

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13..07..2016

Pronounced on: 22..07..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.171 of 2015

John Anthonisamy @ John

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District.
[Crime No.363 of 2006]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Sessions Judge, Sessions Court for Trial of Bomb Blast Cases, Coimbatore, in S.C.No.189 of 2008 dated 22.07.2014.

For Appellant : Mr.R.Sankara Subbu for
Mr.P.Pugazhenth

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The Appellant is the Accused No.1 in S.C.No.189 of 2008 on the file of the learned Sessions Judge, Court for Trial of Bomb Blast Cases, Coimbatore. There were four other accused arrayed as A2 to A5. The trial court framed charges as against all the five accused as detailed below:-

Charge Number	Charges framed against	Penal Provision under which charges framed
1	A1 to A5	Section 120-B of IPC
2	A1 to A5	Section 147 of IPC
3	A1 to A5	Section 342 of IPC
4	A1 to A5	Section 364 of IPC
5	A3 to A5	Section 302 of IPC
6	A1 and A2	Section 302 r/w Sections 120-B and 149 of IPC
7	A1 to A5	Section 201 of IPC
8	A1 to A5	Section 396 of IPC

The trial court, by judgement dated 22.07.2014, acquitted A2 to A5 from all the charges, however, convicted A1 alone for offences under Sections 302 and 201 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for a further period of six months for offences under Section 302 of IPC; and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a further period of three months for offence under Section 201 of IPC. The trial court acquitted A1 of charges under Section 120-B, 149, 147, 342, 364 and 396 of IPC. Challenging the above said conviction and sentences, A1 has come up with this criminal appeal.

2.0. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Kunjan @ Rajan. P.W.3 is the wife of the deceased. P.W.1 was owning a taxi bearing Regn. No.TN 41 P 5856. The Registration of the said vehicle stood in the name of P.W.2, who is the wife of P.W.1. The deceased was employed as driver by P.W.1 to drive the said car. On 25.05.2006, the deceased returned from Madurai with the car and paid a sum of Rs.1,500/- as the day's collection of fare. Then, he told P.W.1 that on 26.05.2006, he would be going to Udumalpet driving the car for hire. On 26.06.2006, at 06.30 a.m., the deceased left his house after informing his wife (P.W.3). Thereafter, he did not return.

2.1. It is the case of the prosecution that A2 is a friend of A1 and A3 to A5 are the friends of A2. A1 was also driving a taxi for some time at Pollachi. In such a way, he knew the deceased. It is alleged that all the five accused, on 23.05.2006, hatched a conspiracy to stealthily engage the car driven by the deceased for hire and after taking him to a far off isolated place, kill him and then to steal the car and other personal belongings owned by the deceased. In pursuance of the said conspiracy, it is alleged that on 26.05.2006, A2 to A5 met A1 at Pollachi Thermutti Bus Stop. Then, A1 spoke to the deceased and fixed him for going to Udumalpet in the taxi driven by the deceased. Accordingly, the deceased came in the taxi to Thermutti Bus Stop. Then, all the five accused got into the taxi. The taxi was proceeding towards Udumalpet. When it was nearing the village known as Ammapatti, at an isolated place, the accused wanted the deceased to stop the car for a while. The deceased stopped the car. As soon as the car came to a halt, suddenly, A2 strangled the deceased by neck. A3 and A4 tied the hands of the deceased and A5 tied the legs of the deceased with ropes. Then, they put the deceased in between the front and back seats of the car. A3 to A5 sat on the back seat of the car and ensured that the deceased was not crying. The car was driven by A1. A2 sat next to the driver's seat. A2 had already kept a spade with handle in the car. When the car was proceeding, A3 to A5 strangled and smothered the deceased. A4 attacked the deceased with the handle of the spade. As a result, the deceased died. By that time, the car reached the place known as Nanjaikalikurichi where they parked the car by the side of the road; pulled out the dead body of the deceased from the car; then A4 dug a pit by the side of the road; and thereafter, all the five accused put the dead body of the deceased into the pit and buried the same. Soon after that, all the five accused vanished away from the scene of occurrence with the car.

2.2. P.W.1 tried to contact the deceased on 26.06.2006 over phone, but, the phone was in switch off mode. Then, P.W.1 came to the house of the deceased and met P.W.3. P.W.3 told that the deceased lastly left his house at 06.30 a.m. on 26.06.2006 and thereafter he did not return back. Then, P.Ws.1 and 3 went in search of the deceased to the taxi stand and other places. Since he was not found anywhere, at last, P.W.1 made a complaint [Ex.P.1] to the police on 30.05.2006 at 02.30 p.m.

2.3. P.W.11, the then Sub Inspector of Police, on receipt of the said complaint from P.W.1, registered a case in Crime No.363 of 2006 under section 406 of IPC. Ex.P.18 is the FIR. P.W.1, thereafter, forwarded both the complaint-Ex.P.1 and the FIR-Ex.P.18 to the jurisdictional court which were received by the learned Magistrate at 12.40 p.m. on 31.05.2006.

2.4. Taking up the case for investigation, P.W.11, examined P.Ws.1 to 3 and few more witnesses and recorded their statements. He went to the taxi stand and examined few persons. He, however, could not get any clue. Then, he collected the file photographs of the deceased from P.W.3 and made a wide publicity in all local newspapers about the missing of the deceased with the car. He even went to the extent of verifying with the check-posts to know whether the car had crossed any check-post. But, P.W.11 was not able to make any break through in the investigation. Therefore, he closed the case on 04.02.2007 as undetected. He served a notice in respect of the same on P.W.1. The learned Magistrate had accepted the said closure report.

2.5. As a matter of fact, between 26.05.2006 and 30.12.2007, that was, for about 1 1/2 years, there was no break through made in the investigation. While so, it is alleged that A1 wrote a letter to P.W.22 which was received by P.W.22 on 29.12.2007. A1 was formerly employed by P.W.22 as his driver to drive his taxi. A1 was driving the said taxi from a taxi stand in Pollachi for some time. The said taxi driven by A1 bearing Regn. No.TMT 8710 had met with an accident. According to P.W.22, because the accident was due to A1, he stopped employing A1 to drive his car. Thereafter, A1 was driving the taxi under different owners for some time. It is alleged that because of the said relationship between A1 and P.W.22, A1 wrote the letter (Ex.P.34). In that letter, A1 had confessed that he along with the other accused engaged the taxi in question, took the driver (deceased), killed him, buried the dead body and took away the taxi. He had further stated that some parts of the car were taken by A2 to A5 and the car was entrusted by him to one Mr.Nachimuthu Gounder. In that letter, A1 had requested P.W.22 to help him monetarily so as to get out of the problems. P.W.22, on 30.12.2007, went to the police station and handed over the letter to P.W.30. P.W.30, examined P.W.22. On going through the said letter (Ex.P.34), P.W.30 found that the accused had confessed to his guilt in two other similar cases registered in Crime Nos.1027 of 2007 and 422 of 2007 on the file of Pollachi East Police Station.

2.6. P.W.30 swung into action. On the same day, at 07.30 a.m., he took P.W.22 and another witness and he laid a trap near Appar Street, Venkatesa Colony, Pollachi. The accused was found in the house bearing Door No.86/125, Appar Street, Venkatesa Colony, Pollachi, which was identified by P.W.22. P.W.30 arrested A1 in the presence of the same witnesses. On such arrest, A1 gave a voluntary confession in connection with the case. In that confession, A1 disclosed the place where he had hidden the car in question. On the application of P.W.30, the learned Judicial Magistrate granted permission for further

investigation. A1, took P.W.30 and the witnesses to Ammapatti Village and identified A2 and A3. Accordingly, P.W.30 arrested A2 and A3 at 02.30 a.m. on 31.12.2017. On such arrest, both A2 and A3 also made independent voluntary confessions one after the other. In his confession, A2 disclosed the place where he along with the other accused had buried the dead body of the deceased and he also disclosed the place where they had buried the dead body of one John Thomas. He also disclosed the place where they had hidden a spade with handle, a cellphone and a car speaker. In pursuance of the same, A2 took the police and the witnesses to the place of hide out and produced the spade with handle (M.O.18). P.W.30 recovered the same under a mahazar (Ex.P.40). Then, at 05.45 a.m., A2 produced a cellphone (M.O.10). A3 in his confession disclosed the place where he had hidden a speaker and a CD player. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the speaker (M.O.11) and the CD player of car in question (M.O.4). P.W.30 recovered the same under a mahazar.

2.7. Thereafter, P.W.30, altered the case into one under Sections 302 and 396 of IPC. Then, on returning to the police station, he forwarded the accused to the court for judicial remand. He forwarded the material objects also to the court. On 02.01.2008, P.W.30 gave a request to the learned Magistrate for police custody of A1. He made a request to the court to conduct test identification parade for the accused. On 05.01.2008, test identification parade for A2 and A3 was held in which P.Ws.24, 25 and one Mr.Kumararaja identified them. Similarly, A4 and A5 were also put up for test identification parade. P.W.9 conducted test identification parade on 11.01.2008 during which, some witnesses identified A4 and A5. Then, on 07.01.2008, P.W.30 secured the police custody of A1 as per the orders of the learned Judicial Magistrate. While in custody, on the same day, at 05.30 p.m., A1 gave a voluntary confession in which he disclosed the place where he had parked the car and P.W.30 recovered the the car without engine and the gear box from P.W.16 as identified by A1. On the disclosure statement of A1, the car engine and the gear box were also recovered. Thereafter, the body was exhumed from the place identified by A1. On the spot, postmortem was conducted by P.W.29, the Doctor, at 02.00 p.m. on 10.01.2008 after the exhumation was made.

2.8. P.W.29 Dr.A.Karthikeyan, who conducted postmortem on the body of the deceased found the following:-

"Appearances found at the post-mortem -
White Half Shirt - One number, White Pant - One
number - Sip present - Locked, an elastic strip
of undergarment present, One stainless steel HMT
Wrist Watch - Time 2.20, Black Rexine slipper -

One pair present, White thread present, Red colour nylon rope with multiple knots in between the free ends and Decayed threads present, Dress materials are dirty with old stains present.

Soft tissues and hairs are missing.

Wounds:-

1. Skull bone - 3rd molars not erupted.

Basal suture not closed.

2. Mandible - 1, Third molars not erupted.

3. Thigh bone - 2 nos.

4. Tibia - 2 nos.

5. Fibula - 2 nos.

6. Humerus - 2 nos.

7. Radius - 2 nos, right radius upper and broken - post-mortem

8. Ulna - 2 nos.

9. Clavicle - 2 nos.

10. Sternum body - 1 no. manubrium sternum - 1 no.

11. Scapula - 2 nos.

12. Hip bone - 2 nos.

13. Sacrum - 1 no.

14. Patella - 2 nos.

15. Calcaneum - 1 no.

16. Talus - 1 no.

17. Lumbar vertebra - 5 nos.

18. Cervical vertebra - 3 nos.

19. Thoracic vertebra - 12 nos.

20. Ribs - 23 nos.

All other bones are missing. Some of them are wet and others are dried.

Opinion:

Origin : Human

Age : 20 - 25 years

Stature : 160 to 165 cms

All bones articulate with each other and belong to one individual. No ante-mortem fracture present. No pathological diseases or fracture present."

Ex.P.31 is the postmortem certificate. He collected the bones for DNA examination which later on proved that the bones were that of the deceased in this case. The doctor was, however, not able to give any definite opinion as to the cause of death because the body was highly decomposed and the skeletal remains alone were found. On completing the investigation, P.W.30 laid charge sheet against the accused.

3. Based on the above materials, the trial court framed as many as eight charges as detailed in the first paragraph of this judgement. A1 to A5 denied the same. In order to prove the case, on the side of the prosecution, as many as 30 witnesses were examined, 50 documents and 27 material objects were marked.

4.0. Out of the said witness, P.W.1 is the owner of the car bearing Regn. TN 41 P 5856. P.W.2 is the wife of P.W.1 in whose name the registration of the car stood. P.W.1 has stated that on 25.05.2006, the deceased came from Madurai in the taxi and then, he left his house informing that he would be going on a trip to Udumalpet, on the next day morning, i.e., on 26.05.2006.

4.1. P.W.3 is the wife of the deceased. She has stated that the deceased lastly left his house on 26.06.2006 at 06.30 a.m. Thereafter, neither the deceased was seen nor the car. Therefore, P.W.1 made a complaint to the police on 30.05.2006. P.W.4 is the brother of P.W.3. He has also stated about the missing of the deceased and the car. P.Ws.3 and 4 have further stated that after the dead body was exhumed on 10.01.2008, they identified the dead body from out of the dress materials found on the dead body.

4.2. P.W.5 has spoken about the arrest of A4 and A5, their voluntary confession statements and the consequential recoveries of material objects. P.W.6 was the then Judicial Magistrate No.II, Coimbatore. She has stated about the test identification parade conducted by her for A2 and A3 in which P.Ws.24, 25 and yet another witness identified A2 and A3 on all the three occasions. P.W.7, the then Head Clerk of the Court of Judicial Magistrate No.I, Pollachi, has stated that she forwarded the material objects to the Forensic Science Laboratory for chemical examination such as the skull and the femurs for DNA examination on the orders of the learned Magistrate for chemical examination. P.W.8, the then Head Clerk of the Court of Judicial Magistrate No.I, Pollachi, has stated that she forwarded the letter allegedly written by A1 and his specimen writings for comparison to the hand writing expert on the orders of the learned Judicial Magistrate. P.W.9, the then Judicial Magistrate No.II, Pollachi, has spoken about the test identification parade conducted for A4 and A5 in which P.Ws.24, 25 and another witness identified them on all the three occasions. P.W.10 is the Forensic Expert, who held DNA examination to find out the identity of the bones collected on exhumation for the purpose of DNA examination. The DNA samples extracted from the parents of the deceased were compared with the DNA of the dead body, the child and the wife of the deceased and from out of the same, P.W.10 has given his opinion that the bones, which were exhumed, were that of the deceased.

4.3. P.W.11 has spoken about the registration of the case on the complaint made by P.W.1 on 30.05.2006 at 02.30 p.m. He has further stated about the initial investigation done by him. He has further stated that he had closed the case as "undetectable". The final negative report was also accepted by the learned Magistrate. P.W.12, the Police Constable has stated that he was present when the postmortem was conducted by the doctor on the spot from where the body was exhumed. P.W.13 has stated about the recovery of the car in question from P.W.16 on the disclosure statement made by A1 on 08.01.2008. P.W.14 has also spoken about the recovery of the car on the confession of the accused. He has further stated about the recovery of M.Os.2 and 3 on the disclosure statement made by A1. P.W.15 has spoken about the disclosure statement made by A1 and the identification of the place by A1 from where the dead body was exhumed.

4.4. P.W.16 is the person from whom the car in question was seized by the police on the disclosure statement made by A1. According to him, in the year 2000, A1 brought the car in question and told him that there was financial problem for him and so he was not able to ply the vehicle; and A1 parked the car near his house and removed the engine and the gear box with the help of a mechanic and took away the same. The car without the engine and the gear box was parked near the house of P.W.16 from where it was recovered on the disclosure statement made by A1. P.W.17, an Advocate, is stated to have purchased the car engine and gear box from A1. P.W.17 has turned hostile and he has not supported the case of the prosecution in any manner.

4.5. P.W.18 is a Forensic Science Expert. She has stated that she conducted superimposition test on the exhumed skull. According to her, it tallied with the file photographs of the deceased. P.W.19 has stated that on 26.05.2006 at 07.30 a.m. at the taxi stand, he was talking to the deceased. At that time, the deceased received a phone call. Immediately, the deceased told that A1 spoke to him engaging the taxi. Accordingly, the deceased left the said place. He has further stated that he already knew A1 because he was also a taxi driver. P.W.20 is a mechanic by profession. He has stated that on 29.05.2006, at 10.00 a.m. A1 came to his work shop with a car. He told him that his yet another car got broke down and, therefore, he was in need of the help of P.W.20 to remove the engine and the gear box so that he could take it for repairing. Accordingly, P.W.20 accompanied A1. He took him to Othakadai Road via Palani - Kodaikanal Road section where, the car in question was parked. P.W.20 removed the engine and the gear box and handed over the same to A1. For the said work done, A1 paid a sum of Rs.1,000/- as coolie to P.W.20. P.W.21 has stated that during investigation he helped the police to seize the car from the place identified by A1. P.W.22, the former employer of A1 has

spoken about the letter (Ex.P.34) wherein A1 had confessed to his guilt. P.Ws.23, 24 and 25 have turned hostile and they have not supported the case of the prosecution in any manner.

4.6. P.W.26, the Village Administrative Officer, has spoken about the arrest of A1 on 30.12.2007 and the disclosure statement made by him. P.W.27 has spoken about the exhumation of the dead body at the place identified by A1. P.W.28, the then Judicial Magistrate, has stated that in his presence, the specimen hand writings of A1 were obtained by the police. But, unfortunately, the report of the hand writing expert has not been proved in evidence. P.W.29 has spoken about the autopsy conducted by him. He has further stated that since skeletal remains alone could be exhumed, opinion regarding cause of death could not be given. P.W.30 has spoken about reopening of the investigation after obtaining necessary permission from the learned Magistrate. He has further made narration of the entire investigation and the final report filed against the accused.

5. When the above incriminating materials were put to A1 to A5 under Section 313 of Cr.P.C. they denied the same as false. On their side, one Mr.Sekar has been examined as D.W.1. He has stated that during the relevant point of time, he was residing at Pethanaickenpatti village near Palani. He was doing Pasimani business. He was also practicing siddha. A1, according to him, was his customer. On 22.12.2007, at 05.00 p.m., A1 was taken into custody by the police at Ponmanthurai Village in his presence. In this regard, on 24.12.2007, he gave telegrams to various authorities like, the District Collector, the Superintendent of Police, etc. Ex.D.1 is the receipt for the issuance of telegram and Exs.D2 to D5 are the copies of telegrams addressed to various authorities. Thus, according to him, A1 was arrested on 22.12.2007 itself. Their defence was a total denial.

6. Having considered all the above, the trial court convicted the Appellant/A1 alone as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 is now before this Court with the present criminal appeal.

7. We have heard the learned counsel appearing for the appellant/A1 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

8. This is a case based on circumstantial evidence. The prosecution has projected many circumstances in an attempt to prove the guilt of A1 to A5. But, the trial court had disbelieved the case against A2 to A5. The trial court has believed the circumstances proved against A1 alone and has found

him guilty. The first and the foremost circumstance projected by the prosecution is that the deceased left the house of P.W.1 on 25.06.2006 late in the evening. According to P.W.3, the wife of the deceased, he left his house on 26.06.2006 at 06.30 a.m. There is no dispute that the deceased was driving the taxi bearing Regn. No. TN 41 P 5856 which belonged to P.W.1 and P.W.2. P.W.19 has stated that on 26.05.2006 at 07.30 a.m., the deceased was in the taxi stand with the taxi. He was talking to him. At that time, A1 spoke to the deceased over phone and engaged his taxi. The deceased conveyed the said message to P.W.19 and left the said place. Thus, in our considered view, the prosecution has succeeded in establishing that the deceased was lastly seen alive at 07.30 a.m. on 26.05.2006 and at that time, he was in possession of the car bearing Regn. No. TN 41 P 5856.

9. Since the deceased had not returned, P.W.1 went in search of the deceased and the car in the taxi stand and then, at the house of the deceased. P.W.3, in turn, told that the deceased, who left on 26.06.2006 early in the morning, had not returned thereafter. All of them went in search of the deceased. Neither the deceased nor the car was seen. Therefore, P.W.1 made a complaint on 30.05.2006 and P.W.11 registered the case.

10. P.W.11 made all-out efforts to make a break through in the investigation, but, was not able to get any clue. Therefore, according to P.W.11, he closed the case on 04.02.2007. He gave a notice in this regard to P.W.1 also. From the evidence of P.W.30 it is seen that the said closure report was also accepted by the learned Magistrate.

11. At this juncture, we have to express our anguish and shock as to how P.W.11 could decide to close the case as undetectable without making any attempt to trace out the deceased and the car. It is also not understandable as to how the learned Magistrate had felt justified to simply accept the final negative report without ordering for further investigation in the matter. With this, we stop. We do not want to make any more comment about P.W.11 and the learned Magistrate. Thus, from 04.02.2007 onwards, there was no investigation at all done by the police. It is really something deplorable and shocking.

12. While so, according to P.W.22, he received Ex.P.34-letter from A1 on 29.12.2007, that was, nearly after 1 1/2 years. P.W.22 handed over the letter to the police on 30.12.2007 and it was only thereafter, P.W.30 thought it fit to reopen the investigation with necessary permission from the jurisdictional Magistrate. But, for the letter, we are of the view that the police would have simply given a decent burial to the case once for all. According to the learned counsel for the appellant, this letter was not written by A1 at all. What has been marked

is not the original, but, only a Xerox copy. It is explained to the court that the original has been marked in connection with another case in which also the said letter is relevant. The only issue which needs to be examined is, whether the said letter (Ex.P.34) was written by A1 to P.W.22.

13. The learned counsel for the appellant/A1 would submit that after 1 1/2 years of the occurrence, that too, after the closure of the case, there was no need or occasion for A1 to write such a letter confessing to his guilt not only in the instant case, but, in other cases as well. But, we are not persuaded by the said argument for, in the letter itself, A1 has explained as to why and for what reason he was forced to write such letter. He had stated that he needed the help of P.W.22 monetarily to come out of the clutches of law inasmuch as he was looked out by the police. Therefore, we hold that there was occasion for A1 to write such letter.

14. The learned counsel for the appellant would next submit that the hand writing in the letter has not been proved to be that of A1. We find force in this argument. P.W.22 has stated that the sample hand writings of A1 were obtained in his presence. It is also in evidence that the same were sent for comparison. But, the report of the hand writing expert who compared the hand writings in Ex.P.34 with the sample hand writings of A1 has not been marked in evidence. Neither the expert has been examined. Thus, in our considered view and as rightly pointed out by the learned counsel for the appellant, there is no proof that Ex.P.34 letter was written by A1. Therefore, we are not inclined to give any weightage for Ex.P.34-letter.

15. P.W.22 has further stated that in his presence P.W.30 arrested A1 from his house. On such arrest, he made a voluntary confession in which, A1 disclosed the place where he had buried the dead body of Kunjan @ Rajan. The dead body was exhumed from the place identified by A1. The superimposition test conducted on the skull and the DNA examination conducted on the bones had proved that the dead body was that of the deceased-Kunjan @ Rajan. But, the fact that the dead body had been buried at the said place came to light only out of the disclosure statement made by A1. It is not explained to the court by A1 as to how, he did come to know about the burial of the dead body at that particular place, if really, he was not the perpetrator of the crime. In the absence of any such explanation, in our considered view, this only circumstance that the dead body of the deceased was exhumed from the place identified by A1 by itself may be sufficient to hold that he was the perpetrator of the crime.

16. Apart from that, the car in question was recovered from P.W.16 only on the disclosure statement made by A1. P.W.16 has stated that on 29.05.2006, A1 came to his house and parked the car near his house. A1 told him that he was in financial stress and therefore, he was unable to ply the car. He further told him that he had, therefore, decided to dismantle the car and to sell the same. Thereafter, according to P.W.16, A1 brought a mechanic and with his help, he removed the engine and the gear box from the car. P.W.20, the motor vehicle mechanic has stated that A1 took him to the house of P.W.16 and he wanted him to remove the engine and the gear box from the car. Accordingly, he removed them and handed over the same to A1 for which he was paid Rs.1,000/- as coolie. The engine and the gear box were recovered from P.W.17, an Advocate by profession. According to the case, P.W.17 purchased these two parts of the car from A1. But, P.W.17 has turned hostile and he has not supported the case of the prosecution. The witnesses for the recovery of the engine and the gear box, including the investigating officer, have stated that these two parts of the car were recovered only from P.W.17. But for the disclosure statement made by A1, the fact that the engine and the gear box were in the custody of P.W.17 would not have come to light. This is yet another very strong circumstance against A1.

17. As stated above, on the disclosure statement made by A1, three relevant facts were discovered, viz., (1) the dead body was exhumed from the place identified by A1; (2) the car without engine and gear box, was recovered from P.W.16 as identified by A1; and (3) the engine and the gear box of the car were recovered from P.W.17. A1 has got no explanation for his possession of these material objects soon after the commission of theft. Therefore, we have to necessarily draw a presumption under Section 114 of the Evidence Act that it was this appellant/A1 who had stolen these material objects from the deceased. As we have already pointed out, the death of the deceased and the removal of these material objects had taken place in one and the same transaction. Thus, it is presumable that the person who committed the theft of the materials objects, had caused the death of the deceased also.

18. The learned counsel for the appellant would lastly submit that the cause of death has not been proved. It is true that the doctor who conducted autopsy on exhumation of the body could not give any opinion regarding the cause of death inasmuch as the body was exhumed after several months of occurrence and except skeletal remains, no other part of human body could be exhumed. It is quite natural that from the skeletal remains, the doctor was not able to give any opinion regarding the cause of death. In this regard, we deem it necessary to mention that it is not necessary that in every case, the cause of death

should be proved only by means of medical evidence by conducting autopsy on the dead boy. There are cases where even if the corpus delicti could not be detected, the cause of death could be proved by means of other circumstances. In the present case, though the skeletal remains of the dead person were recovered, the cause of death could not be proved, by means of medical evidence. But, by means of other circumstances, the cause of death has been clearly proved by the prosecution. It is in evidence that the deceased had been killed, dead body was buried and the car was stolen away by A1. It is true that some of the articles like, speaker, CD player were recovered from the other accused and they have been acquitted. So far as those accused are concerned, according to the trial court, there was no sufficient evidence to convict them. The State has also not made any appeal as against the acquittal of A2 to A5. Thus, we cannot go into the issue whether the acquittal of A2 to A5 is correct or not and we are now concerned with the correctness of the conviction and sentence imposed on A1 alone. As we have already concluded hereinabove, the prosecution has clearly proved the guilt of A1 and so the trial court was right in convicting for murder and screening the evidence of murder. Unfortunately, there is no conviction for the appellant for robbery. The State has also not filed any appeal. So, we cannot go into the same in this appeal.

19. Now turning to the quantum of sentence, the trial court itself has inflicted only a proportionate minimum sentence which also does not warrant any interference at the hands of this court. Thus, we do not find any merit at all in this appeal and the same deserves only to be dismissed.

20. In the result, this criminal appeal is dismissed. The conviction and the sentences imposed on the appellant/A1 by the trial court are hereby confirmed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge, Court for Trial of Bomb Blast Cases,
Coimbatore District.

2.-Do-Thro The Principal Sessions Judge,
Coimbatore.

3.The Judicial Magistrate, No.1,
Pollachi.

4.-Do-Thro The Chief Judicial Magistrate,
Coimbatore.

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

6.The Superintendent,
Central Prison,
Coimbatore.

7.The District Collector,
Coimbatore,

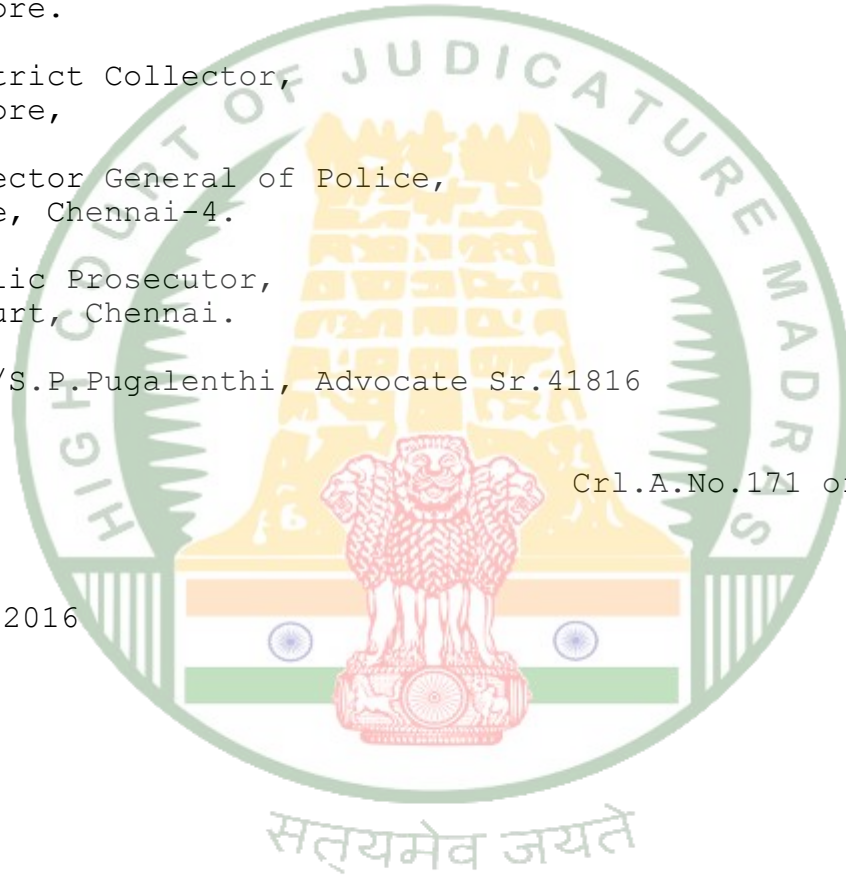
8.The Director General of Police,
Mylapore, Chennai-4.

9.The Public Prosecutor,
High Court, Chennai.

+1cc to M/S.P.Pugalenth, Advocate Sr.41816

Crl.A.No.171 of 2015

ug[co]
srg 11/08/2016



WEB COPY