

**IN THE COURT OF THE II ADDITIONAL
JUDICIAL MAGISTRATE OF FIRST CLASS, ONGOLE**

PRESENT: SMT P.GAYATHRI,

II ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS. ONGOLE

Wednesday, this the 1st day of March, 2023

CALENDER CASE NUMBER.2753 OF 2022

Between:-

The State of Andhra Pradesh represented
By its Sub-Inspector of Police,
Ongole I-Town Police station.

...Complainant

And

Udatha Vasu S/o Venkateswarlu, aged 50 years
Yadava by caste r/o Pragathi nagar
2nd lane, Nellore town now at
Rama Krishna Reddy nagar,
Nawab peta, Nellore district

... Accused

This case came up for final hearing before me on 22.02.2023 in the presence of learned Senior Assistant Public Prosecutor for the State and of Sri. A.Sudhakara Rao learned legal aid Counsel for the accused and this matter having stood over for consideration till this day, this Court delivered the following:-

J U D G M E N T

1. The Sub-Inspector of Police of Ongole I-Town Police Station, filed charge sheet against the accused in Cr.No.187/2022 of Ongole I-Town Police station for the offences punishable under section 380 or in alternative 411 of Indian Penal Code (in brevity I.P.C). The accused is charged and tried for the offence.
2. The case of the prosecution in brief is that on 27.05.2022 the informant namely Mogilipuvvu Siva Kumar and his wife Mogilipuvvu Kavya observed that the Gold ring weighing five grams which was kept behind the photos in the Pooja room went missing and they searched for the same but in vain and later he lodged complaint to the police.
3. Basing on the complaint of L.W.1-Mogilipuvvu Siva Kumar, L.W.8-Shaik Raffiuddin, the Sub-Inspector of Police, Ongole I-Town Police Station registered the case as Cr.No.187/2022 of Ongole I-Town Police station for the offence punishable under section 380 of I.P.C and investigated into.
4. During the course of investigation, L.W.8-Shaik Raffiduddin, the investigating officer visited the scene of offence, examined and recorded the statements of L.W.1 to L.W.4 namely Mogilipuvvu Siva Kumar, Mogilipuvvu Kavya, Annabathina Venkata Ramana Hari prasad, and Peddamalla Kanaka Durga under section 161 (3) Criminal Procedure

Code (in short Cr.P.C). The investigating officer prepared rough sketch of the scene of offence.

5. On 21.05.2022 at about 3.30 P.M L.W.7- Saidu Babu, the Sub-Inspector of Police, Ongole Taluka Police Station, arrested the accused in Cr.No.332/2022 of Ongole Taluka Police Station for the offence under section 457, 380 of I.P.C in the presence of mediators I.e, L.W.5 and L.W.6 namely Pattipati Venkatessh and Machavarapu Hanumantha Rao basing upon his confession.

6. During the course of further investigation, L.W.8 Shaik Raffiuddin the Sub Inspector of police, Ongole I-Town Police station received the intimation from L.W.7 about the involvement of the accused in the present case and on 10.06.2022 he produced the accused before this Court on execution of P.T.Warrant.

7. After completion of investigation L.W.8, the investigating officer filed charge sheet under section 173(2) of Cr.P.C against the accused for the offences punishable under section 380 or in alternative 411 of I.P.C.

8. This court took cognizance under section 190 (1) (b) Cr.P.C against the accused for offence punishable under section 380 or in alternative section 411 of Indian Penal Code

9. On appearance of accused from the District Jail, Ongole copies were furnished to him as required under Section 207 Cr.P.C

10. The accused was examined under section 239 Cr.P.C. Charges were framed against the accused for the offence punishable under section 380 or in alternative 411 I.P.C .and same was read over and explained to the him in Telugu and they denied the accusation made against him and pleaded not guilty and claimed to be tried.

11. During trial, on behalf of prosecution, P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.4 and also M.O.1 are marked. The learned Senior Assistant Public Prosecutor choose not to examine L.W.3, L.W.4, L.W.6 and L.W.7 namely Annabathina Venkata Ramana Hari Prasad, Peddamalla Kanaka Durga, Machavarapu Hanumantha Rao, M.Saidu Babu and hence prosecution evidence is closed.

12. After completion of the evidence for prosecution, the accused was examined under section 313 Cr.P.C and all incriminating circumstances appearing against him is read over and explained to him in Telugu for which he stood by the denial and refused

the correctness of incriminating circumstances with in which he was confronted. However, the accused did not let in any evidence, oral or documentary, in his defence.

13. Heard the learned Senior Assistant Public Prosecutor and learned legal aid counsel for the accused and perused the records.

14. Now the points for determination is:-

1. Whether the prosecution is successful in bringing home the guilt of the accused punishable under section 380 or in alternative 411 of Indian Penal Code?

2. Whether the accused is liable for the punishable for the offence punishable Under section 380 or in alternative 411 of I.P.C. ?

15. The case of the prosecution is that some unknown offenders committed the theft of gold ring of the informant which was kept behind the photos in the pooja room and the accused himself admitted that he committed the theft of the said gold ring which was recovered by another investigating officer in another case.

16. To bring home the charges against the accused, the prosecution examined P.W.1 to P.W.4 and marked Ex.P1 to Ex.P4 and M.O.1 is marked.

17. Mogilipuvvu Siva Kumar, the informant who set law in motion by presenting a written complaint i.e., Ex.P1 to the police got examined as P.W.1. P.W.1 in his evidence deposed that some unknown offenders stolen the ring of the informant which was kept behind the photos of the pooja room. P.W1 further deposed that he lodged a report to the police.

18. During his cross examination, he admitted that he do not know who committed the theft of his gold ring.

19. Mogilipuvvu Kavya, the wife of P.W.1 got examined as P.W.2. P.W.2 in his evidence deposed that some unknown offenders stolen the gold ring.

20. During her cross examination she admitted that she do not know who committed the theft of gold ring.

21. Pattipati Venkatesh, one of the mediator in whose presence, the accused confessed about the commission of offence and the police arrested the accused got examined as P.W.3. P.W.3 in his evidence deposed that accused confessed that he committed theft of gold ring in the house of the P.W.1.

22. During his cross examination he deposed that the police did not issue any written summons to him to act as mediator. He further admitted that the police did not seize M.O.1 from the possession of the accused in his presence.

23. Syed Raffidudin, the investigating officer, got examined as P.W.4. P.W.4 in his evidence deposed about receiving of Ex.P1, registering the case, issuing First Information Report, forwarding the FIR to higher authorities and further deposed that about recording the statements of P.W.1, P.W.2, L.w.3 and L.w.4-Annabattina Venkata Ramana Hari Prasad, Peddamalla Kanaka Durga under section 161(3) Cr.P.C,. He further deposed about inspecting the scene of offence, preparing the rough sketch.

24. He further deposed that on 21.05.2022 he received information from L.W.7 the Sub-Inspector of Ongole Taluka Police Station about the arrest of the accused and his involvement in the present case. He further deposed that he secured M.O.1 from the police of Dargamitta Police station and on 10.06.2022 he produced the accused before this court on execution of PT warrant and send him for Judicial remand and after completion of investigation he filed charge sheet against the accused.

25. During his cross examination P.W.4 admitted that some unknown offenders committed the theft of M.O.1. He further admitted that he had not shown the mediator in whose presence the M.O.1 is seized as witness and also did not file the confessional statement and the seizure mahazar of the accused wherein he confessed before Dargamitta Police and denied other questions.

26. The learned Senior Public Prosecutor during the course of arguments submitted that some unknown persons stolen the Gold ring i.e., M.O.1 of the informant. He further submitted that the accused was in possession of the said Gold ring and the same is established through the evidence of P.W.4, the investigating officer who secured the same from the Dargamitta Police.

27. He further submitted that accused himself confessed about the commission of offence i.e., he had stolen M.O.1 and the same is established through the evidence of P.W.3. He further submitted that the prosecution is successful in bringing home the guilt of the accused that he had stolen the M.O.1 and he is in possession of stolen property which is an offence punishable under section 380 and 411 of I.P.C. and prayed to convict the accused with maximum punishment in the interest of justice.

28. Per contra, the learned counsel for the accused during the course of the arguments submitted that the some unknown offenders stolen the gold ring of the informant. He further submitted that the accused allegedly confessed about the commission of offence before P.W.3, is not admissible as the said confession is made in the custody of the police which is in admissible as per the section 25 and 26 of Indian Evidence Act.

29. He further submitted that there is no evidence in record to show that M.O.1 is recovered from the possession of the accused and the investigating officer simply deposed that he secured M.O.1 from the police Dargamitta Police station which casts serious doubts on the prosecution case that M.O.1 is recovered from the accused. He further submitted that the prosecution failed to prove that the accused committed the offence and M.O1 is seized from his possession beyond all reasonable doubts and sought for acquittal of the accused.

POINT NO.1:

30. The accused is charged and tried for the offence punishable under section 380 or in alternative 411 of I.P.C. . In order to prove that the accused is guilty of offence punishable under section 380 of I.P.C. prosecution has to prove that the accused stolen M.O.1.

31. The accused is also charged for the offence punishable under section 411 of I.P.C. . In order to prove the accused is guilty of offence punishable under section 411 of I.P.C. , the prosecution has to prove the accused was in possession of M.O.1 which is a stolen Gold ring.

32. As observed from the prosecution evidence it is an admitted fact that M.O.1 belongs to the informant and the same was stolen. It is also admitted fact that the M.O.1 is recovered.

33. As per the evidence of P.W1 and P.W.2 some unknown offenders stolen the M.O.1 and they do not know their details. The entire case of the prosecution rests upon the confessional statement of accused i.e., Ex.P2, said to be confessed by the accused in the presence of P.W3 and L.W.6-Machavarapu Hanumantha Rao. The mediator i.e., P.W.3 in his evidence deposed that the accused confessed about the commission of offence in the present case but admitted that the police did not recover M.O1. from the possession of the accused in his presence. Further as per the material available in hand

the investigation officer did not try to secure independent mediators at the scene of arrest which creates a doubt. Thus there arise doubts that the accused confessed the presence of P.W.3.

34. Even if it is considered that the accused confessed about the commission of offence, it is hit by the sections 25 and 27 of Indian Evidence Act. Further confessional statement i.e., Ex.P2 is inadmissible in evidence as it is hit by section 162 of Cr.P.C.

35. Thus, there is no sufficient evidence on record to show that the accused had stolen the M.O.1 and he is in possession of the same and the same were seized by the police, Dargamitta Police station in the presence of mediators as none of the mediator and the investigating officer in the said case was examined by the police as witness and no document is brought on record by the prosecution that M.O.1 is seized from the possession of the accused. Further the arrest of accused itself will not make the accused liable for the alleged offences and it cannot be said that the prosecution established the guilt of the accused for the offences punishable under section 380 of IPC or in alternative of Section 411 of I.P.C

36. With the above observations, it is manifest that the prosecution did not prove the guilt of the accused beyond all reasonable doubt the offences punishable under section 380 of I.P.C or in alternative 411 of I.P.C. This point is answered accordingly.

37. **POINT NO:2:**

In view of foregoing discussion in Point No.1, as the prosecution is unable to prove the guilt of the accused for the offence punishable under section 380 or in alternative 411 I.P.C, he accused is entitled for acquittal on benefit of doubt.

38. In the result, accused is found not guilty under section 248(1) Cr.P.C. for the offence punishable under section 380 or in alternative under section 411 of I.P.C. and he is acquitted for the said offence. The accused is set at liberty. The Superintendent District Jail, Ongole is hereby directed to release the accused forthwith if he is not involved in any other case or cases. The M.O.1 shall be returned to P.W.1 after lapse of appeal time.

Directly typed to my dictation by the Stenographer-III, corrected and pronounced by me in open court, this the 1st day of March,2023.

Sd/-P.Gayathri
II Addl. Judicial Magistrate of I Class,
Ongole.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED FOR

For PROSECUTION:

For DEFENCE:

- | | |
|--|--------|
| 1. P.W.1: Mogilipuvvu Siva Kumar (informant) | -None- |
| 2. P.W.2: Mogilipuvvu Kavya (Wife of P.W.1) | |
| 3. P.W.3: T.Venaktesh (Mediator in whose presence accused confessed) | |
| 4. P.W.4: Shaik Raffiuddin (Investigation Officer) | |

EXHIBITS MARKED FOR PROSECUTION

1. Ex.P.1: Written complaint of P.W.1 dt.29.05.2022
2. Ex.P.2: Confessional statement of the accused dt.21.05.2022
3. Ex.P.3: First information report dt.29.05.2022
4. Ex.P.4: Rough sketch

EXHIBITS MARKED FOR DEFENCE

-Nil-

M.O.s. MARKED

1. M.O.1: Gold ring

Sd/-P.Gayathri

II Addl. Judicial Magistrate of First Class,
Ongole.

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II-Addl.Judl.Magistrate of I-Class, Ongole
Ongole

CALENDAR AND JUDGMENT

District :: PRAKASAM

Calendar cases tried by the II Addl.Judl. Magistrate of First Class, Ongole.

Date of						
Offence	Report	Apprehension of Accused	Released on bail	Commencement of trial	Close of trial	Sentence
29.05.2022	29.05.2022	27.05.2022	Produced from District jail, Ongole	10.01.2023	06.02.2023	01.03.2023

Judgment in **C.C.No.2753/2022** on the file of II Addl.Judl.Magistrate of First Class, Ongole..

Complainant : Sub-Inspector of Police, of Ongole I-Town Police station, Ongole.

Cr.No: 187/2022

Sl. No	Name of the Accused	Age	Father's/ Husband's Name	Religion	Residence	Mandal
1	Udatha Vasu	50	Venkateswarlu	Yadava	Pragathi nagar 2 nd lane,	SPSR Nellore District

Offence: Under section 380 or in alternative 411 of I.P.C.

Finding: In the result, accused is not found guilty under section 248(1) Cr.P.C. for the offence punishable under section 380 of I.P.C or in alternative 411 of I.P.C

Sentence: In the result, accused is found not guilty under section 248(1) Cr.P.C. for the offence punishable under section 380 or in alternative under section 411 of I.P.C. and he is acquitted for the said offence. The accused is set at liberty. The Superintendent District Jail, Ongole is hereby directed to release the accused forthwith if he is not involved in any other case or cases. The M.O.1 shall be returned to P.W.1 after lapse of appeal time.

Sd/-P.Gayathri
II-Addl. Judl. Magistrate of First Class,
Ongole.

Submitted to: The Hon'ble I Additional District & Sessions Judge,
Ongole.

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II-Addl.Judl.Magistrate of I-Class, Ongole
Ongole

// True copy //

II-Addl.Judl.Magistrate of I-Class,
Ongole