



Crl.A.No.393 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON: 20.03.2023**

**PRONOUNCED ON: 03.04.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**Crl.A.No.393 of 2021**

Senthilkumar @ Kundu Senthil

... Appellant

Vs.

State represented by : Inspector of Police,  
Kunnathur Police Station,  
Tiruppur District.  
Crime No.113 of 2019

... Respondent

**PRAYER:** Criminal Appeal filed under Section 374[2] of Cr.P.C. to set-aside the judgment order passed by the learned Principal Sessions Judge of Tiruppur in S.C.No.75 of 2019 dated 06.08.2021.

For Appellant : Mr.V.Partiban  
for Ms.S.Sumathy

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor



Crl.A.No.393 of 2021

WEB COPY

## **JUDGMENT**

Challenging the judgment of conviction, passed by the learned Principal Sessions Judge, Tirupur in S.C.No.75 of 2019, dated 06.08.2022, the present Criminal Appeal has been filed.

2. The prosecution case is that on 26.03.2019, at about 7 a.m., the complainant Varadaraj came to purchase provisions in a grocery shop near Uthukuli Kongu School Bus Stop. The accused came near him and showed a knife and asked him to give money and threatened him to stab with the knife and forcibly taken away Rs.4,300/- from his shirt pocket. Thereafter, the complainant gave a complaint to the respondent police. On the complaint given by the complainant, the respondent police registered a case in Crime No.113 of 2019 for the offence under section 392 read with 397 IPC. After investigation, final report has been filed.



Crl.A.No.393 of 2021

WEB COPY

3. Based on the above materials, the Trial Court framed charges as against the accused and the accused denied the same as false. In order to prove the case of prosecution, 5 witnesses were examined, 7 documents were filed. Besides two material objects were marked.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. One Ms.Shanthi, Inspector of Police, Cyber Crime Branch, Tiruppur District was examined as defence witness and one document Ex.D.1 was marked as defence document.

5. Having considered all the materials, the Trial Court found the accused guilty for the offence punishable under section 392 read with 397 IPC and convicted and sentenced him to undergo 7 years rigorous imprisonment for the offence under section 397 IPC. Aggrieved over the above conviction and sentence, the accused is before this Court with this appeal.



Crl.A.No.393 of 2021

WEB COPY

6. The learned counsel for the appellant/accused not disputed the facts of the case, but would contend that the ingredients for the offence under section 397 IPC is not made out and only an offence under section 392 IPC alone is made out and the punishment may be reduced. He further contended that there is no material, whatsoever, for convicting the accused for the offence under section 397 IPC and thus pleaded to reduce the sentence for the offence under section 392 IPC.

7. When the matter is taken up, the learned Additional Public Prosecutor, supported the judgment of the trial Court and contended that there is ground to convict the accused under section 397 IPC. Hence, pleaded to dismiss this appeal.

8. I have considered the case in the light of the submissions made by the learned counsel for the parties and also perused the materials available on record carefully.



Crl.A.No.393 of 2021

WEB COPY

9. This is an appeal filed by the accused against the conviction and sentence for the offence under section 397 IPC passed in S.C.No.75 of 2019 on the file of the learned Principal Sessions Judge, Tiruppur.

10. Section 397 do not create any offence. But merely regulate the punishment already provided for robbery and decoity. This section fixes minimum term of imprisonment when the commission of robbery and decoity founded with certain aggravating circumstances,

- i. use of deadly weapon
- ii. causing grievous hurt
- iii. attempting to cause death or grievous hurt

Thus Section 397 IPC does not make any act of offence, which only provides minimum punishment for the above said offence.

11. The learned counsel for the appellant argued that in this case, the alleged weapon knife [M.O.1] was not used by the accused. In this regard, there is no evidence on the side of the prosecution. In the absence of any



Crl.A.No.393 of 2021

evidence for using of knife, just showing the knife will not make out any offence to attract Section 397 IPC. To support his contentions he relied upon the judgment of this Court in **1986 [1] MLJ [Crl] 649** equivalent citation **1985 LW [Cr] 14 Raja @ Rajendran Vs State by Inspector of Police.**

12. I have gone through the prosecution evidence. P.W.1 Varadaraj is the defacto complainant. P.W.2 Anandhakumar and P.W.3 Shanmugaraj are eye witnesses to the alleged occurrence. The remaining witnesses P.W.4 Logeshwaran is a witness who attested the Observation Mahazar Ex.P.3. P.W.5 Shanmugam, Inspector of Police, who investigated the case. Among the above said witnesses, P.W.1, P.W.2 and P.W.3 are relied upon by the prosecution. P.W.1 Varadaraj, P.W.2 Anandhakumar and P.W.3 Shanmugaraj have not deposed that the accused used knife M.O.1 and caused any injury to the defacto complainant [P.W.1]. Under these circumstances, the principle stated by this Court in **Raja @ Rajendran Vs. State**, Supra is applicable to the facts of this case. In the above judgment,



Crl.A.No.393 of 2021

the learned Judge in para 5 of the Judgment discussed about the principles and ingredients required to make out an offence under section 397 IPC, which runs as follows :

"As far as 'use' is concerned, its meaning has to be properly understood. This section lists four kinds of acts punishable thereunder and 'using a deadly weapon' being one of those acts, should have more or less in the same gravity as the other acts mentioned in the section and still be different therefrom. Secondly 'use' connotes an active operation; mere possession for keeping of deadly weapon cannot be considered as constituting the offence. In order to have a more precise idea of what is meant by 'using' in the section, it would be expedient to refer to [sections 390 to 398, I.P.C.S. 390 I.P.C.](#) gives a comprehensive definition of 'robbery' and lists the various kinds of robbery. Each kind of robbery is dealt with in subsequent section according to the gravity of the circumstances accompanying the robbery. Robbery without any aggravating circumstances is punished under [S. 392](#) and robbery with aggravating circumstances are punished under the subsequent sections. If 'using a deadly weapon' appearing in [S. 397 I.P.C.](#) is considered in that light, it



Crl.A.No.393 of 2021

would appear that it corresponds in [S. 390](#) to robbery by causing fear of instant grievous hurt or death. It is thus clear that the use of the deadly weapon should be such as to cause such a fear, for instance the act of brandishing it in a frightful manner, or the act of raising it over the head, or the act of touching the body, etc. In the present case, P.W. 1 deposed that the accused showed him the pen knife and threatened him. He did not state how the accused showed, nor how he threatened. The evidence of P.W. 1 is not sufficiently detailed in order to enable the court to ascertain whether there were such acts by the accused as were susceptible of causing fear of instant grievous hurt or fear of instant death to him. It is, therefore, found that in the present case the prosecution has not proved that there was a deadly weapon in the hand of the accused and that such a weapon was used within the meaning of [section 397 I.P.C.](#)

13. By applying the above said principles, the prosecution failed to prove the charge against the accused under section 397 IPC. But the offence under section 392 IPC is proved. Therefore, the conviction under section 397 IPC has to be set aside.



Crl.A.No.393 of 2021

WEB COPY

14. Accordingly, this Criminal Appeal is partly allowed and the judgment passed by the Trial Court passed in S.C.No.75 of 2019, dated 06.08.2021 is set-aside and the accused is found guilty for the offence under Section 392 of IPC and sentenced to undergo rigorous imprisonment for six(6) months, considering the nature of offence, which would meet the ends of justice. The sentence period already undergone by the accused is Ordered to be set off. The Trial Court is directed to secure the custody of the accused to undergo the remaining period of imprisonment.

**03.04.2022**

vrc

**To**

The Principal District and Sessions Judge,  
Tiruppur



WEB COPY



Crl.A.No.393 of 2021

**V.SIVAGNANAM, J.**

VTC

**Judgment in**  
**Crl.A.No.393 of 2021**

**03.04.2023**