

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL.MAGISTRATE,

MORIGAON:.....ASSAM.

GR Case No. 2308 of 2015

U/S 454/380 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: MD. MAZAHARUL ISLAM

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

**APPEARANCE:**

For the State : Mr. P. Hazarika, Learned Addl. Public Prosecutor.  
For the accused person : Mr. B. H. Talukdar, Learned Advocate.  
Charge framed on : 11.08.2016.  
Evidence recorded on : 09.09.2016, 09.06.2017, 09.08.2017 &  
05.09.2017.  
Argument heard on : 17.06.2019.  
Judgment delivered on : 29.06.2019.

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

1. The prosecution case in brief is that the informant Sri Puna Bordoloi, lodged an ejahar stating inter alia that on 4.10.2015, at about 4.15 PM, accused person had entered into his house by breaking the locks of door and committed theft of cash amount Rs. 10,000/- by breaking the lock of a box and one mobile handset. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Laharighat P.S. Case No. 495/2015 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. Mazaharul Islam under section 454/380 IPC showing him as absconder.

4. On appearance of the accused person he was allowed to go on bail. Relevant documents of the case was furnished to him. Finding materials, charges under section 454/380 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. In his examination under section 313 Cr.P.C. the accused person 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 4.10.2015, at about 4.15 PM, committed lurking house trespass or house breaking in the house of Sri Pona Bordoloi in order to commit theft and thereby committed an offense punishable Under Section 454 of IPC?

(ii) Whether the accused person, on the same date, time and place, committed theft of Rs. 10,000/- and a mobile handset from the possession of Sri Pona Bordoloi from his dwelling house and thereby committed an offense punishable 380 of IPC?

### **DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:**

9. PW1 Mrs. Ruma Bordoloi, who is the wife of the informant inter alia deposed that at about 8/10 months ago, at about 4.00 PM, when she was returning to her house and reached verandah, accused came out from their house. Accused Mazaharul ran and fled from their house as soon as accused person saw her. PW1 chased him. That accused committed the theft. After entering into her house, she saw one mobile handset was stolen. Accused had broken the lock of one box and took Rs. 10,000/- from the said box. The

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accused also mismanaged all the articles. Her husband was absent at house at that time. Her five years old son was accompanying her on the date of occurrence. Her in-laws did not reside with them. Till then, she has not got the mobile handset and money. In cross examination, PW1 inter alia answered that the date of occurrence is 8.10.2015. That her husband lodged the ejahar on the date of occurrence itself. Their extended family members' houses are near their house. Among them, Nitya Bordoloi, Umesh Bordoloi, Tilak Bordoloi and others are there. Police came after about half an hour after happening the occurrence. She did not seize the box. She gave purchase papers of mobile to the police. Mobile set was of "Guddu-made". PW1 did not tell about denomination of the stolen cash to the police. The nearby people knows about the occurrence. She denied the suggestion that (i) the accused person did not run away as soon as she saw him, (ii) one mobile set and Rs. 10,000/- were not stolen, (iii) accused did not manage her articles and belongings, (iv) accused did not enter into their house, (v) they have family quarrel with the accused person and therefore they have filed the case.

10. PW2 Sri Pona Bordoloi, who is the informant inter alia deposed that he lodged the ejahar. He exhibited the ejahr as Ext.1 and his signature as Ext.1(1). He further deposed that at about 1½ /2 years back, at about 4.00/4.30 PM, Majaharul entered into his house by breaking the locks of his door and broke the locks of trunk and stolen away cash amount of Rs. 10,000/- and one mobile handset from the box. That his wife was not at home at the time of incident. That when his wife came home, she had seen Mahazarul coming out from the room. That she attempted to stop him but he fled away. That after half an hour on getting information of theft, the informant came to home and lodged the ejahar. That police has taken away one lock. In his cross examination, he inter alia answered that he lodged the ejahar on the same day at 5.00 PM. He denied the suggestion that he did not state before police that accused entered into his house and broke the locks of door and box and committed theft of cash of Rs. 10,000/- and one mobile handset and his wife could not stop him and Mahazarul ran away. He denied the suggestions put to him by Ld. defense counsel.

11. PW3 Musstt. Rejia Khatun inter alia deposed that at about 1½ year back, at about 4.00 PM, she heard hue and cry at the house of Pona and went forward and found gathering. That on being asked wife of Pona stated that accused had committed theft of Rs. 10,000/- and one mobile handset from her

house. That she had not seen the accused Mahazarul at the place of occurrence. In her cross examination, she inter alia answered that she did not state before police that on hearing hue and cry she went to the house of Pona and heard that accused had committed theft of cash of Rs. 10,000/- and a mobile handset and wife of Pona told her about the incident. She denied the suggestions put to her by Ld. defense counsel.

12. PW4 Sri Kushal Bordoloi inter alia deposed that at about 2 years back, at about 4.00/5.00 PM, he heard the sound "chur-chur". That he went forward and found that the lock of main door of Pona was broken. That wife of Pona stated that Mahazarul entered into the room by breaking lock of the door and committed theft of cash amount Rs. 10,000/- and one mobile handset by breaking the lock of a trunk. That PW4 had not seen the accused at the place of occurrence. In his cross examination, he denied the suggestions put to him by Ld. defense counsel.

13. PW5 SI Premananda Deka inter alia deposed that on 4.10.2015, he was working as In-charge at Borchala out post. On that day, informant Puna Bordoloi lodged an ejahar at Borchala out post. He made GD entry No. 53 dtd. 4.10.2015 and sent the ejahar to Laharighat police station for registration. Immediately after making the GD entry, he visited the place of occurrence on 5.30 PM, prepared sketch map and recorded statement of the witnesses. From the statements of the witnesses, accused Mazaharul Islam was found guilty under section 454/380 of IPC. Attempts were made several times to arrest the accused person, but failed to trace out and hence charge sheet was submitted showing him as absconder. He exhibited the sketch map as Ext.2 and his signature as Ext.2(1). He exhibited the charge sheet as Ext.3 and his signature as Ext.3(1). In his cross examination, PW5 inter alia deposed that he received the ejahar on 4.10.2015, at about 5.00 PM and he recorded the statements of the witnesses on that day itself. That he did not seize anything. He did not seize the lock and box as mentioned in the ejahar. He did not seize the mobile handset as documents could not produce before him. He did not mention in the charge sheet that documents of mobile were not produce before him. That witnesses did not tell about the denomination of the note. That informant Puna Bordoloi stated in his 161 Cr.P.C that one Amarajul, S/o-Riazuddin committed the incident. He did not stated about Mazaharul. He also that in the 161 Cr.P.C. statement of Rejia Khatun did not stated that she heard *hallah*. But she told about theft of Rs.

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10,000/- and one mobile handset.

14. I have carefully gone through the evidence on record. From the evidence of PW1 it appears that there was argument between him and the accused person. From the evidence of PW2, it appears that he has not implicated the accused and he has not seen the incident. In the result, there is no incriminating evidence against the accused person.

15. In view of above discussion, the accused person Md. Mazaharul Islam is acquitted of offences U/S 454/380 IPC and set at liberty forthwith.

16. Bail bond shall remain in force for next six months.

17. The case is disposed of on contest.

18. Given under my hand and seal, today, the 29<sup>th</sup> day of June, 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 be me.

Computer Typist.

APPENDIX:

Prosecution witness:

PW1- Mrs. Ruma Bordoloi  
PW2- Sri Puna Bordoloi  
PW3- Musstt. Rejia Khatun  
PW4- Sri Kushal Bordoloi  
PW5- SI Premananda Deka

Prosecution exhibits:

Ext.1 - Ejahar  
Ext.2 - Sketch map  
Ext.3 - Charge sheet

Defence witness:

Nil.

Defence exhibit:

Nil.

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