The acquitted, the remaining three cannot be convicted

The offence under Section 395 is cognizable, and warrant should ordinarily, issue in the first instance. It is both non-bailable and non- compoundable, and is exclusively triable by the Court of Session. In Re Muppanna Appanna [AIR 1948 Mad 96], a group of persons come to a house and beat up the family who were sleeping outside. One accused broke open the door. Three of the accused went inside and the other two kept guard outside.

All the accused helped to remove the boxes. Later two of the accused carried away the boxes. It was held that the beating and the robbery were all part of the same transaction and that all the accused acted conjointly. They were all held to be guilty of committing dacoity under Sections 391 and 395 IPC. In Ram Shankar Singh v. State of Uttar Pradesh [AIR 1956 SC 441], six persons were charged with committing dacoity.

Three out of them were acquitted. The charges framed did not indicate that along with the six persons there were other unknown persons with them, who had committed dacoity. The charge was the six persons, who were placed on trial, were the persons who had committed dacoity. Since three persons were acquitted, there were only three other persons left as the persons involved with the crime.

Hence, it was held that the three persons could be convicted with only the lesser offence of robbery under Section 392 and not for dacoity under Section 395. In Îm Prakash v. State of Rajasthan [AIR 1998 SC 1220], the Supreme Court ruled that where the charge of dacoity is against five named persons and out of them two were acquitted, the remaining three cannot be convicted for dacoity. In Saktu v. State of Uttar Pradesh [AIR 1973 SC 760], it

was alleged that apart from the named seven or eight persons, five or six committed dacoity. A large number of persons were acquitted because their identity could not be established. However, there was evidence that there were more than five persons who committed robbery in the house. So, the conviction under Sections 391 and 395 was sustained.

In Lachhman Ram v. State of Orissa [1985 CrLJ 753 (SC)], it was held that in a case of dacoity, the factum of recovery of articles at the instance of the accused persons in the presence of police officers and panch witnesses who have deposed to the same is itself sufficient to bring the case not only under Section 412 but also under Section 391 with the aid of Section 114, Evidence Act when the recoveries were made very soon after the occurrence and from places not open and accessible to one and all. In Kissour Pater [(1867) 7 WR(Cr) 35], it was observed that imminent fear of death, hurt etc., will be sufficient to bring the Section 391 into operation. Where several persons attacked a house and took away property, but the imamates obtaining information before hand fled before the attack, it was held that the fact of the imamates running away was sufficient proof of fear of hurt and wrongful restraint and the accused were guilty of dacoity.