

BAIL SLIP

1.The Appellant herein/Accused No.3 Viz Chinnathambi @ Karuppursamy S/o.Rangasamy was directed to be released on bail as per order of the Court dated 01.03.2013 made in MP.1/2013 in CrI.A.No.131/2013.

2.The Appellant herein/Accused NO.2 Viz Rengan @ Chinnathambi S/o.Sadaiyan, was directed to be released on bail as per order of the Court dated 04.04.2013 made in MP.No.1/13 in CrI.A.No.172/2013.

3. The Appellant herein/Accused NO.1 Viz Jeganathan @ Asslan S/o.Myilsamy, was directed to be released on bail as per order of the Court dated 30.04.2013 made in MP.No.1/2013 in CrI.A.No.330/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.Nos.131, 172 & 330/2013

Chinnathambi @ Karuppusamy

Rengan @ Chinnathambi

Jaganathan @ Asslan

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Appellant/A3 in
CrI.A.No.131/2013

Appellant/A2 in
CrI.A.No.172/2013

Appellant/A1 in
CrI.A.No.330/2013

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Versus

The State by
The Inspector of Police
Avinashi Police Station
Tiruppur District.

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Respondent in all
the appeals

Appeals filed under section 374 Cr.P.C., against the conviction and sentence passed in SC.No.180/2009 dated 26.09.2012 by the learned II Additional District and Sessions Judge, Tiruppur.

For Appellant in
Crl.A.No.131/2013 : Mr.S.Kamadevan

For Appellant in
Crl.A.No.172/2013 : Mr.A.Raghunathan,
Senior counsel
for Mr.S.Gunalan

For Appellant in
Crl.A.No.330/2013 : Mr.P.Kalimuthu

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 appellant in Crl.A.No.131/2013 is arrayed as A3 and the appellant in Crl.A.No.172/2013 is arrayed as A2 and the appellant in Crl.A.No.330/2013 is arrayed as A1 in SC.No.180/2009 on the file of the learned II Additional District and Sessions Judge, Coimbatore at Tiruppur. Vide judgment dated 26.09.2012, they have been convicted and sentenced as follows:-

Rank of the Accused	Conviction under section	Sentence awarded
A1	341 IPC	Sentenced to undergo one month simple imprisonment.
	302 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.1500/-, in default, to undergo six months rigorous imprisonment.
A2	341 IPC	Sentenced to undergo one month simple imprisonment.
	302 r/w 109 r/w 34 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.1500/-, in default, to undergo six months rigorous imprisonment.

Rank of the Accused	Conviction under section	Sentence awarded
A3	341 IPC	Sentenced to undergo one month simple imprisonment.
	302 r/w 109 r/w 34 IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.1500/-, in default, to undergo six months rigorous imprisonment.

Challenging the said conviction and sentences, they 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.Selvaraj. He had married to one Mrs.Saraswathi and had two children. He was running a Banian Factory at Koyampalayam in Tiruppur. P.W.1, who was aged 20 years, was working as a Helper in yet another Banian Factory by name "Knit Prime" at Tiruppur. The deceased had business transaction with the said company. On account of the same, the deceased used to visit the said factory where P.W.1 was working. In course of time, P.W.1 and the deceased became very close to each other and they had illicit intimacy for about two years.

[B] On 12.04.2007 at about 18.00 hrs, the deceased wanted P.W.1 to accompany him to Karuvalur Temple. P.W.1 agreed for the same. At 18.30 hrs., P.W.1 was waiting for the deceased at the bus stop at Koyampalayam Main Road. The deceased came to the said place in his motorcycle bearing Registration No.TN-39-X-5619. He took P.W.1 in the motorcycle and they went to Avinashi Kakkaattipudur, where, in an Idli shop, they ate idli. Then, they started their journey to go to Nambiyampalayam via Nathanpalayam road. When they were nearing Panappalayam on the said road, it was 20.30 hrs. Three persons [later identified as accused] came in yet another motorcycle, viz., TVS-XL Super, bearing Registration No.TN-40-AA-3124, following them. At the place of occurrence, the said motorcycle of the accused overtook the motorcycle driven by the deceased and came in front of the same and stopped. Consequently, the deceased also stopped his motorcycle. They enquired as to where P.W.1 and the deceased were proceeding. They told them that they were proceeding to Nambiyampalayam village. Then all the three accused, directed P.W.1 and the deceased to take their vehicle into the nearby bushes. The deceased refused. One of the persons in the gang

told that P.W.1 was very beautiful and therefore, they liked to have sex with her. They forced the deceased to drive the vehicle into the nearby land full of bushes. When he resisted, A2 held the hand of the deceased and A1 took out a knife and stabbed the deceased on his chest. A3 held P.W.1. The deceased cried for help. P.W.1 begged not to cause any harm to them. Again A1 stabbed the deceased with the knife on his chest. Though it was dark, P.W.1 could identify all the three assailants, viz., the accused, in the flash of the headlight of the motorcycles. Then all the three accused fled away from the scene of occurrence in their motorcycle. The deceased was struggling for life and was lying near the Load bearer Stone [Rikjh';fp fy;]. P.W.1 found a light in a house situated at a distance. Immediately, she rushed to the said village. She cried for help. She told that somebody had stabbed Mr.Selvaraj. P.W.2 and other villagers accompanied her and rushed to the place of occurrence. They found the deceased with injuries, struggling for life. Then, they took the deceased in an Ambulance to the Government Hospital, at Coimbatore.

[C] P.W.1 rushed to Avinashi Police Station at 00.30 hrs on 13.04.2007 and made a complaint under Ex.P.1. P.W.14, the then Sub Inspector of Police, attached to Avinashi Police Station, on receipt of the said complaint from P.W.1, registered a case in Cr.No.128/2007 for the offence u/s.302 IPC. Since the names of the assailants were not known, P.W.1 mentioned in the complaint that three persons, who could be identified, were the assailants. Ex.P.23 is the FIR. He forwarded both the documents, viz., Exs.P.1 and P.23, to the Court which were received by the learned jurisdictional Magistrate at 05.00 hrs on 13.04.2007 and the copies of the same to his higher officials.

[D] P.W.16, the then Inspector of Police, took up the investigation, proceeded to the place of occurrence at 06.15 hrs on 13.04.2007 and prepared an Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.25] in the presence of P.Ws.5 and 6. He recovered the TVS-Victor motorcycle bearing Registration No.TN-39-X-5619 [M.O.2] ; a pair of blood-stained chappals of the deceased [M.O.4] from the place of occurrence under a Mahazar [Ex.P.4]. He also recovered blood-stained earth [M.O.5] and the sample earth [M.O.7] under a cover of Mahazar. He held inquest on the body of the deceased between 09.00 hrs. and 12.00 hrs on 13.04.2007 in the presence of Panchayatdars and witnesses and prepared the Inquest Report [Ex.P.27]. Thereafter, he forwarded the body of the deceased for postmortem through a Police Constable [P.W.17].

[E] P.W.12-Dr.Malliga, a doctor in the Forensic Medicine Department in the Government Hospital, Coimbatore, conducted autopsy on the body of the deceased on 13.04.2007 at

15.00 hrs. She found the following injuries:-

"Antemortem Injuries:-

[1] An oblique stab wound over front of right side chest 8x3 cm through which lung tissue seen protruding out. The blunt upper inner end of the wound is 4cm below medial end of right clavicle and the lower pointed outer end is 5cm above and inner to right nipple. The wound has passed through the subcutaneous plane passing obliquely downwards, backwards and inwards cutting the lower border of right third rib and entire right 4th rib, causing a stab injury of 4x3x0.5 cm in the anteromedial aspect of lower part of upper lobe of right lung and ended by causing a 7x2 cm flapping incised wound, cavity deep in the anterolateral aspect of right ventricle. The total length of the wound tract is about 10cm. Right pleural cavity contains about 250 ml of blood with clots.

[2] Another oblique stab wound over front of right side chest 2x2x1cm muscle deep seen closely above the previous wound. The outer pointed lower end of the wound is seen closely above lateral margin and 3 cms below upper end of the wound No.1.

[3] Abrasions with underlying contusion seen over the following regions:-

- Dorsum of left foot below big toe 3x2cm
- Back of middle of right leg 6x3 cm
- Outer aspect of right upper arm 1x0.5 cm
- Between left eye and ear 4x0.5 cm
- Scratch abrasion over front of right shoulder 1cm in length.

[4] Lacerated wound over palmar aspect of proximal part of left index finger 2x0.5 cm skin deep.

Other findings:-

- Left pleural and peritoneal cavities empty.
- Left lung cut section pale.
- Heart: right side chambers contain clotted blood. Left side chambers empty. Coronaries patent.
- Stomach contains 250 gms of yellow coloured partially digested cooked rice particles. No specific smell, mucosa pale.
- Small intestine : contain 40ml of bile stained fluid. No specific smell. Mucosa pale.

- Liver, spleen and kidneys cut section pale.
- Urinary Bladder empty."

Ex.P.18 is the Postmortem Certificate. She gave opinion that the deceased had died due to shock and hemorrhage due to the injuries on the body of the deceased. She further opined that the said injuries could have been caused by a knife.

[F] Continuing the investigation, P.W.16, recovered the blood stained cloth of the deceased under a Mahazar. He forwarded the all the material objects to the Court. On 22.05.2007, at 06.00 hrs, near Nambiyampalayam Eswaramoorthy Memorial, he arrested A1 in the presence of P.W.9 and another witness. On such arrest, he came forward to give a voluntary confession [the admissible portion of which is marked as Ex.P.6], in which, he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the said place and produced M.O.1 [knife]. P.W.16 recovered the same under a Mahazar in the presence of the same witnesses. Then A1 took the police and the witnesses towards Thevoor road. At 08.30 hrs on the same day, near Kongu Marriage Hall, A2 and A3 were coming in the motorcycle bearing Regn.No.TN-40-AA-3124. A1 identified them. P.W.16 intercepted them and arrested them. On such arrest, A2 came forward to give a voluntary confession. He produced the said vehicle [M.O.3] and a knife [M.O.11], which were seized under a Mahazar [Ex.P.28]. A3 also came forward to give a voluntary confession statement and he produced a knife [M.O.12] from his possession. P.W.16 also recovered the same under a Mahazar [Ex.P.29]. The confession of the accused were recorded but with no discovery any fact. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court.

[G] On 28.05.2007, he gave a request to the learned Judicial Magistrate for conducting the Test Identification Parade for the accused. P.W.15, the learned Judicial Magistrate No.2, Avinashi, accordingly, after taking all precautionary measures, conducted Test Identification Parade on 07.06.2007. In the Test Identification Parade, P.W.1 participated. Though three opportunities were afforded to P.W.1, she could not identify A3. She identified A1 once and A2 twice. Ex.P.24 is the proceedings of the Test Identification Parade recorded by the learned Magistrate. At this stage, the investigation was taken over by the successor of P.W.16, viz., P.W.18, the Inspector of Police.

[H] P.W.18, made a request to the Court to forward the material objects for chemical examination and the report of the analyst revealed that there were human blood on all the material objects including the knife. Upon completion of

further investigation, P.W.18 laid the charge sheet against the accused.

[I] Based on the above materials, the Trial Court framed appropriate charges against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 18 witnesses were examined, 29 documents and 12 material objects were also marked.

[J] Out of the said witnesses, P.W.1 is the eyewitness to the occurrence and also a victim. She has vividly narrated about the entire occurrence. She has also spoken about the complaint made by her to the police. She has identified all the three accused as the assailants. She has also spoken about the Test Identification Parade in which, she participated and identified A1 and A2. P.W.2 is a villager, who responded to the call of P.W.1 and went to the place of occurrence and took the deceased to the hospital, has turned hostile and has not supported the case of the prosecution in full, though he has stated that he went to the place of occurrence on the call made by a woman, where he found a man lying with injuries and then, the fact that he was taken to the hospital. P.W.3 is the brother of the deceased and P.W.4 is the brother-in-law of the deceased, who have stated about the relationship between the deceased and P.W.1. P.W.3 has further stated that on the day of occurrence, at about 20.30 hrs, the deceased called him over phone and informed him tht he has been stabbed by three persons at Panappalayam. Immediately, P.Ws.3 and 4 went to the said place and before that, the deceased had been taken to the Coimbatore hospital. P.Ws.3 and 4 have stated that they have found a crowd of people at the place of occurrence and the motorcycle of the deceased was lying there. They have further stated that there were blood stains found at the scene of occurrence. P.Ws.5 and 6 have spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the motorcycle and other material objects from the place of crime. P.W.8, the then Village Administrative Officer, who had retired from service on the date of examination, had turned hostile and he has not supported the case of the prosecution, in any manner. P.W.9, yet another witness for the arrest of A2 and A3 and the consequential recovery of the material objects, has also turned hostile and not supported the case of the prosecution in any manner. P.Ws.10 and 11 have not stated anything incriminating against the accused. P.W.12 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.13, is the Constable, who has stated that she took the material objects to the Forensic Lab and handed over the same for chemical analysis. P.W.14 has spoken about the registration of the case on the complaint of P.W.1 under Ex.P.1, on 13.04.2007 at 00.30 hrs. P.W.15, the learned

Judicial Magistrate, Avinashi, has spoken about the Test Identification Parade held by her, in which, P.W.1 participated and identified A1 and A2. P.Ws.16 and 18 have spoken about the investigation done by them and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, on the side of the accused, neither any witness was examined nor was any document marked.

4 Having considered all the above, the Trial Court convicted and sentenced them as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

5 We have heard Mr.S.Kamadevan, learned counsel appearing for the appellant/A3 in CrI.A.No.131/2013 ; Mr.A.Ragunathan, learned Senior counsel appearing for the appellant/A2 in CrI.a.No.172/2013 and Mr.P.Kalimuthu, learned counsel appearing for the appellant/A1 in CrI.A.No.330/2013 and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 The prosecution in this case, mainly relies on the eyewitness account of P.W.1. It is not in controversy that P.W.1 had illicit relationship with the deceased and they together went in a motorcycle. P.W.1 has vividly spoken about the fact that three persons, in yet another motorcycle, followed their motorcycle, came across the motorcycle driven by the deceased and stopped them. She has further stated about the individual overt acts of all the three accused. She has also stated that one of the accused told that they liked to have sexual intercourse with P.W.1 as she is very beautiful and a young girl. She has identified all the three accused in the Court as the assailants. According to her, she went to the nearby village, brought the villagers and then, the villagers took the deceased to the hospital from the scene of crime. The motorcycle driven by the deceased was lying in the place of occurrence.

7 The learned counsel for the appellants would submit that the evidence of P.W.1 would not, in any manner, go to establish the guilt of these three accused, for want of proper identification. They would point out that since it was dark, P.W.1 would not have noticed the identifying features of the assailants. But, we do not find any force in the said argument for, P.W.1 has stated that the assailants could be clearly seen by her in the flash of the headlights of both the motorcycles. The occurrence had taken place for a considerable time. Therefore, we are of the view that P.W.1 would have been

in a position to notice the assailants in the said light available. Hence, this argument stands rejected.

8 The learned counsel for the appellants would next contend that in the Test Identification Parade, P.W.1 had not identified A3 at all. It is true. Though she has identified A3 in the Court for the first time after several months of the occurrence, she was not able to identify A3 in the Test Identification Parade. This creates doubt in the identification of A3 by P.W.1 for the first time in the Court. We are conscious of the legal position that what is substantive evidence is the identification of the accused in Court by a witness and that the prior identification in a Test Identification Parade is used only to corroborate the identification made in Court during trial. Thus, holding that identification parade is not the rule of law, but, rule of prudence. Normally, identification made in the Test Identification Parade lends assurance so that subsequent identification made during trial could be safely relied on. However, even in the absence of Test Identification Parade, the identification made for the first time in Court, could be acted upon, provided, if the witness is otherwise trustworthy and reliable. But, in the instant case, Test Identification Parade was in fact, conducted, but P.W.1 could not identify A3. During Trial, she has not offered any explanation as to why she was unable to identify A3. During Test Identification Parade, had there been any explanation which is acceptable, there can be no difficulty to act upon the identification made during trial. After all, every human conduct is explainable. Here, in this case, it has not been explained to the Court under what circumstances, P.W.1 was unable to identify A3 during Test Identification Parade. Apart from the evidence of P.W.1, there is no other evidence corroborating her evidence in respect of the identity of A3. Therefore, we find it difficult to sustain the conviction of A3.

9 Now turning to the identification of A1 and A2, A1 was identified once and A2 was identified twice in the Test Identification Parade and before the Trial Court, P.W.1 had identified them correctly. The learned counsels for the appellants would submit that during investigation, P.W.1 had not mentioned the identifying features of the accused and therefore, the identification of the accused made by P.W.1, both during the Test Identification Parade as well as during trial, cannot be given weightage of. We do not find any force in the said argument at all., for a perusal of the evidence of P.W.1 would go to show that the accused did not elicit anything from P.W.1 that she had not mentioned the identifying features of the assailants. Therefore, it is not available for the learned counsel for the appellants, for the first time before this

Court, to contend that P.W.1 had not mentioned the identifying features of A1 and A2 during investigation. We do not find any material in the evidence of P.W.1 or any other circumstance to doubt the credibility of P.W.1. From the evidence of P.W.1, we are of the view that the prosecution has clearly established that A1 and A2 along with another man, had intercepted the deceased, caused injuries on him, which resulted in his death.

10 The learned counsel for the appellants would submit that P.W.3, the brother of the deceased, has stated that he received a phone call at 20.30 hrs. from the deceased and the deceased told him that he had been stabbed by three persons. Immediately, P.W.3, along with P.W.4, had gone to the place of occurrence, where they came to know that the deceased had already been taken to the hospital. The learned counsel would submit that the cellphone call details have not been collected by the prosecution, so as to establish the said fact. In our considered view, had the call details been collected and proved as per section 65-B of the Evidence Act, that would have lent more assurance. At the same time, failure on the part of the prosecution to collect these details and produce the same before the Court in evidence, would not in any manner cast doubt in the evidence of P.W.1. P.Ws.3 and 4 have categorically stated that when they went to the scene of occurrence, they found the motorcycle of the deceased lying there and there were blood stains. P.W.2, a villager, though had turned hostile, has substantively supported the case of the prosecution. He has stated that a woman came rushing to the village, cried that the deceased had been stabbed and he accompanied her to the place of occurrence and called an Ambulance, in which the deceased was taken to the hospital. P.W.2 could not recall to his memory as to whether the woman who came to him, was P.W.1 or not. But from the evidence of P.W.2, the time of occurrence, the place of occurrence and the presence of P.W.1, have been again confirmed. The medical evidence also duly supports the prosecution case. The doctor [P.W.12] has opined that the death was due to stab injuries and she has spoken about the approximate time of the injuries also.

11 The learned counsel for the appellants would submit that solely based on the evidence of P.W.1 alone, the conviction of the accused cannot be sustained. This contention deserves to be rejected because it is not the quantity of evidence that matters, but, it is only the quality. It is not the law that the evidence of a solitary witness should be rejected for want of corroboration. It is too well settled that the evidence of a solitary witness, if inspires the fullest confidence of the Court, even without looking for any corroboration, the Court can act upon the said solitary evidence and convict the accused. In the instant case, as we have already concluded, we do not find anything to suspect the

credibility of P.W.1 and her evidence before the Court as against A1 and A2. Her evidence is also duly corroborated by other circumstances, including the medical evidence. On having a scientific analysis of all these evidences, we conclude that it was A1 and A2, along with another man, who have caused the death of the deceased. The act of A1 and A2 would squarely fall within the third limb of section 300 IPC. Therefore, A1 is liable to be punished u/s.302 IPC and for having restrained wrongfully the deceased, A1 is liable to be punished u/s.341 IPC. So far as A2 is concerned, he is liable to be punished for the offence u/s.302 read with 34 and 341 IPC.

12 Now turning to the quantum of punishment, the Trial Court has imposed only a minimum punishment, which does not require any interference of this Court.

13 In the result, the criminal appeals in CrI.A.No.172/2013 and 330/2013 are dismissed. The conviction and sentences imposed by the Trial Court in respect of A1 [341 and 302 IPC] and A2 [341, 302 r/w 109 r/w 34 IPC] in SC.No.180/2009 vide judgment dated 26.09.2012, are hereby confirmed and insofar as A3 is concerned, CrI.A.No.131/2013 is allowed and the conviction and sentences imposed on him by the Trial Court, are set aside and he is acquitted of all the charges leveled against him. The bail bonds executed by him, shall stand discharged. Fine amount if any paid by A3, shall be refunded to him. Insofar as A1 and A2 are concerned, who are on bail, the Trial Court shall take steps to secure them and commit them to undergo the period of sentences imposed on them. The period already undergone by them, shall be given set-off u/s.428 Cr.P.C. The bail bonds executed by them shall stand cancelled.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The II Additional District & Sessions Judge
Tiruppur.

2.The Judicial Magistrate No.2,
Avinashi.

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3.The Inspector of Police
Avinashi Police Station,
Tiruppur District.

4.The Public Prosecutor
High Court, Madras.

5. The Chief Judicial Magistrate
Tiruppur(for Information)

6. The Superintendent of Central Prison,
coimbatore

7.The District Collector Tiruppur Tiruppur District

8. The Superintendent of Police
Tiruppur Tiruppur District

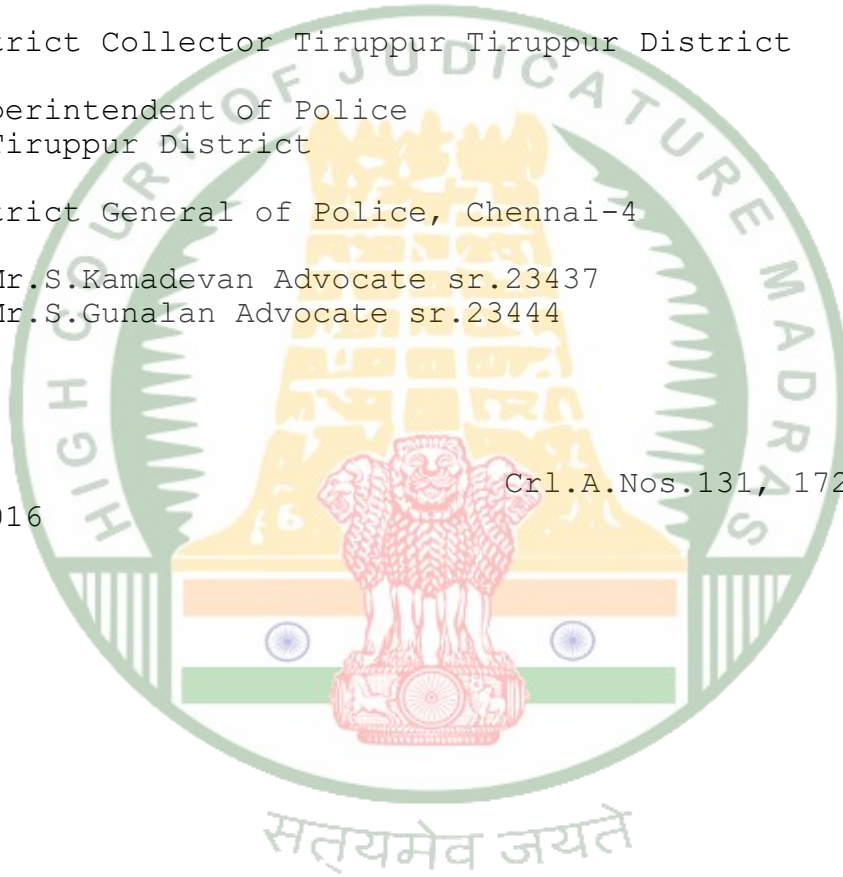
9.The District General of Police, Chennai-4

+1 cc to Mr.S.Kamadevan Advocate sr.23437

+1 cc to Mr.S.Gunalan Advocate sr.23444

aa02/05/2016

Crl.A.Nos.131, 172 & 330/2013



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