

IN THE COURT OF JUDICIAL MAGISTRATE No.III, TIRUCHIRAPPALLI.**Present: THIRU. K.R.BALAJI,B.A.B.L.,(HONS)****JUDICIAL MAGISTRATE No.III,****TIRUCHIRAPPALLI.****Monday, the 14th day of August (Thiruvalluvar aandu 2054)****(Sobakiruthu Aandu Aadi 26th day)****Calendar Case 166/2023****CNR.No.TNTP- 034111-2022**

....

The State rep.by
Inspector of police,
Jeeyapuram Police Station,
Tiruchirappalli.

... Complainant

//Versus//

1. Velan, Aged 19 years
S/o. Raj
No.1, Agraharam,Kuzhumani,
Srirangam, Tiruchy.

2. Karthik, Aged 20 years
S/o. Sekar,
No.5/3A, Keelamoolangudi,
Kuzhumani, Srirangam.

....Accused

1.	Serial Number	C.C No. 166/2023
2.	Name of the Police Station and Crime Number	Jeeyapuram Police Station Crime No.176 of 2022
3.	Name of the Accused	1. Velan, Aged 19 years S/o. Raj No.1, Agraharam,Kuzhumani, Srirangam, Tiruchy.
4.	Age	
5.	Father's Name	
6.	Residence	2. Karthik, Aged 20 years S/o. Sekar, No.5/3A, Keelamoolangudi, Kuzhumani, Srirangam.
7.	Occupation	A1 - Coolie A2 – Coolie

8.	Occurrence date	21.06.2022
9.	Date of Complaint	29.06.2022
10.	Date of Apprehension	A1 - 30.06.2022 A2 - 30.06.2022
11.	Release on bail	A1 - 30.08.2022 A2 - 30.08.2022
12.	Date of Commitment	----
13.	Date of Commencement of Trial	24.05.2023
14.	Date of Closure of Trial	14.08.2023
15.	Sentence or Order	i) As a result, this Court finds that both the accused are not guilty of the offence u/s 379 r/w 34 of IPC, and thus they are acquitted from the aforementioned charge as per section 248(1) of the Cr.P.C. The Bail bond of the accused persons shall stand cancelled after the lapse of limitation period for preferring appeal. ii) The Splendor Plus Bike in C.P.No.46/23 has been obtained by the De-facto Complainant on interim custody vide order passed by this Court in Cr.M.P. No.16960/22 dated 23.08.2022. Interim Custody of the Property made absolute.
16.	Service of copy of judgment or finding on accused	Yes
17.	Explanation of delay	The final report was filed by the police on 23.02.2023. The case was taken on file by this court on 27.02.2023 and the judgment is pronounced on 14.08.2023. No delay on part of the Court.

This case came up for final hearing before this Court on 14.08.2023 in the presence of Thiru V.Baskar, Learned Assistant Public Prosecutor for the state and Thiru.E.Ravichandran, Learned counsel for the Accused. After having perused the records of the case, and upon hearing arguments of both sides and having stood over for consideration till this day, this

Court delivers the following:

JUDGMENT

1. The Inspector of Police, Jeeyapuram Police station has filed a final report alleging that on June 21, 2022 at about 11.00 P.M. , the De-Facto Complainant Mr.Thiyagaraja parked his Splendor Plus Bike bearing Registration Number TN 48 L 8807 outside his Home situated in Anthanallur 4th Ward. Both the accused stole the aforesaid Splendor Plus Bike with a dishonest intention and hence, they were charged for the offence u/s 379 of Indian Penal Code (hereinafter called IPC)

2. COGNIZANCE:-

On perusal of the charge sheet, this court was satisfied that a prima facie case was made out against both the accused. Hence, this Court took cognizance of the offence u/s 379 r/w 34 of IPC and issued summons to both the accused. After appearance of accused persons, the copies of case records were furnished to them free of cost as per section 207 of Cr.P.C.

3. FRAMING OF CHARGES:-

Upon perusal of the records, this Court was satisfied that there is ground for proceeding against both the accused and hence, framed charge as against both of them u/s 379 r/w 34 of IPC. The charge was then read over and explained to them as per the mandate of section 240 of Cr.P.C. Having understood the charge, A1 and A2 pleaded not guilty and claimed to be tried. Hence, this court proceeded with the trial of the case.

4. PROSECUTION WITNESSES:-

The Prosecution, in order to prove its case has examined about six witnesses as PW1 to PW6. Exhibits P1 to Ex.P10 were marked on behalf of the prosecution side. P.M.O.1 was also marked on behalf of the Prosecution side. Learned Assistant Public Prosecutor dispensed the examination of rest of the witnesses. Hence, the prosecution side evidence was closed.

5. EVIDENCE OF THE PROSECUTION IN BRIEF:

i) PW1 Mr Thyagarajan is a farmer residing in Andhanallur. On June 21, 2022 at about 11:00 P.M., PW1 parked his Splendor bike bearing registration number TN 48 L 8807 near his home. On the next day morning at 6.00AM, when PW1 came outside, he found that

his bike had gone missing. PW1 searched for his vehicle in the neighbourhood. But he couldn't find his bike. Hence PW1 lodged Ex. P1 written information before the then Sub Inspector of Police Mr. Selvaraj in Jeeyapuram Police Station. Thereafter, the Sub Inspector registered Ex. P7 F.I.R under section 379 of IPC in Crime Number 176/ 2022 pertaining to Jeeyapuram Police Station.

ii) Thereafter, the Sub Inspector went to scene of occurrence at about 8.30 PM and prepared Ex. P2 Observation mahazar and Ex. P8 Rough Sketch using torch light in the presence of mahazar witnesses PW3 Masilamani and Baskar. Then he examined the de- facto Complainant and witnesses Deeparani, Dharmaraj, Mathivannan, Baskar, Masilamani and recorded their statements. Thereafter, the Inspector of Police Mr. K. Balaji took the case file for his investigation. On June 30, 2022, PW6 was conducting vehicle Checkup near Perur new bypass road at about 7.00 A.M. At that time both the accused were standing in a suspicious manner and when PW6 arrested and interrogated them, one of the accused Velan voluntarily gave a confession statement in the presence of witness PW4 Pandiyarajan and PW5 Senthil Kumar. Thereafter, based on the admitted portion of confession statement Ex. P9, PW6 went to Kuzhumani Kodingaal drainage (vaaikaal karai) along with the accused persons and confession witnesses in police Jeep.

iii) Thereafter accused Velan pointed towards a Coconut grove belonging to one Jegan and PW6 recovered P.M.O.1 Splendor Bike bearing Registration Number TN 48 L 8807 from that coconut grove vide Ex. P4 Recovery Mahazar. The recovery was witnessed by PW4 and PW5 and they appended their signatures in Ex. P4 Ma hazar. The recovery of P.M.O.1 was intimated to PW1 over phone. PW1 went to the Police Station and identified his Splendor Bike. The accused persons were then brought to Jeeyapuram police station along with the case property and both the accused were remanded to judicial custody. P.M.O.1 was forwarded to this Court vide Ex. P10 Form 91. PW6 then examined the seizure witnesses and Sub - Inspector of Police and recorded their statements. After that, PW1 obtained P.M.O.1 on interim custody from Court. After completion of his investigation, PW6 filed a final report against both the accused u/s 379 of IPC on July 11, 2022.

6. 313 PROCEEDINGS:-

After the completion of prosecution evidence, accused was questioned u/s 313 (1)(b) of Cr.P.C. Incriminating circumstances were put forth to him. Accused denied the entire prosecution evidence and the Incriminating Circumstances put forth to him. No oral or documentary evidence were adduced by the defence side. Hence, the defence side evidence was closed.

7. POINTS FOR DETERMINATION:

Upon hearing the arguments of both sides and having perused the connected documents and records, the questions that arises for consideration are :

i)	Whether the Prosecution has established the ingredients of theft U/s.379 of IPC?
ii)	Whether the Prosecution has proved the case beyond all reasonable doubt as against both the Accused ?

8. APPRECIATION OF EVIDENCE AND DISCUSSION:

I) WHETHER THE PROSECUTION HAS ESTABLISHED THE INGREDIENTS OF THEFT U/S 379 OF IPC ?

II) WHETHER THE PROSECUTION HAS PROVED THE CASE BEYOND ALL REASONABLE DOUBT AS AGAINST BOTH THE ACCUSED ?

Since both the issues are interlinked, the aforesaid points are answered together for the sake of avoiding repetition of evidence.

i) Before we delve in to the points for consideration, it is important to note that the Prosecution bears the burden of proof in criminal cases. As per section 101 of the Indian Evidence Act, 1872 (hereinafter referred to as IEA), the burden is upon the prosecution to prove the case beyond reasonable doubt as against both the accused.

ii) The case of the prosecution is that A1 and A2 have committed theft of one Splendor Bike belonging to PW1 Mr. Thiyagarajan. Accused A1 and A2 stands charged u/s 379 r/w 34 of IPC and has faced trial for the same. The Prosecution has examined about six witnesses PW1 to PW6 for proving its case.

iii) To bring home an offence u/s 379 of IPC, the prosecution is required to prove all the ingredients necessary for establishing the offence. All these points are analyzed and determined under separate headings.

iv) Coming to first and foremost point for determination, the main ingredients which are necessary to prove an offence u/s 379 of IPC are:

- a) The property must be movable
- b) It should be taken out of the possession of another person
- c) It should be taken without the consent of that person
- d) Dishonest intention to take such property
- e) There must be some moving of the property in order to accomplish the taking of it

Now, it is time to determine whether prosecution has adduced evidence for satisfying the ingredients of offence u/s 379 IPC and whether it has proved the case against accused beyond all reasonable doubt.

i) PW1 Mr.Thiyagarajan is the De-facto Complainant of this case. The entire case of the prosecution was built upon his Written Information Ex. P1. Upon perusing the evidence of PW1 in extenso, it could be seen that PW1 has stated that his Splendor Plus Bike had gone missing from the parking space outside his home. Hence, he lodged Ex. P1 suspecting theft of his Vehicle. But PW1 stated nothing about the accused persons. He has not personally seen the incident. PW1 failed to adduce any evidence regarding the nexus between theft and the accused persons. Hence, the Complicity of the accused persons could not be established through his evidence.

ii) PW2 Mr. Dharmaraja is a hearsay witnesses. Hence, his evidence is unreliable. PW3 Mr.Masilamani is an Observation Mahazar witness. He has stated about the factum of preparing Ex.P2 Observation Mahzar and Ex.P8 Rough Sketch. But his evidence could not be relied for proving the charge against accused persons.

iii) Upon perusal of records and evidence of PW1 to PW6 in extenso, it could be seen that there is no direct evidence for theft. None of the cited witnesses have seen the accused

persons committing the alleged theft. The entire case of the prosecution is based upon the circumstantial evidence and the alleged recovery of case property from accused persons. It is a well settled principle of law that ***“In case of Circumstantial evidence, the entire chain of evidence must be complete and the conclusions which is arrived after examining the chain of evidence must point towards the culpability of the accused and to no other conclusion”***. In other words, all the proved circumstances must unerringly point towards guilt of accused. It must be considered in all human probability and not in fanciful manner.

iv) So, coming to the evidence of prosecution, the complicity of the accused persons could only be proved by Confession and Seizure Mahazar witness in this case. Their evidence plays a vital role in deciding this case. Upon perusal of evidence of Investigation Officer PW6, it could be observed that the accused persons were arrested by PW6 for present case during vehicle checkup while the accused persons were standing in a suspicious manner near Perur New Bypass Road. After the arrest, one of the co-accused Velan Voluntarily tendered a confession statement and the same was alleged to have been recorded by PW6 in the presence of Confession & Seizure Mahazar witnesses PW4 Mr. Pandiyaraja and PW5 Mr. Senthil Kumar.

v) As per the evidence of PW6, the Splendor Plus Bike was alleged to have been recovered from a bush behind Coconut Grove belonging to one Jagan which is situated nearby Kuzhumani Kodingaal Drainage area based upon Ex.P9, the admitted portion of Confession statement tendered by Accused Velan. So, in order to prove the Charge against accused persons, the aforesaid recovery must be established by the Prosecution beyond all reasonable doubt. Only then, the Complicity of accused persons stands proved. Now it is time to analyze the evidence of seizure Mahazar witness.

vi) PW4 Mr.Pandiyaraja has deposed in his evidence that both the accused persons were arrested on 30.06.2022 at about 7.00 A.M. near Kodingaal Bridge. He further stated that accused voluntarily gave a confession statement and the same was recorded in his presence and in the presence of PW5 Mr.Senthil Kumar. PW4 also admitted his signature in the confession statement. PW4 further stated in his evidence that one Splendor plus bike was recovered from accused at about 11.00 A.M. near Kondingaal bridge vide Ex. P4 Seizure

Mahazar. PW4 also stated that Ex.P4 was duly signed by him and PW5 Mr.Senthil Kumar. So, PW1 has stated about the alleged recovery of the vehicle in his Chief Examination.

vii) But upon perusing his Cross Examination, it could be seen that he has admitted that he is unaware of the Confession statement signed by him. Further, he also admitted that he is unaware of the contents of Ex. P4 Seizure Mahazar and that he did not read the contents while signing the same. Upon perusal of case records, it could be seen that about six vehicles have been recovered from the alleged accused persons based upon Ex. P9, the admitted portion of confession statement tendered by co- accused velan. But PW4 has admitted in his Cross Examination that he has appended his signature only for the recovery of vehicle concerned in the present case and not for the recovery of other vehicles concerned in other Crime Numbers. He admitted that he is unaware of recovery of other vehicles.

viii) PW4 Mr.Pandiyaraja has deposed in his evidence that both the accused persons were arrested on 30.06.2022 at about 7.00 A.M. near Kodingaal Bridge. He further stated that accused voluntarily gave a confession statement and the same was recorded in his presence and in the presence of PW5 Mr.Senthil Kumar. PW4 further stated in his evidence that one Splendor plus bike was recovered from accused at about 11.00 A.M. near Kodingaal bridge vide Ex. P4 Seizure Mahazar. PW4 also stated that Ex. P4 was duly signed by him and PW5 Mr.Senthil Kumar. On the other hand, PW5 Mr.Senthil Kumar stated that the accused persons were arrested on 22.06.2022 and the case property was recovered on the aforesaid date. He further deposed that the case property was recovered from Kodingaal Bridge vide Ex.P4 Seizure Mahazar. Hence, both PW4 and PW5 have stated about the recovery of bike from Kodingaal bridge in their Chief Examinations.

ix) But Per contra, PW4 and PW5 admitted during their cross examination that they are unaware of the contents of Ex. P4 Seizure Mahazar and confession statement and that they did not read the contents while signing the aforesaid documents. Further, upon perusal of case records, it could be seen that about six vehicles have been recovered from the alleged accused persons based upon Ex. P9, the admitted portion of confession statement tendered by co- accused Velan in this present crime number.

x) But PW4 and PW5 have admitted during their Cross Examination that they have appended their signatures only for the recovery of vehicle concerned in the present case and not for the recovery of vehicles cited in other Crime Numbers. Further PW5 failed to state about the confession tendered by Co-accused Velan. He simply stated about the recovery of vehicle from Kondingaal Bridge. Both PW4 and PW5 admitted that they are unaware of the alleged recovery of other vehicles. Hence, this casts a doubt upon PW4 and PW5's version regarding the alleged recovery of Bike.

xi) Even otherwise, according to the version of PW4, both the accused were alleged to have been arrested on 30.06.2022 and the co-accused Velan tendered a confession statement on the aforesaid date. According to PW5's version, the accused persons were alleged to have been arrested on 22.06.2022 and the confession was alleged to have been recorded on the aforesaid date. The oral evidence of Seizure Mahazar witnesses PW4 and PW5 are quite contrary to the actual date contained in Confession statement.

xii) The Confession Statement shows that both the accused were arrested only on 30.07.2022. It ex-facie reveals that the co-accused Velan tendered a confession statement on 30.07.2022 which is exactly one month after the preparation of Ex.P4 Seizure Mahazar. The Investigation Officer PW6 also admitted during his Cross Examination that the confession statement bears the aforesaid date 30.07.2022. PW6 did not offer any explanation for the aforesaid contradictions in the date of seizure for the reasons best known to him.

xiii) According to version of Investigation Officer PW6, the written information Ex.P1 was lodged by PW1 on 29.06.2022. Ex.P1 Written Information and Ex.P7 F.I.R also contains the same date. PW1 has deposed in his evidence that that he received a phone call from police station exactly after one month of lodging Ex.P1 that his bike had been recovered. The actual date contained in the confession statement (30.07.2023) also coincides with the date stated by PW1.

xiv) But the same cannot be considered as coincidence because as per column no.1 of Ex. P4, the seizure of the bike was made on the very next day of lodging Ex. P1. If at all, the bike was actually seized on the very next day of lodging Ex.P1 i.e on 30.06.2022, then PW1 would not have adduced evidence stating that his bike had been recovered after one month of

lodging Ex.P1. Therefore, this creates a reasonable doubt that the bike would have been seized after one month from lodging Ex.P1 Written Information. This very fact proves fatal to the prosecution case since, there was no statement of accused recorded on 30.06.2022. It is a settled principle of law that the recovery cannot be relied upon in the absence of any statement of accused. There is no clarity regarding the date of seizure of bike from accused. The Prosecution witnesses have adduced contrary dates and hence the alleged recovery becomes doubtful. Therefore, the Prosecution has failed to prove the factum of recovery of Splendor Bike beyond all reasonable doubt.

xv) Further the date of recovery stated by PW4 is contrary to the Confession statement prepared by Investigation Officer PW6 Mr.Balaji. PW4 stated in his evidence that vehicle was seized on 30.06.2022. Ex.P4 Seizure Mahazar also contains the same date. But the confession statement is alleged to have been prepared on 30.07.2022 which is one month later than the seizure mahazar. The same has been admitted by the Investigation Officer PW6 in his evidence that confession statement was prepared on 30.07.2023. and Upon perusal of evidence of PW4 Mr.Pandiyaraja, it could be seen that he has and PW5 The evidence of PW4 and PW5 are extracted and roughly translated as follows:

xvi) PW6 Mr.Pandiyaraja deposed in his Chief Examination ***“I am currently residing in 4th ward of Anthanallur. I am a farmer by trade. I went to Jeeyapuram Police Station regarding my brother Thiyagarajan’s missing vehicle. At that time , the Police Officers in Jeeyapuram Police Station requested me to append my signatures on written papers. I appended my signatures at their request. The second signature found in true copy of Confession which is shown to me is mine. The signature is marked as Ex.P5. The second signature found in Seizure Mahazar which is shown to me is also mine. The signature is marked as Ex.P6. I was not enquired by the Police.”***

xvii) PW7 Mr. Senthil Kumar deposed in his Chief Examination ***“I am Currently residing in 4th ward of Anthanallur. I am a farmer by trade. I went to Jeeyapuram Police Station last year for my personal work. At that time, the Police Officers in Jeeyapuram Police Station requested me to append my signatures on written papers.***

I appended my signatures at their request. The first signature found in true copy of Confession which is shown to me is mine. The signature is marked as Ex.P7. The first signature found in Seizure Mahazar which is shown to me is also mine. The signature is marked as Ex.P8. I was not enquired by the Police.”

xviii) Upon perusal of evidence of PW6 and PW7 , it could be seen that both the seizure mahazar witnesses have completely turned hostile to the Prosecution case. They stated nothing about the presence of accused persons and their arrest. They failed to state about the Confession tendered by Co-Accused Velan. Both of them stated in unison that the Police officers in Jeeyapuram Police Station obtained two signatures each on blank pieces of paper. They stated nothing about the alleged recovery of Splendor Plus Bike from bush behind the Coconut Grove. The Seizure Mahazar is just a substantive piece of evidence and it could not be relied upon sans corroboration from mahazar witnesses. Both the Seizure Mahazar witness have turned hostile and hence, it creates reasonable doubt about the alleged recovery of Splendor Plus Bike from accused persons.

xix) Only PW9 have stated about the alleged recovery of Splendor Plus Bike from bush behind the Coconut Grove. But there is no corroboration for his evidence. Therefore, it is unsafe to rely upon evidence of PW9 sans corroboration from any trustworthy witness. As per Police Standing Orders 569 ***"When any property is recovered by a police officer otherwise than on formal search of premises, a contemporaneous record of the facts relating to such recovery may be prepared at the time of such recovery. the record so made is admissible in evidence to corroborate the testimony of police officer who prepared it or may be used to refresh his memory. The signatures of the attesting witness may be used in evidence only to corroborate the statement of the police officer that they were present at the time of recovery of the property and attested the record prepared by him"***. In the present case on hand, both the attesting witness have turned hostile and they also stated that they appended their signatures in police station. Hence, no sanctity could be given to their signatures and it could not be relied upon. Therefore, the Prosecution failed to prove the recovery in the manner known to law.

xx) So, there is no evidence available with the Prosecution to prove that Splendor Plus Bike was seized from accused persons. In such circumstances, the presumption u/s 114(a) of Indian Evidence Act, 1872 could not be drawn. There is no evidence available with the prosecution to establish the complicity of the accused persons in this alleged theft. The recovery has not been proved in the manner known to law. The Chain of evidence is incomplete. The circumstances do not point towards the guilt of the accused persons. Not even a feeble lead could be gathered from the prosecution evidence to bring out the culpability of accused persons. As a result, all of these factors raise reasonable doubts about the involvement of accused persons in the alleged crime.

xxi) The most fundamental principle of Criminal law is “*in dubio pro reo*” meaning “in case of doubt, in favour of the accused”. Everyone is presumed to be innocent until proven guilty. The prosecution case has already been infused with serious doubts. The prosecution has failed to discharge its burden and as a result, the benefit of the doubt ought to be reckoned in favour of both the accused.

9. FINDING:

*The complicity of the accused persons in this crime has not been established by the Prosecution through its evidence. The evidence adduced by the Prosecution does not point towards guilt of both the accused. Hence, in the light of aforesaid discussions, this Court holds that prosecution has failed to discharge its burden and it has miserably failed to prove the case against both the accused beyond any reasonable doubt. **Therefore Point No . I and II are answered in the negative .***

10. DECISION:

i) As a result, this Court finds that both the accused are not guilty of the offence u/s 379 r/w 34 of IPC, and thus they are acquitted from the aforementioned charge as per section 248(1) of the Cr.P.C. The Bail bond of the accused persons shall stand cancelled after the lapse of limitation period for preferring appeal.

ii) The Splendor Plus Bike P.M.O.1 in C.P. No.46/23 has been obtained by the De-facto Complainant on interim custody vide order passed by this Court in Cr.M.P.No.16960/22 dated 23.08.2022. Interim Custody of the Property made absolute.

This judgment was typed by me in my laptop and pronounced by me in the open Court on this 14th day of August 2023.

S/d.K.R.Balaji
Judicial Magistrate No.III
Tiruchirappalli

APPENDIX – A

PROSECUTION SIDE WITNESS:

S.No	Rank of Witness	Name of the Witness	Remarks
1.	PW1	Thiyagarajan	De-facto complainant
2.	PW2	Dharmaraja	Hearsay Witness
3.	PW3	Masilamani	Observation Mahazar witness
4.	PW4	Pandiyaraja	Confession and Seizure Mahazar witness
5.	PW5	Senthilkumar	Confession and Seizure Mahazar witness
6.	PW6	Balaji	Investigation Officer

APPENDIX - B

PROSECUTION SIDE EXHIBITS:-

S.No.	Exhibit	Description of document
1.	Ex.P1	Written Information
2.	Ex.P2	Observation Mahazar
3.	Ex.P3	Second signature in the confession statement
4.	Ex.P4	Seizure Mahazar
5.	Ex.P5	First Signature in the Confession statement
6.	Ex.P6	First Signature in the Seizure Mahazar
7.	Ex.P7	F.I.R
8.	Ex.P8	Rough Sketch
9.	Ex.P9	Admitted portion of Confession Statement
10.	Ex.P10	Form 91

APPENDIX – C

Material Objects -

P.M.O.1 - TN 48 L 8807 Splendor Plus Bike

APPENDIX – D

DEFENCE SIDE WITNESSES - NIL

APPENDIX – E

DEFENCE SIDE EXHIBITS - NIL

S/d.K.R.Balaji
Judicial Magistrate No.III,
Tiruchirappalli

Note:

1. No witnesses were detained more than three times.
2. Nature of the disposal communicated to the concerned Police.
3. The Accused persons were on bail during the pronouncement of Judgment.

/True copy/

Judicial Magistrate No.III,
Tiruchirappalli