

**IN THE COURT OF ADDL CHIEF JUDICIAL MAGISTRATE AT
BONGAIGAON**

G.R. CASE NO .265/2013.

STATE

-VS-

1) JALAL UDDIN

.....ACCUSED U/S. 379 IPC.

PRESENT : SRI DEBASHISH SAIKIA,AJS

SAMEER KUMAR NATH.....ADVOCATE FOR THE STATE

RANIMA AHMED.....ADVOCATE FOR THE ACCUSED.

DATE OF HEARING.....05.06.14,30.06.14,15.09.14.

DATE OF ARGUMENT.....22.10.14, 02.11.14.

DATE OF JUDGMENT.....05.11.14.

JUDGMENT

- 1) Prosecution case in brief as follows :-
- 2) One Riju Kochari lodged an ejahar before the O/C of Dhaligaon P.S. on 11.04.2013 stating inter alia that on 10.11.2013 at about 2.00 A.M. while he was doing his duty as night chowkidar in the construction site, he could apprehend one Jamal Uddin red handed while he was stealing iron road from the construction site.
- 3) O/C of Dahligaon P.S. on receiving the ejahar, registered a case vide P.S case.no.75/13 U/S.379 IPC and started investigation. On completion of investigation police submitted charge sheet against accused Jalal Uddin U/S.379 IPC.
- 4) Charge sheet having laid before the Learned Chief Judicial Magistrate, Bongaigaon, cognizance of the case was taken by the Learned Chief Judicial Magistrate, Bongaigaon and thereafter case was sent to this Court for disposal.

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5) Receiving the case-record summons was issued against the accused. Pursuant to the appearance of the accused copy of the case was furnished and after hearing both sides my learned predecessor in chair vide order dated 07.05.2013 framed a formal charge U/S.379 IPC which having been read over and explained the accused pleaded not guilty and claimed to be tried.

6) Prosecution in the instant case has examined four witnesses, including the I.O. Defence plea is that of total denial. Statement of the accused U/S.313 Cr.PC is recorded in which the accused reiterated his defence plea. Accused , however, did not adduce any evidence. I have heard the learned counsels of both sides.

7) **The only point for determination is :**

i)Whether on 10.04.2013 at about 2.00 A.M. the accused committed theft of iron road from the construction site of Danga Dalang over 31 No. National Highway under Dhaligaon P.S. ?

DISCUSSION,DECISIONS AND REASONS THEREFOR:

8) The informant Riju Kochari has examined as PW-1. Deposing before the Court the informant PW-1 stated that at the time of incident he was working as chokidar at Gayatri Company. According to him the said company was involved in the construction of a bridge. PW-1 deposed that while doing night duty he on hearing sounds of iron rod being removed flashed his torch light to the side from where the sound was coming. PW-1 then deposed that while flashing his torch light he could see the accused stocking up iron rod for loading them in a Tata Mobile vehicle. PW-1 further deposed that he along with his fellow night chowkidar Tanga Daimari caught hold of the accused, while the vehicle left the place. According to PW-1 later on the police came and took the accused to the police station. PW-1 also deposed that in this connection police has prepared seizure list in which he put his signature. PW-1 identified the ejahar lodged by him as Ext-1 and the seizure list as Ext-2.

9) PW-2 is Tanga Daimary and his evidence is in tune of PW-1 on all material aspects. Pw2 deposed that he along with PW1 caught hold of the accused.

10) PW 3 is Sri Khudiram Ray and he was a mason who worked at the construction site at that time. Deposing before the Court PW-3 deposed that on the relevant time he was sleeping inside the make shift camp situated adjacent to the construction site and hearing a hue and cry he came to the place of occurrence and saw the accused being tied up and some iron roads were lying near him. PW-3 further deposed that police later on came and took the said accused away. PW3 also deposed that he put his signature on the seizure list Ext2.

11) PW 4 is the I.O./S.I.Abdul Mannan Sk. In his evidence PW-4 deposed that he has conducted preliminary investigation of the case and later on

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submitted C.S by S.I. Karendra Ch.Ray. This is in a nutshell in the evidence on record.

12) In the instant case the evidence of the Pw1 and Pw2 is vital as both the eye witnesses claimed to have caught the accused red handed while committing the theft. The evidence of both the above witnesses are minutely perused. The evidence of the above two witnesses were consistent and both of them corroborated each other in all material aspects. There was virtually no cross examination and the evidence of both Pw1 and Pw2 remained in tact. Both the witnesses claimed that the accused was caught while he was about to load the iron rods in a vehicle which he has collected from the construction site. Pw1 and Pw2 being the night chowkidars doing night duty in the construction site, having no previous animosity against the accused are reliable witnesses and as such their evidence can be relied upon. Pw3 Khudiram Roy on the other hand claimed to have reached the place of occurrence after hearing the commotion and who on reaching the place of incident had seen the accused in a tied up condition with the iron rods besides him. Pw3 also in his evidence claimed that he being a worker working in the said construction site and who was sleeping in a makeshift camp near the construction site when the incident took place. The above evidence so adduced by Pw3 was not at all challenged at all by the defence and the evidence so adduced lends support to the evidence of Pw1 and Pw2. The Pw4 ASI Abdul Mannan Seikh who was the I/O in his evidence deposed that getting the information he on the very night of incident went to the place of occurrence, and from there he brought the accused to the police station. Pw4 further deposed that the accused was kept detained by the construction workers and he also seized the stolen iron rods vide seizure list Ext2.

13) The above evidence so adduced by the prosecution witnesses clearly established that the accused had moved the iron rods without the consent of the owner with a dishonest intention and as such the ingredients of theft having clearly made out, accused is held to have committed an offence punishable u/s 379 IPC.

14) I have considered extending the beneficial provisions of the Offenders Act to the accused but refrained from doing so considering the nature and gravity of offence.

15) Accused is heard on the question of sentence. Accused submits that he is a poor person having a family to look after and that sentencing him to imprisonment would cause immense hardship to his family. I have considered the above pleas vis a-vis the facts and circumstances of the case. No previous conviction has been proved against the accused. Considering the above facts and circumstances I am of the measured view that the accused deserves a little leniency.

ORDER

Accused Jalaluddin is convicted u/s 379 IPC and is sentenced to S.I

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for 1(one) month and also to pay a fine of rupees one thousand i/d to S.I for ten days.

Seized materials be returned to the owner.

Period of detention already undergone shall be set off as against the term of imprisonment.

Furnish free copy of judgment to the convict/accused.

Given under my hand and seal of this court on the 5th day of November 2014 at Bongaigaon.

(D.Saikia,AJS)

Addl.Chief Judicial Magistrate

Bongaigaon.