



WEB COPY



Crl.R.C.No.1232 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

CORAM:

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

Crl.R.C.No.1232 of 2018

1. S.Kumar

2. K.Kaliarasan

....

Petitioners

Vs

State by

The Inspector of Police,
Poolampatty Police Station,
Salem District.

....

Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the Judgement dated 10.08.2018 in Crl.A.No.10 of 2018 on the file of the III Additional Sessions Court, Salem, thereby confirming the Judgment of conviction imposed in C.C.No.37 of 2016 on the file of the Judicial Magistrate No.I, Sankari, dated 24.11.2017 by allowing this criminal revision petition.

For Petitioners : Mr.R.Maruthachalamurthy

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



Crl.R.C.No.1232 of 2018

ORDER

WEB COPY This Criminal Revision has been filed as against the Judgement dated 10.08.2018 passed in C.A.No.10 of 2018 on the file of the III Additional Sessions Court, Salem, thereby confirming the Judgment dated 24.11.2017 passed in C.C.No.37 of 2016 on the file of the Judicial Magistrate No.I, Sankari, thereby convicted the petitioners for the offence punishable under Sections 379 and 323 (2 Counts) of IPC.

2. The case of the prosecution is that on 29.05.2016, early morning at 2.30 a.m., when the defacto complainant was sleeping in his house, at that time, he heard a dog barging and as such, he came out from his house and found that two cattles are missing. He also found that one TATA ACE vehicle was standing near his house and the accused persons were about to board the cattle into the vehicle. At that juncture, the defacto complainant prevented the accused and he shouted. Immediately, the brother of the defacto complainant came to the place of occurrence and he was also attacked by the accused. Thereafter, all the general public surrounded there and caught hold one of the accused red handed and one of the accused was handed over to the respondent police station. He also lodged a complaint.



Crl.R.C.No.1232 of 2018

3. On receipt of the complaint, the respondent registered an FIR in Crime No.136 of 2016 for the offence punishable under Sections 323 (2 Counts) and 379 read with 511 of IPC. After completion of the investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No.37 of 2016.

4. On the side of the prosecution, he examined P.Ws.1 to 9 and marked Exs.P1 to P10. On the side of the accused, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the first accused was guilty for the offence punishable under Section 379 of IPC and sentenced to undergo two years rigorous imprisonment and the second accused was found guilty for the offence punishable under Sections 379 and 323 (2 Counts) of IPC and sentenced to undergo two years rigorous imprisonment for the offence under Section 379 of IPC and sentenced to pay a fine of Rs.500/- each count, in default to undergo one month simple imprisonment for the offence under Section 323 (Counts) of IPC. Aggrieved by the same, the petitioners preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed. Hence, this revision.



Crl.R.C.No.1232 of 2018

6. The learned counsel appearing for the petitioners would submit that there were contradictions between the eye witnesses. The accused persons were not identified by any of the witness examined by the prosecution. There is no identification parade conducted by the prosecution. It is fatal to the case of the prosecution. The prosecution has also failed to produce the theft articles to satisfy the charges leveled as against the petitioners. No one had identified the theft articles to prove the charge under Section 379 of IPC. All the eye witnesses are interested witnesses and no independent witness was examined to prove the case of the prosecution. P.Ws.1 and 2 were treated as out patient and only simple injuries was found on their body. Unfortunately, the Courts below failed to consider those aspects and mechanically convicted the petitioners. Hence, he seeks to set aside the impugned order.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent submitted that P.W.1 categorically deposed that the petitioners only committed theft of their cattle and they were caught red handed. In fact, the second accused attacked P.Ws.1 and 2 and therefore, they sustained simple injuries. After hearing their noise, other witnesses came to the place of occurrence and thereafter, the first



Crl.R.C.No.1232 of 2018

accused flew away from the scene of crime and the second accused was only caught hold by them. P.Ws.1 and 2 sustained simple injuries and they were treated by P.W.7 and he categorically deposed that they sustained simple injuries and issued wound certificate, which were marked as Exs.P5 and P6. Therefore, both the Courts below rightly convicted the petitioners and it does not warrant any interference by this Court.

8. Heard, Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

9. The case of the prosecution is that on 29.05.2016, early morning at about 2.30 a.m., when the defacto complainant was sleeping in his house, at that time, he heard a dog barging, therefore, P.W.1 came out from his house and found that two cattle were missing. His wife also came out from house. They had found that the vehicle bearing Registration No.TN-38-AF-5497 was standing near their house and the accused persons were boarding their cattle to the vehicle. Immediately, they shouted and prevented the accused from boarding the cattle into the



Crl.R.C.No.1232 of 2018

vehicle. The second accused attacked P.W.1 by his hands. After hearing the noise P.W.2, brother of P.W.1, also came out and while preventing the accused, he was also attacked by A2, who kicked him on his chest. Thereafter, the first accused flew away from the scene of occurrence and the second accused was caught hold by public.

10. According to the case of the prosecution, on 29.05.2016, early morning at about 2.30 a.m., the alleged occurrence had taken place. There is no evidence to show that there was light to identify the accused. However, P.Ws.1 and 2 reported before the Doctor, who treated them, that they were attacked by one known person. There is no evidence to show that how did they know about that too. P.W.1 lodged a complaint, which was marked as Ex.P1. However, in the complaint lodged by P.W.1, there is no whisper about the identity of the accused who was allegedly caught hold by the public. The Doctor, who treated P.W.1, was examined as P.W.7. She categorically deposed that P.W.1 had stated that one known person attacked them. Therefore, A2 was already known to P.Ws.1 and 2. Even according to the case of the prosecution, while the accused persons were boarding the cattle to their vehicle, they were caught hold and thus the theft was prevented. Therefore, it seems that a



Crl.R.C.No.1232 of 2018

false case has been foisted as against the accused persons due to previous enmity.

11. That apart, according to the prosecution, while the cattle, which were allegedly stolen by the accused, were being taken into vehicle, the defacto complainant prevented it. However, the prosecution failed to produce any material to show that the cattle were seized by the Investigation Officer, to prove the offence under Section 379 of IPC. Therefore, the prosecution failed to prove its case beyond any doubt for prove the charge under Section 379 of IPC. One of the eye witnesses was examined as P.W.3. He deposed that after hearing the noise, he along, with his brother, came out from his house and had seen two persons attacking P.Ws.1 and 2. Thereafter, one of the accused flew away from the scene of occurrence. However, P.Ws.1 and 2 categorically deposed that they were attacked by A2 alone. These contradictions, coupled with other facts, viz., non-production of cattle and non-identity of the accused in the complaint, goes to show that the prosecution failed to prove its case beyond any doubt as far as the charge under Section 379 of IPC is concerned. However, P.Ws 1 and 2 had gone to Government Hospital, Edappadi. P.W.7 treated them for their simple injuries and



Crl.R.C.No.1232 of 2018

issued wound certificate. Therefore, the prosecution proved the charge under Section 323 of IPC. Unfortunately, the first Appellate Court also, without considering the facts and circumstances, mechanically convicted the petitioners for the offence punishable under Sections 379 and 323 (2 Counts) of IPC.

12. In view of the above, the conviction under Section 379 of IPC cannot be sustained as against the petitioner and it is liable to be set aside. Accordingly, the conviction for the offence under Section 379 of IPC is hereby set aside. Insofar as the conviction and sentence for the offence under Section 323 (2 counts) of IPC is concerned, the same is hereby confirmed.

13. In the result, this Criminal Revision Case is partly allowed.

22.11.2022

Index : Yes/No
Internet : Yes
Lpp



Crl.R.C.No.1232 of 2018

To

WEB COPY

1. The III Additional Sessions Judge,
Salem.
2. The Judicial Magistrate No.I,
Sankari.
3. The Inspector of Police,
Poolampatty Police Station,
Salem District.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.1232 of 2018

G.K.ILANTHIRAIYAN, J.

Lpp

Crl.R.C.No.1232 of 2018

22.11.2022