BAIL SLIP

The Appellant/A1 namely Animanulla S/o.Mohammed Ismail was directed to be released on bail as per the order of this court dated 16.07.2004 made in Crl.Mp. 5585/2004 in Crl.A.642/04 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.642 of 2004

Ammanulla ... Appellant

Vs.

The State of Tamil Nadu,
Rep. by Inspector of Police,
Kumaralingam Police Station,
Madathykulam Taluk,
Tiruppur, Coimbatore District.
Crime No.147 / 96 ... Respondent

Prayer:
Appeal filed under Section 374 of Cr.P.C. praying to set aside the order of conviction passed in S.C.No.61 of 1997 judgment dated 27.01.2004 on the file of Additional District and Sessions Judge Court, Fast Tract Court No.5, Coimbatore at Tiruppur.

For Appellant : Mr.R.Murali

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment in S.C.No.61 of 1997 dated 27.01.2004 passed by the learned Additional District and Sessions Judge, Fast Track Court No.5, Coimbatore at Tiruppur.

2.The appellant is the first accused in S.C.No.61 of 1997. The case of the prosecution is as follows: P.W.1 was the President of Kumaralingam Village Panchayat in Udumalpet Taluk. He was residing at Samurayanpatti Village. He had two brothers by name Jothikannan and Senthilmurugan. All the three were living as a joint family. P.W.2 is his brother's son. P.W.4 is his brother's daughter. P.W.3 is the husband of P.W.4. P.W.5 is a housemaid at the house of P.W.1. P.W.6 is his neighbour. On 28.11.1996, P.Ws.1 to 6 were in the house of P.W.1 at Samurayanpatti Village. By about 8.00 a.m. a Mahindra Maxi Cab Van, green in colour, bearing Registration No.TN 22 X 2889 came to the house of P.W.1 and the same was stopped in front of P.W.1's house just outside the compound wall. Nine persons got down from the van and came to the premises of P.W.1.

3.All were dressed neatly and they gave a look of high officials. Three of them did not enter into the house and they waited on the varanda. Six of them entered into the house. They told P.W.1 and the other inmates that they were officials from income tax department and that they had come to conduct income tax raid at the house of P.W.1.

They had shown certain forms normally used by the office of the income tax department and the letter pads. By the appearance of the accused and from the way in which they talked and the documents namely forms from the income tax department which they had shown, P.Ws.1 to 6 believed that they were really from income tax department. Therefore, they allowed them to search the entire house.

4.Three persons who were waiting outside did not allow anybody to enter into the house. Similarly, the six persons who entered into the house; who made house search did not allow the inmates to go out. After a thorough search, they found jewels weighing 325 sovereigns in the iron safe of P.W.1. They also found a cash of Rs.95,000/- in the steel bureau. They took them and brought the same to the drawing hall. One of the persons displayed the jewels and the cash on the table in the drawing hall. Thereafter, he entered the details of the jewels and the cash in a form. They gave a copy of the form to P.W.1 as though it was an official document for seizure of the jewels and cash from the house of P.W.1 and also the letter pad [Exs.P.2 and P.1]. Thereafter, they put all the jewels and cash in a suitcase and brought the van to the portico.

5.They told P.W.1 to come to the office of the income tax department in Chennai on 05.12.1996 for enquiry. They got into the van and went away with the looted jewels and cash. Few minutes thereafter, P.W.1 contacted his auditor Mr.Archunaraj [P.W.14] at Coimbatore over telephone. When P.W.1 told about the raid conducted, P.W.14 wanted P.W.1 to rush immediately to his office at Coimbatore along with the documents handed over by those persons during the occurrence. Immediately, P.W.1 and P.W.2 rushed to Coimbatore and met P.W.14.

6.On seeing the letter pads and the forms of the income tax department, P.W.14 found that the said forms were not meant for income tax raid. Therefore, he suspected foul play and so, he immediately contacted the income tax officials at Coimbatore as well as at Chennai and P.W.14 was in turn informed that income tax officials did not make any such raid at the house of P.W.1. From this, P.W.1, P.W.2 and P.W.14 realised that the jewels and cash belonging to P.W.1 had been looted by unscrupulous elements. P.W.14 advised P.W.1 to go to police station. P.Ws.1 and 2 returned to Kumaralingam Town and preferred a complaint at 4.00 p.m. on 28.11.1996 at Kumaralingam Police Station. Ex.P.3 is the complaint.

7.P.W.20, the then Sub Inspector of Police attached to Kumaralingam Police Station registered a case in Crime No.147 of 1996 for offences under Sections 419 and 420 of IPC. Ex.P.32 is the FIR. He forwarded the FIR and the complaint to the court immediately. He also forwarded Exs.P.1 and P.2 which were given by the culprits to P.W.1 and produced by P.W.1 along with Ex.P.3 complaint. Thereafter, P.W.20 handed over the case for investigation to P.W.21. P.W.21 was the then Inspector of Police. On 28.11.1996, he took up the case for further investigation, proceeded to the place of occurrence. At 5.30p.m. he visited the place of occurrence and prepared an observation mahazar [Ex.P.7] in the presence of P.W.11 and another witness. He also prepared a rough sketch [Ex.P.6] showing the place of occurrence.

8.At the request of P.W.21/ Inspector of Police, P.W.19, the Finger Print Expert attached to Coimbatore Finger Prints Bureau visited the scene of occurrence. When he examined a room in the ground floor of the house of P.W.1, he found five finger prints i.e. two finger prints on the steel bureau and three finger prints in the window in the first floor of the house. In the bathroom, precisely on the porcelain flush tank cover, he noticed yet another finger print. On the steel bureau which was kept in yet another room in the ground floor, he noticed two finger prints. Thus, totally, he found eight finger prints which he marked as S1 to S8. He took photographs of the said finger prints in scientific manner.

9.Out of the eight chance finger prints, few chance prints did not tally with the finger prints of the inmates and thus they were the finger prints of strangers. In this regard, he submitted his report dated 16.09.1997 under Ex.P.31. P.W.21 examined P.Ws.1 to 6, P.W.11 and few more witnesses and recorded their statements. On 29.11.1996, he examined few more witnesses and recorded their statements. On 30.11.1996, he handed over the case for further investigation to P.W.23/ Inspector of Police.

10.P.W.23 took up the case for further investigation on 30.11.1996. On some reliable information, he proceeded to Chennai and arrested Accused-Murugan [absconding accused]. On such arrest, he gave a voluntary confession in the presence of P.W.16 and another witness and the same was reduced into writing. In the said statement, he disclosed that he had hidden jewels and cash of Rs.7500/- in bureau at his house. He further disclosed that he would identify the accused Amanullah/ A1.

11.Accordingly, at 9.30 p.m. on the same day, he took the police and the witnesses to his house and produced Items 3 to 28, as many as 25 items of gold jewels [M.O.2] and cash of Rs.7,500/- [M.O.3]. P.W.23 recovered the same in the presence of P.W.16 and another witness under cover of Ex.P.9 mahazar. Thereafter, he took P.W.23 to Madurai Sami Mada Street, Sembiam, Chennai and identified the accused Amanullah [A1]. P.W.23 thereafter arrested accused Amanullah [A1] at 10.45 p.m. Accused Amanullah also gave confession voluntarily and the same was reduced into writing in the presence of the same witnesses. In the said statement, he disclosed that he would produce the jewels and cash of Rs.3250/-. Accordingly, from his house he produced 5 items of gold jewels [items 29 to 33A in M.O.2]. P.W.23 recovered the same in the presence of P.W.16 and another witness under cover of Ex.P.11 mahazar.

12.Thereafter P.W.23 arrested Shathurudeen [A2] at the house of accused Amanullah in the presence of P.W.16 and another witness at about 12.15 a.m. on 01.12.1996. A2 gave a voluntary confession and the same was reduced into writing. In the said statement, he disclosed that he would produce the jewels and cash. Accordingly, from his house at Madurai Sami Mada Theru, Sembiam,

Chennai, he produced 4 items of gold jewels and cash of Rs.7900/-. They were all recovered under Ex.P.13 mahazar. Jewels are Items 34 to 37 [M.O.2] and cash of Rs.7,900/- is Item No.38 [M.O.3].

13.Thereafter, on information, P.W.23 proceeded to house at D.No.741/5, Arulappa Street, G.K.M.Colony, Chennai and arrested accused Amirthalingam [A3] at 2.15 p.m. He also gave a voluntary confession and the same was reduced into writing. In the said statement, he disclosed that he would produce the jewels and cash. Accordingly, he produced 7 items of gold jewels and cash of Rs.7,050/. P.W.23 recovered the same in the presence of P.W.16 and another witness under cover of Ex.P.15 mahazar. The jewels recovered from A3 are Items 39 to 45 [M.O.2] and cash of Rs.7,050/- recovered from A3 is Item No.46 [M.O.3].

14.Thereafter, P.W.23 arrested some of the other accused and reduced the voluntary confession statement given by them into writing and recovered the gold items and cash from them. Thereafter taking all the accused and the seized articles, P.W.23 returned to Kumaralingam Police Station. P.W.23, thereafter, forwarded the accused for judicial remand and the properties to the Court.

15.Thereafter, P.W.24, the then Inspector of Police took up further investigation. On 03.12.1996, on information he proceeded to Sethur, Rajapalayam Taluk and from the house bearing D.No.48, Pillaimar Street, Sethur, he arrested accused Perumal @ Sivaperumal [A7]. On such arrest, A7 gave a voluntary confession in the presence of P.W.17 and one Radhakrishnan. P.W.24 reduced the same into writing. Thereafter, P.W.24 returned to the police station along with A7 and the properties seized and sent the accused to Court for judicial remand. He also forwarded materials objects to the Court under Form-95.

16.In continuation of his investigation, on 06.12.1996, on reliable information, P.W.24 proceeded to Thiruvarur Aathukkulam South Bank and at Door No.56, Pillayar Koil Street, where he arrested the accused Sheik Hussain [A8] in the presence of P.W.18 and another witness. On such arrest, he gave a voluntary confession statement. The said statement was reduced into writing. P.W.24 also recovered the jewels and cash produced by him and thereafter forwarded the accused to Court for judicial remand.

17.On 10.12.1996, P.W.24 gave a requisition to the Chief Judicial Magistrate to depute a Magistrate for conducting test identification parade. Accordingly, on 20.12.1996, P.W.13, the then Judicial Magistrate No.III at Pollachi conducted test identification parade in Central Prison at Coimbatore. During test identification, the accused one Murugan [Asbconding], Amanullah [A1], Shathurudeen [A2], Amirthalingam [A3], Ravi [absconding], Vendan [A4], Surendran [A5], Ganesan [A6], Perumal @ Sivaperumal [A7] and Sheik Hussain [A8] were put up for identification by P.Ws.1 to 3, 5, 6, 10 , 11 and one Sakthi Balan. In the said identification parade, one Sakthibalan [not examined during trial] identified the accused Amanullah/ A1 and some other accused. Thereafter, the learned Magistrate submitted a report under Ex.P.5 regarding the identification of the accused made by the witnesses.

18.P.W.24, thereafter, examined P.W.10, P.W.11 and one Sakthibalan and recorded their statements. He proceeded to the lodge where the accused stayed on the previous night of the day of occurrence and recovered the lodge ledger under Ex.P.4 mahazar and examined P.W.10-Kabilan, the Manager of the lodge and recorded his statement.

19.The finger prints of the accused were sent to P.W.19 for comparison with the chance finger prints lifted from the place of occurrence. P.W.19 compared the finger impressions of the accused with S1 to S6 which were lifted from the house of P.W.1. On such comparison, P.W.19 found the finger impression of Vendan [A4] tallied with S3 to S5 lifted from the place of occurrence. The chance prints S1, S2 and S6 did not tally with the finger prints of the accused. On 11.12.1996, the finger prints of accused Sheik Hussain [A8] were taken and sent for comparison. P.W.19 compared the same with S1, S2 and S6 and found that the chance print S6 tallied with the finger print of the said accused. S1 and S2 did not tally with his finger prints. He submitted a report in this regard on 11.12.1996 along with enlarged photographs of the finger prints and chance prints lifted at the house of P.W.1 for comparison.

20.P.W.24 examined P.W.19, the finger print expert and recorded his statement. Then, he examined an officer from the income tax department [P.W.22] and recorded his statement. On completing the investigation, he laid the final report on 31.01.1997 against all the accused for offences under Sections 120-B, 147, 450 and 395 of IPC.

21.Based on the materials produced, the trial court framed charges against the appellant and other accused. Since the appellant

denied the charges, the trial court proceeded with the trial. During trial, on the side of the prosecution, as many as 24 witnesses were examined and 34 documents were marked as exhibits, besides 4 material objects.

22.P.Ws.1 to 6 have vividly narrated about the occurrence during trial. However, all those things are not necessary for dealing with the present appeal.

23.Except the appellant, the other accused filed appeals before this Court in Crl.A.Nos.656, 163, 522,177, 407 and 524 of 2004 and this Court vide judgment dated 09.04.2011, allowed Crl.A.No.407 of 2004 filed by A6 and set aside the conviction and sentence passed by the lower Court as against A6. This Court partly allowed the other appeals by confirming the conviction and sentence passed against A2 to A5 and A7 and A8 under Sections 120-B, 450 and 395 of IPC and acquitted A2 to A5 and A7 and A8 from the conviction under Section 147 of IPC and set aside the sentence imposed on them for the conviction under Section 147 of IPC.

24.However, in the present appeal this Court has to decide about the involvement of the appellant/ A1 along with the other accused.

25.The appellant/ A1 is the resident of Udumalpet. A2 is the brother of A1. A1 approached A2 and explained about the financial crises faced by him and sought for a solution. Accordingly, they conspired together and identified P.W.1 as the wealthy person in Udumalpet and fixed a date for committing dacoity in his house. Thereafter, A1 and A2 entered into conspiracy with the other accused and committed dacoity in the house of P.W.1.

26.Accordingly, all the accused proceeded to Udumalpet and booked a Lodge known as "Anandha Lodge" at Udumalpet. As per the request of the accused Amanullah [A1] stating that 10 persons who were his friends had come to stay two rooms namely, room Nos.103 and 205 were allotted for them to stay. The persons who came along with the accused Amanullah [A1] appeared to be very smart portraying the look of police officials. The van in question bearing Registration No.TN 22 X 2889 also came, in which, the said persons came to the lodge. P.W.10 is the Manager of the Lodge and he has identified M.O.1 as the van used for the said occurrence. Ex.P.4 is the Ledger. P.W.10 has deposed that A2/ Sathurudeen entered his name as Thirugnanasambandam in the ledger giving his address as Pallivasal Street, Dindigul. P.W.10 has identified A1, A2, A3, A4 and A6 as the persons who stayed in the lodge.

27.P.W.8 is a resident of the same village and he has got a tea shop at Udumalpet Palani Road. According to him, on 28.11.1996 from 5.00 a.m. he was in his shop. The said shop is situated somewhere near the house of P.W.1. According to him, he saw the van in question stopped in front of the house of P.W.1. He has identified M.O.1 as the van. According to him, he came to know that by impersonating as income tax officials some culprits had committed theft of properties from the house of P.W.1.

28.P.W.9 is running a petty shop in Samurayanpatti Village. He has deposed that on the date of occurrence, at 8.30 a.m., the accused - Amanullah [A1] who was already known to him came to his shop. He has further deposed that he enquired him as to why did he come there. At that time, the van in question was passing through the shop. Accused Amanullah [A1] made some signals to the inmates of the said vehicle. The vehicle proceeded towards Udumalpet. Then, the accused Amanullah [A1] left by bus. He has identified M.O.1

van.

29.When the incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, based on the evidence adduced by the witnesses and after analyzing the documents placed, the Trial Court convicted the appellant/ A1 for the offence under Sections 120-B, 147, 450 and 395 of IPC and sentenced him to undergo 8 years rigorous imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 120-B of IPC; to undergo 6 months imprisonment for the offence under Section 147 of IPC; to undergo 8 years rigorous imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 395 of IPC; and to undergo 8 years rigorous imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 450 of IPC and ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellant has filed the present appeal.

30.The learned counsel appearing for the appellant would submit that there are lot of discrepancies in the mahazar as well as evidence of P.Ws.10 and 11. He would further submit that there is violation in the identification parade conducted by P.W.13. He would further submit that the appellant was produced before P.W.10 and P.W.11 prior to test identification parade for investigation. Thereafter, P.W.10 and P.W.11 identified the appellant. There are every possibilities for showing the appellant/ A1 prior to identification parade. Since the appellant/ A1 was already shown to P.W.10 and P.W.11, the test identification parade was not conducted in a proper manner.

31.The learned counsel appearing for the appellant would further submit that the appellant was arrested on 30.11.1996 at Chennai. However, prior to arrest, recovery was made. The evidence of P.W.10/ Manager of the 'Anandha Lodge' at Udumalpet and P.W.11/ Owner of the Tea shop in 'Anandha Lodge' at Udumalpet, clearly shows that the appellant was produced before them on 28.11.1996 and on 29.11.1996. Hence, the appellant may not be arrested on 30.11.1996 at Chennai. Even the arrest and recovery is illegal. The Trial Court failed to note the glaring discrepancies in the prosecution evidence.

32.The learned counsel appearing for the appellant would further submit that only P.Ws.10 and 11 and one Sakthi Balan have

identified the appellant in the identification parade and no other witness have identified the appellant. The said Sakthi Balan was also not examined as witness. He would further submit that in the absence of any incriminating materials, implicating the appellant as accused in the case is un sustainable one.

33.In support of his contentions, the learned counsel appearing for the appellant relied upon the decision of the Hon'ble Apex Court reported in 2018 SCC OnLine SC 378 (Navaneethakrishnan Vs. The State by Inspector of Police), the relevant portion of which reads as follows:

> "23.The Law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstance gets snapped and other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove."

34.The learned counsel appearing for the appellant would further submit that Law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. Accordingly, he prayed for allowing the appeal.

35.Per contra, the learned Government Advocate (Crl. Side) would submit that admittedly, the appellant is a resident of Udumalpet. Though the learned counsel appearing for the appellant made allegations against the prosecuting agency with regard to the manner in which the test identification parade was conducted, the Trial Court did not convict the appellant solely based on the test identification parade.

36.The learned Government Advocate (Crl. Side) would further submit that P.W.9 is running a petty shop in Samurayanpatti Village. In his evidence he has deposed that on the date of occurrence, at 8.30a.m., the appellant/ A1 came to his shop. He has further deposed that when he enquired the appellant as to why did he come there, the van in question was passing through the shop and A1 made some signals to the inmates of the said vehicle. Thereafter the vehicle proceeded towards Udumalpet and A1 left by bus.

37.The learned Government Advocate (Crl. Side) would further submit that P.W.10 is the Manager of the Lodge known as 'Anandha Lodge' at Udumalpet. In his evidence P.W.10 has deposed that on 27.01.1996, the appellant/ A1 came to his lodge and booked two rooms stating that 10 persons who were his friends had come to stay. Accordingly, he allotted room Nos.103 and 205 for them to stay. He has also deposed that A2 entered his name as Thirugnanasambandam in the ledger giving his address as Pallivasal Street, Dindigul. He would further submit that P.W.11 is the owner of the Tea shop in Ananda Lodge and he has also spoken to about the booking of rooms.

38.The learned Government Advocate (Crl. Side) would further submit that the evidences of P.Ws.9, 10 and 11 clearly establish the involvement of the appellant/ A1 in the offence. Furthermore, the prosecuting agency also recovered the gold articles and it was also identified by P.W.1. Thus, the prosecuting agency established the ingredients required for implicating the appellant as accused. The Trial Court after analysing the entire evidences and documents only passed the conviction and sentence as against the appellant along with the other accused.

39.The learned Government Advocate (Crl. Side) would further submit that, except the appellant/ A1, A2 to A8 filed appeals in Crl.A.Nos.656, 163, 522,177, 407 and 524 of 2004 before this Court. This Court allowed the appeal in Crl.A.No.407 of 2004 filed by A6 and acquitted A6 and partly allowed the other appeals by confirming the conviction and sentence passed against A2 to A5 and A7 and A8 under Sections 120-B, 450 and 395 of IPC and acquitted A2 to A5 and A7 and A8 from the conviction under Section 147 of IPC and set aside the sentence imposed on them for the conviction under Section 147 of IPC.

40.The learned Government Advocate (Crl. Side) would further submit that since the appellant/ A1 is the main accused, this Court need not interfere with the well considered judgment of the Trial Court as against this appellant. Accordingly, he prayed for dismissal of the appeal.

41.Heard the arguments advanced on either side and perused the materials available on record.

42.In the light of the above submissions, now it has to be analyzed whether the prosecution has established the case beyond all reasonable doubt.

43.The admitted case of the prosecution is that the appellant did not accompany the other accused on the date of occurrence for committing dacoity. According to prosecution case, on 28.11.1996, P.Ws.1 to 6 were in the house of P.W.1 at Samurayanpatti Village. At about 8.00 a.m. a Mahindra Maxi Cab Van, green in colour, bearing Registration No.TN 22 X 2889 came in front of P.W.1's house just outside the compound wall and stopped. Nine persons got down from the van and came to the premises of P.W.1. All were dressed neatly and they gave a look of high officials. Three of them did not enter into the house and they waited on the varanda.

44.Six of them entered into the house. They told P.W.1 and the other inmates that they were officials from income tax department and that they had come to conduct income tax raid at the house of P.W.1. They had shown certain forms normally used by the office of the income tax department and the letter pads. By the appearance of

the accused and from the way in which they talked and the documents namely forms from the income tax department which they had shown, P.Ws.1 to 6 believed that they were really from income tax department. Therefore, they allowed them to search the entire house.

45.Three persons who were waiting outside did not allow anybody to enter into the house. Similarly, the six persons who entered into the house made house search and did not allow the inmates to go out. After a thorough search, they found jewels weighing 325 sovereigns in the iron safe of P.W.1. and also found a cash of Rs.95,000/- in the steel bureau. They took them and brought the same to the drawing hall. One of the persons displayed the jewels and the cash on the table in the drawing hall. Thereafter, he entered the details of the jewels and the cash in a form. They gave a copy of the form to P.W.1 as though it was an official document for seizure of the jewels and cash from the house of P.W.1 and also the letter pad [Exs.P.2 and P.1]. Thereafter, they put all the jewels and cash in a suitcase and brought the van to the portico.

46.They told P.W.1 to come to the office of the income tax department in Chennai on 05.12.1996 for enquiry. They got into the van and went away with the looted jewels and cash. Few minutes thereafter, P.W.1 contacted his auditor Mr.Archunaraj [P.W.14] at Coimbatore over telephone. When P.W.1 told about the raid conducted, P.W.14 wanted P.W.1 to rush immediately to his office at Coimbatore along with the documents handed over by those persons during the occurrence. Immediately, P.W.1 and P.W.2 rushed to Coimbatore and met P.W.14.

47.On seeing the letter pads and the forms of the income tax department, P.W.14 found that the said forms were not meant for income tax raid. Therefore, he suspected foul play and so, he immediately contacted the income tax officials at Coimbatore as well as at Chennai and P.W.14 was in turn informed that income tax officials did not make any such raid at the house of P.W.1. From this, P.W.1, P.W.2 and P.W.14 realised that the jewels and cash belonging to P.W.1 had been looted by unscrupulous elements.

48.Admittedly, the appellant/ A1 is a local of Udumalpet. A2 is his own brother residing at Sembium, Chennai. The evidence adduced by P.W.10 indicates that the appellant is a local resident of Udumalpet and on his introduction, the other accused stayed at the lodge on 27.11.1996 and vacated the lodge on 28.11.1996 at 6.30 a.m. P.W.10 identified the other accused in the van bearing Registration No.TN 22 X 2889 used for committing the crime. P.W.10 also identified the appellant in the test identification parade.

49.The evidence adduced by P.W.9 who is running a petty shop in Samurayanpatti Village clearly indicates that on the date of occurrence, at 8.30a.m., the appellant/ A1 came to his shop and when he enquired the appellant as to why did he come there, the van in question was passing through the shop and A1 made some signals to the inmates of the said vehicle. Thereafter the vehicle proceeded towards Udumalpet and A1 left by bus.

50.Apart from the above, P.W.23 arrested the appellant and some of the other accused and recorded the voluntary confession statement given by them and recovered the gold items and cash from them. In his evidence, P.W.23 has deposed that he arrested the appellant at Sembium, Chennai, where A2 brother of A1 was residing.

51.The prosecution case is that A1 due to his business loss approached A2 and explained about the financial crises faced by him and sought for a solution. Thereafter, A1 and A2 entered into conspiracy with the other accused and committed dacoity in P.W.1's house. P.W.23 arrested the appellant and recorded the confession statement voluntarily given by him and also recovered the gold jewels and cash produced by him in the presence of P.W.16 and another witness under Ex.P.11 mahazar.

52.Thereafter, P.W.23 also arrested Shathurudeen [A2] on the very next day in the presence of P.W.16 and another witness and recorded the voluntary confession statement given by him and also recovered the gold jewels and cash produced by him under Ex.P.13 mahazar. Thereafter, P.W.23 also arrested some of the other accused and recorded the voluntary confession statement given by them and recovered the gold items and cash produced by them. Thereafter taking all the accused and the seized articles, P.W.23 returned to Kumaralingam Police Station. P.W.23, thereafter, forwarded the accused for judicial remand and the properties to the Court.

53.All these things clearly establish the involvement of the appellant/ A1 in the above said crime. There may be some discrepancy in the deposition of P.Ws.10 and 11. Merely there is some discrepancy in the deposition of P.Ws.10 and 11 does not mean that the prosecution has not proved the case beyond reasonable doubt. Even the test identification parade is only an evidence to arrive at the conclusion. Even in the test identification parade P.Ws.10 and 11 have identified the appellant because he is resident of Udumalpet and known to them. With regard to the involvement of the accused, the Trial Court has not arrived at the conclusion only based on the test identification parade conducted by P.W.13.

54.P.Ws.10 and 11 identified the appellant/ A1 in the test identification parade. The vehicle used for committing the crime was also identified by some of the prosecution witnesses before the Trial Court. Considering all the above, I have no hesitation to state that the prosecution has proved the case as against the appellant/ A1.

55.Though the learned counsel appearing for the appellant submits that there is no evidence available to implicate the accused under Section 120-B of IPC, in my considered opinion and as per the well settled position of Law, conspiracy cannot be proved by eye witnesses. Conspiracy is proved by the evidence as to transmission of thoughts sharing the unlawful design. In the instant case, though there is some discrepancy in the deposition of P.Ws.10 and 11, the fact

remains that the appellant came to the Anandha Lodge and booked two rooms stating that 10 persons who were his friends had come to stay. Accordingly, room Nos.103 and 205 were allotted for them to stay. Merely there is some discrepancy in the deposition of P.Ws.10 and 11 and the same has not gone into the root of the prosecution case, the said discrepancy will not affect the prosecution case.

56.It is pertinent to note here that except the appellant, the other accused/ A2 to A8 have filed criminal appeals in Crl.A.Nos.656, 163, 522, 177, 407 and 524 of 2004 before this Court and the relevant portion of the judgment dated 09.04.2011 made in the aforesaid appeals reads as follows:

> "37.The learned counsel for the appellants/A2 to A5, A7 & A8 would submit that assuming that the prosecution has proved that these accused have got involvement in the crime even then, the offences said to have been committed by the appellants/A2 to A5, A7 and A8 would not fall under Section 395 of IPC and instead, it would fall only under Section 419 of IPC. But, it is in evidence of P.W.2 and P.W.3 that some of the accused intimidated the witnesses not to raise any hue and cry and at that time they had pistols in their pockets. However, the witnesses had not actually seen any pistol. But, at the same time, it is the evidence of the eye-witnesses that they were not permitted to leave the house and they were wrongfully restrained.
>
> 38. Section 390 of Indian Penal Code defines 'robbery' as follows:-
>
> "390. Robbery
>
> In all robbery there is either theft or extortion.
>
> When theft is robbery. - Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carving

away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily cause or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery. Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation. -The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.""

57.In view of the above, I do not find any error or perverse in the judgment dated 27.01.2004 made in S.C.No.61 of 1997 by the learned Additional District and Sessions Judge, Fast Track Court No.5, Coimbatore at Tiruppur, insofar as the appellant is concerned, which warrants interference of this Court.

58.In the result, the criminal appeal is dismissed. The judgment dated 27.01.2004 made in S.C.No.61 of 1997 by the learned Additional District and Sessions Judge, Fast Track Court No.5, Coimbatore at Tiruppur, insofar as the appellant/ A1 is concerned, is hereby confirmed. The Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/ A1 to undergo the remaining part of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pri

To

1.The Additional District and Sessions Judge,
Fast Track Court No.5, Coimbatore at Tiruppur.

2.The Judicial Magistrate I,
Udumalpet.

3.The Chief Judicial Magistrate,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

5.The District Collector,
Coimbatore.

6.The Director General of Police,
Mylapore, Chennai-4.

7.The Superintendent of Police,
Mylapore, Chennai-4.

8.The Inspector of Police,
Kumaralingam Police Station,
Madathykulam Taluk,
Tiruppur, Coimbatore District.
Crime No.147 / 96

9.The Superintendent,
Central Prison,
Coimbatore.

10.The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to Mr.R.Murali, Advocate, S.R.No. 88436

Crl.A.No.642 of 2004

KJ(CO)
GN(26/02/2019)