

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

G.R. CASE NO: 698 OF 2015

U/Sec 379 OF IPC R/W SEC. 3 OF PDPP ACT

STATE OF ASSAM

..... PROSECUTOR

-Vs.-

1) SRI BETAP MALI

S/O: SRI JUGENDAR MALI

ADDRESS: LEDO T.E. LINE NO. 6

P.S. MARGHERITA, DIST: TINSUKIA, ASSAM

2) SRI RAJEN DAS @ KUMBHA DAS

S/O: SRI NEMAI DAS

ADDRESS: TIRAP COLLIERY

P.S. MARGHERITA, 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. BIDYUT DUARAH & Mr. BIJU DEB, LEARNED DEFENCE COUNSEL'S

CHARGE FRAMED ON: 29-05-2017

EVIDENCE RECORDED ON: 03-10-17, 09-02-18, 29-03-18, 19-05-18, 05-07-18, 22-02-19,
24-04-19 & 20-05-19

ARGUMENT HEARD ON: 12-06-19

JUDGMENT DELIVERED ON: 04-07-19

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 02-09-15 at 3:00 pm the complainant received secret information that the accused Sri Betap Mali illegally pilferage coal through some people and stocked at line no.6 Ledo T.E. Accordingly, the complainant apprehended him at Ledo TE Line No. 6 and seized a total 1540 kg coal from his possession which are pilferage from Tirap colliery through his associates. Thereby, the accused person and his associates running their coal pilferage activities among the Ledo area and it is a loss of national property. Hence, the complainant lodged the FIR. The criminal law was set in motion with the lodging of the FIR.

2. In this case the O/C MARGHERITA PS registered as MARGHERITA PS case No. 235/2015 U/sec 379 of IPC R/W Sec. 3 PDPP Act and the case was entrusted to ASI GHANASHYAM HAZARIKA for investigation and finally after completion of investigation the charge sheet was submitted by him against the accused person U/sec 379 of IPC R/W Sec. 3 PDPP Act.
3. In this case the accused persons were arrested in connection with this case and thereafter they were remanded to judicial custody. The accused and they were allowed to go on bail by my learned predecessor. The case was charge sheeted and after taking cognizance summons were issued to the accused persons. As per section 207 of CrPC & the charges U/sec 379 of IPC R/W Sec. 3 of PDPP Act were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. In this case the prosecution has adduced as many as nine PW'S to prove the case. In this case the statements of the accused persons are hereby recorded and their pleas are of total denial. The defence does not want to adduce any DW's from their 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 persons had committed theft on 02-09-2015 at about 3:00 P.M. committed theft of coal from Tirap Colliery, Ledo which was dishonestly removed and thereafter taken without the consent of the informant and the authorities concerned and thereby the accused committed an offence u/s 379 of IPC?

POINT OF DETERMINATION No.2: Whether the accused persons at the same

day date and time had committed damage to the public property which in the form of mischief and thereby committed an offence u/s 3 of PDPP Act ?

Discussion, Decision and Reasons there on:

For the sake of convenience both the points are clubbed together

- 6.** PW1 in his evidence has deposed that he do not know Jayanta Borgohain personally. He know the accused Betab Mali but do not know the other accused person. He is a driver at Ledo outpost under Margherita PS. On the date of occurrence he drove the vehicle of the IC and went to No. 6 line at Ledo Colliery. There the accused persons were caught along with coal by the side of the road. The coal was seized from the possession of accused Betab Mali and he put signature in the seizure list as a witness.
- 7.** In his cross examination he has stated that he know accused Betab Mali as he is a resident of their nearby village. The coal was seized from outside the house of the accused. He put his signature in the seizure list in the PS. He cannot say what is written in the seizure list. He did not see the accused persons committing the theft.
- 8.** PW2 in his evidence has deposed that he is the informant of this case. On 02-09-2015 he was posted at Ledo P.S. On that day the IC, Ledo outpost Dipjyoti Dadhara asked him to go to line No. 6 in order to seize illegally accumulated coal. After arriving there along with staffs he could see that coal had been accumulated in an abandoned house being dumped by one accused Betab Mali. He do not know other accused Rajen Das. He found about 1500 kgs of coal and seized the same in presence of witnesses. They found Rs. 29,500/- only from the possession of accused Betab Mali, which were also seized. Ext. 1 is the seizure list and Ext. 1(2) is his signature. They brought the accused and the seized coal to their outpost and then as per advice of the O/C, Margherita he had lodged the ejahar. Ext. 2 is the ejahar lodged by him and Ext.2 (1) is his signature. Ext.3 is the seizure list and Ext.3(1) is his signature. He also drew sketch map and Ext.4 is the sketch map and Ext.4(1) is his signature.
- 9.** During cross examination he has deposed that he recorded the statement of five seizure witnesses. He did not seize anything from accused Rajen Das. They went to the place of occurrence at about 3:00 pm on the date of occurrence. In the same day evening he lodged the ejahar at about 5:00 pm. As per instruction of the I/C, he went to the place of occurrence on the strength of GD entry. He did not state the name of the owner of line No. 6 tea garden to the IO.
- 10.** PW3 in his evidence has deposed that he do not know who is the informant of the

case. He know the accused Rajen Das and Betab. He do not know the title of Betab. He do not know anything about the facts of the case. He is the VDP member. Generally police ask them to be witness whenever any incident takes place in their locality. The signature shown to him belong to him. Ext.1 is the seizure list and Ext.1(3) is his signature.

- 11.**His cross examination has been declined by defence.
- 12.**PW4 in his evidence has deposed that he do not know the informant but he knows both the accused persons. The signature shown belongs to him. He cannot recollect now when and in what connection he had put his signature.
- 13.**During cross examination he has stated that the accused are known to him as co-villagers. He do not know why he had put his signature.
- 14.**PW5 in his evidence has deposed that in the year 2015 he was the member of VDP of Tirap Gaon. One day police called him to PS and asked him to put his signature in a paper. He cannot say why police took his signature. He have seen a seizure list in the record wherein he put his signature. Ext.1 is the seizure list and Ext.1(4) is his signature.
- 15.**His cross examination has been declined by defence side.
- 16.**PW6 in his evidence has deposed that he know the informant and the accused persons. One day police called him to the PS and asked him to put his signature on the seizure list. Ext.3 is the seizure list and Ext.3(3) is his signature. He knows nothing about the case.
- 17.**His cross examination has been declined by defence side.
- 18.**PW7 in his evidence has deposed that on 02-09-15 he was posted at the Margherita police station. Now he do not remember about the incident. He could not recognize the accused persons.
- 19.**His cross examination has been declined by defence side.
- 20.**PW8 in his evidence has stated that he do not know the informant as well as the accused person. He does not know about the occurrence.
- 21.**His cross examination has been declined by defence side.
- 22.**PW9 in his evidence has deposed that he do not know the informant. He know the accused Betab Mali. He do not know the other accused person. He do not know about this case.
- 23.**During cross examination he has stated that he knows the accused as he used to come to Ledo.

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

- 24.** From the perusal of the evidence of the PW'S it appears that the offence alleged against the accused persons are u/sec 379 of IPC R/W SECTION 3 OF THE PDPP ACT. There is no denial of the fact that no such occurrence took place.
- 25.** 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."*
- 26.** On perusal of the evidence of PW'S it appears that the prosecution side has not been able to examine the I/O of this case despite its best efforts. There is no such evidence brought to light against the accused RAJEN DAS. It appears that on the day of occurrence an incident took place and it cannot be denied at all. The evidence of PW1 & PW2 needs close scrutiny in this case. The other PW'S didn't had any idea about the occurrence. They had merely signed as a seizure witness but didn't know much about the occurrence.
- 27.** However on perusal of the evidence of PW1 & PW2 it appears that they had found coal in the possession of the accused BETAB MALI. There is no denial of the fact that there was coal which was found in an abandoned house. But it has been admitted by PW2 during his cross examination that he didn't know how the theft was committed. It has been stated by PW1 that coal was seized from outside the house of the accused person. But the evidence of PW1 & PW2 doesn't have any corroboration with the evidence of other PW'S. The entire story of the prosecution runs with the accused BETAB MALI but the co accused has not been implicated in this case by the

PW'S and they knew him being a villager and some of the PW'S didn't know him also.

- 28.** There is a presumption which comes to light during the evidence of PW1 & PW2 that there was recovery of coal from the possession of the accused person i.e. BETAB MALI. As per section 114 illustration (a) of the Indian Evidence Act it gives rise to presumption and this court needs to have a look at it as there was recovery of coal from the possession of the accused person BETAB MALI.
- 29.** 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."*
- 30.** ***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.***
- 31.** In this case, the prosecution has not been able to prove the owner of the articles and even if there was theft of coal 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. There is no complain from the Coal India Limited in relation to it. 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 but the prosecution has failed to prove the owner of it.
- 32.** In the case of ***LIMBAJI & OTHERS Vs. STATE OF MAHARASHTRA¹ 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.
- 33.** The evidence of PWs could not make it clear who was involved in the commission of the offence. The evidence of PW1 & PW2 points out that there were coal which were

¹ AIR 2002 SC 491

kept outside the house of the accused. Merely because there was coal kept outside the house of the accused it cannot be said that the accused had kept it. However, a presumption can be drawn but it needs to be proved by the prosecution beyond reasonable doubt. There is no eye witness who had seen the incident of commission of theft. The other PWs had themselves stated that they did not have any idea about the occurrence. It has been admitted by PW2 that the owner of Line no. 6 was not stated before the I/O. The coal was being dumped by the accused in an abandoned house which has been stated by PW2 but the said evidence doesn't have any corroboration with the evidence of PW1 & other PW'S.

34. 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 evidence of PW2 that they found Rs. 29,500/- from the possession of the accused which was seized. Even if the said amount is found what is connected with it couldn't be made clear by the prosecution. The accused BETAB MALI had stated that he was going to purchase tiles. But the prosecution couldn't make it clear. The other co accused plea u/sec 313 of CrPC is of total denial.

35. During the evidence of these PW'S none of the ingredients of section 379 of IPC R/W Section 3 of the PDPP ACT 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.

36. *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.*

37. In the case of **V. D. Jhingan Vs. State of Uttar Pradesh² 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.

38.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.

39.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 persons beyond reasonable doubt u/sec 379 of IPC R/W SECTION 3 OF THE PDPP ACT and hence the accused persons deserved to be acquitted of the charges leveled against them.

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 persons beyond reasonable doubt U/sec 379 of IPC R/W SECTION 3 OF THE PDPP ACT and hence they are acquitted from this case and thereby set at liberty.

Make necessary entry in the Judgment register.

The seized articles be disposed of as per procedure of law.

Given under my hand and seal of this court on this the 04th day of JULY, 2019 at MARGHERITA COURT.

SALEH AHAMMAD

SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),

MARGHERITA, TINSUKIA

APPENDIX:

WITNESSES FROM THE PROSECUTION SIDE:

PW1: SRI RAM BAHADUR KONWAR

PW2: SRI JAYANTA BORGHAIN

PW3: SRI AMAR BAHADUR CHETRY

PW4: SRI ASSU MALI

PW5: SRI RUPJAN HAZARIKA

PW6: SRI BIKI PRADHAN

PW7: SRI DEEP BORPATRA GOHAIN

PW8: SRI BITOPAN BARUAH

PW9: SRI MUNNA GOWALA

WITNESSES FROM THE DEFENCE SIDE: NIL

PROSECUTION EXHIBITS:

EXT 1 IS THE SEIZURE LIST

EXT 1(2) 1(3), 1(4) IS THE SIGNATURE OF PW2, PW3 & PW5

EXT2 IS THE EJAHR

EXT2(1) IS THE SIGNATURE OF PW2

EXT3 IS THE SEIZURE LIST

EXT3(1), 3(2), 3(3) IS THE SIGNATURES OF PW2, PW4 & PW6

DEFENCE EXHIBITS: NIL

SALEH AHAMMAD

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