

G.R CASE NO: 2167 OF 2006  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SHRI BIBHASH RABHA & ORS

DISTRICT: KAMRUP  
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL  
MAGISTRATE, (S),II, KAMRUP

GR CASE NO: 2167/ 2006  
U/S 380 IPC

PROSECUTOR: STATE OF ASSAM  
VERSUS  
ACCUSED: SHRI BIBHASH RABHA & ORS

PRESENT : YUSUF AZAZ, SUB DIVISIONAL JUDICIAL  
MAGISTRATE, (S),II, KAMRUP

ADVOCATE FOR THE PROSECUTION: SHRI M. ALI

ADVOCATE FOR THE ACCUSED: SHRI A. HAQUE

CHARGE FRAMED ON :29/7/2011

EVIDENCE RECORDED ON: 13/9/2011, 29/2/2012, 2/4/2012, 23/5/2012

ARGUMENT HEARD ON: 7/8/2012

JUDGMENT DELIVERED ON: 31/8/2012

### **JUDGMENT**

1. The prosecution in this case was launched by the lodging of an ejahar with the Officer in Charge of the Boko Police Station on 25/5/2006 by the informant, Shri Kaniram Rabha to the effect that

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the accused persons namely, Shri Bibhash Rabha, Shri Sanjay Rabha, Shri Munna Sahani, Shri Mantu Khan and Shri Babul Ali committed theft of the statue of “Gohain” from the Gopinath Mandir and also stole some of the deity’s ornaments.

2. The police upon receipt of the ejahar registered Boko Police Station case no: 110/ 2006 under sections 380 of the Indian Penal Code (IPC) and started investigation in the case. Upon completion of the investigation, the police submitted chargesheet against the accused persons namely, Shri Bibhash Rabha, Shri Sanjay Rabha, Shri Munna Sahani, Shri Mantu Khan and Shri Babul Ali under section 380 IPC.
3. It would be pertinent to mention herein that the accused, Shri Mantu Khan and Shri Babul Ali could not be found and had absconded as such the case was filed against them.
4. The remaining three accused persons were called upon to enter trial and accordingly the said accused persons appeared and the copies of the relevant documents were furnished to them. The formal charge under section 380 IPC were framed against the accused persons and the same was read over and explained to them, to which they pleaded not guilty and claimed to be tried.
5. The prosecution in support of its case examined as many as four witnesses; whereas the defence declined to adduce evidence.
6. The defence case, as is revealed from the statement of the accused persons recorded under section 313 CrPC and from the trend of cross examination is that according to them, the accused, Shri Bibhash Rabha had taken the said articles from the temple, but the other co-accused are not in any way involved in the offence. The defence has further contended that the accused, Shri Bibhash Rabha was of unsound mind at the relevant time.
7. Upon the case set up by the prosecution I have framed the following point for determination in this case in order to arrive at a definite finding as regards the matter in dispute-

(1) Whether the accused persons have committed theft of ornaments of the deity of Gopinath Temple and also stole the statue of the deity

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by dishonestly removing the same from the temple and thereby committed offence under section 380 IPC?

8. I have heard the learned A.P.P and the learned counsels on behalf of the aforesaid accused persons. The learned APP has contended that the prosecution has proved its case beyond reasonable doubt as such the accused persons are required to be convicted; whereas the learned counsels for the accused persons have contended that the accused, Shri Bibhash Rabha took the said articles because he was of unsound mind at that time.

**DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

9. Now let me discuss the materials on record and try to arrive at a definite finding as regards the point for determination.

**POINT FOR DETERMINATION NO.1: Whether the accused persons have committed theft of ornaments of the deity of Gopinath Temple and also stole the statue of the deity by dishonestly removing the same from the temple and thereby committed offence under section 380 IPC?**

10. The prosecution has examined as many as four witnesses in support of its case.
11. The PW1, Shri Kaniram Rabha has deposed that the accused, Shri Bibhash Rabha stole the statue of the deity and also stole the ornaments of the deity. The PW1 has stated that the accused, Shri Bibhash Rabha stole one statue of the deity, one gold ring, one silver ring, and one flute. He has further stated that the aforesaid articles were recovered from the house of the accused, Shri Bibhash Rabha which was kept buried in the earth near the Handpump. The PW1 has further stated that the aforesaid articles were recovered on being shown by the accused, Shri Bibhash Rabha.
12. The prosecution has produced the seizure list by which the police had seized the stolen articles which were recovered from the

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possession of the accused, Shri Bibhash Rabha and the same is marked as exhibit 3. The perusal of exhibit 3 shows that one Gada made of brass, one statue of Krishna and one silver ring was recovered from the possession of the accused, Shri Bibhash Rabha.

13. The accused, Shri Bibhash Rabha has admitted in his statement recorded under section 313 CrPC that the aforesaid articles were seized from his possession. The accused, Shri Bibhash Rabha has stated that he was of unsound mind at the relevant time and at that time he used to pick up objects without any intention of committing theft. The accused, Shri Bibhash Rabha has stated that the other co-accused did not steal any of the aforesaid articles, but it was he who took out the said articles from the temple and took it to his home. The accused has submitted that he did so without the knowledge of the fact that he was committing theft.
14. The co-accused, Shri Sanjay Rabha has also admitted to the recovery of the gold ring from his possession but stated that he did not commit the theft. The accused, Shri Sanjay Rabha had stated in his statement recorded under section 313 CrPC that the accused, Shri Bibhash Rabha gave him the said ring when they were sitting at a temple. The said gold ring was seized by exhibit 2.
15. The perusal of the statement of the accused recorded under section 313 CrPC and the evidence on record clearly establishes that the accused, Shri Bibhash Rabha committed the theft from the temple.
16. The prosecution has examined Shri Chandra Das (PW2), Shri Dayal Chandra Rabha (PW3) in support of their case. The aforesaid witnesses have deposed similarly to the PW1 and have fully corroborated the PW1.
17. The PW4, Shri U.C Ray is the investigating officer in this case.
18. The perusal of the evidence on record establishes beyond reasonable doubt that the accused, Shri Bibhash Rabha had committed the offence of theft under section 380 IPC.
19. The prosecution witnesses namely, Shri Kaniram Rabha, Shri Chandra Das, and Shri Dayal Chandra Rabha have stated in their evidence that the accused, Shri Bibhash Rabha was of unsound mind

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at the relevant time and that they have no objection if the accused is released.

20. The aforesaid witnesses are the neighbors of the accused, Shri Bibhash Rabha as such they could very well depose regarding the mental state of the accused at the relevant time and as they have stated that the accused was of unsound mind at the relevant time, it is held that the accused, Shri Bibhash Rabha was of unsound mind.
21. There is no material on record to show as to whether the accused knew or had the knowledge regarding the fact that he was committing the theft and its consequences or not; as such it cannot be held that the accused was of such unsound mind that he was incapable of knowing the nature of his act. The fact that the accused took the said stolen articles to his house and kept it hiding goes on to show that the accused had the knowledge that he was committing theft and that he should keep it away from the notice of other persons.
22. In view of the above discussions it is held that the accused, Shri Bibhash Rabha has committed the theft of deity's ornaments and his statue.
23. The accused, Shri Bibhash Rabha and Shri Sanjay Rabha has properly accounted for the recovery of the stolen article from the possession of the accused, Shri Sanjay Rabha, and moreover there is no direct evidence to show that the accused, Shri Sanjay Rabha had committed the theft; hence it is held that the prosecution has failed to show that the accused, Shri Sanjay Rabha had committed the offence of theft.
24. In addition to the above there is absolutely no material on record to link the other co-accused with the commission of the offence.
25. In view of the above discussion it is held that the accused, Shri Bibhash Rabha had committed the offence under section 380 IPC. It is further held that the prosecution has failed to prove that the other co-accused had committed the offence of theft.
26. DECISION: The accused, Shri Bibhash Rabha had committed the offence under section 380 IPC. It is further held that the prosecution

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has failed to prove that the other co-accused had committed the offence of theft.

27. In view of the discussions made above it is held that the accused, Shri Bibhash Rabha has committed the offence under section 380 IPC; hence the accused, Shri Bibhash Rabha is convicted of the offence under section 380 IPC. The other co-accused, Shri Sanjay Rabha, and Shri Munna Sahani, are acquitted of the charge under section 380 IPC.

28. I am not inclined to extend the benefits of the provision of Probation of Offenders Act, 1958 to the accused, Shri Bibhash Rabha because he had committed the offence of theft from temple, which is a religious place, and people generally refrain from committing offence at temples.

29. I have heard the accused on the point of sentence and he has stated that he was not of sound mind at the relevant time as such he was not fully aware of his actions.

30. Considering the fact that the accused, Shri Bibhash Rabha was not fully sound and also considering the fact that the accused has confessed to the commission of the offence and has showed his repentance I deem it fit and proper to sentence him to simple imprisonment for four months and further sentence him to pay token fine of Rs.1/- (one rupee).

### ORDER

31. In view of the discussions made above and the decision reached in the foregoing point for determination the accused, Shri Bibhash Rabha is convicted under section 380 IPC and he is sentenced to undergo simple imprisonment for four months under section 380 IPC and further to pay fine of Rs.1/- and in default to undergo simple imprisonment for one day. The period of detention already undergone is to be set off. The other co-accused are acquitted of the charge under section 380 IPC and they are set at liberty.

32. Furnish a free copy of the judgment to the accused, Shri Bibhash Rabha.

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33.The accused, Shri Bibhash Rabha was in judicial custody from 16/5/2006 to 9/10/2006, which is for more than four months; as such the accused is released and set at liberty.

34.The bail bond of the accused and their sureties shall remain in force for six months from today as per section 447A CrPC.

35.The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 31<sup>st</sup> day of August, 2012 at Guwahati.

Yusuf Azaz,  
Sub Divisional Judicial Magistrate,(S)II,  
Kamrup.

**APPENDIX**

**PROSECUTION EXHIBITS:**

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- 1) EXHIBIT 1: EJAHAR
- 2) EXHIBIT 2: SEIZURE LIST
- ) EXHIBIT 3- SEIZURE LIST

**DEFENCE EXHIBITS**

NONE

**PROSECUTION WITNESSES**

- 1) SHRI KANIRAM RABHA
- 2) SHRI CHANDRA DAS
- 3) SHRI DAYAL CH. RABHA
- 4) SHRI U.C RAY

**DEFENCE WITNESSES**

NONE

Yusuf Azaz,  
Sub Divisional Judicial Magistrate,(S)II,  
Kamrup

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