

**IN THE COURT OF III ADDL. JUNIOR CIVIL JUDGE – CUM
XXIII METROPOLITAN MAGISTRATE,
CYBERABAD AT MEDCHAL
Present: Ms. Sowmya Vardha
XXIII Metropolitan Magistrate
Cyberabad, at Medchal**

Friday, 12th day of March 2021

CC No.1400 of 2020

Between:-

The State through Sub Inspector of Police
Jawaharnagar P.S

.....Complainant

AND

- A1. K.Sunny. S/o M.Krishna Murthy
Age-36 years Occ- Painting work/centring work
Caste:Arva mala, R/o-H.No.5-1-251,
Near Mahankali Temple, Bhupesh Nagar
Yapral Malkajgiri Mandal Medchal district.
(UTP.No.7787, remanded on 25.09.2020)
- A2. P.Shiva Kumar S/o.Pooja pathi
Age:30 years, Occ: Painting work
Caste:SC Arvamala, R/o- H.No.2-1-97
Yapral Muthuswamy Nagar Near Mahankalai temple,
Yapral, Malkajgiri Mandal, Medchal district.
(UTP.No.7788, remanded on 25.09.2020)

.....Accused No.1 and 2

This case came up before me for final hearing on 12.03.2021 in the presence of A.P.P for the State and Legal Aid Counsel Sri M.A.Praveen Kumar, Advocate 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 No.1 and 2 in Cr.No.586/2020 for the offences U/sec.457, 380 of IPC.

2. The brief facts of the case of the prosecution is on 01.08.2020 at 22:00 hrs, Sri Ramesh Muval S/o Damal ram Muvval, age: 25years, Occ:kirana shop., Caste: Marvadi,R/o Syndicate Bank, Balaji Nagar main road Kapra (M), Medchal District stating that, on 01-08-2020 at around 22:00 hours, he closed his shop and went to his home, again on 02-08-2020 when he opened his shop he found that all materials in the shop were misplaced and some 2 and 5 rupee coins was missing. Complainant further stated that even C.C cameras and D.V.R were also found missing. Then he came to know that some unknown offenders gained entry into his shop by moving the asbestos roof sheets and committed theft of above mentioned things all worth of Rs. 10,000/- 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.586/2020 under section 457, 380 of IPC and took up investigation.

4. During the course of investigation. P.W.4 examined, recorded statements of the complainant P.W.1, along with crime staff visited the scene of offence Kirana shop beside Ambedkar statue situated at Balaji Nagar Medchal district., and examined the scene of offence and conducted scene of offence observation panchanama in presence of two mediators mentioned in L.W.2 and P.W.2 of this case dairy and drawn rough sketch of the scene in crime detailed form (CDF) and caused enquires about the offence. After completion of investigation charge sheet is filed for the offence under section 457, 380 of IPC against the accused A1 and A2.

5. This case was taken on file for the offences U/sec.457, 380 of IPC against the Accused A1 and A2.

6. On appearance of the accused persons A1 and A2 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.

7. The accused No.1 and 2 examined U/sec.239 Cr.P.C., for the offence U/sec.457, 380 of IPC and charges framed u/sec.457, 380 of IPC were read over to them and explained to them in their vernacular language to which they pleaded not guilty and claimed to be tried.

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

9. Now the point for determination is: -

“Whether prosecution was able to prove the guilt of Accused No.1 and 2 for offence U/sec.457, 380 of IPC.?”

10. The prosecution to prove the guilty of the accused examined all together 4 witnesses, P.W.1 is the defacto complainant, P.W.2 is the panch witness to the scene of offence panchanama, P.W.3 is the mediator to confession cum recovery panchanamas EX.P3 and P4 , P.W.4 is the investigating officer of this case.

11. The main allegation against the accused A1 and A2 is that in the absence of the defcto complainant/P.W.1, the accused A1 and A2 alleged to have gained entry into the complainant Kirana store by removing the asbestos sheets roof sheets and stolen one CC Cameras,

D.V.R some 2 and 5 rupees coins, as such accused A1 and A2 stood charged for the offences under section 457, 380 of IPC for committing theft in a dwelling house by house breaking by night .

12. The prosecution argued that all the witnesses P.W.1 to P.W.5 examined on behalf of the prosecution supported the prosecution case, the accused A1 and A2 have voluntarily confessed before investigation officer/P.W. 4 about the commission of theft, the mediator/P.W.3 to the panchanama also supported the prosecution case. Therefore the accused A1 and A2 are liable for conviction and prayed the court to convict the accused A1 and A2.

13. On the other hand the counsel for the accused persons A1 and A2, vehemently argued that allegation levelled against the accused A1 and A2 are false and baseless there are no eye witnesses to the incident, the confession panchanama on which the prosecution is relying has no evidentiary value in the eye of law u.sec.25 of Indian Evidence Act, and submitted that there no recovery of case property from the possession of the accused persons, the accused A1 and A2 are innocent and falsely implicated in this case and prayed the court to acquit the accused persons A1 and A2.

14. The P.W.1 reproduced the contents of his report Ex.P1, but his evidence does not whisper about the names and identity of the accused persons, according to him, he closed his shop at about 10.00p.m on 1.8.20 and opened the shop on next day morning at about 8.30 a.m and found all the materials in the shop were in disturbed possession, he found missing of net cash of Rs.10,000, on CC camera, some general store items.

15. According to him the alleged theft was taken place at his Kirana store on intervening night 1st or 2nd of /8/20, in his absence and the report was lodged by him against the unknown offenders on 9.8.20 alleging that some unknown offenders gained entry into his Kirana store by removing the asbestos sheets roof sheets and stolen one CC Cameras, D.V.R some 2 and 5 rupee coins.

16. According to the testimony of P.W.2, the police visited the complainant kirina store on 4.8.20 and caused inquires about the theft and conducted the scene of offence panchanama and drawn the rough sketch of scene of offence by noting the boundaries of the complainants store.

17. As per the testimony of P.W.3, the S.I police of P.S. Jawaharnagar called him to police station to attend panchanama, he went to police station and he saw sunny/A1 and Shiva kumar/A2 who are the residents of Yaprul were present in the station, the witness has prior acquaintance with A1 and A2, he often meets them at tea stall, they both confessed before him about the commission of theft. The witness further stated that the police caught them when they were going on stolen bike and they refused to show the vehicle papers of the said bike to the police on suspicious ground the police brought them to police station in one bike theft case. The witness further stated both the accused A1 and A2 further confessed before him about the theft of one splendor plus motor bike from Balaji Nagar area, Market Road and stolen some cloths, cash from the textile shop at Ambedkar nagar and some groceries by gaining entry into the Kirana Store by damaging the asbestos sheets of the shop at Balaji Nagar, the police seized the bike from the possession of Accused A1 and A2 some cash from the

possession of both the accused persons A1 and A2 under the cover of confession and recovery panchanama in his presence, and the police recorded the confessional panchanama of both the accused A1 and A2. The witness along with L.W.4 signed on panchanama. He identified both the accused A1 and A2 in the court room dock.

18. As per testimony of P.W.4, the crime party staff apprehended the accused A1 and A2 while moving on suspicious ground and brought them to police station and produced before him, and he recorded the confession of the accused A1 and A2 in the presence of mediator P.W.3 and one another and recovered the case property from the possession of A2.

19. As per the prosecution case the alleged theft has been taken at P.W.1's store, the store is used for the storing property and squarely falls under the definition of dwelling house u.sec.380 of IPC, the alleged incident occurred during night hours and the unknown offenders alleged to have open asbestos roof sheets which falls under the definition u.sec 457 of IPC house breaking by night.

20. Now the question before the court is "Whether the alleged accused persons A1 and A2 gained entry into the complainants store by removing the asbestos roof sheets and stolen kirana general items, Rs.10,000/- cash, C.C. camera from the store?".

21. The testimony of P.W.1 does not whisper about the names and identify of the accused person and it is clear that the witness P.W.1 lodged the report against the unknown offenders. All the witnesses examined by the prosecution are not direct witnesses.

22. The prosecution relied on the confession statement of the accused A1 and A2 it is a well settled law as per 25 of Indian evidence act that confession made before the police officer is inadmissible in evidence, such confessions are relevant only u.sec 27 of the Indian Evidence Act., when there is a recovery or discovery of any material objects. In the case at hand the investigating officer P.W.4 clearly stated that no property pertains to this crime was recovered, therefore the confession though voluntarily made to police and supported by P.W.3 it cannot be read in evidence, the confession and seizure panchanamas of A1 and A2 which was marked as Ex.P3 and Ex.P4 are inadmissible for the reason stated above.

23. Since the incident occurred in late night hours there are no eye witnesses to the incident to prove that the accused A1 and A2 removed the asbestos roof sheets and gained into the P,W.1 store and the police did not collect the chance prints from the scene of offence, prosecution failed to prove the recovery of stolen property from the possession of the accused A1 and A2. Therefore offence under section 457 and 380 of IPC is not proved against A1 and A2 .

24. The prosecution failed to prove the guilty of the accused A1 and A2 for the offence U/Sec. 457 and 380 of IPC beyond all reasonable doubts.

25. IN THE RESULT : The accused No.1 and no.2 found not guilty for the offence U/sec.457 and 380 of IPC they are acquitted U/sec.248(1) of Cr.P.C.

The bonds and bail bonds of accused No.1 and 2 shall stand cancelled U/Sec.437-A of Cr.P.C, after expiry of appeal time 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 12th day of March 2021.

Sd/-

**XXIII Metropolitan Magistrate,
Cyberabad, Medchal**

Appendix of Evidence

Witnesses Examined

For Prosecution

Pw.1 Ramesh Moval
Pw.2 Mohd Ismail
Pw.3 B.Chandrasekhar
Pw.4 S.Saidulu

For Defence

None

Exhibits Marked for Prosecution

Ex.P1 Report
Ex.P2 C.D.F
Ex.P3 Confessional panchanama of A1
Ex.P4 Confessional panchanama of A2
Ex.P5 F.I.R

Exhibits Marked for Defence

Nil

Material Objects marked

Nil

Sd/-

**XXIII Metropolitan Magistrate,
Cyberabad, Medchal**

