

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - I
NEDUMANGAD**

Present: Smt. Ruby Ismail,

Judl. I Class Magistrate-I, Nedumangad

Dated: Monday, 23rd March, 2026/ 2nd Phalguna, 1947

CALENDAR CASE No. 2133/2020

Complainant		State represented by the Circle Inspector of Police, Aryanad Police Station, in Crime No. 63/2003 Rep. by Sri.Manmohan.A, APP Sr.Gr.
Accused	1 2	Abdula, aged 25/03, S/o Kamarudeen, Laksham Veedu No. 26, Pezhummoodu, Kuzhaykkadu Muri, Veeranakavu Village (original second accused - absconding) Babu, aged 33/03, S/o Chellappan, Laksham Veedu No. 41, Pezhummoodu, Kuzhaykkadu Muri, Veeranakavu Village (original third accused) Rep by Adv. F.Satheesh Kumar, S.H. Muhammed Shafeek
Offences		Under sections 457, 461 & 380 read with section 34 of the Indian Penal Code.
Plea		Not guilty
Finding		Not guilty
Sentence or Order		The second accused (original third accused) is acquitted under section 248(1) of Criminal Procedure Code. The first accused (original second accused) went absconding. Case against him was split up and refiled as CC 172/2026

DESCRIPTION OF THE ACCUSED

Rank & Name	Father's Name	Residence	Age	Taluk
1. Abdula	Kamarudeen	Veeranakavu	25	Nedumangad
2. Babu	Chellappan	Veeranakavu	33	Nedumangad

DATE OF

Occurrence	Complaint	Apprehension or appearance	Period of detention	Release on bail	Commitment	Commencement of trial
21.02.03	21.11.05	15.02.07	15.02.07	15.02.07	-	21.02.07
Commencement of evidence	Close of trial		Sentence or Order	Service of copy of judgment or finding on	Explanation for delay	

			accused	
31.07.25	21.03.26	23.03.26	23.03.26	No delay

This case having been finally heard on 21.03.2026 and posted for judgment to 23.03.2026 and the court on the same day delivered the following:-

J U D G M E N T

The accused persons 1 to 3 were put on trial upon the final report filed by the Circle Inspector of Police, Aryanad Police Station, in Crime No. 63/2003 alleging commission of offences punishable under sections 457, 461 & 380 read with section 34 of the Indian Penal Code.

2. Prosecution case, in brief, is as follows:-

On 21.02.2003 at about 1.00 a.m., accused Nos. 1 to 3, in furtherance of their common intention, removed the roof tiles of the dining room adjacent to the kitchen of PW1's house at Parandodu, Aryanad Village, and trespassed into the house. They broke open the lock of the front iron door and the almirah and committed theft of gold ornaments and electrical items, valued at ₹1,20,000. Thus, the accused persons are alleged to have committed offences punishable under Sections 457, 461 & 380 read with section 34 of the Indian Penal Code.

3. On the strength of Ext. P1, FIS given by PW1, the case was registered as Crime No. 63/2003 of Aryanad Police Station. After completion of the investigation, the Report under Section 173(2) of the Cr.P.C. was laid against the accused alleging commission of offences punishable under the above listed provisions of law.

4. The case was originally taken on file as C.C. No. 702/2005 for offences punishable under Sections 457, 461 and 380 read with Section 34 of the Indian Penal Code. On issuance of summons, Accused Nos. 1 to 3 appeared before the Court and were enlarged on bail. Copies of all relevant prosecution records were furnished to them in compliance with Section 207 of the Code of Criminal Procedure. After considering the police report and the documents produced along with it, and after hearing both sides, this Court, being satisfied that there were sufficient grounds to proceed, framed

charge against the accused for the aforesaid offences. The charge was read over and explained to them, to which they pleaded not guilty and claimed to be tried. Thereafter, the second accused absconded and trial proceeded against Accused Nos. 1 and 3. However, after the examination of PW1 to PW17, the third accused also absconded. Upon completion of the trial, the first accused was found not guilty and was acquitted under Section 248(1) of the Code of Criminal Procedure as per judgment dated 26.08.2020. The case against Accused Nos. 2 and 3 was split up and refiled as C.C. No. 2133/2020, which is the present case.

5. Subsequently, the third accused surrendered before this Court and was enlarged on bail. He was defended by a counsel of his choice. The prosecution had cited a total of 18 witnesses in the final report. Since the third accused had already faced trial up to the examination of PW1 to PW17 in C.C. No. 702/2005, the evidence of PW1 to PW17, along with Exts. P1 to P11 and Material Objects MO1 to MO7 marked therein, shall be treated as evidence in the present case as well.

6. Thereafter, summons was issued to CW17, who was the only remaining witness to be examined. However, CW17, the Investigating Officer, was reported to be laid up. In the said circumstances, the learned APP filed C.M.P. No. 13081/2024 under Section 311 Cr.P.C. to recall and re-examine CW18/PW16, who is acquainted with the signature of CW17. The said petition was allowed, and CW18/PW16 was recalled and examined in the present case as PW1. Through him, the documents produced by the prosecution were marked as Exts. P1 to P11.

7. However, for the sake of convenience and to avoid confusion, CW18 shall hereinafter be referred to as PW16, as originally numbered in C.C. No. 702/2005. Further, certain documents which were already marked in C.C. No. 702/2005 have been re-marked in the present case, which is likely to cause confusion. Hence, for the sake of clarity and convenience, those documents which are re-marked in the present case shall be referred to by

their original exhibit numbers as assigned in C.C. No. 702/2005. Accordingly, Ext.P1 and Ext.P2 in the present case refer to Ext.P8 and Ext.P9 respectively in the earlier case. Ext.P4 refers to Ext.P5 in the earlier case. Ext.P5 refers to Ext.P6 in the earlier case. Ext.P6 refers to Ext.P11 in the earlier case. Ext.P8 refers to Ext.P3 in the earlier case. Ext.P9 refers to Ext.P4 in the earlier case. Ext.P10 refers to Ext.P2 in the earlier case. Ext.P3 series in the present case (property list 6 in nos.) is renumbered as Ext.P12 series (6 in number). Ext.P7 is re-numbered as Ext.P13. Ext.P11 series (3 in nos) in the present case is renumbered as Ext.P14 series (3 in nos). Thus, in effect, CW1 to CW16 and CW18 were examined as PW1 to PW17, and Exts. P1 to P14 and MO1 to MO7 were marked. With this, the prosecution evidence stands closed.

8. Thereafter, the second accused (original third accused) was examined u/S. 313(1)(b) of the Cr.P.C. He denied all incriminating circumstances appearing in evidence against him and pleaded innocence. No evidence was adduced on the side of the accused.

9. Heard both sides, perused the records and examined the material objects.

10. The points that arose for consideration are as follows: -

(i) Whether the second accused (original third accused), in furtherance of the common intention with the other accused, criminally trespassed into the house of PW1 on the date, time, and place as alleged, and thereby committed an offence punishable under Section 457 read with Section 34 of the Indian Penal Code?

(ii) Whether the second accused (original third accused), in furtherance of the common intention with the other accused, broke open the lock of the front iron door and the almirah in the house of PW1, with the intention to commit theft, on the date and time as alleged by the prosecution, and thereby committed an offence punishable under Section 461 read with Section 34 of the Indian Penal Code?

(iii) Whether the second accused (original third accused), in furtherance of the common intention with the other accused, committed theft of gold ornaments and electrical items, valued at ₹1,20,000, belonging to PW1, and thereby committed an offence punishable under Section 380 read with Section 34 of the Indian Penal Code?

(iv) If found guilty and convicted, what is the appropriate order regarding the sentence?

11. **Point Nos. (i) to (iii)**:- To avoid repetition and ensure brevity, these points are considered together. To bring home the charges levelled against the accused, prosecution relied on the oral testimonies of PW1 to P17, documentary evidence, Exts. P1 to P14 and material Objects MOs1 to 7. The criminal law was set in motion based on the First Information Statement given by PW1. PW3 and PW4 are the witnesses examined by the prosecution to prove the occurrence of theft. PW2, PW5, PW6, PW7, PW8, PW9, PW10, PW11, PW14 and PW15 are examined as the witnesses to various mahazars prepared in this case. PW12 registered the FIR and PW16 filed the final report before the Court. PW13 is the Finger print Expert and PW7 was examined to prove the identity of the accused.

12. In court, PW1 Ajlif deposed that the theft took place in his ancestral house between 6:00 p.m. on 21.02.2003 and 8:00 a.m. on the next day. He stated that he came to know about the occurrence on 22.02.2003 when the workers informed him, and thereafter he went to the house and verified the same. On inspection, PW1 found that the roof tiles of the house had been removed and that someone had trespassed into the house. He further stated that the almirah inside the house had been broken open and the gold ornaments, cash and clothes kept therein had been stolen. He also deposed that an iron box and a bright light kept in the house were missing. PW1 further stated that the front door of the house had been broken and the lock on the grill door was found damaged. He also noticed that the weapons used for committing the offence, namely an iron crowbar and another iron rod, were found lying at the scene of occurrence. He identified the crowbar as MO1 and the iron rod as MO2. PW1 further deposed that when the accused persons were apprehended, the stolen gold ornaments were recovered. He identified the recovered ornaments, namely five bangles, one necklace, three chains of different sizes, three pairs of ear studs, one bracelet, three large rings and ten small rings, as MO3 series.

He further identified the stolen iron box as MO4 and the bright light as MO5. He also identified the recovered shawl and lungi as MO6 series. He further stated that the accused persons were brought to his house, and identified the original 2nd accused in court as one among the persons shown to them by the police. He also stated that he had given the Ext.P1 statement to the police regarding the incident.

13. PW3, Nabeesa Bheevi, deposed that the incident took place on the night of 21.02.2003 in their family house at Parandodu. According to her, on the day of the incident, after locking the house, she had gone to her son's house. She further deposed that on the next day, workers informed them that the front door of the house was found open. Thereupon, she along with her son went to the house and on inspection, found that the roof tiles had been removed, the door was open and that the gold ornaments and an amount of ₹40,000/- kept locked inside the almirah had been stolen. PW3 further stated that the police had apprehended the accused persons and that about 30 sovereigns of gold ornaments were recovered and handed over to them. She identified the said ornaments (MO3 series) before the Court. She also stated that the police had shown the accused persons to her, and identified the original second accused in court as one among them.

14. PW4, Sairabheevi, deposed that the occurrence took place in her husband's family house and that when they went to the house as informed by the workers, they found that the door of the house was open, and that gold ornaments and cash had been stolen. She further deposed that the stolen articles included ornaments belonging to herself, PW3 and other family members. She also stated that the police had recovered the ornaments and that the accused persons were shown to them by the police. She also identified the original second accused in court as one among them.

15. PW2 deposed that he had affixed his signature in the scene mahazar prepared by the police, which is marked as Ext.P2. PW5, a

goldsmith by profession, stated that he was present at the time when gold ornaments were recovered from Thrissur Fashion Jewellery, Nedumangad, and that he had signed the mahazar prepared in that regard, which is marked as Ext. P3. He also stated that, except for one bracelet and one ring, shown to him in court all the other gold ornaments were recovered from the said shop, and the gold ornaments identified by the witness was marked as as MO3(a) series (the Gold ornaments marked as MO3 series excluding the one bracelet and one ring). PW6 deposed that he was present at the time of recovery of a lungi and had signed the mahazar, which is marked as Ext. P4; he further stated that the recovery was effected from the house of one Naser and that the mahazar was signed at the police station. PW7 stated that he was present when currency notes were recovered and that he had signed the mahazar relating thereto, which is marked as Ext. P5. PW8 deposed that he had affixed his signature in Ext. P6 mahazar prepared in connection with the recovery of a passbook. PW9 and PW14 deposed that they were present at the time of recovery of a ring and had signed the mahazar prepared in that regard, which is marked as Ext. P7. PW10, who was working as a Clerk in the Service Co-operative Bank, deposed regarding the seizure of ₹10,000/- from an account in the name of Babu and identified the relevant mahazar as Ext. P8. PW10 further identified MO7 as the passbook relating to an account in the name of one Babu. PW11, who was the Secretary of the said bank, deposed that he had produced the ledger extract relating to SB Account No. 9593 before the Investigating Officer and had signed the mahazar prepared in that regard, which is marked as Ext. P9. PW15 deposed that he had affixed his signature in Ext. P11 mahazar prepared in connection with the recovery of thondy articles from his sister's house.

16. PW12, R Dathan is the then Sub Inspector of Police at Aryanad Police Station. He stated that he recorded the statement of CW1 and registered the FIR in this case which is marked as Ext. P10.

17. PW13, Venugopal, deposed that on 22.02.2003 he was working as a Finger Print Expert in the Thiruvananthapuram Rural DCRB. He stated that he visited the scene of occurrence and lifted finger prints from the place of incident, and that he developed the same.

18. PW17 deposed that on 29.02.2003 he was working at Thrissur Fashion Jewellery, Nedumangad. However, he turned hostile to the prosecutions case and stated that he does not remember the occurrence in this case and that he does not recollect whether the accused had come to the jewellery shop.

19. PW16, Radhakrishnan, deposed that in the year 2003 he was working as the Circle Inspector of Police, Aryanad, and that after verifying the records, he had laid the final report against the accused. When he was recalled and re-examined as per order in C.M.P. No. 13081/2024, he further deposed he is acquainted with CW17, V.K. Isaac, who was the Investigating Officer in this case, and that he is able to identify his signature. He further deposed that the signatures seen in the Ext.P5, Ext.P8 and Ext. P9 seizure mahazars are that of CW17. He further stated that the documents seized as per Ext.P8 and Ext.P9 were produced before the Court by CW17 along with the property lists which are marked as Ext.P12 series. He stated that on the same day, the third accused was arrested and a bank passbook found in his possession was seized, and the seizure mahazar prepared in that regard by CW17 is marked as Ext.P6. He further deposed that on the same day, the second accused was arrested, and based on his confession statement, certain articles were recovered, for which the seizure mahazar prepared by CW17 is marked as Ext.P11. He also stated that pursuant to the confession statement of the second accused Abdul Azeez, a dressing table was seized, and the mahazar prepared in that regard is marked as Ext.P13. He further deposed that based on the confession statement of the first accused, gold ornaments were recovered from Thrissur Fashion Jewellery, and the seizure mahazar prepared by CW17 in that regard is marked as Ext.P3. He also stated that

based on the confession statement of the first accused, a lungi was seized, and the mahazar prepared in that regard is marked as Ext.P4. He further deposed that the Ext.P2 is the scene mahazar prepared by CW17, and that the arrest memos prepared by CW17 in connection with the arrest of Accused Nos. 1, 2 and 3 are Ext.P14 series (three in numbers).

20. The gist of the prosecution case, in brief, is that on the night of 21.02.2003, the accused persons, in furtherance of their common intention, committed house breaking and theft of gold ornaments and other articles in the house of PW1 situated at Parandodu in Aryanad Village.

21. I have carefully considered the evidence adduced by the prosecution. In order to prove the occurrence of theft, the prosecution relies mainly on the oral testimony of PW1, PW3 and PW4. The prosecution case is that the incident occurred during the night intervening 21.02.2003 and 22.02.2003. PW1 deposed that he was informed about the incident on 22.02.2003 and, on inspection of the house, found that the roof tiles had been removed, the house had been trespassed into, and the almirah had been broken open. He further stated that gold ornaments, cash and other articles including an iron box and light were found missing. PW3 deposed that on 21.02.2003, after locking the house, she had gone away, and on the next day, on receiving information that the door was found open, she went to the house and found that the house had been broken open and gold ornaments and cash kept inside the almirah were missing. PW4 corroborated their version by stating that on coming to know that the house was found open, she went there and, on verification, found that gold ornaments and cash were missing. Thus, all the three witnesses have consistently spoken about the occurrence of house breaking and theft on the relevant time and date.

22. PW1 and PW3 have also identified MO3 series of gold ornaments as those stolen from their house. PW1 has further identified MO1 and MO2 as the weapons used for committing the offence, and MO4 to MO6 as the

stolen articles recovered by the police. All the three witnesses have also stated that the accused persons were shown to them by the police, and they identified the second accused (original third accused) as one among them.

23. Admittedly, these witnesses are not eyewitnesses to the actual occurrence. However, their evidence clearly establishes that a theft had in fact taken place in the house of PW1. There is nothing on record to discredit their testimony in respect of the occurrence of theft, and hence the factum of theft stands proved.

24. The crucial question that arises for consideration is whether the original third accused has any role in the commission of the said offence. In this context, it is pertinent to note that the prosecution has not examined the Investigating Officer in this case. Therefore, there is no clear and cogent evidence explaining how the investigation proceeded or how the involvement of the accused was detected.

25. The only incriminating circumstance sought to be relied on against the original third accused is the evidence of PW16. PW16 deposed that the third accused was arrested as per Ext.P14 series arrest memo and that a bank passbook found in his possession was seized under Ext.P6 mahazar. The said seizure is spoken to by PW8. PW10, the bank clerk, deposed that MO7 passbook relates to an account in the name of one Babu (original third accused), and that an amount of ₹10,000/- was seized from the said account under Ext.P8 mahazar. She also spoke about certain transactions reflected in the passbook.

26. Apart from the above, there is no material to connect the original third accused with the commission of the offence. Though the prosecution alleges recovery of stolen articles, such recovery has not been proved in accordance with law. In the absence of the evidence of the Investigating Officer and in the absence of any cogent evidence connecting the accused with the crime, the prosecution has failed to establish the involvement of

the original third accused beyond reasonable doubt. In the result, the original third accused is entitled to the benefit of doubt. Accordingly, the points for consideration Nos. (i) to (iii) are answered against the prosecution and is liable to be acquitted.

27. **Point No. (iv):-** As I have already found that the prosecution has failed to prove the involvement of the second accused (original third accused) in the alleged offences, there is no question of passing any sentence against him.

In the result, the second accused (original third accused) is found not guilty of the offences punishable under Sections 457, 461 & 380 read with section 34 of the Indian Penal Code, and he is acquitted under section 248(1) of the Cr.P.C. His bail bond stands cancelled, and he is set at liberty forthwith. The first accused (original second accused) has been absconding. Case against him is split up and refiled as CC 172/2026.

MO1 to MO7, in the custody of court as per T.No. 226/2003, T 227/2003, T 229/2003, T 230/2003 & T 231/2003 shall be disposed of in accordance with law after the expiry of the appeal period.

Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court this the 23rd March, 2026

Sd/-
Judicial First Class Magistrate-I,
Nedumangad

APPENDIX

Witnesses for prosecution:-

- PW1 – Ajlif (Informant witness - CW1)
- PW2 – Saleem (Mahazar witness - CW4)
- PW3 – Nabeesa Beevi (Occurrence witness - CW2)
- PW4 – Saira Beevi (Occurrence witness – CW3)
- PW5 – Ganeshanashari (Mahazar witness – CW5)
- PW6 – Gopi (Mahazar witness - CW6)
- PW7 – Surendran (Mahazar witness - CW9)
- PW8 – Sajad Sagar (Mahazar witness - CW10)
- PW9 – Sajeev (Mahazar witness – CW11)

PW10 – N.Bindhu (Mahazar witness – CW13)
 PW11 – Sasidaran (Mahazar witness - CW14)
 PW12 – Dathan (Official witness - CW15)
 PW13 – Venugopal (Official witness - CW16)
 PW14 – Prathap Kumar (Mahazar witness – CW8)
 PW15 – Ashokan (Mahazar witness – CW12)
 PW16 – Radhakrishna Pilla (Official witness – CW18)
 PW17 – Antony (Occurrence witness – CW7)

Exhibits for prosecution:-

P1 – FIS – proved by PW1 – dated 22.02.2003
 P2 – Scene Mahazar – proved by PW2 – dated 22.02.2003
 P3 – Mahazar – proved by PW5 – dated 25.03.2003
 P4 – Mahazar – proved by PW6 – dated 25.03.2003
 P5 – Mahazar – proved by PW7 – dated 26.03.2003
 P6 – Mahazar – proved by PW8 – dated 26.03.2003
 P7 – Recovery Mahazar – proved by PW9 – dated 26.03.2003
 P8 – Seizure Mahazar – proved by PW10 – dated 27.03.2003
 P9 – Mahazar – proved by PW1 – dated 25.03.2003
 P10 – FIR – proved by PW12 – dated 22.02.2003
 P11– Mahazar – proved by PW15 –dated 26.03.2003
 P12(series) – Form 151 A – proved by PW1 – dated 25.03.2003, 22.02.2003, 27.03.2003, 26.03.2003 (6 in number)
 P13 – Mahazar – proved by PW1 – dated 26.03.2003
 P14(series) – Arrest Memo – proved by PW1 – dated 26.03.2003 (3 in number)

Material Object:-

MO1 – Crowbar
 MO2 – Iron rod
 MO3 (series) – Five bangles, one necklace, three chains of different sizes, three pairs of ear studs, one bracelet, three large rings and ten small rings
 MO3(a) (series) - Gold ornaments excluding the one bracelet and one ring
 MO4 - Ironbox
 MO5 – Bright Light
 MO6 (series) – Shawl & Lungi
 MO7 - Passbook

Witnesses for defence:-

Nil

Exhibits for defence:-

Nil

//True Copy//

Judicial First Class Magistrate-I,
 Nedumangad