

IN THE COURT OF THE SESSIONS JUDGE :: :: TINSUKIA

District: Tinsukia
Present: **Sri P.J. Saikia,**
Sessions Judge,
Tinsukia

Criminal Appeal Case No. 32 (4) of 2018

Sri Surajit Sarkar,

S/o- Sri Niranjan Sarkar

R/o.- Tingrai Habi Goan,

Sripuria Congress Colony,

P.O- Sripuria

P.S & Dist. Tinsukia (Assam) Appellant

-Versus -

1. Sri Jugen Deka

S/o- Sri Atul Deka

R/o- Guijan No.8 Gaon

P.S- Rongagora

District- Tinsukia, Assam

2. The State of Assam

Represented by

The Public Prosecutor, Tinsukia Respondents/

Opposite parties

Appearance:

Sri Debojit Bose,

Advocate For the Appellant

A.K. Choubey,

Public Prosecutor For the Respondents

Date of Argument: 02/05/2019

Date of Judgment: 16/05/2019

Criminal Appeal Case No. 33 (4) of 2018

Sri Joyraj Sharma,

S/o- Sri Trivendar Sharma,

R/o- Gobindapur, Jogipathar

P.O- Panitola,

P.S & Dist.- Tinsukia (Assam) Appellant

-Versus -

1. Sri Jugen Deka

S/o- Sri Atul Deka

R/o- Guijan No.8 Gaon

P.O- Rongagora

P.S- Tinsukia

District- Tinsukia, Assam

2. **The State of Assam**

To be represented by

The Public Prosecutor, Tinsukia Respondents

Appearance:

Sri Debojit Bose,

Advocate For the Appellant

A.K Choubey,

The Public Prosecutor, Tinsukia

..... For the Respondents

Date of Argument: 02/05/2019

Date of Judgment: 16/05/2019

J U D G M E N T

1. This is a common judgment for these two cases, as both the appeals have arisen out of the same judgment. These appeals are directed against the judgment dated 27/11/2018, passed in G.R. Case no. 841/2018, by the Ld. Additional Chief Judicial Magistrate, Tinsukia. By the impugned judgment, the appellants Surajit Sarkar and Joyraj Sharma were convicted u/s 379 and 411 of Indian Penal Code.

PROSECUTION CASE

2. On 02/05/2018, the informant Jugen Deka had lodged an ejarah before police, alleging that on that day at about 9 am,

his Hero Super Splendor motor cycle bearing registration no. AS - 23- L - 4021 was stolen from the PNB Road, Tinsukia near Daily Bazar.

3. On 09/05/2018, police recovered the stolen motor cycle of the informant from both the appellants. Infact, both the appellants were traveling in the stolen motor cycle at that time.

4. Finally, on conclusion of investigation, police filed the charge sheet against these two appellants.

5. During the trial of the case, the prosecution examined seven witnesses, including the police Investigating Officer, who had seized the motor cycle from the appellants at Jingabasti on 09/05/2018. The defence plea was total denial. Therefore, on the basis of the prosecution evidence, the Ld. trial court passed the impugned judgment.

POINT FOR DETERMINATION

6. The only point for determination in these appeals, is as to whether the impugned judgment suffers from any infirmity or illegality?

DECISION AND REASONS THEREOF

7. I have carefully gone through the prosecution evidences. In this case, the accused never disputed the fact that the said super splendor motor cycle bearing registration no. AS-23-L-4021 belongs to the informant Jugen Deka. Therefore, I shall take up the evidence of the Investigating Officer Krishna Gohain first. He has stated in his evidence that on 09/05/2018, he received a secret information and therefore he laid a trap at Jingabasti. Krishna Gohain has stated that the appellants were riding the stolen motor cycle at that time and they were

stopped. Krishna Gohain has stated that he had seized the said stolen motor cycle immediately and Ext. 3 is the seizure list. He prepared the seizure list in presence of witnesses named Mahabir Kurmi, Umesh Yadav and Rajen Handique.

8. The witness Mahabir Kurmi has stated in his evidence that on 09/05/2018, the appellant Surajit Sarkar had come to the village in a motor cycle. Mahabir Kurmi has stated that on that day, another unknown person had come to his village and offered him to sale a motor cycle. Mahabir Kurmi has stated that he wanted to see the motor cycle and therefore this unknown person told him that the motor cycle would be brought by his partner. According to Mahabir Kurmi, when he wanted to see the motor cycle, the unknown person had gone out of his house to call his partner. According to him, after this unknown person had left his house, he immediately called police. Mahabir Kurmi has stated that after sometime, both the appellants come to his house in a motor cycle and after that he again informed police. He has stated that police arrived at his house and apprehended the appellants and seized the motor cycle and at that time he had put his signature in the seizure list, which is marked as Ext. 3(1).

9. Now, I shall take up the evidence of Umesh Yadav. He has stated in his evidence that on 09/05/2018, at about 11 am, he was called by police to his house by Mahabir Kurmi. Umesh Yadav has stated that when he reached the house of Mahabir Kurmi, he saw that there was a motor cycle, standing in the courtyard of Mahabir Kurmi. He has stated in his evidence that he had also seen the appellant there, whom he knew since long. Umesh Yadav has stated that after reaching the house of Mahabir Kurmi, he came to know that the said motor cycle was

a stolen one. He also proved his signature in the seizure list as Ext. 3(2).

10. The seizure witness Rajen Handique has stated in his evidence that one day in the month of May, 2018, Mahabir Kurmi informed him over phone that one stolen motor cycle was brought to his house and the thieves were to be apprehended. Rajen Handique has stated that after receiving a phone call from Mahabir Kurmi, he immediately came out to his house and made Mahabir Kurmi on the road and both prepared a plan to catch them. Rajen Handique has stated that according to their plan, Mahabir Kurmi had started to bargain for the price of the motor cycle and at that time, police was also informed. Rajen Handique has stated that police immediately arrived at the house of Mahabir Kurmi and apprehended the appellants and seized the motor cycle. He has proved his signature in the seizure list as Ext. 3(3).

11. All the four witnesses have been extensively cross examined by the defence counsel.

12. The I.O. Krishna Gohain has admitted in his cross examination that Mahabir Kurmi never made any statement before him like he has stated in his examination in chief. The I.O has also stated that Rajen Handique also did not state before him, as he has stated in his examination in chief. But, one point is noticeable in the cross examination of Krishna Gohain is that the appellants never disputed the fact that on 09/05/2018, at Jingabasti they were in possession of the stolen motor cycle.

13. The cross examination portion of the evidences of Mahabir Kurmi, Umesh Yadav and Rajen Handique do not have any relevant facts for warranting an elaborate discussion. There

are no discrepancies and contradictions in their evidence; nor there is any such discrepancies or contradictions in the evidence of Krishna Gohain. The evidences of these four witnesses have inspire confidence.

14. Now, I have reasons to hold that the prosecution case against the appellants is proved beyond all reasonable doubts. Under the aforesaid premised reasons, I find that the Ld. trial court has rightly appreciated the prosecution evidence and arrived at a correct finding.

ORDER

15. In the result, the appeals are found to be devoid of any merit and are accordingly dismissed. Send down a copy of this judgment along with the LCR.

Given under my hand and seal of this Court on this
16th day of May, 2019.

(P.J. Saikia)

Sessions Judge

Tinsukia

Dictated & corrected by me.

Sessions Judge

Tinsukia