

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, MAVELIKARA
Present: Sri. Japhinraj. JB, Judicial First Class Magistrate - I, Mavelikara
Dated this the 29th day of April, 2026.

CC. 539/2022

Complainant : State represented by the Sub
Inspector of Police, Kurathikadu Police
Station in Crime No. 311/2022.
(Rep. by APP. Sri. Sanjai Jacob,
JFMC-I, Mavelikara)

Accused : A1. Shajahan @ Shaji.
A2. Nasar @ Kochumon @ Maniyappan Nasar
(Adv. P. Sethumohanan Pillai & H. Suni)

Offences : U/Ss. 457, and 380 r/w 511 of IPC.

Plea : Not guilty.

Finding : Not guilty.

Sentence/Order : Accused are acquitted under section
248(1) of Criminal Procedure Code for the
offences punishable u/ss. 457 and 380 r/w 511 IPC.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Father's Name	Occupation	Residence	Age
1	Shajahan @ Shaji	Ibrahimkutty		Parayantethara veedu, Pattoli market PO, Kandallor. [Residing on rent at H.No.XIII/610 owned by Umayba Yusuf, Lakkidiperoor P/W-13, Lakkidi 1st village, Ottappalam Tauk, Palakkad Dist.]	48/22
2	Nasar @ Kochumon @ Maniyappan Nasar	Yunuskunju		Sofina manzil (Mudakathil), Kannamballi bhagam, Keerikkad village.	48/22

DATE OF:-

Offence	Complaint	Appearance	Release on bail	Commencement of trial	Close of Trial	Sentence or order
05.06.22	01.08.22	11.07.22	A1.29.07.22 A2.19.07.22	11.06.24	25.04.26	29.04.26

This case coming on this day for consideration, the court delivered the following:-

JUDGMENT

This case was taken cognizance upon a Final report filed by the Sub Inspector of Police, Kurathikadu Police Station in Crime No.311/2022 alleging the commission of offences punishable under sections 457, and 380 r/w 511 of IPC..

2. The prosecution case in brief is as follows: - On 05.06.2022 at about 12.45 a.m., the accused, with the intention and preparation to commit theft and misappropriation, came on a scooter bearing registration No. KL-29-L-2531, driven by the first accused with the second accused seated pillion. Both accused criminally trespassed into *Bahulayam House*, owned by PW1, situated in Thekkekkara Village. The accused jointly broke open the front door of the house using a screwdriver and hammer, entered inside, and further broke open the lock of the northern room on the eastern side of the main hall. They opened drawers and searched for valuable articles, scattering items kept in the almirah and other rooms, thereby attempting to commit theft. Thus, the accused are alleged to have committed the aforesaid offences.

3. On filing of the final report, process was issued to the accused. The accused appeared before the Court and were enlarged on bail. They were represented by counsel of their own choice. The copy of the prosecution records was furnished to them. After hearing both sides, charge was framed under Sections 457 and 380 read with 511 of the Indian Penal Code. It was read over and explained to the accused. They pleaded not guilty to the charge and claimed to be tried.

4. As per final report, altogether 11 witnesses were proposed from the side of prosecution. Among them, CW1, to CW5 were examined as PW1 to PW5 and CW8 to CW11 are examined as PW6 to PW9. CW6 and CW7 were given up by the learned APP. Ext.P1 to P11 were marked from the side of prosecution. The accused were thereafter examined u/s. 313(1)(b) of Code of the Criminal Procedure, 1973. They denied all incriminating circumstances which appeared in evidence against them. Hence, the defence was invited for adducing evidence. Exts.D1 and D2 marked. M01 was marked as material object. No documents were marked from the side of defence.

5. The matter was considered for final decision after hearing the learned APP and the learned counsel who appeared for the accused. Perused the relevant records.

6. The points which arose for consideration are:

1. Did the accused, in furtherance of their common intention, on 05.06.2022 at about 12.45 a.m., criminally trespass into *Bahulayam House* owned by PW1, situated in Thekkekara Village, by breaking open the front door of the house using a screwdriver and hammer, thereby committing an offence punishable under Section 457r/w 34 IPC?
2. Did the accused, in furtherance of their common intention, at the above said time and place, attempt to commit theft of valuable articles kept in the house by opening drawers and searching for valuables, scattering items kept in the almirah and other rooms, thereby committing an offence punishable under Section 380r/w 511r/w 34 IPC?
3. What shall be the sentence or order?

7. **Point No. 1 and 2:** PW1 stated that he is a retired BSNL employee residing at *Bahulayam House*. He deposed that a theft attempt occurred at his residence while he and his family were away in Bengaluru with his son. The house had been locked, and its care was entrusted to his elder brother, PW3. PW1 came to know of the incident when his brother called him on the morning of 5th May 2022, informing that the front door was found open.

8. According to his evidence, PW1 reached home at about 2:15 a.m. that night and found that the front door lock had been broken open. One panel of the door was dislodged and lying in the sit-out. When he arrived, the police were already present, and after their inspection, he entered the house. He found that silver ornaments had been stolen. He also deposed that he lodged a complaint, and this case was registered. A few days later, the Sub-Inspector called him and asked about the make and description of the stolen wristwatch, which PW1 provided. On the following day, the police brought two persons to the house, and PW1 identified them as the ones who had committed the theft. He stated that the accused had entered his house and also the nearby *Dwaraka House*. He deposed that none of the stolen articles were recovered. PW1 identified both accused standing in the dock.

9. PW1 stated that he came to know about the theft attempt only from his elder brother and that he had no direct knowledge of the incident. His brother informed him on the morning of 5th June 2022. PW1 reached home from Bengaluru at about 2 a.m. the following night and found the police already present. He gave information to the police and entered the house only after they completed their inspection. He stated that the police recorded his statement after the evidence collection was over and that he had given detailed information regarding the loss. PW1 further stated that he had given a written complaint. He said that he gave one

statement at home and another written complaint later at the police station. He admitted that the police recorded his statement at Kurathikkad Police Station. He deposed that he had mentioned the loss of silver ornaments in his written complaint.

10. PW1 denied the suggestion that he had stated to the police that he did not lodge a complaint because no valuable articles were stolen. He maintained that he had not made such a statement. The contradictions in his statement was marked as Ext. D1 and D2.

11. PW2 is the wife of PW1. She also deposed about the theft at their house. She stated that she was not at home when the incident occurred. PW2 further deposed that the accused had gained access to the house through the front door. She identified the accused before the court as the persons who had been brought to the place of incident by the investigating agency for the purpose of collecting evidence.

12. PW3 stated that PW1 is his brother and that they reside close to each other. He lives at *Pallarimangalam*. He remembered that in 2022, his brother and family had gone to Bengaluru to visit their son. During that period, he used to check the house occasionally. He deposed that he came to know that a theft had occurred at the house. On the morning of 5th June 2022, around 10 a.m., he passed by the house and noticed that the front door panel was dislodged and lying on the ground. He had seen the house locked earlier that morning, and therefore concluded that the theft must have occurred between 4th June 2022 after 10 a.m. and 5th June 2022 around 10 a.m.

13. PW3 stated that he immediately informed PW1 about the incident, and PW1 returned home. He came to know that silver ornaments had been stolen and that there was considerable damage to the household articles, including a broken cupboard. He deposed that the police later brought the accused to the house for evidence collection. PW3 stated that he could identify the persons who had entered the house and confirmed that the accused standing in the dock were the same individuals.

14. PW4 is a witness to Ext.P1, the scene mahazar. He identified his signature and deposed that he was summoned to the house of PW1, where his signature was obtained by the police. PW8 is the present Secretary of Chengannur Municipality. He deposed that Bahulayam House belongs to PW1 as per the assessment register of 2013. The ownership certificate issued by PW8 was marked as Ext.P6.

15. PW5 is a witness to Ext.P5, which was prepared during the seizure of a motorcycle that, according to the prosecution, was used by the accused to reach the place of occurrence. Similarly, PW6 is a witness to Ext.P3, which was prepared at the time of recovering MO1, a hammer that the prosecution alleges was used by the accused to commit house-breaking. PW7 is a witness to the seizure of Ext.P5 photographs. He deposed that PW1 had submitted photographs of his house where the attempted theft took place, and the same were seized and described in Ext.P4 mahazar.

16 PW8 stated that on 19.06.2022 he was working as Sub-Inspector at Kurathikkad Police Station. On that day, in Crime No.281/22 under Sections 457, 380, 461 read with 34 IPC, he arrested the first accused, at about 10 a.m. He recorded his confession statement in police custody. In that statement, the accused disclosed that along with the second accused, gone on scooter KL-29-L-2521, driven by A1 with A2 seated behind, to an unoccupied house. They broke open the front door and attempted theft. Based on this disclosure, PW8 accompanied the accused to Thekkekara Village, Ponnara Muri, where the accused pointed out *Bahulayam House*. Since the house was locked, PW8 enquired with neighbours and learned that it belonged to PW1. He then returned to the station and registered this case. The relevant portion of the confession statement was produced before court and marked as Ext. P7. PW8 identified his signature therein.

17. PW8 admitted that the alleged incident took place on 05.06.2022 and that the FIR was registered only on 19.06.2022. He stated that no witness had given him any written complaint or statement between those dates. He further admitted that the statement recorded mentions that no property was lost and that the case was registered *suomotu*. PW8 deposed that no witness had seen the commission of the offence and that no fingerprint evidence was collected from the scene. He admitted that the witnesses did not state that silver ornaments or a wristwatch were lost. He affirmed that PW1 had given statements marked as *Ext.D.* and *Ext.D2.*

18. The accused is alleged to have committed the offences punishable under Sections 457, 380 r/w 511 of IPC. **Section 380 of IPC** reads as follows: "*Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with Imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*" **Section 457 of IPC**

reads as follows: *"Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine, and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years."*

19. The prosecution case is built entirely on circumstantial evidence, which legally requires an unbroken chain of events pointing exclusively to the guilt of the accused. The prosecution relies on Section 27 of the Indian Evidence Act regarding the recovery of items to incriminate the accused. There are no eyewitnesses to the actual crime. The homeowner (PW1) and the caretaker (PW3) only witnessed the aftermath of the incident. The accused were identified by them merely because the police physically brought them to the house.

20. Thus, the only evidence against the accused is that of PW8. Let us examine how PW8 reached the accused and concluded that they were the offenders. On 19 June 2022, PW8 arrested the first accused in connection with an entirely different case (Crime No. 281/22). According to PW8, while in police custody for that case, A1 gave a confession statement admitting that he and the second accused had gone on scooter KL-29-L-2521 to a house on 5 June 2022 and broke open the front door in an attempt to commit theft. Based on this confession, PW8 took the accused to the area described in the statement. The accused physically pointed out the exact house they had allegedly targeted (Bahulayam House). PW8 then verified the owner's name with neighbours and registered the FIR for this case suo motu. He further strengthened his conclusion by recovering the scooter based on information provided by A1 and a hammer (MO1) based on a disclosure by A2. These documents were, in fact, prepared in connection with Crime No. 281/22.

Section 27 of the Indian Evidence Act reads as follows: *"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."* Under **Section 25 and 26 of the Evidence Act**, any confession made to a police officer or while in police custody is inadmissible as evidence against the accused. There is one narrow exception: if the accused gives information that leads to the discovery of a "distinct fact" which the police did not previously know, that specific portion of the statement becomes admissible. For a

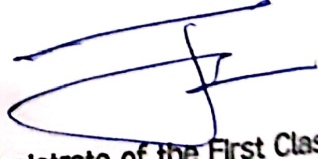
statement to be valid under the discovery exception, the fact must be hitherto unknown to the police. If the police or the public already knew about the fact, there is no 'discovery.' Here, PW3 was the first to learn about the theft. By the next morning, when PW1 and PW2 arrived, the police were already present at the scene. Hence, there is no justification for registering this case after two weeks and claiming that the police discovered any new fact. The only new facts they could possibly claim relate to the alleged weapon and vehicle. However, to establish the accused's connection with these items, there must be independent proof showing that the same weapon and vehicle were used in this incident. Apart from these deficiencies, several factors completely undermine the prosecution case. First, the prosecution has withheld the initial complaint made by PW1, in which he specifically alleged theft and not merely an attempt to commit theft. There is also a substantial and unexplained delay in the registration of the FIR. The evidence and conclusions proposed by PW8 are far too weak to sustain a finding of guilt against the accused.

Hence these points are found against the prosecution.

21. **As to Point No. 4:-** In light of the discussions outlined in points 1 and 2, I find that the accused are not guilty of the charges leveled against them. Accordingly, they are hereby acquitted of the offenses punishable under Sections 457, and 380 r/w 511 of IPC.

22. **In the result:-** The accused are acquitted under Section 248(1) of the Cr.P.C. for the offences punishable under Sections 457, and 380 r/w 511 r/w 34 of the IPC.

(Dictated to the Confidential Assistant directly, corrected and pronounced by me, in open court, on this the 29th day of April, 2026)


Judicial Magistrate of the First Class-I

APPENDIX

Witnesses for prosecution

PW1 Babukuttan
PW2 Radha
PW3 Ramachandran
PW4 Suvarna Rajan

PW5 Siddique
PW6 Somasekharan Nair

PW7 Rajeev (ASI)
PW8 Deepa.M.D
PW9 Sunumon.K (SI)

Exhibits for prosecution:

P1	:	Scene mahazar proved through PW4
P2	:	Certified copy of seizure mahazar proved through PW5
P3	:	Certified copy of recovery mahazar proved through PW
P4	:	Seizure mahazar proved through PW7
P5	:	Series- Photographs of house (5 nos.) proved through PW7
P6	:	Ownership certificate proved through PW8
P7	:	Relevant portion of confession statement proved through PW9
P8	:	FIR proved through PW9
P8(a)	:	Portion of First Information proved through PW9
P9		Arrest memo of A1 proved through PW9
P10		Arrest memo of A2 proved through PW9
P11		Form 15 proved through PW9

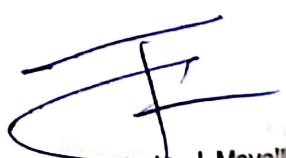
Material Objects :

MO1: Hammer

Witness for Defence: Nil

Exhibits for Defence:

D1	Relevant portion of statement of PW1
D2	Relevant portion of statement of PW1


Judicial First class Magistrate -I, Mavelikara