

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, SIRICILLA

**Present: Smt.S. Sridevi,
Judicial Magistrate of First Class,
Siricilla.**

Tuesday, the 16th day of April, 2019

C.C.No.62 of 2019

Between:

**The State through the Sub Inspector of Police,
P.S. Mustabad (Cr.No.61/2018).**

...Complainant

AND

**A1) Pittala Anjaiah, S/o. Chandraiah,
age: 28 yrs., caste: Are,
R/o.Shilajinagar v/o. Dubbaka Mandal,
Siddipet Dist.**

**A2) Nakkala Shankar, S/o. Gangaram @ Shivaji,
age: 40 yrs., caste: Pittala,
R/o. Mustabad village and Mdandal.**

...Accused

This case is coming on 08-04-2019 before me for final hearing in the presence of A.P.P. for the State and Sri P. Srinivas, Advocate for Accused No.1 and 2, having been heard both sides and having stood over for consideration to this day, the Court made the following:-

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

1. The Sub Inspector of police, PS Siricilla filed charge sheet against the accused A1 and A2 for the offence punishable U/sec.457 and 380 IPC in Cr.No.61/2018.

2. The brief facts of the case are that on 05-06-2013 at 15-00 hrs., the defacto complainant Bandi Laxman came to police station and lodged complaint stating that he is acting as President of Goud Sangham of Mustabad and the temple of their caste goddess Renuka Yellamma is located in the outskirts of their village and on 04-06-2018 Balasani Balaiah who is the Priest in the said

temple visited the temple offered prayers as usual and returned to his house after locking the temple at about 19-00 hrs., and on 05-06-2018 at about 6-00 hrs., when he went to the temple, he found the doors were in broken condition and he informed the same to the complainant over cellphone and on knowing said information the complainant immediately rushed to the temple and noticed the missing of gold pusthelathadu weighing 3 grams worth of Rs.1300/- and lodged complainant. Further he stated that the temple doors of Muthyala Pochamma also found broken but no theft of ornaments took place and hence requested to take necessary action.

3. Based on the above complaint, the Sub Inspector of Police registered a case in Cr.No.61/2018 for the offence punishable U/sec.457 and 380 IPC and then on completion of entire investigation he filed chargesheet against the accused A1 and A2 for the offences punishable U/Sec.457 and 380 IPC.

4. This case was taken on file for the offence punishable U/sec.457 and 380 IPC against the accused No.1 and 2.

5. On appearance of accused A1 and A2, the copies of documents were furnished to them as required U/Sec.207 Cr.P.C. and when they were examined U/Sec.239 Cr.P.C., they denied to have committed the offences. Therefore, charges are framed U/sec.457 and 380 IPC have been read over and explained to them in Telugu, for which the accused A1 and A2 denied the accusation, pleaded not guilty and claimed to be tried.

6. In order to prove its case, the prosecution got examined Pws 1 to 6 and got marked Exs.P1 to P5 and MOs 1 and 2.

7. After closure of the prosecution side evidence, the accused A1 and A2 were examined U/Sec.313 Cr.P.C. for the incriminating evidence found against

them for which they denied the same, pleaded not guilty and reported no defence evidence.

8. Heard the arguments on both sides. Perused the record.

9. Now the point for determination:-

“Whether the Prosecution has proved the guilt of the accused No.1 and 2 the offences U/sec.457 and 380 IPC beyond all reasonable doubt?”

10. The burden of proof is on the prosecution to prove the guilt of the accused A1 and A2 for the offence punishable U/sec.457 and 380 IPC beyond all reasonable doubt and in this regard the prosecution has examined Pws 1 to 6 and got marked Exs.P1 to P5 and MOs 1 and 2. Pw1/Bandi Laxman is the defacto-complainant. Pw2/Balasani Balaiah is the Priest in the Yellamma temple. Pw3/Burra Ramulu is the circumstantial witness. Pw4 is the panch witness to the crime details form. Pw5 is one of the panch witness to the confession and recovery panchanama of accused No.1 and 2. Pw6 is the Investigating officer.

11. The case of the prosecution is that the accused A1 and A2 gained entry into Renuka Yellamma temple, Mustabad by breaking open of the doors and committed theft of 3 grams of pusthelathadu and 20 tulas of silver medal mattelu in total worth of Rs.4000/- on the intervening night of 04-06-2018 and that they are liable for punishment for the offences U/Secs.457 and 380 IPC. Pw1/Bandi Laxman, the defacto-complainant deposed by reiterating the contents of the complaint given by him about commission of theft of MOs 1 and 2 from Yellamma temple, Mustabad by some unknown offenders. Pw2 and Pw3 also deposed on the similar lines as that of Pw1 about commission of theft of MO1 and MO2 from Yellamma temple. For the purpose of corroboration the prosecution also examined one of the panch witnesses to

the crime details form as Pw4 and he deposed about preparation of crime details form by Investigating officer under Ex.P3. During the course of cross examination Pw4 stated that he regularly visited the police for settlement of issues of their Gouda Sangham.

12. The material witnesses in this case is the panch witness to the confession and recovery panchanama and he is examined as Pw5 and he deposed that on 20-07-2018 at about 12-00 noon on the instructions of Tahsildar, Mustabad he went to the police station and the police conducted confession and recovery panchanama in his presence and in the presence of Mengani Srinivas/Lw7. Pw5 deposed that accused A1 and A2 confessed commission of offence in this case and recovery of MOs 1 and 2 from the possession of accused No.1 and 2 and prepared the confession and recovery panchanama under Exs.P4 to P6. During the course of cross examination Pw5 stated that upon instructions of Tahsildar, he went to the police station and the Tahsildar informed to him that the police effected the arrest of two persons who committed theft and asked him to act as panch witness for panchanama and at that time he is working as Village Revenue Assistant and the Investigating officer conducted panchanama in his presence.

13. Now looking into the evidence of Investigating officer, who is examined as Pw6, he deposed about receiving complaint from Pw1 about commission of theft of MO1 and MO2 from Yellamma temple at Mustabad and accordingly he registered a case vide Cr.No.61/2018 under Ex.P3 and then he prepared the crime details form under Ex.P4 after examining and recording the statements of witnesses/Pws 1 to 3. Pw6 further deposed that on 20-07-2018 at 12-00 hrs., he along with his men while conducting the

vehicle checking at Chakali Iamma statue, Mustabad at that time two persons while going on TVS XL Moped on seeing them tried to escape and on seeing them they immediately chased and caught hold of them and during the course of interrogation those two persons confessed the commission of offence before the mediators i.e., Pw5 and Lw7 and accordingly he prepared confession and recovery panchanama and thereafter brought them to police station at 14-40 hrs., and produced them before the court for judicial custody and on completion of entire investigation filed chargesheet against the accused No.1 and 2.

14. The prosecution did not lead the evidence of another panch witness to the crime details form and confession and recovery panchanama i.e., Lw4/Mengani Mallaiah and Mengani Srinivas/Lw7 respectively and hence the prosecution evidence is closed for failure of service of summons to the said witnesses.

15. In order to prove the offences punishable U/Secs.457 and 380 IPC, there must be a definite evidence that a person has committed the offence of house breaking and also committed theft. There must be direct evidence against certain person to prove those offences in this case Pw1 is the defacto-complainant and the evidence of Pw1 is to be affected that some unknown offenders committed the theft of MOs 1 and 2 from Renuka Yellamma temple. Similar is the version of Pws 1 and 2 who are working as Priest and Secretary in the said temple. The evidence of Pws 1 to 3 along with the panch witness to the crime details form examined as Pw4 prove that they took place theft in Renuka Yellamma temple. For the purpose of corroboration to show that A1 and A2 committed theft of MOs 1 and 2 in

Renuka Yellamma temple, the prosecution examined Pws 5 and 6 who are the panch witnesses to the confession and recovery panchanama of Accused No.1 and 2 prepared by the Investigating officer. Looking into the evidence of Pw6, he specifically stated that on interrogation A1 and A2 confessed the commission of offences in the presence of Pw5 and Lw7 and he also recovered MO1 and MO2 from their possession at Chakali Iamma statue, main road, Mustabad. Pw6 further deposed that on preparation of confession and recovery panchanama he brought A1 and A2 to the police station at 12-40 hrs. The confession and recovery panchanama of A1 and A2 under Exs.P4 and P5 revealed that the confession panchanama is prepared at the statue of Chakali Iamma, Mustabad at 12-00 noon on 20-07-2018 and Ex.P6 reveal about MOs 1 and 2 are recovered from the hut situated at Chakali Pochamma temple, Mustabad i.e., from the hut Nakkala Shanker/A2, on 20-07-2018 at 2-00 pm. The evidence of Pw5 is that the confession and recovery panchanama is prepared in the police station on 20-07-2018 at about 12-00 noon and he did not state about the MO1 and MO2 recovered from the possession of A2 from his hut hence there is no cogent evidence to believe that A1 and A2 confessed commission of offences in this case. Further there is lack of corroboration of evidence of Pw6 with that of Pw5 pertaining to preparation of confession and recovery panchanama of accused A1 and A2 and also seizure of the case property. Further the prosecution also did not examine the another panch witness to the confession and recovery panchanama of A1 and A2 though cited him as Lw7/Mengani Srinivas In view of the discussion made above, the prosecution miserably failed to prove the guilt of the accused A1 and A2 for the offences punishable U/Secs.457 and 380 IPC beyond all reasonable doubt and hence the accused A1 and A2 are entitled for acquittal. The point is answered accordingly.

16. In the result, the Accused A1 and A2 are not found guilty for the offence punishable U/sec.457 and 380 IPC and hence they are acquitted U/Sec.248(1) Crpc for the said offences. The Jail authorities are directed to release the accused forthwith if they are not required in any other case. MO's 1 and 2 which are given for safe interim custody to Pw1 shall become absolute after expiry of appeal time.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in open Court on this the 16th day of April, 2019.

Judicial Magistrate of First Class,
Siricilla.

APPENDIX OF EVIDENCE
Witnesses Examined

FOR THE PROSECUTION:

Pw1 : Bandi Laxman
Pw2 : Balasani Balaiah
Pw3 : Burra Ramulu
Pw4 : Akkapelli Rajaram Goud
Pw5 : Mohd. Dhadhe
Pw6 : G. Rajashekar

FOR THE DEFENCE:

--Nil--

EXHIBITS MARKED

FOR THE PROSECUTION:

Ex.P1 : Complaint given by Pw1.
Ex.P2 : Photographs containing the recovered ornaments.
Ex.P3 : First information report.
Ex.P4 : Crime details form.
Ex.P5 : Confession and recovery panchanama.
Ex.P6 : Recovery panchanama of A2.

FOR THE DEFENCE:

--Nil--

MATERIAL OBJECTS

MOs 1 & 2 - (3) grams gold pusthelu worth of Rs.2700/- and 13 tulas silver mattelu worth Rs.1300/- all worth Rs.4000/-.

Judicial Magistrate of First Class,

Siricilla.