

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM**

**G.R. CASE NO.1281/2017**

**State**

**Vs.**

**Md. Israfil Hussain  
Son of Late Abdul Rahman  
Resident of village- Solmari  
P.S.- Nagaon Sadar,  
District- Nagaon, Assam**

Present: Sri N.K. Das, AJS  
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Asstt. P.P.  
For the defense: Mr. P. Bora, Ms. S. Shah, Advocates

Charge framed: u/s 380 of IPC  
Evidence recorded on: 23-3-2018, 11-7-2018, 26-9-2018, 30-5-2019  
and 17-8-2019  
Statement of defense recorded on: 7-11-2019  
Argument heard on: 14-11-2019  
Judgment delivered on: 29-11-2019

**JUDGMENT**

**1.** The prosecution case in brief is that one Sri Bhaskar Jyoti Nath lodged an ejahar in the Morigaon police station against the accused Md. Israfil Hussain alleging therein that on 18-5-2017 at about 3.00 p.m., while Smti. Supriya Das, who is the wife of the aforementioned informant, was on duty at the District Malaria Office, one unknown person took away a bag belonging to her at lunch time. When the said person tried to flee with the bag, other employees of the office quickly responded and caught the said person and informed the nearest police station and police brought the said person from the place of the occurrence to the police station.

**2.** The ejahar was received in the Morigaon police station on 19-5-2017 and a Morigaon police station case No.182/2017 under section 380 of IPC was registered and one assistant sub inspector of police Sri Kushal Bora was assigned to take up the preliminary steps of the investigation and another sub inspector of police Sri

Anjan Saikia was assigned to complete the investigation by the Officer-in-Charge of the said police station. On completion of investigation police submitted charge sheet against the accused Md. Israfil Hussain under section 380 of IPC.

**3.** On appearance before court copies of all relevant documents were furnished to the accused under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offence under section 380 IPC being found against the above named accused person, formal charge under section 380 IPC was framed, which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

**4.** Prosecution in support of its case examined 6 (six) witnesses namely Sri Bhaskar Jyoti Nath, Smti. Supriya Das, Sri Balai Dhar, Sri Bharat Nath, Sri Kuldip Goswami and A.S.I. Sri Kushal Bora, as PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6, respectively. Prosecution also exhibited 5 (five) documents including the ejahar and the charge sheet. While under examination under section 313 CrPC, the accused person denied the allegation leveled against him but admitted his presence in the aforesaid office at the relevant time, amongst others. Defence refused to adduce any evidence.

**5.** I have heard the argument of Mrs. Alakananda Kakati, learned APP as well as the argument of Mr. Pabitra Borah, assisted by Ms. Sangeeta Shah, learned defence counsels, perused the case record and considered the same. The following point for determination is formulated:

- i. Whether the accused person, on or about 18-5-2017, about 3.00 p.m., at the office of the District Malaria Officer, Morigaon, under Morigaon police station of Morigaon district, committed theft of a bag belonging to Smti. Supriya Das from the aforesaid office which was used as a place for custody of property and thereby committed an offence punishable under section 380 of IPC?

**Discussion of evidence, decision and reasons therefor:**

**6.** PW-1 Sri Bhaskar Jyoti Nath lodged the ejahar which is exhibited as exhibit-1 and he confirmed his signature thereon as exhibit-1(1). He has corroborated his ejahar in all material particulars. Though he admitted in his cross-examination that

he did not see the occurrence with his own eyes, in view of his indication that his wife PW-2 Smti. Supriya Das informed him over phone regarding the theft and he immediately arrived at the scene, his deposition is found to be truthful and he did not falsely claimed to have seen the occurrence. It is indicated in the ejahar that the accused was not known to him prior to the said occurrence. This indication, therefore, also confirms the fact that there was no previous enmity between the informant and the accused.

**7.** PW-2 Smti. Supriya Das has narrated the occurrence in vivid details. According to her, she was working at the office, where she works as the District Malaria Officer, and after finishing her lunch, she went to the bathroom in order to wash her hands and after returning from the bathroom she was talking with PW-3 Sri Balai Dhar and PW-4 Sri Bharat Nath, who are her co-workers and who were sitting near her office chamber. At that time she heard a sound in her chamber. She thought that the sound was caused by cow and therefore, she wanted to look inside her chamber from the verandah. While she was attempting to do so, the accused came out of her chamber with something in his hand in a plastic bag. She immediately confronted him but the accused told her that he came to meet one Jintu. As no employee by such name was working in the said office; therefore, she immediately suspected of something and went inside her own chamber and found that her purse inside her hand bag was missing. She immediately created a commotion and her two aforementioned colleagues then immediately came running after the accused, who, by that time, went out of the main gate of the office and was going towards the court campus situated nearby. This commotion was also witnessed by PW-5 Sri Kuldeep Goswami who went to the aforesaid office at the time of the occurrence and heard people shouting 'thief' 'thief'. Employees of the office and some people caught the accused near the court campus and he was taken back to the aforesaid office.

**8.** These events, as narrated by PW-2, are supported in all material particulars by PW-3 and PW-4. Their cross examination could not elicit anything favourable to the accused. PW-2, PW-3 and PW-4 did not have any prior acquaintance with the accused and therefore, the possibility of having previous enmity with him can be safely ruled out. Further, the defense version, as suggested to PW-1 in cross

examination, that the accused went to the office to complain regarding mosquitos was not suggested to PW-3, PW-4 and PW-5 in their cross examination. Though PW-3 admitted in his cross examination that he did not see who took away the purse from PW-2 but the same also goes to show that he is a truthful witness as we have already found that PW-3 only saw PW-2 confronting the accused while the accused was coming out of the chamber of PW-2. He also saw the accused telling PW-2 that he (the accused) came searching for one person, who, it was found, does not work in the said office. Both PW-3 and PW-4 witnessed the seizure of the purse and they confirmed their signature in the exhibit-2 seizure list as exhibit-2(1) and exhibit-2(2) respectively.

**9.** According to PW-3 and PW-4, they pursued the accused when PW-2 created the commotion when she found out that her purse was missing from her hand bag. Both of them immediately followed the accused, who was going towards the court campus, with other people and the accused was caught and taken back to the District Malaria Office, Morigaon. PW-2, PW-3 and PW-4 have all stated that though the accused denied having committed the theft of the purse; however, when pressed and searched, the purse was found inside his pant. This purse, according to PW-6 ASI Kushal Bora was seized vide exhibit-2 seizure list in presence of the PW-3 and PW-4 and same was handed over to PW-2 vide court exhibit no.C-1 zimma nama.

**10.** PW-6 ASI Sri Kushal Bora, who was the investigating officer, also confirmed in his deposition that he, along with the officer in charge, went to the District Malaria Office as per Morigaon police station GD Entry No. 543 dated 18-5-2017 on getting information regarding a theft at the said office and found that the accused was detained in the said office. PW-6 confirmed his signature in the seizure list as exhibit-2(3). He also prepared the exhibit-4 sketch map wherein he admitted his signature as exhibit-4(1). He also revealed that when witnesses implicated the accused of the theft he took the accused to the police station. This fact is also indicated in the ejahar itself. He also confirmed the fact that on the next day the ejahar was lodged and the accused was forwarded to the court under arrest. A combined reading of the ejahar, the exhibit-3 case diary entry containing the extract of GD Entry no.543 and the deposition of the PWs goes to show that lodging of the

ejahar on the next day was a mere formality when the accused was caught red handed with the purse immediately after the occurrence and therefore, lodging of the ejahar on the next day does not in any way affect the prosecution case. PW-6 also stated that the exhibit-5 charge sheet was submitted by SI Sri Anjan Saikia whose signature, which is exhibited as exhibit-5 (1), is known to him.

**11.** The learned defense counsel submitted that there is a material discrepancy as to whether the theft of hand bag was committed or theft of a purse was committed and therefore, in view of this discrepancy, the prosecution could not clearly prove the case against the accused and hence, there is no material to prove that it was the accused who committed the theft as such purse as described by the PWs is also available with other person. The learned counsel has drawn attention of this court to the seizure list wherein the seized article is described as a hand bag. He has also drawn attention to the zimma nama wherein there is no description of the article given in zimma of Smti Supriya Das (PW-2).

**12.** With all due respect to the argument so advanced by the learned defence counsel, this court is of the view that notwithstanding the fact that no description of the seized article, which was given in zimma to the PW-2 vide the aforesaid zimma nama, was given in the zimma nama, however, in view of the clear indication by PW-2, PW-3 and PW-4 that the accused committed theft of a purse from inside the hand bag, which PW-2 kept in her chamber, there is no doubt of the fact that it was a purse which was stolen away by the accused from her chamber and not a hand bag. In view of unambiguous evidence of PW-2 who was the owner of the purse and the evidence of PW-3 and PW-4, the argument of the learned defence counsel cannot be accepted. Omission on the part of the investigating officer (PW-6) to properly describe the article in the seizure list and omission to describe the article in the zimma nama cannot be used to discredit three eye witnesses whose evidence is found truthful, cogent and corroborative of one another.

**13.** The accused in answer to question No.1, while under examination under section 313 CrPC, stated that he went to the District Malaria Office to obtain medicine for cattle, quarreled with the District Malaria Officer i.e. PW-2 Smti Supriya Das and was sitting outside the office when police came and she implicated him of

committing theft of a handbag. None of the PWs i.e. PW-3, PW-4 and PW-5 indicated anything that they saw any quarrel between the accused and PW-2. He further stated that though police searched him for the bag but did not find it. This answer by the said accused, therefore, confirms his presence in the District Malaria Office beyond any doubt on the day of the occurrence and at the relevant time. Further, this answer also goes to show that he encountered Smti Supriya Das (PW-2) in the said office. While cross examining the PW-1 no suggestion that the accused went to the said office to obtain medicine for cattle was suggested to the PW-1. While cross examining PW-2 it was suggested that the accused went to lodge complain before the PW-2, who was the district malaria officer, Morigaon, regarding increase of swarms of mosquitos in somebody's house and as he entered her chamber without permission there was a verbal quarrel with her and this case was lodged out of revenge. It was also suggested that PW-2 was not present in her office and when the accused asked her where she went, this case was lodged against him falsely. It is clear from the answers given by the accused, as indicated above, and the suggestions given to the PW-2 during cross examination, that there is no consistency in the version put forward by the accused to show his reason for his presence in the aforesaid office and the defense side has put up inconsistent defense. Such inconsistency in the defense only goes to show that the accused has no defense at all.

**14.** The said accused also admitted that he was taken to Morigaon police station by police of the said police station. This statement of the accused, therefore, is consistent with the contents of exhibit-3 which is the relevant page of the case diary containing the aforementioned GD entry. The said entry therein reveal that one Sri Kuldeep Goswami informed the police of Morigaon police station regarding a theft at District Malaria Office. On the basis of the said information, the I/O ASI Sri Kushal Bora (PW-6) along with the Officer-in-Charge and other staff arrived at the scene and the accused was taken to the police station. Hence, arrival of the police on the basis of an information received over phone is also beyond doubt. Hence, this action on the part of the Morigaon police, on the basis of the information received immediately after the occurrence, also explained the delay of lodging the ejahar by PW-1 as the lodging of the ejahar was a mere formality.

**15.** We have already noted that in the ejahar it was indicated that the accused was caught red handed while fleeing with the bag belonging to PW-2 from the office of the District Malaria Office, Morigaon. In the ejahar itself the occurrence was indicated to have happened on 18-5-2017; however, the ejahar was lodged on the next day. The lodging of the ejahar on the next day is admitted by the PW-1 in his deposition. Though there is delay of about nineteen hours; however, in view of the fact that the accused was promptly taken away to the police station on the basis of the information received at the police station, vide GD entry no.543 dated 18-5-2017, prior to lodging of the ejahar, therefore, rules out the fact that the ejahar was lodged after deliberation and the accused was falsely implicated therein. The narration given by PW-6 in his deposition that prior to lodging of the ejahar, he along with Officer-in-Charge and other staff took the accused on 18-5-2017 to the police station also confirms such conclusion.

**16.** The accused was asked 61 questions explaining him the circumstances appearing in the evidence against him while he was examined under section 313 CrPC and therefore he had ample opportunity to explain the fact that if he did not steal the purse from PW-2 how come the same was recovered from him when he was caught red handed. But the accused failed to give any explanation.

**17.** As per illustration (a) of section 114 of the Evidence Act, 1872 the court *may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the good knowing them to be stolen, unless he can account for his possession.* The safety valve against such presumption is provided in the same section. In considering whether such maxims do or do not apply to the particular case the court shall have regard to such facts like, as to illustration (a) of the said section, *when a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business.* The question as to which of the two presumptions is to be drawn will depend upon the facts of each particular case.

**18.** The fact of recent possession of stolen property is, in general, evidence of theft, not of receipt of stolen property with guilty knowledge. It would be a reasonable presumption that the accused had committed theft if he is found with the stolen property almost immediately after the occurrence in circumstances when

he is found with the stolen property. Such an inference would not be an inference of law; it would be a pure inference of fact. It would be open to the accused to explain that he was with the stolen property for some innocent purpose, but in the absence of such explanation, the presumption will be that he had taken part in the offence.

**19.** The present accused has failed to account for the possession of the stolen purse. The accused was found with the purse immediately after the theft. Clearly the accused is not in the business of continually receiving purse. Even if he is in such business the accused did not indicated the same to this court in his statement of defense recorded under section 313 CrPC. The evidence of the PWs clearly indicated that it was him who committed the theft of the purse and he did not receive it from any other person.

**20.** There is no material discrepancies in the evidence of the PWs. The possibility of previous enmity can also be ruled out as the accused was not previously known to any of the PWs. We have already found that the accused admitted entering into the District Malaria Office, Morigaon. The immediate recovery of the purse from him; therefore, clearly goes to show that it was the present accused, who committed theft of the purse from the hand bag from within the office chamber of PW-2. The reason the purse itself was not produced before the court is also found in the deposition of PW-2, who stated that when she was given the purse, she immediately took out the contents thereof like ATM card and money and thereafter, discarded the purse at a dustbin.

**21.** From the moment the occurrence took place till filing of the FIR on the next date, the entire chain of the events are clearly described by the PWs including the I/O i.e. PW-6. Therefore, possibility of false implication is also ruled out. There is no doubt in the mind of this court that it was the accused, who committed theft of a purse from the possession of PW-2 on 18-5-2017 at about 3.00 p.m. from the office of the District Malaria Office, Morigaon.

**22.** For the aforesaid reasons and discussion the point for determination is answered in the affirmative.

**23.** The prosecution has proved the case against the accused beyond all reasonable doubt and the accused is found guilty of committing the offence

punishable under section 380 IPC and accordingly, he is convicted of the said offence.

**24.** Having regard to the circumstances of the case, the manner in which the convict Md. Israfil Hussain committed the offence inside the chamber of the District Malaria Officer, Morigaon, in brought day light, by taking advantage of access to a public office, punishment need to be imposed to deter him from committing similar offence in future and deter others from committing such kind of offence and therefore, the benefits of the provisions of the Probation of Offenders Act, 1958 cannot be extended to the convicted person.

**25.** The aggravating circumstances of the case are that the convict committed theft of a purse from a public servant from her very chamber of the office by taking advantage of access of general public to the said office. His attempt to evade detection at the time when he was confronted by PW-2 indicate that he was clever enough to hoodwink his victim. The manner of committing the offence appears to be pre-meditated by the accused as not only he stole the purse but also took steps to conceal it in his pant. In spite of his clear involvement in the offence the convict never expressed any remorse and continued to deny it and compelled the witnesses to come to court and face the stressful environment of a courtroom.

**26.** The mitigating circumstances of the case are that the convict is a young person of about 31 years of age at the time of committing the offence and there is no record of any previous conviction against him.

**27.** Heard the convict in person and his learned defense counsel on the question of sentence. The convict stated that he has his a wife and a three year old child at home, earns his livelihood as a day labourer and therefore prayed for leniency. I have considered the prayer for leniency in the light of the findings against the accused. I have also considered the personal circumstances of the convict, the need to punish the convicted person, a punishment which must be just in all the circumstances, the need to protect the community, the need for a very strong denunciation of the conduct of the convicted person, having regard to the fact that he must be sentenced according to law and the need to generally deter others who might be like minded from committing similar offence. The primary sentencing consideration here is punishment, deterrence, both personal and general,

denunciation of the conduct and promotion of respect for the rule of law. In sentencing, I take account of all the matters I have referred to including the statutory maximum penalty for the offence.

**28. The offence under section 380 IPC is punishable with imprisonment of either description for a term which may extend to seven years, and the offender is also be liable to fine. In view of this court rigorous imprisonment of 5 (five) years with fine would meet the ends of justice. Hence, the convict is sentenced to undergo rigorous imprisonment of 5 (five) years with a fine of Rs.5000/- (Rupees five thousand) for the offence punishable under section 380 of IPC. In default to pay the fine the convict shall undergo simple imprisonment of 3 (three) months.**

**29.** The bail bond of the convict is extended for a period of six months in view of section 437A of CrPC.

**30.** Furnish a free copy of the judgment to the convict.

**31.** The judgment is pronounced in open court and given under my hand and seal on this 29<sup>th</sup> day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

## **APPENDIX**

**(A) PROSECUTION EXHIBITS:**

Ext.-1: Ejahar

Ext.-1(1): Signature of Sri Bhaskar Jyoti Nath

Ext.-2: Seizure list

Ext.-2(1): Signature of Sri Balai Dhar

Ext.-2(2): Signature of Sri Bharat Nath

Ext.-2(3): Signature of ASI Sri Kushal Bora

Ext.-3: Case diary entry containing extract of GDE No.543 dated 18-5-2017

Ext.-4: Sketch map

Ext.-4(1): Signature ASI Sri Kushal Bora

Ext.-5: Charge sheet

Ext.-5(1): Signature of ASI Sri Kushal Bora

**(B) DEFENCE EXHIBITS**

None

**(C) EXHIBITS PRODUCED BY WITNESSES**

None

**(D) COURT EXHIBITS**

Ext.C-1: Zimma nama

**(E) PROSECUTION WITNESSES**

P.W.-1: Sri Bhaskar Jyoti Nath

P.W.-2: Smti. Supriya Das

P.W.-3: Sri Balai Dhar

P.W.-4: Sri Bharat Nath

P.W.-5: Sri Kuldip Goswami

P.W.-6: ASI Sri Kushal Bora

**(F) DEFENCE WITNESSES**

None

**(G) COURT WITNESSES**

None

Chief Judicial Magistrate, Morigaon