

Bail Slip

The Petitioner herein/Accused No.5 was released on Bail in CrI.M.P.No.1 of 2015 in CrI.A.Wo.482/2014 dated 27.10.2014 (S.C.No.187/2008 on the file of the Sessions Judge, Bomb Blast Cases, Coimbatore)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 17.06.2016

DELIVERED ON 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.436, 490, 482 of 2014 &
175 & 176 of 2015

Rajeshkumar @ Rajesh

..Appellant/A.4 in CrI.A.No.436/2014

R.Ganesh Kumar @ Ganesh

..Appellant/A.3 in CrI.A.No.490/2014

S.Kaleeswaran

..Appellant/A.5 in CrI.A.No.482/2014

John Anthonisamy @ John

..Appellant/ A.1 in CrI.A.No.175/2015

Muthumanickam @ Muthu

..Appellant/A.2 in CrI.A.No.176/2015

सत्यमेव जयते
vs

The State by
Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District
Crime No.422 of 2007

.. Respondent/Complainant in all CrI.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374 (2) Cr.P.C., against the judgment passed by the learned Sessions Judge, Bomb Blast Cases, Coimbatore in S.C.No.187/2008 dated 22.7.2014.

In Crl.A.No.436 of 2014:-

For Appellant :Mr.R.Sankarasubbu
for Mr.S.Manoharan

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.490 of 2014:-

For Appellant :Mr.M.Murugesan

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.482 of 2014:-

For Appellant :Mr.S.Rajkumar

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.175 of 2015:-

For Appellant :Mr.R.Sankarasubbu
for Mr.P.Pugalendhi

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.176 of 2015:-

For Appellant :Mr.R.Sankarasubbu
for Mr.P.Pugalendhi

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

(Common Judgement of the Court was delivered by S.Nagamuthu.J)

The appellant in Crl.A.No.175 of 2015 is A.1; the appellant in Crl.A.No.176 of 2015 is A.2; the appellant in Crl.A.No.490 of 2014 is A.3; the appellant in Crl.A.No.436 of 2014 is A.4 and the appellant in Crl.A.No.482 of 2014 is A.5 in S.C.No.187 of 2008, on the file of the learned Sessions Judge for trial of Bomb Blast Cases, Coimbatore. The trial Court framed charges against all the accused as detailed below:-

Charge Nos.	Accused	Section of law
First charge	A.1 to A.5	120 (B) I.P.C.,
Second Charge	A.1 to A.5	147 I.P.C.,
Third Charge	A.1 to A.5	364 I.P.C.,
Fourth Charge	A.3 to A.5	302 I.P.C.,
Fifth Charge	A.1 & A.2	302 r/w 120 (B) & 149 I.P.C.,
Sixth Charge	A.1 to A.5	201 I.P.C.,
Seventh Charge	A.1 to A.5	396 I.P.C.,

All the accused denied the above charges framed against them. By judgment dated 22.07.2014, the trial Court convicted all the five accused for offences under Sections 120(B), 147, 364 & 302, 302 r/w 120(B)/149, 201 & 396 I.P.C., and sentenced them as detailed below:-

Sl. No	Accused	Section of law	Sentence
1	A.1 to A.5	120 (B) I.P.C.,	Rigorous imprisonment for six months each.
2	A.1 to A.5	147 I.P.C.,	Rigorous imprisonment for two years each.
3	A.1 to A.5	364 I.P.C.,	Rigorous Imprisonment for ten years and to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for six months.

Sl. No	Accused	Section of law	Sentence
4	A.1 to A.5	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for six months.
5	A.1 to A.5	302 r/w 120 (B)/149 I.P.C.,	Imprisonment for life and to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for six months.
6	A.1 to A.5	201 I.P.C.,	Rigorous imprisonment for seven years each.
7	A.1 to A.5	396 I.P.C.,	Imprisonment for life and to pay a fine of Rs.2,000/- each in default to undergo simple imprisonment for six months.

The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/A.1 to A.5 are before this Court with these Criminal Appeals.

2.The case of the prosecution, in brief, is as follows:-

Mr.John Thomas, the deceased in this case was a Taxi Driver by profession. According to the case of the prosecution, all these five accused, under the guise of going elsewhere, engaged a Taxi driven by the deceased, kidnapped him, killed him, buried his dead body and stolen away the Car and the properties found in the same.

(a)P.W.1 is the wife of the deceased. P.W.3 Mr.Jegan was owning a Taxi bearing registration No.TN 41B 4980. The deceased was employed as Driver in the said Car. The said Car was operated from the Taxi Stand near Telegraph Office, Pollachi. Usually, the deceased would go to the Taxi Stand daily at 8.30 am with the Taxi and normally, would return home around 7.30 pm. On 18.07.2007 morning, when the deceased was at his house, he received a phone call through his Cell Phone No.9842296044 from one Mr.John Anthonisamy/A.1 in this case. After having attended the same, the deceased told P.W.1 that he was going out with the Taxi for a local trip. But on 18.07.2007, in the evening, he

did not return. P.W.1 tried to contact him over his cell phone. But, there was no response. She went to the house of P.W.3 and enquired about the deceased. He also did not have any information about the deceased. Then both of them went in search of the deceased and the Taxi at various places. They could not find either the deceased or the Taxi. Finally, on 25.07.2007, P.W.1 made a complaint at Pollachi East Police Station at 9.30 am.

(b)P.W.11, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.424 of 2007 for "man missing". Ex.P.1 is the complaint and Ex.P.11 is the F.I.R. He forwarded both the documents to Court, which were received by the learned Judicial Magistrate around 2.45 pm on 25.07.2007.

(c)P.W.28, the then Inspector of Police, took up the case for investigation. He went to the Taxi Stand and commenced the investigation. He examined many persons there. At 2.45 pm, on 25.07.2007, near the Taxi Stand, he prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another witness. Then he examined many persons but, he could not make any breakthrough. He made wide publicity through the local news papers, television and also radio. Special Team was also formed to make breakthrough in the investigation. But, no breakthrough could be made either by the Investigating Officer or by the Special Team.

(d)When the investigation was in progress, on 29.12.2007, P.W.19, Mr.Karthikeyan received an inland letter to his address from A.1. A.1 was formerly a Driver of a Taxi owned by P.W.19. Thus, P.W.19 is the former employer of A.1. The said letter was marked as Ex.P.29. In that letter, (Ex.P.29), A.1 had written that earlier, he abducted a Taxi Driver along with a Taxi killed him and took away the Taxi bearing registration No.TN 41 B 5658 along with A.2 to A.5 herein and sold away the same. He had further stated that in a similar fashion, he engaged the deceased with his Taxi, abducted him, killed him, and buried his body by the side of Pollachi to Coimbatore main Road near Mullupadi Railway gate. P.W.28 recovered the same. P.W.28, on going through the said letter, wanted to verify the facts stated therein. On 30.12.2007, at 7.00 pm, with the assistance of P.W.23, the then Village Administrative Officer and his Assistant along with P.W.19, P.W.28 went to Appar Street, Venkatesa Colony, Pollachi and arrested A.1. A.1 was identified by P.W.19. On such arrest, A.1 made a voluntary confession, in which, he disclosed the place where he had buried the dead body of the deceased and also disclosed the person to whom the Car (M.O.3) had been sold by him along with the other accused. A.1 also disclosed the place where the other accused viz., A.2 & A.3 were hiding. In pursuance of the same, he took the Police and

witnesses to the Ammabatti Village, where he identified A.2 and A.3. On 31.12.2007, at 2.30 am, P.W.28 arrested A.2 & A.3. On such arrest, A.2 gave a voluntary confession, in which, he disclosed the place where he had hidden a spade with wooden handle and the car speaker. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the spade with wooden handle (M.O.11) and also the car speaker (M.O.10). P.W.28 recovered the same under a mahazar in the presence of same witnesses. A.3 also gave a voluntary confession, in which, he disclosed the place where he had hidden a CD player. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the CD Player (M.O.9). P.W.28 recovered the same under a mahazar. On returning to the Police Station, P.W.28 forwarded A.1 to A.3 to Court for judicial remand and also altered the case into one under Section 302, 396 & 201 I.P.C.

(e) Then P.W.28 made a request to the Tahsildar to arrange for exhumation of the body, from the place to be identified by A.1 as per his disclosure statement. At 1.45 pm on 31.12.2007, A.1 took P.W.28 and other Police Officials to the place where the dead body of the deceased was buried. In pursuance of the said request made by P.W.28, P.W.15, the then Tahsildar came to the said place along with P.W.25 - Doctor. The then Tahsildar (P.W.15), with the help of others, dug the place identified by A.1. A dead body in a highly decomposed condition was found. P.Ws.1 & 2 and the other relatives of the deceased were already present there. From the clothes found on the body of the deceased, they identified the body as that of the deceased. As many as eight photographs were taken on the dead body and the surrounding place. P.W.28 prepared an observation mahazar and a rough sketch in the presence of P.W.21 and another witness. Then, inquest was conducted on the body of the deceased.

(f) P.W.25 conducted autopsy on the body of the deceased on the spot itself. Since, what was recovered was only a skeleton, P.W.25 was not able to assess the approximate age of the deceased and he was also not able to find out the cause of death. Ex.P.24 is the Post mortem Report and Ex.P.25 is his final opinion.

(g) P.W.28 recovered the clothes found on the dead body and forwarded the same to Court. Then he forwarded A.2 & A.3 to Court for judicial remand. On 01.01.2008, P.W.28 examined many more witnesses including P.W.7 and P.W.15. At his request, the skull of the dead body was sent for super-imposition. P.W.28 collected the photograph of the deceased from P.Ws.1 & 2 and forwarded the same for the said purpose. P.W.16, the Forensic Expert conducted super-imposition examination and gave opinion that the skull tallied with the photograph of the deceased. On 02.01.2008, P.W.28 made a request to the learned Judicial

Magistrate for the custody of A.1. Accordingly, he was given permission to have A.1 under Police Custody on 07.01.2008. While in custody, A.1 gave another disclosure statement, in which, he disclosed the fact that he had sold the Car to one Mr.Rajendran at Maruthi Nagar, Thiruvavarur. Accordingly, he took the Police and witnesses to Thiruvavarur and identified Mr.Rajendran at 09.01.2008 at 6.15 am. The Car stolen away from the deceased was in the custody of Mr.Rajendran. The same was recovered by P.W.28 under a mahazar.

(h) On 10.01.2008, A.1 identified A.4 & A.5. P.W.28 arrested A.4 & A.5, in the presence of the same witnesses. On such arrest, A.4 gave a voluntary confession in which, he disclosed the place where he had sold a car speaker. In pursuance of the same, he took the Police and witnesses to the said place and produced the speaker (M.O.10). Similarly, on such arrest, A.5 gave a voluntary confession in which, he disclosed the place where he had hidden a cell phone. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the cell phone (M.O.20). The said cell phone was later on identified by the wife of the deceased as that of the deceased. Then he forwarded both these accused viz., A.4 & A.5 to Court for judicial remand.

(i) On the request of P.W.28, the learned Judicial Magistrate (P.W.10) conducted test identification parade for A.2 & A.3 on 09.01.2008. P.Ws.7 & 14 participated in the said Test Identification Parade and identified A.2 & A.3. On 24.01.2008, he conducted Test Identification Parade for A.4 & A.5. In which also, P.Ws.7 & 14 participated and identified both the accused. On completing investigation, P.W.28 filed a final report against all these five accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 28 witnesses were examined and 43 documents were exhibited besides 20 Material Objects.

4. Out of the said witnesses, P.W.1 is the wife of the deceased. P.W.2 is the brother of the deceased. They have stated that the deceased was driving the Taxi bearing registration No.TN 41 P 4980. P.W.1 has stated that the deceased left the house around 8.30 am on 18.07.2007 driving the Taxi. She has further stated that the deceased was using the cell phone bearing number 9842296044. They have stated that thereafter, the deceased did not return to the house. P.W.3, the owner of the Taxi also has stated the same facts. P.W.1 has further stated that on 25.07.2007, she made a complaint to the Police, upon which, the present case was registered. These three witnesses have stated that the dead body was exhumed at Mullupadi Village

on 31.12.2007 by the then Tahsildar (P.W.15) and P.W.28, at the place identified by A.1. P.W.1 has identified the pant and the shirt viz., M.Os.1 & 2 worn by the deceased when he lastly left the house. P.W.4 has stated that on 17.07.2007, he contacted the deceased over phone to engage his taxi for a local trip on 18.07.2007. But, on 18.07.2007, the deceased called him over phone and informed him that he could not come. This witness has not spoken about the time when the deceased spoke to him. P.W.5 has spoken about the preparation of observation mahazar and the rough sketch at the Taxi Stand at Pollachi.

5.P.W.6 is a Taxi Driver and he was operating his Taxi from the very same Taxi Stand where the deceased was operating his Taxi. He has stated that on 18.07.2007, he was standing near Durai Cinema Theater at Pollachi, to meet his friend. It was around 12.45 pm. At that time, A.1 was standing near the Sakthi hotel which is situated near the place where P.W.6 was standing. Within a short time, the deceased came to the said place driving his Taxi bearing registration No.TN 41 P 4980. P.W.6 noticed that A.1 was talking to the deceased for a while. Then A.1 got into the front seat of the car. The car then was driven by A.1 and it proceeded. After that, according to this witness, he did not see the deceased at all.

6.P.W.7, is the another important witness for the prosecution. He has stated that he was also a Taxi Driver during the relevant time. He was operating his taxi from S.S.Kovil Street stand at Pollachi. He had acquaintance with the deceased and who was operating his taxi from telegraphic office stand at Pollachi. He has further stated that on 18.07.2007, he had gone to Palani via Udumalpet from Pollachi driving his taxi. When he was returning from Palani via Udumalpet bus stand, the Taxi driven by the deceased bearing registration No.TN 41 P 4980 was found. P.W.7 slowed down his taxi and stopped it near the taxi bearing registration No.TN 41 P 4980. The deceased was in the driver's seat and A.1 was in the front seat. He knew A.1 already. There were four other persons in the taxi namely A.2 and A.3 and other two persons who were not previously known to him. He has further stated that later on, he identified the other four persons as A.2 to A.5. He had identified all the five accused in Court. He enquired the deceased. He told that he was going for hire. Then, P.W.7, returned to Pollachi. Thereafter, he did not see the deceased at all. Later, he came to know that the deceased was done to death by A.1 to A.5. He participated in the test identification parade and identified A.2 to A.5.

7.P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 is the staff of the learned Judicial Magistrate Court. He has stated that he forwarded the skull recovered at the time of exhumation and the photograph of the deceased for super-imposition as requested by P.W.28.

8.P.W.10, is the then learned Judicial Magistrate No.2, Pollachi. She has stated that as per the request made by P.W.28 and as directed by the learned Judicial Magistrate, she conducted test identification parade at Coimbatore Central Prison on 09.01.2008 at 4.00 pm. In which, A.2 and A.3 were put up for test identification. P.Ws.7 & 14 participated in the same. According to the learned Judicial Magistrate, these two witnesses identified A.2 & A.3 correctly on all the three occasions. She has further stated that on 24.01.2008, she conducted test identification parade for A.4 & A.5 at Pudukottai Borstel School. P.Ws.7 & 14 participated in the same. According to the learned Judicial Magistrate, these two witnesses identified A.2 to A.5 correctly on all the three occasions.

9.P.W.11 has spoken about the registration of the case on the complaint of P.W.1 on 25.07.2007, at 9.30 am, for "man missing". He has further stated that the said case was taken up for further investigation by P.W.28. P.W.12, is the Police Constable. He has stated that after the exhumation was over, he collected the material objects viz., M.Os.4 to 7, and handed over the same to P.W.28. P.W.13, the then Village Administrative Officer of Pennagaram Village was in charge of the Village where the dead body of the deceased was exhumed. He identified the said land as Survey No.112.

10.P.W.14 is yet another important witness for the prosecution. During the relevant time, he was also a Taxi Driver. When he was driving his Taxi in Pollachi, A.1 was also driving a Taxi bearing registration No.TMT 8710 belonging to P.W.19 - Mr.Karthikeyan and the deceased was driving the Taxi bearing Registration No.TN 41 P 4980 belonging to P.W.3. Thus, A.1 and the deceased were known to him. According to him, on 18.07.2007, when he was proceeding to Coimbatore in his Taxi, he found the Taxi bearing registration No.TN 41 P 4980 near Velayudham Palayam Junction at Mullupadi railway gate by the side of the road. He knew that the said vehicle was driven by the deceased. Therefore, he stopped his vehicle near the said taxi. But, he did not find the deceased in the taxi. A.1 was sitting in the driver's seat. P.W.14 enquired as to why he was in the driver seat. For that, A.1 said that it was none of his botheration as to who was driving the vehicle. At that time, by the side of the taxi, he found four persons who were not previously known to him. Then he left the said place and

returned to Pollachi. Later on, he came to know about the occurrence. He has further stated that he identified A.2 to A.5 in the test identification parade as the persons who were standing by the side of the taxi bearing registration No.TN 41 P 4980.

11.P.W.15, the then Tahsildar has spoken about the exhumation of the body as requested by P.W.28 at the place identified by A.1 on 31.12.2007. P.W.16 is the Forensic Expert. She has stated that she conducted super-imposition examination of the skull found at the place of exhumation with the photograph of the deceased. She has further stated that the skull tallied with the photograph and thus, according to her evidence, the dead body which was exhumed was that of the deceased. P.W.17 has stated that on 31.12.2007, when A.1 identified the place from where the dead body was exhumed, he was present. P.W.18, a Taylor by profession has identified the shirt recovered from the dead body of the deceased as the one which was stitched by him for the deceased. He has identified the shirt (M.O.2) as that of the deceased which was found on the dead body at the time of exhumation.

12.P.W.19 is the yet another important witness for the prosecution. He is the former employer of A.1. A.1 was a Driver driving a Taxi belonging to P.W.19 for about three years. On one occasion, the Taxi namely bearing registration No.TMT 8710 met with an accident. A.1 was the Driver of the said vehicle. The said Taxi suffered huge damage. Because A.1 was responsible for the accident, he stopped engaging him as Driver. Thereafter, according to him, A.1 was driving various Taxis under different owners in Pollachi, for some time. He has further stated that he received Ex.P.29 letter sent to his address. The sender's address was that of A.1. On reading the said letter, he was shocked because, it contained the disclosure statement about two murders and stealing of two taxis by him with others. More particularly, the letter contained the statement that A.1 along with A.2 to A.5 abducted the deceased, killed him, buried the dead body at Mullupatti Village and had stolen away the Car (M.O.3). He had further stated that he was spending sleepless nights as he was suffering from bad night mares. He wanted money from P.W.19 as a help. P.W.19 has further stated that he handed over the said letter to P.W.28 on 30.12.2007. P.W.20 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.21 has spoken about the preparation of observation mahazar and rough sketch and also the recovery of material objects at the place where the dead body was exhumed. P.W.22 has stated that he was also a Taxi Driver at Pollachi. He was operating his Taxi from the very same taxi stand where A.1 was operating his taxi. He has further stated that A.2 used to come to the said stand to meet A.1 often. P.W.23 was examined to speak about the arrest of A.1;

the disclosure statement made by him; arrest of A.2 and A.3; the identification made by A.1; the disclosure statement made by A.2 and A.3 and the consequential recoveries made out of the same. P.W.24 has turned hostile and he has not supported the case of the prosecution in any manner. He was expected to speak to the fact that the Car bearing registration No.TN 41 P 4980 was driven by the deceased, in pursuance of the disclosure statement made by A.1.

13.P.W.25 Dr.Edwin Joe has spoken about the post mortem conducted by him. He has stated that since, the body was in a highly decomposed stage, he could not find the cause of death and he preserved the skull and forwarded the same to Court. P.W.26 is the Head Clerk of the Court. He has stated that the hand writing of A.1 was taken by him in the presence of the learned Judicial Magistrate and the same was forwarded to the hand writing Expert for comparing the same with the hand writing in the letter Ex.P.29. P.W.27, an Expert in DNA science has stated that DNA examination could not be conducted by extracting DNA from the bones of the dead body of the deceased because, such DNA analysis cannot be conducted without the DNA drawn from the parents of the deceased. In other words, DNA examination could be conducted only to compare the DNA drawn from the mother or father of the deceased and thus, there was no DNA examination conducted. P.W.28 has spoken about the investigation done and the final report filed in this case.

14.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side one Mr.Sekar and Mr.Rammohan were examined as D.Ws.1 & 2 respectively and Exs.D.1 to D.5 were marked. D.W.1 is a resident of Pethanayakampatti Village near Palani. He was selling Pasi Malai. A.1 was his customer. On 22.12.2007, around 5.00 pm, A.1 had come to his shop. At that time, two Policemen who were in uniform and few other Policemen who were in civil dress came there and arrested A.1 and took him under their custody. Immediately, according to D.W.1 he went to the house of one Mr.Rajavel, an Advocate whose house was situated near Palani and he informed about the same to him. Mr.Rajavel advised him to wait for one or two days and he also further stated that even thereafter, if A.1 was not released by the Policemen, then he could make complaint to the higher Police authorities. Accordingly, on 24.12.2007, since A.1 was not let off by the Police, he sent telegrams to the District Collector, Dindigul; the Superintendent of Police, Dindigul; the District Collector Coimbatore and the Superintendent of Police Coimbatore and also to the Home Secretary. Ex.D.1 is the postal acknowledgement for the said telegrams and Exs.D.2 to D.5 are the copies of the telegrams. D.W.2 claims to be the Secretary of an organization known as "Tamil Nadu All India Employees Agriculturist Federation". He

was running his Office at No.9A, Kandasamy Lay Out, Kavundampalayam, Coimbatore. He has stated that the Velayapalayam branch road is situated in Pollachi to Coimbatore Main Road.

15.Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 5 are before this Court with these Criminal Appeals.

16.We have heard Mr.Sankarasubbu, the learned counsel for the appellant in Crl.A.No.436/2014; Mr.S.Jayakumar, learned counsel for the appellant in Crl.A.No.482 of 2014; Mr.M.Murugesan, learned counsel for the appellant in Crl.A.No.490 of 2014; Mr.Sankarasubbu, learned counsel for the appellant in Crl.A.Nos.175 & 176 of 2015 and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17.This is a case based on circumstantial evidence. It is needless to point out that, in a case of this nature, the prosecution has to prove the circumstances projected by it, beyond reasonable doubts and all such proved circumstances, should form a complete chain, without any break, so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution in the present case.

18.There is no denial of the fact that the Taxi bearing registration No.TN 41 P 4980 (M.O.3) was owned by P.W.3 Mr.Jegan. It has also been established by the prosecution that the deceased was a Driver under P.W.3 and he was operating M.O.3 Taxi. It has also been established through the evidences of P.Ws.1 to 3 that the deceased was operating his Taxi from the Taxi Stand situated near the Telegraphic Office at Pollachi. P.W.1 has stated that on 18.07.2007, around 8.30 am, when the deceased was in his house, he received a phone call to engage his Taxi for hire to go for a trip. The deceased informed the same to P.W.1 and left the house. P.W.4 has stated that on 17.07.2007, he spoke to the deceased to engage his Taxi to go for a local trip on 18.07.2007. But, the deceased told that he would send some other Taxi as he was not available. Thus, the prosecution has established that the deceased left the house of

P.W.1 on 18.07.2007 around 8.00 am. We do not find any reason to reject this part of the prosecution and nothing has been elicited by the defence to create any doubt in this part of the case of the prosecution.

19.The next circumstance is that the deceased was seen alive around 12.45 pm on 18.07.2007 near the Durai Cinema Theatre at Pollachi. This has been spoken by P.W.6. He has stated that he was waiting near the said Cinema Theatre for his friend. At that time, he found A.1 standing near the theatre. After a short while, the deceased came there in the Taxi (M.O.3). P.W.6 noticed A.1 talking with the deceased for some time and then he got into the Car in the front seat. Then the deceased left the said place along with A.1 in his Car.

20.The learned counsel for the appellants would submit that P.W.6 is a Driver by profession and known to the deceased and thus, he is an interested witness whose evidence cannot be believed. In this argument, we do not find any force at all. It is not the law that an interested witness should be disbelieved. The learned counsel would further submit that the said witness did not disclose about the said facts immediately to the Police. Ofcourse it is true, but, there was no occasion for the said witness to disclose about the occurrence to anybody until the dead body of the deceased was exhumed after the arrest of A.1 he did not know that the deceased was no more. At any rate, for the infirmities pointed by the learned counsel for the appellant, we do not find any reason to reject the evidence of P.W.6. From this evidence, the prosecution has established that around 12.45 pm, on 18.07.2007, A.1 went along with the deceased in M.O.3 from Pollachi.

21.The next circumstance is the one spoken by P.W.7. As we have already stated, P.W.7 is an important witness for the prosecution. He has stated that on 18.07.2007, he had gone to Palani driving his Taxi on a trip. When he was returning to Pollachi via Udumalpet, at Udumalpet bus stand, he found M.O.3 Car driven by the deceased. He stopped his vehicle and found the deceased in the driver's seat and four others including A.1 in the Car. He enquired the deceased. The deceased told him that he was going on a trip. Then he left the said place. He identified A.2 to A.5 as the persons who were with A.1 and the deceased in the Taxi. In respect of the evidence of this witness, it is the contention of the learned counsel that being a Taxi Driver, he is also an interested witness and he has been planted by the Police. The learned counsel would further submit that the said witness did not disclose the said facts immediately to anybody. As we have already stated, there was no

occasion for this witness also to disclose about the occurrence to the Police immediately because, he was not aware of the fact that the deceased was no more. It was only after the incident came to his knowledge, he informed the same to the Police. During the test identification parade also, he identified A.2 to A.5 correctly. A.1 was already known to him. Thus, we do not find any reason to reject the evidence of P.W.7. From this evidence, the prosecution has established that from Pollachi, the Taxi driven by the deceased (M.O.3) had been taken to Udumalpet. In Udumalpet bus stand, M.O.3 was parked, for a while, in which, all the five accused along with the deceased were present.

22. Then comes the evidence of P.W.14. P.W.14 is also a Taxi Driver. When A.1 was driving the Taxi belonging to P.W.19, P.W.14 also operating his Taxi from the very same stand. Thus, A.1 was known to him very well. Similarly as a co-driver, the deceased was also known to him. He knew that the deceased was driving M.O.3. He has stated that on 18.07.2007, he was proceeding to Coimbatore. Near Mullupadi Village near Velapalayam Branch Road, he found M.O.3 parked by the side of the road. P.W.14 stopped his vehicle near the said Taxi. It was around 6.00 to 6.30 pm. At that time, he did not notice the deceased in the Taxi instead, A.1 was in the Driver's seat. There were four other persons in the Taxi. During test identification parade, he identified A.2 to A.5 as the said four persons in the Taxi. He identified all the five accused in the Court also. He has further stated that when he enquired A.1, as to why he was driving the Taxi which was usually driven by the deceased, A.1 replied that it was none of his business to know about it. Then P.W.14 returned to Pollachi. From the evidence of this witness, the prosecution has proved that around 6.00 to 6.30 pm, on 18.07.2007, the deceased was missing from the Car and all these five accused were in the taxi at Velapalayam Branch Road, Mullupadi Village. It is only from the said place, the dead body of the deceased was later on exhumed. The learned counsel for the appellant would submit that this witness is also a Taxi Driver and according to him, this witness has also been planted by the Police. Though, this witness has been cross examined at length, the learned counsel for the appellant is not able to point out anything in his evidence to create doubt in the evidence of this witness. Regarding the test identification parade, in which, he identified A.2 to A.5, the learned counsel would submit that the accused were already shown to this witness by the Police. But, during cross examination, though it was suggested to him that he had occasion to see all these five accused before the test identification parade, he denied the same. There is no other material on record to doubt the credibility of this witness. Thus, as rightly held by the trial Court, we believe P.W.14 and from his evidence, the prosecution

has established that, near the place of occurrence, where the dead body was buried, these accused were found moving together and they were in possession of the Taxi (M.O.3) belonging to the deceased. This is a very important circumstance for the prosecution.

23.The next circumstance projected by the prosecution is the letter received by P.W.19 on 29.12.2007 (Ex.P.29). The said letter was written by A.1. In that letter, A.1 had confessed to his guilt that he along with A.2 to A.5 abducted the deceased; killed him; buried the dead body; took away the Car and other properties and sold the same. This letter is in the nature of an extra judicial confession. This can be used as substantive evidence against A.1. But, we are unable to use so, since, though the said letter Ex.P.29 was sent to the hand writing Expert for examination with the sample handwritings of A.1, the report has not been marked and the Expert has also not been examined. Thus, there is no proof that Ex.P.29 is in the hand writing of A.1. Therefore, we are unable to attach any importance to this letter. We have got doubt as to whether Ex.P.29 could have been written by A.1 at all. Therefore, we hold that this circumstance projected by the prosecution stands not proved.

24.The next circumstance is the arrest of A.1. According to P.W.28, A.1 was arrested on 30.12.2007 at 7.45 pm as being identified by his former employer P.W.19. He was arrested in the presence of P.W.23 and another witness. On such arrest, he made a disclosure statement. It was only out of the said disclosure statement, the fact that the dead body of the deceased was buried at a particular place came to the knowledge of the Police. The dead body was thereafter exhumed by the Tahsildar (P.W.15) and other Police officials from the place identified by A.1. There is no reason to reject the evidence of P.W.15 (the Tahsildar); P.W.23 (the then Village Administrative Officer) P.W.28 & P.Ws.1 & 2. They have stated that the place where the dead body of the deceased had been buried was identified only by A.1. A.1 has got no explanation to offer. But the defence of A.1 is that he was not actually arrested on 30.12.2007. As a matter of fact, according to him, he was arrested on 22.07.2007 itself.

25.The learned counsel for the appellants would rely on the evidence of D.W.1 and Exs.D.1 to D.5. These telegrams were given on 24.12.2007 at 12.20 pm. Had it been true that A.1 was really taken by Pollachi Crime Police on 22.12.2007 itself, D.W.1 would not have kept silent for two days. After 24.12.2007 also, he did not make any complaint to any authority.

Considering the close friendship between D.W.1 and A.1, it is presumable that since, the Police were investigating the case intensively, A.1 with the help of D.W.1 had created such telegrams, as a precautionary measure to create a defence. Thus, we are unable to believe D.W.1 and we are unable to attach any importance to Exs.D.1 to D.5. We hold that A.1 was arrested only on 31.07.2007 and on his disclosure statement only, the dead body of the deceased was exhumed from the place which was identified by him.

26.It was A.1 who identified A.2 & A.3 and on their disclosure statements, the speaker (M.O.10) and other parts of the Car which were stolen were recovered. Similarly, from the disclosure statements made by A.4 & A.5, some more stolen properties were recovered. There is no explanation by A.2 to A.5, in respect of the possession of the stolen properties. Further, A.2 to A.5 were lastly seen in the company of the deceased in the Car (M.O.3). At that time, the deceased was in the Driver seat. After some time, according to P.W.14, in the Car (M.O.3), A.1 was in the Driver seat and A.2 to A.5 were in the Car. However, the deceased was not seen. Thus, it has been established that A.1 to A.5 were moving together. The Car in question was recovered on the disclosure statement made by A.1 from one Mr.Rajendran at Thiruvvarur. For the reasons best known, the prosecution has not examined Mr.Rajendran. But, on that score, the evidence of P.W.28 & P.W.23 who were recovered the Car from Mr.Rajendran at Thiruvvarur, on the disclosure statement made by A.1, cannot be disbelieved. A.1 was found in possession of Car (M.O.3) soon after the commission of crime. Thus, the presumption under Section 114 of the Indian Evidence Act, that A.1 along with A.2 to A.5 have committed the crime stands un-rebutted.

सत्यमेव जयते

27.In view of the foregoing discussions, we hold that the prosecution has proved all the circumstances projected by the prosecution except the circumstance that Ex.P.29 letter was written by A.1 and these proved circumstances form a complete chain, which, in our considered view, unerringly and unmistakably would go to prove that it was these five accused who abducted the deceased from Pollachi to Mullupadi village, killed him buried the dead body and then had stolen away the Car (M.O.3) and other properties. The trial Court was thus right in convicting all these five accused.

28.Thus, in our considered view, the trial Court was right in convicting the accused under all the above charges. We do not find any perversity in the judgment of the trial Court warranting interference at the hands of this Court. The quantum of punishment imposed by the trial Court also cannot be stated to be disproportionate. Thus, we do not find any merit in these appeals.

29.In the result, the Criminal Appeals fail and accordingly, the same are dismissed. The conviction and sentence imposed by the trial Court are confirmed. It is reported that some of the accused are in jail and some of them are on bail. The trial Court is directed to secure the presence of the accused those who are on bail and commit them to prison to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Court of the Sessions Judge
For trial of Bomb Blast Cases,
Coimbatore.

2.The Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District.

3.The Public Prosecutor,
High Court, Madras.

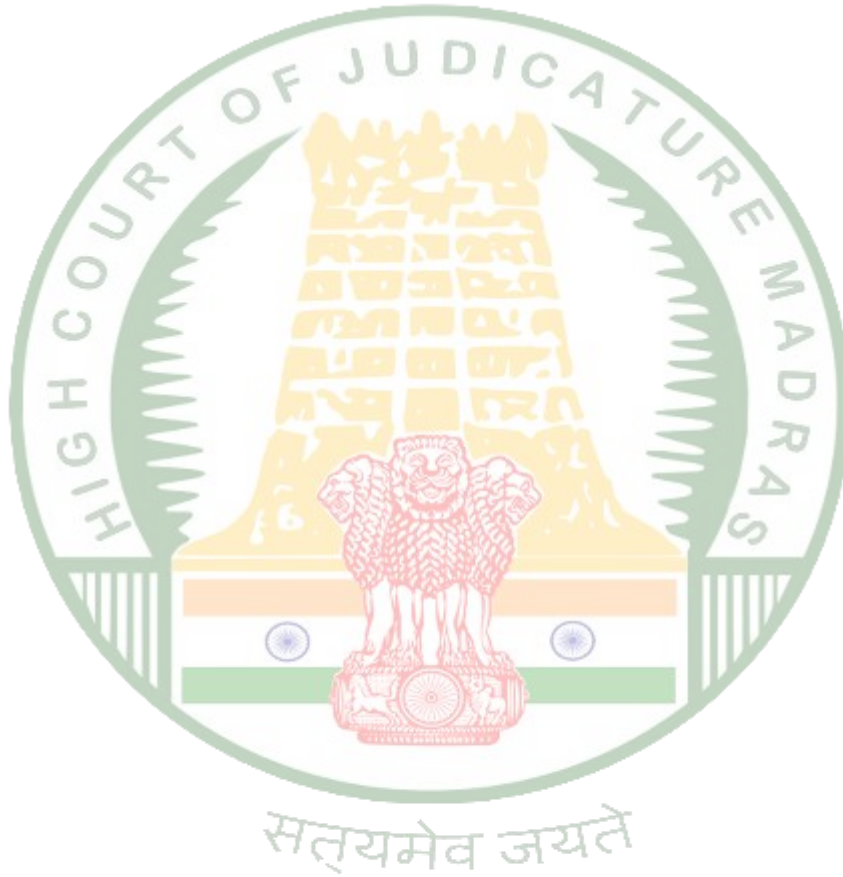
4.The Superintendent,
Central Prison, Coimbatore.

5.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.J.Franklin, Advocate sr.41996
+2cc to Mr.P.Pugalenth, Advocate Sr.41814, 41815

Crl.A.Nos.436, 490, 482 of 2014 &
175 & 176 of 2015

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srg 10/08/2016



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