

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

TIHU, NALBARI

District : Nalbari

Present : **Siddhartha Bora** , AJS

JMFC, Tihu

P.R.C. No. - 36/20

U/S. 457/380 of I.P.C.

State

Vs.

Manoranjan Kalita

S/o – Lt. Khagen Kalita

R/o - Pakasupa(Nakhara)

P/s - Tihu, Nalbari

Dist- Nalbari (Assam)

Arguments for Prosecution : Pulen Barman, Ld. Addl. APP

Arguments for Defence : Nirmal Bharali, Ld. Advocate

Evidence recorded on : 08-02-2021,07-10-2021,08-10-2021,21-10-

2021,02-11-2021,16-11-2021

Arguments Heard on : 03/01/2022

Judgment delivered on : 12/01/2022

JUDGEMENT

1. The story of prosecution leading to the lodging of an FIR on 05-02-2020 IPC by the informant Dipjyoti Das against the accused Manoranjan Kalita. As per the ejahar on 05-02-2020 the accused in the very early morning around 3 AM tacitly open the door of the informant's house entered in to the house. Before entering in to the house the accused plucked off the bulb. After entering in to the house the accused open the trunk while they were sleeping and then took away rupees 1,84,000/- . He then tried to took away the bike which was kept on the veranda. But the father of the informant got awaken and came out the house. By not seeing the bike on the veranda, he then awoke us. They then searched the bike which was recovered near by road. when they then entered in to the house the trunked was open. They are also recovered notebook belonging in to the accused, laying on the veranda. The accused even call them over phone on 09.22 PM in the night to know about them before committing the theft.

2. On receipt of FIR, the police registered a case being Tihu P.S. Case No.- 24/20 under section 457/380 of IPC in Tihu Police Station. The Investigating Officer ASI Biseswar Choudhury carried out the investigation in the matter. During the course of investigation, the I.O. recorded the statement of the witnesses u/s

161 Cr.P.C, prepared one sketch map of the place, where the offence was allegedly committed. The I.O seized a notebook alleged to be belong to the accused from the place of occurrence. The accused was then arrested and then sent for production before the Court. After completing the investigation, he finally submitted the charge sheet finding sufficient materials against the accused person for the offences u/s 457/380 of IPC.

3. On receipt of summons, the accused person is called upon to enter trial and upon appearance of the accused, copies of relevant documents U/S 173 were furnished to the accused person in compliance with Section 207 of Cr.P.C.
4. Considering the relevant documents attached with the case records and hearing both the parties, I have found incrementing materials against the accused person to frame charge u/s 457/380 of IPC and accordingly charge was framed u/s 457/380 of IPC which were read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
5. In order to bring home the charge, the prosecution side examined six witnesses- PW1 to PW8 including the I/O and exhibited four documents from Ext.1, the ejahar to Ext.4, chargesheet.

6. The accused person has been examined and his statement was recorded u/s 313 Cr.P.C. The accused person denied all allegations levelled against him.
7. The defence side did not adduce any DW in support of their evidence.

Points for determination :

1. ***Whether the accused person*** 05/02/20 at about 03.00am in the early morning at the house of Dipjyoti Das committed lurking house breaking by night by entering into the house in the possession of Dipjyoti Das after the hour of the sunset and before the hour of sunrise so as to commit theft and thereby you committed the offence under section 457 of IPC and within my cognizance.

2. ***Whether the accused person*** 05/02/20 at about 03.00am in the early morning committed theft at the house of Dipjyoti Das by taking out rupees 1,84,000/- in cash along with one thousand cash from the possession and without the consent of the owner of the house Dipjyoti Das and that thereby committed an offence punishable U/S 380 of I.P.C and within my cognizance

Discussions, Decisions and Reasons thereof :

8. **I have heard arguments** put forwarded by both the learned counsels appearing on behalf of their respective parties. After hearing their intensive arguments, I have first gone through all the evidence adduced by the prosecution side to appraise the evidence on records including the oral and documentary.
9. PW1, Rabin Goswami has adduced in evidence that he does not the informant but the accused. He does not know about the incident.
10. Cross is declined.
11. PW2, Satyen Das has adduced in evidence that he knows both the parties. He heard about one year ago that the accused had stolen around one lack rupees from the informant. he does not know any thing else regarding the incident.
12. During the time of cross examination he testified that he does not know the exact stolen amount.
13. PW3, Deepjyoti Das, has adduced in evidence that he lodged this case on 05-02-2020. The occurrence took place at night on 04.02.2020. The accused committed theft Rs. 1,84,000/- from his trunk . He was in sleep at that time. His father got awaken for

urinal and so when he went out of this house, he had seen a beg but his bike is not on its place. His father then informed him. They then searched for the bike and the stolen money. The trunk was seen opened. A notebook of the thief was seen there. The stolen bike was then recovered from the veranda of neighbour house of Paresh Barman. From the notebook they could come to know that the notebook belongs to the accused. They then informed police who then arrested the accused. Police also interrogated him.

Ext. 1- Ejahar

Ext. 1(1)- His Signature.

14. During the time of cross examination he testified that he was in sleep at the time of theft and so he does not know the exact time of the occurrence. He does not see the commission of theft by the accused. There are four family members in their house- Maa, Deuta ,his elder brother and he. It's a fact that he saw the broken door of the house, and this is the main door of the house. The trunk was in the room of his father. The trunk was not locked in the room where the trunk was kept. His parents were sleeping . It's a fact that he does not know how many denomination of rupees. His collection of money was Rs. 76,000/-. There was also other money collecting from selling land was Rs. 90,000/-. The money other then Rs. 90,000/- was kept in the moneybag in the trunk. How much money was in the money beg he could not recollect. There are Rs. 7000/- in his elder brother's money beg. There were also Rs. 500 to 600 money in coin. The time in between calling him by his father and recovering the bike, is

about 5 minutes and at that time he does not see the accused Manoranjan Kalita. There is a good relationship in between the accused and his family. That his father call him, they then saw a beg, and then saw the bike in full-stand in neighbours house, is not told to police- it's not a fact. There are many case before this court connected to their family's land and the land of Manoranjan Kalita and so this case was lodged against the accused- it's not a fact.

15. PW4, Bipin Das has adduced in his evidence that the informant is his son. He knows the accused. The occurrence took place one and half years on 05th February in night about 3.00 PM. At that time he awake for urinal and saw the bike not present its place. He then along with Pranab Das went in search of the bike. They then saw the bike in a nearby house. They saw at their house papers in indisciplin manner scattering everywhere. They saw a note book of Manoranjan., On the very day, lock of temple at our house was also seen broken. The villages then informed the police and then police came to one police. Police also came to their house and saw broken trunk. Police then seized the note book. They then lodged FIR.
16. During the cross examination he testified that the statement made in chief were not sated before the police- it's not a fact.
17. PW5, Bijay Kalita has adduced in his evidence that he knows the informant and the accused. The occurrence took place on 05-02-2020 in the night. He knew it in the morning 9.00 am on the next day. He heard that money was stolen from the Dipjyoti Das's

house. Some documents and bag of the accused were recovered from the house of the victim.

18. Cross Declined.

19. PW6, Pranab Das has adduced in his evidence that the informant is his younger brother. He knows the accused. The occurrence took place on 05-02-2021. Money was stolen from his house at night. He knew it when he awaked in night and saw the doors were opened. He also did not see his bike. He then went out and saw the bike in front of the house of his house. The bag of younger brother used for collection was laying outside the house. *Near the bag, one small bag was also recovered from where documents belonging to the accused was also recovered.* His money in the purse amount of Rs. 7000/- was also stolen.

Ext. 2- Seizure list

Ext. 2(1)- his signature.

MR Ext- (A)- Document

MR Ext. A (1)- his signature

20. During the cross examination he testified that in the statement before police, it was stated that he works for mobile as an agent- it's not a fact. *MR Ext. (A) – in the notebook, there is written Jitumaoni Talukdar in place of name and in subject, it is written B.C.A. – it's a fact that it is written there.* It's not a fact

that he deposed falsely about the commission of theft of money from his house by the accused.

21. PW7, Prabhakar Das has adduced in his evidence that he know both the parties. The occurrence took place 05-02-2020, there took place a theft at the house of informant at the time of down. Knowing the commission of theft, he went there and could come to know that some articles and money were stolen. *A notebook was recovered from the house.* The money stolen was connected with land sale. They then suspected that the accused committed the theft. *The accused later on went to the house from where articles were stolen for bringing something. It is then he was suspected.*
22. During the cross examination he testified that the informant is the son of his nephew. How much amount of money stolen he does not know properly. There is a distance of 500/600 metres in between Dipjyoti and their house. They could come to know that the theft committed at about 3.30 am. At that time, he saw gathering of people at the P.O. It's a fact that he does not go inside the house i.e. the P.O. it's a fact that *he does not see commission of theft by his own eyes. Village people discussed that the accused committed theft and so, he suspected it. That the accused went to the place of occurrence to bring something which he left at the time of commission of theft- it is not told to police – it's a fact.* It's not a fact that he deposed falsely in favour of the informant.

23. PW8, Sanjit Das has adduced in his evidence that he knows both the parties. The occurrence took place in the month of February in 2020. There took place a theft committed at the house of informant. *Knowing it he went there and recovered a note book from the P.O. After scrutiny they saw the names of many persons including the name of the girlfriend of the accused, so they suspected the accused.* Some money from collection and from selling land was stolen by the accused.

Ext. 2- Seizure list

Ext. 2 (1)- His signature

Seizure list 2 was seized from the P.O. when he was there.

M.R. Ext A – Note Book seized.

24. During the cross examination he testified that it's not a fact that he does not state to police that the accused committed theft at the house of Biswajit. *It's a fact that there is written Jitumoni Talukdar in the place of name and BCA in place of subject in the notebook. There does not written the name of accused on the front page of the notebook-it's a fact.* It's not a fact that the accused did not commit theft and he deposed falsely against the accused.

25. PW9, Biseswar Choudhury has adduced in his evidence that on 05-02-2020 he was working as ASI at Tihu P.S. and on that day, informant Dipjyoti Das lodged an ejahar the same is registered as Tihu P.S. No- 24/20 u/s 457/380 of IPC. After taking

charge of investigation, he interrogated the informant and then went to P.O. he drew sketch map of the P.O. and then interrogated the witnesses present there. The accused was then arrested and then sent to the court for production. He seized a book at the time of investigation he submitted charge-sheet against the accused U/s 457/380 of IPC.

Ext. 3- Sketch Map

Ext. 3(1)- His signature

Ext. 4- Charge-sheet

Ext. 4(1)- His signature

Ext. 2- Seizure list

Ext. 2(3)- His signature

26. During the cross examination he testified that the sketch map was prepared on 05-02-2020 he was entrusted to investigate the case 05-02-2020. The ejahar was received on 05-02-2020 also. The seized article was seized on which date is not mentioned in Ext. 2- it's a fact. It's a fact that he did not mention the owner of the book in the seizure list. It's a fact that he did not see any breaking of wall or door in the house i.e. the place of occurrence. It's not a fact that he did not investigate properly.

Appreciation of Evidence

27. After going through the evidence adduced by the prosecution side, let us proceed to appraise the evidence. PW1 does not know anything about the commission of theft. PW2 heard that the accused had committed the theft of rupees one lac from the informant. As such his evidence is only hearsay which is not admissible in evidence in the instant case.
28. From the evidence of PW3, it is crystal clear that PW3 is the informant of this case. From a careful scrutiny of the evidence adduced by him, it transpires that he does not see the commission of the theft by the accused. It is admitted in his rebuttal evidence. From the circumstantial evidence adduced by PW3, it is evident that a bag was lying in the house and the trunk where the stolen money was kept was opened. Further PW3 also saw the bike in full stand in a nearby house. The door of the informant's house was also opened. From these facts it is ascertained that theft was committed in the house of the informant by breaking the door. But whether the door was broken by the accused and whether the commission of the theft is done by the accused could not be ascertained with the evidence of PW3. Even PW3 also admitted in his rebuttal evidence that the accused was not seen by him in between the time of calling the father of PW3 and recovering the bike.
29. From a meticulous perusal of the evidence of PW4, it appears that he adduced some incriminating materials in his evidence. He adduced that a notebook belonging to the accused Manoranjan is recovered from the place of occurrence and this fact

is told to Police. As such the defence side could not establish contradiction of his evidence. I have seen the notebook i.e. the M.R. Ext.1. After a careful scrutiny it becomes clear that there is written the name of Jitumani Talukdar in the place of Name and BCA in the place of subject in the notebook. As the evidence of PW4 is found not incriminating so to bring the accused under the purview of the alleged offence u/s 457/380 of IPC.

30. From the evidence of PW5, it is only established by the prosecution side there was committed theft of money from the house of the informant.

31. *PW6 is the elder brother of the informant. From the rebuttal evidence it transpires that the defence side shattered the credit of the fact stated by PW6 at the time of examination-in-chief that the notebook recovered from the place of occurrence belongs to the accused. PW6 admitted at the time of his rebuttal evidence that the MR Ext. (A) i.e. the notebook, there is written Jitumaoni Talukdar in place of name and B.C.A. in the place of subject. As such whether the notebook is solely belongs to the accused could not be confirmed.*

32. From the evidence of PW7, it becomes clear that his evidence is hearsay. But he adduced at the time of his examination-in-chief some germane materials connected to the occurrence such as the act of going to the place of occurrence by the accused after the occurrence to fetch something. But, the credit of this evidence is shattered by the defence side at the time of cross-examination. PW7 admitted at the time of rebuttal evidence that the *act of going to the place of occurrence by the*

accused aftermath the occurrence to fetch something is not told to police. As such this evidence is not admissible in evidence. PW9 also confirmed it in his rebuttal evidence.

33. From the evidence of PW8, it is evident that the defence side becomes success to rebut the evidence of PW8 adduced at the time of examination-in-chief. He adduced at the time of examination-in-chief that they saw the name of the girlfriend of the accused in the notebook recovered from the place of occurrence. But from the rebuttal evidence it is clear that there is written Jitumoni Talukdar in the place of name and BCA in place of subject in the notebook. There does not written the name of accused on the front page of the notebook. As such whether this notebook belongs solely to the accused is not confirmed.

34. *In the last in the evidence of PW7, the I/O of this case I do not find any incriminating materials of commission of the alleged theft from the house of the informant by the accused.*

35. Having completed the appraisal of the entire evidence adduced by the prosecution side, I proceed to determine the points for determination. In both the points for determination, it is to be determined whether the accused entered illegally by breaking the walls of the shop of the informant at night and then committed theft from the shop. In the first point for determination, it is to be decided whether the accused broke down the door of the informant's house so as to commit the theft of Rs.1,80,000/- . I have perused the relevant provisions of law incorporated in the Indian Penal Code. A bare reading of the section 457 of IPC, it transpires that to convict an accused for the offence alleged to be

committed under section 457 of IPC, the following ingredients must be followed -

1. The accused did lurking house trespass by night or house-breaking by night.
2. It was done in order to commit an offence punishable with imprisonment or with a view to commit the theft.

Similarly, as per the section 380 of IPC, to convict the accused under this section, the prosecution shall prove the following ingredients –

1. Accused removed moveable property
2. He removed the property out of the possession of another person without his consent.
3. He did so with a dishonest intention
4. The property was removed from the building, tent, or vessel used as human dwelling or for the custody of property.

For the check of convenience, both the points for determination is discussed together below -

36. In the instant case , it was established by the prosecution, as almost all the PWs adduced in their evidence, that a theft of money was taken place at the house of the informant in the night on the day of occurrence by breaking the door of the house of the informant. But from the appraisal of the evidence of prosecution side as discussed in above, it is evident that not a single PWs including PW3 i.e. the informant, PW4 i.e. the father of the

informant and PW6 i.e. the elder brother of the informant adduced in their evidence that the accused broke down the door of the house of the informant so as to commit theft of money as alleged from the house of the informant. Even PW9, the I/O of this case did not seize any materials or articles of broken door of the house. AS such the prosecution side failed to establish that the accused had broken down the door of the house of the informant so as to commit theft of money as alleged. Therefore, the point for determination no.1 is decided negatively and in favour of the accused.

Decision : The point for determination no.1 is decided negatively and in favour of the accused.

37. In the last pint for determination, it is to be decided that the accused committed theft of money of Rs.1,84,000/- and bike from the house of the informant in the night on the day of occurrence. I have perused the relevant provisions of law incorporated under section 380 of IPC. the same is reproduced verbatim below for better understanding –

*” Section 380 of IPC: **Theft in dwelling house**, etc. —Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description*

for a term which may extend to seven years, and shall also be liable to fine."

38. Thus, the section 380 provides the commission of theft in any dwelling house. But, the definition of theft is provided under section 378 of IPC. As per the definition provided, theft is said to be committed when anyone takes dishonestly any moveable property out of the possession of the any person without that person's consent. Thus, a perusal of the definition provided under section 378 of IPC read with the commission of theft in dwelling house under section 380 of IPC, it appears that to bring home the accused under the purview of the alleged offence under section 380 of IPC, the prosecution shall establish the following ingredients

—

- 1.** The accused removed moveable property i.e. Rs.1,84,000/- along with the bike.
- 2.** He removed it from the possession of another and without his consent i.e. from the possession of the informant without his consent.
- 3.** He did it with dishonestly.
- 4.** The Accused removed the money and the bike from the house of the informant.

39. *From the appraisal of the evidence adduced by all the prosecution side, it is seen that there was no direct proof of commission of theft of the alleged money along with the removing of the bike from the house of the informant by the*

accused Monoranjan Kalita. No one saw the occurrence or the accused at the time of commission of the theft from the house of the informant. The family members of the informant such as his father who informed the informant about the commission of theft at their house, and his elder brother could not adduce any direct evidence so as to bring home the accused under the purview of the alleged offence.

40. *Now from the circumstantial evidence adduced by the prosecution witnesses such as PW3, the informant itself, PW4, PW6, PW7 and PW8, it is evident that after the commission of theft from their house, all of them saw a notebook laying in their house. From the evidence of all the PWs mentioned above and the appraisal of the evidence as discussed in above, it is seen that PW3 and PW4 adduced in their evidence that a notebook belonging to the accused was recovered from their house and the notebook belongs to the accused Monoranjan Kalita. Even PW6, PW7 and PW8 also adduced it that a notebook belonging to the accused was recovered from the house of the house of the informant. But PW6 admitted in his rebuttal evidence that there was written the name of Jitumoni Talukdar in the place of subject on the notebook. Since the name of one Jitumoni Kalita was written in the notebook, as such it is the duty of the prosecution side to examine Jitumoni Kalita. But he was found not summoned for deposition, instead the accused was suspected for the alleged offence. PW7 could not ascertain whether the notebook belongs solely to the accused. PW8 although adduced that while they examined the notebook recovered from the house of the*

informant, the name of girlfriend of the accused was written in the notebook. But he further admitted in his rebuttal evidence that there did not written the name of the accused in the front page of the notebook.

41. Besides, from a meticulous perusal of the evidence of PW3 and PW4, it appears that they adduced some incriminating materials in their evidence. They adduced that a notebook belonging to the accused Manoranjan is recovered from the place of occurrence and this fact is told to Police. As such the defence side could not establish any contradiction of their evidence at the time of their rebuttal evidence or at the time of evidence of PW9, the I/O of this case. But from the evidence adduced by PW4, PW7 and PW8, a doubt creeps in mind whether the notebook belongs to the accused Monoranjna kalita solely. To ascertain whether the notebook belongs to the accused, I have seen the notebook i.e. the M.R. Ext.1. After a careful scrutiny it becomes clear that there is written the name of Jitumani Talukdar in the place of Name and BCA in the place of subject in the notebook. As such, the evidence of PW3 and PW4 is found not incriminating so to bring the accused under the purview of the alleged offence u/s 457/380 of IPC. Thus, from the comprehensive discussion of the entire evidence adduced by the all the PWs including the seized materials, it is evident that the prosecution side failed to establish that the notebook belongs solely to the accused Monoranjan Kalita and none others. Thus, it appears that the prosecution side could not fulfil any of the ingredients of the offence under section 380

of IPC. Hence, the point for determination no.2 is decided negatively and in favour of the accused.

Decision: The point for determination no.2 is decided negatively and in favour of the accused.

42. Thus, after due appreciation of the entire evidence on records including the oral and documentary and the decisions made in the above mentioned points for determination, it is established that the prosecution side has failed to succeed in establishing the commission of the offence by the accused Monranjan Kalita under section 457/380 of IPC beyond all reasonable doubts. Therefore, the accused person is acquitted from the charge levelled under section 457/380 of IPC.
43. Bail bond remain extended for another 6 (six) months as per section 437(A) of the Cr.P.C.
44. The case stands disposed of on contest.

Given under my hand and seal of this court in presence of both sides on this 12th January, 2022.

(**Siddhartha Bora**)

Signature

Judicial Magistrate First Class

APPENDIX

1. **PROSECUTION WITNESSES :**

PW 1 – Robin Goswami

PW 2 – Satyan Das

PW 3 – Dipjyoti Das

PW 4 – Bipin Das

PW 5 - Bijay Kalita

PW 6 – Pranab Das

PW7 – Prabhakar Das

PW8- Sanjit Das

PW9-ASI, Biseswar Choudhury.

2. **DEFENCE WITNESSES :**

Nil

3. **B) List of Exhibits** by the Prosecution side :

Ext.1 - Ejahar

Ext.2 - Seizure List

Ext.3 - Sketch Map

Ext.4 – Chargesheet

(Siddhartha Bora)

Signature

Judicial Magistrate First Class