



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

CRL.A[MD].No.147 of 2014

Veeramani : Appellant

Vs.

State rep by the Inspector of Police,
Pulivalam Police Station,
Trichy District Crime No.7 of 2013. : Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 24.02.2014 made in S.C.No.223 of 2013 on the file of the learned Principal Sessions Judge, Trichirappalli.

For Appellant : Mr.Veera Kathiravan
Senior Counsel for Mr.C.Jeganathan

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

Reserved on : 09.09.2016
Pronounced on : 21.09.2016

JUDGMENT

S.NAGAMUTHU, J.

The appellant is the sole accused in S.C.No.223 of 2013, on the file of the learned Principal Sessions Judge, Trichirappalli. He stood charged for the offences punishable under Sections 364, 302 and 392 r/w Section 397 of the Indian Penal Code. By Judgment dated 24.02.2014, the Trial Court convicted the accused, as detailed below:-



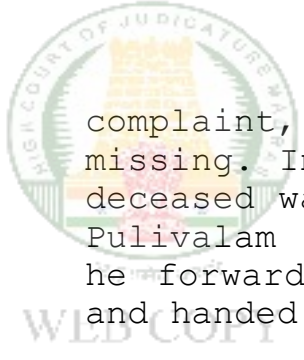
Convicted Sections	under	Sentence imposed	Fine amount
302 IPC		To undergo imprisonment for life.	Rs.1,000/- in default to undergo rigorous imprisonment for six months.
394 r/w 397 IPC		To undergo rigorous imprisonment for seven years.	No fine.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mrs. Pattayee. She was a resident of Pulivalam Village in Trichirappalli District. PW-1 is her husband. The deceased was working in a local school as Caretaker [Aaya]. PW-1 was working as an Office Assistant in a local co-operative bank. PW-2 is the son of the deceased. PW-4 is the daughter of the deceased. PW-2, after marriage, has been living separately in the same village, but, at a different place, with his wife and children. PW-1, PW-4 and the deceased were living together. The accused hails from Vadugapatti Village. He used to visit the house of the deceased, frequently. It was felt that his visit was friendly in nature.

2.1. On 09.01.2013, the deceased had returned home from work place. Around 03.30 PM to 04.00 PM, the accused came to the house of the deceased in his Motorcycle bearing Registration No. TN-47-X-8020. He invited the deceased to go to Pulivalam Karuppu Temple. The deceased got ready, informed PW-4 and went along with the accused in the Motorcycle. PW-1 and PW-2 were not home at that time. In the usual course, after worship, the deceased would have returned home in the evening. But, she did not return back home. Neither the accused was seen. PW-1, by the time, returned home. He was told by PW-4 that the deceased was taken only by the accused, but, she did not return home. PW-2 also came to the house of the deceased. PW-1 and PW-2, thereafter, went in search of the deceased. PW-3, the co-brother of the deceased, also joined them. They all went in search of the deceased to various places, including Vadugapatti Village, where the accused was then residing. But, neither the accused nor the deceased was seen. On the next day, these three witnesses went in search of the deceased. Since the deceased was not seen, at last, at 08.30 PM, on 10.01.2013, PW-1 made a complaint to the Sub-Inspector of Police, Pulivalam Police Station. EX-P1 is the complaint. PW-15, the then Sub-Inspector of Police, on receipt of the said



complaint, registered a case in Crime No.7 of 2013 for woman missing. In the said complaint itself, PW-1 had mentioned that the deceased was lastly taken only by the accused to Karuppu Temple at Pulivalam Village. EX-P18 is the First Information Report. Then, he forwarded both the documents [EX-P1 and EX-P18] to the Court and handed over the investigation to the Inspector of Police.

2.2. Taking up the case for investigation, PW-16, the then Inspector of Police, examined PW-1 to PW-4 and recorded their statements. He went in search of the deceased to various places. However, he was not able to make any breakthrough.

2.3. While so, on 12.01.2013, around 12.00 Noon, the accused appeared before PW-12, the then Village Administrative Officer, at his office at Pulivalam Village. On such appearance, the accused wanted to make a confession voluntarily. After having ascertained that he was in a mood to make a confession voluntarily, PW-12 allowed him to confess orally. The accused, accordingly, made a confession. In his oral confession, the accused has stated that he took the deceased to Karuppu Temple at Pulivalam Village in his Motorcycle for worship. After the worship was over, he wanted the deceased to give him the gold jewels worn by her for pledging, as he was in need of money. Since the deceased refused to do so, the accused held her and cut her with a knife, which was already in his possession. From the dead body, according to the confession, he removed a pair of Nose Screws and Gold Thali Balls with Thali thread. He further confessed that he abandoned the dead body and escaped from the place of occurrence in his Motorcycle along with the stolen properties. He told about the place, where the dead body was thrown by him.

2.4. PW-12, however, did not reduce into writing the oral confession made by the accused. Instead, he prepared a comprehensive report [vide EX-P10], wherein he had mentioned about the substance of the confession made by the accused. Then, he took the accused along with EX-P10 to the Police Station and produced him before PW-16. PW-16 altered the case into one under Sections 302 and 379 of the Indian Penal Code and arrested the accused. He made a request to the Forensic Expert to accompany him to the place, where the dead body was found lying. PW-16 arranged for taking photographs also. Then, in pursuance of the oral confession made, the accused took PW-16, PW-12 and the others to the place, where the dead body was lying and he identified the same. The dead body was in a highly decomposed condition. PW-1 and the other family members of the deceased identified the dead body as that of the deceased. There were injuries on the body of the deceased. PW-16 prepared an Observation Mahazer and a Rough Sketch at the place of occurrence. The photographer took photograph at the place of occurrence from various angles. Then, he conducted inquest on the body of the deceased. EX-P21 is the inquest report. He recovered a



pair of chappels [MO-10], Sample Soil [MO-12] and a Wire Bag [MO-9].

2.5. While in police custody, the accused made a voluntary confession, in which he disclosed the place, where he had hidden a knife and the bloodstained cloth. He also disclosed the person to whom he had pledged the jewels stolen away from the dead body of the deceased. In pursuance of the said confession, he took the police and the witnesses to the place of hide out and produced the knife [MO-13]. PW-16 recovered the same under EX-P13, a mahazer. He took the police and the witnesses to yet another place and produced a half shirt, [MO-14], a lungi [MO-15] and a Motorcycle [MO-8]. PW-16 recovered the same under EX-P14, a mahazer. In the disclosure statement, he told that he pledged the jewels to one Mr.S.Panneerselvam [PW-8]. In pursuance of the same, he took the police and the witnesses and identified PW-8. From PW-8, [MO-1 to MO-5], gold jewels were recovered. Later, they were identified as the stolen properties from the dead body of the deceased. PW-16 returned to the Police Station, forwarded the accused to the Court for judicial remand and handed over the material objects to the Court with a request to forward the same for chemical examination.

2.6. PW-9, Dr.R.V.S.Renuga Devi conducted autopsy on the body of the deceased, on 13.01.2013 at 12.25 PM. She noticed the following injuries:-

"1. A transverse cut wound, 19cm X 5 cm exposing the underlying structures on the front of the neck. 0/E, the edges are regular. The muscles, blood vessels and nerves are clean cut. Food pipe and wind pipe are clean cut.

2. Incised wounds: On the back of right forearm, 2 cm x 0.5 cm x muscle deep, outer side aspect of right forearm, 1 cm x 0.5 cm x muscle, back of right index finger, 1 cm x 0.5 cm x bone deep, back of right middle finger, 1 cm x 0.5 cm x bone deep, back of left forearm, 1 cm x 0.5 cm x bone deep"

EX-P4 is the postmortem certificate, EX-P5 is the viscera report and EX-P6 is her final opinion regarding the cause of death. She gave opinion that the deceased would appear to have died of shock and hemorrhage. She gave further opinion that the death of the deceased could have been caused by a weapon, like knife.

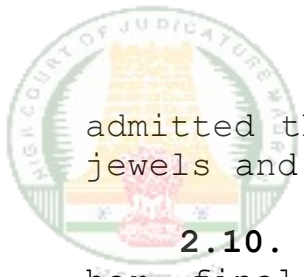
2.7. At the request of PW-16, the material objects were sent for chemical examination. The report revealed that there was bloodstain on one material object-threaded rope [MO-17]. On completing the investigation, PW-16 laid charge sheet against the accused. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on



the side of the prosecution, 16 witnesses were examined, 26 documents and 18 material objects were marked. Out of the said 16 witnesses, PW-1, the husband of the deceased has stated that he was told by PW-4 that lastly, the deceased went along with the accused in his Motorcycle around 03.30 PM, on 09.01.2013. PW-2 has also stated so. PW-1 to PW-3 have further stated that they went in search of the deceased and at last, PW-1 made a complaint at 08.30 PM, on 10.01.2013.

2.8. PW-4, the daughter of the deceased, has stated that she witnessed the deceased being taken by the accused around 03.30 PM to 04.00 PM, on 09.01.2013 in his Motorcycle. According to her, the deceased did not, thereafter, return. PW-1 to PW-4 have identified the jewels worn by the deceased. They were all later on recovered from the accused. PW-5, a resident of Pulivalam Village, has stated that around 04.15 PM, on 09.01.2013, when he was near a Tea Shop at Pulivalam Village Bus Stand, he found the deceased coming with a wire bag [MO-9], to a nearby Grocery Shop and he found the deceased purchasing something in the said shop. He has further stated that he found the accused waiting in the said shop, sitting on his Motorcycle. The Engine of the Motorcycle was then running. After the deceased purchased something from the shop, she returned to the place, where the accused was waiting and thereafter, the accused took her in his Motorcycle. Thus, according to these witnesses, they lastly seen the deceased in the company of the accused, at 04.15 PM, on 09.01.2013. PW-7 is yet another resident of the same village. He has stated that around 04.45 PM, on 09.01.2013, when he was grazing his goats, near Musiri Road, he found the deceased coming in the Motorcycle, driven by the accused. At that time, the deceased was having a wire bag. Then, both went into the temple premises in the Motorcycle. Thereafter, according to him, he found the accused alone leaving the temple premises in the Motorcycle. Thus, according to these witnesses, the deceased was lastly seen in the company of the accused, at 04.45 PM, on 09.01.2013 at Karuppu Temple, Pulivalam Village.

2.9. PW-8 is an important witness for the prosecution. According to him, around 06.00 PM to 06.30 PM, on 10.01.2013, the accused came to his house. The accused wanted a sum of Rs.50,000/- from PW-8, by pledging the jewels in his hands. The accused told that his wife was not well and therefore, for taking treatment, he was in need of money of Rs.50,000/-. PW-8 has further stated that he was having a gold chain, weighing approximately two sovereigns and a pair of ear studs. He assured PW-8 that he would redeem the same within ten days. Believing the words of the accused, according to PW-8, he gave a sum of Rs.37,000/- and took possession of the above jewels, namely, MO-1 and MO-2. Thereafter, PW-8 did not return. According to him, around 08.00 to 08.30 PM, on 12.01.2013, the accused came along with PW-16 and identified the jewels. When enquired, according to PW-8, he



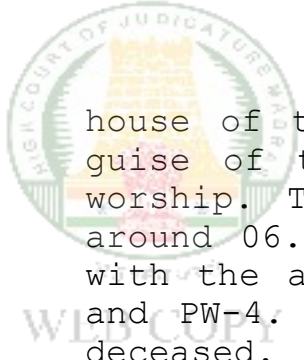
admitted that he is in possession of the receipt for pledging the jewels and returned the same to PW-16. PW-16 recovered the same.

2.10. PW-9 has spoken about the autopsy conducted by her and her final opinion regarding the cause of death. PW-10, the Assistant Director of Forensic, has stated that when he examined the material objects, he found bloodstain only on one property [threaded rope - MO-17]. PW-11, the staff of the jurisdictional Magistrate Court, forwarded the material objects, as directed by the learned Judicial Magistrate for chemical examination. PW-12, yet another important witness for the prosecution. He was the then Village Administrative Officer in Pulivalam Village. He has spoken about the confession made by the accused on his appearance, at 12.00 Noon, on 12.01.2013. He has further stated about the preparation of special report and submission of the same to PW-16. He has also stated about the recovery of the material objects on the said disclosure statements. PW-13, a Head Constable, attached to Pulivalam Police Station, has stated about the fact that he took the dead body and handed over the same to the hospital for postmortem. He has further stated that he recovered the belongings of the deceased and handed over the same to PW-16. PW-14 has spoken about the handing over of the material objects for chemical examination. PW-15 has stated that he handed over the First Information Report to the Court, as directed by the Investigating Officer. PW-16 has spoken about the investigation conducted by him and the filing of final report.

2.11. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On his side, one Mr. Aravan was examined as DW-1, who is the father of the accused. He has stated that he was the hereditary poojari of Kavukandiamman Temple at Pulivalam Village. Since DW-1 and his family members refused to give such a right to PW-1, there was a long standing enmity between these two families. Similarly, according to him, PW-2 and the deceased were enmical towards the accused on account of money transaction. However, on his side, no document was exhibited. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned Senior Counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. This is a case based on circumstantial evidence. The first circumstance projected by the prosecution is that around 03.30 to 04.00 PM, on 09.01.2013, the accused came to the



house of the deceased and took her in his Motorcycle, under the guise of taking her to Karuppu Temple at Pulivalam Village for worship. This fact has been spoken by PW-4. PW-1 returned home around 06.30 PM. PW-4 informed PW-1 that the deceased went along with the accused in his Motorcycle. This has been spoken by PW-1 and PW-4. PW-1 informed about the same to PW-2, the son of the deceased. Thus, the conduct of PW-1 in informing PW-2 and PW-3 that the deceased was taken to the temple by the accused would go to prove that PW-1 is reliable. The fact that the deceased was taken only by the accused in his motorcycle has been mentioned at the earliest point of time in EX-P1 by PW-1. Though these witnesses have been cross-examined at length, nothing could be elicited from them so as to create a slightest doubt about their credibility. They have further stated that they went to Vadukapatti Village, where the accused was residing. But, they could not find the accused also. From these evidences, it has been clearly established that the deceased was lastly taken by the accused in his Motorcycle.

5. The evidence of PW-5, next, assumes importance. PW-5 has stated that when he was standing near a Tea Shop at Pulivalam Village Bus Stand, he found the accused and the deceased together. The accused was sitting in his Motorcycle and the Engine of the Motorcycle was then running. The deceased alone went to the shop, purchased something, returned and went along with the deceased. This witness has got no grudge against the accused. He is an independent witness. During cross-examination, nothing has been elicited so as to discard him. Thus, in our considered view, the evidence of PW-5 inspires the fullest confidence of the Court. From this evidence, it has been clearly established that at or about 04.15 PM, on 09.01.2013, the deceased was in the company of the accused and they went together.

6. As we have already pointed out and as spoken by PW-4, the accused took the deceased under the guise of going to Karuppu Temple at Pulivalam Village. PW-7 has stated that around 04.45 PM, on 09.01.2013, he found the deceased and the accused entering into the temple premises together. After sometime, the accused alone went out of the premises of the temple in his motorcycle. Thus, PW-7, had lastly seen the deceased in the company of the accused. Nothing has been elicited so as to disbelieve his version. Thus, from the evidence of PW-7, the prosecution has clearly established that the deceased was found in the temple premises along with the accused, around 04.45 PM, on 09.01.2013.

7. After 04.45 PM, on 09.01.2013, nobody had seen the deceased. Neither the accused was found anywhere. Though PW-1 to PW-4 went in search of the accused also, he was not seen anywhere. PW-5, the evidence of PW-5, next, assumes importance. He has got no explanation as to what had happened, when the deceased was in

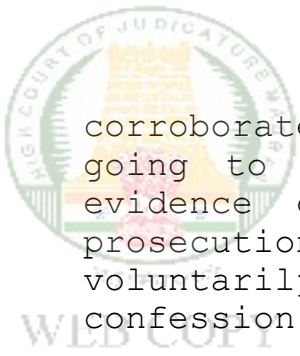
his company between 03.30 PM and 04.45 PM, on 09.01.2013.

8. The fact that the deceased was no more was not known to anybody. It was only on account of the disclosure statement made by the accused to PW-12, the fact that the deceased was murdered came to light. PW-12, the then Village Administrative Officer, has stated that around 12.00 Noon, on 12.01.2013, the accused came to his office and wanted to confess voluntarily. After having ascertained that he was in a mood to make confession voluntarily, he allowed him to orally confess. He has further stated that the accused disclosed the place, where the dead body was lying. He further confessed that he only killed the deceased and removed the gold jewels.

9. Assailing the evidence of PW-12, Mr. Veera Kathiravan, learned Senior Counsel for the appellant, would submit that PW-12 had not reduced into writing the confession alleged to have been made by the accused. EX-P10 is only a special report prepared by him. He would further point out that absolutely, there is no explanation as to why PW-12 did not reduce into writing the confession of the accused. EX-P10, according to the learned Senior Counsel, does not carry the signature of the accused. Thus, the accused would not have made any such oral confession at all.

10. We have given our anxious consideration to the said argument advanced by the learned Senior Counsel. It is true that PW-12 had failed in his duty to reduce into writing the confession made by the accused. But, on that score alone, we cannot simply reject the evidence of PW-12, holding that the accused would not have appeared before him and made a confession. The substance of the confession made by the accused has been incorporated in the special report, EX-P10, prepared by PW-12. In the substance, it has been mentioned that the accused told PW-12 that he took the deceased to Karuppu Temple at Pulivalam Village for worship. He has further confessed that when he wanted her to give the gold jewels worn by her for the purpose of pledging, the deceased refused to do so and on account of the same, there was a small scuffle, in which the accused held her, cut her neck with a knife, killed her and thereafter, he removed the jewels worn by the deceased.

11. If this extra judicial confession is the only piece of evidence available, then, as pointed out by the learned Senior Counsel for the appellant, we would not have hesitated to acquit the accused, because it is the settled law that if an extra judicial confession is shrouded by doubts, as a rule of prudence, the Court should look for corroboration from independent sources on material particulars. In the absence of any such corroboration, the Court should not act on such extra judicial confession alone. Here, in this case, the said extra judicial confession is



corroborated fully by the other circumstances also, which, we are going to discuss a little later. Therefore, we hold that the evidence of PW-12 is reliable, from and out of which, the prosecution has proved that the accused appeared before him, voluntarily, around 12.00 Noon, on 12.01.2013 and made a confession voluntarily.

12. As we have already pointed out, the fact that the deceased was no more was not known until the said fact was disclosed by the accused to PW-12 in his oral confession. Thereafter, PW-12 produced the accused before PW-16 along with EX-P10. In EX-P10, he had disclosed the place, where he had thrown the dead body. It was only out of the said disclosure statement made by the accused to PW-12, the fact that the deceased was no more and the dead body was lying at the place of occurrence came to light. This discovery of a new fact, which was in the exclusive knowledge of the accused, which came to light out of the disclosure statement made by the accused, is a very important piece of circumstance against the accused. The accused has got no explanation at all as to how he came to have the knowledge that the dead body was lying, had it been true that he was an innocent. The very fact that he has got no explanation to offer in this regard and the very fact that the dead body was discovered, only out of the disclosure statement made by the accused would, that by itself, be sufficient to conclusively hold that it was this accused, who committed the murder of the deceased.

13. The dead body was noticed around 12.00 to 12.30 PM, on 12.01.2013. At that time, the jewels worn by the deceased were not found on the dead body. They were missing. PW-1 to PW-4 have stated about the same. From these evidences, it has been clearly established that the jewels worn by the deceased were stolen away. PW-9, who conducted autopsy on the body of the deceased, has stated that the deceased died due to the cut injuries on the neck. She has further stated that the said injury would have been caused by a weapon, like knife. Thus, the prosecution has clinchingly proved that the death of the deceased was homicide and the prosecution has clearly established that the death of the deceased and the removal of the jewels from the dead body had taken place in one and the same occurrence. Thus, the prosecution has proved that the person, who committed robbery of the jewels, had committed the murder of the deceased.

14. After the accused was produced before PW-16, on the disclosure statement made by him, few more incriminating material objects were recovered on his confession. It is stated that the bloodstained clothes, namely, a shirt and a lungi were recovered on the disclosure statement made by the accused. But, there was no evidence on these two material objects. No one had identified that these clothes were worn by the accused, when he



was seen in the company of the deceased. Thus, the recovery of shirt, [MO-14] and shirt [MO-15] is not relevant. However, there is enough evidence to prove that the deceased was taken by the accused in his motorcycle. This is yet another incriminating evidence.

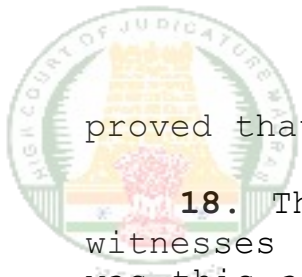
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15. Yet another important evidence available for the prosecution is that of the evidence of PW-8. The fact that MO-1 and MO-2 were found in the possession of PW-8 was not known to the police, until the accused disclosed the same to PW-16. In his disclosure statement to PW-16, the accused has stated that he pledged MO-1 and MO-2 to PW-8. It was only out of the said disclosure statement made by the accused, PW-8 was discovered. PW-8 has stated that around 06.00 PM to 06.30 PM, on 10.01.2013, the accused came to his house and wanted to pledge MO-1 and MO-2. He told him that he was in need of Rs.50,000/- for taking treatment to his wife. PW-8 has also stated that he gave a sum of Rs.37,000/-, after getting MO-1 and MO-2, on pledge. Thus, MO-1 and MO-2, the properties belonging to the deceased, which were lastly worn by the deceased, were in the possession of the accused, around 06.00 PM to 06.30 PM, on 10.01.2013, as spoken by PW-8. The accused has got no explanation as to how he came into possession of these two valuable gold jewels belonging to the deceased.

16. From the very fact that the accused was in possession of the stolen properties, soon after the commission of the theft, we are impelled to raise a presumption that it was this accused, who had committed robbery of these gold jewels belonging to the deceased. Since the robbery and murder had taken place in one and the same occurrence, the presumption is that it was this accused, who committed both the offences. Of course, the said presumption is rebuttable. But, the accused has not rebutted the said presumption either by means of direct evidence or circumstantial evidence. Though PW-8 has been cross-examined at length, nothing has been brought on record so as to disbelieve his version. PW-8, after all, is an independent witness.

17. However, the learned Senior Counsel would submit that PW-4 has admitted that MO-2 belonged to her. From and out of this, the learned Senior Counsel would contend that MO-2 would not be a stolen property. We find no force in the said argument. Though it is true that MO-2 belonged to PW-4, it was worn by the deceased. Thus, MO-2 was lastly in the possession of the deceased, which was stolen away by the accused. Thus, we find no substance at all in the argument advanced by the learned Senior Counsel to doubt the evidence of PW-8. Therefore, from and out of the rebutted presumption raised under Section 114 of the Indian Evidence Act,

It can be safely concluded that it was this accused, who committed murder and robbery and the prosecution has clearly



proved that it was this accused, who committed both the crimes.

18. The Trial Court has dealt with the evidences of all the witnesses elaborately and rightly came to the conclusion that it was this accused, who committed both the crimes. In our considered view, there is no infirmity in the Judgment of the Trial Court. We hold that the prosecution has proved all the charges against the accused beyond reasonable doubts.

19. Now, turning to the quantum of punishment, the Trial Court has imposed a reasonable punishment, which is proportionate to the gravity of the offences and the mitigating circumstances. Thus, we do not find any reason to interfere with the quantum of punishment also. For these reasons, we hold that there is no merit in this Criminal Appeal.

20. In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant, vide Judgment dated 24.02.2014, made in S.C.No.223 of 2013, on the file of the learned Principal Sessions Judge, Trichirappalli, is confirmed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Trichirappalli.
- 2.The Judicial Magistrate, Thuraiyur,
- 3.The Chief Judicial Magistrate, Tiruchirappalli district.
- 4.The Superintendent of Central Prison, Trichy.
- 5.The Inspector of Police,
Pulivalam Police Station, Trichy District
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.C.JEGANATHAN, Advocate, SR No.55852

**PRE-DELIVERY JUDGMENT MADE IN
CRL.A[MD].No.147 of 2014
22.09.2016**