

**IN THE COURT OF
THE CHIEF JUDICIAL MAGISTRATE::BAKSA
Case No. : GR-956/18
Under Section 379/411/34 IPC**

**Present: - Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.**

The State of Assam.....Prosecution.

-Vs-

Nirmal Das

Nayanmoni Das

Tanke @ Nikunjoy.....Accused Persons.

Evidence recorded on :- 16-07-2019, 03-03-2020,
28-09-2021, 23-11-2021,
11-01-2022, 07-09-2022.
Argument heard on :- 15-11-2022.
Judgment delivered on :- 15-11-2022.

Advocate Appeared :-

Mr. Ranjit Basumatary.....APP for the State of Assam.

Mr. Mrityunjoy Mazumdar....Advocate for the accused persons.

J U D G M E N T

1. The prosecution story in brief is that on 17-09-2015 informant Ratneswar Wary lodged an FIR before I/C of Simlaguri OP to the effect that on 16-09-2015 at night his son Hafao Wary kept the informant's Pulsar 220 SF bike bearing No. AS-15F/2732 on the ground floor. The FIR named accused persons stole away the bike by breaking the lock. It is learnt that police of Simlaguri OP has

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caught both the accused persons at Luwasur village with the informant's bike and another Pulsar 150 bike without number plate. Name of Rahul Barman and Apurba Nath are written in the FIR as accused persons.

2. Gobardhana PS Case No. 241/15, u/s 379/411 IPC was registered against accused persons viz. Rahul Barman and Apurba Nath and after completion of investigation charge-sheet was submitted against total five nos. of accused persons viz. Rahul Barman, Apurba Nath, Nayanmani Das, Nirmal Das and Tanke Das @ Nikunjoy U/s 379/411 IPC.
3. The case was filed against accused Rahul Barman and Apurba Nath.
4. Charge U/s 379/411/34 IPC were read over and explained to the accused persons viz. Nayanmani Das, Nirmal Das and Tanke Das @ Nikunjoy to which the accused persons pleaded not guilty and claimed to be tried.
5. The prosecution examined 7 (seven) nos. of witnesses and defence examined none.
6. The accused persons are examined u/s 313 Cr.P.C. The accused persons have declined to adduce evidence.
7. I have heard argument of the learned A.P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

8. POINTS FOR DETERMINATION:-

1. Whether the accused persons had in furtherance of common intention intending to take dishonestly motor cycle out of the possession of informant Ratneswar Wary without his consent took away the motor cycle in order to such taking?
2. Whether the accused persons had in furtherance of common intention dishonestly retained stolen motor cycle knowing the same to be stolen property?

9. DISCUSSIONS, REASONS AND DECISION:

10. POINT NO. 1 & 2:

11. PW1 Ratneswar Wary is the informant. He said that on 16-09-2015 at night his son Hafao Raja Wary kept his Bajaj Pulsar 220 CC motor cycle in the garage and went to his room in the 2nd Floor of a building at Jyotinagar, Barpeta Road under Simlaguri OP. On that night, accused Rahul and Apurba stole the bike breaking the lock of the garage. They were caught along with the bike by police patrolling party. The police informed him and he lodged formal FIR at Simlaguri OP on the next day. Ext.1 is FIR.

12. PW2 Hafao Raja Basumatary is the son of the informant. He said that on 16-09-2015 he was staying at a rented house in Jyotinagar, Barpeta Road. On that night, he kept his Bajaj Pulsar 220 motor cycle in the basement garage of the building and was sleeping in his room in the 2nd floor. But someone stole the bike at night by breaking lock of the garage. He was about to lodge FIR regarding the incident at Barpeta Road PS. But someone informed

that accused persons namely Rahul and Apurba were caught on the previous night by Simlaguri Police. As such, he along with his father went there and found his bike with the said thieves. His father lodged a formal FIR. Police seized his bike and took his signature in the seizure list. Ext.2 is seizure list.

13. PW3 Hasmat Ali said that about 4/5 years ago, one night at around 3.00 AM he along with others were on security duty at Luwasur Over Bridge. They apprehended two accused persons namely Rahul and another with a motor cycle. He suspected them to be motor cycle thief and accordingly interrogated them. During interrogation, he found the lock of the motor cycle broken and as such, he informed I/C, Simlaguri PP. After sometime, police arrived there and identified the accused persons to be known thieves and took the accused persons with them. Police also seized the motor cycle in his presence. Ext.2 is seizure list.

14. PW4 Paritosh Sutradhar said that does not know the informant and the accused persons. But he had seen the accused persons on the day of the occurrence. The incident took place in the year 2015. At night, the VDP party was guarding village Luwasurgaon. He was among the VDP party who was guarding the village. They saw a person keeping a bike under bamboo at around 7 pm and went away. They followed that person but could not get him. Within 10 pm to 12 am, one person came in a bike to take back that bike which was kept under bamboo. The VDP parties were standing at Luwasurgaon Bridge. A person came in a bike then

they caught that person out of suspicion and handed over him to the police. Police had seized two nos. of bike. Ext.2 is seizure list.

15. PW5 Bhaskar Muchahary said that the informant is his father-in-law. He does not know well the accused persons. He saw the accused persons once in police station. The incident is of 2015. One Pulsar 220 bike of his father-in-law was stolen away from his rented house at Simlaguri, for which his father-in-law lodged FIR. The police found the bike and called his father-in-law to see the bike. Then he also went with his father-in-law. The police returned the bike to his father-in-law after verifying the documents of the bike. The police showed them the accused persons in the police station. Police seized the RC, License of the bike. Ext.2 is seizure list.

16. PW6 Kulen Das said that he does not know the informant but his son stayed in his house on rent. He does not know the three accused persons. His tenant had a pulsar vehicle. The vehicle was stolen at night which came to be known in the morning. He learnt that police found the vehicle later on.

17. PW7 Nijara Basumatary said that the informant is her father. The incident took place in 2015. One pulsar bike of his father was missing from the rented house at Simlaguri at night and same was known only in the morning. The garage was under the rented house and the bike was kept in that garage. Her father lodged complaint with the police. After few days, the police informed her

father that the bike was found and the police gave the bike to her father. She does not know who stole the bike.

18. To establish an offence u/s 379 IPC, the points requiring proof are: (1) that the subject-matter of theft is a movable property, (2) that it was in possession of any person, (3) that the accused moved it, (4) that he did so without the consent of the person in possession, (4) that he did so intending to take it out of his possession and (6) that he did so dishonestly.
19. From the seizure list – Ext.2, we can see that the motor cycle bearing No. AS-15F-2732 is in the name of Sri Ratneswar Wary i.e. the informant. The said bike was kept by his son PW2 Hafao Raja Wary at night in the garage of the ground floor of his rented house. The available evidence shows that the said bike was stolen away at night.
20. The points requiring proof for an offence u/s 411 IPC are : (1) the commission of theft, (2) that the possession of the property in question was transferred by theft, (3) that the accused received or retained such property, (4) that he did so dishonestly and (5) that he knew or had reason to believe that it was stolen property.
21. Ext.2- seizure list shows that the pulsar bike bearing No. AS-15F-2732 was recovered from the possession of Rahul Barman, S/O- Dharmeswar Barman and Apurba Nath, S/O- Munindra Nath.
22. The police and VDP Party/PW3, PW4 had caught the bike thieves and recovered the stolen bike. PW3 Hasmat Ali has said that they caught accused Rahul and another with a motor cycle.

The informant has filed the case against accused Rahul Barman and Apurba Nath. Evidence is not at all clear how accused Nayamoni Das, Nirmal Das and Tanke Das @ Nikunjoy are connected with the alleged occurrence and how and why police had filed charge sheet against accused Nayamoni Das, Nirmal Das and Tanke Das @ Nikunjoy. Evidence is almost nil against accused Nayamoni Das, Nirmal Das and Tanke Das @ Nikunjoy.

23. The prosecution evidence simply established the fact of theft of the motor cycle of the informant. It is not established by evidence that accused Nayamoni Das, Nirmal Das and Tanke Das @ Nikunjoy had stolen the motor cycle of the informant or had retained the same.
24. Hence, I find that it is not proved that the accused persons had in furtherance of common intention intending to take dishonestly motor cycle out of the possession of informant Ratneswar Wary without his consent took away the motor cycle in order to such taking **AND** the accused persons had in furtherance of common intention dishonestly retained stolen motor cycle knowing the same to be stolen property. So, the accused persons cannot be held guilty u/s 379/411/34 IPC.
25. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt U/s 379/411/34 IPC. So, I acquit accused persons viz. Nirmal Das, Nayanmoni Das and

Tanke @ Nikunjoy of the charges U/s 379/411/34 IPC and are set at liberty.

26. Custody of the seized articles vide MR No. 83/15, 84/15, zimma No. 39/15 and MR No. 85/15, zimma No. 40/15 is made absolute.

27. Given under my hand and seal of this Court this 15th day of November, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa

APPENDIX

PROSECUTION EXHIBITS:

Ext.1- FIR.

Ext.2- Seizure list

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1- Ratneswar Wary.

PW2- Hafao Raj Wary.

PW3- Hasmat Ali.

PW4- Paritosh Sutradhar.

PW5- Bhaskar Machahary.

PW6- Kulen Das.

PW7- Nijara Basumatary

DEFENCE WITNESSES : NIL.

COURT WITNESSES: NIL.