

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/01/2006

CORAM

THE HON'BLE MR.JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR.JUSTICE N. PAUL VASANTHAKUMAR

Criminal Appeal No.1057 of 2003

and Criminal Appeal Nos, 1272 & 1515 of 2003

Umapathy @ Kutty (A.3) .. Appellant in C.A.1057/03

Udayakumar (A.1) .. Appellant in C.A.1272/03

Kumar @ Kalyan Kumar (A.2) .. Appellant in C.A.1515/03

-Vs-

State rep. by the

Inspector of Police

V-I, Villivakkam Police Station

Chennai 600 078.

(Crime No.63/1998) .. Respondent in all the CAs.

These criminal appeals are preferred under Sec.374 of the Code of Criminal Procedure against the conviction and sentence passed by the learned First Additional Sessions Judge, Chennai in S.C.No.318 of 2001 dated 24.06.2003.

For Appellant : Ms. J. Ranjani Devi

In Crl.A.1057/03 for Mr. S. Palanivelayutham

For Appellant : Mr. S. Shanmugavelayutham

In Crl.A.1272/03

For Appellant : Mr. A. Saravanan

in Crl.A.1515/03

For Respondent : Mr. V.M.R. Rajendran

Additional Public Prosecutor

:COMMON JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

One Umapathy, accused No.3 in Sessions Case No.318 of 2001 on the file of First Additional Sessions Judge, Chennai, who suffered the sentence of life imprisonment, has filed Criminal Appeal No.1057 of 2003 . The second accused, viz., Kumar @ Kalyan Kumar and the first accused, viz., Udyakumar in the same Sessions Case questioning their conviction and sentence to undergo life imprisonment under Section 397 r/ w 395 IPC, have filed Criminal Appeal Nos.1515 and 1272 of 2003 respectively.

2. The case of the prosecution is briefly stated hereunder:

(a) PW.1 Renuka Devi is working as a Security in Testiny Company at Villivakkam. PW.2 is the Manager and PW.3 is a staff of the above said Company. On 7.01.1998, PW.2 Sampath, went to Canara Bank at 9.15 a.m. to encash a cheque and at about 11.00 a.m. while he was returning along with PW.3 with a cash of Rs.2 lakhs, two persons threatened PW.2 Sampath, to handover the cash. PW.2 was beaten by the said persons with stick. Other two persons, armed with knife, came in a motor cycle and cut PW.2 on his right hand upper part. PW.3 Dilli Babu rushed to the Company and brought some people from the Company. On seeing the people, accused persons ran away from the scene of occurrence.

(b) PW.2 was taken to Hospital for treatment. PW.1 went to the Police Station and lodged a complaint, which is marked as Ex.P1. Among four persons, who are involved in the offence, three of them fell into a nearby oil tank and one person escaped in the motor cycle in a different direction. Two persons came out of the tank after some time and the second accused is one among the two persons. Those two persons were found in possession of Rs.1,05,000/-, which was handed over to the police.

(c) Third person was found dead in the tank and a cash of Rs.50,000/- was recovered from his underwear. The bag in which the cash was found is MO.1 and MO.2 and MO.3 series are the cash of Rs.1,05,000/- and Rs.50,000/-. MO.4 is the Motor cycle used by the accused in the scene of occurrence. PW.1 identified the 2nd accused during the identification parade.

(d) PW.3 and PW.4 were also examined and they corroborated the evidence of Pws.1 and 2. PW.5 is working as Head Constable at Choolaimedu Police Station. On 07.01.1998, while he was working as Gr.I constable at I.C.F. Police station, at about 12.00 noon, 4 persons came in a two wheeler and two auto-rickshaws came behind the two wheeler and they shouted "Catch the thief". On hearing this, PW.5 stopped the two wheeler and the persons who came in the two wheeler threatened to stab PW.5 with knife and leaving the two wheeler, three of them ran towards north another person ran towards south. Later, 3 persons jumped into a tank and two of them were taken out of the tank and those persons are 1st and 2nd accused. PW.6, saw a person with injuries.

(e) On 07.01.1998 evening, the police visited the place of occurrence and prepared Observation Mahazar Ex.P2 and the signature of PW.6 in the mahazar is marked as Ex.P3. PW.7 is the Cashier of Canara Bank, who deposed that PW.2 encashed a cheque and received two lakhs rupees from him. Police and the public caught two persons from the tank. PW.9 deposed that ICF police prepared a mahazar near the Tank and the dead body was recovered from the

tank. Rs.50,000/-, one gold chain, one five rupee coin, one rupee coin in one number and one thulasi malai were recovered under mahazar Ex.P4.

(f) PW.10 identified the 3rd accused and deposed that A.3 was working in his company and the 3rd accused is the root-cause for the incident and the statements of accused are marked as Exs.P.7 to P.9. The recovery is said to have been effected from the accused under Form-95.

(g) PW.11 Dr. Basheer Ahamed examined PW.2 Sampath and found the following injuries.

1. A cut injury measuring 8 x 2 cm full depth - skull right parietal region.
2. A cut injury "Y" shaped from centre of the scalp extending to left parietal and temporal region 15 cm with fracture skull.
3. A cut injury over right frontal region 5 x 1 x 1 cms.
4. A cut injury over forehead 3 x 1 x 1 cm.
5. A laceration measuring 5 x 1 x = cm over left cheek below left ear.
6. A cut injury 3 x = x = cm over right shoulder.
7. A cut injury over left shoulder, scapular region with fracture scapula 5 x 2 x ? depth.
8. A cut injury ? Stab over right shoulder measuring 10 cm. below shoulder joint 5 x 2 x ? depth.
9. A cut injury 1 x 1 x = cm left arm.
10. A cut injury measuring 5 x 1 x ? cm depth over left thigh.

PW.11 offered his opinion that the above injuries sustained by PW.2 Sampath are grievous in nature. He issued wound certificate Ex.P.10.

(h) PW.13 Ramesh, Sub-Inspector of Police, ICF Police Station received the complaint from PW.1 and registered a case in Crime No.38 of 1998 under Section 174 Cr.P.C. in respect of the death of one Ramu, who allegedly accompanied the accused 1 to 3. Tahsildar conducted inquest over the dead body of Ramu and found a sum of Rs.50,000/- in cash and 5 rupees coin one, 50 paise coin one, gold chain weighing 1 > sovereign, one Thulasi Malai and one spectacles in gold frame. The above articles were recovered under mahazar Ex.P12 in the presence of witnesses. Subsequently, cash of Rs.50,000/- was handed over to Crime Branch Police, Villivakkam. The printed First Information Report registered under Section 174 Cr.P.C. for the death of one Ramu is Ex.P13.

(i) PW.14 Murugesan, Inspector of Police (since retired) registered a case on the complaint preferred by PW.1 on 7.1.1998 at about 12.45 p.m. in Crime No.63 of 1998 under Section 397 and 506 (ii) IPC. The printed First Information Report is Ex.P14. All the accused were arrested in the presence of Navis Fernando (PW.10) and Krishnamurthy and confession statements were recorded from the accused Kumar @ Kalyan Kumar and Udayakumar at 1.15 p.m. and 2.00 p.m. respectively. The Investigating Officer recovered cash of Rs.1,05,000/- and one Hero Honda Motor cycle bearing Registration No.TN 01 3121 from the complainant. Those items were recovered under Form-95, which are marked as Exs.P5 and P6.

(j) The Investigating Officer inspected the place of occurrence and prepared a rough sketch Ex.P15 and Ex.P2 Observation Mahazar. The Investigating Officer recovered two casuarina sticks, which are marked as MO.5 series. He examined PWs.1 to 4, 7 and others and recorded their statements. On 08.01.1998, both the accused were produced before the XIII Metropolitan Magistrate, Egmore, Chennai and the accused were taken into police custody. Police took the accused Kalyan Kumar and Udhayakumar to Mortuary, where they identified the dead body of Ramu. On 15.01.1998 at 1.00 p.m., the Investigating Officer arrested the A.3 Umapathy @ Kutty at Thiru.Vi.Ka.Nagar, Othavadai Street, Gopalapuram Junction Road and the above accused handed over Rs.175/- to the Investigating Officer which was recovered under the cover of mahazar Ex.P16. A.3 made a confession statement and the admissible portion is marked as Ex.P17. On the basis of the confession statement, the accused Umapathy produced Suzuki Samurai Motor cycle which was recovered under mahazar Ex.P18. All the accused and the properties were produced before the concerned Magistrate. PW.14 examined Medical officer PW.11 Dr. Basheer Ahamed.

(k) PW.12, the XV Metropolitan Magistrate, George Town, Chennai, conducted the identification parade, wherein PW.1 identified 1st accused and PW.3 identified 1st and 2nd accused. The proceedings are marked as Ex.P11.

(l) After completing investigation, PW.14 filed a charge sheet under Section 397 IPC, 395 IPC and 506 (ii) IPC as against all the three accused.

3. When the accused were questioned under Section 313 Cr.P.C. with reference to the incriminating circumstances found against them, in the evidence of prosecution witnesses, they denied the same. Accused have not examined any witness on their side.

4. The learned Additional Sessions Judge, accepted the prosecution case and convicted each of the accused under Section 397 read with 395 IPC and sentenced to undergo imprisonment for life. In so far as charge under Section 506 (ii) IPC is concerned, all the accused were acquitted. Questioning the same, A1 to A3 filed the above appeals.

5. Heard Ms. J. Ranjani Devi, learned counsel for the appellant in Crl.Appl.No.1057 of 2003, Mr. S. Shanmugavelayutham, learned counsel for the appellant in Crl.Appl.No.1272 of 2003, Mr. A. Saravanan, learned counsel for the appellant in Crl.Appl.No.1515 of 2003 and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for the State.

6. The only point for consideration in these appeals is, whether the prosecution has established the guilt of the accused beyond all reasonable doubts?

7. It is the specific case of the prosecution that when PW.2 Sampath was returning from Canara Bank, Villivakkam after encashing Rs.2 lakhs, he was attacked by A.1 to A.3 and 2 others with weapons and they snatched away the cash of Rs.2 lakhs from him. PW.1 is the witness to the occurrence. In her evidence she deposed that she is the Security in Testiny Company. At about 11.00 a.m. on 07.01.1998, the Manager Sampath (PW.2) and another person

working in her Company viz., Delli Babu (PW.3) went to Canara Bank at Sivan Temple South Mada Street, to take money. Around 12 noon, when she was going to a shop in Reddy Street from her company, she saw four persons beating PW.2 with wooden logs and veecharuval, opposite to Muniyandi Vilas Hotel, Reddy Street, due to which PW.2 sustained injuries. When she shouted, the said four persons attempted to assault her and she fell down. Then the four persons, after snatching the cash bag from PW.2, fled the scene in a motor cycle. She further deposed that she along with Krishnamoorthy, Fernandos, Vijayaraj and Delli Babu (PW.3), chased them in an auto rickshaw. Near ICF she saw one Police Constable. By leaving the motor cycle, three of them ran way in one direction and the fourth one ran away in another direction. With the help of the public the accused were prevented from moving further, three of them jumped into a nearby tank. She also deposed that out of three persons jumped into the tank, 2 persons attempted to escape from the tank, and from them a sum of Rs.1,05,000/- (MO.2 series) was recovered and third person drowned in the tank. It was PW.1, who made a complaint to the police. The complaint is Ex.P.1 and the same was registered by VI Villivakkam Police Station in Crime No.063/98 for the offences under Sections 397 and 506 (ii) IPC. She also deposed that a sum of RS.50 ,000/- (MO.3 series) was recovered from the underwear of the person who drowned in the tank. She also identified the motor cycle (MO.4), which was used by the assailants.

8. PW.2 is the Manager of Testiny Spokes Wire Company.

According to him, on 07.01.1998, he went to Canara Bank, in order to encash a cheque for his company. He further deposed that after getting token, he returned to his Office and again went to the bank around 11 a.m. along with Delli Babu (PW.3) in order to get cash. When he was returning from Bank, near Muniyandi Vilas Hotel, two persons armed with wooden logs, demanded money. Since PW.2 refused, he was beaten by them using the wooden logs and other two persons, who came in motor cycle threatened PW.2 with knife and also caused injuries. All the four, after snatching the cash bag, proceeded in the motor cycle. He also deposed that at that time PW.1 intervened and since the accused attempted to attack her, she fell down. It is his further case that after witnessing the said incident, Delli Babu (PW.3), who accompanied him, rushed to his office and brought several men from his company. PW.2 sustained injuries on his head, back and shoulder and he was taken to Government Hospital and thereafter to Vijaya Nursing Home. He also deposed that after causing injuries and snatching the cash bag, four accused fled in the motor cycle. The evidence of PW.1 and PW.2, who are injured witnesses, corroborate in all aspects. Though PW.2 did not identify any one of the accused in the Test Identification Parade held, however, he identified A.1 and A.2 in the Court.

9. The other witness supporting the case of prosecution is

PW.3. He was working in the Export Company, in which PW.2 is cashier. On 07.01.1998, it was PW.3, who accompanied PW.2 when he was going to bank to take money. PW.3 also explained how PW.2 was beaten and injured at the hands of the accused who snatched money from PW.2. In the Test Identification Parade held, he identified only one person. He also explained that since five years had elapsed, he was not in a position to identify others.

10. As rightly pointed out by the learned Additional Public Prosecutor, there is no reason to disbelieve the version of Pws.1, 2 and 3. As discussed earlier, PW.1 is the Security and she witnessed the occurrence and in fact she intervened and attempted to stop the accused, but failed in her attempt, since she was pushed down. PW.2 is the injured witness. The injury sustained by PW.2 was spoken to by PW.11 Dr. Basheer Ahamed. According to PW.11, the injuries sustained are grievous in nature and he issued wound certificate Ex.P.10.

11. Though an argument was advanced that injuries alleged to have been caused by A.1 and A.2 were not tallying with medical evidence, viz., PW.11, Dr. Basheer Ahamed, since the injuries noted by PW.11 were cut injuries and not contusions, on verification of the evidence of PW.11 and Ex.P.10, wherein the injuries on PW.2 have been referred to, we are unable to accept the said argument. Though PW.2 has not mentioned all the injuries, if we consider his evidence and that PW.11 as well as Ex.P.10, we are satisfied that PW.2 sustained injuries at the hands of the accused as stated by him. Equally, there is no reason to disbelieve the version of Pws.1 and 3, who not only witnessed the occurrence, but also corroborated PW.2, who had sustained grievous injuries at the hands of the accused. All these aspects have been correctly appreciated and accepted by the learned trial Judge.

12. The learned counsel appearing for the appellants would submit that all the three accused were not identified properly in the Test Identification Parade and also in the Court. In support of the said contention, Mr. Shanmugavelayutham, learned counsel for one of the appellants submitted that PW.1 did not identify any one of the accused in the Court; PW.2 did not identify any one of the accused in the test Identification Parade, however, in the Court he identified A.1 and A.2 and PW.3 did not identify anybody in the Court, however in the Test Identification parade, only at 3rd time, he identified A.1 and A.2. In this regard the learned counsel for the appellants heavily relied on the decision of the Apex Court reported in the case of DANA YADAV @ DAHU AND OTHERS vs. STATE OF BIHAR (2002 SCC (Crl.) 1698. After analysing the law on the subject, their Lordships have concluded,

"38. In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini-inquiry as to whether the denial is bona fide or a mere pretence and / or made with an ulterior motive to delay the investigation. In case the court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and / or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their

interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto cannot be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of the accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

13. By drawing our attention to the above principles, learned counsel for the appellants submitted that in the absence of adequate evidence, viz., identifying all the three accused both in the test identification parade and in the court, the conclusion of the learned trial Judge accepting the prosecution case and convicting all the accused cannot be sustained. On going

through the evidence of Pws.1 to 3 relating to identification of the accused in the Test identification parade as well as in the Court and the evidence of PW.12, and other circumstances, such as, recovery of Rs.1,05,000/- (MO.2 series) and Rs.50,000/- (MO.3 series) from the accused / appellants, we are unable to accept the argument of the learned counsel for the appellants. On the other hand, we are satisfied that the materials placed on the side of the prosecution are sufficient to prove the guilt of the accused. In the light of the above reasons, while accepting the principles laid down in the case of 2002 SCC (Cri.) 1698 (cited supra) and also the decisions in Kanan vs. State of Kerala (1979 SCC CrI.621), Wakil Singh vs. State of Bihar (AIR 1981 SC 1392) and Bhure Khan vs. State of Madhya Pradesh (1982 SCC (Cri.) 469), we are of the view that the prosecution has established its case and the decisions cited above are not helpful to the appellants.

14. Now, let us consider the evidence regarding recovery. It is seen from the evidence of Investigating Officer (PW.14), A.1 and A.2 were arrested immediately after the occurrence and MO.1, MO.2 series and MO.3 series were recovered from them on the date of occurrence itself. It is also seen that within a week, A.3 was arrested and a sum of Rs.175/- was recovered from him. The vehicle used by the accused was also recovered as MO.4. It is also not in dispute that the recoveries were made under mahazar duly attested by two witnesses. It is also seen that based on the complaint of PW.1, the case was registered within 45 minutes and as said earlier, recoveries, viz., cash of Rs.1,05,000/- as well as Rs.50,000/- and the motor cycle used by the accused were recovered on the same day, i.e., on 07.01.1998. We are satisfied that the recoveries referred to above support the case of prosecution.

15. Though a faint argument was advanced that in the absence of Accident Register for the treatment taken by PW.2 in Cavery Nursing Home and the Government General Hospital, the case as pleaded by PW.2 cannot be accepted. We are unable to accept the said contention. It is true that PW.2 admitted in his chief examination that after sustaining injuries he went to Cavery Nursing Home and took first aid therein and he was also admitted in the Government General Hospital for further treatment and later, he had taken treatment in Vijaya Nursing Home. It is not in dispute that Doctor (PW.11) who treated him was examined and his wound certificate Ex.P.10 clearly proves the injuries sustained by PW.2. In such a circumstance, the contention raised by the learned counsel for the appellants is liable to be rejected.

16. Mr. Shanmughavelayutham, learned counsel appearing for the appellant, by drawing our attention to the evidence of prosecution witnesses Pws.1 to 3, submitted that in the absence of reference to all the five persons, who said to have involved and participated in the crime, the ingredients for offence under Section 397 read with 395 IPC have not been made out. He also submitted that none of the witnesses asserted that they witnessed all the five persons committing crime as alleged by the prosecution. He relied on the decisions of the Supreme Court in the case of Ram Lakhan vs. State of U.P. reported in AIR 1983 SC 352; and Om Prakash vs. State of Rajasthan reported in 1 998 SCC Cri.696. Before going into the dictum laid down in those decisions, it is useful to refer the definition of [dacoity].

"391. Dacoity.

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "Dacoity".

The above definition makes it clear that in order to bring the guilt under Section 391 IPC and punishment under Section 395 IPC, there must be five or more persons to commit or attempt to commit a robbery. It also makes it clear that even when the persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity".

17. In the first decision i.e., in 1983 SC 352 (cited supra) their Lordships have held that, if an offence under Section 395 is to be made out, there must be an assembly of 5 or more persons. In that case, after noting that as per the findings of the Courts below out of 9 persons named in the First Information Report, who alleged to have participated in the dacoity one Ram Lakhan, was alone left, concluded that the appellant / Ram Lakhan cannot be convicted under Section 395 and after further noting that the High court has not found that Ram Lakhan committed any overt act so as to bring his case within any other minor offence, set aside the conviction and sentence imposed on him and acquitted him of the charges framed.

18. In the second case, i.e., 1998 SCC 696 (cited supra) the Supreme Court, after finding that out of 5 named accused, who alleged to have committed offence of dacoity under Section 395 IPC, two accused having been acquitted, only the remaining three accused committed the said offence, and after finding that it was not proper to convict the remaining three accused under Section 395 IPC, altered the conviction into one under Section 392 IPC.

19. In the light of the ingredients for offence under Section 397 read with 395 IPC and as interpreted in the decisions of the Supreme Court referred to above, let us consider whether prosecution has established the guilt of the accused for the offence under Section 397 IPC read with 395 IPC. In the earliest document, viz., compliant, Ex. P.1, PW.1 has referred to only 4 persons armed with veecharauval and wooden logs. In her evidence before Court as PW.1, she has stated that,

(Vernacular portion deleted)

Even in cross examination, she reiterated the presence of 4 persons alone. Like wise, PW.2, who lost the money and also sustained grievous injuries, also referred to only 4 persons. He identified A.1 and A.2 in the Court. According to him, they beat him with wooden logs. In cross examination also, he reiterated that after snatching the money from him and after causing injuries, 4 persons escaped in motor cycle. He identified only A.1 and A.2 in the Court and he did not identify any one in the Test Identification Parade. Another eye witness PW.3 referred only 3 persons. According to him among the three, one drowned in the tank. In the Test Identification Parade he identified only one person. Though PW.4 is not an eye witness to the

occurrence, he deposed before the Court that he heard from some one that 4 persons snatched the cash bag from PW.2 and fled in motor cycle. Even the Head Constable (PW.5), who intercepted the persons, who snatched money from PW.2, in his evidence has referred only 4 persons. It is clear that all the prosecution witnesses referred only 4 persons said to have involved in the crime. The charge proceeds that apart from A.1 to A.3 (appellants) one Balan (absconded) and another person by name Ramu, who died in the tank, committed the offence under Section 397 read with 395 IPC. The charge under Section 506 (ii) IPC was not proved against the accused. Though it is the case of the prosecution that totally 5 persons were involved in the crime, as discussed earlier, none of the prosecution witnesses has spoken about the involvement of 5 persons as alleged in the charge. In such circumstances, as pointed out in 1998 SCC (Cri.) 696 (cited supra), it is not proper to convict the appellants/accused A.1 to A.3 under Section 397 read with 395 IPC. We are of the view that their conviction will have to be altered into one under Section 392 IPC.

Under these circumstances, we partly allow this appeal, setting aside the conviction and sentence under Section 397 IPC read with 395. Considering the fact that the occurrence took place in a broad day light and the offence is of serious nature, we are inclined to award the maximum punishment as provided under Section 392 IPC. Accordingly, we convict the accused under Section 392 IPC and sentenced each of them to undergo rigorous imprisonment for 10 years and also to pay fine of Rs.3,000/- each, in default to undergo rigorous imprisonment for six months. The bail bond executed by Umapathy @ Kutty (A3) shall stand revoked and the learned First Additional Sessions Judge, Chennai, is directed to take effective steps to secure the presence of A.3 and send him to prison to serve the remaining period of sentence.

Index:Yes

Internet:Yes

kh

To:

1. The Ist Additional Sessions Judge
Chennai.
2. The Ist Additional Sessions Judge
Chennai through the Principal
Sessions Judge, Chennai.
3. The Inspector of Police V-1
Villivakkam Police Station
Chennai 600 078.
4. The X Metropolitan Magistrate
Egmore, Chennai.
5. The X Metropolitan Magistrate
Egmore, Chennai through the
Chief Metropolitan Magistrate
Egmore, Chennai.
6. The Superintendent,

Central Prison, Vellore.

7. The Public Prosecutor, Madras.

8. The District Collector, Chennai.

9. The Director General of Police
Mylapore, Chennai 600 004.

□