

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST
CLASS FOR RAILWAYS, KAZIPET**

Present: Smt.P.Srivani,
Judl.1st Class Magistrate for Railways,
Kazipet.

Thursday, this the 26th day of July, 2018

C.C.No.01 OF 2017

Between:

The Sub Inspector of Police,
RPS, Warangal.

...Complainant

AND

Konampalli Shiva Jyothi, S/o Raghavulu, Age: 26 yrs, Occ: Private Teacher,
R/o H.No.6-215, Thiranampeta, Vellampalem (V), Ramachandrapuram (M),
East Godavari District now at Millennium School, Mucherla, Hasanparthy
(M), Warangal District.

... Accused

This case is coming before me for final hearing in presence of
Learned Public Prosecutor for Railways and of Sri.Ch.Ramesh, Learned
Counsel for the accused and the matter having heard and stood over for
consideration till this day, this court delivered the following.

JUDGMENT

PW.5/The Sub Inspector of Police, RPS, Warangal filed a Charge
Sheet before this Court against the accused in Cr.No.209 of 2016 for the
offence Under Section 379 r/w 511 of IPC.

2. The case of the prosecution in brief as follows:

That on 07.11.2016 PWs 1 and 2 together boarded Train
No.17201 Golconda Express at Kesamudram Railway Station to go to
Warangal. While travelling in the train, PW.1 had a conversation on a
Mobile and put behind her seat, when train arrived at Warangal Railway

Station at 11.00 hours, offender who seated PW.1 picked the Mobile of PW.1 and tried to de-board the train. Immediately, PW.1 noticed the same and raised an alarm and meanwhile, Pw.2 eagerly caught the accused red-handedly and then, PW.1 took her Mobile back, handed over the offender i.e, accused herein before RPS, Warangal along with report. Basing on the report given by PW.1 a case has been registered by PW.5 against accused as in Cr.No.209 of 2016 for the offence Under Section 379 r/w 511 of IPC, examined and recorded the statements of PWs 1 and 2 and interrogated the accused in the presence of mediators PWs 3 and 4, for which accused revealed his identity and confessed that he committed an offence. So, PW.5 recorded the confessional statement of accused, then, arrested him and produced before the Court. Accused remanded to judicial custody and later he was released on bail and after completion of investigation, PW.5 filed charge sheet before this Court.

3. This court took cognizance for the offence Under Section 379 r/w 511 of IPC.

4. The accused, when was present, copies of case documents were furnished to him Under Section 207 of IPC.

5. The accused when was examined Under Section 239 of Cr.PC, he denied of committing offence and on perusal of record, a charge Under Section 379 r/w 511 of IPC has been framed, read over and explained to him in Telugu Language, the accused pleaded not guilty and claimed for trial.

6. In order to prove its case, the prosecution examined P.Ws.1 to 5, and during the course of Trial, the prosecution got marked Exs.P-1 to P-4.

7. After closing of the prosecution evidence, when Accused was examined under Section 313 of Cr.P.C. by explaining all the incriminating evidence available in the evidence of the prosecution witnesses, the accused denied the same and reported no defence on their behalf. Hence, defence side evidence was closed.

8. Heard both the prosecution as well as the Learned Counsel for the accused.

9. Now the point for determination is:

“Whether the prosecution could able to prove the guilt of the accused for the offence Under Section 379 r/w 511 of IPC beyond reasonable doubt or not?

10. Perused the evidence coupled with Exhibits.

POINT:

11. PW.1 is the Defacto-complainant, PW.2 is an eye witness, PWs 3 and 4 are the said to have panch witnesses for the arrest of accused and confession of accused and PW.5 is an Investigating Officer.

12. According to PWs 1 and 2, they boarded the Golconda express train at Kesamudram to go to Warangal and during journey, Pw.1 kept her mobile beside her on the seat and same was picked by the accused and tried to de-board the train at Warangal, as such, they both caught hold the accused and handed over the accused to the GRP, Warangal. Entire evidence goes to show that accused picked the mobile of PW.1 and wanted to de-board the train, but, there is no single eye witness evidence in this case, both PWs 1

and 2 belongs to one and the same village who are the interest witnesses and moreover as admitted by PW.2, they know the constable to whom they handed over the accused.

13. When, it is the evidence of PW.2 that there was 'N' number of passengers in the train, no one were cited as witness including the TTE. Moreover, Ex.P.1 was not scribed by PW.1, but, was scribed by known person as stated by PW.1 and who was that known person apart from PW.2 is not revealed by the prosecution and as whether such known person was also present in the train or not was not revealed by the prosecution and as per the entire story of the prosecution PWs 1 and 2 were together right from Kesamudram to Warangal and beside PW.2 who was the persons scribed Ex.P.1 is not know to the court which might have also assumes much importance, why because, the panch witnesses in whose presence accused alleged to have committed offence has turned un-friendly to the prosecution case and stated that they don't know about the case.

14. PW.3 one of the panch witness stated that GRP called him and wrote that accused committed theft of chain on Plat Form of the Warangal Railway Station and obtained his signature. According to PW.4, panchanama was done on the Plat Form, but, not in the Police Station. On perusal of the record, it showing that panchanama was written in the premises of the Police Station and the panch witnesses were not present at the time of recording the panchanama, which is not admissible in eye of law and in the absence of such confessional statement, there should be an

evidence which can be relied upon for the offence Under Section 379 r/w 511 of IPC.

15. In the present case on hand, there is no such cogent and supportive evidence. In the light of suggestion by the counsel for accused that accused tried to pick up the cell phone and tried to give the same to PW.1 when the mobile was fell down while Pw.1 de-boarding the train at Warangal, gives rise to a doubt over the prosecution case as to whether accused was intended to commit theft of not and is not proved by prosecution. Hence, benefit of doubt can be given as benefit to the accused herein.

16. In the light of above discussion, I hold that prosecution failed to prove the guilt of the accused for the offence under section 379 r/w 511 of IPC beyond reasonable doubt and accused is liable to be acquitted.

17. In the result, Accused is found not guilty for the offence Under Section 379 r/w 511 of IPC and accused is acquitted U/sec.248(1) of Criminal Procedure Code for the offence Under Section 379 r/w 511 of IPC.

As there is no property in this case, no order passed.

(Dictated to the Stenographer, after transcription, corrected and pronounced by me in the open court, on this the 26th day of July, 2018).

Sd/-
Judl. First Class Magistrate
for Railways Kazipet.

Appendix of Evidence
Witnesses Examined

FOR PROSECUTION

P.W-1: N.Sunitha
P.W-2: T.Venkateshwarlu
P.W-3: Md.Meenaj Khan
P.W-4: D.Anil
P.W-5: S.Srinivas

FOR DEFENCE

NIL

Exhibits Marked

FOR PROSECUTION

Ex.P1 : Complaint
Ex.P2 : Panchanama
Ex.P3: Signature of PW.4 on the confession panchanama
Ex.P4: FIR.

FOR DEFENCE

- Nil -

Material Objects

FOR PROSECUTION

- Nil -

FOR DEFENCE

- Nil -

Sd/-

Judl. First Class Magistrate
for Railways Kazipet.

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