

GR 686/15
(State of Assam Vs Abdul @ Hukmat& other)

<u>IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE</u> <u>SONITPUR, TEZPUR, ASSAM</u>	
Present : Smti P Chakravarty Addl. Chief Judicial Magistrate Sonitpur, Tezpur Date of judgment : -07.09.2022 U/S- 380of IPC Details of FIR/Crime and Police Station	
Complainant :	State of Assam Or Md. Alauddin S/O- Late Lal Chan Vill- Napam Gaon PS- Tezpur Dist- Sonitpur
Represented by :	Sri. P. Baruah, Learned Addl. Public Prosecutor
Accused :	1. Abdul @ Hukat S/O- Kasem Ali, Vill:- Na Pam Gaon PS- Tezpur. Dist: Sonitpur. 2. Md. Ashikur Rahman S/O- Abdul Vill:- Na Pam Gaon PS- Tezpur. Dist: Sonitpur.
Represented by :	Mr Bijoy Kumar Basumatary

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Date of offence :	31-03-2015
Date of FIR :	01-04-2015
Date of Charge sheet :	30-08-2015
Date of commencement of evidence :	03-06-2022, 23-08-2022
Date on which judgment is reserved :	
Date of judgment :	07-09-2022
Date of Sentencing order, if any :	Nil

ACCUSED DETAILS:

Rank of the 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 428, Cr.P.C.
1.	Abdul @ Hukmat	Nil	18-02-22	U/S-380 of IPC	Acquitted	Nil	Nil
2.	Md. Asikur Rahman	Nil	18-02-22	U/S-380 of IPC	Acquitted	Nil	Nil

J U D G M E N T

1. The prosecution case arises out of an ejahar lodged by the informant Alauddin stating inter alia that on 31.03.2015 at about 9.15 pm, the accused person, Ashiquil had called from his mobile number 8486525640 on his mobile and asked about his son's whereabouts. It is further stated that few days prior to the alleged incident the son of the informant Nur Amin was asked to stand as a witness in favour of the accused persons in connection with a criminal case but as his son refused to be a witness in that case then out of grudge the accused persons had on the relevant date at mid night committed theft in the firm house belonging to the informant situated at Na Pam Chapori. It is further stated that the accused persons had committed theft of 20 tins of jaggery and some agricultural tools along with cash amount of Rs.3,000/- from the possession of the son of the informant namely Nur Amin while he was in the firm house at Napamby committing house breaking in the night. Hence, this case.

2. On receipt of the ejahar, Tezpur PS case no.337/15U/S-380 IPC was registered and ASI-Naren Phukan was entrusted with the investigation of this case. After completion of investigation the police filed charge-sheet against the accused persons namely, Abdul @ Hukmat and Md. Asikur Rahman U/S-380 of IPC. The accused persons appeared before the court and they were furnished copies as mandated u/s 207 Cr.PC. Having found a case against the accused persons U/S- 380 IPC, charge under the said section of law was framed and read over to the accused persons to which they pleaded not guilty and claimed to be tried.

3. The prosecution examined only 2 (two) numbers of witnesses i.e. the informant and his son as PW-1 and 2. Thereafter, on the oral prayer of the prosecution and defence sides as well as considering the evidence of the PW2, further examination of prosecution witnesses and SD were dispensed with.

Points for determination :-

- i. Whether the accused persons on 31-03-15 at about 9.15 pm had committed theft of 20 tins of jaggery along with some agricultural tools and cash amount of Rs.3000/- by committing house breaking of the informant situated at Napam Chapori and thereby committed the offence punishable under Section 380 of IPC?

DISCUSSION OF EVIDENCE

4. **PW1 Allaluddin who is the informant of this case** had deposed in his evidence in chief that the accused persons had committed theft by house breaking on the relevant night in his firm house and had taken away the 20 tins of jaggery along with some agricultural tools and his son Nur Amin who was staying on that firm house on that night informed him about the theft committed by the accused persons. He has identified his ejahar as Ext.P1/PW-1 whereupon Ext.P1(1).PW-1 is his signature.

During his cross-examination, he stated that at the time of the occurrence he was at his house as such he did not see the act of theft being committed inside his firm house.

5. **PW-2 Nur Amin who** is the son of the informant appeared after receiving the summon issued to him and stated that he knows the accused persons who are his co-villagers and on the night of the alleged incident he was in their firm house situated at Na Pam Chapori and at that time the accused person Ashiquil had called him over telephone and talked with him. Towards mid night some unknown person had come to their firm house and as they had covered their faces under mask, he could not recognise those fellows. Thereafter in order to save his life he left the firm house and took shelter in a neighbouring house and later on his father lodged the ejahar as some of the articles were missing from their firm house. He further stated that presently his father is not willing to proceed with this case.

In his cross-examination PW-2 stated that he could not say whether the accused persons were involved in committing the theft inside the firm house on that relevant day and he could not say whether any stolen articles were recovered from their house. He stated that he has no objection if the case against the accused person is withdrawn by the informant.

DECISION AND REASONS THEREOF

5. I have heard the prosecution and defence side.

8. Let me now analyse how far the prosecution has been able to prove its case against the accused persons.

9. It is seen that PW1 being the informant of this case in course of his evidence admitted that at the time of the occurrence he was present at his house as such he did not see the act of theft being committed by the accused persons in his firm house. Similarly, the PW-2 also expressed his ignorance about the fact as to who had committed the theft of the articles inside their firm house. He even stated that he could not say whether the accused persons were involved in commission of the alleged incident of theft and he could not say whether any of the stolen articles were recovered from their house. It is found that the PW-2 who was present at the firm house on the relevant date clearly stated that he could not recognize the face of the persons who had come to the firm house on that night. Moreover, he also stated that at present his father is not willing to proceed with this case against the accused persons and he too has no any objection regarding the same.

Thus, it is found that the PWs has in no manner supported the prosecution case. This being the position, the prosecution case cannot be said to have been proved beyond all reasonable doubt.

10. In view of the above aspects, it is hereby held that prosecution has failed to prove its case beyond all reasonable doubt. As such, accused persons namely, Abdul @ Hukmatand Md. Asikur Rahman are acquitted of the charge U/S- 380, IPC and is set at liberty forthwith. The bail bond furnished by the accused persons is hereby extended for six months from today (07.09.2022).

9. Judgement is delivered and pronounced in open court.

10. Given under my hand and seal of this court on this 07th day of September, 2022

Smti P Chakravarty
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur

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LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Alauddin	Informant
PW-2	Nur Amin	

B. Defence 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/ DEFENCE/ COURT EXHIBITS

1. Prosecution:

Sr. No	Exhibit Number	Description
1	Ext.P1/ PW-1	Ejahaar

B. Defence:

Sr. No	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Nil	Nil

D. Material Objects:

Sr. No	Exhibit Number	Description
	Nil	Nil