

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS AT Kamrup(M).

Present: ARPITA KAR, A.J.S.

G.R.NO.10552/11

U/S 379 I.P.C.

STATE OF ASSAM

Vs

1. Sri Kalyan Khataniar
2. Sri Gautam Rajbongshi

.....Accused

Person.

Advocate Appeared:-

For Prosecution: Smti. S. Yasmin, Learned A.P.P.

For Defence: Sri D.C.Kalita, Smti. P.Das

Charge Framed on: 08.08.2012

Evidence recorded on: 03.09.2013, 05.01.2015.

Arguments heard on: 22.02.2017

Judgment delivered on: 01.03.2017

J U D G M E N T

1. Prosecution story in brief is that on 5.11.2011 Sri Y.S.K. Singha lodged a F.I.R. before the Noonmati P.S. alleging inter alia that the accused were caught red-handed removing the cover of cut pieces with hacksaw blade and knife stealing out from the Guwahati Refinery premises. They were in possession of 05 cut pieces of copper cable approximately measuring 40 metres.

2. On receipt of the F.I.R. Noonmati P.S. case No. 435/11 was registered and investigated into. During Investigation seizures were made by the police. On completion of the investigation the I.O. has submitted the Charge sheet U/S 379/427 I.P.C. against the accused Sri Kalyan Khataniar and Sri Gautam Rajbongshi.

3. The defence Story is of total denial. On their appearance before the Court copies of relevant documents were furnished to them as per sec 207 Cr.P.C. Upon hearing both sides and after perusal of C.D. prima facie materials U/S 379 I.P.C. were found against the accused Sri Kalyan Khataniar and Sri Gautam Rajbongshi and accordingly charges under the said sections were framed. The particulars of the offence U/S 379 I.P.C. were read over and explained to the accused to which they pleads not guilty and claimed to be tried.

4. During trial prosecution side examined 2 P.W.s. The statement of the accused are recorded u/s 313 Cr.P.C.

5. I heard arguments for both sides and also perused the case record.

6. **POINTS FOR DETERMINATION:-**

A. Whether on or about 05.11.2011 at Noonmati Guwahati Refinery the accused committed theft of copper cable measuring 40 metre (05 pieces)?

DISCUSSION, DECISION AND REASONS THEREOF:-

7. The informant of this case Sri Y.Suren Kumar Sinha deposed as P.W.1. He deposed that the he knows the accused. On 05.11.2011 he got an information that there was a theft inside 101 Guwahati, plant. He was then at the duty of 10 C gate. Then he along with constable Ashok Bharali , A.K.Dihingia went to the place of occurrence M.S.tank 106 and 107 and saw the accused jumping over the wall and going inside the premises without gate pass. They saw the accused removing 5 copper cable wire. Both he accused were in possession of Screw driver, hacksaw blade and knife. The accused were caught red handed by them. They took the property certificate from the cable owner and the price value of the said cable was Rs.12,640/- The F.I.R. lodged by him is exhibited as Exbt-1, wherein Exbt-1(1) is his signature. The seizure list is exhibited as Exbt-2 wherein Exbt-2(1) is his signature.

In his cross-examination he deposed that he deposed that the occurrence occurred at the last hour of the working time. He stated that the accused Gautam Khataniyar was working a labour under

J.B.Construction but denied the fact that on the day of occurrence he went to meet his contractor and that the articles that were seized from the accused were given by their contractor to them and that the copper wire were removed from the corner portion for insulating the copper wires.

8. P.W.2 Sri Phanindra Das deposed that he does not know the accused. He deposed that he has not seen the occurrence but has heard that two boys committed theft inside the refinery.
9. From the aforesaid discussions and evidence on record it is clear that it is admitted that the accused Kalyan Khataniar was working in the said refinery and the accused has taken a plea that he removed the copper wires for the purpose of his work. Although the P.W.1 deposed that the accused were caught red handed by them and the owner of the cable owner gave the property certificate but the said owner of the cable was not made a witness in this case. As such it can be said that there is no proper identification or prove by any P.W.s that the wires that were seized by the I.O. were stolen by the accused or that the accused were in possession of the stolen articles.
10. In view of the aforesaid discussions, it is hold that, prosecution has failed to prove the charges against the above-named accused person and as such, they are acquitted from the charges U/S 379 I.P.C. and set at liberty forthwith.
11. **Accused** Sri Dharani Das, Smti. Jutika Das, Sri Munna Das, Sri Rakesh Das, Smti. Dipali Das, Sri Indranil Das and Sri Biswajit Das. **are acquitted from the charges of this case U/S 379I.P.C. and set at liberty.**
12. The accused persons are directed to furnish fresh bail bonds U/S 437A Cr.P.C.and till then the bail bonds executed by the accused and their sureties are extended for next six months.
13. The seized articles are allowed to be returned to the owner on proper identification by the I/O in due course as per the law.
14. Judgment is pronounced in open court. Case is disposed on contest.

Given under my hand and seal of this Court on this the 01st day of March ,2017 at Kamrup(M).

A P P E N D I X.

1. **Prosecution Witnesses:-**

P.W.1: Sri Y.Suren Kumar Sinha

P.W.2: Sri Phanindra Das.

2. **PROSECUTION EXHIBITS:-**

Exbt-1: F.I.R.

Exbt-2: Seizure list.

3. **DEFENCE WITNESSES:-**

None.

4. **DEFENCE EXHIBITS :-**

None.

Judicial Magistrate 1st class, Kamrup (M).