

CALENDAR & JUDGMENT
IN THE COURT OF THE I ADDL. CIVIL JUDGE (JUNIOR DIVISION),
SATTENAPALLI.

CALENDAR CASE No.817/2022

1. Date of Offence	:	02-06-2020
2. Date of Complaint or report	:	02-06-2020
3. Date of apprehension of the accused	:	---
4. Date of release on bail	:	---
5. Date of commencement of trial	:	09-10-2023
6. Date of close of trial	:	09-09-2024
7. Date of Sentence or Order	:	12-09-2024
8. Explanation of delay if any	:	No delay

COMPLAINANT:

State Rep by its Sub-Inspector of Police,
Atchampeta Police station

ACCUSED:

Chittipogu Siva Nageswara rao, S/o. Prabhakara Rao (late), 32 years,
R/o. Kastala village, Atchampeta Mandal.

Section of Law : U/sec.379 of IPC

Finding of Court : Accused are found not guilty.

Sentence/ Order: In the result, accused is found not guilty for the offence punishable u/sec.379 of IPC and accordingly, he is are acquitted under Sec.248(1) of Cr.P.C. Bail bonds of the accused if any shall be in force for six months u/Sec. 437-A of Cr.P.C. Case property i.e, TATA Ace truck bearing No. AP 07 TE 0030 was already given to its absolute owner basing on the orders of this court in CrI.M.P.No.793/2020 dt.26.06.2020 and the same shall become absolute after expiry of appeal time.

**I ADDL. CIVIL JUDGE (JUNIOR DIVISION),
SATTENAPALLI.**

Copy submitted to the Chief Judicial Magistrate, Guntur District.

IN THE COURT OF THE I ADDL. CIVIL JUDGE (JUNIOR DIVISION),
SATTENAPALLI

PRESENT:-Smt.P.Priyadarsini,
I Addl. Civil Judge (Junior Division), Sattenapalli.
Thursday, this the 12th day of September, 2024
CALENDAR CASE No.817/2022

Between:

State Rep by its Sub-Inspector of Police,
Atchampeta Police station.

.... Complainant.

-And-

Chittipogu Siva Nageswara rao, S/o. Prabhakara Rao (late), 32 years,
R/o. Kastala village, Atchampeta Mandal.

... Accused.

This case is coming on this day for hearing before me in the presence of learned APP for complainant and Sri G.Pavan Kumar, learned counsel for accused having stood over till this day for consideration this court delivered the following:-

J U D G E M E N T

1. State represented by Sub-Inspector of Police, Atchampeta Police Station filed a charge sheet against the accused in Cr.No.139/2020 of Atchampeta P.S for the offence punishable U/s.379 of IPC and U/s.21 of MMDAR Act.

2. The brief facts of the prosecution case were as follows:

On 02.06.2020 at about 07.00 A.M the LW1/K.Victor Paul/Head constable received credible information about illegal transportation of sand. Then the LW1/Head constable along with his staff i.e., LWs1 to 3 went near to Krishna river at Kastala village. There they found accused transporting sand by way of Ace truck bearing registration No. AP 07 TE 0030. On seeing the police persons, accused tried to skulk away. But with the assistance of his staff LW1/Head constable caught hold of accused. On enquiry accused confessed that he had stolen the sand from Krishna river and transporting the same illegally without bills in order to sell the same at high rates. On that the LW1/Head constable seized the sand loaded tipper under the cover of police proceedings. Thereafter the LW1/Head constable brought seized property and accused to the police station. Basing on the police proceedings the LW5/SI of police registered a case in

Cr.No.139/2020 for the offence U/s.379 of IPC and U/s.21(1) of MMDAR Act. Thereafter the LW5/SI of police examined witnesses and recorded their detailed statements and on the same day he went to the scene of offence place, inspected it and drew rough sketch. Thereafter LW5/ SI of police served 41(A) Cr.P.C notice to accused. After completion of investigation, LW5/SI of police filed charge sheet. Hence the charge.

3. This case was taken on file for the offence U/s.379 of IPC.

4. On appearance of the accused the case papers were served to the accused as contemplated u/sec.207 of Cr.P.C.

5. Accused was examined u/Sec.239 Cr.P.C and charge for the offence U/s.379 of IPC against the accused was framed, read over and explained to the accused in Telugu. Accused pleaded not guilty and claimed to be tried.

6. During the course of trial of this case, the prosecution has examined P.W.1 and P.W.2 and got marked Exs.P1 to P4. The learned APP gave up the evidence of remaining witnesses.

7. Accused was examined u/sec.313 Cr.P.C. with the incriminating material available in the evidence of the prosecution witnesses, the accused denied the same and did not adduce any defence evidence on his behalf.

8. Heard learned Assistant Public Prosecutor and counsel for accused. Perused the record.

9. Now the point for consideration is:
"Whether the prosecution is able to bring home the guilt of accused for the offence punishable U/s.379 of IPC beyond all reasonable doubt?"

10. Point:
 In order to bring home the guilt of the accused, the prosecution has examined P.W.1 and P.W.2 and got marked Exs.P1 to P4.

11. The case of the prosecution is that on 02.06.2020 LW1/Head constable received credible information about illegal transportation of sand. Then LW1 along with

his staff went near to Krishna river at Kastala village and found accused transporting sand illegally by way of TATA Ace.

12. It is the evidence of PW1 that on 02.06.2020 he along with his staff went near to Krishna river at Kastala village and while they were conducting vehicle checking, they found accused coming with sand loaded tipper. Then they stopped accused and enquired him. Then accused confessed that they brought sand from river in order to sell the same at high prices. Then he enquired accused about bills, for which they stated that they have no bills and then he seized sand loaded tractor under the cover of police proceedings.

13. In addition to that the LW5/PW2/SI of police basing on the police proceedings, he registered a case in Cr.No.139/2020 for the offence U/s.379 of IPC and U/s.21 of MMDAR Act. Thereafter he examined witnesses and recorded their detailed statements and on the same day he went to the scene of offence place, inspected it and drew rough sketch. Thereafter he served 41(A) Cr.P.C notice to accused. After completion of investigation, he filed charge sheet.

14. During cross examination P.Ws1, 2 admitted that the scene of offence is a busy locality and they did not issue any written summons to any local inhabitant to act as mediator. The PW1 also admitted that the scene of offence is a busy locality and no photographs were taken at the time of seizure and arrest.

15. It is clearly established from the evidence on record that the PW1 simply got drafted police proceedings and he did not even try to secure the mediators for arrest of accused and seizure of tractor from the possession of accused. From the evidence of P.W1 and P.W.2, it is clear that the scene of offence is not an isolated place and there is every opportunity to P.W.1 to secure the independent respectable persons as mediators for arrest of the accused and seizure of sand loaded tractor. Moreover, the prosecution did not explain any cogent reason for non-securing of mediators at the time

of recording the confession of the accused and seizure of sand loaded tractor from the possession of accused.

16. Generally in villages, there will be all village level officers and the officials of all Departments of the Government. So, the police officials may approach any official of any Department of Government or local body other than VRO or Sarpanch, to act as mediator. In the present case, the police officials did not try to secure any of those officials as mediators. Except the evidence of PW.1 and PW.2 there is no evidence to prove the guilt of the accused. At this juncture it is relevant to note a decision made in **1994 (2) ALT (Crl. P.69 (AP) Botcha Raju VS State Rep. By the Inspector of Police, Vizianagaram Rural Circle**. Where in it was held that the conviction cannot be given basing on the sole evidence of the police officer without corroboration by disinterested witnesses. In the present case on hand, except the evidence of PW.1 and PW2 i.e., police officials, there is no evidence on behalf of prosecution to prove the guilt of the accused, which is not believable.

17. Moreover, PWs1 and 2 are police officers and the confession recorded by police in their presence is inadmissible and the same is hit by Section 25 of the Indian Evidence Act. It is well settled principle of law and the same is reiterated by our Hon'ble High Court in ***Mudavath Mothia Vs. State of A.P reported in 2002(1) ALT (Crl) 437*** it was held that *"no confession made to police officer shall be proved as against the person of accused of any offence and thereby the alleged confession made by the accused in the presence of excise officials is hit by sec.25 of the Indian Evidence Act and shall not be proved against him"*. As far as the alleged seizure of sand loaded tractor from the accused is concerned, except the evidence of PWs1 and 2, there is no other independent evidence brought on record to prove the accusation levelled against accused. The seizure of sand loaded tipper by Investigating officer vitiates entire seizure aspect as per the provision contemplated U/s. 100(4) of Cr.PC. on this point this court relies upon on the decision reported in ***S.BabuSaheb @ Babu Vs State of A.P 2010(1)***

ALT(crl) 32 (A.P). P.W.1 and P.W.2 are the interested witnesses and without any independent evidence on record, it is not safe to rely on their evidence.

18. In addition to that, the PW2 did not depose in his evidence about the sand which was seized under the cover of police proceedings. The PW2 also failed to produce the same before the court during course of trial.

19. Therefore, in view of the evidence let in by the prosecution, this court opines that the prosecution failed to prove the guilt of the accused for the offence punishable u/sec.379 of IPC beyond all reasonable doubt.

20. In the result, accused is found not guilty for the offence punishable u/sec.379 of IPC and accordingly, he is are acquitted under Sec.248(1) of Cr.P.C. Bail bonds of the accused if any shall be in force for six months u/Sec. 437-A of Cr.P.C. Case property i.e, TATA Ace truck bearing No. AP 07 TE 0030 was already given to its absolute owner basing on the orders of this court in Crl.M.P.No.793/2020 dt.26.06.2020 and the same shall become absolute after expiry of appeal time.

Typed to my dictation to Stenographer on Computer, corrected and pronounced by me in open court on this day of 12th day of September, 2024.

**I ADDL. CIVIL JUDGE (JUNIOR DIVISION),
SATTENAPALLI.**

Appendix of Evidence
Witnesses Examined

For prosecution:

P.W.1 K.Victor Paul
P.W.2 K.Anand/Head constable

For Defence: - None-

Exhibits Marked.

For Prosecution:

Ex.P1 is the police proceedings
Ex.P2 is the FIR.
Ex.P3 is the rough sketch
Ex.P4 is the receipt

For Defence: -Nil-

Material objects marked.

-Nil-

**I ADDL. CIVIL JUDGE (JUNIOR DIVISION),
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