

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2016
Pronounced on : 17.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE **S.BASKARAN**Criminal Appeal No.825 of 2012

Hemnath

... Appellant

Vs

State rep. by the Inspector of Police,
 E.5, Pattinappakkam Police Station,
 Chennai.

... Respondent

Criminal Appeal is filed under Section 374 (2) of Cr.P.C. against the judgment of the learned II Additional Sessions Judge, City Civil Court, Chennai, made in S.C.No.245 of 2009 dated 05.11.2012

For Appellant : Mr.V.Rajamohan

For respondent : Mr.E.Raja,

Additional Public Prosecutor

J U D G M E N T

The appellant is the first accused in S.C.No.245/2009 on the file of the learned II Additional Sessions Judge, City Civil Court, Chennai. There are two accused in this case. By judgment dated 05.11.2012, the 1st accused/appellant herein stood convicted for offences under Sections 341 and 326 of IPC and the trial court sentenced him to undergo one month simple imprisonment for the offence under Section 341 of IPC and also sentenced him to undergo 3 years

rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment for the offence under Section 326 of IPC and the 2nd accused, namely, Munusamy @ Rajendran was acquitted by the trial court. Challenging the said conviction and sentence, the 1st accused/appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution is that on 16.04.2009 at about 11.30 a.m., when the victim P.W.1 Babu was going near the Aavin Milk Booth in the South Canal Bank Road, Mandaveli, Chennai, due to previous enmity between the accused and P.W.1 Babu, with an intention to murder him, the appellant herein/1st accused along with the 2nd accused, came in a Bajaj Pulser Motor Cycle bearing Registration No.TN 07 AF 5456, restrained him, caught hold of the victim P.W.1 Babu and the appellant herein/1st accused assaulted the victim P.W.1 on his head and cut his left forearm with knife causing grievous injuries and thereby committed the offences punishable under Sections 341, 326 and 307 read with 34 of IPC.

(3) The complainant/victim P.W.1 Babu stated that he is living with his grandmother and working as a painter. He also stated that the accused are known to him and the 1st accused/appellant herein is

the son of his uncle Ashok and his another uncle is P.W.3 Anand. According to him, while his uncles Ashok and Anand used to fight among themselves, he used to intervene and pacify them. On 14.04.2009, around 11.00 a.m., while he was walking near the Milk Booth in the South Canal Bank Road, the son of his uncle Ashok, namely, the 1st accused Hemnath, came as a pillion rider in a bike driven by the 2nd accused Munusamy and assaulted him with knife on the right side of his head and left fore arm stating that only because of him, dispute is arising in the family.

(4) On hearing his shouting, P.W.2 Balu, P.W.3 Anand, who were taking tea, in a nearby shop, rushed in and took P.W.1 to Royapettah Government Hospital. Subsequently, P.W.1 was examined by the Sub-Inspector of Police, who recorded his statement, which was marked as Ex.P.1. P.W.1 also identified the weapon used by the accused as M.O.1 Knife. P.W.2 Balu and P.W.3 Anand, who were examined as eye-witnesses to the occurrence, also corroborated the version of P.W.1 and stated that while the 2nd accused was driving the bike, the 1st accused came with him as a pillion rider and assaulted P.W.1 on his head and left fore arm with knife causing injuries. P.Ws.2 and 3 both have identified the weapon used by the 1st accused as M.O.1 Knife. Thus, according to P.Ws.1 to 3, the

victim P.W.1 was assaulted around 11.00 a.m. on 16.04.2009 by the 1st accused/appellant herein with M.O.1 knife, thereby causing injuries and the first accused came to the occurrence spot in the motorcycle driven by the 2nd accused.

(5) The Doctor P.W.9, who gave treatment to the victim P.W.1, deposed that while he was on duty in Royapettah Government Hospital on 16.04.2009, one Babu was brought for treatment and he found the following injuries on his body:

"A cut injury at right temporal region measuring 6 c.m. x 2 c.m. x 2 c.m. size; and
Cut injury at left forearm measuring 8 c.m. 2 x c.m. x 2 c.m. size."

The Accident Register Copy issued by him is produced as Ex.P.9 and after giving First Aid, he was recommended for further treatment. Thereafter, P.W.7 Dr.T.Tholgapiyan treated P.W.1 as inpatient from 16.04.2009 and 18.04.2009 and the Wound Certificate issued by him is produced as Ex.P.7.

(6) The Sub-Inspector of Police, who deposed as P.W.8 stated that on 16.04.2009, on information, he went to Royapettah

Government Hospital at 13.50 hours and recorded the statement of one Babu who was in the Intensive Care Unit of the hospital and registered a case in Crime No.373/2009 under Sections 341, 326 and 307 of IPC and the said First Information Report is Ex.P.8.

(7) The Investigating Officer of the case, who deposed as P.W.10, stated that he took up the case in Crime No.373/2009 for investigation and visited the occurrence spot near the Aavin Milk Booth in South Canal Bank Road and prepared an Observation Mahazar Ex.P.10 and Rough Sketch Ex.P.11 between 15.45 and 16.00 hours on 16.04.2009. Subsequently, he examined the witnesses and recorded their statements. Thereafter, on 20.04.2009 around 9.30 a.m., he arrested the 2nd accused Munusamy in the presence of witnesses and recorded the confession statement given by him. On the basis of the same, he recovered the weapon M.O.1 Knife and the admissible portion of the confession of the 2nd accused is marked as Ex.P.12. He further stated that he examined the 1st accused in the police station and also recovered M.O.2 Bajaj Pulsar Bike from the 2nd accused Munusamy, while arresting him under Seizure Mahazar Ex.P.5. After completing the investigation, he laid charge sheet against both the accused under Sections 341, 326 and 307 read with 34 of IPC.

(8) Based on the above materials, the lower court framed charges under Sections 341 and 307 of IPC against both the accused. Since the accused denied the charges, they were put on trial. During the course of trial, on the side of the prosecution, as many as 10 witnesses were examined and 12 documents were marked, and 2 material objects were produced.

(9) When the incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. But, they have not examined any witness on their side, but marked Ex.D1 to Ex.D.4, namely, Accident Register Copy issued to one Balaji, First Information Report in Cr.No.372/2009, Statement of one Moulana and Observation Mahazar in connection with the case in Cr.No.372/2009 on their side. Their defence was a total denial. Having considered the above materials, the trial court found the 1st accused guilty under Sections 341 and 326 of IPC and not under Section 307 of IPC and convicted him accordingly as detailed in the first paragraph of this judgment, however, acquitted the 2nd accused. That is how, the 1st accused/appellant is before this Court with this appeal.

10. I have heard Mr.V.Rajamohan, learned Counsel appearing for the appellant and Mr.E.Raja, learned Additional Public Prosecutor for the respondent and also perused the records carefully.

for the respondent and also perused the records carefully.

11. Learned Counsel for the appellant contends that the prosecution has failed to establish the motive for the crime and also failed to establish beyond doubt the presence of the victim and two eye-witnesses at the occurrence spot on the alleged date and time. It is also pointed out that P.Ws.2 and 3 were not shown as witnesses and the earlier occurrence which took place on the same day was not taken into consideration. The trial court has not appreciated the oral and documentary evidence properly and the reasoning given by the trial court for holding that the 1st accused alone guilty for the offence alleged by the prosecution is unsustainable and seeks to entertain the appeal.

12. The prosecution witnesses have stated that on the occurrence day, while the victim was going along the South Canal Bank Road, the 1st accused came in the motorcycle driven by the 2nd accused Munusamy and the 1st accused/appellant herein Hemanth, who was travelling as a Pillion Rider, took out M.O.1 Knife from his packet and assaulted the victim P.W.1 Babu. According to P.W.1, the 1st accused assaulted him with knife stating that only due to P.W.1, there was problem in the family and wanted to put an end to his life.

13. It is pointed out that in the First Information Report it is stated that there existed a dispute between the uncles of P.W.1 and there was a civil case relating to property between them and the families of the Uncles of P.W.1, namely, Anand and Ashok Kumar, used to quarrel with each other and P.W.1 used to intervene and pacify them. Whenever P.W.1 Babu attempted to pacify them, they used to quarrel with him. Thus, even in the F.I.R., it is stated that a dispute existed between the family members of P.W.1's uncles, namely, Ashok and Anand. There is nothing stated specifically in the complaint or in the oral evidence of P.W.1 about any previous enmity between himself and the 1st accused, who is the son of the above said Ashok.

14. It is evident from the averment in the F.I.R. that frequent quarrels took place between Anand and Ashok. The said Anand is examined as P.W.3. Further, P.W.1 has categorically stated in his evidence that the father of the 1st accused one Ashok and P.W.3 Anand used to quarrel between them and he used to pacify them. Thus, there is nothing on record to show that either the first accused or his father Anand used to fight with P.W.1. In these circumstances, in the absence of any other materials placed before the Court, as rightly pointed out by the learned Counsel for the appellant, the

rightly pointed out by the learned Counsel for the appellant, the prosecution has not established any motive for the alleged occurrence.

15. The incident is stated to have taken place at 11.00 a.m. on 14.04.2009. P.W.1 has stated that he is working as a painter and used to go for work by 9.00 a.m. and return back by 5.00 p.m. He further stated that on the occurrence day, there was an earlier incident and he is no way connected with the said occurrence. P.W.1 further stated that he is unaware as who was injured on the earlier incident and in connection with that incident, his sister as well as Martin Paulraj and Anand went to the Police Station to give complaint and as he has left for his work, he do not know as to when they went to lodge the complaint.

16. Pointing it out, the learned Counsel for the appellant contended that when P.W.1 has categorically stated that he has left for his work on the occurrence day and in view of his evidence that he normally goes for work at 9.00 a.m. and comes back at 5.00 p.m., it is doubtful as to whether he was present at the occurrence spot at 11.40 hours as claimed by the prosecution.

17. P.W.1 has stated categorically that on 14.04.2009, prior to

and in respect of the same, a complaint was laid. The eye-witness to the present occurrence examined by the prosecution-P.W.2 stated that he is working as an Advertisement Board Writer and knew the accused and P.W.1 is his brother-in-law. As stated earlier, P.W.2 also stated in his chief examination that the victim P.W.1 was assaulted by the 1st accused at about 11.30 a.m. by using M.O.1 Knife. While P.W.2 stated that whenever any issue arises in this area or in his family, he used to write complaint, but, he did not write the complaint about the incident which took place in the morning, on the occurrence day, prior to the present occurrence. However, P.W.2 stated that as dictated by him, another person wrote the complaint about the morning incident, but, he does not know as to who that person was. On further cross-examination, P.W.2 stated that he did not dictate the contents, but he was only present along with the said writer. According to P.W.2, it took about half-an-hour to prepare the complaint about the earlier occurrence and the time was about 10.30 a.m. P.W.2 also stated that from the time of lodging the complaint, till the case was registered, all of them remained in the police station.

18. Likewise the other eye-witness P.W.3 Anand who is the uncle of P.W.1 stated that on the occurrence day, there was a property dispute between himself and his elder brother and consequently, his

dispute between himself and his elder brother and consequently, his wife and his brother's wife also quarreled and on intimation from his wife, he came there and compromised them. At that time, P.W.1, who is the son of his eldest brother, was going in the main road and himself and his son-in-law/P.W.2 Balu, followed him and at that time, the 1st accused Babu came there and assaulted P.W.1 on his head and left forearm with knife marked as M.O.1 and the occurrence took place at about 11.30 a.m. On cross-examination, P.W.3 stated that the occurrence took place on 16.04.2009 and on the same day morning, another incident also occurred wherein his wife and his son got into quarrel wherein his son Balaji @ Martin was injured. The said occurrence took place around 10.30 a.m. and in connection with the same, they went to the police station to lodge a complaint. The complaint was written in the station itself and his wife lodged the complaint. He further stated that they returned back only after the case was registered in the police station by about 11.00 or 11.30 a.m. On their return, P.W.3 stated that he saw the present case occurrence. Thus, it is clear from the admission of the above said witnesses that on the fateful day, there was a prior incident which took place at 10.30 a.m. wherein the members of the P.W.2's family were injured and the quarrel was between the brothers and a complaint in that connection was lodged in the police station.

19. Taking into consideration that the complaint was written only after the alleged occurrence at 10.30 a.m. and pointing out that P.Ws.2 and 3 having stated categorically that they went to the police station to lodge the complaint about the earlier occurrence and remained therein till the case was registered, doubt arises as to whether they would have returned back by 11.30 a.m. to the occurrence site where the present occurrence is stated to have taken place. It creates doubt on the presence of these two witnesses.

20. The Sub-Inspector of Police, who deposed as P.W.8 in his cross-examination stated that prior to this occurrence, another incident took place in the morning on the same day and he registered a First Information Report in that regard. He further stated that in C.C.9910/2009 on the file of the XXIII Metropolitan Magistrate Court, he deposed as P.W.8. The said deposition is marked as Ex.D4 in this case.

21. According to P.W.8, he has stated in the above said case that the accused in that case was secured by 11.00 a.m. in South Canal Bank Road and the present incident is stated to have taken place near the milk booth in the same road. Thus pointing it out, the learned Counsel for the appellant contended that assuming that P.W.8

learned Counsel for the appellant contended that assuming that P.W.8 Sub-Inspector of Police was present there in the same road around 11.00 a.m., and secured the accused in the earlier case, he would have certainly noticed this occurrence, if it had taken place, but the claim of P.W.8 that he was informed about the present occurrence over phone at 13.50 hours and then only, he came to know about the incident creates suspicion as to whether really the occurrence as alleged by the prosecution took place at about 11.30 a.m. Further in respect of the prior incident, which is stated to have taken place on the same day, wherein the relatives of P.W.1 as well as the 1st accused herein was involved, it is stated by P.W.8 Sub-Inspector of Police that he registered a case in Cr.No.372/2009 and the persons who were shown as accused in that case are the sister, mother and mother-in-law of the 1st accused herein.

22. Pointing it out the above said admission of P.W.8, the learned Counsel for the appellant contended that it is unbelievable that when the police was present in the spot in the same area, the present incident would have taken place and the same would not have been noticed by P.W.8 and his men. Further, the learned Counsel for the appellant also pointed out the admission of the Investigating Officer of the case P.W.10 in his evidence. P.W.10 stated that F.I.R. in Crime No.379/2009 marked as Ex.D2 was registered in their police

at what time. He further stated that though he has stated that there used to be frequent quarrels between the family of P.W.1 and the family of the 1st accused regarding property, but, he has not produced the CSR prepared at that time. Thus, in the light of the above said statements of P.Ws.8 and 10, doubt arises as to whether really the alleged eye-witnesses P.Ws.2 and 3 would have come back to the occurrence spot at 11.30 a.m. since they have gone to the police station and remained there till the case was registered about the earlier occurrence. Further, P.W.10 Investigating Officer admitted that P.Ws.2 and 3 have not stated in their statements given to him about witnessing the present case occurrence. Likewise, it is admitted by him that P.W.1 has not stated in his statement that at the time of occurrence, P.Ws.2 and 3 were taking tea nearby and they brought him to the Government Hospital. It also creates doubt as to whether really P.Ws.2 and 3 were present at the occurrence spot.

23. Further, the victim P.W.1 has stated that while he was walking along the road, the accused came in the motorcycle from behind and assaulted him. On the other hand, P.W.2, the alleged eye-witness to the occurrence was categorical in stating that himself and P.W.3 Anand were walking 15 feet behind P.W.1 towards west and the accused did not cross them, but came in the opposite direction from

accused did not cross them, but came in the opposite direction from west to east and stopped P.W.1 and assaulted him. Since the occurrence took place suddenly, they were not able to prevent the same.

24. The other eye-witness P.W.3 stated in his Chief Examination that while P.W.1 was walking 10 feet ahead of himself and P.W.2 towards west, the accused came and assaulted P.W.1. However P.W.3 stated that he does not know from which direction, the accused came to the spot. Thus, in view of the above said contradictory evidences of P.W.1 to 3 doubt arises as to whether really the accused came and assaulted the victim as claimed by the prosecution.

25. In view of the above discussion that the victim who admittedly was working as a painter and used to go for work by 9.00 a.m. has not established the fact that he himself was walking along the Main Road at 11.30 a.m. on the occurrence day as stated earlier and the fact P.W.1 himself admitted in his cross-examination that he was unaware about the person injured in the earlier incident and at what time the complaint was lodged about the earlier occurrence, since he has left for his job, on that day, it is doubtful as to whether really P.W.1 was walking along the South Canal Main Road at the

26. It is claimed by P.W.10, the Investigating Officer that he secured the 2nd accused Munusamy @ Rajendran on 20.04.2009 at 09.30 a.m. near R.K.Mutt Road, Mandaveli, Chennai in the presence of P.W.5 Ravi and P.W.6 Elumalai and recorded his confession statement and recovered M.O.1 Knife from his house as identified by him and the admission portion of the confession of the 2nd accused is marked as Ex.P.12. The trial court has acquitted the 2nd accused and as against the said acquittal, no appeal is preferred by the State.

27. While P.W.10 has stated so about securing the 2nd accused, the witnesses for the same, namely, P.W.5 turned hostile and failed to support the case of the prosecution. He stated that he did not know the contents of the Mahazar and he signed in the Police Station. P.W.6 Elumalai, another witness to the recovery stated that the M.O.2 Motorcycle driven by the 2nd accused was recovered as per Ex.P.5 Mahazar and thereafter, M.O.1 Knife was recovered from the house of the 2nd accused as per Ex.P.6 Mahazar. However, in the evidence of P.W.10, it is stated in his cross-examination that the 2nd accused appeared in the police station on notice and as P.W.6 Elumalai was present there, signature was obtained from him.

28. In such circumstances, doubt arises whether really the 2nd

28. In such circumstances, doubt arises whether really the 2nd accused was secured and M.O.1 and were recovered in the manner as claimed by the prosecution. There is no Serological Report filed by the prosecution to connect the M.O.1 weapon to the alleged occurrence. The Doctor, who treated P.W.1, while deposing as P.W.7 stated that he found a mild fracture in the left hand finger and the victim Babu was treated as inpatient for 3 days. He issued Ex.P.7 Wound Certificate stating that the injury is grievous injury. It is clear from the medical evidence that P.W.1 Babu suffered a fracture and the same is in the nature of grievous injury, but the issue to be considered is as to whether the injury was caused by the 1st accused as alleged by the prosecution.

29. As stated earlier, the presence of eye-witnesses to the occurrence is doubtful and there was an earlier incident in respect of which the FIR marked as Ex.D2 was registered on 16.04.2009 at 12.00 Noon and the eye-witnesses 2 and 3 have stated categorically that they were in the police station till the FIR was registered about the first occurrence. If Ex.D2 F.I.R. was registered at 12.00 Noon, it is impossible for them to witness the alleged occurrence at 11.30 a.m. Further, as stated earlier, it is the evidence of P.W.1 as well as the prosecution case that the dispute was only between the father of the

nothing on record to show that there was any dispute between the 1st accused and P.W.1. In such circumstances, there is nothing on record to prove the motive of the alleged offence.

30. In such circumstances, in the absence of evidence to prove the motive for the occurrence and also the contradictions in the evidence of P.Ws.1 to 3 as to from which direction the accused came and assaulted and in view of the fact that the presence of P.Ws.2 and 3 on the occurrence spot appears to be doubtful and the recovery of M.O.1 is also not established beyond doubt, this Court is of the view that benefit of doubt should go to the accused and the conclusion arrived at by the trial court and the reason stated for the same to hold the appellant/1st accused guilty of the offence under Sections 341 and 326 of IPC is unsustainable and the same is liable to be set aside.

31. In the result, the Criminal Appeal is allowed and the appellant/1st accused is acquitted. The conviction and sentence imposed on the 1st accused by the trial court are set aside. The bail bond, if any executed by the 1st accused, shall stand discharged. The fine amount, if any, paid by the 1st accused, shall be refunded to him.

17.07.2017

17.07.2017

Index:Yes/No
Internet:Yes/No
tsi

To

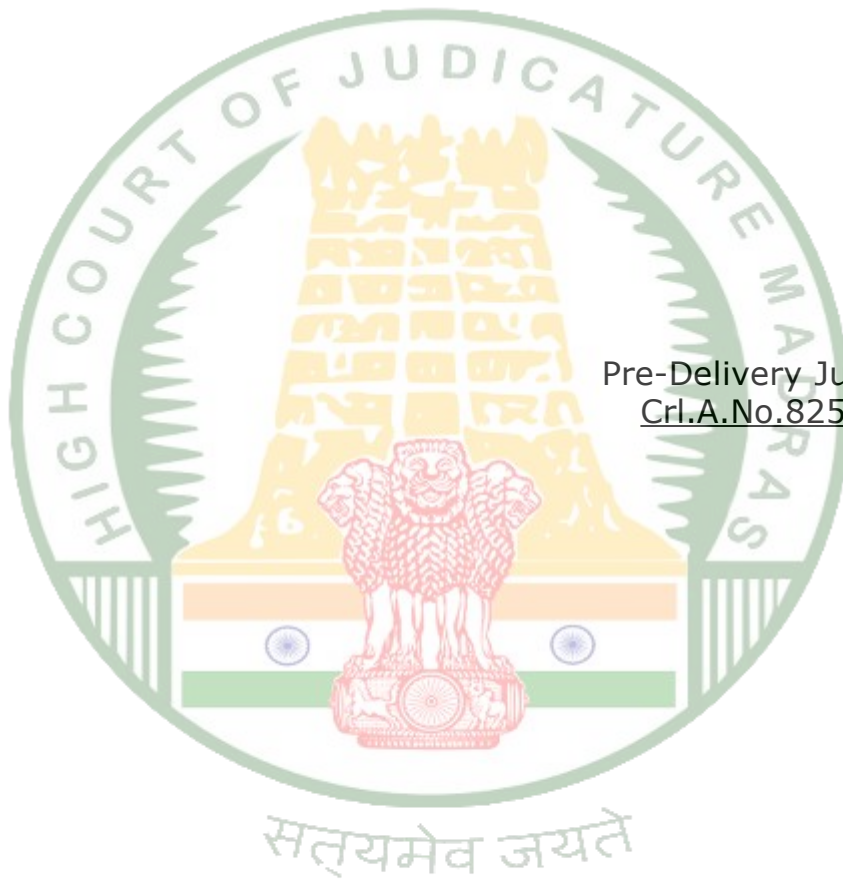
- 1.The Inspector of Police, E.5, Pattinappakkam Police Station, Chennai.
2. The II Additional Sessions Judge, City Civil Court, Chennai.
3. The Public Prosecutor, High Court, Chennai.



WEB COPY

S.BASKARAN, J.

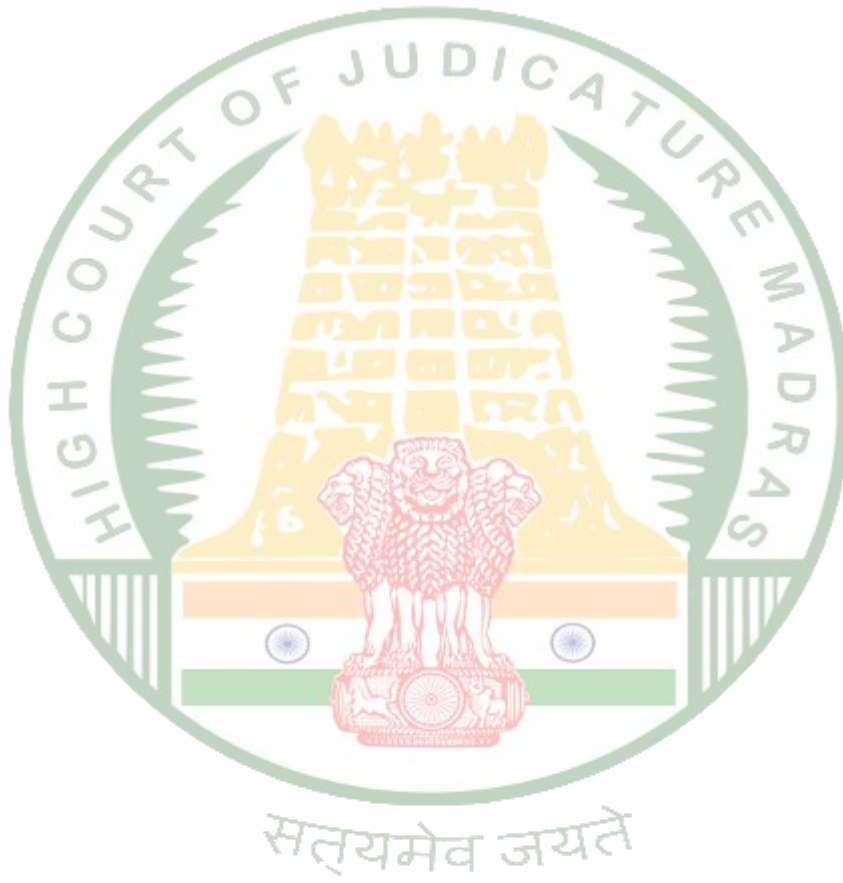
tsi



Pre-Delivery Judgment in
Crl.A.No.825 of 2012

17.07.2017

WEB COPY



WEB COPY

**Advance Order in
Crl.A.No.632 of 2011**

S.BASKARAN, J.

The Criminal Appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused/appellant by the learned Sessions Judge, Mahila Court, Chennai made in S.C.No.140/2009 dated 16.08.2011 are set aside. Therefore, the accused/appellant is ordered to be released forthwith from the prison, unless his presence is required in connection with any other case.

12.07.2017
nvsri
WEB COPY

To
The Superintendent,
Central Prison,
Puzhal, Chennai.