



Presented on : 20-12-2025
Registered on : 20-12-2025
Decided on : 01-04-2026
Duration : 03 months and 12 days.

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.,
AT CHITTAPUR:**

-:: PRESENT ::-

**Sri Abhishek Ramachandra Joshi
B.A.L., LL.B.,**

Civil Judge & JMFC, CHITTAPUR.

C.C.No.1057/2025

DATED THIS 1st DAY OF APRIL-2026

COMPLAINANT

State through Kalagi P.S.

(Asst. Public Prosecutor)

// Versus //

ACCUSED

1. Sher Ali @ Mohammed Ali S/o
Mohammed Rashid,
Age: 31 years, Occ: Coolie,
R/o: Kalagi, Tq. Kalagi, Dist. Kalaburagi.
2. Kailash S/o Nagappa Malagi,
Age: 28 years, Occ: Coolie,
R/o: Garampalli, Tq. Chittapur.

(By Sri. S.G.A., Advocat



1.	Date of commission of offence	20.01.2025
2.	Date of report of offence	18.09.2025
3.	Date of arrest of the accused	12.06.2025
4.	Name of the complainant	Veerendrappa Dammur
5.	Date of recording evidence	09.03.2026
6.	Date of closing evidence	17.03.2026
7.	Offences complained of	Secs.311(4) and 305 of BNS-2023
8.	Opinion of the Judge	As per final order

J U D G M E N T

The accused No.1 and 2 are facing trial for the charge sheet submitted by the Kalagi Police for the offence punishable U/Secs., 331(4) and 305 of BNS 2023.

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

That between 8-00pm on 19.01.2025 and 6-00am on 20-01-2025, some miscreants illegally entered the premises of Veerbhadreshwar Temple in Kandagol village. The miscreants stole the Hundi situated in front of the sanctum sanctorum. Accordingly, the complaint was registered with jurisdictional police being Kalagi Police. During the investigation the Police



found the accused and the accused No.1 and 2 admitted the guilt and handed over the property of this case. Hence it is alleged that, accused No.1 and 2 have committed offence punishable U/s 331(4) and 305 of BNS 2023.

3. The jurisdictional police have filed the present charge sheet, based on the complaint filed by the complainant and guilt admitted by accused No.1 and 2. The cognizance is taken for the aforesaid offences against the accused No.1 and 2. The accused NO.1 and 2 who were in custody of this case were supplied with, copy of the prosecution papers as per provisions of Section 230 of BNSS. Charge is framed and read over to the accused No.1 and 2. The accused No.1 and 2 have denied the accusation and claimed to be tried.

4. In order to bring home the guilt of the accused No.1 and 2 the prosecution has examined 04 witnesses as per P.W.1 to PW-4 and got marked 17 documents as per Ex.P.1 to P-17 and closed its side. The incriminating evidence found against accused No.1 and 2 was explained to them, the accused No.1 and 2 denied the incriminating evidence, but did not lead any evidence on their behalf.



5. Heard both side and perused the evidence available on record.

6. Upon the hearing arguments advanced from the both side and on perusal of materials placed on record, following points arise for consideration:-

- 1. Whether the prosecution proves beyond reasonable doubt that between 8-00pm on 19-01-2025 and 06-00am on 20-01-2025 accused No.1 and 2 after sunset, illegally trespassed into the Veerbhadreshwar Temple Kandagol with an intention to commit an offence and thereby committed an offence punishable under sec. 331(4) of BNS 2023.**
- 2. Whether prosecution proves beyond reasonable doubt that on the aforesaid place, date and time, the accused No.1 and 2 have committed theft in the Veerabhadreshwar Temple, Kandagol and thereby committed an offence punishable under sec. 305 of BNS 2023.**
- 3. What order?**

7. My findings to the above points are:-

Point No.1: In the Negative;

Point No.2: In the Negative;

Point No.3: As per final order for the following:-



REASONS

8. POINTS No.1 AND 2 :-

As these points are inter connected they are taken up together for common consideration.

9. Before discussing the case on its merits, it is necessary to go into the ingredients required to convict an accused for offences punishable under sec.331(4) and 305 of BNS 2023.

9.1. The following ingredients are required to prove guilt of accused No.1 and 2 under sec.331(4) of BNS 2023.

- A. The accused must commit house trespass or house breaking.**
- B. Such trespass must be committed after the sunset and before sunrise.**
- C. Such trespass must be committed with an intention to commit any offence.**

9.2. The following ingredients are required to prove guilt of an accused under sec.305 of BNS 2023.

- A. The accused must take any movable property out of the possession of any person without his consent.**
- B. Such illegal act must be committed in any dwelling house, or means of transportation or place of worship.**



10. Based on the ingredients required let me examine, if the prosecution was successful in proving the guilt of the accused No.1 and 2. It is the case of prosecution that, between 8-00pm on 19-01-2025 and 6-00am on 20-01-2025, accused No.1 and 2 have committed house lurking at night and has stolen the Hundi from Veerbhadreshwar Temple in Kandagol village. To prove such fact, the prosecution has examined the complainant CW-1 as PW-1. He in his chief examination deposed that, around 2 years prior to him giving evidence, there was theft in Veerbhadreshwar Temple and Hundi of such temple was stolen. He further deposed that, all the amount which was stolen from the temple was recovered and received by them. He further deposed that, according to him the accused No.1 and 2 have not committed any theft and the police have never shown the accused No.1 and 2 to them. He also deposed that, he has not given any statement or re-statement to the police. As the witness has deposed contrary to the case of prosecution, Id. APP with the permission of the court treated the witness as hostile witness and cross-examined him. During the course of cross-examination, the witness admitted that, there was theft in the Veerbhadreshwar temple and regarding it he had filed complaint. However, In-spite of best efforts made by Id. APP, the



witness denied regarding his statement given on 12-06-2025 and failed to identify the accused.

11. CW-6/PW-2, CW-7/PW-3 are the members of Veerbhadreshwar Temple Trust Kandagol. They in their chief-examination deposed that, there was theft of the Hundi in Veerbhadreshwar Temple and accordingly, CW-1 had given complaint. They further deposed that, all the amount which was stolen from the temple is recovered and received by them. They also deposed that, according to them the accused have not committed any offence alleged in this case and they were not shown the accused in police station. They even denied giving any statement to the police. As these witnesses have deposed contrary to the case of prosecution, both the witnesses were treated as hostile witnesses and with the permission of the court, were cross-examined by learned. APP. However, both the witnesses denied the suggestions put to them and even though their alleged statements were read-over and explained to them, but they denied giving such statements.

12. CW-14/PW-4 is the IO. He deposed that, after receiving the complaint from CW-1, he registered FIR and submitted it to the court. He further deposed regarding his investigation. He



deposed that, on 12-06-2025 accused No.1 was brought to the Police Station due to his suspicious movements. When he was brought to the police station, the accused No.1 confessed his crime and asked the witness to come with him so that, he can show the place of theft. As per the statement of the accused No.1 the witness alongwith panchas went to the spot shown by the accused No.1 and seized the material objects given by accused No.1. He further deposed that, on 08-09-2025, the accused No.2 was apprehended and his confession was also recorded. The witness identified accused No.1 and 2 who were produced before the court through VC. The witness is cross-examined by advocate for accused No.1 and 2 but the witness denied the suggestions put to him.

13. I have carefully perused the materials available on record. It is the case of the prosecution that, accused No.1 and 2 have trespassed into the temple premises of Veerbhadreshwar temple and have stolen the Hundi. To prove such facts the prosecution has produced the CC tv footage in a pendrive. Even though the prosecution has not got marked the said pen drive, but as it forms the court records, it is considered. When CC tv footage is opened, it is seen that, two masked men have entered the premises and have taken away a Hundi. However in the said



footage the faces are not clear and hence only on the basis of such footage, the guilt of accused No.1 and 2 is not proved.

14.1 Now coming to accused No.2, there is nothing on record to show that, accused No.2 is involved in this case. Only on the basis of confession given by accused No.1, the accused No.2 is made a party to this case. Even though the IO claims that, the accused No.2 has confessed his crime, but as per the provisions of law, such confessions are impermissible in the eye of law. Hence, based on only the confession of accused No.1, the guilt of accused No.2 cannot be proved. Even the prosecution has not made any efforts to recover any material or find out any fact based on confession given by accused No.2. Hence, the involvement of accused No.2 in this case is not proved.

14.2 Now coming to accused No.1. It is submitted by IO that, after six months of the incident of theft in Veerbhadreshwar Temple, he found that, accused No.1 was suspiciously moving around. When he was brought to the station, he confessed about this crime. Further, IO has submitted that, the accused No.1 based on the confession has taken them to the spot of the incident and has shown the place from where he had stolen the Hundi and the place in which he broke such Hundi and collected



the cash in it. However, based on such statement, the IO has failed to recover the Hundi or the tools used to break open such Hundi. Even the prosecution has not examined the panchas of such panchanama. Hence, the provisions of section 23 of BSA 2023 is not complied.

14.3 Now coming to the cash recovered from the accused No.1. The IO clearly mentions that, the accused No.1 in his statement had clearly mentioned that, after breaking open the Hundi there was cash of Rs. 40,300/-. Which is distributed between accused No.1 and 2. Accused No.1 has taken Rs.20,300/- and accused No.2 has taken Rs. 20,000/-. No recovery is made from accused No.2. On the other hand, it is stated that Rs.15,000/- is recovered from accused No.1 as he had taken the IO to his house and handed over the cash. However, such handing over of cash is denied by accused No.1. The IO even though mentions that, the amount is recovered from the house of accused No.1 situated in Kalagi, but he has failed to mention the number of the house, area in which the house is situated. Hence, in the absence of such materials, the prosecution has failed to prove the amount of Rs. 15,000/- is recovered from accused No.1 based on his statement. It is well settled law that, as per Section 23(2) of BSA 2023 a fact discovered in



consequence of information received from a person accused of an offence can be proved. However, the prosecution to prove such fact has to prove the chain of incident based on which the recovery is made. In this case, the prosecution and the IO are silent regarding the chain of incident. Only stating that, on the basis of confession/statement given by the accused No.1, amount of Rs.15,000/- is recovered is not sufficient to prove the circumstances required as contemplated U/s 23(2) of BSA 2023. Even the complainant and other witnesses have deposed that, they have never seen accused No.1 and 2 and the police have not shown the accused No.1 and 2 to them. Considering all these aspects, it is clear that, the prosecution has failed to prove the guilt of accused No.1 and 2. Accordingly the ingredients required to convict accused No.1 and 2 is not proved by prosecution and hence, point No.1 and 2 is answered in the negative.

15. **POINTS No.3-** In view of the above findings, I proceed to pass the following order

: O R D E R :

In the exercise of powers U/S.265 of BNSS 2023 accused No.1 and 2 are acquitted of the offences punishable U/S 331(4), 305, of BNS 2023.



The accused No.1 and 2 are set at liberty.

Office to issue intimation of this judgment to the jail authorities.

The jail authorities shall release accused No.1 and 2, if they are not required in any other case.

The interim custody of Rs.15,000/- given to the applicant as per the application filed is made absolute.

(Dictated to the Typist-Copyist, transcribed by him, then corrected by me and pronounced in open court on this the 1st day of April-2026)

(Abhishek Ramachandra Joshi)

Civil Judge & JMFC, Chittapur.



: ANNEXURE :

LIST OF WITNESSES EXAMINED FOR PROSECUTION:-

- PW.1 Veerendra S/o Mahadevappa.
PW.2 Basavaraj S/o Channaveerayya Mathpati,
PW.3 Udaykumar S/o Basavaraj.
PW.4 Timmayya S/o Balayya.

LIST OF WITNESSES EXAMINED FOR DEFENSE:-

- NIL -

LIST OF DOCUMENTS MARKED FOR PROSECUTION:-

- Ex.P.1 Complaint, (a) Signature, (b) Signature.
Ex. P.2 Re-statement.
Ex. P.3 Statement.
Ex. P.4 Statement.
Ex.P.5 Statement.
Ex.P.6 Statement.
Ex.P.7 Panchanama (a) Signature.
Ex.P.8 Seizure panchanama (a) Signature.
Ex.P.9 Report (a) signature.
Ex.P.10 Requisition (a) Signature.
Ex.P.11 Form 11 from Panchayat (a) signature.
Ex.P.12 FIR (a) signature.
Ex.P.13 to P.17 Photos.



LIST OF DOCUMENTS MARKED FOR DEFENSE:-

-NIL-

LIST OF MATERIAL OBJECTS:-

-NIL-

**Civil Judge & JMFC,
Chittapur.**