

DISTRICT: KAMRUP (METRO)

IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE

(SADAR), NO.1, KAMRUP (METRO)::::GUWAHATI

G.R. CASE NO.2128/2015.

U/S. 379/511 IPC

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: SRI DIPAK KALITA

PRESENT: SMTI. S. CHANDA, AJS.

S.D.J.M.(SADAR), NO.1,

KAMRUP (METRO),

GUWAHATI.

APPEARED:

FOR THE STATE: SRI P. N. GOGOI, LEARNED ADDL. PUBLIC PROSECUTOR.

FOR THE ACCUSED PERSON: SRI P.K. KALITA, SMTI. T. BARUAH,LEARNED
ADVOCATES.

DATE OF CONSIDERATION ON CHARGE: 29-03-2016.

DATE OF EVIDENCE: 08.08.2016, 20.09.2016, 04.11.2016.

DATE OF ARGUMENT: 03-03-2017.

DATE OF JUDGMENT: 29-03-2017.

J U D G M E N T

1. Sri Amarjit Sandilya of Udaygiri Pahar, No.2 Lakhi Mandir, Kharghuli initiated this instant case by filing a written 'ejahar' before the Officer-in-Charge, Latasil P.S. on 01.03.2015.
2. The prosecution case in a nutshell is that, on that day informant's neighbour Sri Dipak Kalita tried to enter his house in his absence by trying to remove the A/C using a range collected from plumber Sri Ganesh Lahkar. Another neighbour Sri Diganta Kalita saw the incident and seeing him the accused fled away. Hence, the case.
3. Upon receipt of the 'ejahar' police registered LatasilP.S. Case No.85/2015 against the accused person under section 379/511 IPC and investigated the matter. During investigation the accused person was arrested and later he was allowed to go on bail.
4. After completion of investigation police filed a charge-sheet against the accused person namely, Sri Dipak Kalita under sections 379/511 of IPC.
5. After securing appearance of the accused person he was allowed to remain on his previous court bail. Relevant documents of the case were furnished to him. Upon perusal of materials on record and after hearing both sides, I have framed a formal charge against the accused person U/s 379/511 of IPC which was read over and explained to him, to which he has pleaded not guilty and claimed to be tried.
6. The prosecution in support of its case examined four witnesses only and declined to examine the other witnesses. Whereas, the defence side has not examined any witness in support of its defence.

7. The accused person was examined under section 313 Cr.P.C., whereon he has denied all the allegations against him.
8. I have heard the argument advanced by the learned counsels for both sides.
9. Upon hearing and on perusal of the record I have framed the following point for determination:
 - (i) Whether the accused person on 01.03.2015 attempted to commit theft in the informant's house?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

10. I have gone carefully through the entire evidence and the materials placed before me. The informant Sri Amarjit Sandilya (PW-1) has stated on oath that, on 01.03.2015 he went to his Mangaldoi residence and people residing opposite to his Kharghuli house i.e., Sri Diganta Kalita's sister-in-law informed him over phone that Sri Diganta Kalita saw the accused trying to break open the backside window A/C of his Kharghuli house and trying to enter the house. He has also stated that immediately he came to Guwahati and found that the A/C was cut off from outside and he lodged the ejahar (Ext.-1), whereon Ext.-1(1) was his signature.

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11. During cross-examination he (Pw-1) has denied the suggestion that Sri Diganta Kalita has sour relation with the accused, so he informed him (PW-1) and accordingly he has lodged this case.

12. The prosecution side has also examined Sri Diganta Kalita (PW-2) who has stated on oath that, he knows both sides to this case and on 01.03.2015 he saw the accused in the informant's compound with a range trying to cut his window A/C from outside with the range and, accordingly, he informed this to his brother and sister-in-law Smti. Gitashree Talukdar. Smti. Gitashree Talukdar informed the informant over phone and the informant returned back on that day.

13. During cross-examination the PW2 has stated that he has not made any hue and cry seeing the accused removing the A/C. He has further stated that it was an incident of mid-day and there were other people's residence adjacent to the spot. But, he has denied the suggestion that, he has not seen the accused touching the A/C and wrongly informed the informant.

14. PW-3, Smti. Gitashree Talukdar has stated on oath that, she knows both the sides to this case and Sri Diganta Kalita is her brother-in-law. During March, 2015 one day at about 11/ 12 noon Sri Diganta Kalita informed her that,he saw the accused person trying to cut the rod of backside window A/C of informant's house sitting near it. Accordingly, she informed the informant over phone and the informant reached Guwahati within 2/3 hours. She has further stated that, she has not seen the incident herself.

15. During cross-examination she (PW-3) has reiterated that she deposed on court based on what she had heard from Sri Diganta Kalita.

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16. The I/O in this case Md. Siraj Ali (PW-4) has stated on oath that, he was endorsed with the duty of investigation in this case. Accordingly, he went to the place of occurrence at Udaygiri Pahar and interrogated the informant and other witnesses and finding material against the accused person he has submitted the charge-sheet (Ext-2) under section 379/511 IPC, whereon Ext-2(1) was his signature.
17. During cross-examination the PW-4 has stated that, he has not interrogated the ejahar mentioned person Sri Ganesh Lahkar. He has further stated that he has investigated as per Assam Police Manual Rules and has denied the suggestion that as ASI of police he cannot investigate this case and submit charge-sheet.
18. During argument the defence side has vehemently argued that as a ASI of Police Md. Siraj Ali has no authority to investigate this case and submit charge-sheet but the learned Addl. APP has drawn attention of this court to **Office Memorandum No. MA 835/2007/Pt/27 dated 07.02.2013 issued by Home (A) Department, Govt. Of Assam authorising ASI of police to investigate a case.**
19. Appreciating the entire material placed before me it appears that, the prosecution side has secured to examine four witnesses and amongst them only Sri Diganta Kalita has claimed himself as an eye witness. He has admitted that, there were other houses nearby, but seeing the incident he has not made any hue and cry. PW1 and PW3 admitted that they have heard about the incident from others. The I/O has admitted that,he has not interrogated the ejahar mentioned person Sri Ganesh Lahkar (Plumber) from whom allegedly the accused brought a range to remove the A/C. The uncorroborated sole testimony of Sri Diganta Kalita is not found sufficient to hold a person guilty of a criminal offence.

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20. I, therefore, find that the prosecution side has failed to establish the guilt of the accused person. Accordingly, the accused person Sri Dipak Kalita is held not guilty of offence punishable under sections 379/511 of IPC, and he is acquitted and set at liberty forthwith.

21. Bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

22. Given under my hand and seal of this court on this 29th day of March, 2017.

**S. CHANDA
S.D.J.M. (SADAR) NO.1,
KAMRUP (METRO), GUWAHATI.**

Dictated and corrected by me,

**S. CHANDA, S.D.J.M.(SADAR) NO.1,
KAMRUP (METRO), GUWAHATI.**

TRANSCRIBED BY SRI N HALOI, STENOGRAPHER.