

IN THE COURT OF JUDICIAL MAGISTRATE COURT NO.I, TAMBARAM

PRESENT: Tr.G. SENTHAMILSELVAN., B.A. M.L.,

JUDICIAL MAGISTRATE NO.I , TAMBARAM

On Tuesday, the 11th day of August, 2026

C.C.No. 99 of 2026

CNR No.TNCG0F-000366-2026

State represented by

The Inspector of Police,
Peerkkankaranai Police Station,
Tambaram District.

.... Complainant

Versus

1. Sivasankar, M/ A 30/2026,
S/o. Sriram,
No.64, Padmavathi Nagar,
3rd Cross Street,
Kilambakkam, Vandalur Taluk,
Chengalpattu District 603 210.

2. Leonard Daniel James, M/ A32/2026,
S/o. Daniel James,
No.15, Variyar Street, Pari Nagar,
Anagaputhur, Pammal,
Pallavaram Taluk,
Chengalpattu District 600075.

.... Accused

This case came up for final hearing today in the presence of the Learned Assistant Public Prosecutor for the complainant and the learned Advocate M/s. M.Siva, M.Ravindran, S.Saravana Perumal, R.Parthiban, A.Augalya Guru Bharathi, A.Deepak, E.Udhaya and R.H.Anushiya appearing for the accused 1 and 2. Heard both sides. Perused the entire records available before this Court. The matter having stood over for consideration, this Court delivers the following:

JUDGMENT

1. INTRODUCTION:

This is a case instituted upon the final report filed by the Inspector/Sub-Inspector of Police, Peerkkankaranai Police Station, in Crime No.584 of 2025, alleging commission of an offence punishable under Section 303(2) read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023, hereinafter referred to as “BNS”.

After full-fledged trial and careful appreciation of oral and documentary evidence, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Hence this judgment.

**(As per Circular of the Hon’ble High Court, Madras in
ROC.No.814/2020/RG/F1 dated 07.04.2021)**

Particulars

Complainant	State represented by The Inspector of Police, Peerkkankaranai Police Station, Tambaram District. (Cr.No.584/2025)
Accused	1. Sivasankar , M/ A 30/2026, S/o. Sriram, No.64, Padmavathi Nagar, 3 rd Cross Street, Kilambakkam, Vandalur Taluk, Chengalpattu District 603 210. 2. Leonard Daniel James , M/ A32/2026, S/o. Daniel James, No.15, Variyar Street, Pari Nagar,

	Anagaputhur, Pammal, Pallavaram Taluk, Chengalpattu District 600075.
Date of offence	07.11.2025
Date of filing of final report	30.01.2026
Offences complained of	U/s. 303(2) r/w Sec. 3(5) of BNS.
Charges framed	U/s. 303(2) r/w Sec. 3(5) of BNS.
Plea of accused	Not guilty
Final Order	Not guilty U/s. 303(2) r/w Sec. 3(5) of BNS.

1. CASE OF THE PROSECUTION:

This is a case instituted upon the final report filed by the Inspector/Sub-Inspector of Police, Peerkkankaranai Police Station, in Crime No.584 of 2025, alleging commission of an offence punishable under Section 303(2) read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023, hereinafter referred to as “BNS”.

The prosecution case, in substance, is that on 07.11.2025 at about 8.00 p.m., PW-1 Yuvaraj took the TVS Zest motorcycle bearing Registration No.TN-11-BM-3514 belonging to PW-3 Sasikala, from PW-2 Anand, husband of PW-3, for going to a vegetable shop at New Perungalathur.

PW-1 allegedly parked the motorcycle in front of “New Shanthi Vegetable Shop” near Perumal Kovil, New Perungalathur, and went inside the shop for purchasing vegetables. When he returned, the motorcycle was found missing.

According to the prosecution, PW-1 thereafter informed PW-2 and PW-3 and ultimately approached the police.

The prosecution further alleges that although the complaint was given on 08.11.2025, the FIR in Crime No.584 of 2025 was registered only on 19.11.2025 at about 20.00 hours under Section 303(2) BNS against unknown persons.

Meanwhile, the accused had allegedly been arrested in another case in Crime No.283 of 2025 on the file of Guduvancheri Police Station on 19.11.2025. The prosecution alleges that while they were in custody, they gave a confession to PW-8, Inspector of Police, Chuduvancheri Police Station, at about 16.40 hours, and that pursuant to such information, the motorcycle bearing Registration No.TN-11-BM-3514 was recovered and seized under Ex.P-9.

Thereafter, PW-9, the Investigating Officer of the present case, allegedly took up investigation, visited the scene of occurrence, prepared the Observation Mahazar and Rough Sketch, examined the witnesses, formally arrested the accused in the present case, recovered the vehicle from Chuduvancheri Police Station and ultimately filed the final report.

The prosecution alleges that both accused acted together in furtherance of their common intention and committed theft of the aforesaid motorcycle.

2. Taking Cognizance:

Upon receipt of the police report under Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), this Court perused the final report and the materials accompanying it and took cognizance of the alleged offence under Section 210 BNSS.

The accused were produced before this Court in accordance with law. Their production and custody were duly recorded.

As required under Section 230 BNSS, copies of the police report, FIR, statements of witnesses and other documents relied upon by the prosecution were furnished to the accused free of cost. Section 230 specifically requires supply of the police report and FIR and other relied-upon materials to the accused.

The accused were represented by counsel and were afforded adequate opportunity to defend themselves.

3. FRAMING OF CHARGE:

After considering the police report, accompanying documents and submissions of both sides, this Court found sufficient ground at the stage of charge to presume that the accused might have committed the alleged offence.

Accordingly, charge was framed under Section 303(2) read with Section 3(5) BNS.

The charge was read over and explained to both accused in a language known to them. Both accused denied the accusation, pleaded not guilty and claimed to be tried.

The framing of charge at that stage does not amount to a finding of guilt. It merely signifies the existence of a prima facie ground for proceeding with the trial. Section 263 BNSS governs framing of charge in a warrant-case instituted on a police report.

4. PROSECUTION EVIDENCE:

In order to establish its case, the prosecution examined nine witnesses as PW-1 to PW-9 and marked Ex.P-1 to Ex.P-13 and M.O.1.

The evidence of each witness is considered below.

a) PW-1 – YUVARAJ

PW-1 is the complainant and the person who allegedly had custody of the motorcycle immediately before it went missing.

He deposed that on 07.11.2025 he took the TVS Zest motorcycle bearing Registration No.TN-11-BM-3514 from PW-2 Anand and went to the vegetable shop at New Perungalathur.

According to him, he parked the vehicle near “New Shanthi Vegetable Shop” and went inside to purchase vegetables. On returning, he found that the vehicle was missing.

He thereafter informed the owner and approached the police.

However, in cross-examination, PW-1 categorically admitted that he had not seen the person who took the motorcycle. He admitted that the place was a public place and that he did not know who had taken the vehicle. He also did not identify either accused as the person who committed the theft.

b) PW-2 – ANAND

PW-2 is the husband of PW-3 and the person who allegedly handed over the motorcycle to PW-1.

His evidence is that he gave the motorcycle to PW-1 and subsequently came to know that it was missing.

In cross-examination, PW-2 admitted that he did not witness the theft and had no personal knowledge regarding the identity of the person who took the motorcycle.

c) PW-3 – SASIKALA

PW-3 is the registered owner of the motorcycle.

She deposed that the vehicle bearing Registration No.TN-11-BM-3514 belongs to her and that her husband had given it to PW-1.

She identified the vehicle and the photograph thereof, marked as Ex.P-1.

She stated that she came before the Court for obtaining return of her vehicle.

During cross-examination, PW-3 admitted that she did not witness the theft and that she did not know who had stolen the motorcycle.

d) PW-4 – ELUMALAI

PW-4 was examined as a witness to the Observation Mahazar.

He stated that the police visited the scene and prepared the Observation Mahazar and Rough Sketch in his presence.

In cross-examination, he admitted that PW-1 was his colleague and that he was working in the same establishment.

He further admitted circumstances which cast doubt upon his independence as a mahazar witness.

e) PW-5 – LOGANATHAN

PW-5 also speaks regarding preparation of the Observation Mahazar and Rough Sketch.

His evidence is likewise formal in character.

He did not witness the theft.

He did not see either accused at the scene.

He did not identify either accused.

Therefore, PW-5 does not provide any substantive link between the accused and the alleged theft.

f) PW-6 – THANGARAJ

PW-6 was cited in connection with the alleged confession and seizure proceedings.

The evidence available on record, however, does not furnish dependable independent corroboration from PW-6 sufficient to establish the alleged disclosure and recovery in the manner projected by the prosecution.

The Court is therefore required to examine the evidence of PW-8 and the documentary material with particular caution.

g) PW-7 – VENGADESAN

PW-7 was projected as an independent witness to the alleged confession/recovery proceedings. However, he did not support the prosecution.

He stated that he did not know anything about the case and that although his signatures appeared on certain documents, he had been called to the police station and made to sign them.

He denied knowledge regarding the alleged seizure of the motorcycle.

The prosecution treated him as hostile and cross-examined him.

h) PW-8 – INSPECTOR OF POLICE, GUDUVANCHERI POLICE STATION

PW-8 stated that the accused were arrested in Crime No.283 of 2025 and that while in police custody they allegedly gave a confession relating to the present case.

He further stated that pursuant to such confession the motorcycle was traced and seized under Ex.P-9.

i) PW-9 – INVESTIGATING OFFICER

PW-9 deposed regarding registration of the FIR, investigation, preparation of Observation Mahazar and Rough Sketch, examination of witnesses, formal arrest of the accused, receipt of the vehicle from Chuduvancheri Police Station and filing of the final report.

However, his cross-examination reveals several material circumstances.

He admitted that:

the complaint was given on 08.11.2025;

the FIR was registered only on 19.11.2025 at 20.00 hours;

Ex.P-9 records seizure of the vehicle at 16.40 hours on 19.11.2025;

the accused were already in custody in another case; and

the alleged recovery was based upon information received from the other police station.

The material discrepancy between the seizure time and FIR registration time has not been satisfactorily explained.

5. EXAMINATION OF ACCUSED UNDER SECTION 351 BNSS:

After closure of prosecution evidence, both accused were examined under Section 351 BNSS. The incriminating circumstances appearing against them were put to them. They denied the allegations and stated that they were falsely implicated. They did not admit the alleged confession or recovery and did not

choose to give evidence on oath in their defence. Their answers cannot be used to fill fundamental gaps in the prosecution evidence.

6. DEFENCE EVIDENCE:

The accused did not examine any witness on their side and did not mark any defence document.

However, the absence of defence evidence does not relieve the prosecution of its primary burden.

The prosecution must succeed on the strength of its own evidence.

The weakness or absence of the defence cannot substitute proof of guilt beyond reasonable doubt.

7. ARGUMENTS OF THE PROSECUTION:

The learned Assistant Public Prosecutor submitted that:

1. PW-1 has established the theft;
2. PW-3 has established ownership;
3. the accused were arrested in another case;
4. they gave voluntary information;
5. the motorcycle was recovered pursuant to such information;
6. Ex.P-9 establishes the seizure;
7. the police evidence corroborates the recovery; and
8. the cumulative circumstances establish guilt under Sections 303(2) and 3(5) BNS.

It was therefore argued that the accused are liable to be convicted.

8. ARGUMENTS OF THE DEFENCE:

The learned Defence Counsel contended that:

1. there is no eyewitness;
2. PW-1 did not identify either accused;
3. PW-2 and PW-3 have no personal knowledge of the theft;
4. PW-7, the independent recovery witness, has turned hostile;
5. the alleged confession was made to a police officer and is inadmissible;
6. the alleged seizure occurred at 16.40 hours, whereas the FIR was registered only at 20.00 hours;
7. the complaint was given on 08.11.2025 but FIR was registered only on 19.11.2025;
8. the prosecution failed to satisfactorily explain these discrepancies;
9. the recovery has not been legally and reliably established; and
10. there is no evidence establishing common intention.

It was therefore argued that the accused are entitled to acquittal.

9. POINTS FOR DETERMINATION:

The following points arise for determination:

Point No.1

Whether the prosecution has proved beyond reasonable doubt that on 07.11.2025 the accused Sivasankaran @ Siva and Leodeniel James committed theft of TVS Zest motorcycle bearing Registration No.TN-11-BM-3514?

Point No.2

Whether the prosecution has proved the alleged disclosure and recovery of the motorcycle in accordance with Section 23 of the Bharatiya Sakshya Adhiniyam, 2023?

Point No.3

Whether the prosecution has established that both accused acted in furtherance of their common intention as contemplated under Section 3(5) BNS?

Point No.4

Whether the investigation defects, particularly the delay in registration of FIR and the circumstance that the seizure is shown to have preceded registration of the FIR, materially affect the reliability of the prosecution case?

Point No.5

Whether the prosecution has proved the guilt of the accused beyond reasonable doubt and whether they are entitled to acquittal?

10. DISCUSSION AND FINDINGS:

This Court has carefully considered the evidence on record, the arguments advanced, and the applicable legal principles. The detailed analysis is as follows:

1. Absence of Direct Evidence

In the present case, no witness has stated that he or she actually saw Accused Nos.1 and 2 taking or moving the motorcycle from the place where PW-1 had parked it.

PW-1 establishes the circumstances in which the motorcycle was parked and subsequently found missing. PW-2 speaks regarding the entrustment of the motorcycle to PW-1. PW-3 speaks regarding ownership. PW-4 and PW-5 speak principally regarding the observation mahazar and connected formalities. PW-7 was projected as an independent witness to the alleged recovery, but has not supported the prosecution version regarding the recovery. PW-8, the police witness, speaks regarding the investigation and alleged recovery.

Thus, there is no direct ocular evidence identifying either accused as the person who removed the motorcycle.

The absence of an eyewitness is not, by itself, fatal to a prosecution. A conviction can legally rest upon circumstantial evidence. However, where the prosecution chooses to rely upon circumstantial evidence, the circumstances must be proved with the requisite degree of certainty and the chain must be complete.

2. Principles Governing Circumstantial Evidence

The governing principles were authoritatively laid down by the Hon'ble Supreme Court in **Sharad Birdhichand Sarda v. State of Maharashtra**, (1984) 4 SCC 116. The circumstances relied upon by the prosecution must be fully established; they must be consistent only with the hypothesis of guilt; they must be conclusive in nature; they must exclude every reasonable hypothesis consistent with innocence; and the circumstances must form a complete chain.

The Supreme Court has repeatedly reaffirmed these principles in subsequent decisions.

Therefore, this Court is required to examine not merely whether each individual circumstance is suspicious, but whether the circumstances proved by the

prosecution collectively establish the guilt of the accused beyond reasonable doubt.

11. APPRECIATION OF THE EVIDENCE OF PW-1 TO PW-5:

1. Evidence of PW-1 – Factum of Theft and Identity of the Offender

PW-1's evidence is relevant principally to establish that the motorcycle was entrusted to him, that he parked it at the vegetable shop, and that subsequently it was found missing.

This part of his testimony is not materially shaken in cross-examination. The Court therefore accepts, for the purpose of the present discussion, that the motorcycle was in the possession of PW-1 and that it was subsequently removed without his consent.

However, the evidentiary value of PW-1's testimony must be confined to what he actually perceived.

PW-1 did not witness the person who removed the motorcycle. He therefore cannot identify Accused Nos.1 and 2 as the persons who committed the act of taking.

There is an important distinction between proving the factum of theft and proving the identity of the thief. Proof that property has disappeared from lawful possession establishes the occurrence of a loss or theft, but it does not, by itself, establish that a particular accused committed the theft.

Consequently, the evidence of PW-1 establishes the occurrence from which the criminal case arose, but it does not complete the evidentiary link connecting the accused with the commission of the offence.

2. Evidence of PW-2 and PW-3

PW-2's evidence relates principally to the fact that the motorcycle was handed over to PW-1. PW-3 speaks regarding ownership of the motorcycle.

These witnesses do not claim to have witnessed the actual removal of the motorcycle. Their evidence therefore cannot be elevated into evidence identifying the accused as the perpetrators.

Ownership and possession of the stolen property are relevant foundational facts. Nevertheless, ownership of the property does not establish the identity of the offender.

The Court therefore finds that PW-1 to PW-3 establish the existence of the property, its possession before the occurrence, and its subsequent disappearance, but they do not establish the participation of either accused in the act of theft.

3. Evidence of PW-4 and PW-5 – Observation Mahazar

PW-4 and PW-5 are witnesses connected with the preparation of the observation mahazar and rough sketch.

Their evidence does not establish that either accused was present at the scene when the motorcycle was removed. Nor does their evidence provide an independent link between the accused and the missing motorcycle.

Their testimony must therefore be confined to the formal investigative acts which they actually witnessed.

The Court is conscious that the evidence of a mahazar witness cannot be rejected merely because the witness is associated with the complainant or is otherwise known to him. At the same time, where such witness does not speak

to the incriminating circumstance relied upon by the prosecution, his evidence cannot be used to supply the missing link.

Thus, the evidence of PW-4 and PW-5 does not materially advance the prosecution case concerning the identity or participation of the accused.

4. PW-7 – ALLEGED INDEPENDENT RECOVERY WITNESS

The prosecution substantially relies upon the alleged recovery of the motorcycle pursuant to the information attributed to the accused.

In such circumstances, the evidence of the independent recovery witness assumes considerable importance. PW-7, however, has not supported the prosecution version regarding the alleged disclosure and recovery.

Merely because a witness has been treated as hostile or has not supported the prosecution, his entire testimony does not automatically disappear from the record. Under Section 157 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), the Court may permit the party calling the witness to put questions in the nature of cross-examination, and the statute expressly preserves the right to rely upon any credible portion of the witness's evidence.

The correct approach is therefore to examine whether any portion of PW-7's testimony is trustworthy and independently corroborated.

In the present case, PW-7 has denied knowledge of the alleged recovery proceedings and has stated, in substance, that his signatures were obtained at the police station. He has not supported the prosecution on the material question whether the accused disclosed the location of the motorcycle or whether the motorcycle was recovered pursuant to such disclosure.

Consequently, the evidence of PW-7 does not furnish independent corroboration for the alleged recovery.

The Court does not hold that a conviction can never be based upon police evidence in the absence of an independent witness. There is no inflexible rule that the evidence of a police officer is inherently unreliable. The question is whether, on the facts of the particular case, such evidence is sufficiently cogent, consistent and trustworthy.

In the present case, the evidence of PW-8 regarding the recovery has to be examined together with the material chronological discrepancy concerning the seizure and registration of the FIR. That circumstance assumes significance because the prosecution relies upon the recovery as the principal connecting link.

12. SECTION 23 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023 – DISCLOSURE AND DISCOVERY

Section 23 BSA expressly provides that a confession made to a police officer cannot be proved against an accused. It further provides that a confession made while the person is in police custody cannot be proved against him unless made in the immediate presence of a Magistrate.

The proviso to Section 23(2), however, permits proof of so much of information received from an accused in police custody as relates distinctly to the fact discovered in consequence of such information.

The principle underlying this exception is not that the entire confession becomes admissible. Only the portion of the information which has a direct and proximate nexus with the fact actually discovered can be proved.

The principle stated in **Pulukuri Kottaya v. Emperor**, 1947 SCC OnLine PC 44 : AIR 1947 PC 67, continues to furnish the classical explanation of the discovery doctrine.

Therefore, in the present case, the prosecution was required to establish:

- (i) that the accused was in police custody;
- (ii) that information was given by the accused;
- (iii) that such information related distinctly to a fact capable of discovery;
- (iv) that the fact was actually discovered in consequence of that information;
- and
- (v) that the discovery is proved by reliable evidence.

The critical issue is the fourth requirement.

The prosecution must establish a causal connection between the information furnished by the accused and the fact discovered. Only that part of the information which has a direct nexus with the discovery is admissible; the rest, being a confession to police, remains inadmissible.

In the present case, the alleged confession to PW-8 is inadmissible except for the limited discovery exception. But the discovery itself has not been established with sufficient reliability, as discussed below.

Whether There Was a Discovery in Consequence of the Information?

The prosecution evidence, as presently available on record, indicates that the motorcycle was seized at about 4:40 p.m. on 19.11.2025 under Ex.P-9, whereas the FIR in the present case was registered at about 8:00 p.m. on the same date under Ex.P-10.

If the prosecution itself relies upon Ex.P-9 to establish that the motorcycle was already traced and seized at 4:40 p.m., the Court must necessarily ask how the motorcycle could thereafter be said to have been discovered at the instance of the accused.

A discovery under Section 23 BSA must be causally connected with the information furnished by the accused. The prosecution cannot merely establish

that the accused made a statement and that the police subsequently produced an article. It must establish that the information led to the discovery.

Where the property was already within police knowledge or custody before the alleged disclosure, the essential causal link becomes seriously doubtful.

In the present case, the prosecution has not satisfactorily explained this chronology.

The Court is not prepared to record a positive finding of fabrication or ante-timing merely on the basis of suspicion. Such a serious finding requires cogent evidence. However, the unexplained chronology is certainly a material circumstance which affects the reliability of the alleged disclosure and recovery. At the very least, the prosecution has failed to establish beyond reasonable doubt that the motorcycle was discovered in consequence of information supplied by the accused.

The alleged confession, insofar as it amounts to a confession to the police, cannot independently be used against the accused. Only the legally admissible discovery portion can be considered, and that portion has not been satisfactorily established in the present case.

13. PRE-FIR SEIZURE AND CHRONOLOGICAL DISCREPANCY:

The relevant chronology emerging from the prosecution records is as follows:

Date / Time	Event
07.11.2025 – about 8:00 p.m.	Alleged theft of motorcycle
08.11.2025	Complaint stated to have been given to police
19.11.2025 – about 4:40 p.m.	Motorcycle allegedly seized/traced under Ex.P-9
19.11.2025 – about 8:00 p.m.	FIR registered under Ex.P-10

The discrepancy is not treated as a mere technical irregularity. It becomes material because the prosecution relies upon the subsequent alleged disclosure of the accused as the foundation for the recovery.

If the vehicle had already been seized at 4:40 p.m., the prosecution must explain:

- (a) in what case or circumstances it was seized;
- (b) from whom it was seized;
- (c) where it was found;
- (d) how its identity as the stolen motorcycle was established;
- (e) when the accused allegedly furnished the disclosure statement;
- (f) whether the accused actually led the police to the place of recovery; and
- (g) how a vehicle already seized at 4:40 p.m. could thereafter be described as having been discovered pursuant to the accused's disclosure.

These questions are not peripheral. They go to the very foundation of the prosecution case.

The Court is conscious that registration of an FIR and the commencement of investigation may involve factual situations requiring examination of the circumstances in each case. Therefore, the Court does not hold, as an abstract proposition, that every investigative step preceding registration of an FIR is automatically illegal.

Nevertheless, where a cognizable offence had allegedly been reported on 08.11.2025 and the FIR was registered only on 19.11.2025, while the principal incriminating property was allegedly seized several hours before the FIR on that very date, the prosecution bears the burden of satisfactorily explaining the sequence.

No convincing explanation emerges from the evidence.

This unexplained chronology substantially weakens the prosecution's theory that the recovery was a spontaneous consequence of information furnished by the accused.

14. DELAY IN REGISTRATION OF FIR:

Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) governs information relating to cognizable offences. Where information discloses a cognizable offence, the statutory scheme contemplates registration of the information in accordance with law.

The principles laid down in **Lalita Kumari v. Government of Uttar Pradesh**, (2014) 2 SCC 1, require the Court to examine whether the information disclosed a cognizable offence and whether the delay in registration is satisfactorily accounted for.

At the same time, delay in registration of an FIR does not automatically demolish the prosecution case. The effect of delay depends upon the circumstances and the explanation offered. The Supreme Court has reiterated that unexplained delay may become a relevant circumstance and may, depending upon the totality of evidence, justify an adverse inference.

In the present case, the alleged occurrence was on 07.11.2025. The complaint was given on 08.11.2025, whereas the FIR was registered only on 19.11.2025.

The prosecution has not placed convincing evidence explaining why the FIR was not registered earlier, particularly when the allegation concerned theft of a motorcycle.

The importance of the delay is enhanced by the fact that the motorcycle was allegedly seized at 4:40 p.m. on 19.11.2025 and the FIR was registered only at 8:00 p.m.

Thus, the delay cannot be viewed in isolation. It has to be appreciated cumulatively with the pre-FIR seizure and the failure of the independent recovery witness to support the prosecution.

The Court therefore holds that the unexplained delay constitutes a material circumstance affecting the credibility of the prosecution investigation, though it is not, standing alone, treated as sufficient to acquit the accused.

15. SECTION 303 BNS – WHETHER THE INGREDIENTS OF THE OFFENCE ARE PROVED AGAINST THE ACCUSED

Section 303(1) BNS defines theft as dishonest taking of movable property out of the possession of any person without that person's consent by moving the property in order to such taking.

The prosecution must therefore establish, inter alia:

- (i) movable property;
- (ii) possession of that property by another person;
- (iii) absence of consent;
- (iv) dishonest intention; and
- (v) movement of the property in order to accomplish the taking.

In the present case, the motorcycle is undoubtedly movable property. The evidence also establishes that it was in the possession of PW-1 before it disappeared and that PW-1 had not consented to its removal.

However, the remaining question is whether the prosecution has proved beyond reasonable doubt that these accused were the persons who dishonestly moved the motorcycle.

That essential link has not been established by direct evidence.

Nor has it been established through reliable circumstantial evidence. The alleged recovery, which is relied upon to bridge the evidentiary gap, itself suffers from the deficiencies already discussed.

The Court therefore distinguishes between proof that an offence of theft occurred and proof that the accused committed that theft.

The first proposition is established. The second is **not** established beyond reasonable doubt.

16. POSSESSION, RECOVERY AND THE ABSENCE OF CONSCIOUS POSSESSION

The prosecution seeks to derive an inference of guilt from the alleged recovery of the motorcycle.

However, the evidentiary value of recovery depends upon the circumstances in which the property was found and the nexus established between the accused and the property.

In the present case, the motorcycle was not recovered from the physical or conscious possession of either accused in circumstances independently proved by reliable evidence. The prosecution case itself places the motorcycle within police custody pursuant to the seizure relied upon in Ex.P-9.

Consequently, the ordinary inference that may sometimes arise from the recent and unexplained possession of stolen property cannot automatically be invoked against the accused.

The prosecution has not established the crucial link showing that the accused had conscious possession of the motorcycle after its alleged removal from PW1. The Court therefore cannot convert the mere existence of the motorcycle in police custody into proof of possession by the accused.

17. COMMON INTENTION – SECTION 3(5) BNS:

The prosecution has also invoked the principle of common intention under Section 3(5) BNS. Section 3(5) provides that where a criminal act is done by several persons in furtherance of the common intention of all, each person is liable as if the act had been done by him alone.

Common intention is not established merely because two persons are subsequently found together or arrested together. The prosecution must establish, through direct or circumstantial evidence, participation in the criminal act pursuant to the requisite common intention.

In the present case, there is no independent evidence establishing:

- (a) prior meeting of minds between Accused Nos.1 and 2;
- (b) a plan to steal the motorcycle;
- (c) their presence together at the place of occurrence;
- (d) their participation in moving the motorcycle; or
- (e) conduct immediately connected with the theft from which common intention can safely be inferred.

The alleged disclosure/recovery is itself doubtful for the reasons already recorded.

Therefore, Section 3(5) BNS cannot be invoked merely on the basis of the accused being together in connection with another criminal case.

18. DEFECTS IN INVESTIGATION – EFFECT ON THE PROSECUTION CASE:

It is settled that defective investigation does not automatically entitle an accused to acquittal if the substantive evidence independently establishes guilt.

Conversely, where the prosecution case itself rests upon the very circumstances which are affected by investigative deficiencies, such deficiencies become relevant in assessing the reliability of the prosecution evidence.

In the present case, the defects are not confined to peripheral investigative matters. They concern the principal connecting circumstance relied upon by the prosecution, namely the alleged disclosure and recovery.

The Court therefore cannot simply disregard the defects as minor irregularities.

The following circumstances require particular consideration:

First, the motorcycle was allegedly seized before the FIR was registered.

Secondly, the prosecution has not satisfactorily explained the 11-day interval between the complaint and FIR.

Thirdly, the independent witness to the alleged recovery has not supported the prosecution.

Fourthly, the accused were not shown to be in conscious possession of the motorcycle when it was seized.

Fifthly, the prosecution has not established a reliable causal connection between the alleged disclosure and the discovery.

These circumstances collectively weaken the prosecution case at its central point.

19. FINDINGS:-

Upon an overall appreciation of the evidence, this Court finds:

- (i) The prosecution has established that the motorcycle was missing from the possession of PW-1 without his consent.
- (ii) The prosecution has not established by direct evidence that Accused Nos.1 and 2 were the persons who removed the motorcycle.
- (iii) The alleged recovery has not been proved with sufficient reliability.

(iv) PW-7, the independent recovery witness, has not supported the prosecution on the material aspect of the recovery.

(v) The chronology showing seizure at about 4:40 p.m. and registration of the FIR at about 8:00 p.m. remains unexplained.

(vi) The prosecution has failed to establish beyond reasonable doubt that the motorcycle was discovered in consequence of information furnished by either accused within the meaning of the proviso to Section 23(2) BSA.

(vii) The prosecution has not established conscious possession of the motorcycle by either accused.

(viii) The prosecution has not independently established the common intention contemplated by Section 3(5) BNS.

(ix) The cumulative effect of the circumstances gives rise to a reasonable doubt regarding the involvement of the accused.

In a criminal trial, the Court cannot convert suspicion into proof merely because a theft has undoubtedly occurred.

The Court is equally conscious of the societal interest in detection and punishment of theft. Nevertheless, the criminal justice system requires that conviction should follow only when the prosecution evidence crosses the threshold of proof beyond reasonable doubt.

In the present case, that threshold has not been crossed.

The accused are therefore entitled to the benefit of reasonable doubt.

20. CONCLUSION AND FINAL ORDER:

For the foregoing reasons, this Court holds that the prosecution has failed to prove beyond reasonable doubt that Accused Nos.1 and 2 committed the offence alleged against them under Section 303 BNS read with Section 3(5) BNS.

Accordingly, Point No. 1 is answered against the prosecution and in favour of the accused. The prosecution has failed to prove that the accused committed the theft.

Point No. 2 is answered against the prosecution. The alleged confession is inadmissible, and the recovery is not proved in a legally admissible manner.

Point No. 3 is answered against the prosecution. The investigation is legally invalid and vitiated due to the mandatory registration of FIR being violated (*Lalita Kumari*).

Point No. 4 is answered in the affirmative. The accused are entitled to the benefit of doubt.

Point No. 5 – The final order is as follows:

21. FINAL ORDER:

Upon careful evaluation of the oral and documentary evidence on record, and in consideration of the arguments advanced by both sides, this Court is of the considered opinion that the prosecution has failed to prove its case beyond all reasonable doubt against the accused.

The prosecution has failed to establish a valid link between the accused and the stolen vehicle. The alleged confession is inadmissible. The recovery witness has turned hostile. The investigation is vitiated by the serious legal infirmity of investigating the case before registering the FIR, which is a violation of the mandatory procedure laid down by the Supreme Court in *Lalita Kumari v. State of U.P.*

The accused are, therefore, entitled to the benefit of doubt.

Accordingly, the accused, SIVASANKAR and LEONARDDENIEL JAMES, are hereby ACQUITTED of the offence charged under Sections 303(2) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023.

Directions:

1. The accused are set at liberty forthwith. Their bail bonds stand cancelled, and the sureties are discharged.
2. The accused shall execute a personal bond for peace and good behavior for a period of six months under Section 437A CrPC (or corresponding provision of BNSS), to the satisfaction of this Court.

Disposal of Property (M.O. 1):

3. The case property, (P.I.No. 14/2026) namely the TVS Zest bearing Registration No. TN-11 BM 3514, if already released to its lawful owner under interim custody, such release is hereby confirmed. If it remains in Court custody, it shall be returned to the lawful owner after the expiry of the appeal period and after obtaining proper acknowledgment, if not required in any other proceedings.

Typed to my dictation, corrected and pronounced by me in the open Court on this 11th day of August, 2026.

**Judicial Magistrate No.1,
Tambaram.**

ANNEXURE**I. List of Prosecution Witnesses:**

PW No.	Name of Witness	Role
PW-1	Mr. Yuvaraj	Complainant
PW-2	Mrs. Sasikala	Hearsay witness
PW-3	Mr. Anand	Hearsay witness
PW-4	Mr. Elumalai	Observation Mahazar witness
PW-5	Mr. Loganathan	Observation Mahazar witness
PW-6	Mr.Thangaraj	Seizure Mahazar witness
PW-7	Mr. Venkatesan	Seizure Mahazar witness
PW-8	Mrs. Paripooranam	Other witness
PW-9	Mr. Govindan	Investigating Officer

II. List of Documents and Material Objects Marked by Prosecution:

Exhibit No.	Description
Ex. P1	Complainant
Ex. P2	Observation Mahazar
Ex. P3	Signature of Mr.Thangaraj (PW6) in confession Statement A1 (1 st Signature)
Ex. P4	Signature of Mr.Thangaraj (PW6) in confession Statement A1 (1 st Signature)
Ex. P5	Signature of Mr.Thangaraj (PW6) in Seizure

	Mahazar (1 st Signature)
Ex. P6	Signature of Mr.Venkatesan (PW7) in confession Statement A1 (2 nd Signature)
Ex. P7	Signature of Mr.Venkatesan (PW7) in confession Statement A2(2 nd Signature)
Ex. P8	Signature of Mr.Venkatesan (PW7) in Seizure Mahazar (2 nd Signature)
Ex. P9	Seizure Mahazar
Ex. P10	First Information Report
Ex. P11	Observation Mahazar
Ex. P12	Rough Sketch
Ex. P13	Form 95

III. Defence Witnesses: Nil

IV. Defence Documents: Nil

V. Material Objects:

MO1	Motorcycle bearing Registration No. TN 11 BM 3514 (TVS Zest) in P.I.No. 14/2026
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Judicial Magistrate No.I,
Tambaram.