

APPENDIX-12

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE
LAKHIMPUR, NORTH LAKHIMPUR

Present: Md. Forhan Uddin Choudhury, AJS
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

(Date of Judgment: 16-03-2022)

(G.R. Case No. 1563/2021)
North Lakhimpur P.S. Case No. 167/2021,
under section 457/380 IPC

COMPLAINANT	STATE OF ASSAM
REPRESENTED BY	Sri Ratul Dutta, Learned Asstt. P.P.
ACCUSED	1. Sri Bijay Bhumij Son of Sri Raju Bhumij Village: Ahubari P.S: Laluk District : Lakhimpur, Assam
REPRESENTED BY	Mr. D. Pokhrel, Learned Advocate

APPENDIX-13

Date of offence	12.06.2021
Date of FIR	12.06.2021
Date of Charge Sheet	17.07.2021
Date of Framing of Charges/offence explanation	18.09.2021
Date of commencement of evidence	01.10.2021

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Mr. F.U.Choudhury, Addl. CJM, Lakhimpur

Date on which judgment is reserved	09.03.2022
Date of Judgment	16.03.2022
Date of the Sentencing Order, if any	16.03.2022

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
A1	Sri Bijay Bhumij	13.06.2021	Nil	Section 457/380	Convicted	S.I for 10 months	09 months 03 days

J U D G M E N T

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 12.06.2021 at about 6.30 AM, informant Smt. Ranima Hazarika along with her daughter Smt. Junu Saikia went to the shop of informant at Harmuti and saw that the lock of the shutter of that shop is broken. Thereafter, informant's son Sri Papu Hazarika also came there on being called and they entered inside that shop and found that somebody committed theft of cash Rs. 5000/- (rupees five thousand), four numbers of clothes
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and one water pump. Thereafter, the informant came to know that accused Sri Bijay Bhumiz has been detained by some people in the house of one Sri Suklal Tanti at Gutibari village and recovered a water pump along with clothes and cash money. The informant then went to the aforesaid village and identified the above mentioned articles and cash money recovered from the possession of accused to be her stolen articles & cash money as mentioned above. The informant then informed the matter to police and accordingly police came there and detained the accused and also seized the recovered articles and took the accused along with the articles to police station. The informant then lodged an FIR about the occurrence before the In-charge of Harmoti police out-post.

2. On receipt of the F.I.R, a case being numbered as Laluk P.S Case No. 167/21 is registered. After investigation, I.O of the case submitted charge sheet against accused Sri Bijay Bhumiz for the offences punishable under section 457/380 of I.P.C. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and after hearing both the parties, charge was framed against the accused for the offences punishable u/s 457/380 of IPC. The charges are then read over and explained to the accused, to which he pleaded not guilty and stood to face the trial.

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3. The prosecution in support of its case examined seven witnesses, whereas the defence did not examine any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

POINTS FOR DETERMINATION:

(i) Whether the accused on 12.06.2021 dishonestly took away one water pump, four numbers of clothes and cash Rs. 5000/- from out of the shop of informant Smt. Ranima Hazarika, situated at Harmuti market, without the consent of informant, and thereby committed an offence punishable u/s 380 of IPC?

(ii) Whether the accused on 12.06.2021 entered inside the shop of informant situated at Harmuti market by breaking open the lock of the shutter/door, and thereafter committed theft of a water pump, four numbers of clothes and cash Rs. 5000/- from that shop, and thereby committed an offence punishable u/s 457 of IPC?

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DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO.1 and 2:

5. For the sake of convenience and as because point no. 1 and 2 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

6. As regards the aforesaid points for determination, informant Smt. Ranima Hazarika as PW-1 and her daughter Smt. Junu Saikia as PW-2 in their respective evidence-in-chief have stated that on 12.06.2021 in between 6.00 to 7.00 AM, they came to their shop situated at Harmuti market and saw that the lock of the shutter/door of that shop is broken. Thereafter, they entered inside the shop and found that somebody committed theft of four numbers of clothes along with one water pump and cash Rs. 5000/- (rupees five thousand) from inside that shop. The informant/PW-1 suspected the above named accused as she saw the accused roaming near the shop since few days back.

7. The PW-1/informant has further stated that thereafter she searched the accused and brought him to her shop and thereafter interrogated him as to whether he committed the aforesaid theft. Initially, the accused denied to have committed the theft but after sometime the accused admitted. Accordingly, she/PW-1 informed the

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matter to police and accordingly police took the accused to custody and interrogated him and thereafter recovered the aforesaid stolen articles and cash money from the house of a villager of Gutibari village on being led and shown by the said accused. She/PW-1 was present with police at the time of recovery of aforesaid articles. The accused led the police and showed the aforesaid articles in her presence. The police then seized the aforesaid articles and prepared seizure list and took her signature therein.

8. PW-1 has also stated that Exhibit-1 is the FIR lodged by her in which Exhibit-1(1) is her signature. Exhibit-2 and exhibit-3 are the seizure list by which police seized the aforesaid recovered articles and broken lock. Material Exhibit-1(A), 1(B), 1(C) and 1(D) are the aforesaid four pieces of clothes which are stolen from her shop. Material Exhibit-2 is the aforesaid water pump which was stolen from her shop. Material Exhibit-3 is the aforesaid broken lock of the door of her shop.

9. As regards the recovery of aforesaid stolen articles, PW-2 Smt. Junu Saikia in her evidence has corroborated the version of PW-1/informant by stating that police detained the accused and subsequently she/PW-2 came to know that the police recovered all the stolen articles and money.

10. In the above context, informant's son Sri Papu Hazarika as PW-3 in his evidence-in-chief has corroborated

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the version of PW-1 and PW-2 by stating that on the day of occurrence in between 6.00 to 6.30 AM, he went to the shop of his mother/PW-1 situated at Harmoti market on being called for by his sister/PW-2 over phone. Thereafter, he saw that the lock of the shutter/door of that door was broken and the articles inside are scattered here and there. His aforesaid sister then informed him that somebody committed theft of articles from that shop by breaking the lock. Thereafter, police was informed about the matter by his mother & sister and police detained the above named accused and recovered the stolen water pump, four pieces of clothes and cash Rs. 5000/- with the help of accused.

11. PW-4 Jitu Saikia, who has a shop near the shop of informant, in his evidence-in-chief has stated that on the day of occurrence at about 7.00 AM he saw that the accused was detained in front of the shop of informant and many people gathered there. He then came to know that the accused committed theft of a water pump along with four pieces of clothes and cash money from the shop of informant. Thereafter, police took the aforesaid accused and thereafter recovered the stolen articles and brought the same to police station and prepared seizure list in front of him. Police also seized the broken lock of the shutter of informant's shop. Exhibit-2 and Exhibit-3 are those seizure lists, in which exhibit-2(2) and exhibit-3(2) are his

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signatures. The PW-4 has then identified the aforesaid material exhibits in court during his examination-in-chief.

12. PW-5 Sri Shuklal Tanti in his evidence-in-chief has stated that on the day of occurrence in the morning hours police came to his house along with the above named accused and informant and thereafter recovered a water pump and a bag containing clothes. The police then seized the same and prepared seizure list in which he had put his signature. The informant told him at that time that the aforesaid water pump and clothes belong to her. Exhibit-2 is that seizure list, in which exhibit-2(3) is his signature. The PW-5 has then identified the aforesaid material exhibits in court during his evidence-in-chief.

13. PW-6 Sri Tapan Das in his evidence-in-chief has corroborated the version of above named witnesses by stating that on the day of occurrence at about 8.00 AM he saw a large gathering in front of the shop of informant and came to know that one water pump and clothes were stolen from the shop of informant.

14. In the above context, the I.O S.I Abhilekh Talukdar in his evidence-in-chief has stated that on 12.06.2021, he was posted as In-charge of Harmoti police out-post. On that day, the informant informed him over telephone that the above named accused has been detained in the house of one Suklal Tanti. Accordingly, he/PW-7 made a GD entry and went to the house of said

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Suklal Tanti and found that the accused has been detained by villagers. Thereafter, he interrogated the said accused and accordingly recovered one water pump along with four pieces of clothes and cash Rs. 5000/- from the house of said Suklal Tanti on being shown by the said accused. He/PW-7 then seized the aforesaid articles in presence of witnesses and prepared seizure list. The informant identified those articles to be the same which were stolen from her shop at Harmuti market. He/PW-7 then visited the aforesaid shop of informant and seized the broken lock of the door of that shop in presence of witnesses and prepared seizure list. Subsequently, the informant lodged a formal F.I.R in writing about the occurrence.

15. Now, upon perusal of the evidence deposed by prosecution witnesses as narrated above, I find that the crux of allegation made by the witnesses is that on 12.06.2021, the informant/PW-1 and her daughter/PW-2 saw that the lock of the door/shutter of the shop of informant at Harmuti market is broken. The informant/PW-1 then brought the accused to that shop and interrogated about the occurrence. The accused then admitted his guilt and accordingly police was informed. Thereafter, police took the accused to the house of Suklal Tanti and recovered those stolen articles on being led and shown by the accused. In my opinion, the aforesaid allegations, if presumed to be true will attract the offences punishable

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u/s 380/457 of IPC. Therefore, it is necessary to find out that whether the above evidence deposed by prosecution witnesses can be believed or not.

16. To proceed with the discussion of evidence in order to find out the credibility of prosecution witnesses, at the very outset, on perusal of cross-examination of prosecution witnesses, it is seen that the defence has primarily put a common question to all the prosecution witnesses (except I.O.), i.e. whether they have seen the accused committing theft? The answer to the aforesaid question is given in negative by all the witnesses by stating that they have not seen the accused committing the theft. Besides that, there is nothing substantial in the cross-examination of above named prosecution witnesses which can create a reasonable doubt with respect to the credibility of their respective versions stated by them in the examination-in-chief. Further, I do not find anything else in the case record which can create any substantial doubt as regards the credibility of the versions stated by above named prosecution witnesses in their examination-in-chief.

17. Therefore, I find that the witnesses examined by prosecution, as named above, have been able to prove beyond reasonable doubt that on the day of alleged occurrence initially the informant found that the lock of the door/shutter of her shop is broken and somebody has committed theft of one water pump along with four pieces

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of clothes and cash Rs. 5000/- from that shop. Subsequently, the accused was detained and thereafter police recovered the aforesaid stolen articles and cash money from the house of one Suklal Tanti/PW-5, on being lead and shown by the accused.

18. The fact that the accused led the police to the house of Suklal Tanti/PW-5 and showed the stolen articles kept in that house leads to only one logical conclusion, i.e., the aforesaid articles were either kept by the accused himself or by engaging somebody else. Further, there is nothing in the case record which can show that the accused has any valid & legal ground to justify his act of keeping those articles in the house of PW-5. This implies that the accused has either stolen those articles himself or received the same from somebody else knowing the same to be stolen property and concealed the same in the house of PW5 Sri Suklal Tanti.

19. Now, it is important to note here that even though none of the prosecution witnesses have seen the accused taking out those articles from the shop of informant, but the PW-1/informant has specifically stated that the accused admitted to her that he committed theft of those articles. Also, as already stated above, there is nothing in the case record to show that there is involvement of any other person in the commission of aforesaid theft. Hence, it can be safely concluded that the

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accused himself entered into the aforesaid shop by breaking the lock of shutter/door during night hours and committed theft of aforesaid articles alongwith cash money.

20. As such, it is clear that the acts committed by accused, as aforesaid, are squarely covered by the offences punishable u/s 380/457 of IPC. Hence, I find that the witnesses examined by prosecution have been able to prove beyond all reasonable doubts that the accused has committed the offences punishable u/s 380/457 of IPC.

DECISION: Point No. 1 and 2 is therefore decided in the affirmative and goes against the prosecution.

ORDER

21. In view of the discussions made above and the decisions reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have proved beyond reasonable doubts that accused person Sri Bijay Bhumiz has committed the offences punishable under section 457/380 of IPC. As such, accused Sri Bijay Bumiz is held guilty for commission of offences punishable u/s 457/380 of IPC and accordingly he is convicted for the commission of aforesaid offences.

22. Considering the fact that the offences committed has caused a sense of insecurity in the mind of victim, I am

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not inclined to release the convict person under the provision of Probation of Offenders Act as the same will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offence in future.

23. I have heard convict Sri Bijay Bhumiz on the point of sentence. Considering the submission made by the convict person, and having regard to the nature and gravity of the offences proved, convict Sri Bijay Bhumiz is sentenced to undergo simple imprisonment for 10 months for the offence under section 457 of IPC. The convict is also sentenced to undergo simple imprisonment for 08 months for the offence u/s 380 of I.P.C. The substantive periods of imprisonments as aforesaid shall run concurrently. The period of imprisonment already undergone by said accused during the investigation and trial of this case shall be set off against the period to which the convict/accused is sentenced under section 457/380 of I.P.C as aforesaid.

24. The cloths, water pump, and broken lock seized by I.O vide M.R No. 73/2021 and M.R No. 74/2021 be handed over to the custody of informant Smti Ranima Hazarika by the P.I of North Lakhimpur Court on execution of a proper bond of Rupees 20,000/- to be executed by the informant incorporating condition that she shall produce

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the same before this court of any other court in connection with this case as and when called for.

25. The cash amount of Rupees 5000/- which was seized by I.O and deposited in the North Lakhimpur treasury as per order of this court, shall also be released to the custody of informant after execution of a similar bond as stated above.

This judgment is given under my hand, and seal of this court on this the 16th day of March, 2022.

The case is disposed of on contest.

F.U. Choudhury
Addl Chief Judicial Magistrate
Lakhimpur, North Lakhimpur

Typed by:
Mr. Mohibul Islam
Stenographer, Gr.III

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Mr. F.U.Choudhury, Addl. CJM, Lakhimpur

APPENDIX – 14

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smt. Ranima Hazarika	INFORMANT/EYE WITNESS
PW2	Smt. Junu Saikia	OTHER WITNESS
PW3	Sri Papu Hazarika	OTHER WITNESS
PW4	Sri Jitu Saikia	OTHER WITNESS
PW5	Sri Suklal Tanti	OTHER WITNESS
PW6	Sri Tapan Das	OTHER WITNESS
PW7	S.I Abhilekh Talukder	POLICE WITNESS

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Nil	
DW2	Nil	

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE
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		WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	Nil	Nil
CW2	Nil	Nil

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	EJAHAR
2	Exhibit 2	SEIZURE LIST
3	Exhibit 3	SEIZURE LIST
4	Exhibit 4	SKETCH MAP
5	Exhibit 5	EXTRACT COPY OF G.D ENTRY
6	Exhibit 6	CHARGESHEET
7	Exhibit 7	TREASURY CHALLAN

B. Defence:

Sr. No.	Exhibit Number	Description
1	Nil	Nil
2	Nil	Nil

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Nil	Nil
2	Nil	Nil

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D. Material Objects:

Sr. No.	Exhibit Number	Description
1	Nil	Nil
2	Nil	Nil

F.U. Choudhury
Addl Chief Judicial Magistrate
Lakhimpur, North Lakhimpur

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