

DISTRICT: TINSUKIA

IN THE COURT OF THE JUDICIAL MAGISTRATE 1ST CLASS, TINSUKIA

GR CASE NO: 2178/14
u/s 379 IPC

State

- V -

Md. Anowar Hussain

.....Accused

PRESENT: SRI. NAVNEET KASHYAP, LLM
JUDICIAL MAGISTRATE 1ST CLASS, TINSUKIA

ADVOCATE FOR THE STATE: Ld. Addl. PP Sri P.K. Sharma

ADVOCATE FOR THE ACCUSED: Ld. Adv. Sri. Munna Kumar Singh

CHARGE FRAMED ON: 06/01/2018

EVIDENCE RECORDED ON: 18/05/2018, 23/08/2018, 30/03/2019

ARGUMENT HEARD ON: 19/07/2019

JUDGMENT DELIVERED ON:19/07/2019

JUDGEMENT AND ORDER

- 1) The prosecution case in brief is that on 26/10/2014 an Ejahar was lodged by Md. Moshahid Moosa stating therein that some days ago he learnt that Sri. Anowar Hussain who is a tenant of his elder brother Md. Mohit sold out C.I. Sheets of the tenanted house. Hence this case.
- 2) On receipt of Ejahar the O.C. Tinsukia P.S. registered a case under Tinsukia P.S. Case no. 978/14 and after completion of usual investigation submitted charge-sheet against

the accused person Md. Anowar Hussain u/s 379 of IPC before the Ld. Chief Judicial Magistrate, Tinsukia. Subsequently the case was transferred to my court for disposal.

- 3) On 06/01/2018 the accused appeared before this court and charge u/s 379 of IPC was framed, read over and explained to the accused which he pleaded not guilty.
- 4) The prosecution side has examined as many as 3 witnesses. The statement of accused u/s 313 CrPC is recorded. Defence declined to adduce evidence.
- 5) I have heard the arguments of both sides and perused the record.

POINTS FOR DETERMINATION:

Whether the accused Md. Anowar Hussain on or about a few days before 26/10/2014 at Dhekiajuri Masjid patty, committed theft of C.I. Sheets of the tenanted house by taking it out of possession of Md. Mohit and thereby committed an offence u/s 379 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF

- 6) PW1 is Md. Mushahid Moosa. He has stated that in the month of October 2014, he came to know that the accused was altering the tenanted house and at the place of occurrence, he saw that the tin roof was sold by the accused to a scrap and when PW1 questioned the accused, he told PW1 that rain water was leaking and the accused changed the C.I. Sheet. EXT 1 is the Ejahar and EXT 1 (1) is the signature of PW1.

In his cross examination PW1 has stated that the alleged C.I. sheets were never recovered or seized by the police. He has denied the suggestion put by the defence that he lodged a false FIR with mala fide intentions.

- 7) PW2 is Sri. Diyal Ali. This witness has not implicated the accused. Defence declined to cross-examine this witness.
- 8) PW3 is Md. Shakeel Akhtar. He has stated that five years ago the accused came to him and asked him to mediate between his brother Mushahid Moosa and the accused. In his cross-examination, PW3 has stated that he has no personal knowledge about the incident

- 9) The above are evidence on record.
- 10) From the evidence of all the prosecution witnesses above, it is seen that PW1 Mushahid Moosa has deposed in his evidence that he came to know that the accused was altering the tenanted house and at the place of occurrence, he saw that the tin roof was sold by the accused to a scrap and when PW1 questioned the accused, he told PW1 that rain water was leaking and the accused changed the C.I. Sheet. All the other witness has not implicated the accused in their evidences. PW1 has admitted in his cross-examination that the alleged C.I. sheets were never recovered or seized by the police.
- 11) Ld. Advocate for the accused has submitted that the prosecution has failed to prove the case against the accused since not theft could be brought out if the evidence of the complainant is gone through. Ld. Advocate for the accused has further submitted that a false and fabricated case has been lodged against the poor accused just to harass him and evict him from his rented house. The Ld. Additional Public Prosecutor has submitted that the case against the accused is proved beyond any reasonable doubt.
- 12) After going through the evidence of the prosecution side witnesses, it is seen that PW1 who is the informant came to know that the accused was altering the tenanted house and further he has stated that the accused told him that as rain water was leaking and the accused changed the C.I. Sheet. Again no seizure is made in the case. All other witness has not implicated the accused.
- 13) In connection to this case, we may refer to the observation of the Hon'ble Gauhati High Court in the case of State of Tripura vs Dulal Dey, 2008(1) GLT 446, Para 27 of the said judgment.

"27. In a criminal case mere suspicion is not enough to convict an accused, as the degree of proof required is strict than the civil proceedings. By this time it is also settled that the criminal trial is meant for doing justice to the accused, the victim and the society, so that the law and order is maintained. Court should not search the evidence of the prosecution witnesses only to punish the accused person for the charges levelled against him. It is also the duty of the Court to find out whether the accused is really involved and/or connected with the offence for which charge is levelled against him. As the duty of the Court is to see that no

innocent person should be punished as well as no guilty person should escape without punishment. The first one is as important as the latter one.”

- 14) Considering all, I find that the prosecution side has failed to prove the case u/s 379 IPC against the accused Md Anowar Hussain beyond all reasonable doubt and accordingly accused Sri. Biswajit Gogoi is convicted under the said sections of law. In result, accused Md. Anowar Hussain is acquitted of the charge u/s 379 IPC in this case and he is set at liberty forthwith.

ORDER

- 15) In result, accused Md. Anowar Hussain is acquitted of the charge u/s 379 IPC in this case and he is set at liberty forthwith.
- 16) Bail Bond of accused is extended to a period of six months from today as per the provisions u/s 437 A of CrPC.

Given under my hand and the seal of this court on this 19th Day of July, 2019 at Tinsukia.

(Sri. Navneet Kashyap)
JMFC, Tinsukia

APPENDIX

(A)PROSECUTION EXHIBITS:

EXT1: Ejahar

(B)DEFENCE EXHIBITS:

Nil

(C)PROSECUTION WITNESSES:

PW1: Mushahid Moosa, Informant

PW2: Sri. Diyal Ali

PW3: Md. Shakeel Ansari

(D)DEFENCE WITNESSES:

Nil

(Sri. Navneet Kashyap)
JMFC, Tinsukia
