

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

***Present: Smt. Sowmya Vardha  
XXIII Metropolitan Magistrate  
Cyberabad, at Medchal***

**Wednesday, 05<sup>th</sup> day of January 2022**

**CC No.1235 of 2020**

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**Between:-**

The State through Sub-Inspector of Police  
Jawaharnagar P.S.

.....Complainant

AND

Tamatta Pavan Singh @ Tamata S/o Late Ram Singh  
Age- 22 years, Occ:Security Guard  
Caste:Hindu(Nepali), R/o H.No.10-2-14  
Flat No.102, West Maredpally, Secunderabad

.....Accused

This case came up before me for final hearing on 05.01.2022 in the presence of A.P.P for the State and Sri M.A.Praveen Kumar Legal Aid Counsel for the Accused and having stood over for consideration till this day this court delivered the following:-

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

1. The Sub Inspector of Police, P.S.Jawaharnagar, filed charge sheet against the accused in Cr.No.588/2020 for the offences U/sec.380 of IPC against accused.
2. The brief facts of the case of the prosecution is, on 04.08.2020 at 10:30 hours, Sri S.V.Raja Narayana Reddy stated received a

complainant from Sri Muthyala Narendra S/o Rama Rao stated that on 03.08.2020 at 18:00 hours he parked his two wheeler Glamour bike bearing No.TS 13 ER 2842 in front of gate. After 23:00 hours on the same day complainant gone to sleep and the windows were not fixed as it is new house. On 04.08.2020 at 05:00 hours complainant woke up and found 1)Gold chain wg.2.2 tulas, 2)One Oppo Reno-3, 3) OPPO F11 Pro, 4) Nokia keypad phone were found missing which were kept beside bed by complainant's wife on before day and also Glamour bike which was parked inside the gate were found missing. Then complainant came to know that some unknown persons committed theft from window and fled away. Therefore, complainant requested for necessary action.

3. On receipt of above complaint P.W.4/Sri S.Saidulu, Sub-Inspector of Police, Jawaharnagar P.S., registered a case in crime No.588/2020 under section 380 of IPC and took up the investigation. After completion of investigation charge sheet is filed for the offence under section 380 of IPC against accused.

4. This case was taken on file for the offences U/sec.380 of IPC against accused.

5. On appearance of the accused person before the court, copies of documents upon which the prosecution proposed to be relied upon, were furnished to him as required U/sec.207 of Cr.P.C.

6. The accused examined U/sec.239 Cr.P.C., for the offence U/sec.380 of IPC. The charges framed u/sec.380 of IPC were read over to accused and explained to him in his vernacular language to which he pleaded not guilty and claimed to be tried.

7. In order to prove the guilty of the accused the prosecution examined P.W.1 to P.W.4 and got marked Ex.P1 to P3 on its behalf.

8. After closure of the prosecution side evidence, accused is examined under section 313 Cr.P.C. he denied the incriminating oral and documentary evidences adduced by the prosecution against him and reported no defence evidence.

9. Now the point for determination is: -

***“Whether prosecution was able to prove the guilt of Accused for the offence U/sec.380 of IPC?”***

10. The case of the prosecution is on intervening night of 3/4-8-2020, the complainant with his family were slept in his new house, where the windows of the house was not fixed, the wife of the complainant, kept one gold chain, one oppo Reno-3 phone, Oppo F-11 Pro, Nokia Keypad phone beside bed and found missing on next day morning and also found missing of Glamour two wheeler vehicle parked inside the gate. On next day i.e., on 5-8-20, the complainant lodged the report Ex.P1 at police station Suspecting the theft by an unknown offender entering into the house through an unfixed window wall, and stolen the above items.

11. From the facts and circumstances the alleged theft has taken place inside the P.W.1 house during night hours, the house is using for dwelling purpose, which falls under the defination of section 380 of IPC.

12. Now the question to be determined before the court is whether the alleged accused committed the theft of M.O.1 and M.O.2 from P.W.1 house.

13. As per the case of the prosecution case, the alleged theft has taken place at P.W.1 house when they are in sound sleep. The P.W.1 did not see the person who stolen the gold chain, cell phone, and motorcycle from his house.

14. One of the investigating officer/P.W.3 who was on vehicle checking duty on 12-9-2020 at Ranigunj X roads caught the alleged accused on suspicious grounds, and on confession of the accused before him, he arrested him and recovered the gold chain M.O.1 and glamour motorcycle M.O.2 from the accused house at Shameerpet in the presence of mediator/P.W.2 and the accused was charged with the offence punishable U.sec.380 of IPC.

15. The burden lies on the prosecution to prove the recovery of M.O.1 and M.O.2 from the accused for which the prosecution relied on the testimony of panch witness P.W.2, it is the case of prosecution that the alleged accused confessed before P.W.3, in the presence of mediator P.W.2 about the commission of theft at P.W.1 house and shown the property M.O.1 and M.O.2, the same was recovered by P.W.3 under the cover of panchanama from the accused house at Shameerpet in the presence of two mediators P.W.2 and L.W.4 and the same was reduced into writing.

16. As per section 25 of Indian Evidence Act, it is a settled law that the confession recorded by the police officer is inadmissible in evidence unless that confession leads to recovery or discovery of material objects. Therefore the document confession cum seizure panchanama recovered by the police/P.W.3 cannot be taken in evidence.

17. Coming to the recovery of M.o.1 and M.O.2, The mediator P.W.2 in whose presence the case property alleged to have been recovered, supported the prosecution case in his chief examination, by deposing that the police recovered the gold chain and gold ear-rings from the accused house at Shameerpet.

18. But the evidence of P.W.2 is not trustworthy for several reasons, firstly the description of the property disclosed him is not totally Corroborating with the case property and it contrary to the evidence of investigating officer P.W.3. Whereas, the P.W.3 recovered only one gold chain and motorcycle from the possession of the accused, the recovery of motor cycle is not stated by the P.W.2, and as stated by P.W.2 the P.W.3 did not recover any gold ear-rings.

19. In the cross examination of P.W.2, he deposed that he don't know the English language, and admitted that the panchanama was drafted by the police and he simple singed on it without reading the contents in it, he cannot say the house address of the accused.

20. The P.W.1 did not file the receipts of cell phones, gold chain, and papers of the glamour vehicle as a proof. The P.W.1 stated that there is a slight change in the case property i.e gold chain recovered by the police and handed over to him. The No.1 which was recovered is not same and the recovery of M.O. 2 is not proved before the court.

21. All these circumstances clearly enables the court that P.W.3 is tutored witness and the police obtained P.W.2 signature on drafted copy panchanama/ Ex.P2 and. Therefore the evidence of P.W.2 is doubtful and does not inspire the confidence in the mind of the court.

22. Therefore this court concludes that the evidence adduced by the prosecution is not cogent and relevant, and there are discrepancies in the evidence of prosecution case for which this court gives benefit of doubt to the accused. Therefore the prosecution failed to prove the guilty of the accused for the offences U.sec.380 of IPC beyond all reasonable doubts.

23. IN THE RESULT : The accused found not guilty for the offence U/sec.380 of IPC. The accused is acquitted U/sec.241(1) of Cr.P.C. The case property M.O.1 – One gold chain wg.2 thulas, M.O.2 One Hero Glamour vehicle bearing No.TS 13 ER 2842 which was returned to the Defacto complainant/Sri Veluri Phanisree Naidu, S/o Sai Sudhakar Naidu for interim custody vide order CrI.M.P.No.871 and 872/2020 dt.13.10.2020 (CPR.No.189 /2020) shall be made absolute after appeal time.

The bonds and bail bonds of the accused shall stand cancelled U/sec. 437-A of Cr.P.C. and there is no case property in this case.

*Dictated to Stenographer, transcribed and typed by her, corrected and pronounced by me in the Open Court this the 05<sup>th</sup> day of January 2022.*

**Sd/-**

**XXIII Metropolitan Magistrate,  
Cyberabad, Medchal**

Appendix of Evidence

*Witnesses Examined*

**For Prosecution**

Pw.1 M.Narendar  
Pw.2 Sikinder Singh  
Pw.3 Gaddam Kashi  
Pw.4 S.Saidulu

**For Defence**

None

Exhibits Marked for Prosecution

Ex.P1 Report  
Ex.P2 Confession –cum-seizure panchanama  
Ex.P3 F.I.R.

Exhibits Marked for Defence

Nil

Material Objects marked

M.O.1 One Gold chain wg.2 thulas  
M.O.2 One Glamour vehicle bearing No.TS 13 ER 2842

***Sd/-***

XXIII Metropolitan Magistrate,  
Cyberabad, Medchal