



Bail Slip

1.The Appellants/Accused were directed to be released on bail vide order in Crl MP(MD)No.1/2011 in Crl.A(MD)No.254/2011 dated 20.10.2011 on the file of the Madurai Bench of Madras High Court.

2.The Appellant/Accused was directed to be released on bail vide order in Crl MP(MD)No.1/2011 in Crl.A(MD)No.257/2011 dated 19.04.2012 on the file of the Madurai Bench of Madras High Court.

3.The Appellants/Accused were directed to be released on bail vide order in Crl MP(MD)No.1/2011 in Crl.A(MD)No.265/2011 dated 19.04.2012 on the file of the Madurai Bench of Madras High Court.

4.The Appellants/Accused were directed to be released on bail vide order in Crl MP(MD)No.1/2011 in Crl.A(MD)No.275/2011 dated 27.01.2012 on the file of the Madurai Bench of Madras High Court.

5.The Appellants/Accused were directed to be released on bail vide order in Crl MP(MD)No.3/2011 in Crl.A(MD)No.280/2012 dated 12.02.2013 on the file of the Madurai Bench of Madras High Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)Nos.254, 257, 265 and 275 of 2011

and

Crl.A. (MD)No.280 of 2012

1.Ariyappan

2.Muthu @ Kelavan ... Appellants in Crl.A.(MD)No.254 of 2011

Muthumani ... Appellant in Crl.A.(MD)No.257 of 2011

Muniyasamy @ Thoppiyan
@ Kumar ... Appellant in Crl.A.(MD)No.265 of 2011

Murugesan @ Kumaresan ... Appellant in Crl.A.(MD)No.275 of
2011

Veerapathiran ... Appellant in Crl.A.(MD)No.280 of 2012

Vs.

The Inspector of Police,
Kumbur Police Station,
Vedasanthur Police Circle,
Dindigul District.

(crime no.25/1998)

... Respondent in all Crl.As



Common Prayer: Criminal Appeals filed under Section 374 of Cr.P.C, to call for the records in S.C.No.117 of 1998, dated 02.08.2011 on the file of Additional Assistant Sessions Judge, Dindigul and set aside the same.

WEB COPY

For Appellant (in Crl.A.(MD)No.254 of 2011)	: Mr.N.Anantha Padmanahan, For Mr.M.Subash Babu
For Appellant (in Crl.A.(MD)No.257 of 2011)	: Mr.V.Malaiyendran For Mr.C.Muthumohan
For Appellant (in Crl.A.(MD)No.265 of 2011)	: Mr.A.K.Azagarsami For Mr.K.Manavalan
For Appellant (in Crl.A.(MD)No.275 of 2011)	: Mr.M.Jagadeesh Pandian For Mr.S.Balakarthick
For Appellant (in Crl.A.(MD)No.280 of 2012)	: Mr.T.Vadivelan
For Respondent (in all Crl.As)	: Mr.A.Robinson Government Advocate (Crl. Side)

C O M M O N J U D G M E N T

The appellants in these five appeals were convicted vide judgment dated 02.08.2011 in S.C.No.117 of 1998 for the offence under Section 395 r/w. 397 of I.P.C. and sentenced to ten years rigorous imprisonment. They were also levied with fine.

2.The case of the prosecution is that on 03.02.1998 at about 08.15 p.m., the appellants herein committed dacoity in a passenger bus travelling from Madurai to Bangalore, bearing Registration No.KA 19 F 1351. The bus had left Madurai at about 06.00 p.m. and when it was crossing Dindigul, the appellants herein, who were travelling in the very same bus as passengers got up and attacked the driver, acting driver and the conductor and some of the passengers and snatched the cash bag from the conductor and also relieved some of the passengers' of their valuables and money. The total value of the robbed items came to be Rs.2,80,000/-. After committing the robbery, the appellants stopped the bus and escaped into the dark.

3.In this regard, P.W.1, the driver of the bus gave a statement before Koombur Police Station. The statement was recorded as Ex.P.1 at about 09.00 p.m. Based on the same, Ex.P.22/FLP in Crime No.25 of 1998, was registered for the offence



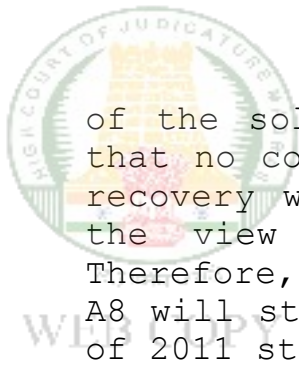
under Section 397 of I.P.C. On the very next day all the appellants were arrested. Recoveries were made from A1 to A6. Investigation was conducted and after recording the statements of the witnesses, P.W.17 filed the final report against the accused before the learned Judicial Magistrate, Vedsanthur for the offence under Section 395 r/w. 397 of I.P.C. Cognizance of the offence was taken and the case was committed to Sessions Court in P.R.C.No.9 of 1998. The case was made over to the learned Additional Assistant Sessions Judge, Dindigul in S.C.No.117 of 1998.

4.The prosecution examined as many as 17 witnesses and marked Exs.1 to 29. M.O.1 to M.O.17 were also marked. On the side of the accused Ex.D.1 to Ex.D.3 were marked.

5.The learned Trial Judge after detailed consideration of the evidence on record found all the appellants guilty and convicted and sentenced them as mentioned above. Questioning the same, these criminal appeals have been filed.

6.The learned counsel appearing for A7 and A8 contended that no charge was framed against A7 and A8 and that therefore, the proceedings against them stand vitiated on this sole ground. This Court called upon the learned Government Advocate (Crl. Side) to respond to this submission of the learned counsel for A7 and A8. He drew my attention to paragraph No.5 of the impugned judgment. It can be seen therefrom that the case against A7 and A8 was split and they were facing trial in S.C.No.3 of 2007. On the application made by the learned Public Prosecutor, S.C.No.3 of 2007 was amalgamated with S.C.No.117 of 1998. But then from the record, it is not evident that charges were ever framed against A7 and A8. Therefore, no plea was also taken from them. If there has been any irregularity or deficiency in framing of charge, one can condone the same and treated as a curable defect but when there is no charge and no plea was recorded from the accused as to whether he pleads guilty or not, I fail to understand how they could have been eventually convicted. Be that as it may, the learned Government Advocate (Crl. Side) in all fairness submitted that as against A8, there is absolutely no evidence whatsoever. He however pointed out that A7 has been implicated by P.W.9.

7.This Court therefore went through the testimony of P.W.9. P.W.9 in his cross examination stated that after the occurrence, he was seeing A7 for the first time only in the Court. The occurrence had taken place on 03.02.1998. P.W.9 was examined on 27.03.2008, i.e., after lapse of decade. He also admitted that he had not given any descriptive particulars of A7 in his statement given under Section 161 of Cr.P.C. Therefore, I am of the view that it would be most unsafe to convict A7 and A8 on the strength



of the solitary testimony of P.W.9. I should also mention here that no confession was taken from A7 as well as A8. There was no recovery whatsoever from both these accused. Therefore, I am of the view that A7 as well as A8 deserve to be acquitted. Therefore, the impugned judgment convicting and sentencing A7 and A8 will stand set aside and they are acquitted. Crl.A.(MD) No.254 of 2011 stands allowed.

8.The learned Government Advocate (Crl. Side) would submit that A1 and A2 had passed away even during the pendency of the trial itself and that therefore, the proceedings against them stood already abated. That leaves us only with remaining accused namely., A3 to A6.

9.A3 was identified by P.W.1/driver, P.W.3/conductor and P.W.7, who is an injured passenger. M.O.6/bag as well as a sum of Rs.40,000/- was recovered from A3, pursuant to his confession. Ex.P.26 is the admissible portion of the confession made by A3. The recovery was witnessed by P.W.10 and P.W.11 under Ex.P.6. In my view, the Court below rightly came to the conclusion that the prosecution established the involvement of A3 beyond reasonable doubt.

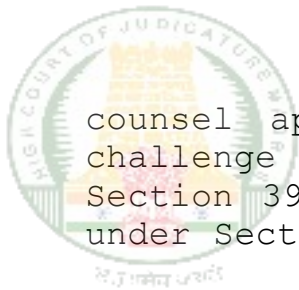
10.A4 was identified by an injured passenger namely., P.W.7. M.O.2/Aruval and M.O.4/bag, a sum of Rs.60,000/- was also recovered pursuant to his confession. Ex.P.27 is the admissible portion of the confession. The recoveries were made under Ex.P.7. P.W.10 and P.W.11 witnessed the recovery and they supported the prosecution case.

11.Apart from M.O.5/VIP suitcase M.O.12/silk saree, a sum of Rs.30,000/- were also recovered from A5, pursuant to his confession. Ex.P.28 is the admissible portion of the confession. The recovery was made under Ex.P.8. P.W.10 and P.W.11 witnessed the recovery and they supported the prosecution case.

12.M.O.16/knife and a sum of Rs.30,000/- were recovered from A6, pursuant to the confession made by him. Ex.P.29 is the admissible portion of the confession. The recovery was made under Ex.P.9. P.W.10 and P.W.11 witnessed the recovery and they supported the prosecution case.

13.Therefore, the Trial Court was absolutely right in coming to the conclusion that the prosecution established the involvement of A3 to A6 beyond reasonable doubt in the occurrence in question.

14.Having regard to the evidence on record, the learned



counsel appearing for A3 to A6 submitted that they would not challenge the finding of guilt or conviction for the offence under Section 395 of I.P.C. and they only want the conviction rendered under Section 397 of I.P.C. alone to be set aside.

15. Mr. T. Vadivelan, learned counsel appearing for A5 drew my attention to the decision of the Honourable Supreme Court reported in **(AIR 2007 SC 3234, [Dilawar Singh Vs. State of Delhi])**. The Honourable Supreme Court held as follows:-

"22. The essential ingredients of Section 397 IPC are as follows:

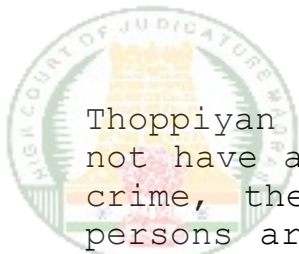
- 1. Accused committed robbery.*
- 2. While committing robbery or dacoity (i) accused used deadly weapon (ii) to cause grievous hurt to any person (iii) attempted to cause death or grievous hurt to any person.*

3. "Offender" refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 IPC is attracted only against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But other accused are not vicariously liable under that Section for acts of co-accused.

23. As noted by this court in Phool Kumar v. Delhi Administration (AIR 1975 SC 905), the term "offender" under Section 397 IPC is confined to the offender who uses any deadly weapon. Use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who had not used any deadly weapon. There is distinction between 'uses' as used in Sections 397 IPC and 398 IPC. Section 397 IPC connotes something more than merely being armed with deadly weapon."

16. In this case, it appears that only A1 and A2 had employed with deadly weapons for inflicting the injuries. These accused namely., A3 to A6 have not caused any injury to any of the witnesses. However, they were part of the gang of dacoits. Therefore, I held that the conviction imposed under Section 395 of I.P.C. on A3 to A6 will have to be confirmed and it is accordingly confirmed. However, the conviction under Section 397 is set aside.

17. Now comes the question of sentence. A3/Muniyasamy @



Thoppiyan @ Kumar, A4/Muthumani and A6/Murugeasan @ Kumarasen did not have any bad antecedent prior to the occurrence and post this crime, they have not come under any adverse notice. All these persons are having permanent residence. They have been regularly complying with the conditions imposed by this Court and they have not run away. Since their subsequent conduct has been good, I am of the view that it would not be appropriate to send them back to prison at this point of time. The occurrence took place in February 1998 i.e., 21 ½ years ago. A4/Muthumani was in prison for about 121 days. A3/Muniyasamy @ Thoppiyan @ Kumar and A6/Murugeasan @ Kumarasen had spent more than 500 days in prison. Therefore, I am of the view that the sentence imposed on A3/Muniyasamy @ Thoppiyan @ Kumar, A4/Muthumani and A6/Murugeasan @ Kumarasen can be modified and reduced to the period already undergone by them. Hence, Crl.A.(MD)Nos.257, 265 and 275 of 2011 are accordingly partly allowed.

18.The learned Government Advocate (Crl. Side) pointed that A5/Veerapathiran was involved in a case of murder in the year 2002 and in a case of extortion in the year 2003. The murder case however ended in acquittal while the extortion case is still pending. In any event, the fact remains that for the last 16 years, A5/Veerapathiran has not caught on the wrong side of the law. He has been in prison for about 623 days. Therefore, taking note all these mitigating aspects, even while finding A5/Veerapathiran guilty of the offence under Section 395 of I.P.C. the sentence of imprisonment is modified and reduced to the period already undergone by him. Therefore, Crl.A.(MD)No.280 of 2012 is partly allowed. The bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (CO)

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/ /2020

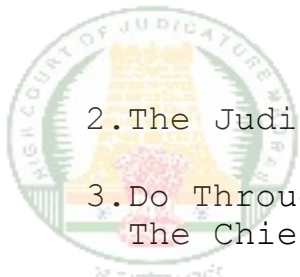
Sub Assistant Registrar (CS)

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To:

1.The Additional Assistant Sessions Judge,
Dindigul.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate, Thuraiyur, Trichy District

3.Do Through
The Chief Judicial Magistrate, Trichy.

4.The Superintendent, Central Prison, Madurai.

5.The Inspector of Police,
Kumbur Police Station,
Vedasanthur Police Circle,
Dindigul District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai-2 copies

+1 cc to Mr.G.Karuppasamy Pandian , Advocate SR.No.80172

+1 cc to Mr.S.Balakarthick , Advocate SR.No.80185

+1 cc to Mr.C.Muthumohan , Advocate SR.No.80513

+1 cc to Mr.T.Vadivelan , Advocate SR.No.80374

Crl.A. (MD) Nos.254, 257, 265 and 275 of 2011

and

Crl.A. (MD) No.280 of 2012

06.08.2019

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