

IN THE COURT OF ADDL. C.J.M.:.....:NALBARI

Present: *Sri Jayanta Kumar Saikia*
Addl. CJM, Nalbari

(Date of judgment: 14/02/2022)

(PRC Case No. 157/2021)

(Details of FIR/Crime: 25/2021 and Police Station:
Ghograpar)

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	Mr. Arjun Barman, Asstt. P.P.
ACCUSED	A.1- Sri Riju Kalita
REPRESENTED BY	Smti Rinku Lahkar, Ld. Legal Aid Counsel

Date of offence	11/01/2021
Date of FIR	11/01/2021
Date of charge-sheet	31/01/2021
Date of framing of charge	12/03/2021
Date of commencement of evidence	26/03/2021, 26/10/2021, 03/02/2022
Date on which judgment is reserved	14/02/2022
Date of Judgment	14/02/2022
Date of sentencing order, if any	14/02/2022

Accused details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charge with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of section 428 of IPC
A-1	Riju Kalita	11/01/2021	15/06/2021 (released on PR Bond)	380/457 of IPC	Convicted	R/I 03 years u/s 380/457 of IPC	05 months and 05 days

JUDGMENT

01. The prosecution case comes into wheels on lodging an FIR by one, Sri Bhabesh Deka alleging that on 11/01/2021 at 3:00 AM Sri Riju Kalita, accused of this case, broke the lock of the shiva Temple situated near the highway and stole money. So, he lodged this case.

02. The FIR was received vide GD entry no. 14 dated 11/01/2021 and registered as Ghograpar PS Case No. 25/2021 u/s-457/380 of IPC. The accused Sri Riju Kalita was arrested on that night itself and stolen property was seized. After completing the investigation the I/O submitted charge-sheet before the Ld CJM , Nalbari against the accused u/s-457/380 of IPC. The case was transferred to this court for disposal and my Ld. Predecessors in office has taken cognizance against the accused person, Sri Riju Kalita, who is in custody, under section 457/380 of IPC. The copy is furnished u/s 207 of CrPC and formal charge was framed against him u/s-457/380 of IPC.

03. During trial prosecution examined as many as four witnesses including I.O. The Statement of the accused is recorded u/s 313 CrPC. Defence led no evidence. I have heard arguments from both sides and framed the following points for determination.

POINTS FOR DETERMINATION:-

(i) Whether the accused person on or about 10/01/2021 at about 3:00 at Bilpar Shiv Mandir committed house breaking at night by entering into that temple and theft and thereby committed an offence punishable u/s-457 of IPC?

(i) Whether the accused person on the same date, time and place committed theft in the Bilpar Shiv Mandir which was used as a place of worship by villagers and thereby committed an offence punishable u/s-380 of IPC ?

DISCUSSION, DECISION AND REASONS THEREOF

04. The cross-examination of PW-1 (informant) clearly shows that he came to know about the name of the accused from the police. Police took his signature in blank paper. He doesn't know the content of the seizure list. Police showed him the seized articles on the next day of the incident. The ejahar was filed as per instruction of the police.

05. However, during his evidence, he testified that his house is situated near the place of occurrence i.e. the Shib Mandir and in the next morning he came to know about the incident. Someone broke the lock of the temple at night and took away Rs. 999/- from Pranami box. On the same of the

day of the incident at about 3:00 AM, police caught the accused during patrolling duty and recovered Rs. 999/- from the accused. However, at the time of recovery, he was not present there. Police also seized one "Gamosa" from the possession of the accused which was the Gamosa of the "Thapona". Exhibit-1/PW-1 is the FIR. Exhibit-2/PW-1 is the seizure list of the broken lock and Gamosa.

06. PW-2 also has not seen the incident. In the morning, he saw the lock of the Shiv Mandir was broken and one Gamosa of the "Thapona" and Rs. 992/- was missing from the temple. In the morning, police took the accused to the Shiv Mandir and accused admitted that he committed theft in the Shiv Mandir. Police has shown him Rs. 992/-, Gamosa and broken lock. Exhibit-2(2) is his signature. During cross-examination, he has stated that he has no personal knowledge about the incident.

07. PW-3 is a hearsay witness and he doesn't know anything about the incident. His evidence doesn't help the prosecution in this case.

08. However, from the evidence of PW-1 and PW-2, it is crystal clear that on the day of the incident i.e. 11/01/2021, an incident of theft was committed at the Shiv Temple at night and in the next morning accused was arrested. A seizure list i.e. Exhibit-2 was prepared by police and PW-1 and PW-2 put their signatures at the seizure list. However,

according to PW-1, the seizure list was blank when he put his signature on it. But, according to PW-2, police shown him Rs. 992/-, Gamosa and broken lock and he put his signature in the seizure list. He doesn't know the content of the seizure list. Nowhere in his evidence, it is reflected that the seizure list was blank at that time when he put his signature.

09. Now coming to the evidence of I.O. (PW-4), it is found that on 11/01/2021, he was on duty as S.I at Ghograpar P.S. He was on patrolling duty along with other police staff at 3:40 am and at Katakia Gaon under the jurisdiction of Ghograpar P.S, on PWD road towards medical, they saw one person was walking and pushing one ladies bicycle. The person was carrying one packet wrapped with a 'gamusa' on the carrier of the bicycle. On suspicion, they stopped the person and on being searched, they found the packet was contained with currency notes and coins. On being asked, that person said that his name is Riju Kalita, R/o Sandha, under Nalbari P.S. The person also said that he committed theft at the Shiv temple of Bilpar and the currency notes and the coins belonged to the said temple. The 'gamusa' which was used to wrap the currency note and coins also belonged to the said temple. Then I.O. (PW-4) took Riju Kalita to the said temple that is the place of occurrence. Riju Kalita showed them the temple and said that the said money was stolen from the 'pranami' box of the said temple. The neighbouring people also gathered at the place of occurrence. They brought the

accused Riju Kalita along with the cash and the bicycle to the police station. He seized the bicycle (hero) ladies, total money Rs. 992/- (coins of Rs. 607 and notes of Rs. 385) and the gamusa by preparing seizure list vide M.R no. 04/21 in presence of Dibakar Deka and Bhabesh Deka in reference to Ghograpar P.S G.D entry no. 05 dated 11/01/2021. **Exhibit P-3/PW-4** is the seizure list and **Exhibit P-3(1)/PW-4** is his signature. The IO (PW-4) visited the place of occurrence on the same day and prepared the sketch map. **Exhibit P-4/PW-4** is the sketch map and **Exhibit P-4(1)/PW-4** is his signature. Thereafter, he seized two broken locks and the pranami box by preparing seizure list in presence of witnesses namely Bhabesh Deka and Dibakar Deka vide M.R no. 05/21 in reference to Ghograpar P.S G.D entry no. 05 dated 11/01/2021. **Exhibit P-2/PW-1** is the said seizure list and **Exhibit P-2(3)/PW-4** is his signature. He has also recorded the statement of the seizure witnesses. On the same day informant Sri Bhabesh Deka lodged the FIR, which was registered as Ghograpar P.S case no. 25/21 u/s 457/380 I.P.C. The O/c endorsed him for investigation of the case. The IO (PW-4) recorded the statement of the accused who was already apprehended. He has also recorded the statement of informant and two witnesses. After finding prima facie materials against the accused Riju Kalita notice was served to him and he was arrested. Accused Riju Kalita was forwarded to the court and the seizure list were produced before the

court. After completion of the investigation, the I.O. (PW-4) has submitted charge-sheet no. 26/21 dated 31/01/2021 against the arrested accused Riju Kalita u/s 457/380 of IPC. **Exhibit P-5/PW-4** is the charge-sheet and **Exhibit P-5(1)/PW-4** is his signature.

10. During cross-examination, the defence failed to insinuate anything to disbelief the evidence of the IO. The seized property has not been produced before the court.

11. Here, the reliance can be put on the judgment ***State Government of NCT of Delhi v. Sunil & Anr.*** referred in ***(2001) 1 SCC in which Honourable Supreme court held that :***

" We are certainly not indicating that despite all this, the statement of the Police Officer for recovery and other matters could not be believed and form the basis of conviction but where the statement of such witness is not reliable and does not inspire confidence, then the accused would be entitled to the benefit of doubt in accordance with law. Mere absence of independent witnesses when the Investigating Officer recorded the statement of the accused and the article was recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recovery at the instance of the accused. Similar would be the situation where the attesting witnesses turn hostile, but where the statement of the Police Officer itself is unreliable then it may be difficult for the Court to accept the recovery as lawful and legally admissible. The official acts of the Police should be presumed to be regularly performed and there is no occasion for the courts to begin with initial distrust to discard such evidence. "

12. There is no particular reason why the evidence of the IO not to be believed in this case. The Ld. Asstt. P.P. has also argued that the evidence of IO is not shaken and he puts his reliance in a judgment of the Hon'ble Allahabad High Court in

the case of Mahesh Vs. State of UP, 2000, Criminal Law Journal 1334 in which the court has held:

7. The obligation to take public witnesses is not absolute. If after making efforts which the Court considered in the circumstances of the case reasonable, the Police Officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the Police Officers was believable after taking due care and caution in evaluating their evidence. What weight is to be attached to the evidence of the Police Officers would essentially be a question of fact for the trial Court to decide applying hard common sense and recognized principle of re-evaluation of evidence of witnesses.

13. The accused has stated in his statement of defence that someone else committed the theft and left the Gamosa and the money on the road near him, where he was lying getting drunk at about 3:00 AM in the morning. Police assaulted him so he confessed the same. According to the accused, he was wrongly impleaded in this case. There were some other cases in which he was impleaded in case of theft committed in school and temple at the locality. That night, he was coming back from the house of his father-in-law situated at Tamulpur. Police found him at about 3:00 AM while he was pushing his ladies bicycle and the Gamosa and stolen money was kept in his cycle by unknown person.

14. Nowhere in his statement and plea, accused has denied the fact that the Gamosa of the temple and stolen money was never recovered from him. His plea is that some other person has kept the Gamosa with the money with him when he was

lying drunk. Moreover, he himself is stating that there are other cases of theft also lying against him. No particular reason is found to corner him with so many theft cases by the police.

15. The evidence of IO is plain and simple. It inspires confidence. Even the accused himself did not deny the fact. The accused was found at about 3:00 AM carrying the packet of currency notes and coins regarding which he has no plausible explanation. The circumstantial evidence shows that the temple lock was broken and money was stolen. IO (PW-4) recovered the same from the accused which the accused has not denied.

16. In state of UP vs. Ashok Kumar Srivastava (1992 CrLJ 1104), the Hon'ble Supreme Court has pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

17. In the instant case, PW-4 (IO) was on patrolling duty. He found the accused carrying the currency notes and coins in a Gamosa. The accused doesn't deny this fact. According to PW-1, the Gamosa seized from the possession of the accused belongs to the temple. PW-1 and PW-2 saw that

temple lock was broken and money was stolen from the temple. According to the accused, the money and the Gamosa belong to the temple itself. But there is no evidence to support his claim that it comes to him from unknown person. Hence, the cumulative effect of all the facts so established is consistent only with the hypothesis of guilt of the accused that on 11/01/2021 at night about 3:00 AM, the accused committed house breaking by breaking the lock of the Shiv Mandir with an intention to commit theft and committed theft of Rs. 992/- (coins of Rs. 607/- and notes of Rs. 385/-) from the Pranami Box of the temple.

CONCLUSION/DECISION

18. Here I find from the evidence on record that prosecution has been fairly able to establish the charge of section 457/380 of IPC and I hold accused Sri Riju Kalita is guilty of commission of offence punishable u/s 457/380 of I.P.C and he is convicted u/s 457/380 of IPC. The nature of the offence committed by the accused does not entitle him benefit of section 360 Cr.P.C and under the provision of Probation of Offender Act and accordingly he is not considered under the said provision of law. Accordingly, I have heard accused on the point of sentence.

HEARING OF THE ACCUSED ON THE POINT OF SENTENCE

19. Convicted accused Sri Riju Kalita is heard on the point of sentence and his pleas of sentence is reduced into writing

in separate sheets and keep with case record. I heard Ld. Legal Aid Counsel as well Ld. Asstt PP for the state on the point of sentence. Convict stated that he has no one in his family. He doesn't have anything to say in this regard. He thought that in theft cases never get punishment of imprisonment. So no punishment is to be given to him. He is physically and mentally fit.

20. Learned Asstt PP prays to for sentencing the convict as per the law and the plea taken by convicted accused person being pity the same should not be considered by the court while sentencing the accused taking in to consideration nature of the offence committed by the offence.

21. After hearing Ld. Counsels for both sides and accused on the point of sentence, going through the material on record and considering the nature of the offence which accused person has committed in a religious place and further taking into account the increasing number of offence of like nature in the society, I am of the opinion that this is not a fit case to consider accused leniently. Accordingly, taking into consideration all aspect, nature of the offence committed by the convicted accused person and considering the overall facts and circumstances of the case, the convict person, namely, Sri Riju Kalita is punished with rigorous imprisonment of 03 (three) years u/s 380 of IPC. He is also further punished with rigorous imprisonment of 03 (three) years for commission of an offence u/s 457 of IPC.

22. It is also made clear that the sentence in this case shall run concurrently with previous sentence of the accused, if any by court, under section 427 Cr.P.C.

23. Benefit of section 428 Cr.P.C. be also given to the convict and period of undergone by him till date of this case shall be set off against the term of imprisonment imposed on them on conviction.

24. The convicted accused is told that he has right to appeal against the judgment and order of this court before Hon'ble Appellate court through the jail authority or independently of his own.

25. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court.

26. Let furnish free copy of Judgment to convicted accused persons.

27. Send copy of judgment to learned District Magistrate Nalbari u/s 365 Cr.P.C.

28. Seized goods be disposed of in accordance with law in due course of time.

Given under my hand and seal of this court on this 14th day of February, 2022 at Nalbari.

Addl. CJM, Nalbari.

Dictated and corrected by

Addl. CJM, Nalbari

APPENDIX-14

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Bhabesh Deka	INFORMANT
PW2	Dibakar Deka	Seizure Witness
PW3	Chandan Deka	OTHER WITNESS
PW4	Bileswar Kalita	POLICE WITNESS

B. Defence witnesses, if any: Not Applicable

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

C. Court witnesses, if any: NOT APPLICABLE

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

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW1	Ejhar
2	Exhibit P-2/PW1	Seizure list
3	Exhibit P-3/PW4	Seizure list

4	Exhibit P-4/PW4	Sketch Map
5	Exhibit P-5/PW4	Charge-sheet

B. Defence: Not Applicable

Sr. No.	Exhibit Number	Description

C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1		
2		

D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
1		

Addl. CJM, Nalbari