

BEFORE THE JUVENILE JUSTICE BOARD, BONGAIGAON

Present: Mrs. S. Handique, AJS

Principal Magistrate, JJB, Bongaigaon

Mr. D. C. Basak,

Member, JJB, Bongaigaon

Mrs. R. Choudhury,

Member, JJB, Bongaigaon.

JJB Case no. 37/13

(u/s 379/34 IPC)

State

V.

1. Adip Basumatary

2. Suken Basumatary

3. Rupen Basumatary

Evidence recorded on: 8-7-14, 31-7-14, 2-9-14

Juvenile examined u/s 313 Cr. P.C. on: 26-8-14

Arguments heard on: 4-9-14

Judgment delivered on: 11-9-14

For prosecution: Mr. T.K. Bhowmik

For defence: Mr. K. Das

JUDGMENT

1. The prosecution was set into motion in this case with the apprehension of three juveniles namely, Adip Basumatary, Rupen Basumatary and Suken Basumatary by a patrolling party of the Sidli Police Station headed by A. S. I. Kalindra Das on 29-10-11 at about 11.30 P.M. near Gendar village, Sidli. The police claimed to have seized a pushing cart containing 13 iron girders belonging to Gayatri Projects Ltd. from the three juveniles. The FIR was

lodged next day by an employee of the Gayatri Projects Ltd. The informant alleged that 13 pieces of iron girders had been stolen by some unknown persons from an under construction bridge at Kashikotra on 29-10-11 at midnight. It was further alleged that 6 more pieces were stolen from another under construction bridge at Chota Chamta Bazar on 26-10-11.

2. The FIR was lodged as Sidli P.S. Case no. 28/11 u/s 379 IPC and after investigation the police filed the charge sheet against the three juveniles. Meanwhile, they were declared as juveniles in conflict with law and after filing of the charge sheet they were summoned by this Board. The necessary copies were served upon the juveniles in conflict with law (herein after referred to as JCWL). The particulars of offence u/s 379 IPC were explained to them to which they pleaded not guilty and claimed trial.
3. During enquiry six witnesses were examined by the prosecution including the investigating officer. JCWL were examined u/s 313 Cr. P.C wherein they denied the incriminating materials put to them and also declined to adduce defence evidence.
4. The following point for determination has been framed in this case:

POINTS FOR DETERMINATION:

1. *Whether JCWL Adip Basumatary, Rupen Basumatary and Rupen Basumatary in furtherance of their common intention dishonestly removed iron girders belonging to the Gayatri Projects Ltd from two under construction bridges at Kashikotra and Chota Samta Bazar and thereby they committed an offence punishable u/s 379/34 IPC:*

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

DECISION ON POINT NO. 1:

5. The allegation against the juveniles is that they stole iron girders from two under construction bridges and they were apprehended by the police while they were carrying away the stolen materials in a pushing cart. In this respect let us examine the evidence on record.
6. *PW1 Lakhikanta Sarkar* is a police constable posted at Sidli Police Station. He was a member of the patrolling team headed by ASI Kalindra Das on the night of 29-10-11. He deposed that while he was on patrolling duty on the night of 29-10-11 they saw three guys were carrying some iron girders in a pushing cart in Sidli. According to him, the three guys were then caught and taken to the police station and ASI Kalindra Das seized the pushing cart along with the iron girders. He exhibited the seizure list as Ext. 1. He stated that the seized articles belonged to the Gayatri Projects Ltd. During cross examination he denied his knowledge if any GD entry was done on that night. He denied his knowledge as to whether the seized articles belonged to

the Gayatri Projects or not. He stated that his signature was taken in the police station on the seizure list. He testified that the Gayatri Projects could not show any papers or documents relating to the seized articles. He testified that the village head man or the VDP were not informed about it. He stated that the seized articles are still lying in the police station. He however denied that nothing was seized from the juveniles on that night.

7. **PW2 Jagadish Debnath** is a Home Guard posted at the same police station. He too deposed that he was a member of the patrolling team which apprehended the three juveniles with the seized iron girders and one pushing cart. He also identified the seizure list whereby ASI Kalindra Das seized the pushing cart and the iron girders from the juveniles. He denied during cross examination that the seized articles were not found in possession of the juveniles on that night by his patrolling team.
8. **PW3 Najjil Hoque** is also a Home Guard posted at Sidli P.S. He also testified that he was present with the patrolling team on that night of occurrence when they apprehended three juveniles with a pushing cart containing iron materials. He testified that he signed Ext. 1 after Kalindra Das seized the articles. During cross examination he denied that he was not present with the patrolling team on that night or that nothing was seized from the juveniles. He testified that the seized articles are still lying in their P.S.
9. **PW4 Jatin Basumatary** does not know anything about the incident, hence his evidence is immaterial.
10. **PW5 P. Suresh Kumar** is the informant who lodged the FIR. He exhibited the FIR as Ext. 2. He stated that his company was constructing bridges in the area covering Kashikotra upto Rakhaldubi. According to him, on that night 13 iron girders were stolen from the construction site. He stated that 6 more girders were stolen earlier from another construction site few days back. According to him, iron worth Rs 55,000/- were stolen from their sites. He stated that the watchman posted at the construction site told him about the alleged theft and so he lodged the case. He stated that when the police informed that the stolen goods have been found, he visited the Police Station and identified the goods and lodged the FIR. During cross examination he stated that the iron girders are manufactured at their construction site itself and a Register is maintained in this respect. He testified that the police was verbally informed about the alleged theft on 26-10-11.
11. **PW6 Kalindra Das, ASI, Sidli P.S,** deposed that he was patrolling with constable Lakhi Sarkar and three Home Guards on the night of 29-10-11 when they noticed three guys with a pushing cart near Gendar Gaon, Sidli at 11.30 P.M. He stated that when the three guys were interrogated, they revealed that they were carrying 13 pieces of iron girders from the bridge which is under construction near Urbashi School. He stated that the three guys were taken to the police station along with the cart and the iron. According to him, the watchman of the company informed the Manager of the Gayatri Projects and the Manager lodged the FIR on 30-10-11. PW6 is also the investigating Officer of this case. He exhibited the sketch map (Ext.

iii). He exhibited his signatures on the seizure list (Ext. i). He also exhibited the charge sheet filed by Lal Mohan Gowala, O/C, Sidli P.S. as Ext. iv. He testified during cross examination that the GD entry was given on that night but the extract of the GD entry was not submitted in the court. He stated that no one from the locality signed the seizure list as it was very late at night. He testified that no document certifying ownership and possession of the seized articles by the Gayatri company prior to its seizure have been taken from the company. He stated that neither the stock book of the company has been seized. He however denied that the seized articles do not belong to the company or that nothing was seized from the juveniles on that night.

12. It may be noted that the Case Diary contains GD Entry no. 717 dtd 29-10-11 at 11.30 P.M regarding patrolling duty. The defence argued that the prosecution has not proved that the seized articles belong to Gayatri Projects Ltd. It is seen from the evidence of PW5 is that 13 iron girders were stolen from their construction site on that night and he lodged the FIR next day upon getting the information of the theft and recovery of the materials. The defence could not belie the testimony of PW5 as regards the alleged theft, though the defence tried to prove that the informant is not an employee of the company. The informant lodged the FIR in the capacity of an employee of Gayatri Projects Ltd. posted at the HRD section and he testified it while deposing as a witness. The I/O has testified that the FIR was lodged by the Manager of Gayatri Projects. The juveniles are students. They were found in possession of 13 iron girders late at night on the road which is not far from the construction site of the company. To constitute an offence u/s 379 IPC, dishonest removal of property out of possession of any person without his consent is essential. The I/O testified during cross examination that he seized the goods from the juveniles and prepared the seizure list. He stated that he could not take signatures of the local people as it was late at night. The explanation given by the I/O is satisfactory. The seizure witnesses are members of the patrolling party and they exhibited their signatures. The defence merely suggested that the signatures on Ext. 1 are not the signatures of the juveniles. As stated by PW5 the company was engaged in constructing bridges in that area from Kashikotra up to Rakhaldubi. The sketch map (Ext. iii) prepared by the I/O discloses that the place of occurrence as bridge no. 70/4 which tallies with the FIR. The defence tried to prove that the ownership of the company over the seized articles is not proved. PW5 testified during cross examination that after getting the information about the recovery of the goods he visited the police station and identified the goods. The defence suggested to the I/O that PW5 had not told him that he identified the goods. In our opinion this is a minor contradiction because it is a fact that PW 5 visited the police station on 30-10-11 and lodged the case. The defence could not discharge the burden as to how the juveniles came to possess the iron girders and for what purpose they were carrying the iron girders in a pushing cart late at night. The fact that the seized articles are still lying in the police station does not affect the merits of the prosecution case.

13. The juveniles during their examination u/s 313 Cr. P.C denied all the incriminating questions put to them. They further denied that they were caught on the spot. Rather they stated that they were arrested from their respective houses. No any defence evidence was adduced to prove the fact that the juveniles were apprehended not from the road near the place of occurrence on that night but from their respective homes later. Their mere denial is not enough to negate the fact of their apprehension by the police with the seized articles, because the evidence of PW1, PW2, PW3, PW 6 certainly prove that the juveniles were apprehended from the road at Gendar gaon with a pushing cart containing iron girders. Once it is proved that they were found in possession of the seized articles (iron girders used in construction purposes) and it is also proved that some 13 or more iron girders were stolen from one of the construction sites of the Gayatri Projects prior to the seizure, the next logical conclusion would be that the seized articles belonged to the said company and the juveniles in furtherance of their common intention removed the goods out of its possession from the construction sites.
14. In view of the above discussions this Board has come to the conclusion that the allegation brought against the juveniles is proved beyond reasonable doubt.
15. Heard both the sides on the question of passing appropriate order as per section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The prosecution argued that considering the tender age of the juveniles the appropriate order as per provisions of law may be passed. On the other hand the Id. Defence counsel argued that the juveniles be shown leniency considering their future prospects.
16. This Board has pondered over the submissions on both the sides. The juveniles, namely, Suken Basumatary, Adip Basumatary and Rupen Basumatary are 18 ½, 17 and 16 years respectively at present and are studying in schools. The incident occurred about three years ago. Considering their tender age at the time of commission of the offence and the period of their detention during the investigation stage, we deem it fit to deal with the three juveniles u/s 15 (1) (e) of the Juvenile Justice (Care and Protection of Children) Act, 2000. We release them on probation of good conduct and place them under the care of their father or in case the father is not alive, in care of their mother on execution of a bond without surety for the good behaviour and well being of the juveniles in conflict with law for a period of one year. The respective bonds are to be executed as per the Juvenile Justice (Care and Protection of Children) Rules, 2007 containing the following conditions:
- A) That the father/ mother of the juvenile shall not change the place of residence without giving prior intimation in writing to the Board through the Probation Officer/ DCPO
 - B) That the juvenile shall not be removed from the limits of the jurisdiction of this Board without giving prior intimation in writing to the Board through the Probation Officer/ DCPO

- C) That the juvenile shall be produced before the Board in case he does not abide by this order and he is beyond control of the father/ mother
- D) That he/ she shall render assistance to the Probation Officer/ DCPO to enable him to carry out the duties of supervision
- E) In case of default, he/ she shall appear before the Board in order to enable the Board to take appropriate action and to forfeit the Bond amount of Rs 20,000/- to the Government.

Given under the hand and seal of this Juvenile Justice Board,
Bongaigaon on 9-9-14.

Smt. S. Handique, AJS
Principal Magistrate, JJB, Bongaigaon

Sri. D.C. Basak,
Member, JJB, Bongaigaon

Smt. R. Choudhury,
Member, JJB, Bongaigaon