

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL. MAGISTRATE,

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

GR Case No. 2554 of 2015

U/S 457/380 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 : 09.08.2019  
Evidence recorded on : 22.08.2019, 19.09.2019 & 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. Abu Bakkar Siddique lodged an ejahar stating inter alia that on 06.11.2015, at about 5.00 AM, the accused person Majaharul Islam entered into the office of Water Supply by breaking locks of door and committed theft of one water pump and public caught him red-handed when he had been taking the water pump. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Laharighat P.S. Case No. 543/2015 and the matter was investigated upon.

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3. After completion of investigation police filed a charge-sheet against the accused person Md. Majaharul Islam under section 457/380 IPC.

4. During trial the accused was arrested and produced before the Court. 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 IPC has been framed in writing, read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case examined five 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 06.11.2015, at about 5.00 AM, at Barbari Water Supply Office under PS Laharighat and Dist. Morigaon committed lurking house trespass by night and house breaking by night by entering in to the office room of Barbari Water Supply Office 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, committed theft of Water Pump from the office room of Barbari Water Supply Office and thereby committed an offense punishable under section 380 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. Abu Bakkar Siddique, who is the informant inter alia deposed that on 06.11.2015 he was working as 4<sup>th</sup> grade staff at Borbori PHE. At about 5 AM he was coming from Masjid and came to know that one water pump was stolen from his office. He lodged the ejahar against the accused person. He has seen the accused and the water pump at the PS. He took the zimma of the

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water pump from the police station. He exhibited the ejahar as Ext.1 and his signature as Ext.1(1). He exhibited the seizure list as Ext.2 and his signature as Ext.2(1). In his cross examination, PW1 inter alia answered that the ejahar was written by clerk. He does not know the contents of the ejahar. He has seen the water pump at the police station. He has not seen as to from which place the water pump was recovered. The weight of the water pump was 50 KG. The contents of Ext.2 was not read over to him. He found Giasuddin, Saiful Islam and other persons at the PO. That the matter has been amicably settled. He has not seen the incident of committing theft. He denied the suggestions put to him by Ld. defense counsel.

11. PW2 Md. Saiful Islam inter alia deposed at about 3/4 years back, at about 6.00 AM, he heard hallah at PHE. He reached there and saw that public caught Majaharul Islam and public told that accused committed theft of motor of Water supply Department. He had not seen the motor with the accused. The motor was in the office. Police took the accused. He exhibited his signature as Ext.2(2). Below his signature, his wife Parbin Sultana put her signature. In his cross examination, PW2 inter alia answered that the weight of the motor is 125 KG. The door of the office was closed where the motor was kept. Four persons cannot lift the motor. The place where accused was kept by the public was about 100 meter away from the Water Supply office. That he does not know the contents of the paper in which he put his signature. The contents of paper was not read over to him.

12. PW3 Musstt. Asia Khatun inter alia deposed that at about 4/5 years back, at morning, she heard hallah at PHE. She heard that thief had come. That she knows nothing about the incident.

13. PW4 Musstt. Sahar Banu inter alia deposed that at about 4/5 years back, at morning, she heard hallah at PHE. She heard that thief had come. She knows nothing about the incident. The defence declined to cross examine Pw-3 and Pw-4.

14. PW5 SI Abdul Kadir Faruki inter alia deposed that on 06.11.2015, he was working as SI at Laharighat PS. On the same date, O/C Ibrahim Khalil Ullah Kabir received an ejahar from Abu Bakkar Siddique, which was registered as Laharighat PS Case No. 543/2015 u/s 457/380 IPC. He was entrusted to investigate the case. He visited the PO at Borbori Water supply office. Public

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caught the accused Mazaharul Islam along with water-pump which he seized. He prepared sketch map and recorded statement of witnesses and arrested the accused person Mazaharul Islam and brought him to PS and forwarded him to the court. After investigation, he submitted the charge sheet against the accused person u/s 457/380 IPC. He exhibited the seizure list as Ext.2 and his signature as Ext.2(3). He exhibited the sketch map as Ext.3 and his signature as Ext.3(1). He exhibited the charge sheet as Ext.4 and his signature as Ext.4(1). In his cross examination, PW5 inter alia answered that O/C received the ejahar at 9.10 AM. After receiving the ejahar GD entry was made. Extract copy of GD entry is not submitted. He denied the suggestion put to him by Ld. defense counsel.

15. I have carefully gone through the evidence on record. From the evidence of Pw-1 and Pw-4 it appears that they heard that water pump was stolen from water supply office. Pw-1 and Pw-2 exhibited the seizure list i.e. Ext-2. But Pw-1 stated that he had seen the water pump at the police station. From the evidence of Pw-2 it reveals that he had not seen the motor pump with accused. Pw-3 and Pw-4 know nothing about the incident.

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 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 19<sup>th</sup> 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.

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APPENDIX:

Prosecution witness:

PW1- Md. Abu Bakkar Siddique.

PW2- Md. Saiful Islam.

PW3- Musst. Asia Khatun.

PW4- Musst. Sahar Banu

PW5- SI Abdul Kadir Faruki

Prosecution exhibits:

Ext.1- Ejahar.

Ext.2- Seizure list

Ext.3- Sketch Map

Ext.4- Charge Sheet

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected  
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Addl Chief Judicial Magistrate  
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