



Crl.A.No.838 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.09.2024

Delivered on 17.10.2024

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CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR.JUSTICE C. KUMARAPPAN**Crl.A.No.838 of 2018**

Mrs.Suguna

...Appellant / Accused – 2

-Vs-

State by
Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai District.
(Crime No.429 of 2003)

...Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, to set aside the order of conviction and sentence passed by the learned Principal District and Sessions Judge, Thiruvannamalai in S.C.No.58 of 2007 by its judgment dated 10.12.2018 and allow the appeal and acquit the Appellant herein.

For Appellant : Mr.S.Anantha Narayanan
Senior Counsel
for Mr.S.M.Nandhie Devhan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

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The instant Criminal Appeal has been filed against the order of conviction against the Appellant in S.C.No.58 of 2007 vide order dated 10.12.2018.

2. In the above sessions case originally, there were two Accused. During the pendency of the trial, the first Accused, Murthy, died, and the charges against him stood abated. Hence, as against the Second Accused, the trial proceeded, and the Trial Court found her guilty under Section 302 IPC.

3. According to the Prosecution case, Accused 1 and 2 are the husband and wife, who were in the business of financing. During the course of their business, the deceased had borrowed some amount to run his small eatery. In the course of such borrowing, there was some outstanding, and to collect such outstanding, the Accused, along with their henchmen, intimidated the deceased's wife. When the deceased went to the Accused residence and questioned their conduct, both the Accused have poured kerosene on the deceased and set him on fire, in pursuance thereof,



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the deceased succumbed to the injuries in the hospital. It appears that subsequently, after coming to know about the incident, P.W-1, who is the wife of the deceased, gave a police complaint to one Mr.Chandran, Head Constable of the Tiruvannamalai Town Police Station, on 29.03.2003. On receipt of such a complaint, an FIR was registered in Cr.No.429 of 2003 at 17.15 hrs, which was forwarded to the concerned Jurisdictional Magistrate, as well as to the Investigating Officer, P.W-14.

4. After receipt of the copy of the FIR, P.W-14 proceeded to the scene of occurrence and prepared an Observation Mahazar; recorded the statement of the mahazar and occurrence witnesses; and also recorded the statements of P.W-6 - Dr.N.Rajendran, and the Postmortem Doctor. The Postmortem Doctor opined that the deceased would appear to have died due to complications of burns. After recording the statements of all the witnesses, P.W-14 – Investigating Officer, laid the charge sheet against the Accused.

5. After committing the case to the Sessions Court, during trial, the Prosecution relied on 14 witnesses, and 15 documents. Besides, the Prosecution has also marked two Material Objects. On behalf of the



Accused, one document was marked as Ex.D-1. The Trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that, the Prosecution has proved the charge against the Second Accused beyond reasonable doubt and convicted her under Section 302 IPC.

6. Assailing the said order, the Second Accused, namely, Appellant herein, has preferred the instant appeal.

7. Learned Senior Counsel appearing for the Appellant would vehemently contend that the entire Prosecution case suffers from factual and legal error, and that the version of P.W-1 is highly unbelievable. Though this case rests upon the dying declaration, the dying declarations are result of tutoring of P.W-1 [wife of deceased] and P.W-2 [brother of deceased] and therefore, the learned Senior Counsel would contend that dying declaration cannot be a sole basis to lay conviction. He would further contend that, apart from the dying declaration, the other alleged eyewitnesses, namely P.W-3 and P.W-9, being the sons of the deceased, are interested witnesses and that their evidences have inherent improbabilities. Thus, he would contend that the Prosecution has miserably



failed to prove the charges and hence prayed to allow the instant appeal.

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8. Per contra, the learned Additional Public Prosecutor appearing for the State would vehemently contend that, this is a case of multiple dying declarations. Though there are multiple dying declarations, the statement made by the deceased, more particularly about his cause of death is consistent. The alleged discrepancy projected by the Appellant is superficial, and does not affect the Prosecution case. It is the further contention of the learned Additional Public Prosecutor that P.W-3 and P.W-9 [sons] have also corroborated the statement made in the dying declaration. Therefore, the findings rendered by the Trial Court is well merited and does not require any interference by the High Court.

9. We have given our anxious consideration to either side submissions.

10. According to Prosecution, this case rests upon both the eyewitnesses account, and also on the basis of the dying declarations. In respect of the eyewitnesses, the Prosecution heavily relies upon P.W-3 and P.W-9, who are the sons of the deceased. According to P.W-3, the Accused



house is very close to their house, and that on the fateful day, the deceased proceeded to the house of the Accused, where there was a wordy quarrel between the Accused and his father. In the melee, while the second Accused poured kerosene upon the deceased, the first Accused lit the fire, and set the deceased ablaze. He would further state that, immediately after the occurrence, he informed his mother and brought her to the scene of occurrence. According to the above statement the scene of occurrence is residence of the Accused and the assailants were only two persons qua Accused 1 and 2.

11. But the Ex.P-1 complaint given by P.W-1, narrates that the deceased was set on fire by the Accused and 10 other assailants, that too in the residence of the deceased, which is an apparent contradiction on the core part of the occurrence. If really the P.W-3 had been the occurrence witness, there would have no possibility for the P.W-1 to refer the deceased house as scene of occurrence in Ex.P-1 complaint, as Ex.P-1 complaint emerged after P.W-3 met her mother P.W-1. Besides, while considering the evidence of P.W-3, his evidence is so straight, pointing only against first and second Accused, while Ex.P-1 complaint refers to 10 other named persons. Therefore, we are of the firm opinion that, if really P.W-3 had



been the occurrence witness, these types of discrepancies would not have crept in Ex.P-1 complaint.

12. Coming to the other son's evidence, namely, P.W-9, he speaks in his cross-examination, as if he was also an occurrence witness. However during the cross-examination, he admits that he had seen his father, only after was set ablaze. Apogee to all, he would further state that only after hearing the hue and cry of his father, he visited the scene of occurrence. Therefore, from the cumulative reading of the evidences of P.W-3 and P.W-9, we safely arrive at a conclusion that they are not reliable persons to place any conviction on the basis of their doubtful testimonies. Furthermore, even if we conclude that P.W-3 is, neither wholly unreliable nor wholly reliable, since P.W-9, the other son did not corroborate P.W-3 evidence, we can safely arrive at a conclusion that the Prosecution could not establish their case through the eyewitnesses account.

13. The issue now narrows down, to consider as to whether the Prosecution has proved the charges beyond reasonable doubt, at least through the alleged dying declarations.

14. Before we proceed further, we deem it appropriate to deal with



the settled legal positions in respect of the multiple dying declarations.

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15. In this regard, the learned senior counsel for the appellant would rely upon the judgment of Division Bench of this Court held in ***Criminal Appeal (MD) Nos.196 & 209 of 2020 (Vijayakumar Vs. The State Represented by the Inspector of Police, Oranthandu Police Station, Thanjavur District***, wherein this Court had relied upon the judgment of the Hon'ble Supreme Court in ***Amol Singh Vs. State of Madhya Pradesh*** reported in ***(2008) 5 SCC 468***, and ***Raju Devade Vs. State of Maharashtra*** reported in ***(2016) 11 SCC 673***, and had laid down a ratio that, whenever there is a discrepancy between multiple dying declarations, laying conviction on the sole basis of the dying declaration, becomes unsafe and held that Court should require a corroboration on material particulars to proceed further. The relevant portion is as follows:

“13. The law is settled that, if a dying declaration is found to be voluntary, reliable and made in fit state of mental condition, it can be relied for convicting the accused without any corroboration. However, in cases of multiple dying declarations and there are inconsistencies, then the Court has to examine whether the inconsistencies are material or not. On examining the dying declarations, if the Court found inconsistencies are material in nature, then, it is unsafe to convict the accused based on the dying declarations. The Hon'ble Supreme Court in Amol Singh v. State of M.P. [(2008) 5 SCC 468], held as follows:



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“8. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, **if there are more than one dying declaration they should be consistent.** (See: *Kundula Bala Subrahmanyam v. State of A.P.* [(1993) 2 SCC 684]. **However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not.** While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”

14. In *Raju Devade vs. State of Maharashtra* reported in (2016) 11 SCC 673, the Hon'ble Supreme Court has held as follows:-

23. It is also relevant to refer to judgment of this court in *Ranjit Singh and others versus State of Punjab*, 2006 (13) SCC 130 wherein this court has clearly laid down that the conviction can be recorded on the basis of the dying declaration alone if the same is wholly reliable. **In the event, if there are suspicions as regards to the said dying declaration, the court should look for some corroborating evidences. Court has further observed that in the event of inconsistencies in the dying declarations the court should lean towards the first dying declaration.** Following was observed in para 13:

It is now well settled that conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards correctness or



otherwise of the said dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence. It is also well known that in a case where inconsistencies in the dying declarations, in relation to the active role played by one or the other accused persons, exist, the court shall lean more towards the first dying declaration than the second one.”

16. In yet another judgment of the Hon'ble Supreme Court reported in ***Mohan Lal and Ors. Vs. State of Haryana*** reported in **2007 (9) SCC 151**, the Hon'ble Supreme Court has restated the principles governing dying declaration, by placing reliance upon the judgment of the Hon'ble Supreme Court in ***Smt. Paniben Vs. State of Gujarat*** reported in (***AIR 1992 SC 1817***). The relevant portion is as follows:

“10. Though a dying declaration

..... This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Paniben v. State of Gujarat* (AIR 1992 SC 1817):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja & Anr. v. The State of Madhya Pradesh* (1976) 2 SCR 764)]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See *State of Uttar Pradesh v. Ram Sagar Yadav and Ors.* (AIR 1985 SC 416) and *Ramavati Devi v. State of Bihar* (AIR 1983 SC 164)]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the



assailants and was in a fit state to make the declaration.
[See *K. Ramachandra Reddy and Anr. v. The Public Prosecutor* (AIR 1976 SC 1994)]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
[See *Rasheed Beg v. State of Madhya Pradesh* (1974 (4) SCC 264)]”

17. In a latest Full Bench judgment of the Hon'ble Supreme Court in ***Irfan @ Naka Vs. The State of Uttar Pradesh*** reported in **2023 Live Law (SC) 698**, the Hon'ble Supreme Court has enunciated the factors to be considered while dealing with the dying declaration, the same reads as follows:

“62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? “Rule of First Opportunity”

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?



(vi) *Whether, the dying declarant had opportunity to clearly observe the incident?*

(vii) ***Whether, the dying declaration has been consistent throughout?***

(viii) *Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?*

(ix) *Whether, the dying declaration was itself voluntary?*

(x) ***In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?***

(xi) *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant."*

(emphasis supplied by this Court)

18. In yet another judgment of the Hon'ble Supreme Court in ***Abishek Sharma Vs. State (Govt. of NCT of Delhi)*** reported in **2023 INSC 924**, wherein the Hon'ble Supreme Court once again restated the principles, after elaborately going into the various precedence, and the same reads as follows:

"9. *Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:*



9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”

19. Therefore, the underlining principles in all those precedents are that, in cases of multiple dying declarations, when there are discrepancies among them, the Court should always expect a corroboration, and furthermore, the Court must prefer the earliest one. Keeping in mind with the above principles, let us consider the facts involved in this case.

20. In the present case, we are confronted with multiple dying declarations. The first dying declaration was given on 29.03.2003 at about 4.20 p.m., to the Doctor (P.W-6), and marked as Ex.P-3. The second dying



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declaration was given to the Police on 30.03.2003, while recording Section 161 CrPC Statement of the deceased, marked as Ex.P-7. The other dying declaration is Ex.P-8, given to the Judicial Magistrate on 30.03.2003. While looking at the above three dying declarations, the earliest dying declaration was on 29.03.2003 at about 4.20 p.m., given to the Doctor while the deceased was admitted in the hospital, according to the Prosecution.

21. According to Ex.P-3, Accident Register having SI.No.2667866, the P.W-6 Doctor, who is the author of Ex.P-3 records that the deceased has informed him that he was set on fire by two known persons. In a similar line, the other two dying declarations, qua given to Police and to learned Judicial Magistrate, namely, Ex.P-7 and Ex.P-8, proceeds. But, while considering Ex.P-7, and Ex.P-8, dying declarations, both refers to the scene of occurrence as the residence of the Accused, and to the assailants as Accused 1 and 2 only.

22. Now while looking at all these three dying declarations, in the backdrop of the Ex.P-1 complaint, there are factual material contradictions, on the face of it. Ex.P-1 complaint, which according to the Prosecution was



given by P.W-1 after hearing about the occurrence through eye witnesses account, namely, her sons P.W-3 and P.W-9. According to her sons, P.W-3 and P.W-9, the scene of occurrence is the residence of the Accused. But in Ex.P-1 complaint, the P.W-1 had stated that the deceased was set fire by the Accused and 10 other persons in the house of the deceased. However, the Exs.P-3, P-7, P-8 qua three dying declarations, refers to only two persons, namely the two Accused and the scene of occurrence as the house of the Accused. Thus there are material factual inconsistencies on the face of it, which creates reasonable doubt on the Prosecution case.

23. While looking at the facts with forensic insights, had there been no communication between the deceased and P.W-1 about the nature of occurrence, and the P.W-1 was not briefed by her sons, these discrepancies could have been ignored. But in the case in hand, Ex.P-1 complaint came into existence, before Ex.P-7 and Ex.P-8, dying declarations, that too on the instructions and information given by the eyewitnesses (P.W-3 and P.W-9). Therefore, if really there had been any real occurrence as stated in the dying declaration, the Ex.P-1 complaint must have recorded the scene of occurrence as the residence of the Accused and must have specifically indicated both the Accused alone as the assailants. Whereas Ex.P-1



complaint gives altogether different picture, qua swapping the scene of occurrence between residence of the Accused to the residence of the deceased and implicating 10 other assailants along with Accused. This definitely is an indication of tutoring of Exs.P-7 and P-8 dying declarations.

24. To crown it all, the learned Senior Counsel invited the attention of this Court in respect of Ex.D-1. This Ex.D-1 was also authored by P.W-6 who issued Ex.P-3, Accident Register. The serial number of Ex.P-3, Accident Register is SI.No.2667866. The previous serial number Accident Register was marked as Ex.D-1. But the AR having SI.No.2667865 (Ex.D-1) was latter cancelled. This Ex.D-1 came into existence along with Ex.P-3, while the deceased was admitted in the hospital. The time of Ex.D-1 is 4.15 p.m., just 5 minutes prior to Ex.P-3. In Ex.D-1, the Doctor had recorded as follows:

“said to have lit fire himself by pouring kerosene on him at 4.00 p.m.”

25. Before we further get into the discussion regarding Ex.D-1, we deem it appropriate to extract the evidence of P.W-6, Doctor, who has



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authored both Ex.P-3 and Ex.D-1, qua Accident Register copies in the

name of deceased. He, during the cross-examination, admits as follows:

"அவருடைய சகோதரர் அவரை
மருத்துவமனைக்கு அழைத்து வந்ததாக
பதியப்பட்டுள்ளது. ராஜேந்திரன் என்பவருடைய
விபத்து பதிவேட்டு நகல் எண்.2667866 ஆகும்.
2667865 என்ற விபத்து பதிவேட்டு நகலையும் நான்
தான் பதிவு செய்தேன். அவர் தன்னைத்தானே
மண்ணெண்ணெய் ஊற்றிக் கொண்டு தீவைத்துக்
கொண்டார் என்று 2667865 விபத்து பதிவேட்டு
நகலில் எழுதி உள்ளேன். அதை நான் பிறகு நான்
கேன்சல் செய்து உள்ளேன். என்ன நடந்தது என்று
தெரியவில்லை. அவரே அவர் ஸ்டேட்மெண்டை
மாற்றிச் சொன்னாரே என்று தெரியவில்லை.
ஒருதடவை அவர் அப்படி சொல்லி இருக்கலாம்.
என்னப்பா நடந்தது என்று நான் கேட்ட போது
திருப்பி அவர் மாற்றி சொல்லி இருக்கலாம்.
அதனால் நான் இன்னொரு விபத்து பதிவேட்டு
நகலை எழுதினேன். முதலில் எழுதினதை நான்
கேன்சல் என்று போட்டு விட்டேன். முதலில்
இறந்தவர் சொன்ன உண்மையை பதிவுசெய்தேன்
என்றும் பின்னால் அவரது உறவினர்கள் வலியுறுத்தி
சொன்னதால் வழக்கிற்றற்றாற் போல் இதை பதிவு
செய்தேன் என்றால் என்னை யாரும் கட்டாயப்படுத்தி
சொன்னதாக ஞாபகமில்லை. நான் எழுதி நான்
கேன்சல் செய்த 26667865 விபத்து பதிவேட்டு
நகல் இது தான். அந்த நகல் எ.சா.ஆ1 ஆகும்."

26. While reading the evidence of P.W-6, Ex.D-1 also came into existence at the instances of the deceased. Therefore, though the Prosecution relies upon three dying declarations, Ex.P-3, Ex.P-7 and Ex.P-8, while considering Ex.D-1, this also must be construed as a dying declaration of the deceased since it also came into existence at the



instruction of the deceased and relates to his cause of death. As we already stated, when there is a inconsistent multiple dying declarations, Court requires Corroboration to act upon the such multiple dying declarations.

27. Now, in the background of existence of 4 dying declarations, we are confronted with following numerous reasonable doubts in the Prosecution's case.

- (a) Ex.P-1 complaint fixes the house of the deceased, as scene of occurrence contrary to the dying declarations Exs.P-7 and P-8.
- (b) Ex.P-1 complaint implicates 10 other named persons as assailants, contrary to the dying declarations.
- (c) Ex.D-1 projects altogether different theory of self immolation.
- (d) The evidences of the alleged eye witnesses, P.W-3 and P.W-9 [sons of deceased], have inherent improbabilities.
- (e) No corroboration is available to support the theory propounded in the dying declarations.
- (f) Possibility of tutoring could not be ruled out.

28. As a matter of understanding, reasonable doubts means a doubt



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which would render the possibility of guilt as highly doubtful. Here, the above listed reasonable doubts would definitely cast a serious doubt to the Prosecution's case and would make the possibility of guilt highly doubtful. Consequently, the appellant is entitled to have the benefit of these reasonable doubts.

29. Further as per the settled legal principles, while preferring the earliest dying declaration Ex.D-1, it fully excludes the Accused from the charges, since Ex.D-1 denotes the cause of death as self immolation. Thus, this Court is of the indubitable view that there are serious and material reasonable doubts, to the Prosecution's case and hence it would be highly unsafe to rely on the dying declarations and therefore, the Prosecution has miserably failed to prove the charge beyond reasonable doubt.

30. The Trial Court without going into the merits of the matter and without appreciating the testimonies in its right perspective, has unfortunately landed on a wrong conclusion with an order of conviction, which deserves to be set aside.



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31. In the result, the **Criminal Appeal stands allowed**. The judgment of the learned Principal District and Sessions Judge, Thiruvannamalai in S.C.No.58 of 2007 dated 10.12.2018 is hereby set aside. As a concomitant, the appellant is acquitted from all the charges and the fine amount, if any paid by her shall be directed to be refunded. The bail bond, if any, executed by the Appellant, shall stand cancelled.

(M.S.R., J.) (C.K., J.)
17.10.2024

cda
Index : Yes
Speaking Order
Neutral Citation : Yes

To

1. The Principal District and Sessions Judge,
Thiruvannamalai.



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2.The Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai District.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer, VR Records,
High Court, Chennai.

M.S. RAMESH, J.
and
C. KUMARAPPAN, J.

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**Judgment in
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