

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE (S),
MORIGAON

G. R. Case No: 2134/16
Under section 379 of Indian Penal Code

State

Vs

Md. Mohidul Islam

.....Accused person

Present: Lohit Kumar Sarmah, SDJM(S), Morigaon

Advocates appeared

For the state: Mrs. B. Devi

For the accused person: Mr. B. Hussain

Evidence recorded on: 11.11.2016, 17.3.2017 and 17.4.2018

Argument heard on: 24.10.2019

Judgment delivered on: 1.11.2019

JUDGMENT

1. The informant Sri Rajendra Debnath lodged an ejahar before the Nellie outpost on 27.8.2016 stating inter alia that on 26.8.2016 at around 5.30 pm the informant kept his cycle besides the fencing of his house after returning from work. Immediately the accused stole the cycle from the place when the wife of the informant namely Smti. Arati Devi saw the accused taking the cycle away and then she made hue and cry. On hearing hue and cry the accused left the cycle and escaped from the place but the villagers on hearing hue and cry ran after the thief and caught hold of him and handed over to the Nellie police. Hence the informant had lodged this complaint.
2. The ejahar was received and registered as Jagiroad Police Station case No. 402/16 under section 379 of Indian Penal Code.

3. Police started investigation to trace the root of the case. The Investigating officer after due investigation of the case submitted charge sheet under section 379 of Indian Penal Code against the accused.
4. The accused appeared and entered trial. Copies of the relevant documents were furnished to the accused person.
5. On perusal of the case record sufficient ground under section 379 of Indian Penal Code were found against the accused person and formal charge under the said section was framed against the accused person and accordingly the particulars of offences under the above section were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. The prosecution has examined five witnesses including the informant. The statement of the accused person under section 313 of Criminal Procedure Code was recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

Whether the accused on 26.8.2016 at around 5.30 pm, committed theft of informant's bicycle and thereby committed an offence punishable under Sec. 379 of the Indian Penal Code?

7. I have heard the oral arguments put forward by both the Counsels. I have also gone through the entire evidence available on record. My discussion and reasons for the decision is discussed below.

DISCUSSION, DECISION AND REASONS THEREOF:

8. PW1 Arati Debnath who is the wife of the informant deposed that the accused is known to her. Around three months prior to her deposition at around 4.30 pm her husband returned home from work and kept his cycle near the rubber garden behind her house. PW1 after taking a bath came to her room and saw through the window that the accused was taking a cycle with him. On reaching the backyard PW1 saw that their cycle was not there. The accused was wearing the same shirt on the day of incident as wearing on the day of PW1's deposition. As PW1 screamed the accused left the cycle there and ran towards the market. Later the public caught the accused in the market and handed over to the police.

PW1 does not know if the public beat the accused. On hearing her scream every member of PW1's house ran after the accused. Her husband had filed this case.

9. In cross-examination PW1 stated that the accused was caught in the Nellie market. The market is about ½ -2 kms away from PW1's house. When the public caught the accused he did not have the cycle. The rest are just some suggestions to which PW1 denied.
10. PW2, Sri Dulal Debnath deposed that both the parties are known to him. Around three months prior to his deposition at around 5 pm PW2 went to the market. Informant is his brother-in-law. At the time of incident PW2 went to the house of informant as his house is just next to the market. Upon making hue and cry as "soor soor" the accused left the cycle and ran away. There were other persons before PW2 who were chasing the accused who caught the accused and beat him. On reaching there, the police was taking the accused with them.
11. In cross-examination PW2 stated that when the accused was caught no cycle was found with him as he threw the cycle on his way. PW2 found the cycle lying at the rubber garden.
12. PW3 Sri Pradip Mandal who deposed that both the parties are known to him. The incident took place around 3 months prior to his deposition at around 4.30 pm. At the time of incident PW3 was taking a bath when heard his sister Arati Mandal screaming "soor soor". Then PW3 came out of bathroom and saw that Arati Mandal was chasing the accused. When the accused reached the road then he was caught and beaten by the public. After that PW3 does not know what happened.
13. In cross-examination PW3 stated that he reached the place of occurrence when the public caught the accused but after that he did not go there. He found the cycle lying at the rubber garden. The accused ran away after throwing the cycle. No cycle was found with the accused when he was caught by the public. PW3 ran after around 5 minutes of incident towards the accused. PW3 stated that he had not seen the incident.
14. PW4 Sri Rajendra Debnath who is the informant deposed that on the day of incident PW4 saw the accused for few seconds. Around 6 months prior to his deposition he returned from work, kept his cycle at home and went out then his wife Arati Debnath made hue and cry as "thief has stolen the cycle". The nearby people rushed and caught the thief and handed over to the police. Later PW4 filed this case vide Ext-1 where Ext-1(1) is his signature.

15. In cross-examination PW4 stated that he was not present at the time of incident. Later when he came then saw that the thief was caught in Nellie bazaar around ½ km away from his house. When the public caught the thief no cycle was found with him as he already threw the cycle when Arati Debnath screamed "soor soor". The rest are just some suggestions to which PW4 denied.
16. PW5 ASI Kushal Bora who is the investigating officer deposed that on 27.8.2016 he was working as Sheristadar at Nellie Outpost. On that day Rajendra Debnath filed an ejahar which was received and registered by the then Officer-in-Charge and he was entrusted with the investigation of the case. The accused was caught by the public along with the cycle. PW5 seized the old Hero bicycle, visited the place of occurrence, recorded the statements of witnesses and drew the sketch map. Upon completion of investigation he handed over the case diary to SI Jyotirmoy Dutta who later submitted the charge sheet. Ext-2 is the seizure list and Ext-2(1) is his signature. Ext-3 is the sketch map and Ext-3(1) is his signature. Ext-4 is the charge sheet and Ext-4(1) is the signature of SI Jyotirmoy Dutta which PW5 can recognize.
17. In cross-examination PW5 stated that he reached the place of occurrence soon after 5/10 minutes of incident. The accused was caught in the market chasing from the place of occurrence. It was not a fact that no cycle was found with the accused.
18. The ingredients of the offence under section 379 of the Indian Penal Code are as follows:
 1. The accused removed the movable property.
 2. He removed it out of the possession of another without his consent.
 3. He did so with dishonest intention.
19. In this regard, the informant alleged in the ejahar that on 26.8.2016 at around 5.30 pm the informant kept his cycle besides the fencing of his house after returning from work. Immediately the accused stole the cycle from the place when the wife of the informant namely Smti. Arati Devi saw the accused taking the cycle away and then she made hue and cry. On hearing hue and cry the accused left the cycle and escaped from the place but the villagers on hearing hue and cry ran after the thief and caught hold of him and handed over to the

Nellie police. During deposition as PW1 he reiterated the allegations and stated that around 6 months prior to his deposition he returned from work, kept his cycle at home and went out then his wife Arati Debnath made hue and cry as "thief has stolen the cycle". The nearby people rushed and caught the thief and handed over to the police. PW1, Arati Debnath who is the wife of the informant is the eyewitness of the case who deposed that around three months prior to her deposition at around 4.30 pm her husband returned home from work and kept his cycle near the rubber garden behind her house. PW1 saw through the window that the accused was taking a cycle with him. On reaching the backyard PW1 saw that their cycle was not there. As PW1 screamed, the accused left the cycle there and ran towards the market. Later the public caught the accused in the market and handed over to the police. Thus PW1 has corroborated the testimony of the informant. Exhibit 2 the seizure list was prepared after seizure of the bi-cycle at the place of occurrence which was identified by the informant. PW2 and PW3 also stated that on making hue and cry by PW1 the accused threw the bicycle there and ran away but the villagers chased him and caught him in the market and handed him over to police. Thus the allegations by the informant have been duly corroborated by all the witnesses adduced by the prosecution. Thus it is proved that the accused had removed the bicycle from its place owned by the informant without his consent. The defence did not adduce any evidence to show that the accused had no dishonest intention of taking away the cycle. The defence had taken a plea that the accused was not caught along with the bicycle but all the witnesses consistently stated that hearing hue and cry the accused left the bicycle then and there and ran away and he was chased by the public and caught at the market and handed over to police. Thus the plea of defence is very weak one and is of no value. Further it is the burden of the accused to prove that he had no dishonest intention for doing the act of committing theft but the accused also failed in this respect. The defence neither could assail the credit of the witnesses examined by the prosecution during cross examination nor adduced any evidence to disprove the case of the prosecution. Hence, the prosecution firmly stands on its own legs and has proved all the ingredients of the offence under section 379 of the Indian Penal Code beyond reasonable doubt.

20. **Decision:** In view of the above, I am of the opinion that the prosecution has successfully proved the charge against the accused persons beyond reasonable

doubt under section 379 of the Indian Penal Code and as such the accused Mohidul Islam is found guilty under section 379 of the Indian Penal Code and he is convicted under the said provision of law.

21. **Hearing on sentence:** The convict is heard on point of sentence that can be imposed upon him under section 379 of the Indian Penal Code. The convict stated that he is the first offender and pleaded for leniency. In view of the facts and circumstances of the case and upon hearing the convict and the nature of the offence I deem it not proper to extend the benefit of probation to the convict but the convict may be treated leniently.

Order:

22. In the aforesaid premises it is held that the prosecution has successfully proved the charge against the accused persons beyond reasonable doubt under section 379 of the Indian Penal Code and as such the accused Mohidul Islam is found guilty under section 379 of the Indian Penal Code and he is convicted under the said provision of law. The convict is sentence to undergo simple imprisonment for a period of three months. The period for which the convict had been in judicial custody shall be set off.
23. Bail bond and affidavits furnished by the bailor is extended for a period of six months from today.
24. Let a copy of the judgement be given to the accused forthwith.

Given under my hand and seal of this Court on the 1st day of November, 2019 at Morigaon.

Lohit Kumar Sarmah
SDJM(S), Morigaon

APPENDIX

Prosecution witnesses:

PW1- Smti. Arati Debnath

PW2- Sri Dulal Debnath

PW3- Sri Pradip Mandal

PW4- Sri Rajendra Deb Nath (Informant)

PW5- ASI Kushal Bora (I.O.)

Exhibits for the prosecution:

Ext. 1 – Ejahar

Ext. 2 – Seizure list

Ext. 3 – Sketch map

Ext. 4 – Charge sheet

Defence witness :

Nil

Exhibits for defence:

Nil

Lohit Kumar Sarmah
SDJM(S), Morigaon.