

**DISTRICT: NAGOAN
IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, HOJAI**

**GR CASE NO: 480/10
U/S 380/34 IPC**

**PROSECUTOR: STATE OF ASSAM
VERSUS
ACCUSED: HASAN AHMED & ORS.**

PRESENT: BISWADEEP BARUAH, JMFC, HOJAI

ASSISTANT PUBLIC PROSECUTOR: SRI. SUNIL DAS

ADVOCATE FOR THE ACCUSED: SRI. SHARIFUDDIN AHMED

EVIDENCE RECORDED ON:

ARGUMENT HEARD ON: 07/02/2017

JUDGMENT DELIVERED ON: 18/02/2017

JUDGMENT

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of Doboka P.S. by the informant Sr. Hridoy Paul on 31/05/10 to the effect that on the night of 30/05/10 at about 10 p.m., the accused persons namely Hasan Ali, Ibrahim Ali and Fokoruiddin broke open the lock of the shop of the informant situated at Ward No. 4 of Doboka Town and stole 30 Cartoons of Water Bottle, Cigarettes worth Rs. 3000/, cosmetics worth Rs. 15,000/ and cash worth Rs. 81,000/.
2. The police upon receipt of the ejahar registered Murajhar Police Station case no. 55/2010 u/s 143/448/427/479 of IPC and started investigation in the case. After completion of the investigation the police submitted chargesheet against the accused, Hasan Ali, Ibrahim Ali and Fokoruiddin under sec 147/448/323/324 of IPC.

3. The accused were called upon to enter trial and copies of all the relevant documents were furnished to them. Upon hearing and on perusal of record, and based on the materials on record, formal charge under sec 380/34 of IPC was framed which was read over and explained to the accused to which they pleaded not guilty and claimed trial.
4. The prosecution could not procure the attendance of a single witness. The son of the informant submitted the death certificate of the informant and stated that he was not interested in prosecuting the case and would not be able to prove the charge. The defense did not adduce any evidence.
5. The statement of defense of the accused u/s 313 Cr.P.C. was discarded with since the accused was not incriminated by the Prosecution Witness.
6. I have heard both the parties. I have heard the learned counsel for the accused who submitted that there is no material against the accused; as such the accused needs to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following point for determination-
 - (1) Whether the accused had on 30/05/10 at about 10 p.m., committed theft of Cartons of water bottles, cigarettes, cosmetics and cash worth Rs. 81,000/ from the shop of the informant in furtherance of their common intention and thereby committed offence punishable under sec 380/34 of IPC?
8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

POINT FOR DETERMINATION NOS.1:

9. The prosecution in support of its case could not produce a single witness. The informant expired during the pendency of the trial as is evident from the Death Certificate submitted by the son of the informant. The Ld. A. P. P. also submitted that no purpose will be served by calling further witnesses as no other material witnesses were present who could shed light into the case and no improvement could be made upon the prosecution story. The defense did not adduce any evidence.

10. DECISION: In light of absence of a single prosecution witness, there was no material to incriminate the accused persons and hence the point of determination is answered in negative, in favour of the accused.

ORDER

1. In view of the discussions made above and the decision reached therein it is held that the prosecution has failed to prove the charge against the accused; as such the accused Hasan Ali. Ibrahim Ali and Fokoruiddin are held not guilty of the charge under section 380/34 of IPC and acquitted.
2. The case is disposed of on contest accordingly.
3. The seized articles if any shall be disposed as per law.
4. The bail bonds of the accused stands extended for a period of six months.

Given under my hand and the seal of this court on this the 18th day of February, 2017 at Hojai.

BiswadeepBaruah,
Judicial Magistrate First Class, Hojai.