove the charge against the accused persons; as such the accused persons are acquitted of the charge under sections 379 IPC and they are set at liberty. The bail bond of the accused and their sureties shall remain in force for six months from today as per section 447A CrPC.

22. The case is disposed of on contest without cost.

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YUSUF AZAZ, SUB- DIVISIONAL JUDICIAL MAGISTRATE, (S), II, KAMRUP.

G.R CASE NO: 5142 OF 2010
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Given under my hand and the seal of this court on this the 7th day of
August, 2012 at Guwahati.

Yusuf Azaz,
Sub Divisional Judicial Magistrate,(S)II,
Kamrup.

APPENDIX

PROSECUTION EXHIBITS:

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G.R CASE NO: 5142 OF 2010
PROSECUTOR: STATE OF ASSAM Vs
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- 1) EXHIBIT 1: EJAHAR
- 2) EXHIBIT 2: SEIZURE LIST
-) EXHIBIT 3- CHARGESHEET

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) SHRI YUSUFUDDIN AHMED
- 2) SHRI KAMAL KAKATI
- 3) SHRI JATIN BORO
- 4) SHRI H.K KALITA
- 5) NAGESWAR KALITA

DEFENCE WITNESSES

NONE

Yusuf Azaz,
Sub Divisional Judicial Magistrate,(S)II,
Kamrup

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YUSUF AZAZ, SUB- DIVISIONAL JUDICIAL MAGISTRATE, (S), II, KAMRUP.