



**G.R No-3089 of 2016**  
**(State of Assam Vs Sri Dhruba Jyoti Kalita & Ors)**

Rs. 730/- and 02 nos of ticket books recovered from his possession. Later, they came to know that he is the agent of Sri Sushil Ghosh and Jintu Kalita.

**"INVESTIGATION"**

2. On receipt of the Ejahar, Tezpur P.S Case No.1678 of 2016, u/s-13/14 of Assam Game and Betting Act was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-13/14 of Assam Game and Betting Act against the above-named accused persons.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s 207 of CrPC was furnished to the above-named accused persons. After hearing both side, charge of offence u/s- 14 of Assam Games and Betting Act was read over and explained to the accused persons by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

**"STATEMENT OF DEFENCE"**

4. The prosecution side to prove the guilty of the accused persons examined as many as 06 (Six) numbers of witnesses including the informant. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused are examined u/s 313 of CrPC and their pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on their defence.

**"ARGUMENT"**

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by the prosecution side.
6. **The points for determination in this case:-**

**Whether on 19.06.2016 at about 3 PM, the accused person named Dhruba Joyti Kalita was found possessing illegal betting articles of 2/3 numbers of Tir Ticket books along with an amount of Rs.730/- and those betting articles used by all the accused persons for the purpose of participating in illegal betting at Dekargaonarea and**

**G.R No-3089 of 2016**  
**(State of Assam Vs Sri Dhruba Jyoti Kalita & Ors)**

**thereby all the accused persons committed an offence punishable  
u/s-14 of Assam Game and Betting Act?**

**EVIDENCES OF PROSECUTION SIDE**

7. In this case prosecution side to prove the disputations of the Ejahar examined six numbers of witnesses including the informant and for the sake of correct appreciation of evidences on record, let us replicate the evidences on record. PW-1, ASI Nurul Islam deposed that he knows the accused persons of this case and on 19.09.2016 when he along with I/C of Salonibari O.P and the other staffs went for patrolling at Dekargaon side, they saw accused Dhruba Jyoti Kalita in a shop and he on seeing them fled away from the said shop by riding his motor cycle in a high speed. He further deposed that thereafter, they chased the accused and detained him and started checking him. On being checked, they recovered 1 to 3 nos of gambling ticket books along with money. He also deposed that when they interrogated the accused, he admitted before them that he used to play gambling and also admitted that accused Sri Sushil Ghosh and Sri Jintu Kalita also involved in the said gambling and they are the agent. He further deposed that I/C- Omar Faruk seized gambling ticket books, motor cycle and Rs. 730/- from the possession of accused Dhuraba Jyoti Kalita. He put his signature on the seizure list as witness. Thereafter, he lodged the Ejahar. Ext-1 is the Ejahar and Ext-1(1) is his signature. Ext-2 is the seizure list and Ext-2(1) is his signature.
8. PW-1 in his cross examination deposed that there were four persons present at the time of incident including I/C Omar Faruk. He forgot the names of other two staff, who were accompanied with them. He deposed that they chased the accused Dhruba Jyoti Kalita towards Woodmari Ganesh Path and apprehended him. He deposed that he has not seen the seized article before the court. He also deposed that the said books were in the bike of the accused. He further deposed that he forgot where he put his signature on the seizure list. They took the articles to the police station. He could not remember actually how many pages were in the seized books. He deposed that nobody's name was written on the seized book.

**G.R No-3089 of 2016**  
**(State of Assam Vs Sri Dhruba Jyoti Kalita & Ors)**

9. PW 2, Constable 925 Krishna Ram Borah deposed that he knows the accused Dhruba Jyoti Kalita but he can't identify the other two accused persons. He also deposed that the incident took place in the year 2016 and at the relevant day, at about 3 PM, when he along with other staffs accompanied with the informant were proceeding towards Tezpur side through Dekargaon road, on seeing them accused Dhruba Jyoti Kalita tried to flee from there and thereafter, they apprehended him. He also deposed that on being enquired, they recovered some piece of papers and money from his possession. He learnt that they recovered some coupon from his possession, which was used for the purpose of gambling. Thereafter, they took the accused to the police station. PW-2 in his cross examination deposed that he himself had not seen the said piece of papers. He also deposed that he had not seen the piece of paper before the court.
10. PW-3, Golap Das deposed that he knows the accused persons standing in the dock. He also deposed that at the time of incident he was posted at Salonibari OP as driver. He also deposed that on 19.09.2016, while he along with the informant was proceeding towards Bazargaon, they saw the accused Dhruba Jyoti Kalita was coming in a bike and told him to stop but he did not stop there. He also deposed that while they were returning from there, they again saw the accused and apprehended near the road. Thereafter, they took the accused Dhruba Jyoti Kalita to the police outpost and on being searched the informant seized Rs. 730/- along with three numbers of gambling books. Ext-2 is the seizure list and Ext-2(2) is his signature. PW-3 in his cross examination deposed that he knew that there was some code number in the said gambling books but he could not say the number of the same. He also deposed that there was some stamp seal in the said gambling books but he could not say which one had the stamp seal as he clearly had not seen the same. He further deposed that he could not say from where the accused got the said Rs. 730/-. He also deposed that he had not seen the said three numbers of gambling books along with Rs. 730/- before this court.

11. PW-4, Sri Manoranjan Mahanta deposed that he knows the informant as well as the accused persons of this case. He deposed that the incident took place in the year 2016 but he has no personal knowledge about the alleged incident.
12. PW-5, H.G Haider Ali @ Saidar Ali deposed in his evidence that he knows the informant of this case. He also deposed that he could not identify the accused persons standing in the dock. He also deposed that he was on a patrolling duty with the informant. He further deposed that on the day of incident in between 3 PM to 3:30 PM, while they were proceeding from their Salonibari police outpost towards Dekargaon for patrolling party, one person fled away on seeing them and as per the instruction of the informant SI Nurul Islam they apprehended the said person. He deposed that on searching, SI Nurul Islam recovered some piece of papers from his possession and thereafter, they took the said person to the police outpost. PW-5 in his cross examination deposed that he had not given any statement before the I/O and he had not stated before the court what was being attributed to him by the Ld. Public Prosecutor. He deposed that he had not seen the seized articles before this court.
13. PW-6, SI Omar Faruk, who is the investigating officer of this case deposed that on 19.06.2016 he was posted at Salonibari OP as I/C. On that day, an Ejahar was received from ASI Nurul Islam of Salonibari OP and on receiving the same, the said Ejahar was sent to Tezpur police station for registering a case and accordingly, Tezpur PS Case No. 1678/16 u/s 13/14 of A.G.B Act was registered and he took the investigation. He deposed that he examined the informant and recorded his statement. He also seized case amounting to Rs. 730/-and two teer ticket books from the possession of Dhruba Jyoti Kalita. He deposed that the Pulsar bike was also brought to the police station by the informant and the same was also seized. He further deposed that the seizure witness along with the other witnesses were examined and recorded their statement. He deposed that the rough sketch map of the place of occurrence was also prepared by him. Moreover, he deposed that the informant was also handed over one apprehended person

named Dhruba Jyoti kalita and he was thereafter formally arrested and produced before the court. He also deposed that in course of investigation, he also arrested accused Jintu Kalita and released him as he obtained pre arrest bail. The other accused Sushil Ghosh could not be apprehended and thereafter. He was shown as absconder. He deposed that after completion of investigation, he submitted charge sheet against all the accused persons u/s 13/14 of Assam Game and Betting Act. Ext-2 is the seizure list and Ext-2(3) is his signature. Ext-3 is the sketch map and Ext-3(1) is his signature. Ext-4 is the charge sheet and Ext 4(1) are his signature.

14. PW-6 in his cross examination deposed that the incident is of 19.09.2016. The Ejarah was lodged on the very same day. He deposed that ASI Nurul Islam was leading a patrolling party along with other staff and he has examined the said staff namely, UBC Krishna Borah, UBC Saider Ali and driver Golap Das. He deposed that the accused Dhruba Jyoti Kalita was picked up from Dekargaon area but the exact location of Dekargaon area is however not mentioned in the case diary. He also deposed that he had not examined Madhab, Rintu Borah and Junti Borah though their houses were mentioned in the sketch map. He deposed that in Ext-3 the place of occurrence is shown as place "A" but he has not specifically mentioned whether "A" is a house or a shop. He also deposed that in seizure list (Ext-2) he has not specifically mentioned that search was conducted in the person of Dhruba Jyoti kalita before making any recovery from his possession. The seized articles were not seen in the court. He denied the suggestion that he has not investigated the case properly. He further denied the suggestion that nothing has been seized from accused Dhruba Jyoti kalita.

#### **APPRECIATION OF EVIDENCES**

15. Prior introducing an elaborate discussion about the evidences offered by the prosecution side let have a glance over some important provisions of Assam Games & Betting Act, which are relevant to the instant case in hand. Section 14 of Assam Games and Betting Act says that ---"anybody who bets or invites betting or possesses any instrument of betting or records of betting or accepts betting as

defined by the provisions of this Act shall be punished with rigorous imprisonment for not less than six months but not exceeding three years and a fine of rupees one thousand but not exceeding rupees two thousand."

16. Section 14 of Assam Games and Betting Act clears that any person who bets or invites betting or possess any instrument of betting or record of betting as defined under the act shall be punished under that section. Now what is betting or betting instruments or betting record? Section 2(d) of the act, defines the "instruments of betting" includes any board, table, tickets, tokens, coupons, books, khata, slips and all other things which are used in betting or to facilitate betting on a game or sport; And 2(e) defined "records of betting" includes any table, board, cloth, writing materials, accounts and account-books, slips, papers, books, khata, receipts, coupons and all other things which contain or may indicate to have any relation to record of betting.
17. Considering the relevant provisions of law as discussed above, in this case in hand it has to be looked upon whether accused persons of this case were found in possessing or inviting of any instruments of betting" which falls under the category of betting record as defined under section 2(d) that includes any table, board, cloth, writing materials, accounts and account-books, slips, papers, books, khata, receipts, coupons and all other things which contain or may indicate to have any relation to record of betting.
18. In this case the prosecution side has got the burden to prove that on the date of alleged incident i.e. 19.09.2016 informant ASI Nurul Islam along with his staffs went for patrolling in connection with GDE No. 652 dated 19.09.2016 and from Dekargaon accused Dhruba Jyoti Kalita fled away with motor cycle bearing Regd. No. AS-12/F-3263 on seeing the police personnel and consequently he was apprehended by the informant and from his possession Rs. 730/- with 02 nos of ticket books were recovered. The prosecution side has also got the burden of prove that at the time of interrogating accused Dhruba Jyoti Kalita it was affirmed

**G.R No-3089 of 2016**  
**(State of Assam Vs Sri Dhruba Jyoti Kalita & Ors)**

by him that other two accused persons namely, Sri Sushil Ghosh and Jintu Kalita are also involved of selling the tickets.

19. As such, from the indictments levelled against the accused persons it can be clearly visible that 2-3 nos of ticket books with Rs. 730/- was recovered from the possession of accused Dhruba Jyoti Kalita and there was no such recovery from other two accused persons, namely, Sri Sushil Ghosh and Jintu Kalita. Criminal law sets in motion against the other two accused persons, namely, Sri Sushil Ghosh and Jintu Kalita as per the version of accused Dhruba Jyoti Kalita and that is what claimed by the informant in his Ejahar.
20. Now, coming to the charge framed against all the three accused persons, this court finds that the allegations of confinement and recapture of betting articles from the possession of accused Dhruba Jyoti Kalita on 19.09.2016 at 3 PM actually needs to be established for holding the accused persons guilty of commission of alleged offences and the prosecution further needs to establish that the accused Dhruba Jyoti Kalita implicated other two accused persons, namely, Sri Sushil Ghosh and Jintu Kalita by acknowledging that they were also involved for bringing and selling the betting articles in that locality.
21. To demonstrate the aforesaid contention the prosecution side examined as many as six numbers of witnesses out of which PW-1 is the informant of this case and as per his version on 19.09.2016 he being I/C of Salonibari OP along with other staffs went for patrolling towards Dekargaon and then they saw accused Dhruba Jyoti Kalita at a shop and on seeing them accused speedily went from there and on being chased they caught hold him and recovered 2-3 teer ticket books along with Rs. 730/-. Accused Dhruba Jyoti Kalita informed him that those articles belong to teer tickets. He also testified that accused Dhruba Jyoti Kalita told him that accused Sri Sushil Ghosh and Jintu Kalita also involved with the teer games and they are the agents. He also exhibited the Ext-2 seizure list through which SI Omar Faruk seized those articles and he put his signature as witness. Ext-1 is the Ejahar lodged by him and Ext-1(1) is his signature.

**G.R No-3089 of 2016**  
**(State of Assam Vs Sri Dhruba Jyoti Kalita & Ors)**

22. The evidence of the stoolpigeon seems to be sympathetic with the contention of the Ejahar. Even though during his cross examination he confirmed that he forgot where he put his signature in the seizure list. PW-2 who escorted PW-1 at the time of alleged occurrence admitted that on seeing them at Dekargaon accused Dhruba Jyoti Kalita fled away and thereafter, they chased him and recovered money and 02 no's piece of paper from his possession and brought the accused to the police station. He in his cross examination admitted that he himself not seen those pieces of papers before the court. PW-3 appears to be a seizure witness and the driver of the vehicle through which the informant went for patrolling and as per his evidence on 19.09.2016 he went with the informant towards market of Bazargaon and saw accused Dhruba Jyoti Kalita was riding bike and when they asked to stop him he did not stop. Thereafter, they turning around again stopped accused Dhruba Jyoti Kalita and on being searched Rs. 730/- and 03 nos of ticket books were seized from his possession. Ext-2 is the seizure list and Ext-2(2) is his signature.
23. On painstaking scrutiny of evidences of PW-1, PW-2, PW-3 and PW-5, it revealed before this court that the evidence of all four witnesses appears to be inconsistent with each other concerning the actual place from where the alleged seizure was made. As per PW-1 they saw the accused at a shop of Dekargaon. PW-2 and PW-5 stated that accused Dhruba Jyoti Kalita fled away from the road on seeing them at Dekargaon road. PW-3 stated that they stopped the accused at Bazargaon. Furthermore, as per PW-1 Rs. 730/- and 2-3 nos of ticket books were recovered from the possession of the accused Dhruba Jyoti kalita and PW-2 stated that some coupon of teer game belongs to piece of papers and some amount were recovered from his possession. PW-3 stated in his evidence that Rs. 730/- and 03 no's of teer game books recovered.
24. On scrupulous perusal of the aforesaid discussion, this court finds that evidences of all three witnesses to be contradictory in respect of actual place of seizure of those alleged articles. PW-4 does not have any personal knowledge about the

alleged incident. PW-5 in his evidence contradicted the version of the informant stating that accused was apprehended from Bozargaon area and on being searched 02 no's piece of papers were recovered. He was declined to be hostile as per the prayer of the prosecution and prosecution put certain suggestions to PW-5 although suggestions were not being confirmed during the examination of the investigating officer. PW-5 during cross examination by the defence stated that he had not made any statement before the police.

25. In totality the evidences of PW-1, PW-2, PW-3 and PW-5 appears to be contradictory regarding the actual articles seized and the actual place from where the accused was apprehended along with those alleged seized articles. The evidence of PW-5 not appears to be supportive with the version of the prosecution as on being declined hostile, the prosecution put certain types of suggestions implicating the accused which were not actually confirmed through examining PW-6 who is the investigating officer of this case. PW-6 being the I/O of this case exhibited the seizure list to be Ext-2, the sketch map to be Ext-3 and Ext-4 to be charge sheet. He also confirmed that a cash amount of Rs. 730/ and 02 nos of ticket books were recovered from the possession of the accused Dhruba Jyoti Kalita and further one Pulsar bike was also brought to the police station. He in his cross examination affirmed that accused He also confirmed that in Ext-3 the place of occurrence is shown as place "A" but he had not specifically mentioned whether "A" is a house or shop. Hence, it is seen that the investigating officer claimed that accused was picked up from Dekargaon area while PW-1 being the informant who actually apprehended the accused and shifted the accused to the Salonibari Police outpost claimed that the accused was seen at Dekargaon area and subsequently he was picked up and chasing by them. Other witnesses have clarified that the accused was picked up from Bozargaon area.
26. The alleged fact of seizure of the seized articles seems to be disbelieving as the exact place of seizure or the exact place of picked up of the accused on the date of alleged incident by the informant and other staff of patrolling party appears to

be contradictory and in presence of such inconsistency the version of prosecution appears to be untrustworthy.

27. Even if the court put its trusts upon the version of seizure of 02 nos of ticket books of teer along with Indian currency of Rs. 730/- from the possession of the accused Dhruba Jyoti Kalita, the question of holding the accused of guilty of commission of alleged offence needs to be passed through numerous assessments. In this case, as per the seizure list the following articles are been seized i.e.Rs. 730/- along with 02/03 no's of ticket books and to appreciate the factum of recovery of those articles from the possession of the accused Dhruba Jyoti Kalita, the accused could not be held guilty in absence of evidence or finding that teer is a betting game or sport within the meaning of clause (a) of Section 2 of Assam Games and Betting Act and the fact so established has neither relevancy nor has it has a natural and inherent probative or persuasive value of prove of the fact that the articles found and seized are the instrument of betting and record of betting as defined in clause (d) and (e) of section 2 of the act and as such no legal presumptions u/s 18 and 19 of the act can be raised.
28. Undoubtedly, in view of Section 18 and 19 of Assam Games and Betting Act, the presumptions and evidence in respect of betting record or taking part in betting like any ticket, token, receipt, coupon or counterfoil from the possession of a person shall be evidence in trial of an offence under this act unless the contrary is proved and the presumption is like shall be presumed that the person concerned had the taken part of betting or records of betting. Section 18 of Assam Games and Betting Act says about presumption of taking part of betting and Section 19 of the act says presumptions regarding records of betting unless any contrary prove by the accused. So, Section- 19 of Assam Games and Betting Act shifted the burden of proof to the accused person regarding records of betting.
29. Our Hon'ble Parent High Court in **Monikanta Gogoi v/s State of Assam vide Criminal Revision No. 23 of 1976** held that for the offence u/s 14 of the act to

invoke the provision of rebuttal legal presumptions under section 18 and 19 of the acts, the prosecution has to prove the following:

- A) "Teer" is a betting game or sport as contemplated by the act
- B) The articles or things seized and the accompanying facts are inherently relevant, and to any rational mind, they would bear a probative or persuasive value in proof of the facts, viz., those articles or things "instruments of betting" and "records of betting's" as defined in clauses (d) and (e) of section 2 of the act.

30. In para 11 of the said judgment it was further held that prosecution is to lead evidence to establish that police officer apprehends a person in view of that teer game or sport is a betting.

31. In **Anil Krishna Kundu v/s State of Assam in Criminal Revision No. 120 of 1976 (unreported)** it was observed 'records and instrument of betting must have some nexus or casual connection with betting..... As such, mere recovery of some tickets, tokens, books, coupons do not bring home a charge or possession of instrument of betting or records of betting. Nor does it bring into operation the presumption under section 18 and 19 of the acts. Only upon proof that some instruments of betting or records of betting were found with the accused, the presumptions under those sections shall be drawn. When such a case is established, the instruments of betting found with and seized from the possession of the person, they shall be evidence and those shall be presumed to be instruments or records of betting and that the person concerned had taken part in betting. Once the prosecution discharges its burden that the articles or things are instruments or records of betting, they shall form a part of the record as evidence and it will not be necessary for the prosecution to formally prove the contents etc and the burden shall automatically shifts on the accused to establish that those are not the instruments or records of betting."

32. As such, it is seen from the aforesaid discussion and settled laws guided by the Hon'ble Parent High Court that strict burden lies with the prosecution to prove of instrument used for betting or records of betting were found with the possessions of the accused and thereafter the presumption under those section shall be drawn upon. Now, the question is whether the articles seized from the possession of the accused actually the instrument of betting. Prior prove of the fact of instrument of betting no presumption can be drawn upon against the accused under section 18 and 19 of Assam Games and Betting Act.
33. Now, coming to the prosecution case in hand this court already perceived that the witnesses of prosecution i.e. PW-1, PW-2 and PW-3 in their evidences claimed that 2-3 nos of books of teer game along with Rs. 730/- recovered from the possession of the accused Dhruba Jyoti Kalita. The evidences presented before this court appears to be without describing what teer ticket meant by and how they have described the book seized as teer ticket receipt book. PW-1 simply says that 2-3 no's of teer game books along with Rs. 730/- was recovered. PW-2 says about 2 pieces of papers claiming such to be coupon of teer game. PW-3 says about the books of teer game and obviously the investigating officer claimed to be recovery of 2 teer ticket books from the possession of accused Dhruba Jyoti Kalita. Seizure list vide Ext-2 described the book as teer betting ticket books. In seizure list vide Ext-2 those documents were shown to be seized articles but those were not been produced before the court for court's inspection and proper appreciation. As such this court is unable to find balanced response for holding the seized articles to be records of teer game or sport as a betting within the definition of the act.
34. The substantial evidences looking to be lacking in this case and the prosecution witnesses even also appears to be contradictory in respect of actual place of seizure of those seized articles and in presence of those contradiction the entire seizure appears to be doubtful and untrustworthy. More also in absence of the seized articles coupled with the non-availability of cogent evidences, this court finds that the prosecution side failed to prove seized articles to be betting records

actually used for illegal betting and accordingly, presumptions in the light of section 18 and 19 of Assam Games and Betting Act could not be drawn upon.

35. Hence, it seen that in this case the prosecution side has failed to prove that the seized articles are the instrument of betting or records of betting as defined in clause (d) and (e) of section 2.
36. Therefore, in the light of the aforesaid discussion this court is constrained to opine that the prosecution side failed to prove or adduce any probable, cogent and trustworthy evidence to prove the guilty of the accused persons, as such all the accused persons entitled to get the benefit of doubt. More also, against the accused persons, namely, Sri Sushil Ghosh and Sri Jintu Kalita no evidence at all adduced by the prosecution side and such fact makes the entire case to be weaker and doubtful.
37. In the upshot this court has no reluctance to harangue that prosecution side botched to prove the guilty of accused persons beyond any shadow of doubt. Accordingly, the accused persons are acquitted from the charge u/s 14 of Assam Games and Betting Act and sets at liberty. Sureties are extended for six months in view of section 437A of Cr PC.
38. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 03<sup>rd</sup> day of July, 2020.

**(Sri N. J. Hoque)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

**A-N-N-E-X-U-R-E**

1. Witnesses for Prosecution

- PW 1: ASI Nurul Islam, the informant
- PW 2: Constable 925 Krishna Ram Borah
- PW 3: Sri Golap Das,
- PW 4: Sri Manoranjan Mahanta,
- PW 5: H.G Haider Ali @ Saidar Ali,
- PW 6: SI Omar Faruk, the I/O

2. Witnesses for Defence : NIL

3. Court Witnesses : NIL

4. Prosecution Exhibits:

- Ext 1 :- FIR
- Ext 1(1) :- Signature of PW-1
- Ext 2 :- Seizure List
- Ext 2(1) :- Signature of PW-1
- Ext2(2) :- Signature of PW-3
- Ext2(3) :- Signature of PW-6
- Ext 3 :- Sketch Map
- Ext 3(1) :- Signature of PW-6
- Ext 4 : Charge Sheet
- Ext 4(1) :- Signature of PW-6

5. Defence Exhibits : NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate  
Sonitpur, Tezpur**