

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS: GOLAGHAT, ASSAM

G.R. CASE NO – 1054/2013.

U/S 379 of Indian Penal Code.



STATE

V.

SRI AJOY TANTI.

.....Accused person.

PRESENT: - MRS. LEENA DOLEY, AJS

J.M. FIRST CLASS, GOLAGHAT.

FOR THE PROSECUTION: - MRS DIPLIP GOGOI, Asstt. P.P

FOR THE DEFENCE: - SMTI ANU TAMULY BARUAHLegal Aid Counsel.

EVIDENCE RECORDED ON: - 26-08-2013, 23-09-2013, 21-10-2013.

ARGUMENTS HEARD ON: - 05-11-2013.

JUDGMENT DELIVERED ON: - 21-11-2013.

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JUDGMENT

1. The prosecution case in brief is that on 21-06-2013 at about 11 AM Sri Raju Thakur's bicycle was theft as he kept the same parked near his shop and after sometime the thief was caught along with the bicycle at Pongka Chariali. The name of the thief was Ajoy Tanti. Later Sri Raju Tanti lodged an FIR in the Numaligarh police out post.

2. The police registered a case bearing Golaghat P.S. Case No 466/2013 and investigated the case. After investigation the police submitted the charge-sheet U/S 379 of the Indian Penal Code and was registered as G.R. Case No-1054/2013. Cognizance was taken and the case was transferred to this court for trial.



3. The accused person was produced from judicial custody and copies of relevant documents were furnished to the accused as required U/S 207 of Criminal Procedure Code. The accused could not arrange for a lawyer and hence Smti Anu Tamuly, Legal Aid Counsel was appointed for the accused. After a preliminary hearing the charge U/S 379 IPC was framed against the accused and when the charge was read over and explained to the accused person he pleaded not guilty and claimed to stand trial.

4. Prosecution examined three witnesses in order to prove its case and the accused did not examine any witness.

5. The accused was examined under section 313 of the Code of Criminal Procedure on 30-10-2013 and in his examination he has denied the allegations leveled against him and stated those to be baseless.

6. Heard the arguments advanced by the Learned Counsels of both the sides.

7. After analyzing the evidences and various documents in record and also after hearing the arguments lead by the Learned counsels of both the sides I frame the following points for determination:

Whether on 21-06-2013 at about 11 AM the accused intending to take dishonestly a certain movable property namely the bicycle, out of the possession of the informant Sri Raju Thakur without his consent moved it in order to such taking and thereby committed offence punishable U/S 379 of the IPC.

If yes, what punishments does he deserve?

8. DISCUSSIONS, DECISION AND REASONS THEREOF:-

I have carefully examined the evidences on record, analyzed the relevant documents on record and after hearing the arguments advanced by the

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Learned Counsels of both the sides, give my decision on the above noted points as follows:-



i) PW1 is the informant in this case and in his examination in chief has deposed that about three months before his testimony in the court he opened his shop at Tel Garam and there he parked his bicycle. He has deposed that at about 11.30 AM he saw his bicycle was not at the place of parking. He has deposed that one Rekibul Hussain was sitting with him in his shop and Rekibul at once went in search of the bicycle and found the same at Pongka with a person and then apprehended that person along with the bicycle with help of the public and handed over the bicycle and that person at Bishnupur police out post. He has deposed that he lodged an FIR with this regard. Exhibit 1 is the FIR where he put his thumb impression.

ii) PW2 has deposed in the manner as that of the informant (PW1) that he was sent by the informant with another bicycle to search for his theft bicycle and so he called up David who stays at Ponka and informed about the incident of theft. He has deposed that he and David found the accused along with the informant's bicycle at Pongka and then took the accused and bicycle to the Bishnupur police out post.

iii) PW3 has also deposed in the same manner that Rekibuddin called him at about 12 noon and informed him that the informant's bicycle was theft and that the thief has gone towards Pongka and asked him to come out. He has deposed that Rekibuddin was also coming behind. He has deposed that the informant's bicycle was familiar to him as he used to take that bicycle for his purpose sometimes. He has deposed that he saw the accused at Pongka Chariali and as the accused was a new face not seen earlier at Pongka, he suspected him as the thief. He has deposed that he caught the accused and handed over to the police and in the meantime Rekibuddin also arrived there.

iv) PW4 is a hearsay witness and has deposed that the accused was brought towards his shop along with the bicycle and then police arrived and seized the bicycle. He has deposed that he has signed as a witness in the seizure list and Exhibit 2 is the seizure list and Exhibit 2(1) is his signature.

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v) PW5 has deposed that he was sitting in a nearby shop of the informant's and heard sur-sur i.e thief- thief and then ran towards the thief and nabbed the accused and on being asked the accused admitted that he committed the theft. He has deposed that thereafter the accused was handed over to the police.

vi) PW6 in his evidence has deposed that on the day of the incident at about 11/12 noon the informant was sitting in his shop which is just beside the shop of the informant's and after about 10/15 minutes the informant saw that his bicycle was missing and raised an alarm that his bicycle was theft. He has deposed that after about one and a half hours a person was caught at Pongka Chariali with a bicycle and hence the informant was called for identifying the bicycle. He has deposed that the informant went there and identified the bicycle and after a while the police visited the place and brought the accused near his shop and seized the bicycle where he has signed as a witness. Exhibit 2(2) is his signature.

vii) In this case the accused is alleged of committing an offence punishable U/S 379 IPC which states – “whoever intending to take dishonestly any moveable property out of possession of any person without that person's consent moves that property in order to such taking is said to commit theft”. Considering all the discussions made above it is evident to visualize that the accused took away the informant's bicycle with a dishonest intention but was caught by the above discussed witnesses and public, along with the theft bicycle, which is a movable property, and not far away from the informant's shop and within a few hours after the incident of theft.

viii) The Learned Counsel for the accused has advanced arguments that none of the witnesses has witnessed the accused moving away with the bicycle but only that the informant's bicycle was recovered from the accused. On this point I am of the opinion that the circumstances have led this court to believe that the accused has committed the theft as there is complete corroboration in the testimonies of PW1, PW2 and PW3 and amongst whom PW2 and PW3 went in search of the bicycle and caught the accused along with the bicycle. Further there is no evidence that the bicycle was moved by some other person and the accused possessed it later and in absence of any such circumstance and evidence, it is crystal clear that the accused has moved the bicycle with a dishonest intention without the consent of the informant and which amounts to commission of



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theft as defined U/S 379 of IPC and hence I decide this point in the positive and against the accused.



9. Heard the accused on sentence where he has stated that he has been in judicial custody since 22-06-13 and now prays for leniency.

10. This court is not inclined to give the benefits as provided U/S 3 or 4 of the Probation of Offenders Act as he is a well build person and can work for his livelihood instead of committing such offence to earn money and if not punished now he will develop the habit of earning money with easy ways.


ORDER

11. In the result considering the entire facts and circumstances of the case and upon analyzing the evidences on record, I am of the opinion that the prosecution has succeeded in proving the charge U/S 379 IPC beyond all reasonable doubt and hence accused person is convicted under the aforesaid section.

The accused is sentenced to undergo simple imprisonment for a period of three months for committing offence punishable U/S 379 IPC and his previous period of detention shall be set off from his sentence.

12. Furnish a free copy of this judgment to the accused.

13. Signed, sealed and delivered in the open court, on this 21st day of November, 2013, at Golaghat.


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