

**G.R Case No-1638 of 2016
(State of Assam Vs Md. Hanif Ali)**

"INVESTIGATION"

2. On receipt of the ejahar, Chariduar P.S Case No-86 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-380/411 of I.P.C against the above-named accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of Cr.P.C was furnished to the above-named accused person. After hearing both sides, charge of offence u/s-380/411 of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in office, to which he 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 six (06) numbers of witnesses including the informant and the Investigating Officer in support of this case. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused was examined u/s-313 of Cr.P.C and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his 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 are:-**
 - (i.) Whether on 25.05.2016 at night at a place called Bhalukpong under Chariduar PS the accused person committed theft of mobile handsets from the shop of the informant at Bhalukpong Centre and thereby committed an offence punishable u/s-380 of IPC?
 - (ii.) Whether the accused person on the same date, time and place had retained the stolen mobile handset knowing the same to be stolen property and thereby committed an offence punishable u/s-411 of IPC?

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EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined as many as six numbers of witnesses in support of this case. I have carefully travelled through the testimonies of the witnesses in the back drop of the entire case.
8. PW-1, Sri Rakesh Dutta deposed before this court that he does not know the informant and the accused person of this case. He also deposed that around 2-2 ½ months he has come to open his shop at Bhalukpong, then he saw people gathering outside the mobile phone shop of a person named Manish and when he approached near the crowd and went inside his shop he saw the roof of the said shop was broken and he came to know that theft had taken place in that shop. Then he came back to his shop. PW-1 in his cross-examination testified that he open his shop usually in between 07:30 AM to 8 AM. He also deposed that Manish shop is just next to his shop. He further deposed that after going in Manish shop he came to know about the occurrence of theft.
9. PW-2, Sri Nani Gopal Mandal deposed before the court that he does not know the informant and the accused person of this case. He also deposed that around one and half months he was in his shop at Bhalukpong. He further deposed that then while serving tea to his customers nearby, he saw a gathering near a mobile shop which is located one shop ahead of his shop. Then, he came to know that theft had taken place in that shop. PW-2 in his cross-examination testified that he came to know about the theft from the crowd but he does not know what had actually happened.
10. PW-3, Sri Sanjay Tseing being the informant of this case deposed before the court that he knows the accused person of this case. He also deposed that the incident took place on 25.05.2016 at around 10 PM to 11 PM and on the date of occurrence, at night some unknown culprits had stolen away around 21 mobile phones from his shop situated at Bhalukpung by cutting the tin sheets of the roof of his shop. He also deposed that next day he came to know about the incident when he opened his shop. Thereafter, he lodged the ejahar. He further deposed that on the date of lodging the ejahar police called him over phone and informed him that the culprit who has stolen his mobile phone has apprehended. He deposed that he recovered the mobile phones from Chariduar PS. He further deposed that he identified some of his stolen mobile phone at the police station. He also deposed that he came to know at the police station that the mobile phones were

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recovered from the possession of accused. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1(1). PW-3 in his cross-examination testified that he did not stay at his shop. He also deposed that his house is about one and half kilometre away from his shop.

11. PW-4, Md. Sabiquil Hoque deposed before the court that he does not know the informant but he knows the accused of this case. He also deposed that one day police went to the house of accused and on seeing the police he went there. He further deposed that police recovered some mobile phones along with other articles from the house of accused and thereafter, seized the same wherein he put his signature as seizure witness. He also deposed that village headman also put his signature on the seizure list. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(1). Later, he came to know that accused committed theft of mobile phones from a shop situated at Bhalukpong.
12. PW-4 in his cross-examination testified that police went there during evening time. He also deposed that Gonburah has a shop at Amoni Centre and he always stays with Gaon Burah. He also deposed that police recovered the mobile phones and later police took their signatures. He further deposed that later he came to know that police recovered the mobile phones from the house of accused. He admitted that he did not go to the house of accused with the police personnel.
13. PW-5, Sri Prafulla Tanti deposed before the court that he knows the accused of this case but he does not know the informant. He also deposed that the incident took place in the year 2016 one day at about 02:30 PM. He further deposed that police personnel from Chariduar PS called him to the police station and thereafter, he went to the police station and saw around 16-17 nos of mobile handsets and C.D. which were seized by police. He also deposed that police shown him the accused at the police station. He identified the seizure list as Ext-2 wherein he put his signature as Ext-2(2). PW-5 in his cross-examination testified that he cannot say the names of company of the said mobile phones.
14. PW-6, ASI Khagen Borah being the Investigating Officer of this case deposed before the court that on 26.05.2016, he was posted at Bhalukpung P.P as ASI and on that day, the O/C of Chariduar PS endorsed him to investigate the case vide Chariduar PS Case No-86/16, under section-380 of IPC lodged by one Sri Sanjay Tsering. Thereafter, he went to

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the place of occurrence situated at Bhalukpung Centre, prepared sketch map and recorded the statement of the witnesses at the place of occurrence. He identified the sketch map as Ext-3 wherein he put his signature as Ext-3(1). He further deposed that he also seized some mobile handsets i.e. (i) 01 no of LED C.D, (ii) 04 nos of Lava mobile, (iii) 06 no of Chalkon mobile, (iv) 02 nos of Jivi mobile, (v) 01 no of Yura Y-3 plus mobile, (vi) 01 no of KMC M15 mobile, (vii) 01 no of Samsung mobile, (viii) 01 no of Wellcon mobile; total 18 nos and also seized one Neeko Bage marked as MR No-38/16 from one Md. Hanif Ali, son of Md. Idrish Ali. Thereafter, he arrested the accused Md. Hanif Ali and forwarded him before the Hon'ble Court. He identified the seizure list as Ext-2 and Ext-2(3) is his signature. He further deposed that there was another guilty associate of the accused but he failed to apprehend him as he found to be traceless. He also deposed that he also recorded the statement of the witnesses at the time of seizing the aforesaid articles. Thereafter, on being transferred, he handed over the case diary to O/C of Chariduar PS. Consequently, one SI named Gitumoni Deka investigated the case and on completion of the investigation, SI Gitumoni Deka has submitted the charge sheet against the accused Md. Hanif Ali u/s-380/411 of IPC. He identified the charge sheet as Ext-4 and Ext-4(1) is the signature of SI Gitumoni Deka, which is known to him.

15. PW-6 in his cross-examination testified that he seized the articles vide Ext-2 (seizure list) from a shop situated nearby Gudamghat area. He admitted that he did not seize anything from the possession of the accused. He also admitted that he did not collect of receipt of sell from the shop.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

16. It is worth mentioning that, the criminal jurisprudence of the country rests on the principle of proving the guilt of the accused beyond all reasonable doubt by the prosecution. There must not be any shadow of doubt on the truthfulness of the prosecution case. This being the cardinal principle of criminal jurisprudence, we must scrutinize the evidence produced by the prosecution from all possible corners and must also test the veracity of the witnesses. If the witnesses are found as wholly reliable on the point of guilt of the accused then only the accused can be held as guilty of the alleged crime.
17. In this case prior discussing the evidence on record, let us appreciate the prime accusations of prosecution side. The prosecution sets in motion against the accused as

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soon as one ejahar lodged by the informant alleging stolen of mobile handsets from the shop of the informant and consequent to that after conclusion of the investigation charge under section-380/411 of IPC framed against the accused person. Considering the nature of charge framed against the accused, the prosecution side has got burden to prove that on the date of incident the accused stolen the mobile handsets and retained the same knowing the same to be stolen. In this case to substantiate the allegations the prosecution side examined as many as six numbers of witnesses including the informant and the investigating officer in support of this case.

18. Now, coming to the charges under section-380/411 of Indian Penal Code, this court needs to understand as to what are the essential ingredients of an offence of Section-380 of IPC that needs to be established.

- a) Dishonest intention to take property,
- b) The property must be movable,
- c) It should be taken out of the possession of another person,
- d) It should be taken without the consent of that person,
- e) There must be some moving of the property in order to accomplish or taking of it.

19. To bring home charges against the accused person for offence punishable under section 411 of IPC, the following ingredients must be present.

- (i) That some property was stolen;
- (ii) That the accused received or retained such property;
- (iii) That the accused received or retained such property dishonestly;
- (iv) That the accused did so knowingly or having reason to believe that such property was stolen.

20. On meticulous perusal of the evidences, this court finds that PW-3 himself not witnessed the alleged incident and it his suspicion upon which he has lodged the ejahar against the accused and PW-1 and PW-2 appears to be an hearsay witnesses as they only heard about the incident and they don't know what had actually happened. It is crystal clear from the evidences of PW-2, PW-2 & PW-3 that prosecution side failed to adduce any direct or circumstantial evidence to prove the alleged stolen of mobile phones from the

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shop of the informant. On meticulous perusal of the evidences on record, this court finds that no witnesses have seen the alleged incident of theft.

21. Now, coming to the evidences presented by seizure witnesses i.e. PW-4 and PW-5, this court finds that no seizure witnesses have witnessed the seizure of stolen mobile phones from the possession of the accused person. One seizure witness i.e. PW-5 stated that he was shown the seized articles in the police station and another seizure witness (PW-4) stated that police recovered the articles and then in the shop of Gaon Burah police obtained his signature. So, it is seen that none of the seizure witnesses were present at the time of the seizure of the stolen articles.
22. Now, PW-6, the Investigating Officer who himself deposed that he had seized the articles from the house of the accused person but he in his cross-examination categorically admitted that he has not seized anything from the possession of the accused person. So, from the evidences on record, it is seen that none of the witnesses have seen the accused has stolen away the seized mobile phones from the shop of the informant. Accordingly, the offence punishable under section-380 of IPC stands not proved and in respect of the retaining the stolen property as described under section-411 of IPC, nobody has deposed before the court that the stolen mobile phones were seized from the possession of the accused. More also, the Investigating Officer who has seized the alleged mobile phone but in the same time he during his cross-examination admitted that nothing has seized from the possession of the accused.
23. The contention of the ejahar itself make known that the ejahar was lodged on the basis of the suspicion against the accused person. But whether the said mobile phones recovered from the possession of the accused actually belongs to the informant of this case that was not clarified by the prosecution side. More also there is no proof or evidence presented by the prosecution side establishing the fact that the recovered mobile phones from the alleged possession of the accused person is the mobile handsets which were stolen from the shop of the informant as the Investigating Officer (PW-6) himself during his cross examination admitted that he failed to collect any receipt of sell from the shop of the informant. The prosecution side even failed to adduce any authentic evidence to prove the alleged seizure of the mobile handsets from the possession of the accused. Hence, from the evidences presented by the prosecution witnesses, this court is unable to make any

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inference that may raise finger against the involvement of the accused with the alleged occurrence. The prosecution side even failed to adduce any single evidence to substantiate the fact of retaining the stolen article by the accused person. There is no cogent evidence found on record which may prove that the mobile handsets which were recovered, actually belongs to anyone and in absence of any proof of such fact, it is hardly possible for a court to decide that accused actually retained any stolen article. One seizure list found enclosed with the case record and on perusal of the same, it is seen that the contention of the seizure list not appears to be proved from the evidence of informant.

24. To sum up the evidences on record this court finds that evidences adduced before this court by the prosecution not appears to be fully reliable and further none have witnessed the alleged incident. The prosecution even failed to adduce any specific trustworthy evidence to establish the fact of recovery of mobile handsets from the possession of accused person. The I.O even failed to make any investigation in respect of identifying the mobile handsets with the alleged stolen mobile handsets of informant.
25. Therefore, in the light of all the aforesaid discussion, I am of the opinion that prosecution has failed to prove the charges against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charge u/s-380/411 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
26. Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 04th day of January, 2022 at Tezpur.

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

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ANNEXURE

1. Witnesses for Prosecution:-

- PW-1 :- Sri Rakesh Dutta,
PW-2 :- Sri Nani Gopal Mandal,
PW-3 :- Sri Sanjay Tseing, Informant
PW-4 :- Md. Sabiqul Hoque,
PW-5 :- Sri Prafulla Tanti,
PW-6 :- ASI Khagen Borah, I.O.

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

- Ext-1 :- FIR
Ext-1(1) :- Signature of PW-3
Ext-2 :- Seizure List
Ext-2(1) :- Signature of PW-4
Ext-2(2) :- Signature of PW-5
Ext-2(3) :- Signature of PW-6
Ext-3 :- Sketch Map
Ext-3(1) :- Signature of PW-6
Ext-4 :- Charge Sheet
Ext-4(1) :- Signature of SI Gitumoni Deka

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**