

The Court of JM 1st Class, Ramgarh
Present: Mrs. Smriti Tripathi
Judicial Magistrate
24th February, 2023
District: Ramgarh
G.R. Case No. 1264/2017
CNR: JHRG03-000509-2017
Gola PS Case No. 105/2017

Informant Represented By	State (Through Rajendra Oraon, Jr.EE, Gola) <i>Smt. Manju Kachchap, Id. APP</i>
Accused	1. Mukesh Kumar Kasera s/o late Madan Prasad Kasera, Male, aged about 34 years, r/o Jaiprakash Marg, Hazaribag [A1] 2. Dipak Turi @ Binod Turi s/o late Naresh Turi, male, aged about 38 years, r/o Saunda-D, PS Patratu, Ramgarh [A2]
Represented By	<i>Sri Deepak Kumar, Ld. Advocate</i>

Date(s) of Offence	17.11.2017 to 18.11.2017
Date of FIR	20.1.2017
Date of Chargesheet	08.02.2018
Date of framing of charge	04.09.2018
Date of Commencement of evidence	09.10.2018
Date when Judgment is reserved	20.02.2023
Date of Judgment	24.02.2023
Date of Sentencing Order, if any	None

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of detention undergone during trial for purpose of s. 428, CrPC
A1	Mukesh Kumar Kasera	20.12.2017	05.03.2018	s. 379, IPC	Acquitted	None	N/A
A2	Dipak Turi @ Binod Turi	20.12.2017	06.03.2018	s. 379, IPC	Acquitted	None	N/A

J U D G M E N T

1. The aforementioned accused persons (hereinafter referred to as "**A1** and **A2**") are facing trial for charges framed u/s. 379 of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**").

PROSECUTION CASE

2. The compendious **case of the prosecution** as sourced from the written report of Rajendra Oraon, JEE, Gola (hereinafter referred to as the "informant"), is that on 18.11.2017 at about 6:00 AM in the morning, the informant received information from the employees of 33/11 KV Power Sub Station, Huppu regarding theft of copper. On that information, he inspected the place of the alleged incident where he was informed that in the intervening night of 17-18/11/2017, some unknown miscreants committed theft of copper coil after breaking and unlocking an MVA-5 power transformer after tying the hands and legs of the staff. Due to this, the said department suffered a loss of revenue of about ₹23,59,189/-. Thus, the instant case.

FROM INVESTIGATION TILL TRIAL

3. After investigation, the Investigating Officer submitted **charge-sheet** bearing no. 13/2018 on 08.02.2018 against A1 and A2 for the offence u/s. 379 of IPC and thereafter, **cognizance** was taken under the same sections by the Id. predecessor court on 22.03.2018.
4. After supplying police papers to them both, on 04.09.2018 **charges were framed** u/s. 379 of IPC against A1 and A2 and the content of the charges was read over and explained to them in simple Hindi to which they pleaded not guilty and claimed to be tried, and the record was advanced for **prosecution evidence** during which the prosecution adduced five witnesses.
5. After closing the **prosecution evidence** on 16.12.2022, the respective **statements** of A1 and A2 were recorded u/s. 313 of CrPC on 25.01.2023 in which they denied the material available against them and claimed to be innocent.
6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the **defence evidence** was closed and the matter was posted for arguments.

ARGUMENTS ADVANCED

7. The prosecution submitted that the guilt of A1 and A2 is well established in this case and fact has also been supported by the witnesses in their deposition, prayer was made to convict A1 and A2.
8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted that the

prosecution has failed to prove the guilt of A1 and A2 beyond reasonable doubt, and he thus, deserves to be acquitted from all charges.

POINTS FOR CONSIDERATION

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges levelled against A1 & A2 beyond reasonable doubt or not.

9.1 Whether A1 and A2 committed theft of copper coil?

EVIDENCES

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, which are enlisted below:

List of Prosecution/Defence Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW01	Rajendra Oraon	Interested Witness [Informant]
PW02	Baldeo Mahto	Eye Witness
PW03	Satyacharan Deshmukh	Eye Witness
PW04	Vakil Kumar Ganjhu	Eye Witness
Pw05	Vinod Kumar	Official Witness [Investigating Officer]

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Prosecution/Defence/Material Exhibits

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Ext. 1	Written report of FIR
2.	Mark X	Photocopy of written application

B. Defence:

Sr. No.	Exhibit Number	Description
--- nil ---		

FINDINGS

11. Whether A1 and A2 committed theft of copper coil?

11.1 PW01 deposed that the alleged occurrence took place on the intervening night of 17-18.11.2017 during mid night. At that time, he was posted at Sub Station, Gola Electricity Supply Department as JEE. He fully corroborated the contents of the written report of FIR and deposed that he learnt about it based upon the written complaint filed by the employees of the department. Upon his identification, Ext. 1 was exhibited and the signatures of employees namely Baldeo Mahto, Satyacharan Desmukh and Wakil Kumar on photocopy of the complaint application made to him were all marked as Mark X for identification. He finally deposed that the stolen copper coil has not been recovered till date. In his cross-examination, he deposed that when a transformer is installed, its concerned papers are also provided but the same was not enclosed with the written application and that his complaint to the police is based upon what concerned staff of the said plant told him. Also, that on the morning after the alleged incident, he received a phone call from mobile no. 8406935096 of Satyacharan Deshmukh who told him about the alleged incident. He further deposed that he made enquiry into the alleged incident at his level and could not find any of his employees at fault. He also deposed that he saw the piece of cloth by which his employees were tied but he did not hand them over to the police.

11.2 PW02 deposed that during the time of the alleged incident, he was employed at Sub Station, Electricity Supplier Station, Huppu as Switch Board Operator and on 17-18.11.2017 at about 11:00 PM in night, he was on duty alongwith lineman Satyacharan Deshmukh and Wakil Ram at 33/11 Power Sub Station. At that time, suddenly, they were caught hold of near the Control Room by unknown thieves who told them that if they will make noises then, they will be killed. Then, the thieves took towels (*Gamcha*) from the two staff there and tied all the three of them separately and made them lie down. The miscreants all had weapons, *lathi- dunda*, rod and one of them had a sword. The thieves snatched the mobiles from the staff and the office and threw the SIM cards. The thief who had weapon took all them of them under his control and the other thieves went inside the yard of Sub-Station. When at 4:00am the thieves ran away, the three of them somehow untied themselves and inspected the Sub Station yard and found that one transformer was in running condition. Near the boundary, there was another 5 MVA burnt transformer which was cut by the thieves and its HT LT copper coil was stolen and the boundary's barbed wire was cut. Thereafter, this witness reported the matter through mobile to his senior Satyacharan Deshmukh who came to inspect the place and instituted the instant FIR. The photocopy of the written application made to PW01 was identified by this witness, and was marked as Mark-

X for identification. He further deposed that he has no knowledge as to whether stolen copper coil has been recovered or not. He finally expressed his inability to identify the thieves as they had covered their faces with a piece of cloth. In his cross-examination, he deposed that on 27.02.2018, he gave an application to Jr. Executive Engineer of Sub-Station but has not mentioned the date below his signature therein or on the application. He further deposed that the statement he gave to the police is similar to the statement he gave today. Further, that the transformer was burnt since 2006. Regarding the '*gamcha*', he deposed that it was torn in six pieces to tie them all and that he showed it to the police but they did not seize it. He also deposed that the police did not write the statement which he gave and that he told them about the incident between 11 to 4 but that has not been entered in the case diary. Further, that he cannot tell the exact number of thieves that day as they were a lot and that one Vakil Kumar received fist-blow from them. Finally, that they did not raise an alarm as they were threatened by the thieves against it.

11.3 PW03 deposed that the alleged incident took place between the night of 17.11.2017 and 18.11.2017 at about 11:00PM at while he was on duty at Huppu Electricity Sub Station with Baldeo Mahto and Vakil Ganjhu. Further, he deposed similar details of the alleged incident as PW01 and PW02. He also deposed that as their mobile phones did not have any sim card, he went to his house nearby and informed Rajendra Oraon by his home telephone there. He also expressed his inability to identify the THEIVES as they their faces were covered with cloth. In his cross-examination, he deposed that the police recorded his statement on the next day of the alleged incident at night in between 1-2 AM. Finally, that he was on duty that day and there was no short circuit there.

11.4 PW04 has deposed that the alleged incident took place on 17.11.2017 when he was on duty at Sub Station, Huppu electricity as a Trainee Operator. All of a sudden, 09-10 armed miscreants entered at around 11:00 PM and took him, Baldeo Mahto and Deshmukh Charan Satto under their control, tied their hands and legs with '*gamcha*', made them lie down and warned them against making any noise with their lives. He further deposed that after they left around 4:00am, the three of them somehow untied themselves and saw that a 33/11 KVA old transformer, kept inside the plant was cut down by the miscreants who took copper coil from it. They also saw that barbed-wire of the boundary was also cut down. They then went to the house of Deshmukh and informed Rajendra Oraon about the theft and the instant case was lodged. He deposed that the stolen article must amount to lakhs

of Rupees. He also expressed his inability to identify the THEIVES as they their faces were covered with cloth. In his cross-examination, he deposed that the police neither recorded his re-statement nor conduct any TIP.

11.5 PW05, the Investigating Officer of this case deposed that on 10.01.2018, he was posted at Gola as ASI and as per direction of Dy. SP-cum-officer in-charge of Gola, he was given the charge of this investigation. On 17.11.2017, copper coil worth ₹23,59,189/- was stolen by thieves after breaking an old 5 MVA transformer. In the course of investigation, as per the confessional statement of Vinod Kumar Mahto on 18.12.2017 recorded by the previous Investigating Officer, he arrested A1 and A2 and sent them into judicial custody on 20.12.2017. The two confessed to their guilt before him and stated that they have sold the stolen item. On 08.02.2018, he obtained the progress report from police inspector and the charge-sheet was submitted against A1 and A2. In his cross-examination, he deposed that he neither visitd the place of alleged incident during investigation nor did he record the statement of any of the witnesses. He also did not seize any article or conduct TIP.

11.6 In addition to the oral testimonies, the prosecution has produced one document that can be read into evidence which is the written report which formed the basis of this case. No material exhibit has been produced.

11.7 Apart from the depositions referred to above, the prosecution has not produced the stolen article. PW05 states that he learnt that the stolen article was sold but the proceeds of this sale have also not been produced. The basis on which A1 and A2 have been implicated in this case remains blurry. None of the witnesses who were there when the alleged thieves entered have identifies them. No other form of evidence has been produced to suggest that A1 and A2 were there to commit the alleged crime.

11.8 Thus, the prosecution case is shorn of even a single piece of evidence to show that A1 and A2 were present and committed the alleged crime.

11.9 A1 and A2 are therefore acquitted u/s. 379, IPC.

ORDERED

12 Regard being had to the discussion made above, this court is of the considered opinion that the prosecution has failed to show the involvement of A1 and A2 in the alleged crime. They are both therefore, acquitted of all charges in this case i.e. u/s. 379, IPC. Their and their respective bailors are set free from the liabilities of their respective bail bonds.

(Dictated and corrected)

Pronounced by me in open court

Sd/-

(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 24th February, 2023

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