

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
Haripad**

Present:-**Smt. Maneesha.K. Bhadran, Judicial First Class Magistrate-II,**

Friday, the 22nd day of May, 2026

CC No.6/2021

Complainant : State represented by the Sub Inspector of Police, Haripad Police Station in Crime No.73/2020
(By Sivaprasad P. M., Assistant Public Prosecutor, Grade-I, Haripad)

Accused : Ajith Thomas @ Vava, aged 43 years, S/o.Thomas, Manickakath Veedu, Thamallackal North muri, Kumarapuram Village. Now residing at House No.176, Marad BCT road, Ernakulam District.
(By Advocate Jayan P.)

Charge : Offences punishable u/ss.457 and 380 Indian Penal Code.

Plea : Not guilty

Finding : Not guilty

Sentence : Accused is found not guilty of the offences under sections 457 and 380 Indian Penal Code. Therefore, the accused is acquitted u/s.248(1) Cr.PC. The bail bond of the accused stands cancelled and he is set at liberty.

DESCRIPTION OF ACCUSED

Name	Father's name	Religion	Residence	Age
Ajith Thomas @ Vava	Thomas	Christian	Manickkakth Veedu, Thamallackal North muri, Kumarapuram Village. Now residing at House No.176, Marad BCT road, Ernakulam District.	43/21

DATES OF

offence	Report of complaint	Apprehension of accused	Released on bail	Commence ment of trial	Close of trial	Sentence or order
14.01.2020	14.01.2020	03.08.2020	18.12.2020	29.11.2021	19.05.2025	22.05.2026

This case having been finally heard on 19-05-2025 and the court on 22-05-2026 delivered the following:-

J U D G M E N T

1. Accused stands charged in Crime No.73/2020 of Haripad Police Station alleging commission of offences punishable under sections 457 and 380 IPC.
2. **The prosecution case in brief is that:-** On 14.01.2020 at 2.30 a.m, accused broke opened the window pane of the bedroom of Bismilla Manzil, bearing No.5/238 of Kumarapuram Panchayath, Thamallackal South Muri, Kumarapuram Village, the residence of PW1 and committed theft of two gold bangle weighing 6 grams each worn by the daughter of PW1, who was sleeping in the bedroom. Accused thereby committed the above said offences.
3. Pursuant to the FIS lodged by PW1, FIR was registered by PW8 who conducted initial investigation. As per the confession of accused recorded in crime No.935/2020 of Haripad Police Station, he was arrested by PW9 who conducted further investigation and laid final report against accused before the court alleging commission of offences punishable under sections 457 and 380 IPC.
4. Cognizance of offences under sections 457 and 380 IPC was taken and processes issued to accused. He was enlarged on bail and given the copies of the case records. After hearing both sides and perusing the prosecution records, charge for offences under sections 457 and 380 IPC was framed. It was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. Among the eleven witnesses cited in the final report nine were examined as PW1 to 9 and Exts.P1 to P6 and MO-1 were marked. It is reported that CW9 is no more. After closing the evidence of prosecution, accused was questioned u/s.313(1)(b) Cr.P.C for the purpose of enabling him to personally explain the circumstances brought out against him in the evidence. He denied all the allegations levelled against him and filed additional statement.
6. Heard both sides. Perused records.
7. The following points arise for consideration:-
 - (1) Whether on 14.01.2020 at 2.30 a.m, accused committed house breaking by opening the window pane of the bedroom of the residence of PW1 by name Bismilla Manzil, bearing No.5/238 of Kumarapuram Panchayath, Thamallackal South Muri, Kumarapuram Village, as alleged?
 - (2) Whether accused committed theft from the above mentioned house as alleged?
 - (3) If so, what offence if any is committed by the accused?
 - (4) What is the punishment if convicted?
8. **Point Nos.1 to 3:-** For convenience the above points are discussed together. PW1 is the defacto complainant. PW8 registered Ext.P4 FIR and prepared Ext.P2 scene mahazer. PW3 and PW4 are the witnesses to Ext.P2 scene mahazer. PW9 arrested accused pursuant to confession of accused recorded in crime No.935/2020 of Haripad police station, conducted investigation, recovered MO1 as per Ext.P3 seizure mahazer and produced the same before court as per Ext.P6 property list. PW5 and PW7 are cited as witnesses to Ext.P3 seizure mahazer. PW6 is cited as the appraiser who

verified the gold ingot.

9. Evidence of PW1 would show that on the night of 14.01.2020 while he was sleeping along with his child and PW2, his wife in the bedroom of Bismilla Manzil, two gold bangles weighing 6 gms each worn by his daughter was stolen by breaking open the window pane. His evidence would show that he came to know about the theft at 7.00 a.m on 14.01.2020. PW2, testified in tune with her husband. The testimony of PW1 and PW2 would show that theft of gold chain occurred at Bimilla house on the night of 14.03.2020 by breaking open the window pane. A close reading of the testimony of PW1 and PW2 would show that they have no clue as to the identity of the accused.
10. Evidence of PW8 would show that he registered Ext.P4 FIS pursuant to Ext.P1 FIS of PW1 and conducted initial investigation. The testimony of PW9 would show that the role of the accused in the above crime was unravelled on confession of the accused in crime No. 935/2020 of Haripad Police Station. Evidence of PW9 would show that he recovered MO-1 gold ingot from Maharaja Jewellery, Eramalloor as per the confession of accused. It is categorically testified by PW9 that accused was identified by the owner of the jewellery while recovering MO-1 gold ingot as Ext P3 seizure Mahazar.
11. CW5, the owner of the jewellery failed to appear before the court. PW5 and PW7, the witnesses who were alleged to be present during recovery of gold ingot also failed to support the prosecution case and feigned ignorance as to the recovery of the ingot. PW6 appraiser who was allegedly present during

recovery of the ingot has not identified MO1 as that recovered. The recovery of MO-1 as per Ext.P3 seizure mahazer is not convincing. Further MO-1 alleged to be recovered on 13.08.2020 is seen produced before court on 11.11.2020. No explanation as to the delay was furnished. The delay in producing MO-1 before court also strikes at the root of the prosecution case that it was duly recovered. There are no occurrence witnesses to the alleged incident and scientific evidence to link the accused to the crime. The prosecution has solely relied on the confession made by accused in Crime No.935/2020 of Haripad police station.

12. In **Madhu vs. State of Kerala, 2012 (2) SCC 399**, Hon`ble Supreme Court

while discussing the mandate of S.27 of the Evidence Act held that:-

“ As an exception, S.27 of the Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of S.25 and S.26 of the Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under S.27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Ss.27 aforesaid, is limited “... as relates distinctly to the fact thereby discovered....”. The rationale behind S.27 of the Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. The discovery of facts itself, therefore, substantiates the truth of the confessional statement. And since it is truth that a court must endeavour to search, S.27 aforesaid has been incorporated as an exception to the mandate contained in S.25 and S.26 of the Evidence Act.”

13. No new fact was discovered from the statement of the accused herein. S.27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance is limited as it relates distinctly to the fact thereby discovered. The confession allegedly made by accused while in custody in crime No.935/2020 is hit by S.26 of the Indian Evidence Act,1872 and cannot be relied. Prosecution has miserably failed to prove the recovery of the article alleged to be stolen.
14. Hence, in the absence of any other material evidence against accused, he cannot be held guilty of the alleged offences. Prosecution has failed to prove that accused committed house breaking as alleged. Prosecution has also failed to prove beyond reasonable doubt that the accused committed theft as alleged. Accused is entitled to benefit of doubt holding that prosecution has not been able to prove its case beyond reasonable doubt. Hence points 1 to 3 are found against the prosecution.
15. **Point no.4:-** In the light of above findings, accused is found not guilty of the offences under sections 457 and 380 IPC. Therefore, the accused is acquitted u/s.248(1) Cr.PC. The bail bond of the accused stands cancelled and he is set at liberty. MO1 gold ingot is ordered to be released to PW1 after the expiry of the appeal period.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court this the 22nd day of May, 2026.

Sd/-
Judicial First Class Magistrate-II

APPENDIX

Witnesses for prosecution:-

PW1	:	Abdul Vahid
PW2	:	Sumayya
PW3	:	Sabeer
PW4	:	Shafeeq
PW5	:	Sijin Solomon
PW6	:	Selvakumar
PW7	:	Faisal
PW8	:	M. Hussain
PW9	:	Jijin Joseph

Exhibits for prosecution:-

P1/PW1	:	F.I.S
P2 /PW3	:	Scene Mahazar
P3/PW6	:	Seizure Mahazar
P4/PW8	:	FIR
P5 & P5(a)/PW9	:	Arrest memo, Inspection memo
P6/PW8	:	Property list

Material objects marked:

MO1	:	Gold Ingot
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Sd/-
Judicial First Class Magistrate-II