

APPENDIX -12

<p style="text-align: center;">IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR, TEZPUR</p> <p style="text-align: center;">Present: Smt. Priyanka Saikia, JMFC</p> <p style="text-align: center;">(Date of the Judgment)</p> <p style="text-align: center;">04-11-2022</p> <p style="text-align: center;">(CASE NO- G.R. 379/2012)</p> <p style="text-align: center;">(Details of FIR/Crime and Police Station)</p>	
Complainant	State of Assam or Md. Anowar Hussain Choudhury
Represented By	Smti. Bandana Baro, Learned APP
Accused person	Md. Jakir Hussain S/o- Md. Abdul Khaleque Village- Tengabasti P.S.- Tezpur Dist- Sonitpur, Assam
Represented by	Shri J. Borah

APPENDIX -13

Date of offence	26-01-2012
Date of FIR	20-02-2012
Date of charge sheet	30-06-2012
Date of charge frame	16-09-2013
Date of commencement of evidence	24-03-2014
Date on which judgment is reserved	21-10-2022
Date of judgment	04-11-2022
Date of the sentencing order, if any	NIL

Accused Details

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A-1	Md. Jakir Hussain	NIL	21-06-13	Section 457, 380 of IPC	Convicted	NIL	NIL

APPENDIX -14**LIST OF PROSECUTION / DEFENSE / COURT WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Anowar Hussain Choudhury	Informant
PW2	Saidul Rahman	Other witness
PW3	Sahjahan Ali	Other witness
PW4	Abdul Rahman	Other witness
PW5	Sultan Mohammad	Other witness
PW6	Sahara Khatun	Other witness
PW7	Sahara Khatoon	Other witness
PW8	Jagadish Ch. Debnath	Other witness

B. Defense Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/ DEFENSE/ COURT EXHIBITS**A. Prosecution:**

Sr. No	Exhibit Number	Description
1	Ext. 1	Ejahaar
2	Ext. 1(1)	Signature
3	Ext. 2	Sketch map
4	Ext. 2(1)	Signature
5	Ext. 3	Seizure list
6	Ext. 3(1)	Signature
7	Ext. 4	House search
8	Ext. 4(1)	Signature
9	Ext. 5	House search
10	Ext. 5(1)	Signature
11	Ext. 6	Charge sheet
12	Ext. 6(1)	Signature

B. Defense:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

J U D G M E N T

1. The brief fact of the case is that the informant, Anowar Hussain Choudhury lodged an FIR in Tezpur Police Station on 19.02.2012 stating inter alia that on 25.01.2012 at night, A-1 has broken the lock of the door of his old house and stolen the said door and some neem woods. Hence, this case.

2. On receipt of the FIR, the police registered a case as Tezpur P.S. Case No. 209/2012 under Sections 457, 380 of IPC and conducted investigation into the matter. In the mean time Police had arrested A-1 and seized the stolen property from him. On completion of the investigation, the police submitted the charge-sheet against A-1, Md. Zakir Hussain under Sections 457, 380 of IPC.

3. On appearance of A-1, copies were furnished to him and charge was framed under Sections 457, 380 of IPC which on being read over and explained, A-1 pleaded not guilty and claimed to be tried. During trial, the prosecution examined 8 (Eight) numbers of witnesses and closed its evidence. A-1 was examined under Sec. 313 of Cr.P.C. A-1's defence is of innocence.

4. Upon hearing both the parties and on perusal of the case record, the following points for determination were formulated by this Court.

POINTS FOR DETERMINATION

(i) Whether on 25.01.2012 at night, A-1 namely Md. Zakir Hussain had committed Lurking house-trespass or house-breaking by night in order to commit offence at informant's house and committed the offence punishable under Sec. 457 of IPC?

(ii) Whether on same date and time, A-1 namely Md. Zakir Hussain had committed the theft of door and some neem woods at informant's House and had committed the offence punishable under Sec. 380 of IPC?

5. I have heard the learned counsels on both side and have gone through the evidence on records which have been outlined below.

DECISION, DISCUSSION AND REASONS THEREOF

6. PW1 (Md. Anowar Hussain Choudhury), who is the informant in the present case, had deposed in his examination in chief that he knew the A-1. On the day of incident in the year 2012, when PW-1 went to his old house, he noticed that the main door of his old house and some pieces of neem woods were stolen from his old house. After his investigation, he came to know that the stolen door was framed on A-1's house and the neem woods were sold by him. Therefore, PW-1 lodged an FIR. Exhibit 1 is the Ejahar and Exhibit 1(1) is his signature.

During cross-examination of PW-1, he deposed that after 15/20 days of incident he lodged the ejahar. He did not mentioned the reason of delay and description of the door in Ejahar (Ext-1). PW1 said that he had not seen the incident. PW-1's mother had seen that the said stolen door was framed in A-1's house. Police recovered the door from A-1's house in the presence of his mother and one Sultan.

7. P.W.2 (Saidul Rahman) deposed in his evidence-in-chief that he knew both informant and A-1. He got to know that A-1 stole something from the informant. But he has no knowledge whether A-1 actually stole it.

8. P.W.3 (Sahjahan Ali) deposed in his evidence-in-chief that he knew both informant and A-1. He knew that informant's door etc was stolen. Later he came to know that stolen articles were recovered from A-1's house.

In his cross examination, PW-3 deposed that he only heard that stolen articles were recovered from A-1's house.

9. P.W.4 (Abdul Rahman), P.W.5 (Sultan Mohammad), P.W.6 (Sahara Khatun), P.W.7 (Sahara Khatoon) deposed that they know both informant and A-1 and only heard that theft was occurred in informant's house.

10. P.W.8 (Jagadish Ch. Debnath) deposed that on 19-02-2012, he was posted in Borghat O.P. he was endorsed to investigate the case by in-charge Borghat OP, Pankaj Pratim Mahanta vide GDE. NO. 345 dated 19.02.2012. The

same was send to Tezpur PS and the same was registered by O.C. Tezpur vide Tezpur P.S. case No. 209/2012 under Sections 457, 380 of IPC vide GDE. No. 1058 dated 20.02.2012. He was endorsed for further investigation by Biren Ch. Deka, O.C. Tezpur PS dated 20.02.2012. He took the statements of the informant at the place of occurrence and other witnesses. Thereafter, he prepared a sketch map as Ext.P.2. He went to A-1 house and seized the stolen wood along with the frame. Ext.P.3 is the seizure list vide MR No.209/2012 submitted in the Court. He searched A-1 but he did not get him. Ext.P4 & Ext.P5 are the house search report dated 03.03.2012, 02.04.2012 against A-1. He gave zimma to the mother of informant. As PW-8 did not get A-1 on the time of investigation therefore he was declared as an absconder and PW-8 submitted the charge sheet against A-1 under Sections 457, 380 of IPC. Ext.P6 is the charge-sheet.

In his cross examination he stated that the date of incident as mentioned in the ejahar was 25.01.2012 and ejahar was lodged on 19.02.2012 and not mentioned the reason of delay. The stolen articles were mentioned in ejahar as *Neem Takhta* and he has not submitted any proof that seized door belongs to informant.

APPRECIATION OF EVIDENCE

11. In this case, the prime accusations levelled by the informant/PW-1 that someone has stolen his door and some neem woods. The condemnation upon which the

criminal law sets in motion against A-1 of this case needs to be demonstrate by the prosecution beyond any reasonable doubt to prove the guilt of A-1.

12. In this case the prosecution side able to examine 8 (eight) numbers of witnesses to substantiate the accusations against A-1 and on meticulous perusal of the evidences on record, this court finds that PW-1, who testified that in the year 2012 at about night, A-1 had stolen the main door of his old house and some neem woods from his old house.

13. In this case, there are ample corroborating evidences to show that the stolen articles were recovered from the A-1's house and it has also been proved by the chain of evidences adduced by the prosecution that the door and neem woods were stolen by the A-1. Therefore the chain of evidence so far is complete and does not base any reasonable ground for suspicion.

14. A-1 took the plea of total denial. His plea is that while he was attending nature's call, he was arrested by the police. He was no way involved with the alleged occurrence.

15. I have heard the arguments of the learned ASST.PP & the learned defence counsel, learned ASST.PP appearing on behalf of the State of Assam has submitted that the prosecution has been able to bring to light the ingredients

of Sec. 379 of IPC beyond doubt. The learned defence counsel has vehemently argued on the ground that the Ejahar was lodged after 15/20 days and there is lacuna in prosecution as the I.O., who had investigated the case could not be brought before this Court. Therefore, the learned defence counsel has prayed that A-1 may be acquitted from this case.

16. In order to establish the offence under Sec. 380 IPC, the prosecution has to satisfy the following ingredients in the act of the accused:

- i) The accused committed theft
- ii) That such theft was committed in any building, tent or vessel; and
- iii) That such building, tent or vessel was used as a human dwelling or used for the custody of property.

17. At the onset, it is pertinent to note that there are no eye-witnesses in the instant case. None of the PWs have actually seen A-1 committing the theft in the place of occurrence. As per the Exhibit-1, being the Ejahar, a door and neem woods were stolen from the informant's old house. In his deposition, the PW-1 stated that on being searched, the stolen door was recovered by the police from A-1's house. In support of the seizure of the stolen door, the prosecution has exhibited 1 seizure list. It transpires from the case record that the zimma of the stolen door was given to the informant's mother.

18. In this case, on close scrutiny of the evidence of PW's it appears that there was recovery of stolen article from the A-1 and it cannot be denied at all. It is evident on perusal of the evidence of PW-1 it appears that he is not an eye witness to this case. However, mother of PW-1 has informed PW-1 that the stolen door was framed in the A-1's house and when Tezpur police Station went to A-1's house, they recovered the stolen articles vide Seizure List vide No. 209/2012 exhibited as Ext.3, which was identified by PW-1's mother.

19. Having gone through the evidence of PW-1 it is crystal clear that the stolen property (door and neem woods) belongs to him & it was stolen from his house on or before 25.01.2012. There is also no dispute to the fact that PW-1 has got back his half of the property. I must herein point out that the defense has nowhere while cross-examining PW-1 denied these statements so made by him. It is true that none of the PWs examined by the prosecution has witnessed A-1 committing the theft of the door and neem woods from the house of the PW-1. However, it is the specific evidence of PW-8 that the stolen article was recovered from the possession of the A-1. In this respect I find that the defense has not denied such recovery made by PW-8 during investigation. Even though PW-2 did not corroborate the testimony of PW-8 but I find PW-3 has corroborated the testimony of PW-8. And there is

nothing on record to show that PW-2 & PW-3 have got previous enmity with the A-1 so as to falsely implicate him in this case. Rather, it is their specific evidence that the door as recovered from the possession of the A-1 & the defense, I find has failed to impeach their credibility as a witness by way of cross-examination.

20. From the evidence of the Prosecution witness No.8 it is noticed that the Tezpur police recovered the stolen door from the possession of A-1. All the prosecution witnesses are corroborative, believable and trustworthy which inspires confidence of the court that it was A-1 who committed the theft of the door and words of the informant/PW-1 on that particular date. Defence has failed to negate the evidence of the prosecution on the question of charge. The evidence of the prosecution witnesses clearly indicate that it is the A-1, who committed the theft of door of the informant/PW-1.

21. For the argument of delay in lodging of the FIR the Court reiterated what the Supreme court held in ***State of Punjab v. Gurmit Singh, (1996) 2 SCC 384*** that delay in lodging of the FIR in such cases does not vitiate the Prosecution case.

22. The present A-1 has failed to account for the possession of the stolen door. In the instant case the witnesses did not see the fact of stealing of the door by A-1. But police has recovered the stolen door from A-1's

house. This court therefore has no doubt and difficulty in concluding and presuming that it was A-1 who committed the theft of the door belonging to informant.

23. In the present case firstly the prosecution has proved that the stolen door was in possession of A-1, which is the first ingredient of Sec. 380 of IPC. The next ingredients that the stolen door was taken out of the possession of informant/PW-1.

24. On the other hand it is the defense case that the A-1 had purchased the door. But no documentary evidence has been laid in support of such a contention. Thus I hold that the burden to prove such a contention that he was a genuine purchaser of the door was upon the A-1, which he has failed to discharge by cogent evidence.

25. In this case, from another angle also the facts and circumstances go against A-1. It has remained unchallenged that the stolen door was recovered from his possession. A-1 has not claimed that the stolen door in question owned by him. As A-1 was found in possession of the stolen door belonging to the informant/PW-1 without any explanation, a presumption can be drawn under Sec. 114 illustration (a) of Evidence Act that A-1 has stolen the door and woods. Sec. 114 illustration(a) of Evidence Act clearly lays down that the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to

be stolen unless he can account for his possession. In this case since A-1 has failed to prove "account for his possession" by any iota of documentary evidence I am constrained to presume that A-1 has committed the theft. And the defense has failed to rebut such a presumption by an iota of evidence during trial.

26. Now, it was for the A-1 to rebut the presumption by leading evidence. But A-1 has neither led any evidence nor taken any defence in his statement under Sec. 313 of Cr.P.C. A-1 failed to account his possession over it. A-1 also could not probabalise his defence plea through the cross examination of the prosecution witnesses. The material on record nowhere discloses that the PW-1 has any axe to grind against A-1 to falsely implicate him in the instant case. There is also nothing on record that the witnesses examined in the case were related to the informant so as to falsely depose against A-1. In the above facts and circumstances, I see no reason to discard the otherwise trustworthy evidence of the prosecution witnesses. In the context of such facts and circumstances therefore, it can be concluded that the motorcycle is stolen one and A-1 retained it dishonestly, by drawing presumption under Sec. 114 (a) of the Evidence Act.

27. It, thus, transpires that the essential ingredients of the offence under Sec. 380 of IPC are found to be present in the act committed by A-1.

28. Coming to the offence under Sec. 457 IPC, the following are its essential ingredients:

- i) A trespass or breaking of the house has happened
- ii) The presence or attempts to enter into the house had been deliberately concealed
- iii) The trespass or house-break has been committed to giving effect to the commission of any crime punishable with imprisonment
- iv) The house-break or trespass has been committed for the purpose of theft

29. In light of the discussion above which proves beyond reasonable doubt that it was A-1 who committed theft of the door from the informant/PW-1's old house, it is safe to conclude that all the essential ingredients of the offence under Sec. 457 of IPC are found present in the act of A-1. As per the Exhibit 1 being the ejahar, the incident occurred on the night of 25.01.2012. As per the deposition of the PWs, the next morning after the occurrence, he found his old house has been broken into and the main door and neem woods of the old house were stolen. Subsequently, as per the deposition of the PW-8/I.O. the stolen door was recovered in A-1's house. The participation of the A-1 in committing the lurking house trespass/house-breaking by night at the informant's old house clearly indicates that he had to do so at the place and time of occurrence. As such, it clearly transpires that there are sufficient materials to

connect A-1 with the crime and the circumstances relied on by the prosecution forms a chain of events connecting him with the crime.

30. Further, while it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. In **Inder Singh Vs State (Delhi Admin.)** reported in **1978 SCR (3) 393**, it was held that Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.

31. Accordingly, the prosecution has able to prove the charge under Sections 457, 380 of IPC against A-1 beyond all reasonable doubt. As the offence under Sections 457, 380 of IPC are proved, that is why I consider as to whether A-1 deserves the benefit of Probation of the Offenders Act or the provision of Sec. 360 of Cr.P.C., but I find in negative.

32. In my considered view, A-1 must keep in mind that stealing is not a business for profit making and it is a business for loss and punishable offence. However, considering the nature of the offences committed, I am not inclined to exercise powers under Sec. 3 or 4 of the Probation of Offenders Act, 1958.

33. I have heard A-1/convict on the point of sentence to be imposed upon him which is recorded in a separate sheet and tagged with the case record. A-1/convict has stated that he is a poor person and sole bread-earner of the family and he has to look after his family i.e. his old widow mother and 5 minor children. He has stated that he shall not commit such kind of offence in future and prayed for mercy of the court. I have considered the submission of A-1/convict.

34. It is not on record that A-1/convict is a previous convict. Therefore, long term imprisonment may not have healthy effect or result of the case. At the same time nature of offence committed by A-1/convict is required to be kept in mind.

35. Accordingly, I sentence A-1/convict to undergo simple imprisonment for 6 (six) months and to pay a fine of Rs. 5,000/- (Five Thousand Rupees) only in default further simple imprisonment for 1 (one) month for the offence under Sec. 380 of IPC. He is also sentenced to undergo simple imprisonment for a period of 6 (six) months and to pay fine of Rs. 1,000/- (Rupees One Thousand) only in default to undergo simple imprisonment for a period of 7 (Seven) days under Sec. 457 of IPC.

36. Both the substantive sentences of imprisonment are to run concurrently.

37. Any period of detention undergone by the A-1/convict shall be set off against the term of his sentence under Sec. 428 of Cr.P.C.

38. Let the fine, if paid, be deposited in the State Treasury under the proper head.

39. Let a copy of the judgment be given to the A-1/convict immediately free of cost as per the provisions of Sec. 363(1), Cr.P.C.

40. A-1/convict is also informed of his right of appeal to higher court against the judgment and order of conviction and sentence.

41. The custody of the seized stolen property is made absolute in favour of the informant/PW-1.

Given under my hand and seal of this court on this 4th day of November, 2022 at Sonitpur Assam.

(Smt. Priyanka Saikia)

Judicial Magistrate First Class

Sonitpur, Tezpur