

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

Present :- Niyatha Prasad,  
Judicial First Class Magistrate – II, Kanjirappally

Friday, the 18<sup>th</sup> day of March, 2026  
(27<sup>th</sup> day of phalgnam, 1947)

**CC No. 883/2015**

**Complainant** : State of Kerala represented by the Sub-Inspector of Police, Karukachal P.S in Crime No. 441/2015.  
**(By Sri. Shajahan K.S, APP-II, Kanjirappally)**

**Description of accused**

SL. No.	Name	Father's Name	Age	Occupation	Residence
A1.	Shamseer C.P @ Arun Mandarappu	Kunju Ahmed	30/15	...	Chappentekuth Puthiyapurayil (H) Moyyam Desam, Thaliparambu Taluk, Kannur District
A3	Sunny Joseph @ Palakkayam	Jopseph	44/15		Puvathaniyil (H), Kandumangalam P.O Kottopadam Village, Mannarkadu Taluk Palakkadu District

**(By Adv. Sri. Sajeesh Shajahan)**

Offence : Under sections 380, 454, 461, 34 of IPC

Plea : Not Guilty.

Finding : Not Guilty.

Sentence/Order : 1<sup>st</sup> accused is acquitted u/s.248(1) of Criminal Procedure Code 1973.  
Case against the 3<sup>rd</sup> accused is split up and refiled as CC 888 /2015.

**Dates of :-**

Offence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of evidence
08.03.15	13.03.15	17.03.15	...	...	21.10.15	05.12.17

Close of trial	Sentence or order	Service of copy of judgment or finding on accused	Explanation of delay	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C
12.03.26	18.03.26	...	Stenographer not available	....

**J U D G M E N T**

This is a case charge sheeted by the Sub Inspector of Police, Karukachal Police Station in Crime No. 441/2015 against the accused alleging commission of offences punishable under sections 380, 454, 461 r/w 34 of Indian Penal Code (hereinafter referred to as “IPC”).

2. The prosecution case in brief is as follows:- The accused persons 1 to 3 in furtherance of their common intention to commit the offence of theft on 08.03.2015 at 04.15 p.m. criminally trespassed into the bedroom of the house of PW1, bearing No. 43 in Ward No. VII of Nedumkunnam Grama Panchayath near Vyakuzhi Bhagham in Nedumkunnam Village and took ₹ 30,000 which was kept inside the almirah in the said bedroom. The accused persons have also taken a Canon digital camera and a Titan company made watch and Indane company gas cylinder from the said house and escaped from the place in a Maruthi Zen car bearing registration number KL-3 B 8206 driven by accused no. 3. Thereby the accused is alleged to have committed the offences punishable under sections 380, 457, 461 of IPC.

3. On the basis of the statement given by the informant to CW10, he registered FIR u/s. 380, 454, 461 of IPC. Final report was filed before the court and cognizance was taken for the offences punishable under sections 380, 454, 461, 34 of IPC and the case was initially taken on file as C.C.630/2015 before JFCM-I, Changanasserry. The first accused is in custody in connection with another crime. He is represented by a lawyer of his own choice. Copies of all relevant prosecution records were furnished to the accused and thereby the mandate under section 207 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") was complied with. On appearance of the accused 1 and 2, they were heard on the question of framing of charge. After perusing the prosecution records, charge was framed u/s.240 Cr.P.C and it was read over and explained to the accused 1 and 2 n u/s 240(2) Cr.P.C for the offences punishable under sections 380, 454, 461, 34 of IPC to which the accused pleaded not guilty and claimed to be tried.As per the OM No. 1306/2025 dated 19.03.2025 of the Hon'ble Chief Judicial Magistrate Court, Kottayam the case was transferred to this court and it was refiled as CC 883/2015. During the course of trial the 3<sup>rd</sup> accused remained continuously absent and hence case against 3<sup>rd</sup> accused is split up.

4. From the side of prosecution, PW1 to PW6 were examined and Exts.P1 to P12 were marked. Material objects MO1 & MO2 were marked. CW3 was reported to be abroad and inspite of repeated coercive steps, his presence could not be procured. CW4 was given by the prosecution. CW8 and CW9 were not produced by the prosecution inspite of repeating coercive steps even through the District Police Chief. Since there were incriminating circumstances against the accused, he was given an opportunity to personally explain the incriminating circumstances against him under section 313 (1)(b) Cr.P.C and he denied all the incriminating circumstances against him and maintained the plea of innocence. During 313 Cr.P.C examination, the accused stated that he is innocent in this case and that he has no connection with the alleged offence. No oral or documentary evidence was adduced from the side of defence.

5. Heard both sides. Perused the records.

6. Points that arise for consideration are:-

- (i) Whether the accused in furtherance of their common intention committed theft of articles worth Rs 59,000/- from the house of PW1 and thereby committed the offence punishable u/s.380 r/w 34 of IPC?
- (ii) Whether the accused in furtherance of their common intention committed house breaking by in order to commit the offence of theft and thereby committed the offence punishable u/s. 454 r/w 34 of IPC?
- (iii) Whether the accused in furtherance of their common intention to commit theft broke open the door of the house of PW1 and opened the locker in the bedroom and thereby committed the offence punishable u/s. 461 r/w 34 of IPC?
- (iv) If found guilty, order as to sentence?

7. **Points Nos.(i) to (iii)**: Since these points are interconnected, they are considered together for brevity and convenience. Prosecution case started when PW6 registered Ext. P3 first information report on the basis of Ext. P1 statement given by PW1 The investigation was conducted by PW6 and after completion of investigation, final report was filed by him. The learned APP argued that the prosecution has adduced enough evidence to prove the guilt of the accused and hence the accused is liable to be convicted for the alleged offence. *Per contra*, the learned counsel for the accused argued that the prosecution has failed to prove the case and hence the accused is entitled to get a clean acquittal.

8. The specific case of the prosecution is that, the accused persons 1 to 3 in furtherance of their common intention to commit the offence of theft on 08.03.2015 at 04.15 p.m. criminally trespassed into the bedroom of the house of PW1, bearing No. 43 in Ward No. VII of Nedumkunnam Grama Panchayath near Vyakuzhi Bhagham in Nedumkunnam Village and took ₹ 30,000 which was kept inside the almirah in the said bedroom. The accused persons have also taken a

Canon digital camera and a Titan company made watch and Indane company gas cylinder from the said house and escaped from the place in a Maruthi Zen car bearing registration number KL-3 B 8206 driven by accused no. 3.

9. PW1 is the owner of the house in which the alleged incident had occurred. He deposed that the alleged incident occurred on 08.03.2015 after 02.30 p.m. at his house near Devagiri in Nedumkunnam Village. He testified that by around 02.15 p.m. they had locked the front and back door of the house and went outside. When they returned by around 11 p.m. it was found that the back door of the house was broke open. Hence he did not enter the house and informed the matter to the police as well as his neighbours. When the police came, along with policeman, he entered inside the house and found the articles inside the bedroom scattered around. When the almirah was inspected, the cash bag was found to be missing. He testified that around 25,000 to 50,000 rupees was present inside the cash bag. He also stated that a digital camera and a titan company watch was also found missing from the almirah. He further testified that when the house was checked as a whole it was found that the gas cylinder of Indane company was missing. Hence he had given a statement to the police which is marked as Ext P1. He also testified that he can identify his cash bag and the other articles which were taken from his custody. The cash bag was marked as MO1 and the visiting cards which were found inside his bag was marked as MO2 series. He also deposed that he can identify the accused who were shown to him by the police. During the examination of PW1 before this court, the first accused was not produced. However, the learned counsel for the accused has submitted that he has no identity dispute.

10. PW6 is the Investigation Officer in this case. He deposed that on 13.03.2015 while he was working as Sub Inspector of Police at Karukachal Police Station he had recorded the statement of PW1 and on the basis of the same he registered Ext P3 FIR under sections 451, 454, 461, 380 IPC. Thereafter he visited the place of occurrence and prepared Ext P2 scene mahazar in the presence of

PW5. As per Ext P2, the place of occurrence is the house of PW1 bearing number 43 in Ward No. VII of Nedukunnam Grama Panchayath near Vyakhuzha Bhagom in Devagiri P. O., Nedukunnam Kara, Nedukunnam Village. While the investigation in this case was proceeding it was informed that the first accused herein was arrested by in Crime No. 88/2015 of Perivantham Police Station and hence as per the order obtained from JFCM-1, Changanassery, the accused was formally arrested as per Ext P4 arrest memo. Thereafter the first accused was taken into police custody and on the basis of the confession statement given by the first accused, that he had taken a bag, watch, money, camera and gas cylinder from the house of PW1 and had kept the same in his rented house at Kumali PW6 proceeded along with the first accused and recovered the same as per Ext P5 recovery mahazar. The relevant portion of the confession statement of the first accused which led to the recovery of said articles is marked as Ext P5 (a). The articles so seized by were produced before this court as per Ext P6 property list. Further on questioning the first accused he revealed that two other persons were also included in the commission of the offence and hence as per Ext P7 report section 34 of IPC was added. Exit P8 is the complete address report of the first accused.

11. Thereafter it was informed that the third accused herein was arrested by Peruvandhanam Police in Crime No. 88/2015 and hence as per the order of JFCM-1 Changannassery, the 3rd accused was formally arrested as per Ext P9 arrest memo. He was taken into police custody and questioned. On the basis of the confession statement given by accused no. 3 and as per Ext P10 recovery mahazar, the regulator and the tube attached to the gas cylinder were recovered from the rented house at Chakkuvalam, Kumali. The relevant portion of the confession statement of the third accused which led to the recovery of the articles were marked as Ext P10 (a). The said articles were produced before this court as Ext P11 property list. Ext P12 is the certified copy of the mahazar by which the car bearing registration number KL3 B 2863 was taken into custody by

Peruvanthanam Police. PW6 identified the first accused who was produced through video conferencing mode. After completion of investigation final report was laid down by PW6.

12. The learned APP submitted that the evidence of the police witness categorically proves the guilt of the accused and hence he should be punished in accordance with the law. On the other hand, the learned counsel for the accused submitted that in the absence of supporting and corroborating evidences, the evidence of police witness alone cannot be taken into consideration. However I am not in agreement with the said argument raised by the learned counsel for the accused. When the evidence of official witness is trustworthy and inspiring confidence, then there is nothing that prohibits this Court from relying on the evidence of the official witness. Hence we can now analyse the evidence of the witnesses more in detail.

13. The first and foremost convention of the learned defence counsel is that there is a delay of 5 days in giving Exit P1 FIS to the police. The learned APP submitted that the delay is properly explained by the prosecution and hence the same is not fatal to the prosecution case. PW1 during his examination before the courtl stated that he is a businessman and in connection with his business he had to leave to Bangalore and after returning he had given Ext P1. During cross examination he submitted that he had reached his house at 11.00 p.m. and had informed the matter to the police on the same day and the police had reached the place and it was in the presence of the police he had entered inside the house. This means that nothing prevented him from giving a statement to the police on the same day itself. The delay in lodging FIR by itself is not fatal to the prosecution. However, when coupled with other factors, the same can be considered as a mitigating factor.

14. Admittedly PW1 did not witness the actual incident in this case. PW2 who is alleged to have seen the accused persons coming in the car turned hostile to the prosecution case by deposing that he neither saw the incident nor gave any

statement to the police. PW4 is the person who had helped the accused persons take the rented house and Kumali. PW3 is the owner of the said house. He deposed that it was the third accused who had taken the house on rent and he deposed that he does not remember having seen the first accused along with the third accused. PW4 also stated that he had helped third accused to find a rented house and does not know whether the first accused was present along with the third accused. As rightly pointed out by the learned defense counsel, the only evidence that connects the first accused is the evidence of PW6, the Investigation Officer. However, even the prosecution could not produce any evidence to connect the first accused with the alleged house bearing number 79 in Ward No. 15 of Chakkuvallam Grama Panchayath, Kumali. There is no evidence to show that the first accused resided in the said house. No forensic or fingerprint evidence was collected from the place of occurrence. Merely on the basis of the confession statement alleged to be given by the accused, his guilt does not stand proved.

15. Section 27 provides that the recovery which emerges from the confession statement is only a corroborative piece of evidence. When other evidences are proved, evidence under Section 27 of the Evidence Act becomes relevant. The law as laid down under section 27 of the Evidence Act is the recovery of the article which is in the exclusive knowledge of the accused. While recovery under S.27 of the can be a crucial piece of evidence , it cannot be the sole basis for conviction. It is not substantive evidence. It needs to be corroborated by other evidence to establish guilt beyond a reasonable doubt. Recently, the Supreme Court in **Manoj Kumar Soni v. State of Madhya Pradesh** reported in **AIR 2023 SC 3857** considered the question - can disclosure statements *per se*, unaccompanied by any supporting evidence , be deemed adequate to secure a conviction?. It was held that although disclosure statements hold significance as a contributing fact for in unriddling a case, they are not so strong a piece of evidence sufficient on their own and without anything more to bring home the charges beyond a reasonable doubt.

16. It is the cardinal principle of the criminal jurisprudence that prosecution must prove its case against the accused beyond all reasonable doubts. Suspicion however strong cannot take the place of the evidence. Considering the evidence on record by yardstick of probabilities, its intrinsic worth and animus of witness, this court is of the view that the accused is entitled to get the benefit of doubt in his favour. Hence point nos.(i) to (iii) are found against the prosecution.

17. **Point No.(iv):** In view of point Nos.(i) to (iii), this point does not arise for consideration. Hence, the first accused is found not guilty for the offences punishable under sections 380, 454, 461, r/w 34 of IPC and the first accused is liable to be acquitted for the said offences.

**In the result:-**

The first accused is acquitted U/s.248(1) Cr.P.C for the offences punishable under sections 380, 454, 461, r/w 34 of IPC. Bail bond executed by the accused stands cancelled and the accused is set at liberty. Issue release order of the accused if he is not required in any other case. Case against third accused is split up and refiled as CC 888 /2015.

Material objects produced and marked as MO1 (bag) and MO2 (visiting cards) shall be destroyed after the period of appeal and if any appeal has been preferred then after the disposal of the same.

*(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 18<sup>th</sup> day of March, 2026.)*

**Sd/-**

**JUDICIAL FIRST CLASS MAGISTRATE-II  
KANJIRAPPALLY**

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**APPENDIX**

List of Prosecution /Defence/Court Witnesses

A. Prosecution witnesses

Rank	Name	Whether Eye Witness,Police Witness, Expert witness, Medical Witness, other witness
PW1	Sobichan Abraham	Informant
PW2	Binoy	Occurrence witness
PW3	Roy Joseph	Other witness
PW4	Chinna Thampi	Other witness
PW5	E.M Chacko	Mahazar witness
PW6	V.R Vijayachnadrans	Investigation Officer

B. Defence Witness

Rank	Name	Whether Eye Witness,Police Witness, Expert witness, Medical Witness, other witness
	Nil	

C. Court Witness

Rank	Name	Whether Eye Witness,Police Witness, Expert witness, Medical Witness, other witness
	Nil	

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl.No	Exhibit Number	Description
1.	Ext P1/PW1	FIS dated 13.03.2025
2.	Ext P2/PW5	Scene mahazar dated 13.03.2025
3.	Ext P3/PW6	FIR dated 13.03.2015

4.	Ext P4/PW6	Arrest memo dated 17.03.2015
5	Ext P5/PW6	Recovery mahazar dated 18.03.2015
6.	Ext P5(a)/PW6	Portion in confession statement of the accused dated 18.03.2015
7.	Ext P6/PW6	Property list dated 18.03.2015
8.	Ext P7/PW6	Section added report dated 19.03.2015
9.	Ext P8/PW6	Address report dated 19.03.2015
10.	Ext P9/PW6	Arrest memo of A3 dated 30.03.2015
11.	Ext P10/PW6	Recovery mahazar dated 31.03.2015
12.	Ext P10 (a)/PW6	Portion in confession statement of the accused dated 31.03.2015
13.	Ext. P11/PW6	Property list dated 31.03.2015
14.	Ext.P12/PW6	Certified copy of the seizure mahazar in Cr. 88/2015 of Peruvanthanam P.S dated 11.03.2015

**B. Defence Exhibits**

Sl.No	Exhibit Number	Description
	Nil	

**C. Court Exhibits**

Sl.No	Exhibit Number	Description
	Nil	

**D Material objects**

Sl.No	Material object	Description
1.	MO1	Bag
2.	MO2 series	Visiting cards ( 2 in Nos)

**Sd/-**

**JUDICIAL FIRST CLASS MAGISTRATE-II**

**KANJIRAPPALLY**



