

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S),
BONGAIGAON**

PRESENT: S. HANDIQUE, AJS

G.R. 522/14

(U/S 379 IPC)

Bongaigaon P.S. Case no. 354/15

State

V.

Ranjan Mandal.....Accused.

For prosecution: Mr. P. Chatterjee, A.P.P

For defence: Mrs. A. Kumari

Evidence recorded on 28-6-16, 21-7-16, 8-8-16,

Accused examined u/s 313 Cr. P.C. on 12-8-16

Arguments heard on 12-8-16

Judgment delivered on 18-8-16

J U D G M E N T

- 1.** The prosecution case in brief is that on 17-6-14 at 10.30 P.M a thief named Rajib Ray was caught red handed while stealing construction materials from Lower Assam Hospital and Research Centre, Bongaigaon. The person was handed over to the police by the night staff and the VDP members. The formal FIR was lodged next day by Gopal Krishna Bhagawati, an employee of the hospital. The FIR mentioned that two persons namely, Ranjan Mandal and Nanki, a staff of the hospital used to

engage Rajib Ray for stealing building materials from the newly constructed hospital building. The FIR was registered as Bongaigaon P.S. Case no. 354/14 and the case was investigated upon. After investigation charge sheet was filed against accused Ranjan Mandal and Salamuddin Ahmed u/s 379 IPC. Meanwhile accused Salamuddin was arrested during investigation stage and later on released on bail. Accused Ranjan Mandal was shown as an absconder.

2. The Id. CJM, Bongaigaon took cognizance and transferred the case to the court of Id. JMFC, Bongaigaon. Later on the case got transferred to this court. Accused Ranjan Mandal appeared and took bail and received copies. The case was filed against accused Salamuddin as he failed to appear in spite of issuance of P&A. The case was thus split up and proceeded against the present accused.
3. The formal charge was framed against accused Ranjan Mandal and same on being read over and explained to the accuse he pleaded not guilty and claimed trial.
4. The prosecution examined six witnesses in this case. The accused was examined u/s 313 Cr. P.C. which is of total denial. He also declined to adduce evidence. Heard arguments. The following point for determination has been framed in this case:

POINT FOR DETERMINATION

Whether the accuse on 17-6-14 at 10.30 P.M. committed theft of building materials in Lower Assam Hospital, Bongaigaon and thereby committed an offence punishable u/s 379 IPC?

DISCUSSIONS, DECISION AND REASONS THEREOF:

5. **PW1 Gopal Krishna Bhagawati**, informant of the case deposed that on 17-6-14 at 10.30 P.M. he was informed that a thief has been caught by the VDP and night staff along with building materials. He handed over the thief to the police. He stated that the thief disclosed his name as Rajib Ray. He exhibited the FIR as Ext.1. Ext 2 is the seizure list. He identified the seized aluminium frame, iron grille, window grille as Mat. Ext. A, B &

C respectively. In cross examination he could not say if the thief caught on that day is the accused present in the dock or not.

- 6. PW2 Utpal Dutta** , an employee of the hospital deposed that he knows the accused since the date of occurrence. He was in the hospital then and he heard the hue and cry and saw that a thief has been caught. The police was informed and the police took the thief along with the stolen goods to the police station. He identified the seized articles. He is a seizure witness too. He stated during cross examination that the accused was tied up and his name was Rajib Ray.
- 7. PW3 Jogesh Sutradhar** is a driver of the hospital. He stated that the VDP had caught the thief and handed him over to the police. According to him, one of the thieves is Nanki who used to work in the hospital. He exhibited his signature in the seizure list as Ext. 2 (3). In cross examination he stated that he does not recognise the accuse standing in the dock. He does not know the name of the thief caught by VDP.
- 8. PW4 Abdul Barek** deposed that at the time of occurrence he was the VDP Secretary and one night the public caught a boy aged 12/14 years and brought the boy to his shop with the stolen grille. He called the police and handed over the boy to the police. He does not know the name of that boy.
- 9. PW5 Atowar Rahman** deposed that the accused was caught by the public while stealing some stuff from Lower Assam Hospital. He identified the seized articles as the stolen goods. In cross examination he stated that the accused is the person caught by the public on that day.
- 10. PW6 SI Ganesh Sarkar** deposed that on 17-6-14 at about 11 P.M. he was on his duty at North Bongaigaon P.P when his superior officer asked him to proceed to Lower Assam Hospital on getting a call that a thief has been caught in the backside of the hospital red handed with stolen materials. On arriving there he saw that a guy named Rajib Ray has been caught with few items. He brought Rajib Ray to the police station. Rajib's mother produced his age proof and he found that Rajib was a juvenile and thus he let him go with his mother. Next day the FIR was received. He thereafter got the formal charge of investigation. During investigation

he arrested accused Samaluddin and forwarded Rajib Ray to the JJB, Bongaigaon. After investigation he filed the charge sheet against accused Salamuddin and absconder accused Ranjan Mandal. He filed a separate charge sheet against the juvenile. He identified the seized goods. Ext. 3 is the sketch map; Ext. 4 is the charge sheet.

11.In cross examination he testified that the goods were seized from Rajib Ray. He stated that the VDP did not see Ranjan Mandal with stolen goods and there is no allegation against him. He stated that he did not seize any document pertaining to the ownership of the goods.

12.From the above evidence of PWs it transpires that on 17-6-14 a juvenile named Rajib Ray was caught with few building materials in Lower Assam Hospital and he was handed over to the police. The witnesses could not testify if the present accused was caught on that day or not. Ext. 1 (FIR) mentions the name of the present accused as one of the two persons who had engaged Rajib Ray in stealing. Apart from FIR and Charge sheet there is no other evidence pointing towards his guilt. If accused Ranjan Mandal was the brain behind the alleged theft the prosecution ought to have proved it. But the prosecution has miserably failed in this respect.

13.Considering all the above, it is held that the prosecution has been unsuccessful in bringing home the charge against the accused.

ORDER

14.In view of the above discussions, accused Ranjan Mandal is held not guilty u/s 379 IPC and he is acquitted. He is set at liberty forthwith. Bail bond is extended for six months. Judgment is delivered in the open court. Given under the hand and seal of the court on 18-8-16.

Typed and delivered by

S. Handique

SDJM (S), Bongaigaon

APPENDIX

PROSECUTION EVIDENCE

PW1..GOPAL KRISHNA BHAGAWATI

PW2..UTPAL DUTTA

PW3..JOGESH SUTRADHAR

PW4..ABDUL BAREK

PW5..ATOWAR RAHMAN

PW6..SI GANESH SARKAR

EXT.1..FIR

EXT.2..SEIZURE LIST

EXT.3..SKETCH MAP

EXT.4..CHARGE SHEET

MAT. EXT.A, B,C..SEIZED ARTICLES

DEFENCE EVIDENCE..NONE.