

**DISTRICT : KOKRAJHAR****IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,  
KOKRAJHAR****GR Case No. 808/2014**

Under Section 457/380 of I.P.C

State of Assam

**..... Complainant**

-Vs-

Md. Sumar Ali

**..... Accused**PRESENT : **Achyutananda Saikia, AJS**

## APPEARANCE:

For the State: Sri Lakshman Barman, Ld. APP  
For the Accused: Sri Narayan Sarkar, Ld. Advocate  
Date of Charge: 21.12.17  
Date of Evidence: 04.01.18 and 18.01.18  
Date of Argument: 18.01.18  
Date of Judgment: 25.01.18

**JUDGMENT**

1. The prosecution case is initiated with the lodging of an FIR by one Md. Nazrul Islam Miah before the Officer-in-Charge of Bagribari P.S. to the effect that on 05.09.14 in the night some unknown thief committed theft in his hardware and mobile recharge shop situated near Mahamaya Bus Stand by breaking the lock of the door and had stolen away one inverter, inverter battery, mobile recharge cards, old mobile batteries and cash to a total value of about Rs. 25,000/-. Hence the case.
2. Accordingly, Bagribari Police Station Case No. 77/14 was registered under Section 457/380 of IPC. Accused Md. Sumar Ali was arrested during investigation as the stolen inverter and the battery were recovered from his possession and the inverter and the battery were given in zimma of the informant Md. Nazrul Islam Miah vide order dated 18.09.14. Accused Md. Sumar Ali was subsequently released on bail. After completion of investigation police submitted Charge Sheet under Section 457/380 of IPC

against the accused Md. Sumar Ali and against another accused Md. Mahar Ali Mondal showing him as absconder.

3. Processes were issued for attendance of the accused Md. Sumar Ali and Md. Mahar Ali Mondal but since their attendance could not be secured by issuing summons, warrants of arrest were issued subsequently. Accused Md. Sumar Ali was arrested on the strength of warrant of arrest and he was sent to judicial custody, however again granted bail. Attendance of accused Md. Mahar Ali Mondal since could not be secured by warrant of arrest, proclamation was issued against him and on receipt of report of due execution thereof case against accused Md. Mahar Ali Mondal was filed. However, accused Md. Sumar Ali again defaulted in attending Court and thus again arrested on the strength of warrant of arrest and was taken into judicial custody. Copies of relevant documents submitted by the Investigating Officer were furnished to him and formal charges under Section 457/380 of IPC were framed against him and contents of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.
4. Trial proceeded against accused Md. Sumar Ali while he was in judicial custody. During trial prosecution examined as many as four prosecution witnesses and defence examined none. The accused was examined under Section 313 of Cr.P.C. and he denied the prosecution allegations of house breaking and theft. Defence did not adduce evidence.

#### **POINTS FOR DETERMINATION**

5. Whether the accused on 05.09.14 entered into the shop of the informant Md. Nazrul Islam Miah in the night by cutting the lock rings and bolt of the door in association with Md. Mahar Ali Mandal and committed theft of one inverter, inverter battery, old mobile batteries, mobile recharge cards, and cash, and thereby committed offences punishable under Section 457/380 of IPC.
6. I have heard arguments of both sides and carefully examined the evidence on record.

**DISCUSSION on EVIDENCE , DECISION and REASON THEREOF**

7. PW 1, informant Md. Nazrul Islam Miah has stated that on a morning in the year 2014 when he came to his mobile recharge shop situated near Bagribari Bus Stand to open the shop, he found the lock of his shop broken and the door was open and when he came inside he found one inverter, one inverter battery, some mobile recharge cards, some cash of about Rs. 25,000/- were missing and that thereafter he lodged the FIR. He has also stated that the stolen inverter and battery were recovered from the residence of one person at Bangalipara and that the accused was apprehended by people of Bangalipara and informed him about the same and that police arrested the accused and handed over his inverter and battery to him. Prosecution marked the FIR as Ext. 1. There is no material in cross examination of PW 1.
8. PW 2 Md. Nur Habib Ruhul Amin has stated that the accused was apprehended at Bangalipara by local people and the stolen battery and inverter of the informant were recovered from the accused and he has suspicion over the accused as the stolen inverter and battery were recovered from him.
9. PW 3 Md. Salim Sk knows about the theft at the shop of the informant but he does not know who committed the theft.
10. PW 4 SI Sri Gagan Ch. Das investigated the case and he visited the place of occurrence, recorded statement of witnesses and seized two numbers of iron rings, broken bolts and one cotton 'gamocho' from the place of occurrence vide seizure list marked by prosecution as Ext. 2. He has also stated that the stolen inverter and one tubular inverter battery were recovered at Bilashipara and he apprehended the accused Md. Sumar Ali while he was carrying them in a rickshaw. He seized the inverter and battery vide seizure list which prosecution marked as Ext. 3. He submitted the charge sheet which prosecution marked as Ext. 4. There is no material in cross examination of PW 4.
11. From prosecution evidence it is established that the accused Md. Sumar Ali was apprehended by local people of Bangalipara alongwith the stolen

inverter and battery. However, PW 1, PW 2 and PW 3 are not hailing from Bangalipara and they were not amongst the local people of Bangalipara who apprehended the accused alongwith the stolen inverter and battery. There is no proper evidence as to who actually apprehended the accused with the stolen inverter and battery and in what situation and from what place. Evidences of PW 1 and PW 2 says that the accused was apprehended by local people of Bangalipara, whereas evidence of the Investigating Officer, PW 4, says that he apprehended the accused while the accused was carrying the inverter and battery in a rickshaw, thus bringing two separate situation regarding apprehension of the accused. Furthermore, there is no evidence at least show that the inverter and the battery were stolen by the accused and none other else.

12. Mere recovery of stolen articles from ones possession does not attract penal liability unless he or she committed theft of those articles or he or she possessed those articles knowing them to be stolen. There is also no material in the case diary and even in evidence that the accused possessed the inverter and battery knowing them to be stolen and as such charge under Section 411 of IPC was also not framed against the accused. Accused in his examination under Section 313 of Cr.P.C. has stated that Mahar Ali Mondal committed the theft and Mahar Ali Mondal wanted to sell the said inverter and battery and so the accused Md. Sumar Ali wanted to purchase the same for running his CD Hall at his village and accordingly he paid Rs. 2000/- as advance to Mahar Ali Mondal. He also stated that he did not know that the inverter and battery were stolen earlier but when he came to take the same by paying the remaining amount of Rs. 6000/- as demanded by Mahar Ali Mondal, informant Nazrul Islam Miah apprehended him with the help of other public and later police came and took him to the thana along with the inverter and battery and then only he came to know that the battery and inverter were stolen from the shop of the informant.
13. Accused though admits in his statement under Section 313 of Cr.P.C. that the inverter and the battery were recovered from his possession, yet the same is not enough to establish that he committed theft of the same.

Accused also explains that he was to purchase the stolen inverter and battery from the other charge sheeted accused Md. Mahar Ali Mondal on payment of money and he was apprehended by public while he came to take them on purchase, and then he came to know that the same were stolen, and such explanation also raises questions that whether it was he accused who committed the theft or possessed the inverter and battery knowing the same to be stolen, and prosecution evidence is silent in those aspects.

14. Thus, from the discussions made above, I am of the opinion that prosecution has failed to establish the guilt of the accused Md. Sumar Ali that on 05.09.14 entered into the shop of the informant Md. Nazrul Islam Miah in the night by cutting the lock rings and bolt of the door in association with Md. Mahar Ali Mandal and committed theft of one inverter, inverter battery, old mobile batteries, mobile recharge cards, and cash beyond reasonable doubt.

**ORDER**

15. The prosecution has failed to establish the guilt of the accused beyond all reasonable doubt by adducing sufficient evidence.
16. The accused Md. Sumar Ali is acquitted from the charges punishable under Section 457/380 of IPC and set at liberty forthwith. Release Order be issued accordingly.
17. Zimma Order dated 18.09.14 is hereby made absolute.

Given under my hand and seal of this Court on this the 25<sup>th</sup> day of January, 2018.

(Typed by me)

ACHYUTANANDA SAIKIA

Judicial Magistrate 1<sup>st</sup> Class, Kokrajhar

ACHYUTANANDA SAIKIA

Judicial Magistrate 1<sup>st</sup> Class, Kokrajhar

**APPENDIX****1. Witnesses for Prosecution**

- P.W. 1: Md. Nazrul Islam Miah  
P.W. 2: Md. Nur Habib Ruhul Amin  
P.W. 3: Md. Salim Sk  
P.W. 4: SI Sri Gagan Ch. Das

**2. Witnesses for Defence**

NIL

**3. Court Witnesses**

NIL

**4. Prosecution Exhibits**

- Ext. 1: FIR  
Ext. 2/3: Seizure Lists  
Ext. 4: Charge Sheet

**5. Defence Exhibits**

NIL

ACHYUTANANDA SAIKIA

Judicial Magistrate 1<sup>st</sup> Class, Kokrajhar