

Bail Slip

That the Appellants herein in Crl.A.No.796 of 2015/Accused namely,

- 1.Mechanic Kumar (A2) S/O Jayapal Kounder
- 2.Durai(A3) S/O Jayapal
- 3.Siva(A4) S/o Jayapal
- 4.Manikandan(A7) S/O Pakkirisamy
- 5.Ramesh(A8) S/O Thanigasalam
- 6.Vijayan(A9) S/O Pakkiri Gounder

in S.C.No.41 of 2015 on the file of the Special Sessions Court for SC and ST Act Cases Villupuram released on bail as per order of this Court dated 08/01/2016 in Crl.M.P.No.1 of 2015 in Crl A.No.796 of 2015.

Crl A.No.7 of 2016

That the Appellants herein in Crl.A.No.7 of 2016/ Accused namely,

- 1.K.Mohan(A5) S/O Kuppan Goundar
- 2.K.Shankar (A6) S/O Kuppan Gounder

in S.C.No.41 of 2015 on the file of the Special Sessions Court SC & ST Act Cases, Villupuram are released on bail as per the order of this court dated 11/02/2016 in Crl.M.P.No.32/2016 in Crl.A.No.7/16.

Crl.A No.58 of 2016

That the Appellant herein in Crl.A No.58 of 2016/ Accused namely, Prabhu kumar S/O.Ramasamy in S.C.No.41 of 2015 on the file of the Special Sessions Court SC & ST Act Cases Villupuram was released on bail as per the order of this court dated 24/02/2016 in Crl.M.P.No.735/2016 in Crl.A.No.58/16.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.796 of 2015, 7 & 58 of 2016

1.Mechanic Kumar
2.Durai
3.Siva
4.Manikandan
5.Ramesh
6.Vijayan

... A.2,3,4,7,8 & 9/Appellants in
Crl.A.No.796/2015

1.K.Mohan

2.K.Shankar

...A.5 & 6/Appellants in Crl.A.No.7/2016

Prabhu Kumar

.. A.1/Appellant in Crl.A.No.58/2016

vs

State of Tamil Nadu,
Represented by
Deputy Superintendent of Police,
Villupuram sub-Division,
Villupuram District.

.. Respondent in all Crl.As

Common Prayer in all the Criminal Appeals:- These Criminal Appeals have been filed under Section 374 r/w 382 Cr.P.C., against the judgment passed by the learned Special Judge (SC/ST Act cases), Villupuram in S.C.No.41 of 2015 dated 11.12.2015.

In Crl.A.No.796 of 2015:-

For A.2,3,4,7,8 & 9 :Mr.M.Devaraj

For Respondent :Mr.E.Raja,
Additional Public Prosecutor

In Crl.A.No.7 of 2016:-

For A.5 & 6 :Mr.R.John Sathyan

For Respondent :Mr.E.Raja,
Additional Public Prosecutor

In Crl.A.No.58 of 2016:-

For A.1 :Mr.A.Ramesh, Senior Counsel
for Mr.R.Vivekanandan

For Respondent :Mr.E.Raja,
Additional Public Prosecutor

COMMON JUDGMENT

(Common Judgement of the Court was delivered by S.Nagamuthu.J)

The appellant in Crl.A.No.58 of 2016 is A.1; the appellants in Crl.A.No.7 of 2016 are A.5 & A.6 respectively and the appellants in Crl.A.No.796 of 2015 are A.2,A.3,A.4,A.7,A.8 & A.9 respectively in S.C.No.41/2015, on the file of the learned Special Judge (SC/ST Act cases), Villupuram. There were totally 14 accused in the case. The trial Court framed six charges against the accused as detailed below:-

Sl.No	Accused	Section of law
1	A.1 to A.14	148 I.P.C.
2	A.1 to A.14	448 I.P.C.
3	A.1, A.2 & A.10	302 I.P.C., r/w 3(2) (v) of SC/ST Act.
4	A.1, A.2 & A.10	324 I.P.C.
(a)	A.2 & A.5	324 I.P.C.,
(b)	A.3 & A.8	324 I.P.C.,

Sl.No	Accused	Section of law
(c)	A.4 & A.9	324 I.P.C.,
5	A.6 & A.7	324 I.P.C.,
6	A.1 to A.14	3(1)(x) of SC/ST Act

All the accused denied the above charges framed against them. By judgment dated 11.12.2015, the trial Court acquitted A.2 & A.10 from the charge under Section 302 I.P.C., r/w 3(2)(v) of SC/St Act and also acquitted A.10 to A.14 from the charge under Sections 148 & 448 I.P.C., however, convicted & sentenced the appellants as detailed below:-

Sl.No	Accused	Section of law	Sentence
1	A.1 to A.9	148 I.P.C.,	Imprisonment for one year each.
2	A.1 to A.9	448 I.P.C.,	Imprisonment for six months each.
3	A.1 to A.3, A.5 to A.9	324 I.P.C.,	Imprisonment for one year each.
4	A.1	302 I.P.C., r/w 3(2)(v) of SC/St Act	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo imprisonment for one year

The trial Court ordered the above sentences to run concurrently. Challenging the above conviction and sentence, the appellants are before this Court with these criminal appeals.

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

The accused in this case belong to a non scheduled or scheduled tribe community in Aanangur Village in Villupuram District. P.Ws.1 to 4, 6 to 8 belong to the same village and they belong to the Scheduled Caste. There was long standing enmity between the people belonging to these two communities in the village. Actuated by the said enmity, it is alleged that at 1.30 pm on 05.11.2010, these 14 accused assembled with deadly

weapons like iron pipes, knives and wooden logs in an unlawful assembly. They went to the house of P.W.10, in the same village, where P.W.2, was hiding. A.1 to A.4 trespassed into the said house. A.1, A.2, A.9 & A.10 attacked P.W.2 with iron pipes. On hearing the alarm raised by P.W.2, the deceased who was a neighbour, rushed to the place of occurrence. When he intercepted, A.1, A.2 & A.10, attacked him with iron pipes indiscriminately. The deceased fell down in a pool of blood. One Mr.Chinnathambi, yet another neighbour intervened. A.3 attacked him with iron pipe on his head and caused injury. A.8 attacked him on his shoulder with wooden log. Mr.Singaram - P.W.6 also rushed to the place of occurrence. A.4 & A.9 attacked him with wooden logs on his head. Mr.Narasimhan - P.W.8, who came to the place of occurrence was attacked by A.5 with iron pipe, on his chest. All these victims sustained injuries. The injured and the deceased were attacked by these accused on account of the fact that they belong to Scheduled Caste. Then all the accused fled away from the scene of occurrence.

3.After the occurrence, all the injured including the deceased were taken to the Government Hospital at Mundiambakkam. Since, the deceased was in a serious condition, he was referred to Jipmer Hospital at Puducherry. Around 3.00 pm, on 05.11.2010, the deceased died in the hospital. Then P.W.1, who is the relative of the deceased went to the Police Station and made a complaint at 7.00 pm on 05.11.2010. P.W.22, the then Sub Inspector of Police on receipt of the said complaint registered a case in Crime No.687 of 2010 for offences under Sections 147, 148, 448, 294(b), 323, 324, 307 & 302 I.P.C., r/w 3(2)(V) of SC & ST Act. Ex.P.1 is the complaint and Ex.P.35 is the F.I.R. In Ex.P.1 - complaint, P.W.1 has stated that 11 named accused and few unnamed accused were the assailants. Out of the named accused, P.W.1 had mentioned the names of one Mr.Jayaraj and Sridhar also as the assailants with a specific overt acts. Mr.Jayaraj was arrayed as A.2 and Mr.Sridhar was arrayed as A.3. P.W.22, then forwarded Ex.P.1 - complaint and Ex.P.35 F.I.R., to Court which were received by the learned Judicial Magistrate, Villupuram, only at 5.00 pm on 06.11.2010 (vide the endorsement of the learned Judicial Magistrate on Ex.P.35).

4.P.W.23, the then Inspector of Police took up the case for investigation. He went to the place of occurrence at 8.30 pm on 05.11.2010 and prepared an observation mahazar and a rough sketch in the presence of P.W.13 and another witness. Then he examined P.W.1 at the place of occurrence and recorded the statement. On going over to the Government hospital, Mundiambakkam, he examined the other injured witnesses who were undergoing treatment. On 06.11.2010, he conducted inquest on the body of the deceased between 9.00 am and 11.00 am at the

Jipmer Hospital, Puducherry and forwarded the same for post mortem.

5.P.W.5 - Dr.Anburose, conducted autopsy on the body of the deceased on 06.11.2010 at 11.20 am. He found the following injuries on the body of the deceased:-

- "a) Scalp
Recent pericranial haemorrhage approximately 0.8cm thickness was present in the right side of the calvarium.
- b) Skull - A recent, curvilinear fissured fracture measuring 19.3 cm was present over the right side of frontal, temporal, parietal bone extending on to the middle cranial fossa.
- c) Brain and meninges - The brain weighed 1450 gms and showed diffuse cerebral edema. Recent subdural haemorrhage approximately 0.3cm thickness was present over the right frontal, temporal and parietal lobes.
A contusion measuring 1.4x0.5cm was present over the left temporal lobe.
Multiple petichiae were present in the brain stem."

Ex.P.2 is the post mortem certificate. P.W.5 gave opinion that the deceased had died due to shock and haemorrhage due to the head injury. He further opined that the injury found on the deceased would have been caused by a weapon like iron pipe. He also found that the deceased had consumed alcohol.

6.P.W.23, during the course of investigation, at 7.15 pm on 08.11.2010, arrested A.1 in the presence of P.W.14 and another witness. On such arrest, he gave a voluntary confession in which, he disclosed the place where he had hidden an iron pipe. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced Iron pipe. On returning to the Police Station, he forwarded A.1 to Court for judicial remand. On 09.11.2010, at 6.00 am, he arrested A.2, A.3, A.5 to A.12 in the presence of P.W.16 and another witness. On such arrest, A.2 gave a voluntary confession in which, he disclosed the place where he had hidden an iron pipe. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the Iron pipe; A.5 gave a voluntary confession in which, he disclosed the place where he had hidden an iron pipe. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the Iron pipe; A.6 gave a voluntary confession in which, he disclosed the place where he had hidden a wooden log. In pursuance of the same, he took the Police and witnesses to the place of hide out

and produced the wooden log. A.7 gave a voluntary confession in which, he disclosed the place where he had hidden a wooden log. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the wooden log. A.8 gave a voluntary confession in which, he disclosed the place where he had hidden a wooden log. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the wooden log. A.9 gave a voluntary confession in which, he disclosed the place where he had hidden an iron pipe. In pursuance of the same, he took the Police and witness to the place of hide out and produced the iron pipe. P.W.23 recovered all these material objects under an independent mahazar in the presence of same witnesses. Then he forwarded all these accused to Court for judicial remand. On 27.11.2010, at 10.15 am, he arrested A.4 in the presence of P.W.16 and another witness. On such arrest, he disclosed the place where he had hidden a stick. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the stick. P.W.23 also recovered the same under a mahazar and then he forwarded A.4 to Court for judicial remand. He obtained the community certificates of the accused and the injured eye witnesses. He forwarded all the material objects to Court. On completing investigation, he laid charge sheet against the accused on 25.12.2010.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 23 witnesses were examined and 52 documents were exhibited, besides 5 Material Objects were marked. On the side of the accused, an ear boring invitation dated 22.07.2014 was marked as Ex.D.1.

8. Out of the said witnesses, P.W.1, is the relative of the deceased. She claims to have witnessed the entire occurrence. She has also spoken about the complaint made by her to the Police. P.W.2 is the elder brother of the deceased who has also stated that he witnessed the entire occurrence. He has vividly spoken about the same. P.W.3 - Mr. Venkatachalam @ Chinnathambi is the husband of P.W.1. He sustained injuries in the same occurrence and he has also vividly spoken about the entire occurrence. P.W.4 is the mother of the deceased. She also claims to have witnessed the entire occurrence and she has stated about the same. P.W.5 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.6 is yet another injured eye witness. He has also spoken about the entire occurrence. P.W.7 is another injured eye witness. He has spoken about the entire occurrence. Neither P.W.6 nor P.W.7 has stated anything about A.1. P.W.8 is yet another injured eye witness and he is the brother of the

deceased. P.W.9 who was examined to speak about the motive, has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10 is the one in whose house, the occurrence had taken place. P.W.11 claims to be an eye witness to the occurrence. P.W.12 has stated that he took all the six injured including the deceased to the Government Hospital, Mundiambakkam for treatment. P.W.13 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.Ws.14 to 18 have turned hostile and they were expected to speak about the arrest of the accused and the consequential recoveries of the material objects on the disclosure statements made by the accused. P.W.19 - Dr.Ilanchezian has spoken about the treatment given by him to all the injured witnesses at the Government hospital, Mundiambakkam. P.W.20, the Tahsildar has spoken about the community certificates issued. According to him, all the injured belong to Scheduled Caste whereas, the accused belong to the community other than the Scheduled Caste. P.W.21, has spoken about the arrest of A.2 & A.3, the confession statements made by A.2 & A.3 and the consequential recoveries of the material objects. P.W.22 has spoken about the registration of the case on the complaint of P.W.1 and P.W.23 has spoken about the investigation done and the final report filed in this case.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side. Only one document was marked as Ex.D.1 on their side.

10. Having considered all the above materials, the trial Court convicted the appellants, as stated in the first paragraph of this judgment. Challenging the same, the appellants are before this Court with these Criminal Appeals.

11. We have heard Mr.M.Devaraj, learned counsel for A.2, A.3, A.4, A.7, A.8 & A.9; Mr.R.John Sathyan, learned counsel for A.5 & 6; Mr.A.Ramesh, Senior Counsel appearing for A.1 and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. Admittedly, in this case, a total number of seven persons sustained injuries in the alleged occurrence including the deceased. P.Ws.2, 3, 6, 7, 8 & 9 are the injured eye witnesses to the occurrence. P.Ws.1, 4, 10 & 11 are the neighbours having their residence in and around the place of occurrence and they have also stated that they witnessed the entire occurrence. There is no denial of the fact that in the said occurrence, the above stated six witnesses had sustained injuries. It is crystal clear that they were present at the time of occurrence and they

had witnessed the occurrence. Similarly, so far as the other witnesses who were examined as eye witnesses and who have got houses some where near the place of occurrence are concerned, their presence at the time of occurrence also cannot be doubted. Thus, the presence of P.Ws.1 to 4, 6 to 11 at the time of occurrence cannot be doubted at all for any reason.

13.Mr.A.Ramesh, the learned Senior Counsel appearing for the appellant/A.1 in Cri.A.No.58 of 2016 would however submit that simply because the presence of the said witnesses at the place of occurrence is probable, it cannot be presumed that the facts spoken by them are gospel truth. In order to substantiate his contention, that these witnesses are highly unbelievable, the learned Senior Counsel would at the first assail the very origin of the F.I.R. As pointed out by him, though it is stated that the alleged occurrence was at 1.30 pm on 05.11.2010, the F.I.R., in this case is stated to have been registered only at 7.00 pm on the same day, for which, absolutely there is no explanation. It may be argued that because there were a number of injured witnesses and out of whom one was in a critical stage, P.W.1 would not have thought of immediately going to the Police Station and to make complaint. We find some justification in the said argument. Therefore, we cannot conclude that P.W.1 had caused unnecessary delay in going over to the Police Station to make the complaint.

14.But, the fact remains that though, it is alleged that F.I.R., was registered at 7.00 pm on 05.11.2010, it had reached the hands of the learned Judicial Magistrate only at 5.00 pm on 06.11.2010 i.e., after 22 hours. The Police Station and the house of the learned Judicial Magistrate are in the very same Villipuram town. It is a very small town. Had it been true that the F.I.R., had been really registered at 7.00 pm on 05.11.2010, the same would not have taken 22 hours to reach the hands of the learned Judicial Magistrate. Absolutely, there is no explanation for the said delay. As rightly pointed out by the learned Senior Counsel appearing for A.1, the absence of any plausible explanation for this inordinate delay, we have to raise doubt regarding the origin of the F.I.R., itself. 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, in an identical situation, the Hon'ble Supreme Court has taken the view that such inordinate unexplained delay creates doubt in the case of the prosecution. Applying the same yardstick to the facts of the present case, we hold that there is enormous doubt in the very origin of the F.I.R., in this case.

15.As we have already pointed out, in the F.I.R., P.W.1 has named a total number of 11 persons as assailants besides few more persons whose names were not mentioned. Out of the 11 named accused in the F.I.R., one Mr.Jayaraj s/o Mr.Rajendren was

arrayed as A.2 and one Mr.Sridhar s/o Mr.Rajendren was arrayed as A.3. In the F.I.R., it is alleged that these two accused were armed with deadly weapons and they attacked the deceased and the witnesses. During the course of investigation, according to P.W.23, it was found out that these two persons had been falsely implicated in the case therefore, in the final report, these two accused were not arrayed as accused at all.

16.Neither P.W.1 nor any other injured witness had raised any protest either before the learned Judicial Magistrate or before the Sessions Court in respect of the omission of these two persons as accused in the case. Had it been true that these two persons also participated in the occurrence by all means, these injured would have raised such objections or they should have spoken about them in their evidence, in which case, the trial Court would have invoked Section 319 Cr.P.C., to array them as accused. Thus, according to the positive case of the prosecution itself, these two persons had been falsely implicated in the case. This would only go to show that the prosecution party cannot be fully believed as they had gone to the extent of implicating two persons falsely as accused in this case. Thus, the false implication of Mr.Jayaraj & Mr.Sridhar as accused in the F.I.R., coupled with the enormous delay of 22 hours in handing over the F.I.R., to Court and beside the fact that the village is communally factious would all go to create further doubt as to whether the persons who are arrayed as accused in the final report would have really participated in the occurrence or not.

17.Now, turning to the charges, it is the positive case that as per the charges framed by the trial Court, the deceased was attacked only by three persons viz., A.1,A.2 & A.10. Therefore, they stood charged for offence under Section 302 I.P.C., r/w Section 3(2)(V) of the SC & ST Act. But the trial Court has disbelieved the evidences of the injured eye witnesses as against A.2 & A.10 and had acquitted them from the charge under Section 302 I.P.C., r/w 3(2)(V) of the SC & ST Act. The State has not preferred any appeal against the acquittal of A.2 & A.10 for the charge under Section 302 I.P.C., r/w 3(2)(V) of the SC & ST Act.

18.The trial Court has convicted only A.1 for offence under Section 302 I.P.C., r/w 3(2)(v) of the SC/ST Act. Though, the trial Court has disbelieved these injured eye witnesses and the other eye witnesses in respect of the alleged role of A.2 & A.10 and has acquitted them, the State has not preferred any appeal and thus, their acquittal for offence under Section 302 I.P.C., r/w 3(2)(V) of the SC & ST Act has become final. This would go to show that even the trial Court was not prepared to believe these injured as well as other eye witnesses in full.

19.The trial Court has acquitted A.10 to A.14 from all the charges. The names of A.10 to 14 do not find a place in the F.I.R. It is not as though these accused namely A.10 & A.14 were not known to P.W.1. There is no explanation as to why the names of these persons were omitted to be mentioned in the F.I.R. In Ex.P.1, it was not mentioned that they also actively participated in the occurrence. The trial Court has therefore, acquitted A.10 to A.14. The State has failed to challenge their acquittal also. Thus, the involvement of A.10 to A.14 in the alleged crime has been doubted by the trial Court. By giving the benefit of doubt, the trial Court has acquitted them. This would also go to show that the trial Court did not believe these eye witnesses in full.

20.At the earliest point of time, when these injured witnesses were taken to the Government Hospital at Mundiyaambakkam, they told the Doctor that they were attacked by 10 known persons. These injured eye witnesses have been duly contradicted in respect of their former statements. They have not offered any explanation for the same. This also weigh much in the mind of the trial Court. In our considered view, this would also go to show that at every stage, an attempt has been made to increase the number of accused in the case. This shows the tendency of the prosecution party to implicate as many as persons as possible as accused in this case.

21.Now, turning to the injuries found on the deceased, according to P.W.5, the Doctor, there was only one external injury on the right parietal region of the head. The death was due to the corresponding internal haemorrhage. This injury could have been caused by one single attack. But according to charge, three persons viz., A.1, A.2 & A.10 attacked the deceased with iron pipes indiscriminately. The injured witnesses have also stated so. But the trial Court has disbelieved their evidences in respect of the overt acts attributed against A.2 & A.10 alone. Thus, the medical evidence also does not corroborate the eye witness account so far as the injuries found on the deceased are concerned. Similarly, there are lot of contradictions in respect of the overt acts against the rest of the accused also among the eye witnesses.

22.In view of the above anomalies in the case of the prosecution and in view of the above contradictions, we doubt that the F.I.R., has been fabricated after due deliberation to implicate as many persons as possible. Further, at every stage, improvement had been made to increase the number of accused in this case. Hence, we find it difficult to sustain the conviction of the accused.

23.Above all, as we have already pointed out, though, it is stated that all the 14 accused had formed an unlawful assembly

with deadly weapons, there is no corresponding charge framed under Section 149 I.P.C. Except A.1, A.2 & A.10, as against the others, there is no charge framed under Section 302 r/w 149 I.P.C. Against those accused who had not actually caused injuries on the witnesses but being members of the unlawful assembly there was no corresponding charge framed under Section 324 r/w 149 I.P.C. The charges are thus highly defective.

24. In view of the foregoing discussions, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants are entitled for acquittal.

25. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants by the learned Special Sessions Judge (SC/ST Act cases), Villupuram in S.C.No.41 of 2015, dated 11.12.2015, are set aside and the appellants are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants, shall stand discharged.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Villupuram.
2. -Do- Thro The Chief Judicial Magistrate,
Villupuram.
3. The Special Sessions Judge for SC and ST Act Cases,
Villupuram.
4. The Sessions Judge,
Villupuram.
5. The Superintendent of Police,
Villupuram Taluk Police Station,
(with copies in duplicate for communication to the accused)

6.The Superintendent of Central Prison,
Cuddalore.

7.The District Collector,
Villupuram.

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

9.The Public Prosecutor,
High Court, Madras.

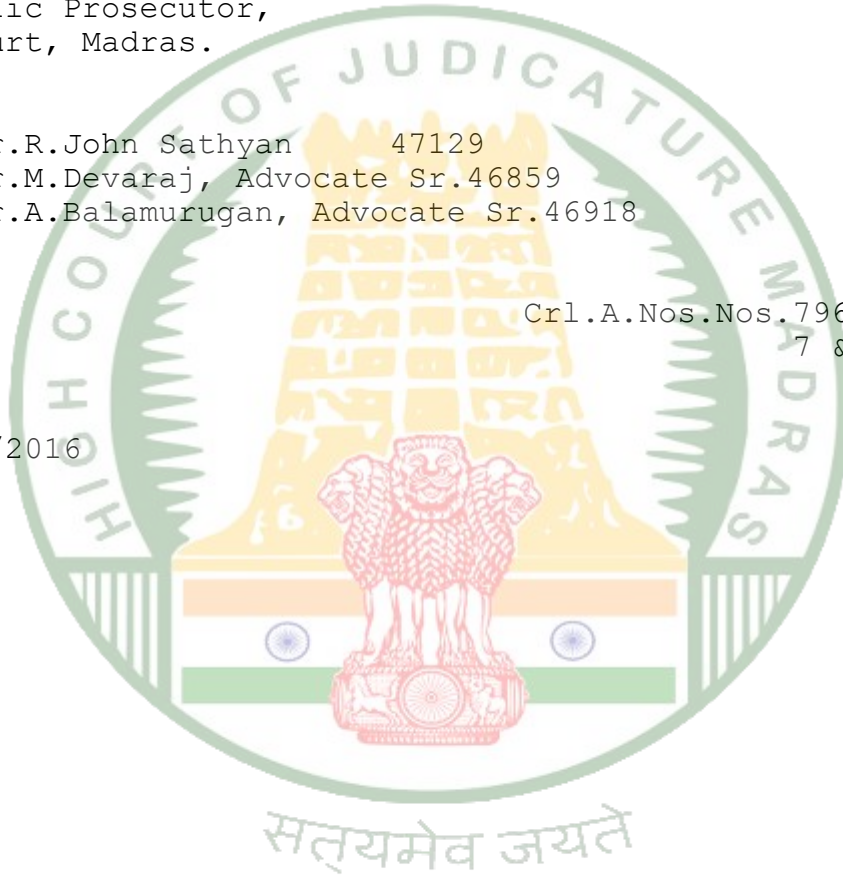
+1cc to Mr.R.John Sathyan 47129

+1cc to Mr.M.Devaraj, Advocate Sr.46859

+1cc to Mr.A.Balamurugan, Advocate Sr.46918

CrI.A.Nos.Nos.796 of 2015,
7 & 58 of 2016

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