

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE(M),  
SONITPUR, TEZPUR.**

**PRESENT: SRI KAUSHIK KUMAR SHARMA**

**ADDL. CJM, SONITPUR, AT TEZPUR.**

**GR: 74/12**

**U/S 457/380 of IPC**

**STATE OF ASSAM.....PROSECUTION**

**v.**

**Sri Pinku Deka and Ors.....ACCUSED**

**Ld. Advocates: For Prosecution.....Md. Hussain Ld.APP**

**For Defence...Sri J. Adhikari, Ld. Counsel**

**Evidence Recorded on: 26.6.13, 23.7.13, 20.3.14, 21.8.15**

**Argument heard on: 07.1.16**

**Judgment delivered on: 30.1.16**

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

1. The prosecution's case, in brief, is that, on 12.1.12, at about 12/12:30AM, the accused persons, namely, Sri Pinku Deka, Sri Dhaneswar Deka and Md. Anowar Ali, had broken the shutter/ lock of the shop of the informant, "Sualkuchi Silk House", located at Dhekiajuli, and stolen away some of the clothes from the shop. When a police patrolling party, had spotted them, doing the act, the accused persons had fled from the place, in their Bolero Pick Up van, with the stolen goods. The accused persons were nabbed at Orang Check gate by police, and were brought to the police station along with the stolen goods. Hence, the case.
2. The informant, Sri Hamen Nath, had lodged FIR, on 12.1.12, at Dhekiajuli P.S, which had led to registration of Dhekiajuli P.S. Case

18/12, u/s 457/380 of IPC. The police after investigation had lodged the charge sheet u/s 457/380 of IPC.

3. The charge u/s 457/380 r/w Sec 34 of IPC, was framed against the accused persons, namely, Sri Pinku Deka, Dhaneswar Deka and Md. Anowar Ali. The charge was read out to the accused persons, to which they pleaded not guilty and claimed to be tried.
4. The prosecution had examined 6 witnesses, including the I.O. The witnesses examined by prosecution were as follows:
  - a) PW1: Sri Hamen Nath
  - b) PW2: Sri Anil Haloi
  - c) PW3: Sri Tiken Baishya
  - d) PW4: Sri Chenaram Nath
  - e) PW5: Sri Ram Krishna Dhar
  - f) PW6: Sri Dharani Dhan Deka.
5. After the closure of prosecution's evidence, the accused were examined u/s 313 Cr PC, where the accused have denied the commission of such offences. The defence side had adduced no evidence. Heard arguments.

**POINTS FOR DETERMINATION:**

- a) Whether the accused persons, in furtherance of their common intention, on 12.1.12, at about 12:30AM, had committed theft of cloths from the shop of Sri Hamen Nath, situated at Dhekiajuli?
- b) Whether the accused persons, in furtherance of their common intention, on 12.1.12, at about 12:30AM, had committed lurking house trespass, by entering into the said shop of the informant, by breaking the door/shutter and stolen away some of the cloths from the shop?

**DISCUSSION AND DECISION BASED ON REASON:**

6. PW1, Sri Hamen Nath, in his examination in chief has stated that he is the informant. He stated that he recognizes the accused persons. The incident had taken place at 12/ 12:30 in the night. He stated that he

has a shop, 'Suwalkuchi Silk House' at Dhekiajuli Town. He stated that in the night, the police patrolling party had caught the accused persons red-handed, while they were committing theft of Pat-Muga clothes from his shop. He also stated that the accused persons had tried to flee from that place in their vehicle. But, the police had chased them and then, caught them. Thereafter, Sri Anil Haloi, had informed him about the incident over phone. He stated that on the next day, he had lodged the FIR in the police station. Ext1 is the FIR and Ext 1(1) is his signature. He stated that the police has seized the goods which were stolen from his shop, such as Pat clothes, Semi-silk clothes and one crow-bar as well as the Bolero Pick-UP van, which was used by the accused persons. He stated that he had signed on the seizure list. Ext2 is the seizure list and Ext 2(1) is his signature.

7. In his cross examination, he has stated that he had not seen the act of theft. He stated that he had lodged the FIR on the next day of the incident. He stated that he had not mentioned the names of the accused persons in his FIR. He stated that police did not give him zimma of the seized articles(clothes). He stated that similar kind of seized clothes are found in other shops as well. He denied the suggestion that the accused persons had not committed theft of the clothes from his shop and that he had deposed falsely.
8. PW2, Sri Anil Haloi, in his examination in chief has stated that he recognize the accused persons as well as the informant. He stated that the incident had occurred at about 12:30 in the night, on 11.1.12. He stated that at that time, he was sleeping in his house. The police patrolling party came and informed him that theft had taken place at ' Suwalkuchi Silk House'. Thereafter, he had informed the matter to the owner of the shop(informant), and saw that the shop was broken. Thereafter, he and the informant came to the police station. He stated that police had caught the accused persons and brought them to the police station, and had seized the clothes which were stolen from the shop. He stated that he had signed on the seizure list. Ext 2 is the

seizure list and Ext 2(2) is his signature. He stated that Mat Ext 1 is the stolen clothes recovered by the police and Mat Ext 2 is the 'siprang', seized by the police. He also stated that police had seized the Bolero Pick Up van of the accused persons.

9. In his cross examination, he has stated that the informant is his brother. He stated that his house is situated at a distance of about ½ KM from the place of occurrence. He stated that he did not see the incident himself. He stated that Madan Pradhan, who was on patrolling duty, had informed him about the incident over phone. But he did not mention his name before police. He also stated that he had seen the accused persons in the police station. The police have not given the seized article in the zimma of the informant. He stated that in order to lift a vehicle, jack-lever is used. For big vehicles, 'siprang' is used to lift the jack-lever. He stated that he does not know the names of the accused persons. He denied the suggestion that the accused persons did not commit any theft of articles.
10. PW3, Sri Tiken Baishya, in his examination in chief has stated that he is a business partner of the informant. He stated that he recognizes the accused persons. The incident had taken place on 11.1.12. at 12 in the night. He stated that they have a shop, "Sualkuchi Silk House" at Dhekiajuli. He also stated that Anil Haloi, had informed him over phone that theft had taken place in their shop and police patrolling party had gone chasing the thieves. There was no one in the shop. He stated that when he came to the shop, he found that the shop was broken and the shutter of the shop was open in the side. He stated that they came to the police station. The police had brought the accused persons after nabbing them from Orang, along with the vehicle used by the accused persons. The police had seized the clothes and one *siprang* from the accused persons. Ext 2 is the seizure list and Ext 2(3) is his signature. He stated that he has seen the seized clothes, as Mat. Ext 1 and the *siprang* as Mat Ext 2, in the Court.

11. In his cross examination, he has stated that he has not seen the incident of theft. The seized clothes can be found in any other shop. He stated that there are code numbers in the clothes of their shop. He denied the suggestion that they have not sought for zimma of the seized clothes as the clothes did not belong to their shop. He denied the suggestion that the accused persons did not commit theft of the clothes from their shop. He denied the suggestion that he had deposed falsely.
12. PW4, Sri Senaram Nath, in his examination in chief has stated that the informant is his son. He could recognize one among the accused persons. But he does not know their names. The incident had taken place on 11.1.12, in the night. He stated that he was sleeping on the third floor, and at that time, theft had occurred in their "Sualkuchi Silk House", which was situated on the ground floor. The informant had informed him about the incident. He stated that one Bolero vehicle was in front of his shop and the police patrolling party was in the opposite side of the road. When the police party was seen, the vehicle had left the place. Then, the police had nabbed the vehicle in Orang.
13. In his cross examination, he has stated that he has not seen the incident himself. He denied that he did not state before police that he had seen a Bolero vehicle in the night. He denied the suggestion that he had deposed falsely, as the informant is his son.
14. PW5, Sri Ram Krishna Dhar, in his examination in chief has stated that he recognizes the informant but not the accused persons. He stated that his tailoring shop is near the place of occurrence. The incident had taken place in Dhekiajuli town. On the next day of the incident, in the morning, he saw the police was investigating in the "Sualkuchi Silk House", shop of the informant. He stated that the shutter of the shop was broken. He came to know that theft had taken place there.
15. In his cross examination, he has stated that he does not know who had committed the theft.

16. PW6, Sri Dharani Dhar Deka, in his examination in chief has stated that he was working at Dhekiajuli P.S in the month of January, 2012. He stated that on 12.1.12, the O/C of Dhekiajuli P.S had received FIR from Hamen Nath. Ext 1 is the FIR. After receiving the FIR, he was given the responsibility to conduct the investigation. Ext 1(2) is the endorsement of the O/C( Ananta Das). He stated that he was in his patrolling duty on 12.1.12. When he was on his duty, he and the other patrolling party members had seen that three persons, who came in a Bolero Pick Up van were stealing goods from " Sualkuchi Silk House", the shop of Hamen Nath( Informant). Seeing that, they had gone to that shop. When those three persons saw them(police patrolling party), they fled away in the Bolero vehicle at high speed. Thereafter, when they had informed police at Orang Check Gate, the gate was closed, and they chased the culprits and nabbed them at Orang Check gate. He stated that two of the accused persons, in the dock, had come on that day and were nabbed, while the other one did not come, but he recognized him. He also stated that they had seized the vehicle, some of the clothes found inside the vehicle and one *siprang*. Mat Ext 1 is the clothes. The vehicle was given in zimma. Mat Ext 2 is the *siprang*. The said articles were seized vide Ext 2, seizure list. Ext 3 is the sketch map and Ext 3(1) is his signature. The accused were arrested and were forwarded to Court. The witnesses were questioned. Ext 2(4) is his signature on the Ext 2, seizure list. The statements of the witnesses were recorded and the investigation was completed. At the end of the investigation, charge sheet was filed u/s 457/380 of IPC against the accused Pinku Deka, Dhaneswar Deka and Anwar Ali. Ext 4(1) is his signature on the charge sheet.
17. In his cross examination, he has stated that after getting the responsibility of investigation, he had done the investigation and seized the articles. At first, GD entry no. 362 dtd.12.1.12, was entered upon in the case and then the case was registered. He stated that they had reached the Orang Check gate five minutes after the

accused persons were caught. He stated that the accused persons had tried to flee from the check gate. The accused were caught with the help of police. When the accused were caught, no GD entry was again recorded at Orang Check gate. He stated that he had not recorded statement of witnesses regarding the fact that the accused had tried to flee from Orang check gate or that they were nabbed at Orang check gate. He also stated that the informant had identified the seized clothes, during his examination. Challan was not taken. The articles were brought to the police station. The accused had indentified the articles found in the vehicle. Colour description was not given. In the seizure list, Dhekiajuli P.S 361 is mentioned. He denied the suggestion that he had not seized any articles and had submitted charge sheet without doing actual investigation. He denied the suggestion that the accused were not present at the time of the incident.

**APPRECIATION OF EVIDENCE:**

18. On a careful reading of the evidence on record, it becomes clear that the prosecution's case primarily rests on the evidence of PW6, Sri Dharani Dhar Deka, who has claimed to have seen the accused persons, looting articles of the shop, "Sualkuchi Silk House", belonging to the informant, when he along with some other police personnel were on patrolling duty in the concerned area and have caught them after a chase. PW6, in his evidence, has also stated that the accused persons had fled from that place in a Bolero Van when they saw the police patrolling party. Thereafter, they were caught in the Orang check gate. The prosecution's case has also the support of the corroborating testimonies of other PWs.
19. On analysis of the evidence of PW6, I find the evidence of PW6, inherently believable and consistent. I find that PW6 has been able to withstand the test of cross examination. Nothing could be elicited during his cross examination, which would raise reasonable doubt as to his veracity or reliability.

20. Let me analyze, why the testimony of PW6 can be inherently relied upon. I find nothing to disbelieve that PW6 along with others had come on patrolling duty on 12.1.12, at about 12:30AM, and they had seen the theft in the shop. The evidence of PW2, Sri Anil Haloi, supports the assertion of PW6. He has stated that on 11.1.12, at about 12:30 in the night( i.e 12.1.12, at about 12:30AM), police patrolling party had informed him about the theft in the shop, and thereafter, he had informed the informant about it. PW1, the informant has also stated that Anil Haloi had informed him about the incident, initially. Likewise, PW3, who is the business partner of the informant, has also stated that Anil Haloi had informed him about the incident over phone.
21. I find the evidence of PW2, that he had received information from the police about the theft, reliable. The Ld. Counsel for the accused, has argued that as PW2, had received information about the theft from one Sri Madan Pradhan, who was a member of the patrolling party, he( Madan Pradhan) should have been made as a witness. I do not find the failure to bring Madan Pradhan as a witness, has made the evidence of PW2 unreliable. It is not material, who among the patrolling party had informed him. The fact that he was being informed by police and the fact that after receiving information, he and the informant came to the police station, and witnessed the seizure of stolen clothes, make it believable that they had reached the police station after receiving the information about the theft.
22. The assertion of PW6, that the accused persons had fled from the scene after spotting the patrolling party and that they were nabbed at the Orang check gate, shows that the accused persons were involved in the alleged offences.
23. The Ld. Counsel for the accused has argued that there is inconsistency in the prosecution's version as to the date on which the incident had occurred, which has made prosecution's story unbelievable.

24. However, I do not find the argument acceptable. It is true that in the FIR, it is mentioned that the incident took place on 11.1.12, but the time was mentioned as 12:30 in the night. This means that the incident , actually, occurred on 12.1.12, at 12:30AM. This was what PW6, had stated in his evidence.
25. The Ld. Counsel, has also argued that the I.O( PW6), GD entry no. recorded at the time of receipt of information and that recorded at the time of preparation of seizure list, are different. Hence, the prosecution's case is doubtful.
26. I do not find the difference in GD entry nos. creating any doubt. General Diary contains recording of all important transactions/ events taking place in a police station. Thus, when a FIR is received, the substance /gist of the same, is reflected in General Diary, and a number is given to it. Likewise, if seizure list is prepared, it may be registered against another number, in the General Diary. So, the GD entry nos. may differ, depending upon the chronology of the events.
27. I also do not find the argument that non-recording of GD entry number, at the Orang Check gate, has proved fatal to the prosecution's case. There is no obligation on the part of an I.O. to record every details of an investigation in the General Diary.
28. The Ld. Counsel for the accused, has also argued that the I.O. ought to have recorded the statements of police personnel at Orang check gate and made them as PWs. It is true that evidence of police personnel, stationed at Orang Check gate, would strengthen the prosecution's case, but absence of such a witness, in my view, does not weaken the evidentiary value of the substantive evidence of PW6, which has the support from the corroborative evidence of other PWs. It is a settled principle that evidence should be weighed and not counted.
29. The evidence of PW6, that the accused persons had looted the shop "Sualkuchi Silk House", has received support from the other PWs. PW2, Sri Anil Haloi, has stated that he saw that the shop was broken.

Likewise, PW3, has stated that he saw the shop broken and a side of the shutter was open. PW5, has also stated that the shutter of the shop of the informant, "Sualkuchi Silk House" was broken. Nothing could be elicited in their cross examinations, which could raise reasonable doubt regarding their veracity and reliability.

30. Another important aspect, which further strengthens the prosecution's case is the articles/property seized from the possessions of the three accused persons. The I.O. (PW6) had seized a Bolero Pick Up van, one crow-bar( *siprang*) and clothes, such as *Patar sari*, *Kesa-pat*, Semi-silk etc., as revealed from Ext 2( seizure list). The recovery of the clothes shows that the clothes were from the "Sulakuchi Silk House", which deals with such silk/pat clothing. An inference can be drawn from the presence of crowbar that it could possibly be used for breaking the shutter of the shop. PW1, PW2 and PW3 were the seizure witnesses, and they have supported the fact of seizure. PW1 has stated that police had seized the clothes which were stolen from his shop, and that he had signed as seizure list. Likewise, PW2, has recognized the stolen clothes as Mat Ext 1, in the Court.
31. The Ld. Counsel for the accused has also argued that the clothes so seized do not belong to the shop of the informant, because the informant has not sought for zimma of the clothes, so far.
32. I do not accept this argument, because it is up to the informant to decide, whether he wants the seized clothes or not. The mere fact that he did not applied for zimma of the same, it does not mean that the clothes do not belong to his shop.
33. Further, the argument of the Id. Defence advocate, that absence of code nos. on the seized clothes, renders it doubtful that the clothes belong to the informant's shop, not acceptable. It is not essential for a shopkeeper, to tag every items of his shop with a code number, so as to claim it as belonging to his shop. The fact that the items are kept in his shop, shows, at least, that those are in his possession. Ownership is not required to be proved to establish the offence of theft.

34. Hence, the evidence of PW6, and the supporting testimonies of other PWs, establish the fact that the accused persons had broken the shutter of "Sualkuchi Cloth House", and entered the shop, on 12.1.14 in the night, at about 12:30AM. The fact that all the three accused persons were present at the place, where the shop was situated; the fact that they had entered the shop after breaking it and that they had fled after seeing the police, proves that they had shared a common intention to commit house breaking and to commit theft of the clothes from the shop.

**POINT NO.1**

35. In the light of the above, I am of the considered view that the accused persons, in furtherance of their common intention, had entered the shop of the informant, namely, " Sualkuchi Silk House", and lifted some of the clothes present inside the shop, with dishonest intention to steal the clothes, out of the possession of the informant, without his knowledge, before they were spotted by the police patrolling party. Moreover , they were caught after a chase with the stolen clothes. The Ext.3 sketch map, clearly shows that the incident had occurred inside the shop premises, which is located on the ground floor of the building. These facts prove, beyond reasonable doubt, that the accused persons had committed theft inside the shop. Hence, the offence u/s 380 r/w Sec.34 of IPC is proved, beyond reasonable doubt.

**POINT NO.2:**

36. Similarly, the above proved facts establish that the accused persons, in furtherance of their common intention, had entered into the "Sualkuchi Silk House", at about 12:30 in the night( before sunrise), by opening the locked shutter. As stated above, the breaking of the shutter of the shop was proved by the evidence of PW2, PW3 and PW5, who had seen the shutter of the shop broken. As stated earlier, the accused persons had the intention to commit theft of the clothes from the shop. The fact that they had committed theft is also proved.

**CONCLUSION:**

37. Thus, I am of the considered view that the Prosecution has been able to prove that the accused persons had committed offences punishable u/s 457/380 r/w Sec.34 of IPC, beyond reasonable doubt. Thus, the accused are convicted u/s 457 r/w Sec34 of IPC and u/s 380 r/w Sec.34 of IPC.
38. Considering the nature and circumstances of the case, the gravity of the offences and the manner in which the offences were committed, I am not inclined to extend the benefit of Probation of Offenders Act, to the accused persons.
39. Heard both sides on the point of sentence.
40. Considering the fact that the offences are serious and have the tendency to spread insecurity among people regarding their properties, I sentence the accused persons, namely (a) Sri Pinku Deka, (b) Sri Dhaneswar Deka and (c) Md. Anowar Ali, each, to undergo Rigorous Imprisonment for one (1) year and to pay fine of Rs.3000/- each i/d 30 days of R.I., u/s 380 of IPC, and to undergo R.I for 1(one) year and to pay fine of Rs.4000/- each i/s 30 days of R.I. u/s 457 of IPC. The period of detention already undergone by the accused persons, during investigation phase, shall be set off from the aforesaid sentences of R.I. Further, the aforesaid sentences shall run concurrently.
41. The judgment is pronounced in the open court on this 30<sup>th</sup> of January, 2016. The judgment is prepared under my hand and seal of this Court.
42. The case is, accordingly, disposed of.

(K.K. Sharma)

ADDL. CJM, Sonitpur, Tezpur.

ANNEXURE

**LIST OF DOCUMENTS EXHIBITED BY THE PROSECUTION**

EXT.1: FIR

EXT 2: SEIZURE LIST

EXT 3: SKETCH MAP

EXT 4: CHARGE SHEET

**MATERIAL EXHIBITS:**

MAT EXT 1: Clothes

MAT EXT 2: CROWBAR( Siprang).

ADDL. CJM, Sonitpur, Tezpur.