

**G.R. CASE NO. 370/2009**

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS, DIBRUGARH, ASSAM**

**G.R. CASE NO. 370/2009**

(U/S- 379/411 IPC)

**Present: Smti. Sanskrita Khanikar, A.J.S.**

Judicial Magistrate First Class, Dibrugarh

**State**

- VS -

**1. Sri Binod Gupta**

S/O - Sri Joyprakash Gupta

R/O - 16 No. Tiniali

P.S. - Duliajan

Dist - Dibrugarh, Assam

**2. Sri Amarnath Gupta**

S/O - Sri Shiv Prasad Gupta

R/O - 16 No. Tiniali

P.S. - Duliajan

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**3. Sri Ram Chandra Gupta**

S/O - Sri Ramdhani Gupta

R/O - B.M. Road

P.S. - Duliajan

Dist - Dibrugarh, Assam

**4. Sri Anil Daimary**

S/O - Sri Moneswar Daimary

R/O - Tipling Nalani Gaon

P.S. - Duliajan

Dist - Dibrugarh, Assam

**.....Accused persons**

Advocate for the Prosecution : Learned Smti. Lakshmi  
Mohan

Advocate for the Defence : Learned Sri Shyamal Seal

Evidence recorded on : 22-04-2013, 27-06-2013,  
26-08-2014, 27-04-2015,  
08-09-2015 & 18-07-2016

Argument heard on : 17-01-2022

Judgment delivered on : 29-01-2022

**J U D G M E N T**

**1.** The prosecution case as stated in the F.I.R. dated 05-03-2009 lodged by the informant, namely, S.I. Sri Biman Chetia of OIL security Dept. is that at about 10:30 AM in the morning of the same date, as per the information received from some special sources, the Oil Security team, Duliajan along with the police team of Bhadoi Panchali Police O.P. conducted a joint search operation at the dampas (shops selling scrap metal pieces) located at Bhadoi Panchali and Bogoritol Padumoni nearby Bhadoi Wednesday Bazar wherein they found 142 pieces of cut iron oil pipe. It was also alleged in the said F.I.R. that the owners of the dampas, namely, Sri Binod Gupta, Sri Amarnath Gupta and Sri Ram Chandra Gupta had stolen and collected the said cut iron oil pipe pieces which are of the approximate value of Rs. 30,00,000/-. The said iron pieces had allegedly been stolen from various OIL regions of Duliajan.

**2.** A case was registered at Duliajan P.S. subsequent to the lodging of this F.I.R. Upon completion of investigation, the police submitted charge-sheet against the accused persons, namely, Sri for commission of the offence u/sec 379/411 of the Indian Penal Code (hereinafter referred to as I.P.C.) r/w Section 3 of the Prevention of Damage to Public Property Act (hereinafter referred to as PDPP Act).

**3.** The accused persons stood for trial. Copies of the relevant documents were furnished to the accused person as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). Upon finding prima facie grounds for presuming that the accused Sri Amarnath Gupta and Sri Anil Daimary committed the offences u/sec 379/411 of the IPC, the charges therein under were framed, read over and explained to them to which they pleaded not guilty and claimed to be tried. Upon finding prima facie grounds for presuming that the accused Sri Binod Gupta and Sri Ram Chandra Gupta committed the offences u/sec 411 of the IPC, the charges therein under were framed, read over and explained to them to which they pleaded not guilty and claimed to be tried

**4.** The prosecution in order to prove its case and to nail the guilt of the accused persons has examined as many as 11 (eleven) witnesses namely Sri Bipul Gogoi as PW-1, Sri Biren Gohain as PW-2, Sri Bimal Chetia being the informant as PW-3, Sri Utpal Handique as PW-4, Sri Lochon Gogoi as PW-5, Sri Rudra Gogoi as PW-6, Sri Hiren Gogoi as PW-7, Sri Barun Chandra Das as PW-8, Sri Tankeswar Konwar as PW-9, Sri Rudreswar Chetia as PW-10 and Sri Tilak Chandra Roy as PW-11.

The prosecution also took aid of 05 (five) documents which were exhibited as follows:

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The seizure list of 108 cut pieces of iron oil pipe being MR No. 24/09 as Exhibit 1, the ejahar as Exhibit 2, the seizure list of 34 cut pieces of iron oil pipe being MR No. 23/09 as Exhibit 3, the rough sketch-maps of the places of occurrence as Exhibits 4 and 5.

It is pertinent to mention herein that during the trial two accused persons, namely, Sri Anil Daimary and Sri Ram Chandra Gupta expired and as such vide orders dated 19-12-2013 and 17-01-2022 respectively, the case stood abated against them.

After recording the prosecution evidence, the statements of defence of the remaining two accused persons, namely Sri Binod Gupta and Sri Amarnath Gupta were recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused persons claimed innocence. The defence adduced no evidence.

**5.** I have heard the arguments from both sides and perused the entire evidence on record.

**6. THE POINTS FOR DETERMINATION**

i) Whether the accused Sri Binod Gupta and Sri Amarnath Gupta dishonestly receive or retain stolen property being 142 cut iron oil pipe pieces knowing or having reason to believe the same to be stolen property

and thereby committed an offence punishable u/sec 411 of the IPC?

ii) Whether the accused Sri Binod Gupta and Sri Amarnath Gupta committed theft of 142 pieces of cut iron oil pipe belonging to OIL, Duliajan and thereby committed an offence punishable u/sec 379 of the IPC?

**DISCUSSION, DECISION AND REASONS THEREOF**

**7.** PW-1 deposed in his evidence that on the date of the incident, on being informed by Sri Bimal Chetia, OIL Security Inspector (informant/PW-3), he went to the places of occurrence at the two dams at Bhadoi Panchali and Bogoritol. There he found 142 cut iron oil pipe pieces. He proved Exhibit 1 as the seizure list being MR No. 24/09 by identifying Exhibit 1(1) as his signature thereon.

During his cross-examination, he stated that the recovered items were scrap pieces and that OIL auctions scrap pieces.

**8.** PW-2 in his evidence deposed that he is an Oil Security guard and on the day of the incident he accompanied the PW-3/informant Sri Bimal Chetia who is the Oil Security Inspector to the two dams at Bhadoi Panchali and Bogoritol where they found 142 cut iron oil pipe pieces. He proved Exhibit 1 as the seizure list being MR No. 24/09 by identifying Exhibit 1(2) as his signature thereon.

During his cross-examination he stated that the seized pipe pieces were broken scraps and that OIL auctions scrap pieces.

**9.** PW-3 being the informant deposed in his evidence that he had seen the accused persons before. On 05-03-2009 at about 10 AM in the morning, upon receiving information from some special sources that some cut iron oil pipe pieces were being kept at the damp at Bhadoi Panchali and Bogoritol Padumoni, he and his team accompanied by a police team of Bhadoi Panchali O.P. went to the said two damp and found about 142 cut iron oil pipe pieces of different sizes. It was found that the accused Sri Amar Gupta, Sri Binod Gupta and Sri Ram Chandra Gupta were the owners of these damp. The value of the cut iron oil pipe pieces were estimated to be Rs. 3,00,000/- approximately and it was found that these were stolen from the OIL areas of Duliajan town. He proved Exhibit 2 as the ejahar lodged by him by identifying Exhibit 2(1) as his signature thereon.

During his cross-examination he stated that he is not the writer of the ejahar and that the name of the actual writer of the ejahar has not been mentioned in the ejahar itself. How many pieces of cut iron oil pipe were recovered from which damp has not been stated in the Exhibit 2 being the ejahar. He had received the information about the regions from which the said pipe pieces were stolen but

he did not mention the same in the ejahar. He also stated that OIL often auctions the sale of broken scrap pieces of pipes etc. The full addresses of the accused persons were not mentioned in the ejahar. He denied the defence suggestion that the seized pipe pieces were not stolen articles.

**10.** PW-4 deposed in his evidence that the incident was of the year 2009. He was called to Bhadoi Panchali O.P. where he saw about 30 pieces of cut iron pipe pieces which were seized by the police. He was made to sign on the seizure list as a seizure witness. He proved the seizure list being MR No. 23/09 as Exhibit 3 by identifying Exhibit 3(1) as his signature thereon.

During his cross-examination he stated that he does not know from where the said pipe pieces were seized. He denied the defence suggestion that the police had not shown him the seized pipe pieces.

**11.** PW-5 in his evidence deposed that sometime in the year 2009, he was called to Bhadoi Panchali O.P. to sign on a seizure list as the police had seized some cut iron pipe pieces. He proved the seizure list being MR No. 23/09 as Exhibit 3 by identifying Exhibit 3(2) as his signature thereon.

During her cross-examination, he stated that he does not know from where the said pipe pieces were seized. He



denied the defence suggestion that the police had not shown him the seized pipe pieces.

**12.** PW-6 in his evidence deposed that the incident took place in the year 2009 and it was regarding the theft of some pipe pieces of OIL. When he saw a gathering at Bhadoi Panchali, he went there and found out from the people gathered there that some pipe pieces of OIL had been stolen.

During his cross-examination, he stated that he could not remember how many people were gathered at Bhadoi Panchali. His statement was not recorded by the police.

**13.** PW-7 deposed in his evidence that the informant as well as the accused persons are known to him. He is the member of a local football club. An iron goal post which was on their football-field was stolen and a complaint regarding the theft was filed at the police station. The OIL security dept. team and a police team of Bhadoi Panchali O.P. carried out a joint operation and recovered cut iron pipe pieces from a damp. The police informed them that their goal post had been cut into pieces and had been recovered. But he was unable to confirm whether the seized iron pieces shown to him were actually of their iron goal post or cut iron oil pipe pieces. He stated that a tubewell was also stolen from Bhadoi School and a tubewell was also recovered from the damp. He was not made to sign on any seizure list.

During his cross-examination, he could not tell which iron piece was recovered from which damp. He also could not describe the sizes of the iron pieces. He denied the defence suggestions that he had not seen any iron pieces as deposed by him and that he deposed falsely. He could not say in whose name the damp was.

**14.** PW-8 deposed in his evidence that the informant is known to him. He was unable to recognise the accused persons. On 05-03-2009, the OIL security team and a police team of Bhadoi Panchali O.P. carried out a joint operation at Bogoritola region at about 10 AM in the morning. About 142 pieces of cut iron oil pipe were found at a damp in that region. He was not a part of the teams but upon hearing about the said seizure, he had gone to the sight. He had seen the police carrying out the seizure and had signed on the seizure list as a seizure witness. He proved the seizure list being MR No. 23/09 as Exhibit 3 by identifying Exhibit 3(3) as his signature thereon. He later on came to know at the police station that three persons, namely, Sri Binod Gupta, Sri Amarnath Gupta and Sri Ram Chandra Gupta were involved in the said incident.

During his cross-examination, he stated that he reached the place of occurrence when the seizure was being carried out. The police had not shown him any documents regarding the real owners/ownership of the damp. He has

no personal knowledge as to who is the owner of the said damp. He knows the names of the accused as he heard about them at the police station but they are not personally known to him. He did not see any seal or stamp on the seized iron pieces but there was crude oil on them. He could not tell how many iron pieces were seized from which accused. He had seen the seized iron pieces together at one place. He did not see the seized iron pieces in the Court. He had gone to the place of occurrence on his own accord. He signed the Exhibit 3 at the police station. He denied the defence suggestion that he had not reached the place of occurrence during the time of the seizure. He denied the defence suggestion that he has deposed falsely as he works as OIL security. He denied the defence suggestion that he did not see any cut iron oil pipe pieces.

**15.** PW-9 deposed in his evidence that the informant is known to him. Although he does not remember the accused persons by their names, he could recognise them by their faces. On 05-03-2009, the informant/PW-3 informed him that some stolen oil pipes were kept at a damp at Bogoritola region. At that time, he was working at Nagajan Security Camp. Upon receiving the information, he accompanied the informant/PW-3 to the place of occurrence. They were also accompanied by a police team of Bhadoi Panchali O.P. They recovered 142 cut iron oil pipe pieces from the place of occurrence. They came

to know that the accused Sri Amarnath Gupta, Sri Binod Gupta and Sri RamChandra Gupta were the owners of the said damp. They seized the iron pieces and brought them to Duliajan P.S. Then he signed on the seizure list. He proved the seizure list being MR No. 23/09 as Exhibit 3 by identifying Exhibit 3(4) as his signature thereon.

During his cross-examination, he stated that he has no personal knowledge about the seized iron pieces. He did not see the said seized iron pieces in the Court. He could not describe the measurements of the said seized iron pieces but he stated that they were of different sizes. He also stated that the said iron pieces were broken pieces and that OIL often auctions the sale of such broken iron or metal pieces or parts. There was no information that any article(s) were stolen from OIL. He could not tell the name of the officer who conducted the seizure. It was the informant who handed over the seized articles to the police. He denied the defence suggestion that no such article were recovered as deposed by him. He denied the defence suggestion that no such incident as deposed by him ever took place and that he deposed falsely in the Court.

**16.** PW-10 deposed in his evidence that the informant is known to him. He could not recognise the accused persons. On 05-03-2009, he was working for OIL security when he participated in the joint operation carried out by

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Duliajan OIL security and a police team of Bhadoi Panchali O.P. at a damp of Bogoritol region. About 142 cut iron oil pipe pieces were recovered from the said damp. He had signed on the seizure list. He proved the seizure list being MR No. 23/09 as Exhibit 3 by identifying Exhibit 3(5) as his signature thereon.

During his cross-examination, he stated that he had signed on the Exhibit 3 at the police station and that he does not know its contents. He stated that the seized articles were scrap materials. He does not know who was the owner of the scrap materials. He did not see the seized iron pieces in the Court. He does not know anything else about the incident. He denied the defence suggestion that the police did not seize any articles.

**17.** PW-11 deposed in his evidence that on 05-03-2009, he was posted as the I/C of Bhadoi Panchali O.P. On that day, OIL security S.I. Sri Bimal Chetia i.e. the informant/PW-1 came to him along with his staff and informed him verbally that some stolen pipes of OIL were being kept at the damp at Bhadoi Panchali and Bogoritol Padumoni for which a search operation was to be conducted. At about 10:15 AM of the same day, he along with the Oil security team went to the damp of accused Sri Binod Gupta and seized a total of about 34 cut iron oil pipe pieces in the presence of seizure witnesses. He proved the seizure list being MR No. 23/09 as Exhibit 3 by

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identifying Exhibit 3(6) as his signature thereon. He recorded the statements of the seizure witnesses at the place of occurrence and also prepared a rough sketch-map of the place of occurrence. He proved Exhibit 4 as the sketch-map by identifying Exhibit 4(1) as his signature thereon. Then they proceeded to the damp of accused Sri Ram Chandra Gupta at Bogoritol Padumoni. Seizure was carried out there in the presence of seizure witnesses. About 108 cut iron oil pipe pieces were seized therefrom. He proved Exhibit 1 as the seizure list being MR No. 24/09 by identifying Exhibit 1(4) as his signature thereon. He also prepared a sketch-map of the place of occurrence. He proved Exhibit 5 as the sketch-map by identifying Exhibit 5(1) as his signature thereon. They could not arrest the owners of the said two damp as they were absconding arrest. All the seized iron pieces were kept at Duliajan P.S. On the same day, the informant/PW-3 S.I. Sri Bimal Chetia lodged an ejahar at Bhadoi Panchali P.S. which was entered as G.D. Entry no. 89 dated 06-03-2009 on the next day. The original ejahar was sent to Duliajan P.S. and was registered as Duliajan P.S. Case No. 32/2009 u/sec 379/411 IPC r/w Section 3 of the PDPP Act. The O/C of Duliajan P.S. entrusted him with the investigation of the case. On 07-03-2009 he revisited the place of occurrence for the purpose of investigation. On 10-03-2009, he handed over the case diary to the O/C, Duliajan P.S. due to his district transfer order.

During his cross-examination, he stated that on 06-03-2009, the time of the G.D. Entry is not mentioned in the case diary. He did not give the extract copy of the G.D. Entry. He denied the defence suggestion that as there was no G.D. Entry, its extract copy could not be given. Before the investigation, he did not receive any information from OIL or any organisation regarding the theft of any article. OIL does not intimate the police when it conducts auction of scrap materials. Damp is a place where scrap materials are sold. He did not go through any papers or documents regarding the ownership, license, land of the said damp. He stated that as per the seizure lists being Exhibits 1 and 3, it transpires that the search and seizure was conducted at the house premises of the accused and the seized articles were recovered therefrom. The ejahar being the Exhibit 2 does not disclose that information of any theft was received from any organisation. He did not get the seized articles seen in the Court. Also, he did not see the seized articles in the Court. He denied the defence suggestion that he did not seize any articles. He conducted the search without any search warrant. He denied the defence suggestions that he did not visit any damp and that he conducted the investigation in a perfunctory manner.

**18.** I have heard the arguments of the learned Asst. Public Prosecutor representing the State and the learned defence counsel representing the accused persons.

**19.** At the onset, it transpires from the materials on record that the informant/PW-3 S.I. Sri Bimal Chetia himself was a part of the team which conducted the joint operation at the two dams at Bhadoi Panchali and Bogoritol Padumoni. He neither disclosed in the Exhibit 2 being the ejahar nor in his testimony in the Court as to how and from where he received the information that the seized cut iron pipe pieces were stolen from various OIL regions of Duliajan. The OIL regions in which the alleged thefts occurred have also not been mentioned in the Exhibit 2 or in the depositions of the witnesses including the depositions of the PW-3/informant and PW-11/I.O. None of the PWs including the PW-11/I.O. stated anything about the receipt of any information from OIL or any other organisation regarding theft of any pipe etc. Quite surprisingly, the prosecution failed to even produce the said seized iron pipe pieces in the Court during the trial. It has been alleged that the accused Sri Binod Gupta, Sri Amarnath Gupta and Sri Ram Chandra Gupta were the owners of the said two dams but the I.O. categorically stated during his cross-examination that he did not go through any papers or documents regarding the ownership, license or land of the said dams. There is no evidence on record which confirms that the said dams were infact owned by the accused persons. Not a single legal document regarding ownership of the said dams have been produced by the prosecution. The



informant/PW-1 as well as the PW-11/I.O. could not explain in their depositions as to how they confirmed the accused persons, namely, Sri Binod Gupta, Sri Amarnath Gupta and Sri Ram Chandra Gupta as the owners of the said two damp.

Although the names of the accused persons have been linked with the said incident there is no evidence showing or confirming their involvement with the said offences. PWs 1, 2, 9 and 10 deposed that the seized cut iron pieces were scrap materials and that OIL often auctions such scrap materials. These scrap materials are then sold at the damp. PW-11/I.O. also stated during his cross-examination that OIL does not intimate the police while auctioning such scrap metal pieces. PW-7 deposed that he was informed by the police that stolen goal post of their football field had been cut into pieces and had been recovered. But he was unable to confirm whether the seized iron pieces shown to him were actually of their iron goal post or cut iron oil pipe pieces. He further stated that a tubewell was also stolen from Bhadoi School and a tubewell was also recovered from the damp. So, there arises confusion as to whether the sized cut iron pieces are pieces of an oil pipe or are pieces of a football goal post or are pieces of some other metal object which the prosecution has been unable to explain. From the prosecution evidence, it is also not clear whether the seized cut iron pieces are stolen iron pieces or are simply

broken scrap materials which may have been auctioned by OIL. Moreover, not a single prosecution witness deposed anything regarding the role or involvement of the deceased co-accused Anil Daimary. The prosecution has not been able to prove how, in what manner and wherefrom the seized cut iron pipe pieces have been stolen and how the same came to be in the possession of the accused persons or in what manner and circumstances they were acquired by the accused persons.

**20.** It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the prosecution case and there is ample scope of reasonable doubt as to the factum of the occurrence alleged. In the absence of any cogent evidence, I am not inclined to hold the accused persons, namely, Sri Binod Gupta and Sri Amarnath Gupta guilty of the offences u/sec 379/411 IPC.

**21.** Situated thus, I am constrained to hold that the prosecution has failed to establish the guilt of the accused persons, namely, Sri Binod Gupta and Sri Amarnath Gupta u/sec 379/411 IPC beyond all reasonable doubt. As such, the points of determination are answered in the negative in favour of the accused persons.

**ORDER**

**22.** In view of the decision made above, the accused persons, namely, Sri Binod Gupta and Sri Amarnath Gupta are acquitted of the charge of the offences u/sec 379/411 IPC and set at liberty forthwith.

**23.** Their bail bonds shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

**24.** Let the seized items, if any, be returned to the rightful owners after proper verification and if that is not possible, let the same be sold off in auction.

**25.** The case is disposed of on contest.

**26.** Given under my hand and the seal of this Court on this 29<sup>th</sup> day of January, 2022 at Dibrugarh.

Typed by: Self

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh

**APPENDIX**

**A. Prosecution witnesses:-**

- i) Sri Bipul Gogoi as PW-1
- ii) Sri Biren Gohain as PW-2
- iii) Sri Bimal Chetia being the informant as PW-3
- iv) Sri Utpal Handique as PW-4
- v) Sri Lochon Gogoi as PW-5
- vi) Sri Rudra Gogoi as PW-6
- vii) Sri Hiren Gogoi as PW-7
- viii) Sri Barun Chandra Das as PW-8
- ix) Sri Tankeswar Konwar as PW-9
- x) Sri Rudreswar Chetia as PW-10
- xi) Sri Tilak Chandra Roy as PW-11

**B. Defence witnesses:- Nil**

**C. Prosecution exhibits:-**

- i) The seizure list of 108 cut pieces of iron oil pipe being MR No. 24/09 as Exhibit 1

- ii) The ejahar as Exhibit 2
- iii) The seizure list of 34 cut pieces of iron oil pipe being MR No. 23/09 as Exhibit 3
- iv) The rough sketch-maps of the places of occurrence as Exhibits 4 and 5

**D. Defence exhibits: Nil**

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh