

**BEFORE THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
MARGHERITA**

G.R CASE No. 687 of 2016

u/s 379/429 of IPC

STATE

Vs.

Akshay Bhumij and Another..... (Accused)

PRESENT: Miss. Sukanya Gogoi, LL.M, A.J.S

JUDICIAL MAGISTRATE 1ST CLASS, MARGHERITA, TINSUKIA

FOR THE PROSECUTION:

Mr. Bappa Purkayastha

- ASST. PUBLIC PROSECUTOR FOR THE STATE

FOR THE DEFENCE:

- ADVOCATE FOR THE ACCUSED

**EVIDENCE RECORDED ON: 7.2.2017, 29.3.2017, 20.5.2017, 6.9.2017,
23.5.2019**

ARGUMENTS HEARD ON: 18.2.2020

JUDGMENT DELIVERED ON: 20.10.2020

JUDGMENT

1. The prosecution's story in brief is that one Mr. Debeswar Saikia, filed an F.I.R on 13.10.2016 stating that a few days before filing the instant ejahar, one of his goats were stolen. After looking for the stolen goat, they found that the accused persons named in the F.I.R viz., Akshay Bhumij and Anil Chawtal, had stolen and killed it. The informant along with his fellow villagers recovered the dead goat from their possession and handed it over to the police along with the 2 accused persons they had apprehended.
2. Upon receipt of such ejahar, the police registered the case as Digboi P.S case no. 171/2016 under section 379/429, IPC. The I/O arrested the accused persons on 14.10.2016 and forwarded them before the Court after which they were remanded to judicial custody. Having completed the investigation, the I/O submitted a charge-sheet against the said accused under section 379/429, IPC.
3. The accused persons were called upon to enter trial and upon their appearance, copies of all the relevant documents under section 173 of Cr.P.C were furnished to them in compliance with section 207 of Cr.P.C.
4. After a thorough perusal of the case record and hearing both parties and finding sufficient materials against the said accused persons, a formal charge under section 379/429, IPC was framed against them on 16.12.2016. The same was read over and their contents explained that the accused persons, Akshay Bhumij and Anil Chawtal, to which they pleaded not guilty and claimed to be tried.
5. During the trial, the prosecution examined 8 witnesses and exhibited 4 documents. The statement defence of the accused persons was then recorded under section 313, Cr.P.C on 23.12.2019 where all the incriminating materials found against them were put to them. They took the plea of the complete denial. Defence adduced no evidence.
6. I have heard the engaged counsels appearing for both sides during the course of arguments and have also thoroughly perused the entire case record and the evidence brought on record, both oral and documentary.
7. Points for Determination:

- i. Whether the accused persons, Akshay Bhumij and Anil Chawtal, on 13.10.2016 stole a goat belonging to Debeswar Saikia, the informant and thereby committed an offence punishable under section 379, IPC?
 - ii. Whether the accused persons on the same day committed mischief by killing the stolen goat of value of 50 rupees or upwards and thereby committed an offence punishable under section 429, IPC?
8. Before we discuss the law under which the accused has been charged, let us see what the prosecution has forwarded as evidence in order to prove the allegations levelled against the accused.
9. PW-1, Debashwar Saikia, who is the informant in this case stated in his examination in chief that one day he had let his goat graze near the forest when the accused persons caught the animal and beat it to death and were caught by the villagers. Later on the same day, when he went in search of his goat, he found her lying dead near the forest. A village meeting was held where the accused persons were asked to pay the price of the goat as compensation to PW-1, which they refused. Following such refusal, he lodged an F.I.R in the police station which is Ext. 1 wherein Ext. 1 (1) is his signature. In his cross-examination, he clarified that the ejahar was written by one Bhubon Changmai and as such did not know the exact contents of the ejahar. He also stated that he had not shown anything to the police to prove his ownership of the said goat nor had he given any description of the goat. One of the villagers named Deben Gogoi had informed him that his goat had died because she was beaten up by the accused persons.
10. PW-2, Ghana Dowarah, stated in his evidence in chief that at the time of incident he was the designated VDP Secretary and on being asked by the police, he had put his signature [Ext. 2 (1)] on the seizure list marked as Ext. 2 wherein Ext. 2 (1). He did not have any personal knowledge of the incident. In his cross-examination, he clarified that the police had taken his signature on a blank sheet of paper.
11. PW-3, Munin Boruah, was working as a VFA (Veterinary Field Assistant) at Digboi Veterinary hospital when a dead goat was brought in for post-mortem. One Dr. Marjhina Khatun, had conducted the post-mortem and PW-3 had assisted her in it. Ext. 3 is the post mortem report wherein Ext. 3 (1) is his signature. In his cross-examination, he stated that he did not know the exact contents of the post-mortem report and that he had put

his signature on the report under the direction of the doctor-in-charge, Marjhina Khatun.

12. PW-4, Prasanta Hazarika, was also working as a VFA (Veterinary Field Assistant) at Digboi Veterinary hospital when a dead goat was brought in for post-mortem and he assisted their doctor-in-charge, Dr. Marjhina Khatun, in the post-mortem procedure and put his signature as Ext. 3 (2) on the post mortem report. In his cross-examination, he stated that he did not know the exact contents of the post-mortem report and that he had put his signature on the report under the direction of the doctor-in-charge, Marjhina Khatun.
13. PW-5, Anima Saikia, who is the wife of the informant, stated that they were informed by the villagers that one of their goats was killed by the accused persons and that they handed over the dead goat to the police when they arrived. She put her signature as Ext. 2 (2) on the seizure list. In her cross-examination, PW-5 stated that the police had not taken her statement and that he she had put her signature on the ext. 2 in the police station and also that they were informed by one Deben Gogoi about the said incident.
14. PW-6, Nitul Khanikar, was present at the time when the villagers apprehended two boys in connection with the death of a goat belonging to the informant and handed them over to the police. The dead goat was then seized by the police and he put his signature [Ext. 2 (3)] in the seizure list. In his cross-examination, he stated that he had no personal knowledge of the incident and could neither confirm nor deny whether or not the accused persons had killed the goat and whether the same had been recovered from their possession. He also could not remember whether there was anything written on the sheet before he had put his signature on it.
15. PW-7, Dr. Marjhina Khatun, was working as the Veterinary Officer at the State Veterinery Clinic on 28.10.16 when a dead body of a black coloured goat, aged about 2 years was brought in for post-mortem. After examination, she observed in her report that no abnormalities, injury or deformities were found in the head region but the respiratory cavity was filled with water up to the abdominal cavity. The abdominal cavity did have a small amount of water but the other organs in the region were found normal. The goat was also 1.5-2 months pregnant. She concluded

that the death was caused due to suffocation from drowning in water as indicated by the presence of water in the respiratory tract. The examination was conducted in the presence of one Mr. Das, a constable of the Digboi P.S. Ext. 3 is the post mortem report wherein Ext. 3 (3) is her signature. In her cross-examination, she clarified that she opined that the reason for the death of the goat is suffocation because she found water in the respiratory tract and that she had neither mentioned the time of death of the goat in her report nor did she mention the name of the constable who had escorted the dead body for examination.

16. PW-8, the I/O of the case was working as the attached officer at Digboi P.S on 13.10.2016 when he was entrusted with the investigation of this case by O/C Debeshwar Saikia. He then went on to record the statement of witnesses, prepare the sketchmap and seize the body of the dead goat. Ext. 2 (4) is his signature in the seizure list marked as Ext. 2. He then sent the goat for post-mortem and later on collected the post-mortem report. Ext. 4 is the sketch-map wherein ext. 4 (1) is his signature. The accused persons were then arrested and forwarded before the court and he submitted charge-sheet u/S 379/429, IPC which is marked as ext. 5 wherein ext. 5 (1) is his signature.

17. In his cross-examination, he further stated that according to the F.I.R, theft had been committed and that when the goat was caught she was about to die. The time of the incident has not been mentioned in the F.I.R and nor was it mentioned to him by any of the witnesses. The incident had taken place on 13.10.2016 and the same was confirmed by the witnesses. However, in ext. 3, the post-mortem report, the dated has been noted down as 28.10.2016 and the time as being around 11.00 A.M. He further stated that the cause of death as per the post-mortem report was suffocation by drowning but the same was not mentioned in the F.I.R. He also stated that Anima Saikia had not produced any proof/documents that the goat did belong to her and that he had not recovered the goat from the possession of the accused persons. He denied the suggestion that he had not investigated the matter properly and that the accused have been falsely implicated in this case.

18. The main issue in contention is whether the accused persons, Pranab Hazarika and Bhaskar Borah, had committed theft by stealing condensed oil from OIL Well No. 18. Section 379, IPC lays down the punishment for

theft. The offense of theft itself has been described u/S 378, IPC which reads as, *"Whoever, intending to take dishonestly any moveable property out of the possession of any person without the person's consent, moves that property in order to such taking, is said to commit theft."*

19. A careful and keen reading of the offense described above reveals that there are three essential ingredients to prove an offence u/S 379 which are as follows:

- a. Dishonest intention or *mens rea*
- b. Takes moveable property away from the possession of a person
- c. The person who owns such possession has not given his consent to such moving

20. On the other hand, section 429 of IPC lays down the punishment for causing mischief by killing or maiming any cattle of any value or any animal of the value of ₹ 50. The section reads as, *"Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, Buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of ₹ 50 or upwards, shall be punished..."*

21. The definition of mischief again, has been laid down under section 425 of IPC which states that, *"Whoever with the intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or effects it injuriously, commits mischief."*

22. A combined reading of both the provisions together clearly spells out that anybody who causes wrongful loss or damage to any person by killing an animal of ₹ 50 or upwards shall be made punishable under law.

23. Now that we know the legal stance behind both of the offences that the accused persons have been charged with, let us go through the evidence that the prosecution has placed before the Court. In order to avoid confusion and disarray, I shall first cull out those evidences which are irrelevant either because they are based on hearsay facts or because of a lack of personal knowledge of the same. The first being P.W-2, who was the designated VDP secretary at the time of the incident and had put his signature on a blank seizure list on being asked by the police even though he had no personal knowledge about the incident itself. P.W 6 also

admitted in his cross-examination that he had no personal knowledge of the incident and could neither confirm nor deny as to whether or not the accused persons had killed ago and the same had been recovered from the possession and that he had only put his signature on blank sheet of paper as the seizure witness and the police asked him to. P.W 5 who is the wife of the informant herself clarified in her examination in chief that they were only informed by Deben Gogoi, one of the villagers that their goat was killed by the accused persons and that the police had not taken her statement even though she was also one of the seizure witnesses.

24. The Supreme Court in its infinite wisdom opined in the case of **Kalyan Kumar Gogoi v. Ashutosh Agnihotri (2011) 2 SCC 532** that, *“the phrase “hearsay evidence” is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible. A statement, oral or written, made otherwise than a witness in giving evidence and a statement contained or recorded in any book, document or record whatever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of a Judge about the existence of a fact, and the fraud which may be practiced with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.”* From their statements made by P.W 2, P.W 5 and P.W 6 in both their examination in chief as well as their cross-examination, it is quite clear that their knowledge about the incident is not first-hand but is only based on hearsay evidence and therefore inadmissible as evidence.

25. In order to prove the offense of theft u/S 379, IPC, we know that it is upon the prosecution to prove that the object alleged to have been stolen, which in this case is a goat, has to be taken away from the possession of its owner without his/her consent. To see if this particular ingredient has been satisfied, let us look into what the informant of this matter, which in this case was the owner of the stolen goat, had deposed with regard to the incident that had occurred. Standing as P.W 1, Debeshwar Saikia, the

informant stated in his evidence in chief that he had let his goat graze near the forest when the accused persons caught the animal and beat it to death. In his cross-examination, he admitted that he had not shown anything to the police nor had he given any description of the goat to prove his ownership. This is a strong point raised by the defence which supported their contention that the ownership of the dead goat itself has not been proven by the prosecution. Although, I am inclined to agree with the defence on this contention, it is also important to remember that the scenario here involves simple people from a village. To expect them to own documentary proof for their ownership over their belongings would be tantamount to holding an open prejudice against them all. Even though a description of the goat to the police would have certainly helped to prove a relation between this particular goat to the informant, it still would not have been conclusive proof of his ownership. Rarely does every animal take birth with distinctive birth-marks to help identify each of them. What is however material, is that he states that he had “found” her lying dead near the forest. Let us focus on the phrase “found her dead near the forest”. At the very beginning of his examination, he himself had deposed that he had let his goat graze near his forest and he follows this statement that when later in the day he went looking for it, he found her in the same place but dead. Thus, we see that the goat was not exactly “taken” out of his possession per se, as it was right where he himself had left it. One of the essentials has just been defeated by the above reasoning. Even if we set aside the technicalities and go straight to “consent” we can see that the matter of his consent doesn’t come into the picture as the goat was never moved from place where he was set to graze.

26. Thus, we see that the essential elements of the offense of theft could not be proven by the prosecution. Nothing in the evidence forwarded suggests that the accused persons in this case had indeed taken the goat out of the possession of the owner/informant without his consent. The involvement of the accused persons in the entire episode is merely speculation based on the account of unnamed villagers. Hence, **point no. (i) is decided in negative and goes in favour of defence.**

27. The most befuddling affair of the whole incident is how the goat which was left healthy and grazing turned up dead at the same spot later on the same day. P.W 1 stated it was one Deben Gogoi, a villager who had told

him that the accused persons apprehended by the villagers, had caught hold of the poor animal and beat it to death. From herein onwards we carry forth his account that as far as he had been informed, the goat had been beaten to death by the accused persons. The Investigating Officer seized the dead body of the goat from the villagers and on learning about the suspicious circumstances of its death, sent it for a post-mortem examination. At this juncture, three very important witnesses step forward with their version of the incident. P.W 7, Dr. Marjhina Khatun, is the Veterinary Officer on duty on 28.10.2016, when the dead body of a black colored goat, aged around 2 years was brought in for post-mortem. Her post-mortem report is marked as Exhibit-3 with her signature on it as Exhibit- 3 (3) wherein she had laid down the cause of death as suffocation from drowning in water as was indicated by the presence of water in the respiratory tract. She found no abnormalities or injuries or deformities in the head region of the goat. P.W 3 and P.W 4 were the veterinary field assistants who assisted Dr. Khatun while she was conducting her post-mortem examination. Neither of them however, had any idea about the contents of the report itself nor admitted to having put their signatures on exhibit-3 under instruction of the doctor-in-charge. Thus, we see that even though the informant was told that the accused persons had beaten up his goat till it died, the veterinary doctor did not find any marks of injury or deformity on the body of the goat. If the allegations were to be considered true, I am hard pressed to believe that the accused persons attacked the goat and killed it without it sustaining a single bodily injury or blow to its person. The report of the expert clearly lays down that water was found in its respiratory tract which is what had actually caused the death of the goat. Even though the cause of death was cited as drowning, it is unclear how and where the goat had drowned as there had to be a body of water involved and from where the goat had to be fetched out of it. However, the allegations of the accused persons are clear and so far, nothing in the evidence forwarded by the prosecution has been able to solidify their stance. The report of P.W 7 went completely against the statement of P.W 1 and his statement stands uncorroborated and vilified.

28. Lastly, we come to the examination of the I/O himself, who appeared as P.W 8 and detailed out the formalities of the procedure starting from the receipt of the F.I.R on 13.10.2016 to the entrustment of the investigation

and the follow up routine procedure. According to his statement, he went to the place of occurrence and seized the dead goat and sent it up for a post mortem. Now it is significant to note that the I/O as he had deposed in his examination in chief, had send the dead body of the goat immediately upon seizing it on the very date of the incident itself i.e on 13.10.2016. On the other hand, if we look carefully at exhibit 3 and the statement of P.W 7, we find that the post mortem was conducted on 28.10.2016. A huge gap of 15 days from the date of seizure till the date of the post mortem examination remains unaccounted for. His cross-examination also fails to shed any light over this major discrepancy as this gap in the timing of death of the goat till its examination would have proven pivotal in deciding the guilt of the accused. If we were to presume that the report that was submitted by the expert is based on the same goat that had been seized by the police 15 days earlier, it would be safe to presume that during the course of a fortnight, a number of natural processes would have taken over and affected the findings of the post mortem examination making it unreliable and inconclusive. Furthermore, he also admitted that he had not recovered the goat from the possession of the accused persons thus pointing at a few more discrepancies at the investigative process followed and also leaving huge gaps of reasoning and nexus between the incident and the accused persons. Deben Gogoi, the villager who had informed the informant and his wife about the entire incident seemed like a key witness to the event but he was not listed as a prosecution witness. There is not a single credible witness who could directly link the accused persons in this case to the incident that had occurred that resulted in the theft and death of the goat. None of the witnesses could testify that the accused persons were seen beating the goat to death even though the same was alleged. Moreover, the post mortem report also confirmed the cause of death being the presence of water in the respiratory tract rather than injury to the head or body of the goat.

29. Considering the testimonies of the above witnesses, it can be surmised that the prosecution has not been able to prove that the accused persons had indeed caused any kind of wrongful loss to the informant by hurting and killing his goat. Although the unexplained death of the goat is rather mysterious, the prosecution failed to prove that the accused persons had

been responsible for its unfortunate demise. Thus, I am of the opinion that point no. (ii) is also decided in negative and goes in favour of the defence.

DECISION

30. Situated thus, this Court is of the opinion that the prosecution failed to prove that the accused persons had stolen the goat out of the possession of the informant and bludgeoned it to death. There is absolutely nothing in the evidence that even links the two accused to the crimes alleged against them, much less proves its commission by them. Therefore, after considering all the materials and evidences on record, this Court holds that prosecution has failed to prove the charges against the accused persons beyond all reasonable doubt.

ORDER

31. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the accused persons, Akshay Bhumij and Anil Chawtal, have not committed the offences punishable under section 379 and 429 of I.P.C and as such the accused persons are acquitted of all charges against them and they are set at liberty.

32. Let a copy of the judgment be given to the acquitted persons immediately and free of cost as per the provisions of Section 363(1), Code of Criminal Procedure.

33. The bail bond shall extend to 6 months (Six months) from today.

This judgment is given under my hand and seal of this court on this 20th day of October, 2020.

The case is disposed of on contest.

Sukanya Gogoi
Judicial Magistrate First Class,
Margherita

APPENDIX

PROSECUTION WITNESSES

P.W.1 - Debeswar Saikia

P.W.2 - Ghana Dowarah

P.W.3 – Munin Boruah

P.W.4 – Prasanta Hazarika

P.W.5 – Anima Saikia

P.W.6 – Nitul Khanikar

P.W.7 – Dr. Marjhina Khatun

P.W.8 – Arun Ch. Gogoi

DEFENCE WITNESSES

None

PROSECUTION EXHIBITS

EXT. 1 – F.I.R

EXT. 2 – Seizure List

EXT. 3 – Post Mortem Report

EXT. 4 – Sketch-map

DEFENCE EXHIBITS

None