

GAHC010032072020



**IN THE GAUHATI HIGH COURT
(The High Court of Assam: Nagaland: Mizoram &
Arunachal Pradesh)**

Crl. Rev. P. 55/2020

1:Sunil Mirdha and 2 Ors.

S/O Sri Harilal Mirdha, R/O Gatanga Tea Estate, Bhalukmora,
P.O.-Gatanga, P.S.-Jorhat, Dist-Jorhat (Assam), Pin-785616

2: Samim Ali

S/O Hasim Ali

R/O Gatanga Tea Estate

Bhalukmora

P.O.-Gatanga

P.S.-Jorhat

Dist-Jorhat (Assam)

Pin-785616

3: Bipul Kurmi

S/O Raja Kurmi

R/O Gatanga Tea Estate

Bhalukmora P.O.-Gatanga

P.S.-Jorhat

Dist-Jorhat (Assam)

Pin-78561

.....Appellants

VERSUS

1:The State of Assam and Anr.

Represented By The Public Prosecutor, Assam

2:Pritpal Singh

S/O Late Sukhdew Singh

Airforce Station

Rowriah

Jorhat Assam Pin-78500

.....respondents.

**BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Advocate for the Appellants : Mr. P.P. Dutta
Advocate for the Respondents : Mr. K.K. Das, (Addl. P.P.)
Date of Hearing : 03.01.2023
Date of Judgment : **05.04.2023.**

JUDGMENT & ORDER (CAV)

1. Heard Mr. P.P. Dutta, learned counsel appearing on behalf of the appellants. Also heard Mr. K.K. Das, learned Addl. P.P. for the State of Assam.
2. The petitioners Sri Sunil Mirdha, Sri Samim Ali and Bipul Kurmi are before this Court with an application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short). The petitioners are aggrieved by the judgment and order dated 24.08.2016 passed by the learned Chief Judicial Magistrate, Jorhat in G.R. Case No. 1508/2011, convicting them under Section 380 of the Indian Penal Code (IPC for short) and sentencing them to undergo simple imprisonment for 6(six) months and to pay a fine of Rs. 1,000/- with default stipulation. The petitioners are also aggrieved by the judgment and order dated 13.12.2019 passed in Criminal Appeal No. 33/2016 passed by the learned Addl. Sessions Judge, Jorhat dismissing the appeal preferred by the petitioners and upholding the sentence passed by the learned Chief Judicial Magistrate, Jorhat.
3. The genesis of the case was that the petitioners who were casual labourers under the MES Contractor were found carrying copper wire and metal piece (Rang) from the Technical

Area of Air Force Station at Jorhat. On being checked by the Sentry at 16.15 hours on 01.10.2011 at MES exit gate, the petitioners were caught red handed carrying the above mentioned articles. The metal piece carried by the petitioners weighed 3.250 Kgs, 3.750 Kgs and 3.520 Kgs respectively. The FIR was lodged by the Flying Officer Sri Pritpal Singh. The FIR was registered as Jorhat P.S. Case No. 710/2011, under Sections 380 IPC and the Investigating Officer was entrusted with the investigation.

4. The learned counsel for the petitioners laid stress in his argument that the concurrent decisions of both the trial Court and the Appellant Court are liable to be set aside. It is submitted that the prosecution has failed to prove that the copper metal was removed from the possession of the owner of the property for wrongful gain as it was not proved that the Air Force authority at Jorhat was the owner of the stolen property. The search and seizure was not conducted as per provisions of law. The prosecution has failed to examine other vital witnesses cited in the charge-sheet. Both the courts failed to appreciate the statements of the petitioners recorded under Section 313 Cr.P.C. The appellants were not given the benefit of the probation of offenders Act or the benefit under Section 360 Cr.P.C and so on and so forth.

5. The Investigating Officer (I/O in short) embarked upon the Investigation and on completion of investigation, charge-sheet was laid against the petitioners under Section 380 IPC. On commencement of trial, copies were furnished and charge was framed under Section 380 IPC. The petitioners abjured their guilt and claimed innocence. To substantiate its stance, the prosecution adduced the evidence of 4(four) witnesses and the defence cross-examined them to refute the charges.

6. The statements of the petitioners were recorded under Section 313 1(b) Cr.P.C. The

petitioners denied their involvement in an evasive manner. The petitioners did not tender any evidence in defence. The appeal was decided on following point:-

“(i) Whether the impugned judgment and order dated 24.08.2016 passed by the CJM, Jorhat, Smti. Sharmila Bhuyan in G.R. Case No. 1508/2011 is sustainable in the law and facts of the case?”

7. The trial Court decided this case on the following points:-

(i) “Whether the accused persons on 01.10.2011, at about 4.15 p.m., at M.E.S. gate were found in possession of about 10.520 kgs of metal piece during check and thus committed theft of the said articles from the possession of M.E.S. authority from the MES camp, and thereby committed an offence punishable u/s 380 of the I.P.C.?”

8. It was held by the learned trial Court that the prosecution was fairly able to connect the link between the accused lifting up the stolen articles, up to the recovery of the same from the possession of the accused. There was a clear link between the theft and recovery of the stolen articles from the possession of the accused and no snag was noticed. On the day of the incident, the accused/petitioners were working inside the Air force station at MES camp at Jorhat under a contractor. At about, 4.00 P.M., after finishing their work, the petitioners came out and they were about to leave by the exit gate when the man on duty checked them. PW-3, checked and found the accused/petitioners in possession of the goods belonging to the Air Force Station. PW-3, immediately informed his superior officer, who informed the local police at Rowriah police station, and came to the spot where the accused were found in possession of the stolen goods. PW-1 and PW-2 saw the accused being in possession of the stolen goods and the police had arrived at the place of occurrence and seized the stolen

goods in presence of the witnesses. The accused were held guilty of charges under Section 380 IPC and were convicted under the aforesaid sections of law and sentenced to simple imprisonment for six months and to pay a fine of Rs. 1,000/- each with default clause. The learned Appellate Court re-appreciated the evidence on record and upheld the order of conviction and sentence, dismissing the appeal preferred by the present petitioners.

9. Now, the question that falls for consideration before this Court is that whether there was any illegality in the concurrent findings of sentence and order passed by the Trial Court and the Appellate Court.

10. In the instant case, PW-1 Sri. Pritpal Singh is the informant and he stated that the petitioners are casual workers under a contractor. On 01.10.2011, at about 4.00 P.M., after the day's work when the appellants were about to leave, they were checked by the constable Prodip Kumar, who caught them carrying metal pieces weighing approximately 10 Kgs valued at Rs. 8,000/- approximately. Constable Prodip Kumar stated as PW-3 that on 01.10.2011, while he was working at 10 Wing Ari Force, Rowriah as security at No. 1 Exit Gate, he found the petitioners carrying copper metal and he immediately informed the matter to the Air Force police.

11. PW-2 Sri Tribhuban Sharma testified that on 01.10.2008, he was working as Assistant Security Officer at Ari Force Station, Jorhat. On that day, at about 4.00 P.M., Prodip Kumar (PW-3) brought the petitioners to the Guard room stating that the petitioners were caught red handed at the gate carrying some copper metal. The petitioners were then handed over to the police. This witness also proved his signature as Exhibit-2(1) on the seizure list. He identified the seized articles in the Court as material Exhibit-1. The Investigating Officer

(I/O), Rajen Bora has testified as PW-4 that on 02.10.2011, at 8.30 p.m. Pritpal Singh (PW-1) lodged an FIR with the police at Rowriah outpost. GDE entry dated 01.10.2011 was registered and the FIR was forwarded to the Jorhat Police station. The Investigation was conducted by ASI Bolin Tai and he recorded the statements of the witnesses and prepared the sketch map of the place of occurrence. After completion of preliminary investigation, the case diary was handed over by Bolin Tai. After perusal of the case diary, he submitted charge-sheet against the petitioners under Section 380 IPC. This witness identified the signature of ASI Bolin Tai as Exhibit-2 and 3 on the seizure list. He proved his signature on the charge-sheet as Exhibit-4(1). PW-4 has admitted that the investigation was basically conducted by Bolin Tai and he (PW-4) submitted charge-sheet against the petitioners.

12. In this case at hand, the Guard (PW-3) who was on regular duty from 4.00 P.M. to 6.00 P.M., on a routine check-up identified the copper carried by the contractual workers. The plea that was taken by the petitioners at this stage of revision, was not taken at the stage of trial. The cross-examination of the witnesses does not reveal any contradiction. The plea taken by the petitioners through their statements under Section 313 Cr.P.C was of total denial. The petitioners have denied all the incriminating materials arising against them in a blanket manner with answers as "yes" or "false" and "false evidence". They have not taken the plea that the articles that were found in their possession does not belong to the Air Force authority.

13. In view of my foregoing discussions, it is thereby held that no illegality or impropriety could be detected in the findings of the learned Trial Court as well as in the findings of the learned Appellate Court. It is hereby held that the judgment and order of the learned Trial Court impugned by the present petitioners and the judgment and order of the Appellate Court

dated 13.12.2019 upholding the judgment and order of the learned Trial Court were found to be rightly passed. This Criminal Revision is devoid of merits. It is true that both the trial Court and Appellate Court have not considered the grounds, if the petitioners could be released under Section 360 of the Cr.P.C or under the probation of Offenders Act, 1958

14. It is submitted that during investigation, the accused persons were in custody for 14 days. Although, the revision is dismissed, the period of sentence of 6(six) months is scaled down to the period of detention of the petitioners already undergone by them during investigation. The sentence of payment of fine is however maintained. The petitioners are directed to appear before the trial Court immediately and pay the fine.

15. With the above observation and direction, this petition stands disposed of.

Send back the LCR.

JUDGE

Comparing Assistant