

P.R.C.CASE NO:154 of 2019  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI LUCKY ALI

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DISTRICT: NALBARI  
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL MAGISTRATE:::::NALBARI

**P.R.C.CASE NO:154/2019**  
**U/S 379 IPC**

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: (1) MD LUCKY ALI

**PRESENT : SHALMA AZAZ,  
S.D.J.M., (S) NALBARI.**

ADVOCATE FOR THE PROSECUTION: SMTI M.CHAKROVERTY.

ADVOCATE FOR THE ACCUSED: SRI M.MISRA.

CHARGE FRAMED ON: 21.01.2019.

EVIDENCE RECORDED ON: 20.07.19.

ARGUMENT HEARD ON: 20.07.19.

JUDGMENT DELIVERED ON: 20.07.19.

### **JUDGMENT**

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of the Nalbari Police station, by the informant, Dr. Rohan Malla Baruah on 07.01.19, against the accused Sri Lucky Ali to the effect that, on 06.01.19 at about 11:30 a.m, the accused person had stolen away his domestic Labrador dog from the in front of their house and on 07.01.19 from the C.C.T.V., footage, the police apprehended the accused along with the dog. Hence, the case.
2. The police upon receipt of the ejahar registered it as Nalbari Police Station case No.17/19 under section 379 IPC and started investigation in the case. After completion of the investigation the police submitted charge sheet against the accused person namely, Sri Lucky Ali under section 379 IPC.
3. The accused person was called upon to enter trial and after causing their appearance the copies of the relevant documents were furnished to the accused person. Upon hearing and on perusal of record the particulars of offence under section 379 IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined two witnesses including the informant/victim of the case. The prosecution prayed to close the evidence of prosecution side, as the principal witness, i.e the informant/victim, did not support the case of the prosecution and the examination of the other witnesses is not required. I have perused the record and it appears that the informant/victim, was the principal witness for the prosecution; hence when he have not supported the case of the prosecution then further examination of other witnesses would merely be a futile exercise as it will not change the merit of the case; as such the evidence of the prosecution side is closed.

5. The statement of the accused persons under section 313 of CrPC, is recorded, and the accused persons denied of committing the alleged offence.
6. I have heard both the parties. I have heard the learned counsel for the accused who submitted that there is no material against the accused persons; as such the accused persons need to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following points for determination-
  - (1) Whether the accused person, on 06.01.19 at about 11:30 a.m, in the morning, at Bidyapur, college road under Nalbari P.S., dishonestly took away the Labrador dog, of the informant/victim Dr. Rohan Malla Baruah, without the consent of the owner, and moved the dog from his possession, in order of such taking, and thereby committed an offence punishable under section 379 I.P.C.?
8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

**DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

**POINT FOR DETERMINATION NOS.1:**

9. The prosecution has examined two witnesses in support of its case, i.e., the informant/victim and one Sri Sonu Singh.
10. The PW1 Dr. Rohan Malla Barua, is the informant/victim of this case, and he has stated that, the incident occurred on 06.01.2019, at around 1 p.m., and at that time he was in the hospital, and when he came back to home, he heard that his own Labrador dog, cream colour, age around nine years old was missing and so, he lodged the ejarah, and he searched his dog, and later on, he found it from the accused, the accused saw his dog on the road, so he took it for a walk, and later on he came to know that the accused had no intention of stealing his dog, his dog is in good and fit

health. But, he out of misunderstanding and in haste lodged the ejahar. Exhibit.1 is the ejahar and Exhibit.1(1) is his signature.

In cross examination, the PW1 admitted that he has no grievance against the accused person, he found his dog, and he is healthy and the accused had no intention of stealing his dog.

11. The PW2 Sri Sonu Singh, stated that at the time of incident , he was in the hospital and the informant informed him that his Labrador Dog, was missing and called him to search his dog, and later on they found the dog from the accused, the accused liked the dog so took it for walk.

In cross-examination the PW2 admitted that he did not see the accused stealing the dog.

12. On perusal of the case record and on perusal of the evidence of the PW1 and PW2 reveals that they had not at all supported the prosecution version and according to them, PW1 had lodged the ejahar in haste, and out of misunderstanding. The accused in his statement stated that at the time of incident , he saw the dog on the road in abandoned condition, and the dog was injured , blood was oozing out of his leg, and the dog came near him so out of pity he took the dog for treatment. The explanation provided by the accused is quite probable, further the PW1 , specifically stated that later on he came to know that the accused had no intention of stealing his dog moreover , he got his dog back is good health. Hence . from the above it is held that the prosecution has failed to establish the charge against the accused person.

13. In view of the above discussion it is held that the prosecution has failed to prove the point for determination.

14. DECISION: The prosecution has failed to prove the charges against the accused person under section 379 of IPC, and therefore, the point for determination is answered in negative, in favour of the accused person.

**ORDER**

15. In view of the discussions made above and the decision reached therein it is held that the prosecution has failed to prove the charges against the accused person, namely Sri Lucky Ali; as such the accused is acquitted of the charge under section 379 IPC and he is set at liberty.
16. The bail bond of the accused person and his surety shall remain in force for six months from today.
17. The recovered dog is with its owner, and the other seized articles be disposed off according to law.
18. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 20<sup>th</sup> day of July, 2019 at Nalbari.

Shalma Azaz,  
S.D.J.M., (S),  
Nalbari.

**APPENDIX**

**PROSECUTION EXHIBITS:**

- 1) EXHIBIT 1 - EAHAR

**DEFENCE EXHIBITS**

NONE

**PROSECUTION WITNESSES**

- 1) DR ROHAN MALLA BARUA
- 2) SRI SONU SINGH.

**DEFENCE WITNESSES**

NONE

SHALMA AZAZ,  
S.D.J.M., (S), NALBARI

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