

Bail Slip

1)Chinnadurai Appellant in Crl.A.455/11 (A4 in S.C.40/07 on the file of the District and Sessions Judge, Nagapattinam) was released on bail by the order of this Court dated 28/6/12 and made in M.P.1 of 2012 in Crl.A.No.455 of 2011.

2) Sundar @ Sundarapandian Appellant in Crl.A.No.589 of 2011 (A7 in S.C.No.40/07 on the file of the District and Sessions Judge, Nagapattinam) was released on bail by the order of this Court dated 9/3/12 and made in M.P.No.1 of 2012 in Crl.A.No.589 of 2011.

3)S.Shankar Appallant in Crl.A.614 of 2011 (A7 in S.C.No.40/07 on the file of the District and Sessions Judge, Nagapattinam) was released on bail by the order of this Court dated 3/8/12 and made in M.P.No.1 of 2012 in Crl.A.614 of 2011.

4)Murugappan and Ayappan Appellants in Crl.A.719 of 2011 (A1 and A2 in S.C.No.40/07 on the file of the District and Sessions Judge, Nagapattinam) were released on bail by the order of this Court dated 10/10/12 and made in M.P.No.1 of 2012 in Crl.A.719 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.02.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CRL.A.Nos.455/2011, 589/2011, 614/2011 and 719/2011

Chinnadurai ..Appellant/A4 in Crl.A.No.455/2011

Sunder @ Sundarapandiyan ..Appellant/A7 in Crl.A.No.589/2011

S.Shankar ..Appellant/A3 in Crl.A.No.614/2011

1.Murugappan

2.Ayappan ..Appellants/A1 & A2 in Crl.A.No.719/2011

Vs

State by the Inspector of Police
Poraiyar Police Station
Nagapattinam District.
(Crime No.261/2004)

.. Respondent in all the appeals

Appeals filed u/s.374 [2] Cr.P.C., against the judgment passed in SC.No.40/2007 dated 12.07.2011 on the file of the learned District and Sessions Judge, Nagapattinam.

For Appellant in
Crl.A.No.455/2011 : Mr.A.Thiyagarajan, SC for
Mr.P.Dinesh Kumar

For Appellant in
Crl.A.No.589/2011 : Mr.D.Veerasekaran

For Appellant in
Crl.A.614/2011 : Mr.D.Veerasekaran

For Appellants in
Crl.A.No.719/2011 : Mr.R.Sankarasubbu for
Mr.S.Rajanikanth

For Respondent in
all the appeals : Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 to 4 and 7 in SC.No.40/2007 on the file of the learned District and Sessions Judge, Nagapattinam. Including the appellants, there were a total number of sixteen accused. They stood charged for the offences u/s.147, 148, 341, 302 and 302 r/w 149 IPC. By judgment dated 12.07.2011, the Trial Court acquitted accused 5, 6, 8, 10 to 16 from all the charges. Accused No.9 [Amirdhalingam] died during pendency of the trial and hence, the charges framed against him automatically abated. The Trial Court convicted and sentenced the appellants for the following offences:-

Sl.No.	Conviction under section	Sentence Awarded
1	148 IPC	Each of the accused were sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.1000/- each, in default, to undergo 3 months simple imprisonment.
2	341 IPC	Each of the accused to undergo 1 month rigorous imprisonment and to pay fine of Rs.500/- each, in default, to undergo 10 days simple imprisonment.
3	302 r/w 34 IPC	Each of the accused to undergo imprisonment for life and to pay a fine of Rs.5000/- each, in default, to undergo 3 years simple imprisonment.

Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

[a] The deceased in this case was one Senthilkumar. P.W.1 is his brother. P.W.1 is a driver in the State Transport Corporation Limited. The deceased had earlier fallen in love with one Vembu, sister of A1 and A2. It is alleged that though on the earlier occasions, the deceased had promised to marry her, at a later point of time, he declined to marry her and deceived her. A marriage proposal was finalised for him with another girl. The betrothal was to take place on 10.12.2003. On that day, the said Vembu came to the spot and developed quarrel with a view to prevent the betrothal being performed. In connection with the same, there was a panchayat held ; but no compromise could be arrived at. Thereafter, Ms.Vembu made a complaint against the deceased to the police on 16.12.2003. During enquiry, into the said allegation made in the complaint, at the police station, some politicians and other villagers participated. In that meeting, a compromise was reached, by which, Vembu withdrew the complaint. But the family members of Vembu were not satisfied with the same. A1 and A2, who are the brothers and A3 to A16 who are either the relatives or the friends of A1 and A2, developed grudges against the deceased on account of the above occurrence. This is stated to be the motive for the present occurrence.

[b] On 18.04.2004 at about 10.00 a.m., the deceased had gone out of his house to the Bazaar for purchasing some groceries. By about 12.00 p.m., P.w.1 along with P.W.2

proceeded towards Ozhugaimangalam village to participate in a temple festival. When they were nearing the house of one Amirthalingam, they found a huge crowd of people. In that crowd, many of these accused were present and the others were hiding. On seeing these accused standing with weapons, P.W.1 developed a fear that some untoward incident was going to take place. At that time, P.W.1 and P.W.2 found the deceased coming from the opposite direction in a cycle. With a view to save the deceased, P.W.1 tried to rush towards the deceased so as to ask him to escape from the scene of occurrence as these accused were waiting for the deceased. But the accused prevented him from proceeding further. In the meanwhile, the deceased had come near the place of occurrence. On seeing the deceased, the accused surrounded him and started inflicting cut injuries on him using the aruvals. It is the further case of the prosecution that all the sixteen accused were armed with weapons and each one had a role to play in the matter of committing murder of the deceased. There were number of injuries caused by these accused.

[c] After the occurrence was over, all the accused fled away from the scene of occurrence with weapons. P.W.1, with the help of P.W.2, immediately took the deceased to the Government Hospital, Mayiladuthurai. At 2.30 p.m., Dr.Sampath Kumar [P.W.5] examined the deceased at the hospital. He found the following injuries:-

- "[1] A cut injury 4x4x4 cm on the neck.
- [2] A cut injury 2x2x4 cm on the left side abdomen
- [3] A cut injury from the left earlobe to the extent to the neck exposing of the tissues."

Ex.P.5 is the Accident Register. He declared the deceased as dead and sent the body to mortuary. He also gave intimation to the police station.

[d] P.W.1 was waiting in the hospital for some time. According to the case of the prosecution, thereafter, he went to the police station at 5.00 p.m., on the same day and gave a complaint against all the sixteen accused. P.W.13, the then Sub Inspector of Police, Poraiyar Police Station, on receiving the complaint, registered a case in Cr.No.261/2004 for the offences u/s.147, 148, 341, 324 and 302 IPC. Ex.P.1 is the complaint and Ex.P.25 is the FIR. He forwarded both the documents to Court and handed over the Case Diary to P.W.15, the then Inspector of Police for investigation. The FIR reached the jurisdictional Magistrate Court at 6.30 p.m. on 18.04.2004.

[e] P.W.15, took up the case for investigation, proceeded to the place of occurrence, prepared Observation Mahazar [Ex.P.23] and a Rough Sketch [Ex.P.26] in the presence of witnesses and recovered blood stained earth [M.O.11] ; sample earth [M.O.12] ; tea bag [M.O.14] and Chappals [M.O.13] under a cover of Mahazar [Ex.P.24] and also examined the witnesses and recorded their statements. He also conducted inquest on the dead body of the deceased on 19.04.2004 at 10.00 a.m. in the presence of panchayatdars and other witnesses under Ex.P.27-Inquest Report. He sent the dead body for postmortem.

[f] P.W.4, Dr.Tiruvenkadam, conducted autopsy on the dead body of the deceased at 12.30 p.m. on 19.04.2004. He found the following injuries:-

"External Injuries:-

[1]A cut injury in front of right ear 5x5x4 cm on extending from centre of right eye to cheek,

[2]A cut injury over right shoulder 5x3x3 cm over front of right upper arm.

[3]A cut wound 5x3x3 cm over lever one third of right upper arm.

[4]A long cut wound 7x3x3 cm over middle one third of right fore arm.

[5]A cut injury over right hand extending from right thonor eminence near base of right thumb to huponer eminence size 6x3x3 cm. Tendons and metacarpal bones of right hand seen.

[6]A big chop injury extending from middle of left side chest to center of back of neck region size 12x5x6 cm. Muscles and blood vessels seen dry blood present.

[7]A cut wound over right ear 2 ½ x1x1 cm. Upper part is hanging from the rest of the eyes.

[8]A cut injury over left supra clavicular from 6x5x5 cm in size.

[9]A cut wound over and above left ear 3x3x2 cm.

[10]A cut wound over left side neck region 3x2x2 cm.

[11]A cut wound over left shoulder extending to left upper arm size 10x8x6 upper arm muscles and tendons seen.

[12]A cut wound over left shoulder 6x5x4 cm.

[13]A cut wound over left upper one third upper arm 3x2x2 cm.

[14]A cut wound 3x2x2 cm upper one third forearm.

[15]A cut wound over left side of lateral side of elbow region 6x4x4 cm.

[16]A cut wound 4x3x3 cm over middle one third left forearm.

[17]A cut wound 2x2x1 cm over centre of left upper arm.

[18]A cut injury 8x4x2 cm in size over left loin region.

[19]A cut wound over left side forehead 3x2x2 cm.

[20]An abrasion over left forearm 2x2 cm.

[21]An abrasion over left calf muscle 2x1 cm.

[22]A cut wound over left upper one third thigh 5x3x3 cm.

Internal Examination:-

Thorax, heart and lungs intact c/m pale.
Abdomen:- Stomach empty. Head:- No fracture skull bones. Brain surface pale, no haemorrhage. Hyoid bone intact."

Ex.P.2 is the Postmortem Certificate. He opined that the above injuries could have been caused by sharp edged weapon like aruval. He further gave opinion that the death was due to shock and haemorrhage due to the injuries sustained by the deceased.

[g] P.W.15, during the course of investigation, arrested the accused Murugappa [A1], Ayappan [A2] and Shankar [A3] on 23.04.2004 at about 1.00 p.m. in the presence of P.W.6 and another witness. On such arrest, all the three accused gave independent, voluntary confession statements [Exs.P. 6 to 8] one after the other. P.W.15 reduced the same in writing. In those confession statements, the accused disclosed the place where they had hidden the aruvals respectively. In pursuance of the same, M.Os.5, 16 and 17 [aruvals] were recovered under the cover of Mahazars [Exs.P.6 to 8] from the place of hide out. He also recovered the clothes of the said accused under the cover of Mahazars [Exs.P.12, 13 and 14]. On returning to the police station, P.W.15, sent the A1 to A3 for judicial remand and also forwarded the materials objects to the Court. Then, he handed over the investigation to his successor, P.W.16.

[h] P.W.16, took up the case for investigation and on 24.04.2004 at about 8.30 a.m., he arrested Mullainathan [A5], Arasu @ Ilavarasu [A6] and Sunder @ Sundarapandiyan [A7] in the presence of P.W.7 and another witness. A6 came forward to give a voluntary confession statement [Ex.P.15], in pursuance of which, M.O.18 [aruval] was recovered under a cover of Mahazar [Ex.P.16]. Likewise, M.Os.19 and 20 [aruvals] were also recovered from the place of hide out as identified by A5 and A7, under the cover of Mahazars [Exs.P.17 and 18]. The said accused were sent for judicial remand and the material objects were

forwarded to the Court for chemical examination. He also arrested Amrithalingam [A9], Ganesan [A11], Ramakrishnan [A12] and Balakrishnan [A14]. On coming to know that the accused Kaliyamurthy [A8], Shanmugam [A10] and Jagannathan [A15] surrendered before the learned Judicial Magistrate, Mayiladuthurai and that the accused Chinnadurai [A4] surrendered before the learned Judicial Magistrate, Cuddalore, he took police custody of the said accused and recorded their statements and also recovered the material objects from the hide out. He sent the accused for judicial remand and also the material objects to Court for chemical examination. He also recorded the statements of Dr.Tiruvenkatam and Dr.Sampath Kumar. On receipt of the Biological reports and Serological reports and on completion of investigation, he laid charge-sheet against the accused.

[i] Based on the above materials, the Trial Court framed charge against the accused as detailed in the first paragraph of the Judgment. The accused denied the same as false. In order to prove the case on the side of the prosecution, as many as 16 witnesses were examined and 40 documents and 21 material objects were marked.

[j] Out of the said witnesses, P.W.1 claims to have been present at the place of occurrence. He has spoken vividly about the entire occurrence.

More particularly, about the individual overt acts of all the accused and their participation. P.W.2, who was examined as a witness, has turned hostile and not supported the case of the prosecution in any manner. P.W.4 [Dr.Tiruvenkadam] has spoken about the Postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.5 has spoken that he examined the deceased at 2.30 p.m. at the Government Hospital, Mayiladuthurai. He has also spoken about the injuries found on the deceased. P.Ws.6, 7 and 8 are the witnesses who have spoken about the arrest of the accused persons and the subsequent recovery of the material objects. P.W.9 has spoken about the love affair between the deceased and Vembu. P.W.10 is the driver of the van in which the deceased was taken to the hospital. P.W.11 has spoken about the earlier complaint given to the police by Vembu against the deceased. P.W.12-Village Administrative Officer has spoken about the Observation Mahazar prepared in the scene of occurrence, recovery of material objects. P.W.13 has spoken about the registration of the case. P.Ws.15 and 16 have spoken about the respective investigation done by them.

3 When the above incriminating materials were put to the accused under section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not

chose to examine any witness nor marked any documents on their side.

4 Having considered all the above, the Trial Court convicted the appellants herein. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

5 We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record.

6 In this case, the prosecution relies mainly on the eyewitness account of P.W.1. Learned counsel for the appellants would submit that P.W.1 could not have been present at all in the scene of occurrence and therefore, his evidence deserves to be rejected. But the learned Additional Public Prosecutor, while vehemently opposing these appeals, would submit that there are no reasons to reject the evidence of P.W.1 and the Trial Court has analysed the evidence of P.W.1 so as to come to the right conclusion that from out of the evidence of P.W.1, these appellants have been proved to have committed the crime. Thus according to him, no interference is required at the hands of this Court.

7 We have considered the rival submissions.

8 Admittedly, P.W.1 is an inimical witness. He has got motive against the accused party. At the place of occurrence, his presence is stated to be only by chance. It is too well settled by a catena of decisions of the Hon'ble Apex Court that if a witness claims to have been present at the place of occurrence by chance, the said witness should explain to the satisfaction of the Court as to what made him to be present at the time of occurrence. Further, it has been well settled that if the prosecution relies only on the interested, inimical and chance witnesses, then the evidence of such witness require more close scrutiny. Keeping these broad principles in our mind, let us now go into the evidence of P.W.1.

9 Admittedly, according to the case of the prosecution, the occurrence was at 12.30 p.m. on 18.04.2004. But the deceased was taken to the hospital only at 2.30 p.m. Had it been true that P.W.1 was present at the scene of occurrence, it would not have taken two hours for him to take the deceased to the hospital. This creates initial doubt in the evidence of P.W.1 about his presence at the time of occurrence. At the hospital, P.W.5 [Dr.Thiruvankadam] declared the deceased dead at 2.30 p.m., itself. Even after that, P.W.1 did not go to the Police Station to make any complaint. During cross-examination, P.W.1 has admitted that he did not want to go to

the Police Station to make any complaint as he was not interested in any case being registered. Further, P.W.1 has stated that he was waiting all along only in the hospital and at that time, the Sub Inspector of Police came to the hospital. He shouted at the police personnel because the police had failed to protect his brother/the deceased herein. When he wanted the dead body of the deceased to be handed over to him, he was informed by the police that postmortem could be conducted only if a case was registered. P.W.1 has further admitted that only after that, for the purpose of having the body of the deceased subjected to postmortem, he gave a complaint to the police. This conduct of P.W.1 also creates further doubt about his veracity. Thereafter, according to P.W.13, the Sub Inspector of Police, a written complaint was presented by P.W.1 at the Police Station at 5.00 p.m. Whereas, P.W.1 would state that he only orally narrated the occurrence which was reduced to writing by the Sub Inspector of Police at the Hospital, in which his signature was obtained. Had it been true that such an information was reduced to writing at the hospital by the Sub Inspector of Police, the same would contain the earliest version about the occurrence. There is no reason as to why the same has been suppressed. According to P.W.13 [Sub Inspector of Police], Ex.P.1 is the written statement given by P.W.1. Thus, there is some doubt about the very origin of the complaint.

10 Next comes the participation of the accused in the occurrence. In the FIR, 16 accused have been mentioned as the persons who participated in the occurrence. FIR also further mentions about the individual overt acts of each accused. In his evidence also, P.W.1 has mentioned about the presence and participation of all the 16 accused including their overt acts. But the Trial Court has rejected his evidence in respect of the other accused excepting the appellants herein. The Trial Court has given reasons for the same. From this, it is crystal clear that P.W.1 is not fully believable.

11 Above all, in our considered view, the presence of P.W.1 at the place of occurrence itself is doubtful because of the above delay and also because he claims to have been present at the place of occurrence by chance, for which, there is absolutely no satisfactory explanation.

12 At this juncture, the learned counsel for the appellants would submit that when a solitary witness to the occurrence is only partly believable, prudence requires that there has to be corroboration in material particulars from independent sources. Learned counsel relied on the judgment of the Apex Court in VADIVELU THEVAR Vs. STATE OF MADRAS reported in AIR 1957 SC 614, wherein, the Hon'ble Apex Court has held in paragraph 12 as follows:-

".....

11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 100 and 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the

truth of the case for the prosecution. Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if Courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver ; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony

of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

13 Applying the same, if we analyse the evidence of P.W.1, it is crystal clear that the Trial Court itself has disbelieved him in respect of the other accused who have been acquitted and thus, he is only partly believable. Admittedly, there is no other corroboration from any other source. Above all, his evidence does not fully inspire confidence of the Court. This Court has got every doubt about the presence of P.W.1 at the place of occurrence. As we have already pointed out, the FIR is a doubtful document in this case. The original information in this case has been suppressed. The evidence of P.W.1, thus, does not pass the test of close scrutiny. For all these reasons, we hold that the prosecution has failed to prove its case beyond reasonable doubts. Therefore, the appellants are entitled for acquittal.

14 In the result, the criminal appeals are allowed and the conviction and sentence imposed on the appellants by the Trial Court are hereby set aside. Fine amount, if any, paid by them, shall be refunded to them. Bail bonds, if any, executed by them, shall stand terminated.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police
Poraiyar Police Station.
Nagapattinam.
- 2.The District and Sessions Judge
Nagapattinam.
- 3.The Judicial Magistrate No.II,
Mayiladuthurai.
- 4.The Public Prosecutor,
High Court, Chennai.

5.The Judicial Magistrate,
Mayiladuthurai.

6.3 & 5 -Do- thro The Chief Judicial Magistrate,
Nagapattinam.

7.The Superintendent,
Central Prison,
Cuddalore.

8.The District Collector,
Nagapattinam District.

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

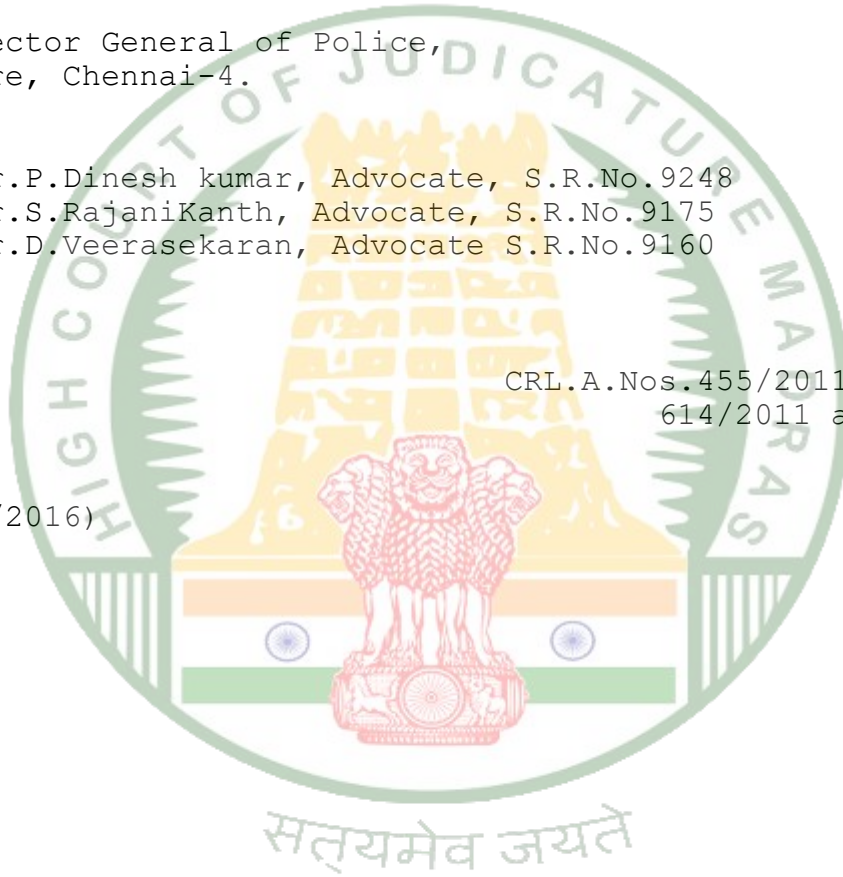
+3cc to Mr.P.Dinesh kumar, Advocate, S.R.No.9248

+1cc to Mr.S.RajaniKanth, Advocate, S.R.No.9175

+1cc to Mr.D.Veerasekaran, Advocate S.R.No.9160

CRL.A.Nos.455/2011, 589/2011,
614/2011 and 719/2011

ksj (CO)
srg (26/02/2016)



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