

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL
MAGISTRATE(M), GOHPUR**

PRESENT: SRI KAUSHIK KUMAR SHARMA

S.D.J.M(M), GOHPUR

GR: 652/12

U/S 380 of IPC

STATE OF ASSAM.....PROSECUTION

v.

Sri Sarbinder Singh.....ACCUSED

Ld. Advocates: For Prosecution.....Smti Bornali Chetia, Ld.APP

**For Defence...Sri Amarjyoti Bora and Smti
Parishmita Bora , Ld. Advocate.**

Evidence Recorded on: 19.1.13, 23.9.13, 10.7.14, 18.2.15

Argument heard on: 22.4.15

Judgment delivered on: 08.5.15.

J U D G M E N T

1. The prosecution's case , in nutshell, is that, the accused, Sri Sarbinder Singh, had stayed in the house of the informant, Sri Deben Saikia, for four days from 30.8.12, Thursday, as guest. On the next Sunday morning, the accused had stolen a gold necklace from the godrej,in the house of the informant and went away. After the accused had left , when the godrej was opened, the necklace was found missing. On 04.09.12, the accused was found in the house of Sri Anil Bora, in Hazarika Chuk, Gohpur, and the gold necklace was found in his possession. Hence, the case.

2. The informant, had lodged the FIR on 04.9.12 at Gohpur police station. The police had registered Gohpur P.S Case No. 214/12 u/s 380 of IPC . After investigation, the police had submitted charge sheet u/s 380 of IPC against the accused.
3. During investigation, the accused was arrested and was remanded to judicial custody. He remained in judicial custody from 05.09.12 till 18.10.12, before he was released on bail on 18.10.12.
4. On appearance before Court, charge u/s 380 of IPC was framed against the accused, which on being read out to him, he pleaded not guilty and claimed to be tried.
5. The prosecution had examined 5 witnesses, including I.O. After the closure of the prosecution's evidence, the accused was examined u/s 313 Cr PC, where he had denied commission of any offence. The defence side adduced no evidence. Heard arguments.
6. The witnesses examined by the prosecution are:
 - a) PW1, Sri Dhan Saikia
 - b) Pw2, Sri Deben Saikia
 - c) PW3, Sri Nipen Baruah
 - d) PW4, Sri Mantu Saikia
 - e) PW5, Sri Dipendra Charan Saikia, I.O.

POINTS FOR DETERMINATION:

- a) Whether the accused, had committed theft of the gold necklace from godrej almirah, in the house of Sri Deben Saikia, the informant, on 02.9.12 or 03.09.12 ?

DISCUSSION AND DECISION BASED ON REASON:

7. PW1, Sri Dhan Saikia, in his examination in chief has stated that the informant is his father and he recognizes the accused. He stated that the incident had occurred in the month of August, 2012. He stated that the accused is like his friend. The accused came to his house on 30.08.12 as guest and stayed in their house till 03.09.12. On 03.09.12, his sister came and took away the accused. On 04.09.12, when he came from Tezpur, and when he opened the godrej almirah to keep his ring, he did not find the gold necklace of his elder sister there. He suspected the accused, and when he called the accused, immediately, the accused had switched off his phone. On 4.09.12, his son-in-law , Sri Mantu Hazarika, had found the accused in the house of Sri Nipen Barua, and the necklace was recovered from the accused. Thereafter, the accused was taken to the Gohpur Police station, where the police had seized the necklace from them. Ext 1 is the seizure list and Ext 1(1) is his signature. Later on, his father had lodged the case.
8. In his cross examination, he has stated that he was acquainted with the accused for the last 2 years. The accsued had come to his house at Tezpur on 29.08.12. His father and mother stay in the house at Barangabari. On 29.08.12, he had sent the accused to his(accused) house, from Tezpur. But the accused, after going to his house, called him up and told him that there is no one in his house, and hence, he had told the accused to go his(PW1) house. He also stated that his sister had come to his house on 3.09.12 in the afternoon. He stated that necklace, chain, earring and ring are kept in the Godrej. He also stated that the Godrej was made of tin, and it is kept locked and the key is kept at a secret place. He came to know about the incident on 4.9.12, when he came to his house. He stated that the godrej was opened, in order to keep the ring,

meant for ring ceremony, and when it was opened, the necklace was not found therein. Later on the accused was found in the house of Nipun Baruah, and necklace was recovered from him. He denied the suggestion that the accused did not commit theft of the necklace from his house. He denied the suggestion that he had owed money to the informant, and the accused had gone to Tezpur to take his money, but he told the accused that he would give back the money on receiving salary and sent the accused to his(PW1) house. He denied the suggestion that in order to misappropriate the said money, he had lodged a false case against the accused.

9. PW2, Sri Deben Saikia, the informant, in his examination in chief has stated that on 30.08.12, the accused came to his house as guest and had stayed in his house for about 3 nights. On 3.9.12, when his daughter, Buli Saikia, had come to his house, the accused had sought to go to his house. Thereafter, the accused had gone with Buli Saikia, to his house. On 04.09.12, his son, Dhan Saikia, came to his house from Tezpur, when his son wanted to keep his ring in the godrej, he did not find a necklace therein. This fact was told to him by his son. On 04.09.12, in the morning, he had gone to Ghahigaon outpost to lodge a case. A few moments thereafter, his son had informed him over phone that the accused was caught with the necklace at the entrance of the house of a man, in Gohpur. Thereafter, his son had handed over the accused to the police at Gohpur P.S. Ext 2 is his FIR and Ext 2(1) is his signature.
10. In his cross examination, he has stated that the accused is a friend of his son, Dhan Saikia, and the accused used to visit his house at times. He also stated that the accused came in the evening to his house on 30.08.12. He stated that after 3 days, the accused had gone to Tezpur with his daughter, and on the fourth day, Dhan

Saikia came to know about the theft of the necklace after coming home. He has stated that he had not seen the accused committing the theft of the necklace from the Godrej. He also stated that he had not seen the necklace being recovered from the accused. He denied the suggestion that the accused did not commit theft of the necklace from his house. He denied the suggestion that his son had owed money to the accused; that the accused had come to ask for his money to his house, and in order to misappropriate the money, a false case was lodged against the accused. He denied the suggestion that he had deposed falsely.

11. PW3, Sri Nipen Baruah, in his examination in chief has stated that on the day of occurrence, Sukhbinder(accused) was present in his house, who had come from Arunachal. While brushing teeth in the morning, Mantu Saikia had spotted Sukhbinder. At that time, Mantu Saikia, had called a person to that place, and thereafter, questioned, Sukhbinder as to why he(accused) would commit theft of gold chain. Thereafter, Mantu Saikia, had searched Sukhbinder and recovered a gold chain from the elastic portion in the waist portion of a half pant of Sukhbinder, which was kept in his bag. The police had seized the gold chain through Ext 1 and Ext 1(1) {actually Ext 1(2)} is his signature.
12. In his cross examination he has stated that he had stated before the police that Sukhbinder had come to his house on the day before the day of occurrence. The house of Mantu Saikia is 3 km away from his house. The person, who was called by Mantu, was Durgeswar. On the day of occurrence, at about 9AM, Mantu had seen Sukhbinder and shouted "thief" "thief". He also stated that he does not know the name of the person, who was called by Mantu. The said person came after 10 minutes of the call made by Mantu. He stated that he does not remember, even though he had seen

the incident, as to who had taken out the pant and chain from the bag, when Mantu was searching the bag. He stated that he was being examined by police at the police station. He has denied the suggestion that he had not seen the recovery of the chain from the elastic portion of the waist area of the pant, and he had falsely signed on the seizure list after giving his statement to the police. He stated that at the place of occurrence, persons such as Golap Baruah, Ankan Bora etc were there. He does not remember the names of other persons who had assembled there. He denied the suggestion that no gold chain was recovered from the waist portion of the pant of Sarbinder @ Sukhbinder .

13. PW4, Sri Mantu Saikia, in his examination in chief has stated that the accused had stolen a necklace from the house of his father-in-law. He stated that when his father in law had gone to the field, and when there was no one in the house, the accused, had taken out the godrej key from beneath the mattress, and stolen the necklace from the godrej. He also stated that Dhan Saikia had suspected the accused to be the culprit. The accused was found in the house of Nipen Hazarika, two days thereafter. When the accused was searched, the necklace was found in his pant, kept in a bag. The accused had gone to the house(of the informant) as guest, and later on, he took shelter in the house of Nipen.
14. In his cross examination, he has stated that the distance between his house and that of his father in law is 25 KM. He came to know, about the fact that the accused had stayed at the house of his father in law, after the incident. He came to know about it, when Dhan Saikia, had called him up on the next day of the incident. He stated that they went to the house of Nipen, s/o Thela Hazarika, and his workers, namely, Ruben, Phan, Karenga etc were with him. The village people were also there with Nipen. He does not know

the names of all the persons. When he informed the police station over phone, the police and Dhan came. He stated that police had inquired him at the police station.

15. PW5, Sri Dipendra Saran Saikia, the I.O. in his examination in chief has stated that on 04.09.12, the informant, Sri Deben Saikia, had lodged a FIR in the Gohpur P.S. The O/C Sri Ashok Kr. Dutta, had registered the case, as Gohpur P.S Case 214/12, and entrusted him with the responsibility to conduct the preliminary investigation. The O/S had informed him that the accused, Sri Sarbinder Singh was kept in the police station. He came to the police station and seized a gold chain from the custody of the accused, in the presence of the witnesses. Ext 1(3) is his signature on the seizure list. The accused was arrested and he was sent to judicial custody. On 04.09.12, he surveyed the place of occurrence. He prepared the sketch map on that day. Ext 3 is the sketch map and Ext 3(1) is his signature. On that day, he went to Hazarika Chuk, where the accused was caught, and took statements of witnesses. He took inquired the witnesses in the house of Nipen Baruah, in whose house, the accused was caught. On the next day, the accused was sent to Court. The seized gold chain was given in the zimma of the informant. Ext 4 is the zimmanama and Ext 4(1) is his signature. After conducting the preliminary investigation, he had submitted the case diary to the I/C Sri Tinkumoni Bordoloi. Later on the I/C had submitted charge sheet u/s 380 of IPC. Ext 5 is the charge sheet and Ext 5(1) is the signature of I/C Sri Tinkumoni Bordoloi, which he could recognize.
16. In his cross examination, he has stated that he had arrested the accused at Gohpur police station. The accused was brought to the police station by police staff. The accused was caught in the house of Nipen Baruah, of village Solengi, in Hazarika Chuk. He had

conducted the entire investigation. The charge sheet was submitted by the I/C sir. The I/C sir had come to Gohpur. The I/C sir did not go with him to the place of occurrence. He stated that the commission of theft was known on 04.09.12. The gold chain was seized from the possession of the accused. The chain was in the hands of the accused. He stated that he did not take the statements of Cheniram Saikia, Dipen Saikia and Puneswar Saikia, who were mentioned in the Sketch map. He stated that he had taken the statement of Deben Saikia. He denied the suggestion that the accused is not connected with the offence and that he had been charge sheeted without any reason.

APPRECIATION OF EVIDENCE:

17. It is well established from the evidence of PW1, Sri Dhan Saikia, that the accused stayed in his father's house from 30.08.12 till 03.09.12, and on 03.09.12, the accused had left the house and on 04.09.12, PW1 came to his house from Tezpur, and found the necklace missing from the Godrej. This assertion of PW1 was corroborated by the informant, PW2. Nothing could be elicited during the cross examination of PW1 and PW2, to cast a doubt on the veracity of their evidence. The defence, did not dispute the aforesaid assertions of PW1 and PW2. In other words, the defence did not dispute that the accused had stayed in the house of the informant from 30.08.12 till 03.09.12. In fact the defence had put a suggestion, that the accused had come to the house, in order to ask for the money lent by him to PW1. This shows that the defence has admitted the presence of the accused in the house of the informant.
18. It was also established from the evidence of PW1 and PW2 that when PW1 came home, from Tezpur , on 04.09.12, he found the

necklace missing from the godrej almirah. This fact was also not disputed by the defence, during cross examination of PW1 and PW2.

19. PW1, has stated that when he found the necklace missing, out of suspicion, he called the accused over phone, but the accused had switched the phone off. This fact was also not disputed by the defence. Not even a suggestion was put, during cross examination of PW1, to deny the assertion. Thus, the fact of calling the accused immediately, after knowledge of the fact of missing of the necklace and the fact that the accused had switched off his phone, are proved.
20. PW1 has stated on 4.09.12, his son-in-law , Sri Mantu Hazarika, had found the accused in the house of Sri Nipen Barua, and the necklace was recovered from the accused. This piece of evidence has been corroborated by PW 3, Nipen Baruah. PW3, has stated that in the morning, Mantu Saikia, had spotted the accused, who was in his house and questioned him about the commission of the theft of necklace. PW3 has also stated that he had searched the bag of the accused and found the gold necklace inside the elastic portion of the waist area of his half- pant, and that he(PW3) had signed on the seizure list, when police had seized the necklace. The defence, while cross examining, PW3, did not dispute the fact that Mantu Saikia had found the accused in his house, that he questioned him(accused) about the theft, searched his(accused) bag and found the gold necklace kept inside the elastic portion(waist area), of his half-pant. The defence has only suggested to PW3 that he had not seen the recovery of the chain from the elastic portion of the waist area of the pant, and he had falsely signed on the seizure list.

21. PW4, Mantu Saikia, has also stated that the accused was found in the house of Nipen Hazarika, two days thereafter and when the accused was searched, the necklace was found in his pant, kept in a bag. In his cross examination, he has stated that he came to the house of Nipen, after coming to know about the incident from Dhan Saikia. Further, in his cross examination, it was not disputed by the defence that the accused was spotted in the house of Nipen and that the necklace was found in the possession of the accused, when his bag was searched. Not even any suggestion was put to him. Though, PW4 had referred the person, in whose house the accused was found as "Nipen Hazarika", and not as "Nipen Barua", this variation, appears to me a minor one and a possible mistake in recollection. Moreover, it was not suggested by the defence that Nipen Barua and Nipen Hazarika are different persons, so as to raise a doubt on the testimony of PW4. Furthermore, the seizure of the gold necklace from the possession of the accused was corroborated by the I.O. The I.O. has stated that the necklace was seized from the possession of the accused, and that Ext 1(3) is his signature on the seizure list. The seizure of the Gold necklace was also not disputed by the defence.
22. Thus, the fact that the accused was found in the house of Nipen Barua; that the accused was being questioned about the commission of the theft; that on search of the bag of the accused, the gold necklace was found, kept inside the elastic portion of the half pant of the accused, and that the gold necklace was seized from the possession of the accused, are proved, beyond reasonable doubt.
23. It is also in the evidence of the I.O. that the gold necklace was given back in the zimma of the informant, vide zimmanama Ext 4. The zimmanama was proved by the I.O. himself, where his

signature was exhibited as Ext 4(1). This establishes the fact that the gold necklace, which was seized from the accused, was the one, which was being stolen from the house of the informant.

24. The above proved facts, raises a presumption u/s 114(a) of the Indian Evidence Act, that that the accused was the thief or had received the gold necklace knowing it to be stolen, as the gold chain was found in his possession soon after the theft, and he could not give any account for his possession of the gold necklace. As stated above, the fact that the gold necklace was found in the possession of the accused, in the morning on 04.9.12, has not been disputed by the defence. Further, no explanation was put forward by the defence, either by adducing any evidence or by eliciting during cross examination of PWs, as to how the necklace, came into the possession of the accused. In fact, not even any suggestion was made to the PWs, denying the said possession. Further, when the incriminating evidence, among other evidences, was put to the accused, during his examination u/s 313 Cr PC, he had simply, stated the evidence is false, but did not give any explanation. Moreover, the fact of finding the accused to be in possession of the gold necklace, was discovered soon after the commission of the theft. It is in the evidence, duly proved, that the accused had left the house of the informant in the evening of 03.9.12, and he was caught in the morning of 04.09.12, in the house of Nipen.
25. Thus, the presumption raised u/s 114(a) of Evidence Act, that the accused had committed the theft of the gold necklace, could not be rebutted by the defence, in any manner.
26. On perusal of the entire evidence, it appears that the Defence side has laid its defence on two counts: a) that no one has seen the accused committing the offence of theft of the gold necklace from

the godrej almirah, and b) that a false case was lodged against the accused as PW1 had taken money from the accused and PW1 and the informant wanted to misappropriate the money.

27. Further, the Ld. Counsel has argued that the accused did not have the key of the godrej almirah, and hence, he could not have had opened the godrej almirah.
28. It is true that no one had seen the accused committing the theft, but the chain of facts, which were proved, as stated above, form a complete chain and only point to guilt of the accused, that it was he who had committed the theft. The said facts so proved, couple with the unrebutted presumption of the guilt of the accused as per Sec114 (a) of Evidence Act, are incompatible with the innocence of the accused person. As stated, the defence could not lay any basis to show that the accused was innocent. The plea of the defence that the accused was falsely implicated as PW1 had owed money to him, was only by way of a suggestion, which was denied. No evidence was laid by defence, in this regard, nor anything could be elicited during cross examination of the PWs. I do not find any basis for the said plea, so as to raise a hypothesis as to the innocence of the accused.
29. Further, I do not accept the argument of Id. Defence counsel, because the manner in which the accused had found the key, was explained by PW4, who has stated, in his evidence, that when there was no one in the house, the accused, had taken out the godrej key from beneath the mattress, and stolen the necklace from the godrej.
30. This evidence, was also not disputed by the defence. Moreover, nothing could be elicited during his cross examination, so as to raise a doubt of the veracity of the testimony of PW4.

31. Hence, in the light of the above circumstantial evidence, duly proved, and considering the presumption, raised u/s 114(a) of the Evidence Act, I come to the conclusion that the accused had committed the theft of the gold necklace from the house of the informant. Hence, the prosecution has been able to prove the guilt of the accused u/s 380 of IPC, beyond reasonable doubt.
32. Hence, I convict the accused Sri Sarbinder Singh u/s 380 of IPC.
33. Considering the nature and gravity of the offence, the mature age of the accused, and the circumstance, in which it was committed, I am not inclined to extend the benefit of Probation of Offenders Act to the accused.
34. Heard the accused on the point of sentence.
35. After hearing the accused on the point of sentence , considering the nature and gravity of the offence as well as the fact that the stolen necklace was given back in the zimma of the informant, I sentence the accused, Sri Sarbinder Singh, a Rigorous Imprisonment for 6(six) months, and to pay a fine of Rs.2000(Two Thousand) i/d 30 days of R.I. The period of detention already undergone by the accused, shall be set off from the sentence of imprisonment.
36. The judgment is pronounced in the open court on this 08th of May, 2015. The judgment is prepared under my hand and seal of this Court .
37. The zimma of the informant of the stolen necklace, is made absolute.
38. The case is, accordingly, disposed of.

(K.K. Sharma)

S.D.J.M Gohpur.

ANNEXURE

LIST OF DOCUMENTS EXHIBITED BY THE PROSECUTION

EXT.1: Seizure List

EXT 2: FIR

EXT.3: Sketch map

EXT 4: Zimmanama

Ext 5: Charge sheet.

S.D.J.M, Gohpur.