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FORM - A

BEFORE THE SPECIAL FAST TRACK COURT (POCSO) & IN THE COURT OF THE 2nd ADDITIONAL SESSIONS JUDGE, DISTRICT- SURAT Date of Judgment: 11/03/2025 Sessions Case No. <u>113/2021</u> [Athwalines Police Station Part - 'I' C.R. No.258/2019]	
Complainant	The State of Gujarat
Represented Through Ld. Public Prosecutor	Mr. D. V. Dave
Accused	Mohhmad Samir Mo Nuru Saudagar, Aged: 21 years, Resi.at: House No. 9336, Subhashnagar, Near Shital Talkies, Rander Road, Surat
Ld. Advocate for the	Mr. S. M. Saudaghar

Accused	
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FORM-B

Date of Offence	28/12/2019
Date of FIR	29/12/2019
Date of Charge-sheet	04/03/2020
Date of Framing of Charges	17/01/2023
Date of commencement of evidence	09/12/2024
Date on which judgment is reserved	25/02/2025
Date of the Judgment	11/03/2025
Date of the sentencing order, if any	-----

Accused Details

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr.PC
1	Mohhmad Samir Mo Nuru Saudagar	09/02/2020	17/02/2020	379(a) (3), 114, 411 of IPC	acquitted	No	-----

Offence: Under Sections 379(a)(3), 411 & 114 of IPC

FORM – C

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution Witnesses:

PW No.	Name of Prosecution witnesses	Exh	Nature of Evidence
1	Rakeshbhai Dilipbhai Gandhi	11	Complainant
2	Dipak Ramdas Baviskar	16	Panch witness
3	Kamlesh Mangabhai Rathod	19	Panch witness
4	Sabir Sadik Shaikh	20	Panch witness
5	Sunil Govindbhai Chaudhary	23	Police witness
6	Maheshbhai Ishwarbhai Vasava	26	Police witness

B. Defence Witnesses, if any: None

C. Court Witnesses, if any: None.

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Particular of document	Exh.
1	Complaint lodged by Sanketbhai Dilipbhai Gandhi	12
2	Panchnama for place of incident	17

3	Recovery Panchnama	18
4	Station Diary entry	24
5	FIR	27
6	Arrest Memo	28
7	Yadi to the Court to add section 411 of IPC in the offence	27

B. Defence: None

C. Court Exhibits: None

D. Material Objects:

No.	Muddamal	
1.	Realme XT Pearl Blue colour Mobile IMEI 862672042084478	Mark-A

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

1. The accused herein were stood for trial for the offences under Sections 379(a)(3), 411 & 114 of IPC, registered vide Part-'I' C.R. No.258/2019 at Athwalines Police Station.

Filing of FIR

2. The case of prosecution is that on 28.12.2019 at about 9 o'clock the complainant was towards Snehmilan

garden at some distance of his house for walking while talking on phone, at that time one moped with two persons having 25-30 years of age, came from behind and the pillion rider worn red colour jacket, snatched his mobile and ran away speedily towards Majura gate and for that he has filed the complaint.

Investigation

3. Accordingly, the P.S.O. of Police Station, Athwalines Police Station, recorded the complaint, vide F.I.R. being C.R. No.I- 258/2019 for the offences punishable under section 379(a)(3), 411, 114 of IPC, the investigation of the case was handed over to the Investigating Officer - PSI. He had recorded the statements of concerned witnesses. During the investigation, the accused arrested pursuant to the information AHC Ajjitsinh and Kalabhai Jadav and also recovered the muddamal by drawing panchnama of place of incident. He has reported the court to add Section 411 of IPC in the said offence. There being enough culpable evidence against the accused, he had submitted the charge-sheet before

the Court and registered vide Criminal Case No.12742/2020.

5. The offence being triable by the Court of Session, Id. 8th Additional Civil Judge & Judicial Magistrate First Class, Surat had committed the case under Section 209 of the CrPC to this Court by way of committal order passed on 01.02.2021 vide Exh.5 after compliance of section 207 of Cr.P.C.

Charge

6. My learned predecessor had framed the charge on 17.01.2024 under Section 228(1) of Criminal Procedure Code against the accused for the offences punishable under Section 379(a)(3), 411 & 114 of IPC, to which the accused denied the charges and pleaded not guilty under section 228(2) of Cr.P.C. and claimed trial and therefore, the prosecution was directed to produce oral evidence as well as documentary evidence, if any, against the accused persons to prove their guilt.
- 6.1 It is to note that thereafter, the said case is transferred to this Court by the administrative order of District

Court, No.917/2024, dated 12.7.2024 for disposal in accordance with law.

Trial

7. In order to substantiate its case, the prosecution in all has examined as many as 6 witnesses and has produced documentary evidence as per 'Form-C'

Further statement

8. After leading the oral and documentary evidences, the prosecution filed the closing pursis vide Exh.30 declaring that, he does not want to examine any more witnesses pursuant to which, the further statement of the accused were recorded under Section 313 of the CrPC, wherein the incriminating evidence which has come on record was put to them, however, he has denied all such evidence, and has stated that he is innocent and has not committed any offence and urged to acquit him. He has chosen not to examine any defence witness.

Rival contentions

9. Heard, learned A.P.P. Mr.Dave for the State and learned advocate Mr. M. M. Saudagar for the accused side in detail.
10. Learned APP Mr.Dave has vehemently submitted that the prosecution is successful in proving the charges against the accused. He submitted that the complainant has proved the contents of FIR and his mobile was snatched by the accused is proved beyond reasonable doubt. He further forcefully submitted that though the panchas have not supported the case of prosecution but the police witnesses have proved the same. The investigating officer has proved all the documentary evidence and therefore, the accused has snatched the mobile phone and is recovered from the accused and therefore, accused may be punished according to law.
11. On the contrary, learned counsel Mr.Soudagar for the accused has refuting the arguments, is the candidly submitted that the prosecution failed to prove the alleged charges. It is submitted that the complainant has not identified the accused before the Court and no

identification parade was conducted hence, prosecution failed to prove the accusations. It is further submitted that all the panchas have turned hostile and no other independent witnesses examined and no CCTV footage was produced and therefore, the prosecution failed to prove the allegations, urged to acquit the accused.

12. In view of the rival contentions of Ld. A.P.P. and Ld. Adv.s for the defence, the following points of determination arise for the Court to decide, as regards the guilt of the accused.

13. **POINTS OF DETERMINATION:-**

- (1) Whether the prosecution proves beyond reasonable doubt that, the accused persons have in collusion with each other snatched the mobile of the complainant and thereby, the accused had committed the offence under Section 397(a)(3), 114 of the IPC ?
- (2) Whether the prosecution proves beyond reasonable doubt that the accused dishonestly received or retained stolen property i.e. mobile phone, knowing

or having reason to believe the same to be stolen property and thereby committed offence under section 411 and 114 of IPC?

(3) What order?

14. My findings on the aforesaid points of determination are as under.

- 1) In the negative,
- 2) In the negative,
- 3) As per final order.

DISCUSSION, DECISION & REASONS THEREOF:

Point No.1:-

15. As both the issues are interconnected and interlinked, they are discussed together to avoid repetition of discussion. Before appreciating the testimonials of witnesses, it is relevant to refer the legal provisions. The question to be decided in the instant case is that whether the prosecution has been able to prove beyond the reasonable doubt the essential ingredients of the

offences punishable under under section 378 for which charges against the accused have been framed. Before evaluation of the evidence produced on record, we peruse the definition of section 378 of IPC, thus;

Section 378 of IPC

Whoever, intending to take dishonestly any movable property out of the possession of any person without that person' consent, moves that property in order to such taking, is said to commit theft.

Explanations:

1. A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.
2. A moving effected by the same act which effects the severance may be a theft.
3. A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.
4. A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.
5. The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Section 379A Snatching has been amended vide state amendment, and the new definition of Snatching is mentioned hereunder;

379A. Snatching.--

- (1) Whoever, with the intention to commit theft, suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his physical possession any moveable property, and makes or attempt to make escape with such property, is said to commit snatching.

- (2) Whoever attempts to commit snatching shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.
- (3) Whoever commits snatching shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.
- (4) Whoever, after committing or attempting to commit snatching, causes hurt or wrongful restraint or fear of hurt, in order to effect his escape shall be punished with rigorous imprisonment for a term which may extend to three years, in addition to the punishment provided for the offence of snatching by the preceding sub-sections.

Considering the said provision, the prosecution has to prove beyond reasonable doubt that the accused persons had committed the offence with the intention to commit theft, suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his physical possession any movable property, and makes or attempt to make escape with such property.

16. Let me evaluate the evidence produced on record and Prosecution in support of its case examined the following witnesses. **PW-1 Sanketbhai Dilipbhai Gandhi** was examined at **Exh.11** and in his deposition, he has deposed that on the date of incident i.e. 28.12.2019, he was going by walking with friend from Snehmilan

Garden to Majuragate at that time, one moped riding two persons came from Jivanbharti school, snatched his mobile Realme Com. XT blue Colour phone and he had given the complaint before Athwalines Police Station which is produced at **Exh.12**. He has deposed that he got his phone from the Court after about 2 years. He went at the place of incident with the police. He did not identify the accused persons.

16.1In cross-examination of the said witness, he has admitted that it has not been occurred that the police took him anywhere for T.I. Parade. He had admitted that he has not known the accused.

17. Evaluation of the testimony of complainant is cleary appears that when the complainant was going towards Snehmilan building, his mobile phone was snatched by persons who came on moped. But, important to note that the complainant has not identified the accused before the Court. Even he has admitted that no identification parade was conducted. Thus, the testimony of complainant is not enough to connect the accused with the alleged crimes.

18. It is to note that the panchas **PW-2 Dipak Ramdas Baviskar, PW-3 Kamlesh Mangabhai Rathod and PW-4 Sabir Sadik Shaikh** were examined at Exh.16, 19 & 20, who are the panch witness of panchnama for place of incident and recovery panchnama have not supported the case of prosecution. They only identified their signatures in panchnama produced vide **Exh.17 & 18**. PW-2 and PW-3 are the panch witness for the place of incident and PW-2 and PW-4 are the panch witness of recovery panchnama. The said witnesses have not supported the prosecution case and have been declared as hostile, hence, the nothing more needs to be discussed, as regards the depositions of the witnesses. As all the panchas have not supported the case of prosecution, the ld.APP has after declaring them hostile, cross examined at length but nothing fruitful brought on record. Thus, now the case is based on evidence of police officers.
19. **PW-5 Sunil Govindbhai Chaudhary- HC** was examined at **Exh.23**. In his examination-in-chief, he has deposed that on 29.12.2019, he was on duty as PSO in Athwalines

Police Station from 14.00 hrs. to 20.00 a.m., at that time the complainant came before him and filed the complaint and written the same as per his version which is produced at Exh.12 wherein he identified the signature of the complainant as well as his signature. He has further deposed that he was in charge of PSO and he has made entry in the station diary vide No.29/2019 at 15.45 hrs. and registered the offence vide I- C.R. No. 258/2019, for the offence punishable U/s. 379(a), 114 of IPC and the investigation has been handed over to PSI Shri M.I. Vasava. He has produced copy of station diary which is produced at Exh.24.

19.1In cross-examination of the said witness, he has admitted that he has not conducted any procedure, except registering the complaint. He has admitted that he has no knowledge about the incident narrated in the complaint. He has denied that he has given false deposition.

20. PW-6 PSI Maheshbhai Ishwarbhai Vasava PSI was examined at **Exh.26**. In his examination-in-chief, he has deposed that in 2019, he was serving as PSI in

Athwalines Police Station, at that time the complaint was registered before PSO Sunil Govindbhai who has handed over the investigation to him. He has deposed that he has recorded the statements of concerned witnesses. He has drawn the panchnama for place of incident produced at Exh.17. During the investigation, pursuant to the secret information received by AHC Ajitsinh and Kalabhai Jadavbhai, when they were on patrolling, the accused found near Tapi river and arrested and recovered mobile phone Real-me of the complainant and also drawn the panchnama to that effect which is produced at Exh.18, and thereafter, report has been sent to the Court for addition sec.411 of IPC, which is produced at Exh.27. He has filed the charge-sheet against the accused, as enough evidence revealed against him. He has identified the signature as regards arrest of the accused in station diary entry which is produced at Exh.29. He can identify the accused, but he was not present before the Court.

20.1In cross-examination the witness has denied that mobile bill of ownership was not kept with the complaint. He

has not remembered that mobile bill was not kept with the charge-sheet. He has admitted that he was not present in raiding party and recovered by the staff. He has admitted that the muddamal mobile was not recovered in his presence, but the witness has voluntarily stated that police staff of D staff recovered mobile phone and given it alongwith the papers. He had admitted that he has not conducted TIP in presence of the complainant before Exe. Magistrate. He has admitted that CCTV footage was not recovered from the place of incident. He has admitted that he has not recorded the statement of eye witnesses. He has denied that he has recorded the statements of witnesses as per the complaint. He has denied that he has prepared panchnama in police station and obtained the signatures of panch witnesses in prepared panchnama. He has denied that he has filed the false charge-sheet, in-spite of having no evidence against the accused.

21. Considering the evidence of police agency, believed as it is, even though, the evidence is not enough to connect the accused with the alleged crimes. From the careful

examination of the Prosecution case and evidence produced before the Court, it is observed that there are not one but several short-comings in the Prosecution case, which question its credibility. The same have been discussed in the following paragraphs.

22. No independent public witness examined in the matter:

It is the admitted case of the Complainant that the incident happened on a public road where several passersby were present. It is thus apparent that there was availability of public persons at the spot, however, none have been made witnesses in this matter. It is not the case that sole testimony of the complainant can not be the basis of conviction of the Accused, however, the same has to be corroborated by cogent evidence and must be of sterling quality which is not the case herein. In his deposition of the complainant, has not identified the accused who snatched his mobile phone.

23. No Test Identification Parade of the Accused persons by the Complainant was made in presence of Executive Magistrate: The Complainant has stated that unknown persons came and snatched his mobile. Also, as per

Prosecution case, one moped riding by accused persons came at the place of incident, where the mobile phone of the complainant snatched by the accused, thus he is unable to identify the accused persons. Thus, when no identification parade was conducted, such lacuna in the investigation is very weak evidence and therefore, the testimony of police officer is not reliable one.

- 24. No Independent witness to the recovery of muddamal mobile phone:** It is also pertinent to note that there is no independent witness to the recovery of muddamal is examined by the prosecution. Even the police officer allegedly who recovered the muddamal is also not examined. Panchas have not supported the contents of panchnama. The contents of recovery panchnama is not proved. Therefore, testimony of police officer generating doubt.
- 25. No CCTV footage collected:** It is highly relevant to note that during the investigation the Investigating Officer has not collected the CCTV footages of the place of incident. Thus, in absence of any such evidence, there

is nothing incriminating to connect the accused with the alleged crime.

- 26.** On perusal of the testimony of PW-6, it clearly proves that the investigating officer is not the member of raiding party. The officer in whose presence the alleged recovery of muddamal is not examined by the prosecution. Even no bills of mobile phone regarding ownership is also collected by the IO. Thus, the prosecution failed to prove that the accused are the persons who came in moped and snatched the mobile phone of complainant. Thus, considering the entire evidence, this court has no hesitation in holding that despite examination of plethora of witnesses and bringing several documents on record, the prosecution has failed to prove its case beyond reasonable doubts as required in law. Thus, the accused cannot be convicted on surmises and conjectures.
- 27.** In view of the appreciation of evidence as well as above held discussion, the accused is held not guilty and acquitted for the charges leveled against them under

379(a)(3), 411 and 114 of IPC. Hence, I answer the point No.1&2 in the '**negative**'.

POINT NO.3

28. Having regard to the appreciation of material and evidence and totality of the facts and circumstances, I hold that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. In view of the above discussion, when the prosecution has totally failed to prove the allegations leveled against the accused, the accused is entitled to get the benefit of doubt and thus, this Court would like to extend benefit of doubt in favour of the accused and pass the following final order in the interest of justice.

FINAL ORDER

- Under Section 235(1) of the Criminal Procedure Code, the accused **Mohmad Samir S/o Mohmad Nuru Saudagar**, is ordered to be acquitted from all the charges leveled against him viz. 379(a)(3), 411 & 114 of I.P.C. [Athwalines Police Station Part - 'I' C.R. No.258/2019] by extending the benefit of doubt.

- Bail and bail bond is ordered to be cancelled.
- As per the provision of Section 437(A) of the Code of Criminal Procedure, 1973, the accused is hereby ordered to execute bail bond of Rs.10,000/- (Rupees Ten Thousand only) with a surety of like amount, for a period of six months, for their appearance in case of appeal or revision being filed against this judgment before the higher Court.
- Muddamal articles, if any, be disposed of after the appeal period is over as per the Criminal Manual and if appeal is filed then as per the direction of the Appeal Court.
- As per para-349 of the Criminal Manual, all unexhibited documents are ordered to be returned to the Investigating Officer.

Seal, signed and pronounced in open Court today
i.e.11.03.2025.

Date : 11.03.2025
Place: Surat

[Shakuntala Naresh Solanki]
Special Fast Track Court(POCSO) &
2nd Additional Sessions Judge
Surat CODE NO.GJ00623

//rsp//

