

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA:

TINSUKIA

G.R. CASE NO: 595 OF 2013

U/Sec 379 OF IPC

STATE OF ASSAM

..... PROSECUTOR

-Vs.-

SRI BUBU CHANGMAI

S/O: SRI HUKHIRAM CHANGMAI

ADDRESS: BORBIL NO. 3

P.S. DIGBOI, DIST: TINSUKIA, ASSAM

.....ACCUSED

PRESENT: SALEH AHAMMAD, LL.M. AJS

**SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA,
TINSUKIA**

FOR THE STATE: Mr. BAPA PURU KASHYTA, LEARNED ASST.PP

FOR THE ACCUSED: Mr. PRANJAL PROTIM HAZARIKA, LEARNED DEFENCE COUNSEL

CHARGE FRAMED ON: 19-03-16

EVIDENCE RECORDED ON: 04-05-16, 15-06-16 & 05-05-18

ARGUMENT HEARD ON: 24-06-2019

JUDGMENT DELIVERED ON: 08-07-2019

JUDGMENT:

- 1.** The genesis of this case had its roots with the lodging of the First Information Report (in short as FIR) wherein the informant has alleged that on 19-08-13 at night his water pump motor was theft from his house which was fitted with the pump and the complainant suspected Mr. Bubu Changmai is fully involved in this matter. Thereby the informant lodged the FIR. The criminal law was set in motion with the lodging of the FIR.
- 2.** In this case the O/C DIGBOI PS registered as DIGBOI PS case No. 209/2013 U/sec

379 of IPC and the case was entrusted to SI GOLAP GOGOI for investigation and finally after completion of investigation the charge sheet was submitted by him against the accused person U/sec 379 of IPC.

3. In this case the accused person was arrested and forwarded to court. The accused was allowed to go on bail after filing of the charge sheet by my learned predecessor. As per section 207 of CrPC the copy was found ready and furnished to the accused person & the charge U/sec 379 of IPC was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. In this case the prosecution has adduced as many as five PW'S to prove the case. In this case the statement of the accused person is hereby recorded and his pleas is of total denial. The defence does not want to adduce any DW's from his side.
4. I have heard arguments of the learned defence counsel and the learned Asst. P.P. I have perused the evidence on record and scrutinized the evidence on record.
5. After hearing both sides the following are determined point of determination.

POINT OF DETERMINATION

POINT OF DETERMINATION No.1:

Whether the accused person had committed theft on 19-08-2013 at night intending to take dishonestly water pump out of the lawful possession of its original owner without his consent and removed it in order to such taking and thereby the accused committed an offence u/s 379 of IPC?

Discussion, Decision and Reasons there on:

6. PW1 in his evidence has deposed that the occurrence took place in the year 2013. One water pump was stolen from his house at night. He lodged the FIR. Ext.1 is the FIR and Ext.1(1) is his signature.
7. During his cross examination he has stated that he did not know what is written in the FIR. He did not know who committed the theft of the water pump. The suggestion are put forward is of total denial.
8. PW2 in his evidence has deposed that the accused came to sell one water pump to him. The accused could not inform him from where he brought it and he did not purchased it. The police had recovered the pump from the accused person and he signed as a seizure witness. Ext. 2 is the seizure list and Ext.2(1) is his signature.
9. During his cross examination he has stated that he did not know what is written in Ext.2 as Ext.2 was not read over to him. He signed Ext.2 on the instruction of police. He did not know the description of the water pump. The suggestion put forward are of total denial.

- 10.** PW3 in her evidence has deposed that there was theft of water pump from their house. It was one unknown miscreant who had committed theft by breaking the fencing of their house. The accused went to sell the water pump to Pabitra Dihingia and thereafter the case was lodged.
- 11.** During her cross examination she has stated that she knew that the pump which was being sold to Pabitra Dihingia belongs to them. She did not give the description of the water pump to the police and she did not know about it also. She was informed about the recovery of pump by Pabitra Dihingia. She did not know how the theft was committed from their house as she did not show the occurrence. The suggestions put forward are of total denial.
- 12.** PW4 in his evidence has deposed that there was theft of one motor pump from the tube well of the informant. He came to know about it on the next day. The police had recovered the water pump from the back side of the house of Sudarshan Changmai wherein the water pump was kept lying near the Brinjal plant. The police had seized it and he was present there. Ext.3 is the seizure list and Ext.3(1) is his signature.
- 13.** During his cross examination he stated that when he signed Ext.3 it was a blank paper. The suggestion put forward are of total denial.
- 14.** PW-5 in his evidence has deposed that he could not recognize the accused person. He has no idea about the occurrence. The police took his signature in a paper. Ext.2 (2) is his signature. He did not had any idea why the police took his signature.
- 15.** The cross examination is hereby declined.

I have heard the arguments of the learned ASST.PP & the learned Legal Aid counsel.

- 16.** From the perusal of the evidence of the PW'S it appears that the offence alleged against the accused person is u/sec 379 of IPC. There is no denial of the fact that no such occurrence took place.
- 17.** It is to be noted here that *Section 378 of IPC defines theft, "Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth. Explanation 2.—A moving effected by the same act which affects the severance may be a theft. Explanation 3.—A person is said to cause a thing to move by removing an obstacle which*

prevented it from moving or by separating it from any other thing, as well as by actually moving it. Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal. Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.”

- 18.** On perusal of the evidence of PW'S it appears that none of the PWs had seen the commission of theft by the accused person. It has also been admitted by PW-1 that he did not know who had committed the theft of water pump. It has also been admitted by PW-3 during her cross examination that she did not know how the theft was committed. PW-5 is a seizure witness but he has no idea about the occurrence. On perusal of Ext.1 i.e. FIR it appears that the accused person has been suspected by the informant in the commission of the offence. This is apparent on perusal of evidence of PW-2 that the accused person went with a pump which he wanted to sell to him i.e. PW-2. But he did not know from where the water pump was brought and he has no idea about the description and details of water pump. The evidence of PW-3 and PW-4 brings forward a new version to the evidence of PW-1 but both the PWs did not know about the commission of theft. Even if it appears from the evidence of PW-3 & PW-4 wherein they have stated that there was seizure of water pump from the possession of the accused person. They had signed as a seizure witness. But they have no idea about the description of the water pump.
- 19.** The principle of criminal law lays down that the burden of proof is always on the prosecution to prove the case beyond doubt and the accused is presumed to be innocent. *Section 114 illustration (a) of the Indian Evidence Act lays down, "that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession."*
- 20.** ***The presumption permitted under section 114 of Indian Evidence Act illustration (a) doesn't arise until the prosecution has established the following facts: (1) the ownership of the articles in question, (2) their theft (3) their recent possession by the accused.***
- 21.** In this case, the prosecution has not been able to prove the owner of the articles and even if there was theft in the shop of the informant but the informant has not been able to claim or prove his ownership over it. This is clear that the prosecution

has failed to prove who the owner of the article is. The prosecution has not been able to prove that the ingredients of theft in this case also. Similarly, in order to bring the presumption under section 114 illustration (a) of the Indian Evidence Act it needs to be proved that the recovery of articles was found in recent possession of the accused person. In this case even if there was recovery of articles after two days, but on perusal of Ext.2 it does not mention about the date on which the seizure list was prepared.

- 22.**In the case of **LIMBAJI & OTHERS Vs. STATE OF MAHARASHTRA AIR 2002 SC 491** the hon'ble Supreme Court has held that in circumstances of recovery of incriminating articles within reasonable time after incident at the places pointed out by the accused the presumption as to commission of offence by accused can be drawn.
- 23.** As none of the witnesses had seen the occurrence of theft by the accused person and even if there was recovery of water pump from his possession but the informant has not been able to prove the ownership of it.
- 24.** This court has also taken into consideration the statement of the accused person u/sec 313 of CrPC and on close perusal it appears that his plea is of total denial. The accused person has raised the plea with regard to the evidence of PW-4 wherein it has been stated that there was recovery of water pump from the back side of his house near the brinjal plant, which he has denied. But on perusal of Ext.2 the contention raised by the accused person can be accepted which clearly creates doubt about the story of the prosecution. The Ext.2 reflects the place of seizure near the scrap dealer's godown. This itself creates doubt and the contention raised by the accused can be accepted to some extent. The prosecution has not been able to examine the I/O of this case despite its best efforts.
- 25.** During the evidence of these PW'S none of the ingredients of section 379 of IPC could be brought forward by the prosecution during the course of evidence. Hence, this court finds itself difficult that no such essential elements of the above mentioned section could be proved by the prosecution beyond doubt.
- 26.** *The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence. Presumption of innocence is a human right as envisaged under Art.14 (2) of the International Covenant on Civil and Political Rights 1966. Art.11(1) of the Universal Declaration of Human Rights 1948 also provides that any charged with penal offences has a right to be presumed innocent until proved guilty according to*

law in a public trial at which he has had all the guarantees necessary for his defence.

27.In the case of **V. D. Jhingan Vs. State of Uttar Pradesh¹ AIR 1966 SC 1762**

the hon'ble supreme court has held that It is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lies upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.

28.A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.

29.In the light of above discussions and reasons I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt u/sec 379 of IPC and hence the accused person deserved to be acquitted of the charge leveled against him.

ORDER

In view of the above discussions and reasons mentioned above I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt U/sec 379 of IPC and hence he is acquitted from this case and thereby set at liberty.

The accused person is hereby set at liberty.

Make necessary entry in the Judgment register.

The seized articles be handed over to the custody of the actual owner.

Given under my hand and seal of this court on this the 08th day of JULY, 2019 at MARGHERITA COURT.

SALEH AHAMMAD

SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),

MARGHERITA, TINSUKIA

¹ AIR 1966 SC 1762

APPENDIX:

WITNESSES FROM THE PROSECUTION SIDE:

PW1: SRI KARUNA KT. HAZARIKA

PW2: SRI PABITRA DIHINGIA

PW3: SMTI JYOTI HAZARIKA

PW4: SRI NITUL KHANIKAR

PW5: SRI KIRAN KR. CHOWDHORY

WITNESSES FROM THE DEFENCE SIDE: NIL

PROSECUTION EXHIBITS:

EXT 1 IS THE FIR

EXT1(1) IS THE SIGNATURE OF PW-1

EXT 2 IS THE SEIZURE LIST

EXT 2(1), EXT2(2) ARE THE SIGNATURES OF PW2 & PW5

EXT3 IS THE SEIZURE LIST

EXT3(1) IS THE SIGNATURE OF PW4

DEFENCE EXHIBITS: NIL

SALEH AHAMMAD

**SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA**