

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
CHAPAKHOWA, SADIYA,

GR No. 377 of 2018

STATE OF ASSAM

-VS-

1. SRI GOKUL MECH, S/O: SRI THOMAS MECH

ADDRESS: VILL. PADUMPUKHURI GAON, P.S:SADIYA, DIST: TINSUKIA(ASSAM)

Under Section 457/380 of IPC

Present: Debasish Kashyap,
 Sub-Divisional Judicial Magistrate (M), Sadiya

FOR THE STATE: Mrs. Sulekha Kar, learned Asstt. PP

FOR THE ACCUSED: Mr. Putukan Chiring, learned defence counsel

CHARGE FRAMED ON: 14.02.2019

EVIDENCE RECORDED ON: 27/02/2019, 12/03/2019, 26/03/2019

ARGUMENT HEARD ON: 03/04/2019

JUDGMENT DELIVERED ON: 06/04/2019

JUDGMENT

1. The case of the prosecution is that on the night of 07.12.2018 the accused person had committed theft at the house of Sri Subhash Pareek at Seuj Nagar, Chapakhowa and took away Rs.8,000/- to Rs.10,000/- from the almirah. An FIR was lodged by Sri Subhash Pareek in this regard at Sadiya P.S. stating that an unknown person had committed theft in his house. It is also mentioned in the FIR that villagers had caught the accused and handed him over to police at

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Sadiya P.S. A case was registered as Sadiya P.S case No. 169/2018 under section 457/380 of IPC and S.I. Ujjal Mili was entrusted to investigate the case. On the basis of investigation, charge-sheet was submitted against the accused person under Section 457/380 of IPC.

2. The accused person was arrested and remanded to judicial custody. After hearing both sides, charge under Section 457/380 of IPC was framed. The particulars of offences under Section 457/380 of IPC was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. Prosecution has adduced evidence of as many as six witnesses including the I/O. The accused person was examined under Section 313 of Cr.P.C. and he denied the allegation against him. Defence side declined to adduce any evidence and hence defence evidence is closed. I have heard the argument of both the sides.

4. **POINT FOR DETERMINATION:**

1. Whether the accused on the night of 07.12.2018 committed lurking house trespass by night by entering into the house of Subhash Pareek in order to commit theft and thereby committed an offence punishable under Section 457 of IPC?

2. Whether the accused on the night of 07.12.2018 committed theft of Rs.8,000/- to Rs.10,000/- in the house of Subhash Pareek and thereby committed an offence punishable under Section 380 of IPC?

DISCUSSION, DECISION AND REASONS THEREFORE:

Both the points for determination are taken together for discussion for the sake of convenience.

5. PW1 Sri Kanta Pareek who is the wife of complainant deposed that the

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accused person used to come to their shop and they know the accused as a customer. On the night of 07.12.2018 at about 2/3 a.m, when they got up from bed, they saw that all the almirahs in their house were open and the clothes and other articles were lying here and there. Thereafter they came to know that about Rs. 8000/- to Rs.10000/- were stolen from their house as well as from the shop. One Rs. 10 bundle and other amount were also missing. On the same day, they lodged an F.I.R in this regard at Sadiya P.S. She again deposed that later, police has seized some amount from the accused she could identify the amount seized to be stolen from her house. She proved the seizure list as Ext.1 and her signature on the seizure list as Ext1(1). In her cross, she stated that she did not see any person committing theft in her house or entering her house and she does not know the contents of Ext1. She again stated that she did not see police personnel recovering any money from the accused and she cannot see the seized articles in the court. Again, PW2 Sri Rajkumari Chauhan deposed that the incident occurred on the night of 07.12.2018. The next morning, she was informed by the daughter of Subhash Pareek that there was theft in her house. Thereafter, she went there and saw that all the almirahs in their house were open and the clothes and other articles in their house were lying here and there. She again stated that the wife of the Subhash Pareek had told her that some cash amount was stolen from their house. Later, she went with her to the police station and saw that some amount was seized by police personnel. She had put her signature on the seizure list which she proved as Ext.1(2). She stated that she does not know what happened thereafter. In her cross, PW2 stated that she did not see any person committing theft. She does not know the contents of Ext1. She again stated that she did not see police personnel recovering any money from the possession of the accused. She also stated that she cannot see the seized articles in the court.

6. PW3 is the informant of this case. He stated that he know the accused as he used to work in a garage near his house. On 07.12.2018 at about 5 to 5:30 am, he saw that all the almirahs in his house were open and the clothes and other articles were lying here and there. They came to know that about Rs. 8000/- to 10,000/- was stolen from his house as well as from his shop. One Rs. Dictated and corrected by me
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10 bundle and other amount were also missing. He showed the same to nearby people. Some of villagers told him that they had caught one thief on the previous night and handed him over to police station. Villagers also told him that the thief might be the one who committed theft in his house. Thereafter, he rushed to the police station and lodged an FIR in this regard. Police told him that they recovered some cash amount from the accused and showed him the same. He stated that he could recognize one Rs.10/- bundle which was missing from his house. Police had seized the amount from the accused and prepared seizure list wherein he proved his signature as Ext1(3). He also proved the FIR as Ext2 and his signature as Ext1(1). In his cross, PW3 stated that he cannot say from where the seized amount was recovered by police. He again stated that he had put his signature on Ext2 at police station.

7. Another witness, P.W.5 stated that on a day in the month of January, 2019 when he came to open his shop near the shop of the complainant, he came to know that someone had committed theft in the shop of the complainant. Similarly, the P.W.6 also stated that she could know from the wife of the informant that some articles were stolen from the shop of the informant. Both P.W.5 and P.W.6 stated in cross that they cannot say what happened thereafter. PW4 is the I.O of the case. He deposed that on 07.12.2018 Sri Subhash Chandra Pareek lodged an FIR at Sadiya PS informing that cash amount and some other articles were stolen from his shop on the night of 07.12.2018. Moreover, his neighbors had apprehended one person named Sri Gokul Mech and handed him over to police. He stated that some local persons had already handed over the accused to the Police station. As deposed by him, after he was entrusted with the investigation of the case, he recovered Rs. 3171/- from the possession of the accused. Thereafter, he visited the place of occurrence, draw a sketch of the P.O, recorded the statement of the witnesses. Later on Charge sheet was submitted against the accused person on the basis of his investigation. He proved the charge sheet as Ext4. In his cross, he stated that he did not record the statement of persons who had handed over the accused to the police station. He again stated that none of the witnesses has stated before him about seeing the accused person committing theft or entering the house of the Subhash Dictated and corrected by me

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Pareek.

8. From the above evidence, it transpires that none of the prosecution witnesses has seen the accused either entering into the house of the complainant, Sri Subhash Pareek or committing any theft in his house. It appears that the accused was already apprehended by some villagers and handed over to police at Sadiya P.S. even before the FIR (Ext.2) was lodged. Police has not enquired any of the persons who had handed over the accused to police and there is nothing on record to explain why the accused was apprehended. As claimed by the prosecution, cash amount was recovered from the possession of the accused which was seized vide seizure list (Ext.1) and that amount belongs to the complainant Sri Subhash Pareek. Prosecution has argued that the recovery of the said amount from the possession of the accused itself proves that the accused had committed theft as alleged. However, it transpires from the above evidence that none of the prosecution witnesses has seen any recovery of money from the possession of the accused. Although it is claimed by the P.W.1 and P.W.3 that they could identify one Rs.10/- bundle among the seized cash amount, the seized articles are not produced in the Court. Therefore, there is considerable doubt regarding the manner and about any recovery of cash amount vide Ext.1 from the possession of the accused.

9. Thus, there is no evidence from the prosecution to show that the accused had entered into the house of the complainant Sri Subhash Pareek or that he had committed theft in his house. Prosecution has also failed to satisfactorily establish that anything was recovered from the accused. Therefore, there is no difficulty in holding that prosecution has miserably failed to bring out any materials against the accused in respect of the charge under Section 457/380 of IPC through its evidence.

10. Therefore, considering all the aspect including the circumstances of the case, I am of the opinion that the prosecution has miserably failed to prove its case under Section 457/380 of I.P.C. against the accused. Accordingly, the

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accused Sri Gokul Mech is found not guilty and acquitted of the charge under Section 457/380 of I.P.C. and he is set at liberty forthwith.

11. The bail bond executed by the accused and surety, if any are extended for next six months as per the Provisions of section 437(A) Cr.P.C.

12. Seized articles, if any be returned to the rightful owner as per law.

Case is disposed of on contest.

Judgment is pronounced in open court, in presence of both sides, and given under my hand and seal of this court on this 06th day of April, 2019.

(Debasish Kashyap)
Sub-Divisional Judicial Magistrate (M),
Chapakhowa, Sadiya

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APPENDIX

EXHIBIT OF THE PROSECUTION

Ext.1.....Seizure list
Ext.1(1).....Signature of P.W.1
Ext.1(2).....Signature of P.W.2
Ext.1(3).....Signature of P.W.3
Ext.1(4).....Signature of P.W.4(I.O)
Ext.2.....FIR
Ext.2(1).....Signature of P.W.3
Ext.3.....Sketch map
Ext.3(1).....Signature of P.W.4(I.O)
Ext.4.....Charge Sheet
Ext.4(1).....Signature of P.W.4(I.O)

EXHIBIT OF THE DEFENCE

NONE

MATERIAL EXHIBIT OF THE PROSECUTION

NONE

MATERIAL EXHIBIT OF THE DEFENCE

NONE

PROSECUTION WITNESS

P.W.1: Smti. Kanta Pareek
P.W.2: Smti. Rajkumari Chauhan
P.W.3: Sri Subhash Pareek
P.W.4: Sri Ujjal Mili (I.O)
P.W.5: Sri Biman Chiring
P.W.6: Smti. Julee Gogoi

DEFENCE WITNESS

NONE

(Debasish Kashyap)
Sub-Divisional Judicial Magistrate (M),
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