

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO. 2521/2014

State

Vs.

**Md. Nirjul Amin
Son of Late Nazir Ali
Resident of village- Dhingarati
P.S.- Laharighat
Dist.- Morigaon, Assam**

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

For the state: Mrs. A. Kakati, Addl. P.P.

For the defense: Md. A.U. Siddique, Advocate

Charge framed: u/s 457/380 of IPC

Evidence recorded on: 26-4-2016, 1-6-2016, 10-8-2017, 14-9-2018 &
10-10-2019

Statement of defence recorded on: 31-10-2019

Argument heard on: 31-10-2019

Judgment delivered on: 15-11-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Habibur Rahman, Block Development Officer, Laharighat Development Block, Assam lodged an ejahar on 13-12-2014 in the Laharighat police station alleging therein that miscreant broke three locks of the front door of a community hall, used as a godown, which is situated in the office campus of Laharighat Development Block and committed theft of one power pump machine set and one power pump machine which were allotted from the Char Development Department to the beneficiaries. At the time of lodging the ejahar, it was not known what other articles were stolen.

2. The ejahar was received in the Laharighat police station on 13.12.2014 and a Laharighat police station case no.419/2014 under sections 457/380 of IPC was registered and one assistant sub inspector of police Sri Khitish Ch. Borah was assigned to take up the preliminary investigation of the case and sub inspector of police Sri Rebat Ch. Baruah, who was the officer-in-charge of the said police station, decided to complete the investigation himself. On completion of investigation, police submitted charge sheet against the accused Md. Nirjul Ali under sections 457/380 of IPC showing him as absconder.

3. On appearance before court, copies of all relevant documents were furnished to the accused person under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offences under sections 457/380 of IPC being found against the above mentioned accused person, formal charge under sections 457/380 of IPC was framed, which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 5 (five) witnesses namely Md. Habibur Rahman, Md. Abdul Kadir, Md. Dildar Hussain, assistant sub inspector of police Sri Khitish Ch. Borah and sub inspector of police Sri Sunil Kr. Medhi, as PW-1, PW-2, PW-3, PW-4 and PW-5, respectively. The prosecution side also exhibited 8 (eight) documents including the ejahar and the charge sheet. While under examination under section 313 CrPC the accused person completely denied the allegations leveled against him. Defense side refused to adduce any evidence.

5. I have heard the argument of Mrs. Alakananda Kakati, learned APP and the argument of Md. Azad Uddin Siddique, learned defence counsel, perused the case record and considered the same. The following points for determination are formulated:

- i. Whether the accused person, on the night of 12.12.2014, at Laharighat Block Development Office, under Laharighat police station of Morigaon district, committed lurking house trespass by night or house breaking by night by entering into the Laharighat Block Development Office, with intent to commit theft and thereby committed an offence punishable under section 457 of IPC?
- ii. Whether the accused person, on or about the same date, time and place, committed theft of one power pump machine set and one power pump machine

from the Laharighat Block Development Office, which is used for custody of property and thereby committed an offence punishable under section 380 of IPC?

Discussion of evidence, decision and reasons therefor:

6. The allegation as revealed in the ejahar is of theft of one power pump machine set and one power pump machine from the godown situated within the campus of the office of the Laharighat Development Block, in the night of 12/13 December, 2014. The charge sheet was submitted against the accused showing him as absconder. Perusal of the charge sheet, which is exhibited as exhibit-8 reveals that the present accused was arrested on suspicion and a power pump was seized from his house. This power pump was seized vide seizure list bearing MR No.11/2015 which is exhibited as exhibit-2 and the signature of seizing officer ASI Sri Khitish Ch. Borah, who deposed as PW-4 is proved as exhibit-2(2). Perusal of the seizure list reveals that the seized article was seized on being produced by Md. Abdul Kadir, who deposed before the court as PW-2, at village Dhingarati.

7. The charge was framed against the accused under sections 457/380 IPC. However, none of the PWs had seen the accused committing lurking house breaking at night in order to commit theft. The informant Md. Habibur Rahman, who lodged the ejahar, which is exhibited as exhibit-1, deposed before the court as PW-1. In his cross-examination, he stated that he did not see the occurrence and cannot say who committed the theft of the articles mentioned in the ejahar. He was informed about the theft by the Chowkidar.

8. PW-2 Md. Abdul Kadir is the Chowkidar of the office of the Laharighat Block Development Office. According to his statement, he was on duty from 7 p.m. to 4 a.m. on the night of the theft and at 4.00 a.m., he went away from his duty and his wife told him about the theft at the godown. Thereafter, he went and saw that the locks were broken and three power pump machines were stolen. One Md. Dildar Hussain also came to the place of the occurrence. The said PW informed the Block Development Officer through one clerk named Md. Motibur Rahman. According to him, it was the

accused who committed the theft and one power pump was recovered from his house which is in the police station. The remaining two pumps could not be recovered.

9. Md. Dildar Hussain, who, according to PW-2, came to the place of occurrence, deposed before the court as PW-3. In his deposition, he stated that he went for a morning run at about 6.00 a.m. in the field of Laharighat Block and the Chowkidar of the block informed him about the theft. This statement of PW-3 Md. Dildar Hussain indicates that it was the PW-2, who informed PW-3 regarding the theft, whereas, we have noticed that while under cross-examination, PW-2 revealed that it was Md. Dildar Hussain, who informed his (PW-2) wife regarding the theft. We have found from the deposition of PW-2 that it was his wife who informed him. Therefore, this revelation in cross-examination of PW-2 creates a confusion as to who informed PW-2 regarding the theft. If Md. Dildar Hussain (PW-3) was informed by PW-2 and PW-3 informed the wife of PW-2, then either PW-2 was lying or PW-3 was lying regarding the person who informed the PW-3.

10. According to PW-2, he had no knowledge of the theft until his wife told him. Whereas according to PW-3 it was PW-2 who informed him about the theft. PW-3 further indicates that he has no knowledge regarding other aspects of the occurrence. The seizure list (exhibit-2) vide which one pump set was seized reveals that this pump set was produced by the said PW-2 Md. Abdul Kadir and the investigation officer Sri Khitish Ch. Borah seized the same. There is no mention in the seizure list that the said pump set was seized from the house of the accused person. Another seizure witness Md Moinul Hoque died before he could depose before the court. Therefore, we only have the evidence of PW-2 to come to a conclusion regarding the guilt or innocence of the accused.

11. PW-1 and PW-3 has no direct knowledge of the occurrence. Though PW-2 stated that the pump set was recovered from the house of the accused; however, the seizure list did not indicate anything to that effect. According to PW-2 himself, during the time from 7.00 p.m. to 4.00 a.m. on the night of the theft, he was on duty at the office of the Block Development Office. It therefore raises an assumption that during that period no theft took place. He further stated that after his duty ended at 4.00 a.m., he went to his own house and it was his wife, who told him about the theft.

Therefore, the said PW-2 has also no direct knowledge of the theft and he did not see the accused committing the theft. The seizure is not of any help to indicate that it was the accused who committed the theft, as the seizure was neither properly explained nor it was clearly shown in the seizure list that the pump set was seized in the house of the accused person.

12. PW-4 ASI Sri Khitish Chandra Bora and PW-5 S.I. Sunil Kr. Medhi were the investigating officers. PW-4 visited the place of occurrence, seized the pump set, prepared the sketch map and two search lists (exhibit-5 & 6). PW-5 prepared the search list (exhibit-7) and submitted the charge sheet (exhibit-8) showing the accused Md. Nirjul Ali as absconder. It may be indicated herein that the name of the accused was also wrongly indicated in the charge sheet as Md. Nirjul Ali whereas his name is Md. Nirjul Amin. It appears that the I/Os could not even ascertain the correct name of the accused. The deposition of PW-2 is not sufficient enough in view of the other discrepancies, as noticed above, to come to the conclusion that it was the accused who committed the theft as alleged in the ejahar.

13. For the aforesaid reasons and discussion the points for determination are answered in the negative.

14. The prosecution has failed to prove the case against the accused person. As such, the accused person is acquitted of offences under sections 457/380 of IPC alleged against him. He is set at liberty forthwith. His bail bond is extended for a period of six months from today in view of section 437A CrPC.

15. The pump set, seized vide seizure list bearing MR No.11/2015 be returned to the office of the Laharighat Block Development Office, Laharighat, if not already returned, in due course. PSI, Morigaon court shall do the needful.

16. The judgment is pronounced in open court and given under my hand and seal on this 15th day of November, 2018 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

- Ext.-1: Ejahar
- Ext.-1(1): Signature of Md Habibur Rahman
- Ext.-2: Seizure list
- Ext.-2(1): Signature of Md. Abdul Kadir
- Ext.-2(2): Signature of ASI Sri Khitish Ch Bora
- Ext.-3: Sketch Map
- Ext.-3(1): Signature of ASI Khitish Ch. Borah
- Ext.-4: Extract copy of GD Entry No.265 dated 13-12-2014
- Ext.-5: Search list
- Ext.-5(1): Signature of ASI Khitish Ch. Borah
- Ext.-6: Search list
- Ext.-6(1): Signature of ASI Khitish Ch. Borah
- Ext.-7: Search list
- Ext.-7(1): Signature of SI Sunil Kr. Medhi
- Ext.-8: Charge sheet
- Ext.-8(1): Signature of SI Sunil Kr. Medhi

(B) DEFENCE EXHIBITS

None

(C) EXHIBITS PRODUCED BY WITNESSES

None

(D) COURT EXHIBITS

None

(E) PROSECUTION WITNESSES

- P.W.-1: Md. Habibur Rahman
- P.W.-2: Md. Abdul Kadir
- P.W.-3: Md. Dildar Hussain
- P.W.-4: ASI Khitish Ch. Borah
- P.W.-5: SI Sunil Kumar Medhi

(F) DEFENCE WITNESSES

None

(G) COURT WITNESSES

None

Chief Judicial Magistrate, Morigaon