

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.12.2017**Delivered on 21 .12.2017**

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

CRL.A.No.243/2017

Kannan

..

Appellant / Sole
Accused

Versus

The State rep by
The Inspector of Police
Komangalam Police Station
Coimbatore District.
[Crime No.181/2013]

..

Respondent /
Complainant

Appeal filed under section 374 [2] Cr.P.C., to set aside the conviction imposed in judgment dated 18.04.2017 made in SC.No.52/2015 on the file of the learned Principal District and Sessions Judge, Coimbatore.

For Appellant : Mr.N.Manokaran

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

JUDGMENT

M.SATHYANARAYANAN, J.

The appellant is the sole accused in SC.No.52/2015 on the file of the Court of the learned Principal District and Sessions Judge, Coimbatore and he stood charged and tried for the commission of the offences **u/s.302 and 201** IPC, for having committed the murder of his wife Tmt.Sanathi. The Trial Court, vide impugned judgment dated 18.04.2017, has found the appellant / accused guilty of the aforesaid offences and awarded sentence of **imprisonment for life** and to pay a fine of Rs.1000/- with a default sentence of one year for the offence **u/s.302 IPC** and to undergo **three years rigorous imprisonment** and to pay a fine of Rs.1000/-, with a default sentence of six months imprisonment for the offence of **u/s.201 IPC**. The Trial Court had also granted set-off for the period of incarceration undergone by him between 07.08.2013 and 20.11.2013 u/s.428 Cr.P.C., and further ordered that the sentences awarded, shall run concurrently. Challenging, the said conviction and sentences, the appellant / accused has filed the present appeal.

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

2.1 The appellant / accused, viz., **Thiru.Kannan**, got married to **Santhi** about 15 years prior to the year 2013 and out of the said wedlock, begot a female and a male children. In the year 2012, the wife of the appellant / accused, on account of the difference opinion between her and her husband, especially due to demand of dowry on the part of the appellant / accused and his parents, came to her parental home and started residing there.

2.2 The wife of the appellant / accused has also lodged a **complaint** under **Ex.P7** dated **27.05.2013** to the Superintendent of Police, Thallakulam Police Station, Madurai District, Madurai, stating that the marriage between her and her husband was solemnised during the year 1999 and her in-laws and other close relatives of the appellant / accused started ill-treating her on account of the dowry an despite the efforts made, she was not to live with her husband and children and on

20.05.2013, the daughter of the appellant / accused and the deceased Santhi, attained puberty and when Santhi and her parents went to the matrimonial home, they were not allowed to enter the house and the relatives of the appellant / accused abused her in filthy language. The said complaint was forwarded to the Inspector of Police, All Women Police Station, Thallakulam, Madurai City, who took it on file in **CSR.No.311/2013** dated **28.05.2013**.

2.3 Thereafter, both the appellant/accused and his wife Santhi [deceased] were summoned and their statements were corded on 28.05.2013 by the said police official, wherein the appellant / accused undertook to state that on account of difference of opinion, he was residing away from his wife and since his wife and children are willing to live with him and that he is also employed at Coimbatore, he is searching for a house and after getting the house, he will take his wife and children within a period of two months and the wife of the appellant / accused [deceased] Santhi had also given the similar statement.

2.4 The appellant / accused got enraged on account of

the said act of his wife Santhi and also suspecting her fidelity / conduct and character, decided to do away with her life. Accordingly, on **23.07.2013** at about **5.00 p.m.**, the appellant / accused went from Pallapalayam to Madurai and contacted his wife through mobile phone and told her that he has arranged for a house in a place in which he got his employment and that he asked her to come immediately to Aarapalayam and believing his words, the wife of the appellant / accused came to Aarapalayam and from that place, the appellant / accused took her to Palani and went to watch a movie in Cine Valluvar Theatre and half-way through, he came outside and went to the electrical shop owned by **P.W.7-R.Saravanan** and purchased one metre yellow and green colour twined wire and put inside his pocket. After his wife came out of the Cinema Hall, he provided her with food and thereafter, boarded the bus which was proceeding to Pollachi and alighted at Komangalam Bus Stop at about 8.00 p.m. and took her on the mud road which leads to the shed in which he was employed near Vidhya Nethira School and on the way, asked his wife to proceed further as he wants to answer the nature's call and following her from behind, he strangled his wife Santhi and also put the saree in her mouth and pushed her and sat on her and took the wire and once

again, strangulated her and as a result, his wife Santhi died on account of **asphyxia**. The appellant / accused, in order to conceal his act, dragged the body of his Santhi and put it inside the well.

2.5 P.W.1-Mr.Kaatudurai was the **Village Administrative Officer** of Komangalampudhur and on **02.08.2013**, while he was on his official duty, one **Pappusamy – P.W.2** that inside the dry well in the land of one **Mrs.Aruna Gandhi**, a decomposed body of a female was found lying. P.W.1, on receipt of such information, proceeded to the said spot along with his Menial **Rajendran** and saw the body in the well, which is located inside the patta land of Tmt.Aruna Gandhi in S.No.341/2 and the neck was encircled with a green colour wire and also having found that the death would have occurred one week prior to the said date and the saree worn by the deceased was also lying nearby and when he made enquiry, he was not in a position to identify the body of the deceased and having formed the impression that the deceased would have been strangulated by the use of the wire, went to **Komangalam Police Station** at about **12.00 Noon** along with his Menial Rajendran and lodged a **complaint** under **Ex.P.1** to **P.W.19-Mr.Periyasamy**, the

Sub-Inspector of Police attached to the said police station, who on receipt of the same, has registered a case in **Cr.No.181/2013** for the offence u/s. **302 IPC** on **02.08.2013**. The **Printed FIR** is marked as **Ex.P.17**. P.W.19 forwarded the original complaint [Ex.P.1] and the Printed FIR [Ex.P.17] to the jurisdictional Magistrate Court as well as to the higher officials.

2.6 P.W.20-Mr.Murugachalam, was the **Inspector of Police** attached to the said Police Station at the relevant point of time. On receipt of the complaint under Ex.P.1 and FIR under Ex.P.17, he took up the investigation and proceeded to scene of crime at about 1.00 p.m. on the same day and in the presence of the witnesses, prepared the **Observation Mahazar** and the **Rough Sketch** under **Exs.P.2 and 8** respectively and also summoned the services of the **Fire and Rescue Services** and recovered the body of the deceased and between 15.00 hours and 18.00 hours on the same day, he held inquest on the dead body of the deceased in the presence of the Panchayatdars. The **Inquest Report** is marked as **Ex.P.19**. P.W.20, in order to ascertain the real cause of death, sent the body for autopsy through **P.W.12-Renukadevi, Constable** along with a requisition.

2.7 P.W.11-Dr.Jeyasingh, was working as the District Police Surgeon and Associate Professor and the Head of the Department attached to the Forensic Medicine, Coimbatore Medical College Hospital. He received the requisition at about 3.50 p.m. on 03.08.2013 and noted that the condition of the body then had decomposition changes with loss of soft tissues in areas noted all over the body and commenced the postmortem at about 4.35 p.m. on the same day. He noted the following features:-

“Appearance found at Postmortem:-

Decomposing body of a female aged about 30-40 years. Small to large size maggots scrolling all over the body. The body was seen clothed with a black colour inskirt and dark green colour blouse. A green colour wire was seen encircling the neck and tied with double knot in the front side of neck.

On Examination:- *Post mortem tissue loss noted around lower abdomen, pelvic region, back of both hands and inner aspect of both thighs.*

- *Head and neck found with decomposed and exposing the underlying bones in areas.*
- *Postmortem fractures were noted on fronto, parietal, temporal right maxilla, and right zygomatic bone.*

- Partially decomposed muscles mass was seen attached over the left cheek, chin and upper neck region. On careful examination, hyoid bone was seen attached with the decomposed muscles. On dissection of hyoid bone, it was found antemortem fractured in its middle of right side greater cornu with surrounding tissue contusion noted.
- Left thigh and forearm found deformed:- On dissection the underlying bones found fractured with surrounding tissue normal [postmortem injury].
- On examination of skull through foramen magnum:- cranial cavity found filled with maggots and brain matter found eaten up.

Other findings:-

- Pleural and peritoneal cavity – empty
- Stomach contains about 100 gms of partially digested food particles, no specific smell. Mucosa seen decomposing.
- Small Intestine contains about 10 ml of bile stained fluid, no specific smell. Mucosa seen decomposed.
- Liver, Spleen, Kidneys, Lungs and Heart identifiable and decomposing.
- Urinary bladder and Uterus – found absent.

- Viscera preserved and sent for chemical analysis.
- Right femur preserved for DNA profiling.
- Skull with mandible preserved for superimposition.”

P.W.11 has issued the **Postmortem Certificate** under **Ex.P.8** and reserved the final opinion for receipt of the Chemical Analysis Report and gave the **final opinion** under **Ex.P.9**, stating that “*the postmortem findings consistent with the death due to violent compression of the neck. Viscera does not contain any poison*”.

2.8 P.W.20 the Investigating Officer in continuation of the investigation, summoned the services of the photographer **Mr.S.Prabhu** and took the photographs which are marked as **Ex.P.14 series**. Since the identity of the deceased was not known and the person who murdered, was also not known, P.W.20 took efforts to find out the same and on **02.08.2013**, he examined P.Ws.1, 5, 2, 3, Ramasamy as well as the witness to the Observation Mahazar, viz., P.W.4 and one Raja and also the Fire and Rescue Services Officer Mr.Murugandi and recorded their statements u/s.161[3] Cr.P.C. P.W.20

having found that even after the Postmortem, he was unable to identify the body, had taken efforts to cremate the body through Fathima Trust and sent the articles seized from the body of the deceased under Form 95 to the jurisdictional Magistrate Court. On **06.08.2013**, when P.W.20 was in the Police Station, at about **6.30 p.m.**, **P.W.5-Mr.D.Rajendran**, the **Village Administrative Officer** of Kolarpatti Village along with his Menial **Selvaraj** came to the Police Station along with the appellant / accused with his **Special Report [Ex.P.5]**, wherein, the appellant / accused gave a confession to P.W.5 which was recorded under Ex.P.5, admitting his guilt. P.W.20 examined the appellant / accused and effected his arrest at about 6.30 p.m. and the appellant / accused voluntarily came forward to give a **confession statement** the **admissible portion** of which is marked as **Ex.P.4** and the same was recorded in the presence of P.W.5 and his Menial Selvaraj. P.W.20 also obtained the signature of the appellant / accused in the said confession statement and as per the said confession statement, the appellant / accused told that he will take the Investigating Officer-P.W.20 to the spot, from where he will produce the remaining of the electrical wire which was used for the commission of the offence of murder as well as the cell phone. As per the said

admissible portion of the confession statement, on **07.08.2013**, in the presence of P.W.5 and another, **M.O.4-Samsung Mobile Phone without a Sim Card** and **M.O.5-Yellow colour wire** was recovered under the cover of the **Mahazar – Ex.P.6**. The appellant / accused told the Investigating Officer that he will identify the shop of P.W.7 from where he had purchased the electrical wire and accordingly, the appellant/accused took the Investigating Officer to the Electrical Shop of **P.W.7-Saravanan** at Palani and P.W.20 examined P.W.7 and recorded his statement. He also examined P.W.5-Rajendran, VAO and his Menial Selvaraj and recorded their statements and thereafter, sent the appellant/accused for remand. On 07.08.2013, the parents of the deceased Santhi and their relatives came to Komangalam Police Station and P.W.20 had shown them the photograph of the deceased Santhi as well as the earring and saree worn by her and those articles were identified by them and thereafter, P.W.20 examined P.W.1 and three other witnesses and recorded their statements and during the course of recording the statement of the father of the deceased Santhi, viz., **Thangaraj [P.W.8]**, he informed that with regard to the missing of his daughter on 23.07.2013, she was asked by the appellant / accused to come to Aarapalayam Bus Stand and accordingly, she went there to

meet her husband ; but till date she did not return and in this regard, P.W.8 had lodged a **complaint** on the file of Sellur Police Station on 30.07.2013 and immediately, P.W.20 contacted the Station House Officer of the Sellur Police Station told him about the registration of the case under **Ex.P.16**. P.W.20 was also informed about the registration of CSR.No.311/2013 dated 28.05.2013 by the Thallakulam Police Station and P.W.20 contacted the Station House Officer of the All Women Police Station, Thallakulam and enquired and thereafter, despatched the recorded the statements to the jurisdictional Magistrate Court. On **14.08.2013**, P.W.20 had examined **P.W.14-Raju Naicker** and recorded his statement.

2.9 On **20.09.2013**, P.W.20 had examined **P.W.19**, the Sub-Inspector of Police who registered the FIR as well **P.W.12-Constable** who took the body of the deceased along with the requisition for postmortem. He had also examined one **Sivasubramaniam, Scientific Assistant** and also **P.W.11-Dr.Jeyasingh**, who conducted autopsy and recorded their statements. P.W.20 on **22.09.2013** went to the parental home of the deceased Santhi at Madurai and seized the photographs of the deceased in the

presence of **P.W.15-Balasubramani** and another under the cover of **Mahazar [Ex.P.20]** and recorded their further statements. P.W.20 proceeded to Thallakulam Police Station on **28.05.2013** and examined **Mrs.Kousalya, Inspector of Police [P.W.9]** who conducted enquiry on the complaint given by the deceased Santhi and thereafter, proceeded to Sellur Police Station and examined **P.W.18-Thiru. Duraipandian, Inspector of Police** attached to the said police station, who registered the case in **Cr.No.732/2013** for "Woman Missing" and recorded his statement and also collected the Xerox Copy of the records from them. Thereafter, he sent the three photographs under Form 95 to the jurisdictional Magistrate Court. P.W.20 on **25.10.2013** made requisition for **Superimposition Test** and further examined P.W.11 and on **10.10.2014**, P.W.20 had examined P.w.17, who has given the **Superimposition Test Report** under **Ex.P.15** and recorded his statement.

2.10 P.W.20, after completion of the investigation on **16.10.2014**, has filed the charge sheet / final report against the appellant / accused for the offence u/s.302 and 201 IPC before the learned Judicial Magistrate, No.2, Pollachi, who took it on file in

PRC.No.5/2015 and issued summons to the accused and on his appearance, furnished him the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of Principal District and Sessions Judge at Coimbatore, who took it on file in SC.No.52/2015 and on appearance of the appellant / accused, had framed the charge u/s.302 and 201 IPC and questioned him. The appellant / accused pleaded not guilty to the charges framed against him.

2.11 The prosecution, in order to sustain their case, examined P.Ws.1 to 20 and marked Exs.P.1 to 20 as well as M.Os.1 to 8.

2.12 The appellant/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 he filed his written statement stating that on **03.08.2013** on the night hours, he was taken to Sellur Police Station for the purpose of enquiry and from there, he was taken to the All Women Police Station, Thallakulam and from there, he was taken to

Komangalam Police Station and was incarcerated and he is nothing to do with the death of his wife and he has been falsely implicated. On behalf of the appellant / accused, his mother **Tmt.Mariammal** was examined as **D.W.1**. No documentary evidence was marked on his side.

2.13 The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, has convicted and sentenced the appellant/accused as stated above and hence, this appeal.

3 Mr.N.Manoharan, learned counsel appearing for the appellant / accused would submit that the case of the prosecution rests upon circumstantial evidence and the following circumstances are projected by the prosecution to connect the appellant/accused for the commission of the offence of murder of his wife Tmt.Santhi:-

[1] Motive

[2] Extra-judicial confession given by the appellant / accused to **P.W.5-Village Administrative Officer** of Kolarpatti -Mr.Rajendran **and P.W.6** -Mr.Nanjundamoorthy – employer of the appellant / accused.

[3] Last Seen Theory

[4] Arrest and Recovery of incriminating materials /
articles ; and

[5] Scientific Evidence.

4 The learned counsel for the appellant / accused made the following submissions:-

- Admittedly, the appellant / accused and his wife Santhi had strained relationship and she left for her parental home and started residing with her parents and alleging harassment at the hands of the appellant / accused and his parents and relatives, she had lodged a complaint under Ex.P.7 to the Superintendent of Police, Madurai District, who in turn, forwarded the same to the Inspector of Police, All Women Police Station, Thallakulam, Madurai City on 22.09.2013, who took it on file in CSR.NO.311/2013. The said Station House Officer had summoned the appellant / accused and his wife and recorded their statements on 28.05.2013 to the effect that both of them are willing to live together and for the purpose of taking a house on rent, the appellant / accused sought for two months time and

the same was reduced into writing.

- The motive projected by the prosecution that the appellant / accused having suspected the fidelity of his wife, took a decision to do away with her life, has not at all been proved or substantiated for the reason that even as per the complaint under Ex.P.7 given by the deceased Santhi to the Superintendent of Police, Madurai, no such allegation is made and that apart, both of them had agreed to live together and the statements were also recorded by the Inspector of Police, Thallakulam Police Station to that effect on 28.05.2013.
- It is the specific case of the prosecution that on 23.07.2013 the appellant / accused on reaching Madurai, asked his wife to come to Aarapalayam Bus Stand for the purpose of taking her to the place in which he was employed, has not at all been proved for the reason that as per Ex.P.16-the complaint given by P.W.8-father of the deceased, only on 25.07.2013, the appellant/accused had called his daughter to come to Aarapalayam and whereas, the wife of the appellant / accused

was found missing even from 23.07.2013 and the said portion of the oral testimony of P.W.8 is nothing but an improvement and it is wholly unsafe to rely upon the testimony of P.W.8, in the light of the improvement made in the oral testimony.

- The extra-judicial confession said to have been given by the appellant / accused to P.W.5, has been reduced into writing under Ex.P.4 and the said extra-judicial confession given to P.W.5 was the only incriminating material / circumstance projected by the prosecution to connect the appellant / accused with the crime and the same cannot be considered for the reason that it is a weak piece of evidence unless it is corroborated of material particulars through independent witnesses and no reliance can be placed upon the same and that apart, it runs to very many pages with minute details and therefore, it has been created by the prosecution to fix the appellant / accused.

- The arrest of the appellant / accused and recovery of the incriminating materials pursuant to the admissible portion of the confession in the presence of P.W.5-VAO, cannot be believed for

the reason that the story projected by the prosecution that the electrical wire was purchased from the shop of P.W.7 and after committing the murder, the appellant / accused had kept the remaining wire and thereafter, removed the SIM card from the Cell Phone, belies the common sense and logic and that apart, though P.W.7 would depose that he had prepared the bill at the time of selling the wire to the appellant / accused, the relevant record has not been seized.

- The Superimposition Test Report marked as Ex.P.15 has also not helped the case of the prosecution for the reason that the body was recovered at least four days after the commission of the offence and it was in a highly decomposed stage and the skull was found broken and even otherwise, the Superimposition Test is a very very weak piece of evidence.

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- Though the Scientific evidence would show that the deceased died on account of homicidal violence, that cannot be a sole ground or the incriminating circumstance to connect the appellant / accused with the commission of the crime.

5 In sum and substance, it is the submission of the learned counsel for the appellant /accused that the case of the prosecution bristles with inconsistencies and very many infirmities and it miserably failed to prove the case beyond any reasonable doubt and that there are very many vital links missing in the chain of circumstances projected by the prosecution and in any event, the Trial Court ought to have awarded benefit of doubt and acquitted the appellant / accused and hence, prays for setting aside the conviction and sentence and honourable acquittal of the appellant / accused.

6 The learned counsel for the appellant / accused, in support of his contentions, has placed reliance upon the following decisions:-

[1] **AIR 1952 Supreme Court 159** [*Kashmira Singh Vs. The State of Madhya Pradesh*] ; and

[2] **2012 [6] Supreme Court Cases 403** [*Sahadevan and another Vs. State of Tamil Nadu*].

7 *Per contra*, Mr.R.Ravichandran, learned Government

Advocate [Crl.Side] made the following submissions:-

- The estranged relationship between the appellant / accused and his wife Santhi has been proved through Ex.P.7 series coupled with Ex.P.16-FIR registered at the instance of the father of the deceased [P.W.8].
- P.W.8-Thangaraj-father of the deceased and P.W.15-younger brother of the deceased [treated as hostile witness] had clearly spoken to the fact that even on 23.07.2013, the appellant / accused called his wife [deceased Santhi] over phone and asked her to come to Aarapalayam Bus Stand for the purpose of taking her to the matrimonial abode and absolutely no cross-examination has been done with regard to the answer elicited by the prosecution.
- P.W.6-employer of the appellant / accused has spoken to the effect that the appellant / accused told him that he committed the murder of his wife and asked him to save him and therefore, he took the appellant / accused to P.W.5-VAO of Kolarpatti on 06.08.2013 and gave the statement under Ex.P.5 which was

recorded by P.W.5 and thereafter, he was taken to Komangalam Police Station and he was arrested by P.W.20 and after arrest, the appellant / accused voluntarily came forward to give the confession statement based on the admissible portion of which, M.Os.4 and 5 were seized and admittedly, a portion of the wire was used by the appellant / accused for committing the murder.

- P.W.7 had also spoken to the fact that the appellant / accused came to his shop on 23.07.2013 at about 4.00 p.m. and purchased 1 metre wire for connecting the same to a light and accordingly, he sold the yellow and green colour twined wire and the appellant / accused paid a sum of Rs.100/- for the sale consideration to P.W.7 and the remaining portion of the wire, as per the admissible portion of the confession statement, was recovered and marked as M.O.4.

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- The Scientific evidence in the form of the result of Superimposition Test marked as Ex.P.15 and the Postmortem Certificate marked as Ex.P.8 prepared by P.W.11 and the Final Report under Ex.P.9, would clearly sustain the case of the

prosecution that the deceased died on account of homicidal violence and in the cross-examination done to the crucial witnesses, no useful answer was elicited in favour of the appellant / accused.

8 In sum and substance, it is the submission of the learned Government Advocate [Crl.side] that the prosecution, through the testimonies of the witnesses, exhibits and material objects, had conclusively proved its case beyond any reasonable doubt and on legal position, he would add that the extra-judicial confession given by the appellant / accused to P.W.5 had been independently corroborated through the testimonies of the other witnesses, more particularly, P.Ws.8 and 15 and the Trial Court, on a thorough consideration of the oral and documentary evidences, had rightly reached the conclusion to convict and sentence the appellant / accused and this Court, in exercise of its Appellate Jurisdiction, may not interfere with the same.

9 The learned Government Advocate [Crl. Side], in support of his contention, has placed reliance the decision reported in **2010 [2] SCC 583 [Aftab Ahmad Anasari Vs. State of Uttaranchal]**.

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

11 The following questions arise for consideration:-

[a] Whether the prosecution is able to prove the chain of circumstances connecting the appellant / accused with the commission of the offence of murder of his wife?

[b] Whether the reasons assigned and the findings recorded by the Trial Court for convicting and sentencing the appellant / accused, are sustainable?

Questions No.1 and 2:-

12 The case of the prosecution rests upon circumstantial evidences, viz.,

[A] **MOTIVE:-**

13 P.W.8-Thangaraj is the father of the deceased Santhi and in his **chief examination**, he would aver among other things that the deceased Santhi was his second daughter and she was given in marriage to the appellant / accused and out of the said wedlock, they begot a female and a male children and they were happily living together some time after marriage and thereafter, started fighting with each other and he used to mediate and his son-in-law [the appellant / accused] suspecting the character of his wife, used to fight with her and his daughter/deceased was in his home along with her son and his granddaughter Vijayalakshmi was residing with the appellant / accused and when she attained puberty, they were not invited for the function. It is further stated by P.W.8 that his daughter has also lodged a complaint against her husband on the file of the All Women Police Station, about two months prior to her death and the police had examined the appellant / accused as well as his daughter, wherein the appellant / accused made a promise / undertaking to take back his wife to the matrimonial home and on 23.07.2013, he came and asked his

daughter to come to Aarapalayam bus stand and at that place, the appellant / accused had told his wife not to go to Thallakulam Police Station and inform about the same and hence, his daughter, without informing the Thallakulam Police Station, went with the appellant / accused. P.W.8 made attempts to contact his daughter through mobile phone and it was in switched off condition and immediately, he proceeded to Thallakulam Police Station, who asked him to lodge a complaint before the Sellur Police Station and accordingly, he lodged a complaint on the file of the said Police Station [E.P.16-FIR]. Ten days thereafter, he became aware of the death of his daughter and Komangalam Police has showed him the photograph of his daughter and he identified her. P.W.8 in the **cross-examination** had denied the suggestion that the appellant / accused has nothing to do with the demise of his daughter and he has lodged a false complaint against his son-in-law on account of previous enmity / motive.

14 P.W.15-Balasubramani is the younger brother of the deceased Santhi / brother-in-law of the appellant / accused and in the **chief examination**, he would depose that his sister used to fight with the appellant / accused and used to come to the parental home

and she was staying there for about six months and two years prior to the date of giving evidence, i.e., on 23.07.2013, his sister went with the appellant / accused as he asked her to come and thereafter, she was untraceable and a complaint was also lodged on the file of Sellur Police Station by the appellant / accused and they enquired P.W.8 and P.W.15. He also admitted that the signature found in Ex.P.13 is that of his and he was treated as a hostile witness. In the **cross examination** done on behalf of the appellant / accused, P.W.15 would depose that his sister and parents do not have mobile phone and also the land-line in their house. A perusal of Ex.P.16-FIR registered by P.W.18, Inspector of Police, Sellur Police Station, Madurai City would disclose that the father of the deceased – P.W.8 has lodged the complaint stating among other things that on 25.07.2013 at about 12.00 Noon, his son-in-law contacted his daughter through mobile phone and told her that he is in Aarapalayam and asked her to come and accordingly, his daughter told P.W.8 the same and left the house and she did not return. The motive projected by the prosecution is that since the appellant / accused has suspected the fidelity of his wife and hence, he had committed the murder. However, a perusal of Ex.P.7 Series – the complaint given by the deceased and CSR.No.311/2013

registered by the All Women Police Station, Madurai City, as well as the statements given by the deceased and the appellant / accused would disclose that the appellant / accused did not suspect the fidelity / character and conduct of his wife ; but the parents of the appellant / accused and his relatives have told false information about his wife and tried to separate her from the appellant / accused and heeding to the same, the appellant / accused joined with them and used to torture and ill-treat her. The fact remains that thereafter, in the enquiry conducted by the said police, both of them agreed to live together and the appellant / accused also made a promise / undertaking that after leasing a house, he will take her back and for that purpose he sought two months time.

15 It is noted at this juncture that the deceased was found missing from 23.07.2013 and as per Ex.P.16 – FIR, on the basis of the complaint given by P.W.8, the appellant / accused at about 12.00 Noon on 25.07.2013 contacted his daughter through cell phone and asked her to come to Aarapalayam and accordingly, she left. The testimony of the son of P.W.8 / the younger brother of the deceased, who was examined as P.W.15 would show that neither his parents nor

his sister [deceased] had a mobile phone and they did not have any land-line also. No doubt, P.W.8 and P.W.15 in their chief examination would state that on 23.07.2013, the appellant / accused asked his wife to join with him and accordingly, she left the place. In the considered opinion of the Court, the motive aspect put forth by the prosecution has not been proved and there is a material discrepancy as to the date in which the appellant / accused asked his wife to come and join with his company.

**[B] EXTRA-JUDICIAL CONFESSION SAID TO HAVE BEEN
GIVEN BY THE APPELLANT / ACCUSED TO P.Ws.5 and 6:-**

16 It is well settled position of law that the extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution evidence, it may be difficult for the Court

to base a conviction on such a confession and in such circumstances, the Court would be fully justified in ruling such evidence out of consideration. [*Sahadevan and Another Vs. State of Tamil Nadu* reported in **2012 [6] SCC 403**].

17 Keeping in mind, the said legal position, this Court has carefully analysed the testimonies of P.Ws. 5 and 6.

18 P.W.5-Rajendran, Village Administrative Officer of Kolarpatti, in his **chief examination** would depose that he was in his office on 06.08.2013 and at about 4.00 p.m. along with his Menial Selvaraj and at that time, P.W.6 and the appellant / accused came to his office and the appellant / accused told him that he murdered his wife and put her body inside the well in Komangalampudhur and he should save him and P.W.5 asked him whether he is telling voluntarily or he was compelled and the appellant / accused told him that he is doing "centering work" and is employed in Pallipalayam and suspecting the fidelity of his wife, he murdered her and put her body inside the well and he did so on 23.07.2013 and also told him the manner in which he committed the murder and that he

also removed the SIM card from the Mobile phone and concealing the same along with the torn wire [M.O.4 and M.O.5]. The same was reduced into writing and is marked as Ex.P.4 and P.W.5 prepared the **Special Report** under **Ex.P.5** and thereafter, took the appellant / accused to Komangalam Police Station and handed over him to the police custody and that on 07.08.2013, he was summoned by the police and he along with the Menial Selvaraj went to the Police Station. He along with P.W.20-the Investigating Officer and his Menial and the appellant / accused, went to the branch canal and those articles were recovered under the cover of **Mahazar – Ex.P.6**. In the **cross-examination**, P.W.5 would depose that he took 1 ½ hours time to record the statement of the appellant / accused in writing and it was as per his dictation and he did not ask P.W.6 to accompany him to sign as a witness and on the next day at 6.30 a.m., he again went to the Police Station and he was not aware about P.W.6 and denied the suggestion that it is impossible to record the statement within 1 ½ hours.

19 P.W.6-Nanjundamoorthy, was the “Centering” Contractor and according to him, the appellant / accused was employed under him from the year 2011 and till 2013, he was doing that work in

Pallapalayam School and P.W.6 would further depose that on 20.07.2013, the appellant / accused told him that he intend to go to his place and got a sum of Rs.1000/- and he returned back on 27.07.2017 and when P.W.6 enquired the appellant / accused, he told that he came back on the night hours on 23.07.2013 itself and was doing work on 25.07.2013 and 26.07.2013 and again on 27.07.2013, stating that he was unwell, got a sum of Rs.200/- and went to his place and P.W.6 saw him on 06.08.2013 and he was in a disturbed state of mind. P.W.6 asked him about the reasons and he told him that he murdered his wife by strangulated her with wire and put her inside the dry well behind Vidhya Nikethan School and asked him to save in any manner and accordingly, P.W.6 took him to P.W.5 – Village Administrative Officer, who is known to him and before him, the appellant / accused gave his statement and thereafter, he was taken to Komangalam Police Station by P.W.5 and he was examined on the next day. In the **cross-examination**, P.W.6 would depose that all of them went to the Police Station at about 6.30 p.m. and he did not remember that during the course of investigation, he has stated that he went to the Police Station at about 4.00 p.m. and the police did not ask him to act as a witness and denied the suggestion that the appellant / accused was taken to

the Police Station and did not give any statement.

20 In the light of the settled position that the extra-judicial confession being a very weak piece of evidence, is to be corroborated by other prosecution evidence, this Court has searched for such materials.

21 The appellant / accused was taken to the Police Station by P.W.5 along with his Special Report marked as Ex.P.5, wherein he was arrested and he voluntarily came forward to give a confession statement, wherein he made a voluntary disclosure as to the place in which he had hidden M.O.4-Cellphone and M.O.5-Wire. P.W.7 was running the electrical shop at Palani and as per the chief examination, on 23.07.2013 at about 4.00 p.m. the appellant / accused came to his shop and asked for a one metre of wire for the purpose of connecting to a light and he sold the twined wire of yellow and green colour and the appellant / accused gave him a sum of Rs.100/- and asked him the balance and he gave the article along with the balance amount. M.O.5 was also shown to P.W.7 and he identified the same. In the cross-examination, P.W.7 would state that the wire has no brand name and he was examined by the police on 07.08.2013 at about 3.00

p.m. and his father was also examined and after selling the wire to the appellant / accused, he prepared the bill and it was also handed over to the police and denied the suggestion that the same was not handed over to the police. A cursory glance of Ex.P.4-Confession Statement given by the appellant / accused to P.W.5 runs to very many pages based on which, he has prepared the Special Report under Ex.P.5 and of course, the admissible portion of the confession statement has not been marked based on which, M.Os.4 and 5 were recovered under the cover of Mahazar [Ex.P.6]. The prosecution has projected seizure of the said incriminating articles as one of the important circumstances in the chain of events to connect the appellant / accused with the commission of the crime and it is the specific case of the prosecution that the appellant / accused has purchased the twined electrical wire of yellow and green colour in nature from P.W.7 and he used the green colour wire to strangle the neck of his wife and it was also recovered from the body of the deceased. P.W.8 was examined during investigation on 07.08.2013 and he was examined as a witness on 22.09.2016 nearly three years later. Admittedly, P.W.7 did not know the appellant / accused on an earlier occasion and would admit that the wire sold by him is a non-branded item and he sold it under a bill and

handed over the same to the police. However, the bill was not marked on behalf the prosecution. The version of P.W.7 also appears to be a parrot-like version for the reason that though he did not know the appellant / accused on an earlier occasion, he exactly remember the colour of the wire sold to the appellant / accused. Though as already pointed out, the wire was sold under a bill and it was handed over to the police – the investigating agency, however it was not marked. The testimony of P.W.7 is highly artificial and in the circumstances, it is highly improbable also. Therefore, it cannot be treated as a corroborative circumstances / material to place reliance upon the extra-judicial confession given by the appellant / accused to P.W.5.

22 It is also the submission of the learned Government Advocate [Crl. Side] appearing for the State that even if this Court eschews the testimony of P.W.5, P.W.6, the employer of the appellant / accused was in a position of trust and confidence and before him also the appellant / accused made a confession as to the commission of the offence and he has specifically spoken about the absence for attending the work between 20.07.2013 and 27.07.2013 and in the interregnum, on 23.07.2013, the murder was committed.

23 A perusal of the cross-examination of P.W.6 would disclose that he went along with P.W.5 and his Menial and the appellant / accused to the Police station and he was asked by the police to act as a witness. *De hors* the testimony of P.W.6, the statement made by the appellant / accused to P.W.6 who was his employer, can also be treated as an extra-judicial confession for which also, corroboration is required. According to the prosecution, the corroboration is in the form of confession statement given by the appellant / accused after his arrest, in the presence of P.W.5 and the recovery of M.Os.4 and 5. This Court has already disbelieved the testimony of P.W.7 on the ground of improbability and therefore, the only material available is M.O.4-Cellphone. It is the specific evidence of P.W.8 that his son-in-law – the appellant / accused has contacted his daughter on 23.07.2013 through mobile phone and therefore, she went. However, his son, who was examined as P.W.15 was treated as hostile witness and he would depose in his cross-examination done on behalf of the appellant / accused, he would state that neither his parents nor his sister [deceased] possessed mobile phone and do not have the land-line also. The Investigating Officer – P.W.20, in the cross-examination

would admit that he has not done investigation as to the possession of the mobile phone or land-line and with regard to the seizure of the mobile phone – M.O.4 belong to the appellant / accused. No investigation has been done to ascertain the registered ownership and the call details from the Service Provider, though the said mobile phone is having IMEI No.355719/04/553602/2. There is also a discrepancy between Ex.P.16-FIR registered on the basis of the complaint given by P.W.8 as to the missing of his daughter with that of his testimony with regard to the date on which the appellant / accused had contacted his daughter over mobile phone. In the considered opinion of the Court, the prosecution has failed to establish the contact made by the appellant / accused to his wife [deceased] and as a consequence, she went with her husband. It is also to be noted at this juncture that P.W.9 was the Inspector of Police attached to the All Women Police Station, Thallakulam, at the relevant point of time and she has spoken about the registration of CSR.No.311/2013 and the statements given by the appellant / accused as well as his wife [deceased] as to the joining of company with each and she would further depose that 27.07.2013, the appellant / accused appeared before her and told her that on 26.07.2013, he came and told her that he had arranged the house at

Coimbatore and when she contacted the parents of the deceased / in-laws of the appellant / accused, they told P.W.9 that the appellant / accused had already took his wife on 23.07.2013 and however, the appellant / accused told P.W.9 that he is yet to see his wife. The statement given by the appellant / accused to P.W.9 is marked as Ex.P.7. P.W.9 would further depose that the said fact was informed to the parents of the deceased who told her that they are not aware of the whereabouts of their daughter and accordingly, she advised them to lodge a complaint at Sellur Police Station.

24 It is the submission of the learned Government Advocate [Crl. Side] that the appellant / accused acted cleverly and having committed the murder of his wife on 23.07.2013, had boldly came to the All Women Police Station on 27.07.2013 and created an impression as if he is searching for his wife and therefore, the statement recorded by P.W.9 under Ex.P.7 cannot be given importance. This Court has already pointed out that there is a material discrepancy from the testimony of P.W.8 and P.W.15 as to the date on which the appellant / accused contacted his wife, whether it is 23.07.2013 or 25.07.2013 and the testimony of P.W.9 coupled with Ex.P.7 also

strengthens the case of the appellant / accused that he came to Madurai only on 27.07.2013 for the purpose of taking his wife in pursuant to the undertaking given by him. Ex.P.7 series before the All Women Police Station, Thallakulam.

[C] LAST SEEN THEORY:-

25 One of the most important circumstances projected by the prosecution is the last seen theory, viz., the deceased was found in the company of the appellant / accused lastly and for that purpose, the prosecution had examined P.W.14 and he turned hostile and did not support the case of the prosecution in any manner. In the cross-examination done on behalf of the prosecution with the permission of the Court, it was suggested that on 23.07.2013 at about 8.30 p.m., he was riding his motor cycle and in the light emanated out of the headlight, he saw a male and female near Aruna Gandhi well and thereafter, he became aware of the strangulation by the appellant / accused and it was denied by him. In the considered opinion of the Court, the prosecution has failed to prove the important circumstance as to the last seen theory.

[D] SCIENTIFIC EVIDENCE:-

26 The scientific evidence is in the form of the Superimposition Test under Ex.P.15 coupled with the Postmortem Certificate [Ex.P.8] prepared by P.W.11. The Superimposition Test is also a weak piece of evidence and even as per the testimony of P.W.17, the skull was fragmented and after putting the bone in the proper place, the Superimposition Test was done and denied the suggestion that because some portion of the bone was missing in the skull, the superimposition test not properly done. The testimony of P.W.11 who conducted autopsy would disclose that the deceased died on account of strangulation and though the prosecution was able to establish that the deceased died on account of homicidal violence, they failed to prove that it was the appellant / accused who committed the said murder.

27 The prosecution placed heavy reliance upon the extra-judicial confession given by the appellant / accused to P.W.5 and the recovery effected pursuant to the admissible portion of the

confession statement and the contact made by the appellant / accused to his wife through the mobile phone on 23.07.2013. This Court has already found that the testimony of P.W.7 is highly improbable and more so, for the reason that sale of wire was effected through a bill and though it was handed over to the police, it was not marked as an exhibit and that P.W.15-younger brother of the deceased Santhi would also state that their parents as well as the deceased sister did not possess mobile phone and there is no land-line in their house and in the absence of the same, it was impossible for the appellant / accused to contact his wife/deceased on 23.07.2013 with an intention to take her back and in the process, committed the murder. P.W.20 would also admit that he has not done any investigation with regard to the seizure of the mobile phone belonging to the appellant / accused.

28 In ***AIR 1952 SC 159 [Kashmira Sigh Vs. The State of Madhya Pradesh]***, the evidenciary value and the use of the extra-judicial confession came up for consideration and the **Hon'ble Mr. Justice BOSE**, has spoken for the Bench and in his own classical way, has observed as follows:-

“...They stated in addition that such a confession cannot be made the foundation of a

conviction and can only be used in “support of other evidence”. In view of these remarks, it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except i so far as he is corroborated?

[9] In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in **Emperor V. Lalit Mohan, 88 Cal.559 at p.588** where he said that such a confession can only be used to “lend assurance to other evidence against a co-accused” or to put it in another way as Raily J. did in **In re Periyaswami Moopan, 54 Mad. 75 at p.77:-**

“the provision goes no further than this – where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in S.30 may be thrown into the scale as an auditional reason for believing

that evidence.”

[10] *Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus, fortify himself in believing what without the aid of the confession he would not be prepared to accept.”*

29 This Court, in the light of the said ration, has marshalled the other evidence available against the appellant / accused connecting him with the commission of the crime and thereafter, taken into consideration the extra-judicial confession given by the appellant / accused, first to P.W.6 and then to P.W.5 and after carefully scrutinising and analysing the oral and documentary evidences, finds that no other

tenable materials has been placed to lend assurance.

30 In the considered opinion of the Court, the extra-judicial confession said to have given by the appellant / accused, did not inspire the confidence and it is also not corroborated with the material particulars by the other prosecution evidence and it also suffers from inherent improbability and there are material discrepancies in the evidence rendered by the prosecution and therefore, it is wholly unsafe to place reliance upon the same to sustain the conviction.

[E] ARREST AND RECOVERY:-

31 Even for the sake of argument, recovery has been proved, the same cannot lead to the inference that the appellant / accused has committed the offence. It is also pertinent to point out at this juncture that the appellant / accused has given a written statement while he was examined u/s.313[1][b] Cr.P.C., wherein he has specifically stated that he was taken into custody even on 03.08.2013 by the Sellur Police officials and from there, he was taken to Thallakulam Police Station and from there, he was taken to

Komangalam Police Station and he is nothing to do with the demise of his wife and he has been falsely implicated. The mother of the appellant / accused was examined as D.W.1 and after lodging of the complaint, she along with her son was summoned by Thallakulam Police Station and she told in the police station that some time thereafter, they would come and take back the deceased and one week thereafter, the officials of Thallakulam Police Station had taken away her son – the appellant / accused herein, stating that her daughter-in-law / deceased is present in the police station and that they are taking the appellant / accused for an enquiry. She further deposed that she could see her son / appellant / accused for a week and that when she enquired, she came to know that her son was in Komangalam Police Station and since they do not have enough resources, they did not go there and fifteen days thereafter, her son has written a letter and accordingly she went and met her son in the Coimbatore Jail and took him on bail. She denied the suggestion that her daughter-in-law / deceased was taken by her son only.

32 In the decision reported in **2010 [2] SCC 583**

[Aftab Ahmad Anasari V. State of Uttaranchal], the rule for recording the conviction based on circumstantial evidence has been reiterated and it is relevant to extract paragraphs 13 to 15:-

“....

13 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 must be proved individually and only thereafter, the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be.

14 There must be a chain of evidence so far complete as not to leave any reasonable ground

for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other.

15 *In regard to the proof of basic or primary facts, the court has to Judge the evidence and decide whether that evidence proves a particular fact or not and if the fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one 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 or presumptions, 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.”

33 In the considered opinion of the Court, the prosecution has failed to prove the chain of circumstances in complete form which unerringly point out the guilt on the part of the appellant / accused and there are very many inconsistencies and improbabilities in the evidence let in by the prosecution and further there are very many missing links in the chain of circumstances. Hence, the benefit of doubt shall enure in favour of the appellant / accused.

Thus, Questions No.1 and 2 are answered in negative and against the case of the prosecution.

34 In the result, the **criminal appeal** is **allowed** and the **conviction and sentences** for the offences u/s.302 and 201 IPC awarded by the learned Principal District and Sessions Judge, Coimbatore in SC.No.52/2015 dated 18.04.2017 are hereby **set aside**. The appellant / accused is acquitted of the charges levelled against him. Fine amount, if any paid, shall be refunded to the appellant / accused.

35 It is reported that the appellant / accused is in jail.

Hence, he is ordered to be released forthwith unless his presence / custody / detention is required in any other case / proceedings.

Consequently, the connected miscellaneous petition is closed.

[M.S.N., J]

[S.P.I., J].

21st December 2017

Internet: Yes

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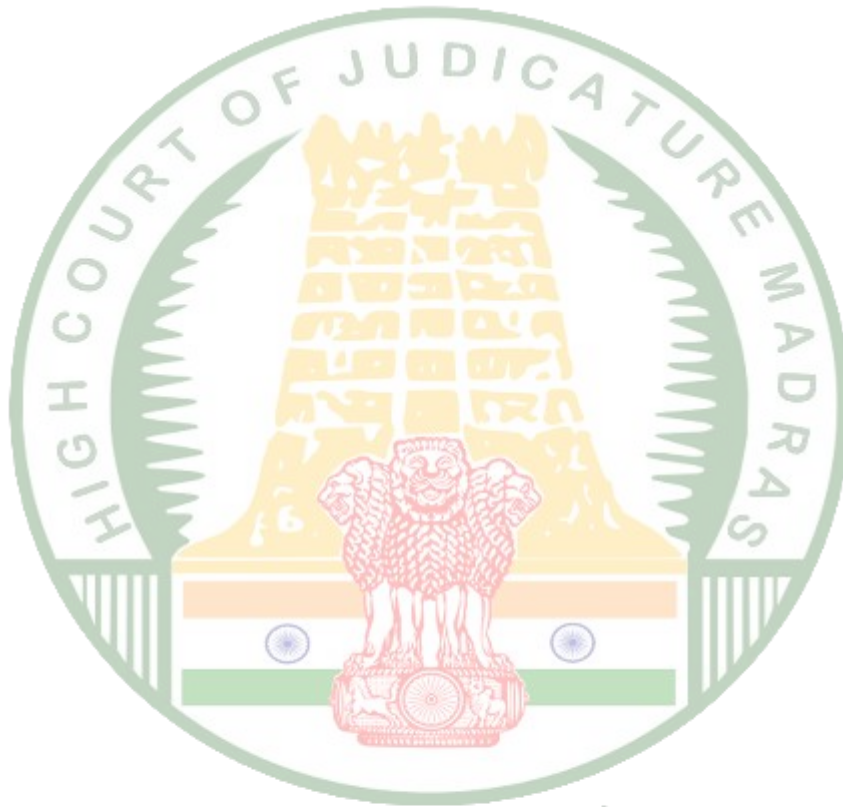
- 1.The Principal District and Sessions Judge
Coimbatore.
- 2.The Judicial Magistrate No.2
Pollachi.
- 3.The Chief Judicial Magistrate
Coimbatore.
- 4.The Inspector of Police
Komangalam Police Station
Coimbatore.
- 5.The Superintendent
Central Prison, Coimbatore.
- 6.The District Collector
Coimbatore.
- 7.The Director General of Police
Mylapore.
- 8.The Public Prosecutor
High Court, Chennai.



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M.SATHYANARAYANAN, J.,
AND
SATRUGHANA PUJAHARI, J.,

AP



Judgment in
Crl.A.No.243/2017

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21.12.2017