

DISTRICT SONITPUR, IN THE COURT OF THE C. J. M. AT TEZPUR, ASSAM :::::

Present:- Sri S. K. Dhar,

C.J.M. Tezpur.

G. R. Case No. 970/05
U/S 379 I.P.C.

State of Assam.....Compltt.

-Vs-

Md. Maqbul Ali.....Accused.

Date of recording evidences:- 19-09-07, 17-10-07
06-06-03 & 02-02-12.

Date of arguments:- 04-04-12.

Date of judgments:- 18-4-12.

ADVOCATE APPEARED

For the states:- Mr. M. Hussain, Ld. Additional
Public Prosecutor.

For the accused:- Mr. B. Barthakur.

J U D G M E N T

This case is arising out of a written ejarah, herein proved and marked as Ext. 1. The brief of the prosecution's case, as it reveals from the Ext. 1 is that, on 08-06-05 at about 5-30 p.m. the informant Dulal Bora returned home with his Hero bicycle and by stranding the cycle in the court yard to keep the marketable articles,

^ went inside the house
retain.
Keeping the articles as he came out he saw the cycle missing from the place and saw an unidentified young man attempting to flee away with the cycle. Accordingly he raised hulla. Other people gathered and apprehended the accused with the cycle. Thereafter the accused alongwith the cycle was handed over to the police.

Alleging as above said Dulal Bora (P.W. 1) lodged the Ext. 1 ejarah before the incharge of the Lalmati O.P. on the basis of which the incharge made a G.D. entry and forwarded the Ext. 1 to the O.C. Tezpur P.S. for registration of a case, after taking up the investigation of the case. Police investigated the case and upon completion of investigation filed charge sheet against the accused U/S 379 I.P.C. and forwarded the same to this court.

Receiving the case record in charge sheet my Ld. Magistrate in chair retained the case record in this court for disposal & issued process against the accused to procure his attendance. In due course

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of time the accused entered into appearance. On his appearance he was furnished with copies of the prosecution documents U/S 207 Cr.P.C. and after hearing both the sides and going through the case record a charge U/S 379 I.P.C. was framed. The charge so framed and particulars of offences U/S 379 I.P.C. were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

During trial the prosecution side examined in all five P.Ws. including the I.O. and also exhibited some documents. Defence side took full scope for cross examination. Upon closure of prosecution evidence the statements of the accused U/S 313 Cr.P.C. were recorded wherein he denied the material against him and also declined to adduce evidence in defence. The defence case is ^{that} of false implication.

^{18/4/12} Heard argument advanced by both the sides.

Point for determination:-

Whether on 08-06-05 at about 5:00 p.m. the accused intending to take dishonestly removed a half chain cover Hero cycle from the possession of the informant without his consent in order to such taking ?

Discussion, decision and reasons therefor:-

It is a case of theft of a bicycle and prosecution in order to prove its case relied upon the testimonies of five P.Ws. including the I.O. and ^{also on the fact of} recovery ^{of} cycle from the possession of the accused. The accused took the plea of denial simplicitor. In criminal law the burden of proof of its case as well as the charge levelled against the accused lies on the prosecution and prosecution is required to discharge that burden independently. Only when the prosecution discharges its burden the accused is required to prove its innocence. However, the standard of proof for the prosecution is beyond all reasonable doubt whereas for the accused it is preponderance of probability. It may not be out of place to mention here that the accused took the plea that he has been falsely implicated in the occurrence.

During the course of argument the Ld. Addl. P.P. argued that the evidences of the P.Ws. on record proved the guilt of the accused U/S 379 I.P.C. and accordingly prayed for conviction of the accused. According to the Ld. Addl. P.P. prompt lodging of the ejahar, direct testimonies of all the P.Ws. that the accused was apprehended with the stolen cycle which remained un rebutted in the cross examination goes to point the finger of

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a forth accused.

accusation to the accused and none else. On the other hand the ^{18/4/12} Ld. Advocate, submitted that the evidences on record suffers from material discrepancies which diminishes their credibility. He further submitted that in the cross examination the credibility of putting reliance on the testimonies has been diminished and hence prayed for acquittal of the accused.



Bearing in mind the points of argument let us now scrutinise the evidences on record.

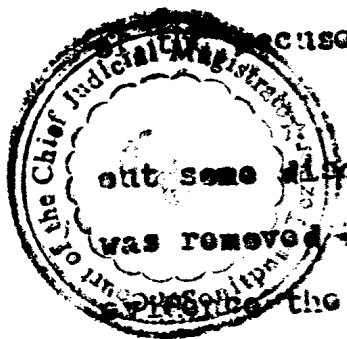
P.W. 1 Sri Lalal Bora is the owner of the cycle in question and informant of the case. In his testimonies he has fully corroborated the contents in the Ext. 1 which was lodged with the police on the very day of the occurrence within a couple of hour. He categorically stated that seeing the cycle missing from the place where it was stranded and seeing a young man taking away the cycle he raised hulla and with the help of others apprehended the accused with the cycle. According to him later the accused with the cycle was handed over to the police. He proved the ojhar vide Ext. 1 and the seizure list of the cycle vide Ext. 2. In his cross examination nothing has been extracted to diminish the credibility of the P.W. 1. Rather the cross examination has fortified the fact that the accid. was apprehended with the cycle. Though the P.W. 1 was confronted with a suggestion that the accused has been falsely implicated but no any material has been extracted in the evidence of the P.W. 1 to justify a cogent ground on his part to falsely implicate the accused. Had there been enmity or grudge between the accused and the P.W. 1 there lies a probability of false implication. Rather the evidence of the P.Ws. show that on the date of occurrence itself they first saw the accused. So question of false implication is merely a pla without any ground. There is absolutely nothing to disbelieve the testimonies of the P.W. 1.

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P.W. 2 Kanak Bora completely corroborated the P.W. 1.

His evidence also show that the accused was apprehended with the cycle of P.W. 1. He witnessed the seizure of cycle and he proved his signature vide Ext. 2(2). His cross examination part fortified the prosecution case that on the date of occurrence the accused was apprehended with the cycle of the P.W. 1. P.W. 3 Trinayan Borah and P.W. 4 Heron Ch. Bharali in their testimonies have completely corroborated the fact that the accused was apprehended with the cycle of the P.W. 1. P.W. 5 Ranjan Kr. Gogoi is the police officer who investigated the case. His evidence lended corroboration to the

testimonies of the P.Ws. as well as the prosecution case that on 08-06-05 he received the Ext. 1 ochar and visited the place of occurrence and found the accused apprehended by people with the cycle. He seized the cycle vide Ext. 2. Ext. 2 seizure list shows that on the very date of occurrence the P.W. 5 seized the cycle from the place of occurrence from the possession of the accused witnessed by P.W. 1 to 4.



During the course of argument the Ld. Advocate pointed out some discrepancies regarding the time and place wherefrom the cycle was removed. It is stated that in Ext. 1 the time disclosed is 8-30 p.m. but in Ext. 2 the time of occurrence has been disclosed as 6-30 p.m. or that one witness said that the cycle was removed from the veranda and other stated that the cycle was removed ^{from} the courtyard and argued that the prosecution case is to be disbelieved. In my considered view the discrepancies so argued are minor and donot do away with the prosecution case that the accused removed the cycle of the P.W. 1 from within the homestead boundary and later apprehended by the P.Ws.

From the above discussions and reasoning it is crystal clear that the prosecution has been successful to prove the fact that the accused removed a bicycle from the possession of the P.W. 1 without his consent. Hence the charge U/S 379 I.P.C. found squarely proved against the accused.

In the result the point in hand is decided in the affirmative. For affirmative decision of the point in hand the accused is found guilty of the charge U/S 379 I.P.C. and accordingly he stands convicted.

Considering the fact that now a days the incidence of theft has made the life of common man of our society perturbed I am not inclined to extend the benefit of section 360 Cr.P.C. or Probation of Offenders Act to the convict.

Heard the convict on the point of sentence. He submitted that he is a young man and this is his first conviction. So he prays

for remitting him from punishment.

Perused case record. It is a case of theft of an old bicycle which was recovered soon after the occurrence. No previous conviction against the convict is in case record. He found to have already undergone jail custody for over a month during investigation as well as ^{during}

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pendency of the trial of the case. Considering all aspect and also taking into account the aspect of punishment I am of the view that a judicious blending of sentence of imprisonment and fine will meet the ends of justice.

Accordingly the convict is sentenced to R/I for 6 (six) months and a fine of Rs. 1000/- (rupees one thousand only) 1/2 to S/I for another one (1) month.

The period of imprisonment already undergone shall be set off U/S 428 Cr.P.C. *Furnish a free copy of this judgment to the convict.*

The zimma of seized bicycle in favour of the informant is hereby made absolute.

Given under my hand and seal of this court on this the 18th day of April 2012 at Tezpur.

Typed by me:-

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Chief Judicial Magistrate
Sonitpur, Tezpur.

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Chief Judicial Magistrate
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