

1
G.R No-1454 of 2016
(State of Assam Vs Md. Mojibur Rahman & Anr)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 1454 of 2016

Under section 380 of I.P.C

Present:-**Sri N. J. Haque, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

1. Md. Mojibur Rahman
2. Md. Bali Kalander.....Accused Persons

Advocate appeared:

Mrs. Niva Devi, Addl. P.P..... For the State

Mr.R. Gohain, Ld. Advocate.....For the accused person

Evidence recorded on	:- 11.12.2017, 07.02.2019 & 05.04.2019
Date of Statement of defence	:- 03.07.2020
Argument heard on	:- 03.07.2020
Judgment delivered on	:- 03.07.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that on 10.05.2016 one Sri Amal Basumatary lodged an Ejahar before the O/C, of Missamari PS, alleging inter alia that on 08.05.2016, 06 (six) numbers of cows had stolen from Pungkhabill and Lohakhuti village. It is also alleged that one week prior to the incident, two numbers cows stolen and he suspected the FIR named accused to be involved in the said stealing.

"INVESTIGATION"

2. On receipt of the Ejahar, Missamari P.S Case No.52 of 2016 u/s 380 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s 380 of I.P.C against the accused persons, namely, Md. Mojibur Rahman and Md. Bali Kalander.

**G.R No-1454 of 2016
(State of Assam Vs Md. Mojibur Rahman & Anr)**

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s 207 of CrPC was furnished to the above-named accused persons. After hearing both sides, charge of offence u/s 380 of I.P.C. was read over and explained to the accused persons by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as 05 (Five) numbers of witnesses including the informant. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused are examined u/s 313 CrPC and their pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on their defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case:-**

Whether on 08.05.2016 at night at Kongkha bill and Loha Khuti, the accused committed theft of six cows from cowshed of the said village and prior to the incident the accused also committed theft of two cows and thereby committed an offence punishable u/s 380 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined six numbers of witnesses. I have carefully travelled through the testimonies of each witnesses in the back drop of the entire case. PW-1 being the informant of this case deposed that he does not know the accused of this case. He also deposed that the incident took place in the year 2016 and on the day of incident at night six cows were missing from his cowshed. After four days of the incident, police recovered the said stolen cows and given zimma to him. Ext-1 is

**G.R No-1454 of 2016
(State of Assam Vs Md. Mojibur Rahman & Anr)**

the Ejahar lodged by him and Ext-1(1) is his signature. Ext-3 is the zimmanama and Ext-3(1) is his signature. Ext 2 is the seizure list and Ext-2(1) is his signature. PW-1 in his cross examination deposed that he did not see who committed the theft of cows. He also deposed that he did not know from where and from which village police recovered the stolen cows. He did not know what was written in Ext-2. He also did not know about the contents of Ext-3. He was only asked to put his signature thereon.

8. PW 2, Bhadreswar Boro deposed that he knows the informant but he does not know the accused of this case. He also deposed that the incident took place in the year 2016. He further deposed that he heard from the informant that his six numbers of cows had been stolen. He went to the police station along with the informant. He deposed that after two day, police handed over the said stolen cows to them. Ext 2 is the seizure list and Ext-2(2) is his signature. PW-2 in his cross examination deposed that he had not witnessed the alleged theft. He did not know from where the police recovered the cows. They have seen the cows at the police station.
9. PW-3, Sri Krishna Basumatary deposed that he does not know the informant and the accused of this case. He also deposed that the incident took place around two years back and on the day of incident, the cows of Rabin Wary, Indra and Amal Basumatary had been stolen. Later police recovered the said stolen cows. He also deposed that at the police station they have identified their own cows. He also deposed that he put his signature on the seizure list as witness when the police seized the cows. Ext-2 is the seizure list and Ext-2(1) is his signature. He further deposed that their village people found the stolen cows from the house of the village Raikyshamari. Some cows were recovered from the market. PW-3 in his cross examination deposed that he himself did not go for searching the cows. He even did not go the village of Raikyashmari. He deposed that he did not say from whose house the stolen cows were recovered. Police seized six numbers of cows. The description of the said six cows was mentioned in the seizure list.
10. PW-4, Sri Manoranjan Gayari deposed that the incident took place around two years back and at the relevant time cows of one Nabin had been stolen. Later,

**G.R No-1454 of 2016
(State of Assam Vs Md. Mojibur Rahman & Anr)**

the stolen cows were recovered from Raikyashmari. He deposed that Nabin identified his cows at the police station he also deposed that police seized the cows and prepared seizure list wherein he put his signature as witness. Ext-3 is the seizure list and Ext-3(1) is his signature. PW-4 in his cross examination deposed that except putting his signature on the seizure list, he did not know from where the cows were recovered.

11. PW-5, Babul Basumatary deposed that he knows the informant but he did not know the accused of this case. He deposed that the incident took place in the year 2016 and on the day of incident one cow of the informant had stolen. At the same time, the cows of the others were also stolen. Later, the stolen cows were recovered from the field of Raikyshamari while the cows were tied there. He also deposed that police and the members of ABMSU recovered the stolen cows. Police seized the cows and prepared seizure list vide Ext-2 where he put his signature as Ext-2(2).

APPRECIATION OF EVIDENCES

12. On perusal of the Ejahar, it divulges that the prosecution side has got the burden to prove that on 08.05.2016, accused persons stolen 06 (six) numbers of cows from Pungkhabill and Lohakhuti village and prior one week of incident two cows had been stolen by accused persons.
13. To prove the above said accusation, the prosecution side examined as many as five numbers of witnesses including the informant. I have carefully travelled through the testimonies of each witness in the backdrop of entire prosecution case and it finds that PW-1 being the informant not deposed anything against the accused persons. He simple deposed that he does not know the accused and on the date of incident six cows were missing from his cowshed. After four days of the incident, police recovered the said stolen cows and given zimma to him.
14. From the evidence of PW-1, nothing appears to be implicating against the accused persons of this case. PW-1, mentioned the name of accused Majibur Rahman in the ejahar but PW-1 in his cross-examination specifically admitted that he had not seen who committed the alleged theft of cows.

**G.R No-1454 of 2016
(State of Assam Vs Md. Mojibur Rahman & Anr)**

15. PW-2, who is a seizure witness also does not know the accused and simply deposed that he heard about the incident from the informant. The evidence PW-2 appears to be hearsay in nature. PW-3, PW-4 & PW-5 all are appears to be seizure witnesses and they do not have any knowledge from where the stolen cows were recovered.
16. On meticulous perusal of evidences this court finds that testimonies of all the witnesses failed to implicate the accused persons with the alleged incident. They further deposed in their evidences that they do not know who stolen those cows from the house of informant and the informant lodged this case on suspicion against the accused persons. The prosecution side failed to examine any eye witnesses to the alleged incident. The other charge-sheeted witnesses also not appear to be eye witnesses to the alleged incident, which is very much clear from their statements recorded before this court.
17. To sum up the evidences on record, this court finds that the prosecution side failed to adduce any probable evidence before this court under which involvement of the accused persons with the alleged incident may be proved. The evidences offered by the prosecution side specifically failed to implicate the accused persons with the alleged incident.
18. Therefore, in the light of above said evidences offered by the prosecution side is not appears to be implicating against the accused person and trustworthy in nature under which accused person may held guilty for commission of the alleged offence u/s 380 of IPC.
19. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused persons beyond reasonable doubt and as such the accused persons are acquitted from the charge u/s 380 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
20. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 03rd day of July, 2020.

(Sri N. J. Haque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

G.R No-1454 of 2016
(State of Assam Vs Md. Mojibur Rahman & Anr)

ANNEXURE

1. Witnesses for Prosecution:-

PW 1: Sri Amal Basumatary
PW 2: Sri Bhadreswar Boro
PW 3: Sri Krishna Basumatary
PW 4: Sri Monoranjan Gayari
PW 5: Sri Babul Basumatary

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1	:-FIR
Ext 1(1)	:- Signature of PW 1
Ext 2	:-Seizure List
Ext 3	:-Zimmanama

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur