

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE
TEZPUR, SONITPUR.**

Present: Dr. M Baruah.
Chief Judicial Magistrate,
Sonitpur, Tezpur.

G. R. Case No. 1980/2008
u/s. 411 IPC

State

Vs

1. Yusuf Ali
2. Mintu Gogoi
3. Bumoni Bora
4. Kishor Bora

.....Accused persons

Appearance:

Learned counsel for the State : Sri N Das.

Learned counsel for the defense : Sri B. Borah.

Charge framed on : 4-4-2009.

Evidence recorded on : 13-5-09,14-9-11,19-9-12,26-6-13.

Argument heard on : 16-9-2013.

Judgment delivered on : 21-10-2013.

J U D G M E N T

1). The prosecution's case in brief is that, the informant Durgeswar Bora filed an ejahar before the O/C, Jamuguri P.S. on 19-11-08 stating that on 16-11-08 his cow was fastened for grazing on the irrigation pipe of Santipur village and at about 3 p.m. the said cow was missing. On suspicion he asked the accused persons and the accused persons told that on 19-11-08 the said cow was sold to one Yusuf Ali of Sootea Ghahigaon. Hence, he handed over the accused persons to the Jamuguri P.S.

2). Upon receive of the ejahar, the O/C, Jamuguri PS registered a case being Jamuguri PS case No. 98/08 U/s.379 IPC and started investigation. After completion of investigation, police filed

charge sheet against the accused person Yusuf Ali, Kishor Bora, Bumoni Bora and Prasanta Gogoi u/s 379/411 IPC.

3). During investigation accused Kishor Bora was held as juvenile in conflict with law and the accused was sent to the Juvenile Justice Board for enquiry.

4) The accused Yusuf Ali, Bumoni Bora and Prasanta Gogoi appeared before the Court and faced trial. Copies of prosecution documents were furnished to the accused persons. After hearing Id. Counsel for both the sides, charge U/s.379/411 IPC framed. The charge was read over and explained to the accused persons. The accused persons pleaded not guilty and claimed to be tried. Later on, during jail trial, accused Bumoni Bora and Prasanta Gogoi pleaded guilty and accordingly both the accused persons were convicted U/s.379 of IPC.

5). Prosecution adduced evidences of four witnesses, including the IO. After close of prosecution evidence statement of the of the accused Yusuf Ali was recorded u/s 313 Cr.P.C. Plea of the accused is total denial and adduced one DW in his defence.

6) **POINTS FOR DETERMINATION**

i) Whether the accused person on 19-11-08 received or retained the cow of Durgeswar Bora knowing the same to be stolen cow?

7) Heard argument of the Id. defense counsel and the Id. Addl. P. P. Also perused the case record.

DECISION, DISCUSSION AND REASONS THEREOF

8) PW-1 Sri Durgeswar Bora deposed that his reddish brown cow was stolen from the grazing field. He searched for it and filed one ejahar in the police station. Later on police recovered the cow and handed it to him. He cannot say from where police recovered the cow. Ext-1 is the ejahar and Ext-1(1) is his signature.

PW-2 Sri Nabin Ojha deposed that the informant filed the ejahar when he could not trace out his cow. Police recovered the cow and handed it to the informant. He also cannot say from where the police recovered the cow.

PW-3 Md. Anowar Hussain does not have any knowledge about the incident.

PW-4 Sri Kandarpa Laskar deposed that he made preliminary investigation of the case filed by the informant. During investigation the informant handed him three boys who were suspected to have stolen the cow of the informant. During interrogation the said boys confessed that they had stolen the cow of the informant and they sold it to the accused Yusuf Ali. He went to the residence of the accused Yusuf Ali and found the cow in his cow shed. The accused Yusuf told him that he purchased the cow from accused Mintu Gogoi paying Rs. 3500/-. He seized the cow and arrested four accused persons. Ext-2 is the seizure list. He stated that the accused Yusuf did not show him the receipt of purchasing the cow. After investigation he handed over the case diary to O/C Sri Kulendra Bharali who later on filed the charge sheet against the accused persons. Ext-3 is the charge sheet.

During cross examination he denied that the accused Yusuf showed him the receipt of purchasing the cow and also that he never recorded the statement of accused Yusuf.

The accused adduced one witness in his defense. DW-1 Padum Ali stated that in the November 2008 the accused Yusuf purchased a cow from the Biswanath Chariali Weekly market form Bumoni Bora. He was present at the time of purchase. After three to

four days he heard that police had arrested the accused. The accused took receipt at the time of purchase of the cow.

During cross examination he stated that he does not know as to who is the actual owner of the cow. He denied that the accused did not purchase the cow from Bumoni Bora at the Biswanath Chariali weekly market.

9) Now scrutinizing the evidences on record, I found that apart from the investigating officer i.e. the PW-4, none of the witnesses could say as to from where the cow was recovered. On perusal of the case record I found that the other accused persons admitted to have stolen the cow and sold it to the accused Yusuf. It is not clear from the materials on record that the accused Yusuf had knowledge that the cow was stolen property. The accused in his statement stated that he has the receipt of purchasing the cow from the weekly market. The DW-1 stated that he saw the accused Bumoni Bora had sold the cow to the accused Yusuf at the Biswanath Chariali Weekly Market. Considering the available materials, I found that the Prosecution has failed to prove that the accused Yusuf had purchased the cow knowing that it was stolen property.

O R D E R

10) Considering the facts and circumstances of this case I found that the prosecution has failed to prove the alleged offence u/s 411 IPC against the accused beyond doubt. As a result the accused Yusuf is acquitted and set at liberty. His bail bond stands canceled. The seized cow shall remain with the informant.

11) The judgment is prepared and typed by me.

12) Set my hand and seal of this Court on the 21st day of October, 2013.

(Manash Baruah)
Chief Judicial Magistrate,
Sonitpur, Tezpur.