

IN THE COURT OF III ADDL. JUNIOR CIVIL JUDGE – CUM
XXIII METROPOLITAN MAGISTRATE,
CYBERABAD AT MEDCHAL

PRESENT: Smt. K. SOWJANYA,
XXI Metropolitan Magistrate,
Cyberabad at Medchal.
FAC: XXIII Metropolitan Magistrate, Medchal

Friday the 2nd day of July 2021

C.C. No.1494 of 2020

Between:

The State of Telangana through P.S. Alwal

....Complainant

And

1. Sampangi Mahesh @ Mahi S/o Masaiah
aged 28 years, occ: Labour, R/o Balaji Nagar,
Jawahar Nagar (M), Medchal District.
2. Vallapu Devender S/o Balaiah aged 30 years,
occ: Labour, R/o Balaji Nagar, Jawahar
Nagar (M), Medchal District.
3. Jerpati Sailu S/o Peda Sailu aged 35 years,
occ: Labour R/o Shanti Nagar, Balaji Nagar,
Jawahar Nagar (M), Medchal District.
4. Shaik Jigriya @ Munna S/o Chand Pasha
aged 27 years, occ: Mason R/o Borabanda,
Indiranagar, Phase-I, Hyderabad.

.....Accused No.1
to 4

*This case is coming before me for final hearing in the presence of **Sri G.Raghavender Assistant Public Prosecutor** for the State and **Sri G.Prabhakar Reddy Advocate for A1, Sri Vikranth Peddi Advocate for A2 and A3, Sri M.A.Praveen Kumar counsel for A4** and upon perusal of the entire material on record, on hearing the argument of both sides and having stood over the matter for consideration till this day, this court delivered the following:*

J U D G M E N T

The Sub-Inspector of Police, PS Alwal filed charge sheet against the accused A1 to A4 in Crime No.124/2020 for the offences punishable under

Sections 457, 380 IPC against A1 to A3 and under Section 411 IPC against A4.

2. The prosecution case, in a nutshell, is that on 22.02.2020, at about 11.00 a.m., LW1/ Arjun Reddy lodged a complaint with police stating that on the previous day which was a festival of Shivarathri, his parents went to a temple at Gundlapochampally at about 5.00 p.m., and he went for attending to his night duty at about 8.00 p.m., by locking the house. In the midnight at 1.30 a.m., when his parents returned home, they found the house lock was broke open and immediately they informed him over phone. He went to the house and noticed that the items were scattered, his almirah in the bed room was opened and items like – gold necklace ear rings, gold ear maties, one pair gold ear rings, four pairs of small gold ear rings, one diamond ring, gold chain and gold bracelet, total weighing about nine tulas and some net cash of Rs.5,000/- were missing and they suspect theft by unknown offenders. Basing on the above report, the case was registered. During the course of investigation, the statements of witnesses were recorded when the wife of LW1/ Arjun Reddy stated the details of some more lost items viz., two silver plates, one pair of silver kundulu, one pair of silver anklets, one silver God simhasanam, one silver kumkum bharni, total silver weighing about 500 grams and one gold vanku weighing about 4.31 grams. During the course of further investigation, A1 to A3 were apprehended and upon their confession, A4 was also arrested and stolen property was recovered from the possession of A4 under cover of confession cum seizure panchanama. One screw driver and one rod was recovered from the possession of A1 under cover of a separate confession cum recovery panchanama. The confession of A2 and A3 were also recorded in the presence of mediators. On completion of investigation, charge sheet is filed against A1 to A4.

3. The case was taken cognizance for the offences punishable under Sections 457, 380 of IPC against A1 to A3 and under Section 411 of IPC

against A4 and on appearance of accused copies of documents were furnished to them under Section 207 of Cr.P.C.

4. Thereafter the accused were examined under Section 239 of Cr.P.C. Charge for the offences punishable under Sections 457, 380 of IPC against A1 to A3 and under Section 411 of IPC against A4 was framed, read over and explained to them in vernacular language. All the accused persons pleaded not guilty to the charge framed against them and claimed trial.

5. During the course of trial, the prosecution examined PWs 1 to 5 and got marked Exs.P1 to P6 and MOs 1 to 15. Ex.P7 – FIR was marked with consent of both sides. The evidence of LW4/ K.Satyanarayana, one of the panch for crime details form and LW5/ Makkala Sarvesh, one of the panch for confession cum seizure panchanama of accused were given up by the learned APP endorsing the reason that as PWs 2 and 3 have deposed sufficiently. The evidence of remaining witnesses was closed by this court.

6. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. to the incriminating circumstances found in the evidence of prosecution witnesses which they denied as false and no defence evidence was adduced.

7. Heard arguments of both sides.

8. **Now the points for consideration are -**

- (i) Whether the prosecution is able to prove the offence U/sec.457, 380 of IPC against A1 to A3 beyond reasonable doubt?**
- (ii) Whether the prosecution is able to prove the offence U/Sec.411 of IPC against A4 beyond reasonable doubt?**

9. In order to substantiate its case, the prosecution had examined the de facto complainant as PW1, one of the panch witnesses for crime details form

as PW3, one of the panch witnesses for confession cum seizure panchanama as PW2 and the investigating officers as PWs 4 and 5.

POINT No.1

10. Regarding house breaking by night, PW1 deposed that on 21.02.2020, on the eve of Shivarathri, his parents went to Gundlapochampally village and at about 8.00 p.m., he went to attend his job by locking the main door. When his parents returned home at 1.30 a.m., they noticed the main door lock was broken, items in the house were scattered. PW3 deposed that on 22.02.2020, police visited the house of PW1 enquiring about theft in that house and also drawn rough sketch by noting the boundaries. He found that the things inside the house of PW1 were in disturbed condition and the house main door was broke opened. The place of conducting panchanama and its time clearly corroborate with Ex.P6 – crime details form. Nothing was elicited from his cross-examination to disbelieve his evidence.

11. PW5 deposed that on 22.02.2020, he examined and recorded the statement of PW1, conducted scene of offence panchanama by drawing the rough sketch of the scene by incorporating the details in the Crime Details Form. In his cross-examination it is elicited that they tried to take finger prints at the scene with the help of CLUES team but they could not find any finger prints.

12. Regarding giving information to police, PW1 deposed that on noticing the broken lock of their house, his mother dialed 100 and informed to police and on the next morning he went to police station and lodged report Ex.P1. A perusal of Ex.P1 shows that when the parents of PW1 found the lock of their house broken, they informed him over phone and then he went to his house. Ex.P1 is dated 22.02.2020. The FIR /Ex.P7 is also dated 22.02.2020 and it is registered at 11.00 a.m. There is no mention in Ex.P7 that any information is received in the previous night through ‘dial

100'. To the contra, in column no.8 of the FIR, the reason for delay is mentioned as '*after confirming the lost property then came to PS hence delay.*'

13. Regarding theft in the house of PW1, PW1 deposed that they found missing of items like – *one pair of gold ear rings, one pair of gold matilu, one gold bracelet, one gold chain, one pair of gold ear top* – total nine tulas gold and cash of Rs.5,000/-. Through him, MO1 to MO13 – *one black-beads chain, one pair of gold matilu, one big ear rings, four pairs of gold ear rings, one gold bracelet, two silver plates, one pair of silver kundulu, one pair of silver anklets, one silver Simhasanam, kumkuma bharani* were marked. Thus, the description of stolen property deposed by PW1 differs from MOs 1 to 13. Further, Ex.P1 shows the stolen items as – *gold necklace ear rings, two gold ear maties, one pair gold ear rings, four pairs of gold small ear rings, one diamond ring, gold chain, gold bracelet* – total weighing about nine tulas and net cash of Rs.5,000/-. It can be seen that there is clear contradiction regarding the items said to have stolen as mentioned in Ex.P1 to the oral evidence of PW1 and to MOs 1 to 13. Though P.W-1 admitted in his cross-examination about this variation, he did not offer any explanation for the same.

14. Now it has to be seen whether these contradictions would render prosecution case doubtful.

15. Coming to the offence of theft, to connect the alleged theft with A1 to A3, the oral evidence of PW2, Ex.P2 – confession cum seizure panchanama of A1, Ex.P3 and P4 – confession panchanamas of A2 and A3 respectively are relied upon by the prosecution. PW2 deposed that on 23.09.2020, LW5/ Makkala Sarvesh received phone call from PW4, SI of Police upon which they both went to police station where they enquired A1 to A3 who confessed to have committed theft and on their confession that they hid the stolen property with A4, they went to the house of A4. The police conducted confession cum seizure panchanama of A1 under cover of which they seized

one rod and one screw driver from the possession of A1. In his cross-examination, it is elicited that by the time PW2 reached police station, A1 to A3 were present in the lock up and one constable was present near the lock up. It is further elicited that A1 to A3 had informed him that police beat them in the police station.

16. From the evidence of PW2, it is clear that he enquired A1 to A3 in the police station when the accused were in the custody of police. Hence this confession which is made by the accused while in the custody of police cannot be proved against them and only any fact discovered from such information gathered from the accused can be proved against them under Section 27 of the Indian Evidence Act. Here, MOs 14 and 15 which were in the possession of A1 were seized from his possession and no new fact is discovered. Further, MOs 14 and 15 alone cannot establish the guilt of the accused. It is also deposed by PW2 that basing on Ex.P2 to P4, the confession of A1 to A3, that they hid the stolen articles with A4, they all went to the house of A4 where they found the alleged stolen articles which were seized from his possession under cover of Ex.P5.

17. So in order to prove the offence of theft, except the confession of A1 to A3 made to PW2 under Ex.P2 to P4, there is no other evidence. As held supra, such confession is inadmissible in evidence. The prosecution intends to rely on this evidence and prays the court to look into the discovery made from the confession of A1 to A3 upon which property was recovered from the possession of A4. Thus, as per the own version of prosecution, on information given by A1 to A3, stolen property is recovered from the possession of A4. It goes to show that A1 to A3 had no possession over the property. Further there is a contradiction in Exs.P2 to P4 regarding the number of offenders in the custody of police; it is the prosecution case and also the oral evidence of PW2 that there were three persons A1 to A3 in the custody of police whom PW2 and another had enquired, whereas Exs.P2 to P4 show that there were

four persons in the custody of police and PW2 enquired them one after the other.

POINT No.2

18. Coming to the evidence against A4, PW2 deposed that on confession of A1 to A3, he along with SI of Police, A1 to A3 proceeded to the house of A4 and enquired A4 who confessed to have received property and has shown the gold and silver articles to them. In his cross-examination it is elicited that A4 brought three bags consisting of gold and silver articles and that A4 has not revealed about the description of each item received from each accused but confessed to have received the stolen property from A1 to A3. A perusal of Ex.P5 shows that A4 had shown three bags which he confessed to have given by A1 on three different occasions. The details of those three bags are given in Ex.P5 to the effect that each bag pertains to a separate theft said to have committed by A1 to A3 and registered under different crime numbers.

19. The learned APP in this regard has contended that from the oral evidence of PW2 coupled with the documents – Exs.P2 to P5, clearly proves that the stolen property was seized from the possession of A4 and hence provisions of section 114 illustration a of Indian Evidence Act must be invoked. The learned counsels for the accused contended that to bring home the offence punishable under section 411 IPC, the property recovered from the possession of the accused must be identified to be stolen property to the satisfaction of the court beyond reasonable doubt. In this case, the victim gave different description of property from the MOs 1 to 13, and hence cannot be said that the property recovered from A4 was stolen property.

20. Further P.W-1 failed to prove ownership of gold and stolen items. This court does not agree with this contention of the learned counsel for accused as the complainant need not prove his ownership in these cases of theft. Coming to the offence under section 411 of IPC, the law is clear that to bring home

the offence punishable under section 411 IPC, first of all, two facts, viz., that (1) a theft was committed and certain articles were stolen, and (2) that the stolen articles were recovered from the possession of the accused, have to be established by direct evidence. They cannot be presumed. If these two facts are established and the recovery, from the possession of the accused is a recent one, it will be open to the court to presume under illustration to Section 114 Evidence Act that the accused is either the thief or a receiver of the stolen property.

21. In this case, as observed supra, theft is not proved beyond reasonable doubt for the reasons like – contradictions regarding the details of property and the mode of information given to police. The only evidence is that of confession of A1 to A3, which is not admissible unless any discovery is made. The discovery is sought to be the possession by A4 and seizure from his possession under Ex.P5. While looking into the details of seized property as revealed in Ex.P5, it is seen that in the month of January 2020, A1 telephoned A4 asking him to come to Balaji Nagar where he gave some gold and silver articles stating that those were stolen by A1 to A3 from a house at Jawaharnagar and requested A4 to sell the same. A4 kept those articles in his house and gave some amount to A1 to A3, which was with him. Similarly, after another theft in the month of February, 2020 and the third theft in the month of June, 2020, A4 received stolen items from A1 to A3 and gave them money saying that it was sale proceeds.

22. Admittedly, Ex.P5 is dated 23.09.2020. The theft alleged in this case is on 22.02.2020. The last among the three thefts as mentioned in Ex.P5 is in the month of June 2020 and the first is in the month of January 2020. A person keeping such a quantity of gold and silver articles with him, especially if he has knowledge that they are theft properties, does not appear natural. Further, to invoke the presumption under Section 114 (a) of the Indian Evidence Act, the interval between theft and recovery should not be much. The word '*soon after*' in section 114 (a) are eloquent enough to show that the

interval between the theft and the recovery should be short. Another ingredient is that the possession must be an exclusive and conscious possession. It is for the prosecution to prove that the property was in exclusive and conscious possession of the accused. It means that if the house is occupied by the accused along with other members of the family, presumption under 114 (a) is not invocable. In this case, no details of the house of A4 like if it is his own house or is any rented premises, are brought on record by examining any neighbours or house owner, etc. No other details like any other inmates of the house of A4 are brought on record. In such a case, the presumption of exclusive possession required under Section 114 (a) of the Indian Evidence Act cannot be invoked.

23. Further, as per the evidence of PW2 and Ex.P5, A4 had kept the properties pertaining to different crimes in different bags, in his house, for months together, without selling them but was giving away amounts to A1 to A3 stating that the amount was sale proceeds of those gold and silver articles. These facts also appear very unnatural. The question whether a presumption should be drawn against an accused under Section 114 (a) of Indian Evidence Act is a matter which depends on the evidence and the circumstances of each case. The nature of recovered articles, the manner of their acquisition by the owner, the nature of evidence about their identification, the manner in which the article was dealt with by the accused, the place and circumstances of their recovery are some of the circumstances. In this case, as held in the above paras, the details of property differ from Ex.P1 to MOs 1 to 13, the manner of information given to police also differs, the recovery is also rendered doubtful. Thus, evidence on record is neither wholly nor wholly unreliable. In such a case, the well established principle in criminal law which propagates that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and the other to their innocence, the view favourable to the accused should be adopted. Considering this principle, it is held that the prosecution has failed to prove

the guilt of the accused persons beyond reasonable doubt and hence they are entitled for acquittal.

24. In the result, accused No.1 to 3 are found not guilty for the offence punishable under Sections 457, 380 of IPC, A4 is found not guilty for the offence U/Sec.411 of IPC and they are accordingly acquitted under Section 428(1) Cr.P.C. The bail bonds of A1 to A3 shall stand cancelled. A4 shall be released forthwith if he is not required in any other case. M.O.1 to M.O.13 which are given to P.W-1 for interim custody vide orders dated 25.11.2020 in CrI.M.P.No.1002/2020, shall be made absolute after appeal time. M.O.14 and M.O.15 shall be destroyed after appeal time.

*Typed to my dictation, corrected and pronounced by me in the open Court on this the **2nd day of July 2021.***

Sd/-

FAC: XXIII METROPOLITAN MAGISTRATE
CYBERABAD, AT MEDCHAL

Appendix of Evidence

Witnesses Examined

For Prosecution

Pw.1 T.Arjun Reddy
Pw.2 Mohd. Khasim
Pw.3 R.Jagadeesh
Pw.4 Mohd. Majid Ali
Pw.5 B.S.S.Vara Prasad

For Defence

None

Exhibits Marked for Prosecution

Ex.P1 Report
Ex.P2 Confessional panchanama and seizure panchanama of A1
Ex.P3 Confession panchanama of A2
Ex.P4 Confessional panchanama of A3

Ex.P5 Confessional and seizure panchanama of A4
 Ex.P6 C.D.F
 Ex.P7 FIR

Exhibits Marked for Defence

Nil

Material Objects marked

M.O.1 One black beads chain wg.about 22.14 grams
 M.O.2 One pair of gold matties wg.about 6.90 grams
 M.O.3 One pair of bit ear rings wg.abot 10 grams
 M.O.4 Four pairs of gold ear rings wg.about 25.69 grams
 M.O.5 One diamond ring wg.about 9.92 grams
 M.O.6 One gold chain wg.about 22 grams
 M.O.7 One gold bracelet wg.about 3.51 grams
 M.O.8 One gold vanku wg.about 4.31 grams
 M.O.9 Two silver plates
 M.O.10 One pair of silver kandulu
 M.O.11 One pair of silver anklets
 M.O.12 One silver god simhasanam
 M.O.13 One silver kunkumabarini
 M.O.14 One Rod
 M.O.15 Screw driver

Sd/-

FAC:XXIII Metropolitan Magistrate,
 Cyberabad, Medchal