

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE  
(SADAR), NORTH LAKHIMPUR**

**GR CASE NO: 1839/2017**

**U/s- 380 of IPC**

**State**

**- Versus -**

**Md. Ainul Hoque**

**.....Accused person.**

**PRESENT : Smt. Sorbani Bhattacharjee , AJS  
Sub Divisional Judicial Magistrate (Sadar)  
Lakhimpur, North Lakhimpur.**

**ADVOCATES APPEARED :**

**FOR THE PROSECUTION : Sri Khirod Kr. Kakoti.**

**FOR THE ACCUSED : Sri Bulumoni Das**

**CHARGE FRAMED ON : 29.03.2019**

**EVIDENCE RECORDED ON : 12.04.2019, 08.05.2019,  
22.05.2019,**

**ARGUMENT HEARD ON : 01.06.2019**

**JUDGMENT DELIVERED ON: 01.06.2019**

### **JUDGMENT**

1. The prosecution story in brief is that on 12.06.2017 at night the accused Md. Ainul Hoque committed theft of articles of Rs.63,000/- in the shop of the informant situated near National Highway.

2. The Officer-in-charge, North Lakhimpur police station, on receipt of Ejahar registered North Lakhimpur P.S. Case No. 806/2017, U/S 380 of IPC and started investigation. After completion of the investigation, the concerned I.O. submitted charge sheet against the accused person namely, Md. Ainul Hoque U/S 380 of IPC.

3. In due course, the accused is produced before the court from jail and the copies of relevant documents were furnished to him as per section 207 of CrPC. Having found a prima facie case against the accused person, the charge U/S 380 of IPC was framed, which was read over and explained to him to which he pleaded not guilty and claimed to be tried.

4. The prosecution, in support of its case, examined 4 (four) witnesses. As per the submission of learned Assistant Public Prosecutor further evidence of prosecution side is closed. The statement of the accused person has been recorded U/S 313 of the Code of Criminal Procedure. Defence side examined no witnesses. I have heard the arguments advanced by the learned counsels for both sides.

#### **5. POINTS FOR DETERMINATION:-**

(i) *Whether the accused person on 12.06.2017 at Night, at Nakari, under the jurisdiction of North-Lakhimpur P.S., in the shop of the informant committed*

*theft of articles of about Rs. 63,000/- which is used for custody of property by the informant and thereby committed an offence punishable U/S 380 of Indian Penal Code?*

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. PW-1 Sri Mahendra Panging in his evidence deposed that he is the informant of this case. Ext-1 is the ejahar and Ext-1(1) is his signature. He knows the accused Ainul Haque. He has a shop of goods and mobile recharge near bypass of National Highway at Saboti. About more than 1 year back incident occurred near bypass of National Highway at Saboti. On the next day of the incident he went to his shop and found the 3 locks of his shop broken. He called Gopal Panging who was in the nearby field. Then police patrolling party came there and told him to lodge FIR. Thereafter he lodged this case. He had a loss of about 20,000/- to 30,000/- in the incident. Accused stole recharge cards/vouchers, Fan etc. from his shop. He further stated that in aircel there is a process through which a person can be identified with the help of customer care as to who has used the recharge cards purchased by him for sale from aircel. He came to know about the name of accused by tracing out that number. Police bought the second son of Ali Master. The persons who bought the recharge cards from accused told police that accused sold them the cards.

In cross-examination, he deposed that he cannot remember the date and time of incident. He lodged this case after one day of incident. Ejahar was not written by him. He has not mentioned the reason of not writing Ejahar himself in the ejahar. He has not seen the incident and cannot say who and how the theft was committed in his shop. On the basis of his ejahar police apprehended the second son of Ali Master. He saw the accused earlier while he used to hang out near his shop and also on the day he was brought in the police station. He saw the son of the son of Ali master. He cannot say what the son of Ali

master said before police. He denied the suggestion that he has lodged this case out of suspicion. He cannot say the Sl. No. of the recharge cards using which accused recharged mobile phone. He gave police the Sl. no. of recharge cards stolen from his shop. He denied the suggestion that he has deposed falsely.

7. PW-2 Md. Nurul Ali @ Nurul Huda in his evidence deposed that he does not know the informant. He knows the accused. About 1 year back one day accused gave him recharge cards of Rs. 320/- telling that he found it somewhere. He took the cards from him. Later on he came to know that the recharge cards were stolen by the accused from the informant.

In cross-examination, he deposed that he does not know where and how the incident of theft took place. He cannot say whether the incident is true or false. He cannot say the date and time of alleged incident. As police called him so he went to the police station after the incident. Police recorded his statement. Police found the recharge cards in the shop of his brother. Recharge cards is not illegal. Anyone can deal with recharge cards. He denied the suggestion that he has not stated to police that the recharge cards of Rs.320/- were sold to him by accused. He denied the suggestion that actually they stolen the recharge cards and incriminated the accused in this case. His father was a teacher. He denied the suggestion that police arrested him in this case and he is the actual culprit. He denied the suggestion that accused is not involved in this case.

8. PW-3 Sri Gopal Panging in his evidence deposed that the informant is his brother. He does not know the accused. About 2 years back one day incident occurred at night. On the next day of incident he saw the locks of the shop of informant situated at Saboti bypass were broken while going to the paddy field. He informed informant and informant came there. He does not know how the incident occurred.

In cross-examination, he deposed that the informant did not tell him how the incident of theft took place. He has no personal knowledge about it.

9. PW-4 Sri Phul Kumar Barman in his evidence deposed that on 25.06.2017 he was working at Lilabari Outpost as ASI. On that day one Mahendra Panging lodged an ejahar before I/C Lilabari outpost. The same was entered in GD register as GD entry no. 390 at about 6 p.m. dated 25.06.2017 and the same was sent to O/C NL PS for registering a case. After receipt of ejahar the O/C NLPS registered the case as NL PS case no. 806/2017 U/S 380 of IPC and the case was endorsed by O/C NL P.S. in his name. He recorded the statement of informant on 25.06.2017 at our outpost. On the next day he has visited the P.O. and prepared rough sketch map of the P.O. Ext-2 is the sketch map and Ext-2(1) is his signature. He searched the accused Ainul Haque but he could not be traced out. On 14.11.17, he forwarded accused to the Court after his arrest. On 14.11.17 he had handed over the case diary to I/C Monimoy Tamuly of Lilabari Outpost. On 31.12.17 Monimoy Tamuli submitted CS against accused Ainul Haque as accused in this case vide C.S. No.692/2017 U/S 380 of IPC. Ext-3 is the CS and Ext-4(1) is the signature of Monimoy Tamuli which is known to him.

In cross-examination he deposed that as per the ejahar incident occurred on 12.06.2017 and the ejahar was received on 25.06.17. The reason of delay in lodging FIR is not mentioned in the form of FIR or ejahar. The ejahar was not written by the informant. Who wrote the ejahar was also not investigated by him. As per the FIR articles of 63,000/- was stolen by the accused. It is a fact that the stolen articles were not recovered by him. He has not recorded the statement of one Ramesh Taid whose name was mentioned in the ejahar. The informant did not say before him that he lodged the ejahar after one day of incident. Complainant did not give any serial number of recharge cards to him. PW-2 Nurul Huda did not state before him that accused sold recharge cards of Rs.320 to him. He denied the suggestion that

the case was not investigated by him properly and the CS was filed by Monimoy Tamuli Falsely.

10. In this case the FIR reveals that the incident occurred on 12.06.2017 and instant case was filed on 25.06.2017 i.e. after 13 days of the alleged incident. The informant neither in the FIR nor in his evidence has stated anything to justify to lodge the case after 13 days. The inordinate delay in lodging the FIR bring the prosecution story under shadow of doubt as prosecution has failed to satisfactorily explained the reason of delay in lodging FIR.

11. In this case prosecution examined altogether four witnesses including the informant and I.O. From the evidence of the PWs, it is apparent that none of them has seen the alleged incident. In this case I.O. failed to recover and seize anything allegedly stolen from the shop of the informant.

12. According to PW-1 the accused stole recharge cards/vouchers, fan etc. from his shop which caused him the loss of Rs.20,000/- to Rs.30,000/-. He came to know about the name of the accused by tracing out his mobile numbers and the persons who bought the recharge cards from accused told police that the accused sold them the cards. But other PW's have not supported him in this regard. None of the PW's stated in their evidence supporting PW-1 that accused admitted in front of them that he sold stolen recharge cards to them. PW-1 could not say the serial number of the recharge cards which were allegedly stolen by the accused. In his cross examination also he has admitted that he has not seen the incident and cannot say who and how the theft was committed in his shop. PW-2 although alleged that accused sold some recharge cards to him but he has failed to say from whom he knew that the cards sold to him were in fact the stolen cards which were stolen from the shop of informant.

13. From the evidence of the PWs as discussed above, it cannot be ascertained how the accused is involved with the theft in the shop of the informant. Merely saying that the accused has

in fact committed the theft is not enough when the informant himself has not seen the alleged incident. Prosecution failed to bring out by adducing cogent evidence how the accused committed theft in the shop of the informant and how the accused is apprehended by I.O. to being involved with the alleged offence. In such circumstances the accused is entitled to get acquitted from this case. Situated thus, I am of the opinion that the ingredients of the offences u/s 380 of IPC has not been proved against the accused person beyond all reasonable doubt by the prosecution and hence the accused person is hold not guilty for the alleged offence.

**ORDER**

14. Accordingly, the accused person Md. Ainul Hoque is acquitted of the offence U/S 380 of IPC and he is set at liberty forthwith if not required in any other case.

**Given under my hand and seal of this court on this 1<sup>st</sup> day of June, 2019.**

Smti Sorbani Bhattacharjee, AJS  
Sub Divisional Judicial Magistrate (S)  
Lakhimpur, North Lakhimpur

**APPENDIX**

***PROSECUTION EXHIBITS:***

- Ext.1 : Ejahar
- Ext.2 : Sketch map of P.O.
- Ext.3 : charge-sheet

***DEFENCE EXHIBITS***

NIL

***PROSECUTION WITNESSES :***

- (1) PW-1 Sri Mahendra Panging
- (2) PW-2 Md. Nurul Ali @ Nurul Huda
- (3) PW-3 Sri Gopal Panging
- (4) PW-4 Sri Phul Kumar Barman

***DEFENCE WITNESSES***

NONE

***MATERIAL EXHIBITS***

NIL

**Smt. Sorbani Bhattacharjee, AJS  
Sub Divisional Judicial Magistrate (S)  
Lakhimpur, North Lakhimpur**