

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE AT
ASIFABAD

Present : Sri K.Balachander
Judl. Magistrate of First Class,
Asifabad

Wednesday, this the 9th day of April, 2014
CC.No.207/2012

Between:
The State of A.P through
Sub-Inspector of Police,
Asifabad.

.... Complainant

//AND//

1. A.1: Kondra Rajeshwar, S/o.Rajanna, Age:39 years, Caste:Rajaka, Occ:Real Estate business & TRS party member, R/o.H.No.2-151, Hudco colony of Asifabad
2. A.2: Sangude Jeevan, S/o.Damodhar, Age:34 years, Caste:Arey, Occ:real Estate business & TRS party member, R/o.H.No.7-5, Rajampet of Asifabad
3. A.3: Md.Sajid Ahmed, S/o.Neeyaz Ahmed, Age:29 years, Caste:Muslim, Occ:Dish business & TRS party member, R/o.H.No.3-62 , Rajampet nagar of Asifabad
4. A.4:Kayati Ramulu, S/o.Kondaiah, Age:36 years, Caste:SC, Occ:Sakshi reporter, R/o.Bazarwadi of Asifabad, native of Huzurabad of Karimnagar
5. A.5: Sri ram Varaprasd, S/o.Buchaiah, Age:39 years, Caste:Goldsmith, Occ:Caste work, R/o.3-95 Bazarwadi of Asifabad

.....Accused

This case is coming before me for hearing on this day in the presence of APP Sri Ganeshanand for the State and Sri T.Suresh and Sri G.V.S.Prqasad Advocates for the accused, after hearing of both sides and having stood over for consideration till this day, the Court delivered the following:

J U D G M E N T

The Sub Inspector of police, Asifabad filed charge sheet against the accused for the offence punishable U/S. 384 IPC.

2. The case of the prosecution in brief is that : On 07.01.2012 A.3 went to the jewelry shop of LW.2/Abai kumar Jain, purchased 5 grams of gold and went away. Later A.1 to A.4 approached to the shop of A.5 and got weighted the gold by A.5. Later on 11.01.2012 morning A.1 to A.4 went to the jewelry shop of LW.2/Abai kumar Jain and caused threatened

him expressing that the complainant/Vijay Jain has selling fake gold and A.4 got photographed the shop of LW.2/Abai kumar Jain from all four sides and threatened that they will write about the mollify business of the LW.2/Abai kumar Jain in new items and they will give the scrolling all over T.V against the complainant and see that no body (customers) come to their jewelry shop and thereby crate bad name of the complainant in locality. A.1 to A.5 expressed and demanded LW.2/Abai kumar Jain if the complainant want to not happen anything he will give an amount of Rs.5,00,000/- till the evening of the day and went away from his shop. Later on the same day evening at 1800 hours, again A.1 to A.5 came to jewelry shop of LW.2/Abai kumar Jain and threatened to give the bribe amount of Rs.5,00,000/-, otherwise they will flashed the news in T.V.scrolling and in news items. Night until 2000 hours A.1 to A.5 stayed at the shop and extorted an mount of Rs.1,00,000/- from the complainant. After extorting the amount A.1 to A.5 went away and divided the amount as their share of parts. Subsequently happening this A.4 again approached LWs.3, 4 (Naresh Tatiya and Ramesh Solanki) and extorted an amount of Rs.13,000/- by threatening. Basing on the above report from LW.1/ Vijay Jain, LW.13/Sub Inspector of police, Asifabad registered a case in Cr.No.12/2012 for the offence punishable U/S.384 IPC. During the course of investigation he examined and recorded the statements of witnesses, drawn rough sketch, conducted scene of offence panchanama. . On 18.01.2012 he arrested A.1 to A.5 at the house of A.2. During the course of interrogation, A.1 to A.5 voluntarily committed theft of offence, in pursuance of commission of offence, he recorded the confession and recovery panchanama of A.1 to A.5 before the mediators and got recovered an amount of Rs.17,000/- from the possession of A.2, Rs.63,000/- and Nokia camera from he possession of A.4, Rs.16,300/- from the possession of A.1, Rs.16,700/- from the

possession of A.3 and a piece of gold from the possession of A.5 before the mediators and after completion of investigation he filed charge sheet against the accused for the offence punishable U/S. 384 IPC.

3. Upon consideration of the material placed before the court, cognizance taken for the offence punishable U/S. 384 IPC against A.1 to A.5. On appearance of accused copies of documents were furnished to them as required U/s. 207 Cr.P.C. and after that they were examined U/S. 239 Cr.P.C. Charge for the offence punishable U/S.384 IPC was framed, read over and explained to them for which they pleaded not guilty and claimed to be tried.

4. To prove the case, the prosecution has examined PWs. 1 to 12 and marked Ex.P1 to P.20. In spite of several adjournments, conditional orders given to the prosecution and also issued memo to the concerned Sub Inspector and Circle Inspector of police for the production of LW.13 on the next date of hearing without fail, if failed to produce him, his evidence will be closed. In spite of conditional order, neither the police nor the prosecution took any interest to Produce LW.13. Hence this court has come to the conclusion that there is a pronounced negligence on the part of the prosecution and police. Hence the evidence of LW13 is closed by this court.

5. After the closures of prosecution evidence, A.1 to A.5 were examined U/S.313 Cr.P.C. for which they denied to the incriminating material appeared against A.1 to A.5 in the evidence of prosecution witnesses and reported no defence evidence.

6. Heard arguments from the counsel for the accused. Learned APP is on leave, considering the merits of the case of the prosecution treated as heard from the prosecution side..

7. Now the point for determination is that:

Whether the prosecution is able to establish the guilt against A.1 to A.5 for the offence punishable U/S. 384 IPC against the accused beyond all reasonable doubt?

8. **POINT:**

PWs.1,2 & 5 deposed that in the year January, 2012 one Muslim woman went to their shop and purchased 5 or 10 grams gold. After purchasing of the 4 days she went to their shop and stated that the purity of the gold is not good that it is mixed one, on that she brought 4 or 5 members and threatened them with dire consequences and demanded an amount of Rs.1,00,000/- from them. They have given the said amount to them. They do not remember the date of the incident and who came to their shop. A.1 to A.5 are not the persons who went to their shops and they did not saw them at any point of time. Thereafter PW.1lodged Ex.P1 report to the police. These witnesses declared hostile.

PWs.1, 2 & 5 clearly deposed that one Muslim woman went to their shop and purchased 5 or 10 grams gold. After purchasing of the 4 days she went to their shop and stated that the purity of the gold is not good that it is mixed one, on that she brought 4 or 5 members and threatened them with dire consequences and demanded an amount of Rs.1,00,000/- from them. They did not depose about one Muslim woman and the relation ship between Muslim woman and that 4 or 5 members who came to their house and threatened them. That Muslim woman was not examined by the police. PWs.1,2 & 5 are complainant and victims to this case, they did not identify the accused persons who went to their shops and threatened them with dire consequences and demanded an amount

of Rs.1,00,000/- from them on the date of incident. They did not remember on which date the incident was occurred. When they clearly admitted that A.1 to A.5 are not the persons and they did not went to their shop at any point of time how can their evidence taken into consideration to connect the accused with the alleged incident. Therefore this point is not taken into consideration in favour of the prosecution and answered in favour of the accused persons.

9. PW.3 & 4 who are the circumstantial witnesses to this case they did not supported the case of the prosecution and turned hostile by saying that they do not know anything about the facts of the case as they did not eye witnessed pertaining this case. Therefore this point is answered in favour of the accused.

10. PW.6 who weighted the gold recovered from A.5, he deposed that nearly 1 ½ year back one constable went to his shop with a yellow metal piece and requested him that weighing the said piece, on his request he weighed and given the same to the said constable, except this he do not know pertaining to this case, except constables no persons in the custody of the police. This witness declared hostile by APP.

As per the evidence of PW.6 on the request of the constable he weighed one gold piece and given the same to that constable, but he did not disclosed whether that gold piece is fake or not. Allegation of the case is that as PWs.1,2 & 5 are sold fake gold to the accused persons, they threatened PWs.1,2 & 5 and extorted an amount from them. But PW.6 who weighed the gold piece did not determine that gold piece is fake one. Therefore this point is answered in favour of the accused.

11. Panch witnesses for scene of offence panchanama who are examined as PWs.7 & 8 they did not supported the case of the

prosecution and turned hostile by APP saying that police obtained their signatures on blank papers and they do not know the contents of scene of offence panchanama.

12. Panch witnesses for confession cum recovery panchanama who are examined as PWs.9 & 10 they also did not supported the case of the prosecution and turned hostile by APP saying that police obtained their signatures on blank papers, police did not read over and explained the contents of confession cum recovery panchanama, police did not seized and recovered from the possession of accused in their presence. A.1 to A.5 are not present at any point of time in the custody of the police in their presence.

On perusal of the record it emerges that LW.13/Sub Inspector of police recovered an amount of Rs.16,300/- from the possession of A.1, Rs.17,000/- from the possession of A.2, Rs.16,700/- from the possession of A.3, Rs.63,000/- from the possession of A.4, and a piece of gold from the possession of A.5 in the presence of PWs.9 & 10. But they are the crucial witnesses to this case, when they clearly admitted that nothing was seized from the possession of accused persons in their presence and A.1 to A.5 were not present at any point of time in the custody of the police in their presence, how their evidence supported to the case of the prosecution. Hence this point is answered in favour of the accused.

13. PW.11 who flashed the news in Namasthe Telangana news item about the commission of offence, he deposed that in December 2012, he received information through one Solanki i.e. PW.4 Hindi Vaartha reporter about the duplicate gold selling by one Marwadi person, he can not say the said business man, then he has given a news item in the month of December in the Namasthe Telangana news paper in the district edition.

He can not say the date of the news item and he can not say the names of the persons who extracted the business persons.

As per his evidence he came to know through PW.4 about the incident and flashed the news in his news paper, but he did not enquired about the facts and also he do not know the date of the news item. When he clearly admitted that he can not say the names of the persons who extracted the business persons i.e. PWs.1,2 & 5 how his evidence support the case of the prosecution?. Hence this point is answered in favour of the accused.

14. PW.12 photographer deposed that about 2 years back police called him to the police station and requested him to give the print and police given memory card, on that he took two print copies of photos and the same was handed over to the police. Ex.P20 is one photo copy along with CD. During his cross examination he clearly admitted that there is no identification marks on the Ex.P20 that the print was taken by him and handed over to the police, he has not issued any receipt to the Ex.P20.

As per his evidence police given memory card, on that he took two print copies of photos, but he did not went to the scene and took the photographs. When there is no identification of his shop on Ex.P20 how it is believable that the said photos are taken print by PW.12. Mere taking photographs is not sufficient to connect the accused with the alleged incident. Therefore this point is not taken into consideration in favour of the prosecution. Hence this point is answered in favour of the accused.

15. . In spite of several adjournments, conditional orders given to the prosecution and also issued memo to the concerned Sub Inspector and Circle Inspector of police for the production of LW.13 on the next date of hearing without fail, if failed to produce him, his evidence will be closed.

Inspite of conditional order, neither the police nor the prosecution took any interest to Produce LW.13. Hence this court has come to the conclusion that there is a pronounced negligence on the part of the prosecution and police. Hence the evidence of LW13 is closed by this court.

16. In these circumstances this court is of the considered view that the prosecution has miserably failed to establish the guilt of A.1 to A.5 for the offence punishable U/S. 384 IPC beyond all reasonable doubt.

17. IN THE RESULT A.1 to A.5 are found not guilty for the offence punishable U/S.384 IPC. Accordingly they are acquitted U/S.248(1) Cr.P.C. for the said offence. Their bail bonds shall stand cancelled. Unmarked case property which was deposited into this court vide CP.No 34/2012 item Nos.1 to 4 i.e. Rs.16,300/-, Rs.17,000/-, Rs.63,000/-, and Rs.16,700/- which are in interim custody it shall be made absolute after appeal time over and item no.5 & 6 i.e. one gold piece wt.4.510 grmas, one Nokia camera shall be given to the real owner after appeal time is over.

Dictated to the Stenographer on computer and after corrections pronounced by me in the open court on this the 9th day of April, 2014.

**JUDL.MAGISTRATE OF I CLASS,
ASIFABAD.**

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

For prosecution

PW-1: Vijay Jain (LW.1/complainant)
 PW-2: Abaykumar Jain (LW.2/victim)
 PW-3: Naresh Tatiya (LW.3/circumstantial witness)
 PW-4: Ramesh Solanki (LW.4/circumstantial witness)
 PW-5: Ajaukumar Jain (LW.5/Victim)
 PW-6: Ajit Jain (LW.7)
 PW-7: Kawalkar Maruthi (LW.9/panch witness for scene of offence panchanama)
 PW-8: Gobude Shankar (LW.10/panch witness for scene of offence panchanama)
 PW-9: Upre Shankar (LW.11/panch witness for confession cum seizure and recovery panchanama)
 PW-10: Anumula Nagireddy (LW.12/panch witness for confession cum seizure and recovery panchanama)
 PW-11: T.Chandranth (LW.6)

For Defence

--NONE--

PW-12: Shaik Saleem (LW.8/photographer)

EXHIBITS MARKED

- Ex.P-1: Report given by PW.1, Dt:16.01.2012 -NIL-
- Ex.P-2: 161 Cr.P.C. statement of PW.1, Dt:16.01.2012
- Ex.P-3: 161 Cr.P.C. statement of PW.2, Dt:16.01.2012
- Ex.P-4: 161 Cr.P.C. statement of PW.3, Dt:16.01.2012
- Ex.P-5: 161 Cr.P.C. statement of PW.4, Dt:16.01.2012
- Ex.P-6: 161 Cr.P.C. statement of PW.5, Dt:16.01.2012
- Ex.P-7: 161 Cr.P.C. statement of PW.6, Dt:16.01.2012
- Ex.P-8: Signature of PW.7 on crime detail form
- Ex.P-9: Signature of PW.8 on crime detail form
- Ex.P-10: Signature of PW.9 on confession cum seizure
panchanama of A.1, Dt:18.04.2012
- Ex.P-11: Signature of PW.9 on confession cum seizure
panchanama of A.2, Dt:18.04.2012
- Ex.P-12: Signature of PW.9 on confession cum seizure
panchanama of A.3, Dt:18.04.2012
- Ex.P-13: Signature of PW.9 on confession cum seizure
panchanama of A.4, Dt:18.04.2012
- Ex.P-14: Signature of PW.9 on confession cum seizure
panchanama of A.5, Dt:18.04.2012
- Ex.P-15: Signature of PW.10 on confession cum seizure
panchanama of A.1, Dt:18.04.2012
- Ex.P-16: Signature of PW.10 on confession cum seizure
panchanama of A.2, Dt:18.04.2012
- Ex.P-17: Signature of PW.10 on confession cum seizure
panchanama of A.3, Dt:18.04.2012
- Ex.P-18: Signature of PW.10 on confession cum seizure
panchanama of A.4, Dt:18.04.2012
- Ex.P-19: Signature of PW.10 on confession cum seizure
panchanama of A.5, Dt:18.04.2012
- Ex.P-20: 161 Cr.P.C. statement of PW.11, Dt:16.01.2012
- Ex.P-21: photo copy along with CD

M.O.s MARKED

-NIL-

**JUDL.MAGISTRATE OF I CLASS,
ASIFABAD.**