

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

(Judgment reserved on 30.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Cr1.A.No.483 of 2015

Dhanabal

.. Appellant

Vs.

State rep. by Inspector of Police,
Manalmedu Police Station,
Manalmedu, Nagapattinam District.

.. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 07.07.2015 in S.C.No.59 of 2011 on the file of the Sessions Court, Fast Track Mahila Court, Nagapattinam.

For appellants : Mr.J.R.Prabhakaran for Mr.C.T.Saravanan

For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

The appellant/A1 stood for trial along with his wife (A2); A2 was acquitted of the charge by the trial Court. This Criminal Appeal is filed by the appellant/A1 against the judgment dated 07.07.2015 in S.C.No.59 of 2011 on the file of the Sessions Court, Fast Track Mahila Court, Nagapattinam, in and by which, he was convicted for the offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year.

2. The genesis of the prosecution case leading to the conviction of the appellant/A1 is that the deceased Shanthi was the wife of P.W.3, who is the brother of the appellant/A1. P.W.1/de-facto complainant and P.W.2 are the mother and father of the deceased Shanthi. The deceased was given in marriage to P.W.3, which took place on 29.08.2003, and out of their wedlock, a male child was born to them. P.W.6 is the brother of the deceased Shanthi's mother (P.W.1). The deceased used to pledge jewels and household brass articles with P.W.6. Hence, for this purpose, P.W.6 Ilanagovan used to very often visit the house of

the deceased Shanthi. The appellant/A1, along with his wife/A2, were living adjacent to the house of the deceased, and frequently, A1 used to indulge in quarrel with the deceased and her husband. Since P.W.6 used to very often visit the house of the deceased, the appellant/A1 used to speak ill of the deceased, by connecting her with P.W.6. In this situation, the daughter of the appellant/accused, namely Sundari eloped with one Kishore. On 29.07.2010, when the deceased Shanthi was with her husband, the uncle of the deceased, i.e. P.W.6, came to her house and the husband of the deceased told P.W.6 that here-after he should not come to his house and sent him out. At that time, the accused persons scolded the deceased in filthy words, stating that it is better for her to die than to live. Due to the continuous mental torture given by the accused persons, the said Shanthi (deceased) poured kerosene all over her body and set fire to herself, thereby she sustained burn injuries. Immediately, she was taken to Mayiladuthurai Government Hospital by "108 Ambulance" and was admitted on 29.07.2010 by P.W.3. On the next day, i.e. on 30.07.2010 at about 2 p.m., the said Shanthi succumbed to injuries. P.W.12 Inspector of Police, who received the intimation, went to the hospital and recorded the statement of P.W.1-mother of the deceased and came back to Police Station and registered a case in Crime No.242 of 2010 under Section 174 Cr.P.C. Since she died within seven years of her marriage, P.W.12 sent a copy of the complaint Ex.P-6 to the Revenue Divisional Officer for further action. P.W.14-RDO conducted inquest over the body of the deceased in the hospital as to the cause of her death and recorded the statement of the Panchayatdars, and thereby, P.W.14 came to the conclusion that the death was not due to dowry harassment. Ex.P-10 is the inquest report. He forwarded his enquiry report Ex.P-9 to Police. P.W.15 DSP took up the case for further investigation. He went to the place of occurrence on 31.07.2010 and recorded the statements of the witnesses, prepared Ex.P-2 observation mahazar and drew Ex.P-12 rough sketch. He recovered M.O.1 light yellow colour plastic kerosene can (of approximately 5 litres capacity). On 18.10.2010, he sent Ex.P-13 alteration report with regard to the alteration of offences, to the jurisdictional Magistrate Court. After completing all formalities and investigation, P.W.15 DSP filed charge sheet against the accused before the trial Court. The case was taken on file by the trial Court in S.C.No.59 of 2011. During the course of trial, on the side of prosecution, P.Ws.1 to 17 were examined, Exs.P-1 to P-15 were marked and M.O.1 was produced. When the accused persons were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. They neither examined any witness, nor marked any document. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, after conducting trial, the trial Court convicted and sentenced the appellant/A1 as stated supra. Challenging the same, A1 has filed this appeal.

3. Learned counsel for the appellant/A1 submitted that most of the prosecution witnesses, i.e. P.Ws.1 to 5, who are the mother, brother, husband and two neighbours of the deceased and P.W.7 independent witnesses, all turned hostile. P.W.6 Ilangovan who is the uncle of the deceased, was not at the place of occurrence and his evidence is only hear-say. Though the main prosecution witnesses turned hostile, the Court below, by relying upon the dying declaration (Ex.P4) of the deceased and the evidence of P.W.9 Judicial Magistrate, who recorded the dying declaration, has recorded the conviction on the appellant/A1. Learned counsel for the appellant/A1 further submitted that P.W.10 Doctor who conducted post-mortem and P.W.16 Doctor who received the deceased in the hospital and gave treatment when she was brought in "108 Ambulance", have opined that the deceased sustained 100% burn injuries. Therefore, learned counsel submitted that a person with 100% burn injuries, cannot speak, and therefore, recording of Ex.P-4 dying declaration itself is doubtful.

4. Learned counsel for the appellant/A1 further submitted that the deceased, on the date of occurrence, was under the influence of alcohol, along with P.W.6 and when the villagers found both of them together in the house, her husband questioned the same and scolded the deceased and P.W.6 and since the villagers caught both of them red-handed, the deceased poured kerosene over herself and set herself ablaze. In this regard, learned counsel invited the attention of this Court to Ex.P-9 - RDO enquiry report and submitted that P.W.14 RDO has enquired the villagers/panchayatdars and recorded their statements, who have uniformly stated that the deceased and P.W.6 were found together in the house and when the same was seen by the villagers, both of them were questioned, and hence, she poured kerosene all over her body and set herself on fire. The trial Court did not consider Ex.P-9 RDO enquiry report in the proper perspective.

5. Learned counsel for the appellant/A1 further contended that the trial Court has given a go-by to the evidence of P.W.14 R.D.O, which would show that the death of the deceased was only due to illegal intimacy with P.W.6. Learned counsel for the appellant further submitted that there is absolutely no evidence to show that the appellant/A1 instigated or intentionally aided any act so as to drive the deceased to commit such an extreme act of suicide. Learned counsel further submitted that Ex.P-4 dying declaration was recorded after the deceased sustained 100% burn injuries, i.e., when she was not in a fit state of mind, and hence, Ex.P-4 is not a reliable piece of evidence to convict the appellant. For all these reasons, learned counsel for the appellant prayed for acquitting the appellant/A1 by allowing

this appeal. In support of all his contentions, learned counsel relied on the following judgments:

- (i) 1997 (11) SCC 15 (State of Orissa Vs. Parasuram Naik);
- (ii) 2001 (9) SCC 618 (Ramesh Kumar Vs. State of Chhattisgarh);
- (iii) 1995 Supp (3) SCC 731 (Mahendra Singh Vs. State of M.P.);
- (iv) 2008 (2) LW (Crl) 776 (Madras High Court) (Rukumani Vs. State) and
- (v) 1997 Cri.L.J. 2014 (Gujarat High Court) (State of Gujarat Vs. Sunilkumar Kanaiyalal Jani).

6. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the evidence available on record shows that there was continuous harassment by the appellant/A1 and that on the date of occurrence, the appellant/A1 harassed her by uttering words in filthy language and shouted at her that it is better for her to die than to live. In this regard, learned Additional Public Prosecutor invited the attention of this Court to Ex.P-4 dying declaration and submitted that the dying declaration of the deceased fulfills all the essential conditions/requirements in law, and therefore, based on the dying declaration, the trial Court, by well-considered reasons, passed the conviction against the appellant/A1, with which, no interference is called for and hence, he prayed for dismissing the appeal. In support of his submissions, learned Additional Public Prosecutor relied on the decisions of the Supreme Court reported in AIR 2006 SC 951 (Radha Mohan Singh @ Lal Saheb and others Vs. State of U.P) and 2013 (8) SCC 781 = CDJ 2013 SC 637 (Kantilal Martaji Pandor Vs. State of Gujarat and another).

7. Keeping in mind the above submissions made by the learned counsel on either side, I have given my anxious consideration to the submissions made by learned counsel on both sides and perused the materials available on record.

8. It is the case of the prosecution that the deceased Shanthi was continuously harassed by the appellant/A1, who is none other than the brother of the husband of the deceased. On 29.07.2010, the appellant/A1, along with his wife/A2, abused the deceased in filthy language by uttering the words that it is better for her to die than to live, and unable to tolerate the torture meted out to her, she poured kerosene over herself and set herself ablaze and thereby, she has committed suicide. It is mainly contended by the learned counsel for the appellant/A1 that the main prosecution witnesses had not supported the case of the prosecution. In fact, P.Ws.1 to 5, namely, the mother, brother, husband and two neighbours of the deceased and P.W.7

independent witness, all of whom have turned hostile. It is the defence of the appellant/A1 that there was illegal intimacy between the deceased Shanthi and P.W.6. P.W.6 is the maternal uncle of the deceased. On the date of occurrence, when the deceased and P.W.6 were found together and when it was questioned by the villagers and others, she poured kerosene over herself and committed suicide and that is the reason why P.Ws.1 to 5 and 7 have not supported the case of prosecution and turned hostile. In order to prove the defence, learned counsel for appellant/accused invited the attention of this Court to Ex.P-9 RDO report and submitted that in Ex.P-9, the statements of Village Panchayatdars were recorded and they have stated that deceased and P.W.6 were found together in her house and when the same was seen by the villagers and when both of them were questioned by the appellant, the deceased committed suicide. In my considered opinion, the purpose of RDO report is to find out only the cause of her death and as to whether the death was due to dowry harassment, if death occurs within seven years from the date of marriage. In this case, P.W.14 RDO, by conducting enquiry, has come to the conclusion that death was not due to dowry harassment. But, RDO report is not the conclusive proof of evidence, as the main purpose of RDO enquiry is only to enquire into the cause of the death. Therefore, the statement of Village Panchatdars in the RDO report has no significance in this case.

9. Further, according to learned counsel for the appellant/A1, the deceased was having illegal relationship with P.W.6, in the cross-examination of P.W.6, only bald suggestions were put to him, all of which were denied by P.W.6, and therefore, no favourable reply was elicited in favour of the defence. On the other hand, Ex.P-4 dying declaration recorded by P.W.9 Judicial Magistrate, reveals that the deceased has clearly stated therein that appellant/A1 and his wife/A2 very often used to scold her under the influence of alcohol and even on the date of occurrence, the appellant scolded the deceased that she is responsible for elopement of her daughter with one Kishore. In her dying declaration, she has further stated that appellant uttered to her that it is better for her to die than to live and hence, unable to bear the torture given by the appellant/accused, she poured kerosene all over her body and set fire to herself. In the dying declaration, the deceased had also emphatically stated that the act of appellant/A1 and his wife A2 alone had driven her to take such an extreme step to end her life. Further, she had stated that appellant/A1 and his wife/A2, on seeing the act of the deceased, compelled her to say that she sustained injuries only from a sparkle of fire which emanated due to short-circuit in electricity connection. But, it is the submission of the learned counsel for the appellant/A1 that the deceased sustained 100% burn injuries, and therefore, she would not have been in a fit state of mind to give dying declaration.

This submission of learned counsel for the appellant/A1 cannot be accepted, in view of the evidence adduced by P.W.9 Judicial Magistrate, who had stated in her evidence that at the time of recording dying declaration, the deceased was in a fit state of mind. Further, P.W.16 Doctor in his evidence in chief-examination stated that the deceased was conscious to speak when she was brought for treatment in the hospital. Therefore, I do not find any infirmity in the dying declaration (Ex.P-4) of the deceased Shanthi, recorded by P.W.9 Judicial Magistrate.

10. In the above backdrop, it is to be noted that the evidentiary value of the dying declaration is that it is a substantive piece of evidence, and can be used against the accused, when there is nothing to suggest in this case that the deceased had substituted an innocent person in the place of real culprit. Further, it is trite law that if a dying declaration given to the Magistrate does not suffer from any infirmity, the conviction can be passed, based upon the said dying declaration. Furthermore, the dying declaration should be corroborated by medical evidence. In this case, Ex.P-4 dying declaration of the deceased is corroborated by the medical evidence of P.W.16 Doctor. Moreover, the statement of the deceased, is a dying declaration as per Section 32 of the Indian Evidence Act. The dying Declaration must be wholly reliable and in case of suspicion, the Court should seek corroboration. If evidence shows that statement of deceased is not wholly true, then only it can be treated as a piece of evidence, but conviction cannot be based solely upon it (vide - 2006 (3) SCC 161 - P.Mani Vs. State of T.N). Further, a dying declaration can be oral or in writing and any adequate method of communication, whether by words or by signs or otherwise, will suffice to show that the indication is positive and definite and what is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. (vide - 5 Judge Bench - 2002 SCC (Cri.) 1491 = 2003 L.W. (Cri.) 814 (SC) Laxman V. State of Maharashtra). In this case, the evidence of P.W.16 is such that the deceased was in a fit state of mind while she was treated in the hospital. Further, it is to be noted that the Apex Court in the decision reported in 2004 AIR SCW 6320 (State of Maharashtra Vs. Sanjay D.Rajhans) held as follows:

"17. It is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. It has been repeatedly pointed out that the dying declaration should be of such nature as to inspire full confidence of the Court in its truthfulness and correctness (vide the observations of Five-Judge Bench in Laxman V. State of Maharashtra (2002) 6 SCC 710). Inasmuch as the correctness of

dying declaration cannot be tested by cross-examination of its maker, "great caution must be exercised in considering the weight to be given to this species of evidence'. . . . "

(emphasis supplied)

11. In yet another decision of the Supreme Court reported in 2006 (3) SCC 161 (P.Mani Vs. State of T.N), the Apex Court has held as follows:

"14. Indisputably conviction can be recorded on the basis of the dying declaration alone but therefor the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the court before convicting an accused on the basis thereof would look for some corroborative evidence. Suspicion, it is trite, is no substitute for proof. If evidence brought on record suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which event conviction may be not rested only on the basis thereof."

12. While applying the above dictum of the Supreme Court in the various decisions, in this case, it has to be concluded that the dying declaration is an acceptable piece of evidence, taking into consideration the evidence of P.W.16 Doctor, who adduced that the deceased was in a fit and conscious state of mind inspite of 100% burn injurees, coupled with the fact that Ex.P-14 Accident Register also indicates her consciousness with 100% burn injuries, which is also evident from the evidence of P.W.9 Magistrate that the deceased was in a fit state of mind at the time of recording the dying declaration. Therefore, there is no reason warranting to disbelieve the dying declaration (Ex.P-4), which was duly recorded by P.W.9 Judicial Magistrate, whose evidence would show that the deceased was in a fit state of mind at the time of recording the dying declaration. Further, P.W.16 Doctor has stated that even if a person suffers from 100% burn injuries, he/she could be in a fit and conscious state of mind to give dying declaration.

13. Therefore, I am of the opinion that it is established by the prosecution through Ex.P-4 dying declaration of the deceased and also through the evidence of P.W.16 Doctor that the deceased was in a fit and conscious state of mind while giving her dying declaration. Thus, the prosecution has proved its case in respect of the conviction imposed on the appellant under Section 306 IPC, as there is positive act on the part of the appellant/accused in inducing and inciting the deceased to commit the act of suicide.

14. Further, the evidence available on record shows that the occurrence has not happened only because of the quarrel on the particular date, but the dying declaration shows that the quarrel was existing over a long period of time and the deceased was continuously tortured by the appellant/A1. Therefore, there is ample evidence on record to show that the cruelty and harassment were actually meted out to the victim/deceased/Shanthi, continuously for a long time, coupled with the fact that on 29.07.2010, the appellant/A1 had scolded the deceased in filthy language, which induced and drove her to go to such an extent of having no other alternative, except to commit suicide. Further, in order to bring an accused within the purview of the offence under Section 306 IPC, there must be an aid/act so as to make the deceased to go to such an extreme step of committing suicide. In this regard, it is useful to refer a judgment of the Supreme Court, which is reported in 2010 (1) SCC 707 (Amalendu Pal Vs. State of West Bengal), relevant portion of which reads as follows:

"12. this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

(emphasis supplied)

15. Furthermore, in the judgment of the Apex Court reported in 2011 (3) SCC 626 (M.Mohan Vs. State), with regard to bringing an accused under the purview of the offence under Section 306 IPC, the Apex Court held as follows:

"41. This Court in SCC para 20 of Ramesh Kumar (Ramesh Kumar Vs. State of Chhattisgarh (2001 (9) SCC 618 = 2002 SCC (Cri) 1088) has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC.p.629):

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

... ..

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens-rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

(emphasis supplied)

16. From the dictum laid down by the Apex Court in all the above decisions, it is clear that before holding an accused guilty of the said offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and

also assess the evidence adduced before it, in order to find out as to whether the cruelty/harassment meted out to the deceased/victim had left her with no other alternative except to commit suicide.

17. In fact, in the instant case, there is sufficient evidence to come to the conclusion that soon before her death, the deceased was subjected to cruelty so as to attract the offence under Section 306 IPC, which is evident from the contents of the dying declaration. The relevant portion of the dying declaration reads as follows:

" இன்னிக்கு 7-1/2 மணி நைட்டுக்கு எங்க வீட்டுக்கு வந்த தனபால் என்னை அசிங்கமாக திட்டி உன்னை வாழவும் விடமாட்டேன். சாவவும் விடமாட்டேன் என்று சொல்லி, நீ இருக்கிறத விட செத்துவிடலாம் என்று திட்டினார். அதனால் எனக்கு கோபம் வந்து நானே எங்க வீட்டிலிருந்து மண் எண்ணை கேனிலிருந்து என் மீது மண் எண்ணை ஊத்தி பத்த வச்சிக்கிட்டேன். அப்ப என் வீட்டுக்காரர் வீட்டு வாசலில் இருந்தார். என் பையனும், வீட்டு வாசல் நடையில் இருந்தான். என் மீது தீ பத்திக் கொண்டு நான் சத்தம் போட்டதும், என் வீட்டுக்காரர் வந்து என்னை காப்பாத்தி ஆஸ்பத்திரியில் சேர்த்தார். எனக்கு தீ காயம் ஆனதும், என்னை காப்பாத்த வராமல், தனபாலும், ஜெயராணியும் என் கூரை வீட்டில் நெருப்ப, அள்ளி போட்டு, கரண்டுல எரிந்து காயமாச்சினு சொல்லு என்னு சொல்லிட்டு போயிட்டாங்க. எனக்கு சொல்றதுக்கு வேறு எதுவும் இல்லை. நான் மண் எண்ணை ஊத்திக்கிட்டதற்கு காரணம் ஜெயபாலும், அவன் பெண்டாட்டியும் தான், வேறு ஒன்றும் இல்லை."

Therefore, the prosecution has clearly established its case that soon before her death, the deceased was subjected to cruelty and harassment.

18. Further, in this case, the presumption under Section 113-A of the Indian Evidence Act, with regard to the abetment of suicide by a husband for the act of suicide committed by his wife, has not been rebutted by the defence in this case through the cross-examination of the prosecution witnesses or by adducing documentary evidence.

19. Moreover, in this case, there is evidence to the effect that there is a positive act on the part of the appellant/accused to induce or intentionally aid the deceased by an act to drive the deceased with no other alternative but to go to such an extent of committing suicide. Thus, in this case, the dying declaration and the evidence available on record shows that the prosecution has established its case beyond reasonable doubt.

20. In the above view taken by this Court and discussion made hereinabove, it is not necessary to deal with each and every decision of Courts relied on by the learned counsel on either side, as it is suffice to state that the material evidence available on record shows that the appellant/A1 had abetted the crime under Section 306 IPC, leading to the death of the deceased Shanthi.

21. Further, I find that considering the fact that now almost six years have lapsed from the date of occurrence and considering the age of the appellant/accused, I am of the view that the sentence of imprisonment imposed on the appellant/A1 can be reduced from five years to three years rigorous imprisonment. Accordingly, while confirming the conviction imposed on the appellant/A1, this Court reduces the period of the sentence of imprisonment imposed on the appellant/A1 from five years to three years rigorous imprisonment.

22. With the above reduction in the period of sentence of imprisonment, the appeal is partly allowed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

cs

Copy to

- 1.The Judicial Magistrate I,
Mayiladuthurai.
- 2.-Do- Thro The Chief Judicial Magistrate,
Nagapattinam.
- 3.The Principal Sessions Judge,
(Fast Track Mahila Court)
Nagapattinam.
- 4.-Do- Thro The Principal Sessions Judge,
Nagapattinam District.

5.The Inspector of Police,
Manalmedu Police Station,
Manalmedu, Nagapattinam District.

6.The District Collector,
Nagapattinam District.

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

8.The Superintendent,
Central Prison, Cuddalore.

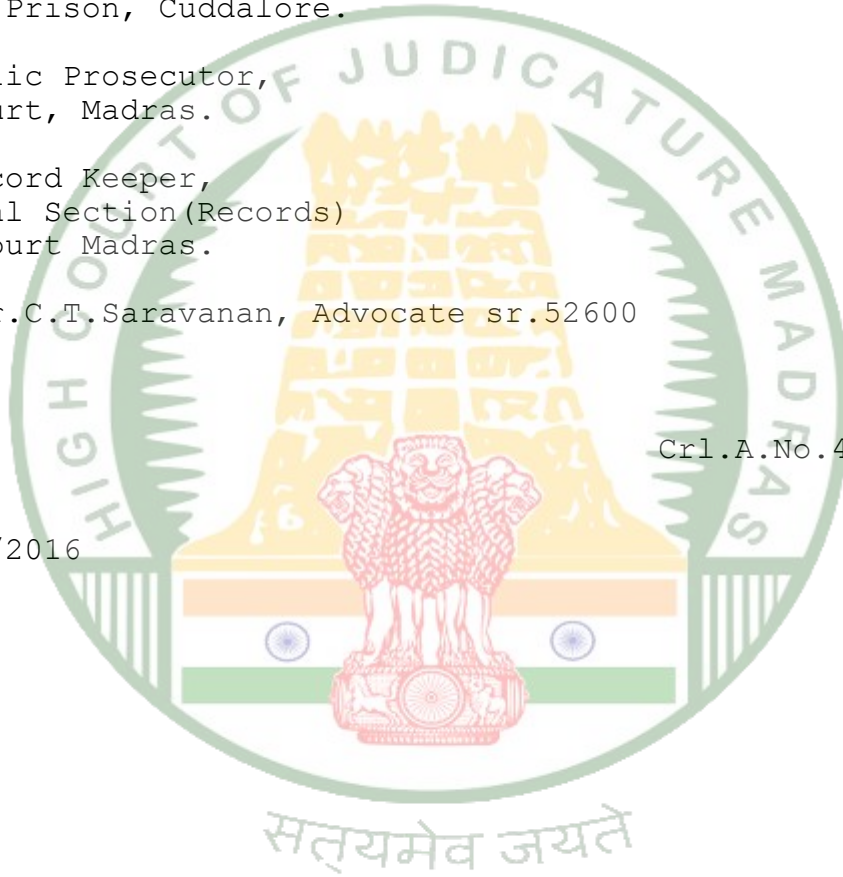
9.The Public Prosecutor,
High Court, Madras.

10.The Record Keeper,
Criminal Section(Records)
High Court Madras.

+lcc to Mr.C.T.Saravanan, Advocate sr.52600

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srg 07/11/2016



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