

**Pampilas Bagh Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/530682](http://sooperkanoon.com/530682)

**Court :** Orissa

**Decided On :** Mar-07-1984

**Reported in :** 57(1984)CLT520; 1984(I)OLR337

**Judge :** B.K. Behera, J.

**Acts :** Indian Penal Code (IPC) - Sections 380, 457 and 488

**Appeal No. :** Criminal Revision No. 93 of 1984

**Appellant :** Pampilas Bagh

**Respondent :** The State

**Advocate for Def. :** D.P. Sahoo, Standing Counsel

**Advocate for Pet/Ap. :** Y.S.N. Murty, Adv.

**Judgement :**

**B.K. Behera, J.**

1. The petitioner stands convicted under Section 457 and 380 of the Indian Penal Code (for short, 'the Code') and has been sentenced under the first-mentioned Section to undergo rigorous imprisonment for a period of two years and under the latter Section to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs. 500/- and in default of payment thereof, to undergo rigorous

imprisonment for a further period of three months with a direction that the substantive terms of imprisonment would run concurrently. The order of conviction recorded by the trial court has been maintained by the appellate court-

2. The petitioner, it was alleged, committed house-breaking and entered into the dwelling house of Tonkodhara Khiller (P. W. 21 and committed theft of clothes during the night of the 10th July, 1980. He had then an iron instrument and a torchlight with him. He was caught and a report was lodged at the Papdahandi Police Station. Investigation followed and on its completion, a charge-sheet was placed and the petitioner was prosecuted being charged under Sections 457 and 300 of the Code. To bring home the charges, the prosecution had examined five witnesses. The petitioner had pleaded not guilty to the charges and had denied the accusations made against him.

3. I have heard the learned council for the petitioner and the learned Standing Counsel for the State.

4. There was no evidence whatsoever that the petitioner had committed theft of clothes from inside the house. Merely because some clothes were lying outside at a time when the petitioner was caught inside the house, it could not be assumed that he was the author of the crime of theft of clothes from the dwelling house of P. W. 2.

5. As far the offence of house-breaking, it is noticed that neither the trial court nor the appellate court had found out as to whether the petitioner had made entry into the house in any of the six ways enumerated in section 445 of the Code. This section defines house breaking. As has been submitted at the Bar, there was absence of proof that the petitioner had made his entry into the house in any of the six ways mentioned therein.

6. In the judgment, the learned Magistrate had formulated the point for determination thus :

"(1) Whether on the alleged occurrence night the accused has entered into the dwelling house of the informant after the hour of sunset and before the hour of

sunrise in order to commit theft ?

(ii) Whether at the material point of time the accused had removed one printed Sari, one Dhoti, one Banian and one Spade from the house of informant with dishonest intention ?

It is, therefore, apparent that the commission of an offence of house-breaking had not been kept in mind while formulating the point for determination. After examining the evidence, the trial court found :

'From the consistent evidence of the prosecution witnesses as indicated above I find that there is ample evidence to come to a conclusion that on the date of occurrence the accused had entered into the house of the informant with a torch light and iron rod (Sundhi Kathi) to commit theft and he had committed the theft of one printed Sari, one Dhoti, one Banian, one Spade from the house of the informant. In view of the above facts I find that the prosecution successfully established its case against the accused beyond all reasonable doubts. Accordingly I hold the accused guilty under Section 457/380 of the Indian Penal Code and convict him there under.

It is thus apparent from this finding that the trial court did a conclusion that the petitioner had committed the offence of house-breaking. The appellate court did no better. No specific finding sustained by reason was recorded by the appellate court' that the petitioner had committed the offence of house breaking. When a culprit is found to have entered the house of another, it cannot be assumed, in the absence of other evidence, that he had committed house-breaking. A charge under Section 457 of the Code must be substantiated by evidence and cannot be assumed from nothing. The mere presence of a person inside the house of another would not establish a case of house-breaking. If a person is charged of house-breaking and theft and the commission of theft is established, it would not follow that commission of the other offence of house-breaking has also been established.

7. The order of conviction recorded against the petitioner under Sections 457 and 380 of the Code is illegal and misconceived and must have to be set aside.

8. The petitioner had entered the dwelling house of P. W. 2 where he was caught during the night when he had an iron instrument and a torch light with him. As has been submitted by the learned counsel for both the sides, the petitioner had committed the offence of house-trespass punishable under Section 448 of the Code.

9. During the course of investigation and after his surrender to serve out the sentence before making this application in revision, the petitioner has been in custody for over three weeks. In my view, the period already undergone would meet the ends of justice.

10. In the result, the revision is allowed in part. The order of conviction and sentences passed against the petitioner under Sections 457 and 380 of the Indian Penal Code is set aside and in lieu thereof he is convicted under Section 448 of the Indian Penal, Code and sentenced to suffer imprisonment for the period already undergone by him. The petitioner be set at liberty forthwith.

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