

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

Criminal Appeal No.232 of 2017

Mathesh

..

Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
(Crime No.279 of 2013)

..

Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 06.03.2017 made in S.C.No.137 of 2015 passed by the learned Sessions Judge, Mahila Fast Track Court, Dharmapuri, Dharmapuri District.

For Appellant : Mr.C.R.Malarvannan
for M/s.V.Rajamohan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T
सत्यमेव जयते

(Judgment of the Court was delivered by
M.Sathyannarayanan, J.)

The appellant was arrayed as accused in S.C.No.137 of 2015 on the file of the Court of Sessions (Mahila), Fast Tract Court, Dharmapuri District and he stood charged and tried for the commission of offences under Sections 302 I.P.C and 201 r/w. 302 I.P.C. The Trial Court, vide impugned judgment dated 06.03.2017, found him not guilty for the offence under Section 201 r/w.302 I.P.C. and acquitted him for the said offence and however convicted him for the offence under Section 302 I.P.C. and sentenced him to undergo imprisonment for life with a fine of Rs.2,000/- in default to undergo 2 months rigorous

imprisonment. The Trial Court has also granted set off under Section 428 Cr.P.C. The appellant/accused, challenging the legality of the conviction and sentence passed by the Trial Court, has filed this appeal.

2. The case of the prosecution, briefly narrated and necessary for the disposal of this appeal, are as follows:

2.1. The deceased, namely Neela, is the mother of PW1. According to the prosecution, the appellant/accused and the juvenile accused, namely Mani as well as the deceased belong to the same place. At about 10.00 p.m. on 11.08.2013, when the deceased/Neela was in his house, the appellant/accused as well as the juvenile accused Mani started consuming liquor and when it was questioned by the deceased, she was abused. PW1 is the daughter of the deceased and she informed to her neighbour PW2-Surya about the said incident and PW1 asked her mother not to indulge in unwanted things and made her to sit in the house of PW2 and she went back to her home at 10.30 p.m. on 11.08.2013. The deceased/Neela was having conversation with PW2 for sometime and thereafter, she went back to his house on 12.08.2013 at about 6.00 a.m. When PW2 proceeded to his lands, she passed through the house of the mother of PW1 and found blood stains near the entrance of the house and also found that the doors were found open and developing suspicion, she went inside the house and found that Neela was dead and she informed the same to PW1-daughter of the deceased.

2.2. PW1 developed suspicion that on account of the wordy altercation that had happened between the appellant/accused and the juvenile accused and her mother, she would have been done to death and went to Karimangalam Police Station and lodged a written complaint to PW13- Sub-Inspector of Police, Karimangalam Police Station. PW13, on receipt of the written complaint, registered a case in Crime No.279 of 2013 at about 8.a.m. on 12.08.2013 for the commission of offence under Section 302 I.P.C. The printed F.I.R. was marked as Ex.P7. PW13 despatched the original complaint as well as F.I.R. to the Jurisdictional Magistrate.

2.3. PW19 was the Station House Officer of Mathikanpalayam Police Station and also In-charge of Karimangalam Police Station and on receipt of the F.I.R., took up the investigation and went to the scene of occurrence and in the presence of PW6 and Palani, inspected the said area and prepared the Observation Mahazar and Rough Sketch, marked as Exs.P2 and P13 respectively. PW19 examined PWs.1, 8, 9, 10, 11, 2, 3, 4, 5, 6 and 12 and recorded their statements under Section 161(3) Cr.P.C., and conducted inquest on the body of the deceased in the presence of Panchayatdars and the Inquest Report was marked as Ex.P14. PW19, through PW15, made a requestion for conducting postmortem and also prepared a report, which was marked as Ex.P15.

2.4. PW16 was the Assistant Surgeon attached to Dharmapuri, Medical College Hospital and he received the body of the deceased along with a requisition at about 2.00 p.m. on 12.08.2013 and seen the body at 2.15 p.m. and noted the presence of Rigor Mortis in all four limbs and commenced the postmortem at about 2.15 p.m. on 12.08.2013 and noted the following features:

"A body of a female aged about 75 years, lying on its back, arms by the side R/L.

External Injuries: Fracture all skull exposing brain matter 2) 3 x 1 cm abrasion over cheek. 3) Abrasion over left cheek. 4) Laceration 3 x 1 over right side forehead.

Thorax & Abdomen: Hyoid -intact, sternum-intact, Ribs-normal, Lungs-normal, C/s-pale.

Thoracic cavity: Heart - normal in size, Empty Chambers, stomach 400 gm partially digested food with no specific odor, pale mucosa Liver-normal in size. C/s- Pale, Spleen-normal, C/s-Pale. Kidney-normal in size, Bladder-empty, Uterus (n.c.) C/s.Empty, External genitalia - normal.

Head : 15 x 12 cm cavity deep irregular laceration involving right and left fronto parietal region exposing multiple fractured pieces of underlying right fronto parietal vault. Irregular lacerated duramater (?), brainstem and base of skull major part of lacerated. Brain matter was oozed out. Oozed brain matter was collected in separate plastic bag."

PW16, after completion of postmortem, opined that the death would have occurred 12-24 hours prior to autopsy and issued the Postmortem Certificate, marked as Ex.P9.

2.5. PW19 continued with the investigation and searched for the accused and on information, effected the arrest of the accused/appellant as well as juvenile accused near the area going around the hill in the presence of PW12/VAO and his menial. The appellant/accused voluntarily came forward to give confession statement and as per the admissible portion of the confession statement marked as Ex.P16, M.O.1-Stone and M.O.4-Blood Stained Shirt worn by the accused were recovered under Mahazars Ex.P3 and Ex.P5 respectively. PW19 sent the material objects for chemical and biological analysis through requisition letter marked as Ex.P17. PW19 also recovered M.O.2- Blood Stained Earth and M.O.3- Sample Earth under Mahazar Ex.P4 and after bring the accused to the police station, sent him to the Jurisdictional Magistrate Court for remand and custody. PW19 received the Chemical Analysis Reports, marked as Exs.P10 to P12 and thereafter handed over the case papers to his successor,

namely Mr.Thangadurai/Inspector of Police and based upon the materials collected during investigation, has altered the Section from 302 I.P.C to Sections 302 and 201 I.P.C. The Alteration Report was marked as Ex.P18.

2.6. PW18, the successor of PW19, continued with the investigation and after completing the investigation, filed the Final Report/Charge Sheet on the file of the Court of Judicial Magistrate, Palacode, charge sheeting the appellant/accused for the offences under Sections 302 and 201 r/w. 302 I.P.C., which was taken on file in P.R.C.No.31/2015. The Committal Court summoned the accused and on his appearance, furnished copies of the documents under Section 207 CrPC. The Committal Court, having found that the case is exclusively triable by the Court of Sessions, committed the same under Section 209 CrPC to the Principal Sessions Court, Dharmapuri and the said Court made over the case to the Sessions Judge, Mahila Fast Tract Court, Dharmapuri in S.C.No.137 of 2015.

2.7. The Trial Court had issued summons to the accused and on his appearance, framed charges for the offences under Sections 302 I.P.C and 201 r/w. 302 I.P.C. The appellant/accused pleaded guilty to the charges framed against him.

2.8. The prosecution, in order to sustain their case, examined PWs.1 to 19, marked Exs.P1 to P18 and also marked M.Os.1 to 4. The accused/appellant was questioned under Section 313(1) (b) CrPC with regard to incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied it as false. On behalf of the accused, no witness was examined and no document was marked.

2.9. The Trial Court, on consideration and appreciation of oral and documentary evidence and other materials, convicted and sentenced the accused for the offence under Section 302 I.P.C. and however acquitted him for the offence under Section 201 r/w. 302 I.P.C. and the State did not prefer any appeal against the acquittal of the appellant/accused for the offence under Section 201 r/w. 302 I.P.C. The appellant/accused, challenging the legality of the conviction and sentence passed by the Trial Court, has filed this appeal.

3. Mr.C.R.Malarvannan, learned counsel appearing for the appellant/accused made the following submissions:

(a) The case of the prosecution rests upon circumstantial evidence and the following circumstances are projected by the prosecution:

- (i) Motive
- (ii) Last Seen Theory spoken to by PWs.1 to 4.

(b) As per the testimony of PW1, she did not write the complaint and she was not even aware of the contents of the F.I.R and admittedly, F.I.R came to be registered on the basis of Ex.P1/complaint given by PW1 and since the writing of the complaint itself is doubtful and the evidence of the prosecution case based upon such a complaint got weakened, as it rests upon weaker foundation.

(c) Though the witnesses, namely PWs.1, 2, 3 and 4 had spoken about wordy altercation between the appellant/accused and the deceased, the same would not lead to the inference that they had committed the heinous crime of murder and even as per the prosecution, wordy alteration took place in drunken state, they have not uttered any word stating that they will do away or finish the life of the deceased.

(d) The arrest of the accused at about 2.00 p.m. on 12.08.2013 and the recovery of incriminating articles are also doubtful for the reason that according to PW2, immediately after the occurrence, police was informed and they came to the spot at about 7.00 a.m. on 12.08.2013 and at that time, they brought the accused and the juvenile accused and sometime thereafter, they were taken to the police station.

(e) The Mahazar Witness for the recovery of M.Os.1 and 4, namely PW6 would also disclose that his signature was obtained at about 9.00 or 10.00 a.m. on 12.08.2013 and his statement was recorded at that time and according to the prosecution, the accused was arrested only at 2.00 p.m. on 12.08.2013 and as such, the time of arrest of the accused and the recovery of incriminating articles, as projected by the prosecution, is also highly doubtful.

(f) The material witnesses, namely PWs.1 to 4, who had spoken about the Last Seen Theory, made very many improvements from that of the statements recorded from them under Section 161(3) CrPC and as such, their evidence ought to have been eschewed in toto by the Trial Court.

(g) The Trial Court has recorded conviction merely on the basis of the Chemical Analysis Reports, which would disclose that M.O.4- Shirt worn by the accused and M.O.1-Stone were tainted with blood and mere recovery of incriminating articles and the Chemical Analysis Reports would not lead to the

presumption that the appellant/accused along with juvenile accused has committed the offence and even assuming that those circumstances have been proved, the rest of the circumstances such as Last Seen Theory and Mens Rea on the part of the appellant/accused to do away with the life of the deceased/Neela have not been proved by the prosecution and since the chain of circumstances projected by the prosecution is not complete and further, the case of the prosecution bristles with infirmities and inconsistencies, the Trial Court ought to have awarded benefit of doubt and acquitted the accused and instead, without assigning proper and tenable reasons, has convicted and sentenced him and prays for setting aside the impugned judgment of conviction and sentence passed by the Trial Court.

4. Per contra, Mr.R.Ravichandran, learned Government Advocate (Crl.Side) appearing for the respondent/State, in his usual vehemence and relentless pursuit, made forceful submission that the prosecution, through the testimonies of PWs.1 to 4, coupled with scientific evidence and other evidence, had cogently linked the chain of circumstances pointing out the guilt on the part of the appellant/accused and trivial/minor discrepancies have not affected the core of the prosecution. It is the further submission of the learned Government Advocate (Crl. Side) that admittedly, the witnesses were examined nearly 3 years after the date of occurrence and therefore, embellishment and discrepancies are bound to occur and this Court has to take into consideration the over all evidence of all witnesses and find out as to whether the prosecution has proved the chain of circumstances to link the accused with the commission of the offence. It is the further submission of the learned Government Advocate (Crl. Side) that the appellant/accused, while questioned under Section 313(1)(b) CrPC, merely denied the incriminating circumstances and it could be an added or additional circumstance to connect the accused with the commission of the offence and the Trial Court, on a thorough consideration of oral and documentary evidences, has rightly reached the conclusion to convict and sentence the accused and it may not be interfered with and prays for dismissal of this appeal. The learned Government Advocate (Crl.Side), in support of his submissions, relied upon the following decisions:

(i) G.Parshwanatha v. State of Karnataka [(2010) 8 SCC 593]

(ii) Kishor Bhadke v. State of Maharashtra [(2017) 3 SCC 760]

(iii) Abu Thakir and Others v. State of Tamil Nadu, rep. by Inspector of Police, Tamil Nadu [(2010) 5 SCC 91]

(iv) Dharnidhar v. State of Uttar Pradesh and Others [(2010) 7

SCC 759]

(v) Aftab Ahmad Ansari v. State of Uttaranchal [(2010) 2 SCC 583]

5. This Court paid it's anxious consideration and best attention to the submission made by the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the State and perused the oral and documentary evidence and other materials.

6. It is a well settled proposition that "In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established; each fact sought to be relied upon must be proved individually. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the Court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case and the Court thereafter, has to consider the effect of proved facts. [See G.Parshwanath v. State of Karnataka (2010) 8 SCC 593].

7. This Court, keeping in mind the time tested principles in a case of circumstantial nature, has carefully scrutinized and analyzed the oral and documentary evidence.

8. PW1 is the daughter of the deceased and in her chief examination, she has spoken about the wordy altercation, especially the use of filthy and abusive words by the accused as well as juvenile accused in front of the house of the deceased under the influence of alcohol and she would further state that on 11.08.2013 at about 11.00 p.m. after the wordy altercation was over, she saw the accused along with juvenile accused going on the side of her mother house and on the next day, she was informed by her neighbour about the blood stains found in her mother house. In the cross examination, PW1 made a crucial admission that she did not write the complaint and it was written in the police station and she was not aware of the contents of the complaint. PW1 also made a crucial admission that in the statement recorded during investigation, she did not state about seeing both the accused going by the side of her mother house and she would further state that the complaint was given at 10.00 to 11.00 a.m. and even prior to that, police, on receipt of information, came to the spot.

9. PW2 is the neighbour of PW1 and she has corroborated the version of PW1 with regard to wordy altercation. In the cross examination, PW2 would admit that at about 6.30 a.m. on

12.08.2013, he was aware of the demise of Neela and immediately information was given and police came to the spot at about 7.00 a.m. and even at that time, they brought the accused/appellant and the juvenile accused and some time thereafter, they were taken to the police station.

10. PW3 has also corroborated the evidence of PW1 and in the chief examination she had seen both the accused together at 11.00 p.m. and however in the cross examination admitted that she has not stated so during the course of investigation.

11. PW4 has corroborated the testimonies of PWs.1 to 3 with regard to wordy altercation and in the cross examination, he has stated that at about 1.30 a.m. on 12.08.2013, he saw the appellant/accused along with juvenile accused with a lighted cigarette and both of them went near the house of the deceased and however, in the cross examination, PW4 would depose that he did not state so during the course of investigation that he saw both accused at about 1.30 a.m. on 12.08.2013.

12. The testimonies of PWs.1 to 4, no doubt, have sustained the case of the prosecution insofar as wordy altercation or use of filthy words by the appellant/accused under the influence of alcohol. It is to be pointed out at this juncture that it is for the prosecution to prove beyond reasonable doubt that the appellant along with juvenile accused has committed the heinous offence of murder.

13. As regards the crucial aspect of seeing both the accused near the house of the deceased, the above said witnesses did not state so while their statements were recorded under Section 161 (3) CrPC during the course of investigation and however, made improvements by leaps and bounds during the course of their oral testimonies.

14. As regards arrest and recovery of incriminating articles in pursuant to the admissible portion of the confession statement, marked as Ex.P16, is concerned, hereagain, the prosecution has failed to prove the same. As already pointed out, PW2, in his cross examination, has stated that police came to the spot on receipt of information at about 7.00 a.m. on 12.08.2013 and at that time, they brought the accused as well as the juvenile accused. PW6- Mahazar Witness, in his cross examination, would depose that his signature was obtained in the recovery mahazar at about 9.00 to 10.00 a.m. on 12.08.2013 and would admit that though in his chief examination, he deposed that both the accused voluntarily surrendered and prayed for pardon before PW5, he did not state so during the course of investigation and would further depose that he was in the police station till 2.00 p.m. and till he was present in the police station, both the accused were kept in the police station.

15. In the light of the above said testimonies, the case of the prosecution that the accused was arrested at 2.00 p.m. on 12.08.2013 and thereafter, in pursuant to the admissible portion of the confession statement marked as Ex.P16, recovery was effected, became unsustainable and this Court is of the considered view that the arrest of the accused and recovery of incriminating articles became doubtful.

16. Insofar as the recovery of M.O.1-Stone is concerned, as per the evidence of PW12/VAO, immediately on receipt of the information, he went to the house of Neela and found her dead with head injuries on the head and nearby a stone-M.O.1 was found and on returning to his office, he informed the same to his higher official and at about 2.00 p.m. police came to be spot and asked him to subscribe his signature and as per Ex.P3/Mahazar, M.O.1-Stone was recovered. PW12 would admit that he has signed the mahazar only at the police station and thereby implying that he has not signed the mahazar at the scene of occurrence.

17. A perusal of the Recovery Mahazar/Ex.P3 would also disclose that M.O.1-Stone was recovered from a pond located behind the house of the deceased and whereas PW6 would depose that it was found near the body of the deceased. Therefore, the recovery of incriminating articles, especially M.O.1-Stone, which was used by the accused as well as juvenile accused for the commission of offence, have not been proved by the prosecution.

18. No doubt, the scientific evidence in the form of Exs.P10 - P12/Chemical Analysis Reports would disclose that the articles were tainted with human blood and however, that may not be the sole circumstance so as to enable the Trial Court to reach the conclusion that the appellant has committed the offence. That apart, the Investigating Officer/PW19, in his cross examination, was also put a specific question as to the belated despatch of F.I.R. and in the cross examination would admit that the F.I.R. was despatched with 4 hours delay and it was despatched through the Head Constable Mr.Balasubramaniam, but he was not examined during the course of investigation. PW19 would also admit about the improvements in the testimonies of the above cited witnesses and also admitted that he has recorded the confession statement and though he has admitted that the confession statement was recorded at about 12.00 noon on 12.08.2013, whereas the accused was arrested at about 2.00 p.m. on 12.08.2013. The prosecution has drawn the inference simply because the appellant/accused along with juvenile accused going nearby the house of the deceased and they would have committed the murder. As already pointed out, with regard to the said crucial aspect, the material witnesses have made very many improvements from

that of their statements recorded under Section 161(3) CrPC and therefore, it is not safe to rely upon their testimonies with regard to that material aspect.

19. The learned Government Advocate (Crl.Side) has also made a valiant attempt by inviting the attention of this Court to the judgments in Aftab Ahmad Ansari v. State of Uttaranchal [(2010) 2 SCC 583], Dharnidhar v. State of Uttar Pradesh and Others [(2010) 7 SCC 759] and Abu Thakir and Others v. State of Tamil Nadu [(2010) 5 SCC 91] and would submit that as per the ratio laid down in the above cited judgments, the prosecution has established the chain of circumstances and therefore, interference may not be warranted.

20. This Court, on going through the above cited decisions, is of the considered view that the said decisions have no application to the case on hand.

21. In Aftab Ahmad Anasari v. State of Uttaranchal [(2010) 2 SCC 583], the Hon'ble Supreme Court of India held that if bloodstains are found on visible part of clothes worn, normally such person would not move around with those clothes and further the appellant therein had not denied the said fact in the course of his examination under Section 313 CrPC. However, in the case on hand, this Court already held that the arrest of the accused at 2.00 p.m. on 12.08.2013 itself is doubtful and so also the recoery of incriminating articles viz., M.Os.1 to 4 and as such, the said decision has no application to the case on hand.

22. In Dharnidhar v. State of Uttar Pradesh and Others [(2010) 7 SCC 759], the Hon'ble Supreme Court of India held that admission or confession of accused under S.313 CrPC recorded in course of trial can be acted upon and Court can rely on these confessions to convict the accused. In the case on hand, PW2 has spoken the fact that the accused were present in the custody of police even at about 7.00 a.m. on 12.08.2013 and whereas according to the prosecution, they were arrested at about 2.00 p.m. on 12.08.2013 and as such, in the light of the infirmities pointed out above, the said judgment also have no application to the case on hand.

23. In Abu Thakir and Others v. State of Tamil Nadu [(2010) 5 SCC 91] it is held that "Criminal justice should not be made a casualty for the wrongs committed by the Investigating Officers in the case; if the Court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the investigating officer's suspicious role in the case".

24. It is to be remembered at this juncture that if the case of the prosecution rests upon circumstantial evidence, it is the bounden duty of the prosecution to link the chain of circumstances unerringly to connect the accused for the commission of offence, but they have miserably failed to do so.

25. In *Kanhaiya Lal v. State of Rajasthan* [(2014) 4 SCC 715], the Hon'ble Supreme Court of India held that circumstance of last seen together does not by itself necessarily lead to inference that it was accused who committed the crime but there must be something more to connect the accused with the crime and to point out guilt of accused and none else.

26. In *Shyamal Ghosh v. State of West Bengal* [(2012) 7 SCC 646], the Hon'ble Supreme Court of India held that "the reasonableness of the time gap is of some significance. If the time gap is very large, then it is not only difficult but may even not be proper for the Court to infer that the accused had been last seen alive with the deceased and thus was responsible for commission of the offence. However, facts of the said case would disclose that evidence was available as to the deceased last seen together alive with the accused/appellant therein, but in the case on hand, the prosecution has failed to establish the same.

27. In the considered opinion of the Court, there are very many gaps and holes in the case projected by the prosecution and the chain of circumstances to link the accused with the commission of offence is not at all complete and therefore, benefit of doubt shall enure in favour of the appellant.

28. In the result, this Criminal Appeal is allowed and the conviction recorded and sentence imposed on the appellant under Section 302 I.P.C., vide impugned judgment dated 06.03.2017 made in S.C.No.137 of 2015 passed by the learned Sessions Judge, Mahila Fast Track Court, Dharmapuri, Dharmapuri District is set aside and the appellant/sole accused is acquitted of the charge framed against him.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Principal District and Sessions Judge,
Dharmapuri, Dharmapuri District.

2.The Sessions Judge, Mahila Fast Track Court,
Dharmapuri District.

3.The Judicial Magistrate, Palacode.

4.The Superintendent of Prison, Central Prison, Vellore.

5.The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District. (Crime No.279 of 2013)

6.The Public Prosecutor, High Court, Madras.

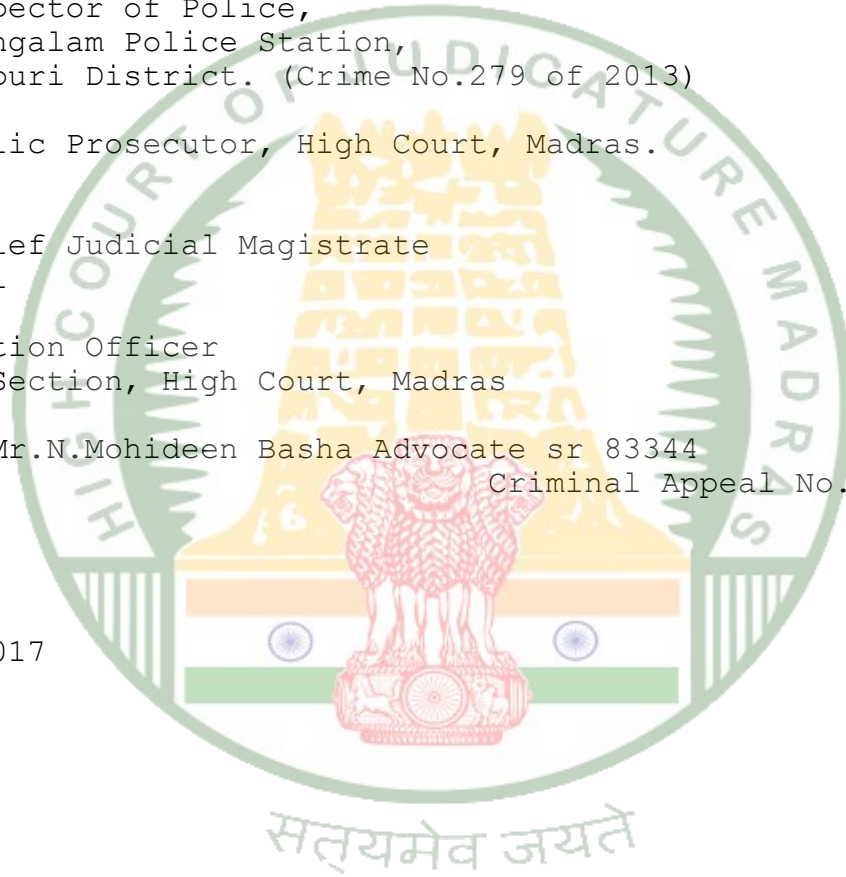
7. The Chief Judicial Magistrate
Dharmapuri

8.The Section Officer
Criminal Section, High Court, Madras

+1 cc to Mr.N.Mohideen Basha Advocate sr 83344

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