

ASCH050011352019



CASE NO. G. R. 174/2019

CNR No. ASCH050011352019

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, BIJNI**

PRESENT: SMTI. MEGHALI SAIKIA, JMFC, BIJNI

(Date of Judgment: 07.08.2026)

(Case No. G.R. No. 174/2019)

COMPLAINANT :	STATE OF ASSAM
REPRESENTED BY :	Sri. Anirban Das, Learned A.P.P
ACCUSED :	1.Abdul Rashid (A-1) S/O- Md. Surejuddin Sheikh. Vill- Damugaon, P.S- Panbari, Dist- Chirang. 2. Sanowar Hussin (A- 2) S/O- Lt. Abdul Awal Sheikh. 3. Riyaj Ahmed @ Puski (A-3)

	S/O- Lt. Nafaruddin Ahmed Both are R/O of Vill- No. 2 Monakocha, P.S- Panbari, Dist- Chirang. 4. Abu Bakkar Sheikh (A-4) S/O- Lagu Sheikh R/O of Vill- No. 3 Goraimari, P.S- Panbari, Dist- Chirang.
REPRESENTED BY :	Mr. Swapan Kr. Das, Ld. Advocate.
Date of Offence	27.04.2019
Date of FIR	02.05.2019
Date of Charge sheet	30.09.2020
Date of Framing-Charge	04.07.2023
Date of commencement of evidence	22.08.2023
Date on which judgment is reserved	07.08.2026
Date of Judgment	07.08.2026
Date of the Sentencing Order, if any	NIL

Rank of the Accuse	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention
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d					d		Undergone during Trial
A-1	Abdul Rashid	5.8.19	27.9.19	U/S 457/380 /34 IPC	Acquitted	-----	-----
A-2	Sanowar Hussain	-----	-----	Do	Do	-----	-----
A-3	Riyaj Ahmed @ Puski	-----	-----	Do	Do	-----	-----
A-4	Abu Bakkar Sheikh	-----	-----	Do	Do	-----	-----

JUDGMENT

- The brief facts of the prosecution case are that the informant, Md. Abdul Jalil Sheikh, lodged an Ejahar before the Officer-in-Charge of Panbari Police Station on 02.05.2019, alleging, inter alia, that on 27.04.2019 at about 2:00 A.M., while he and his family members were asleep, some unknown miscreants forcibly entered his house by opening the door and committed theft of a sum

of Rs. 4,50,000/-, being the sale proceeds of a piece of land, which had been kept inside a trunk. It was further alleged that while the miscreants were attempting to remove the money, a noise was generated from the lock of the trunk, which awakened the informant's daughter. She immediately raised an alarm, whereupon the miscreants fled from the spot. During a search of the premises, the informant found a Nokia mobile handset bearing SIM No. 9126070853 lying in the courtyard of his house. Thereafter, on 28.04.2019 at about 7:00 A.M., one Akkar Ali, son of Dasham Ali, a resident of Village No. 2 Monakocha, informed the informant that the stolen trunk had been found abandoned in a nearby field. The informant went to the spot and found the trunk, but discovered that the cash amounting to Rs. 4,50,000/- was missing. The informant further alleged that on 28.04.2019, a missed call was received on the recovered Nokia mobile handset from Mobile No. 9126070803. Upon making further inquiries, he came to know that one Mubarak Ali had sold the SIM bearing No. 9126070853 to an unidentified person. The informant stated that as he was occupied in searching for the stolen money, there was a delay in lodging the Ejahar. Hence, this case.

- 2.** On receipt of the ejahar, the O/C, Panbari P.S. registered the case being Panbari P.S. Case No. 33/2019 under section 457/380 IPC and carried on investigation. At the conclusion of investigation, police submitted charge-sheet under section 457/380 of IPC.

This Court took cognizance on the police report and issued summons to the accused persons.

3. On appearance of the accused persons, the relevant copies were supplied to them. After considering the materials on record and hearing both sides, formal charge under-Sections- 457/380/34 of IPC was framed against the accused persons. The contents of the aforesaid charge were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. In the course of the trial, the prosecution side examined 10 (Ten) witnesses. Thereafter, the prosecution evidence was closed upon the prayer of Ld. APP. After closure of prosecution evidence the accused persons were examined u/s 313 Cr. P.C. The accused persons denied all the allegations leveled against them and also denied to adduce defence evidence.
5. Upon such hearing and perusal of the case record, I have framed the following points for just decision of the case.
6. **POINTS FOR DETERMINATION:**
 - (i). Whether the accused persons on 27.04.19 at about 2.00 AM in furtherance of common intention committed theft in the house of the informant which was used as a human dwelling and thereby committed an offence punishable U/S 380/34 IPC?
 - (ii). Whether the accused persons on the same date,

time and place in furtherance of common intention committed lurking house trespass by night by entering into the house of the informant used as a human dwelling and thereby committed an offence punishable U/S 457/34 of IPC?

7. DISCUSSION, DECISION AND REASONS THEREOF:

8. P.W-1 Md. Abdul Jalil Sk i.e., informant of this case deposed in his examination-in-chief that he knows the accused persons who are from his village. The incident took place about 03 years ago, at around 1.00-1.30 A.M. His daughter's house is adjacent to his house. On the date of occurrence at night, on hearing commotion of his daughter, he came out of his house and saw a few people went running from his daughter's house. He could not apprehend those persons. However, he found one mobile phone on ground and submitted the same to the police and thereafter the police arrested the accused persons. The accused persons stole a Trunk and there was an amount of Rs. 2,00,000/- inside the Trunk. He lodged the the ejahar after three days of the incident. Exhibit-P-1/P.W-1 is the ejahar.

In cross-examination P.W-1 stated that he did not witness the accused persons committing theft. The ejahar was written by person of police station. He does not know the contents of the ejahar. He has not mentioned the name of Mubarak Ali as accused in the case. The police could not recover the stolen money.

The police arrested the accused persons on the very day of filling the ejahar. He further denied all the suggestions put to him.

- 9. P.W-2 Md. Abdul Baten Sk** deposed in his examination-in-chief that the informant and the accused persons are his neighbour. He does not know anything about the incident. The police took his signature on a white paper but he does not know why. Exhibit-P-2(1)/P.W-2 is his signature.

In cross-examination P.W-2 stated that the police took his signature on a blank paper.

- 10. P.W-3 Jarina Bibi** deposed in her examination-in-chief that informant is her father and the A2 is her brother. The co-accused persons live near her father's house. The incident occurred about 5 years ago. On the date of occurrence at around 2.00 A.M., theft was committed at her father's house and at that time she was in her father's house. She further stated that she woke up on hearing the cry of her child and then she heard a noise being generated from the lock of the trunk. She raised commotion and then her father came and saw that the Trunk was missing. Since it was raining at that time, as such, they could not make search of the Trunk. On the next day they found the Trunk in the middle of a field. On hearing her commotion A2 and some neighbours came to the place of occurrence. She does not know the total amount of money which was inside the Trunk. Exhibit-

P-2/P.W-3 is the seizure-list & Exhibit-P-2(1)/P.W-3 is her signature.

In cross examination P.W-3 stated that she does not remember the date of occurrence. On hearing her commotion, about 10-12 people had come to her house. The police came to the place of occurrence after 1-2 days of the incident. The police did not read over the contents of the seizure-list to her and that the police interrogated her.

- 11. P.W-4 Joba khatun** deposed in her examination-in-chief that she knows both the parties as co-villager. She does not know anything about the incident.

Her cross examination was declined.

- 12. P.W-5 Mujjamel Hoque** deposed in his examination-in-chief that he knows the informant as neighbour and also know the A2 as co villager. He does not know the other accused persons. He heard that about 4 years ago, informant's money got stolen but he does not know who committed the theft.

His cross-examination was declined.

- 13. P.W-6 Mahima Begum** deposed in her examination-in-chief that informant is her father. A2 is her husband. Other accused persons are from her village. Around 5 years back, while she was at her parental house, an amount of Rs. 4,50,000/- was stolen from their house. Thereafter, her father filed this case.

Her cross-examination was declined.

- 14. P.W-7 Kurman Ali** deposed in his examination-in-

chief that informant is his father. Accused persons are from his village. The incident took place around 3 years ago. On the date of occurrence while he was at his maternal aunt's house, his elder sister Jarina Bibi called him and informed him that someone stole away an amount of Rs. 4,40,000/- from his house. The said money was kept inside a trunk and the thief took away the said trunk. Immediately he came back to his house and on his way to his house, he found a mobile phone on the road. Later on, the said mobile phone was handed over to the police. On the next date, his father filed the ejahar.

In cross-examination P.W-7 stated that he did not state about the facts before the police which he has deposed in the court.

- 15. P.W-8 Suleman Sheikh** deposed in his examination-in-chief that informant is his father. He knows all the accused persons. The incident took place around 6-7 years ago. On the date of incident at around 2:30-3:00 a.m. his brother came to his house and told him that theft has been committed at his father's house. He immediately went to his father's house and saw that a trunk was stolen by some miscreants. He also heard that Rs. 6 Lakh was inside the trunk. After that he went to his uncle's house and requested him to settle the matter. On the next date, the trunk was recovered at the field. But the money was missing from the trunk.

In cross-examination P.W-8 stated that the distance between his house and his father's house is about 1 KM. He cannot say at what time the theft was committed. He does not know who has committed the theft. The stolen money was not recovered later.

- 16. P.W-9 Mubarak Ali** deposed in his examination-in-chief that he knows the informant of this case. He knows the A2 and A3. He heard that money was stolen from the informant's house. A2 purchased 2 nos. of Sim Card from him. Exhibit-P-3/PW-9 is his statement u/s 164 CrPC dated 20/01/2022. Exhibit-P-3(1)/PW-9 and Exhibit-P-3(2)/PW-9 are his signatures.

In cross-examination P.W-9 stated that he does not remember the Sim Nos. He did not issue any receipt to the A2 while selling sim to him. His statement recorded u/s 164 CrPC was not read over to him. He does not know who stole informant's money.

- 17. P.W-10 S.I Sumit Mahatu** deposed in his examination-in-chief that on 2.5.2019 he was posted at Panbari PS as SI (P). On the said date, the complainant, Abdul Jalil Sheikh, lodged an ejahar at Panbari P.S. alleging, inter alia, that on 27.04.2019 at about 2:00 a.m., some miscreants stole an amount of Rs. 4,50,000/-, being the proceeds from the sale of land, which had been kept inside a trunk. He was endorsed with the investigation of the case by the OC concerned. Thereafter, he visited the place of occurrence. He recorded the statement of complainant

and witnesses. During the course of investigation, he came to know that when the complainant's daughter chased the thief, one of the thieves left behind a Nokia mobile phone in the courtyard of their house. He seized the trunk and Nokia mobile handset. He collected CDR of the mobile phone and came to know that A1, A2, A3 and A4 were involved with the case. The Nokia mobile phone contained SIM No. 9126070853. A missed call from mobile No. 9126070803 was received on the said SIM. During the course of investigation, he came to know that mobile No. 9126070803 belonged to one Mubarak Ali, a SIM card vendor, and that he had sold SIM No. 9126070853 to A2. He further came to know that he had called A2 to ascertain whether the SIM card had been activated. Thereafter, he submitted a prayer before the Court to record to statement of Mubarak Ali. The Court accordingly, recorded the statement of Mubarak Ali u/s 164 Cr.P.C. He collected the certified copy of CDR details of IMEI No. 353406098466867 & 911488503125523 and two mobile no. 8416026973 & 7636849980 and submitted the requisite certificate under the Indian Evidence Act. During the course of investigation, accused Abdul Rashid was arrested and produced before the Court. He served the accused Abdul Rashid with notice u/s 50 Cr.P.C. Thereafter, charge-sheeted was submitted u/s 457/380 IPC against the accused persons namely A1, A2, A3 and A4.

Exhibit-P-4/PW-10 is the Formal FIR.
Exhibit-P-5/PW-10 is the sketch map.
Exhibit-P-5(1)/PW-10 is his signature.
Exhibit-P-2(2)/PW-10 is his signature.
Exhibit-P-2(3)/PW-10 is his signature.
Exhibit-P-6/PW-10 is the prayer submitted to the Court for recording the statement of witness.
Exhibit-P-6(1)/PW-10 is his signature.
Exhibit-P-7/PW-10 is the accused forwarding report.
Exhibit-P-7(1)/PW-10 is his signature.
Exhibit-P-8/PW-10 is the arrest memo of Md. Abdul Rashid Sheikh.
Exhibit-P-8(1)/PW-10 is his signature.
Exhibit-P-9/PW-10 is the notice u/s 50 CrPC.
Exhibit-P-9(1)/PW-10 is his signature.
Exhibit-P-10/PW-10 is the Charge-sheet.
Exhibit-P-10(1)/PW-10 is his signature.

In cross-examination P.W-9 stated that he was endorsed with the investigation of the case by the OC concerned on 02/05/2019. After a lapse of 2 days from the date of occurrence, the complainant lodged the ejahar. He could not find any document relating to the ownership of the Nokia mobile phone. He did not seize any document from Mobarak Ali to show that he had sold SIM No. 9126070853 to A2. The stolen money was not recovered. He cannot say whether he collected any document from the complainant to show the source of the money alleged to have been stolen,

which he claimed to have received from the sale of land. He further denied all the suggestions put to him.

- 18.** Upon a careful appraisal of the evidence on record, it is evident that PW-1 admittedly did not witness the accused persons committing the alleged theft. Although he stated that he saw certain persons fleeing the place of occurrence, he was unable to identify any of them. It also appears that in the ejahar, the informant alleged theft of Rs. 4,50,000/-, but in his evidence as P.W.1, he deposed that Rs. 2,00,000/- was inside the trunk. So, it is seen that the informant has contradicted his own version regarding the amount of money allegedly stolen. Likewise, PW-3, who was present inside the house at the relevant time, did not depose that she had seen any of the accused entering the house or removing the trunk. Rather, she stated that the A2 came to the place of occurrence after hearing the commotion. Thus, the evidence of the two material witnesses failed to establish the identity of the accused persons.
- 19.** PW-2, PW-4 and PW-5 have not supported the prosecution case on any material particular. PW-6 has only stated about the alleged theft of money and has not deposed anything regarding the involvement of the accused persons. PW-7 and PW-8 reached the place only after the occurrence and their evidence is merely hearsay regarding the involvement of the accused. Such evidence cannot form the basis of a

conviction.

- 20.** The prosecution has primarily sought to connect the accused with the crime on the basis of a Nokia mobile handset allegedly recovered from the place of occurrence and the Call Detail Records obtained during investigation. According to the Investigating Officer (PW-10), the handset contained SIM No. 9126070853 and, upon investigation, it was revealed that the said SIM had been sold by PW-9 to the A2. However, this circumstance has not been proved by cogent and reliable evidence. PW-9 merely stated that the A2 had purchased two SIM cards from him. At the same time, he admitted that he did not remember the SIM numbers and had not issued any receipt relating to such sale. His evidence, therefore, has not established that the SIM allegedly recovered from the place of occurrence had in fact been sold to the A2.
- 21.** The evidence of PW-10, the Investigating Officer, has also not satisfactorily established the aforesaid circumstance. During cross-examination, he admitted that he could not collect any document to prove the ownership of the recovered Nokia handset. He further admitted that no document was seized from PW-9 to establish the sale of SIM No. 9126070853 to the A2. It has also come in evidence that the alleged stolen money was not recovered during investigation.
- 22.** It is, therefore, seen that the present case, rests entirely on circumstantial evidence. It is a settled

proposition of law that each circumstance relied upon by the prosecution must be fully established and the chain of circumstances must be so complete as to lead only to the hypothesis of the guilt of the accused. If any material link in the chain remains unproved, or if the circumstances are capable of any other reasonable inference, the accused is entitled to the benefit of doubt.

- 23.** In the present case, the prosecution has failed to prove the ownership of the recovered mobile handset, failed to establish by reliable evidence that the SIM recovered therefrom belonged to or was being used by the A2, failed to recover the stolen property from any of the accused and failed to adduce any direct or other convincing circumstantial evidence connecting the accused persons with the offences alleged. The circumstances proved on record are, therefore, not of such a conclusive nature as to exclude every reasonable hypothesis other than the guilt of the accused.
- 24.** Consequently, this Court is of the considered opinion that the prosecution has failed to establish the charges under Sections 457/380/34 IPC beyond reasonable doubt. The accused persons are, therefore, entitled to the benefit of doubt.
- 25.** In the result, the accused persons are found not guilty of the offences punishable under Sections 457/380/34 IPC. Accordingly, they are acquitted of the said

charges and are set at liberty forthwith, if not required in connection with any other case.

- 26.** Bail bonds of the accused persons shall be in force for a period of six months from today.
- 27.** The judgment is delivered and operative part of the judgment is pronounced by me in the open Court today.
- 28.** Given under my hand and seal of this court on this 07th day of August, 2026.

(SMTI MEGHALI SAIKIA)

Judicial Magistrate First Class, Bijni

**LIST OF PROSECUTION/ DEFENCE/
COURT WITNESSES**

1. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW-1	Md. Abdul Jalil Sk	Informant
PW-2	Md. Abdul Baten Sk	Independent witness
PW-3	Jarina Bibi	Related witness
PW-4	Joba Khatun	Independent witness

PW-5	Mujjamel Hoque	Independent witness
PW-6	Mahima Begum	Related witness
PW-7	Kurman Ali	Related witness
PW-8	Suleman Sheikh	Related witness
PW-9	Mubarak Ali	Independent witness
PW-10	S.I Sumit Mahatu	Investigating Officer

2. Defence: Nil

3. Court Witness: Nil

**LIST OF PROSECUTION/ DEFENCE/
COURT EXHIBITS**

4. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit-P-1/PW-1	Ejahaar.
2.	Exhibit-P-2/PW-2	Seizure list.
3.	Exhibit-P-2(1)/PW-2	Signature of PW2.
4.	Exhibit-P-2/PW-3	Seizure list.
5.	Exhibit-P-2(1)/PW-3	Signature of PW3.
6.	Exhibit-P-3/PW-9	PW-9's Statement u/s 164 CrPC dated 20/01/2022.
7.	Exhibit-P-3(1)/PW-9 and Exhibit-P-3(2)/PW-9	Signature of PW9.
8.	Exhibit-P- 4/PW-10	Formal FIR.
9.	Exhibit-P-5/PW-10	Sketch map.

10.	Exhibit-P-5(1)/PW-10	Signature of PW10.
11.	Exhibit-P-2(2)/PW-10	Signature of PW10.
12.	Exhibit-P-2(3)/PW-10	Signature of PW10.
13.	Exhibit-P-6/PW-10	Prayer submitted to the Court for recording the statement of witness.
14.	Exhibit-P-6(1)/PW-10	Signature of PW10.
15.	Exhibit-P-7/PW-10	Accused forwarding report.
16.	Exhibit-P-7(1)/PW-10	Signature of PW10.
17.	Exhibit-P-8/PW-10	Arrest memo of Md. Abdul Rashid Sheikh.
18.	Exhibit-P-8(1)/PW-10	Signature of PW10.
19.	Exhibit-P-9/PW-10	Notice u/s 50 CrPC.
20.	Exhibit-P-9(1)/PW-10	Signature of PW10.
21.	Exhibit-P-10/PW-10	Charge-sheet.
22.	Exhibit-P-10(1)/PW-10	Signature of PW10.

5. Defence: Nil

6. Court Exhibits: Nil

7. Material Objects: Nil

(SMTI. MEGHALI SAIKIA)

Judicial Magistrate First Class, Bijni

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