

**COURT OF MUNSIFF NO-4 cum JUDICIAL MAGISTRATE FIRST CLASS  
KAMRUP (M)**

**G.R CASE 275 of 2013**

**U/S 379/411/34 of IPC**

**STATE**

**V**

**SADDAM HUSSAIN & ORS.....ACCUSED**

**PRESENT: - SUNDEEP KASHYAP DAS, A.J.S**

**JUDICIAL MAGISTRATE FIRST CLASS, KAMRUP (M)**

**FOR THE PROSECUTION:**

**Smti JITUMONI TAMULI**

**.....A.P.P. FOR THE STATE**

**FOR THE DEFENCE**

**M. HUSSAIN, R. DEKA, D.R GAYARI**

**.....ADVOCATE FOR THE ACCUSED**

**EVIDENCE RECORDED ON: - 09.02.2017, 08.03.2017**

**ARGUMENTS HEARD ON: - 08.03.2017**

**JUDGMENT DELIVERED ON: -08.03.2017**

## **JUDGMENT**

### **BRIEF FACTS OF PROSECUTION'S CASE**

1. The informant **JITUMONI DAS** had lodged an F.I.R stating inter alia that some unknown persons had stolen one 12 Volt AGM battery bearing I.D No-ASTTR001 from AIRCEL Tower situated on the land of **SULEKHA BEGUM**. Hence, the informant filed this instant case for taking necessary action.

### **INVESTIGATION**

2. On receipt of *ejahar*, the police registered a case P.S 03/13. After completion of investigation, the police submitted a charge-sheet for the offence under section 411/34 of Indian Penal Code (hereinafter referred to as 'IPC') against the accused persons namely *Md. ATIKUR RAHMAN, HAZRAT ALI, HABIBUR RAHMAN, SOKOT ALI and SADDAM HUSSAIN*

### **APPEARANCE OF THE ACCUSED PERSONS**

3. The accused persons were called upon to enter trial and upon their appearance, copies of relevant documents were furnished to them u/s 207 CrPC.

### **CHARGE AGAINST THE ACCUSED PERSONS**

4. Considering the relevant documents and hearing both parties, charge u/s 379 IPC has been framed against accused Md. *HABIBUR RAHMAN* and charge u/s 411/34 of IPC was framed against *Md. ATIKUR RAHMAN, HAZRAT ALI, SOKOT ALI and SADDAM HUSSAIN* to which they pleaded not guilty and claimed to be tried.

### **WITNESSES EXAMINED and DOCUMENTS EXHIBITED**

5. The prosecution examined (2) witnesses and exhibited 2 (two) no of documents.

### **EXAMINATION OF THE ACCUSED PERSONS**

6. The examination of the accused persons u/s 313 of Cr.P.C have been dispensed with as there were no incriminating materials against them

### **POINTS FOR DETERMINATION**

***Whether, on 31<sup>st</sup> day of December, 2012 at about 12 a.m., the accused, Md. HABIBUR RAHMAN committed theft of one 12 volt battery from AIRCEL Tower bearing i.d. ASTTR001 by taking it out of the possession of from the land of Sulekha Begum and thereby committed an offence u/s 379 of Indian Penal Code?***

***Whether, the accused persons namely Md. ATIKUR RAHMAN, HAZRAT ALI, SOKOT ALI and SADDAM HUSSAIN in furtherance of their common intention, dishonestly received (or retained) stolen property, belonging to the informant, knowing or having reason to believe the same to be stolen property and that you thereby committed an offence punishable u/s 411/34 of IPC?***

### **DISCUSSION, DECISIONS AND REASONS THEREOF**

### **EVIDENCE FOR PROSECUTION**

#### **EVIDENCE OF P.W.1**

7. P.W.1, Md. ***SUBUR ALI*** has stated that neither he knows the informant nor the accused persons. He does not remember the date of incident but

it took place about 4 years ago. He opened the door of the tower and could not find the battery. He informed the matter to office. Office informed the matter to police. Police informed that the stolen battery was recovered. He was asked to identify the battery and he identified the battery. He deposed that it was their battery.

#### **EVIDENCE OF P.W.2**

8. P.W.2, Sri ***JITUMONI DAS*** has stated that he is the informant of this case and that he does not know the accused persons. At present, he does not want to pursue the case as he received the stolen items.

#### **CROSS-EXAMINATION BY DEFENCE**

##### **CROSS-EXAMINATION OF P.W.1**

9. P.W.1 has stated that he does not know who had stolen the battery from AIRCEL Tower. He does not know the accused persons present in the court.

##### **CROSS-EXAMINATION OF P.W.2**

10. Defence decline to cross-examine the said witness.

#### **STATUTORY REQUIREMENTS**

##### **SECTION 379 of INDIAN PENAL CODE**

11. In order to attract the ingredients for theft, the following points are required to be proved by prosecution beyond reasonable doubt. They are:-

*a. That the subject matter of theft is moveable property*

- b. That it was in possession of any person*
- c. That the accused moved it*
- d. That he did so without the consent of the person in possession*
- e. That he did so intending to take it out of his possession*
- f. That he did so dishonestly*

12. In order to attract Section 411 of IPC, prosecution is required to establish that-

- A. That the stolen property was in the possession of the accused
- B. That some person other than the accused had possession of the property before the accused got possession of it,
- C. That the accused had knowledge that the property was stolen property

13. Section 410 of IPC explains what comes under the words 'stolen property'. Things which have been stolen, extorted, or robbed, or which have been obtained by criminal misappropriation or criminal breach of trust come under the extended significance given to these words. The essence of the offence of receiving stolen property u/s 411 IPC consists in the receipt or retention, with full knowledge at the time of receipt or retention that the property was obtained in one of the ways specified in Section 410 of IPC. It is immaterial whether the receiver knows or not who stole it. This section does not apply to the actual thief.

14. The standard of proof in criminal law is to prove the guilt of the accused beyond reasonable doubt. Basic allegations against the accused reveals from the story of prosecution as stated above. Question arises whether prosecution has been able to discharge the burden? The answer is NO. The prosecution manage to examine two witnesses. On perusal of P.W.1, it reveals merely the fact that one battery was stolen from the place of occurrence. But, he does not know who was responsible for the incident. The informant stated that since he received the property which was stolen and as such he does not want to pursue the case. From the

evidence that has been brought on record, it is seen that no offence has been made out against the accused person under any section of law.

15. Situated thus, it is found that the prosecution has failed to implicate the accused persons of any offence.

**DECISION: - *The points are decided in negative and goes in favour of the accused persons***

## ORDER

In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused person namely **HABIBUR RAHMAN** has committed an offence u/s 379 of IPC and as such he is acquitted of the charge under section 379 of IPC on benefit of doubt and they be set at liberty forthwith.

Prosecution has failed to prove beyond reasonable doubt that the accused person **Md. ATIKUR RAHMAN, HAZRAT ALI, SOKOT ALI and SADDAM HUSSAIN** have committed the offence under section **411/34** of IPC as alleged and as such the accused persons are acquitted of the charges under section **411/34** of IPC on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand and seal of this court on this 08<sup>th</sup> day of MARCH, 2017

The case is disposed of on contest.

SUNDEEP KASHYAP DAS

JUDICIAL MAGISTRATE FIRST CLASS

KAMRUP (M)

**APPENDIX**

**LIST OF PROSECUTION WITNESS**

**PW1- Md. *SUBUR ALI***

**PW2- Sri *JITUMONI DAS***

**LIST OF DEFENCE WITNESS**

**DW- NONE**

**LIST OF PROSECUTION EXHIBITS/DOCUMENTS**

**EXT-1- *SEIZURE LIST***

**EXT-2-*F.I.R***

**LIST OF DEFENCE EXHIBITS/DOCUMENTS**

**NONE**

SUNDEEP KASHYAP DAS

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