

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

CRL.A.No.213/2017

Balamurugan

..

Appellant/Sole
Accused

Versus

The State rep.by
The Inspector of Police
Anuparpalayam Police Station
Tirupur District.
[Crime No.1453/2012]

..

Respondent /
Complainant

Prayer:- Appeal filed under section 374 [2] Cr.P.C., to set aside the Judgment passed in SC.No.16/2014 dated 19.02.2015 on the file of the learned Judge, Mahila Court [Fast Track Court], Tirupur.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.R.Ravichandran, GA [Crl.Side]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellant herein is the sole accused in SC.No.16/2014 on the file of the Court of Fast Track Mahila Court, Tirupur District and he stood charged and tried for the commission of the offence u/s.302 IPC, for having committed murder of his wife, viz., Vanaja. The Trial Court, vide impugned judgment dated 19.02.2015, has convicted the appellant / accused for the commission of the said offence and sentenced him to undergo rigorous imprisonment for life and also to pay a fine of Rs.5000/- with a default sentence to undergo one year simple imprisonment. The Trial Court also granted set-off for the period of incarceration undergone by him between 09.12.2012 and 19.02.2015 u/s.428 Cr.P.C.

2 The facts, briefly narrated and are necessary for the disposal of this appeal, are as follows:-

2.1 The appellant / accused and the deceased, viz., Vanaja, got married during the year 2004 and were blessed with two female children. The appellant / accused and the deceased were living

together as husband and wife in Door No.218, Thiruneelakandar Street,

Ponnusamy Compound, Tirumurgan Poondi, Tirupur Taluk. The appellant / accused used to suspect the fidelity of his wife / deceased and as a consequence, both of them used to have wordy quarrel and they were also living separately for some time and thereafter, some mediatory efforts were made and thereafter, they started living together as husband and wife once again in the above said address.

2.2 On **08.12.2012** once again there was a wordy quarrel between the appellant / accused and his wife Vanaja and the appellant / accused took a decision to do away with the life of his wife and accordingly, at about **03.15 a.m.**, on **09.12.2012**, with a view to commit murder of his wife, he took the **Grinding Stone [M.O.1]** and threw it upon the head of his wife and as a consequence, she died on the spot.

2.3 P.W.1-Sivasubramaniam, was a resident adjacent to the portion in which the appellant / accused and the deceased were living and according to him, the appellant / accused was in the habit of not attending to work and also pestering his wife Vanaja [deceased] to get money from her father - **Ponnusamy [P.W.4]** and as a consequence, there used to be wordy altercation / commotion between

the appellant / accused and the deceased. The appellant / accused was living separately at Palani and due to mediatory efforts of the elders of the family, he started living with his wife, just few days prior to the date of occurrence, i.e., on 09.12.2012. The appellant / accused went for work only for about 1 ½ months and thereafter, he stayed at home and once again, wordy quarrel arose between the spouses.

2.4 On 08.12.2012, P.W.1, after attending his work, came to his house at about 10.00 p.m. and at that time, there was a power cut and after having dinner, P.W.1 was chatting with one Viji and his mother **Selva Rani [P.W.2]** and at that time, he heard the wordy altercation between the appellant / accused and his wife Vanaja and informed about the same to P.W.2. Thereafter, they went for sleep. P.W.1, at about 3.15 a.m., on 09.12.2012 went outside to attend the nature's call and at that time, he heard some commotion inside the house of the appellant / accused and when he was nearing his house, he saw the appellant / accused, in a fit of rage, coming out of his house with M.O.1-Grinding Stone and told P.W.1 that he murdered his wife. Immediately, P.W.1 went to the house of P.W.2 and asked her to come and accordingly, P.W.1, P.W.2 and Viji went inside the house of the appellant / accused and found that the deceased was lying in a pool of

blood with crushed head and her child was also weeping. P.W.1 had informed the said fact to one Shanmugam-son of the senior paternal father of the deceased. The said Shanmugam came to the occurrence scene along with his brother **Ilango [P.W.3]**. Thereafter, P.W.1 along with Shanmugam and P.W.3 went to Anuparpalayam Police Station, Tirupur and lodged a **complaint** under **Ex.P.1** to **P.W.11-Mr.Syed Babu**, the Station House Officer attached to the said Police Station.

2.5 P.W.11, the Inspector of Police [In-charge] attached to the respondent police station at the relevant point of time, on receipt of the complaint from P.W.1 under Ex.P.1, registered a case in **Crime No.1453/2012** for the commission of the offence u/s.302 IPC on 09.12.2012. The **Printed FIR** is marked as **Ex.P.11**. He despatched the original complaint and the FIR to the jurisdictional Magistrate Court and to the higher officials through **P.W.7-Mr.Rajendran-Head Constable**.

2.6 **P.W.11**, the Investigating Officer, then proceeded to the scene of crime and at 07.15 a.m., on 09.12.2012, in the presence of **P.W.5-Vijayakumar** and one **Sekar**, had prepared the **Observation**

Mahazar and the **Rough Sketch** which are marked as **Exs.P.2 and 12** respectively. P.W.11 held inquest on the dead body of the deceased in the presence of the Panchayatdars at about 08.30 a.m., and prepared the **Inquest Report [Ex.P.13]**. He sent the Grinding Stone [M.O.1] for the purpose of ascertaining its weight through **P.W.10-Rameshkumar**. P.W.11 recovered the said Grinding Stone [M.O.1] ; blood-stain from the said Grinding stone in a Gauze cloth and sample Gauze cloth **[M.O.3 series]** ; blood-stain from the body of the deceased in a Gauze cloth and the sample Gauze cloth **[M.O.2 series]** under the cover of **Mahazar – Ex.P.3** in the presence of the same witnesses.

2.7 P.W.11, the Investigating Officer, in order to ascertain the cause of death, sent the body of the deceased Vanaja through P.W.10 to the Government Headquarters Hospital, at Tirupur along with a requisition for postmortem.

2.8 P.W.8-Dr.N.Vimal Kumar, was the **Assistant Surgeon** attached to Government Headquarters Hospital, Tirupur, at the relevant point of time. P.W.8, on receipt of the requisition along with the body at about 13.05 p.m. on 09.12.2012, noted the presence

of *rigor mortis* in all four limbs and commenced the postmortem at about 13.30 hours on the same day and noted the following features:-

"External Injuries:-

Lacerated 6x4x1 cm right frontal region bond deep exposing right frontal bone, contusion 10x6 cm occipital region. Eyes closed. Mouth closed. No other external injuries. On opening thorax, ribs intact, lungs pale weighs 500 gms, pleura intact. Heart-pale, 350 gm, 10 ml [n.c] blood present. Hyoid bone was intact. Stomach contains 200 ml of partially digested food. Liver pale in cut section weighs 1600 gms, spleen-pale in cut section 120gm. Kidneys congested wt 160 gms each. Intestines distended with gas, bladder-empty. On opening skull, scalp bleeding present from right frontal, parietal temporal occipital on both sides. Compound fracture involving occipital region [bone] extending to light parietal bone noted. Brain shows infra [n.c] haemorrhage,, EDH, SDH, Brain weighs 1300 gm."

P.W.8, after the conclusion of the postmortem, has given the final opinion that the "deceased would have died 20-24 hours prior to autopsy" and also reserved his opinion pending receipt of the chemical analysis of viscera, hyoid bone and blood sample. The **Postmortem Certificate** is marked as **Ex.P.6**. P.W.8 gave the **final opinion**

<http://www.judis.nic.in> under **Ex.P.8** that poison was not detected and hyoid bone was in tact

and that the “deceased would appear to have died of shock and hemorrhage due to head injury. Death would have occurred 20-24 hours prior to autopsy.”

2.9 P.W.11, the Investigating Officer, in continuation of his investigation, examined P.Ws.1, 2, 3, 4, 5 and three other witnesses and recorded their statements and after coming to the Police Station at about 12.30 p.m., on 09.12.2012, effected the arrest of the appellant / accused in the presence of P.W.6 and Iyappan. The appellant/accused came forward to give a voluntary **confession statement** in the presence of the said witnesses, the **admissible portion** of which is marked as **Ex.P.14** and as per the said admissible portion of the confession statement, P.W.11 seized **M.O.14-shirt** worn by the appellant / accused. The Investigating Officer also seized the cloth worn by the deceased and sent the same to the jurisdictional Magistrate Court under Form 95 and also made a request for sending the same for chemical analysis to the Professor of Forensic Science, Coimbatore Medical College Hospital and the said **Chemical Analysis Report** is marked as **Ex.P.7**. P.W.11 examined the Constables and after the conclusion of the investigation, laid the charge sheet/final report on 31.12.2012 before the Court of the Judicial Magistrate No.1, Tirupur,

who took it on file in PRC.No.5/2013. The Committal Court had summoned the accused and furnished him with the copies of the documents u/s.207 Cr.P.C., and having found that the case is exclusively tried by the Court of Sessions, committed the same to the Court of the Principal Sessions Judge, Tirupur, who took it on file in SC.No.16/2014 and on appearance of the accused, framed the charge u/s.302 IPC and questioned him and the accused pleaded not guilty to the said charge framed against him and subsequently, the case was made over to the Mahila Fast Track Court, Tirupur.

2.10 The prosecution, in order to sustain their case, examined P.Ws.1 to 11 and marked Exs.P.1 to 14 as well as M.Os.1 to 8.

2.11 The accused was questioned under section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false and also stated that he is nothing to do with the commission of the offence and he was living away from his wife for the past two years and on hearing the news about the demise of his wife, he came there and that he was arrested by the police and a false case

was foisted against him. The accused did not file any documents nor let in any oral evidence.

2.12 The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, had convicted the appellant/accused for the commission of the offence u/s.302 IPC and imposed the sentence of rigorous imprisonment for life with a fine and default sentence. Challenging the legality of the conviction and sentence of the Trial Court, the appellant/accused has preferred this appeal.

3 Mr.T.Muruganandham, the learned counsel appearing for the appellant / accused would submit that the case of the prosecution rests on the circumstantial evidence and the following circumstances are projected by the prosecution to connect the appellant / accused with the commission of the crime:

- **Motive**
- **Last Seen Theory** spoken to by **P.Ws.1 and 2**
- **Homicidal Death**
- **Scientific Evidence**

4 The learned counsel for the appellant / accused

made the following submissions:-

- 1.** Even according to the prosecution, the appellant / accused has suspected the fidelity of his wife – the deceased herein and therefore, he was living separately for some time and the appellant / accused never joined with the company of his wife and continued to live at Palani which is quite a distance from the place of occurrence and the prosecution has failed to adduce any evidence as to the appellant / accused joining the company of his wife.
- 2.** The testimony of P.W8-the doctor who conducted the autopsy coupled with the Postmortem Certificate [Ex.P.6] would disclose that the deceased appeared to have died 20-24 hours prior to autopsy and if time is calculated based on the said opinion, the offence could not have been committed in the early morning hours on 09.12.2012.
- 3.** The testimonies of P.Ws.1 and 2 are highly artificial and cannot be believed and their testimonies did not corroborate with each other on material particulars.

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5 Alternately, it is pleaded by the learned counsel appearing for the appellant / accused that even as per the version of the prosecution, just prior to the commission of the offence, there was a commotion and wordy quarrel between the appellant / accused and his wife Vanaja and since he has committed the offence of murder in a heat of passion by lifting the grinding stone which was inside the house and put it on the head of his wife and as a consequence, she died and the said act of the appellant / accused comes within Exception [4] to section 300 IPC and therefore, prays for alteration of conviction and reduction of sentence of imprisonment of life.

6 *Per contra*, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] appearing for the State would submit that the prosecution was able to prove the chain of circumstances beyond any reasonable doubt and the testimony of P.W.1 would clearly reveal that immediately after committing the offence of murder, the appellant / accused came out with the Grinding Stone [M.O.1] and told P.W.1 that he has committed the murder of his wife Vanaja and the testimony of P.W.1 has been amply corroborated by another neighbour, viz., P.W.2-Selvarani and that apart, the prosecution, through the scientific evidence marked as Ex.P.6 coupled with the testimony of P.W.8, has

proved that the deceased had died on account of homicidal violence and the chemical analysis report marked as Ex.P.7 would also disclose that the Grinding Stone was used for the purpose of the commission of murder and the said Report also disclosed that M.O.4-Half Sleeve Shirt worn by the appellant / accused was tainted with human blood. In sum and substance, it the submission of the learned Government Advocate [Crl. Side] that since the prosecution was able to prove all circumstances which unerringly point out to the guilt on the part of the appellant / accused and further that the Trial Court, on a proper appreciation and consideration of the oral and documentary evidences and other materials, had reached the conclusion that it was the appellant accused alone had committed the commission of murder, the conviction and sentence recorded by the Trial Court u/s.302 IPC, may not warrant interference. As regards the alternate plea made by the learned counsel appearing for the appellant / accused, it is the submission of the learned Government Advocate [Crl. Side] that the appellant / accused always used to suspect the fidelity of his wife and made her life miserable and solely with the intention of causing her death, he took the Grinding Stone [M.O.1] and put it on her head and he very well know the consequence of the said act and as such, he is

not entitled to get any indulgence or lenience from this Court and hence, prays for dismissal of the appeal.

7 This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

8 The following questions arise for consideration:-

[a] Whether the prosecution was able to link all the chain of circumstances which unerringly point out the guilt on the part of the appellant / accused beyond any reasonable doubt?

[b] Whether the alternate plea made by the learned counsel for the appellant/accused for alteration of conviction and sentence is to be considered or not?

QUESTION NO.1

9 The testimony of **P.W.3-Ilango**, who is closely related to the deceased and the father of the deceased, viz., **P.W.4-Ponnusamy**, would clearly reveal that the appellant / accused under the influence of alcohol, used to ill-treat his wife / the deceased and also used to have wordy quarrel with her and when P.W.4 asked his daughter/deceased, she told him that her husband also used to suspect her fidelity. Thus, the prosecution was able to prove that the appellant / accused used to suspect the fidelity of his wife and some time, under the influence of alcohol, used to have wordy quarrel with her and also living separately and due to the mediatory efforts done by the elders of the family, they started living together as husband and wife for about 1 ½ months prior to the commission of the offence on the early morning hours on 09.12.2012.

10 The primordial submission made by the learned counsel appearing for the appellant / accused is that the appellant / accused continued to live away from his wife at Palani, which is quite a distance from the place of crime and in his answer to the question put to him u/s.313[1][b] Cr.P.C., he has also stated so.

11 P.W.1--Sivasubramaniam is the neighbour and apart

from the fact about the frequent quarrel between the appellant / accused and his wife, he had also spoken about the fact of the appellant / accused joining the company of his wife and was also a resident of one of the houses which is located nearby to his house. P.W.1 in his **chief examination**, had deposed that the appellant / accused after joining with the company of his wife, attended the job for one or one-half months and thereafter, he used to stay in the house and used to have wordy quarrel with his wife and the said fact was disclosed by the deceased Vanaja to his cousin, viz., Mr. Shanmugam, who effected mediation. According to P.W.1, on 08.12.2012, after attending job, he came back to his house at about 10.00 p.m. and at that time, there was a power cut and after having his dinner, he was conversing with one Viji along with his mother P.W.2 between 10.15 p.m. and 10.45 p.m. and they heard the wordy quarrel between the appellant / accused and his wife and also told P.W.2 about that and some time thereafter, P.Ws.1 and 2 went inside their respective houses at about 3.15 a.m. On 09.12.2012, P.W.1 came out to answer the nature's call and at that time, light was burning inside the compound and he heard the whispering sound from the house of the appellant / accused and when P.W.1 was about to go inside his house, the appellant / accused, in a fit of rage, came outside of his house carrying

M.O.1-Grinding Stone and putting it down and told P.W.1 that he murdered his wife. P.W.1 was flabbergasted and thereafter, knocked the house of P.W.2 and P.W.5 came out and some time thereafter, P.W.2 also came there and all of them went inside the house and they found the body of the deceased lying in a pool of blood with a crush injury on her head. They also saw the child was weeping inside the house and they found that Vanaja was dead and the appellant / accused was also sitting outside the house. Immediately, they proceeded to the jurisdictional police station and lodged a complaint. The testimony of P.W.1 as to the presence of the appellant / accused inside the house was also corroborated by the testimony of P.W.2.

12 It is to be pointed out at this juncture that the fact of the appellant / accused joining the company of his wife – the deceased herein, has been spoken to by his father-in-law [P.W.4] and on the date of occurrence, his presence inside the house wherein the offence was committed, had been cogently spoken to by P.Ws.1 and 2. It is also the categorical testimony of P.W.1 that immediately after hearing some whispering noise, when he was about to enter his house, he saw the appellant / accused suddenly opening the door, in a fit of rage and came out with the Grinding Stone and putting it aside and told P.W.1

that he murdered his wife Vanaja.

13 Thus, the prosecution was able to prove that it was the appellant / accused who was in the company of his wife Vanaja [deceased] at the time of the commission of the offence and he only caused the death of his wife by putting the Grinding Stone [M.O.1] on her head. The scientific evidence in the form of the Postmortem Certificate [Ex.P.6] coupled with the testimony of P.W.8 had amply corroborated the fact that M.O.1-Grinding stone was used for the commission of the offence.

14 The learned counsel for the appellant / accused made a valiant attempt by submitting that as per the Postmortem Certificate, the deceased would have appeared to have died 20-24 hours prior to autopsy and as such, she could not have died on the early morning hours on 09.12.2012. However, in the considered opinion of this Court, the said submission lacks merit and substance for the reason that it is merely an opinion of the doctor, who conducted autopsy and P.W.8 was very categorical that M.O.1-Grinding Stone was used for the commission of the offence. The Chemical Analysis Report marked as Ex.P.7 would also disclose that M.O.1-Grinding Stone was

used for the commission of the offence. The prosecution has also proved that the appellant / accused was taken to the jurisdictional police station and he voluntarily gave a confession statement and as per the admissible portion of the confession statement, the Investigating Officer-P.W.11, effected the recovery of M.O.4-Half-Sleeve shirt worn by the appellant / accused and it was subjected to chemical analysis and as per the Chemical Analysis Report [Ex.P.7], it was tainted with human blood. Thus, the prosecution was able to prove that it was the appellant / accused alone who committed the murder of his wife Vanaja and thus, it was able to prove the chain of circumstances, which unerringly point out the guilt on the part of the appellant / accused.

Thus, Question No.1 is answered accordingly.

QUESTION No.2:-

15

Even as per the admitted case of the prosecution, the appellant / accused some time, under the influence of alcohol and also suspecting the fidelity of his wife, used to have wordy quarrel with her and they were living separately for quite some time and due to the mediatory efforts of the elders of the family, they joined together and

started living as husband and wife. The evidence of P.W.1 was that he returned to his house at about 10.00p.m. On 08.12.2012 and he heard the commotion / wordy quarrel between the appellant / accused and his wife and it was going on for some time between 10.15 p.m and 10.45 p.m. and P.Ws.1 and 2 went inside their houses and when P.W.1 came out of his house at about 03.15 a.m., on 09.12.2012 to answer the nature's call, he heard the whispering sound from the house of the appellant / accused and when he went near his house, he saw the appellant / accused, in a fit of rage, coming out of his house with M.O.1-Grinding Stone and putting it aside and told P.W.1 about committing the murder of his wife Vanaja.

16 Thus, the wordy quarrel was going on during night hours between 10.15 p.m. and 10.45 p.m. on 08.12.2012 and on the early morning hours on 09.12.2012 and P.W.1 also heard some commotion. In the considered opinion of this Court, the wordy altercation was going on immediately prior to the commission of the offence during the night hours on 08.12.2012, which culminated in the commission of the offence of murder on the early morning hours on 09.12.2012. Thus, the act on the part of the appellant / accused, in the considered opinion of the Court, comes within Exception 4 to section

300 IPC.

17 The prosecution was able to prove that the appellant / accused had the intention to cause such a bodily injury which is likely to cause death. It is to be noted at this juncture, that the appellant / accused, in a fit of anger, took M.O.1-Grinding Stone which normally is found in a place of abode and threw it on the head of the deceased/his wife and as a consequence, she died on the spot. Therefore, the offence committed by the appellant / accused falls under Section 304 [Part I] IPC. It is also brought to the knowledge of this Court that the appellant / accused, apart from the period of incarceration undergone by him between 09.12.2012 and 19.02.2015 for a period of 803 days, continues to be incarcerated after conviction and sentence recorded by the Trial Court on 19.02.2015.

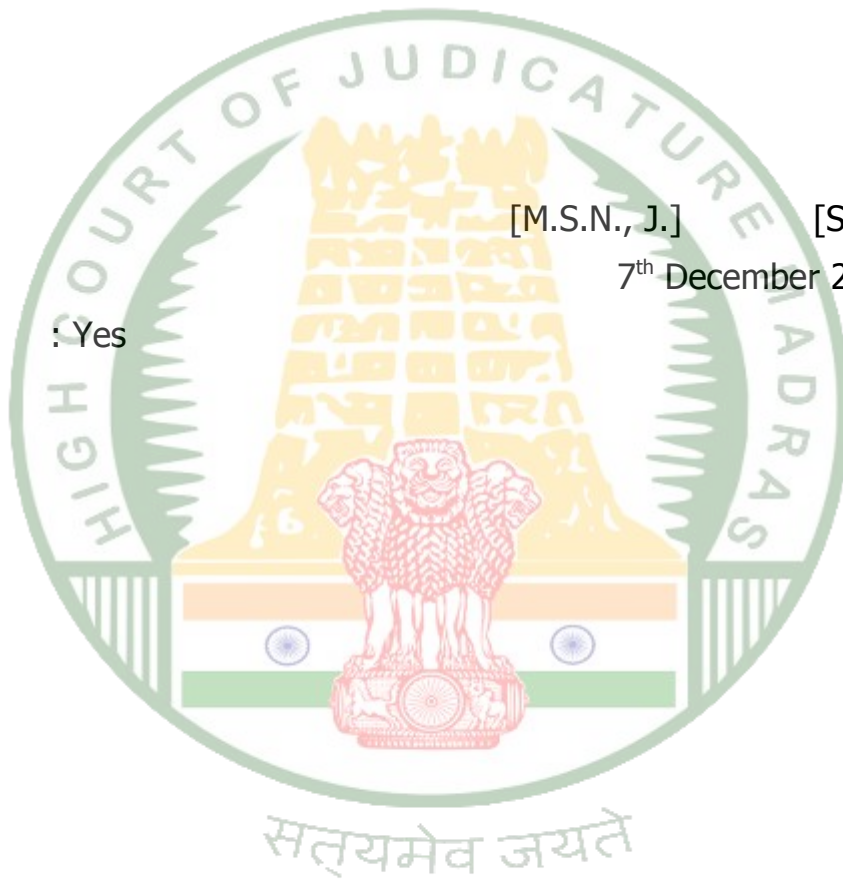
18 In the result, the criminal appeal is **partly allowed** and the **conviction and sentence** imposed on the appellant / accused for the commission of the offence **u/s.302 IPC** by the learned Sessions Judge, Mahila Court [Fast Track Court], Tiruppur, vide impugned judgment dated 19.02.2015 in SC.No.16/2014 is **modified** and in **stead**, he is convicted for the commission of the offence **u/s.304 [Part**

I] IPC and is sentenced to undergo **ten years rigorous imprisonment.** The sentence of fine with the default sentence imposed by the Trial Court is maintained. The period of incarceration already undergone by the appellant / accused is given set-off u/s.428 Cr.P.C.

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[M.S.N., J.]

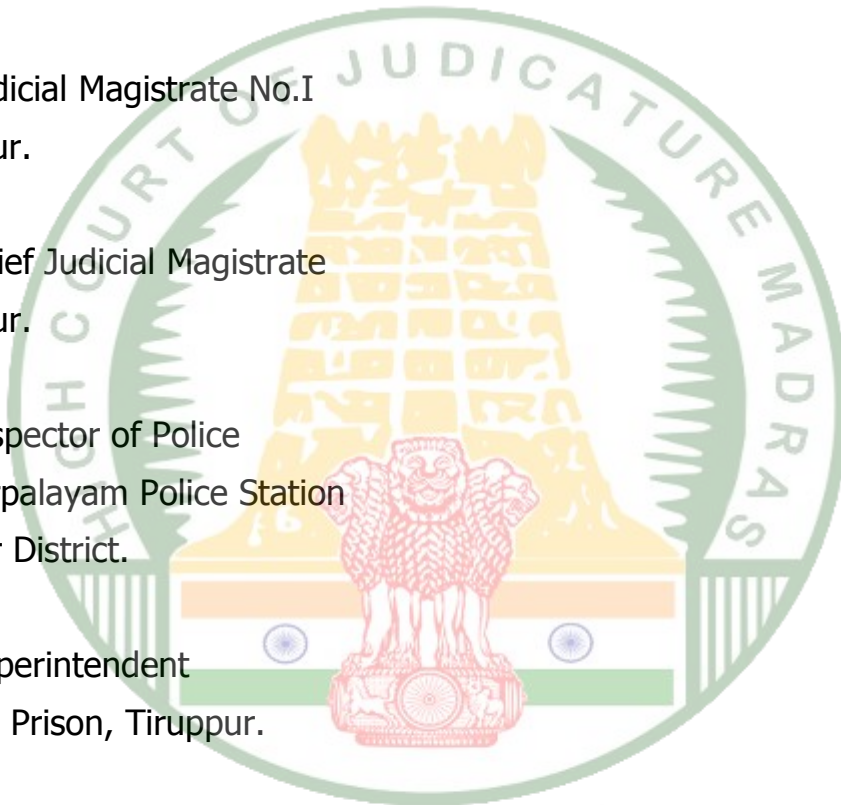
[S.P.I., J.]

7th December 2017

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To

- 1.The Sessions Judge,
Mahila Court [Fast Track Court], Tiruppur,
- 2.The Principal District and Sessions Judge
Tiruppur.
- 3.The Judicial Magistrate No.I
Tiruppur.
- 4.The Chief Judicial Magistrate
Tiruppur.
- 5.The Inspector of Police
Anuparpalayam Police Station
Tiruppur District.
- 6.The Superintendent
Central Prison, Tiruppur.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The District Collector,
Tiruppur District.
- 9.The Public Prosecutor
High Court, Madras.



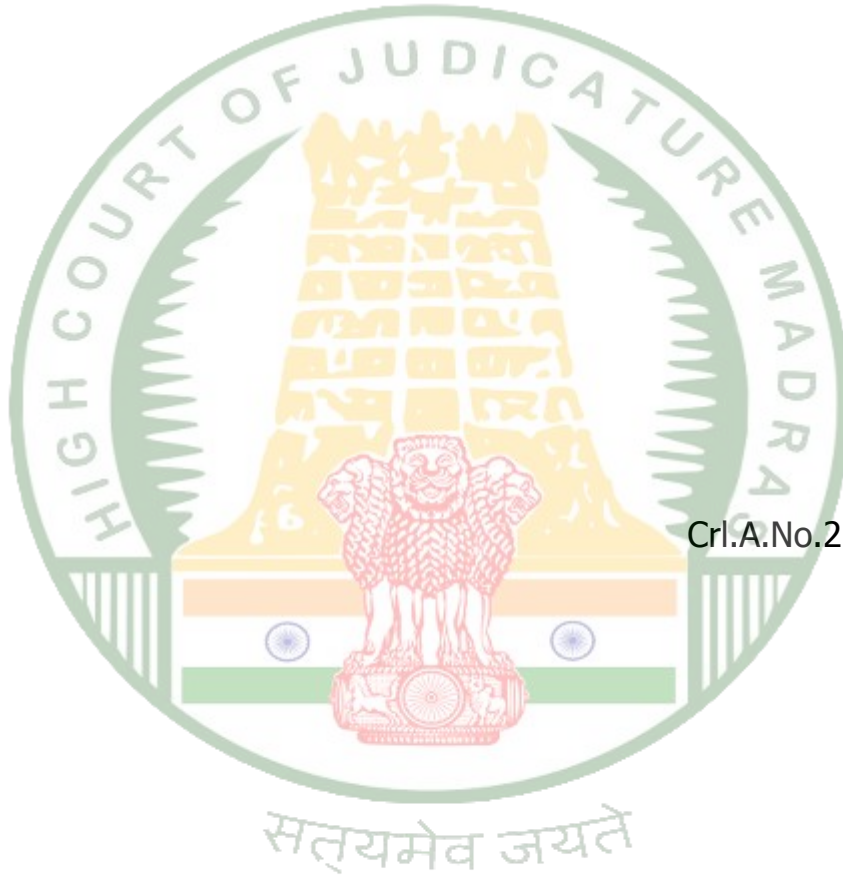
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M.SATHYANARAYANAN, J.,

AND

SATRUGHANA PUJAHARI, J.,

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