

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL.MAGISTRATE,

MORIGAON::::::::::ASSAM.

GR Case No. 2032 of 2015

U/S 457/380/511 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: MD. MAJAHARUL ISLAM

Present : Smti. S. Acharyya, AJS,
Addl. Chief Judicial Magistrate,
Morigaon.

APPEARANCE:

For the State : Mr. P. Hazarika, Ld. Addl. Public Prosecutor.
For the accused person : Mr. J. A. Bhutoo, Ld. Advocates.
Charge framed on : 22.08.2019
Evidence recorded on : 19.09.2019, 17.10.2019 & 31.10.2019.
Argument heard on : 05.11.2019.
Judgment delivered on : 19.11.2019.

J U D G M E N T

1. The prosecution case in brief is that the informant Md. Rashidul Islam lodged an ejahar stating inter alia that on 01.09.2015, at about 10.00 PM, the accused persons Majaharul Islam and Md. Abul Nasar had entered into his shop and hearing sound inside the shop, he had seen the accused persons inside his shop in torch light and with the help of public the accused persons had been caught. Hence the case.
2. On receipt of the 'ejahar' at the police station, the same was registered as Laharighat P.S. Case No. 436/2015 and the matter was investigated upon.
3. After completion of investigation police filed a charge-sheet

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against the accused persons Md. Majaharul Islam and Md. Abul Nasar under section 457/380/511 IPC.

4. During trial, the accused Md. Majaharul Islam was arrested and produced in the Court and was sent to judicial custody. On production of the accused person, relevant documents of the case were furnished to him. Upon perusal of materials on record and after hearing both sides, charges under section 457/380/511 IPC has been framed in writing, read over and explained to the accused person Md. Majaharul Islam to which he pleaded not guilty and claimed to be tried. The case is split up against accused Abul Nasar.

5. The prosecution in support of its case examined four witnesses. Whereas, the defence side has not examined any witness in support of its defence.

6. The statement of accused under section 313 Cr.P.C. has been recorded. The accused denied the allegation against him.

7. I have heard the argument advanced by the learned counsels for both sides.

8. Upon hearing and on perusal of the record I have framed the following points for determination:

(i) Whether the accused person, on 01.09.2015, at about 10.00 PM, at No.2 Borbori (reserve) under PS Laharighat and Dist. Morigaon committed lurking house trespass by night by entering in to the shop of Rashidul Islam in order to commit theft and thereby committed an offense punishable under section 457 of IPC?

(ii) Whether the accused person, on the same date, time and place attempted to commit theft in the shop of Rashidul Islam and thereby committed an offense punishable under section 380/511 of IPC?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

9. For convenience of discussion and for the sake of brevity, I am discussing both the points together.

10. PW1 Md. Lukman Hekim, inter alia deposed that on at about 4/5 years back, he heard that theft took place at the shop of the informant and he does not know who committed the theft.

11. PW2 Md. Rashidul Islam, who is the informant inter alia deposed he had a shop at Borbori Reserve. At about 4 years back, Majaharul Islam committed theft in his shop. At night, accused entered into his shop. He saw the accused in the torch light and raised hue and cry. The accused could not take any articles from his shop. He exhibited the ejahar as Ext.1 and his signature as Ext.1(1). In his cross examination, PW2 inter alia answered that he has not instituted any ejahar. He does not know the contents of the ejahar. Ashadul, Saiful, Sahidul, Bahar Ali and many other persons came at the PO. He had not caught the accused person. Public caught the accused on suspicion. He denied the suggestions put to him by the Ld. defense counsel.

12. PW3 Md. Raisuddin inter alia deposed that the incident took place at about 4 years back, at about 10.00 PM. They were sleeping. They heard hallah and went to the house of the informant and after reaching PO, he heard that police has already arrested the thief. In his cross examination, PW3 inter alia answered that he had not seen the stolen articles. He heard that thief was caught. He does not know what had been stolen.

13. PW4 SI Abdul Kadir Faruki inter alia deposed that on 02.09.2015, he was working as SI at Laharighat PS. On the same date, O/C Ibrahim Khalil Ullah received an ejahar from Rasidul Islam, which was registered as Laharighat PS Case No. 436/2015 u/s 461/380 IPC. He was entrusted to investigate the case. He visited the PO at No.1 Borbori and prepared sketch map and he recorded statement of witnesses and arrested the accused persons Abul Nasar and Mazaharul Islam. They were caught by public. On the next day, he recorded statement of the accused persons and forwarded them to the court. After investigation, he submitted the charge sheet against both the accused persons u/s 457/380/511 IPC. He exhibited the sketch map as Ext.2 and his signature as Ext.2(1) and charge sheet as Ext.3 and his signature as Ext.3(1). In his cross examination, PW4 inter alia answered that he recovered nothing, when he had arrested the accused persons.

14. I have carefully gone through the evidence on record. From the evidence Pw-1 and Pw-3 it reveals that they had not seen the thief. They only

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heard about the theft. From the evidence of Pw-2 who is the informant it reveals that accused entered into his shop but he could not take any article from his shop. From the evidence of Pw-4. i.e. I.O. it appears that he did not seize anything from the accused.

15. To attract section 457 IPC it must be proved that accused entered into a house with intention to commit theft. In order to attract section 380/511 IPC it must be proved that accused had attempted to commit theft and he did any overt act towards the commission of offence of theft. In this case though the accused entered into informant's shop but no evidence is found that he had done any act in order to commit theft. Nothing including any instrument of stealing is found with the accused. From the cross examination of Pw-2 it reveals that public caught the accused on suspicion.

16. In view of above discussion, I am of the opinion that prosecution has failed to establish the guilt of the accused beyond all reasonable doubt. Accordingly, the accused person Md. Majaharul Islam is acquitted of charges U/S 457/380/511 IPC and set at liberty forthwith.

17. The case is disposed of on contest.

18. Given under my hand and seal of this Court today, the 19th day of November, 2019.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

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Addl Chief Judicial Magistrate
Morigaon.

Dictation taken and
transcribed by me.

Computer Typist.

APPENDIX:

Prosecution witness:

PW1- Md. Lukman Hekim.

PW2- Md. Rashidul Islam.

PW3- Md. Raisuddin.

PW4- SI Abdul Kadir Faruki.

Prosecution exhibits:

Ext.1- Ejahar.

Ext.2- Sketch Map.

Ext.3- Charge Sheet.

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
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