IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, CHAVAKKAD Present: Smt. Veena. K.B. LL. M., Judicial First Class Magistrate Friday, this the 22nd day of November 2019/ Ist Agrahayana 1941

Calendar Case No: 911/2015

Complainant : State/- Sub Inspector of Police, G TPS

Crime No: 300/2015 of Guruvayoor Temple P.S.

(By Sri. James Karanath , A.P.P, Chavakkad)

Accused : Vijesh S/o Dasan, aged 34 Ramalayathil

Thazhekuniyil House Chembra Desam Paral P. O .

By Sri. K. V. Ramanathan, Advocate, Chavakkad.

Offence : U/s. 379 of IPC
Plea : Not guilty
Finding : Not guilty

Sentence or Order : Accused is convicted and sentenced to undergo Rigorous Imprisonment for a term of three (3) months for the offence Punishable U/s. 379 of IPC . to pay fine of Rs 5000(Rupees Five Thousand Only), for the offence Punishable U/s. 379 of IPC, in default of payment of fine, he shall undergo Simple Imprisonment for a period of 3 months for the offence Punishable U/s. 379 of IPC. Set off is allowed for the period during which the accused was under Judicial custody in connection with this case.

DESCRIPTION OF ACCUSED.

SI.No: 1.	Name Vijesh	Father's Nam Dasab	ne Occupa Nil		esidence embra	Age 36
DATES OF						
Occurre	nce Comp	laint Appreher				Sentence
20/0/		sion		ment of trial		Order
20/9/	14 04/05	/15 22/09/16	22/09/16	22/09/16	18/11/19	22/11/19
This case having been heard finally on the 22 nd day of November						

2019 the court on the same day delivered the following:-

JUDGMENT

Accused is put on trial for the offence punishable U/s. 379 of IPC in Guruvayoor Temple Police Station crime No: 300/2015 .

2. The factual allegation against the accused is that, on 20/09/2014 at 8.30 PM, the accused committed theft of Rs. 5,500/- and

a receipt of a mobile Phone kept at the Cloak room, from the hand bag of CW7 named Thushara, while inside the Guruvayoor Sreekrishna Temple near to Kodimaram (കൊടിമരം) and thus committed the aforesaid offence.

- 3. On the appearence of the accused, copies of the relevant prosecution records were furnished to him and after hearing both sides and perusing the records, charge was framed, read over and explained to which he pleaded not guilty and claimed to be tried.
- 4. From the side of the prosecution, PW1 to PW 5 were examined and Ext.P1 to P8 documents, MOI were marked. Pws I and 2 are those from whom the articles were stolen away. They identified mobile phone as MOI. PW3 is the Civil Police Officer who had accompanied the S.I while arresting the accused and seizing the articles from his possession, through him the seizure Mahazar prepared while seizing the mobile phone, one pair of golden anklets and the autorikshaw, which the accused was found driving at the time of his apprehension and the arrest Memo were marked as Exts.P1 and P2. PW4 is cited as an attestor to the Scene Mahazar which is marked as Ext.P3. PW 5 is the S.I of Police through him the First Information Report, the list of property and the report to add Section 379 of IPC were marked as Ext.P4 to P7 respectively.
- 5. After the prosecution evidence was over, the accused was examined U/s 313(1)(b) Cr.PC in order to enable him to personally explain the incriminating circumstances appearing in the evidence against him and he denied all such circumstances. He further stated

that he was taken into custody by the Police while he was sleeping inside the autorikshaw. Then the accused was called upon to enter upon his defence. Though sufficient opportunities were given, no evidence is adduced from the side of the defence.

- 6. On the above facts, following points arises for consideration :
 - 1. Did the accused committ theft of Rs. 5,500/- and the mobile phone at the time and place as alleged so as to Punish U/s. 379 of IPC?.
 - 2. What offence if any committed by the accused, what is the order on sentence?
- 7. **Point Nos. 1** :- The evidence of Pw1 and PW2 proves that they had visited the Guruvayoor Sree Krishna Temple on 20/09/2014 and after getting out of the temple, PW2 noticed that the zib of hishand bag was found opened and on further inspection they found that an amount of ₹.5,500/- and a receipt of her HTC phone kept at the cloak room was found missing. They immediately rushed to the cloak room from where it was informed that just before, a person came with the receipt and took the phone from the cloak room. They identified the mobile phone as MOI. During cross-examination they stood their version regarding the theft as alleged. Nothing could be brought out from their cross-examination to discredit their evidence.
- 8. The prosecution inorder to connect the accused with the occurrence relies upon the evidence of PW3 and PW5, the Senior Civil Police Officer and the Sub Inspector and their evidence proves that on 17/4/2015 at about 3 am, while they were on law and order patrolling duty and while conducting inspection of the vehicles at Guruvayoor Karekkad Junction the accused was found driiving an autorikshaw. Then the S.I signalled

the vehicle to stop. But the accused drove away. Then they chased the autorikshaw and blocked it's way.

- 9. After that the name and address of the accused was ascertained and upon the inspection of the vehicle, two match box were kept beneath the back seat and it was found to contain a pair of anklets. The accused was also found in possession of an HTC phone, the possession of which also the accused failed to satisfactorly account for. During cross-examination of PW3 and PW5 nothing could be brought out to descredit their evidence rather it fortified the prosecution case.
- 10. Thus there is clinching evidence against the accused to find that the accused committed theft of mobile phone which was later recovered from his possession and it's identity is also established through the evidence of Pws I and 2. It is argued by the Learned Counsel for the defence that though PW1 who asserted that he had filed a complaint with the Police on the incident no such complaint is produced by the prosecution. That alone according to me is not sufficient to disbelieve the prosecution case. It is argued by the Learned APP that there is convincing evidence adduced by the prosecution to the effect that accused committed theft of the mobile phone as alleged. Regarding the amount of ₹.5,500/- it is brought out in evidence that the police could not recover the same as they were already expended by the accused. If that be so having gone through the evidence on record, I am of the view that the prosecution could prove beyond any reasonable that the accused committed theft of money and the mobile doubt

phone at the time and place as alleged . Ergo, the point stands answered in favour of the prosecution and against the accused.

11. Point No: 2:- In view of my findings on the above point, I find the accused guilty of the offence Punishable U/s. 379 of IPC and therefore he is convicted of the offence U/s. 248(2) of Cr.P.C.

Dictated to the Confidential Assistant, taken down and transcribed by her corrected and pronounced by me in open court this the 22 nd day of November 2019

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE CHAVAKKAD

12. After pronouncing the judgement of conviction I heard the accused and prosecution on the question of sentence. He pleaded for mercy of the court. Considering the facts and circumstances of the case, I am satisfied that this is not a fit case to invoke the benevolent Provisions of the probation of Offenders Act and that the imposition of the following sentence would satisfy the ends of justice. Hence I do so.

In the result, the accused is convicted and sentenced to undergo Rigorous Imprisonment for a term of 3 (three) Months and to pay fine of Rs 5000(Rupees Five Thousand Only), for the offence Punishable U/s. 379 of IPC, in default of payment of fine, he shall undergo Simple Imprisonment for a period of 3 (three)months for the offence Punishable U/s. 379 of IPC. The accused was in judicial custody form 17/4/2015 to 30/4/2015. Set off is allowed for the period during which the accused was under Judicial custody in connection with this case.

MO1. Mobile phone shall be returned to PW2

Dictated to the Confidential Assistant, taken down and transcribed by her corrected and pronounced by me in open court this the 22 nd day of November 2019

JUDICIAL FIRST CLASS MAGISTRATE CHAVAKKAD

APPENDIX

Witnesses Examined for prosecution:-

PW1:Ranachandrasekharan S/o Chandrasekhara Pilla, Chankuvetty.

PW2: Thusharananrayanan W/o Ranachandrasekharan, Chankuvetty.

PW3: Sivadas (Sr CPO, Guruvayoor Temple PS)

PW4: Nitheesh S/o Ashamoorthy, Pattambi

PW5: M.V. Balakrishnan (SHO, Guruvayoor Temple PS)

Exhibits filed for prosecution:-

Ext.P1: Seizure Mahazar Dated 17/04/2015

Ext.P2: Arrest Memo Dated 17/04/2015

Ext.P3. Scene Mahazar, Dated 17/04/2015

Ext.P4: F.I.R, Dated 17/04/2015

Ext.P5: Property List Dated 17/04/2015

Ext.P6: Report for adding section 379 of IPC, daged 17/4/2015

Witnesses and Exhibits for Defence: Nil

Material Objects marked for Prosecution:-

MOI: Mobile Phone

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