

**HEADING OF JUDGMENT IN SESSION CASE**  
**:: IN THE COURT OF SESSION JUDGE :::::::::::NALBARI ::**

**Present:- Smti S. Bhuyan,  
Sessions Judge,  
Nalbari.**

**Sessions Case No- 105 of 2015**

**u/s 461/380 IPC**

**STATE**

**Versus**

**1. Abdul Kasem @ Kasim Ali**

S/O-Late Riajuddin Ahmed

**2. Md Sahidul Islam @ Shahidul Islam**

S/O-Md Kuddus Ali.

Both are R/O- Vill- Borajol, Noonarpar

P.S.-Ghograpar

District- Nalbari

**Accused persons.**

(Committed by SDJM(S), Nalbari in GR case No- 318/13 u/s-  
461/380 I.P.C.)

**Advocate appeared:-**

For the state :- Mr. D. Barman learned. P.P

For the accused :- Mr. A. Ali, Advocate.

Date of institution of the case :- 14/03/13.

Date of commitment :- 23/07/15.

Date of Framing charge :- 11/12/15

Date of prosecution evidence :- 15/06/16, 05/04/17, 29/05/17,  
30/05/17, 26/06/18, 25/09/18,  
05/03/19.

Statement of accused recorded on:- 13/06/19

Date of Argument :- 08/07/19, 22/07/19.

Judgment delivered :- 26/07/19.

## **JUDGMENT**

### **Prosecution Case**

1. The prosecution case, in brief, is that one Sri Dhruba Jyoti Likhok lodged an ejahar inter alia, citing that on 14/03/13 at about 3 AM security guard of Mobile tower of Bharti Infratel Ltd informed him over phone that 2 no's of batteries had been stolen away by two unknown persons and caught red handed by the public and recovered the stolen batteries. The apprehended accused is Md Majibur Ali s/o-Markum Ali of Bullut Bazar and other accused person able to fled away and apprehended accused was handed over to police.

### **Investigation**

2. Officer in charge of Ghograpar PS on receipt of ejahar from Dhruba Jyoti Likhok registered a police case vide Ghograpar Police Case No. 27/13 u/s-461/380 I.P.C. During course of investigation I/O visited place of occurrence, took statement of witnesses and took custody of the accused Majibur Ali (Rahman) and arrested him and seized the two batteries. During the investigation the other two accused Abdul Kasem @ Kasim Ali and Sahidul Islam were sent to jail hajot after their arrest. Accused Majibur was taken to SMK Civil Hospital as public manhandled him and he died on following day at SMK Civil Hospital, Nalbari. On completion of investigation getting incriminating material against the accused persons submitted charge-sheet u/s-461/380 against accused persons Sahidul Islam and Abdul Aksem @ Kasim Ali.

### **Committal**

3. On receipt of the charge sheet, Ld. CJM, Nalbari, took cognizance and transferred the case to the Court of Ld SDJM(S), Nalbari for committal and Id SDJM(S), Nalbari after furnishing necessary copies to accused persons committed the case to the court of Sessions for trial.

### **Charge**

4. My learned predecessor after hearing learned counsel for both sides and perusal of material on record framed charge u/s 461/380 of IPC against the accused persons, namely, Abdul Kasim and Sahidul Islam and when charges are read over and explained to the accused persons they pleaded not guilty and claimed to be tried.

### **Trial**

5. In order to prove the prosecution charge against the accused persons, prosecution adduce evidence of all together 10 number of witnesses and exhibited 5 numbers of documents. PW-1 Rajani Barman, PW-2 Mintu Barman, PW-3 Jagadish Barman, PW-4 Sadananda Barman, PW-5 Abdul Jalil, PW-6 Amulya Barman, PW-7 Krishna Kt Barman, PW-8 Gautam Baro, PW-9 Pratul Boro, PW-10 Tridip Kr Dutta (I/O). Ext-1 Seizure list, Ext-2 seizure list, Ext-3 seizure list, Ext-4 Charge-sheet, Ext-5 ejahar. After closure of the prosecution evidence, statement of the accused persons recorded u/s 313 Cr.P.C. Accused plea is total denial, however declined to adduce evidence in support of the plea of denial.

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

- (i) Whether accused on 14/03/13 at night dishonestly opened the door of the tower center of Airtel and Idea tower center and unfasten the batteries kept in the tower center ?
- (ii) Whether accused on 14/03/13 at night committed the theft of batteries by removing the same from the store room of the tower room and also unfasten the batteries of the store room ?

### **Argument**

7. It has been argued by learned PP, prosecution fairly able to establish the prosecution charge against the accused person beyond all reasonable doubt.

8. Ld defence counsel made submission that prosecution failed to bring home the charge of section 461/380 IPC and PW-3 is the accused of Majibur murder case. So this case is filed against the accused. He further submitted none of the PWs seen accused unfastening removing the batteries and accused Abdul Kasim is totally innocent and his name is not uttered by any of the PWs.

### **DISCUSSION DECISION AND REASON THEREOF**

9. PW-1 Rajani Barman deposed incident took place in Dihajari village and he hailed from Sahpur which is adjacent to Dihajari village and his house is about 10 meters away from the place of occurrence. His further evidence is that at about 1.30 am he heard hulla of thief thief from the side of tower of Airtel and Idea situated at village Dihajari. Immediately, he went to the place and found door of the store room of the tower in open condition and noticed batteries lying outside the store room. His further evidence pointed there was large gathering. Some people are searching for the thief and some are standing at the place of occurrence and about 100 meters distance one marriage ceremony was going in the village and one thief was caught by the villagers. On interrogation the apprehended thief disclosed name of another thief Saidul Ali who belonged to village Borajol. Matter was informed to police. Police arrived and seized the battery and taken away the apprehended thief and when police took the thief he was in healthy condition and on next day he came to know that thief died at the hospital. His cross pointed he did not see the incident of theft, do not know the name of the thief who was caught by the villagers and apprehended thief did not reveal the father's name of Saidul Ali whose name he discloses.

10. PW-2, Mintu Barman deposed his house is situated just beside the tower and network of the tower was stopped and the matter was immediately came to the knowledge of head office

Guwahati of the Airtel and Idea office and head office called security Jagadish Barman of the mobile tower and direct him to check the tower. His statement further pointed at about 2 am hearing the scream of the security person of the tower, he waked up from the bed and after sometimes later he heard the noise of huge gathering then he opened the door of his house and noticed presence of huge gathering near the office of the tower. Then he came near the office of the tower and found inside the compound of the office of the tower one person was assaulted by the people and said apprehended person confessed that he committed theft of the battery from the office of the tower and revealed the name of another person who was involved in the commission of theft with apprehended person. PW-2 revealed he noticed three batteries of the tower were removed from the actual place and were kept outside the door of the store room and also noticed the security of the tower Jagadish Barman from whom he got to know that Jagadish Barman security guard of the tower after receiving the call of head office at night came to the office of the tower and found two thieves run away from the store room where batteries were kept.

11. PW-2 further deposed he informed the matter to police over mobile and police came and asked the gathering not to assault apprehended thief and police took the thief and he accompanied police and police seized two numbers of batteries. His cross revealed at night Jagadish used to reside at his own home, he does not know when Jagadish came and where from the thief was caught.

12. PW-3 Jagadish Barman is the security guard of the Airtel and Idea tower situated at Dihajari village under Ghograpar police station and on 14/03/13 at 2 am, Idea in charge telephoned him from Nalbari that the site of the mobile tower was down, so he went to the tower site from his house which is at a distance of 150 meters from his house. He on the light of torch noticed two

persons fled away from the tower side and he shouted thief, thief, nearby villagers who were present in the marriage ceremony house near the place of occurrence came out near to the tower and public caught one thief but one managed to fled away. Ghograpar police was informed and on interrogation apprehended thief introduced himself as Majibur Ali (since deceased) and revealed that Sahidul Ali is also involved in the commission of the theft of battery and Sahidul is waiting in the nearest school at a short distance in a sumo vehicle. After apprehension of the accused he entered into the center room of the tower and noticed 24 batteries were opened out 48 batteries and 2 batteries were removed from the center room and kept out side the center room. Police seized those 2 batteries took Majibur (since deceased) to the police station and he put his signature on Ext-1 seizure list.

13. In cross stated the apprehended thief Majibur (since deceased) died on the next day and in connection with the same, case is pending against him for a charge of murder of Majibur (since deceased). He denied that he did not make statement before the police that Sahidul was also present while committing the theft. The weight of 1 battery might be 25 Kgs. And he went towards the tower side by lighting the torch he noticed two persons tried to fled away. People chased and caught Majibur (since deceased) at a distance of 150 meter from the tower and when Majibur (since deceased) confessed before them about commission of theft of battery of tower and involvement of Sahidul many villagers were present along with him. He deposed his officer Dhrubajyoti arrived at about 4 am on 14/03/13. In cross he denied that Majibur (since deceased) was not the thief of the battery and they apprehended him on doubt and Majibur (since deceased) came to attend a marriage held near the place of occurrence.

14. PW-4 stated he knows informant Dhrubjyoti Likhak who is an officer of Airtel tower. Incident was took place on 14/03/13 at

about 2 am and his house is situated at a distance of 50 meter from the tower. His further evidence is that at that time he was sleeping and hearing hulla at about 2.30 am he got up and came near the tower and noticed villagers apprehended one thief, thief was kept near the tower. Two marriage was solemnized on that day and many people gathered there. His evidence pointed he is the member of No.1 Khata Gaon Panchayat of Pub Nalbari Anchalik Gaon Panchayat and inquired the name of the thief and apprehended thief disclosed his name as Majibur Rahman (since deceased) and he hails from village Bullut and also revealed the name of another thief who is involved in the commission of theft is Sahidul Ali of Borajol. His evidence is that apprehended thief Majibur Rahman (since deceased) and Sahidul Ali brought one tata sumo vehicle that was kept near a school at a very short distance from the place of occurrence and tower security man informed the matter to Ghograpar police.

15. PW-4 evidence is that when he entered with police inside the tower he noticed 24 no's of batteries of the tower were disconnected and 2 batteries were removed and kept out side the center room of the tower and police took those two batteries along with the thief. In cross he denied he did not state before the police that Majibur (since deceased) on inquiry revealed name of Sahidul who was involved in the commission of theft and one tata sumo vehicle was kept near the place of occurrence. He did not witness any assault caused upon Majibur (since deceased).

16. PW-5 Abdul stated he does not know informant Dhrubajyoti and accused persons and he has no knowledge of theft of battery in tower.

17. The statement of PW-1, PW-2, PW-3, PW-4 goes to show that on the date of incident hearing hue and cry all of them came out from their respective houses and they heard hulla of theft theft. One thief was apprehended by public, apprehended thief disclosed

his name as Majibur hails from village Bullut and on interrogation by the public along with PW-1, PW-2, PW-3, PW-4 the apprehended thief stated that along with him another thief Saidul Ali was present in stealing the batteries from the tower. Majibur (since deceased) in reality stayed at village Bullut. Village Dihajari and Bullut are different village and at far off distance. But evidence of PW-1 to PW-4 pointed Majibur hails from Bullut. Defence cross pointed Majibur (since deceased) came to village Dihajari on the day of incident. The presence of Majibur (since deceased) is established. Prior to the incident, Majibur was not known to PW-1 to PW-4. So when they stated Majibur hails from Bullut and they got to know from him and this is acceptable, the witness other part that he disclosed name of Sahidul is also believable.

18. It was PW-2 who informed police, PW-1 reached first and when PW-1, PW-2, PW-3, PW-4 went to the tower center they found 2 batteries removed and were kept outside the tower center.

19. PW-3, PW-4 stated 24 no's of batteries are in open condition. All these 4 witnesses stated that it was Majibur (since deceased) who died on following day, one car was parked near the school at a little distance from the place of occurrence to carry the batteries and Majibur (since deceased) disclosed the name of Sahidul.

20. The evidence of PW-5 is neither relevant for the prosecution nor helping anyway to the defence side. PW-6 Amulya Barman stated his house is at 130 feet away from the tower and PW-7 Krishnakanta Barman stated his house is at a distance of 600-700 meter from the place of occurrence and at about 1-1.30-2 AM they heard hue and cry near the tower reached there and found people tied one thief.

21. PW-6 stated the apprehended thief disclosed his name along with name of other 2 persons and they came for committing theft of battery from the tower. PW-6 is not cross examined.

22. PW-7 evidence pointed apprehended accused disclosed name of Sahidul Ali who is also involved in commission of theft of battery from the tower. In cross denied he did not make statement before the police that thief which was caught by public revealed the name of Sahidul as the person accompany him for theft of batteries from the tower.

23. These two witnesses stated that in the locality two marriage ceremony is going near the tower. They also noticed two batteries at the campus of the tower lying outside the tower and they could come to know that the person who is tied is thief.

24. The statement PW-1 to PW-4, PW-6, PW-7 brings on record that on the date of incident two marriage ceremony were going on near the place of occurrence. It also revealed from their evidence that at night at about 1-2 am, all of them came to place of occurrence hearing hue and cry and their house is very near to the place of occurrence. On reaching the place of occurrence that is mobile tower they noticed one thief was apprehended by public and the apprehended thief disclosed before them the name of Sahidul and they are coming for committing theft of batteries. It is also appearing from the record that on the next day apprehended thief whose name is Majibur died. It reveals from the PWs that public assaulted the apprehended thief namely Majibur (since deceased).

25. Statement of PW-8 Gautam Barman shown that one day police recovered a tata sumo from the road in front of their house and accused Sahidul kept the vehicle on the road and police seized the road.

26. From the statement of PW-1 to PW-4, PW-6, PW-7 it further revealed that all of them noticed two batteries were kept outside the tower which were removed and took out from the tower center and some batteries inside the tower center were also disconnected to lift the same. The statement of PW1 to PW-4 further revealed that one sumo is kept near the school to carry the batteries. PW-8 deposed accused Sahidul kept the vehicle on road which was seized by police vide Ext-3 seizure list.

27. PW-9 deposed he knows accused Kasem but other accused is not known to him, This evidence does not help prosecution as well as defence side.

28. PW-10 is the IO of the case. His evidence revealed he seized two batteries vide GD entry no.295 dated 14/03/13 vide Ext-5 is said ejahar, Ext-5(1) is his signature. He arrested Sahidul Islam and seized one sumo vide registration no.AS-18-A-1766 engine no. HSQ797250 vide Ext-3 and Ext-3(3) is his signature. He seized one Nokia mobile.

29. From the statement of PW-1 to PW-4, PW-6, PW-7 and IO of the case it revealed that PW-2 Mintu Barman called police when public apprehended Majibur (since deceased) who subsequently died and in that connection Ghograpar PS case no.28/13 u/s-364/302 IPC, Ghograpar PS GD Entry no.295 dated 14/03/13 is entered,

30. Evidence pointed that on the incident night police arrived at the place of occurrence and seized 2 no's of batteries that were lying outside the tower center.

31. Statement of PWs pointed the public apprehended one thief whose name is Majibur (since deceased) and said Majibur was assaulted by public and he died on the following day. During interrogation said Majibur disclosed the name of Sahidul.

32. PW-3 when reached place of occurrence after getting information from the head office about network down, 2 persons fled away from the tower side. All the PWs stated that it was apprehended accused who confessed before them that along with him one Sahidul is present in committing the theft of the batteries.

33. The Ext-2 seizure list by which PW-10 seized the batteries on the incident day at about 4.40 AM and statement of PW-8 shown seizure of sumo vide seizure list Ext-3.

34. The evidence on record pointed that along with the deceased Majibur, accused Sahidul was present in commission of theft. They entered into the tower center, unfasten the door and then removed 2 no's of batteries, move the batteries to outside and also unfasten another 24 no's batteries to remove the same from the tower center to take away out of the possession of informant. The public apprehended one thief and his name is Majibur and accused Sahidul managed to fled away. Accused Sahidul hails from village Borajol. There is nothing to disbelief in the testimonies of PWs.

35. Cross examination of PWs does not pointed any reason why the PWs; PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8 will made false statement against the accused and falsely implicating his name in commission of theft of the batteries.

36. On entire scrutiny of the evidence on record I find that on the date of incident, incident of theft in the Airtel and Idea Tower present at Dihajari village took place and near the place of occurrence, two marriage ceremonies were going on and public apprehended one of the thief. PW-3 the security personal of the tower noticed two thief running out from the tower in his torch light when he proceeded to the tower getting information about down network of the tower from the central division.

37. Evidence of PW-1 pointed he came out first and noticed public bringing one thief to the place of occurrence and during interrogation said person disclosed his name is Majibur and this is an admitted fact and he was beaten by the public. Said apprehended thief disclosed along with him accused Sahidul is present in commission of thief. There is nothing different comes out from the cross examination of the PWs on this vital point and all the PWs stood firmly in their piece of testimonies. PWs further deposed on next day they heard apprehended thief died and this is an admitted fact and one murder case lodged against the security guard of the tower where thief took place that is against the Jagadish Barman.

38. The statement of PWs further pointed one tempo kept to carry the removed battery from the tower center and two number of the batteries removed from the tower center and keep outside the tower and about 24 no of batteries unfasten to remove the same from the tower center. Door of the tower center is unfasten by the thief and testimonies of the PWs clearly pointed that accused Sahidul along with deceased Majibur engaged in unfastening the tower center and thus batteries by entering into the tower center and then removed the batteries to take away the same from the possession of the informant. None of the PWs took the name of accused Abdul Kasim. When PWs took the name of only two person that is Majibur (since deceased) and Sahidul, the present accused and when there is nothing comes out from their corss examination to disbelief their piece of evidence, I find their evidence is acceptable, reliable and can be safely acted upon and evidence on record only pointed the guilty of accused Sahidul to commit the offence of section 461/380 IPC and accordingly I hold accused Sahidul guilty of committing offence u/s-461/380 IPC.

### **CONCLUSION**

39. Prosecution failed to establish the charge u/s-461/380 IPC against the accused Abdul Kasim and he is acquitted from the charge of section 461/380 IPC and is set at liberty.

40. Prosecution fairly able to bring home the charge of section 380 and 461 IPC against the accused Sahidul Islam and he is convicted u/s-461/380 IPC. His bail bonds stands cancelled.

41. Considering the increasing nature of the offence in the society of like nature the accused Sahidul Islam is not entitled for the benefit of section 360 Cr.P.C and under the provision of Probation of Offender Act. Accordingly, I have heard accused on the point of sentence.

#### **HEARING OF THE ACCUSED ON THE POINT OF SENTENCE**

42. I have heard accused Sahidul Islam on the point of sentence. I have also heard learned PP and learned defence counsel on the point of sentence. Convicted accused Sahidul and his learned counsel prays for leniency.

43. After hearing learned PP and Id defence counsel and also hearing the convicted accused person on the point of sentence, and after taking into account the increasing number of offence of like nature I opined that convicted accused person Sahidul do not deserve leniency. Accordingly, accused Sahidul Islam is sentenced to undergo R/I for 1 (one) year and to pay fine of Rs.2,000/- (Rupees two thousand only) I/d SI for 3 months u/s-461 IPC and further sentenced the accused Sahidul to undergo R/I for 3 (three) years and to pay fine of Rs.5,000/- (Rupees five thousand only) I/d SI for 6 months u/s-380 IPC. All the sentences will run concurrently.

#### **ORDER**

44. Accused Abdul Kasim is not found guilty u/s-461/380 IPC and is acquitted from the charge of section 461/380 IPC.

45. Accused Sahidul Islam @ Shahidul Islam is found guilty u/s-461/380 I.P.C and accused Sahidul Islam is sentenced to undergo R/I for 1 (one) year and to pay fine of Rs.2,000/- (Rupees two thousand only) I/d SI for 3 months u/s-461 IPC and further sentenced the accused Sahidul to undergo R/I for 3 (three) years and to pay fine of Rs.5,000/- (Rupees five thousand only) I/d SI for 6 months u/s-380 IPC. All the sentences will run concurrently. The period of detention already undergone by the convicted accused shall be set off against the period of imprisonment.

46. The convicted accused is told that he has right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court. Let furnish free copy of Judgment to convicted accused persons.

47. Send copy of judgment to learned District Magistrate Nalbari u/s 365 Cr.P.C.

48. Seized battery be returned to Airtel and Idea company in due course of time and rest seized goods be disposed off in accordance with law.

49. Send back the GR case record to the learned committal Court with a copy of the judgment.

50. Given under hand and seal of this Court on this 26<sup>th</sup> day of July, 2019 at Nalbari, Dist- Nalbari.

(Smti S. Bhuyan)  
Session Judge, Nalbari

Dictated and Corrected by me,

(Smti S. Bhuyan)  
Session Judge, Nalbari.

Typed by,  
Biswajit Bhattacharjya, Copyist

**APPENDIX**

**PROSECUTION WITNESS.**

PW-1 Rajani Barman,  
PW-2 Mintu Barman,  
PW-3 Jagadish Barman,  
PW-4 Sadananda Barman,  
PW-5 Abdul Jalil,  
PW-6 Amulya Barman,  
PW-7 Krishna Kt Barman,  
PW-8 Gautam Baro,  
PW-9 Pratul Boro,  
PW-10 Tridip Kr Dutta (I/O)

**PROSECUTION EXHIBIT**

Ext-1 Seizure list,  
Ext-2 seizure list,  
Ext-3 seizure list  
Ext-4 Charge-sheet,  
Ext-5 ejahar

**DEFENCE WITNESS:- Nil**

**DEFENCE EXHIBIT :- Nil.**

**COURT WITNESS :- Nil**

**COURT EXHIBIT :- Nil.**

(Smti S.Bhuyan)  
Sessions Judge Nalbari