

APPENDIX-12IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPURTEZPUR

Present:- Sri Nabajit Bhatta. AJS. MA, LL.B.
Chief Judicial Magistrate,
Sonitpur, Tezpur

[Date of the Judgment]

14.09.2022**[PR Case No-253 of 2018]**

(FIR NO-60/2018 DATED-07.04.2018/ THEFT CASE AND RANGAPARA POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Sri Apurba Kumar Das, Junior Manager of Rangapara Electrical Sub-Division S/O:- Late Khagendra Kumar Das, P/S:- Rangapara, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSONS	1. Md. Ayub Ansari S/O:- Late Jaan Ansari, R/O- Borjuli TE, Line No-17, Rangapara, P/S:- Rangapara, Dist:- Sonitpur, Assam 2. Sri Maina Sahu @ Ankur Sahu, S/O:- Sri Murli Sahu, R/O- Kenduguri Chengeligaon, Jorhat, P/S:- Bhogdoi, Dist:- Jorhat, Assam
REPRESENTED BY	Mr. Rajiv Gohain, Ld. Counsel Mr. Imtiaz Ansari, Ld. Counsel Mr. Hasib Ahesan Ansari, Ld. Counsel

APPENDIX-13

Date of Offence	06.04.2018
Date of FIR	07.04.2018
Date of Charge Sheet	30.04.2018
Date of Framing of Charge	29.06.2018
Date of commencement of evidence	20.06.2019
Date on which judgment is reserved	05.09.2022
Date of Judgment	14.09.2022
Date of the Sentencing Order, if any	14-09-2022

ACCUSED DETAILS :

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Ayub Ansari	07.04.2018	08.05.2018	Sec-379 of IPC	Convicted	Sentenced to go S.I. for one month and to pay fine of Rs.1000/- I/D S.I. for 07 days U/S.379 I.P.C.	31 Days
A-2	Sri Maina Sahu @ Ankur	07.04.2018	09.05.2018	Sec-379 of IPC	Convicted	Sentenced to go S.I. for one month and to pay fine	32 Days

						of Rs.1000/- I/D S.I. for 07 days U/S.379 I.P.C.	
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IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR::
TEZPUR

P. R. Case No-253 of 2018

State of Assam

-Vs-

1. Md. Ayub Ansari
2. Sri Maina Sahu @ Ankur Sahu

.....Accused Persons

Under section-379 of I.P.C

Present:

Sri Nabajit Bhatta AJS. MA, LL.B.
Chief Judicial Magistrate, Sonitpur at Tezpur

14th day of September, 2022

Mr. N. K. Mishra, Ld. Addl. P.P Advocate for the State
Mr. R. Gohain & Ors, Ld. Counsels Advocate for the Accused

Date of Hearing : 20.06.2019, 16.08.2019, 10.02.2022
08.07.2022,

Date of Argument : 22.08.2022 & 05-09-2022

Date of Judgment : 14.09.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 07.04.2018 the informant Sri Apurba Kumar Das, Junior Manager of Rangapara Electrical Sub-Division lodged an Ejahar before the O/C of Rangapara Police Station to the effect that last few days some line materials of Borjuli area has been stolen in different places. It is stated that last night i.e. on 06.04.2018 some materials with two persons apprehended by police party and he found the seized materials belongs to their department. Hence, the case.
2. The instant case was registered under section-379 of Indian Penal Code R/W Section-135(1) of Electricity Act, 2003 and police investigated the

same. After completion of the investigation, police submitted the charge-sheet against the accused persons, namely, Md. Ayub Ansari and Sri Maina Sahu @ Ankur Sahu under section-379 of Indian Penal Code R/W Section-135(1) of Electricity Act, 2003 and accordingly, the case was committed before the Hon'ble Special Judge, Sonitpur, Tezpur vide order dated-09.04.2018 in compliance of the due process of law. Consequently, Hon'ble Special Judge, Sonitpur at Tezpur remanded back the case record before this court framing charge under section-379 of IPC.

3. Prosecution in order to prove the case has examined as many as 06 (Six) numbers of witnesses including informant and the investigating officer in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statements of the accused persons have been recorded under section-313 of Cr. P.C.

4. **POINTS FOR DETERMINATION:-**

- (i.) Whether the accused persons on 06.04.2018 intending to take dishonestly certain movable property namely, weasel conductor (approx 50 meter), 3 bundles GI wear (approx 90 kg), Recon conductor (approx 30 meter), 22 nos. of L.T. stay shed, 5 piece black clamps, 2 piece angle cross arms, 12 piece stay rod out of the possession of Rangapara Electrical Sub-Division without consent of the authority, moved it in order to such taking and thereby committed an offence punishable under section-379 of I.P.C.?

5. Heard argument from the Ld. Advocate of the both sides. On perusal of the evidence on record and case diary the very findings are as follows.

DISCUSSION, DECISION AND REASONS THEREOF

6. The prosecution opening the account of examining the witnesses first brought the witness, namely, Sri Gautam Singh as PW-1. The PW-1 has

stated in his evidence-in-chief that the informant is a Manager of APDCL Rangapara. He stated that he knows the accused Maina Sahu standing in the dock but he does not know the other accused person. He further stated that on 06.04.2018 accused Maina Sahu told him to bring a vehicle as he has some electricity duty. Then he along with Dul Bodo went to Borjuli APDCL Office along with a vehicle where he had seen accused Maina Sahu and some other persons loaded some electrical items including some other articles in an Alto vehicle. Thereafter, he along with Dul Bodo left the place and Dul had informed the matter to police. He also stated that when the accused persons were going towards town side then he saw police apprehended the accused near Rangapara SBI. He further stated that thereafter, they both went to the police station. He stated that police seized the articles which were loaded in a Alto vehicle and those articles belongs to the Electricity Department and he put his signature on the seizure list as seizure witness. He identified two numbers of seizure lists as Ext-1 and Ext-2 wherein he puts his signature as Ext-1(1) and Ext-2(1).

7. In cross-examination, PW-1 has stated that he saw around 6-7 persons including the accused persons at Borjuli Electricity Office. He further stated that he had seen that the articles were loaded from the outside of said office in an Alto vehicle. He also stated that he could not say from where the said articles were kept. He further stated that the said articles were loaded in the vehicle from the road which situated outside of the Electricity campus. He stated that he could not say what kind of articles had been loaded in the vehicle but he only identified that some of the articles were wires. He stated that he left the place without making any conversation with accused Maina Sahu. He further stated that he put his signatures on Ext-1 and Ext-2 at police station and the same was given in the very next day of incident. He stated that the contents of seizure lists were read over to him. But now he could not say what was written

in the seizure list. He also stated that police stopped the vehicle at Rangapara SBI Office and brought them to the police station. But in the said place the seizure list was not prepared.

8. PW-2, Sri Apurba Kumar Das being the informant of this case in his evidence-in-chief has stated that he knows the accused persons of this case. He also stated that the incident took place in the last year and at the time of incident, he was working at Rangapara APDCL. He further stated that one day police informed him that they have apprehended two persons along with some electrical items and thereafter, called him to identify the said electrical items and accordingly, he went to the police station and found the seized articles belongs to their electricity department. He further stated that many electrical items had been stolen from various place at Borjuli area. Thereafter, he lodged the ejahar. He identified his ejahar as Ext-3 wherein he put his signature as Ext-3(1)
9. In cross-examination, PW-2 has stated that police told him to lodge an ejahar so that he lodged the same. He further stated that he could not say from where and how police brought the seized articles. He stated that he had already given intimation in connection with stolen of articles from Borjuli area around one year back. He further stated that he had seen the accused persons at the police station. He also stated that there were no any specific marking of their APDCL on the seized articles which were seized by police. He stated that they have maintained register and if any APDCL articles were purchased and dispatch they have made an entry in the register. He also stated that they have not compared with the register that the seized articles belong to their department and in this regard they have not given prove to the police. He further stated that they have not filed any prayer before the court regarding the zimma of the said electrical articles. He could not say presently where the stolen articles were kept. He stated that he could not say whether police had prepared any documents regarding the identification of seized articles.

Further, he could not say whether police took his any signature in connection with the same.

10. PW-3, Sri Dul Kumar Boro in his evidence-in-chief has stated that he knows the accused persons of this case. He also stated that the incident took place in the year 2018 one day in between 10 PM to 10:30 PM and on the date of incident, his friend Gautam Singh called him and accordingly, he went to meet Gautam Singh and thereafter, they were proceeded towards Borjuli Power House through a Magic vehicle wherein the accused persons showed them some electrical items which were kept in a room and told them to load the said items in the Magic vehicle. He also stated that they have seen that some electrical item had already been loaded in a Alto vehicle and on being suspicion they told the accused persons to arrange another vehicle and thereafter, they left the place and informed the matter to the police. He further stated that after sometimes the Alto car had left the place and they followed the said Alto car. He stated that they had seen that police caught the said Alto vehicle near Dhekiajuli Bus Stand and accordingly, police brought the said alto vehicle to the police station. They too went to the police station wherein police seized the electrical items which were kept inside the Altu vehicle. He identified the seizure lists as Ext-1 and Ext-2 wherein he put his signatures as Ext-1(1) and Ext-2(2).
11. In cross-examination, PW-3 has stated that he had not seen the seized articles before the court. He further stated that there were many articles kept inside the Alto vehicle. He also stated that he could not say the registered owner of the Alto vehicle. He also could not say which of the accused called Gautam Singh over phone. He further stated that he put his signature on the seizure list at police station. He could not say the exact description of the seized electrical articles. He further stated that he exactly could not say the names of the accused persons and he did not know them prior to this incident.

12. PW-4, Sri Ratul Mahanta has stated in his evidence that he knows the accused persons of this case and the incident took place last year at night hours. He further stated that on the date of incident one day at about 10:30 PM to 11 PM he received a phone from Borjuli Sub Station and a boy from Control Room informed him that the electrical items (11 KV) of their company had been stolen and the said items had been captured by Rangapara PS. So, that he should go the police station. He also stated that APDCL had given contract to their company called Nikkon Power and Infra Ltd. to distribute power and their company had stored the electrical items at the campus of Borjuli Sub-Station. Thereafter, he informed the matter to the junior manager of APDCL Apurba Kumar Das (PW-2) and told him to go the police station. He further stated that he went to the police station on the next day of incident wherein he identified the electrical items of their company. He stated that he had seen the accused persons at the police station.
13. In cross-examination, PW-4 has stated that he had not seen the alleged commission of theft. He further stated that he described before the police about the stolen electrical items of their company. He also stated that he wrote the names of the electrical items when police asked him. He had not seen the said description letter before the police. He stated that he had also not seen the seized articles before the court. He further stated that the original owner of seized articles is APDCL and said APDCL department had given them contract to install the same. He also stated that he had not seen from where the police seized the said articles. He only had seen the seized articles before the police.
14. PW-5, Md. Rashid Islam has stated in his evidence-in-chief that he does not know the informant but he knows the accused persons of this case. He also stated that in the year 2018, he worked as mason at Rangapara Borjuli Power house. He further stated that accused Moina Sahu was the driver of their contractor. He stated that he heard that from the power

house some electrical cable, conductor, wire, angle etc. stolen away at night. On the next day morning, he came to know about the incident. The cross-examination of PW-5 was declined by defence.

15. PW-6, Sri Puran Ch. Sarmah (Retired SI) being the Investigating Officer of this case has stated in his evidence that on 07.04.2022, he was posted at Rangapara PS as SI and on that day O/C of Rangapara PS received an ejarah lodged by one Apurba Kumar Das and accordingly, on received of the same, the O/C of Rangapara PS registered as Rangapara PS Case No-60/2018, U/S-379 of IPC R/W Sec-135(1) of Electricity Act, 2003 and subsequently, he was endorsed for investigation. Before registering the case on the basis of GDE No-150 dated-06.04.2018 and he found stolen articles along with the vehicle. He seized weasel conductor (approx 50 meter), 3 bundles GI wear (approx 90 kg), Recon conductor (approx 30 meter), 22 nos. of L.T. stay shed, 5 piece black clamps, 2 piece angle cross arms, 12 piece stay rod. He identified the seizure list as P. Ext-1 wherein he put his signature as P. Ext-1(3). He further seized one Alto car in the name of owner Kiron Deori along with one insurance policy and one photocopy registration certificate from the possession of the accused persons. He further identified the seizure list as P. Ext-2 wherein he put his signature as P. Ext-2(3). Thereafter, apprehended the accused persons and took them to the police station and on the next day forwarded them before the court. He also stated that on the next day he again visited the place of occurrence and drew sketch map. He identified the sketch map as P. Ext-4 wherein he put his signature as P. Ext-4(1). He stated that he also recorded the statement of the informant and the other witnesses. He sent the seized articles to the court. He further stated that after conclusion of the investigation, he submitted charge sheet against the accused persons under section-379 of IPC R/W Sec-135(1) of Electricity Act, 2003. He identified the charge sheet as P. Ext-5 wherein he put his signature as P. Ext-5(1).

16. In cross-examination, PW-6 has stated that the extract copy of GD Entry on basis of which he started investigation, he has not submitted along with the case record. He also stated that he did not take the original GD entry No-150 dated-06.04.2018 before the court. He further stated that before apprehension of the accused and seized of the electricity articles no complaint had been lodged by any person regarding stolen of these articles. He further stated that he prepared the seizure list on the place of seizure of articles. He also stated that he recorded the statement of seizure witnesses on 06.04.2018 at 11 PM near bus stand, SBI, Rangapara. He stated that on the next day the FIR was lodged on 07.04.2018 at 12 o'clock by complainant after getting information from them and in the FIR no description of stolen articles had been mentioned by the complainant. Although he had shown the seizure list on 09.04.2018 before the court but he did not forwarded the stolen articles to the court. He also stated that he has not seen the stolen articles before the court. He further stated that he has no knowledge where the stolen articles are kept. He stated that he did not mention the date of preparing the sketch map Ext.4. He stated that the informant did not file any application before him for taking zimma of the stolen articles. He also stated that the weight of stolen articles was above one ton.
17. I have minutely perused the evidence on record including the cross-examination of witnesses. In this case, the prosecution side has examined as many as six numbers of witnesses including informant and the I.O. PW-1 who was the driver has stated that he was called on 06-04-2018 by accused Maina Sahu with his vehicle and when the PW-1 arrived at APDCL office situated at Borjuli he saw accused Maina Sahu and some other persons loaded some electrical items including some other articles in an Alto vehicle. Then he and PW-3 left the place and PW-3 informed the police. After that when the accused persons were proceeding on the Alto towards town side then he saw police

apprehended the accused near Rangapara SBI and also seized the electrical goods from the Alto Car. PW-2 being the employee of APDCL has deposed that in the year 2018, one day police informed him that they have apprehended two persons along with some electrical items and thereafter, called him to identify the said electrical items and accordingly, he went to the police station and found the seized articles belongs to their electricity department. He further stated that many electrical items had been stolen from various place at Borjuli area.

18. PW-3 also stated that in the year 2018, one day in between 10 PM to 10:30 PM he along with PW-1 were proceeded towards Borjuli Power House through a Magic vehicle wherein the accused persons showed them some electrical items which were kept in a room and told them to load the said items in the Magic vehicle. He also stated that they have seen that some electrical item had already been loaded in an Alto vehicle and on being suspicion they told the accused persons to arrange another vehicle and thereafter, they left the place and informed the matter to the police. He further stated that after sometimes the Alto car had left the place and they followed the said Alto car. He stated that they had seen that police caught the said Alto vehicle near Dhekiajuli Bus Stand and accordingly, police brought the said alto vehicle to the police station.
19. PW-4 who was the Engineer of Nikkon Power & Infra Ltd has deposed that on the date of incident one day at about 10:30 PM to 11 PM he was informed that the electrical items (11 KV) of their company had been stolen from Borjuli Sub Station and the said items had been captured by Rangapara PS. On the next day PW-4 went to police station and also identified the seized electrical goods of their company at Police station and he saw the both accused persons at police station. The I.O. has deposed that he seized the stolen articles from the Alto and after that he also apprehended the accused persons. Later on he sent the seized articles to the court.

20. That the statement given by the PW-1 was corroborated by the statement of the PW-3. I have not found any reason to disbelieve the statement of the PW-1 and PW-3 who was the eyes witness of the alleged incident. Although, there was minor discrepancy among the statement of the witnesses but it cannot be thrown from the admissibility. So, from the evidence of these witnesses it appears that on the day of incident the accused persons committed theft of the electrical goods of APDCL.
21. From the above discussion, it is proved that the accused persons were involved with offence of committing theft of electrical goods of APDCL from Borjuli Sub-station under Sec. 379 of I.P.C.
22. Hence, the Prosecution has proved the case against the accused persons namely, Md. Ayub Ansari and Sri Maina Sahu @ Ankur for the committing theft u/s: 379 I.P.C. beyond reasonable doubt. Accordingly, the accused persons namely, Md. Ayub Ansari and Sri Maina Sahu @ Ankur are found guilty U/S: 379 I.P.C.
23. I have considered extending the beneficial provisions of the Probation of Offenders Act to the accused persons who are found guilty, but I refrained myself from doing so as the same would send a wrong signal to the society.
24. Heard, the guilty accused persons on question of sentenced. The accused persons have submitted that they are poor persons and they have families to support and sentencing them to imprisonment will cause immense hardship to his families. So, the submissions so made was considered vis a vis the fact and the circumstances of the case and considering all aspects I am declined to inflict a harsh punishment on the guilty accused persons.

ORDER.

Accused persons, namely, Md. Ayub Ansari and Sri Maina Sahu @ Ankur are held guilty U/S: 379 I.P.C. and they are convicted and

sentenced to go S.I. for one month and to pay fine of Rs.1000/- each I/D S.I. for 07 days U/S.379 I.P.C.

The period of detention already undergone by the accused Md. Ayub Ansari and Sri Maina Sahu @ Ankur shall be set off.

Bail bonds of the accused persons stand cancelled.

Furnish copy of Judgment to accused Md. Ayub Ansari and Sri Maina Sahu @ Ankur at free of cost.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 14th day of September, 2022 at Tezpur.

(Sri Nabajit Bhatta)
Chief Judicial Magistrate,
Sonitpur: Tezpur

Dictated and Corrected by me

Chief Judicial Magistrate,
Sonitpur: Tezpur

APPENDIX -14
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sri Gautam Singh	Eye WITNESS
PW-2	Sri Apurba Kumar Das	INFORMANT
PW-3	Sri Dul Kumar Boro	EYE WITNESS
PW-4	Sri Ratul Mahanta	OTHER WITNESS
PW-5	Md. Rashid Islam	OTHER WITNESS
PW-6	Sri Puran Ch. Sarmah (Retired SI)	POLICE WITNESS

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Ext-1/PW-1, PW-3 & PW-6	Seizure List
2	Ext-1(1)	Signature of PW-1
3	Ext-1(2)	Signature of PW-3
4	Ext-1(3)	Signature of PW-6
5	Ext-2/PW-1, PW-3 & PW-6	Seizure List
6	Ext-2(1)	Signature of PW-1
7	Ext-2(2)	Signature of PW-3
8	Ext-2(3)	Signature of PW-6
9	Ext-3/PW-2	Ejahaar
10	Ext-3(1)	Signature of PW-2
11	Ext-4/PW-6	Sketch Map
12	Ext-4(1)	Signature of PW-6
13	Ext-5/PW-6	Charge Sheet
14	Ext-5(1)	Signature of PW-6

B. Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

Chief Judicial Magistrate,
Sonitpur: Tezpur