

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.08.2019

DELIVERED ON: 17.09.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.1176 of 2018, Crl.M.P. Nos.13768 of 2018 & 17496 of 2018 Crl.R.C. No.1244 of 2018, Crl.M.P. Nos.14799, 14803 & 17497 of 2018 Crl.R.C. No.1245 of 2018, Crl.M.P. Nos.14808, 14809 & 17499 of 2018 Crl.R.C. No.1403 of 2018 & Crl.M.P. No.16310 of 2018

Crl.R.C. No.93 of 2019 & Crl.M.P. No.8521 of 2019

Crl.R.C. No.108 of 2019 & Crl.M.P. No.1024 of 2019

Crl.R.C. No.159 of 2019 & Crl.M.P. Nos.1411,

1414 & 1416 of 2019

Crl.R.C. No.1176 of 2018:

1 Thavasi @ Thavasi Rajan

2 Marrutai

3 Shali @ Shali Priyadarshini

Petitioners/Accused Nos.3,11, 45

vs.

State represented by

The Inspector of Police

Veppur Police Station

Perambalur District

(Crime No.90/2008)

Respondent/complainant

Crl.R.C. No.1244 of 2018:

Sundar @ Sundaresan

Petitioner/A8

vs.

State represented by

The Inspector of Police

Veppur Police Station

Cuddalore District

(Cr. No.90 of 2008)

Respondent/Complainant

Crl.R.C. No.1245 of 2018:

Raja

Petitioner/A9

vs.

State represented by

The Inspector of Police

Veppur Police Station

Cuddalore District

(Cr. No.90 of 2008)

Respondent/Complainant

Crl.R.C. No.1403 of 2018:

Malar

Petitioner/A-13

vs.

The State represented by

The Station House Officer

Veppur Police Station

Cuddalore District

(Cr. No.90 of 2008)

Respondent

1 Meiyan

Petitioners/A-52,14

State by

The Inspector of Police

Veppur Police Station, Perambalur District

Respondent/Complainant

Vakil Pandi @ Shankara Narayanan

VS.

State represented by

The Inspector of Police

The Station House Officer

Veppur Police Station

Respondent/Complainant

Pichaiyammal

VS.

State represented by

The Inspector of Police

The Station House Officer

Veppur Police Station

Respondent

Prayer in Crl.R.C. No.1176 of 2018:

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to call for the entire records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore, at Virudhachalam partly allowing Crl.A. No.24 of 2014 filed against the common judgment and order dated 23.07.2014 passed by the Additional Assistant Sessions Judge, Virudhachalam, Cuddalore District in S.C. Nos.75 & 341 of 2009, set aside the same and consequently, acquit the petitioners honourably from all the charges framed in the Sessions Case.

Prayer in Crl.R.C. No.1244 of 2018:

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to call for the records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in Crl.A. No.25 of 2014 partly confirming the judgment and order dated 23.07.2014 passed by the Additional Assistant Sessions Judge, Virudhachalam in S.C. No.75 of 2009 and acquit the petitioner.

Prayer in Crl.R.C. No.1245 of 2018:

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to call for the records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in Crl.A. No.24 of 2014 partly confirming the judgment and order dated 23.07.2014 passed by the Additional Assistant Sessions Judge, Virudhachalam in S.C. No.75 of 2009 and acquit the petitioner.

Prayer in Crl.R.C. No.1403 of 2018:

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to call for the records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in Crl.A. No.24 of 2018, confirming the judgment and order dated

23.07.2014 passed in S.C. No.75 of 2009 by the Additional Assistant Sessions Judge, Virudhachalam and acquit the petitioner.

Prayer in Crl.R.C. No.93 of 2019:

Criminal Revision filed under Sections 397 and 401 Cr.P.C. seeking to call for the records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam, confirming the judgment and order dated 23.07.2014 passed by the Additional Assistant Sessions Judge at Virudhachalam, Cuddalore District in S.C. Nos.75 and 341 of 2009.

Prayer in Crl.R.C. No.108 of 2019:

Criminal Revision filed under Section 397(1) r/w Section 401 Cr.P.C. seeking to call for the records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam partly allowing and partly dismissing Crl.A. No.42 of 2014 filed against the judgment and order dated 23.07.2014 passed by the Additional Assistant Sessions Judge, Virudhachalam.

Prayer in Crl.R.C. No.159 of 2019:

Criminal Revision filed under Section 397(1) r/w Section 401 Cr.P.C. seeking to call for the records pertaining to the judgment and order dated 04.10.2018 passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam partly allowing and partly dismissing Crl.A. No.27 of 2014 filed against the judgment and order dated 23.07.2014 passed by the Additional Assistant Sessions Judge, Virudhachalam.

For petitioners in

Crl.R.C. No.1176 of 2018

Mr. R. Anand

For petitioners in

Mr. K.M. Balaji

Crl.R.C. Nos.1244 &

1245 of 2018 for

Mr. K. Gandhi Kumar

Srinivasan (P.W.1), Boopathy (P.W.2), Senthil Kumar (P.W.3), Vijayakumar (P.W.8), Shanmugamani (A.10) and Maruttai (A.11) were working in the Trichy Branch.

3.2 It was the practice of the said firm to transport huge quantities of retail items from Trichy to Chennai by road. Besides, monies in the form of liquid cash were sent for the purchase of bullion. While so, on 05.08.2008, cash of Rs.1 crore was sent by road to Chennai. However, it was brought back to Trichy as the price of bullion was fluctuating. Again, on 08.08.2008, money was sent to Chennai and on that occasion too, it was brought back for the same reason. The next day, i.e., on 09.08.2008, around 10.00 p.m., Mookka Pillai (P.W.4) instructed his employees Srinivasan (P.W.1-Supervisor) and Senthilkumar (P.W.3-Driver) to transport huge quantities of home appliances, including pressure cookers and also cash of Rs.3.72 crores to Chennai and directed Boopathy (P.W.2-Driver) to be the driver of Eicher container lorry bearing Regn.No.TN 45 AK 3834 (M.O.1) to carry the home appliances and cash. When these instructions were being given by Mookka Pillai (P.W.4), Shanmugamani (A.10) and Maruttai (A.11) were present there. The cash of Rs.3.72 crores was packed by Vijayakumar (P.W.8-Supervisor in silver section of the firm), in four cartons, which were loaded in the container, along with other items., viz., pressure cookers, mixers, etc. Mookka Pillai (P.W.4) gave cash of Rs.10,000/- to Senthilkumar (P.W.3) for meeting incidental expenses.

3.3 On 10.08.2008, Mookka Pillai (P.W.4) left Trichy for Chennai by air. The trio, viz., Srinivasan (P.W.1), Boopathy (P.W.2) and Senthil Kumar (P.W.3), left the Trichy Branch around 6.00 a.m. and were proceeding to Chennai via Perambalur. En route, they halted for a brief while for having a cup of tea and continued with their journey.

3.4 As stated above, Boopathy (P.W.2) was on the wheels and Srinivasan (P.W.1) and Senthil Kumar (P.W.3) were sitting beside him in the cabin. Srinivasan (P.W.1) and Senthil Kumar (P.W.3) dozed off a little bit. The container lorry (M.O.1) was stopped at the Gomuki Bridge in Cuddalore District by a group of five persons (who were identified by the trio in the Test Identification Parade as well in the Court as A.2 to A.6) posing themselves as department officials. They called upon the trio to open the container and accordingly, the container was opened and shown. Karuppusamy (A.4) snatched the cell phone from Srinivasan (P.W.1) and the container key. They opened the lock of the container and Karuppusamy (A.4) got into the container and started checking the cartons for cash. He found the carton(s) with cash stacked in the container and informed the others. The

group of five persons questioned the trio as to whether they have any authority to transport such huge cash and accused them of having links with terrorists. Saying so, they bundled the trio into the container. Irulandi (A.2), Karuppusamy (A.4) and Meyyan (A.5) also got into the container. They directed the other members of their gang to take the vehicle to the police station. The container was locked from outside and the container lorry (M.O.1) started moving. A little later, the container lorry (M.O.1) was stopped at an unknown place and the cartons containing cash alone were unloaded from the container and the accused gang also alighted. The accused gang locked the container once again with Srinivasan (P.W.1), Boopathy (P.W.2), Senthil Kumar (P.W.3) inside and the container lorry (M.O.1) started moving upto a certain distance. Thereafter, it stopped and there was no movement at all. The trio smelt trouble and started banging the container door with the lid of a pressure cooker and made noise with a view to draw the attention of outsiders to come to their rescue. On hearing the noise made by the trio, Suresh (P.W.9), a by-stander, opened the bolt outside and rescued the trio. The trio found that the container lorry (M.O.1) was abandoned by the accused group at Lakkore cross road in Cuddalore District. The owners were informed of the robbery and a written complaint (Ex.P.1) was lodged by Srinivasan (P.W.1), based on which, Govindasamy (P.W.38), Inspector, Veppur Police Station, registered a case in Cr. No.90 of 2008 under Section 397 IPC and prepared the printed FIR (Ex.P.124).

3.5 Govindasamy (P.W.38), Inspector of Police, went to the place where the container lorry (M.O.1) was found abandoned and prepared the observation mahazar (Ex.P.6) and rough sketch (Ex.P.126). The Trichy branch had CCTV network and that was retrieved and given to the police by Muralidharan (P.W.10), operator of the CCTV control room of the partnership firm. On the directions of the police, Mookka Pillai (P.W.4) instructed all his staff members not to go on leave, but, attend office. Considering the manner in which the offence was committed, the Superintendent of Police, Cuddalore District, transferred the investigation to Sakthivel (P.W.40), Additional Superintendent of Police.

3.6 It is worth mentioning that Shanmugamani (A.10) and Maruttai (A.11) continued to come to office even after the incident, till 08.09.2008, after which, they stopped coming to office. The police found the presence of Shanmugamani (A.10) and Maruttai (A.11) in the CCTV footages (M.Os.5 and 6) when Mookka

Pillai (P.W.4) was giving instructions to Srinivasan (P.W.1) about the transit of cash and other items. Though all these aroused suspicion in the mind of the police, they continued maintaining surveillance on the suspects. The breakthrough in this case came on 20.09.2008 with the arrest of Meyyan (A.5) at Trichy, who spilled the beans and disclosed the names of those who were involved in the offence. Suffice it to say that the police effected arrest of all the accused on various dates and recovered a huge haul of cash from them and from their family members.

3.7 The substantive evidence in this case are as follows:

- Evidence for conspiracy;
- Knowledge of two moles, viz., Shanmugamani (A.10) and Maruttai (A.11) about the transit of cash on the instructions of Mookka Pillai (P.W.4);
- Identification of five accused by the trio in the Test Identification Parade as well before the Court;
- Usage of two cars, viz., Maruti Omni bearing Regn. No.TN 45 AC 7771 (M.O.15) and Tata Indica bearing Regn. No.TN 69 K 1207 (M.O.21) by Irulandi (A.2), Sundar (A.8) and Raja (A.9) for transporting cash after unloading it from the container; and
- Recovery of huge haul of cash from the arrested accused and their family members;

3.8 Instead of narrating the sequence of arrests and recovery effected from the arrested accused in a running format, it will be more lucid if the same is given in a tabular form.

S.No	Accused Rank and name	Date & Time of Arrest	Admissibl e portion of confessio n	Recovery/Seizure	Mahazar (Panchanama)	Indepen dent witness
1.	A-5 Meiyyan	20.09.08 4.00 a.m.	Ex.P.130	M.O. 7 - Dollar Chain M.O. 8 Necklace Rs.95,000/- cash M.O. 9, 10,11 - three pairs of ear studs/hangings Ex.P.69 Jewel purchase receipts	Seizure Mahazar (Ex.P.8) Recovery Mahazar (Ex.P. 9)	P.W 11 along with one Mohd. Navas
2.	A-13 Malar W/o. A-2 Irulandi	20.09.08 12.30hrs	Ex.P.131	1,00,000/- Rs. Cash M.O. 12 chain M.O. 13 Saradu	Recovery Mahazar (Ex.P.11)	-Do-
3.	A-10 Shanmugamani	22.09.08 12.30 hrs	Ex.P.133	Rs. 2,00,000/-	Recovery Mahazar (Ex.P.134)	P.W. 12 along with Marimuthu
4.	A-8 Sundar @ Sundaresan	22.09.08 4.00pm	Ex.P.135	On 23.09.08 at 00.30 hrs M.O. 15 TN 45 AC 7771 Maruti car 28.09.08. 18.00hrs Rs.1,07,64,000/- cash M.O. 14 Digital Camera	Recovery Mahazar (Ex. P16) Recovery Mahazar Ex.P15	-Do- -Do-

5.	A-11 Marudai	23.09.08 1.00 hrs	Ex.P.136	On 23.09.2008 at 03.00hrs Rs.2,00,000/- cash	Recovery Mahazar Ex.P.18	-Do-
6.	A-9 Raja	23.09.08 04.30hrs	Ex.P.137	On 23.09.08 at 06.30 hrs Rs.38,36,000/- M.O. 16 Watch M.O. 17 Chain	Recovery Mahazar Ex.P.20	-Do-
7.	A-14 Panjavarna m W/o. A-5 Meiyyan	23.09.08 18.00hrs	Ex.P.138	On 23.09.08 at 20.30 hrs. Rs.20,000/- cash	Seizure Mahazar Ex.P.22	P.W. 13 along with Sardar
8.	A-3 Thavasi	26.09.08 PT warrant from J.M. I Virudha chalam	Ex.P.139 30.09.08 10.00hrs	On 02.10.08 at 12.00hrs Rs.22,68,150/- cash M.O. 18 Sewing Machine M.O. 19 Motor	Recovery Mahazar Ex.P.25	P.W. 14 along with Kumaravel
9.	A-4 Karuppusam y S/o. Chellaya	-Do-	Ex.P.140 30.09.08 12.00hrs	On 03.10.08 at 04.00pm M.O. 20 TN67 7177 (2 wheeler) Rs. 14,43,000/- Cash	Ex.P.26	-Do-

S . N o	Accused Rank and name	Date & Time of Arrest	Admissible portion of confession	Recovery/Seizure	Mahazar (Panchanama)	Independent witness
10	A-7 Kannan	10.10.08 17.00hrs	Ex.P.141	On 10.10.08 at 19.30 hrs. Rs.13,520/- cash	Seizure Mahazar Ex.P.20	P.W.15 along with Selva m
11	A-2 Irulandi	24.10.08 9.00 hrs.	Ex.P.142	On 24.10.08 at 18.30 hrs Rs.47,55,000/- cash On 25.10.08 at 02.00 hrs. Tata Indica Car TN 69 K 1207 M.O. 21	Recovery Mahazar Ex.P.31 Recovery Mahazar Ex.P.33	P.W.16 along with Krishnamurthy -Do-
12	A6 Aruvapandi @ Thangapandi	24.10.08 15.30hrs	Ex.P-143	On 24.10.08 at 23.00 hrs. Rs.7,80,000/- cash	Recovery Mahazar Ex.P.32	-Do-

13	A-15 Shali @ Shali Priyada rshini W/o. A- 3 Thavasi	25.10.0 8 17.00	Ex.P- 144	On 25.10.08 at 18.30 hrs Rs.12,00,000/-	Recovery Mahazar Ex.P.36	P.W. 17 along with Sujan
14	A-12 Karuppu samy S/o. Muthu	25.10.0 8 17.00hr s`	Ex.P.14 5	On 25.10.08 at 20.30 hrs Rs.8,00,000/-	Recovery Mahazar Ex.P.37	-Do-

15	A-1 Vakkil Pandi @ Sankara narayan an	14.09.09	Ex.P.149	On 17.09.09 at 1430 hrs	Recovery Mahazar	P.W. 24 with Sivakumar
			16.09.09 16.00hrs	Rs.2,10,000/- On 17.09.09 at 16.30 hrs Rs.22,86,980/- cash 15.09.08 Agreement for sale 23.06.09 Sale deed 18.09.09 Sale deed 18.09.09 12.30 hrs 16.09.08 Doc 5874/08	Ex.P.140 Recovery Mahazar Ex.P.150 Ex.P.45 Recovery Mahazar Ex.P42	-Do-
16	A16 Pichayammal W/o. A-1 Vakkil Pandi	18.09.09 16.30hrs	Ex.P151	On 18.09.09 at 16.30 hrs Rs.4,43,000/- cash	Recovery Mahazar Ex.P.44	-Do-

3.9 It may be pertinent to state here that the police had sufficient materials at hand to show that the entire operation was masterminded by Vakil Pandi (A1), a law college dropout, who had about nine previous cases to his credit in conspiracy with others, but, the police were not able to arrest him during investigation. However, they arraigned him as A.1 in the final report, but, showed him as an "absconding accused" and filed the final report before the Judicial Magistrate No.I, Virudhachalam, for the offences under Sections 120-B, 395 and 342 IPC against A.1 to A.11 and under Section 412 IPC against A.13 to A.15, which was taken on file as P.R.C. No.24 of 2008.

3.10 The case was split up against Vakil Pandi (A1) as P.R.C. No.3 of 2009 and a warrant was issued to secure him. The case qua A.2 to A.15 was committed to the Court of Session and was numbered as S.C. No.75 of 2009. While so, Vakil Pandi (A.1) was arrested by the police on 14.09.2009 and during the course of investigation, it came to light that, Pichaiammal (A.16), his concubine, was also involved as a recipient of the booty. Hence, a supplementary final report was filed against Vakil Pandi (A1) and Pichaiammal (A.16) and that was also committed to the Court of Session and was taken on file as S.C.No.341 of 2009. Both the cases, viz., S.C. No.75 and 341 of 2009 were made over to the Additional Assistant Sessions Court, Virudhachalam, for trial and a simultaneous trial was held since all of them were involved in the offences that were committed in the course of the same transaction as contemplated by Section 223 Cr.P.C.

3.11 Charges were framed against the accused as under and, they pleaded not guilty.

Array of accused	Provisions under which the accused were charged
A.1 to A.11	Section 120-B read with Sections 342 and 395 IPC
A.12 to A.16	Section 412 IPC

3.12 To prove their case, the prosecution examined 40 witnesses and marked 153 exhibits and 63 material objects.

3.13 When the accused were questioned about the incriminating circumstances appearing against them under Section 313 Cr.P.C., they denied the same. On their behalf, 5 witnesses were examined and 16 exhibits were marked.

3.14 Pending trial, Karuppasamy (A.12) breathed his last. The Trial Court, after considering the evidence on record and on hearing either side, by a common judgment and order dated 23.07.2014 in S.C. Nos.75 and 341 of 2009, convicted and sentenced the accused as under:

Rank of accused	Provision(s) under which convicted	Sentence
A.1 to A.11	Section 120-B IPC	To undergo 7 years rigorous imprisonment and fine of Rs.10,000/- each, in default to undergo 3 months
	Section 395 IPC	--do--
	Section 342 IPC	To undergo 1 year rigorous imprisonment and fine of Rs.1,000/- each, in default to undergo 1 month rigorous imprisonment.
A.13 to A.16	Section 412 IPC	To undergo 7 years rigorous imprisonment and fine of Rs.10,000/- each, in default to undergo 3 months rigorous imprisonment

3.15 The aforesaid sentences qua A.1 to A.11 were ordered to run concurrently. All the convicted accused were remanded to judicial custody for serving out their respective sentences.

3.16 Calling into question the legality and validity of their conviction and sentences, the accused filed criminal appeals as catalogued below through different counsel before the Sessions Court, Cuddalore.

Accused name and rank	Crl. A. No.
Vakil Pandi (A.1)	42 of 2014
Irulandi (A.2)	28 of 2014
Thavasi (A.3)	24 of 2014
Raja (A.9)	
Maruttai (A.11)	
Malar (A.13)	
Shaly @ Shaly Priyadarshini (A.15)	
Karuppusamy (A4)	70 of 2015
Meyyan (A.5)	46 of 2014
Panchavarnam (A.14)	
Aruvapandi (A.6)	25 of 2014
Sundar (A.8)	
Kannan (A.7)	55 of 2014
Shanmugamani (A.10)	27 of 2014
Pichaiammal (A.16)	

3.17 All their sentences were suspended and they were released on bail under Section 389(1) Cr.P.C. The appeals were made over to the file of the III Additional District and Sessions Court, Cuddalore at Virudhachalam for disposal. The said Appellate Court, by a common judgment and order dated 04.10.2008, confirmed the conviction and sentence imposed on:

- A.1 to A.11 of the offences under Sections 120-B and 395 IPC;
- A.2 to A.6 of the offence under Section 342; and
- A.13 to A.16 of the offence under Section 412 IPC;

and acquitted A.1 and A.7 to A.11 of the charge under Section 342 IPC.

3.18 Challenging the judgments and orders passed in appeals, some of the accused, as detailed under, have preferred the instant revisions under Section 397 read with 401 Cr.P.C.

Name of accused	Crl.Rev. Case No. filed
Vakil Pandi (A1)	108 of 2019
Pichaiammal (A.16)	159 of 2019
Thavasi @ Thavasi Rajan (A.3)	1176 of 2018
Maruttai (A.11)	
Shali @ Shali Priyadarshini (A.15)	
Meyyan (A.5)	
Panchavarnam (A.14)	93 of 2019
Sundar (A.8)	1244 of 2018
Raja (A.9)	1245 of 2018
Malar (A.13)	1403 of 2018

4 Heard M/s. R. Anand, K.M. Balaji, R. Anburaj, S. Panneerselvam and S. Manohar Ponraj, learned counsel for the defence and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

5 Since there are overlapping arguments, this Court, instead of referring to the submissions of each counsel individually, refers to the submissions of all the defence counsel collectively as "defence counsel".

6 The submissions made by the learned defence counsel and the Court's reasonings therefor are as under:

i. The defence counsel were not afforded a proper hearing by the Appellate Court and hence, the matter may be remanded to the Appellate Court for fresh disposal. Further, the appeals were filed by some counsel and after they obtained suspension of sentence and bail, the accused changed their counsel; the new counsel engaged by the accused made their submissions before "X" Judge and the case was reserved for judgment; however, suddenly, the appeals were dismissed by "Y" Judge on 04.10.2018, which is illegal as per the judgments of the Supreme Court in *Bapu Limbaji Kamble vs. State of Maharashtra*¹, *A.S. Mohammed Rafi vs.*

¹ (2005)11 SCC413

State of Tamil Nadu and others² and Mohammad Sukur Ali vs. State of Assam³, especially in the light of the following passage in Mohammad Sukar Ali (supra):

"17. We reiterate that in the absence of a counsel, for whatever reasons, the case should not be decided forthwith against the accused but in such a situation the court should appoint a counsel who is practising on the criminal side as amicus curiae and decide the case after fixing another date and hearing him....."

Reply by Government Advocate (Crl. Side)

The Trial Court records do not support the aforesaid plea of the defence counsel, inasmuch as the records show that after obtaining suspension of sentence and bail, the defence were playing truant with the Court by not proceeding with the appeals, despite which, the Appellate Court had issued notices to the counsel on record and has heard the counsel who appeared and argued and only thereafter, has passed the final order in the appeal.

This Court's reasoning:

a. One can have no quarrel with the law laid down in the aforesaid judgments of the Supreme Court relied on by the learned defence counsel. On a reading of the facts of those cases, it is seen that the Appellate Courts had not appointed any counsel for the defence in those cases and had proceeded to pass the judgment after hearing the prosecution and going through the records. In this regard, it may be apposite to extract Section 386, Cr.P.C.

"386. Powers of the appellate court:

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in the case of an appeal under section 377 or section 378, the accused, if he appears, the appellate court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

(a)

(b)

2 (2011)1SCC 688

3 (2011) 4 SCC 729

- (c)
- (d)
- (e)"

b. From a reading of the above, it is clear that hearing the pleader, be it for the prosecution or for the defence, would arise only if he appears. Of course, if the pleader does not appear, the Supreme Court has held that the Appellate Court should appoint an advocate, hear him and pass orders thereafter. This Court called for the adjournment diary from the Appellate Court and perused the same. As contended by the defence counsel, the A Diary entry on 20.03.2017 reads as follows:

"A1, A3 present. A1,A3 counsel made submissions. Other appellants on their side. In spite of several opportunities provided. Hence, the case is reserved for judgment. Call on 28.03.2017. Meanwhile, the appellant counsel is permitted to file written arguments, if any."

c. Unlike in the High Court, where, after a judgment is reserved, the next time it will appear in the cause list only when the Judge directs the matter to be posted again, in the subordinate Courts, such a luxury is not available. The Subordinate Court Judges will have to give the next date of hearing of each case and the daily adjudication will be hosted in the CIS which can be accessed by everyone including the counsel for the defence. Thus, on 20.03.2017, the Appellate Judge has posted the case to 28.03.2017. Ergo, the defence counsel cannot be heard to contend that they thought that the Appellate Court has adjourned the case sine die. The adjudication recorded on 28.03.2017 reads as under:

"Appellant called absent. Suo motu reopened for hearing AdPP and Spl PP. Call on"

Thereafter, the case has been adjourned to 17.04.2017, 19.04.2017, 01.06.2017, 09.06.2017, 29.06.2017, 05.07.2017, 24.07.2017, 08.08.2017 and 28.08.2017. Until this time, "X" Judge was handling this case. Thereafter, seemingly, he was transferred and "Y" Judge had assumed charge. On 01.09.2017, the adjudication reads "Suo motu re-opened to hear both side arguments" and thereafter, the matter has been posted continuously for arguments on 15.09.2017, 13.10.2017, 10.11.2017, 08.12.2017, 05.01.2018, 02.02.2018, 09.02.2018, 16.02.2018 and 23.02.2018. The contention of the defence counsel that after they had advanced their arguments on 23.02.2017, they thought that the Judge would pass judgment and that there may not be any necessity for them to appear, cannot hold water, because, the adjudication, which is in the public domain,

clearly shows that the matter was getting adjourned for arguments. The adjudication on 02.03.2018 shows that the appellant's side arguments were heard and the case was posted to 14.03.2018 for judgment. Again, it was suo motu reopened on 07.06.2018 and was posted to 14.06.2018 for further arguments on 27.06.2018, 07.07.2018 and 12.07.2018. On 19.07.2018, the adjudication shows that arguments were heard and the case was posted for judgment to 01.08.2018. From 01.08.2018, the case was posted to various dates since the judgment was not ready. The adjudication on 03.10.2018 shows that due to power interruption, the matter stood adjourned to 04.10.2018 for judgment. On 04.10.2018, the judgment was delivered. The Appellate Court Judge has heard the defence counsel by name M. Mahendra Varman, V. Ambedkar and Ramanathan for the appellants. In the cases relied on by the defence counsel, the Appellate Courts had not heard any advocate and had merely heard the prosecution, perused the records and had passed orders which was frowned upon by the Supreme Court. In this case, "X" Judge heard the case on 20.03.2017 and after his transfer in the year 2017, "Y" Judge had the case for one year and after hearing the defence counsel and the prosecution, has passed the judgment on 04.10.2018.

d. Further, pertinent it is to point out that the Appellate Court has not mechanically confirmed the Trial Court's findings, but, has acquitted A.1 and A.7 to A.11 of the offence under Section 342 IPC. In fact, the Appellate Court's records show that notice in writing has been issued to the counsel on record for their appearance to argue the appeals vide D.Nos.1291, 1292, 1293, 1294 and 1295 dated 23.11.2017. Therefore, this Court has no incertitude in holding that on facts, this is not a case in which the Appellate Court had merely passed the final order after hearing the prosecution alone and perusing the records. As a sequel, the aforesaid judgments relied on by the defence counsel are clearly distinguishable on facts and hence, are not of any avail to the defence.

e. It may be pertinent to state here that even after the disposal of the appeals, Vakil Pandi (A.1), Aruvapandi (A.6), Kannan (A.7), Sundar (A.8), Raja (A.9), Shanmugamani (A.10), Panchavarnam (A.14) and Pichaiammal (A.16) have not surrendered to custody and are still at large though suspension of sentence and bail was not granted to them. It may not be out of place to state here that a Revisional Court cannot act as a second Appellate Court and re-appreciate the evidence unless manifest perversity is demonstrable on the face of the record.

ii. The charge of conspiracy has not been proved inasmuch as the evidence of Suresh (P.W.18) that he saw Vakil Pandi (A.1) confabulating with the other accused sounds unbelievable.

This Court's reasoning:

a. Let us, for a moment, accept the defence submission and keep out the evidence of Suresh (P.W.18). De hors this evidence, let us examine the other evidence in order to see whether the prosecution has proved that the accused had acted in pursuance of a conspiracy.

b. Prior to introduction of Section 120-A IPC, conspiracy was an inchoate offence and was one of the forms of abetment as defined by Section 107 IPC. By virtue of Section 120-A IPC conspiracy is, by itself, a substantive offence. There is a general misconception that in every case, the prosecution should either have an approver or must examine a person to say that he overheard the accused conspiring to commit the offence in question. Dictates of common sense would say that none would ever plan with his cohorts to commit a crime within hearing distance of a stranger. Unfortunately, in our legal system, like other cliches, we befool ourselves by accepting the evidence of such eavesdroppers. If a person had seen the conspirators and had heard them conspiring, his evidence would be admissible under Section 5 of the Evidence Act.

c. Sir James Stephen knew the difficulty in proving a conspiracy charge, as conspiracies are almost always hatched in secrecy. Unlike in England, where, a police officer can testify about the confession given to him by the accused in the course of which he may speak about the conspiracy and the conspirators, a policeman in India is at a handicap in view of Section 25, *ibid.* Perhaps, to get over this bottleneck, Sir James Stephen has engrafted a special provision, viz., Section 10 in the Evidence Act, which is far wider than the analogous rule in English law [See Article 4 - A Digest of the Law of Evidence by James Fitzjames Stephen, Q.C., Macmillan and Co., London (1876)]. Section 10 of the Evidence Act reads as under:

"10. Things said or done by conspirator in reference to common design:

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the

time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration:

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.

The facts that ? procured arms in Europe for the purpose of the conspiracy, ? collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which ? had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it."

d. Unlike the other provisions in Chapter II, "Of the Relevancy of Facts" in the Evidence Act, Section 10, *ibid*, cannot be applied in dosages at the time of reception of evidence during trial. For example, if the Prosecutor attempts to prove a confession to the police, the same can be stopped at the threshold by quoting Section 25, *ibid*. Whereas, in a case of conspiracy, every piece of evidence the prosecution proposes to adduce, cannot be tested on the anvil of Section 10, *ibid*, during the trial and the Trial Court cannot be compelled to take a decision to admit it or reject it. In a case of conspiracy, the prosecution should be given a free hand to adduce relevant and admissible evidence and while appreciating the evidence in toto, the Court should see whether there is a reasonable ground to believe that two or more persons have conspired. The expression employed in Section 10, *ibid*, is not "evidence to believe", but, "reasonable ground to believe". When there is evidence to believe, then, there is no necessity for Section 10, *ibid*, at all.

e. Coming to the case at hand, even if we keep aside the evidence of Suresh (P.W.18) and analyse the evidence on record from the standpoint of a prudent man, we can draw a clear inference that this crime was committed in pursuance of a conspiracy. It will be ludicrous for a judge to believe that, on the facts of this case, everything occurred by a strange happenstance. To believe that the container with huge cash was, by chance, seen by A.2 to A.6; when they coincidentally checked the container, they found cash stacked inside; when they offloaded the cash, A.8 and A.9 came there coincidentally in two cars to transport them; they coincidentally shared the booty amongst themselves, etc., can only be by a judge who has kept his common sense in cold storage. May be, Karmic law can afford to envisage cosmic coincidences in divine Courts, but, not statute laws in human Courts. Fortunately, the Trial Judge and the Appellate Judge in this case were persons with robust common sense and so, they rightly inferred the existence of a conspiracy to plan and execute the heist.

f. It must be remembered that the satisfaction for the existence of a reasonable ground to believe that there existed a conspiracy, can be arrived at by the Court inferentially. There cannot be a better expatiation of the law than the summing up of Justice Crump in his address to the jury in Emperor vs. Shafi Ahmed Nabi Ahmed⁴ which reads as under:

"7. Again, I should like to deal a little further with the question of evidence in conspiracy cases and for that purpose I may read to you certain dicta taken from cases decided by learned Judges in England. "Conspiracy," gentlemen, "is a matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them." (per Grose J. in The King v. Brisac and Scott [(1803) 4 East 164, 171.] . It was held by Lord Mansfield in The King v. Parsons [(1762) 1 W.B., 392.] that (p, 392) "there was no occasion to prove the actual fact of conspiring, but that it might be collected from collateral circumstances." And the matter is further and clearly put by Erie J. in another English case (Reg. v. Duffield [(1851) 5 Cox 404.] in the following words (p. 434):-

4 (1929)31 born LR515

"It does not happen once in a thousand times, when the offence of conspiracy is tried, that anybody comes before the jury to say-'I was present at the time when these parties did conspire together, and when they agreed to carry out their unlawful purposes'; that species of evidence is hardly ever to be adduced before a jury, but the unlawful combination and conspiracy is to be inferred from the conduct of the parties, and if you see several men taking several steps, all tending towards one obvious purpose, and you see them through a continued portion of time, taking steps that lead to an end, why it is for you to say whether those persons had not combined together to bring about that end, which their conduct so obviously appears adapted to effectuate."

g. How should Section 10, *ibid*, be applied has been lucidly set out in the address of Coleridge, J. in his summing up to the jury in *Regina vs. Murphy*⁵, which has been approved by the Supreme Court in *Nazir Khan and others vs. State of Delhi*⁶.

"Coleridge, J. (in summing up)--

You have been properly told that this being a charge of conspiracy, if you are of opinion that the acts, though done, were done without common concert and design between these two parties, the present charge cannot be supported. On the other hand, I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, "Had they this common design, and did they pursue it by these common means--the design being unlawful?" I ought also to tell you that by finding the defendants guilty

5 1837-173 ER 502

6 (2003) 8 SCC 461

you will not (as has been said) affect the right of petitioning. It is not wrongful to assemble in a public meeting to petition Parliament against that which is alleged to be a public grievance, neither is it unlawful to refuse payment of the church-rate in money, and to leave the collector to obtain payment by taking the goods of the party, as is constantly done in the case of the Quakers; but it is unlawful, by means like those charged in this indictment, to prevent these rates being levied on the goods of the party. It is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it. If a conspiracy be already formed, and a person joins it afterwards, he is equally guilty. You are to say whether, from the acts that have been proved, you are satisfied that these defendants were acting in concert in this matter. If you are satisfied that there was concert between them, I am bound to say that, being convinced of the conspiracy, it is not necessary that you should find both Mr. Murphy and Mr. Douglas doing each particular act, as, after the fact of a conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the act of both. A good many observations were made as to the exercise of my discretion with regard to the examination of Mr. Last, and it is put on the part of the defendants that if this witness is unworthy of credit you ought not to act on his testimony. Now, you must know, as matter of common sense, that a witness is often very unwilling to tell the truth; and if such a witness is at last induced, by the fear of punishment either here or hereafter, to make a statement, I will even say terrified into it. It will be for you to consider whether the statement he so makes be really the truth which he is obliged to tell, or whether it is a false tale. You must satisfy yourselves that in this case the acts of the defendants arose from previous concert and conspiracy, or you should not convict them."

h. Now, let us briefly recapitulate the evidence on record in this case,

(i) P.W.1 to P.W.3 have spoken to about the involvement of A.2 to A.6 in the actual commission of the offence of dacoity;

(ii) they did not know the names of A.2 to A.6;

(iii) the police arrested Meyyan (A.5) on 20.09.2008 and in his confession, he disclosed the names and involvement of Irulandi (A.2), Thavasi (A.3), Vakil Pandi (A.1) and Kannan (A.7). Based on the information provided by Meyyan (A.5), the police discovered the existence of Irulandi (A.2), Thavasi (A.3), Vakil Pandi (A.1) and Kannan (A.7) which discovery is relevant under Section 27 of the Evidence Act (See Mehboob Ali and another vs. State of Rajasthan⁷).

(iv) Shanmugamani (A.10) and Maruttai (A.11) were present when Mookka Pillai (P.W.4) instructed P.W.1 to P.W.3 to transport cash to Chennai.

(v) Shanmugamani (A.10) and Maruttai (A.11) remained absent from work from 09.09.2008.

(vi) Shanmugamani (A.10) was arrested on 22.09.2008 and he disclosed the involvement of Maruttai (A.11), Sundar (A.8), Raja (A.9), Karuppusamy (A.4) and Aruvapandi (A.6) and the police discovered these individuals and effected recoveries from them.

(vii) P.Ws. 1 to 3 identified A.2 to A.6 in the dock which is relevant under Section 9 of the Evidence Act and also deposed about the words spoken to and acts done by each of them.

(viii) The police arrested A.1 and A.6 to A.11 and based on their confessions, recovered huge cash as detailed above.

(ix) Sundar (A.-8) and Raja (A.9) brought a Maruti car [belonging to Nandakumar (P.W.19)] and Tata Indica car [belonging to Varada Vinayaga Murthy (P.W.21)] respectively, on the date of occurrence.

i. If the above evidence is cumulatively assessed by the Court from a bird's eye view, it will undoubtedly provide a reasonable ground to believe that A.1 to A.11 were part of a conspiracy to commit the heist. When such a satisfaction is arrived at, then, the evidence against one accused is not only relevant against each of them, but also against the others, since they had acted in reference to their common intention to commit the heist and escape.

j. The evidence against Sundar (A.8) and Raja (A.9) for getting the cars from their owners, per se, is not an offence, but, it becomes an incriminating material as it has been done in reference to their said common intention. Likewise, the presence of Shanmugamani (A.10) and Maruttai (A.11) when Mookka Pillai (P.W.4) was instructing P.W.1 to P.W.3 is not, per se, an offence, but, it becomes an incriminating circumstance as it has been done in reference to their said common intention.

k. The failure of the accused to account for the huge cash that was recovered from them becomes an incriminating circumstance under Section 10, *ibid*. Had the accused discharged the burden under Section 106, *ibid*, by accounting for the huge cash recovered from them, then, the Court can even take them out of the net of conspiracy.

l. Finally, the evidence adduced against one accused becomes relevant against the other as each is the principal and agent of the other.

m. The seed of conspiracy is sown in the mind of one person in the form of an urge to commit a crime and when a second person agrees and joins the first, the seed sprouts as a sapling. As the sapling of conspiracy grows, others may join and a few may drop out after playing their assigned role. Yet, the conspiracy will continue till the goal is accomplished or the plan foiled, whichever is earlier. However, the evidence against one will be relevant against the outgoer and the incomer in the same measure.

n. Courts should bear in mind the sapient observation of the Supreme Court in *Firozuddin Basheeruddin and others vs. State of Kerala*⁸, where, it was opined as under:

"Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial."

iii. In the complaint (Ex.P.1) given by Srinivasan (P.W.1) which formed the basis for registration of the FIR, he has stated that he can identify only three persons and therefore, his identification of five persons both at the Test Identification Parade and in the Court becomes suspect.

This Court's reasoning:

Srinivasan (P.W.1) has stated in his evidence that he fell asleep when the container lorry (M.O.1) started moving and that he woke up only when it was stopped by Boopathy (P.W.2-driver). Boopathy (P.W.2) has clearly stated in his evidence that five persons stopped the container lorry (M.O.1) and they made all the three of them get into the container; amongst five persons, three of them also got into the container and the remaining two persons drove the container lorry (M.O.1) until it was abandoned at the Lakkore cross road. Therefore, even if the evidence of Srinivasan (P.W.1) qua identification of two others becomes suspect, the evidence of Boopathy (P.W.2) cannot be jettisoned in toto.

iv. When Mookka Pillai (P.W.4) had instructed Srinivasan (P.W.1) only on the night of 09.08.2008 to proceed to Chennai with the cash, the question of the accused hatching conspiracy prior to 09.08.2008 will not arise.

This Court's reasoning:

There appears to be a fallacy in the aforesaid submission. Mookka Pillai (P.W.4) has clearly stated in his evidence that the container lorry (M.O.1.) carrying a huge amount of cash, had gone twice to Chennai and returned without delivering the same since the bullion rates were fluctuating and again on 09.08.2008, he instructed Srinivasan (P.W.1) to carry more cash to Chennai. When Mookka Pillai (P.W.4) was giving these instructions, his two employees, viz., Shanmugamani (A.10) and Maruttai (A.11) were there. Had the involvement of Shanmugamani (A.10) and Maruttai (A.11) not been there, then, this argument may hold water.

v. The Test Identification Parade was not conducted promptly and the delay that had occasioned would have resulted in the possibility of the accused being shown to the witnesses. Further, the newspapers had published the photographs of the

accused immediately after their arrest and therefore, the Test Identification Parade was only an empty formality.

Government Advocate's reply:

There is no material on record to show that the photographs of the arrested accused were published in the dailies. In fact, even in the statement under Section 313 Cr.P.C., the accused had not enclosed the newspaper clippings to show that their photographs were published.

This Court's reasoning:

To appreciate this contention, this Court carefully perused the evidence on record. In the cross-examination of Srinivasan (P.W.1), Boopathy (P.W.2), and Senthil Kumar (P.W.3), they have clearly denied the suggestion that they have seen the photographs of the accused in the dailies. Coming to the alleged delay in the conduct of Test Identification Parade, Sakthivel (P.W.40), Investigating Officer, in his cross-examination, has stated that Irulandi (A.2), Meyyan (A.5) and Aruvapandi (A.6) were lodged in the Central Prison, Cuddalore, while Thavasi (A.3) and Karuppusamy (A.4) were lodged at the Central Prison, Madurai. Therefore, making all the prisoners assemble in one prison for the witnesses to identify them would have taken time. That apart, the witnesses are from Trichy District and not from Cuddalore District or Madurai District. Therefore, this Court does not find any infirmity in the conduct of Test Identification Parade proceedings.

vi. The CCTV footages lack the certification under Section 65-B of the Evidence Act and therefore, they should be excluded from consideration.

This Court's reasoning:

In *Sonu vs. State of Haryana*⁹, the Supreme Court has held that the objection with regard to certification under Section 65-B of the Evidence Act should be taken during trial and in the absence of such objection, the same cannot be made a bone of contention at the appellate/revisional stage. In the instant case, the CCTV footages only show the presence of Shanmugamani (A.10) and

Maruttai (A.11), employees of Mangal and Mangal when Mookka Pillai (P.W.4) was giving instructions. Even if we keep aside the CCTV footages, the evidence of Mookka Pillai (P.W.4) and Srinivasan (P.W.1) that Shanmugamani (A.10) and Maruttai (A.11) were there when the former was giving instructions is sufficient enough for this Court to infer that they knew that a huge amount of cash was going to be transported by road the next day. The CCTV footages are only a corroborative piece of evidence of this fact spoken to by Mookka Pillai (P.W.4) and Srinivasan (P.W.1).

vii. There is no reference to Shanmugamani (A.10) and Maruttai (A.11) in the complaint (Ex.P.1) given by Srinivasan (P.W.1).

This Court's reasoning:

It is well nigh settled that an FIR is not an encyclopedia of the prosecution case. At the time of giving the complaint (Ex.P.1), Srinivasan (P.W.1) would not have had an inkling of suspicion on his colleagues, viz., Shanmugamani (A.10) and Maruttai (A.11). Only when Shanmugamani (A.10) and Maruttai (A.11) stopped coming to office from 09.09.2008, did the police start suspecting their involvement in the heist. The suspicion got strengthened when Meyyan (A.5), who was arrested on 20.09.2008, spilled the beans. Shanmugamani (A.10) was arrested on 22.09.2008 and he disclosed the involvement of Sundar (A.8), Raja (A.9) and Maruttai (A.11). From Shanmugamani (A.10) and Maruttai (A.11), a sum of Rs.2 lakhs each was recovered and from Sundar (A.8), a sum of Rs.1,07,64,000/- was recovered and from Raja (A.9), a sum of Rs.38,36,000/- was recovered. Therefore, it cannot be stated that there was no material to fasten criminal liability on Shanmugamani (A.10) and Maruttai (A.11). None of them has been able to account for such huge recoveries.

viii. There is no material to show that Sundar (A.8) and Raja (A.9) had transported cash from the container in Maruti Omni car (M.O.15) and Tata Indica car (M.O.21), because, Srinivasan (P.W.1), Boopathy (P.W.2) and Senthil Kumar (P.W.3) were locked up in the container and they have clearly stated that they were unable to see anything outside.

This Court's reasoning:

It is true that there is no direct evidence to implicate Sundar (A.8) and Raja (A.9). However, from their disclosure statements, the vehicles were seized and the owners of the two vehicles, viz., Nandakumar (P.W.19) and Varada Vinayaga Murthy (P.W.21) have identified them. They were part of the conspiracy discussed above. This Court is unable to find any perversity in the judgments of the Courts below in fastening liability on Sundar @ Sundaresan (A.8) and Raja (A.9).

ix. None of the accused was arrested at the time and place as projected by the prosecution and that they were shown arrest only after the family of the accused had filed a habeas corpus petition.

This Court's reasoning:

It is the specific defence of Thavasi (A.3) and his wife Shaly @ Shaly Priyadharshini (A.15) that a Habeas Corpus Petition was filed on his behalf before the Madurai Bench of this Court and the police took Shaly @ Shaly Priyadharshini (A.15) into illegal custody and forced her to execute a sale deed in respect of a property owned by her, to one Hemant Babu and showed the sale consideration as recovery under Section 27 of the Evidence Act. To establish this fact, the defence examined one Subburam (D.W.2). Subburam (D.W.2), in his evidence, has stated that, he is a document writer by profession and at the request of the police, he drafted a sale deed on 24.10.2008, in which, the seller was Shaly @ Shaly Priyadharshini (A.15) and the buyer was one Hemant Babu. The sale deed was marked as Ex.D.8. This Court perused Ex.D.8 which shows that the sale consideration was Rs.20,000/- and the guideline value of the property was shown as Rs.21,650/-. Whereas, a sum of Rs.12,00,000/- has been recovered from Shaly @ Shaly Priyadharshini (A.15) by the police. Notwithstanding that, Subburam (D.W.2) has admitted that he is the brother of Thavasi (A.3). Therefore, to say that the police caught hold of Thavasi's brother and made him write a document of sale defies credulity. The police would have taken the services of another document writer other than the brother of Thavasi (A.3) for such a nefarious job. In the cross-examination of Sakthivel (P.W.40), Investigating Officer, he has denied the knowledge about the Habeas Corpus Petition that is said to have been filed on behalf of Thavasi (A.3). In this case, Thavasi

(A.3) was involved in a theft case in Amandur Police Station Crime No.121 of 2008 in Dindigul District. Learning that the police were after him, he voluntarily surrendered before the Judicial Magistrate, Dindigul on 19.09.2008. On coming to know of his surrender, the Trichy police had him produced under a P.T. warrant and effected his arrest on 30.09.2008 and thereafter, took police custody to effect recoveries. Therefore, the contention that the police had taken the accused into illegal custody is completely misconceived.

x. The seized currency notes were not marked during trial and hence, it cannot be stated with certainty that the prosecution has proved the case.

This Court's reasoning:

In this case, as and when seizures were made, they were reported to the jurisdictional Magistrate and the seized monies were also produced. After the accused obtained bail, they resorted to every trick under the sun to delay the trial. The seized monies were handed over to the de facto complainant after taking photocopies and preparing inventories. The prosecution examined Diwakaran (P.W.35), Head Clerk of the Judicial Magistrate Court No.1, Virudhachalam, to prove that the monies were handed over to the Court and were returned to the de facto complainant. In the opinion of this Court, this procedure cannot be faulted at all. It is neither the case of the prosecution nor the case of the defence that the seized currency notes were counterfeit ones for the Court to either mark them during trial or hand them over to the mint. Hence, this submission of the defence counsel stands rejected.

xi. As per the judgment of the Supreme Court in Sheo Nath Vs. State of Uttar Pradesh¹⁰, the prosecution has failed to prove the offence under Section 412 IPC qua Malar (A.13), Panchavarnam (A.14), Shaly @ Shaly Priydarshini (A.15) and Pichaiammal (A.16) and at the most, they can be convicted only under Section 411 IPC and not under Section 412 IPC. Further, the expression "soon after the theft" in illustration-a of Section 114 of the Evidence Act would mean that the recovery should have been effected immediately after the incident, whereas, in this case,

10 (AIR 1970 SC 535)

there is a yawning gap between the date of occurrence and the date of recovery.

This Court's reasoning:

a. In this case, immediately after the occurrence, all the accused, except Shanmugamani (A.10) and Maruttai (A.11) were in abscondence. Shanmugamani (A.10) and Maruttai (A.11) also absconded after 09.09.2008. Therefore, the police were able to effect recoveries only after their arrest. The expression "soon" used in the illustration cannot be given a pedestrian meaning and should be interpreted in the facts and circumstances of each case. In this case, A.1 to A.10 were not affluent persons with any fixed avocation. The contention of the defence that wives cannot be mulcted with criminal liability under Section 411 and 412 IPC cannot hold water, for, they do not enjoy any such immunity in law. In fact, there are previous cases against most of them. It is true that A.13 to A.16 are the spouses of the principal accused. Though there is force in the argument of the learned defence counsel that as house wives, they merely received the amount which their husbands gave and that cannot lead to the inference that they had complicity in secreting the booty, yet, the evidence against Malar (A.13), Shaly @ Shaly Priydarshini (A.15) and Pichaiammal (A.16) shows that they were not innocent lambs. However, the same is not the case with Panchavarnam (A.14), from whom, only Rs.20,000/- was recovered. Though the recovery has been established beyond reasonable doubt, in the absence of any other credible material, this Court extends the benefit of doubt to Panchavarnam (A.14) and acquits her of the charge under Section 412 IPC.

b. As regards, Malar (A.13), cash and jewels were recovered from her and as regards Shaly @ Shaly Priydarshini (A.15), a sum of Rs.12,00,000/- was recovered at her instance and both of them have failed to properly account for it. But, there is no material to show that they knew that the amounts were fruits of dacoity. Hence, the conviction of Malar (A.13) and Shaly @ Shaly Priydarshini (A.15) of the offence under Section 412 IPC is set aside and they are convicted of the offence under Section 411 IPC and sentenced to undergo 3 years rigorous imprisonment.

c. Coming to the case of Pichaiammal (A.16) from whom a sum of Rs.4,43,000/- was recovered, the evidence on record shows that she is the concubine of Vakil Pandi (A1) against whom there are 9 previous cases. The prosecution had examined Valasubramanian as P.W. 33 to show that Pichaiammal (A16), who is the concubine of Vakil Pandi (A1) had no source of income. Pichaiammal (A.16) examined herself as D.W.4 and conceded in the cross-examination of the Public Prosecutor that she is the mistress of Vakil Pandi (A1) and she is aware of his criminal antecedents. Of course, the prosecution cannot rest its case on the defence evidence.

But, in this case, de hors the evidence of Pichaiammal (A16), there is copious material on record to infer that she had sufficient cause to believe that the amounts entrusted to her by Vakil Pandi (A1) were fruits of the dacoity. Hence, the conviction of Pichaiammal (A.16) of the offence under Section 412 IPC and the sentence therefor are confirmed.

7. In view of the foregoing discussion:

- the conviction and sentence imposed on A.1 to A.11 by the Courts below of the offences under Sections 120-B and 395 IPC are confirmed.
- the conviction and sentence imposed on A.2 to A.6 by the Courts below of the offence under Section 342 IPC are confirmed.
- the case against Karuppasamy (A.12) stands abated, since he died during trial;
- the conviction and sentence imposed on Malar (A.13) and Shaly @ Shaly Priydarshini (A.15) of the offence under Section 412 IPC are set aside and instead, they are convicted of the offence under Section 411 IPC and sentenced to undergo 3 years rigorous imprisonment each.
- the conviction and sentence imposed on Panchavarnam (A.14) by the Courts below for the offence under Section 412 are set aside and she is acquitted of the said charge.
- the conviction and sentence imposed on Pichaiammal (A.16) by the Courts below of the offence under Section 412 IPC stand confirmed.

To sum up:

- CrI.R.C. No.1176 of 2018 is dismissed qua Thavasi @ Thavasi Rajan (A.3) and Maruttai (A.11) and partly allowed qua Shali @ Shali Priyadarshini (A.15).
- CrI.R.C. No.1244 of 2018 preferred by Sundar (A.8) is dismissed.
- CrI.R.C. No.1245 of 2018 preferred by Raja (A.9) is dismissed.

- Crl.R.C. No.1403 of 2018 preferred by Malar (A.13) is partly allowed.
- Crl.R.C. No.93 of 2019 is dismissed qua Meyyan (A.5) and allowed qua Panchavarnam (A.14)
- Crl.R.C. No.108 of 2019 preferred by Vakil Pandi @ Shankara Narayanan (A.1) is dismissed.
- Crl.R.C. No.159 of 2019 preferred by Pichaiammal (A.16) is dismissed.

Connected Crl.M.Ps. are closed.

- The Trial Court is directed to secure the accused who are on bail and commit them to prison for undergoing the period of sentence.
- Panchavarnam (A.14) is directed to be set at liberty forthwith, provided she is not required in connection with any other case. Fine amount, if any, paid by her shall be refunded. Bail bond, if any, executed by her shall stand cancelled.

Before parting with the matter, this Court places on record its appreciation for Mr.T.Rajamanickam, the Trial Court Prosecutor, who rendered invaluable assistance to the Court.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

cad/gya

To

1 The III Additional District and Sessions Judge
Cuddalore at Virudhachalam

2.The Additional Assistant Sessions Judge
Virudhachalam

3.The Chief Judicial Magistrate
Cuddalore District

4.The Inpsector of police
Veppur Police Station
perambalur District

5.The Public Prosecutor
High Court Madras

6.The Deputy Registrar(Crl.Side)
High Court Madras
Chennai-104

+3 cc to Mr.R.Anand Advocate sr79546,80808

+1 cc to Mr.R.Sethuvarayar Advocate sr79811

+1 cc to Mr.S.Panneer selvam Advocate sr80608

+1 cc to Mr.A.G.Rajan Advocate sr80558 dated 03/12/2019

Crl.R.C. Nos.1176, 1244, 1245 & 1403 of 2018
and 93 ,108 and 159 of 2019

ev(co)

aa14/10/2019

aa03/12/2019