

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

G.R CASE 6163 of 2008

U/S 381/411 of IPC

STATE

V

JAINAL ALI.....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

I. RAHMAN, J. BEGUM, N. ABED

.....ADVOCATE FOR THE ACCUSED

EVIDENCE RECORDED ON: -09.08.2016

ARGUMENT HEARD ON: -18.02.2017

JUDGMENT DELIVERED ON: -10.03.2017

JUDGMENT

BRIEF FACTS OF PROSECUTION'S CASE

1. On 29.08.2008, the informant, Sri **PRASANNA KUMAR SHARMA** has lodged an F.I.R stating inter alia one the employees namely **ISMAIL ALI**, mechanic by profession of workshop of M/S Prerona Transportation, stole some items from the said workshop and sold it. Hence, the informant filed this instant case for taking necessary action.

INVESTIGATION

2. On receipt of *ejahar*, **PALTAN BAZAR P.S** police registered a case as **PALTAN BAZAR P.S 531/08** After completion of investigation, the police submitted a charge-sheet for the offence under section 381 and 411 of Indian Penal Code (hereinafter referred to as 'IPC') against the accused persons namely **Md. JAINAL ALI, Md. ASHADUL ISLAM and Md. BADIUL ZAMAL**

APPEARANCE OF THE ACCUSED PERSONS

3. The accused persons were called upon to enter trial and only **Md. JAINAL ALI** completed his appearance. Copies of relevant documents u/s 173 Cr.P.C were furnished to him in compliance with section 207 CrPC.

FILED

4. The Court vide its order dated 07.09.2016 filed this case against accused persons namely **Md. ASHADUL ISLAM and Md. BADIUL ZAMAL**

CHARGE AGAINST ACCUSED PERSONS

5. Considering the relevant documents and hearing both parties, charge u/s 381 and 411 of IPC against **Md. JAINAL ALI** is framed and read over and explained to him to which they pleaded not guilty and claimed to be tried.

WITNESSES EXAMINED AND DOCUMENTS EXHIBITED

6. The prosecution examined 2 (two) witnesses and exhibited 2 (one) no documents.

EXAMINATION OF ACCUSED u/s 313 Cr.P.C

7. The examination of the accused u/s 313 Cr.P.C has been dispensed with as there are no incriminating materials against him

POINTS FOR DETERMINATION

a. Whether, the accused, Md. JAINAL ALI, being an employee of the informant committed theft by stealing property in the possession of the said informant and thereby committed an offence punishable u/s 381 of IPC?

b. Whether, the accused, 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 of IPC?

DISCUSSION, DECISIONS AND REASONS THEREOF

EVIDENCE FOR PROSECUTION

EVIDENCE OF P.W.1 [INFORMANT]

8. P.W.1, Sri ***DIPAK BHARALI*** has stated that he knows the informant but could not remember the accused. On the day of incident, he was sleeping at Volvo Workshop. Suddenly, he heard one noise where people were shouting as 'thief thief'. He added that unwanted materials were stolen. He saw one ran away with some articles from the workshop. On being

asked, he deposed that he does not know if the person who ran away on the date of incident present in court.

CROSS-EXAMINATION BY DEFENCE

CROSS-EXAMINATION OF P.W.1

9. P.W.1 has stated that he does not remember the date of alleged incident. In addition to this, he stated that he have not seen the items stolen by the thief on the date of incident. He does not know who had stolen the items.

STATUTORY REQUIREMENTS

SECTION 381 of INDIAN PENAL CODE

10. An offence under Section 381 of IPC has following requisites:-
 - A. That the accused was a clerk or servant or was employed in such capacity.
 - B. That he committed that theft in respect of any property
 - C. That such property was in the possession of his master or employer.
11. To bring home an offence u/s 381 of IPC, the prosecution is required to prove all the elements necessary to establish an offence u/s 379 plus that the delinquent was a clerk or servant or employed in the capacity of a clerk or servant and that the moveable property was removed from the possession of his master or employer.

SECTION 411 of INDIAN PENAL CODE

12. 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.

JUDICIAL DETERMINATION

THE PROPERTY

14. On perusal of evidence of P.W.1, it is not clear as to what were the articles alleged to have been stolen.

PLACE OF PROPERTY STOLEN

15. The property as mentioned in last paragraph was alleged to have stolen from the workshop of the informant, i.e. Volvo Workshop situated at *Ulubari*.

16. On perusal of C.R, it appears that there are 4 (four) charge-sheeted witnesses. Out of which, prosecution manage to examine only 1 (one) witness. In spite of its best efforts, prosecution failed to bring the other witnesses to the dock to prove the allegations levelled against the accused person.

17. The lone prosecution witness could not manage to contribute much to discharge the burden of prosecution as he merely stated that he heard some noise where people shouted as thief-thief. Even though he saw one person ran away with some articles but on being asked he admitted that he could not identify whether the accused in this case was the person who ran away with the articles from the place of occurrence on the date of incident.
18. Situated thus, I can safely hold that prosecution failed to prove the basic ingredients to warrant conviction against the accused person

DECISION

The above points are discussed in negative and goes in favour of the accused person

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 **JAINAL ALI** has committed the offence under section **381 and 411** of IPC as alleged and as such the accused person is acquitted of the charge under section **381 and 411** of IPC on benefit of doubt and he 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 10th 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-Sri *DIPAK BHARALI*

LIST OF DEFENCE WITNESS

DW- NONE

LIST OF PROSECUTION EXHIBITS/DOCUMENTS

NONE

LIST OF DEFENCE EXHIBITS/DOCUMENTS

NONE

SUNDEEP KASHYAP DAS

JUDICIAL MAGISTRATE FIRST CLASS

KAMRUP (M)