

DISTRICT: SONITPUR

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST
CLASS, SONITPUR, TEZPUR

G.R. Case No. 1204/2010

U/Ss. 379/411 IPC

1) SH. MADAN DAS

S/O LATE KALI KUMAR DAS

VILL: SIMOLUGURI COLONY

P.S: THELAMARA

DISTRICT: SONITPUR

ASSAM

- Accused No. 1

2) SH. MANGAL BASUMATARY

S/O LATE GOBINDA BASUMATARY

VILL: NOLINIDOOBA

P.S: THELAMARA

DISTRICT: SONITPUR

ASSAM

- Accused No. 2

3) SH. KHADAR BASUMATARY

S/O LATE PREMKANTA BASUMATARY

VILL: NOLINIDOOBA

P.S: THELAMARA

DISTRICT: SONITPUR

ASSAM

- Accused No. 3

**4) SH. DAULA BORO @ LAMA
S/O LATE DHONIRAM BORO
VILL: NOLINIDOOBA
P.S: THELAMARA
DISTRICT: SONITPUR
ASSAM**

- Accused No. 4

**5) MD. ALI
S/O JABON ALI
VILL: KATONIBARI
P.S: THELAMARA
DISTRICT: SONITPUR
ASSAM**

- Accused No. 5

**6) SH. RAJESH GUPTA
S/O PARAS NATH GUPTA
VILL: DHEKIAJULI
P.S: DHEKIAJULI
DISTRICT: SONITPUR
ASSAM**

- Accused No. 6

VERSUS

STATE OF ASSAM

- PROSECUTOR

PRESENT: JAYASHREE BORA, AJS
JUDICIAL MAGISTRATE FIRST CLASS
SONITPUR, TEZPUR

ADVOCATES APPEARED

FOR THE PROSECUTION: Sh. Ashok Sharma, APP

FOR THE ACCUSED: Md. A. Aziz, Sh. B. Basumatary

CHARGE FRAMED ON: 17/08/12

EVIDENCE RECORDED ON: 08/11/12, 11/12/12, 05/06/13, 27/03/15

ARGUMENT HEARD ON: 24/04/15

JUDGMENT DELIVERED ON: 06/05/15

JUDGMENT

1. The factual matrix of the prosecution is that on the night of 28/06/10 certain iron rods were stolen from the camp of the construction site of the tower under the power grade at Silikhabari. After inquiry, on 30/06/10 at 12 o'clock in the afternoon, the iron rods were recovered from the possession of Accused No. 5 while he was carrying the same from Thelamara daily market towards Thelamara ghat village. On being interrogated, Accused No. 5 stated that Accused No. 1 to 4 had sold off the rods to him after committing theft of the same.

2. In connection with the aforesaid incident, the informant lodged an *ejahar* at Thelamara P.S. on 30/06/10. On receipt of the FIR, the police registered Thelamara P.S. case No. 68/2010 u/ss. 379/411 IPC and conducted investigation into the matter. On completion of investigation, the police laid charge sheet against the accused u/ss. 379/411 IPC.

3. In due course the accused entered their appearance in response to the process issued. Copies of relevant documents were furnished to the accused in accordance with Sec. 207 CrPC. Charge u/s. 411 IPC against Accused No. 5 and charge u/ss. 379/34 IPC against the other accused were framed, read over and explained to them to which each pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined 5 (five) numbers of witnesses, exhibited four documents and closed its evidence. On the closure of prosecution evidence the statement of each accused was recorded u/s. 313 CrPC. Defence chose not to adduce any evidence.

5. Upon hearing both the parties and perusal of the records, the points for determination have been formulated as follows-

(i) Whether Accused No. 1, 2, 3, 4 and 6, in furtherance of their common intention, on the night of 28/06/10 at Silikhabari, committed theft of iron rods belonging to the complainant by dishonestly removing the same from the camp of the tower construction site, and thereby committed an offence punishable u/s. 379 IPC read with Sec. 34 IPC?

(ii) Whether Accused No. 5, on 28/06/10 and on earlier dates, received the stolen rods of the informant and thereby committed an offence punishable u/s. 411 IPC?

Discussion, Decision and Reasons for Decision

6. I have gone through the evidence on record and heard the learned counsels on both sides and I shall now discuss and decide the points formulated.

EVIDENCE

7. Testifying as PW1, the informant stated in her evidence in chief that she is the informant. She knows Md. Ali and

Rajesh Gupta. She also knows Mangal Basumatary, Khadar Basumatary, Madan Das. She does not know the other accused. Incident took place on 28/06/10. She had deposited 400 pieces of rods at Silikhabari tower camp where tower work was under way. 226 pieces of rods along with wrench went missing. After enquiry Rajesh Gupta was found with 226 pieces of iron. He confessed before her that Mangal, Khadar, Md. Ali, Madan Das and the other person (in dock) had given him the articles. When Md. Ali was asked he said that Mangal had given him the articles. Articles were found in the 'kabari" shop of Rajesh Gupta and these were seized. Exhibit 1 is the FIR and Exhibit 1(1) is her signature. Exhibit 2 is the seizure list and Exhibit 2(1) is her signature.

8. In her cross examination PW1 stated that her camp had been there since one month prior to the date of occurrence. People stay in the camp. Labourer namely Mantaz Ali was present. About 30 labourers are there in the day and at night only Mantaz is there. On the date of occurrence also Mantaz was there. Articles were strewn outside the camp. She had not herself seen the accused taking away the articles. FIR was written by a scribe. She signed in English. Thana is 5 kms away from the place of occurrence. Date of occurrence was 28/06/10. FIR was lodged on 30/06/10. Reasons for delay are not stated. Details of stolen articles are not mentioned in the *ejahar*. Stolen rods were allotted to her but documents were not submitted to the police. These rods can be purchased from the market also and there were no specific markings. Items seized were scraps. Tin and other articles were there in the shop of Rajesh Gupta. Rajesh Gupta had confessed to having received from Md. Ali. Md. Ali stated that he received from other accused. Rods were not given in her zimma and she has not seen them in court. She had signed over Exhibit 2 at Gupta's

shop. Seizure list was duly filled up and she knows about its contents. She denied the defence suggestion that the seized articles were not hers and that they belonged to others. She denied that the accused did not confess to the theft.

9. In his examination in chief PW2 stated that he knows all accused in dock. He knows the complainant Sila Boro. He heard the sound of iron rods and came out of the house. He saw unidentified men taking away the rods. He raised hue and cry hearing which Amal Das and tower inmates came out.

10. Defence declined to cross examine PW2.

11. In his examination in chief PW3 stated that he knows all accused in dock and the complainant. He heard hue and cry and on coming out saw rods lying on the ground. He had not seen the accused near the place of occurrence.

12. Defence declined to cross examine PW3.

13. In his examination in chief PW4 stated that he does not know the accused in the dock. He knows the complainant. Around one year ago from the date of his deposition, he was at Thelamara P.S. in connection with line repairing. At that time the police showed him some rods and asked him to sign. He signed over Exhibit 2 and Exhibit 2(2) is his signature. He does not know from whom the police had seized the iron.

14. Defence declined to cross examine PW4.

15. PW5 is the I/O of this case. In his examination-in-chief, PW5 stated that on 30/06/10, he was at Thelamara P.S. as S.I. On that day the informant lodged an *ejahar* at the police station. The complaint was registered as Thelamara P.S. Case No. 68/2010 u/ss. 379/411 IPC. He took up the

investigation of the case. He interrogated the complainant at the police station. Thereafter he along with the complainant went to the scrap shop of Rajesh Gupta where he recovered the stolen rods as shown by the complainant and seized the same in the presence of the witnesses. He brought the seized articles to the police station. Exhibit 2 is the seizure list and Exhibit 2(3) is his signature. Thereafter he again went to the place of occurrence along with the complainant. At the place of occurrence he interrogated the other witnesses and prepared a sketch map. Exhibit 3 is the sketch map and Exhibit 3(1) is his signature. On the date of seizure he brought one Md. Ali and Rajesh Gupta to the police station for interrogation. During interrogation it was found that Madan Das, Md. Ali, Rajesh Gupta, Mangal Basumatary, Khadar Basumatary and Dawla Basumatary are involved in the offence. Then he brought Madan Das to the police station for interrogation. He searched for the remaining three accused but could not find them. On 01/07/10, he arrested accused Madan Das, Md. Ali and Rajesh Gupta in connection with the above case and forwarded them to the court. Mangal Basumatary and Khadar Basumatary surrendered before the court. Till the completion of investigation accused Dawla Basumatary was absconding and he could not be arrested. Against all the accused he found sufficient material and so he submitted charge sheet against the above named six accused showing Dawla Basumatary as an absconder. The charge sheet was filed u/ss. 379/411 IPC. Exhibit 4 is the charge sheet and Exhibit 4(1) is his signature.

16. In his cross examination PW5 stated that the place of occurrence is at a distance of 3 kilo metres from the shop of Rajesh Gupta. There is no other shop nearby the shop of Rajesh Gupta except some houses. The *ejahar* does not mention the number of iron rods stolen. He seized 296

pieces of spiral rods each measuring two-two and half feet in length. He also seized eleven numbers of dull range of flat size. There was a labour camp at the place of occurrence. Usually how many labourers stay in the camp was not enquired by him, nor has he written the same in the case diary. There are a number of households near the labour camp. He did not interrogate any person residing near the shop of Rajesh Gupta. There is no mention regarding the shape or size of the stolen rods in the *ejahar*. As identified by the complainant, he seized the entire amount of rods which were lying in the shop of Rajesh Gupta. He does not know if the complainant is a surrendered NDFB ultra. He has recorded the statement of Amal Das but did not record the statement of Parimal Bhowmik, both of whom are the nearby residents of the shop of Rajesh Gupta. At the time of seizure, the signature of the complainant and that of one Mihir Roy was taken. Mihir Roy's house is at Thelamara Centre. He has seized the rods as shown by the complainant. The incident took place on 28/06/10 and the *ejahar* was lodged on 30/06/10. He seized the articles on 30/06/10. He denied the defence suggestion that the *ejahar* was lodged after making the seizure. The *ejahar* does not explain the delay regarding the lodging of the *ejahar*. He denied the defence suggestions that he did not carry out any investigation in connection with this case, that he has falsely filed charge sheet against the accused u/ss. 379/411 IPC despite the absence of any materials under those sections of law, that he arrested the accused persons Madan, Rajesh Gupta and Md. Ali as per the direction of the complainant and that he did not investigate the case properly.

APPRECIATION OF EVIDENCE

17. In order to constitute the offence of theft, it must be established that a movable property was dishonestly removed from the possession of another person without that person's consent. Apparently, the evidence on record shows the absence of any eye witness to the alleged offences. According to PW1 she did not witness the accused stealing the rods. The evidence of PW2 reveals that he could not identify the men whom he had seen carrying away the rods. According to PW3 he came out on hearing hue and cry and saw rods lying on the ground. In her evidence PW1 stated that Accused No. 6 had stated before her that the other accused persons had given him the articles. This piece of evidence has not been corroborated by any other witness. In fact, on going through the evidence, there is absolutely no explanation as to how the prosecution arrived at the conclusion that the alleged theft was committed by the accused.

18. Perusal of the *ejahar* marked as Exhibit 1 shows that it does not contain any description of the stolen goods. According to PW1 it was after enquiry that Accused No. 6 was found with the rods. As per the I/O he along with PW1 went to the shop of Accused No. 6 and recovered the iron rods. However, there is absolutely no evidence to support as to how the prosecution came to know that the alleged stolen goods were in the possession of Accused No. 6. Further, turning to the evidence of PW4, the independent seizure witness, it is seen that he did not himself witness the seizure. He signed on the seizure list at the police station and he did not know from where the goods were seized. This leads me to disbelieve that the seized articles were in fact seized from the possession of Accused No. 6.

19. In her evidence in chief PW1 stated that 226 pieces of iron rods were stolen whereas Exhibit 1 does not mention anything as regards the quantity of the stolen goods. To my mind, this is a vital omission considering that if the informant was aware of the quantity of goods regarding which the alleged theft had been committed, the same must have been referred to in the *ejahar*.

20. Furthermore, according to the allegations in the *ejahar* the alleged theft had been committed regarding iron rods. Going by PW1's evidence, the items seized consisted of iron scraps. On the other hand perusal of the seizure list shows that the police had seized 296 pieces of spiral rods each measuring two-two and half feet in length and eleven numbers of dull range of flat size. Clearly, there are discrepancies galore regarding the very nature of the stolen property. If the alleged theft had been committed with regard to iron rods, there is no explanation as to why dull range were seized vide the seizure list. This leads me to disbelieve the alleged seizure of the goods. This conclusion gets fortified by I/O's own admission that as identified by the accused he seized all the iron rods that were found lying in the shop of Accused No. 6. Therefore, it is unexplained as to why the I/O carried out the seizure simply at the instance of PW1 when there is no material on record to substantiate PW1's ownership or possession of the seized goods.

21. Stitching everything together, it is manifest that the nature of the alleged theft property is deeply fraught with discrepancies. The ownership of the seized articles also remains doubtful. The prosecution has failed to prove that the seized property were in fact the stolen property. Consequently, the applicability of Sec. 411 IPC gets automatically ruled out.

22. In the backdrop of what has been discussed above I am persuaded to arrive at the conclusion that the prosecution has failed to prove beyond reasonable doubt that Accused No. 5 has committed an offence punishable u/s. 411 IPC and that Accused No. 1, 2, 3, 4 and 6 have committed the offence punishable u/ss. 379/34 IPC. As such Accused No. 5 is acquitted of the charge u/s. 411 IPC and Accused No. 1, 2, 3, 4 and 6 are acquitted of the charge u/ss. 379/34 IPC they are set at liberty fort with.

The bail bonds of the accused and their sureties shall remain in force for six months from today in compliance with Sec. 437-A, CrPC.

Case is disposed of on contest.

The judgment is typed and prepared by me.

Given under my hand and the seal of this court on this 6th day of May, 2015 at Tezpur.

Jayashree Bora
Judicial Magistrate First Class
Sonitpur, Tezpur

APPENDIX

PROSECUTION EXHIBITS:

Exhibit 1: *Ejaha*r

Exhibit 2: Seizure list

Exhibit 3: Sketch map

Exhibit 4: Charge sheet

DEFENCE EXHIBITS:

NONE

PROSECUTION WITNESS:

PW1- Smt. Sila Boro

PW2- Sh. Ramendra Bhowmik

PW3- Sh. Amal Das

PW4- Sh. Mihir Roy

PW5- Sh. Prabhat Rajkhowa

DEFENCE WITNESS:

NONE

Jayashree Bora
Judicial Magistrate First Class
Sonitpur, Tezpur