

BAIL SLIP

The Accused/Petitioners(A1 to A5) namely Viz, 1.Rahman(A1) S/o.Jakir Hussain, 2)Dhinesh(A2) S/o.Balan 3) Veera(A3)S/o.Ragu, 4) mani @ Manirathanam(A4)S/o.Sundar and 5)Kuppan@Kuppa(A5) S/o.Varadan were directed to release on bail dated 25.04.2013, 27.03.2013 and 23.12.2014 made in Crl.MP.Nos.1, 1 of 2013 in Crl A.No.282 and 303/13, MP.No.1/13 in Crl.A.No.195/13 and MP.No.1/14 in Crl.A.508 of this Hon'ble Court respectively.

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 09..06..2016

Judgement Pronounced on : 15..06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.195, 282, 303 of 2013 and 508 of 2014

Mani @ Manirathinam [A4]

... Appellant in Crl.A.No.195 of 2013

1.Dinesh [A2]

2.Veera [A3]

... Appellants in Crl.A.No.282 of 2013

Rahman [A1]

... Appellant in Crl.A.No.303 of 2013

Kuppan @ Kuppa [A5]

... Appellant in Crl.A.No.508 of 2014

-Versus-

State Rep. by
The Inspector of Police [Crime],
H-6 R.K.Nagar Police Station,
Chennai 600 001.
[Crime No.934 of 2009]

... Respondent in all Criminal
Appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned III Additional Sessions Judge, Chennai, in S.C.No.136 of 2010 dated 22.08.2012.

For Appellant (s) : Mr.R.Alvin Manoraj for Appellant/A4 in Crl.A.No.195 of 2013 and Appellants/A2 & A3 in Crl.A.No.282 of 2013

Mr.R.C.Paul Kanagaraj for Appellant/A1 in Crl.A.No.303 of 2013

Mr.A.Nirmal Kumar for Appellant/A5 in Crl.A.No.508 of 2014

For Respondent : Mr.M.Maharaja, APP for respondents in all Criminal Appeals

COMMON JUDGEMENT

S.NAGAMUTHU, J.

The appellant in Crl.A.No.303 of 2013 is the 1st Accused, the appellants in Crl.A.No.282 of 2013 are the Accused Nos.2 and 3, the appellant in Crl.A.No.195 of 2013 is the 4th Accused and the appellant in Crl.A.No.508 of 2014 is the 5th Accused in S.C.No.136 of 2010 on the file of the learned III Additional Sessions Judge, Chennai. A1 to A3 stood charged for offences under Sections 148 and 302 of IPC and A4 and A5 stood charged for offences under Section 147, 342, 302 r/w 149 of IPC. The trial court, by judgement 22.08.2012, convicted A1 to A5 under the charges framed against each of them and accordingly sentenced them as detailed below:-

Rank of the Accused	Penal provisions under which Charges were framed	Penal provisions under which Accused were Convicted	Quantum of Sentence Imposed by the trial court
A1 A2 and A3	Section 148 of IPC	Section 148 of IPC	Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months
	Section 302 of IPC	Section 302 of IPC	Imprisonment for Life and to pay a fine of Rs.4,000/- each in default to under go simple imprisonment for six months
A4 and A5	Section 147 of IPC	Section 147 of IPC	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months
	Section 342 of IPC	Section 341 of IPC	Simple Imprisonment for one month and to pay a fine of Rs.300/- each in default to undergo simple imprisonment for one week
	Section 302 r/w 149 of IPC	Section 302 r/w 149 of IPC	Imprisonment for Life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months

2.0. The case of the prosecution in brief is as follows:-
The deceased in this case was one Mr.Murugan. He was involved in a murder case and was convicted. He had served twelve years of imprisonment in prison. Two years before the occurrence, he was released. He had all bad habits, like drinking and ganja consuming, etc. Two months prior to the occurrence, there was a wordy quarrel between the mother of A1 and the deceased. In the said quarrel, the deceased had attacked the mother of A1. This is stated to be the motive for the occurrence.

2.1. A1 is a resident of J.J.Nagar, Korukkupet. A2 to A5 are his friends and associates. It is alleged that on 19.12.2009, around 01.30 p.m., the deceased was proceeding along the Manali Road. He was accompanied by his wife (P.W.1) and mother-in-law (P.W.2). When they were crossing a wine shop on Manali Road, all these five accused suddenly emerged there and at that time, A1 to A3 were armed with knives while A4 and A5 were unarmed. They surrounded the deceased and A4 and A5 caught hold the deceased. A1 attacked the deceased with knife repeatedly on the head of the deceased; A2 stabbed him with knife on the chest of the deceased; A3 stabbed the deceased with knife on the back hip of the deceased. P.Ws.1 and 2 raised alarm. Immediately, thereafter, all the accused ran away from the scene of occurrence. The deceased fell down in a pool of blood.

2.2. P.Ws.1 and 2, with the help of the others, immediately rushed the deceased to the Stanley Government Medical College Hospital. P.W.8, Dr.Dheenadayabaran, examined him at 02.30 p.m. on 19.12.2009. He found that there was no life in the body of the deceased and accordingly, he declared him dead. Ex.P.10 is the accident register. He gave intimation to the police under Ex.P.11. P.W.1, thereafter, rushed to R.K. Nagar Police Station and made a complaint. P.W.13, the then Inspector of Police, R.K.Nagar Police Station, on receipt of the said complaint registered a case in Crime No.934 of 2009 under Sections 147, 148, 341 and 302 of IPC against the accused. Ex.P.24 is the FIR. Then, he forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.24) to the court which were received by the learned Magistrate at 07.15 p.m. at 07.15 p.m. on 19.12.2009.

2.3. Taking up the case for investigation, P.W.13 went to the hospital and conducted inquest on the body of the deceased at 04.00 p.m. and forwarded the body for postmortem. At 06.30 p.m., he visited the place of occurrence and prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P26) in the presence of P.W.5 and another witness. He also recovered blood stained earth and sample earth from the place of occurrence in the presence of the same witnesses under a mahazar (Ex.P2).

2.4. P.W.9 Dr.Vedanayagam, conducted autopsy on the body of the deceased on 20.12.2009 on 12.05 p.m. He found the following fifteen external injuries and corresponding internal injuries:-

"Injuries:

(1) An oblique cut laceration of size 5 x 1.5 cm x bone deep seen on the left mid parietal region with clear cut edges and surrounding soft tissue contusion.

(2) An oblique cut laceration of size 3.5

cm x 1 cm x bone deep seen on the right parietal region with clear cut edges and surrounding soft tissue contusion.

(3) An oblique cut laceration of size 3.5 cm x 1 cm x bone deep surrounding soft tissue contusion.

(4) An oblique cut laceration of size 3 x 1.5 cm x bone deep seen below the left side of the angle of the mouth with clear cut margins and surrounding soft tissue contusion.

(5) An oblique stab injury of size 2.5 cm x 4 cm seen just below the lateral 1/3rd of clavicle and directed backwards and downwards with clear cut margin and surrounding soft tissue contusion.

(6) An oblique stab injury of size 4.5 cm x 1 cm x cavity deep seen 1 cm medial to the left nipple and 7 cm away from the sternum with regular margins and directed downwards and backwards.

(7) An oblique stab injury of size 2.5 cm x 1 cm x 3 cm seen on the lateral side of upper part of left thigh with clear cut margins.

(8) An oblique stab injury of size 2 x 1 x 4 cm seen along the medial border of the lower part of left scapula with clear cut margins.

(9) A reddish brown abrasion of size 3 x 2 cm seen along with lateral part of left forearm.

(10) A reddish brown abrasion of size 5 x 3 cm seen along the lateral part of left forearm.

(11) A cut laceration of size 6 x 1 x 1 cm seen on the left forearm just above the wrist joint with clear cut margins.

(12) A reddish brown abrasion of size 3 x 0.5 cm seen on the medial epicondyl of left elbow joint.

(13) A cut laceration of size 2 x 1 x 1 cm seen on the web space between ring and middle finger of the left hand with clear cut margins.

(14) A cut laceration of size 2 x 0.5 x 0.5 cm seen on the webspace between left middle and index finger with clear cut margins.

(15) Multiple abrasion of variable size and shape seen on the anterior part of the left knee joint.

On dissection of Head: Scalp found contused on both parietal and temporal regions. A cut fracture of length 5 cm seen under the injury No.1 on the mid parietal region.

A cut fracture of length 3 cm seen under the injury No.2 on the right parietal region.

Dura matter found intact. A thin layer of subarachnoid haemorrhage seen all over the brain surface. Brain dura matter C/S pale.

On dissection of Thorax:-

Anterior chest wall found contused on the left side over the 2-8 ribs on further dissection 4-5 ribs on the left side found fractured with surrounding tissue contusion along the midclavicular line. On further dissection and Thoracic cavity, pericardial sac found to contain about 175 ml of fluid blood with pericardial puncture close to apex.

Heart: Normal in size. A stab injury of size 2 x 0.5 x chamber deep seen on the left ventricles anterior surface close to the apex. C/S all chambers found empty. Valves and coronaries found normal.

Lungs: Both normal in size C/S pale.

On dissection of abdomen: Stomach contains about 10 mg of light yellow coloured partly digested food particles with no specific odour. C/S Musosa congested.

Liver, Spleen and Kidneys are normal in size C/S pale. Hyoid bone, Pelvis, and Spinal Column found intact."

He preserved the visceral organs of the deceased and forwarded the same for chemical analysis. Ex.P.12 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage as a result of the above stab injuries. He further opined that these injuries could have been caused by knives. According to P.W.9 After the postmortem was over, P.W.13 recovered the dress materials from the body of the deceased and forwarded the same to the court along with a request to send them for chemical analysis.

2.5. In the course of investigation, on 21.12.2009, at 10.00 a.m. at Korukkupet Meenambal Nagar Railway Gate, P.W.13 arrested A4 and A2 in the presence of P.W.7 and P.W.10. On such arrest, at 10.10 a.m., A4 gave a voluntary confession in which he disclosed the place where he had hidden a knife. Following him, at 11.00 a.m., A2 gave a voluntary confession in which he disclosed the place where he had hidden three knives. P.W.13 recovered the above said knives (M.O.11-series) under a mahazar

(Ex.P.30) in the presence of the same witnesses. In pursuance of the said disclosure statement [Ex.P.28], A2 took the police and the witnesses to CP Road Bridge and from a bush he produced three knives. Thereafter, P.W.13, brought both the accused to the police station and recovered from A4 and A2 a blood stained light yellow and white colour designed full sleeve shirt and a blood stained black colour pants which was worn by A4 from A4. P.W.13 also recovered a blood stained dark green colour full sleeve shirt and a blood stained torned lunghi from A2 under a mahazar (Ex.P.31) in the presence of the same witnesses. They are M.O.12-series. Then, he forwarded both A4 and A2 to the court for judicial remand. On the same day at 03.00 p.m., he arrested A5 at 04.00 p.m., near Olaivasal Company at Ananthanayagi Nagar in the presence of P.W.7 and P.W.10. On returning to the police station, P.W.13 recovered a blood stained grey and brown colour T-shirt and a grey colour pants under a mahazar (Ex.P32). The clothes recovered from A5 are M.O.13 series. Then, he forwarded A5 to the court for judicial remand. He also forwarded the material objects to the court.

2.6. In the course of further investigation, P.W.13, on 22.12.2009 at 12.00 noon arrested A1 and also A3 in the presence of P.W.6 and another witness. On such arrest, at 12.10 p.m. A1 gave a voluntary confession in which he disclosed the place where he had hidden the blood stained clothes. Similarly, at 01.00 p.m., A3 gave a voluntary confession in which he disclosed the place where he had hidden the knives. In pursuance of his disclosure statement (Ex.P.33), A1 led the police and the witnesses to the place of hide out. On returning to the police station, P.W.13, at 03.30 p.m. recovered a blood stained sandal colour full sleeve shirt (M.O.8) and a jeans pants (M.O.7) worn by A1 and from A3, P.W.13 recovered a blood stained white colour full hand shirt (M.O.9) and a blood stained lungi (M.O.10) under a mahazar (Ex.P4) in the presence of the same witnesses. P.W.13, then, on returning to the police station, forwarded A3 and A1 to the court for judicial remand. He also forwarded the material objects recovered from the accused along with a request to send them for chemical examination. The report revealed that there were blood stains on all the material objects including the knives recovered from the accused and the clothes recovered from the respective accused. On completing the investigation, P.W.13 laid charge sheet against all the five accused.

3. Based on the above materials, the trial court framed charges against A1 to A5 as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 34 documents and 13 material objects were marked.

4. Out of the said witnesses, P.Ws.1 and 2, the wife and mother respectively of the deceased, are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. They have stated about the motive. They have further stated that when they were in the company of the deceased and proceeding along the Manali Road, A1 to A5 emerged there suddenly and surrounded the deceased; A4 and A5 caught hold him; A1 cut the deceased with knife on his head; A2 stabbed the deceased on his chest and A3 stabbed the deceased on his back hip. P.Ws.3 and 4, examined as eye witnesses have spoken, have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of material objects from the place of occurrence. P.W.10 has spoken about the arrest of A2, A4 and A5 and the consequential recoveries of material objects pursuant to the disclosure statements of A2, A4 and A5 and also the recoveries of clothes worn by the respective accused. P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8, the Doctor, has stated that he declared the deceased dead at 02.30 p.m. on the day of occurrence. P.W.9 has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of the death. P.W.6 has spoken about the arrest of A1 and A3 and the consequential recoveries on the disclosure statement made by the respective accused. P.W.11 has spoken about the fact that he took the dead body of the deceased to the hospital, as directed by P.W.13, and identified the same to the doctor for postmortem. P.W.12 has spoken about the chemical analysis conducted on the material objects received from the court and his report. P.W.13 has spoken about the registration of the case and the entire investigation done by him in the case and the filing of charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor they did mark any document on their side. Their defence was a total denial.

6. Having considered all the above, the trial court convicted the appellants/A1 to A5 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the A1 to A5 are now before this Court with these criminal appeals.

7. We have heard the learned counsel appearing for the respective appellant and the learned Additional Public Prosecutor appearing for the respondent/state and we have also perused the records carefully.

8. The learned counsel for the appellants would submit that P.Ws.1 and 2 would not have witnessed the occurrence at all and therefore, their evidence cannot be believed. He would further submit that there is no evidence from any independent witness to speak about the occurrence so as to give corroboration to the evidences of P.Ws.1 and 2. He would further submit that the discovery of the material objects on the disclosure statements made by the respective accused would not in any manner advance the case of the prosecution. The learned counsel would point out that there is enormous delay in lodging the complaint and forwarding the same to the court which remains unexplained. The learned counsel would further submit that P.W.2 has not even identified the accused. For these reasons, according to the learned counsel, the appellants are entitled for acquittal.

9. The learned Additional Public Prosecutor would, per contra, submit that the presence of P.Ws.1 and 2 at the place of occurrence is quite natural and their evidences deserve credence. He would further submit that though there was some delay in preferring the complaint, it was because of the sudden demise of the deceased as a result of the attack made in a gruesome manner by A1 to A5. He would further submit that the delay in forwarding the FIR to the court alone cannot be a ground to disbelieve the evidences of P.Ws.1 and 2. He would further submit that the medical evidence duly corroborates the eye witness account. He would also submit that A1 has got yet another yet another murder case to his credit. Similarly, A5 has also got a murder case. He would further submit that all the accused have got bad antecedents. For these reasons, according to the learned Additional Public Prosecutor, the appeals deserve to be dismissed.

10. We have considered the above rival submissions carefully.

11. The fact that the deceased was a life convict and he had served twelve years of imprisonment in prison is not disputed. Yet another fact that he was released just two years before the occurrence is also not in dispute. He had bad habits and he had bad antecedents are also not in dispute. But, on that score, no one can claim right to take away his life. Here, in the instant case, the deceased sustained fifteen external injuries which were so deep and extensive. The death had occurred instantaneously due to shock and haemorrhage.

12. Now, the question is, who caused the death of the deceased? The prosecution, in order to prove that it was A1 to A5 who caused the death of the deceased, relies on the evidences of P.Ws.1 and 2. It was nowhere suggested to P.W.1 that she did not know these accused previously. P.W.1 has categorically stated about the overt acts of A1 to A5. She has stated that A1

to A3 were armed with knives when they attacked the deceased. She has further stated that A4 and A5 held the deceased so as to facilitate A1 to A3 to attack the deceased. The presence of P.W.1 cannot be doubted and her presence is quite natural. It has been elicited during cross examination that the distance between her house and the place of occurrence is hardly 1 km. She has further stated that she accompanied the deceased to go to Manali Road and when they were proceeding, the occurrence had taken place. This witness has been extensively cross examined by the accused, but, nothing has been elicited so as to even create a slightest doubt in the credibility of P.W.1. Though P.W.1 happens to be the wife of the deceased and highly interested in the case, on that score, her evidence cannot be rejected. Prudence requires only a close scrutiny. In our considered view, on such close scrutiny, it is crystal clear that P.W.1 is fully reliable. According to her, A1 to A5 had caused the death of the deceased.

13. Now, turning to the evidence of P.W.2, she is the mother of P.W.1 and mother-in-law of the deceased. According to the prosecution, she was also present at the time of occurrence. P.W.1 speaks about her presence also. She accompanied the deceased and she has spoken about the entire occurrence. But, unfortunately, the Public Prosecutor who conducted the case had failed to call upon P.W.2 to identify the assailants in court. The evidence, in chief examination of this witness, would go to show that she has stated that she did not identify any of these accused as assailants. Taking advantage of the same, the learned counsel for the appellants would point out that had it been true that these accused were the assailants, she would have identified them in court. But, we do not find any force in the said argument inasmuch as it is a sheer failure on the part of the Public Prosecutor who conducted trial to call upon the eye witness namely P.W.2 to identify the assailants in court. The trial court has not recorded that when the witness was called upon to identify the accused, she was unable to identify. This would go to indicate that no attempt was made by the Public Prosecutor to call upon this witness to identify the accused. So, for the failure of the Public Prosecutor to discharge his duty, we cannot reject the evidence of P.W.2. For two purposes, her evidence could be taken into consideration. Firstly, she has spoken about the time of occurrence and secondly, the presence of P.W.1. Thus, her evidence duly corroborates the eye witness account of P.W.1. P.W.1 has identified A1 to A5 as the assailants. We, thus, from the evidences of P.Ws.1 and 2 hold that the prosecution has clearly proved that it was A1 to A5 who are the perpetrators of the crime.

14. The learned counsel for the appellants would submit that P.W.1 has stated during cross examination that she knew the names of the accused only as it were mentioned by the deceased. In our considered view, this part of the evidence of P.W.1 would in no way affect her evidence regarding the identity of the assailants. The names of the accused were made known to her before the occurrence by her husband and not after the occurrence. The evidence of P.W.1 goes to show that on receiving the injuries the deceased fell down and he died instantaneously. Therefore, the deceased would not have stated about the names of A1 to A5 at the time or after the occurrence. Their names would have been told to P.W.1 by the deceased long before and after the motive occurrence which had taken place two months before this occurrence. Therefore, we hold that P.W.1 knew the names of the accused before the occurrence and that is how, she mentioned the same in the FIR.

15. Now, turning to the contention of the learned counsel for the appellants in respect of the delay in lodging the FIR, the deceased was taken to the hospital and P.W.8-the doctor, who examined the deceased, declared him dead at 02.30 p.m. on 19.12.2009. P.W.2 is an illiterate witness and she does not know even to sign her name. P.W.1 had lost her husband. She would have been under shock. After getting relieved of the shock, she had gone to the police station within half an hour and made the complaint at 03.00 p.m. Quite naturally, from the hospital to go the police station 30 minutes time would have been taken for P.W.1. Thus, absolutely, there is no delay in registering the FIR. The FIR had, of course, reached the hands of the learned Magistrate at 07.15 p.m., that is, after 4 hours and 15 minutes of the registration of the case. But, the aforesaid delay has not been explained away by the prosecution. But, on this score, the very cogent and convincing evidences of the eye witnesses namely, P.Ws.1 and 2 cannot be rejected. After all, the delay was caused by P.W.13 for which P.Ws.1 and 2 cannot be blamed. Therefore, on the ground of delay in forwarding the FIR to the court in this case, we are unable to reject the evidence of P.Ws.1 and 2 as their evidences are so cogent and convincing.

16. So far as the contention of the learned Additional Public Prosecutor that the A1 is an accused in yet another murder case and A5 is also an accused in another murder case and that A1 to A5 have got bad antecedents is concerned, we are of the considered view, that the same cannot be considered because in a criminal proceedings, the fact that the accused person has bad character is irrelevant, unless evidence has been given that he has a good character. In the instant case, A1 to A5 have not pleaded so and they have not let in any evidence that they have good character. Therefore, their alleged bad character is irrelevant and so, the same cannot be considered.

17. In view of the foregoing discussions, we hold that the trial court was right in convicting A1 to A5 under all the charges. Insofar as the quantum of punishment is concerned, the trial court has imposed only a proportionate sentence for each offence which also does not require any interference at the hands of this court. Thus, we do not find any merit at all in these criminal appeals.

18. In the result, CrI.A.No.195, 282, 303 of 2013 and 508 of 2014:- All these criminal appeals are dismissed and the conviction and sentences imposed on the appellants/A1 to A5 by the trial court are hereby confirmed. Since it is reported that the appellants/A1 to A5 are on bail, the III Additional Sessions Judge, Chennai, shall take steps to secure the presence of A1 to A5 so as to commit them to prison to suffer the sentences imposed by the trial court and as confirmed by this court.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

1.The XV Metropolitan Magistrate
George Town, Chennai-1

2.-do- Thro The Chief Metropolitan Magistrate
Chennai-8

3.The III Additional Sessions Judge,
Chennai.

4.The District Sessions Judge, Chennai

5.The Inspector of Police [Crime],
H-6 R.K.Nagar Police Station,
Chennai 600 001.

6.The Superintendent Central Prison
Puzhl, Chennai

7.The Director General of Police
Mylapore Chennai

8.The District Collector Chennai

9.The Public Prosecutor, High Court, Chennai.

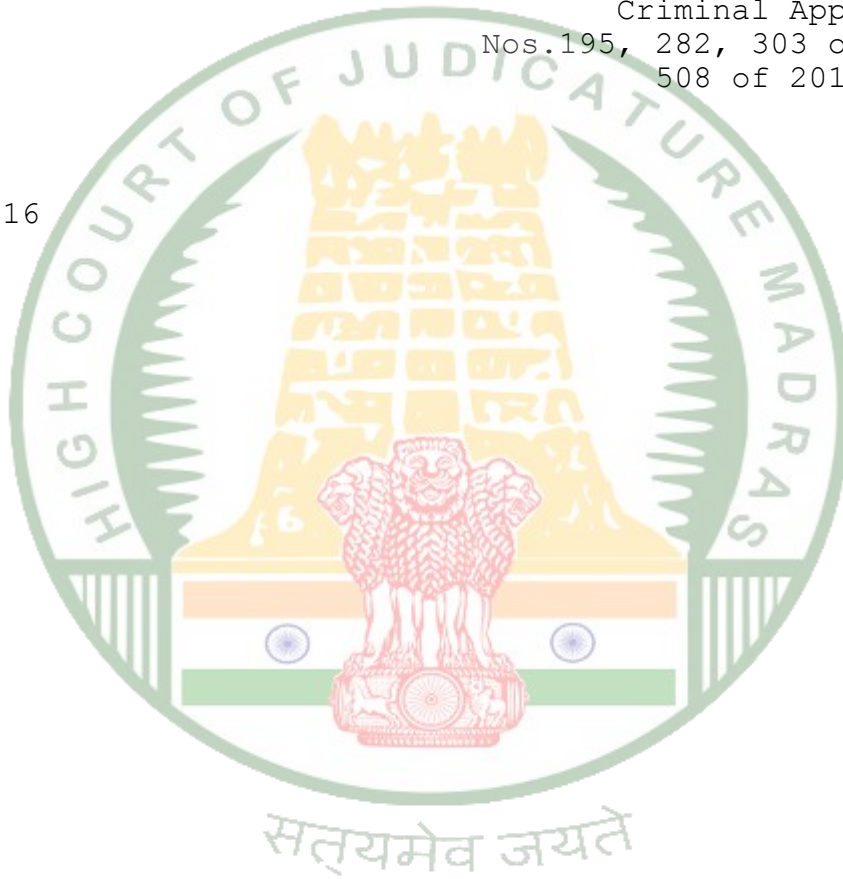
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Common Judgement
in

Criminal Appeal

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