

GR CASE No- 3155/16

APPENDIX -12

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

Present: Vishek Bhuyan, AJS, Judicial Magistrate First Class

(Date of the Judgment)

20.06.2022

(GR CASE No- 3155/16)

(Dhekiajuli Police Station Case No- 663/16)

COMPLAINANT :	STATE OF ASSAM OR Md Ramjan Ali S/o- Late Jahed Ali Address- Rangagora P.S- Dhekiajuli Dist- Sonitpur, Assam
REPRESENTED BY	Mr Tapan Das, Ld. Addl. P.P
ACCUSED	1. Md Muslemuddin S/o-Late Taleb Hussain Village-No 1 Rangagora 2. Md Kurban Ali S/o- Md Muslemuddin Village-No 1 Rangagora P.S- Dhekiajuli Dist- Sonitpur, Assam
REPRESENTED BY	Ld. Advocates Sri A.K Saikia, P. Saikia

APPENDIX -13

Date of Offence	20.09.2016
Date of FIR.	21.09.2016
Date of Charge-sheet	30.07.2017
Date of Consideration of charge	27.11.2018
Date of commencement of evidence	28.01.2019,24.02.2022
Date on which judgment is reserved	NIL
Date of the Judgment	20.06.2022
Date of the 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 438, Cr.P.C.
A-1	Md Muslemuddin	22.09.2016	07.10.2016 (Court bail)	Under Section 457/380 IPC	Acquitted	NIL	NIL
A-2	Md Kurban Ali	NIL	25.10.2018 (Court bail)	Under Section 457/380 IPC	Acquitted	NIL	NIL

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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)
PW-1	Hallaluddin	Other Witness
PW-2	Mubarak Hussain	Other Witness
PW-1	Badaruddin	Other Witness
PW-1	Ramjan Ali	Informant

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	NIL	NIL

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	NIL	NIL

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

SI. No	Exhibit Number	Description
1	Exhibit-P1	Ejaha
2	Exhibit-P1(1)	Signature of informant in the ejaha

B. Defence:

SI. No	Exhibit Number	Description
1	NIL	NIL

C. Court Exhibits:

SI. No	Exhibit Number	Description
1	NIL	NIL

D. Material Objects:

SI. No	Exhibit Number	Description
1	NIL	NIL

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

TEZPUR, ASSAM

G.R CASE NO:3155/16

U/ Sec 457/380 of IPC

of the Indian Penal Code

State of Assam

.....PROSECUTOR

-Vs.-

Md. Muslim Uddin

S/o Lt. Taleb Ali

Md. Kurban Ali

S/o Kurban Ali

Village- Keherukhanda, Dhekiajuli, Sonitpur

.....ACCUSED

PRESENT: VISHEK BHUYAN, LL.M, AJS

JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

FOR PROSECUTION: LD. APP. Mr Tapan Das

FOR DEFENCE: Ld. Advocates Sri A.K Saikia, P. Saikia

EVIDENCE RECORDED: 28.01.2019, 24.02.2022

ARGUMENTS HEARD ON: 06.06.2022

JUDGEMENT DELIVERED ON: 20.06.2022

JUDGMENT

1. The accused persons Muslemuddin and Kurban Ali stood trial for offences punishable under Sections 457/380 of Indian Penal Code (hereinafter IPC).

Information and Investigation

2. The genesis of this case has its roots with the lodging of Ejahar by informant Md. Ramjan Ali who alleges that on 20.09.2016 when no one was present in his house, the accused persons broke the wall of his house to gain entry and stole a T.V, gas cylinder, an old BSA cycle, clothes and utensils. Hence the case.
3. The Ejahar was received and registered as Dhekiajuli P.S Case no 663/16 U/s 457/380 of IPC. The police after investigation submitted charge sheet against the accused persons under sections 457/380 of IPC.

Trial

4. Cognizance was taken of the Charge sheeted offences and processes were issued upon which the accused persons appeared and copies of the relevant documents were furnished to them in compliance with section 207 of Code of Criminal Procedure (hereinafter referred as CrPC). The particulars of the offences were explained to the accused persons, to which they pleaded not guilty and claimed to be tried.
5. In this case, the prosecution has examined 4(four) PWs including the informant as PW-4. The accused persons were examined U/s 313 of CrPC and their plea was of total denial.
6. After hearing the learned Counsel of both sides and after perusal of the case record, I do hereby frame the following points of determination.

POINTS FOR DETERMINATION

- i. Whether the accused persons Muslemuddin and Kurban Ali on 20.09.2016 during evening hours broke into the house of the informant Ramjan Ali and Halaluddin in order to commit theft and thereby committed an offence punishable U/s 457 of IPC?***
- ii. Whether the accused persons at around the same time and place committed theft in the dwelling house of the informant and Halaluddin and thereby committed an offence punishable U/s 380 of IPC?***

PROSECUTION EVIDENCE

Evidence of victim

- 7. PW-1 Hallaluddin** states that he knows both the informant and the accused person but he does not have any personal relation with the other co-accused. The incident took place around 2.5 years back during night time when theft was committed at his house but he was in Chennai. He was informed by the informant that a mobile handset, television, documents and clothes were stolen from his house. His son informed the Police and the Police was able to recover the stolen articles from the house of the accused Mulemuiddin. He returned from Chennai on 14.01.2018. **In his cross examination** he states that he did not give statement before the Police and hence deposed for the first time before the Hon'ble Court. He states that he does not remember the exact date of occurrence of the incident but it was his son Muzahidul Islam who lodged an ejahar before the Dhekiajuli P.S and accordingly the stolen properties were recovered. He further reveals that he deposed before the Court based on the ejahar lodged by his son. He does not have any knowledge as to at what stage the case initiated on ejahar filed by Muzahidul is pending. He visited the house one year after the occurrence of incident. He did not witness any stolen article being recovered from the house of Muslemuddin. He does not suspect the accused persons for the alleged offence of theft.

Evidence of other witnesses

8. **PW-2 Mubarak Hussain** states that the informant is his younger brother and the accused persons are from the same village. The incident took place two years ago wherein a theft was committed in the house of Ranjan Ali and a television set, gas cylinder, cycle and clothes were stolen from his house. On the next day of the incident the accused Muslemuddin was arrested on grounds of suspicion by the Police. Police recorded his statement and the stolen articles are yet to be recovered. **In his cross examination** he states that the informant resides near his house and the incident was reported to him by his family. He did not witness the commission of theft and it was the public who suspected the accused Muslemuddin to have committed.
9. **PW-3 Badaruddin** states that he knows the informant. He also knows the accused persons. The incident took place about 2.5 years ago and while he was in his house during morning hours, he heard a commotion and he was informed by his nephew Musahidul Islam that a theft was committed in the house of Ramjan Ali. He then went and found that a television set, clothes, cash and ATM card were stolen. He also visited the house of Ramjan Ali and found that gas cylinder, cycle, television and clothes were stolen. The Police did not record his statement. **In his cross examination** he deposed that he did not state before the Police as to the fact that he heard a commotion during the morning hours in relation to the theft. He further admitted that he does not know the description of the stolen articles and the same could be found in the possession of any other person.

Evidence of informant

10. **PW-4 Ramjan Ali** is the informant of this case and he states that he knows the accused persons. The incident occurred about 5 to 6 years back. A theft took place while he was not present at his house. He arrived and saw a thief entering his house by breaking the wall, a cycle, television, gas cylinder etc were stolen. On suspicion he filed the ejahar. **In his cross examination** the informant reveals that the Police did not recover the stolen articles from his house as he mentioned in the ejahar. In his ejahar(P-1) he mentioned in his ejahar that a TV worth Rs 7,000/- was stolen. And the wall which was

broken by the accused was made of bamboo. The Police did not make any seizure of the part of broken wall. He was informed of the incident over the phone by Kitab Ali. He has not mentioned of the serial number or brand name of the television that was stolen. The Police did not seize any purchase receipt of the stolen television. Hassan Ali is the son of his uncle. Hassan Ali is an informer at Dhekiajuli PS at the time of the incident. A case was filed against Hassan Ali by Rohila Khatoon who stated that her daughter Rohila Khatoon was kidnapped, the same case is pending as GR-1924/2006 U/s 376 of IPC. He does not know whether Mumtaz Begum is the daughter of the accused. The informant denied suggestion that he the fact that Rohila Begum is the wife of accused Mulemuddin and Mumtaz Begum is his daughter. He further denied suggestion that he filed the case as revenge against the accused on behalf of Hassan Ali. The Police while searching the house of the accused also seized some articles that belonged to the accused person.

DISCUSSIONS, DECISIONS AND REASONS THEREOF

11. After going through the evidences brought on record as well as other materials placed before me, the following points are pertinent to be taken note of as it creates reasonable doubt regarding the guilt of the accused persons in light of the charges brought against them-

- i. PW-1 Hallaluddin who was named as one of the victims, in whose house the offence of theft was alleged to have been committed, has stated in his cross examination that he had deposed on behalf of ejahar lodged by Muzahidul, but the present case has been instituted based on ejahar lodged by Ramjan Ali. He further deposed in his cross examination that he has not witnessed the articles being recovered from the accused person and hence he holds no grounds of suspicion against them.
- ii. Informant Ramjan Ali has stated in his ejahar as well as his evidence that at the time when the theft occurred he was not present and that he was attending a marriage. But without witnessing the incident himself he already mentioned the names of the accused persons based on pure suspicion, this was prior to the Police recovering the allegedly

stolen article from the house of the accused. It creates reasonable doubt as to the fact that there might have been some pre existing dispute between the accused persons and the informant and hence the informant might have lodged the FIR to exact revenge. This theory is further supported when suggestions were made to the informant/PW-4 in his cross examination that, one Hassan Ali who is a relative of the informant, kidnapped the daughter of the accused Muslemuddin due to which a case U/s 376 of IPC registered as GR-1924/2006 was lodged against Hassan Ali and the informant being a relative of Hassan Ali filed this case against accused Muslemuddin to exact revenge. This suggestion even though denied by the informant, still creates reasonable doubt in the eyes of this Court, as he denied knowing that Rohila Khatoon is the wife of accused Muslemuddin but he did not elaborate further whether accused Muslemuddin had a wife or is it someone else. Furthermore the informant himself admitted that he knew the accused persons and that they are from his village, logic will dictate that since the accused is from the same village hence the informant should be well aware about his wife.

- iii. Furthermore, the informant in his ejahar has mentioned that a Videocon television was stolen from his house and that it was recovered from the house of accused by the Police. But upon a perusal of the seizure list dated 21.09.2016 bearing MR 167/16, a BPL television was recovered from the house of the accused persons. Additionally, the informant has not submitted any purchase receipt of the stolen television along with the ejahar. So the seized television may very well belong to the accused himself.
- iv. The informant has mentioned in his ejahar that the accused entered into the house of the informant by breaking the wall. But it is seen that no seizure of broken pieces of wall has been made by the Police.
- v. The informant has also stated in his ejahar that gas cylinder, an old BSA cycle, clothes and utensils was also stolen from his house. But none of the said stolen articles have been recovered from the possession of the accused persons. Furthermore, the articles that were

alleged to have been stolen are articles of general everyday usage and the same can be found in any other household.

12. In light of the discussion made above, there appears to be considerable lacunae in the evidence of prosecution that absolutely creates reasonable doubt whether the accused persons have committed the offences alleged. Furthermore, I do not deem it necessary to delve into the ingredients of the offences alleged since it appears to this Court that the accused persons have not committed the theft in the house of the informant as alleged.

13. As such, the prosecution has miserably failed to prove that the accused persons have committed the offences u/s 457/380 of IPC beyond reasonable doubt.

ORDER

In light of the above, it is held that the prosecution has failed to prove the case U/s 457/380 of IPC against the accused persons **Muslemuddin and Kurban Ali** beyond all reasonable doubt. Hence, they are hereby **acquitted** and set at liberty forthwith.

However, his bail bond shall remain in force for a period of next 6 (six) months as provided by section 437A CrPC.

Let articles seized vide seizure list bearing MR No-167/16 be disposed of as per law.

Given in my hand and under the seal of this court on this the 20th day of June, 2022.

Typed by Me:

(Mr Vishek Bhuyan)
Judicial Magistrate First Class
Sonitpur, Tezpur