

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S),

SONITPUR, TEZPUR

G.R CASE NO:- 1365/09

Under section: - 379 IPC.

State

-VS-

Md.Bodorud Jamal Mandal @ Juwel Ahmed.

.....accused.

Present: - O. Mize, A.J.S.

Counsel appeared:-

For the prosecution: - L.Hazarika.

For the defense: - D.Bora & M.Deka.

Evidence Recorded on: - 13.10.09, 10.12.14 & 08.01.15.

Argument Heard on: - 22.05.15.

Judgment Delivered on: - 28.05.15.

JUDGMENT

The prosecution's case in brief is that, on 30.07.09, the informant Shri Deba Acharya lodged a F.I.R at Jamuguri police station informing that on 29.07.09 at around 7 PM while he was in the market, one unknown person was taking away his new bicycle. When he made hue and cry, the public caught the thief and handed over to the police.

The police registered the case and after investigation laid charge sheet u/s 379 I.P.C against accused Bodorud Jamal Mandal @ Juwel Ahmed.

The accused person was summoned to stand trial. Copies of the relevant documents were furnished to the accused person. Charge u/s 379 IPC was framed against the accused person. The charge was read over and explained to the accused person. The accused person pleaded not guilty and claimed to be tried.

The Prosecution examined six witnesses and closed its evidence. The accused person was examined u/s 313 Cr.P.C in which he pleaded his innocence. The defense's side did not adduced evidence.

I have heard the argument of Id. Counsel for the accused person and also the Id. Asst.P.P for the state.

POINT FOR DETERMINATION

1. Whether the accused person had committed theft of the bicycle of the informant and thereby committed an offence punishable u/s 379 IPC?

DECISION WITH REASONS

The essential ingredients of the offence u/s 379 I.P.C., are as follows:-

1. The accused removed the movable property;
2. He removed it out of the possession of another person without his consent ;
3. He did so with a dishonest intention.

In the present case, Pw1- Shri Deba Acharya has deposed that, he is the informant/complainant of this case. He knows the accused person. The incident occurred at about 6 month ago. At the time of the occurrence of the incident, he kept his bicycle at his back side & he was selling vegetable in the market. He saw that accused person was going along with his bicycle. He asked him to stop. But, the accused person did not stop. When he made hue and cry, people caught the accused person along with the bicycle. After getting the information, the police came and the accused person was handed over to the police. Later on, he lodged the FIR. Exhibit-1 is the FIR and exhibit-1(1) is his signature. The police seized the bicycle and gave the custody of the bicycle to him. He identified his hero bicycle. Exhibit-2 is the seizure list and exhibit-2 (1) is his signature.

Pw2- Shri Trilochan Sarma has deposed that, he knows the informant. The incident occurred on 29.07.09 at around 6/7 PM. At the time of the occurrence of the incident he was in the market. Then he heard hue and cry regarding a theft. He along with 3/4 VDP person caught the accused person with the bicycle. They called the police. The police came and seized the bicycle in their presence and it was a new hero bicycle. Exhibit 2(2) is his signature in the seizure list.

Pw3- Shri Dilip Mandal has deposed that, he knows the informant and the accused person. The incident occurred on 29.07.09 at around 6/7 pm. At the time of the occurrence of the incident, he heard hue and cry about theft and they caught the accused person. The complainant was the owner of the bicycle. After getting the information the police came and took away the accused person. He gave his signature as witness in the seizure list. Exhibit-2(3) is his signature. The police gave the custody of the bicycle to the complainant.

Pw4- Shri Pralash Acharya has deposed that, he knows the complainant. The incident occurred on 29.07.09 at around 6.30/7 pm. At the time of the occurrence of the incident he was in the market. He heard hue and cry about theft of a bicycle. The thief was caught along with the bicycle.

Pw5- Shri Padma Sharma has deposed that, he knows the informant and he does not know the accused person. The incident occurred in the year of 2009 at around 7 PM. At the time of the occurrence of the incident, he was in the market. The complainant was also in the market. The complainant made hue and cry after finding his bicycle missing. The people present in the market caught the thief and handed over to the police.

Pw6- Shri Dharani Adhikari has deposed that, at the time of the occurrence of the incident, he heard hue & cry about theft of a bicycle. The people present in the market caught the thief and handed over him to the police.

I have gone through the entire evidence on record of this case. It appears that, Pw5 & Pw6 did not see the accused person. In the cross-examination, Pw5 has deposed that he did not see the thief. Pw6 has also deposed that, he did not see when thief was taking away the bicycle and he does not know the thief.

It appears from the evidence of the remaining Pws that, Pw1 is the complainant of the case and at the time of the occurrence of the incident, he was selling vegetable in the market. He saw that accused person was taking away his bicycle. He asked him to stop. But, the accused person did not stop. So, he made hue & cry and Pw2, Pw3 & Pw4 caught the accused person along with the bicycle. Thereafter, police came after getting the information and bicycle was seized in the presence of Pw1, Pw2 & Pw3. Exhibit-2 is the seizure list and exhibit-2 (1) is the signature of Pw1. Ext. 2(2) is the signature of Pw2 & ext-3(3) is the signature of Pw3.

It appears from the evidence of Pws that the prosecution has proved that, the accused person removed the bicycle of Pw1 out of the possession of Pw1 without his consent. The accused person was caught red handed in the place of the occurrence of the incident. The circumstance and manner of committing the offence shows that accused person had dishonest intention. The accused person would have taken away the bicycle of Pw1 if he was not caught by the people. I do not find any contradiction in the evidence of Pw1, Pw2 & Pw3 who were the eye witnesses. The defense could not destroy the evidence of Pws in the cross-examination.

Mr.L.Hazarika, Id.Asst.P.P for the state while arguing has submitted that the prosecution has proved its case against the accused person beyond doubt and contended to accept the prosecution's case and to convict the accused person. Per contra, Mr.D.Bora, the learned defence counsel argued that there is contradiction in the versions of the witnesses.

However, it appears to me that, the evidence of Pws cannot be discarded for minor discrepancies. Much importance should not be given to minor discrepancies. They can be overlooked unless the discrepancies go to the root of the matter to impeach the basic version of the case. In the case of State of Himachal Pradesh -vs- Lakhraj (2000)1 SCC-247, the Hon'ble Apex Court has distinguished minor discrepancies from contradiction and held that minor discrepancies or variation in evidence does not make the case doubtful. In the State of Rajasthan v. Smt. Kalki and Anr. AIR 1981 SC 1390 & in Bihari Nath Goswami v. Shiv Kumar Singh and Ors. (2004) 9 SCC 186 apex court has held similar view.

In view of the above findings and discussion, the prosecution has proved beyond doubt that accused person remove the bicycle of Pw1 out of his possession &

without his consent with dishonest intention. So, I find accused guilty u/s 379 IPC. Accordingly, accused Bodorud Jamal Mandal @ Juwel Ahmed is convicted u/s 379 IPC.

After considering the gravity of the offence and manner of committing the offence, it is not a fit case to extend the benefit of the provisions of the Probation of Offenders Act to the accused person. Heard the accused person on the point of quantum of sentence. Accused person has prayed for leniency on the ground that he is a poor person. He has wife & small children in his home and they will suffer if he will be sent to jail.

After considering the prayer of the accused person & considering all aspects, accused Bodorud Jamal Mandal @ Juwel Ahmed is sentenced to pay a fine of Rs.3000/- (Rupees three thousand only). In default of payment of fine, the accused shall suffer simple imprisonment for a period of six months.

Let a free copy of the judgment be given to the convict Bodorud Jamal Mandal @ Juwel Ahmed immediately. Convict is informed about his right of appeal against the judgment and order of conviction and sentence. Judgment is pronounced in open court. Case is disposed of on contest. The bail bond of accused person will remain in force for six months from today.

Given under the hand and seal of this court on this 28th day of May 2015.

Sub-Divisional Judicial Magistrate (S),
Sonitpur, Tezpur

APPENDIX

Prosecution has examined the following witnesses:-

Pw1- Shri Deba Acharya.

Pw2- Shri Trilochan Sarma.

Pw3- Shri Dilip Mandal.

Pw4- Shri Pralash Acharya.

Pw5- Shri Padma Sharma.

Pw6- Shri Dharani Adhikari.

Prosecution has exhibited the following documents:-

Ext.1- FIR.

Ext.1(1)- signature of Pw1.

Ext.2- seizure list.

Ext.2(1), 2(2) & 2(3)- signature of witnesses.

Defence's side has not examined any witness.