

Bail Slip

The Petitioner herein/A2 namely Ravi @ Varun was released on bail in CrI.MP No.1 of 2015 in crl.A. No.546/2015 dated 05.10.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.563, 683, 693 and 546 of 2015

Mohamed Gouse .. A.1/Appellant in CrI.A.No.563/2015

Ravi @ Arun .. A.2/Appellant in CrI.A.No.546/2015

1.Thangiyappan

2.Nataraj .. A.3 & A.4/Appellants in CrI.A.No.683/2015

Selvi Deicy Victoriya Rani

.. A.5/Appellant in CrI.A.No.693/2015

vs

State by

Inspector of Police,

B-3, Kanchi Taluk Police Station,

Kanchipuram District.

(Crime No.333/2014

.. Respondent/Complainant in all
CrI.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed against the judgment passed by the learned Sessions Judge No.2, Kancheepuram in S.C.No.99 of 2004 dated 10.08.2015.

In CrI.A.No.563 of 2015:-

For A.1

:Mr.P.Pugalenth

For Respondent :Mr.M.Maharaja,

In Crl.A.No.546 of 2015:-

For A.2 :Mr.I Paul Nobel Devakumar

For Respondent :Mr.M.Maharaja,

Additional Public Prosecutor

In Crl.A.No.683 of 2015:-

For A.3 & A.4 :Mr.I Paul Nobel Devakumar

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

In Crl.A.No.693 of 2015:-

For A.5 :Mr.R.Margabandhu

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.563 of 2015 is A.1; the appellant in Crl.A.No.546 of 2015 is A.2; the appellant in Crl.A.No.89 of 2015 is A.3; the appellants in Crl.A.No.683 of 2015 are A.3 & A.4 and the appellant in Crl.A.No.693 of 2015 is A.5 in S.C.No.99 of 2014, on the file of the learned Sessions Judge No.2, Kancheepuram. The trial Court framed charges against all the accused as detailed below:-

Accused	Section of law
A.1	120(B), 364, 147, 342, 302, 201, 379, 465 r/w 114 & 468 r/w 114 I.P.C.,
A.2	120(B), 364, 147, 342, 302 r/w 149, 201, 379, 465 r/w 114 & 468 r/w 114 I.P.C.,
A.3	120(B), 364, 147, 342 & 302 r/w 149, 379 r/w 114, 465 & 468 I.P.C.,
A.4	120(B), 364, 147, 342, 302 r/w 149, 201, 379, 465 & 468 I.P.C.,

Accused	Section of law
A.5	120(B), 364, 147, 302 r/w 149, 201 379, 465 r/w 114 & 468 r/w 114 I.P.C.,

All the accused denied the above charges framed against them. By judgment dated 10.08.2015, the trial Court convicted & sentenced all the five accused as detailed below:-

Sl.No	Accused	Section of law	Sentence
1	A.1 to A.5	120(B) I.P.C.,	Rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for six months.
2	A.1 to A.5	364 I.P.C.,	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for six months.
3	A.1 to A.5	147 I.P.C.,	Rigorous Imprisonment for two years and to pay a fine of Rs.500/- each, in default to undergo rigorous imprisonment for three months.
4	A.1 to A.4	342 I.P.C.,	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for three months.
5	A.1	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.

Sl.No	Accused	Section of law	Sentence
6	A.2 to A.5	302 r/w 149 I.P.C.,	Imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for six months.
7	A.1, A.2, A.4 & A.5	201 I.P.C.,	Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for six months.
8	A.1, A.2, A.4 & A.5	379 I.P.C.,	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for six months.
9	A.3	379 r/w 114 I.P.C.,	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.
10	A.3 & A.4	465 I.P.C.,	Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for three months.
11	A.1, A.2 & A.5	465 r/w 114 I.P.C.,	Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for three months.
12	A.3 & A.4	468 I.P.C.,	Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for six months.

Sl.No	Accused	Section of law	Sentence
13	A.1, A.2 & A.5	468 r/w 114 I.P.C.,	Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/- each, in default to undergo rigorous 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:-

The deceased in this case was one Mr.Balaraman. He was a taxi Driver by profession. P.W.4, owned a taxi bearing registration No.TN 23 AM 6669. It was an Innova Car. A.1 to A.5 are close associates. On 15.04.2014, all these five accused conspired together to abduct the deceased along with the Car, under the guise of engaging the said Car to go to Chennai Airport, to kill him and to steal away the Car.

3.The deceased left his house at 7.00 am on 16.04.2014 with the said Car (M.O.6). The said car was engaged through one Mr.Nagaraj. Since, the Car did not return, P.W.4 enquired the wife of the deceased (P.W.2). P.W.2 informed him that the deceased left the house at 7.00 am on 16.04.2014 but did not return thereafter. Therefore, on the advice of P.W.4, P.W.2 went to Vellore Taluk Police Station and made a complaint under Ex.P.12 on 17.04.2014 at 12.00 noon. P.W.7, the then Sub Inspector of Police, Vellore Taluk Police Station, registered a case in Crime No.145/2014 for "man missing". Ex.P.13 is the F.I.R. He forwarded both the documents viz., Ex.P.12 (complaint) & Ex.P.13 (F.I.R.,) to Court and handed over the case diary to the then Inspector of Police, Vellore Taluk Police Station for investigation.

4.While so, the dead body of a male was found by one Mr.Durai, a Village Assistant of Nasarathpettai, Kancheepuram, in a coconut grove situated in S.No.171 at Siruvakkam Village. On the information received from Mr.Durai, P.W.1, the then Village Administrative Officer of Nasarathpettai Village, Kancheepuram, went to the said place at 4.00 pm on 16.04.2014 and found the dead body. The identity of the dead body was not known. Both the hands of the deceased were found tied together behind. The eyes were also tied with a cloth. P.W.1 suspected that the deceased could have been killed by somebody. Therefore, he immediately, proceeded to Kancheepuram Taluk

Police Station on 16.04.2014 at 5.30 pm and made a complaint. P.W.15, the then Sub Inspector of Police attached to Kancheepuram Taluk Police Station, registered a case in Crime No.333/2014 for offence under Section 302 I.P.C. Ex.P.1 is the complaint and Ex.P.24 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 8.30 pm on 16.04.2014.

5.P.W.24, the then Inspector of Police, Kancheepuram Taluk Police Station, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.9 and another witness. He recovered blood stained earth and sample earth from the place of occurrence under a mahazar. He recovered the full hand shirt found on the body of the deceased under a mahazar. He examined few persons at the place of occurrence but, nobody was able to say about the identity of the dead body. Then he forwarded the dead body to the Government hospital at Kancheepuram for being kept in the mortuary.

6.On 18.04.2014, he came to know that a "man missing" case in respect of the missing of the deceased Mr.Balaraman had been registered on the file of the Vellore Taluk Police Station. Therefore, P.W.24, contacted the Investigating Officer who was investigating the case in Crime No.145/2014 and to verify whether the dead body kept in the mortuary was that of Mr.Balaraman. On the direction issued by the Investigating Officer, Vellore Taluk Police Station, the relatives and the wife of Mr.Balaraman came to Kancheepuram Government Hospital. After having seen the dead body, they identified the same as that of the deceased, Mr.Balaraman. They also identified the full hand shirt recovered from the dead body. But, the whereabouts of the Car which was driven by the deceased bearing Registration No.TN23 AM 6669 was not known. Thereafter, P.W.24, conducted inquest on the body of the deceased. He altered the case into one under Sections 302, 201 & 379 I.P.C., and submitted an alteration report to the Court under Ex.P.28.

7.The deceased was using a mobile phone with number 9345715655. P.W.24 obtained the call details of the said cell phone number which revealed that there was a phone call from the cell phone No.8124445202 to the deceased. During further investigation, it was revealed that the said cell phone No. 8124445202 was used by A.1 herein.

8.Suspecting the involvement of A.1 in the crime, P.W.24, along with P.W.1 and one Mr.Durai, went in search of A.1. A.1 was at his house in Vellore. When he was interrogated by P.W.24, he offered to make a voluntary confession. P.W.24

allowed him to confess and accordingly he reduced the same into writing. In that confession, he disclosed the involvement of two other persons in this crime and also the place where he had hidden an Innova Car (M.O.6). He also disclosed the place where he along with the other accused kept an Indica Car bearing registration No.TN 09 BV 9567 (M.O.3). In pursuance of the same, he took the Police and witnesses to the house of one Mr.Muthiar s/o Mr.Popjohn, (P.W.17) and identified him. From the possession of P.W.17, P.W.24 recovered the Indica Car (M.O.3) under Ex.P.3 mahazar. Then A.1 took the Police and witnesses to the place of hide-out and identified, A.2 at 8.10 pm on the same day. P.W.24 arrested him. While in custody, A.2 made a voluntary confession. In which, he disclosed that he would identify the other accused who involved in this case. He also disclosed the place where he had hidden a ATM Card issued by IDBI Bank standing in the name of the deceased Mr.Balaraman. In pursuance of the said disclosure statement, A.2 produced the said ATM card (M.O.4). P.W.24 recovered the same under Ex.P.5 mahazar. Then A.1 & A.2 took the Police and witnesses to the place of hide out and identified A.3 at 10.55 pm on the same day. P.W.24 arrested A.3. On such arrest, A.3, gave a voluntary confession, in which, he disclosed the place where he had hidden an Innova Car (M.O.6). Accordingly, he produced the Car (M.O.6) to P.W.24. Then they identified A.5. On such arrest, A.5 gave a voluntary confession, in which, she had disclosed the place where she had kept a black colour purdah. In pursuance of the same, she produced the black colour purdah (M.O.5). A.4 in his disclosure statement disclosed the place where he had kept the original number plate of Innova Car bearing Registration No.TN 23 AM 6669. At the time of recovery, the number plate of the said Car was to the effect that it was AP 15 BB 9916. After having seized all these material objects, P.W.24 returned to the Police Station along with the accused and the material objects.

9.While in custody, P.W.24 obtained the sample finger prints of all the five accused and forwarded the same for comparison. He collected the call details of the cell phone numbers of all the five accused. Finally, on completing investigation, he laid charge sheet against all the accused.

10.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 24 witnesses were examined and 37 documents were exhibited besides 10 Material Objects.

11.Out of the said witnesses, P.W.1, the then Village Administrative Officer of Siruvakkam Village has stated that on 16.04.2014, one Mr.Durai, his Village Assistant informed him that there was a dead body of a male lying in S.No.171 at Siruvakkam Village. He visited the said place at 4.00 pm on

16.04.2014 and after having ascertained that the dead body was found there, he made a complaint to the Police. He further stated that both the hands were tied behind and the eyes of the dead body were also tied with a cloth. He has further stated about the preparation of observation mahazar and rough sketch. He has also spoken about the arrest of all the five accused; confession made by them and the consequential recoveries. P.W.2 is the wife of the deceased. She has stated that the deceased left the house at 7.00 am on 16.04.2014 with M.O.6, Car. By 10.00 am on the same day, she received a phone call from the deceased that he would return by 1.00 pm. But, he did not return. She has further stated that on 17.04.2014 at 12.00 noon, she made a complaint to the Vellore Taluk Police Station about the missing of the deceased. P.W.3 is the brother of P.W.2. He has also stated about the above facts, as spoken by P.W.2. P.W.4 is the owner of the taxi (M.O.6). He has stated that the deceased was a Driver of the taxi owned by him. On 16.04.2014, according to him at 7.00 am, the deceased took the said car (M.O.6). Since, he did not return with the Car, on his advice, on 18.04.2014, according to him, P.W.2 made a complaint. P.W.5 was running a Travel Agency at Katpadi. According to him, one Mr.Nagaraj, a person known to him spoke to him and wanted him to fix a taxi for some passengers who were staying in Sholai Hotel at Vellore to go to Chennai Airport. P.W.5, in turn, contacted the deceased over phone and told him to speak to the parties. It was thus, the accused engaged the said taxi of the deceased under the guise of going over to the Chennai airport. P.W.5 has stated that later on, he came to know that the deceased was no more. P.W.6, Mr.Nandhakumar has stated that A.1 contacted him and wanted to engage an Innova Car to go to Chennai Airport from Sholai Hotel at Vellore. He contacted P.W.5. P.W.5 in turn, contacted the deceased that is how the deceased was engaged to carry the accused from Sholai Hotel at Vellore to Chennai Airport. P.W.7 the then Sub Inspector of Police at Vellore Police Station has stated about the registration of the case on the basis of the complaint preferred by P.W.2 in Crime No.145/2014 for "man missing". P.W.8 has spoken about the fact that he saw the dead body of the deceased along with the crowd. P.W.9 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence by P.W.24 on 16.04.2014 at 6.00 pm. He has also spoken about the recovery of blood stained earth and the sample earth and the full hand shirt of the deceased under a mahazar. P.W.10 was working as a Manager in Sholai Hotel at Vellore. According to him, the family members of one Mr.Rajeshkumar were staying in Room No.202 from 21.03.2014 onwards as guests. They belong to Jharkand State. On 16.04.2014, they vacated the room and proceeded towards the Chennai Airport. He noticed that the accused had engaged the Innova Car bearing No.TN 23 AM 6669 (M.O.6) and they travelled from the lodge on 16.04.2014. This witness has not identified any of the accused. P.W.11 was an

Organizer in Idea Cellular Company in Chennai. He has stated that the Police wanted him to give call details of four cell phone numbers. He gave the required details under Ex.P.20. P.W.12 was the Deputy Manager and Nodal Officer in Vodafone Cellphone company. He has stated that the Police wanted the call details of the cell phone Nos.9092565863, 8124445202, 9092872525, 8189803100. He gave the said details to the Police. He also gave the details of owners of those cell phones. P.W.13 has spoken about the post mortem conducted on the body of the deceased and the cause of death. According to her, the death of the deceased was due to asphyxia due to strangulation. P.W.14 was a sub Inspector of Police in Cyber Crime Branch, Kancheepuram. She has also spoken about the call details of the said cell phone numbers obtained from the service providers. P.W.15 has spoken about the registration of the case in Crime No.333/2014 for offence under Section 302 I.P.C., on the complaint of P.W.1. P.W.16 has stated that A.1 was known to him closely. P.W.16 was owning a cell phone bearing No.8189803100. Some time before the occurrence, A.1 requested him to give the said cell phone to him. Accordingly, he handed over the said cell phone with the sim card to A.1. But, A.1 had not returned the same. P.W.17 has stated that he was the owner of the Indica Car bearing registration No.TN 09 BB 9567 (M.O.3). He has further stated that one year before his date of giving evidence before the Court, on 9th (month not mentioned) around 6.00 pm, the Car was seized by the Police. He turned hostile and he has not supported the case of the prosecution in any manner. P.W.18 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.19 has stated that he handed over the dead body to the Doctor for post mortem. P.W.20 has stated that he accompanied P.W.24 when he arrested all the five accused and when the recovery of material objects were made. P.W.21 was working as a Motor Vehicle Inspector in Chithoor District of Andhra Pradesh. According to him, the registration No.AP 15 BP 9916 was not registered at his office in Andhra Pradesh. P.W.22 was the Nodal Officer of Reliance Info Company Limited. He has spoken about the call details of the cell phone No.9345715655 for the period between 01.04.2014 and 18.04.2014. P.W.23 was working in the toll gate at Vallajapet on the Chennai to Bangalore main road. During investigation, he gave the CCTV footage relating to recording of the movements of the vehicles through the said toll gate on 16.04.2014. P.W.24 has spoken about the investigation done and the final report filed.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, neither they examine any witness nor did they mark any documents on their side.

13. 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 4 are before this Court with these Criminal Appeals.

14.We have heard Mr.I Paul Nobel Devakumar, the learned counsel for the appellants in CrI.A.Nos.563 & 693/2015; Mr.P.Pugalethi, learned Counsel for the appellant in CrI.A.No. 683 of 2015; Mr.R.Margabandhu, learned counsel for the appellant in CrI.A.No. 546 of 20215 and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15.The deceased had left his house at 7.00 am on 16.04.2014. This has been spoken by P.W.2 as well as P.W.4. Around 10.00 am on 16.04.2014, the deceased had spoken to P.W.2 and informed her that he would return at 1.00 pm. After that, there was no word from the deceased. There is no evidence as to whether he was seen alive anywhere. Thus, the deceased was lastly seen and alive at 7.00 am on 16.04.2014 and his voice was heard at 10.00 am on 16.04.2014.

16.P.W.1 had found the dead body of the deceased on 16.04.2014 at 4.00 pm. Thereafter, he had made the complaint to the Police upon which, the present case was registered. From the evidence of P.W.1, it is crystal clear that the dead body of the deceased was found at Siruvakkam Village, Kancheepuram at 4.00 pm on 16.04.2014. Both the hands of the deceased were tied behind and the eyes were also tied with cloth. As per the medical evidence, the death of the deceased was due to asphyxia due to strangulation. From these evidences, the prosecution has clearly established that the deceased would have died between 7.00 am on 16.04.2014 and 4.00 pm on 16.04.2014. Undoubtedly, it was a homicide.

17.Now, the question is, "Who caused the death of the deceased ?". P.Ws.2 & 4 have stated that the deceased had gone driving the Car (M.O.6) on 16.04.2014 at 7.00 am. The Car (M.O.6) was seen in the Solai Hotel in Vellore, on the same day. Thereafter, neither the Car (M.O.6) nor the deceased was found anywhere. When the dead body of the deceased was found at 4.00 pm on 16.04.2014, the whereabouts of the Car (M.O.6), was not known. Thus, the prosecution has established that after having caused the death of the deceased, the culprits had taken away the Car (M.O.6). In other words, the prosecution has established that the death of the deceased and stealing away of the Car (M.O.6) from the possession of the deceased, happened in one and the same occurrence. Therefore, it is inferable that the persons who committed the murder had stolen away the Car (M.O.6) also.

18.After the registration of the case, from out of the cell phone talks between the cell phone number of the deceased

and A.1, P.W.24 suspected the involvement of A.1 in this crime. Accordingly, P.W.24, went to the house of A.1, arrested him and interrogated him in the presence of witnesses. While under interrogation, A.1 gave a voluntary confession in the presence of witnesses. In the said confession, he disclosed the place where he had hidden a grey colour Indica Car (M.O.3). The said car was seized. But, the involvement of the said Car (M.O.3) in the crime, has not been established by the prosecution, in any manner. Therefore, the recovery of the said Grey colour Indica Car (M.O.3) from A.1 would not in any manner go to advance the case of the prosecution.

19. Then, A.1 in pursuance of the disclosure statement, identified A.2. From A.2, IDBI Bank ATM card (M.O.4) was recovered. There is no evidence to connect the ATM card (M.O.4) with crime. Therefore, the recovery of M.O.4 from A.2 also would not be useful for the prosecution in any manner. A.1 identified A.5 also. But, during interrogation, A.5 gave a voluntary confession, in which, she disclosed the place where she had hidden a purdah (M.O.5) that was recovered from her. Here again, there is no connection between the said purdah (M.O.5) with the crime. Thus, the recovery of purdah (M.O.5) also would not be useful for the prosecution in any manner.

20. A.1 identified A.3. A.3 on interrogation, gave a voluntary confession, in which, he disclosed the place where he had hidden Innova Car (M.O.6). At that time, the number plate of the said vehicle was shown as AP BP 9916. But, from the engine number and the chassis number, it was ascertained that the car in question was only M.O.6. We do not find any reason to reject the evidence of P.W.2 and P.W.24 in respect of the same.

21. On being identified by A.1, A.4 was arrested. On his disclosure statement, a number plate showing TN 23 AM 6669 was recovered. But, there is no acceptable evidence that the said number plate was the original number plate kept in the Car. At any rate, from out of the recovery of this number plate alone, we cannot safely conclude that A.4 had involvement in the crime.

22. From the foregoing discussion, it is crystal clear that the prosecution has proved the guilt of A.1 & A.3 alone. Though, the prosecution has made reliance on the call details obtained from the service providers of the cell phones used by the accused and the deceased, we are unable to rely on the same since, these documents have not been proved properly as required under Section 65B of the Indian Evidence Act. As per the judgment of the Hon'ble Supreme Court in ANVAR Vs. P.K. BASHEER AND OTHERS reported in 2014 [10] SCC 473, these documents showing the call details are inadmissible in

evidence as primary evidence for want of proper certificates. Therefore, we do not refer to these documents.

23.A.1 gave a disclosure statement, out of which, A.3 was identified and located and form out of the disclosure statement made by A.3, stolen car (M.O.6) was recovered. Thus, A.1 was in conscious possession of the car in question (M.O.6) and A.3 was in physical possession of the car (M.O.6) soon after the commission of theft. A.1 & A.3 have no explanation to offer for the same.

24.As we have already concluded, since, the murder of the deceased and the theft of the Car (M.O.6) had taken place in one and the same occurrence, and since, these two accused (A.1 & A.3) were in possession of stolen car (M.O.6) soon after the commission theft, for which, they have got no explanation to offer, we have to necessarily raise the presumption under Section 114 of the Indian Evidence Act, that these two accused (A.1 & A.3) are the perpetrators of the crime.

25.Ofcourse, the said presumption is rebuttable, but, the accused have not rebutted the said presumption either by direct evidence or by any circumstantial evidence. But, the learned counsel for the appellants would point out that P.W.4 during cross examination has stated that he identified the car (M.O.6) in Kancheepuram Taluk Police Station by 12 'O' clock on 9th. From out of this, the learned counsel would submit that the car (M.O.6) would not have been seized from the possession of A.3 on 20.04.2014, as alleged by the prosecution. We find no force in the said argument at all. During cross examination, P.W.4 has not stated that he identified the car (M.O.6) in the police station on 19.04.2012. He has simply stated that he identified the car (M.O.6) on 9th. He has not made reference to the month. Therefore, this argument is rejected.

26.The learned counsel for the appellants would further submit that P.W.5, during cross examination, has stated that on 18.04.2014 itself, A.1 was interrogated by the Police, at the police station. From this evidence, the learned counsel would try to make out a case that A.1 would not have been arrested on 19.04.2014 at all, as it is projected by the prosecution. P.W.5 is not an literate. He was examined before the Court on 26.03.2015 whereas, the occurrence had taken place on 16.04.2014. Because of the long lapse of time, he would have forgotten the details of the dates. Therefore, his evidence that A.1 was interrogated by Police on 18.04.2014 itself can be taken only as a result of fading memory of P.W.5. Therefore, this argument is also rejected.

27.Similarly, for the very same reasons, for which, we have rejected the argument of the learned counsel in respect of P.W.5, we reject the arguments of the learned counsel in

respect of P.W.6 also. The learned counsel for the appellants is not able to point out any other infirmity, in the case of the prosecution, as against A.1 & A.3. Thus, we hold that the prosecution has proved that A.1 and A.3 have committed the offences punishable under Sections 302 r/w 34, 364 & 379 r/w 34 I.P.C. We are unable to convict the accused for robbery as there is no charge. Now, turning to the quantum of punishment imposed as against A.1 & A.3, it also does not require any interference at the hands of this Court.

28. In the result:-

(i) The appeal filed by the first accused/the appellant in CrI.A.No.563/2015 is partly allowed. The conviction and sentence imposed on A.1 are set aside and instead he is convicted for offences under Sections 302 r/w 34, 364 and 379 r/w 34 IPC. A.1 is sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 302 r/w 34 I.P.C; to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section, 364 I.P.C., and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 379 r/w 34 I.P.C.

(ii) Cr.A.No.683/2015 is partly allowed. The conviction and sentence imposed on the first appellant/A.3 are set aside and instead, he is convicted for offences under Sections 302 r/w 34, 364 and 379 r/w 34 IPC. A.3 is sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 302 r/w 34 I.P.C; to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks for offence under Section, 364 I.P.C., and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 379 r/w 34 I.P.C. The appeal as against the second appellant/A.4 is allowed and the conviction and sentence imposed on him are set aside and he is acquitted. The fine amount if any, paid by him shall be refunded to him. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the second appellant/A.4, shall stand discharged.

(iii) CrI.A.Nos.546 and 693 of 2015 are allowed and the conviction and sentence imposed on A.2 and A.5 are set aside and they are acquitted from all charges. The fine amount, if

any paid, shall be refunded to them. The bail bond, if any, executed by A2 & A.5, shall stand discharged.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Sessions Judge No.2,Kancheepuram.

2. The Principal District and Sessions Judge, Kancheepuram.

3. The Judicial Magistrate No.II, Kancheepuram.

4. The Chief Judicial Magistrate Chengalpattu (For information)

5. The Superintendent, Central Prison, Vellore.

6. The Judicial Magistrate No.I, Chengalpattu.

7. The Inspector of Police, B3, Kanchi Taluk Police Station, Kanchipuram.

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

9. The District Collector, Kancheepuram.

10. The Director General of Police, Chennai 4.

11.The Public Prosecutor, High Court, Madras.

2 ccs to Mr.I.Paul Noble Devakumar, Advocate, sr.43050, 43059

1 cc to Mr.R.Margabandhu, Advocate, sr.42563

1 cc to Mr.P.Pugalenth, Advocate, sr.42519

CrI.A.Nos.563, 683, 693 and 546 of 2015

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