

APPENDIX-12

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR

TEZPUR

Present:- Dr. Chetana Khanikar AJS.
Chief Judicial Magistrate,
Sonitpur, Tezpur

[Date of the Judgment]

11.09.2023

[PR Case No-1124 of 2023]

(FIR NO-68/2023 DATED-02.06.2023/LURKING HOUSE-TRESPASS OR HOUSE-BREAKING BY NIGHT IN ORDER TO COMMIT OFFENCE/ATTEMPT TO COMMIT THEFT IN DWELLING HOUSE CASE AND THELAMARA POLICE STATION)

COMPLAINANT :	Smt. Anju Pradhan, W/O:- Sri Loknath Pradhan, R/O:- Katonigaon P/S:- Thelamara, Dist:- Sonitpur, Assam
REPRESENTED BY	Smt. Nibha Rahman, Ld. Addl. Public Prosecutor Smt. Jaya Baruah, Ld. Addl. Public Prosecutor
ACCUSED PERSON	Md. Mujamil Haque, S/O:- Md. Rahmat Ali, R/O:- Katonigaon P/S:- Thelamara, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Rupjyoti Baruah, Ld. Legal Aid Defence Counsel

APPENDIX-13

Date of Offence	02.06.2023
Date of FIR	02.06.2023
Date of Charge Sheet	30.06.2023
Date of Framing of Charge	14.08.2023
Date of commencement of evidence	25.08.2023
Date on which judgment is reserved	07.09.2023
Date of Judgment	11.09.2023
Date of the Sentencing Order, if any	11.09.2023

ACCUSED DETAILS:

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Mujamil Haque	02.06.2023	NIL	Sec-457/511 (of 380 of IPC) of IPC	Convicted	i) Sentenced to Rigorous Imprisonment for three months for section 447 of IPC. ii) Sentenced to Rigorous Imprisonment for four months for section 511 (of 379 of IPC) of IPC.	102 Days (Till 11.09.2023)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR::
TEZPUR

P. R. Case No-1124 of 2023
(U/S-457/511 (of 380 of IPC) of IPC)

State of Assam

.....Prosecutor

- *Versus* -

Md. Jamil Haque (UTP)

.....Accused Person

Present:- Dr. Chetana Khanikar, AJS
Chief Judicial Magistrate, Sonitpur at Tezpur

For the prosecution :- Mr. N. Rahman, Addl. P. P.

For the defence :- Mr. R. Baruah, Ld. Chief L. A. D. C.

Evidence recorded on :- 25.08.2023, 28.08.2023, 29.08.2023
30.08.2023 & 05.09.2023

Argument heard on :- 07.09.2023

Judgment delivered on :- 11.09.2023

J U D G M E N T

1. The prosecution case in brief as stated in the FIR is that on 02.06.2023 at about 01:00 AM, while the informant was sleeping at her house at Katonigaon, the accused Md. Muzamil Haque at first removed the water pump of the informant and thereafter, while he tried to take away the gas cylinder of the informant, the informant woke up and saw the thief. When the informant made hue and cry, neighbours gathered and apprehended the thief red handed and handed over to police. The informant came to know that one more thief namely, Md. Saddam Hussain Hussain was also associated with the accused.

2. On the basis of aforesaid FIR, police registered a case against the accused as Thelamara PS Case No: 68 of 2023 U/S. 380 of IPC. Police investigated the case and on completion of investigation submitted charge-sheet against the accused, Md. Mujamil Haque U/S. 380 of IPC.

3. On production of the accused Md. Mujamil Haque from judicial custody, copies of relevant documents were furnished to him as required U/S-207 of Cr. P.C. Considering the relevant documents and hearing both the parties and having found sufficient material to presume that the accused had committed offence U/S. 457/511 (of 380 of IPC) of IPC, charge under those sections was framed against him. The accused pleaded not guilty and claimed to be tried when the charge was read over and explained to him.

4. During trial the prosecution side has examined eight numbers of witnesses and adduced 04 documentary evidences.

5. At the close of the prosecution evidence, the accused was examined U/S-313 of the Cr.P.C. and his answers were recorded on separate sheets. The plea of the accused is that the accused was consuming alcohol on the day of incident and under the influence of alcohol he got slept on the ground outside the boundary wall of the informant Smt. Anju Pradhan. The accused does not know what happened thereafter, Later on, police apprehended the accused.

6. After perusing the record, considering the materials produced, hearing the arguments of the learned counsels for both the sides and the accused the following points are taken as POINTS FOR DETERMINATION:

(i) Whether on 02.06.2023 at about 01:00 AM, the accused had committed lurking house trespass by entering the house of the informant Smt. Anju Pradhan, for the purpose of committing the offence of theft?

(ii) Whether the accused on the same day, time and place, took attempt to commit theft at the house of the informant Smt. Anju Pradhan and caught red handed while trying to take away a gas cylinder and a water pump for the wrongful gain of the accused and without the consent of the informant, out of her possession?

Evidences:

7. In this case, PW 1 is the informant Smt. Anju Pradhan. She deposed that on the night of incident, she heard some sound. At that time, her husband was not available at home. Therefore, she called her neighbours namely, Subhas Dahal, Bornali Devi and Archana Devi over phone. When they came, she opened the door and saw the accused, who was hiding behind the flowers. The accused told that one more person was associated with the accused. The accused has removed the water pump of the informant and thrown away the same outside her boundary wall. Regarding the incident, she filed the FIR.

8. During cross-examination, PW 1 has deposed that she does not know the contents of the FIR. The water pump was fixed by bolts and knots. They found two knives in the possession of the accused and the same were handed over to police. The water pump was of Havells Company. She has a concrete boundary wall with iron gate. She used to lock the gate in night hours. She did not know the accused prior to the incident. The accused resides in the same village with her in an interior area. She was suggested that she has not stated before police that "on the night of incident, she heard some sound. At that time, her husband was not available at home. Therefore, she called her neighbours, namely, Subhas Dahal, Bornali Devi and Archana Devi over phone. When they came, she opened the door and saw the accused, who was hiding behind the flowers. The accused told that one more person was also associated with the accused. The accused has removed their water pump of the informant and thrown away the same outside her boundary wall." But she denied that suggestion. She was

further suggested that the accused has not entered her courtyard and has not removed here water pump, at the time of incident the accused was sleeping outside her gate and on suspicion, this case was filed against the accused. But she denied those suggestions.

9. PW 2, Sri Subhash Dahal has deposed that in the night of incident, at about 01:30 AM, his wife heard the yell of the informant and woke him up. He also heard that the informant was yelling like "thief, thief". Then, he immediately went to the house of the informant. Already 4/5 people were gathered there. He saw the accused there who was hiding behind the flowers at the courtyard of the informant. The accused has removed the water pump of the informant and thrown away the same outside her boundary wall.

10. During cross-examination, PW 2 has deposed that there are 6/7 houses near his house. The house of the informant is situated by the side of his by lane. The water pump was of Havells Company. He along with 3/4 other persons entered the courtyard of the informant by climbing the boundary wall. But he forgot who were the other 3/4 persons. Police arrived at the place of occurrence after 01:00 AM on the night of incident. He did not know the accused prior to the incident. He was suggested that he has not stated before police that "in the night of incident, at about 01:30 AM, his wife heard the yell of the informant and woke him up. He also heard that the informant was yelling like 'thief, thief,. Then, he immediately went to the house of the informant. Already 4/5 people have gathered there. He saw the accused there, who was hiding behind the flowers at the courtyard of the informant. The accused has removed the water pump of the informant and thrown away the same outside her boundary wall." But he denied that suggestion. He was further suggested that "at the time of incident the accused was sleeping outside the gate of the informant and on suspicion, this case was filed against the accused and PW 2 deposed falsely." But he denied those suggestions.

11. PW 3, Sri Bibekananda Nath has deposed that at that time, he was sleeping at his house. Then, he received a phone call from the daughter of his neighbour Archana that a thief has entered the house of the informant Smt. Anju Pradhan and PW 3 was asked to go there. PW 3 immediately went to the house of the informant and found many people there. But the gate of the informant was closed. After some time the gate was opened and PW 3 went inside. People gathered there searched the thief, but PW 3 came back. He again heard the yelling that the thief was found and then he went there. He saw the accused there and the accused told him that two more thieves were with the accused. But PW 3 forgot the names of the other two thieves which were told to him by the accused. Somebody informed the matter to police and police took the accused to the police station. The water pump of the informant was removed from its place by the accused and thrown the pump to outside the compound of the informant.

12. During cross-examination, PW 3 has deposed that he saw the accused when the accused was apprehended by public within the courtyard of the informant. Public assaulted the accused. He did not state before police that "he received a phone call from the daughter of his neighbour Archana that a thief has entered the house of the informant Smt. Anju Pradhan and PW 3 was asked to go there. PW 3 immediately went to the house of the informant and found many people there. But the gate of the informant was closed. After some time the gate was opened and PW 3 went inside. People gathered there searched the thief, but PW 3 came back. He again heard the yelling that the thief was found and then he went there. He saw the accused there and the accused told him that two more thieves were with the accused. But PW 3 forgot the names of the other two thieves which were told to him by the accused. Somebody informed the matter to police and police took the accused to the police station. The water pump of the informant was removed from its place by the accused and thrown the pump to outside the compound of the informant." He was suggested that "at the time of incident the accused was

sleeping outside the gate of the informant and on suspicion, this case was filed against the accused and PW 3 deposed falsely.” But he denied those suggestions.

13. PW 4 Smt. Archana Das has deposed that on the night of incident, the informant heard the sound of pulling her gas cylinder and called PW 4 over phone that a thief has entered at her house. PW 4 immediately went there and saw that a water pump was lying outside the gate of the informant. At that time, the gate of the informant was opened. PW 4 entered the courtyard of the informant and saw that the accused was hiding below the logs house of the informant. Then the informant informed the matter to the police and handed over the accused to police. The water pump of the informant was removed from its place by the accused and thrown it to outside the compound of the informant.

14. During cross-examination, PW 4 has deposed that only Bibekananda Nath, Lakhi Kanta Nath and PW 4 were present at the place of occurrence when she arrived there. She forgot the date of incident. When she saw the accused, the accused was sleeping. She does not know the make or model of the water pump. She was suggested that she has not stated before police that “on the night of incident, the informant heard the sound of pulling her gas cylinder and called PW 4 over phone that a thief was at her house. PW 4 immediately went there and saw that a water pump was lying outside the gate of the informant. At that time, the gate of the informant was opened. PW 4 entered the courtyard of the informant and saw that the accused was hiding below the logs house of the informant.” But she denied that suggestion. She was further suggested that at the time of incident the accused was sleeping outside the gate of the informant, on suspicion, this case was filed against the accused, she has not seen any water pump outside the gate of the informant and she deposed falsely. But she denied those suggestions.

15. PW 5 Sri Lakhi Kanta Nath has deposed that on the night of incident, he heard hue and cry and went out. He came to know that something happened at the house of the informant. Then, he went to her house and entered her courtyard by climbing the boundary wall. He found that one person was hiding behind the flowers at the courtyard of the informant. But PW 5 was not able to identify the person as it was dark and PW 5 has problem of his eyesight. PW 5 saw two knives in the hands of the said person. The said person was a thief and the thief has stolen a water pump of the informant. PW 5 saw the water pump outside the boundary wall of the informant. Later on, police came there and apprehended the thief.

16. During cross-examination, PW 5 has deposed that Bibek Nath and one person of Nepali community were present at the place of occurrence when PW 5 arrived there. The distance between the house of PW 5 and the house of the informant is about 11 meters. There is a road in between. PW 5 deposed that he does not know how the water pump came outside the boundary of the informant and who the owner of the said water pump is. PW 5 was suggested that he has not stated before police that "he heard hue and cry and went out. He came to know that something happened at the house of the informant. Then, he went to her house and entered her courtyard by climbing the boundary wall. He found that one person was hiding behind the flowers at the courtyard of the informant. He saw two knives in the hands of the said person. The said person was a thief and the thief has stolen a water pump of the informant. PW 5 saw the water pump outside the boundary wall of the informant." But he denied those suggestions.

17. PW 6 is the Investigating Officer Sri Ritul Moni Das. He has deposed that preliminary investigation of the case was done by ASI Satya Kakati who has visited the place of occurrence, drew the sketch map, seized one Horsepower Motor and thereafter, handed over the case diary. After that PW 6 took the charge of investigation and he went to the place of occurrence, recorded the

statements of the informant and witnesses, arrested the accused and submitted charge sheet.

18. During cross-examination, PW 6 has deposed that he received the FIR at 09:00 AM on 02.06.2023 and he along with ASI Satya Kakati went to the place of occurrence at 09:10 AM. The investigation of the case was started after receipt of the FIR. Time of seizure is not mentioned in the seizure list. PW 1 did not state before him that "on the night of incident, she heard some sound. At that time, her husband was not available at home. Therefore, she called her neighbours, namely, Subhas Dahal, Bornali Devi and Archana Devi over phone. When they came, she opened the door and saw the accused, who was hiding behind the flowers. The accused told that one more person was associated with the accused. The accused has removed the water pump of the informant and thrown away the same outside her boundary wall." PW 1 stated before him that when the thief Mujamil Haque after removing her water pump, entered her house and tried to steal the gas cylinder, she woke up and saw the thief. When she made hue and cry, neighbours gathered and caught the thief Mujamil Haque red handed. PW 2 did not state before the I/O that "in the night of incident, at about 01:30 AM, his wife heard the yell of the informant and woke him up. He also heard that the informant was yelling like 'thief, thief'. Then, he immediately went to the house of the informant. Already 4/5 people were there. He saw the accused there who was hiding behind the flowers at the courtyard of the informant. The accused has removed the water pump of the informant and thrown away the same outside her boundary wall." But PW 2 stated before him that when the thief Mujamil Haque tried to steal a gas cylinder and water pump from the house of the informant, the informant made hue and cry and then the neighbours went there and caught the thief Mujamil Haque red handed. PW 3 did not state before the I/O that "he received a phone call from the daughter of his neighbour Archana that a thief has entered the house of the informant Smt. Anju Pradhan and PW 3 was asked to go there. PW 3 immediately went to the house of the informant and found many people

there. But the gate of the informant was closed. After some time the gate was opened and PW 3 went inside. People gathered there searched the thief, but PW 3 came back. He again heard the yelling that the thief was found and then he went there. He saw the accused there and the accused told him that two more thieves were with the accused. But PW 3 forgot the names of other two thieves which were told to him by the accused. Somebody informed the matter to police and police took the accused to the police station. The water pump of the informant was removed from its place by the accused and thrown the pump to outside the compound of the informant." But PW 3 stated before him that, the thief Mujamil Haque was caught red handed while he was going to the house of the informant Anju Pradhan for committing theft of gas cylinder and water pump. PW 4 did not state before the I/O that "on the night of incident, the informant heard the sound of pulling her gas cylinder and called PW 4 over phone that a thief was at her house. PW 4 immediately went there and saw that a water pump was lying outside the gate of the informant. At that time, the gate of the informant was open. PW 4 entered the courtyard of the informant and saw that the accused was hiding below the logs house of the informant." But PW 4 stated before him that she heard hue and cry from the house of the informant, went there and caught the thief Mujamil Haque red handed with a gas cylinder and water pump and handed over to police. PW 6 has deposed that he has not seized any gas cylinder or any knot and bolt in connection to this case. The accused was handed over by the informant and local public in the night of 02.06.2023. In this case, he has not submitted any GDE copy regarding the fact of handing over the thief at the police station by the informant and public. PW 6 was suggested that he has not investigated the case properly and submitted false charge sheet against the accused and the accused is not connected with the incident of this case. But he denied those suggestions.

19. PW 7 Sri Ramen Nath has deposed that at the time of incident, he was sleeping at his house. On hearing hue and cry, he went to the house of the

informant Anju Pradhan and saw that a thief was sleeping in the flower garden of the informant and also saw that a water pump was lying in the road. Police took the thief to the police station. Police also seized the water pump and two knives where he stood as a seizure witness.

20. During cross-examination, PW 7 has deposed that he put his signature in the seizure list at the police station. The signature was taken as a formality in the concerned theft case. In his presence, police seized a water pump, which was lying outside the courtyard of the informant. He forgot the date and time of seizure.

21. PW 8 Smt. Bornali Devi has deposed that at the time of incident, she was sleeping at her house. On hearing hue and cry, she along with her husband went to the house of the informant Anju Pradhan and saw that a thief was sleeping in the flower garden of the informant and also saw that a water pump was lying outside the courtyard of the informant. The informant told PW 8 that when the informant was sleeping, the informant heard the sound of dragging a gas cylinder and woke up and then she knew that thief entered her house. PW 8 has deposed that police took the thief to the police station and police seized the water pump and two knives and she stood as a seizure witnesses.

DISCUSSION, DECISION AND REASONS THEREOF:

Point (i) and (ii):

(i) Whether on 02.06.2023 at about 01:00 AM, the accused had committed lurking house trespass by entering the house of the informant Smt. Anju Pradhan, for the purpose of committing the offence of theft?

(ii) Whether the accused on the same day, time and place, took attempt to commit theft at the house of the informant Smt. Anju Pradhan and caught red handed while trying to take away a gas cylinder and a water pump for

the wrongful gain of the accused and without the consent of the informant, out of her possession?

22. For convenience of discussion and to avoid un-necessary repetition both these points are taken together for discussion.

23. In this case, PW 1 to PW 5 have deposed that they heard yell of the informant and then went to the house of the informant, where they saw a person within her courtyard. PW 7 and PW 8 also have deposed the same. PW 1 who is the informant has also narrated the same story that on hearing the sound of dragging a gas cylinder she woke up and came to know that thief entered her house. Then, she called her neighbours. When neighbours came, she opened the door of her house and they she saw the accused Md. Mujamil Haque, who was hiding behind the flowers. PW 6 is the I/O has deposed that he and the earlier I/O ASI Satya Kakati went to the place of occurrence and the accused Md. Mujamil Haque was handed over to I/O. Thus, all the witnesses have deposed the same thing that the accused was found within the courtyard of the informant. The defence side has taken the plea that the accused was sleeping in front of the gate of the informant and this case was filed against him on suspicion. But whereas the prosecution side has adduced corroborative evidences of all the witnesses that the accused was found within the courtyard of the informant, the defence side could not adduce any evidence in support of the plea that the accused was sleeping outside the boundary of the informant. Merely, taking a plea is not sufficient to disprove the prosecution evidences. Thus, the presence of the accused within the courtyard of the informant at the time of incident is clearly proved.

24. All the witnesses have deposed that a water pump of the informant was removed from its place and the same was found outside the boundary wall of the informant. PW 6 who is the I/O has deposed that the said water pump was seized. PW 7 and PW 8 are two seizure witnesses who have also deposed about

their knowledge regarding the seizure of the water pump. The defence side tried to bring some doubt regarding the fact of removal or seizure of the water pump by showing the facts that the knots and bolts by which the water pump was fixed were not seized. Again, the witnesses including the seizure witnesses have stated about two knives. But the knives were not seized in this case. The gas cylinder was also not seized which was alleged to be dragged by the accused. The seizure list was given to the seizure witnesses to put their signatures at the police station, whereas police took the water pump from the place of occurrence.

25. The water pump which was seized was produced by the prosecution side and the same was identified by the seizure witnesses. From the seizure list, it is seen that no knots, bolts, knives or gas cylinder were seized. But all the witnesses have clearly stated about the fact that the accused has removed the water pump from its place and the same was thrown outside the boundary of the informant. No other evidence in contradiction to that was found. The defence side has brought forward some differences of the statements of the witnesses between their depositions in Court and their statements given under section 161 of the CrPC. However, on careful scrutiny, it is seen that the main facts that the witnesses went to the house of the informant, found the accused Md. Mujamil Haque there and saw the water pump of the informant outside her boundary wall remains same. Difference in the writing style of the Court and the investigating officer, during recording the statements of the witnesses cannot be construed as contradiction. Apart from that, non seizure of other articles is a mistake on the part of the I/O. But the Hon'ble Supreme Court in the case of *Balu Sudam Khalde and Another vs. State of Maharashtra: Criminal Appeal No. 1910 OF 2010*, has clearly stated that,

“...Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error

committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.”

26. Thus, it is seen that the seizure of the water pump is duly proved by the evidence of the witnesses as well as seizure list, as well as the material exhibits, if it was not removed by the accused, how the same was found outside the boundary wall of the informant was not explained by the defence side. The entire evidences of the prosecution side have pointed towards the only fact that the water pump of the informant was removed from its place and the same was thrown outside the boundary wall of the informant. Nothing is found in the materials available, in contradiction to the said fact. Hence, it is clearly proved by the corroborative evidences of the prosecution side that the water pump of the informant was removed from its place and thrown outside the boundary wall of the informant. The lacuna on the part of the investigating authority regarding in the procedure of seizure, which has not affected the root of the case regarding the presence of the accused at the PO and removal of the water pump from its place, cannot be the ground for rejection of the prosecution evidences.

27. It is found that the accused was found within the courtyard of the informant who was hiding there and that the water pump of the informant was removed from its place and thrown outside the boundary wall of the informant. The combined reading of these two facts implies the circumstance that the accused has removed the water pump from its place and thrown it to outside. **No other circumstance appeared from the materials available to explain how the water pump was removed from its place and it was recovered outside the boundary wall of the informant. Hence, from the materials the only fact found is that the accused has removed the water pump of the informant from its place and thrown the same to outside the boundary wall of the informant.**

28. Intention of a person can be gathered from his acts. Here, it is seen that the accused was hiding himself within the courtyard of the informant. It was night hours. From the evidence of PW 3, it is seen that, at first the gate of the informant was under lock and key. PW 2 has also stated the same and has deposed that he along with 3/4 persons have entered the courtyard of the informant by climbing the boundary wall. The time of incident is seen as midnight. Thus, presence of the accused within the courtyard of the informant at midnight when the gate of the informant was also under lock and key, itself shown his intention of doing something illegal by secretly entering the courtyard of the informant. The fact of throwing the water pump to outside has proved his intention of committing the offence of theft. Thus, it is clear from the evidences available that the accused has entered the courtyard of the informant with intent to commit theft and in furtherance of his intention, the accused has removed the water pump of the informant from its place and thrown the same to outside the courtyard of the informant. The defence side could not rebut the prosecution evidences, whereas the prosecution side has clearly proved the fact by adducing corroborative evidence.

29. In this case charge was framed against the accused under section 457 and 511 (of 380 of IPC) of IPC. Section 457 of IPC is lurking house trespass or house breaking by night in order to commit offence punishable with imprisonment. Here, although alleged that the accused has pulled the gas cylinder of the informant by entering her house, the same is not proved. Sufficient corroborative evidence is not found to show that the accused has entered the house of the informant. It is also not proved that the accused has broken any part of the house of the informant. **The fact proved here is that the accused has entered the court of the informant to commit the offence of theft.** This would fall under the definition of **criminal trespass** as defined under Section **441** of the IPC for which the penalty is provided under **Section 447 of the IPC. Criminal trespass** under IPC is a **smaller offence than lurking house trespass** or house breaking by night in order to commit

offence punishable with imprisonment. **All the ingredients of Sec.447 of IPC are present in Sec.457 of IPC.**

30. Again, it is seen that the prosecution side has clearly proved that the accused took attempt to commit theft of the water pump of the informant and for that he removed the water pump from the place where it was kept and thrown out the same to outside the boundary of the informant. But no evidence is found to the effect that the water pump was kept within any house or any such structure, vessel etc. Hence, here the attempt of theft is proved as attempt of committing offence under section 379 of IPC only, instead of attempt of committing offence under section 380 of IPC. **Section 379 of IPC is a smaller offence than section 380 of IPC. All the ingredients of Sec.379 of IPC are present in Sec.380 of IPC.**

31. Hence, in view of paragraph no. 29 and 30, **following Sec.222 of CrPC, I deem it fit to hold the accused Md. Mujamil Haque guilty under section 447/511 (of 379 of IPC) of IPC instead of section 457/511 (of 380 of IPC). Accordingly, the accused Md. Mujamil Haque is hold guilty u/s. 447/511 (of 379 of IPC) of IPC and convicted under those sections under the provision of "offence proved including offence charge".**

32. In the interest of justice and considering the nature of the offence, I decided **not to release the accused Md. Mujamil Haque on probation of good conduct** as it will encourage occurrence of this type of offence in the society and faith of the people on justice delivery system will be decreased by such release. Also, there exists every possibility that the accused will again commit offence of the similar type, without any hesitation if he is so released without allowing them to suffer the consequences of his act.

SENTENCE HEARING:

33. The accused **Md. Mujamil Haque** was heard on the question of sentence. Considering his statement, fact and circumstances of the case, it appears to me that he entered the courtyard of the informant when the gate was closed. He entered in night hours. Thus, the trespass here is of highest extent of gravity. Considering the submissions, I have not found any reasonable ground to deal with the matter of punishment in a lenient way. The accused simply prayed to impose nominal punishment without showing any reasonable ground. Presence of kid, wife or ailing parents at home and being the sole earner of the family cannot be a ground to decrease someone's sentence. I have not seen any considerable ground, which provoked the accused to commit the offence. Therefore, I prefer to impose maximum punishment upon the accused for the offence under section 447 of IPC and accordingly, the accused **Md. Mujamil Haque is sentenced to Rigorous Imprisonment for three months for section 447 of IPC.** On the other hand, it is seen that, here the value of the property tried to steal is not too high. It was only a water pump. Hence, the extent of gravity of the offence committed is not of a very high degree in connection to section 511 (of 379 of IPC) of IPC. Therefore, I prefer to deal with the matter of sentence in a lenient way and I hold that **Md. Mujamil Haque is sentenced to Rigorous Imprisonment for four months for section 511 (of 379 of IPC) of IPC. There is no order as to fine in view of the economic condition of the accused, who could not even engage a counsel of his own choice and represented throughout the case by Ld. LADC.**

34. As per provision of **section 428 of Cr.P.C.** the period of detention already undergone by the accused person during investigation, inquiry and trial of the case be **set off** against the sentence of imprisonment.

35. **The sentences of imprisonment for both the offences will run concurrently.**

36. The **seized** 1 Horsepower Motor, Model No-81/FLOWS2 **be returned to the real owner in due course of law.**

37. Let the **free certified copy of this judgment be furnished to the accused Md. Mujamil Haque.**

Given under my hand and the seal of this Court on this 11th day of September, 2023

(Dr. Chetana Khanikar)
Chief Judicial Magistrate,
Sonitpur: Tezpur

Dictated and Corrected by me

Chief Judicial Magistrate,
Sonitpur: Tezpur

APPENDIX -14
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Smt. Anju Pradhan	INFORMANT
PW 2	Sri Subhas Dahal	OTHER WITNESS
PW 3	Sri Bibekananda Nath	OTHER WITNESS
PW 4	Smt. Archana Das	OTHER WITNESS
PW 5	Sri Lakhi Kanta Nath	OTHER WITNESS
PW 6	Sri Ritul Moni Das	POLICE WITNESS
PW 7	Sri Ramen Nath	OTHER WITNESS
PW 8	Smt. Bornali Devi	OTHER WITNESS

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Ext. P 1/PW 1	FIR
2	Ext. P 2/PW 6	Seizure List
3	Ext. P 3/PW 6	Sketch Map
4	Ext. P 4/PW 6	Charge Sheet

B. Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Sr. No.	Exhibit Number	Description
1.	Material Object Ext. M 1/PW 7	Water Pump

Chief Judicial Magistrate,
Sonitpur: Tezpur