

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

**North Lakhimpur, Lakhimpur**

**PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS**

Judicial Magistrate First Class,

North Lakhimpur, Lakhimpur

**G.R. Case No. 2402/2014**

**State**

***Versus***

**Golap Chutia**

**(Under sections 380/457 of I.P.C)**

Charge framed on: 05.02.2015

Evidence recorded on: 19.02.2015, 14.07.2015, 11.08.2015,

Statement recorded on: 08.03.2021

Arguments heard on: 08.03.2021

Judgment delivered on: 12.03.2021

Advocate for the Prosecution: Mr. Jangki Doley

Advocate for the Accused person: Mrs. Runa Ahmed

**J U D G E M E N T**

**Prosecution Case in brief:**

- 1.** This case arose out of North Lakhimpur Police Station Case No.1303/2014 u/s 457/380 of I.P.C based on the gist of facts stated in the ejahar which has set this criminal case in motion against accused person.
- 2.** The informant lodged an ejahar stating *inter alia* that on the night of 28.11.2014 at about 1:00 a.m., some unknown person entered the house of the informant by breaking door and took away valuable articles like mobile phone with sim no. 8472848329, one bag full of rice, metal plates, one metal pot,

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accessories of hand pump, cash amounting to Rs.1200/- (Rupees One Thousand Two Hundred Only). On coming to know about the commission of theft the informant raised hue and cry. On hearing his hue and cry the neighbours came out and searched for the miscreants but could not apprehend anybody. Hence this case.

3. On receipt of the ejahar, incharge of Nowboicha outpost forwarded the ejahar to North Lakhimpur Police Station and the officer-in-charge of North Lakhimpur Police Station registered the case as North Lakhimpur Police Station Case No. 1303/2014 u/s 457/380 of I.P.C. Thereafter I/O has launched the investigation of this case and after completion of investigation, I/O has finally submitted charge sheet u/s 457/380 IPC against the accused person.
4. Thereafter, cognizance has been taken and summon have been issued to the accused person. On appearance of accused person, necessary documents required u/s 207 Cr. P.C have been furnished to him. On perusal of the materials on record formal charges u/s 457/380 of the Indian Penal Code is read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. Prosecution, in support of its case has examined only five (5) witnesses.
6. Accused is examined under section 313 of the Code of Criminal Procedure wherein he denied the allegations brought against him. Accused denied adducing evidence in defence.
7. I have heard the arguments advanced by the learned counsel for the accused person and Learned A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

**POINTS FOR DETERMINATION:**

**Point No 1:** Whether the accused on 28.11.2014 at about 01:00 a.m., at Kaligaon committed the offence of house breaking by entering into the house of the informant Sri Haren Borah at night, i.e., before sunrise and after sunset by breaking the door within an intent to commit theft and thereby committed an offence punishable under section 457 of I.P.C?

**Point No 2:** Whether the accused on the same date, time and place committed theft in the house of the informant Sri Haren Borah and thereby committed an offence punishable under section 380 of I.P.C?

**DISCUSSIONS, DECISIONS AND REASONS THERE OF:**

8. Now let me try to decide the above points on the basis of evidences on record. In order to make a clear and convenient discussion, I deem it fit to reproduce the relevant testimonies of witness. **The informant / P.W-1 Haren Borah** stated that on the night of 28.11.2014 at about 1:00 a.m., some unknown person entered his house by breaking door and took away valuable articles like mobile phone with sim no.8472848329, one bag full of rice, metal plates, one metal pot, accessories of hand pump, cash amounting to Rs. 1200/- (Rupees One Thousand Two Hundred Only). While the miscreant tried to take out the earrings of his wife she woke up and raised hue and cry. At this the thief fled away. For this incident he lodged the ejahar. Later on, police apprehended the accused and at his instance the articles were recovered from a pond and the mobile phone was recovered from another village. The witness proved the ejahar as Exhibit 1 and the seizure list as Exhibit-2. The informant in his ejahar stated that after the incident they looked to apprehend the miscreants but could

not do so. Thus, his evidence shows that he has not seen the person who committed theft.

P.W-1 in his cross examination though admitted that he has not produced any documents to prove the ownership of the articles but none has claimed the ownership of those articles except for the informant. Simply not producing any ownership documents does not mean that the informant is not the owner of those articles.

- 9. P.W-2 Khunmoni Borah**, the wife of the informant in her evidence stated that on the date of occurrence at night time the accused entered the house by breaking door and committed theft of valuable articles like mobile phone, one bag full of rice, metal plates, one metal pot, accessories of hand pump, cash amounting to Rs. 1200/- (Rupees One Thousand Two Hundred Only). As the accused tried to remove the earring from her ears she woke up and raised hulla. Though the neighbours surrounded the house, the accused managed to flee away. She further stated that for this incident her husband lodged the ejarah and he was arrested by the police and at his instant police recovered the stolen articles.

During cross examination P.W-2 stated she identified the accused in the moonlight as the accused switched off the light.

- 10. P.W-3 Sabitri Bora** in her evidence stated that on the date of occurrence the public came with the accused and recovered metal plates and pots from her pond. She came to know that the accused committed theft of those articles and concealed the articles in her pond.

P.W-3 in her cross examination stated that she does not know who has left the articles in her pond.

- 11. P.W-4 Dibya Jyoti Bora** is a seizure witness. In his evidence he stated that on the date of occurrence the police came with

the accused and villagers and recovered the stolen articles from the pond of P.W-3 which includes metal plates, metal pots and one mobile phone. The articles were seized in his presence. He also proved the seizure list marked as Exhibit-2.

During cross examination P.W-4 stated that he was not present at the time of occurrence and that he heard about the occurrence.

- 12. P.W-5 Indrewsar Gogoi** is the investigating officer of this case who stated that while he working as in-charge of Nowboicha outpost he received an ejahar from the informant and forwarded the same to the officer-in-charge North Lakhimpur for registering a case. He took up investigation and visited the place of occurrence, prepared a sketch map and examined the witnesses. He also examined the accused at the place of occurrence and recorded his statement. At the instance of the accused and led by him he recovered the articles from the pond of P.W-3. After completion of investigation he submitted case diary to the O.C. who later on submitted the charge sheet against the accused. Exhibit-4 is the charge sheet submitted by SI Rufu Chetia whose signature is known to him.

During cross examination P.W-5 stated that the accused admitted his guilt and led him to recover the stolen articles.

- 13.** Though the informant in the ejahar did not mention that the accused was involved in commission of theft but in his evidence he stated that he has identified the accused who tried to remove the earrings of his wife. Again P.W-2 corroborated the evidence of P.W-1 but their evidence appears to be doubtful as the informant would have named the accused in his ejahar. However, both the informant and his wife clearly stated that some articles were stolen on the date of occurrence. Further they stated that the articles were

recovered from the pond of P.W-3. P.W-3 and P.W-4 also corroborated the fact of recovery of articles from the pond of P.W-3. Admittedly none of the witnesses have stated that they have witnessed the accused committing theft or removing the articles from the house of the informant but their evidence goes to show that the articles were in fact removed from the house of the informant which were recovered from the pond of P.W-3. The whole prosecution case rests on recovery of articles at the instance of the accused. Section 27 of the Evidence Act states that **“When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in custody of police officer, so much information, whether it amounts to confession or not, as relates distinctly to the facts thereby discovered”**. On going through the evidence of the investigating officer it appears that he visited the place of occurrence and examined the accused. During his custody the accused admitted his guilt and led him to recover the articles from the pond of P.W-3. The investigating officer recovered the articles from the pond of P.W-3 as shown by the accused. The evidence of the investigating officer regarding recovery of the stolen articles at the instance of the accused has not been challenged by the defence. Though the investigating officer during his evidence should have proved the incriminating statement of the accused but the said incriminating statement has not been reproduced by the investigating officer. This is a serious lapse on the part of the investigating officer but for the fault of investigation officer the entire prosecution case cannot be discarded. In a catena of decision pronounced by the Hon’ble Supreme Court and Hon’ble Gauhati High Court held that **for the lapse of investigating officer the prosecution case cannot be discarded**. What appears here in the instant case is that stolen articles were removed from the house of the informant which was

recovered from the pond of P.W-3. The said articles were recovered while the accused was in the custody of the investigating officer that too on being shown and led by the accused. Thus, this court is of the opinion that it is the accused and none else that removed the articles from the house of the informant and concealed the same in the pond of P.W-3.

- 14.** The incident occurred at night time and theft was committed from inside the residence of the informant. The accused was put the incriminating materials and he only denied all the allegations brought against him but regarding the recovery of articles his simple denial is not good enough to accept his mere denial. Thus, in my view prosecution has successfully proved the charges u/s 380/457 IPC.
- 15.** Considering the allegation and circumstances under which the incident occurred I find that this is not a fit case for giving benefit under section 360 of the Code of Criminal Procedure and the benefit of Probation Of Offenders Act. Heard the convict on the point of sentence. He pleaded for mercy of the court. It appears that this is his first offence as no previous conviction could be proved by the prosecution against him. Thus, it appears to me that lenient punishment will meet the ends of justice.
- 16.** Accordingly, in light of all, I sentence the convict Golap Chutia - (a) to undergo simple imprisonment for a term of three years under section 457 of the Indian Penal Code and  
(b) to undergo simple imprisonment for a term of five years under section 380 of the Indian Penal Code.
- 17.** Both the sentences shall run concurrently. Set off the period already undergone by the convict.
- 18.** His bail bond shall remain in force for a further period of six

months as per provision of section 437-A of the Code of Criminal Procedure.

- 19.** Let a copy of the judgment be given to the convict immediately free of cost as per provision of section 363(1) of the Code of Criminal Procedure. The convict is also informed of his right to appeal against the judgment and order of conviction and sentence.
- 20.** Copy of the judgment be forwarded to District Magistrate, Lakhimpur in compliance with section 365 CrPC.
- 21.** The case is disposed of on contest accordingly.

Given under my hand and seal on this 12<sup>th</sup> of March, 2021 at Lakhimpur.

(Ms. Sparsita Garg)  
Judicial Magistrate First Class  
Lakhimpur, North Lakhimpur

**APPENDIX**

**A WITNESS OF PROSECUTION:**

1. P.W-1: Haren Borah
2. P.W-2: Khunmoni Borah
3. P.W-3: Sabitri Bora
4. P.W-4: Dibyajyoti Bora
5. P.W-5: ASI Indreswar Gogoi

**B EXHIBITS OF PROSECUTION:**

1. Exhibit-1 : Ejahar
2. Exhibit 1(i) : Signature of P.W-1 in the ejahar.
3. Exhibit-2 : Seizure List
4. Exhibit 2(i) : Signature of P.W-1 in the seizure list.
5. Exhibit 2(ii) : Signature of P.W-4 in the seizure list.
6. Exhibit 2(iii) : Signature of P.W-5 in the seizure list.
7. Exhibit-3 : Sketch Map
8. Exhibit 3(i) : Signature of P.W-5 in the sketch map.
9. Exhibit-4 : Charge Sheet
10. Exhibit 4(i) : Signature of S.I. Rufu Chetia, which is recognised by P.W-5.

**C WITNESS OF DEFENSE: NIL**

**D EXHIBITS OF DEFENSE: NIL**

(Ms. Sparsita Garg)  
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