

DISTRICT :: SONITPUR

**IN THE COURT OF THE JUDICIAL MAGISTRATE, 1ST CLASS,
TEZPUR.**

G. R. Case No. 1887/2009

U/S. 379 & 411 I.P.C.

STATE

V.

Md. Riaj Uddin @ Raju

... Accused Person

PRESENT: Sri Kiran Lal Baishnab, AJS.

Judicial Magistrate, 1st Class,
Tezpur.

For the Prosecution: Sri L. Hazarika, Asstt. P. P.

For the Defence: Sri D. Sinha, Advocate.

Evidence recorded on: 19.05.2011, 02.08.2011 and 16.12.2011.

Argument heard on: 18.01.2012.

Judgment delivered on: 27.01.2012.

JUDGMENT

1. The prosecution case in brief, as reflected from the Kacharigaon O.P. G.D. Entry No. 392, dated 20/09/2009 and the 'ejahar', is that on 20.09.2009 at 10.00 A.M. an unknown person informed the police that a few pieces of Pipe and Tin Sheets were being taken in rickshaw Van by one unknown person. It is also alleged that on getting the information the said Van was identified and seized alongwith the accused person. Thereafter the Asstt. Executive Engineer, R.K. Patangia identifying the seized articles to be of the P.W.D. (Buildings), Tezpur Sub-Division lodged ejahar on 30.09.2009, alleging that the goods were stolen from their Construction Site of the Polytechnic Institute, Dekargaon.

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2. That on receipt of the said ejahar, In-Charge, Kacharigaon Police Out Post forwarded same to the Officer-in-charge, Tezpur Police Station who received and registered the same as Tezpur P.S. Case No. 977/09 U/s. 379 I.P.C.

3. On the basis of the G.D. Entry No. 392, dated 20.09.2009 and the 'ejahar' police started investigation and after completion of investigation the police found sufficient materials and submitted charge-sheet against the accused Md. Riaj Uddin @ Raju U/s. 379 & 411 I.P.C. vide Charge-Sheet No. 522/09, dated 30.11.2009.

4. On submission of the charge-sheet, the learned C.J.M. accepting the charge-sheet took cognizance U/s. 379 & 411 I.P.C. and transferred the case to this court for trial. Subsequently, summons was issued to the accused person and on his appearance he was enlarged on bail. During trial copies of relevant documents were furnished to the accused person complying with the provisions contained U/s. 207 Cr.P.C. and finding sufficient materials against the accused Md. Riaj Uddin @ Raju to proceed for the offences U/s. 379 & 411 I.P.C. charge under the said sections were framed. The charge was then read over and explained to the accused person and was asked as to whether he pleads guilty to the offences charged, to which he pleaded not guilty and claimed to be tried.

5. In the course of hearing the prosecution examined altogether Five (5) witnesses, including the Investigating Officer (I.O.). P.W.1 R. K. Patangia is the informant. P.W.2 Khargeswar Deka and P.W.3 Ram Chandra Baitha are seizure witnesses. P.W.4, Ratul Kumar Das is the Section Assistant in P.W.D. (Buildings), Tezpur Sub-Division and P. W.5, ASI Maheswar Sharma is the Investigating Officer (I.O.).

6. The prosecution side also exhibited Five (5) documents. Ext-1 is the General Diary of Kacharigaon O.P. from 28.08.2009 to 26.09.2009, Ext-2 is the 'ejahar' (F.I.R.), Ext-3 is the Seizure List, Ext.-4 is the Charge-sheet and Ext.5 is the Sketch Map of P.O.

7. The accused was also examined U/s. 313 Cr. P. C. and his answers were accordingly recorded. Moreover, defence side declined to adduce any evidence.

8. Points for determination:-

(a) Whether on 20.09.2009 at around 10.00 A.M the accused Md. Riaj Uddin @ Raju had stolen the pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division, and thereby committed an offence punishable U/s. 379 I.P.C.?

And

(b) Whether on 20.09.2009 at about 10.00 A.M. at Mission Chariali, the accused Md. Riaj Uddin @ Raju was found possessing the stolen pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division and thereby committed an offence punishable U/s. 411 I.P.C.?

9. Discussion, Decision and Reasons thereof:-

Heard arguments of both sides. Perused the Case Record very minutely. My findings are as follows:-

Now lets move forward discussing the points for determination:-

(a) Whether on 20.09.2009 at around 10.00 A.M the accused Md. Riaj Uddin @ Raju had stolen the pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division, and thereby committed an offence punishable U/s. 379 I.P.C.?

The defence side took the plea that no evidence was forwarded from the side of the prosecution to establish the fact of theft by the accused. Now in order to establish the fact of theft the prosecution has to prove the criteria of Section 378 I.P.C. which defines theft. So as per Section 378 I.P.C. in order to bring home the charge U/s. 379 I.P.C. against the accused person the prosecution has to prove the following ingredients:

- i. That on 20.09.2009 at around 10.00 A.M at 'Construction Site of the Polytechnic Institute, Dekargaon', the accused person removed the pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division from their possession;
- ii. That the accused removed the pieces of Pipes and Tin Sheets from the possession of the P.W.D. (Buildings), Tezpur Sub-division without the consent of the Authority;

And

- iii. That the accused did so dishonestly;

As regard the date, time and place of occurrence P.W. 1, R. K. Patangia, the informant deposed that the on 30.09.2009 he was informed by the In-Charge, Kacharigaon Police Out Post over telephone that some articles suspected to be of P.W.D. had been seized by the police. He also deposed that some incident of theft took place at that time from their abandoned construction site at Dekargaon. He further deposed that the sized articles were identified to of that site by Section Assistant, Ratul Kumar Das (P.W.4) on being deputed by him. P.W.4 also supported his statement. Both P.W.2 & 3 deposed that the incident took place about two years back from their date of deposition i.e. 19.05.2011 which is also supported by Ext.2, the ejahar. Though, P.W.1 & 4 stated that some incidents of theft took place at their abandoned construction site at Dekargaon but did not state specifically as to when did the theft took place. Moreover, P.W.2 & 3, deposed that they signed the seizure list about two years back but nothing was stated as to the date of theft.

Hence, from the above discussion it is seen that the prosecution could not prove the fact of date, time and place of occurrence beyond all reasonable doubts.

Now, the fact which remains to be proved by the prosecution is whether the accused Md. Riaj Uddin @ Raju

removed the pieces of Pipes and Tin Sheets from the possession of the P.W.D. (Buildings), Tezpur Sub-division. I have gone through the prosecution evidence minutely, but none of the witnesses have deposed as to who has removed the pieces of Pipes and Tin Sheets. P.W.1, the informant also deposed only that some pieces of pipes and tin sheets were missing from the abandoned construction site at Dekargaon. The witnesses mostly talk of the incident following the missing of the pieces of Pipes and Tin Sheets, specifically, the seizure of the pieces of Pipes and Tin Sheets by the police. Thus, I am of the view that the prosecution has failed miserably the fact as to the removal of the pieces of Pipes and Tin Sheets by the accused Riaj Uddin @ Raju.

Now, considering the fact that the prosecution has failed to prove beyond all reasonable doubts that the pieces of Pipes and Tin Sheets was removed by the accused Md. Riaj Uddin@ Raju, I am of the considered opinion that it is unnecessary to discuss as to whether the accused removed the pieces of Pipes and Tin Sheets dishonestly, without the consent of the informant.

Thus considering the foregoing discussions I am of the considered opinion that the prosecution has failed to prove beyond all reasonable doubts that on 20.09.2009 at around 10.00 A.M the accused Md. Riaj Uddin @ Raju had stolen the pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division and thereby committed an offence punishable U/s. 379 I.P.C.

(b) Whether on 20.09.2009 at about 10.00 A.M. at Mission Chariali, the accused Md. Riaj Uddin @ Raju was found possessing the stolen pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division and thereby committed an offence punishable U/s. 411 I.P.C.?

The defence side took the plea that no evidence was forwarded from the side of the prosecution to

establish the fact of dishonestly receiving stolen property by the accused person. Now in order to establish the fact of dishonestly receiving stolen property, the prosecution has to fulfil the criteria of Section 410 of I.P.C. which defines 'stolen property' and also Sec - 411 of I.P.C. which defines dishonestly receiving stolen property and also imposes punishment for the offence. So as per Section 410 of I. P. C. r/w Sec-411 of I.P.C., in the instant case in order to bring home the charge under the said section against the accused person, the prosecution has to prove the following ingredients:

(i) That on 20.09.2009 at around 10.00 A.M. at 'Mission Chariali' the accused was found in possession of stolen property, specifically, the pieces of Pipes and Tin Sheets of the informant, R. K. Patangia, the Assistant Executive Engineer, P.W.D, Tezpur Buildings Sub-division;

And

(ii) That the accused person dishonestly received the stolen property or retained the same, knowing or having reasons to believe the same to be stolen property;

As regard the date, time and place of occurrence P.W. 5, ASI Maheswar Sharma, the Investigating Officer deposed that on 20.09.2009, he, after being entrusted with investigation of the instant case went and found the alleged Rickshaw Van in front of the Trade and Industries, Mission Chariali. He further deposed that finding the alleged articles he took the Rickshaw alongwith the person in it to the Police Out Post and on being asked the person introduced him as Riaj Uddin, S/O Alal uddin of Vill.No.1 Dholabari. He also deposed that thereafter the Rickshaw Van and the articles in it were seized suspecting to be stolen property in presence of the witnesses. This is also supported by the P.W.2 & 3 who

said that they signed in the seizure list on being called by the police in the out post.

Hence, from the above discussion it is seen that the prosecution could successfully prove the fact of date, time and place of occurrence beyond all reasonable doubts.

Now, the fact which remains to be proved by the prosecution is that the stolen pieces of Pipes and Tin Sheets were found in possession of the accused Md. Riaj Uddin @ Raju. I have gone through the prosecution evidence minutely, but none of the witnesses except the investigating officer had deposed as to in whose possession stolen articles were found. The Investigating Officer (P.W.5) deposed that he seized the articles mentioned in Ext – 3 (Seizure List) from the possession of the accused Riaj Uddin in presence of witnesses named on said Ext. 3. But the persons shown to have witnessed the seizure deposed before the Court that neither they have seen the seized articles nor they have seen the person from whom the articles were seized. They further deposed that they signed the seizure list only on being told by the police.

Hence, from the foregoing discussion, there arises doubt not only as to whether the alleged goods were found in possession of the accused Riaj Uddin @ Raju but also as to whether the goods were actually stolen property because person who has allegedly identified the properties deposed that he could not ascertain the property to be of the P.W.D. (Buildings), Tezpur Sub-Division. The fact is even the Ejahar (Ext.2) reflects that in his report Section Assistant Ratul Kumar Das (P.W.4) stated that the goods resembles those used in construction of the Polytechnic Institute in Dekargaon.

Therefore, I am of the considered opinion that the prosecution failed to prove beyond all reasonable doubts that on 20.09.2009 at about 10.00 A.M. at Mission Chariali, the accused Md. Riaj Uddin @ Raju was found possessing the

stolen pieces of Pipes and Tin Sheets of the P.W.D. (Buildings), Tezpur Sub-division and thereby committed an offence punishable U/s. 411 I.P.C.

ORDER

Hence, considering the above discussions the accused Md. Riaj Uddin @ Raju is not found guilty of the offences punishable U/s. 379 & 411 I.P.C. and thus, the accused person is accordingly acquitted of the said accusations/charges.

10. The bail-bond of the accused person stands cancelled.
11. The judgment is delivered and operative part of the same is pronounced in the open court, today, the 27th day of January, 2012 under my hand and the seal of this Court.

**Judicial Magistrate, 1st Class,
Tezpur.**

DISTRICT :: SONITPUR

**IN THE COURT OF THE JUDICIAL MAGISTRATE, 1ST CLASS,
TEZPUR.**

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ANNEXURE

1. PROSECUTION WITNESSES:

P.W.1- R. K. Patangia (informant),

P.W.2- Khargeswar Deka (seizure witness),

P.W.3- Ram Chandra Baitha (seizure witness),

P.W.4- Ratul Kumar Das

P.W.5- ASI Maheswar Sharma (Investigating Officer),

2. DEFENCE WITNESSES:

NIL.

3. EXHIBITS(BY PROSECUTION SIDE):

Ext-1- the General Diary of Kacharigaon O.P. from 28.08.2009 to 26.09.2009,

Ext-2- the 'ejahar',

Ext-3- the Seizure List,

Ext-4- the Charge-sheet

Ext-5- the Sketch Map of P.O.

4. EXHIBITS(BY DEFENCE SIDE):

NIL.

**Judicial Magistrate, 1st Class,
Tezpur.**