2025:KER:29666

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.A NO. 1850 OF 2006

AGAINST THE JUDGMENT DATED 16.09.2006 IN SC NO.349 OF 2004 ON THE FILE OF THE COURT OF THE ADDITIONAL SESSIONS JUDGE (ADHOC-II), ERNAKULAM.

APPELLANTS/ACCUSED 1,2,3 & 4:

1 SREENESH, S/O. LOHIDAKSHAN,
PALACKAPARAMBIL VEEDU,
PADIVATTOM KARA, EDAPPALLY,
SOUTH VILLAGE.

2 VARGHESE @ KUNJUMON,
PALLITHARA VEEDU, NETHAJI ROAD,
MAMANGALAM KARA,
EDAPPALLY NORTH VILLAGE.

3 SUNIL @ SUNI, S/O.PAPPACHAN,
KANNIVEEDU, ANAMUKKU BHAGOM,
THUTHIYUR KARA,
KAKKANAD VILLAGE.

4 ANEESH JOSEPH @ ANEESH,
S/O.ANTONY, PUTHALATH VEEDU,
MANGATTU BHAGOM,
KAKKANAD VILLAGE.

BY ADV. SRUTHY N.BHAT, STATE BRIEF

2025:KER:29666

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
(REP. BY STATION HOUSE OFFICER,
KALAMASSERY POLICE STATION- CRIME NO.
418/2003 OF KALAMASSERY POLICE STATION),
REPRESENTED BY THE PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, ERNAKULAM.

BY ADV SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:

2025:KER:29666

C.S.SUDHA, J.

Crl.Appeal No.1850 of 2006

Dated this the 8th day of April 2025

J U D G M E N T

In this appeal filed under Section 374 (2) Cr.P.C., the appellants, who are accused 1 to 4 in S.C.No.349/2004 on the file of the Court of Session, Ernakulam, challenge the conviction entered and sentence passed against them for the offences punishable under Section 397 read with Section 395 and Section 412 IPC.

2. The prosecution case is that on 18/11/2003 at about 02:30 a.m. the accused persons eight in number waylaid the mini lorry bearing registration no.KL-Z/E-8442 driven by PW1 at Edappally in the National Highway bypass road and forcibly took away ₹51,000/-. PW1 was proceeding to Manjeri for purchasing plantains. The accused persons who arrived in a car were armed with weapons like sword sticks. They caused damage to the lorry, entered into the cabin of the lorry from either side and pulled down PW1 as

well as PW2, the cleaner of the lorry and by threatening PW1 stole ₹50,000/- kept in the dashboard of the lorry and also ₹1,000/- from the pocket of PW1. Hence, the accused persons, as per the charge sheet, were alleged to have committed the offence punishable under Section 397 IPC.

3. Crime no.418/2003, Kalamassery police station, that is, Ext.P1(a) FIR was registered by PW13, the then Sub Inspector, Kalamassery police station, based on Ext.P1 FIS of PW1. PW13 conducted investigation for a day and thereafter investigation was taken over by PW14, Circle Inspector, Kalamassery police station, who on completion of investigation submitted the final report before the court alleging the commission of the offence punishable under the aforementioned Section.

4. On appearance of all the accused persons, the jurisdictional magistrate after complying with all the necessary formalities contemplated under Section 209 Cr.P.C. committed the case to the Court of Session, Ernakulam. The case was taken on file as S.C.No.349/2004 and thereafter made over to the Additional Sessions Judge (Adhoc-II), Ernakulam for trial and disposal. The trial

court after hearing both sides, framed a charge under Section 395 read with Section 397 IPC, which was read over and explained to the accused persons to which they pleaded not guilty.

5. On behalf of the prosecution, PW1 to PW14 were examined and Exts.P1 to P23 and MO.1 to MO.7 series were marked in support of the case. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied those circumstances and maintained their innocence.

6. As the trial court did not find it a fit case to acquit the accused persons under Section 232 Cr.P.C., they were asked to enter on their defence and adduce evidence in support thereof. DW1 was examined on behalf of the accused persons. No documentary evidence was adduced by the accused persons.

7. On consideration of the oral and documentary evidence and after hearing both sides, the trial court by the impugned judgment found no evidence to find accused 5 to 8 (A5 to A8) guilty of the offence alleged against them and hence acquitted them under



Section 235(1) Cr.P.C. However, accused 1 to 3 (A1 to A3) have been found guilty of the offence punishable under Section 397 read with Section 395 IPC and hence they have been sentenced to rigorous imprisonment for seven years each and to a fine of ₹10,000/- each and in default of payment of fine, to undergo rigorous imprisonment for a period of six months each. The 4th accused (A4) has been found guilty of the offence punishable under Section 412 IPC and hence has been sentenced to rigorous imprisonment for seven years and to a fine of ₹10,000/- and in default to rigorous imprisonment for a period of six months. Set off under Section 428 Cr.P.C. for the period from 23/11/2003 to 4/3/2004 has been allowed. Aggrieved, A1 to A4 have come up in appeal.

8. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against A1 to A4/appellants by the trial court are sustainable or not.

9. Appellants 1 and 3/A1 and A3 were reported dead as early as on 15/11/2021. None of their legal representatives have come forward to prosecute the appeal. However, as the sentence imposed include fine also, the appeal does not abate. As there was no

representation for the appellants, advocate Sruthy Bhat was appointed as State Brief. Heard both sides.

10. It was submitted by the learned counsel for the appellants/A1 to A4 that PW1 and PW2 had identified only three persons involved in the crime, that is, A1 to A3. Though PW1 and PW2 have a case that they were beaten up by the assailants, no injuries were seen though they were examined by the doctor within hours of the incident. PW1 and PW2 have no prior acquaintance with any of the accused persons. However, no Test Identification Parade (TIP) was conducted by the investigating officer. Therefore, identification of the accused persons is doubtful because the incident took place at 02:30 a.m. Even going by the testimony of PW1 and PW2, the assailants immediately after jumping out of the car, broke the headlights of the lorry and smashed the windshield. There was no other source of light available at the place of occurrence. Hence, there was no possibility or chance of PW1 and PW2 identifying their assailants. A4 has been found guilty of the offence punishable under Section 412 IPC. However, no charge was framed by the trial court for the said offence. Section 412 IPC is not a minor offence when

compared to the offence under Section 395 or 397 IPC. There is no evidence to show that the money that was stolen from PW1 was the money alleged to have been recovered from A4. Shaukath Ali the owner, who is alleged to have given money to PW1 to buy plantains was never examined. Further, the trial court found the accused persons guilty of the offence punishable under Section 397 IPC. As per Section 395, the offence of dacoity would be made out only when five or more persons are involved. Here going by the testimony of PW1 and PW2, there were only three persons involved. Hence the trial court went wrong in convicting the accused for the offence of dacoity, goes the argument.

10.1. *Per contra*, it was submitted by the learned Public Prosecutor that to make out the offence of dacoity it is not necessary that five persons should be convicted. It is sufficient, if participation of five people in the crime is shown by the prosecution. PW1 and PW2 have spoken about the presence of seven persons who had waylaid and robbed them. It is true that they could not identify all the accused persons. But that would not go against the prosecution case because they have spoken about the presence of more than five



persons at the scene. Though TIP was not conducted, the witnesses did have sufficient time to see the accused persons and therefore there is no infirmity in the identification done by PW1 and PW2 in the box. There is no infirmity in the findings of the trial court calling for an interference by this Court, argued the prosecutor.

11. I briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext.P1 FIS of PW1 is seen recorded on 18/11/2003 at 04:00 a.m. PW1, a tempo driver has stated thus in Ext.P1 FIS: on 18/11/2003 he along with PW2 were on their way to Manjeri to buy plantains for their employer Shaukath. They started their journey with the money given by their employer at 11:00 p.m. from Parakote. When they reached near the Kurisupally at Edappally, a Maruti car driven in great speed overtook them and stopped in front of the lorry. When he pressed on the accelerator and tried to move forward, the car went further ahead and stopped abruptly near Kurisupally. The four doors of the car opened and seven people with sword sticks jumped out of the car and got into the cabin of the lorry from both sides. As soon as the assailants came out of the car, they smashed the windshield. Shards of glass fell on

his face and body. Both of them were trembling with fear. One of the persons in the group saying that he would kill them swung the sword and tried to hack/cut, which he warded off with a mat. He and PW2 were pulled out of the lorry. ₹50,000/- which was kept in the dashboard of the lorry was taken away by the robbers. They also beat him and PW2. One of the robbers also snatched away ₹1,000/- and his driving license from his pocket. The assailants were shouting loudly that they would kill them. Thereafter, the assailants drove away in their green Maruti car bearing registration no.KR B 7999. One of the assailants was not wearing a shirt. All the others were wearing shirt and pants. The assailants were young men aged between 20 to 28 years. Three of them were fair in complexion, lean and tall. The remaining four were dark in complexion, short in stature and stout. He can identify the assailants on sight. He had pain all over his body as he was beaten up. There was street light at the place of occurrence in which light he could see the assailants. PW2 was also beaten up. The incident as per Ext.P1 FIS took place on 18/11/2003 at 02:30 a.m.

11.1. PW1 in the box stands by his case narrated in Ext.P1 FIS. He identified A1 as the person who had taken the amount of ₹50,000/- from the dash of the lorry and also ₹1,000/- from his pocket. He deposed that he had identified A1, A3 and others before the police. However, he was able to identify only A1 and A2 before the court. PW1 identified MO.1 series as the four sword sticks in the hands of the accused persons. The total amount taken away by the robbers was ₹51,000/-. The said amount was in different denominations of ₹500, ₹100, ₹50, ₹20, ₹10 etc. The police recovered ₹30,710/-, which he obtained from the court. In the cross examination PW1 deposed that when the money was given by his employer, he had not counted it. But it was written on the bundle that it was ₹50,000/-. Thereafter, he deposed that it was after counting the notes he had wrapped the same. PW1 admitted that he had stated to the police that the accused had come in a green Maruti car bearing registration no.KL V 7199. According to him, the said statement was given at a time when he was quite stressed out due to the loss of money. Actually the accused had come in a UNO car bearing registration no.KL.5G.7639. No injury was caused to him when the

shards of glass fell on him. He was beaten and fisted by the robbers. The mat with which he had warded off the attack by a sword stick was torn. He did not produce the said mat before the police. PW1 also deposed that two of the accused persons had held him at sword point when they took the money from the dashboard. He denied having stated to the police that the accused persons had pulled him out of the lorry and thrown him out. PW2 was thrown out of the lorry. PW1 did not have anything to say when his attention was drawn to the absence of any such statement to the police. According to PW1 he was beaten on his back and kicked. In the hustle and bustle, he could only notice two of the accused persons and not the others. Immediately after the incident, he along with PW2 went to the traffic police station to report the crime. Thereafter, they went to Kalamassery police station.

11.2. PW2 supports the prosecution case. According to him, he had identified four accused persons before the police. PW2 identified A1 and A3 in the box. He deposed that it was difficult for him to identify the other persons involved in the crime. He also identified MO.1 and MO.2 series. In the cross examination he



deposed that the amount of ₹50,000/- was in the denominations of ₹1000/-, ₹500/-, ₹100, ₹20/-, ₹10/- etc. He does not remember whether he had stated the denominations to the police. The accused persons had tried to hack him from outside the lorry, but the cut hit the lorry. He was pulled out from the vehicle and put outside. He ran to the side of the lorry and so he was unable to see what exactly happened inside the lorry.

11.3. PW4 a taxi driver deposed that on 23/11/2003 four people had hired his taxi bearing registration no.KL 7 K 7552 to go from Kakkanad to Thrippunithura. When they reached near Thrippunithura he heard them talking on their mobile phone. He was then asked to go to Palarivattom. On seeing a youngster standing in front of the K.R. Bakery, he was asked to stop the car. When he stopped the car, two of the passengers got out and tried to pull the youngster into the car, at which time the police arrived at the spot and surrounded the taxi. One person out of the two passengers who had got down from the taxi took to his heels. The police apprehended the three passengers in the car. He was also taken to the police station. PW4 identified A3 and A4 as two among the persons who had hired

his car on the said day. PW4 further deposed that he does not remember the other passengers whom he had identified before the police.

11.4. PW5, Head Constable, Kalamassery police station deposed that on 23/11/2003 he went along with PW14, Circle Inspector for investigation. By noon they reached the road in front of K.R. Bakery at Palarivattom. They parked their jeep by the side of the road and were waiting by the side of the road. A white ambassador car arrived, stopped by the side of the road and the passengers in the car tried to pull a person into the car. They surrounded the car at which time one of the persons from the car ran way. The Circle Inspector arrested A2, A3 and A4 who were in the car. He is an attestor to Ext.P4 and P5 mahazars prepared relating to the cash seized from the possession of A2 and A4. In the cross examination PW5 deposed that there were about 5 to 8 members in the police party and that they reached the place in two jeeps. They were not on routine patrol duty. They reached the spot as the Circle Inspector had received some information. PW5 also deposed that by the time they returned to the office of the Circle Inspector with A2, A3 and A4, the

Sub Inspector had brought A1 who had taken to his heels also, to the police station.

11.5. PW6, Police Constable, Kalamassery police station supports the version of PW5. PW6 deposed that when the police team surrounded the ambassador car, one of the passengers in the car had taken to his heels. He along with PW13, Sub Inspector and two police men chased the said person and apprehended him. Along with the said person they returned to the office of the Circle Inspector. PW6 identified A1 as the person who was arrested by the Sub Inspector on the said day.

11.6. PW7, Police Constable, Kalamassery police station, deposed that on 23/11/2003 he was on patrol duty along with PW13, Sub Inspector. He supports the version of PW5 and PW6.

11.7. PW8, Police Constable, Kalamassery police station, deposed that on 23/11/2003 when A1 was arrested and produced at the station by about 02:00 p.m., he was also present at the station when a search of the body of A1 was conducted. An amount of ₹15,310/- from the purse of A1 was seized. He is an attestor to Ext.P8 mahazar prepared by the Sub Inspector when the money was seized

from A1.

11.8. PW9, Head Constable, Kalamassery police station, deposed that on 23/11/2003 he was also present in the team along with PW13 Sub Inspector on patrol duty. He was present when A1 was chased and apprehended.

11.9. PW10, Assistant Surgeon, Govt. Hospital, Aluva deposed that on 18/11/2003 he had examined PW1 and PW2 and had issued Ex.P11 and Ext.P12 certificates. On examination he did not find any external injuries on PW1. PW2 had a tenderness on his back.

11.10. PW13, Sub Inspector, Kalamassery police station deposed that he arrested A1 and had recovered MO.1 series sword sticks as per Ext.P13 seizure mahazar based on the disclosure statement given by A1 in the presence of PW11 attesting witness. The disclosure statement has been marked as Ext.P13(a). The recovery was made from the bushes in a plot near Ayyappa temple, Thuthiyoor, Kakkanad. PW13 deposed that he had conducted investigation in this case for a day, that is, on 24/11/2003 as PW14, Circle Inspector was on court duty. In the cross examination PW13 deposed that on 23/11/2003 he was on patrol duty with his team of 6



police men. It was in front of K.R.Bakery he had seen A1 trying to pull a person into the car. A1 was on the front seat of the car and there were 3 persons on the back seat. He was told by the Circle Inspector that the latter had received information that the accused persons were coming from Thrikkakkara side towards Palarivattom. The Circle Inspector had passed on the information to him at H.M.T. Junction. A1 had taken to his heels on seeing the police and he and his police men had chased the former and apprehended him.

11.11. PW14, Circle Inspector, Kalamassery deposed that on 18/11/2003 he prepared Ext.P2 scene mahazar after inspecting the place of occurrence. On 23/11/2003 by about noon he received information that the accused persons were travelling from Palarivattom to Thrippunithura in a car bearing registration no.KL 7 K 7552. He immediately passed on the information to PW13 and thereafter along with his team reached Palarivattom. He saw the aforesaid car at Palarivattom and one of the passengers in the said car attempting to forcibly pull a person standing by the side of the road into the car. He along with his team immediately surrounded the car. One of the passengers from the car took to his heels. After giving



instructions to PW13 to chase the said person, he took the remaining passengers, that is, A2 to A4 into custody. He seized the taxi car in which A2 to A4 were travelling as per Ext.P3 mahzar. He returned to his office along with A2 to A4. By that time A1 was chased and caught by PW13 and was brought to his office. When the accused persons were searched, currency notes worth ₹30,710/- was recovered from them. A1 to A4 confessed regarding the complicity of A5 to A8 in the crime. On 24/11/2003 as he was on court duty, he instructed PW13 to conduct the investigation as per which PW13 seized MO.1 series sword sticks based on the disclosure statement of A1. In the cross examination PW14 deposed that the car that was used by the accused in the crime was not seized as it had already been taken into custody by the Sub Inspector, Ernakulam Town, North Police Station in crime no.537/2003. A1 to A4 were identified by PW1. On questioning PW1 he stated that it was in a UNO car that the accused had come, attacked and robbed him on 18/11/2003.

12. DW1, Sub Inspector of Police, Town North Police Station, Ernakulam, was examined on behalf of the accused persons. DW1 deposed that the accused persons herein are also involved in

crime no.537/2003 and that he had filed a final report before the court after conducting investigation in the crime. In the said crime the allegation was that a UNO car having registration no.KL-5G 7639 involved in this case was stolen by the accused persons. DW1 further deposed that the statements given by the witnesses interrogated by him would show that during the night of 17/11/2003 the aforesaid car was proceeding from Nedumbassery to Kothamangalam.

13. PW1 and PW2 have clearly identified A1 to A3. The testimony of PW1 shows that there was street light at the scene of occurrence. Therefore, the argument advanced on behalf of the appellants that there was no source of light at the place of occurrence is apparently incorrect. The testimony of PW1 and PW2 regarding the identification of A1 to A3, has not been discredited in any way and hence I find no reasons to disbelieve them. A1 to A3 have been convicted for the offence punishable under Section 397 read with Section 395 IPC. Section 395 dealing with punishment for dacoity says that whoever commits dacoity is liable to be punished with imprisonment for life or rigorous imprisonment for a term which may extend to 10 years and also fine. Section 397 deals with robbery or

dacoity with attempt to cause death or grievous hurt. The Section says that at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished, shall not be less than seven years. 'Dacoity' is defined under Section 391 IPC. It says that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and the persons present at aiding such commission or attempt amounts to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

14. In cases of dacotiy, the gravity of the offence consists in the terror it causes by the presence of the number of members. Here the testimony of PW1 and PW2 show that there were more than five persons, that is seven persons involved in the assault. It is true that PW1 and PW2 were unable to identify all the accused persons and they were able to identify only A1 to A3. PW1 deposed that there were about seven persons, but he was not able to notice all



of them. PW2 also deposed that there were more than five persons involved in the crime, but he was also unable to identify all the accused persons. The participation of more than five persons is testified by PW1 and PW2. The other accused persons were not convicted only because the witnesses failed to identify them. As pointed out by the learned Public Prosecutor, it is not necessary that if only all the five persons are convicted, the offence of dacoity would stand proved. Even if the witnesses are unable to be identify all 5 of them, if the remaining materials on record is creditworthy and reliable to show that there was infact five or more persons involved in the crime, the offence of dacotiy would stand proved. However, in the case on hand, it appears from the testimony of PW1 that in the hustle and bustle he failed to notice all the persons. That being the position, it may not be quite safe to conclude positively that there were infact five persons or more persons involved in the crime.

15. It is true that there is discrepancy in the prosecution case regarding the make and registration number of the vehicle in which the accused persons are alleged to have arrived at the scene of occurrence. The testimony of DW1, as rightly pointed out by the trial

court does not show that it was impossible for the accused persons to have been present at the scene of occurrence. The discrepancy regarding the make and registration number of the vehicle is not of much relevance in the light of the testimony of PW1 and PW2 whom I find no reasons to disbelieve coupled with the prompt registration of the crime. From the materials on record even if the offence of dacoity is not made out, the offence of robbery as contemplated under Section 390 punishable under Section 392 IPC is clearly made out. Section 390 IPC deals with robbery, which says that in all robbery there is either theft or extortion. Theft becomes robbery if in order to committing of the theft or in the committing of theft or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes 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.

16. It is true that PW1 and PW2 have deposed that the robbers had smashed the windshield as well as the headlamps of the lorry. However, PW1 referred to the presence of street light at the place of occurrence. This testimony of PW1 has not been challenged



or discredited in any way. The identity of A1 to A3 testified by PW1 and PW2 is also not seen effectively challenged or discredited. The testimony of PW1 and PW2 along with the FIS would show that they did have sufficient opportunity to see the accused persons and that it was not a fleeting glance. PW1 also deposed that both of them were trembling with fear when the robbers attacked them, placed him at sword point and took away the money from dashboard of the lorry. It would certainly have been ideal, had TIP been conducted. However, merely because a TIP was not conducted, is no ground to reject the prosecution case in the light of the testimony of PW1 and PW2, whom I find no reasons to disbelieve. The complicity of A1 to A3 in the crime has been clearly made out. The testimony of PW1 and PW2 shows that they were put under fear of instant death/of instant hurt as PW1 deposed that both of them were trembling with fear when the accused persons attacked and threatened them with sword sticks that both of them would be done away with. Therefore, the offence of robbery as contemplated under Section 390 punishable under Section 392 IPC is clearly made out. Section 392 IPC deals with punishment for robbery which says that whoever commits robbery shall be

punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. Here, the testimony of PW1 and PW2 shows that the incident took place on 18/11/2003 at 02:30 a.m. and that it took place on a highway and so the latter part of Section 392 is attracted.

17. A4 has been found guilty of the offence punishable under Section 412 IPC which deals with the offence of dishonestly receiving property stolen in the commission of a dacoity. The Section says that whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, is liable to be punished with imprisonment and fine. I have already referred to the materials relied on by the prosecution in support of the case. Admittedly, no charge under Section 412 of IPC has been framed

against A4. Section 222(2) Cr.P.C. says that when a person is charged with an offence and facts are proved which reduce it to a minor offence, then he may be convicted of the minor offence, although he is not specifically charged with it, this Section cannot be invoked in the case on hand because Section 412 IPC is not a minor offence compared to the offence contemplated under Section 395 or Section 397 IPC. That being the position, the evidence on record is also totally insufficient to find A4 guilty of the offence under Section 412 IPC. Therefore, the finding of the trial court that A4 is guilty of the offence under Section 412 is liable to be interfered with.

18. As far as A1 to A3 is concerned, the offence under Section 392 IPC has been clearly made out. A1 and A3 are no more. Therefore, the substantive sentence against A1 and A3 stand abated. The sentence regarding fine imposed on A1 and A3 shall stand confirmed. As far as A2 is concerned, he is found guilty of the offence under Section 392 IPC. The trial court has sentenced A2 to rigorous imprisonment for a period of seven years and to a fine of ₹10,000/- for the offence under Section 395 read with Section 397. As noticed earlier when a robbery is committed on the highway

between sunset and sunrise, the imprisonment extends to 14 years. The period of seven years that has been imposed by the trial court, though for a wrong offence, is commensurate with the crime committed by A2. Therefore, I find no reasons to interfere with the sentence that has been imposed.

In the result, the appeal is partly allowed and the conviction and sentence passed against A4 is set aside and he is acquitted under Section 235(1) Cr.P.C. He is set at liberty and his bail bond shall stand cancelled. The appeal filed by A1 to A3 shall stand dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

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