

Bail Slip
Crl.A.397 of 2014

That the Appellant (A4) Namely nizam Baig S/o.Mohammed Baig in scno.694 of 2005 on the file of the Additional district Judge, Chengalpatu, Kancheepuram District was directed to be released in bail by the order of this court dated 03/09/2014 made in MP No.1 of 2014 in Crl A.No.397 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 22..08..2016

Judgement Pronounced on: 20..09..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN
Criminal Appeal Nos.406 and 397 of 2014

1.Sudhakar [A1]
2.Alaudeen [A2]
3.Ayyappan [A3]

... Appellants in Crl.A.Nos.406 of 2014

Nizam Baig [A4]

... Appellant in Crl. A.No. 397 of 2014

Vs

State Rep. by
The Inspector of Police,
Meenambakkam Airport
Police Station, Chennai.
[Crime No.105 of 2003]

... Respondent in both Criminal Appeals

Criminal Appeals filed under Section 374(ii) of Cr.P.C. challenging judgement of conviction and sentenced passed by the learned Additional District Judge, Chengalpattu, in S.C.No.694 of 2005 dated 17.07.2014.

For Appellant(s) : Mr.V.C.Gopinath, Senior Counsel
for Mr.Sasikumar for
Appellants in Crl.A.No.406 of
2014

: Mr.S.Ananthanarayanan, Senior
Counsel for Mr.Sasikumar for
Appellant in Crl.A.No.397 of
2014

For Respondent(s) : Mr.V.M.R.Rajendran, APP for
respondents in both Criminal
Appeals

COMMON JUDGEMENT

S.NAGAMUTHU, J.

The appellants in Crl.A.No.406 of 2014 are Accused Nos.1 to 3 and the sole appellant in Crl.A.No.397 of 2014 is Accused No.4 in S.C.No.694 of 2005 on the file of the learned Additional Sessions Judge, Chengalpattu. The trial court framed as many as eight charges against the accused as detailed below:-

Charge Number	Charge(s) framed against	Penal provision under which charge framed
1	A1 to A3	Section 120(B) of IPC
2	A1 to A3	Section 302 r/w 34 of IPC
3	A1 to A3	Section 201 of IPC
4	A1 to A3	Section 392 r/w 397 of IPC
5	A4	Section 465 of IPC
6	A4	Section 468 of IPC
7	A1 to A3	Section 465 r/w 109 of IPC
8	A1 to A3	Section 468 r/w 109 of IPC

The trial court, by judgement dated 17.07.2014, convicted and sentenced the accused under various penal provisions as detailed below:-

Rank of the Accused	Penal provision under which conviction recorded	Quantum of Sentence Imposed
A1 to A3	Section 120(B) of IPC	Rigorous Imprisonment for ten years and a fine of Rs.10,000/- each in default to suffer simple imprisonment for a further period of one year
A1 to A3	Section 302 r/w 34 of IPC	Imprisonment for life and to a fine of Rs.10,000/- each in default to suffer simple imprisonment for a further period of one year
A1 to A3	Section 201 of IPC	Rigorous imprisonment for seven years and a fine of Rs.10,000/- each in default to suffer simple imprisonment for a further period of one year
A1 to A3	Section 392 r/w 397 of IPC	Rigorous imprisonment for ten years and a fine of Rs.10,000/- each in default to suffer simple imprisonment for a further period of one year
A1 to A3	Section 465 r/w 109 of IPC	Rigorous imprisonment for two years and a fine of Rs.1,000/- each in default to suffer simple imprisonment for a further period of one year
A4	Section 465 of IPC	Rigorous imprisonment for two years and fine of Rs.1,000/- in default to suffer simple imprisonment for a further period of one year

Rank of the Accused	Penal provision under which conviction recorded	Quantum of Sentence Imposed
A4	Section 468 of IPC	Rigorous imprisonment for seven years and fine of Rs.10,000/- in default to suffer simple imprisonment for a further period of one year
In respect of charge No.8, there has been neither acquittal nor conviction of A1 to A3		

Challenging the above said conviction and sentences, A1 to A3 have come up with Criminal Appeal No.406 of 2014 while A4 has come up with Criminal Appeal No.397 of 2014.

2.0. The case of the prosecution in brief is as follows:-
The deceased in this case was one Mr.Ganesan. P.W.2 was owning a Toyota Qualis bearing Regn. No.TN 09 AA 0771. The deceased was working as driver under P.W.2 driving the said car as a taxi. P.W.3 was also a tax driver who was operating the taxi from the taxi stand at Meenambakkam Airport in Chennai. A1 to A3 were already known to P.W.3. On 12.07.2003, around 08.30 p.m. A1 to A3 approached P.W.3 at the taxi stand and wanted a toyota qualis car with air condition to go to Ulundurpet. Since P.W.3 did not have qualis car with air condition, he contacted Modern Travels at Pallavaram. P.W.1 was the proprietor of the said travel agency. P.W.3 told P.W.1 that some people are coming from Singapore and they wanted a qualis car with A/C for hire. P.W.1, in turn, contacted the deceased and fixed his car bearing Regn. No.TN 09 AA 0771. The deceased came with the said car to the travel agency run by P.W.1 at Pallavaram. From Pallavaram, P.W.1 and P.W.32 went in the same qualis car driven by the deceased to Meenambakkam Airport. At the airport, A1 to A3 were present in the taxi stand. P.W.3 told P.W.1 that these three accused were to go to Ulundurpet in the car. P.W.1 as well as the deceased agreed. A1 to A3 go into the said qualis car. P.W.1, P.W.3 and P.W.32 also got into the car. The deceased drove the car upto a petrol bunk at Pallavaram and filled fuel for Rs.2,000/-. A1 gave a cash of Rs.2,000/- for the same. Then, P.W.1, P.W.3 and P.W.32 got down from the car and returned to their respective destinations. The car started towards Ulundurpet driven by the deceased. A1 to A3 travelled in the car. It was around 10.30 p.m. on 12.07.2003.

2.1. Thereafter, the deceased did not return. P.W.4 and P.W.5, who are the wife and sister respectively of the deceased

went in search of the deceased and the car. They could not spot either the car or the deceased. P.W.2 also went in search of the deceased. He also could not locate the car nor the deceased. One Mr.Naganathan, the brother of the deceased also went in search of the deceased. Since he was not seen, Mr.Naganathan made a complaint to the Inspector of Police, Meenambakkam Airport Police Station, Chennai on 15.07.2003 at 08.00 p.m. P.W.39, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.105 of 2003 for "Man Missing". Ex.P.23 is the complaint of Mr.Naganathan. Ex.P.24 is the FIR. He, therefore, forwarded both the complaint (Ex P.23) and the FIR (Ex.P.24). He examined P.Ws.1 to 4 and few others and recorded their statements. [Mr.Naganathan, the brother of the deceased, who made the complaint, was not examined before the trial court as he died subsequently].

2.2. The case was, thereafter, taken up for investigation by P.W.41, the Inspector of Police, Meenambakkam Airport Police Station on 15.07.2013. On 21.07.2003, during investigation, he gave intimation to all the District Police Offices about the missing of the car and the deceased. But, he did not make any progress in the investigation.

2.3. On 29.09.2003, according to P.W.41, P.W.2 and Mr.Naganathan came to him and informed that the said car [TN 09 AA 0771] was seized by the Inspector of Police, Gummidipoondi Police Station in connection with a murder case and the registration number of the car has been changed in the number plates as TN 20 K 2337. P.W.41 recorded their statements. On 30.09.2003, P.W.41 along with P.W.2 and Mr.Naganathan, went to Gummidipoondi Police Station. On verification with the Inspector of Police, Gummidipoondi Police Station, P.W.41 came to know that a case was registered in Crime No.324 of 2003 under Section 302 of IPC and the toyota qualis car in question had been seized by the Inspector of Police, Gummidipoondi Police Station, in connection with the said murder case. The photographs of the accused involved in the said murder case were also kept in the police station at Gummidipoondi. P.W.1 and P.W.32 after having seen the photographs of the accused identified the photograph of A1 as one of the persons who engaged the car and went along with the deceased in the car on 13.07.2003. After having ascertained the engine and chassis number of the said car he came to know that the car seized in Crime No.324 of 2003 under Section 302 of IPC was the car belonging to P.W.2 bearing Regn. No. TN 09 AA 0771. But, the changed number plates had been changed displaying the fake registration number as TN 20 K 2337. P.W.41, therefore, altered the case into one under Sections 365, 379, 468 and 471 of IPC. Ex.P.25 is the alteration report. A1 had been remanded to judicial custody on being produced before the court in

connection with the case in Crime No.324 of 2003 on the file Gummidipoondi Pollice Station. P.W.41, therefore, made a request to the judicial Magistrate, Alandur, for issuance of P.T. Warrant for the production of A1 before the said court. Accordingly, he was produced. On an application made by P.W.41, A1 was entrusted to the custody of the police on 06.10.2003 at 06.00 p.m. On the same day, while in police custody, A1 gave a voluntary confession in the presence of P.W.17 and one Mr.Perumal. In the said voluntary confession, A1 made certain disclosure statements which later on led to the discovery of certain relevant facts. In pursuance of the said disclosure statement, A1, at 02.45 a.m. on 07.10.2003, took the police and the witnesses to Room No.26 of Students Hostel at New College, Royapettah and identified A2. P.W.41 in the presence of the same witnesses arrested A2. While in custody, A2 also gave a voluntary confession P.W.41 recorded the same in the presence of the same witnesses. Then, A1 and A2 took the police and the witnesses to the students hostel at 3rd street, Kailasapuram, Mylapore, where they identified A3. On the same day at 04.00 a.m. P.W.41 arrested A3 also in the presence of the same witnesses. On such arrest A3 gave a voluntary confession in which he made certain disclosure statements. In pursuance of the same, certain relevant facts were later on discovered.

2.4. In pursuance of his disclosure statement, A1 took the police and the witnesses to his house at Gummidipoondi and produced a bag (M.O.5). P.W.41 recovered the same under a mahazar (Ex.P.5). On 07.10.2003, he altered the case into one under Section 174 of Cr.P.C. He forwarded A2 and A3 for judicial remand.

2.5. In the disclosure statement made by A1 he had disclosed the place where they had buried the dead body of the deceased. On 08.10.2003, P.W.41 made a request to the Tahsildar, Tindivanam (P.W.38) for exhumation of the dead body from the place being identified by A1. A2 and A3 were again entrusted to P.W.41 in police custody as per the orders of the learned Judicial Magistrate, Alandur. A1 to A3 took the police and the witnesses around 11.20 p.m. on 08.10.2003 to Thondi riverbed at Senthur Village. The relatives of the deceased had also come there by that time. A1 to A3 identified the place where they had buried the dead body of the deceased.

2.6. On 09.10.2003 and 10.10.2003, in response to the request made by P.W.41, a team of doctors could not come to the said place and therefore exhumation could not be done. On 11.10.2003 around 12.00 noon in the presence of the Tahsildar and P.W.6, P.W.41 prepared an observation mahazar and a rough sketch at the place of occurrence. On the same day, in the presence of witnesses, the place identified by the accused was

dug from where some bones including the skull were recovered. The doctors conducted autopsy on the human skeletal remains on the spot. Since only skeletal remains were available the cause of death could not be ascertained. Similarly, the identity of the body also could not be made. But, from the dress materials found on the human skeletal remains, the wife and the sister of the deceased identified the same as that of the deceased.

2.7. On 11.10.2003 as identified by A1 to A3 at 11.00 p.m. P.W.41 arrested A4. A4 on such arrest produced M.O.10 a fake Office Seal of the Regional Transport Officer, driving licenses (M.O.11-series), and a Registration Certificate (M.O.12). He recovered the seal and the other documents under a mahazar. On 12.10.2003, he altered the case into one under Section 302 of IPC. Earlier pursuant to the disclosure statements of A1 and A2, a crowbar (M.O.7), a garden hoe [spade]-(M.O.8) and a nylon rope (M.O.9) were recovered by P.W.41 under a mahazar in the presence of witnesses.

2.8. The skeletal remains were sent for DNA examination in which the DNA of the wife and the children of the deceased were used. The DNA examination proved the identity of the deceased. Then, on completing the investigation, P.W.41 laid charge sheet against the accused. Based on the above materials, the trial court framed charges as detailed below. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 41 witnesses were examined, 39 documents and 12 material objects were marked.

3.0. Out of the said witnesses, P.W.9 to 13, 18 to 21, 23, 24 and 36 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.1, the owner of the travel agency, P.W.3, a driver operating taxi at Chennai Airport taxi stand and P.W.32 have stated that on 12.07.2003, the deceased filled fuel at a petrol bunk at Pallavaram, drove the qualis car carrying A1 to A3 towards Ulundurpet. They have further stated that thereafter neither the car nor the deceased was found. A1 to A3 also were not found. P.W.2, the owner of the qualis car has stated about the missing of the car and the driver [the deceased]. P.Ws.4 and 5, the wife and the sister respectively of the deceased have also stated about the missing of the deceased and the car. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence.

3.1. P.W.7, the Village Administrative Officer has stated about the exhumation of the dead body on 10.10.2003 at the place identified by the accused in the presence of the Tahsildar and the team of doctors. P.W.8, a Poclain vehicle operator has

stated that he dug the place spotted by the police to help the investigating officer to retrieve the dead body.

3.2. P.W.14, a tailor by profession has stated that the shirt found on the human skeletal remains was stitched by him for the deceased. P.W.15, yet another tailor, has stated that the pants on the human skeletal remains was stitched by him for the deceased. Thus, from these two witnesses, the prosecution has tried to prove the identity of the deceased. P.W.16 has spoken about the exhumation of the dead body. P.W.17 has spoken about the arrest of A1 and the confession made by A1 on 06.10.2003 and also the consequential recoveries made. P.W.22, the then Superintendent at the Office of the Regional Transport Officer has stated that the registration number TN 20 K 2337 was allotted to a TVS 50 XL motor cycle and not to the toyota qualis car in question.

3.3. P.W.25 has stated that on 13.07.2003, A1 to A3 came in a car and parked the same near his house for some time. P.W.26 is the owner of the TVS 50 XL motor cycle bearing Regn. No.TN 20 K 2337. He has stated that the registration of the said vehicle stands in his name. P.W.27, the Head Constable has stated about the postmortem conducted by the team of doctors with his help. P.W.28 has spoken about the postmortem conducted. He has further stated that neither the identity of the dead body could be made out nor the cause of death could be ascertained since only skeletal remains were found on exhumation. P.W.29, an Assistant in the Forensic Sciences Laboratory, has spoken about the chemical analysis conducted on the internal organs which provided no clue. P.W.30, an Assistant Director at Forensic Sciences Laboratory, Government of Tamil Nadu, has spoken about the DNA examination conducted from which identity of the deceased has been established. P.W.31 has stated that A4 used to come to her for attestation of certain forms for being submitted to the Regional Transport Office. P.W.34 has again spoken about the serology examination conducted. P.W.35 has spoken about the chemical analysis conducted on the shirt and pants wherein he found human bloods. P.W.37 has not stated anything incriminating. P.W.39, the Tahsildar has spoken about the exhumation conducted and also the inquest held by him. P.W.39, the Sub Inspector of Police has spoken about the registration of the case on the complaint made by Mr.Naganathan, the brother of the deceased. P.W.40 has spoken about the confession made by A1 and A2 and the consequential recoveries made out of their disclosure statements. P.W.41 the Inspector of Police has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the

accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

5. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused are now before this Court with the present criminal appeals.

6. When these criminal appeals came up for hearing on 29.06.2016, it was noticed that the Toyota Qualis Car, which was driven by the deceased and stolen away, was not marked in evidence in this case. Neither the records relating to the car were marked. The witnesses to speak about the arrest of A1 and the consequential recovery of the car in question from his possession were also not examined. This court, thus, found a lot of flaws in the conduct of the trial before the trial court. The Inspector of Police, Airport Police Station filed miscellaneous petitions Crl.M.P.Nos.7331 and 7332 of 2016 before this court seeking to summon the witnesses and to examine them as additional witnesses and also to recall some of the witnesses examined already and to prove certain documents. After affording sufficient opportunity to the accused, by order dated 08.08.2016, this court allowed those miscellaneous petitions. The copies of the documents sought to be relied on by the prosecution were also supplied to the accused in advance. The accused were ordered to be produced before this court. Accordingly, they were present before this court. One Mr.Ravi, was examined as P.W.42 before this court on 11.08.2016. P.W.42, in his evidence, has stated that on 30.08.2003 near Arambakkam Railway Station, the Inspector of Police, Gummidipoondi Police Station, arrested A1 and recovered the car with the number plate carrying the Registration No. TN 20 K 2337 under a mahazar. The said car is a Toyota Qualis car. P.W.43 was the Inspector of Police, Gummidipoondi Police Station during the year 2003. He was the one who investigated the murder case in Crime No.324 of 2003. He has stated that on 30.08.2003 around 03.30 p.m. when he was waiting near Arambakkam Railway Station, in search of the accused in connection with the said murder case, a vehicle bearing Regn. No. TN 20 K 2337 white colour Toyota Qualis car came towards the said place. On suspicion, when he intercepted the car he noticed that there were 4 persons in the car including A1. All the four were the accused wanted in connection with the murder case and therefore, P.W.43 arrested them. He has further stated that he seized the said car. As per the number plates of the car, the registration number of the car was TN 20 K 2337. He noted the chassis number and the engine

number of the car in the mahazar. Later on, during the investigation, it came to light that the original number of the said car is TN 09 AA 0771. Ex.P.41 is the copy of the registration certificate of the said car.

7. P.W.2 was recalled and examined on 11.08.2016 before this court. During such examination he stated that the registration number of the toyota qualis car which was stolen away was TN 09 AA 0771. Ex.P.41 is the registration certificate of the car. Ex.P.40 is the mahazar under which the car was recovered by P.W.43.

8. The counsel for the accused cross examined all these witnesses in the presence of the accused. After the examination was over, A1 to A4 were questioned under Section 313 of cr.P.C. in respect of the fresh evidences received by this court. They denied the same. The case was then posted for arguments.

9. Thereafter, we heard the learned senior counsel appearing for the appellants/A1 to A4 and the learned Additional Public Prosecutor appearing for the respondent/State and we also perused the records carefully.

10. There is no denial of the fact that the deceased was lastly seen alive on 12.07.2003 around 10.30 p.m. P.Ws.1, 3 and 32 have stated that they accompanied the deceased up to Pallavaram where fuel was filled for the car at a petrol bunk. A1 to A3 engaged the taxi to go to Ulundurpet. Thereafter, the dead body was exhumed on 11.10.2003. From the skeletal remains, DNA was extracted and the examination of DNA conducted with the DNA drawn from the children and the wife of the deceased had proved the identity of the deceased. The ragged shirt (M.O.1) and the ragged pants (M.O.2) found on the skeletal remains were identified by the wife (P.W.5) and the sister (P.W.6) respectively of the deceased, P.Ws.14 and 15, who are tailors by profession, have also identified the dress materials on the human skeletal remains. Thus, it has been proved beyond reasonable doubts that the skeletal remains, which were recovered on 11.10.2003 on exhumation, was that of the deceased.

11. P.W.28, the doctor, who conducted autopsy on the skeletal remains could not give any opinion regarding the cause of death. It is quite natural and understandable that from the mere skeletal remains it may not be possible for the doctor to find out the cause of death. But, on that score, it cannot be held that the death of the deceased was not a homicide inasmuch as there are other circumstances to prove that the death of the deceased was a homicide about which we will discuss a little later.

12. P.Ws.1, 3 and 32 , as we have already pointed out, have stated that the deceased was engaged by A1 to A3 and they went along with the deceased in the car in question. A1 to A3 were in the company of P.W.1, P.W.3 and P.W.32 for a long time. Therefore, there is no question of holding any test identification parade. [See Amit Singh Bhikam Singh Thakur v. State of Maharashtra, (2007) 2 SCC 310 and Ankush Maruti Shinde and Ors. Vs. State of Maharashtra [(2009) 6 SCC 667]]. These witnesses are independent witnesses and they had no axe to grind against A1 to A3. Though P.Ws.1, 3 and 32 have been subjected to gruel cross examination, at length, nothing could be elicited to disbelieve their version. In our considered view, the evidences of these three witnesses by themselves would be sufficient to hold the accused guilty. But, fortunately, there are other evidences also to prove the guilt of the accused.

13. The complaint in this case was made on 15.07.2003 by Mr.Naganathan [since deceased], the brother of the deceased-Mr.Ganesan. Till the complaint was made, it was not even known to anybody as to what had happened to the deceased. That was the reason why only a "Man Missing" case was registered. Unfortunately, P.W.41 could not make any break through in the investigation. Mr.Naganathan, who made the complaint has not been examined before the trial court as he had already passed away. Therefore, the contents of the complaint (Ex.P.23) cannot be treated as substantive evidence. But, from the evidences of P.Ws.1, 2 , 3 and 32 and also P.W.4 it has been clearly established that the car in question was in the possession of the deceased lastly and the disappearance of the car as well as the deceased had happened in the same transaction.

14. According to P.W.43, the then Inspector of Police, Gummidipoondi Police Station, he was investigating the case in Crime No.324 of 2003 on the file of Gummidipoondi which was a case of murder case. On 30.08.2003, when he was searching for the accused involved in the said crime, near Arambakkam Railway Station, he found the Toyota Qualis car bearing Regn. No. TN 20 K 2337 moving suspiciously. Immediately, he intercepted the car in which A1-Sudhakar and three others by name (1) Krishnan (2) Ramesh and (3) Srinivasan were travelling. The number plates of the car displayed the registration number as TN 20 K 2337. While recovering the car from the possession of A1, he had noted down the engine number and chassis number of the car in the mahazar (Ex.P.40). From the evidence of P.Ws.22 and 26, it has been proved that the registration number TN 20 K 2337 was allotted to the TVS 50 XL motor cycle belonging to P.W.26. Thus, the number plates which were fixed at the car were fake number plates. P.W.2, the owner of the car has proved the certificate

of registration of the car as Ex.P.41. A comparison of the chassis number and engine number in Ex.P.41 and chassis number and the engine number noted down in the recovery mahazar would go to show that the car recovered by P.W.43 from the possession of A1 was the one which belonged to P.W.2. Thus, it has been clearly established that the stolen car bearing Regn. No. TN 09 AA 0771 was in the possession of A1. This fact is disputed by A1. But, we do not find any reason to reject the evidence of P.W.43 and the mahazar witness (P.W.17). Therefore, we hold that A1 was in possession of the stolen car for which he has got no explanation. From this fact, we have to raise a presumption as provided under Section 114 of the Evidence Act that A1 was one of the perpetrators of the crime.

15. P.W.41, on getting information about the seizure of the car by P.W.43, immediately visited the Gummidipoondi Police Station and after having verified the fact with the available records he came to know that the stolen car was the one which was seized by P.W.43 in connection with the other murder case. In the mean while, A1 along with the other accused who were involved in a murder case, were all remanded to judicial custody. P.W.41 therefore took police custody of A1. While in police custody, A1 gave a voluntary confession out of which A1 identified A2 and A3. Then, A2 and A3 were also arrested. They also made independent disclosure statements. From those disclosure statements only, more particularly, the disclosure statement made by A1, the fact that the deceased was no more and that the dead body of the deceased was buried on the Thondi Riverbed at Senthur Village came to light. This is a very important piece of circumstance falling under Section 27 of the Evidence Act. But for the disclosure statement made by A1, the fact, that the dead body of the deceased was buried there, would not have come to light at all. In fact, the very fact that the deceased was no more also would not have come to light. Thus, the discovery of the dead body from the place of exhumation on being identified by A1 pursuant to his disclosure statement is a very important piece of evidences. A2 and A3 also had identified the place where the dead body was buried. Thus, the fact of A2 and A3 in identifying the place where the dead body was buried is a very strong incriminating circumstance against A2 and A3 falling under Section 8 of the Evidence Act. The accused have got no explanation as to how they came to know the fact that the dead body was buried at particular place. Had it been true that they were innocent and they came to know about the burial of the dead body from the other sources, nothing would have prevented them from explaining the same to the court. But, their defence is a total denial. From these circumstances, in our considered view, though the doctor, who conducted autopsy was not able to give any definite opinion regarding the

cause of death of the deceased, the prosecution has clearly established that the death of the deceased was a homicide and the same was caused by A1 to A3. We do not find any reason to take a different view than the view taken by the trial court in this regard as against A1 to A3.

16. So far A4 is concerned, we find no evidence against him except the evidence of P.W.31 which is also a very vague piece of evidence. Therefore, the conviction of A4 cannot be sustained.

17. In view of the foregoing discussion we hold that the trial court was right in convicting A1 to A3 for offences under Sections 120-B , 302 r/w 34, 201, 392 r/w 397 of IPC, however, the conviction of A1 to A3 recorded by the trial court for the offence under Section 465 r/w 109 of IPC is not sustainable and instead they are liable to be convicted under Section 465 of IPC simpliciter.

18. Now, turning to the quantum of sentence imposed by the trial court, the same is proportionate having regard to the mitigating as well as the aggravating circumstances. Thus, we do not find any reason to interfere with the conviction and sentences so far as A1 to A3 are concerned for the offences under Section 120-B, 302 r/w 34, 201, 392 r/w 397 of IPC. However, the conviction and sentence imposed on A1 to A3 for the offence under Section 465 r/w 109 of IPC are set aside and instead, they are convicted under Section 465 of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a further period of two weeks. Therefore, we are inclined to partly allow the criminal appeal in CrI.A.No.406 of 2014 filed by A1-Sudhakar, A2-Alaudeen and A3-Ayyappan and we are inclined to allow the criminal appeal in CrI.A.No.397 of 2014 filed by A4-Nizam Baig in its entirety.

In the result, (i) CrI.A.No.406 of 2014: This criminal appeal is partly allowed in the following terms:-

(a) The conviction of the 1st appellant/A1-Sudhakar, 2nd appellant/A2-Alaudeen and the 3rd appellant/A3-Ayyappan for offences under Sections 120-B, 302 r/w 34, 201 and 392 r/w 397 of IPC and the sentences imposed thereunder by the trial court are hereby confirmed.

(b) The conviction and sentence imposed on the 1st appellant/A1-Sudhakar, 2nd appellant/A2-Alaudeen and the 3rd appellant/A3-Ayyappan by the trial court for offence under Section 465 r/w 109 of IPC are hereby set aside and instead they are convicted under Section 465 of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a

further period of two weeks.

(ii) CrI.A.No.397 of 2014: This criminal appeal is allowed. The conviction and sentences imposed on the appellant/A4 by the trial court are hereby set aside and he is acquitted of both the charges. Fine amount already paid if any, shall be refunded to him. The bail bond executed by the appellant/A4 shall stand terminated.

Sd/-
Assistant Registrar(ccc)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Sessions Judge,
Chengalpattu.
- 2.The Inspector of Police,
Meenambakkam Airport Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Chennai.
- 4.The superintendent central prison,puzhal chennai.
- 5.The Judicial Magistrate Alandur.

WEB COPY

Pre Delivery Common Judgement
in
Criminal Appeal
Nos.406 and 397 of 2014

CO (NM)
CP 20/10/2016