

Bail Slip

The Appellant's/Accused 1 to 4 namely 1)Rajendran 2) Velmurugan, 3)Natarajan 4) Sekar were directed to be released on bail vide Ordedr dated 20.6.2012 made in Crl M.P. No.1 of 2012 in Crl. A.No.810 of 2011 [Accused 1 & 2) and dated 25.1.2012 made in Crl.M.P.No. 1 of 2011 in Crl. A No.726 of 2011 (Accused No. 3 & 4) respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.726 and 810 of 2011

1.Natarajan
2.Sekar

... Appellants in Crl.A.No.726/2011/
Accused 3 & 4

1.Rajendran
2.Velmurugan

... Appellants in Crl.A.No.810/2011/
Accused 1 & 2

-Vs-

State rep by
The Inspector of Police
Yeathappur Police Station
(Crime No.49 of 2009)
Salem District.

... Respondent in both appeals/Complainant

These Criminal Appeals have been preferred against the judgment of conviction and sentence dated 14.10.2011 in S.C.No.231 of 2010 on the file of the Additional District Sessions Judge (Fast Track Court No.2), Salem.

For Appellants : Mr.D.Shivakumaran
in Crl A. No.726/11
Mr.A.thiyagarajan Senior Counsel for
M/S.K.M.Jayapal in crl A No.810/11

For Respondent
in both the Crl
Appeal

: Mr.M.Maharaja
Additional Public Prosecutor

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants in CrI.A.No.810 of 2011 are the accused 1 and 2 and the appellants in CrI.A.No.726 of 2011 are the accused 3 and 4 in S.C.No.231 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court - 2, Salem. They stood charged for the offence under Section 302 r/w 34 IPC. By judgment dated 14.10.2011, the trial Court convicted all the four accused under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the accused/appellants are before this Court with these appeals.

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

[a] The deceased in this case was one Mr.Subramaniam. P.Ws.1 to 3 are the son, wife and daughter respectively of the deceased. P.W.2 was residing along with the deceased at East Garden in Panaimadal Village. P.W.3 was residing in the same village, but at a different place along with her husband Mr.Muthukumar. These four accused are brothers. The accused 1 and 2 were residing as neighbours of the deceased and the accused 3 and 4 were living elsewhere. Between the family of the accused and that of the deceased, there were ill-feelings, on account of a dispute regarding a common ridge between the lands belonging to both the families. It is alleged that some time before the occurrence, there was theft of coconuts committed from the coconut trees of the deceased and there was also a theft of air compressor from the field of the deceased. The deceased had suspicion that the said theft was committed only by the accused parties and therefore, he convened a village panchayat. Six months prior to the occurrence, a pipe belonging to the deceased was stolen away from his field. Suspecting that the accused had committed theft, the deceased made a complaint to the police at Yeathappur Police Station. The police held enquiry on the said allegations. The accused 1 to 3 appeared before the police and explained that they did not commit the theft of the pipe. The deceased told the Inspector of Police, that he would prove that these accused had stolen away the pipe and if not, he would withdraw the complaint. Thus, there was no finality reached at the police station in respect of the said complaint.

[b] Subsequently, P.W.4 - Chinnathamani, allegedly informed the deceased that when he visited the field of the accused, he found the above stolen pipe lying there. It is stated that on the said information, the deceased again went to the police

station and told the Inspector of Police about the said fact. The police in turn sent intimation to the accused to appear for enquiry. On 24.01.2009, in the morning, the deceased alone had gone to the police station to participate in the enquiry. But, till the evening, the accused did not turn up. The Inspector of Police wanted the deceased to come for enquiry again on 26.01.2009. Therefore, the deceased, with a view to return to his village, travelled in B-6 bus from Vazhappadi to Edyapatti. He got down at the bus stop around 7.00 p.m., where he found P.W.4. Then, he took his cycle from there and was proceeding. When he was walking alone along the road, near the field of one Advocate Velmurugan, all these four accused emerged there and surrounded the deceased with a view to commit murder. The accused 3 and 4 prevented the deceased from further proceeding, to facilitate the accused 1 and 2 to cut him. The accused 1 and 2 cut the deceased repeatedly with aruvals on his face, neck, left shoulder, upper hand, right thigh and other parts of the body. The deceased raised alarm.

[c] P.W.2, the wife of the deceased, by that time, went in search of the deceased. Since it was so dark, she took a torch light. When she was nearing the field of Advocate Velmurugan, she heard the distress call of the deceased. She rushed towards the said place. P.W.3, the daughter of the deceased, along with her husband, at the same time, had gone to their motor pumpset to switch on the motor. When they were nearing a transformer, they heard the distress call of the deceased. P.W.3 also rushed towards the place of occurrence. [It is not clear whether her husband also accompanied her]. Thus, P.W.3 also witnessed the occurrence. P.Ws.2 and 3 saw the accused 1 and 2 cutting the deceased indiscriminately. According to P.W.1, the accused 3 and 4 were also there. But, according to P.W.3, the accused 4 alone was there and she has not stated anything about the third accused. The deceased fell down in a pool of blood. The accused ran away from the place of occurrence.

[d] On hearing the hue and cry raised by P.Ws.2 and 3, the neighbouring villagers reached the place of occurrence. Then, the husband of P.W.3 had also come to the place of occurrence. He arranged for a share auto, in which, they took the deceased immediately to one Palaniyandi hospital at Salem. The Doctor found the deceased in a serious condition and therefore, advised them to take the deceased to the Government Hospital. The Doctor in the said hospital gave first aid treatment. When he was brought to the Government Hospital at Salem, P.W.12- Dr.Raja examined him at 10.20 p.m. on 24.01.2009. He found that there was no life in the body. He declared him dead. He duly gave intimation to the police about the same and forwarded the body to the mortuary.

[e] P.W.1 who was in his auto was informed by someone about the occurrence. Immediately, he rushed to Palaniyandi Hospital. Since he was informed that the deceased had been taken to the Government Hospital at Salem, he rushed there. He enquired about the occurrence and came to know that all the four accused had caused the death of the deceased. P.W.13, who was the then Inspector of Police of Yeathappur Police Station has stated that at 9.00 p.m. on 24.01.2009, he was informed by someone that the deceased was lying with cut injuries at East Garden at Panaimadal Village. Immediately, according to him, he rushed to the place of occurrence. When he reached the place of occurrence, he found that the deceased had been taken to the Government Hospital at Salem. Therefore, he rushed to the Salem Government Hospital at 11.30 p.m. He ascertained that the deceased was already declared dead and the dead body was kept in the mortuary. P.W.1 who was there at the hospital presented a written complaint to him. P.W.13 returned to the police station and registered a case in Cr.No.49 of 2009 for offences under Sections 341 and 302 IPC at 2.00 a.m. on 25.01.2009. He forwarded the complaint [Ex.P1] and the FIR [Ex.P.13] to the Court through the police constable. The learned Judicial Magistrate received the same at 3.15 p.m. on 25.01.2009.

[f] Taking up the case for investigation, P.W.13 went to the place of occurrence at 6.30 a.m. on 25.01.2009 and prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of P.W.9 and another witness. Then, he recovered blood stained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witnesses. At 8.30 p.m., he went to the hospital and conducted inquest on the body of the deceased, during which, he examined many witnesses, including P.Ws.1 to 3. Then, he forwarded the body for post-mortem. P.W.7-Dr.Rathinakumar conducted autopsy on the body of the deceased on 25.01.2009 at 1.45 p.m. He found the following injuries:

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- 1 Chopped injury over left temporal region of scale 1 x 1 cm x bone deep and it is situated 7cms above the left mastoid process, and 8cm above anterior to the left temporal eminence
- 2 Chopped innury over left temporal region of scalp 7 x 2 cms x bone deep and it is situated 2 cms below the first injury
- 3 Chopped injury over left tempro parietal region 15 x 2 cms x bone deep with cut fracture left tempro parietal bone 12 cms long and it is situated 2 cms below the 2nd wound

- 4 Chopped injury over left mastoid process extends upto left temporo parietal region 13 x 2 cms x bone deep and it is situated 2.5 cms below the 3rd injury
- 5 Cut injury over left ear lobe upper part of external ear and pinna found missing measuring 4 cms compare to right side
- 6 Chopped injury over back of the left side neck extends upto left frontal region to left side neck it also extends to middle part of left ear 0.5 cm below the 5th injury
- 7 Chopped injury over left side face 7 x 1 cms x bone deep with underlying fracture zygomatic bone seen through the injury and it is situated 5 cms below the 6th injury
- 8 Chopped injury over left side face 17 x 3 x bone deep with fracture mandible seen through injury and it is situated 4 cms anterior to the 7th injury
- 9 Chopped injury over left side mandible 9 x 4 x bone deep and it is situated 2cms below the 8th injury
- 10 An incised injury with tapering edge left side of neck 7 x 1 cm bone deep with severance of sterno mastoid muscles on left side with severance of external jugular vein left side
- 11 Incised injury over left clavicle with tapering edge 6 x 1 x bone deep through which fracture of medial end clavicle bone
- 12 Chopped injury over left shoulder 12 x 4 x bone deep with fracture humeral head seen through the injury
- 13 Chopped injury over left upper arm antro lateral aspect 7 x 2 x bone deep
- 14 Chopped injury over anterior aspect of left upper arm 4 x 2 x bone deep
- 15 Chopped injury over left hypotheinar area 14 x 4 x bone deep. 3rd and 4th metacarpal bone found fracture seen through the injury and distal fragments hanging and there is severance of hypotherinar muscle tendons vessels
- 16 Cut injury over left thigh 1 x 0.5 x 0.5 cm

- 17 Chopped injury over right side maxillary region 8 x 6 x bone deep
- 18 Chopped injury over upper right side upper lip extends upto the right nostril 4 x 0.5 x bone deep
- 19 Cut injury over right ear 4 cms long lower portion found hanging
- 20 Chopped injury over right mastoid process extends upto the right side lateral side of neck 14 x 3 x bone deep with severance of lateral to the neck muscle
- 21 Chopped injury over right upper lip extends upto right side nostril 4 x 0.5 x bone deep
- 22 Cut injury over right ear through and through a part of attachment lower ear found hanging measuring 4cms long
- 23 Chopped injury over right mastoid process extends upto lateral aspect of right side neck 14 x 3 x bone deep with severance of neck muscles
- 22 Chopped injury over right scapular region extends upto right shoulder 8 x 2 x bone deep
- 24 Chopped injury over occipital region of scalp 6 x 0.5 x bone deep all chopped injuries are oblique and gapping with edges are everted with adherence of blood clots and dust."

Ex.P3 is the Post-mortem Certificate. According to him, the injuries found on the deceased would have been caused by weapons like M.Os.9 and 10 [Aruvals]. He further opined that the death was due to shock and haemorrhage due to multiple injuries.

[g] P.W.13 recovered the blood stained cloth found on the body of the deceased and forwarded the same to the Court. He examined P.W.6-Dr.Rajganesh, who initially treated the deceased at Palaniyandi Hospital at Salem, on 27.01.2009. On 28.01.2009, the accused 1 and 2 had surrendered before the learned Judicial Magistrate-IV, Salem. On the orders of the learned Judicial Magistrate-I, Athur, he took police custody of the accused 1 and 2 on 02.02.2009. While in custody, in the presence of P.W.8, the first accused gave a voluntary confession, in which, he disclosed the place where he had hidden the blood stained aruval. In pursuance of the same, he took the police and the witnesses to the said place and produced M.O.9 - aruval. Similarly, the second accused gave a voluntary confession, in

which, he disclosed the place where he had hidden the aruval. In pursuance of the same, he took the police and the witnesses to the said place and produced M.O.10 - aruval. P.W.13 recovered the same under independent mahazars. On returning to the police station, he forwarded the accused 1 and 2 to the Court for judicial remand and also handed over the material objects to the Court. He arrested the third accused Natarajan on 31.01.2009 and forwarded him to the Court for judicial remand. On 18.02.2009, he arrested the fourth accused Sekar and forwarded him for judicial remand. At his request, the material objects were sent for chemical analysis. The investigation was thereafter taken by his successor P.W.14. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed appropriate charges, which the accused denied. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 18 documents were exhibited, besides 10 Material Objects.

4. Out of the said witnesses, P.W.1 has stated that he heard about the occurrence. He went to Salem and after having ascertained that all the four accused were involved in the crime, he made a complaint to the police. P.Ws.2 and 3 have been examined as eye witnesses and they have stated that they witnessed the entire occurrence. P.W.4 turned hostile and he has not stated anything about the occurrence. P.W.5 has spoken about the motive of the occurrence. P.W.6, the Doctor has stated that on 24.01.2009, when he was at Palaniandi Hospital, Salem, the deceased was brought at 9.30 p.m. He found extensive cut injuries on his body and then, he advised the attenders to take the deceased to the Government Hospital at Salem. P.W.7 has stated about the post-mortem conducted and his final opinion regarding the cause for death. P.W.8 has spoken about the disclosure statement made by the accused 1 and 2 and the consequential recovery of M.Os.9 and 10 at their instance. P.W.9 has spoken about the Observation Mahazar and Rough Sketch prepared at the place of occurrence in his presence. P.W.10 is a Police Constable, who carried the dead body for post-mortem. P.W.11, the Head Clerk of the Court has stated that he had forwarded the material objects for chemical examination. P.W.12 is the Doctor at Government Hospital at Salem, who has stated that when the deceased was brought to him, he found him dead. P.W.13 has spoken about the registration of the case and the initial investigation done by him. P.W.14 has spoken about the further investigation and the laying of the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any witness on their

side. They marked two documents, namely CSR Receipt dated 10.04.2008 [Ex.D1] and a Xerox copy of the Accident Register pertaining to the deceased given by Dr.Raju [Ex.D2]. Their defence was a total denial.

6. Having considered all the above, the trial Court convicted all the four accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with these appeals.

7. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. As narrated above, in this case, the prosecution has relied on the eye witness account of P.Ws.2 and 3. The learned counsel for the appellants would submit that the presence of P.Ws.2 and 3 cannot be believed at all. Similarly, the learned counsel would submit that Ex.P1 contains the names of only the accused 1 to 3 and not that of the fourth accused. He further submitted that before making Ex.P1 the written complaint, P.W.1 had enquired P.Ws.2 and 3 and others present in the hospital. Only after having ascertained the number of accused involved in the crime, according to him, he prepared the complaint. The learned counsel would point out that, if really P.Ws.2 and 3 had seen the occurrence, in the FIR, the names of the four accused would have been mentioned as assailants. The learned counsel would further submit that the evidence of P.W.13 that the earliest information given to him that the deceased was lying with cut injuries in the East Garden should have been viewed by the trial Court. Thus, according to the learned counsel, there are lot of doubts in the prosecution and the prosecution has failed to prove the case beyond reasonable doubts.

9. The learned Additional Public Prosecutor would however stoutly oppose these appeals. According to him, the presence of P.Ws.1 and 2 is quite natural and the same cannot be doubted. The learned Additional Public Prosecutor would further point out that the evidence of P.Ws.2 and 3 has been corroborated by medical evidence. He would further submit that there is no reason to reject the eye witness evidence of P.Ws.2 and 3. He would further add that M.Os.9 and 10 at the instance of the accused 1 and 2 would also go to strengthen the case of the prosecution. Accordingly, the learned Additional Public Prosecutor would submit that the prosecution has proved the case beyond all reasonable doubts and therefore, the conviction of the accused does not need any interference at the hands of this Court.

10. We have considered all the above submissions.

11. The entire occurrence in this case was at 7.30 p.m. on 24.01.2009. It is the evidence of P.W.1 that at that time, he was in Athur. On getting information, from Athur, he rushed to Salem Palaniyandi Hospital and from there, after finding that the deceased had been taken to the Government Hospital, Salem, he rushed to the Government Hospital. It is his further evidence that at the Government Hospital at Salem, he made enquiries and came to know that all these four accused had participated in the crime and they only caused the death of the deceased. But, he did not choose to go to the police station immediately. It can be explained that he would not have had the mind to go to the police station, since his father was brutally murdered. Therefore, in this conduct of P.W.1, we do not find anything unnatural.

12. At this juncture, the evidence of P.W.13 assumes much importance. P.W.13, the Inspector of Police would state that while he was at the police station, he received information that the deceased was lying in the East Garden with cut injuries. This would give an indication that the occurrence would not have been witnessed by anybody. According to him, he immediately rushed to the place of occurrence and since the deceased had been already taken to the Government Hospital, he rushed to the Government Hospital at Salem. He ascertained that the deceased was dead and the body was in mortuary. Then, he made enquiries. P.W.1 at that time came forward to present the written complaint. P.W.1 has admitted that it took about one hour for him to prepare the said complaint, which runs to about two pages. At the time when Ex.P1 was prepared, the relatives and others were all there in the hospital. The very fact that they took about one hour to prepare the complaint would go to show that it was preceded by deliberation by P.W.1 with others. This possibility of deliberation cannot be ruled out. Thereafter, the written complaint was allegedly presented by P.W.1, which unfortunately does not contain any allegation against the fourth accused. It proceeds as though only the accused 1 to 3 participated in the crime. P.W.1 had no explanation to offer for the omission of the role played by the fourth accused. This creates further doubt about the genuineness of Ex.P1 and the very presence of P.Ws.2 and 3 at the place of occurrence.

13. The learned counsel for the appellants would submit that the FIR would not have come into being at the time as it is projected by the prosecution. Ex.P13 reads as if it was registered at 2.00 a.m. on 25.01.2009. But, the FIR had reached the hands of the learned Magistrate very belatedly only at 3.15 p.m. on 25.01.2009. Thus, there is a delay of more than 13 hours in the FIR reaching the Court. The distance between the

police station and the Court is only a few kilometres. Absolutely, there is no explanation for this inordinate delay. The prosecution has not examined the Police Constable who carried the FIR to the Court. As rightly pointed out by the learned counsel for the appellants, this unexplained inordinate delay would certainly give raise to a suspicion about the time at which the case was registered. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Thulia Kali vs The State of Tamil Nadu [1973 AIR 501] wherein, the Hon'ble Supreme Court, in similar circumstances, has rejected the case of the prosecution suspecting some manipulation. In the instant case, applying the same yardstick, we have to doubt the case of the prosecution, as manipulation cannot be ruled out.

14. Admittedly, these accused are brothers. When the name of the fourth accused was not in the FIR, though the FIR has come into being very belatedly, the fact that at a later stage all the four accused have been roped in as accused would go to show that an attempt has been made to rope in as many number of accused as possible from the house of the accused so as to wipe out the entire family of the accused. This inference cannot be stated to be unreasonable.

15. In the light of the above doubts, let use now go into the evidence of P.Ws.2 and 3. P.W.2 the wife of the deceased states that just before the occurrence she was at her house. P.W.13 would state that there are no houses anywhere either near the place of occurrence or at a short distance from the place of occurrence. Admittedly, the house of P.W.2 was at a far of place. She claims to have been present at the time of occurrence by chance. Similarly, P.W.3 also claims to have been present at the time of occurrence only by chance. It is well settled that, if witnesses claim that they were present at the place of occurrence by chance, the reason for their being present at the place of occurrence should be explained to the satisfaction of the judicial conscience of the Court. Here in this case, the explanation offered by P.W.2 is that she went in search of the deceased since it was late in the evening as there was also no light. Similarly, P.W.3 would say that she along with her husband had gone to switch on the motor and when they were nearing the transformer, they heard the cry of the deceased and then, she rushed to the place of occurrence. But, P.W.13 has admitted that there was no such transformer at all found anywhere near the place of occurrence. Thus, in our considered view, the explanation offered by P.Ws.2 and 3 for their being present at the place of occurrence is doubtful.

16. It is the further evidence of P.W.2 that it was pitch dark at the place of occurrence. She has not stated that she saw the occurrence by flashing the torch light. Similarly, P.W.3 also does not state as to how she was able to identify the

assailants. P.W.3 has further stated that she found only the accused 2 and 4. She has not stated even about the presence of the third accused. The occurrence had taken place in the field of one Velmurugan. The Rough Sketch prepared by P.W.13 would go to show that there were no houses near the place of occurrence. In that situation, in the absence of light, it is not explained to the Court as to how P.Ws.2 and 3 could witness the entire occurrence, including the overt acts. In our considered view, since P.Ws.2 and 3 are inimical witnesses interested in the case of the prosecution and since they are also chance witnesses whose presence itself is doubtful, we find it difficult to act upon the uncorroborated testimonies of P.Ws.2 and 3 alone. It needs to be mentioned that P.W.4 - Mr.Chinnathambi has turned hostile and he has not supported the case of the prosecution in any manner. As we have already pointed out, the earliest information passed on to P.W.13 that the deceased was lying in East Garden with cut injuries, would clearly go to show that the occurrence would not have been noticed by anyone and by taking enough time and after due deliberation, P.W.1 and the police had fabricated a case, so as to implicate all the brothers, who are the accused 1 to 4 in this case, by planting P.Ws.2 and 3 as eye witnesses. Further, as we have already pointed out, the unexplained delay in forwarding the FIR to the Court is yet another very strong circumstance to doubt the case of the prosecution. For all these reasons, we find it difficult to sustain the conviction of the accused. We hold that the prosecution has not proved the case beyond reasonable doubts and therefore, the appellants are entitled to acquittal.

In the result, these appeals are allowed and the conviction and sentence imposed on the appellants by the trial Court are set aside and they are acquitted of all the charges. The fine amount, if any paid by the accused, shall be refunded to them.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

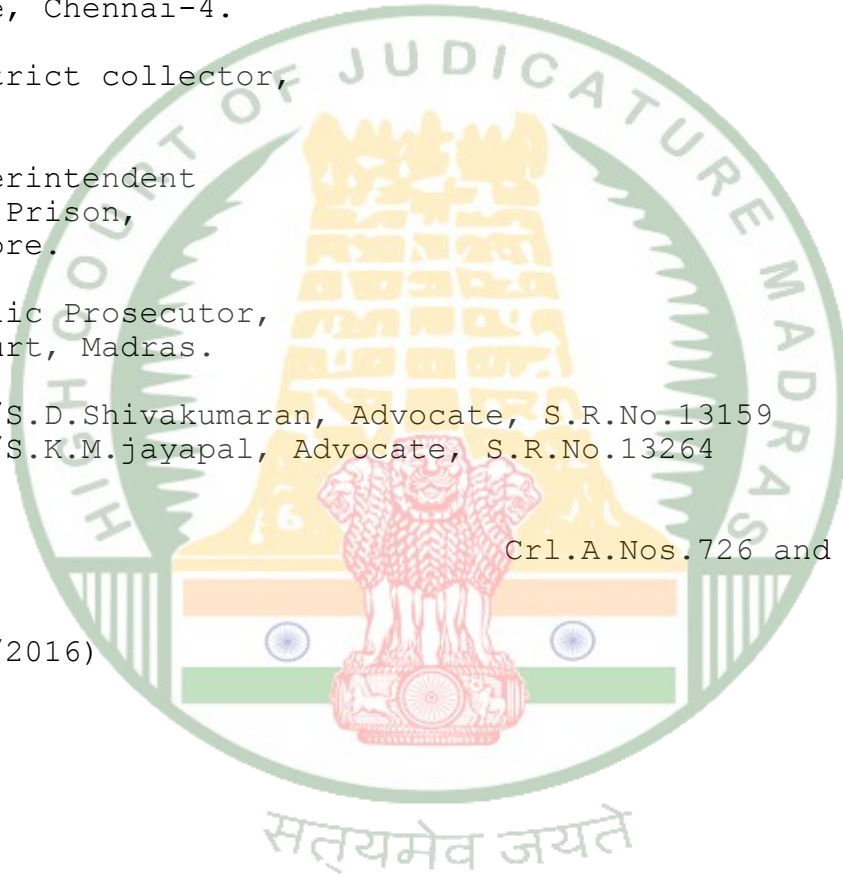
- 1.The Judicial Magistrate No.I,
Athur, Salem.
- 2.The Chief Judicial Magistrate,
Salem.

- 3.The Additional District Sessions Judge,
(Fast Track Court No.2)
Salem.
- 4.-Do- Thro' The Principal Sessions Judge,
Salem.
- 5.The Inspector of Police,
Yeathappur Police Station,
Salem District.
- 6.The Director General of Police,
Mylapore, Chennai-4.
- 7.The District collector,
Salem.
- 8.The Superintendent
Central Prison,
Coimbatore.
- 9.The Public Prosecutor,
High Court, Madras.

+1cc to M/S.D.Shivakumaran, Advocate, S.R.No.13159
+1cc to M/S.K.M.jayapal, Advocate, S.R.No.13264

Cr1.A.Nos.726 and 810 of 2011

rsi (CO)
srg (04/04/2016)



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