

Bail Slip

Crl. A. NO. 857/2016

The Appellant/Accused namely Anandaraj (A6) was directed to be released on bail as per Order of this Court dated 16/08/2016 made in Crl.Mp.NO. 7625/2016 in Crl A NO. 538/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.538 of 2016
and 857 of 2016
and Crl.M.P.No.12476 of 2016

Anandaraj Appellant in C.A.No.538 of 2016
Accused NO.6

1. Meganathan
2. Sampath
3. Sanmuga Gounder
4. Arivazhagan

..... Appellants in C.A.No.857 of 2016
Accused NO. 1,3,4 & 5

Vs

State rep by
The Inspector of Police,
Kandamangalam Police Station,
(Cr.NO.127/2008)
Villupuram District

....Respondent in both the appeals/
Complainant

Appeals filed u/s.374 (2) of Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal District and Sessions Judge, Villupuram dated 07.06.2016 in S.C.No.337 of 2009.

For Appellant in : Mr.L. Mahendran
Crl.A.No.538/2016

For appellants in : Mr.V. Gopinath
Crl.A.No.857/2016 Senior Cousnel for
Mr.A. Arasu Ganesn

For Respondent : Mr.P. Govindarajan
Crl.A. 538/857/2016 Addl. Public Prosecutor

COMMON JUDGMENT

The appellants are accused Nos.1 to 6 (A.1 to A.6) in S.C.No.337 of 2009 on the file of Principal District and Sessions Judge, Villupuram. They stood charged for the offences under Secs.148 and 302 read with 34 IPC. During the pendency of trial, A.2-Jothy died. Thus, the charges against him stood abated. The trial Court, by Judgment dated 07.06.2016 convicted the accused 1 and 3 to 6 under Secs.148 and 302 read with 34 IPC and sentenced them to undergo rigorous imprisonment for three years for the offence under Sec.148 IPC and to undergo imprisonment for life and to pay a fine of Rs.50,000/-each as against A.1, A.3, A.5 and A.6 and Rs.1,000/- for A.4, in default, to undergo six months simple imprisonment for the offence under Sec.302 read with 34 IPC. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

(a) The deceased in this case was one Mr.Arul. P.W.1 is his wife. P.Ws.2 and 3 are his brothers and P.W.5 is his daughter. P.W.4 is the neighbour of the deceased. The deceased and his family members were all residing at Periababy Samuthiram Village in Villupuram District. A.4 Shanmuga Gounder is the brother of the deceased. A.1 to A.3 are the sons of A.4. A.5 is the brother of P.W.1 and A.6 is the neighbour of A.1 to A.4.

(b) It is alleged that between the deceased and A.1 to A.4, for a quite long time, there was enmity on account of dispute relating to partitioning of common property between them. Ten days before the occurrence, it is alleged that the deceased went to A.1 to A.4 and demanded for partition of the property and for allotment of his share. A.1 to A.4 declined to partition the property and to give any share to the deceased. The deceased told A.1 to A.4 that he would go to Court, seeking justice for partitioning the property. A.1 to A.4, in turn, challenged that if only he was alive, he could go to Court and so they would not spare him to live. This is stated to be the motive for the occurrence.

(c) On 26.04.2008, around 10.00 p.m, it is alleged that P.W.1, her daughter P.W.5 and another daughter were sleeping along with the deceased just in front of the Shop belonging to them. The electric lamp was burning. Around 1.16 a.m, when they were all sleeping, they were awakened by the noise of people rushing to that place. They found all the six accused rushing towards the deceased. They surrounded the deceased and started attacking him with Aruval. A.1 attacked the deceased with Aruval on his stomach; A.2 followed him and attacked the deceased on his right knee; Following them A.3 attacked the deceased on his left chest with Aruval and A.5 attacked the deceased with Aruval on the right hand and other parts; A.4 then attacked the deceased on both the hands and A.6 lastly attacked the deceased with Aruval on his right cheek and other parts of the body. The deceased sustained extensive injuries on his body and fell unconscious. P.W.1 and his daughter raised alarm. The accused ran away from the scene of occurrence. According to the case of the prosecution, the occurrence was witnessed by P.Ws.1 to 4.

(d) Thereafter, P.W.3 brother of the deceased along with the help of others, took the deceased to Government Hospital, Puducherry at 2.30 a.m on 27.04.2008. One Dr.Senthil Ganesan, who was on duty, examined the deceased at 2.30 a.m. He found him unconscious. P.W.3 informed him that the deceased was cut by a group of four people around 1.15 a.m. He found the following injuries:

1. Exposed bowel contents
2. Lacerated injuries Right knee
3. Left wrist molar aspect lacerated wound
4. Left wrist dorsal aspect lacerated wound

Ex.P.17 is the Accident Register. Since Dr.Senthil Ganesan retired, based on Ex.P.17 , P.W.17 Dr.C. Ramakrishnan has given evidence.

(e) On receiving intimation from the hospital, P.W.18, the then Inspector of Police, went to the hospital and recorded the statement of P.W.1 at 11.30 a.m on 27.04.2008. On returning to Kandamangalam Police Station at 1.00 p.m, on 27.04.2008 P.W.18 registered a case in Cr.No.127 of 2008 for the offence under Secs.147, 148, 324 and 307 IPC against all the six accused. Ex.P.1 is the complaint and Ex.P.18 is the Printed First Information Report. Then he forwarded both the documents to the Court, which were received by the Judicial Magistrate at 6.15 p.m on 27.04.2008.

(f) P.W.18, the Inspector of Police, took up the case for investigation, went to the place of occurrence; prepared an Observation Mahazar and a Rough sketch. He recovered blood

stained earth and sample earth from the place of occurrence in the presence of witnesses. He examined P.Ws.1 to 4 and few more witnesses. On receiving intimation on 27.04.2008 at 1.00 p.m, that deceased died, P.W.18 altered the case into one under Sec.302 IPC. On the next day, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(g) P.W.15 Dr.R.Balaraman, Government Hospital, Puducherry, conducted Autopsy on the body of the deceased on 28.04.2008 at 1.30 p.m. He found the following injuries on the body of the deceased:

" EXTERNAL INJURIES: (Ante-mortem)

- (1) Abrasion 10 x ½ cms over upper of chest right side
- (2) Sutured wound 6 cms length over right side of right nipple
- (3) Sutured wound 2 cms over outer aspect of chest right side (Surgical)
- (4) Transversely placed sutured wound 26 cms over upper Abdomen.
- (5) Sutured wound 6 cms over upper 1/3rd of right thigh.
- (6) Sutured wound 22 cms across right knee and 12 cms below right knee.
- (7) Sutured wound 6 cms over left side of chest above nipple and 2 cms sutured wound 10 cms below axilla.
- (8) Sutured wound 1 cm left side abdomen and another sutured wound 2 cms with rubber drain present on left side (surgical)
- (9) Sutured wounds 7 cms over left wrist palmar aspect and sutured wound 5 cms over left wrist dorsal aspect.
- (10) Sutured wound 9 cms over dorsum of left hand and middle finger 2 cms sutured wound over left index finger.
- (11) Abrasion 1 cm middle of left leg.
- (12) Sutured wound 4 cms length right upper arm
- (13) Sutured wounds (1) 5 cms over outer aspect of right elbow and 3 cms length over right elbow inner aspect.
- (14) Sutured wound 20 cms over right fore arm.
- (15) Incised wound (Not sutured) 6 cms over mid parieto occipital region partly cutting under lying bone on removal of stitches all sutured wounds have clean cut margins.

INTERNAL EXAMINATION:

Head (scalp, skull, brain, meninges and blood vessels)

SKULL - Normal

BRAIN - Pale

Neck structures (skin, muscles, hyoid, thyroid cartilage, larynx, trachea, bronchi etc.,)

Hyoid: Intact

Neck, muscles - NAD

THORAX:

On dissection of External injury No.-(2), the Wound has cut through 6th Rib and cut liver 5 cms x 1 1/2 cm 4 x 1/2 x 1/2 on the right lobe.

Lungs - Left - Pale

ABDOMEN AND PELVIS

Brownish fluid 20 ml No specific smell.

Sutured wound present over greater curvature of stomach - Resection anastomosis present over Transverse colon sutured present over mesentery, Feeding jejunostomy present as described under Injury No. (11) thorax.

Kidneys, Ureters and Adrenals: Pale

Genital Organs : NAD

Spine : NAD

Opinion regarding the cause of death:

Died of shock and hemorrhage due to multiple injuries. Time since death is more than 6 hours and within 24 hours prior to post mortem examination.

Ex.P.13 is the Post mortem certificate. He gave opinion that the injuries found on the body of the deceased was due to cut injuries. He further opined that the death of the deceased was due to shock and hemorrhage due to multiple injuries.

(h) On 30.04.2008, P.W.18 arrested A.4 and A.6 in the presence of witnesses. After arrest, accused gave a voluntary confession. Out of the confession made by A.4, he took police and witness to Om Sakthi temple and from the bushes behind, he produced two knives ; similarly, out of the confession made by A.6, he took the police and other witnesses to the place of occurrence and produced two knives. They were all recovered under mahazars. On returning to the Police Station, he forwarded the accused to Court for judicial remand and handed over the material objects recovered from the place of occurrence to Court.

(i) On 07.05.2008, A.1 and A.5 had surrendered before the learned Judicial Magistrate at Thirukovilur. P.W.18 took custody

of these two accused on 09.05.2008 as per the order of the learned Judicial Magistrate. While in custody, on 10.05.2008, A.1 made confession, in which, he disclosed the place where he had hidden the Koduva Knife. In pursuance of the same, he took the police to the place of hide out and produced the said Koduva knife. Similarly, A.5 Arivazhagan made confession, in which, he disclosed the place where he had hidden the Koduva Knife. In pursuance of the same, he took the police to the place of hide out and produced the said Koduva knife. P.W.18 recovered the same in the presence of witnesses. P.W.18 forwarded the accused to Court for judicial remand and handed over the Material Objects to Court. A.2 surrendered before the learned Judicial Magistrate, Cuddalore on 19.05.2008. P.W.18 - the Inspector of Police took custody of A.2 and while in custody, on 22.05.2008, A.2 made voluntary confession, in which, he disclosed the place, where he had hidden a knife. In pursuance of the same, he took police and witnesses to the place of hide out and produced the said knife. P.W.18 recovered the same. A.3 surrendered before the learned Judicial Magistrate, Cuddalore on 19.05.2008. P.W.18 Inspector of Police took custody of A.3 and while in custody, on 22.05.2008, A.3 made voluntary confession, in which he disclosed the place, where he had hidden a Veechu Aruval. In pursuance of the same, he took police and produced M.O.6 Veechu Aruval. P.W.18 recovered the same. Since P.W.18 retired, P.W.19 continued the investigation, examined the doctor and collected the medical records. P.W.19, on completing the investigation, laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 25 documents and 12 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 to 5 have spoken about the entire occurrence as eyewitnesses and Ex.P.1 complaint made to the police also. P.W.6 has spoken about the preparation of observation mahazar, rough sketch and recovery of material objects. P.W.7 has spoken about the arrest of A.4 and A.5 and the consequential recoveries of the material objects on the disclosure statements made by the accused. P.W.8 has spoken about the same facts. P.W.9 has spoken about the motive. P.W.10 has also spoken about the motive. P.W.11 has stated that he heard about the incident and went to the hospital. P.W.12 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.13 has spoken about the confession made by A.2 and A.3 and the consequential recoveries of the material objects. P.W.14 has spoken about the photographs taken at the place of occurrence. P.W.15 has spoken about the post mortem conducted and his final opinion regarding the cause of death of the deceased. P.W.16, an Expert from the Forensic

Lab, has stated that he examined the Material Objects and found blood stains on all the material objects. P.W.17, Dr.C. Ramakrishnan has spoken about the treatment given to the deceased at Government Hospital, Puducherry on 27.04.2008. P.W.18 has spoken about the registration of the case and investigation done by him. P.W.19 has spoken about the further investigation and final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, On the side of the accused, one Dr.Namasivayam, Professor in Thanjavur Medical College and Hospital was examined as D.W.1. He has stated that A.3 Sampath was admitted in Thanjavur Medical College Hospital on 27.04.2008 at 5.25 a.m. He was admitted by one Dr.Rajendran, who is now no more. A.3 was admitted for chest pain. According to the medical records, he had a complaint of acute chest pain from 9.00 p.m on 26.04.2009 onwards and was admitted as inpatient for treatment. But he left the hospital on his own without being discharged. P.Parthiban, D.W.2, an Assistant Engineer of Public Works Department at Thanjavur has stated that the bridge at Anaikarai was damaged and found to have a crack and the same was closed for traffic between 15.04.2008 and 26.04.2008. Therefore, for going to Thanjavur via alternative route, it would take 6 to 7 hours. Thus, the defence of the accused was total denial.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

7. We have heard the learned Senior Counsel, appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. As we have already pointed out, in this case, in order to prove the guilt of the accused, the prosecution mainly relies on the eyewitness account of P.Ws.1 to 5. According to them, the alleged occurrence had taken place around 1.15 a.m on 27.04.2008. The deceased was immediately taken to Government Hospital, Puducherry and admitted at 2.30 a.m on the same day. The Senior Counsel argued that the distance between the police station and the place of occurrence is hardly 3 kms as indicated in Ex.P.18 First Information Report. However no one cared to go to the police station to make a complaint which creates doubt in the case of the prosecution. This argument of the learned Senior Counsel does not persuade us, because, P.Ws.1 to 5 would have been more concerned about the condition of the deceased and their first intention would have been only to save the deceased

by rushing him to the hospital instead of going to police station for making a complaint. Therefore, this argument that there was no complaint made by P.Ws 1 to 5 immediately though the police station is situated at the distance of 3 kms cannot be countenanced. But at the same time, it cannot be lost sight of that P.W.1, has admitted in her evidence that at the time when the deceased was admitted in the Government Hospital at Puducherry at 2.30 a.m on 27.04.2008, the respondent police had already arrived at the place of occurrence. She has further stated that at that time itself, the Inspector of Police enquired about the occurrence and obtained a statement.

9. P.W.4, during cross examination, has also stated that at 2.30 a.m police arrived at the hospital. But, the case of the prosecution is that until intimation was received from the hospital and until 11.30 a.m on 27.04.2008 when P.W.18 went to the hospital, the occurrence was not known to the police. This is highly unbelievable. When P.Ws. 1 to 4 have categorically stated that the police arrived at the hospital at 2.30 a.m on 27.04.2008 itself, the case of the prosecution that the occurrence came to the knowledge of P.W.18 only at 11.30 a.m cannot be believed and the said evidence of P.W.18 is nothing but a misleading statement. We hold that there was some other information at the earliest point of time which brought police officials as early as on 27.04.2008 at 2.30 a.m itself and that information has been deliberately suppressed. This creates doubt in the case of the prosecution. As already we have pointed out that A.4 is the father of A.1 to A.3. A.5 belongs to their family and A.6 is a neighbour. The entire family of A.4 has been implicated as accused. This would go to show that an attempt has been made to rope in as many number of accused as possible. Though it is alleged that the first information report was registered at 1.00 p.m on 27.04.2008 by P.W.18, it reached the hands of the learned Magistrate only at 6.50 p.m, for which also, there is no explanation. Thus, it is obvious that Ex.P.1 complaint has been drafted with due deliberation to rope in the entire family members of the accused to rope in as many number of accused as possible.

10. In a case where there are multiple number of accused and no explanation for the delay in forwarding the first information report to the Court and obvious suppression of the first information report would create doubt in the case of the prosecution, which itself would be sufficient to throw the case of the prosecution out and to acquit the accused.

11. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Thulia Kali vs The State of Tamil Nadu [1973 AIR 501] wherein, in an identical situation, though there were injured eyewitnesses, the Hon'ble Supreme Court rejected the entire case of the prosecution even by going to the extent

of disbelieving the evidence of injured witnesses. Applying the same yardstick, in our considered view, in this instant case, the case of the prosecution deserves to be doubted and rejected.

12. It is not only on the above stated ground but there are also other grounds which create enormous doubt in the case of prosecution. When the deceased was brought to the Government Hospital at Puducherry, P.W.3 at the earliest point of time told the doctor at 2.30 a.m on 27.04.2008, that the deceased was attacked only by four known persons. Now there are six accused in the case. By this statement P.W.3 was contradicted by the defence. He has got no explanation to offer, instead he has stated that he told the doctor that there were six assailants. The explanation of P.W.3 is liable to be rejected because we have to give credence to the contemporary record prepared by the doctor at the time of admission of the deceased that P.W.3 told that the assailants were only four in number. If it is the earliest information that there were only four assailants, it would be clear as to who were those four assailants. This has not been explained to the satisfaction of the Court. This is yet another reason that gives more weightage to this doubt in the case of the prosecution. In other words, this Court cannot afford to convict an individual on mere surmise or suspicion.

13. It is the case of the prosecution that while the accused were in the police custody, they gave independent voluntary confessions, out of which, material objects viz., weapons were recovered. But P.W.1, during the cross examination, has admitted that all the weapons were found lying near the place of occurrence and when the police arrived at the place of occurrence, they recovered all the knives from the place of occurrence. If that be so, the case of the prosecution that these accused made independent confessions, out of which, weapons were recovered, cannot be true.

14. Above all, according to P.W.1, all the accused were armed with Veechu Aruval each. According to her specific evidence, each accused attacked the deceased with one Veechu Aruval and no accused was having any knife. P.W.2 had stated that all the accused attacked the deceased only with Veechu Aruval. P.W.3 has also stated that all the accused attacked the deceased with Veechu Aruval. P.W.4 also stated so. Thus, P.Ws.1 to 4 have stated that all the accused attacked the deceased only with one Veechu Aruval each, but P.W.5, the daughter of the deceased, who claims to have been present at the time of occurrence, has stated that all the six accused came with knives and they stabbed the deceased with knife and also cut the deceased with knife. She has not stated that any of the accused was armed with Veechu Aruval. Thus, according to her, no Veechu Aruval was used by any one and all the accused used only knife,

whereas, the evidence of P.Ws.1 to 4 was that all the accused used Veechu Aruval.

15. P.W.18 in his evidence has stated that out of the disclosure statement made by A.4, he took the police and the witnesses to the place of hide out and produced two knives. When the evidence of P.Ws.1 to 4 is that the accused used only Veechu Aruval, it has not explained to Court as to how the accused could produce two knives and how they are relevant to this case. Similarly, out of the disclosure statement made by A.6, he took the police and witnesses to the place of hide out and produced two blood stained knives. But it is the case of P.Ws.1 to 4 that he also used Veechu Aruval and nobody used knife. It is not explained to Court as to how the accused (A.6) produced knife and how they are relevant to the case.

16. Similarly, P.W.18 has stated that on 10.05.2008 A.1 made voluntary confession, out of which, he took the police and witnesses to the place of hide out and produced "Koduva Kathi". This is in consonance with the evidence of P.W.5, but contrary to the evidence of P.Ws.1 to 4, who have stated that he used only "Veechu Aruval".

17. Similarly, according to P.W.8, Arivazhagan (A.5) in his confession, disclosed the place, where he had hidden the "Koduva Kathi". Accordingly, he produced M.O.4. This is in consonance with the evidence of P.W.5, but contrary to the evidences of P.Ws.1 to 4. According to them, he used only "Veechu Aruval" and not "Koduva Kathi". P.W.18 has further stated that A.2, in his confession, disclosed the place, where he had hidden a knife. Accordingly, it was recovered, but this is in consonance with the evidence of P.W.5, who has stated that he used knife, but contrary to the evidence of P.Ws.1 to 4, who have stated that he used only "Veechu Aruval". P.W.18 has further stated that similarly, out of the disclosure statement made by Sampath (A.3), he took the police and witnesses to the place of hid out and produced "Veechu Aruval". This is in consonance of he evidence of P.Ws.1 to 4, but it is contrary to the evidence of P.W.5, who have stated that he used only knife.

18. As we have already pointed out, M.Os.1 to 6 are "Veechu Aruval". Neither knife nor "Koduval" was produced. This contradiction has not been explained to the Court. This creates enormous doubt. Though it may be true that P.Ws.1 to 5 were present at the place of occurrence, in view of the above contradictions and the delay in filing the first information report, we feel that there is doubt in the case of the prosecution. In a case of this nature, when there are multiple number of accused, unless the prosecution proves the case beyond reasonable doubt, it would not be possible for the Court to sustain the conviction, because suspicion cannot take the place

of proof and therefore, we are constrained to acquit all the accused. We find that the prosecution has not proved the charges beyond reasonable doubts.

19. In the result,

(i) both the appeals are allowed and the conviction and sentence imposed on the appellants by the learned Principal District and Sessions Judge, Villupuram dated 07.06.2016 in S.C.No.337 of 2009 are set aside and they are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.
Consequently, connected MP is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Principal District and Sessions Judge, Villupuram.
2. The Judicial Magistrate, Villupuram.
3. -Do- Thri the Chief Judicial Magistrate, Villupuram.
4. The District Magistrate/District Collector Villupuram.
5. The District Magistrate/District Collector, Cuddalore.
6. The Inspector of Police, Kandamangalam Police Station, Villupuram District.
7. The Superintendent, Central Prison, Cuddalore.
8. The Director General of police, Mylapore, Chennai-4.

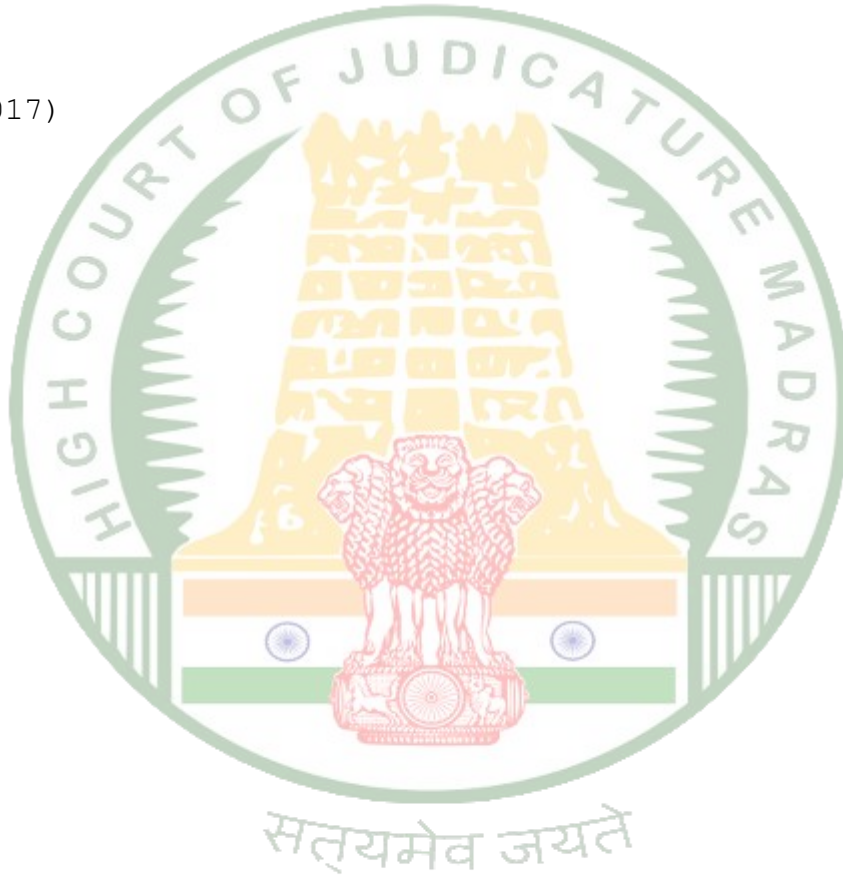
9. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.L. Magendran, Advocate SR. 3288

+1cc to Mr.A. Arasu Ganesan, Advocate, SR. 2377

Judgment in
Crl.A.Nos.538/2016
& 857 of 2016

AD(CO)
VR(1/03/2017)



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