

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS::NALBARI**

**C.R. CASE NO. 08 OF 2019**

**U/S 380 OF I.P.C.**

**GIRISH TALUKDAR .....COMPLAINANT**

**vs.**

**DIP @ DEEP KUMAR DAS ..... ACCUSED**

**:PRESENT:**

**SMRITI REKHA BHUYAN, A.J.S.**

**JUDICIAL MAGISTRATE FIRST CLASS, NALBARI.**

**ADVOCATE FOR THE COMPLAINANT : J. U. AHMED.**

**ADVOCATE FOR THE ACCUSED : PHANIDHAR DEKA.**

**EVIDENCE RECORDED ON : 24.10.2019, 22.01.2020,  
28.01.2021, 08.02.2021.**

**ARGUMENTS HEARD ON : 23.04.2021, 05.05.2021**

**JUDGMENT DELIVERED ON : 07.05.2021.**

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

1. The prosecution in this case was launched by the lodging of the ejahar before the In-Charge of the Doulashal Out post, by the informant, Girish Talukdar on 02/05/2017 stating inter alia that the accused on 29/4/17 at around 2:30 a.m. at night trespassed into the house of the informant, at village Kaldi under Mukalmua P.S., Nalbari from backside and came into his shop. At relevant time, his son Sri Nipon Talukdar, came home after finishing his duty, as he was a member of the VDP, and his son saw that the accused was inside the shop, and was about to commit theft of money by breaking the cashbox. As such, he was caught red-handed and was handed-over to the police in presence of public.
  
2. The O/C of Mukalmua Police Station upon receipt of the ejahar registered it as Mukalmua Police Station case No.148/17 under section 457/380/511 I.P.C. and started investigating the case. After completion of the investigation, the police submitted final report and notice was issued to the informant. On receipt of notice the informant appeared before court and filed protest petition and hence, this complaint case was registered.
  
3. Accordingly my learned predecessor examined the complainant under section 200 Cr.P.C and also

examined 3 (three) witnesses under section 202 Cr.P.C. and after that cognizance was taken U/S 380 I.P.C. and summons was accordingly issued to the accused. The accused on his appearance was released on Court bail to face the trial.

4. At the stage of evidence before charge, the complainant namely Girish Talukdar was examined as P.W.1 and Nipon Talukdar, Ramani Talukdar and Maina Talukdar were examined as P.W.2, P.W.3 and P.W.4. respectively. Their cross-examinations were reserved till framing of the charge. After-that, upon hearing both sides on the point of charge and finding sufficient materials U/S 380 of I.P.C., a formal charge was framed and read over and explained to the accused Dip @ Deep Kumar Das, to which he pleaded not guilty and claimed to be tried.

5. At the stage of evidence-after-charge, the complainant was cross-examined as P.W.1 and Nipon Talukdar and Ramani Talukdar were cross-examined as P.W.2 and P.W.3. However, P.W.4. was not appeared for cross-examination and the complainant prayed to expunge the evidence-in-chief of P.W.4. As such, the evidence-in-chief of P.W.4 was expunged. After-that, complainant declined to adduce further evidence.

6. Then accused Dip @ Deep Kumar Das was examined U/s 313 Cr.P.C. The accused's plea was of total denial and he declined to adduce any evidence.
7. This court has heard arguments of both the Learned Counsels for the complainant and the accused person.

**POINT FOR DETERMINATION:**

8. Upon hearing and perusal of the record, this court has framed the following point for determination:

**(I) Whether the accused Dip @ Deep Kumar Das, on 29/4/17 at around 2:30 a.m. at village Kaldi under Mukalmua P.S., Nalbari, had committed theft in the dwelling house of the complainant and thereby committed an offence punishable u/s 380 of IPC?**

**DISCUSSION, DECISION AND REASONS THEREOF:**

**A. EVIDENCE ON RECORD:**

9. Let us, first of all, re-produce herein below the gist of the testimonies of the witnesses examined by the prosecution in this case.

*a. P.W.1/the complainant Girish Talukdar has deposed in his examination-in-chief that the*

*occurrence took place on 29/4/17 at around 2:30 a.m. at night at his house. At that time a bihu function was going on. At the time of incident, he was sleeping in his house, and then his son Nipon Talukdar, came home after finishing his duty as he was a member of the VDP, and he saw that the accused person was inside his grocery shop, and he was touching the cashbox, so his son caught the accused red handed and raised hue cry, and lot of local people gathered, and he also went and saw that some change currency were scattered on the floor of the shop, so they suspected that the accused stole the money from their cash box, so they searched the body of the accused and recovered Rs.840/- and he checked his cashbox. He kept around Rs.900/- in the cash box, which were missing. After-that, police were informed and the police came and they handed over the accused to the police. After-that, he lodged the ejahar against the accused, but the police submitted final report in this case, and being aggrieved, he proceeded with this case.*

*b. During cross, P.W.1 admitted that Jatin Das of 3 No. Bartala Village is his brother-in-law. P.W.1 further admitted that his daughter Bhanti is his niece. P.W.1 further admitted that there is a love affair between Bhanti and one namely Chandan*

*Das of the same village. P.W.1 denied the defence suggestion that Chandan Das refused to marry Bhanti. P.W.1 further denied the defence suggestion that as Chandan Das refused to marry Bhanti, hence, he lodged this case. P.W.1 admitted that his brother-in-law Jatin Das has lodged a case against Chandan Das and the case is pending at the court of Special Judges Court, Nalbari bearing Case No. Spl. P 15/2017. P.W.1 further denied the defence suggestion that he has lodged false case because of a case is pending against him lodged by the wife of Deep Kumar Das. P.W.1 further denied the defence suggestion that he lodged a case against Deep Kumar Das in order to save himself from the case lodged against him.*

- c. P.W.2 Nipon Talukdar stated in his examination-in-chief that the incident occurred on 29/04/17 at around 2.30 am at night in his house. At that time a bihu function was going on. At the time of incident, he was returning home after finishing his VDP duty and he saw that the back door of their grocery shop was open, so on suspicion he looked inside and saw that the accused person was standing near the cash box and the cash box was broken and some change currency and coins were scattered on the floor and some were on the cash box, so he shouted "thief thief" and the local*

*people gathered and his family members also came and he caught the accused and from the pocket of the accused he recovered the stolen amount of Rs.840/-. After that police were informed, and the police came and they handed over the accused to the police.*

*d. During cross, P.W.2 admitted that he is the accused in the case bearing G.R. Case no. 613/17 lodged by the wife of the accused namely Rupa Das. P.W.2 further admitted that Jatin Das of 3 No. Bartala Village is his brother-in-law. P.W.2 further admitted that there is a love affair between Bhanti and one namely Chandan Das of the same village. P.W.2 further admitted that he did not know whether Chandan Das refused to marry Bhanti. P.W.2 further admitted that he did not know whether police submitted F.R. of this present case when there was an F.I.R. lodged by the informant. P.W.2 further admitted that the accused person is police personnel. P.W.2 further denied the defence suggestion that the accused person Deep Das did not commit theft in his house and for that reason he held him by tying him. P.W.2 further admitted that because he held the accused by tying him and for that reason the wife of the accused lodged F.I.R. against him. P.W.2 further admitted that he lodged this case in order to save himself from the*

*case lodged against him.*

*e. P.W.3 Ramani Talukdar stated in his examination-in-chief that he came to the place of shop after hearing commotion. Some articles were stolen from a shop. It was happened 3 years ago. Cash Box was lying on the ground. There was a huge gathering of public of Bihu-Mela. Police arrived there and the accused was handed over to them for committing theft of Rs.840/- from the shop of the PW1.*

*f. During cross, P.W. 3 admitted that he is the accused in a case lodged by the mother of the accused namely Anima Das. P.W. 3 further admitted that the accused Deep Das is police personnel. P.W. 3 denied the defence suggestion that there was previous enmity between the accused person and him and for that reason he deposed false evidence.*

**B. THE LAW:**

10. It is seen that there is allegation of offence U/S 380 I.P.C. against the accused in the instant case and this court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.

11. Now, in order to establish the fact of theft u/s 380 I.P.C., the prosecution has to prove the criteria of Section 378 I.P.C., which defines theft. So as per Section 378 I.P.C., in order to bring home the charge u/s 380 I.P.C. against the accused persons, the prosecution has to prove the following ingredients:-

- (i) The accused removed the movable property;*
- (ii) He removed it out of the possession of another person without his consent and*
- (iii) He did so with a dishonest intention.*
- (iv) The movable property was removed from a building, tent or vessel.*
- (v) That such building, tent, or vessel was used as a human dwelling or used for the custody of property.*

12. The actus-reus of theft is usually defined as an unauthorized taking, keeping or using of another's property which must be accompanied by a mens-rea of dishonesty and/or the intent to permanently deprive the owner or the person with rightful possession of that property or its use.

13. Thus, in order to constitute theft u/s 380 IPC, the person must have removed movable property out of the possession of another dishonestly and without the person's consent and also it is necessary to prove that the 'theft' was committed in a 'building', 'tent', or

'vessel' used as 'human dwelling' or for 'custody of property'. The expression 'building' conveys a structure, whether covered or uncovered, made of any material whatsoever. The word 'dwelling house' means a building or a vessel that is being used by a person for living or remains there permanently or even temporarily. If any single element out of the above elements is missing, the prosecution fails.

### **C. THE ARGUMENTS:**

14.Ld. counsel for the complainant has submitted in his argument that the complainant has succeeded to prove the instant case beyond all reasonable doubt in as much as the prosecution witnesses clearly stated in their evidence that the accused had committed the alleged theft. He has further submitted that there is eye-witness of the said offence of theft, which implies that there is truth in the prosecution story. Thus, learned counsel for the complainant has submitted that the accused is liable to be convicted and sentenced in accordance with law.

15.Per-contra, Id. defence counsel has submitted in his argument that on the fateful night, the complainant and his family attacked him and as such, a G.R. case bearing no. 613/17 is lodged against them and as such, to make save themselves from the said case, the complainant lodged this false case against the accused and hence, there is no substantial evidence against

the present accused. The Id. defence counsel has further submitted that the complainant is totally failed to adduce sufficient evidence. Learned defence counsel has also argued that there are material contradictions, major discrepancies and material omissions in many points and the only independent witness i.e. P.W.3 stated nothing material in support of the prosecution case. Thus, learned defence counsel has argued that because of the lacunas, prosecution has failed to prove the case against the present accused beyond all reasonable doubt and as such the accused deserves acquittal.

**D. APPRECIATION OF EVIDENCE:**

16. Now, the question arises, whether prosecution has been able to discharge their burden by proving the ingredients of the offence under section 380 I.P.C., which the accused has been charged? Even though it is a complaint case, nevertheless, the standard of proof is same, i.e. proof beyond reasonable doubt.

17. Now, the fact which remains to be proved by the prosecution is whether the accused took away Rs. 840/- (Rupees eight hundred and forty only) from the dwelling house of the complainant with intent to take away the same.

18. From the forgoing evidence, it is found that the complainant, namely Girish Talukdar examined as

P.W.1 stated that his son i.e. P.W.2 caught the accused red-handed inside his grocery shop and a lot of people gathered there and then he also went and saw that some currency were scattered on the floor and they searched the body of the accused and recovered Rs. 840/- (Rupees eight hundred and forty) and after that they handed-over him to the police. To this, P.W.2 the son of the informant Nipon Talukdar also stated almost in the same version of P.W.1/complainant. During cross-examination of P.W.1 and P.W.2, both of them denied that they deposed false evidence in order to save themselves from the case lodged by the wife of the accused against them.

19. From the evidence of the independent witness i.e. P.W.3, it is found that he is not the eye witness of the alleged theft and he arrived at the place of occurrence on hearing commotion. As such, it is clear that he did not witness the alleged theft directly. P.W.2 is the son of the complainant/P.W.1, as such P.W.2 is the related witness. It is seen that except their evidence, there was no any other direct witness or independent witness or eye witness to corroborate the evidence of the complainant/P.W.1. The only independent witness i.e. P.W.3 Ramani Talukdar came to the place of shop after hearing commotion, which is clear from his evidence.

20. Moreover, after proper scrutinizing the entire evidence-on-record, it is found that there are some contradictions in the evidence of the independent witness. P.W.3 stated that some articles were stolen from a shop, whereas, P.W.1 and P.W.2 did not state about stealing of articles as that of P.W.3. Further, P.W.3 stated that Cash Box was lying on the ground, whereas P.W.1 and P.W.2 both did not state that cash-box was lying but stated that some change currency/coins were scattered on the floor of the shop. As such, it would not be prudent to arrive at the conclusion of the guilt of the accused on the basis of such contradictory version of the only independent witness. In view of that, this court is of the considered opinion that the testimony of the complainant/P.W.1 is not untarnished and inspires confidence. As such, it is found that the prosecution has left some facts under a cloud.

21. The factum of taking away of Rs. 840/- (Rupees eight hundred and forty) from the possession of the victim by the said accused is not supported by any reliable evidence. In the considered opinion of this court, when the factum of taking away of something is not corroborated by any reliable evidence, then there remains doubt as to whether actually the alleged accused had committed the alleged offence of theft. There is nothing appeared in circumstances in the

evidence-on-record of the prosecution witnesses, which can point to the guilt of the accused regarding theft of the money. Thus, prosecution depositions are not found very natural, consistent, cogent and unimpeachable in nature with the alleged offence to show the role of accused in the alleged incident of theft.

22. In view of the above consideration, this court finds it appreciable to consider that the witnesses as adduced by the complainant are not sufficient enough to implicate the present accused in the case in an appreciable manner, beyond all reasonable doubt. As such, the motive of the accused in commission of the crime is the considerable aspect, which is not sufficiently explained in the evidence. Even if, witness who is neither 'wholly reliable nor wholly unreliable' can be relied, if corroborated by credible evidence. The evidence of the informant/P.W.1 along with the evidence of the P.W.2 and P.W.3 regarding theft are appears to be not sufficient and found to be weak. This casts doubt about story of the prosecution that there may be scope misusing the provision of law against the present accused, if implicated him in this case with support of weak depositions regarding theft. When, there are two possible views, benefit must go to accused. As such, this court has to inspire by the argument of defence for not to rely on the evidence-

on-record regarding commission of theft by the present accused.

23. Thus, this court observes that there is lack of cogent/substantive evidence on the part of the prosecution, which creates doubt about the complainant's case and reliability of the evidence of the prosecution witnesses. The accused had totally denied about the allegations made against them in the statement of defense recorded under Section 313 Cr.P.C. and from the aforesaid evidences of prosecution witnesses, it is sufficiently clear and established that no any reliable evidences are found against the accused under the alleged section of law in the present case.

24. In view of the entire discussion made above, this court relies on the submission of the learned Defence Counsel made during his argument. In any given case, prosecution is required to discharge its burden. Thus, it has become crystal clear that the prosecution has been failed to discharge its burden.

25. Criminal law calls for strict proof. Though, it is a complaint case instituted otherwise than on police report, but the degree of proof is beyond reasonable doubt. In the case of **V. D. Jhingan Vs. State of Uttar Pradesh AIR 1966 SC 1762** the Hon'ble Supreme Court has held,

*"It is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt."*

26. Situated thus, this court has reached to the conclusion after perusing the entire evidence on record and submission of both the parties that prosecution has failed to prove the guilt of the accused beyond reasonable doubt. In **Partap Vs. State [AIR 1976 SC 966]** it has been observed by the Hon'ble Supreme Court that:

*"The right of the accused to obtain the benefit of a reasonable doubt is the necessary outcome and counterpart of the prosecution's undeniable duty to establish its case beyond reasonable doubt and that this right is available to the accused even if he fails to discharge his own duty to prove fully the exception pleaded."*

27. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence. Presumption of innocence is a human right as envisaged under Art.14(2) of the International Covenant on Civil and Political Rights 1966. Art.11(1) of the Universal Declaration of Human Rights 1948

also provides that any charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

28. In the light of the above discussions and reasons thereto, this court is of the view that an appreciable offence against accused Dip @ Deep Kumar Das u/s 380 I.P.C. has not been made out beyond all reasonable doubts. Thus, it is found that the accused Dip @ Deep Kumar Das is not held guilty of committing the offence u/s 380 I.P.C.

29. Consequently, the only point of determination is decided in negative and in favour of the accused.

## **ORDER**

30. In view of the discussions made above and the decisions reached in the foregoing point for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused namely Dip @ Deep Kumar Das committed offence U/S 380 I.P.C. as alleged by the complainant and as such the accused is acquitted of the charge under U/S 380 I.P.C. on benefit of doubt and he be set at liberty forthwith.

31. Make necessary entry in the Judgment register.
32. The bail bond of the accused shall remain in force for six months in view of section 437A of the Cr.P.C.
33. This judgment is given under the hand and seal of this court on this 7<sup>th</sup> day of May, 2021.
34. The case is disposed of on contest.

SMRITI REKHA BHUYAN  
J. M. 1<sup>ST</sup> CLASS, NALBARI.

*Typed & corrected by me*

*Smriti Rekha Bhuyan, J.M.F.C., Nalbari.*

## **A P P E N D I X**

### **LIST OF PROSECUTION WITNESS:**

**P.W.1: GIRISH TALUKDAR**

**P.W.2: NIPON TALUKDAR**

**P.W.3: RAMANI TALUKDAR**

### **LIST OF DEFENCE WITNESS:**

**D.W. : NIL.**

SMRITI REKHA BHUYAN  
JUDICIAL MAGISTRATE FIRST CLASS, NALBARI.