

KACD210008562020



Presented on : 24-07-2020
Registered on : 24-07-2020
Decided on : 15-04-2026
Duration : 05 Years 08 Months 21 Days

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
CHALLAKERE

PRESENT : SHAMEER P. NANDYAL,
B.A., LL.B. (Hons.), LL.M.
Senior Civil Judge & JMFC
CHALLAKERE

DATED THIS 15th DAY OF APRIL 2026

C.C.No.614/2020
[Old C.C.No.409/2018]

Complainant : State by Challakere P.S.
(Rep. By Ln. APP, Challakere)

Versus

Accused :1. Shoukath S/o Basheer Sab,
Occ: Coolie Worker,
R/o Opp Madeena Munavar Masjid,
1st Cross, Chelugudda,
Chitradurga

2. Jagadeesh S/o Govindappa,
Aged about 19 years,

Occ: Mason,
R/o Behind Councillor
Bhemmanna's House,
Bhovi Colony,
B.D.Road, Chitradurga
[Split up on 08-08-2022]

3. Mansoor S/o Rizwan Sab,
Aged about 35 years,
Occ: Coolie Worker,
R/o Kari Hanchinakatte,
Chelugudda, Chitradurga
(A-1 & A-3 by Sri NTS, Adv.)

1. Date of Offence : Between 05-05-2016
to 07-05-2016
2. Arrest of the accused : Bail granted to A-1
A-3 under body warrant
3. Name of the Informant : Sri Habeebulla
4. Date of opening of evidence : 07-03-2022
5. Date of closure of evidence : 19-01-2026
6. Offences complained of : S.457 & 380 of IPC
7. Opinion of the Judge : Accused Nos.1 and 3 found
not guilty
8. Informant rep. by : Ln.A.P.P, Challakere
9. Accused defended by : Sri NTS, Adv.

J U D G M E N T

The Circle Inspector of Police, Challakere Circle has submitted the charge sheet against the accused Nos.1 to 3 for the offences punishable under sections 457 and 380 of IPC.

2. **Brief facts of the case of the prosecution:**

During the nights of 05-05-2016 to 07-05-2016 the accused Nos.1 to 3 in furtherance of their common intention have broke open the house situated near Aishwaraya Hotel, Thyagaraja Nagar, Challakere belonging to the informant CW-1/Habeebulla, with an intention to commit theft. Further accused Nos.1 to 3 have further broke open the Godrej almirah kept in the house and have stolen golden and silver ornaments worth of Rs.2,60,000/-.

3. Based on the information received the PSI, Challakere has registered the case against accused under station Cr.No.425/2017 dated 12-10-2017 for the offences punishable under sections 457 and 380 of IPC. After the investigation, the Circle Inspector of Challakere Circle has placed the charge sheet against the accused Nos.1 to 3 for the aforesaid offences.

4. The accused Nos.1 to 3 were enlarged on bail. The copies of the prosecution materials were supplied to them. Thereafter the accused No.2 remained absconded and as such the case against accused No.2 was ordered to be split up. A split up case is registered against the accused No.2 in C.C.No.388/2022. The charges were framed against the accused Nos.1 & 3, for which they have pleaded not guilty and claimed to be tried.

5. It is pertinent to note here that the charge sheet was initially submitted before the court of learned Principal Civil Judge & JMFC, Challakere in C.C.No.409/2018. By virtue of Order No.3/2020 passed by learned Senior Civil Judge & CJM, Chitradurga dated 03/03/2020, the present case came to be transferred to this court. Thereafter the same was renumbered as C.C.No.614/2020.

6. During the pendency of the case, the accused No.3 remained absent before the court and NBW came to be issued against him. Thereafter the presence of accused No.3 was secured by this court under body warrant.

7. In order to bring home of the guilt of the accused, the prosecution has got examined 15 witnesses as PW-1 to PW-15. The prosecution has also got marked 16 documents at Ex.P-1

to P-16. Thereafter the prosecution evidence was taken as closed.

8. The accused No.1 and 3 were examined under section 313 of Cr.P.C. They have denied the incriminating evidences appearing on record against them and have not chosen to lead any evidence on their behalf. Hence the matter was posted for arguments.

9. Heard arguments. Perused records.

10. On consideration of contentions of both the sides and also evidences on record, the points that arise for the consideration of this court are:

POINTS

1. Does the prosecution prove beyond reasonable doubt that between the nights of 05-05-2016 to 07-05-2016, at the house of the informant situated near Aishwaraya Hotel, Thyagaraja Nagar, Challakere, the accused Nos.1 & 3 along with accused No.2, in furtherance of their common intention, committed offence of lurking house-trespass by night, in order to the committing of theft at the house of the informant?

2. Does the prosecution further prove that on the aforesaid date, time and place, the accused Nos.1 and 2 along with accused No.2 have committed theft of golden and silver ornaments worth of Rs.2,60,000/-, which were kept in almirah at the house of the informant?

3. What order or sentence?

11. This court proceeds to answer the aforesaid points as hereunder:

Point No.1 : In the *negative*

Point No.2 : In the *negative*

Point No.3 : As per final order

for the following:

REASONS

12. **Points Nos.1 and 2:** As both these points are interconnected, they are taken up together for common discussion, in order to avoid repetition of facts and evidences. As aforesaid the prosecution has got examined 15 witnesses in all, as PW-1 to PW-15. Among the witnesses examined PW-1 is the informant. PW-2 and PW-3 are the witnesses to spot mahazar. PW-4, PW-11 and PW-8 are the witnesses to recovery mahazar. PW-5 and PW-7 are the witnesses to the mahazar drawn at the time of release of seized articles to the informant. PW-6 and PW-10 are the circumstantial witnesses. PW-9 is the revenue official, who has issued the house property extract of the informant. PW-12 is the police official, who speaks about the arrest of the accused No.1. PW-13 to PW-15 are the investigation officers.

13. PW-1 is the informant in this case. In the examination-in-chief, he has deposed regarding the theft, which had taken place at his house in consonance with the contents of the first information statement. He further speaks about lodging of information with the police and drawing up of spot mahazar by the police. PW-1 has further deposed that he had tried to search the culprits and when he was unable to find it, he had lodged information with the police after lapse of one year. PW-1 has further deposed that the police had informed him that the stolen articles were seized by the Kote P.S, Chitradurga and that the accused by names Showkath, Mansoor and Jagadish have stolen it. Further PW-1 has deposed that the police had shown the accused No.1 Showkath at the Kote P.S, Chitradurga. He further speaks about release of the stolen articles in his favour and giving of statements before the police. PW-1 has specifically deposed that he is unable to identify the accused present before the court.

14. PW-1 was treated hostile by the prosecution, in part and was cross-examined. During the course of his cross examination conducted by learned APP he has admitted that the Chitradurga Circle police has shown the accused No.1 to him on 16-10-2017.

15. During the course of his cross-examination conducted by the defence, PW-1 has deposed that he do not know the contents of first information statement and spot mahazar. Further he has admitted that he is seeing the accused present before the court, for the first time. Further he has deposed that he do not know as to who had committed theft at his house.

16. PW-2 and PW-3 are the witnesses to the spot mahazar. In their examination-in-chief, they have deposed that no mahazar was drawn in their presence. Though both these witnesses have admitted their signatures, they have deposed that they are unaware about the contents of the same. Thus both these witnesses were treated hostile by the prosecution and were cross-examined. Nothing worth is elicited by the prosecution, during the course of these cross-examination. As such there evidences are of no avail to the prosecution.

17. PW-4 and PW-11 are the witnesses to the recovery mahazar drawn at the instance of the accused No.1. In their examination-in-chief, they have deposed that no mahazar was drawn in their presence by the police. Though they have admitted their signatures found on Ex.P-7 and P-8, they have deposed that they are unaware about the contents of the same. They have also deposed that they signed Ex.P-8 at

Kote P.S, Chitradurga and are unaware about the reason as to why their signatures were obtained. They have deposed that no recoveries were effected in their presence. Both these witnesses were treated hostile by the prosecution and were cross-examined. Nothing worth is elicited from them. As such their evidences are of also no avail to the prosecution.

18. PW-5 and PW-7 are the witnesses to the mahazar drawn at the time of release of seized articles in favour of CW-1/informant. Both these witnesses have deposed that they signed Ex.P-4 mahazar about one year ago at the office of Circle Inspector, Hiriyur. Further they have deposed no articles were released in their favour and that they are unaware about the contents of the mahazar. Even these two witnesses were also treated hostile by the prosecution and were cross-examined. Nothing worth is elicited from them by the prosecution. As such the evidences of PW-5 and PW-7 is also of no avail to the prosecution.

19. PW-6 is the circumstantial witness. He has deposed his evidence in consonance with the evidence of PW-1. Further he has deposed that police had informed him that the theft was committed by one Showkath. PW-6 has failed to identify the accused present before the court. PW-6 has further

deposed that Showkath had not given any confession statement before him. This witness was treated hostile in part and was cross-examined. Nothing worth is elicited from him by the prosecution.

20. During the course of his cross-examination conducted by learned counsel for the defence, PW-6 has admitted that he has not given any statements before the police and that he is seeing the golden ornaments found in Ex.P-6 photograph for the first time.

21. PW-8 is the goldsmith, who assisted the police at the time of conducting recovery mahazar. In his examination-in-chief, he has deposed to the fact that in the year 2017, he had signed the mahazar marked at Ex.P-7, in theft case, while examining the golden ornaments. He has further deposed that he had signed the same, near the house of the person, who had stolen the articles. Further he has deposed that the accused had handed over the stolen articles from his house. PW-8 has further deposed that he do not know as to at which places the theft was committed. PW-8 has further deposed that he had examined one long necklace, necklace, black beads chain, ear rings and bangles. Further he has deposed that he cannot identify the accused and do not the person, present before the court.

22. This witness was treated hostile by the prosecution and was cross-examined. During the course of cross-examination conducted by learned APP, he has admitted that the police had called him for mahazar on 16-10-2017. He has pleaded his ignorance as to presence of CW-4 and CW-5. He has denied the suggestion that recovery was effected by the police at the instance of the accused present before the court. He has admitted that the accused No.1 had taken him to the house situated in front of Madina Masjid, Chelgudda, Chitradurga and the accused No.1 had handed over the stolen golden articles to the police, which he had kept it godrej almirah. He has further admitted that the accused had stated before the police that he has stolen the said articles along with his friends Jagadish and Mansoor. PW-8 has denied the other suggestions put to him.

23. During the course of his cross-examination conducted by learned counsel for the accused, PW-8 has deposed that no notice was issued to him prior to the drawing up of mahazar. Further he has deposed that he do not as to who had accompanied him at the time of drawing up of mahazar and as to who all had signed the mahazar. He has also admitted that he do not know as to whom the seized articles belong to and as to what is written in the mahazar. Further when it was suggested that the accused Nos.1 and 3 were not

present at the spot, PW-8 has deposed that accused were present but he do not know who were they. PW-8 has also admitted that he was seeing the accused No.1 for the first time before the court. PW-8 has denied all the other suggestions put to him.

24. PW-9 is revenue official, who had issued the house extract of CW-1 and CW-9. He has identified the property extract and the same is marked at Ex.P-10. During the course of her cross-examination, PW-9 has deposed that he cannot give the date on which notice was issued to her by the police, for production of the document.

25. PW-10 is the teacher, who is also a circumstantial witness. In his examination-in-chief, he has deposed that when CW-1 had gone to Haj trip, about 8 years ago, theft had taken place in his house. He has further deposed he do not know as to what articles were seized and that he has not given any statement before the police. This witness was treated hostile by the prosecution and was cross-examined. During the course of cross-examination conducted by the prosecution, PW-10 has denied all the suggestions put to him.

26. PW-12 is a police official. In his examination-in-chief, he has deposed to the fact that on 15-10-2017 at 9.30 p.m. when

he was under patrolling duty along with CW-14; Nagaraj, near private bus stand situated at Chitradurga, one person tried to hide himself by seeing them. When they caught hold of him and enquired, the said person disclosed his identity to be Shoukath and they took him into their custody. Later they had produced the accused Shoukath before CPI at 10.30 p.m. PW-12 has identified the accused present before the court. During the course of his cross-examination, PW-12 has denied all the suggestions put to him.

27. PW-13 is the PSI of Challakere P.S. In his examination-in-chief, he has deposed regarding that fact that on 12-10-2017 at 9.30 p.m. the informant had lodged written information with him and based on the same, he had registered FIR as per Ex.P-13. During the course of his cross-examination he has admitted that the first information statement was not written in his presence. PW-13 has denied all the suggestions put to him.

28. PW-14 is the investigation officer, who has partly investigated the matter. In his examination-in-chief, he has deposed regarding drawing up of spot mahazar, spot sketch, recording of statements of the witnesses, receipt of documents from Kote P.S, Chitradurga, receipt of property extract and submission of charge sheet against the accused.

During the course of his cross-examination, PW-14 has denied all the suggestions put to him.

29. PW-15 is another investigation officer in this case. In his examination-in-chief, he has deposed to the fact that on 15-10-2017 at 10 p.m. his staff members Imam Hussain and Nagaraj had arrested the accused No.1 Shoukath and produced him. Further PW-15 has deposed that on enquiry the accused No.1 had admitted for having committed theft at various places along with his friends Jagadish and Mansoor. PW-15 has further deposed regarding the completion of arrest formalities and recording of confession statement of the accused No.1. PW-15 has further deposed regarding drawing up of recovery mahazar on 16-10-2017 at the instance of accused No.1 at his house. Further he has deposed regarding release of the seized golden articles in favour of the informant by drawing mahazar as per Ex.P-4. During the course of his cross-examination, PW-15 has denied the entire suggestions put to him.

30. It is for the prosecution to prove its case beyond reasonable doubt. As discussed *supra*, the alleged offence has taken place between 05-05-2016 to 08-05-2016. The information came to be lodged only on 12-10-2017. Thus there is an inordinate delay of more than 14 months in

lodging the information with the police. PW-1 has deposed that he had made efforts to search the stolen articles. However this explanation does not justify inordinate delay of 14 months. The reason offered by the prosecution, would have justified a week's delay in lodging information, but not inordinate delay of 14 months. That apart the first information statement came to be lodged just 3 days prior to alleged arrest of the accused No.1. This creates a stronger suspicion in the mind of this court as to the entire genesis of the case of the prosecution.

31. PW-2 and PW-3, who are the witnesses to the spot mahazar, have not supported the case of the prosecution in toto. PW-4 and PW-11, who are the witnesses to the recovery mahazar allegedly drawn at the instance of the accused No.1, have also not supported the case of the prosecution. The recovery of the stolen golden articles at the instance of the accused No.1 has also not been proved by the prosecution. That apart even the witnesses to release mahazar i.e. PW-7 and PW-5 have also not supported the case of the prosecution. The evidence of PW-9, who had issued house property extract is formal in nature. The evidence of PW-13, who has registered the FIR is also formal in nature.

32. In so far as PW-14 is concerned, he speaks about drawing up of spot mahazar, spot sketch, recording of statements of the witnesses, receipt of documents from Kote P.S, Chitradurga and submission of charge sheet against the accused. As such even his evidence is formal in nature. Thus the case of the prosecution squarely rests upon the evidences of PW-1, PW-6, PW-8, PW-10, PW-12 and PW-15.

33. PW-1 speaks about the theft, drawing up of spot mahazar, seizure of golden articles by Kote P.S, Chitradurga and seeing of accused No.1 Shoukath at police station. PW-1 has further deposed that he cannot identify the accused No.1 present before the court. During the course of his cross-examination also PW-1 has deposed that he has not seen the accused before and that he is seeing him for the first time before the court. He has also deposed that he cannot say as to who had committed theft at his house. Though PW-1 deposes regarding the factum of theft at his house, his evidence is silent with regard to the involvement of the accused No.1 in commission of the crime. As such the evidence of PW-1 is not sufficient to connect the accused No.1 with regard to commission of offence.

34. PW-6 is a circumstantial witness and neighbor of the informant. His evidence is in the line of evidence of PW-1.

Though he speaks about factum of theft at the house of the informant, he has also not identified the accused No.1. Another circumstantial witness i.e. PW-10 has not supported the case of the prosecution in toto. As such the evidences of PW-6 and PW-10 are insufficient to connect the accused No.1 with regard to commission of offence.

35. In so far as the evidence of PW-12 is concerned, he only speaks about the arrest of the accused No.1 under suspicious circumstances. As such the evidence of this witness in itself, will not be sufficient to the prosecution to connect the accused No.1 with regard to the commission of offence. Thus the case of the prosecution comes down only to the evidences of PW-8, who is a party to seizure mahazar and the evidence of PW-15, who is the investigation officer.

36. PW-15 speaks about the arrest of the accused, recording of his confession statement and recovery of stolen articles from the house of the accused No.1. It is pertinent to note here that no photographs are produced by the police to show that any recovery was effected at the instance of the accused No.1. That apart the evidence of PW-15 is not supported with the evidences of any of the independent witness.

37. In so far as the evidence of PW-8 is concerned, he has supported the case of the prosecution as to alleged recovery of the stolen articles from the house of the accused, which is the house of the accused No.1 as per the case of the prosecution. Further he has deposed that he cannot identify the accused, who had produced the seized golden articles before the police. This witness was treated hostile by the prosecution in part and was cross-examined. During the course of the cross-examination, PW-8 has deposed that it is the accused No.1, who has handed over the stolen golden ornaments to the police by removing the same from the almirah of his house. Again during the course of cross-examination conducted by the defence, PW-8 has deposed that none of the accused, who are present before the court, were present at the spot. Further he has admitted that he is seeing the accused No.1 only for the first time before the court. Thus his evidence is highly oscillating and unsafe to be relied upon, when it comes to the identification of the accused.

38. As discussed supra, the evidence of PW-8 is highly unsafe to be relied upon. The same does not inspire the confidence of this court. The evidences of none of the prosecution witnesses are sufficient to connect the accused No.1 with the commission of the crime. All the independent

witnesses to spot mahazar have not supported the case of the prosecution. That apart the delay of 14 months in lodging the information creates a strong suspicion in the mind of this court. The timing of lodging of the information by the informant, that too three days prior to the arrest of the accused also appears to be doubtful. Thus for all these reasons, this court is of the considered opinion that the prosecution has failed to bring home of the guilt of the accused. As such this court, extending the benefit of doubt, in favour of the accused, answers point No.1 in the **negative**.

39 **Point No.2:** In the light of foregoing discussions, this court answers the aforesaid points as hereunder:

ORDER

Under the powers conferred upon this court under section 248 (1) of Cr.P.C, the accused No.1 & 3 are acquitted of the offence punishable under sections 457 & 380 of IPC.

In view of Sec.437-A of Cr.P.C, the bail bond and surety bond executed by the accused No.1 and his surety shall be in force for a further period of six months or till issuance of notice in respect of any appeal [if preferred] against the present judgment.

The body warrant issued against the accused No.3 stands recalled. Accused No.3 is ordered to be sent back to judicial custody in the main case, pending against him.

[Dictated to stenographer directly on computer, transcription corrected and then pronounced by me in open court on this 15th day of April 2026)

[SHAMEER P. NANDYAL]
Senior Civil Judge & JMFC
Challakere

ANNEXURES

WITNESSES EXAMINED FOR PROSECUTION:

PW-1	:	Habeebulla
PW-2	:	Alijan
PW-3	:	Muneeb Ahmed
PW-4	:	Ravikumar
PW-5	:	Rahamathulla
PW-6	:	Vasanthkumar
PW-7	:	H.D.Thippeswamy
PW-8	:	Shivaprakash
PW-9	:	Eramma
PW-10	:	R.Abdul Mujeeb
PW-11	:	M.D.Rangaswamy
PW-12	:	Imam Hussain
PW-13	:	Sathish Naik
PW-14	:	Thimmanna
PW-15	:	Faizulla

DOCUMENTS EXHIBITED FOR PROSECUTION:

Ex.P-1	:	First Information Statement
Ex.P-1 (a)	:	Signature of PW-1

Ex.P-1 (b)	:	Signature of PW-13
Ex.P-2	:	Spot mahazar
Ex.P-2 (a)	:	Signature of PW-1
Ex.P-2 (b)	:	Signature of PW-2
Ex.P-2 (c)	:	Signature of PW-3
Ex.P-2 (d)	:	Signature of PW-14
Ex.P-3	:	Photograph
Ex.P-4	:	Seizure mahazar
Ex.P-4 (a)	:	Signature of PW-1
Ex.P-4 (b)	:	Signature of PW-5
Ex.P-4 (c)	:	Signature of PW-7
Ex.P-5 & 6	:	Photographs
Ex.P-7	:	Spot mahazar
Ex.P-7 (a)	:	Signature of PW-4
Ex.P-7 (b)	:	Signature of PW-3
Ex.P-7 (c)	:	Signature of PW-11
Ex.P-7 (d)	:	Signature of PW-15
Ex.P-8	:	Seizure mahazar
Ex.P-9	:	Further statement of PW-6
Ex.P-10	:	Assessment extract
Ex.P-10 (a)	:	Signature of PW-9
Ex.P-10 (b)	:	Signature of PW-14
Ex.P-11	:	Statement of Mujeebulla
Ex.P-12	:	Further statement of Mujeebulla
Ex.P-13	:	First Information Statement
Ex.P-13 (a)	:	Signature of PW-13
Ex.P-14	:	Spot sketch
Ex.P-14 (a)	:	Signature of PW-14
Ex.P-15	:	Confession statement of A-1
Ex.P-15 (a)	:	Signature of PW-15
Ex.P-16	:	Letter
Ex.P-16 (a)	:	Signature of PW-15

MATERIAL OBJECTS MARKED FOR PROSECUTION:

- NIL -

WITNESSES EXAMINED FOR DEFENCE :

- NIL -

DOCUMENTS EXHIBITED FOR DEFENCE:

-NIL-

**Senior Civil Judge & JMFC
Challakere**