

Bail Slip

1.The Appellant/Accused 3 namely Selvam S/o Munusamy was directed to be released on bail as per order of this Court dated 9/2/17 made in Crl.M.P.No.1065/17 in Crl.A.42/17 on the file of this Court.

2.The Appellants Accused 2 & 4 to 13, Namely 1.Gowri W/O Ammavasai 2.Chennakrishnan S/o Ponnusamy 3.Ramesh S/O Govindan 4.Vadivel S/O Arjunan 5.Munusamy S/o Ramasamy 6.Rakkappan S/o Ramasamy 7.Murugan S/o Muthappan 8.Amirthan S/O Muthusamy 9.Andirakarichi@ Muniamma W/o Ramappa 10.Chandira W/O Amirthan 11.Subramani S/O Ramappa were directed to be released on bail as per order of this Court dated 20/2/2017 made in Crl M.P.No.2518 of 2017 in Crl A 85/7 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal Nos.42, 85, 163, 169 & 192 of 2017

Crl.A.Nos.42, 85 & 169 of 2017:-

Selvam (A.3)

... Appellant in Crl.A.No.42/2017

- 1.Gowri (A.2)
- 2.Chennakrishnan (A.4)
- 3.Ramesh (A.5)
- 4.Vadivel (A.6)
- 5.Munusamy (A.7)
- 6.Rakkappan (A.8)
- 7.Murugan (A.9)
- 8.Amirthan (A.10)
- 9.Andirakarichi @ Muniamma (A.11)
- 10.Chandira (A.12)
- 11.Subramani (A.13)

.. Appellants in Crl.A.No.85/2017

Ammavasai (A.1)

..Appellant in CrI.A.No.169/2017

Vs

State Rep. By
Inspector of Police,
Maharajakadai Police Station,
Krishnagiri District
CrI.A.Nos.42,
2017

.. Respondent in
85 & 169 of

Common Prayer in CrI.A.Nos.42, 85 & 169 of 2017:- Criminal Appeals filed under Section 374(2) Cr.P.C., by the appellants against the judgment in S.C.No.13 of 2016 dated 20.12.2016 on the file of the learned Additional District and Sessions Judge, Krishnagiri.

In CrI.A.No.42 of 2017:-

For Appellant/A.3: Mr.G.Varghese

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

In CrI.A.No.85 of 2017:-

For Appellants/A.2 & A.4
to A.13 : Mr.A.K.Balaji

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

In CrI.A.No.169 of 2017:-

For Appellant/A.1 : Mr.V.Raja Mohan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

1.A.No.163 of 2017:-

Muniyappan (P.W.1) ... Appellant

vs

- 1.Ammavasai (A.1)
- 2.Gowri (A.2)
- 3.Selvam (A.3)
- 4.Chennakrishnan (A.4)

5.Ramesh (A.5)
6.Vadivel (A.6)
7.Munusamy (A.7)
8.Rakkappan (A.8)
9.Murugan (A.9)
10.Amirthan (A.10)
11.Andirakarichi @ Muniamma (A.11)
12.Chandira (A.12)
13.Subramani (A.13)

14.State Rep. By
Inspector of Police,
Maharajakadai Police Station,
Krishnagiri District.
(Crime No.316 of 2013) Respondents

Prayer :- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment in S.C.No.13 of 2016 dated 20.12.2016 on the file of the learned Additional District Sessions Judge, Krishnagiri and convict the first respondent/A.1 for the offence under Section 344 I.P.C., and convict the respondents 2 to 13/A.2 to A.13 for the offences under Sections 302 r/w 149 I.P.C., and Section 364 I.P.C.

For Appellant/P.W.1: Mr.C.Prabakaran

For RR1 to 13 : Mr.V.Raja Mohan

For R.14 : Mr.P.Govindarajan,
Additional Public Prosecutor

Cr1.A.No.192 of 2017 :-

State rep. By
The Public Prosecutor,
High Court,
Madras - 600 104.
(Maharajakadai Police Station,
Crime No.316/2013) .. Appellant/Complainant

vs

1.Gowri (A.2)
2.Selvam (A.3)
3.Chennakrishnan (A.4)
4.Ramesh (A.5)
5.Vadivel (A.6)
6.Munusamy (A.7)
7.Rakkappan (A.8)

8.Murugan (A.9)
9.Amirthan (A.10)
10.Andirakarichi @ Muniamma (A.11)
11.Chandira (A.12)
12.Subramani (A.13) .. Respondents

Prayer:- Criminal Appeal filed under Section 378(1)(b) Cr.P.C., to set aside the judgment of acquittal of the respondents/A.2 to A.13, passed in S.C.No.13/2016 dated 20.12.2016 by the learned Additional Sessions Judge, Krishnagiri District and convict the respondents/A.2 to A.13 for the offence framed against them under Sections 302 r/w 149 I.P.C.

For Appellant : Mr.P.Govindarajan
Additional Public Prosecutor

For Respondents: Mr.V.Raja Mohan

COMMON JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant in CrI.A.No.42 of 2017 is A.3; the appellants in CrI.A.No.85 of 2017 are A.2, A.4 to A.13 respectively and the appellant in CrI.A.No.169 of 2017 is A.1 in S.C.No.13 of 2016, on the file of the learned Additional & District Sessions Judge, Krishnagiri. CrI.A.No.163 of 2017 has been filed by P.W.1 against the acquittal of A.1 for offence under Section 364 I.P.C., and the other accused from the offence under Section 302 r/w 149 I.P.C. CrI.A.No.192 of 2017 has been filed by the State to set aside the judgment of acquittal of the respondents/A.2 to A.13 passed by the learned Additional District & Sessions Judge, Krishnagiri District in S.C.No.13 of 2016 dated 20.12.2016. A.1 to A.13 stood charged for offences under Sections 147, 148, 364, 342, 302 r/w 149 I.P.C. By judgment dated 20.12.2016, the trial Court convicted the accused/appellants and sentenced them as detailed below:-

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Sl. No	Accused	Section of law	Conviction
1	A.1	148, 342 & 302 r/w 149 I.P.C.,	Rigorous imprisonment for three years, for the offence under Section 148 I.P.C., Rigorous imprisonment for one year, for the offence under Section 342 I.P.C., Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year for the offence under Section 302 r/w 149 I.P.C.,
2	A.2 to 13	147, 342, 323 & 324 I.P.C.,	Rigorous imprisonment for two years, for the offence under Section 147 I.P.C., Rigorous imprisonment for one year, for the offence under Section 342 I.P.C., Rigorous imprisonment for one year, for the offence under Section 323 I.P.C., Rigorous imprisonment for three years, for the offence under Section 324 I.P.C.,

The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/A.1

to A.13 are before this Court with Crl.A.Nos.42, 85 & 169 of 2017. However, the trial Court acquitted A.1 to A.13 for the offence under Section 364 I.P.C., and also acquitted A.3, A.5, A.7 & A.13 for offence under Section 148 I.P.C. As against the said acquittal, P.W.1/the defacto complainant has come up with Crl.A.No.163 of 2017 and the State has filed Crl.A.No.192 of 2017. That is how all these criminal appeals are before this Court.

2.The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mr.Rajiv Gandhi. P.W.1 is his father. The deceased was working in a sweet stall in Kerala State. P.W.1 was residing at Pelavarathi Village. All these accused were also residing in the same Village. A.1 was the Village Head. The daughter of A.1 is Ms.Ramya. Ms.Ramya, had illicit intimacy with the deceased for some time. When this relationship came to light, P.W.1 and the other family members warned Mr.Rajiv Gandhi and requested him to disconnect his relationship with Ms.Ramya. A.1, by suppressing the above relationship, given in marriage Ms.Ramya to some one else. Though, Ms.Ramya was not willing for the said marriage, as she was very particular to marry the deceased. The deceased had gone back to Kerala.

3.After 4 or 5 days of marriage of Ms.Ramya, A.1 and his men had brought the deceased from Kerala to Pelavarathi Village. In the said Village, on 14.09.2013, A.1 and his men conducted a panchayat. They imposed a fine of Rs.15,000/- to P.W.1 and to the deceased for his mis-conduct. P.W.1 paid a sum of Rs.2,000/- and took time to pay the balance. It is further alleged that as soon as the panchayat was over around 11.00 pm, all these 13 accused, attacked the deceased with hands and legs and also with stones. They tied him to a stone. On the next day morning at 10.00 am, the accused allowed P.W.1 to take the deceased after untying him. It is the further case that they threatened P.W.1, not to disclose about the occurrence to anyone and instead, take the deceased to a private hospital.

4.P.W.1 and his other family members took the deceased to a private hospital known as "Shripriya Nursing Home" at Kuppam Village at 6.00 pm on 15.09.2013. The deceased was admitted in the said hospital. At that time, the deceased was semi-conscious. There were abrasions and contusions on his body. There was also an abrasion measuring 10x10 cm on the head. In the said Nursing Home, P.W.12 - Dr.Sudhir, gave treatment to the deceased. At that time, one Mr. Ramesh (P.W.3) who accompanied the deceased to the hospital informed P.W.12 that the deceased

had fallen from the motor cycle and sustained the contusions and abrasions. After treatment in the said hospital, the deceased was taken to the Government Headquarters Hospital at Krishnagiri and admitted at 1.20 am on 19.09.2013. Dr.Uma Maheshwari (P.W.13) attended the deceased and at that time, she was told by P.W.3, the Uncle to the deceased that the deceased was attacked by unknown persons with weapons and the weapons used were also not known to him. P.W.13 recorded same in an Accident Register and admitted the deceased in the hospital. The deceased was semi-conscious at that time. Therefore, the deceased was taken to the Government Medical College and Hospital at Dharmapuri. When the deceased was taken to the said Hospital, near Thopur Village, he died. Hence, the body was sent to the mortuary at the Government Hospital, Dharmapuri.

5. Thereafter, on intimation from the hospital, the Sub Inspector of Police (P.W.15) went to the Government Hospital, Dharmapuri and recorded the statement of P.W.1 and on returning to the Police Station, at 12.00 noon on 19.09.2013, he registered a case in Crime No.316/2013 for offences under sections 147, 148, 341, 302 r/w 34 I.P.C., against all the 13 accused. Ex.P.1 is the complaint and Ex.P.17 is the F.I.R. The complaint and F.I.R., were sent to the Court and the same were received by the learned Judicial Magistrate at 6.05 pm on 19.09.2013.

6. The case was taken up for investigation by P.W.16, the then Inspector of Police. He went to the place on occurrence at 2.00 pm on 19.09.2013, prepared an observation mahazar and rough sketch in the presence of witnesses. He examined many more witnesses at the place on occurrence then, on going over to the hospital, he conducted inquest on the body of the deceased between 9.00 am and 12.00 noon on 20.09.2013 and forwarded the body for Postmortem.

7. P.W.11 - Dr.Hemalatha, conducted autopsy on the body of the deceased on 21.09.2013 at 3.55 pm and she found the following injuries on the body of the deceased:-

"External Injuries

1. 1.5 x 0.5 on right big toe.
2. 1 x 0.4 cm, 0.4 x 0.4 cm on right foot.
3. 0.4 x 0.4cm on right 3rd toe.
4. 0.3 x 0.3 cm on right 4th toe.
5. 2 x 0.5 cm on front upper part of right leg.
6. 0.4 x 0.4, 1 x 1 cm on front of lower part of right thigh.
7. 11 x 5-3 cm on outer aspect of lower

- half of right forearm.
8. 5 x 4 cm on back of right wrist.
9. 0.5 x 0.3 cm on back of right middle finger.
10. 0.4 x 0.4 cm back of right ring finger.
11. 8 x 2 cm on outer aspect of right mid arm.
12. 10 x 3 cm on outer aspect of upper part of right arm.
13. 5 x 3 cm on outer aspect of lower part of right arm.
14. 7 x 2 cm on front of right mid arm.
15. 0.5 x 0.5 cm, 0.5 x 0.5 cm on front of right side of mid chest.
16. 2 x 1.5, 1 x 1.5 cm on outer aspect of right side of chest.
17. 3 x 2 cm on right shoulder.
18. 6 x 3 cm on left shoulder.
19. 5 x 3 cm on outer aspect of upper part of left arm.
20. 14 x 8 cm on outer aspect of left mid arm.
21. 5 x 2cm , 4 x 0.5 cm , 3 x 0.3 cm on outer aspect of left side of chest.
22. 6 x 2 cm on outer aspect left side of forehead and face.
23. 2 x 0.3 cm on left cheek.
24. 1 x 0.3 cm on outer aspect of left knee.
25. 0.4 x 0.4 cm on front of left knee.
26. 1 x 0.5 cm, 1 x 1 cm on front of upper part of left leg.
27. 1 x 1cm, 1 x 1 cm, 0.7 x 0.3 cm on left foot.
28. 0.3 x 0.3 cm on left 2nd toe.
29. 5 x 3 cm on outer aspect of upper part of left thigh.
30. 8 x 4 cm, 7 x 3 cm on back of left side of abdomen.
31. 9 x 3, 12 x 6cm on back of left side of chest.
32. 8 x 3 cm, 9 x 5 cm on back of right side of chest.
33. 5 x 3 cm on back of left shoulder.
34. 1 x 1.05 x 0.5 cm on back of right thumb.
35. 2 x 3cm on back of left elbow.
36. 1 x 0.5 cm on nose."

She opined that the death of the deceased was due to the effects of the multiple injuries found on the body of the deceased. Ex.P.11 is the Postmortem certificate.

8.P.W.16 during the course of investigation, collected the medical records. On 22.09.2013 at 11.00 am, he arrested the accused Nos.1,2,4,5,6,7,8,9,10 and 12. While in custody, A.1 made a voluntary confession and produced a sum of Rs.1,800/-. P.W.15 recovered the same. Then, he forwarded all the arrested accused to Court for judicial remand. At this request, learned judicial Magistrate recorded the statement to some of the witnesses. The investigation was thereafter, continued by his successor P.W.17 on 21.01.2014 onwards. He collected the postmortem certificate and examined many more witnesses. On completing the investigation, P.W.17 laid charge sheet against all the 13 accused on 06.05.2015.

9.Based on the above materials, the trial Court framed charges as against all the appellants/A.1 to A.13 as stated in the first paragraph of this judgment. The appellants/A.1 to A.13 denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 24 documents were exhibited, besides 9 Material Objects.

10.Out of the said witnesses, P.W.1, the father of the deceased has spoken about the occurrence. P.W.2 a close relative of P.W.1, though examined as an eye witness, has not supported the case of the prosecution. He has stated that he heard about the occurrence. P.W.3 is yet another close relative of the deceased. He has also stated that he participated in the panchayat but, he did not see that the deceased being attacked in the panchayat, by any of the accused. Thus, he has been treated as hostile. P.W.4 yet another relative of the deceased has turned hostile and he has also not supported the case of the prosecution in any manner. P.W.5 has stated that he heard about the occurrence and then, took the deceased to the hospital. He has also treated as hostile. P.W.6 who was examined to speak about the observation mahazar and rough sketch and also about the vital facts has turned hostile and he has not supported the case of the prosecution in any manner.

11.P.W.7 is the brother of P.W.1. He has spoken about the occurrence, in detail. He has also spoken about the overt-acts against all the accused. He has also stated that in the panchayat, a sum of Rs.25,000/- was imposed as fine on P.W.1 and

the deceased. He has also stated that when the people in the crowd tied the deceased in a stone and attacked him.

12.P.Ws.8,9 and 10 have turned hostile and they have not supported the case of the prosecution, in any manner. P.W.11 has spoken about the postmortem conducted and the final opinion regarding the cause of death. P.W.12 Dr.K.Sudhir has Spoken about the treatment given to the deceased at Sri Priya Hospital. P.W.13 has spoken about the treatment given to the deceased at the Government Headquarters Hospital, Krishnagiri. P.W.14, the then learned Judicial Magistrate has spoken about the statements recorded from some of the witnesses. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.16 & 17 have spoken about the investigation done and the final report filed.

13.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness nor did they mark any document on their side.

14.Having considered all the above materials, the trial Court convicted the appellants, as stated in the first paragraph of this judgment. Challenging the same, the appellants are before this Court with Crl.A.Nos.42, 85 & 169 of 2017 and challenging the acquittal of some of the accused in respect of some of the offences, P.W.1 has come up with Crl.A.No.163 of 2017 and the State has come up with Crl.A.No.192 of 2017.

15.As we have already narrated, it is the case of the prosecution that the deceased was attacked by all the thirteen accused on 14.09.2013 around 11.00 pm. Whereas, the complaint was made to the Police only after the death of the deceased on 19.09.2013. The learned counsel for the appellants would submit that there is no plausible explanation for the said delay in preferring the complaint by P.W.1 to the Police.

16.But, the learned Additional Public Prosecutor and the learned counsel for the defacto complainant/P.W.1 would submit that the said delay in preferring the complaint has been duly explained by the prosecution. According to them, since, A.1 happened to be the Village Head and since, all the accused had threatened P.W.1 and others not to go to Police Station with any complaint, no complaint was infact made on time. But, no witness has stated more particularly, P.W.1 has not stated that he did

not go to the Police Station because of the alleged threat made by the accused. Thus, this explanation now made before this Court is only an after thought and it has got no foundation by way of evidence through P.W.1 or any other witness.

17.The learned counsel for the defacto complainant would next contend that, at the earliest point of time, when the deceased was taken to Sri Priya Hospital by P.W.3 who is none else than the Uncle of the deceased accompanied by P.W.1, it was informed to the Doctor that the deceased had fallen from motorcycle and sustained injuries. That was recorded by P.W.12, the Doctor who examined the deceased in the said hospital in Ex.P.13 - Case sheet issued by Kuppam Hospital. The deceased was semi-conscious at that time. There were only abrasions and contusions found on him. There is no explanation as to how the Doctor (P.W.12) was informed that the deceased had fallen from the motorcycle. This is the earliest information given to the independent authority by the prosecution witnesses which should carry some weightage. After the Doctor's advice, the deceased was taken to the Government hospital at Dharmapuri.

18.P.W.13 - Dr.Umamaheswari, at the Government Headquarters Hospital, Krishnagiri admitted the deceased at 1.20 am on 19.09.2013. At that time, the deceased was in a semi-conscious state. P.W.3 and others who were brought the deceased to hospital informed the Doctor (P.W.13) that the deceased was attacked by unknown persons by means of unknown weapons. P.W.13 has recorded the same in Ex.P.14 - Accident Register. There is an entry in the said medical record that the deceased had sustained injuries due to assault around 1.00 am on 16.09.2013 near his house by number of persons, not known and the weapons used in the occurrence also were not known. This statement was made after four days of the occurrence. It is not explained to the Court as to why the Doctor (P.W.13) was informed by P.W.3 who was accompanied by the family members of the deceased that the deceased was attacked near his house by number of persons who were not known and the weapons used were also not known. The deceased died on the same day. Even thereafter, P.W.1 and others did not prefer any complaint to the Police. Thereafter, only on 19.09.2013, Ex.P.1 - complaint was made. It is for the first time, after four days of the occurrence, the allegation was made that these 13 accused had attacked the deceased with hands, legs and stones and caused his death.

19.Above all, except P.Ws.1 and 7, all the other independent witnesses have turned hostile. A perusal of the evidences of P.Ws.1 & 7 also would go to show that there are lot of contradictions over which. P.W.1 has stated that in the panchayat, a sum of Rs.15,000/- was imposed as fine and he paid Rs.2,000/-. But, P.W.7 has stated that in the panchayat, fine of

Rs.25,000/- was imposed. Had it been true that in the panchayat, such fine was imposed, this contradiction between the evidence of P.Ws.1 & 7 would not have emerged. P.W.1 has stated that the deceased was tied to a stone and he was attacked by many people with stones, hands and legs and also with sticks. But, he has not stated that any one of these accused had attacked the deceased. He has in a very vague manner has stated that 10 people surrounded the deceased and attacked him. He has not specifically stated as to whether any one of these accused had attacked the deceased. P.W.7 has stated that A.1, A.3 & A.4 have attacked the deceased. He has further stated that the deceased was tied to a stone and attacked by the accused. Thus, he has also not stated any specific overt acts against any of the accused. Thus, in our considered view, considering the delay in preferring the complaint (Ex.P.1), the earliest statement made to the Doctors (P.Ws.12 & 13) and inconsistency between the evidences of P.Ws.1 & 7, it is difficult to sustain the conviction and sentence imposed on any of the accused.

20. In a case of this nature, when there are number of accused involved in the offence, unless the possibility of false implication is completely ruled out, it is not possible for the Court to convict any of the accused. In other words, unless grain and chaff could be separated, the Court cannot act on the grain to convict the accused. But, here, in this case, it is very difficult to find out the truth. There are lot of doubts in the case of the prosecution. In such view of the matter, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants/A.1 to A.13 are entitled for acquittal.

21. In the result, Crl.A.Nos.42, 85 & 169 of 2017 are allowed and the conviction and sentence imposed on the appellants/A.1 to A.13 are set aside and the appellants/A.1 to A.13 are acquitted from all the charges. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 to A.13, shall stand discharged. Crl.A.No.163 of 2017, preferred by P.W.1 and Crl.A.No.192 of 2017 preferred by the State are dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate,
No.2 Krishnagiri.

3.The Chief Judicial Magistrate,
Krishnagiri.

4.The Superintendent,
Central Prison, Vellore.

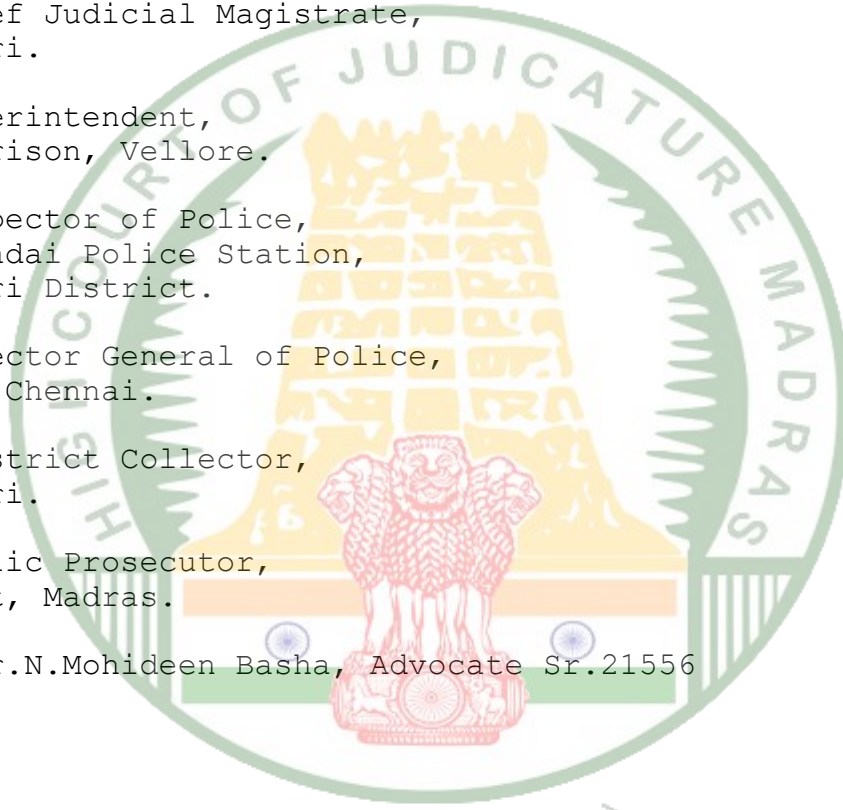
5.The Inspector of Police,
Maharajakadai Police Station,
Krishnagiri District.

6.The Director General of Police,
Mylapore, Chennai.

7. The District Collector,
Krishnagiri.

8.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N.Mohideen Basha, Advocate Sr.21556



सत्यमेव जयते

Criminal Appeal Nos.42, 85, 163,
169 & 192 of 2017

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