

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,  
UDALGURI, ASSAM.**

**G.R. CASE NO. 39 of 2016  
(U/S- 457/380 IPC)**

**STATE**

**-VS-**

**LOK PRASAD REGMI**

**-----Accused persons.**

**Present: Smti. Nilakshi Lahkar, A.J.S.**

**Advocate for the Prosecution : Mrs. N. Narzari**

**Advocate for the Defence : Mr. M. Deka**

**Evidence recorded on : 02.08.2019 and 19.08.2019**

**Argument heard on : 28.08.2019**

**Judgment delivered on : 28.08.2019**

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

- 1.** Briefly the prosecution case, is that, the informant Smti. Prassana Devi had lodged an FIR before Orang PS by stating inter-alia that on 23.12.2015 she went to visit her elder sister's house. But on that day she did not return to her home, so he informed her neighbor Khem Regmi over phone and asked her to see her house. But in the night hour someone had broken his lock and entered inside her house and stolen away the passbook of her husband, ATM card along with pin number, gold ornaments and cash amount of Rs. 22,000/-. Afterwards they made search and came to know that on the alleged night of the incident the accused persons had withdrawn Rs. 32,000/- from Kopati State bank ATM. Hence this case.
- 2.** After receiving the aforesaid FIR the Officer-in-Charge of Orang Police Station registered a PS case vide Orang PS case no. 03/2016, u/S 457/380 IPC. Investigating Officer investigated the case. Investigating Officer investigated the case, recorded the statement of witnesses,

prepared the sketch map, collected the medical report, prepared the seizure lists and after completing the investigation, IO submitted the charge sheet against the accused persons Mohidul Islam and Lok Prasad Regmi u/S 457/380 IPC vide CS No. 59 of 2017 dated 31.10.2017. The case has been filed by this Court against the accused Mohidul Islam vide order dated 03.07.2019.

3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused persons before the court. Accordingly accused person Loki Prasad Regmi appeared. The copies of relevant documents were furnished to the accused person Lok Prasad Regmi. Considering the materials on record, Charges u/S 457/380 IPC had been framed against the accused person Lok Prasad Regmi, thereafter the charges so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. During trial the prosecution has examined as many as six (6) PWs including the informant. The statement of defence of the accused persons u/S 313 Cr.P.C have been recorded. The defence case is of total denial. No witness been examined by the defence. Argument had been heard from both sides.
5. **POINT FOR DETERMINATION OF THE CASE :**

- I. Whether the accused persons on 23.12.15 at night hour at about 08:30 PM had committed lurking house trespass or house breaking by night in the house of the informant and thereby committed the offence punishable u/S 457 IPC?
- II. Whether the accused on the same day time and place had committed theft of cash amount of Rs. 22,000/- gold ornaments fro the dwelling house of the informant and thereby committed the offence punishable u/S 380 IPC?

- 6. DISCUSSION, DECISION AND REASONS FOR THE DECISION:** The prosecution has examined as many as six (6) witnesses:
- 7.** PW1 Prasanna Devi, the informant herein this case has deposed in her deposition that she knows the accused persons. About 3 years ago the incident was occurred. On the day of the incident she went to visit her elder sister's house after locking her house as there was no one present in her house. That day someone had broken her lock and taken away Rs. 20,000/-, ATM card, security number and one pair of ear ring. On the next day when she returned to her home then she found that the lock of the door was broken and open his almirah and there was no articles in her almirah. Afterwards she informed the matter to the police station. Later on police had updated her bank passbook and found that the thief had withdrawn Rs. 32,000/- from her account through ATM card at night from Dalgaon, Kopati ATM. Afterwards police had arrested one Mahidul and accused person. She had not received any stolen articles. She has identified the FIR as Exhibit 1 and Exhibit 1 (1) is his signature.
- 8.** During cross examination PW1 has stated that she had lodged the FIR after 20 days of the incident. She had not mentioned any reason of delay in filing the FIR. She did not know as to why police had arrested the accused persons.
- 9.** PW2 Shyamlal Sarmah has deposed in his evidence that he knows the informant as well as the accused persons. He heard about the theft in the house of the informant, but he did not know as to who had stolen away the articles from his house. No article had been recovered from the possession of the accused persons. Later on he came to know that the photographs of the accused persons were taken from the CCTV footage of Dalgaon Kopati ATM.
- 10.** During cross examination he has deposed that he went to Dalgaon Kopati ATM with the police. He had not stated in his 161 statement that he had seen the photographs of the accused persons in the CCTV footage as police did not ask him about this. He did not know whether

accused person had stolen away the articles from the house of the informant or not.

- 11.** PW3 Pushpalal @ Prabhalal Sarmah has deposed in his evidence that he knows both the parties. He heard about the theft in the house of the informant. But he did not know as to who had stolen away the articles from his house. Later he came to know that someone had withdrawn Rs. 32,000/- from the account of the informant. But he did not know as to who had withdrawn the money.
- 12.** His cross-examination was declined by the learned defence counsel.
- 13.** PW4 Lakshmi Prasad Sarmah has deposed in his evidence that he is a father-in-law of the informant. He knows the accused persons. On the day of the incident someone had stolen away Rs. 22,000/-, gold ornaments and ATM card from the house of the informant. But he did not know as to who had stolen away.
- 14.** His cross-examination was declined by the learned defence counsel.
- 15.** PW5 Khem Regmi has deposed in his evidence that he knows both the parties. About 2 years ago the incident was occurred. He heard about the theft at the house of the informant, but he did not know as to who had done that.
- 16.** His cross examination was declined by the learned defence counsel.
- 17.** PW6 Someswar Borah, the I/O herein this case has deposed in his evidence that on 13.01.2016 he was posted at Orang PS as O/C. That day he had received an FIR from Prasanna Devi and accordingly he registered the case vide Orang PS case No. 03/2016 u/S 457/380 IPC and taken up the investigation himself. Afterwards he went to the place of occurrence, drew the sketch map and recorded the statements of the witnesses. He had arrested the accused person and forwarded them to the Court. As per the version of accused Mohidul Islam, he had arrested the accused Lok Prasad Regmi and also

forwarded him to the Court. He had recovered one bike and one tempo vehicle from the possession of the accused Mohidul Islam. Afterwards he had handed over the CD to the O/C Umesh Bordoli as he was transferred. He has identified the sketch map as Exhibit 2 and Exhibit 2 (1) is his signature. He has also identified the seizure lists as Exhibit 3, 4 and Exhibit 3 (1), 4 (1) are his signatures.

- 18.** During cross examination he has deposed that he had not given any prayer to record the confessional statement of accused Mohidul Islam. He had not seen any photo of the accused persons in CCTV footage. He had not seized any articles from the accused persons.
- 19.** Learned defence counsel has argued that none of the prosecution witnesses had seen the accused persons had stolen away the articles from the house of the informant. The prosecution witnesses are contradictory to each other. He argued that there is no evidence on record to prove the charge under section 457/380 IPC. So, he prayed to acquit the accused persons forthwith.
- 20.** After appreciating the evidence on record, it is seen that the informant Prasanna Devi as PW1 has deposed in her evidence that someone had committed theft of ATM card, bank passbook and cash amount of Rs. 20,000/- from her house in her absence. But she has no knowledge who had committed theft in her house. Police arrested the accused Mohidul Islam on the basis of the CCTV footage which was collected from Dalgaon, Kopati ATM. PW2 Shyamlal Sarmah while deposing his evidence has stated that he has only know about the theft in the house of the informant, but he has no knowledge who had committed theft in the house of the informant. No stolen articles were recovered from the possession of the accused persons. Police had only found the photos of the accused persons from the CCTV footage of the Dalgaon Kopati ATM. PW3 Puspallal @ Prabhallal sarmah, PW4 Lakshmi Prasad Sarmah and PW5 Khem Regmi also did not depose in their evidence about the persons who committing theft in the house of the informant. PW6 Someswar Borah, the IO herein this case did not depose anything in his evidence that he arrested the accused persons on the basis of

the CCTV footage which was collected from Dalgaon Kopati ATM. Rather he had deposed in his cross-examination that he had not seen the accused persons in the CCTV footage. No articles were seized from the possession of the accused persons. Thus, after accumulation of all the evidence available in this case record, it is found that there found no incriminating materials against the accused person that he had committed theft in the house of the informant and no stolen articles were recovered from the possession of the accused person. The ingredients u/S 457/380 IPC have not been fulfilled with. Hence, prosecution has miserably failed to prove its case against the accused person Lok Prasad Regmi beyond all reasonable doubt.

**ORDER**

Under the facts and circumstances of the instant case, it is found that the prosecution has miserably failed to prove the alleged offence under Section 457/380 IPC against the accused Lok Prasad Regmi beyond all reasonable doubt and hence he stand acquitted under the above sections of law and set him at liberty forthwith.

The bail bond of the accused Lok Prasad Regmi shall remain in force for next six months as per provision of section 437(A) CrPC.

The judgment is given under the hand and seal of this Court on this 28<sup>th</sup> day of August 2019.

**(N. Lahkar)**

Addl. Chief Judicial Magistrate  
Udalguri, Assam.

**Dictated and corrected by me:**

**(N. Lahkar )**

Addl. Chief Judicial Magistrate.  
Udalguri, Assam.

**APPENDIX**

- A. Prosecution witnesses : PW 1 Prasanna Devi (Informant)  
PW 2 Shyamlal Sarmah  
PW 3 Pupalal @ Prabhalal Sarmah  
PW 4 Lakshmi Prasad Sarmah  
PW 5 Khem Regmi and  
PW 6 Someswar Borah
- B. Defence witness : Nil.
- C. Documents exhibited : Ext.1 FIR  
Ext.2 Sketch map,  
Ext.3 Seizure list  
Ext.4 Seizure list

(N Lahkar)  
Addl. Chief Judicial Magistrate  
Udalguri, Assam.