

UTDN010017482022



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DURATION : Ys. Ms. Ds.
00 02 03

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS,
U.T. OF DADRA AND NAGAR HAVELI, AT SILVASSA
(Presided over by B. H. Parmar)

Regular Criminal Case No. 153/2022.
Exh.No.13.

The State,

Through : Ram Bable Wagh

Age : 45 years,

Occupation : Service,

R/o : Besda

.... Informant.

VERSUS

Sampat Laxi Marade

Age : 31 years,

Occupation : Farming,

R/o : Vasda, Khanvel.

.... Accused.

Charge - Offence punishable under section 379 of the

Indian Penal Code, 1860.Adv. P. G. Patel A.P.P. for the State.Adv. Anil Bagul for the accused.JUDGMENT(Dictated and pronounced on 17.12.2022)

The accused is facing trial for the offence punishable under Section 379 of the Indian Penal Code, 1860.

Factual matrix of the case, is as follows

02. That the informant Ramu Bable Wagh (*hereinafter referred to as ‘informant’*) is a resident of Besda and is working as Government Servant in PWD department. On 26.03.2022 the informant was having night duty at Vasda Bavarpada water plant. The informant was sleeping in the cabin attached to water plant. AT that time informant was having Vivo mobile phone of Rs.8200/-. Thereafter during midnight hours his mobile was stolen by unknown person. The informant had searched for his mobile phone in nearby area but he could not find the same. Informant thereafter filed complaint to Police Station.

03. On the basis of complaint Khanvel Police registered F.I.R. vide C.R. No. 63/2022 for the offence punishable under section 379 of the act. Thereafter, investigation was handed over to investigating officer H.C. B.M.Vasava. During investigation, investigating Officer

prepared spot and seizure panchnama, recorded statement of witnesses, seized property, prepared muddemal pavti and arrested accused and after completion of investigation he filed report under section 173 (2) of Code of Criminal Procedure 1973 against the accused for offence punishable under section 379 of the Indian Penal Code, 1860.

04. Accused appeared before the court. Charge was framed against the accused for the offence punishable under section 379 of the act vide (Exh.03). The charge was read over and explained to him in his vernacular, to which he pleaded not guilty and claimed to be tried. Statement of the accused is recorded at (Exh.04).

05. On considering rival contentions and the material on record the following points arose for determination of the case and I have recorded my findings thereon, along with reasons, as under:-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Does the prosecution prove that the accused on 27.03.2022 at about 00:00 to 03:00 hours at Vasda, Barvarpada water plant cabin dishonestly moved a certain property namely Vivo mobile phone of informant from the cabin and moved the same without consent of the informant ?	No
2.	What order?	As per final order

06. In order to prove the charges, the prosecution has examined three witnesses. Informant Ramu Bable Wagh as P.W.1 at Exh.06, and seizure panch witnesses Sayresh Kharpadiya as P.W.2 at Exh.08 and Jasu Khanjodiya as P.W.3 at Exh.10. Prosecution after examining the witnesses have closed their side by filing pursis at Exh.12. As no incriminating evidence came forth against the accused his statement u/sec 313 of Cr.P.C was dispensed with. The prosecution has filed on record Complaint at Exh.07.

REASONS.

AS TO POINT No. 1 :-

07. Prosecution in all have examined three witnesses out of which seizure panch witnesses Sayresh Kharpadiya P.W.2 and Jasu Khanjodiya P.W.3 have turned hostile. Hence, they both were cross examined by APP but nothing fruitful could be elicited from their evidence. Hence, prosecution failed to prove the seizure panchnama from the mouth of panch witnesses and as such failed to prove that the seized mobile was recovered from the instance of accused.

08. On perusal of evidence of Informant Ramu Wagh P.W.1 it seems that he has only testified that on alleged day of incident i.e. 26.03.2022 he was having Vivo mobile phone which he had kept in the

cabin of water filter plant and the said phone was stolen from the cabin of water plant at Vasda Bavarpada. Apart from it, there is no single iota of evidence as to who had committed the theft of his mobile phone. On the contrary it has come in his cross examination that he does not know who had stolen his mobile and contents of his complaint were typed by Police. He further admitted that he does not want to proceed with the case and also do not want to examine any further witnesses. The said vital admissions is itself sufficient to infer that informant has settled his case with accused and he does not desires to proceed further with the case.

09. Therefore, taking into consideration the discussions in the above foregoing paragraphs it seems that there is no iota of evidence against the accused to prove that he had stolen the mobile of the informant and the same was recovered from his possession. **Hence, I answer point number 1 in the negative.**

AS TO POINT No. 2:-

10. In view of above discussion prosecution failed to prove the charges leveled against the accused beyond reasonable doubt. Hence, the accused is to be acquitted for want of cogent evidence. **Hence, I answer point No. 2 as under :-**

O R D E R

1. Accused Sampat Laxi Marade is hereby acquitted under

section 248 (1) of Code of Criminal Procedure, 1973 for the offence punishable under section 379 of Indian Penal Code 1980.

2. Bail bonds of the accused stand cancelled. Surety stands discharged.
3. Seized property i.e. Vivo mobile phone having IMEI no. 866157048654371 & 866157048654363 be returned back to its registered owner after appeal period is over.
4. The accused is directed to furnish P.R. & S.B bond of Rs.15,000/- (Fifteen Thousand only) to appear before higher court as and when such court issues notice in respect of any appeal or petition filed against this judgment and the said bond shall in force for six months under section 437 (A) of Code of Criminal Procedure, 1973 within seven days.

Judgment dictated and pronounced in open Court.

Silvassa.

Date:- 17.12.2022

Sd/-

(B. H. Parmar)

Judicial Magistrate (First Class)
Dadra Nagar Haveli
Silvassa.

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment/order are same, word to word, as per the original Judgment.

Name of the Clerk : J. H. Patel

Court : Judicial Magistrate First Class

Date : 17.12.2022

Judgment Signed by the Presiding officer on: 17.12.2022

Judgment uploaded on : 17.12.2022