



IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE

BAKSA: MUSHALPUR

PRESENT: *A.M.Md. Mahiuddin. M.Sc.;LL.B.*
Chief Judicial Magistrate,
Baksa, Mushalpur.

G.R. case no. 787/2018

u/s. 379/411 I.P.C.

State

Vs

Gadang Basumatary and Harikanta Narzary

... Accused persons.

Date of framing of charge : 09-05-2017
Date of recording evidence : 23-06-2017, 19-08-2017, 15-12-
2017, 03-05-2019 and 03-07-2019
Date of hearing argument : 20-01-2021
Date of delivery of the judgment : 20-01-2021

APPEARANCE :

Sri. Kishore Basnet. (Assistant P.P.-For the State).

Sri. Mrityunjay Mazumdar & Gobinda Nath. (Advocate - For the
Accused persons).

J U D G M E N T

1. The prosecution case in brief is that informant Sri Upen Brahma on 11-06-2013 lodged a written FIR against unknown culprits before the officer-in-charge Mushalpur police station alleging that on 10-06-2013 night while his

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Baksa, Mushalpur
Chief Judicial Magistrate
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Bajaj Pulsar Motorcycle bearing registration No. AS-28 4686 was parked in the verandah of Mushalpur Circle office, the same was stolen by some unknown culprits.

2. The FIR was registered as Mushalpur PS case No-44/13, u/s-380 IPC and police started to investigate the case. After completion of investigation, the Police submitted charge sheet No. 57/15 dated 11-06-2015 against accused **Dipen Boro @ Laoda, Gadang Basumatary, Nayanjit Basumatary and Harikanta Narzary u/s 379/411, IPC.**
3. After receiving the case for disposal, learned predecessor in chair took cognizance against the accused persons and issued summons to them. As the accused Nayanjyoti Basumatary had expired already, the case was abated against him vide order dated 17-11-2016. The other accused persons appeared and being released on bail. The accused persons were supplied with the copies of the relevant documents u/s 207, Cr.P.C. As prima-facie material u/s 379/411, I.P.C. was found against the accused persons; the charge was framed under the said sections of law which was read over and explained to them and on being asked the accused persons pleaded not guilty. Thereafter, after recording of evidence of 5 witnesses, the case has been transferred to this court on point of territorial jurisdiction after establishment of Baksa District Judiciary. Again, the accused persons were summoned to appear in this court but accused Dipen Boro @ Laoda defaulted and as such after performing all necessary formalities, the case against him was filed vide order dated 08-01-2019.
4. During the trial, the prosecution has examined the informant and six other witnesses. But prosecution failed to examine the investigating officer after having so many dates for the same. Accordingly, the evidence for the prosecution has been closed. Considering the evidence on record the

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examination of the accused persons u/s 313 Cr.P.C. is dispensed with. Accordingly, arguments from both sides are heard.

POINTS FOR DETERMINATION

1. *Whether the accused persons on or about the 10th day of June, 2013 intending to take dishonestly a bike bearing registration no. AS-28-4686 out of the possession of the informant Upen Brahma without his consent and moved that property?*
2. *Whether the accused persons, on or about the same day, place and time, dishonestly received or retained bike bearing registration no. AS-28-4686, knowing or having reason to believe the same to be stolen property?*

DISCUSSION, DECISION AND THE REASONS THERE OF

5. *It may be mentioned here that, for the convenience of decision, both the points are taken together for discussion. After going through the arguments of both the sides and evidence all records it appears that none of the prosecution witnesses including the informant had witnessed the accused persons taking away his Motorcycle from the Varandah of Circle Office at Mushalpur on the night of 10-06-2013. As such, I am of this reasonable finding that the prosecution has failed to prove the charge u/s 379, IPC against the accused persons.*
6. *No coming to the next point to the determination regarding retaining the stolen bike by the accused persons with the knowledge that the same is a stolen property, I find from the evidence of the prosecution witnesses that except PW-5, PW-6 and PW-7, the other prosecution witnesses have deposed nothing regarding recovery of the stolen property from the possession of the accused persons. From the evidence of PW-5, PW-6 and*

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PW-7, it appears that they also could not depose conclusively that the stolen Motorcycle was recovered from the possession of the accused persons. However, they have been shown as the Seizure witnesses by the prosecution. From the evidence of PW-5, PW-6 and PW-7, it appears that police only took their signatures on a paper, i.e. the seizure list, but they did not witness the actual seizure. As such from the evidence on record it is clearly shown that the prosecution has failed to prove the charge u/s 411, IPC against the accused persons beyond all reasonable doubt.

7. So it is found that prosecution has failed to discharge its bounded duty to prove the guilt of the accused beyond reasonable doubt and as such the benefit should go to the accused persons. Accordingly extending the benefit of doubt the accused **Gadang Basumatary and Harikanta Narzary** are found not guilty and hence acquitted of the offence u/s 379/411, IPC.
8. The accused are set at liberty forthwith. The seized motorcycle along with its document be returned to the registered owner.
9. The bail bonds will remain in force for next 6(six) months or till furnishing of fresh surety by the accused persons u/s 437(A), IPC, whichever is earlier.

This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this 20th Day of January, 2021.

(A.M.Md. Mahiuddin.)
Chief Judicial Magistrate,
Baksa, Mushalpur.

Chief Judicial Magistrate
Baksa, Mushalpur

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(Signature)
20/1/21
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Baksa, Mushalpur.
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Baksa, Mushalpur