

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, NALBARI**

**PRC No.416/2018**

U/S 379/511/34 of I.P.C

State of Assam

-Vs-

Md Babul Ali

Md Mirajul Ali

Md Jakir Ali .....Accused

**PRESENT** : Sri Jayanta Kumar Saikia, A.J.S,

Additional Chief Judicial Magistrate, Nalbari.

**ADVOCATES APPEARED:**

For the state : Mr. Arjun Barman

For the accused : Mr. Phanidhar Deka

Dates of evidence : 02.08.2019, 07.09.2019 & 19.12.2019.

Date of argument : 30.10.2021

Date of judgment : 30.10.2021

## **J U D G M E N T**

- 1)** The prosecution case in brief as unfolded from the 'ejahar' filed by the informant Sri Dilip Rai Medhi is that on 28.07.2018 at about 01:30 a.m., three persons riding a bicycle committed theft of one xaar goru from Jugurbori, near L.P. School. On hearing hue and cry of the villagers he came out and saw that the villagers caught two of them and the third one fled away. Hence, he lodged the case.
- 2)** The said 'ejahar' was received and registered as Nalbari P.S case No.537/2018 u/s 379/511/34 I.P.C. After completion of investigation charge-sheet was submitted against accused persons Md Bubul Ali, Md Jakir Ali and Md Mirajul Ali u/s 379/511/34 I.P.C.
- 3)** In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to them as per section 207 of CrPC. Having found a prima facie case against the accused persons, the charge is framed, under Section 379/511/34 of IPC against the accused persons, which is read over and explained to them, to which they pleaded not guilty and claimed to be tried.
- 4)** The prosecution side examined three (3) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. The statement in defence of the

accused person u/s 313 of the Code of Criminal Procedure was recorded. Defence side examined no witnesses. I have heard the arguments advanced by the Ld. Counsels for both sides.

**5) POINTS FOR DETERMINATION:**

- i) Whether on or about the 29<sup>th</sup> day of July, 2018 at about 01:30 A.M., in furtherance of common intention attempted to commit theft of one cow from Jugurbori, near L.P. School and thereby committed an offence u/s 379/511/34 I.P.C ?

**EVIDENCES OF PWs:**

- 6) PW1 Sri Dilip Rai Medhi deposed that he is the informant. He filed the ejahar being the Secretary of Jogorbori Barogopal Than. He does not know the accused persons. The incident took place on 28/07/18. There was theft of one 'xaar goru'. The village people apprehended two numbers of thief when they tried to catch the 'xaar goru' near the village temple while coming on a motorcycle. The place of occurrence is near Jogorbori Dangardig Prathamik Bidyalaya. The village people called police and handed over the two apprehended persons to police. Ext 1 is the ejahar and Ext 1(1) is his signature. Defence declined to cross-examine this witness.
- 7) PW2 Sri Amal Baruah deposed that he knows the informant. He does not know the accused persons. The incident took place on 28-07-2017 at about 2.00 am at night. He heard 'hulla' and

came to Dangardi Jugorbori Milan Primary school. He found a gathering of people and heard 'hulla' was going on. He informed Police who came and apprehended two persons for theft of 'Xaar Goru'. Police recorded his statement. During cross-examination this witness deposed that he has not seen the two persons who were apprehended by the Police. He heard from village people that the persons were apprehended for theft of 'Xaar Goru'.

- 8) PW3, Md Taznur Ali deposed that he knows the informant. He does not know the accused persons. The incident took place in the year 2018. Two persons were apprehended by police and taken to police station in connection with theft of cows. Police recorded his statement. During cross-examination this witness deposed that he does not have personal knowledge about the incident.

**DISCUSSION, DECISION AND REASONS THERE OF:**

- 9) From the evidence of PW1 it is found that he is the informant of this case and he was the Secretary of Jogorbori Barogopal Than. The allegation is that one xaar goru of stated Than was attempted to steal by the accused persons. But from the evidence of PW1 it is found that he does not know the accused persons though in his evidence he has stated that village people called police and handed over the two apprehended persons to police. But from his testimony it is found that neither

he could identify the accused persons nor he has stated that knows the accused persons. From his evidence it is found that his evidence does not help the prosecution story.

**10)** PW2 also reveals that he does not know the accused persons and he has not seen the two persons who were apprehended by the police. His evidence clearly shows that he heard from the villagers. From his evidence it is found that this witness is a hearsay witness and it is not safe to rely upon it. In the entire evidence he has not stated anything incriminating against the accused persons. The evidence of PW3 also shows that he does not have personal knowledge about the incident and he does not know the accused persons.

**11)** From the entire evidence on record it is found that the evidence of PW1, PW2 and PW3 none have supported the prosecution story to help the prosecution side to prove the guilt of the accused persons in this case.

**12)** It is a cardinal principle of criminal jurisprudence that guilt of the accused persons must be proved beyond reasonable doubt. Nowhere in the evidences of PW1, PW2 and PW3 can it be testified that due to the fault of the accused persons the alleged incident took place. Considering the same, I am of the considered opinion that the prosecution side has miserably failed to prove its case that the accused persons have committed offence u/s 379/511/34 of IPC.

**ORDER**

In the light of discussions and reasons, it is seen that the prosecution side has failed to prove the guilt of the accused persons.

Accordingly, the accused persons, Md Bubul Ali, Md Jakir Ali and Md Mirajul Ali are acquitted of the offence under Section 379/511/34 of IPC and they are set at liberty forthwith.

The bail bonds and surety of the accused persons shall remain in force for a period of 6 months from today as per amended CrPC.

The seized property to be disposed of as per law.

**Given under my hand and seal of this court on this 30<sup>th</sup> day of October, 2021.**

**Sri Jayanta Kumar Saikia, A.J.S,  
Additional Chief Judicial Magistrate,**

**Nalbari, Assam.**

**APPENDIX**

**Prosecution witness:**

PW 1- Sri Dilip Rai Medhi (Informant of this case),

PW 2- Sri Amal Baruah

PW 3- Sri Taznur Ali

**Prosecution Exhibits:**

Exhibit 1 - Ejahar

**Defence witnesses :**

Nil

**Defence Exhibits :**

Nil

**Court Witness:**

Nil

**Sri Jayanta Kumar Saikia, A.J.S,  
Additional Chief Judicial Magistrate, Nalbari**