

BAIL SLIP

The Petitioner/Accused No.2 Viz., Abdullah, S/o.Pandian, was directed to be released on bail as per the Order of this Court dated 18.06.2015 in M.P.No.1 of 2015 in CrI.A.No.208 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 18.07.2016

Judgement Pronounced on : 29.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.433 and 208 of 2015

Arumugam [A1] ... Appellant in CrI.A.433 of 2015
Abdullah [A2] ... Appellant in CrI.A.208 of 2015

-Versus-

State Rep. by
The Inspector of Police,
Veppur Police Station,
Cuddalore District.
[Crime No.410 of 2007] ... Respondent in both Criminal Appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned III Additional Sessions Judge, Cuddalore at Virudhachalam, in S.C.No.229 of 2008 dated 19.03.2015.

For Appellant (s) : Mr.R.Sanakarasubbu for
Appellant/A1 in CrI.A.No.433
of 2015

Mr.K.Ramesh for Appellant/A2
in CrI.A.No.208 of 2015
[Court appointed Legal Aid
counsel]

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

COMMON JUDGEMENT

S.NAGAMUTHU, J.

The appellant in Crl.A.No.433 of 2015 is the Accused No.1 and the appellant in Crl.A.No.208 of 2015 is the Accused No.2 in S.C.No.229 of 2008 on the file of the III Additional Sessions Judge, Cuddalore at Virudhachalam. They stood charged for offences under Sections 302, 201 r/w 302, 392 and 201 r/w 392 of IPC. The trial court, by judgement dated 19.03.2015, convicted both A1 and A2 under all the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a further period of two years for the offence under Section 302 of IPC; to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a further period of six months for offence under Section 392 of IPC; to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a further period of six months for offence under Section 201 r/w 302 of IPC; and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a further period of six months for offence under Section 201 r/w 392 of IPC. Challenging the above said conviction and sentences, A1 and A2 have come up with these criminal appeals.

2.0. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Madhavan. He was employed as a driver in a Lorry Transport concern known as "Sri Meenakshi Transports", Chennai. P.W.6 was a manager in the said company. P.W.14 is yet another manager in the same company. On 30.11.2007, 16 Tons of Bitumen [also known as "Tar"] was transported in the tanker lorry bearing Regn. No.TN 22 L 2518 belonging to the said Transport concern, from IOC, Chennai. The deceased was the driver of the said lorry. The tanker lorry loaded with tar left Chennai on 01.12.2007. The consignment of tar was meant to be delivered to a company known as "JMC Project (I) Limited" at Thuvarankurichi. The lorry was proceeding via, Koyambedu Bus Stand at Chennai. There, when the deceased stopped the lorry for a while, these two accused came and approached the deceased and wanted him to permit them to travel in the said lorry upto Perambalur. Since Perambalur was in between Chennai and Thuvarankurichi, the deceased allowed them to travel in the said lorry as a measure of help. The lorry was then proceeding towards Thuvarankurichi on the National Highway. Around 03.00 a.m. on 02.12.2007, when the lorry reached a place known as "Kalugur Village", for taking rest for some time, the deceased stopped the lorry by the side of the road. A1 and A2, who were sitting in the cabin of the lorry, decided to rob the tanker

lorry with consignment loaded therein utilizing the said opportunity. They acted swiftly, smothered the deceased to suffocation and killed him. Then, they threw the dead body in the maize field of one Mrs.Pitchayee Ammal and took away the lorry, loaded with tar. It is further alleged that they drained the tar from the tanker in 67 barrels and sold the same to one Mr.Sakthikumar [P.W.16] at Arainarai Village for a total consideration of Rs.2,30,000/-. The barrels filled with tar were stored by P.W.16 in his field for the purpose of selling the same to various third parties for higher value. Then, A1 and A2 shared the sale proceeds among themselves. Thereafter, they took the empty lorry to Ranganathapuram village where, A1 parked the same by the side of the High Road after changing the number plate with a fake registration number. Then, both A1 and A2 went to their respective house without disclosing anything about the occurrence. The entire occurrence was thus not witnessed by anyone.

2.1. P.W.1 was the then Village Administrative Officer of Kalugur village. On 05.12.2007 at 05.00 p.m. when he was at his Office, his Assistant one Mr.Periyasamy informed him that there was a dead body of a male lying in the field of one Mrs.Pitchayee Ammal in Kalugur Village. He immediately went to the place of occurrence where he found the dead body. There were blue colour jatti and sleeveless banian on the dead body. Thereafter, P.W.1, went to Veppur Police Station and made a complaint (Ex.P1) to the police at 08.00 p.m. One Mr.Kandasamy, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in crime No.410 of 2007 under Section 174 of Cr.P.C. Ex.P.31 is the FIR. Then, he forwarded both the complaint-Ex.P1 and the FIR-Ex.P31 to the jurisdictional court which were received by the learned Magistrate at 05.45 p.m. on 11.12.2007.

2.2. In the mean while, P.W.6, the Manager of Meenakshi Transports, was informed over phone by JMC Project (I) Limited that the tanker lorry loaded with tar had not reached their company and the consignment was not delivered. P.W.6 waited for some information till 03.12.2007. Since the lorry had not reached the consignee at Thuvrankurichi and delivered tar load at JMC Project (I) Limited till 03.12.2007, on 03.12.2007 and since there was no information from the deceased, P.W.6, went to Perambalur by bus. Since, he was unable to trace out the driver [the deceased] and the lorry loaded with tar anywhere, he went to Perambalur Police Station and made a complaint [Ex.P.12] on 07.12.2007 at 11.00 p.m. P.W.4, the then Sub Inspector of Police, Perambalur Police Station, on receipt of the said complaint, registered a case in Crime No.885 of 2007 under Section 379 of IPC. Ex.P.36 is the FIR. Then, he forwarded both

the complaint-Ex.P.12 and the FIR-Ex.P.36 to the jurisdictional court which were received by the learned Magistrate at 12.30 a.m. on 08.12.2007.

2.3. P.W.36 took up the above said case for investigation. P.W.6 on making thorough inquiries came to know that the tar load consigned in the lorry in question had been sold to P.W.16 at Aranarai village. Based on the same, P.W.36 went to Aranarai village and found 25 barrels of tar in the go-down. P.W.36, prepared an observation mahazar and a rough sketch in respect of the said place in the presence of the witnesses. He interrogated P.W.16 and then recovered 25 barrels of tar from the possession of P.W.16 under Ex.P.16 mahazar in the presence of P.W.15 and another witness. He recovered a sum of Rs.1,00,000/- from P.W.16.

2.4. When the investigation was in progress, A1 appeared before P.W.16, the then Village Administrative Officer, Perambalur North Village, at his Office at 03.00 p.m. on 09.12.2007. On such appearance, A1 wanted to confess his guilt. Having been satisfied that A1 was voluntarily willing to give confession, P.W.17 allowed him to confess orally which P.W.17 reduced into writing. Ex.P.20 is the said extra judicial confession given by A1. Thereafter, P.W.17 prepared a special report and took the accused to the police station and produced him before P.W.36 at 05.00 p.m. on 09.12.2007 along with the extra judicial confession. In the said extra judicial confession, A1 gave a complete narration of the entire events as to how he along with A2 got into the lorry at Koyambedu bus stand with the permission to travel upto Perambalur and as to how they killed the deceased, threw the dead body and as to how they sold the tar load to P.W.16 and all other details. P.W.36 arrested A1. On such arrest, A1 made a voluntary confession to P.W.36 in the presence of P.W.17 and another witness. In the said confession, he disclosed the place where he had hidden the lorry bearing Regn.No.TN 22 2518. In pursuance of the said disclosure statement, he took the police and the witnesses to the place of hide out and produced the said lorry and a sum of Rs.60,000/-. In the said confession, he further disclosed the place where he along with A2 had thrown the dead body of the deceased. In pursuance of the same, he took the police and the witnesses to the maize field of Mrs.Pitchayee Ammal at Kalugur Village and identified the place where he along with A2 had thrown the dead body. During further investigation, P.W.36 came to know that a dead body was found at that place identified by A1 and in connection with the same, on the complaint of P.W.1 to the police, a case had been registered in crime No.410 of 2007 on the file of Veppur Police Station, under section 174 of Cr.P.C. and the case was under

investigation. On returning to the police station, he forwarded A1 to the court for judicial remand. Then, on the orders of the superior police officer, the investigation in respect of the case in Crime No.885 of 2007 on the file of Perambalur Police Station was transferred to the Inspector of Police, Veppur Police Station so as to club the same along with case in Crime No.410 of 2007 on the file of Veppur Police Station.

2.5. P.W.37 was the then Inspector of Police, Veppur Police Station. As we have already narrated above, on 05.12.2007, on the complaint of P.W.1, the case in Crime No.410 of 2007 had been registered under Section 174 of Cr.P.C. P.W.37 took up the case for investigation. He went to the place of occurrence along with a police photographer and a Forensic Science Expert at 06.30 a.m. on 06.12.2007. He prepared an observation mahazar and a rough sketch in the presence of the witnesses. The identity of the dead body was not known then. He conducted inquest on the dead body between 08.00 a.m. and 10.00 a.m. on the same day in the presence of the panchayatars and prepared an inquest report (Ex.P41). The police photographer took photographs of the dead body and the place where the dead body was lying. The Finger Print Expert could not trace out any clue at the place of occurrence. P.W.37, thereafter, requested to the doctor to come over to the place where the dead body was found for conducting postmortem.

2.6. P.W.29, Dr.C.Velmurugan, the Assistant Surgeon, conducted autopsy on the body of the deceased at 09.15 a.m. on 06.12.2007. He found the following :-

"Identification and caste marks

(1) Could not be made out due to decomposed state of the body.

The body was first seen by undersigned at 01.05 p.m. on 06.12.2007. Its condition then was body in fully decomposed state & RM passed off in all four limbs.

Postmortem commenced at 01.05 p.m. on 06.12.2007.

Appearances found at the postmortem of a moderately nourished male body lying on its back in a maize field about 150 mts from Trichy Chennai highways road towards west at Kazhuthur Village, with head in the north east direction, legs extended in the south west direction and both upper limbs upwards and out wards direction.

External Injuries:

No obvious visible injuries seen over the external surface of the body.

External Appearance: Entire body is bloated

and discoloured abdomen distended. Patches of greenish discoloration seen over the chest, neck, arms and legs, Maggots seen crawling over the body. Face bloated both eye balls absent. Maggots seen crawling over both eye sockets, nose & mouth, tongue bitten between teeth, teeth loose, hair sparse and loose over the scalp, peeling of cuticles seen over the anterior aspect of neck, anterior aspect of chest and left Inguinal region.

Abdomen over left side burst and intestines seen lying outside. Right hand below the wrist absent and only first three metaphalanges seen finger nails over left hand and toe nails bluish in colour and are loose.

Internal Examination:

Hyoid bone sent for HPE. No fracture of ribs. Larynx and trachea softened heart soft and flabby, chambers empty. Lungs soft and multiple small petechial hemorrhages seen over the external surface and inter lobar fissure of both lungs. Spleen soft and pulpy stomach and intestines in decomposed state. All internal organs stomach and bit of intestines and sample of blood preserved and sent for analysis. On opening of scalp no fracture skull bone seen. Brain matter liquefied."

P.W.29, the doctor, preserved the entire skull bone and middle 1/3 of right femur and forwarded the same to the Forensic Science Laboratory for identification purpose. The chemical analysis on visceral organs revealed that there was no poison was detected in any of the visceral organs. The hyoid bone was intact. He opined that the death of the deceased was due to asphyxia due to smothering. P.W.37 was working hard to find out the identity of the deceased. But, he was not able to make any break through.

2.7. While so, on 09.12.2007, P.W.36, who was investigating in the other case in Crime No.885 of 2007 gave an intimation to P.W.37 about the arrest of A1, confession made by A1 and the consequential recovery made out of the said confession. It was only thereafter, the investigation of the case in Crime No.885 of 2007 was transferred on the orders of the superior police officer so as to club along with the case in Crime No.410 of 2007 on the file of Veppur Police Station. P.W.37, accordingly, proceeded further with the investigation of the case in Crime No.410 of 2007 on the file of Veppur Police Station. The family members of the deceased identified the dead body as that of the

deceased from out of the photographs of the dead body. In the meanwhile, A1 had been remanded to judicial custody on being forwarded to the learned Judicial Magistrate, Perambalur in connection with the case in Crime No.885 of 2007 on the file of Perambalur Police Station. On a PT warrant, he was produced before the Judicial Magistrate No.I, Virudhachalam and remanded to judicial custody in connection with the present case on the file of Veppur Police Station.

2.8. On 12.12.2007, A2 had surrendered before the Judicial Magistrate No.V, Trichy. On a request made by P.W.37, he was produced before the learned Judicial Magistrate NO.I, Virudhachalam on a P.T. Warrant and he was remanded to judicial custody in connection with the said case by the learned Magistrate. On a further request made by P.W.37, on 18.12.2007, both A1 and A2 were given police custody on the orders of the learned Judicial Magistrate, Virudhachalam. While in custody on 19.12.2007, in the presence of P.W.1 and another witness, A1 gave a voluntary confession in which he disclosed the place where he had hidden the lorry, a original lorry number plate, a lorry name plate and a pawn receipt evidencing pledging of a gold jewel for cash with Canara Bank, Perambalur Branch. At 11.15 a.m., A2 gave a voluntary confession in which he disclosed the place where he had hidden a shirt, lungi and a towel besides a sum of Rs.50,000/- being the balance illegal sale proceeds from his house.

2.9. In pursuance of his disclosure statement [Ex.P.3], A2 took the police and the witnesses the place of hide out and produced a shirt (M.O.1), lungi (M.O.2) and a towel (M.O.3) and then at 05.00 p.m. on the same day A2 took his house wherefrom he produced a sum of Rs.50,000/- (M.O.18) being the balance illegal sale proceeds from the hide out. P.W.36 recovered the same under mahazars, Exs.P.4 and P.5 respectively.

2.10. A1, in pursuance of his disclosure statement [Ex.P2], at 06.00 p.m. on the same day, took the police and the witnesses to the place of hide out near his house and produced the lorry number plate (M.O.4) and then at 07.00 p.m. A1 produced the pawn receipt (Ex.P.8). P.W.36 recovered the same under two independent mahazars namely Exs.P6 and P.7. On 20.12.2007, P.W.36 produced both the accused before the learned Magistrate, who in turn, remanded them to judicial custody.

2.11. P.W.37, thereafter, made a request to the learned Magistrate for conducting test identification parade. P.W.33 the then learned District Munsif-cum-Judicial Magistrate, Thittakudi conducted test identification parade on 21.01.2008 in which P.Ws.20, 21, 22 and 23 participated. In the test identification

parade, they identified both A1 and A2 correctly. Then, P.W.37 recovered the documents pertaining to the lorry, examined many more witnesses and filed charge sheet against both A1 and A2 on 30.04.2008.

3. Based on the above materials, the trial court framed as many as four charges as against A1 and A2 as detailed in the first paragraph of this judgement. They denied the same. In order to prove the case, on the side of the prosecution, as many as 37 witnesses were examined, 43 documents and 18 material objects were marked.

4.0. Out of the said witnesses, P.W.1, the Village Administrative Officer, has stated about the fact that a dead body was found on 05.12.2007 and also the fact that he made a complaint to the police in this regard. He has further stated about the disclosure statement made by both the accused while in custody on 19.12.2007 and the consequential recoveries of material objects made. P.W.2 is the cultivating tenant under one Mr.Ponnusamy on whose land the dead body was found. He has spoken about the same. P.W.3, the neighbour of the land has also stated that the dead body was found in the field of P.W.2 on 05.12.2007. P.Ws.4 and 5 are neighbours of P.W.2 and they have also stated about the fact that the dead body was found on the field of P.W.2 on 05.12.2007. P.W.6 is the Manager of Sri Meenakshi Transports at Chennai. He has stated that the lorry bearing Regn. No.TN 22 L 2518 left IOC, Chennai to Thuvarankurichi with the consignment of tar and the deceased was the driver. Ex.P.10 is the goods consignment note. Ex.P.11 is the Invoice. He has further stated about the complaint made by him at Perambalur Police Station in respect of missing of the lorry with driver namely, the deceased. P.Ws.7 to 11 have turned hostile and they have not supported the case of the prosecution in any manner.

4.1. P.W.12, is the owner of P.W.13. P.W.13 is the owner of the lorry (M.O.6) involved in the case. They have spoken about the ownership of the lorry and the fact that the deceased was the driver of the lorry. They have also stated about the fact that the lorry left IOC, Chennai to Thuvarankurichi with tar load on 30.11.2007 and latter on, the lorry and the driver were missing. They have also spoken about the case registered on the complaint of P.W.6.

4.2. P.W.14 is the yet another manager of Sri Meenakshi Transports. He has stated that the tanker lorry loaded with tar left Chennai on 01.12.2007 at 11.00 a.m. Then, on 04.12.2007, he came to know that the tar loaded in the tanker lorry had been sold to P.W.16. P.W.15 has spoken about the recovery of 25

barrels of tar under Ex.P.16 mahazar from P.W.16 at 12 30 p.m. on 08.12.2007 and also recovery of cash. P.W.16 has turned hostile. He has not supported the case of the prosecution in any manner. P.W.17 was the then Village Administrative Officer of Perambalur North. According to him, on 09.12.2007 at 03.00 p.m. A1 appeared before him and made a voluntary confession orally which he reduced into writing. Ex.P.20 is the said extra judicial confession. He has further stated that thereafter he produced A1 before P.W.36 along with the extra judicial confession. He has further stated about the disclosure statement made by A1 to P.W.36 and the consequential recovery of the material objects.

4.3. P.W.18 is the wife of the deceased and P.W.19 is the son of the deceased. They have stated that the deceased lastly left Chennai driving the lorry in question to Thuvankurichi. P.W.20 is the cleaner of the lorry bearing Regn. No.TN 22 AV 5506. The said lorry had gone to Aruppukottai with the load of tar and after unloading the consignment, they were returning to Chennai. Enroute Chennai, around 03.00 a.m. they found the lorry bearing Regn. No.TN 22 L 2518 driven by the deceased parked at Kaludur village by the side of the road. Since the said lorry also belonged to Sri Meenakshi Transports, in which, he was also employed, he wanted his driver to stop the lorry and after getting down from the lorry, he went near the other lorry. At that time by the side of the lorry, there were two persons standing. When he inquired them, they told that the driver was sleeping. They further told that since there was no work in Chennai for them, they were returning in the lorry with the help of the driver to Perambalur. At that time, he found the driver namely, the deceased, sleeping in the lorry. According to P.W.20, since the deceased was sleeping, he did not wish to disturb him. Therefore, he along with his driver took off their lorry and proceeded to Chennai. Later on, he came to know that the tanker lorry bearing Regn. No.TN 22 L 2518 was missing. Thereafter, he informed the fact that the lorry was found at Kaludur village. Later on, during test identification, he identified A1 and A2 as the persons who were found standing near the lorry with whom he inquired.

4.4. P.W.21 was a lorry driver in the same company. According to him on 01.02.2007, he was the driver of the lorry bearing Regn. No. TN 01 5511. He was to go to Afcon Company at Arasur carrying tar load in the said lorry. One Mr.Gunasekaran, who was working in the said company came along with him in the said lorry. The deceased, who was the driver of the lorry bearing Regn. No.TN 22 L 2518, had forgotten the invoice and therefore, his company supervisor gave the invoice to this witness and wanted the same to be handed over to the deceased.

Accordingly, they found the lorry on their way to Arasur. When he gave the invoice to the deceased, the deceased put on the cabin light of the lorry and at that time there were two persons sitting in the cabin. When he asked as to why he was taking two persons, who were unknown to him, the deceased told that they requested him to allow them to travel in the lorry up to Perambalur. He has also identified A1 and A2 during test identification parade as well as in court during trial.

4.5. P.W.24 was the then Branch Manager of Canara Bank, Perambalur Branch. He has stated that on 20.09.2007, A1 pledged a gold jewel weighing 40.900 grams for a sum of Rs.22,000/-. Later on, on 03.12.2007, the said gold jewel was redeemed by A1. Again, when A1 was brought to the bank by P.W.37, he handed over the application for loan against gold jewel (Ex.P.28) submitted by A1 and the counterfoil of the challan (Ex.P.29). The challan is Ex.P.8. P.W.25 has stated about the loading of Tar in the tanker lorry driven by the deceased on the crucial day. P.W.26 was a mechanic in the transport company at Chennai. He has stated that on one occasion, he repaired the lorry in question. P.W.27 has spoken about the photographs taken of the dead body at the place of occurrence. P.W.28 has stated that he identified the dead body to the doctor at the scene of occurrence for postmortem as directed by P.W.37.

4.6. P.W.29, the doctor, has spoken about the postmortem conducted on the dead body and his final opinion regarding the cause of death. P.W.30 was then then Sub Inspector of Police, Veppur Police Station. He has spoken about the registration of the case in crime No.410 of 2007 under Section 174 of Cr.P.C. on the complaint of P.W.1. P.W.31 is the Head Clerk of the Court of Judicial Magistrate. He has stated that he forwarded the material objects on the orders of the learned Magistrate for chemical examination.

4.7. P.W.32 has stated that he conducted superimposition test on the skull of the dead body in connection with the case in Crime No.410 of 2007 with the photograph of the deceased furnished by the police through court. According to him, the photograph of the deceased tallied with the skull and thus, according to him, the dead body was that of the driver who was missing. P.W.33 has spoken about the test identification parade held in which P.Ws.20 to 24 identified A1 and A2 on all the three occasions. P.W.34 has spoken about the registration of the case in Crime No.885 of 2007 under Section 379 of IPC on the file of Perambalur Police Station on the complaint made by P.W.6. P.W.35 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.36 has spoken about the investigation done in respect of the case in Crime No.885 of

2007 on the file of Perambalur Police Station until that case was clubbed with the other case. P.W.37 has spoken about the investigation in Crime No.410 of 2007 on the file of Veppur Police Station and filing of charge sheet against both the accused.

5. When the above incriminating materials were put to A1 and A2 under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness, but, a document was marked as Ex.D.1. The said telegram was allegedly issued by the wife of A1 stating that A1 was taken into custody by the Inspector of Police, Perambalur Police Station, on 05.12.2007 around 02.30 a.m. and he was kept in illegal custody. Their defence was a total denial.

6. Having considered all the above, the trial court convicted the appellants/A1 and A2 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

7. We have heard the learned counsel appearing for the appellants/A1 and A2 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. In a case of this nature, the prosecution is expected to prove the circumstances projected by it beyond all reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and that there should not be any other hypothesis which is inconsistent with the guilt of the accused. Undoubtedly, the deceased in this case was the driver in the tanker lorry bearing Regn. No.TN 22 L 2518 (M.O.6) belonging to Sri Meenakshi Transports at Chennai. According to P.W.14, the tanker lorry took off its journey from Chennai to Thuvankurichi on 01.12.2007 at 11.00 a.m. From the evidence of P.W.6, the Manager of the Sri Meenakshi Transports which owned the said lorry, it has been proved that the lorry was carrying 16 Tons of Bitumen from Chennai to Thuvankurichi. The tar load was filled in the tanker lorry in question at IOC as spoken by P.W.25.

9. P.Ws.21 and 22 have stated that they found the lorry driven by the deceased near a check-post at Ongur village on the highways. When they gave the invoice to the deceased, they found two persons sitting in the lorry cabin. This happened at 11.00 p.m. on 01.12.2007. As a matter of fact, P.W.21, inquired the deceased as to why he was taking two unknown persons. The

deceased told that he was carrying them only as a help as they had no work at Chennai and they wanted him to drop them at Perambalur. P.Ws.21 and 22 have identified these two accused not only during test identification parade held at the earliest point of time correctly but, during trial before the court as well. The learned counsel for the appellants would submit that P.Ws.21 and 22 cannot be believed inasmuch as they were co-drivers of the deceased. Simply because the deceased happened to be the co-driver of these two witnesses, their testimonies cannot be disbelieved out right. These two witnesses have vividly spoken as to why and how they met the deceased and found these two accused in the cabin of the lorry in the company of the deceased. Thus, we do not find any reason to doubt the credibility of these two witnesses. Thus, lastly, at 11.00 p.m. on 01.12.2007, the deceased was in the company of A1 and A2 in the lorry which was carrying the consignment of 16 Tons of Bitumen for being delivered to JMC Project (I) Limited at Thuvarankurichi.

10. The next circumstance is spoken by P.Ws.20 and 23. P.W.23 was the driver of yet another lorry owned by the same Transport Company. P.W.20 was the cleaner of the said lorry. In that lorry, they carried tar load and after unloading the consignment in a company at Aruppukottai, in the same lorry they were returning towards Chennai. On 01.12.2007, around 03.00 a.m., when they were proceeding towards Chennai on the Trichy - Chennai National Highways, near the place of occurrence, they found the lorry driven by the deceased parked by the side of the road. Since that lorry also belonged to their transport company, they stopped their lorry, went near the lorry driven by the deceased where they found the deceased sleeping in the lorry and two persons standing by the side of the lorry. They had identified these two accused as those two persons. When they inquired these two accused, they told that since they had no work at Chennai, they were returning to their village with the help of the deceased. Since they did not want to disturb the deceased, they took off their lorry and proceeded to Chennai. This piece of evidence again confirms that on 01.12.2007, these two accused were found in the company of the deceased at the place of occurrence and at that time, they noticed that the lorry with the load of tar. These two witnesses have identified both A1 and A2 during test identification parade at the earliest point of time as well as in court during trial.

11. The learned counsel for the appellants would submit that since P.Ws.20 and 23 are also co-drivers of the deceased, they should not be believed as, according to him, they have been planted as witnesses. Though attractive, we do not find any force at all in the said argument. These two witnesses have

vividly spoken as to why and how, they came to the place of occurrence, they found the lorry driven by the deceased parked by the side of the road and the fact that they found the deceased sleeping in the lorry parked at the place of occurrence. The learned counsel for the appellants is not in a position to point out any material on record to doubt the credibility of these two witnesses. Thus, we do not find any reason to reject the testimonies of P.W.20 and P.W.23.

12. The learned counsel for the appellants would further submit that so far as P.Ws.20 and 23 are concerned, during investigation, they did not mention about the physical features of the accused and therefore, the identification made by them during test identification parade as well as during trial cannot be believed. This argument, in our considered view, in the facts and circumstances of the present case, deserves to be rejected for, it is not as though these witnesses had a glimpse of the face of the accused for a fraction of second or a minute. As a matter of fact, they found A1 and A2 in the company of the deceased for a considerable time and thus, their identity could have been imprinted in their mind. That is how, they correctly identified A1 and A2 during test identification parade and also in court. Therefore, we reject the argument of the learned counsel for the appellants assailing the identification of these two accused during test identification parade as well as in court.

13. According to P.W.1, the dead body of the deceased was found on 05.12.2007 at 05.00 p.m. in the maize field of one Mrs.Pitchayee Ammal. Precisely, it was near the said place of occurrence. P.Ws.20 and 23 had seen the lorry driven by the deceased lastly. On the complaint of P.W.1, the case was registered on the file of Veppur Police Station in which though investigation was taken up initially, the identity of the dead body was not known and later on, it was identified by means of the photographs of the dead body by the wife and son of the deceased. The identify of the dead body has also been established by means of superimposition test conducted by P.W.32. P.W.32 has stated that superimposition test conducted on the skull tallied with the photograph of the deceased. Thus, the prosecution has clearly established that the dead body which was found by P.Ws.1 on the file of one Mrs.Pitchayee Ammal was that of the missing driver [the deceased] in this case. There is no reason to doubt this part of the case of the prosecution.

14. P.W.29, the doctor, who conducted autopsy on the body of the deceased has given a clear opinion that the death was due to asphyxia as a result of smothering. Thus, according to P.W.29,

the death of the deceased was due to mechanical violence. We accept the opinion of P.W.29, the doctor, and thus, we hold that the death of the deceased was a homicide.

15. Now, the next question is, Who were the perpetrators of the crime? As we have already pointed out, A1 and A2 travelled with the deceased all the way from Chennai up to the place of occurrence and lastly, the deceased was found in their company near the place of occurrence. These are all very strong circumstances against A1 and A2. They have got no explanation to offer for the same.

16. After the above occurrence, A1 and A2 had illegally unloaded the tar from the tanker lorry in 65 barrels and sold away the same to P.W.16. Though P.W.16 had turned hostile, on that score, we cannot reject the case of the prosecution that these two accused only had sold the tar by filling the same in barrels to P.W.16. P.W.15 has stated that 25 tar barrels alone were recovered from P.W.16. The fact that tar unloaded in barrels from the tanker lorry had been in the possession of P.W.16 came to light only on the roving inquiries made by P.W.6, the Manager of Sri Meenakshi Transports. According to P.W.6, since the lorry did not reach Thuvankurichi with the tar load and the consignment was not delivered, P.W.6 went in search of the lorry. During such recourse, he came to know that tar load which was unloaded in barrels from the tanker lorry were in possession of P.W.16. Therefore, he made a complaint to the Inspector of Police at Perambalur Police Station, about missing of the driver with tanker lorry and tar load P.W.36, taking up the case for investigation came to the go-down of P.W.16 and recovered tar barrels numbering 25 which were then available besides cash. Though P.W.16 has turned hostile, we find no reason to reject the evidence of P.W.15 and P.W.36. Thus, we hold that consignment of tar loaded in the tanker lorry in question was unloaded in 67 barrels immediately after the crime and later on, during investigation, only 25 barrels were found in the possession of PW.16.

17. When the investigation was under way at the hands of P.W.36, A1 surrendered before P.W.17, the Village Administrative Officer of Perambalur North on 09.12.2007 at 03.0 p.m. On such surrender, A1 made a voluntary extra judicial confession orally which P.W.17 reduced into writing. Ex.P.20 is the extra judicial confession. In the said confession, A1 had narrated the entire event as to how, he and A2 had got into the lorry at Chennai with the help of the deceased near Koyabedu Bus Stand and came up to the place of occurrence as gratuitous passengers, killed the deceased, threw the dead body, took away the lorry loaded with tar, sold the tar by unloading the same in 67 barrels to

P.W.16 and had hidden the lorry.

18. The learned counsel for the appellants would submit that P.W.17 was a stranger to A1 and, therefore, he would not have chosen to make a confession to P.W.17. We find no force in the said argument for, in the confession, A1 had narrated as to how and why he had chosen to confess before P.W.17. The learned counsel would further submit that according to Ex.D1, the telegram, given by the wife of A1, the custody of A1 was taken by the Inspector of Police on 09.12.2007 itself and, therefore, the appearance of A1 before P.W.17 on 09.12.2007 and the alleged voluntary confession cannot be true. But, we are unable to give any evidential value to Ex.D1 inasmuch as the author of the said document has not been examined to prove its contents. We, therefore, reject Ex.D1 as not properly proved in accordance with law and as such we find no reason to reject the evidence of P.W.17. Thus, we hold that A1 surrendered before P.W.17 on 09.12.2007 at 03.00 p.m. and made Ex.P.20-Extra judicial confession voluntarily.

19. In the said extra judicial confession, A1 had categorically admitted that he sold the tar load consigned in the tanker lorry by filling the same in 67 barrels to P.W.16. Thus, though P.W.16 has turned hostile, by means of the extra judicial confession, the prosecution has proved that tar load which was consigned in the tanker lorry in question was unloaded by the accused in 67 barrels and sold to P.W.16. That is how, the remaining 25 barrels were recovered by P.W.16. Though it is the case of the prosecution that the rest of the tar barrels were, in turn, sold out by P.W.16, there is no evidence to prove the same.

20. P.W.17, thereafter, produced A1 before P.W.36 along with the extra judicial confession (Ex.P.20). P.W.36, in turn, arrested A1. While in custody, A1 disclosed as to where he had abandoned the lorry bearing Regn. No.TN 22 L 2518 after removing the name plate and changing the registration number with fake number plate. In pursuance of the said disclosure statement, A1 took the police and the witnesses to the place where he abandoned the lorry and produced the lorry (M.O.6). The same was accordingly recovered by P.W.36. A1 also produced cash of Rs.60,000/- from his house. That was also recovered. P.W.16 has vividly spoken about the same. We do not find any reason to reject this part of the case of the prosecution. Thus, it has been clearly established beyond any doubt that M.O.6-Lorry, which was robbed, was found in the possession of A1 for which A1 has got no explanation at all to offer. Then, A1 took P.W.36 and the witnesses and identified the place where he had thrown the dead body of the deceased. It was only on this disclosure

statement, P.W.36 came to know that the dead body was found there and a case in connection with the same was under investigation at the hands of P.W.37. That how, both the cases were thereafter taken over for investigation by P.W.37 on the orders of the higher police officer.

21. After P.W.37 has taken over the case for investigation, A2 voluntarily surrendered before the court. Both the accused were thereafter taken into custody on the orders of the learned Magistrate. While in custody, A1 made a voluntary confession out of which, the number plate of the lorry and the name plate of the lorry were produced. P.W.37 recovered the same. On the confession of A2, the clothes (M.Os.1 to 3) allegedly worn by the deceased soon before the death were recovered. From these disclosure statements and the recoveries of material objects made out of the same, the prosecution has established that A1 and A2 had conjointly committed the crime of murder and robbed the lorry with tar loaded in the tanker. On the disclosure statement made by A1, Application for loan against gold jewel and the remittance challan for having been redeemed the jewel by paying the loan amount and its counterfoil were recovered from Canara Bank, Perambalur Branch. According to the extra judicial confession of A1, he utilized the amount which was paid as consideration for the tar sold to P.W.16 for redeeming the pledged gold jewel. From out of the confession of A1, it has been established that cash recovered from him on the disclosure statement, was part of the sale consideration of tar sold to P.W.16.

22. Thus, from out of the above, the prosecution has proved the chain of circumstances which clearly and clinchingly establish that it was A1 and A2 who killed the deceased and committed robbery and erased the evidence of murder by throwing the dead body after removing the upper wear cloth materials from the person of the deceased. In our considered view, by means of overwhelming evidence, the prosecution has proved the case beyond all reasonable doubts. We do not have any doubt in our mind about the complicity of the accused. The trial court was right in convicting them under the charges levelled against them.

23. In so far as quantum of sentence also, we are of the view that the trial court itself has imposed only a proportionate punishment which also does not require any interference at the hands of this court.

24. In the result, Criminal Appeal Nos.433 and 208 of 2015 fail and the same are accordingly dismissed. The conviction and sentences imposed on the appellant/A1 in CrI.A.No.433 of 2015

and the appellant/A2 in Crl.A.No.208 of 2015 are hereby confirmed. Since it is reported that A2 is on bail, the learned III Additional Sessions Judge, Cuddalore at Virudhachalam, shall take steps to secure the presence of A2 and on production, he shall commit him to prison so as to serve the sentences as confirmed by this judgement.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The III Additional District and Sessions Judge,
Cuddalore, Virudhachalam.
- 2.The Inspector of Police,
Veppur Police Station,
Cuddalore District.
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The Judicial Magistrate No.1,
Virudhachalam.
- 5.Do- Through The Chief Judicial Magistrate,
Virudhachalam.
- 6.The District Collector,
Cuddalore District.
- 7.The Director General of Police,
Mylapore, Chennai.
- 8.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.K.Ramesh, Advocate, S.R.No.43476

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.43093

Crl.A.Nos.433 and 208 of 2015

MP(CO)
CA(24/08/2016)