

Gr 1242/17
State
Vs
Bubul Kalita

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. GR 1242/2017 u/s 379 IPC

STATE

-Vs-

BUBUL KALITA..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Manika Chakraborty.....for the State.

Mr. Nirmal Bharali.....for the accused.

Date of prosecution evidence – 13.02.18, 14.05.18, 13.06.18 and 2.07.18

Date of argument – 20.08.18

Date of judgment – 13.09.18

Judgment

1. Shri Kishore Talukdar initiated the instant case by filing written 'ejahar' before the O/C, Nalbari P.S. on 11.08.17. Prosecution case in brief is that, on 10.08.17 at about 7:30 pm, while the informant was busy purchasing medicine in New Sankar Medicos Nalbari the accused person took away his mobile nokia X1 and that the incident is captured in the cctv footage of the pharmacy. Hence he filed the ejahar.
2. On receipt of the 'ejahar', police has registered the case as Nalbari

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P.S. case No. 564/17 u/s 379 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused person Bubul Kalita u/s 379 IPC.

3. During trial, accused person entered his appearance and was allowed to go on bail. Relevant copies of the documents were furnished to him u/s 207 Cr.P.C Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 379 IPC and accordingly charges were framed. The contents of the charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
4. Prosecution in support of the case examined seven witnesses. Defence side did not examine any witness in support of their claim. The accused person was examined u/s 313 of Cr.P.C. to which he denied all the allegations leveled against him.
5. I have heard argument of both sides.

Points For Determination

6. Upon hearing and perusal of the record, I have framed the following points for determination:
 1. Whether the accused person on 10/8/17 at about 7:30 pm committed theft of the informant's mobile and thereby committed an offence punishable u/s 379 IPC?

Discussions Decisions and Reasons thereof

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. On perusal of the prosecution evidence it appears that PW 1 Utpal sharma and Pw 2 Sujal das are the employees of the pharmacy from where the informant's mobile was stolen. Both of them deposed in their evidence that on the date of occurrence when the informant inquired about his stolen mobile they checked the CCTV footage and got to know that the accused person stole the same. When they were

cross examined Pw 1 stated that he do not know the model of the handset. Pw 2 stated that he do not know the color or model of the handset though he saw the same in the footage. Moreover, Pw 2 have been confused while stating the number of person that were present at the time of occurrence. He once said that there were 50-60 people and later stated 5-6 people were present at the time of occurrence. Moreover, when the evidence of Pw 2 is juxtaposed with that of the investigating officer it transpires that he did not state before him that the accused person has stolen the mobile.

9. When the evidence of Pw 3 Kishore Talukdar who is the informant of the case is scrutinized it appears that he too saw the CCTV footage and came to know that it was the accused person who stole his mobile. He then filed the ejahar on the next day and the I/O tracking the IME number of the mobile caught the accused and seized the mobile from him. He also made a statement that when he purchased the medicine he saw the accused person in the pharmacy and when he again came back to inquire about his mobile he saw him standing in the pharmacy. But when he was cross examined he stated that it was only when the police caught the accused he came to know about him. Therefore the statement that he saw the accused in cctv footage and that he was also standing in the pharmacy becomes vague. Moreover, the I/O confirmed that Pw 3 did not state before him that he saw the accused when he came back to inquire about his mobile.
10. PW 4, Pw 5, Pw 6 are the seizure witnesses. They have no knowledge with regard to the occurrence and also admitted not to have known the contents of the seizure list. Pw 5 added that he came to know about the incident from the police.
11. On perusal of the entire evidence on record it transpires that the basis of the prosecution case is CCTV footage form where it was revealed that the accused person only stole the mobile. However the prosecution has failed to bring the CCTV footage before the court and

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I/O has not even seized the footage. Therefore, it is not clear if the mobile was stolen by the accused. Though the occurrence took place in an open place like pharmacy but the prosecution failed to bring any eye witness to lend support to its case.

12. I, therefore, find that the prosecution has failed to establish the guilt of the accused person beyond all reasonable doubt. As such, accused person Bubul Kalita is held not guilty of the offence punishable u/s 379 of IPC and accordingly, he is acquitted and set at liberty forthwith.

13. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

14. The seized article, if any, be returned to the original owner as per law in due course.

Given under my hand and seal of this court on this 13th day of September, 2018.

Rubina Yasmin
J.M.F.C. Nalbari

APPENDIX

Prosecution witness:

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PW 1 – Utpal sharma

PW 2 – Sujal Das

PW 3 – Kishore Talukdar

PW 4 – Subhash Kalita

PW 5 – Anup Kalita

PW 6 – Karan Kalita

PW 7 – TSI Hemendra Singha

Defence witness:

Nil

Exhibits:

Ext. 1 – Ejahar

Ext. 1(1) – Signature of the informant

Ext. 2 – seizure list

Ext. 2(1) & 2(2) – Signature of the seizure witnesses

Ext. 3 – Sketch map

Ext. 3(1) – Signature of I/O

Ext. 4 – Charge sheet

Ext. 4(1) – Signature of I/O

Rubina Yasmin

J.M.F.C. Nalbari