

IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE OF  
TALIPARAMBA

Present: Sri.Anuraj.M.V.,  
Judicial First Class Magistrate

Dated this the 8<sup>th</sup> day of April, 2026/ 18<sup>th</sup> day of Chaithra 1948

CC 116/2025

Complainant : State represented by the S.I of  
Police, Alakode police station in  
Crime No. 169/2016  
(By Sri. Abdussatar.V.P., A.P.P.)

Accused : Sabir  
(By Adv.Denny George)

Offence : u/s. 379 r/w 34 IPC

Plea : Not guilty

Finding : Not guilty

Sentence/Order : Accused is acquitted u/s. 248(1) of Cr.PC.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Father's name	Occupation	Residence	Age
1	Sabir	Zubair	-----	Arinchira (H), Pankayam, Kunnumkai	19/16

DATE OF

Occurrence	Complaint	Apprehension of appearance	Released on bail	Commencement of trial	Close of trial	Sentence/ Order	Explanation of delay
12-02-16	14-02-16	04-08-25	07-08-25	18-08-25	26-03-26	08-04-26	

**JUDGMENT**

This case was taken on file on the basis of the final report filed by SI of Police, Alakode Police Station in Cr.No. 169/2016 alleging offences punishable u/s. 379 r/w 34 IPC.

2. The prosecution case in brief is as follows, on 12.02.2016 at about 2.00 am at Meembatti in Vellad amsom, the accused in furtherance of their common intention committed theft of two goats of PW1. Thus, the accused committed the offence punishable U/s. 379 r/w 34 IPC.

3. Originally, the case was taken on file as CC 723/2016. All accused appeared before the court and they were released on bail. Copies of all relevant documents relied on by the prosecution were furnished to them. Thereafter on hearing both sides, charge u/s. 379 r/w 34 IPC was framed, read over and explained to the accused. They pleaded not guilty and claimed to be tried.

4. Thereafter from the side of prosecution PW1 to PW6 witnesses were examined and Ext.P1 to P5 documents were marked. Since A1, A2 and A4 absconded at the time of questioning u/s. 313 Cr.PC and the judgment was pronounced against A3. Case against A1, A2 and A4 was split up and refiled as CC 473/2023. In CC 473/2023, A1 alone appeared before the court and judgment was pronounced against him. Case against A2 and A4 was split up and refiled as CC 2681/2023. In CC 2681/2023, A4 alone appeared before the court and judgment was pronounced against him. Case against A2 (accused herein) was split up and refiled as the above case. He was released on bail. The above accused faced trial in CC 723/16 upto the stage of questioning u/s. 313 Cr.PC. Hence, the accused was questioned u/s 313 Cr.P.C. He denied all the incriminating circumstances appearing in evidence against him. Thereafter, accused was called upon to enter his defence and to adduce his evidence. No evidence was adduced on the side of the defence.

5. Heard. Following points arise for consideration:

1. Has the prosecution proved that the accused in furtherance of their common intention committed theft of two goats of PW1 and thereby committed the offence punishable under section 379 of IPC?
2. Has the prosecution proved that the accused acted in furtherance of their common intention?

3. If found guilty what is the order as to sentence and punishment?

6. Point No. 1 and 2 : For the sake of convenience and to avoid repeated discussion of the same evidence, these points are considered together. PW1 is the owner of the goat which is alleged to have stolen by the accused persons. PW2 is the neighbour of PW1. PW2 identified the goat through its photographs marked as Ext.P1. PW3 is the attesting witness to Ext.P3 seizure mahazar by virtue of which the car used by the accused were seized and Ext.P4 arrest memo by virtue of which the accused persons were arrested. PW4 is the attesting witness to Ext.P5 scene mahazar. PW5 is the prior owner of the car seized as per Ext.P3 seizure mahazar and as per the deposition of PW4, he entrusted the said car with PW5 for giving it for rent. PW5 deposed that he received the car of PW4 and he gave it to CW13 for rent. The presence of CW13 couldn't be secured inspite of repeated coercive steps.

7. Learned counsel appearing on behalf of the accused vehemently argued that there was no such incident of theft as alleged by the prosecution. Learned counsel appearing on behalf of the accused placed reliance upon the fact that no first information statement was seen lodged by PW1 after the incident to prove that no incident of theft as alleged by the prosecution has actually happened because normally no prudent person would refrain himself from lodging the complaint if his property was stolen. On perusal of

the records, it is seen that the first information report of this case was registered on the basis of confession statement of the first accused (Sameer) of this case. Admittedly, no first information statement was lodged by PW1 regarding the incident. As per the deposition of PW1, he had informed about the incident to the police but there is no material to show that PW1 had given any information about the incident to the police. It can be perceived through commonsense that if an incident as alleged by the prosecution has actually taken place PW1 would have lodged first information statement at the police station soon after the incident. Here, the first information report was registered after two days of the occurrence. The prosecution hadn't given any explanation as to what prevented PW1 from lodging any complaint at the police station regarding the incident and this fact is fatal to the case of the prosecution and creates reasonable doubt as to whether the incident deposed by PW1 has actually taken place at the place of occurrence.

8. Here, admittedly the goat seen in Ext.P1 photograph was not seized either from the possession of the accused persons or recovered on the basis of the statement of the accused persons. The main incriminating circumstance relied by the prosecution to prove the guilt of the accused herein is that the accused persons were arrested from the car which was used for the commission of the offence.

9. As per the deposition of PW1, when he gone out of the house, he saw a car going towards the Alakode direction. PW2 is the neighbour of PW1 and he supported the above mentioned statement of PW1 and stated that it was an alto car and the registration number of the car was KL 60 F 3864. As per the deposition of PW3, the accused persons were arrested from this car. Admittedly, PW1 and PW2 hadn't seen the accused persons going in the said car from the place of occurrence.

10. Learned counsel appearing on behalf of the accused vehemently argued that the deposition of PW2 is not believable by placing reliance upon the omission between the deposition of PW2 and his statement recorded u/s. 161 of the code of criminal procedure. PW2 deposed the number as well as the colour of the car in his statement before the court but this was omitted in his statement recorded u/s. 161 of the code of criminal procedure. PW2 hadn't given any explanation when he was confronted with this omission.

11. Moreover, learned counsel appearing on behalf of the accused argued that PW2 hadn't had the opportunity to note either the number of the car or the colour of the car from the place of occurrence. Admittedly, the incident occurred at 2.30 am in the midnight. As per the deposition of PW2, he woke up when he was called by the neighbours and he saw the car while he was going to the house of PW1. As per the deposition of PW1, he understood that two goats were stolen when he came and looked on hearing

the barks of dog and at that time, PW1 screamed ‘കള്ളൻ കള്ളൻ‘ and at that time, the car started and went away.

12. When viewed from a realistic perspective, it can be perceived through commonsense that the neighbours came to know about the incident after this screaming of PW1. So, by the time, the neighbours called PW2 and PW2 reached the spot, the car must have gone away. From the above discussed circumstances, it can be concluded that PW2 hadn't had the opportunity to see the car which went away from the place of occurrence. So, the deposition of PW2 cannot be relied to prove that the car seized along with the accused persons was the car seen by PW1 at the place of occurrence.

13. With regard to the deposition of PW1, he hadn't stated either the number or the colour of the car seen at the place of occurrence. Apart from this, PW1 also hadn't stated that he can identify the car seen at the place of occurrence. So, it can be concluded that PW1 also hadn't had the opportunity to clearly see and understand the car at the place of occurrence in that darkness. Considering the above discussion, it can be concluded that the prosecution failed to prove beyond reasonable doubt that the car seized at the time of the arrest of the accused persons was the car seen by PW1 and PW2 at the scene of occurrence.

14. Even if it is believed to be true that the car seized at the time of the arrest of the accused persons was the car seen by the PW1 and PW2 at

the place of occurrence, still, it is not an incriminating circumstance because neither PW1 nor PW2 had seen the accused person herein going in that car from the place of occurrence. Merely because the accused person herein was seen in the said car after two days of the incident only creates a suspicion and suspicion however grave cannot be substituted as proof.

15. The other circumstance relied by the prosecution to prove the guilt of the accused is the confession of the first accused in the case that he along with the accused herein and two others committed the theft. Here, the above mentioned confession of the first accused in this case is not admissible in evidence because the first accused made the confession to the police while he was in the custody of the police and hence, it is hit by section 25 of the Evidence Act.

16. Furthermore, PW1 deposed that on 01.02.2016 afternoon, three persons came to his house for buy the goat and that sale hadn't taken place since they hadn't come to an agreement with the price. PW1 further stated that on 15.02.2016, ie, the day after the arrest of the accused persons, the police brought the four accused persons at his house and PW1 stated that three persons among those four persons were the persons who approached him on 01.02.2016 for buying goat. PW1 hadn't clarified that the accused person herein was present along with the other two persons came to his house on 01.02.2016. No material was also adduced from the side of the prosecution to show that the accused person was present along with two

other persons who approached PW1 on 01.02.2016. Therefore, the prosecution failed to prove beyond reasonable doubt that the accused was the person who approached PW1 on 01.02.2016 for buying goat. Even if it is believed to be true that the accused person was present along with the two other persons who approached PW1 on 01.02.2016 for buying goat, that fact alone without any other cogent evidence is not sufficient to prove that the accused herein committed theft of the goat of PW1.

17. Therefore, on the evaluation of the entire evidence the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the points are answered in favour of the second accused.

18. **Point No.3**:- In view of the discussion on point Nos.(i) and (ii), accused is found not guilty of the offence punishable u/s. 379 r/w 34 IPC.

In the result, accused is found not guilty of the offence punishable under section 379 r/w 34 IPC and he is acquitted under section 248 (1) of code of criminal procedure. His bail bond stands cancelled and he is set at liberty.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 10<sup>th</sup> day of April, 2026).

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE,  
TALIPARAMBA

APPENDIXList of Prosecution/Defence/Court WitnessesA. Prosecution Witnesses

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	Joseph @ Ouseppachan	Eyewitness
PW2	Somichan Joseph	Eyewitness
PW3	A.J.George	Mahazar witness
PW4	Joy	Mahazar witness
PW5	Aaris.V.V.	Occurrece witness
PW6	Abdul Rasheed	Occurrence witness

B. Defence witness : NIL

C. Court witness : NIL

List of Prosecution/Defence/Court ExhibitsA. Prosecution Exhibits

Sl.No.	Exhibit number	Description
1	Ext.P1	Photograph of goat
2	Ext.P2	451 petition dated 16.03.2016
3	Ext.P3	Certified copy of seizure mahazar dated 14.02.2016

4	Ext.P4	Arrest memo dated 14.02.2016
5	Ext.P5	Scene mahazar dated 15.02.2016

- B. Defence Exhibits : NIL  
C. Court Exhibits : NIL  
D. Material Objects : NIL

Sd/-  
JUDICIAL FIRST CLASS MAGISTRATE,  
TALIPARAMBA

//True copy//