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Duration : 01Y. 01M. 14D.

**IN THE COURT OF JUDICIAL MAGISTRATE F.C., GADHINGLAJ.**  
**(Presided over by H.V.Kulkarni)**

**Reg.Cri.Case No. 35/2018**  
**CNR No.MHKO10-000334-2018**  
**Exh. No. /B**

**State of Maharashtra,** }  
Through Police Inspector, }  
Gadhinglaj Police Station, }.....**Complainant**  
Tal. Gadhinglaj, Dist. Kolhapur. }

**Versus**

**3. Mininath @ Anna @ Arjun @ Vahid** }  
**Vishwambhar Gaikwad,** }  
Age : 38 yrs., Occ. : Driver, }.....**Accused**  
R/o. C Patrachal, Near Water Tank, }  
Ajanthanagar, Chinchwad, Dist. Pune }

**Offence punishable U/s. 454, 457,**  
**380 r/w. 34 of Indian Penal Code.**

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Sou. Nita Chavan, A.P.P. for the State

Sou. A.V.Ghatage, Advocate for the Accused No. 3

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**JUDGMENT**

**(Delivered on 08/07/2019)**

1. The prosecution has set up against the accused no. 3 on the footing of the offence punishable under section 454, 457, 380 r/w. 34 of the Indian Penal Code.

**The case of the prosecution in short is as under-**

2. As per the information of the crime (Exh.28), the case of the prosecution is that the alleged incidence of lurking criminal trespass and theft took place between 22.02.2018 to 23.02.2018 at village temple of God Kalbhairav at village Badyachiwadi, Tal. Gadhinglaj wherein the informant Balasaheb is working as a priest in the said temple. On 22.2.2018 informant closed the temple and locked the door of the temple as per daily routine. On 23.02.2018 when the informant came to open the door of the temple for performing daily religious rites he found lock and latch of the door of the temple in a broken condition. He also found that some of the gold and silver ornaments from the temple were stolen. Therefore, he immediately informed about the same to the Police, who thereafter reached on the spot and inspected the spot. At that time, informant came to know that other gold and silver ornaments from the temple alongwith donation boxes were also stolen. Therefore, the informant got the knowledge that theft had been taken place in the temple. Therefore, he lodged the complaint for the said incidence to the police station Gadhinglaj.

3. On the basis of F.I.R. lodged by the informant, Crime No.39/2018 came to be registered at Gadhinglaj police station.

During the investigation, spot panchanama was drawn and the statement of the witnesses were recorded. After the arrest of the all accused, memorandum statement and seizure panchanama were also prepared. After the completion of the investigation, charge sheet came to be filed against all accused for the above stated offences.

4. As per the order below Exh. 1, the trial of accused no. 3, being under-trial prisoner came to be separated from accused no. 1 and 2 as they have not appeared after furnishing the bail. The charge came to be framed against accused no. 3 vide Exh.17 for the offences punishable u/s. 454, 457, 380 r/w. 34 of I.P.C. The said charge was read over and explained to accused no.3 in his vernacular to which he pleaded not guilty and claimed to be tried.

5. The statement of accused no. 3 came to be recorded u/s. 313 (1) (b) of Criminal Procedure Code vide Exh.49. The defence of accused no. 3 was that of total denial and the false implication. According to the accused no. 3, he is having no concern with the alleged incident, seized articles. Accused no. 3 has not examined any witness in support of his defence nor he has filed any documentary evidence in that behalf.

6. Considering the material on record and submissions advanced by the parties following points arise for my determination, to which I have recorded my findings against each of them as under.

<b><u>Points</u></b>	<b><u>Findings</u></b>
1. Whether the prosecution proved that in between 22/02/2018 and 23/02/2018 at about 06.45 hrs., at village Badyachiwadi, Tal.Gadhinglaj in the	....In the Negative

**Points**

**Findings**

village temple of Kalbhairav, accused no. 3 along with accused no. 1 and 2, in furtherance of their common intention committed lurking trespass by night in order to commit theft in the said temple and thereby committed an offence punishable under section 454 of Indian Penal Code ?

2. Whether the prosecution proved that on the above said date, time and place, accused no. 3 along with accused no. 1 and 2 in furtherance of their common intention committed lurking trespass by night in order to commit theft in the said temple and thereby committed an offence punishable under section 457 of Indian Penal Code ?

....In the  
Negative

3. Whether the prosecution proved that on the above said date, time and place, accused No. 3 along with accused no. 1 and 2 committed theft of gold and silver ornaments worth of Rs. 2,68,000/- which were kept in the said temple and thereby committed an offence punishable under section 380 of Indian Penal Code ?

....In the  
Negative

4. What order ?

As per final  
order.

**REASONS :-**

7. In order to prove the guilt of all accused, prosecution have examined the following witnesses.

<b>Sr. No.</b>	<b>Name of the witness and Exh. No.</b>	<b>Category/Status</b>
1.	Kiran Irrappa Waddar (Exh.25)	Spot panch witness
2.	Balasaheb Nana Gurav(Exh.27)	Informant
3.	Sanjay Maruti Tippe (Exh.32)	Memorandum and seizure panch witness

4.	Sidharam Namdev Kolekar (Exh.34)	Independent witness (Goldsmith)
5.	Dhanaji @ Bandu Narayan Sawant (Exh.35)	Independent witness (Goldsmith)
6.	Amir Sadik Sanadi (Exh.36)	Panch witness (Memorandum and seizure panchanama)
7.	Duryodhan Maruti Belanke (Exh.38)	Independent witness
8.	Rahul Ramesh Mhetar (Exh.40)	Panch witness (Memorandum and seizure panchanama)
9.	Vaibhav Parisnath Daddikar (Exh.42) – Head Constable	Police witness
10.	Sandip Dadarao Malghane (Exh.43) – Head Constable	Police witness
11.	A.P.I. Amol Balu Mane(Exh.45)	Investigating Officer

8. The prosecution has put the reliance upon the documentary evidence as follows.

<b>Sr. No.</b>	<b>Description of document</b>	<b>Exh. No.</b>
1.	Information of crime	28
2.	Spot panchanama	26
3.	Memorandum cum seizure panchanama for accused no. 1	33
4.	Memorandum cum seizure panchanama for accused no. 2	41
5.	Evidence close pursis	48

**As to point No. 1 and 2 :-**

9. Since all these points are interrelated with each other, the discussion for the same is made in together to avoid the repetition of the facts. With regard to the alleged incidence is concerned as per the case of the prosecution, the same had been taken place at public place i.e. village temple situated at village Badyachiwadi, Tal. Gadhinglaj. It has been alleged that all these accused entered in the temple when it was closed in the night to conceal their presence and thereby committed lurking house trespass and theft of gold and silver ornaments. Considering these allegations, it is necessary to consider the evidence produced on behalf of the prosecution in respect of alleged incidence.

10. With regard to the alleged incident of theft is concerned, it has been deposed by the informant Balasaheb(P.W.No.2)(Exh.27) that on 22.2.2018 he closed the temple and locked the door of the temple as per daily routine. On 23.02.2018 when he came to open the door of the temple for performing daily religious rites he found lock and latch of the door of the temple in a broken condition. He also found that some of the gold and silver ornaments from the temple were stolen. Therefore, he immediately informed about the same to the Police, who thereafter reached on the spot and inspected the spot. At that time he came to know that other gold and silver ornaments from the temple along with donation boxes were also stolen. Therefore, he lodged the complaint (Exh.28) in the police station for the aforesaid incidence. During his evidence, he narrated the details of the ornaments stolen from the temple. He further deposed on 04/04/2018 he was called by the police personnel of

local crime branch, Tal.Ichalkaranji where accused no. 1 to 3 confessed in his presence about the theft in the temple and he identified two gold Mangalsutra (Art. E and F) and silver biscuits (Art. A to D) converted from the silver ornaments.

11. During the cross-examination at the instance of accused no. 3, he stated that he is performing the religious rites in the temple from his forefathers. He has handed over to the police the register kept in the temple wherein details of the ornaments are given. He admitted that his application for the return of seized gold and silver ornaments is rejected by the court. He further admitted that, committee namely Western Maharashtra Devasthan Committee has also claimed the custody of said ornaments in the said application. Lastly, he admitted that except gold ornaments, the nature of the other ornaments is changed as such he is not certain whether the seized articles are converted from the stolen ornaments.

12. In order to prove the spot panchanama (Exh.26), prosecution has examined panch witness P.W.No.1 Kiran(Exh.25) who has stated that on 23.02.2018 police prepared the spot panchanama in his presence. At the relevant time, he had seen that the door of the temple in a broken condition. He also saw that silver plate forming back of pedestal of an idol in temple was also stolen. He had also seen that the donation boxes from the temple were also broken, which were lying near to the temple. During the cross-examination, he narrated the boundaries of the spot of incidence.

13. Considering the evidence produced on behalf of the

prosecution, it is necessary to consider the modus operandi used by accused no. 3 along with other accused while commission of such offence as the case is based upon the circumstantial evidence. Considering the nature of the offence therefore, it is for the prosecution to prove the complete chain of the circumstances from which the guilt of accused no. 3 can be fully established. Therefore, in order to appreciate the evidence of the prosecution, it is necessary to consider the evidence with regard to the mode of discovery effected by the investigating officer for the guilt of all accused. Therefore, considering the nature of the alleged offences, two essential ingredients namely memorandum cum recovery panchanama (Exh.33, 41) and the evidence of recovery panch witnesses and investigating officer carries utmost importance.

14. The investigating officer P.W.No.11 API Mali (Exh.45) has deposed in his evidence that when he was working at crime branch, Tal.Ichalkaranji he has handed over with the investigation in the present case. At the relevant time he took custody of accused no.1 and 2 by the order of the court. When he made inquiry with them for the present case, on 30.03.2018 accused No.1 Sidhnath Gaikwad confessed his crime to him in presence of two panch witnesses. Accordingly, he recorded the memorandum of the confessional information given by accused No.1 under the memorandum panchanama(Exh.33). He further deposed that accused No.1 has stated in his confession that he along with accused No.2 and 3 committed the alleged offence on the particular day of incidence.

15. The investigating officer API Mali further deposed that, on accused no.1 Sidhanath made the specific statement that he is ready to give the gold and silver ornaments stolen from the temple. Therefore, on the basis of the said information, he proceeded to recover the said ornaments wherein accused no.1 shown them the shop of the goldsmith Sidharam Kolekar (P.W.No.4) from whose shop three silver biscuits (Art. A, B & D) and gold mangalsutra (Art. E and F) were seized in presence of two panch witnesses. The evidence of investigating officer with regard to the memorandum cum recovery panchanama is duly corroborated by the panch witness Sanjay (P.W.No.3) and Aamir (P.W.No.6) who have also deposed that in their presence the said goldsmith gave the said silver biscuits and gold mangalsutra to API Mali from shop as stated in the memorandum cum seizure panchanama (Exh.33).

16. The investigating officer API Mali further deposed that, on 03/04/18 accused no.2 Suraj made the specific statement that he is ready to give the gold and silver ornaments stolen from the temple at Gadhinglaj and village Kumbhoj. Therefore, on the basis of the said information, he proceeded to recover the said ornaments wherein accused no.2 shown them the shop of the goldsmith Dhanaji Sawant (P.W.No.5) from whose shop one silver biscuit (Art. C) was seized in presence of two panch witnesses. The evidence of investigating officer with regard to the memorandum cum recovery panchanama is duly corroborated by the panch witness Rahul (P.W.No.8) who has also deposed that, in his presence the said goldsmith gave the said silver biscuits (Art. A & B) to API Mali from shop as stated in the memorandum cum seizure panchanama (Exh.41).

17. The panch witness P.W.No.3 Sanjay (Exh.32), P.W.No.6 Aamir (Exh.36) and P.W.No.8 Rahul (Exh.40) during their evidence deposed that police prepared the seizure panchanama (Exh.33 & 41) in their presence wherein accused no.1 and 2 gave their statements confessing that they had stolen the ornaments from the village temple of Badyachiwadi Tal.Gadhinglaj and accordingly police seized the said ornaments from the goldsmiths (P.W.No. 4 & 5).

18. In order to prove guilt of accused no. 3, prosecution has relied upon the evidence of goldsmiths Sidharam (P.W.No. 4) and Dhanaji (P.W.No. 5). Out of the evidence of Sidharam (P.W.No. 4), it is brought on record that accused no. 1 Sidhanath handed over him the gold ornaments and silver for melting for his financial need. Therefore, as per say accused no. 1 he prepared one silver biscuit weighing 100 gm and one silver biscuit weighing 5 kg. He also identified the gold ornaments (Art. E & F) seized from his shop which were given to him by accused no. 1. Out of the evidence of Dhanaji (P.W.No. 5) it is brought on record that accused no. 1 Sidhanath along with other accused handed over him silver for melting, and therefore, he prepared one silver biscuit (Art. C) admeasuring 1180 gm.

19. Considering the evidence produced on the record, the learned. A.P.P. for the State contended that, out of the testimony of the all prosecution witnesses as discussed above the ingredients of the alleged offences against accused no. 3 is proved beyond all reasonable doubts. The spot and memorandum cum recovery panchanama are duly proved at the instance of the panch witnesses

and the investigating officer. Accordingly, she has prayed to convict accused no. 3. To the contrary, the learned Advocate for the accused no. 3 has submitted that, prosecution has failed to bring on record the chain of circumstantial evidence to attribute the guilt of accused. Nothing has been recovered from the custody of accused no. 3 as such the confessional statements of accused no. 1 and 2 can not be relied upon to attribute guilt of accused no. 3. Therefore, She has prayed for the acquittal of accused no. 3.

20. Considering the evidence produced by the prosecution with regard to the recovery of gold ornaments and silver biscuits at the instance of accused no. 1 and 2, it is necessary to consider that as per section 27 of the Indian Evidence Act, facts discovered i.e. place of recovery and the knowledge of accused no. 1 and 2 is admissible in the evidence and not object recovered. In the present case the facts discovered by the investigating officer were accused no. 1 and 2 had kept the said gold and silver ornaments which led to the recovery is admissible in the evidence. However, it is necessary to consider that the confessional statements of accused no. 1 and 2 that all of them had committed the theft of gold and silver ornaments from the temple is not relevant and it can not be made as admissible as against accused no. 3 as per section 27 of the Evidence Act. Therefore, memorandum cum recovery panchanama (Exh. 33 & 41) proved by the direct evidence of investigating officer API Mali and panch witnesses (P.W.No. 3, 6 and 8) are pertaining to recovery made at the instance of accused no. 1 and 2.

21. The present case is solely based upon the circumstantial

evidence for the very reason that at the time of commission of such criminal trespass and theft, there is no eye witness in that behalf. Therefore, in view of the settled law, it is necessary to consider whether prosecution has proved the complete chain of the circumstances to attribute the guilt of accused no. 3.

22. As stated earlier, memorandum cum recovery panchanama (Exh. 33 & 41) are pertaining to recovery made at the instance of accused no. 1 and 2. Informant (P.W.No. 2) has stated in his evidence that, all accused have admitted their guilt to police in his presence and accordingly police seized the articles (Art. A to F) from them. However, it is admitted fact on record that recovery of articles is made from accused no. 1 and 2 only and accused no.3 has not made any statement relating to commission of offence in present case. Panch witness Sanjay (P.W.No. 3) has deposed that, goldsmith Sidhram (P.W.No. 4) has stated to police that accused no. 1 Sidhanath had given him stolen ornaments. However, said goldsmith (P.W.No. 4) has made contrary version that accused gave said ornaments for his financial need. Further, though goldsmith Dhanaji (P.W.No. 5) has stated that, accused no. 1 Sidhanath, one Kale and person namely Gaikwad, gave him silver for melting, he has not given specific details about disclosure made by any of accused for commission of theft from temple and that silver belongs to ornaments stolen from temple. In view of there testimony of prosecution witnesses it shows that, these witnesses have not stated anything against accused no. 3 attributing his guilt for commission of offence along with other accused. Investigating Officer Mali (P.W.No. 11) has also admitted that, accused no. 3 has never given any statement

pertaining to theft in concern temple and nothing has been recovered from accused no. 3 in his investigation.

23. The confessional statement of accused no. 1 and 2 with regard to the involvement of accused no. 3 in the alleged offence is not admissible as per section 26 & 30 of the Indian Evidence Act and accused no. 3 was also not found in apparent possession of such stolen ornaments. Therefore, prosecution has failed to link the complete chain of circumstances to prove the guilt of all accused. The evidence of prosecution witness Duryodhan (P.W.No. 7) is also not helpful for the prosecution as from his evidence, nothing has come against accused persons, except the fact that he identified the seized articles. The said witness resides near to the spot of incidence where he runs his tea stall. The evidence of prosecution witness H.C Daddikar (P.W.No. 9) is also in terms of the evidence of the investigating officer who has stated that articles were seized as per the statements of accused no. 1 and 2. The evidence of prosecution witness H.C Malghane (P.W.No. 10) is also not helpful for the prosecution as it can be seen from his evidence that said memorandum cum seizure panchnama were not prepared in his presence as he was working as a driver on a police vehicle.

24. In view of above stated reasons, the evidence of the prosecution is not trustworthy and reliable. Therefore, prosecution has not proved the complete chain of the circumstantial evidence which raised considerable doubt while attributing the guilt of accused no. Considering the forgoing discussion, it is to be concluded that the prosecution has not produced necessary evidence against accused no.

3 who is alleged to have committed theft of gold and silver ornaments from the concerned temple with the help of accused no. 1 and 2. Thus, it is not proved on behalf of the prosecution that accused no. 3 has committed an offence under section 454, 457 and 380 of the Indian Penal Code. Hence, point No. 1 to 3 are answered in the negative.

**As to Point No. 4 :-**

25. In view of forgoing discussion it is to be concluded that the evidence of prosecution failed to inspire the confidence in the present case because it lacks non-corroboration of material evidence. Therefore, the evidence of the prosecution lacks to bring home the guilt of accused no. 3 in respect of alleged offences. Accordingly, accused no. 3 is entitled for the benefit of doubt. With this, I proceed to pass the following order.

**ORDER**

1. Accused No. 3 Mininath @ Anna @ Arjun @ Vahid Vishwambhar Gaikwad, is hereby acquitted vide section 248(1) of Code of Criminal Procedure for the offence punishable under section 454, 457 and 380 of the Indian Penal Code.
2. Matter to proceed further against accused no. 1 and 2, till then seized articles (Art. A to F) be preserved.
3. (Dictated & Pronounced in open court)

Gadhinglaj.  
Date : 08/07/2019

(H.V.Kulkarni)  
Judicial Magistrate First Class,  
Gadhinglaj.