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Crl.R.C.Nos.120 and 203 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2022

DELIVERED ON : 04.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.Nos.120 and 203 of 2018

Crl.R.C.No.120 of 2018:-

1. Kumar
2. Johnson

... Petitioners

Vs.

State Represented by
Inspector of Police,
Kangayam Police Station,
Tirupur District.

(Crime No.388 of 2013)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records in Crl.Appeal No.79 of 2016 and to set aside the Judgment of the Learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dated 28.11.2017, confirming the order of conviction and sentence passed by the Learned Judicial Magistrate, Kangayam in C.C.No.280 of 2014 dated 11.07.2016.

For 1st Petitioner : Mr.T.Muruganantham

For 2nd Petitioner : Mr.R.Prabakar for
Mr.C.E.Pratap

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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Crl.R.C.No.203 of 2018:-

Muthuraja

... Petitioner

Vs.

State Represented by
Inspector of Police,
Kangayam Police Station,
Tirupur District.
(Crime No.388 of 2013)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the order of the Learned III Additional District and Sessions Judge, Tiruppur at Dharapuram dated 28.11.2017 in C.A.No.80 of 2016, confirming the Judgment of the Judicial Magistrate, Kangayam, dated 11.07.2016 passed in C.C.No.280 of 2014.

For Petitioner : Mr.J.Antony Jesus

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision cases have been filed to set aside the Judgment of the Learned III Additional District and Sessions Judge, Tiruppur passed in C.A.Nos.79 and 80 of 2016, confirming the Judgment of the learned Judicial Magistrate, Kangayam, dated 11.07.2016 passed in C.C.No.280 of 2014, thereby convicted the petitioners for the offences punishable under Sections 457 and 380 of IPC.



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2. The case of the prosecution is that on 07.10.2013, the MRF Tyre company owned by the defacto complainant was broke open by all the accused, who had stolen 24 MRF tyres which were meant for lorry back wheel, worth about Rs.6,10,080/- and 12 MRF tyres which were meant for van. Thereafter, the tyres were loaded in the vehicle bearing Registration No. TN 11 X 4959, TATA 407 van owned by the third accused and the vehicle bearing Registration No. TN 72 M 9192, Tavera car, owned by the first accused. On the complaint, the respondent registered an FIR in Crime No.388 of 2013 for the offences punishable under Sections 457 and 380 of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.280 of 2014, on the file of the learned Judicial Magistrate, Kangayam.

3. On the side of the prosecution, they examined P.W.1 to P.W.8 and marked Exs.P1 to P8 and also marked material objects M.O.1 to M.O.5. On the side of the petitioners no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offences punishable under Sections 457 and 380 of IPC and sentenced them to undergo 3 years rigorous imprisonment each, for the offence punishable under Section 457 of IPC and also awarded compensation of



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Rs.5000/- each, in default, to undergo three months imprisonment. The accused were sentenced to undergo 3 years rigorous imprisonment each, for the offence punishable under Section 380 of IPC and also awarded compensation of Rs.5000/- each, in default, to undergo three months imprisonment. Aggrieved by the same, the accused preferred appeals and the same were dismissed confirming the Judgment and conviction imposed by the Trial Court. Hence, these revisions.

4. The learned counsel for the revision petitioners in Crl.R.C.No.120 of 2018 submitted that P.W.3 is an interested witness and as such his evidence cannot be relied upon for convicting the petitioners. He would also state that the contradictions in the version of P.W.3 would go to show that he is a cooked up witness produced by the prosecution. No identification parade was conducted by the respondent. Even according to the prosecution, the accused persons were seen by the witnesses only in the Court for the first time and as such it is fatal to the case of the prosecution. The Courts below failed to adhere to the *sine qua non* requirement under Section 9 of Indian Evidence Act that without identifying the accused guilt of the accused could not be established. Even according to P.W.3, he was having suspicion on identifying the accused and he was not definite about the accused. Therefore, he is only a chance witness and his



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evidence cannot be relied upon to convict the petitioners. P.W.3 and P.W.5 are relatives of the defacto complainant and as such they are interested witnesses.

That apart, P.W.5 is not an eye witness to the occurrence and he was set up by the defacto complainant. There are contradictions between the statement recorded under Section 161 Cr.P.C and the depositions. There is absolutely no evidence to show that there was recovery of amount from A1 and A2. Therefore, he prayed for acquittal of the petitioners.

5. The learned counsel for the revision petitioner in Crl.R.C.No.203 of 2018 submitted that P.W.3 who is alleged to be the eye witness, neither identified the accused nor identified the vehicle allegedly involved in the crime. There was no identification parade held during Trial and P.W.3 identified the accused persons only in the Court. Therefore, it is fatal to the case of the prosecution. There are contradictions between P.W.3 and P.W.5 in respect of recovery of money. There is absolutely no evidence to implicate the petitioners as accused. That apart, P.W.1 never stated what kind of tyres were stolen by the accused persons and also failed to mention any numbers and mark of the tyres. The Courts below, only on presumption had convicted the accused.

6. In support of their contentions, the learned counsel for the petitioners relied upon the Judgments of the Hon'ble Supreme Court of India reported in



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2022 LiveLaw (SC) 582 in the case of *Amrik Singh Vs. The State of Punjab* and *Subhash Chander Vs. The State of Punjab*, in **2022 LiveLaw (SC) 403** in the case of *Jafarudheen and ors. Vs. State of Kerala*, in *Crl.A.No.2438 of 2010* in the case of *Bijender @ Mandar Vs. State of Haryana*.

7. Per contra, the learned Government Advocate (Crl.Side) submitted that in order to bring the charges to home, the prosecution had examined P.W.1 to P.W.8 and marked Exs.P1 to P8 and also marked material objects M.O.1 to M.O.5. He further submitted that there are totally 3 accused. P.W.1 deposed that the case property belong to him. After shutting the shop, he went to his house and on next day morning, when he went to the shop, he found that the shop was broke open and the tyres were stolen by the accused persons. P.W.3 deposed that on 06.10.2013, when he returned to home after watching movie in Sorgam Theatre his two wheeler was stopped due to want of petrol. Therefore, he pushed the vehicle through the shop owned by P.W.1. He had seen the vehicle bearing Registration No. TN 11 X 4959, TATA 407 van was standing in front of the shop owned by P.W.1 and three persons were loading the tyres. He had thought that only on instruction of P.W.1 the tyres were loaded by the load men. Thereafter, he came to understand that the accused persons had stolen the tyres from the



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shop owned by P.W.1. On verification, it was found that the said vehicle belongs to the accused persons and it was also found that they were in possession of cash which they got by selling some of the tyres and the remaining tyres as well. Therefore, the prosecution proved its case beyond any doubt and the Courts below rightly convicted the petitioners. Hence, nothing warranted to interfere with the conviction imposed by the Courts below.

8. Heard, Mr.T.Muruganantham, learned counsel appearing for the first petitioner in Crl.R.C.No.120 of 2018, Mr.R.Prabakar, learned counsel appearing for the second petitioner in Crl.R.C.No.120 of 2018, Mr.J.Antony Jesus, learned counsel appearing for the petitioner in Crl.R.C.No.203 of 2018 and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent in both revisions.

9. There are totally three accused and they were charged for the offences punishable under Sections 457 and 380 of IPC. The case of the prosecution is that P.W.1 owned MRF Tyres shop and he found that the lorry tyres and van tyres were stolen, in total 36 tyres (24 Nos. of radial tyres and 12 Nos. of van MRF tyres). On the complaint, the respondent registered an FIR and filed a final report



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as against the petitioners herein. The petitioners in Crl.R.C.No.120 of 2018 is arrayed as A1 and A2. The petitioner in Crl.R.C.No.203 of 2018 is arrayed as A3. The learned counsel for the petitioners in both petitions vehemently contended that there was no identification parade conducted by the prosecution and P.W.1 had seen the accused only in the Court and as such it is fatal to the case of the prosecution. P.W.3 and P.W.5 are relatives of P.W.1 and therefore their testimony cannot be relied upon to convict the petitioners.

10. In support of their contentions they relied upon the Judgment of the Hon'ble Supreme Court of India in **2022 LiveLaw (SC) 582** in the case of ***Amrik Singh Vs. The State of Punjab and Subhash Chander Vs. The State of Punjab***, in which it was held that it would not be safe or prudent to convict the accused solely on the basis of their identification for the first time in the Court. He also relied upon another Judgment in **2022 LiveLaw (SC) 403** in the case of ***Jafarudheen and ors. Vs. State of Kerala***, in which it was held that the onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will



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have to satisfy the Court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The Court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.

11. Admittedly, P.W.1 owned a shop and there was theft of tyres which belonged to P.W.1. It was proved by P.W.1 and P.W.2. P.W.1 is the complainant and P.W.2 is the owner of the adjacent shop. P.W.3 categorically deposed that on 06.10.2013, when he was returning to his house after watching a movie from Sorgam theatre, his vehicle ran out of petrol and as such he pushed his two wheeler towards the petrol bunk through P.W.1 shop. He had seen that, in front of the shop owned by P.W.1, the vehicle bearing Registration No.TN 11 X 4959 TATA 407 van was standing and the accused persons were loading the tyres from the shop owned by P.W.1. He thought that only on instructions of P.W.1, the tyres were loaded in the vehicle. On such statement, the Investigation Officer found that the said vehicle was owned by A3.



12. On investigation, the Investigation Officer found that A1 to A3 were involved in the offence of theft and they had stolen the tyres which belong to P.W.1. On 12.12.2013, he arrested A1 to A3 and remanded them to judicial custody. Thereafter, their confession statements were recorded in the presence of P.W.5. The scene of crime and the place where they had sold out the tyres were marked from the confession statement as Ex.P3. As per his confession statement, a sum of Rs.5,14,000/- was recovered from A1, as crime proceeds. As per the portion of the confession statement of A2, the scene of crime and the place in which they sold out the tyres were marked as Ex.P4.

13. On the confession statement of A2, a sum of Rs.78,000/- was recovered from A2 and the vehicle bearing Registration No.TN 11 X 4959, TATA 407, which was used for the crime were recovered from the third accused. The remaining tyres which were stolen by them were recovered which was marked as M.O.4. The Tavera Car bearing Registration No.TN 72 M 9192 was produced as M.O.2. The vehicle bearing TN 11 X 4959 TATA 407 van was produced as M.O.5. The confession of the accused leads to recovery and as such, part of the confession statement is admissible in evidence under Section 27 of the Indian Evidence Act. The prosecution categorically established the link between the fact



discovered and the crime.

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14. Insofar as the Test Identification Parade is concerned, it is a well settled law that Test Identification Parade is a part of investigation and it is not a substantive evidence. The question of holding T.I Parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court, who has, for the first time seen the accused in the incident of offence, is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, Test Identification Parade may make the identification of the accused by the witness before the Court trustworthy. However, the absence of Test Identification Parade may not be ipso facto sufficient to discard the testimony of a witness who has identified the accused in the Court. In a given case, there may be otherwise sufficient corroboration to the testimony of the witness. In some cases, the Court may be impressed with testimony of the prosecution witnesses which is of a sterling quality. In such cases, the testimony of such a witness can be believed.



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15. In the case on hand, P.W.3 categorically deposed that he had seen the vehicle which was owned by the third accused while loading the stolen goods.

His deposition corroborated with the confession statement of the accused persons and also lead to recovery. Therefore, the non conduction of the Test Identification Parade is not fatal to the case of the prosecution.

16. Hence, the Courts below rightly convicted the petitioners for the offences punishable under Sections 457 and 380 of IPC and this Court finds no infirmity or illegality in the orders passed by the Courts below and these revisions are liable to be dismissed.

17. Accordingly, these Criminal Revision cases are dismissed.

04.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The III Additional District and Sessions Judge,
Tiruppur at Dharapuram.
2. The Judicial Magistrate,
Kangayam.
3. The Inspector of Police,
Kangayam Police Station,
Tirupur District.
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J

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