

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE I CLASS-III,
KOTTAYAM.

Present:- Smt. Rekha. R., LL.M.,
Judicial Magistrate of the 1st Class-III.

Monday, the 30th January 2017/10th Magha, 1938

C.C. 1856/2014

Complainant :- State represented by Sub Inspector of Police,
Kottayam West Police Station in Cr. 1860/2014

By Sri. Saju Bhaskaran., A.P.P.

Accused:- K.B. Shibu S/o. Bhaskaran,
Kottayamkandam house,
Kallumada bhagam, Aimanam Village,
Kottayam District

By Adv. Manu Varappally

Charge:- Offence punishable under sections 454, 380 and 461 of
Indian Penal Code.

Plea:- Not guilty

Finding:- Not guilty

Sentence/Order:- *Accused is acquitted under section 248 (1) of Criminal
Procedure Code for the offence punishable under sections
454, 380 and 461 of Indian Penal Code.*

DESCRIPTION OF THE ACCUSED

Name	Father's Name	Occupation	Residence	Age
K.B. Shibu	Bhaskaran		Aimanam	51/14

DATE OF:-

Offence	Complaint	Apprehension	Release on bail
07.11.2014	18.11.2014	11.11.2014	11.11.2014
Commencement of trial	Close of trial	Sentence/Order	Explanation of delay
03.12.2015	27.01.2017	30.01.2017	

This case having been finally heard on 27.01.2017 and the Court on 30.01.2017 delivered the following:-

JUDGMENT

Accused stand charged with having committed the offence punishable under sections 454, 380 and 461 of Indian Penal Code.

2. Prosecution case, in brief, are as follows :

On 07.11.2014 at 10.30 am accused trespassed in to bedroom in the middle of Kottayamkandam house in ward No. XV of Aimanam Panchayath in which Anila was residing after having made preparations to conceal the house with the intention to commit theft. Accused dishonestly broke open a shelf in which money was kept with the help of a screwdriver and had dishonestly taken away Rs. 60,000/- owned by Anila without her consent and with the dishonest intention to take that amount. Accused had thus committed the above mentioned offences.

3. On the basis of the first information statement given by Anila, Sub Inspector of Police, Kottayam West Police Station registered first information report No.1860/14 alleging the offence under sections 454, 380 and 461 of Indian Penal Code. After completing investigation, investigating officer filed final report.

Cognizance was taken for having committed the offence punishable under sections 454, 380 and 461 of Indian Penal Code. Accused appeared. Accused was released on bail. Accused was defended by counsel. On appearance of accused, he was served with copy of the prosecution records. After hearing both sides, charge under sections 454, 380 and 461 of Indian Penal Code was framed, read over and explained to the accused, to which he pleaded not guilty. To prove its case, prosecution examined PW1 to PW6 and got marked Ext.P1 to P6. Prosecution evidence was closed. After closing the prosecution evidence, accused was questioned under section 313 of Criminal Procedure Code. The defence version as seen from 313 statement of accused and from cross examination of prosecution witnesses was that accused was innocent and Rs. 2,500/- produced in this case was actually the wages received by accused from his job as a light and sound operator in a temple and this case was filed when accused objected to the relationship of Anila with Saji and his visit to the house in which Anila and accused got equal right. No defence evidence was adduced.

4. Both sides were heard.

5. On the basis of the available evidence, the following points arise for consideration:-

- (i) *Did accused trespass into the bedroom of Kottayamkandam house in which Anila was residing after having made preparation for canceling his trespass from Anila and with the intention to commit theft?*
- (ii) *Did accused dishonestly broke open a shelf in which money was kept in the house of Anila with a screwdriver?*
- (iii) *Did accused take Rs. 60,000/- from the shelf without the consent of Anila and with the dishonest intention to take that property ?*

(iv) *In the event of conviction, what is the proper sentence to be imposed on the accused ?*

6. Point No.1 to 3:-Since facts of the case to be discussed in points No. 1 to 3 are inter-connected, these points are considered together.

7. Prosecution allegation was that accused committed theft of Rs. 60,000/- owned by Anila and kept in a shelf after trespassing into her house. PW1 to PW3 were produced by the prosecution to prove the incident. PW4 is a witness in Ext.P2 scene mahazar. PW5 is a witness in Ext.P3 seizure mahazsar PW3 recorded Ext.P1 first information statement of PW1 and registered Ext.P4 first information report. PW5 conducted inspection and laid final report.

8. It is necessary to consider at first is whether prosecution succeeded in proving that accused trespassed into Kottayamkandam house in which Anila was residing after having made preparation for concealing his trespass from Anila who has a right to eject accused from that house and with the intention to commit theft. Anila was examined as PW1. PW1 deposed that on 07.11.2014 Rs. 60,000/- kept in a shelf in her house was stolen. According to PW1, he went to attend her job at 8 am from house and returned at 4 pm on 07.11.2014. PW1 found that her shelf was broken. PW1 opened the shelf and found that her money was lost. It is crystal clear from the deposition of PW1 that the house got three doors to go outside and the said doors were not opened. PW1 categorically deposed that she one Swapna and her husband, accused and his mother were residing in the very same house as join family. It is crystal clear from the deposition of PW1 that the said house consisted of 3 rooms

she and her brother were occupying the middle room, Shinu and Swapna were occupying the room at the right side and accused and his mother were occupying room at the southern side. According to PW1, there was access from the other two rooms to her room. It is crystal clear from the deposition of PW1 that she and accused were residing in the very same house. PW1 stated in the chief examination that even though they were residing in the same house, they could not go to the portion occupied by them without consent. During the cross examination PW1 deposed that she and accused got equal right in the house. PW1 stated that her brother created some problem and she told accused to keep the key of the house and she saw accused in the position of her father and hence accuse could enter any place in the house. PW1 deposed in chief examination that Swapna told her that accused came to the house in the morning on the date of incident and he might have entered the house through the wall. During chief examination PW1 admitted that accused did not come to the house regularly and he would leave the house after having his bath and cloths washed if he came. According to PW1, accused are residing in the house at present. On scrutinizing the deposition of PW1 it is crystal clear that accused was also residing in the very same house in which PW1 was residing. PW1 candidly admitted that accused also got equal right in the said house. As per the deposition of PW1 she, Swapna and accused were occupying one room each in the house having three rooms and they could not go to the portion occupied by others. It is crystal clear from the deposition of PW1 that she, Swapna and accused were residing in the house as a joint family and accused also got equal right over the said house. No convincing

evidence or document was produced by the prosecution to prove that PW1, accused and others having right in the house partitioned the house in such a way as to allot the room occupied by them and others got no right over the portion occupied by Anila. Moreover it is crystal clear from the deposition of PW1 that she had only hearsay knowledge regarding the entry of accused in to the portion occupied by her. PW1 did not actually see the incident. As per the version of PW1, Swapna told her that accused came to the house in the morning on the date of incident. Swapna was examined as PW2. But PW2 turned hostile to the prosecution and deposed that she had only hearsay knowledge regarding the incident. On evaluating the evidence of PW1 it is crystal clear that accused was residing in the very same house in which PW1 and accused got right and PW1 did not see the actual entry of accused into the portion of the house occupied by her. Hence it cannot be concluded from the deposition of PW1 that accused trespassed in to the house of Anila after having made preparation to conceal such trespass from Anila and Anila got a right to eject accused from the portion of the house occupied by her. Prosecution miserably failed to prove that accused committed the offence under section 454 of Indian Penal Code.

9. The next important question to be considered is whether accused committed theft of Rs. 60,000/- owned by PW1 after dishonestly breaking open a shelf in which the said amount was kept. As per the version of PW1 she left the house at 8 am on 07.11.2014 and returned at 4 pm on that day. According to PW1, she saw that her shelf was broken. PW1 found that her money was lost. PW1 deposed that accused asked Rs. 750/- two days before the incident to her. According to PW1, she came to

know that accused committed theft as there was no other person in the house who was of such a nature. It is crystal clear from the deposition of PW1 that she did not see the incident. PW1 came to the conclusion that accused committed theft of her money as he demanded Rs. 750/- to her two days prior to the incident and there was no other person in the house having such a nature except the accused. According to PW1, PW2 told her that accused came to the house in the morning on that day. But PW2 turned hostile to the prosecution and deposed that she had only hearsay knowledge regarding the incident. PW3 also deposed that he had only hearsay knowledge regarding the incident. PW6 who prepared Ext.P2 scene mahazar deposed that he saw that the shelf in the house was seen opened forcefully with a strong object. On evaluating the deposition of PW1 to PW3 it is crystal clear that they did not see the incident. It is a well settled principle that suppositions and surmises are not evidence. Hence the evidence adduced by PW1 that accused demanded Rs. 750/- prior to the incident and there was no person in the house having such a nature except the accused and hence accused committed the offence cannot be acted upon to conclude that accused had taken away Rs. 60,000/- owned by PW1 without her consent after dishonestly breaking open her shelf in the absence of evidence regarding the commission of offence by accused.

10 PW6 deposed that on 11.11.2014 he arrested accused at 8 am at Kottayam West Police Station. According to PW6, he found Rs. 2,500/- and mobile phone when he conducted body search of accused. PW6 seized the same as per Ext.P3 seizure mahazar and produced the same before the court as per Ext.P5 property list. PW5

also deposed that he signed in Ext.P3 mahazar prepared for seizing Rs 2500/- and mobile phone from the accused at 8 am on 11.11.2014. The important question to be considered is whether the above said money produced in this case belonged to PW1 or not. PW1 stated the denominations of money as 38 notes of Rs. 1,000/- and 34 notes of Rs. 500/-. As per Ext.5 property list money produced in this case are two notes of Rs. 1000 and one note of Rs. 500/-. According to the accused the said amount was actually the wages received by him from his job as a light and sound operator. PW5 did not know the person who owned that money. Nothing has been forthcoming from the deposition of PW6 to prove that the money seized by him belonged to PW1. No steps were taken by the prosecution to get the money produced in this case identified by PW1 as her money. Moreover PW1 did not state any distinguishing characteristics of currency notes possessed by her so as to identify by the same. Hence the mere fact that two notes of Rs. 1000/- and one note of Rs. 500/- was seized from accused on his body search on 11.11.2014 i.e. four days after the incident cannot be relied upon to conclude that the said money belonged to PW1. On evaluating the entire evidence it is crystal clear that the prosecution failed to prove that accused was in possession of money of PW1 on 11.11.2014.

11. It is crystal clear from the deposition of PW1 that the incident occurred on 07.11.2014. PW1 stated in cross examination that she went to the police station on the very same date of incident and gave statement on that day itself and police came and enquired about the incident on the very same day. Ext.P1 first information statement was given only on 09.11.2014. According to PW6, PW1 gave Ext.P1

statement only on 09.11.2014. During cross examination PW6 stated that the delay in lodging Ext.P1 first information statement was that defacto complainant initially did not want to report the matter as the accused was her relative. But it is interesting to note that PW1 had no such case. The definite case of PW1 was that she gave the statement on the date of incident itself. But the deposition of PW6 and Ext.P1 revealed that statement was given by PW1 only on 9.11.2014. Since PW1 did not explain the delay in giving the statement, reason for delay stated by PW6 cannot be accepted. It can be safely concluded from the available evidence that PW1 failed to explain the delay in lodging Ext.P1 first information statement. Failure of PW1 to explain the said delay also affected the credibility of the prosecution case.

12. On evaluating the entire evidence it is crystal clear that prosecution miserably failed to prove that accused trespassed into Kottayam Kandan House in which PW1 was residing and committed theft of Rs. 60,000/- owned by PW1 and kept in a shelf after breaking the shelf. Point Nos. 1 to 3 are found against the prosecution.

13. Point No.4: In view of the finding on points No.1 to 3, accused is not guilty of offence punishable under sections 454, 380 and 461 of Indian Penal Code of Indian Penal Code.

14. In the result, accused is acquitted under section 248(1) of Criminal Procedure Code for the offence punishable under sections 454, 380 and 461 of Indian Penal Code. Accused is set at liberty. Bail bond executed by accused stands

cancelled.

15. Property produced as item No. 1 to 3 in T 416/2014 is ordered to be returned to accused after appeal period.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 23rd day of January 2017

Sd/-
Rekha. R.,
Judicial Magistrate of the I Class-III.

APPENDIX
Witnesses for the prosecution

PW1- Anila	PW2 – Swapna Shinu
PW3 – Shino K.B	PW4 – Moncy
PW5 – George Thomas	PW6 – Jiju T.R.

Exhibits for the prosecution

P1 –	09.11.2014	First information statement
P2 -	10.11.2014	Scene mahazar
P3	11.11.2014	Seizure mahazar
P4	09.11.2014	First information report
P5 –	11.11.2014	Property list
P6	11.11.2014	Additional report
Witness for the Defence	:	NIL
Exhibits for the Defence	:	NIL
Material objects marked	:	NIL

//True copy//

Sd/-
Judicial Magistrate of the First Class- III

Judicial Magistrate of the First Class- III

CC 1856/2014
Judgement : 30.1.2017
Delivered on:30.01.2017