


<b>MHJN070007572019</b> 	Presented on : 06/08/2019 Registered on : 06/08/2019 Decided on : 17/03/2026 Duration : <b>06 07 11</b> <b>Y. - M. - D.</b>
	<p align="center"><b><u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, JAFRABAD</u></b>  (Presided over by A.N.Khatade )  <b>R.C.C. No.121/2019</b> <span style="float:right"><b>Exh.No.65</b></span>    Date of the Judgment – 17<sup>th</sup> March, 2026</p>
<b>Prosecution</b>	: State Of Maharashtra, Through Police Station Officer, Police Station- Tembhorni, Tq. Jafrabad, Dist. Jalna. <b>Vilas Sukhdev Savde,</b> R/o Nandkheda, Tq. Jafrabad, Dist. Jalna.
<b>Represented By</b>	: Ld. A.A.P Mr. A. M. Gaikwad
<b>Accused</b>	: <b>1. Arun Dilip Savde,</b> Age : 27 Yrs., R/o. Nandkheda, Tq. Jafrabad, Dist. Jalna.
	<b>2. Babasaheb Baburao Savde,</b> Age : 23 Yrs., R/o. Nandkheda, Tq. Jafrabad, Dist. Jalna.
<b>Represented By</b>	: Adv. Smt. M. K. Dandge

**Part 'B'**

Date of Offence	17/01/2019
Date of FIR	18/01/2019
Date of Charge sheet	06/08/2019
Date of framing of Charges	10/01/2024
Date of commencement of evidence	16/01/2024
Date on which judgment is reserved	17/03/2026
Date of Judgment	17/03/2026
Date of the Sentencing Order, if any	Not Applicable

**-: Accused Details :-**

Rank	Name	Date of Arrest	Date of Release on Bail
1	2	3	4
1	Arun Dilip Savde,	03/02/2019	05/02/2019
2	Babasaheb Baburao Savde,	05/02/2019	05/02/2019

Offences charged on Bail	When acquitted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P.C.
5	6	7	8
U/S 379, 34 of the I.P.C.	acquitted	NA	NA

**Part 'C'****LIST OF WITNESSES****A. Prosecution:**

Rank	Name	Nature of Evidence
PW-1	Vilas Sukhdev Savde (Exh.28)	Informant
PW -2	Babasaheb Gulabrao Savde (Exh.37)	Witness
PW -3	Ravsaheb Vishram Savde (Exh.43)	Witness
PW -4	Ankush Karbhair Savde (Exh.45)	Witness
PW -5	Dipak Ambadas Shivankar (Exh.50)	Witness
PW -6	Chagan Ambadas Tidke (Exh.51)	Witness
PW-7	Anand Amarsing Mohite (Exh.57)	Investigating Officer

**B. Defence Witnesses, if any:**

RANK	NAME	NATURE OF EVIDENCE
DW1	Nil	Nil

**C. Court Witnesses, if any:**

RANK	NAME	NATURE OF EVIDENCE
CW1	Nil	Nil

**LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS****A. Prosecution:**

Sr.	Exhibit Number	Description
-----	----------------	-------------

No.		
1	PW 1 / Exhibit No. 29	Complaint
2	PW 7 / Exhibit No. 58	Spot panchanama
3	PW 7 / Exhibit No. 59	Seizure panchanama

**B. Defence :**

Sr. No.	Exhibit Number	Description
1	NIL	NIL

**C. Court Exhibits:**

Sr. No.	Exhibit Number	Description
1	NIL	NIL

**D. Material Objects:**

Sr. No.	Exhibit Number	Description
1	NIL	Six motor pumps
2	NIL	One CD-R

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

(Pronounced on 17.03.2026)

The accused are prosecuted for the offence punishable under Section 379, 34 of the Indian Penal Code, 1860.

2. The prosecution case is that the informant is owner and possessor of one motor pump installed in the 'well' situated in his agricultural land at Nandkheda shet shivar. On 17.01.2019 at about 6:00 a.m. he went to his field and noticed that the motor pump installed in his well was missing. He then made inquiry with the owners of adjoining agriculture field and learnt that in the night some unknown persons had committed theft of another five motor pumps installed in the near by agricultural lands. On that basis he lodged report with the police station Jafrabad and accordingly crime No. 12/2019 was registered and investigated.

3. On the basis of report of the informant Crime No.12/2019 was registered against the accused persons under Section 379, 34 of I.P.C. I.O. investigated the crime and recorded the statement of witnesses, drew spot panchanama and arrested the accused. He filed the charge sheet against the accused for the above offence.

4. My Ld. Predecessor had framed the charges against the accused at Exh-25 for the offence punishable under Section 379, 34 of I.P.C. The contents of the charge were read over and explained to the accused in their vernacular. The accused pleaded not guilty and claimed to be tried. Statement of the accused under Section 313 (1) (b) of Cr.PC came to be recorded at Exh.63 and 64 to which accused claims false implication and dispute over trivial cause.

5. The following points arose for my determination.

Sr. no	Points	Finding
1.	Does the prosecution prove that on 17.01.2019 to 18.01.2019 at about 22:00 to 6:00 at village Nandkheda shivar in furtherance of common intention accused committed theft of six electric motor pumps worth Rs. 38,000/- and thereby committed an offence punishable under Section 379 read with 34 of the Indian Penal Code, 1860?	.... Negative
2.	What order ?	Accused are acquitted.

### REASONS

#### As to point No. 1 :

6. The offence under Section 379 is that, *"whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

7. In order to establish the prosecution case, the prosecution has examined P.W.-1 Vilas Sukhdev Savde at Exh.28 who is the informant and deposed that he had installed the motor pump in the 'well' situated in his agricultural field. On 17.01.2019 at about 6:00 a.m. when he went to his field in the morning he found his motor pump on the well was missing. He then made inquiry with adjacent farmers and learnt that in all six motor pumps were stolen during night. He therefore lodged report with police station. He identified his signature in the F.I.R. at Exh.29. He has further stated that subsequently police found all the six motor pumps in abandoned condition in a farm and those motor pumps were recovered. The testimony of PW.1 proves that his motor pump was missing in morning and that he promptly approached police.

8. The prosecution further examined Babasahed Gulabrao Savde P.W.-2 at Exh.37 and Ankush Karbhari Savde P.W.-4 at Exh.45 who are the witnesses to the incident but failed to support the version of the informant and turned hostile. The prosecution examined Ravsaheb Vishram Savde P.W.-3 at Exh.43 who is the spot panch but has not supported the prosecution.

9. The prosecution has examined Dipak Ambadas Shivankar P.W.-5 at Exh.50 who is the another victim of the theft and deposed that his motor pump in agricultural land Gat No.201 of company Laxmi 5 H.P worth Rs. 6,000/- to Rs. 7,000/- was purchased by him and was handed over by the police to him during the investigation on supurtnama. In the cross-examination, he denied that the complaint regarding the theft of motor pump was lodged by him. He has further failed to state specific date of incident of theft even in the cross-examination.

10. The prosecution further has examined Chagan Ambadas Tidke P.W.-6 at Exh.51, who stated that in the year 2019 his adjacent land owner Babasaheb Savde informed him regarding the theft of motor pump. He stated that after inquiry into the village he found that some

motor pumps from agricultural land were gone missing. He stated that there was one 5 H.P. motor pump of Laxmi company in his agricultural land Gat No. 18 worth Rs. 7,000/- purchased by him. He further stated that the same motor pump was recovered by the police during the investigation and returned to him on supurtnama. He simultaneously in the cross-examination denied lodging of complaint regarding the theft and further unable to state the specific date of incident.

11. Lastly, the prosecution has examined Anand Amarsing Mohite P.W.-7 at Exh. 51 who is the Investigating Officer, who stated that after receiving the investigation in Crime No. 12/2019 he visited the spot at village Nandkheda shivar and prepared spot panchanama. He identified his signature on the spot panchnama at Exh.58. He stated that after recording the statement of witnesses has obtained the conversation of call record between the accused persons. He stated that the conversation was recorded into C.D. and was seized during the investigation. He identified his signature on the seizure panchnama of all six motors at Exh.59. He has proved the portion mark in the statements recorded of P.W.2 and P.W.4 at Exh.60 and 61.

12. In the cross-examination he admitted that any of the motor pumps were not seized from the custody of any of the accused persons. He further admitted that there is relationship between the accused and the informant and dispute of agriculture and political rivalry. All other adverse suggestions were denied by the witness.

13. The testimony of P.W.1 who is the informant, his testimony is crucial to the extent that he found his motor pump missing from his well on the morning of the incident inspires confidence. There is no reason for him to falsely claim loss of his own motor pump. His prompt F.I.R. at Exh. 29 is also consistent with his deposition. His evidence sufficiently establishes that one motor pump in his possession had been removed with his consent. It also shows that similar incident had taken place in

neighboring fields. However, PW.1 is not an eye witness to the actual incident of theft. He did not see culprits taking motor pump. He also does not state the stolen articles were recovered from the possession of any of the accused persons. On the contrary, his version is that the articles were found in abandoned condition in the agricultural field near the spot.

14. PW.2 is a witness examined by the prosecution but he did not support the prosecution case and was declared hostile. The prosecution proved relevant portion marked in his previous statement recorded by the I.O. However, mere proof of contradiction or omission in police statement does not amount to substantive evidence. The previous statement under Section 161 can only be used to contradict the witness in the manner permitted by law but it cannot be treated as substantive proof of the fact stated. Therefore, the evidence of PW.2 does not advance the prosecution case against the accused persons.

15. PW.3 is the spot panch who also has turned hostile therefore spot panchnama is formally proved only through the I.O. The result is that the prosecution has left substantially with the evidence of the I.O. in respect of preparation of spot panchanama. Even assuming the spot panchanama to be duly proved it only indicates that theft has taken place from the spot. It does not identify any of the offender.

16. PW.4 is another witness of incident who has also turned hostile. However, relevant portion of his prior statement is proved through the I.O. Again, the prior statement cannot be treated as substantive evidence. Thus, testimony of PW.4 also does not connect the accused with the incident of theft.

17. PW.5 is another farmer owner who has his land adjacent to the spot of the incident. He deposed that the motor pump was also stolen on the same day and that police later recovered it and handed it over to him. The evidence corroborates with the version of PW.1 to the extent

that several motor pumps from neighboring farmers had in fact were stolen in the same occurrence of same night. It lends assertions to PW.1 regarding the occurrence of the theft. However, PW.1 and PW.5 is not witness to the actual act of theft. He does not state that the motor pumps were recovered from the possession of accused persons. His evidence proves loss and later recovery of property but did not identify any offenders. PW.6 who is also the another owner of a motor pump in the adjacent agricultural field. He stated that his motor pump was stolen on that day and later recovery of stolen motor pump. However, his testimony does not speak any incriminating material against the accused persons. Moreover, he is not an eye witness and does not depose about any possession or connection with the accused persons.

18. PW.7 is I.O. who has proved the spot panchanama at Exh.58, seizure panchanama at Exh.59 and the portion mark in the statement of PW.2 and PW.4. His evidence is important because he has categorically admitted that the stolen articles were not recovered from the accused persons. This admission goes to the root of the prosecution case so as to the involvement of the accused persons is concerned. If the articles of theft had been found in possession of the accused, then a strong incriminating circumstance could have arisen subject to proof and explanation. However, the prosecution case itself is that articles were found in abandoned condition in a farm. Therefore, the recovery does not consist the circumstance binding any guilt of the accused persons.

19. There is no evidence of last seen, no evidence of eye witness and no evidence of confession admissible by law to know recovery at the instance of accused under Section 27 of the Indian Evidence Act, no identification of accused by any witness and no circumstance going exclusive or recent possession of property with the accused persons. In substance the prosecution has proved that theft has occurred and the

property was later found in abandoned condition but I.O. failed to prove who committed the theft.

20. While appreciating this evidence, the Court has to separate two matters. The first is whether the theft actual happened. The second is whether the accused persons before the Court were the persons who committed the theft. The prosecution has been successful on the first matter and has failed on the second. Criminal law does not permit conviction merely because an offence has occurred and somebody must have done it. The prosecution must prove that these accused persons were the offenders.

21. The testimony of hostile witnesses is not to be wholly discarded merely because they turned hostile. It can be relied upon to the extent it is found trustworthy. However, in the present matter PW.2, PW.3 and PW.4 have not supplied any material against the accused persons. Therefore, their hostility does not help the prosecution.

22. The evidence of PW.1, PW.5 and PW.6 is considered together it is making occurrence of theft probable and proved. The prudent man can accept that in the relevant night several motor pumps were stolen from nearby farmers. However, the standard required in a criminal case is not mere probable of commission of offence by someone which is proved but proof beyond reasonable doubt against the particular accused. In the present case, the chain of evidence is broken at the most material place the connection of accused with the stolen property and occurrence.

23. The Investigating Officer's admission that the articles were not recovered from the accused persons assumes great significance. When stolen properties are found abandoned in open field. That circumstance remains natural unless there is further evidence connecting the accused with the articles hidden or concealed. In the present case no such further evidence is placed on record. Seizure panchanama at Exh.59

therefore proves only seizure of articles not authorship of theft by the accused persons.

24. It is well settled that suspicion however strong cannot take the place of proof. The prosecution case may create some suspicion because theft has taken place in a cluster of agricultural land and the motor pumps later found. However, suspicion cannot be converted into the proof unless supported by legal and reliable evidence. If a cultivator found his motor pump stolen and later the police show him his article lying abandoned in another field he can safely say that theft had indeed occur and his article had been traced. However, the prudent man will not on that basis consider that particular accused persons committed the theft unless he shows some connecting material such as position of the articles with the accused persons.

25. In the result, this Court finds that the prosecution has proved a fact of theft of the motor pumps from farms of PW.1, PW.5 and PW.6 and others. However, the prosecution has failed to prove beyond reasonable doubt that the accused persons had committed theft. Resultantly, the essential ingredients of identity of offenders and their connection with the incident of theft remains unproved. Therefore, this Court does not find the accused persons' involvement in the incident of theft of motor pumps taken place in the field of informant. Hence, the accused persons are entitled to benefit of doubt. Hence, I answer point No. 1 in the negative and in answer to point No. 2 pass following order.

### **ORDER**

1.	Accused are acquitted of the offence punishable under Section 379 r/w. 34 of the Indian Penal Code, 1860 vide Section 248(1) of the Criminal Procedure Code, 1973.
2.	The bail bonds of accused stands cancelled.
3.	The accused to comply provision under Section 437-A of the

	Code of Criminal procedure.
4.	Interim custody of seized muddemal i.e. six electric motor pumps is confirmed.
5.	Seized muddemal one CD-R be disposed off after appeal period is over.

(Judgment pronounced in open Court)

Dt. 17.03.2026  
Jafrabad

[A.N.Khatade]  
Judicial Magistrate First Class,  
Jafrabad.

**CERTIFICATE**

Affirm that the contents of this PDF file are word to word as per original order.

Dt. 17.03.2026

Sd/-xxx  
(Ahmad Shaikhh)  
Stenographer.