

TNVR080002332025



**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
VIRUDHUNAGAR.**

**Present : Tmt.S.K.ANGALAESWARI, B.A., B.L.,
ADDITIONAL DISTRICT JUDGE,
VIRUDHUNAGAR.**

Tuesday, the 07th day of April, 2026

CRIMINAL APPEAL No.52/2025
(CNR No.TNVR080002332025)

From which court the appeal is preferred	The Judicial Magistrate, Kariyapatti.
Number of the case in trial court	C.C.No.440/2024
Name and description of the Appellant/1st Accused	Selvam @ Valukai Selvam,(A1) Age 41/2025 S/o.Vellaisamy, Mariyammal Kovil Street, Pattukottai Kalyanasundharam Street, Meenampalpuram, Madurai, Madurai District.
Name and description of the Respondent/Prosecution	The Sub Inspector of Police, Kariyapatti Police Station, Crime No.463/2011
To what offence the Trial court passed the order	u/s.457, 380 of IPC
Sentence and law under it was imposed in the trial court	1 st Accused is convicted under section 248(2) Cr.P.C. the 1 st Accused was found guilty of the commission of the offence u/s.457 of IPC and sentenced to undergo Rigorous Imprisonment for 6 months and also imposed a fine of Rs.5000/- in

	<p>default of payment undergo Simple Imprisonment for 4 weeks and found guilty of the commission of the offence u/s.380 of IPC and sentenced undergo Rigorous Imprisonment of 6 months and imposed a fine of Rs.5000/- in default of payment undergo Simple Imprisonment for 4 weeks. Total fine amount – Rs.2000/-. The period of custody from 26.02.2012 to 20.01.2012 is ordered to be set off u/s.428 of Cr.P.C.</p>
Findings of this court	<p>In the result, the Criminal Appeal is dismissed. The Judgment passed by the District Munsif cum Judicial Magistrate, Kariyapatti in C.C.No.440/2024 dated 17.06.2025 is hereby confirmed. The trial court is directed to take steps to secure the Accused and to execute the remaining sentence imposed against the Accused.</p>
Whether the judgment of the trial court has been confirmed or modified or set-aside ?	Confirmed
Date of taken on the file of Principal Sessions Court	07.07.2025
Date of receipt of the Appeal by this court	19.07.2025
Trial court Judgment date	17.06.2025
Date of Judgment of this court	07.04.2026

This Criminal Appeal came up before me on 27.03.2026 for final hearing in the presence of Thiru.P.Pandiyaraj, Counsel for the Accused and Thiru.P.Kannan, Additional Public Prosecutor for the Complainant/State of Prosecution and upon hearing the argument of both sides and on perusing the entire case records, and having stood over for my consideration till this day, this court delivered the following:

JUDGMENT

This Criminal Appeal is filed by the Appellant u/s.415 (3) of BNSS to call for the records and judgment in C.C.No.440/2024 dated 17.06.2025 passed by the Judicial Magistrate Kariyapatti and set aside the same for the reason stated in the Grounds of Appeal memorandum.

2. Brief case of the prosecution as follows:

The case of the prosecution is that on 26.08.2011 at about 2 a.m. in the night when the defacto complainant was sleeping in her house, the 1st Accused trespassed into the house and had stolen the gold jewels and amount of Rs.20,000/- and had given the stolen jewels to 2nd Accused stating it as stolen property and had received money from A2 and subsequently A2 has sold the gold jewels to some unknown person. The Inspector of Police, Kariyapatti Police Station has filed a charge sheet against the Accused under Sections 457, 380 of IPC.

3. The Respondent/Complainant presented the charge sheet before the Trial Court on 19.08.2013 and the same was taken on file on 22.08.2013. After taking cognizance of the offence, the trial court furnished copies of the documents relied by the complainant to the Accused 1 and 2 under Section 207 of Cr.P.C. After perusing the material records and on hearing the counsels the learned Trial Judge had framed charge u/s.457, 380 of IPC against 1st Accused and charge u/s.414 of

IPC against 2nd Accused and they are denied the said charge and pleaded not guilty, and opted to be tried, and the case was proceeded for trial.

4. During the trial before the trial court on the side of prosecution PW1 to PW12 were examined and Ex.P1 to Ex.P10 were marked and M.O.1 was marked. On completion of prosecution witnesses the Accused 1 and 2 were questioned under Section 313 of Cr.P.C. for the incriminating material appeared against them. The Accused 1 and 2 totally denied the case of prosecution/complainant and no witnesses has been examined and no documents has been marked on behalf of them. While pronouncing the judgment the trial court formulated the following points for determination.

(i) Whether the prosecution has proved that the Accused 1 and 2 have committed the offence punishable under section u/s.457, 380 of IPC beyond all reasonable doubt?

5. The trial court after considering the evidence on record and the arguments of the counsel, convicted the 1st Accused for the offence u/s.457, 380 of IPC.

6. Aggrieved it, the 1st Accused filed the following grounds of appeal by challenging the trial court order of conviction:

The judgment rendered by the lower court is invalid, both in law and in equity. The lower court failed to take into consideration the reasonable doubts and arguments raised by the Appellant/Defendant during the proceedings. The judgment delivered by the lower court is one-sided. The lower court failed to take note of the fact that PW1 did not witness the arrest of the Accused by the complainant, nor did he witness the seizure of the jewellery from the Accused points that were explicitly stated during both the chief examination and cross-examination. Furthermore, the lower court failed to closely scrutinize the

discrepancies regarding the stolen jewellery versus the recovered jewelry specifically, the shortfall in the recovered items as well as the seizure of cash. Since PW8 did not testify before the lower court either during the chief examination or subsequently that the Accused had made a confession statement in his presence or that jewellery had been recovered, the prosecution has failed to prove its case. The judgment, having been rendered without taking into consideration the circumstances of the case and the contradictions in the evidence points that were specifically highlighted on behalf of the Appellant/Accused during both cross-examination and arguments in the lower court is one-sided and cannot be sustained either in law or in equity. The judgment rendered by the lower court is contrary to the law, as it was delivered without giving due consideration to the prosecution side documents and statements of witness submitted by the parties. The statements made to the police are fraught with contradictions when compared to the testimonies given during the chief examination in the lower court. Hence this appeal.

7. The points to be determined in the Appeal:

1. Whether the prosecution had proved that the 1st Accused had committed the offence and complied the ingredients of u/s.480, 357 of IPC?
2. Whether the judgment by the learned District Munsif cum Judicial Magistrate, Kariyapatti in C.C.No.440/2024 dated 17.06.2025 is required any interference warranted or not?

8. Point No. 1, 2 :

For sake of convenience the rank of the parties in this Criminal Appeal has been referred hereinafter as per their rank before the trial court.

8.1) This Criminal Appeal in C.A.No.52/2025 was filed by the Accused in C.C.No.440/2024 on the file of the learned District Munsif cum Judicial

Magistrate, Kariyapatti passed his Judgment dated 17.06.2025 and 1st Accused was found guilty of the commission of the offence u/s.457 of IPC and sentenced to undergo Rigorous Imprisonment for 6 months and also imposed a fine of Rs.5000/- in default of payment Simple Imprisonment for 4 weeks and found guilty of the commission of the offence u/s.380 of IPC and sentenced undergo Rigorous Imprisonment of 6 months and imposed a fine of Rs.5000/- in default of payment Simple Imprisonment for 4 weeks. Total fine amount – Rs.2000/-. The period of custody from 26.02.2012 to 20.01.2012 is ordered to be set off u/s.428 of Cr.P.C. Being aggrieved over by the Judgment of the Trial Court this 1st Accused has preferred this Criminal Appeal.

8.2) On behalf of the prosecution PW1 to PW12 were examined and Ex.P1 to Ex.P10 and M.O.1 was marked. On behalf of the Accused persons no witnesses were examined and no documents were marked before the trial court.

8.3) On a consideration of the oral and documentary evidence, the learned Judicial Magistrate, Kariyapatti found that the allegations against the 1st Accused have been proven beyond reasonable doubt by the witnesses and documents examined by the prosecution, convicted the 1st Accused was found guilty of the commission of the offence u/s.457 of IPC.

8.4) The prosecution case in nutshell is that the PW1 – Sri devi lodged a complaint before the Kariyapatti Police Station for the alleged offence u/s.457, 380 of IPC and registered a First Information Report in Crime No.463/2011. After registration of First Information Report the Investigation Officer conducted investigation and on culmination of the same Charge Sheet filed u/s.457, 380 of IPC against the 1st Accused and u/s.414 of IPC against the 2nd Accused.

8.5) By considering the overall facts and the circumstances of this case this court sumup the arguments advanced by both sides in the following points:

SUBMISSION ON BEHALF OF THE APPELLANT/1ST ACCUSED

(i) The learned counsel appearing for the Accused vehemently contented that the trial court committed serious error in convicting the Accused. According to the learned counsel the trial court failed to appreciate that no reliance could have been placed on the evidence of the so called relative witnesses. According to the learned counsel the narrative version on record does not inspire any confidence and deserve to be discarded.

(ii) The learned counsel further submitted that the trial court has failed to consider the ingredients of section 457, 380 of IPC. The prosecution failed to establish its case. In the absence of such evidence the trial court found the Accused guilty for an offence u/s.457, 380 of IPC is devoid of merits.

(iii) The learned counsel further submitted that the prosecution cited two witnesses as confession witnesses. The prosecution examined as PW8 and PW9, but PW8 turned hostile. Therefore the learned counsel argued that the Accused connected with the crime on the basis of confession statement of the Accused and which was leads to recovery. If the one of the confession witness turned hostile there is no piece of evidence available to prove connect the Accused with crime. It is fatal to the case of the prosecution.

iv) The learned counsel argued that the witnesses PW1 to PW3 are family members and PW4 to PW6 are working as employee in the Hospital. Therefore their evidence not trustworthy.

(v) The learned counsel further argued that PW1 in her chief examination stated that she not seen the Accused at anywhere. Therefore the identity of Accused has not been proved before the trial court by the prosecution side. As such there is a serious doubt arose the case of the prosecution. Hence for point outing the above contradictory in the trial court judgment ought to have set aside.

(vi) In such circumstances referred to above the learned counsel prays that there being merit in his appeal the same may be allowed and the Accused to be acquitted of all the charges.

SUBMISSION ON BEHALF OF THE STATE

(i) The learned counsel appearing for the state vehemently opposed this appeal and submitting that there is no error said to have been committed by the trial court while convicting the Accused.

(ii) Further the learned counsel could submit that there is no good reason to disbelieve the version of the prosecution witnesses and there is no reason for them to falsely implicate the Accused in the alleged crime.

(iii) The learned counsel further submit that to bring the case within the ambit of section 457, 380 of IPC the Confession Statement and Admitted portion of Confession Statement under Ex.P5 and Form 95 under Ex.P9 were produced by the prosecution as such the ingredients of above said sections were proved.

(iv) The learned counsel for the state argued that the Investigating officer promptly conducted the investigation and recovered the material object in this case.

(v) Therefore the learned counsel appearing for the state prayed that in such circumstances referred to above there being no merit in the present appeal the same may be dismissed.

8.6) In view of the rival submissions, the question that arises for consideration is whether the accused committed the offence under section 457, 380 of IPC. Before going to the Merit of this case the law namely u/s. 457, 380 of IPC extracted hereunder for better reference,

Section 457 – Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment

“Whoever commits lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

***And**, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.”*

Section 380 – Theft in dwelling house, etc

“Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8.7) The theft is defined under section 378 of IPC. The essential ingredients to constitute an offence under section 380 of IPC are as follows:-

- a) Intention to take dishonestly
- b) The property shall be movable property;
- c) The property shall be taken out from the possession of any person without his consent;
- d) There should be some moving of the said property to such taking;
- e) The theft should have been committed in a dwelling house of place used for safe custody of property.

Section 457 of IPC provides for the offence of lurking house trespass or house breaking by night in order to commit theft. It reads as under:

Whoever commits lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment in order to the committing of any offence punishable with imprisonment, shall be

punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;
and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

The essential ingredients to constitute the offence of house breaking at night are :-

- a) The Accused should have entered into the property which is in possession of another;
- b) There should be an intention to commit an offence on part of the Accused;
- c) Such property should be any building/tent/vessel used for human dwelling or place for worship or for custody property;
- d) Entry into the house should have been effected by the Accused in any one of the six ways as defined under section 454 of IPC.

The Accused has been charged with the offence of theft from dwelling house section 380 of IPC and lurking house trespass, house-breaking by night in order to commit theft section 457 of IPC. In order to prove offence under section 380 of IPC, theft in terms of section 378 is to be proved to be committed from any building, tent or vessel, which is used for human dwelling or custody of property. Further in order to prove the second part of the offence under section 457 of IPC, the prosecution has the burden to prove that the house trespass section 443 of IPC or house-breaking section 445 of IPC was committed by the Accused in order to and with the intent to commit theft.

8.8) While perusing the oral and documentary evidence this court finds that PW1- Sri devi, PW2 - Uma Maheshwaran, PW3 – Madhavamoorthy, PW4 – Saravanakumar, PW5 – Marnan, PW6 – Kavitha in their evidence deposed that at the time of occurrence on 26.08.2011 at about 3 a.m. they found that the cupboard of the bedroom and main door of the house and room door were opened and Gold Chain – 2 Nos. (4 Sovereign and 2 sovereign), 1 set of bangles – 6 sovereign, one set of bangles – 2 sovereign, 2 set of earring – 2 sovereign totally 16 sovereign gold jewels and cash of Rs.20,000/- were stolen by the 1st Accused. On perusal of records it is learnt that the trial court recorded conviction relying the evidence of PW1/Defacto complainant and as well as the evidence of PW2 who is the Husband of the PW1 and remaining witnesses PW3 to PW6 and confession of the recovery witnesses PW7, PW9 and PW10. As rightly pointed out by the Additional Public Prosecutor that it stands proved that the house was locked at the time of incident. The PW1 in her complaint statement under Ex.P1 has categorically stated that she and his husband were sleeping in the night on 26.08.2011 at about 03.00 a.m., when she wake up and saw that somebody had stolen the gold jewels and money. Then she have apprehension that some thief has entering her house. The testimony of complaint statement under Ex.P1 has clearly pointed out the scene of occurrence and it proves that incident took place at night. It further proves that the house was closed so the theft could not have taken place unless house breaking was involved. Even in the oral evidence of PW1 to PW3 they were reiterated the version of complaint.

8.9) It was also the contention of learned counsel for the Accused that PW1 to PW3 are family members and closely related to each other and PW4 to PW6 were working in the hospital hence they are interested witnesses and their evidence cannot be looked into. But there were cantana of decisions of our Hon'ble High

Court and Supreme Court held that mere because the witnesses are closely related to each other their evidence cannot be discarded.

8.10) In several cases, only the close relative are present at the time of incident, then the case of the prosecution will be based only on their evidence. When their evidence is the only evidence available, Courts should be cautious and meticulously evaluate the evidence in the process of trial and hence this court is not able to appreciate the contention on behalf of the Accused that the non-examination of independent witnesses and conviction based on the evidence of available witnesses is not fatal to the case of the prosecution.

8.11) Having given consideration to the submissions made by the respective learned counsels this court perused the materials on records and in the light of facts and circumstances of this case this court finds that theft was committed in a building which is used as dwelling house. Thus it will fall within the definition of 380 of IPC. Further house breaking is done in six ways mention u/s.445 of IPC. In the present case on hand the Accused enter into the house which is covered under the one of the class mentioned u/s.445 of IPC. Moreover he enter into the house with the intent of committing theft which is evident from the fact that he was found in possession of Material Objects recovered in this case and the Accused identity has been established during the trial. There is no Material on record to suggest that the complainant and Accused had any prior enmity. There is no material to suggest that the Investigating Officer had falsely implicated the Accused in this case. The evidence of PW1 to PW6 augment the case of the prosecution. Thus the ingredients of offence u/s.380 and 457 of IPC are established beyond any doubt.

8.12) The first charge leveled against the 1st Accused is u/s.380 of IPC. The prosecution has relied the Complaint Statement under Ex.P1, First Information

Report under Ex.P7 as well as the evidence of PW1 to PW6 to sustain the charge u/s.380 of IPC. To connect the Accused with crime u/s.380 of IPC that the Accused might have commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property. The PW1 who is the defacto complainant in her complaint statement under Ex.P1 had stated that on 27.08.2011 at about 3 a.m., PW1 and PW2 saw that there was house-breaking in their house. The relevant portion in the Complaint Statement under Ex.P1 is extracted hereunder for better reference,

“...யாரோ திருடன் வீட்டின் முன் மரக்கதவை கம்பியால் நெம்பி உள்ளே நுழைந்து எங்கள் படுக்கை அறையில் உள்ள அலமாரியில் இருந்த தங்க லாங்செயின் - 4 பவுன், 2 வளையல் - 6 பவுன், சின்ன செயின் - 2 பவுன், கம்மல் - 2 ஜோடி - 2 பவுன் சின்ன வளையல் (2) - 2 பவுன் ஆக மொத்தம் 16 பவுன் நகையும், ரொக்கப்பணம் - 20,000 ரூ இவைகளை திருடிச்சென்று விட்டான். நாங்கள் வழக்கம் போல் காலையில் எழுந்து பார்க்கும்போது திருடுபோனதைக் கண்டு காவல்நிலையம் வந்து புகாரை கொடுக்கிறேன்...”

The relevant portion in the chief examination of PW1 to PW6 are extracted hereunder for better reference,

The chief examination of PW1

"...26.8.2011 ஆம் தேதி அதிகாலை 3 மணிக்கு எழுந்து பார்த்தபோது என் வீட்டின் படுக்கை அறையில் இருந்த அலமாரி கதவு திறந்திருந்தது. எங்கள் வீட்டின் கதவும், அறை கதவும் திறந்திருந்தது. என்

கணவரையும் அழைத்து இந்த விபரத்தை சொன்னேன். அலமாரியில் ஒரு பெட்டியில் வைத்திருந்த 2 தங்க செயின்கள் (4 பவுன் மற்றும் 2 பவுன் செயின்) 6 பவுன் உள்ள 1 ஜோடி வளையல் 2 பவுன் உள்ள 1 ஜோடி வளையல், 2 ஜோடி தோடு (2 பவுன்) ஆக மொத்தம் 16 பவுன் தங்க நகைகள் திருடு போயிருந்து தெரியவந்தது. அலமாறியில் வைத்திருந்த பணம் காணாமல் போயிருந்தது. பின்னர் 27.8.2011 ம் தேதி காரியாபட்டி காவல் நிலையத்தில் நான் என் கணவருடன் சென்று புகார் கொடுத்தேன். புகார் அ.சா.ஆ.1 அதில் உள்ள கையெழுத்து என்னுடையதுதான்....”

The chief examination of PW2

"...26.8.2011 அன்று இரவு மருத்துவமனை வேலை முடித்துவிட்டு வீட்டிற்கு சென்று நானும் என் மனைவியும் தூங்கி விட்டோம். அதிகாலை 3 மணியை போல் நான் எழுந்து பார்த்தபோது, எங்கள் வீட்டில் பெட்டும் கதவு திறந்து கிடந்தது. உள்ளே இருந்த அலமாரியின் கதவு திறந்து கிடந்தது. உள்ளே அலமாரியே பார்த்தபோது அதில் வைத்திருந்த 16 பவுன் தங்க நகைகள் மற்றும் 20 ஆயிரம் திருடு போனது தெரிய வந்தது. மறுநாள் காலையில் காரியாபட்டி காவல் நிலையம் நானும் என் மனைவியும் சென்று என் மனைவி புகார் கொடுத்தார்..."

The chief examination of PW3

"...27.08.2011ம் தேதி காலை 6.00 மணிக்கு என் அண்ணன், அண்ணி மூலமாக அவர்கள் வீட்டில் இரவு திருடு போன தகவல் தெரிந்து நான் அவர்கள் வீட்டிற்கு சென்று பார்த்தேன். படுக்கை அறை அலமாறியில் சுமார் 16 பவுன் நகைகளும், பணம் ரூ.20,000 திருடி சென்றுள்ளார்கள். அலமாறி கதவு லாக் போடமால் சாத்தி இருந்தது. அங்கிருந்த 4 அலமாறியை திறந்து திருடன் தேடியுள்ளான் செயின், வளையல், கம்மல் திருடப்பட்டுள்ளதாக சொன்னார்கள். என் அண்ணனும், அண்ணியும் காவல் நிலையத்தில் சம்பவம் தொடர்பாக நடவடிக்கை எடுக்க கோரி புகார் கொடுத்தார்கள்..."

The chief examination of PW4

"...26.08.2011ம் தேதி இரவு நான் என் மனைவிக்கு உதவியாக மருத்துவமனையில் தங்கியிருந்தேன். 27.08.2011ம் தேதி காலையில் டாக்டர் வீட்டில் யாரோ வாசல் மரக்கதவை உடைத்து உள்ளே சென்று படுக்கை அறை அலமாறியில் இருந்த நகைகளும், பணம் ரூ.20,000/- திருடி சென்று விட்டதாக தகவல் தெரிந்து நான் சென்று பார்த்தேன். நான் டாக்டருடன் பேசிய போது ரூ.2,00,000/- மதிப்புள்ள நகைகளும், பணம் ரூ.20,000/-மும் திருடு போனதாக சொன்னார்கள். காவல் நிலையத்தில் புகார் கொடுத்த விவரம் எனக்கு தெரியும்..."

The chief examination of PW5

“..காலை 6.00 மணி அளவில் டாக்டர் வீட்டில் இரவு யாரோ வாசல் மரக்கதவை உடைத்து உள்ளே சென்று திருடி சென்று விட்டதாக தகவல் தெரிந்து கொண்டேன். காவல் நிலையத்தில் புகார் கொடுத்த விவரம் எனக்கு தெரியும்..”

The chief examination of PW6

“..27.08.2011ம் தேதி காலை 6.00 மணி அளவில் டாக்டர் வீட்டில் இரவு யாரோ வாசல் மரக்கதவை உடைத்து உள்ளே சென்று படுக்கை அறை அலமாரியில் இருந்த 16 பவுன் நகைகளும், பணம் ரூ.20,000/- திருடு போனதாக தகவல் சொன்னார்கள். செயின், வளையல், கம்மல் திருடு போனதாக கேள்விப்பட்டேன். காவல் நிலையத்தில் புகார் கொடுத்த விவரம் எனக்கு தெரியும்..”

8.13) The Complaint statement under Ex.P1 as well as the evidence of PW1 to PW4 and PW5 and PW6 referred supra are corroborated each other that the 1st Accused committed the offence u/s.380 of IPC. Though the PW1 to PW3 are the family members and PW4 to PW6 are working in the hospital, their evidence is considered to be natural and trustworthy. Therefore, this court is of the considered opinion that the evidence of PW1 to PW6 and evidence of PW7, PW9, PW10 as well as the documents under Ex.P1 is suffice to connect the 1st Accused with the crime, thereby the Prosecution has proved the charge u/s.380 of IPC.

8.14) The second charge level against the 1st Accused is u/s.457 of IPC. The prosecution has relied the Complaint Statement under Ex.P1, First Information

Report under Ex.P7 as well as the evidence of witnesses PW1 to PW6 and the evidence of Mahazar witnesses – PW7/Pandiyarajan, PW10/Saravankumar and Confession Witnesses - PW8/Karthikeyan, PW9/Prabu and the evidence of Investigating Officer/PW10 - Jeyakodi clearly exhibits the way in which the 1st Accused house breaking the home. To connect the 1st Accused with crime u/s.457 of IPC that the 1st Accused might have commits lurking house-trespass or house-breaking by night. Nothing was contradict in the cross examination of PW1. PW5 and PW6 are the hearsay witnesses they visited the occurrence place and narrated the prosecution version. As such the evidence of PW5 and PW6 were corroborated with the evidence of PW1 to PW4. No contrary evidence is available against the evidence of PW1 to PW6, PW7, PW9 and PW10.

8.15) PW9 - Prabu/Recovery mahazar witness had deposed that 1st Accused gave confession statement in pursuance of the Admitted portion of the confession statement under Ex.P5 given by him the material object M.O.1 recovered from A2. In this case it is a contention of the 1st Accused that only 7 Sovereign of gold jewellery were recovered from the 2nd Accused the remaining stolen property was not recovered by the prosecution. Therefore the 1st Accused can't be convicted on the basis of confession statement. But the above said stand taken by the counsel for the 1st Accused unable to taken into consideration while because the remaining gold jewellery was sold and 1st Accused spent the money. The above said fact was narrated by the PW1 in her chief examination. Moreover the PW1 had identified the MO.1 before this court. In this case the recovery of material object from 1st Accused and identification of 1st Accused were clearly demonstrated by the prosecution.

8.16) It is crystal clear that the burden of proof on prosecution is that of beyond reasonable doubt. The presumption of innocent of the 1st Accused has to be

rebutted by the prosecution by adducing cogent evidence that points towards the guilt of the 1st Accused. From the above discussion the prosecution clearly prove the ingredients of the offence beyond reasonable doubt. The evidence of the PW1 to PW6 and the testimony produced by the prosecution inspires confidence and cogently implicates the Accused persons. The other prosecution witnesses have corroborated the case of the prosecution and the documentary evidence on record has proved the offence u/s.457 of IPC beyond reasonable doubt.

8.17) In view of the discussion supra this court is of the considered opinion that the prosecution has clearly prove the charges leveled against the 1st Accused u/s.380, 457 of IPC beyond all reasonable doubt.

8.18) It is pertinent to note here that only 1st Accused prepared this Criminal Appeal. Therefore the charges leveled against the 2nd Accused u/s.414 and also subsequently the trial court found A2 not guilty and recorded its finding of acquittal not discussed above.

8.19) The trial court has properly appreciated the evidence of prosecution as well as the arguments advanced by both side and arrived at a conclusion and recorded the conviction against A1. There is no any perverse in the finding of trial court which leads to conviction against A1 and there is no interference is warranted. Therefore the reason for conviction recorded by the trial court is hereby confirmed. Thus the Points 1, 2 are answered accordingly.

8.20) In the result, the Criminal Appeal is dismissed. The Judgment passed by the District Munsif cum Judicial Magistrate, Kariyapatti in C.C.No.440/2024 dated 17.06.2025 is hereby confirmed. The trial court is directed to take steps to

C.A.No.52/2025
Date : 07.04.2026

Additional District Court
Virudhunagar

secure the Accused and to execute the remaining sentence imposed against the Accused.

Dictated to the Steno Typist, directly typed by her in the computer, corrected and pronounced by me in the open court, on this the 07th day of Arpil 2026.

Additional District Judge,
Virudhunagar.

No oral or documentary evidence on either side

Additional District Judge,
Virudhunagar.

Copy to:
The Learned District Munsif cum
Judicial Magistrate, Kariyapatti.