

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2018
Pronounced on : 12.09.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA
and
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

Crl.A.No.370 of 2017

Selvaraj ... Appellant/Accused

versus

State

Rep. by its Inspector of Police,
Erode North Police Station,
Erode District.
(Crime No.444/2016)

... Respondent

Criminal Appeal filed under Section 374 (2) of CrI.P.C. seeking to set aside the conviction imposed in Judgment dated 19.05.2017 made in S.C.No.4 of 2017 on the file of the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, by allowing this appeal.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.Mohammed Riyas, APP

JUDGMENT

DR. S. VIMALA, J.

This Criminal Appeal has been filed by the appellant, challenging the Judgment dated 19.05.2017, made in S.C.No.4 of 2017 on the file of the learned Additional Sessions Judge, Magalir Neethi Mandaram (Fast Track Mahila Court), Erode.

2. Accepting the prosecution case that the accused murdered his wife, the trial court found the appellant/accused guilty for the offence punishable under Section 302 IPC and convicted and sentenced him to undergo imprisonment for life together with a fine of Rs.5,000/- in default, to undergo simple imprisonment for a period of two years.

3. Brief facts:

(i) The marriage of the deceased and the accused took place on 13.12.2009, with the consent of the parents, though it was originally proposed and finalized, on account of the blossoming of love between them. After their marriage, the couple lived in

Pannimadai at Coimbatore, i.e., the native place of the appellant/accused. During their marital relationship, they were blessed with two children. However, marital discord arose in their matrimonial life, due to which the accused and the deceased had frequent quarrels with each other on account of the accused suspecting the fidelity of the deceased.

(ii) Due to the said marital discord, the deceased came over to reside at Periyasemur in Erode District, along with her husband and they were living in the house of one Chandrasekar, the junior paternal uncle of the deceased. But even then, the strained relationship continued and the accused continuously quarreled with the deceased. Unable to bear the torture, the deceased preferred a complaint before the All Women Police Station, Erode. Thereafter, three months prior to the occurrence, the deceased left the accused and started living with her mother.

(iii) On 11.08.2016, at about 2.00 p.m., the appellant/accused came to the house of the deceased and called upon her to come and live along with him. Since she refused, a wordy quarrel ensued and enraged over the same, the accused beat the deceased with his hands and strangled her and dashed her head against the wall saying that, if she is not willing to live along with him, she may as well die. Due to the continued attack, the deceased fell down unconscious. The deceased was taken in an ambulance to the Government Hospital, Erode, from where, she was referred to Mohan Kumaramangalam Government Medical College and Hospital, Salem, where she succumbed to the injuries on 12.08.2016.

(iv) On the basis of the complaint given by P.W.1, a case was registered in Cr.No.444 of 2016 on the file of the Erode North Police, against the accused under Section 302 IPC, on 12.08.2016. P.W.15, the then Deputy Superintendent Police went to the place of occurrence and in the presence of witnesses, prepared observation mahazar, Ex.P2 and drew rough sketch, Ex.P-14. He examined the witnesses and recorded their statements and sent the file to P.W.18, the Inspector of Police, North Police Station, Erode, for further investigation.

(v) P.W.18, on receipt of the file, arrested the accused and recorded his confession statement and handed over the investigation to his successor, P.W.19, for further investigation. P.W.19 recorded the statement of P.W.1, the defacto complainant and after obtaining the postmortem report of the deceased, had chosen to add Section 498 (A) along with under Section 302 IPC and sent the altered report to the Court.

(vi) The prosecution, in order to substantiate the case against the accused, examined P.W.s 1 to 19 and marked Ex.P-1 to Ex.P-19. On the side of the accused, there is no evidence. After considering the oral and documentary evidence placed before it, while the Trial Court found the accused guilty for the offence under Section 302 IPC and sentenced him to undergo life imprisonment, acquitted the accused of the offence under

Section 498(A) IPC.

3. Before the Trial Court, the prosecution mainly relied upon the evidence of P.W.1, the mother of the deceased and P.W.5-Chandrasekaran, brother-in-law of P.W.1, i.e., the junior paternal uncle of the deceased, apart from, the evidence of two eye-witnesses to the occurrence, i.e., P.W.s 2 and 3.

4. In the evidence of P.W.1, she deposed that on 11.08.2016, the accused came to the house of the deceased in an intoxicated state and when the deceased asked about the children, the accused indiscriminately scolded her by using abusive language and forced her to come and live along with him and when the deceased refused, he dashed her head against the wall, due to which, the deceased fell down unconsciously. With the key of his two wheeler, he caused injuries over the right side ear of the deceased. P.W.1 further deposed that the continuous hitting over the abdomen of the deceased caused profused bleeding from the mouth of the deceased. When this was questioned by P.W.s 1 to 3, the accused said that it is his private affairs. The deceased was not in a position to drink water. Immediately, she was shifted to the Erode Government Hospital through Ambulance, from where, she was referred to Salem Government Hospital. However, inspite of treatment, the deceased died at 04.00 a.m. on 12.08.2016. On the death of the deceased, P.W.1 lodged a written complaint, which was written by P.W.5.

5. In the background of the evidence of P.W.1, the probability of occurrence, as spoken to by the prosecution, has to be tested.

6. The evidence of P.W.1, in cross-examination, reveals that the desire of the deceased to have her mother, along with her, was not to the liking of the accused and there had been frequent quarrels on account of the same; P.W.1 had been along with the couple for a period of two years at Coimbatore. It is also admitted that the deceased had been borrowing money, which was being repaid by the parents of the accused, though the deceased had been insisting upon partition of the properties. The deceased had been insisting upon a separate family to be set up, for which the parents of the accused consented. It is admitted that after the occurrence, people in and around the scene of occurrence, numbering about 10, assembled at the place of occurrence. It is further stated in the evidence, that when they went to Erode Government Hospital, the accused was available there and she was enquired by the Police and her statement was reduced into writing and thereafter, she signed that. On P.W.1 identifying the accused, the Erode Police took the accused into custody and thereafter, the accused also accompanied the deceased to the Salem Hospital. In the Salem

Hospital also, the police enquired both P.W.1 and the accused and the Police were present with them till the death of the deceased. Thereafter, the accused and P.W.1 were taken to Erode Police Station. Thereafter, the accused was taken to Salem Police Station.

7. P.W.2, who is the neighbour of P.W.1, stated that there was quarrel between the deceased and the accused; the deceased was beaten by the accused and when he went to separate them, the accused attempted to beat him and thereafter, he left the place. Strangely, he did not speak about the presence of P.W.1 at the place of occurrence. He stated that at the time of occurrence, he was present along with accused. P.W.2 further went on to state that the accused travelled along with the deceased Suba and P.W.1, when the deceased was taken to the hospital.

8. The evidence of P.W.3 regarding the accused accompanying the deceased to the hospital was on similar lines as spoken to by P.W.2. P.W.3 further deposed that there were bloodstains on the floor (about three feet) in the walls as well as in the dress of the deceased and it was shown to the police officials.

9. The deposition of P.W.5, who is related to the deceased, reveals that the accused and the deceased were living in his house for two months and frequent quarrels arose between them; that he was informed over phone at about 3.00 p.m. that the accused had beaten the deceased and the deceased suffered fits and the deceased had been taken to Erode Government Hospital. P.W.5 further went on to depose that he did not write the complaint, but it was written by one Jambulingam.

10. The core question that requires to be considered is whether the evidence of the above witnesses, taken cumulatively together, supports the case of the prosecution.

11. Though P.W.1 stated that the accused was very well available along with her in the ambulance and accompanied the deceased to the hospital, P.W.7-Saravanan would state that the accused was arrested on 14.08.2016 at Erode Bus Stand. Pointing to the above, it is the submission of the learned counsel appearing for the accused that the arrest of the accused, as spoken to by the prosecution, cannot be true, which stands disproved by the evidence of P.W.7.

12. As per Ex.P-3, the earliest version before Dr.Suresh (Ex.P-3) is that the deceased had been beaten by a known person which could have been given only by the accused, as the deceased had been unconscious at that point of time. The doctor would further state that intimation was given to the police under Ex.P4, after registering Ex.P3, Accident Information Report. The Doctor was examined by the Inspector on the same day.

13. The Doctor who conducted postmortem has stated that the deceased would have died on account of multiple injuries. Though the accident register copy mentions only three injuries, the doctor has mentioned six injuries in the postmortem report. Pointing out the same, the learned counsel for the accused submits that the injuries found on the body of the deceased during post mortem have not been explained by the prosecution and, therefore, the case of the prosecution is unbelievable.

13.1. A perusal of the injuries as noted in the post mortem report and the comparison of the same with the injuries noted in the Accident Register Copy would clearly go to show that certain injuries would have been noted only on account of postmortem having been done and therefore, the omission of those injuries, in the accident register copy, is obviously reasonable. So far as the remaining external injuries are concerned, perhaps, the Doctors, in a hurry to refer the patient to the hospital for saving the life, should have omitted to take note of the injuries in the left ear. In any event, those injuries could not have been caused in the intervening time as the injuries are unlikely to have been caused by somebody else, having regard to the part of the body which got affected on account of the injuries.

14. It is the contention of the learned counsel appearing for the accused that there was no complaint at the earliest point of time and this could have been on account of the fact that mistake was not on the part of the accused; that the death of the deceased had infuriated the defacto complainant and only on account of that, false complaint should have been laid against the accused.

14.1. Pointing out the statement of P.W.1 that she was not willing to give any complaint at that point of time when the accused caused the injuries on the deceased, it is pointed out that the prosecution has not explained the reason as to why P.W.1 was not willing to give complaint immediately after the occurrence and non-explanation of the same is detrimental to the prosecution case.

14.2. Though such a contention is advanced, the fact remains that the incident had happened between the spouse and at that point of time, no one would have thought that the deceased would succumb to her injuries and, therefore, keeping in mind the welfare of the children, P.W.1 would have restrained herself from giving the complaint. However, the death of the deceased would have made her give the complaint at a later point of time. Therefore, not giving the complaint at the immediate point of time would not go to show that there was a mistake on the part of the accused.

14.3. It is the contention of the learned counsel for the accused that the Investigating Officer in his evidence has stated that no information was received by the Erode Police till

about 10.00 a.m., on 12.08.2016 which is contrary to the evidence of Sub-Inspector of Police. It is therefore submitted that the earlier complaint has been suppressed by the prosecution to fasten the liability on the accused, as the perpetrator of the crime and, therefore, the delay in registering the case is a fatal to the case of the prosecution.

14.4. Delay in preferring the complaint even after the death of the deceased is also commented upon and it is argued towards throwing out the prosecution case unbelievable.

14.5. No doubt, there is some delay in lodging the complaint and there are some trivial omissions and additions in the evidence of the witnesses relating to the delay in the arrest of the accused and the place in which the accused might have been arrested. Whether this delay could have been a cause to fix the accused is the main point to be considered. It is nobody's case that apart from the accused herein whomever was involved in the occurrence. Admittedly, the dispute was between the couple. Even in the accident register copy, it is mentioned that the injuries of the deceased were caused by a known person. Admittedly, the deceased had been taken to hospital by the accused. Therefore, the reference known person only fixes the accused. Therefore, the delay in preferring the complaint do not affect the merits of the prosecution case.

15. It is contended by the learned counsel appearing for the appellant / accused that in the report of P.W.17, the Revenue Divisional Officer, it is stated that the cause for the incident was not dowry. But, he would state that the statement of P.W.1-Krishnaveni was obtained only on 02.09.2016. The inquest report itself has been made ready only on 02.09.2016. There is a vital admission that the statements of P.W.2 and P.W.3 before him was that they heard about the occurrence and thereafter, they went and saw the deceased in an unconscious state. Therefore, as rightly contended by the learned counsel for the accused, P.W.s 2 and 3 could not have been eye witnesses to the occurrence. Therefore, the only evidence available with reference to the actual incident is only that of P.W.1-the mother of the deceased.

16. The contention of the learned counsel for the accused that P.W.1 could not have been an eye-witness to the occurrence, since had she seen the occurrence, she would not have let the accused travelled along with her in the ambulance when the deceased was taken to the hospital.

16.1. The above contention of the learned counsel for the accused merits acceptance. No mother-in-law, who has witnessed the brutal attack on her daughter, viz., the deceased, would have allowed her son-in-law to accompany the deceased. Therefore, it stands to reason that P.W.1 would not have been an eye witness to the occurrence, but later would have accompanied the deceased along with the accused to the hospital. Moreover,

if she had been an eyewitness to the occurrence, certainly as a mother she would have been tempted to prevent the occurrence and in that event, there is likelihood of her sustaining injuries also. That is also not the case here.

17. In the communication dated 13.08.2016, the Deputy Superintendent of Police has directed the Inspector of Police to continue further investigation and arrest the accused. In the said letter, it is stated that from the investigation conducted by him and enquiry conducted by the Revenue Divisional Officer, it came to light that the death was not on account of demand for dowry, but on account of hurt caused by the accused. It is not known how such a communication was sent when the inquest report itself is dated 02.09.2016.

17.1. In the communication dated 23.09.2016 by the Deputy Superintendent of Police, to the Inspector of Police, Erode, two references have been made.

17.2. The first reference is about the North Police Station Cr.No.444 of 2016, which reads that Section is altered from 174 Cr.P.C. to 302 IPC.

17.3. The second reference is about the inquest report dated 03.09.2016.

17.4. Pointing out this, the learned counsel for the accused submits that the earlier complaint has been suppressed is fully supported by the reference cited supra with reference to alteration of offence from Section 174 Cr.P.C. to Section 302 IPC. There is no complaint filed or sent to the Court which has been registered under Section 174 Cr.P.C.

18. At this juncture, it is necessary to look into the evidence of P.W.15 the Deputy Superintendent Police. P.W.15 has deposed that as it is a case registered under Section 174 Cr.P.C., the requisition was sent to Erode Revenue Divisional Officer for inquiry.

19. It is the contention of the learned counsel for the accused that there is no explanation as to what happened to the case registered under Section 174 Cr.P.C. It is further contended by the learned counsel for the accused that the evidence of P.W.15 supports the case of the appellant that the earlier complaint under Section 174 Cr.P.C. has been suppressed and subsequent complaint has been brought into existence and therefore the prosecution case must be thrown out.

20. No doubt, P.W.15 has categorically stated that the offence was altered from Section 174 Cr.P.C. to Section 302 IPC but has further deposed that it is not for the purpose of suppressing the evidence and to give undue advantage to the accused to escape from the clutches of law. Though the above discrepancies stare at the face of the prosecution theory,

however, the fact remains that at the earliest point of time, the doctor has recorded the statement of the deceased, who has stated that the injuries were caused by a known person. Immediately, after the death of the deceased, postmortem has been conducted and opinion has been given that the death was on account of the injuries sustained.

21. The deposition of P.W.5 reveals that there were frequent quarrels between the accused and the deceased and the death of the deceased was informed to him over phone by P.W.1. Under the above circumstances, it would not have been possible for the Police to register a case under Section 174 Cr.P.C, except for the misunderstanding of the law. Therefore, no advantage can be taken by the accused to the evidence which is patently incorrect and is against the other facts and circumstances available on records.

22. In the absence of any eye-witnesses to the occurrence and when the evidence reveals that the deceased was originally admitted by the accused in the hospital, as per records, and in the light of the fact that P.W.1 and the accused had gone together to admit the deceased in the hospital would go to show that the occurrence would not have taken place in the manner alleged by the prosecution.

23. However, admittedly, it is for the accused to explain under what circumstances, he happened to admit the deceased in the hospital. Admittedly, the accused had not preferred any complaint against anybody for having caused the injuries on the deceased, who is none other than his wife. It is within his personal knowledge to explain under what circumstance his wife suffered the injuries. In any event, it is for him to explain how he came to know that his wife had sustained injuries and she needs to be hospitalized. In the absence any explanation, finger of suspicion, points to the accused.

24. The question that arises for consideration is whether there was intention on the part of the accused to cause murder of his wife. In other words, whether the case of the accused in the context would be covered under Section 302 IPC or it would be covered under any of the exceptions to 300 IPC is the issue to be considered.

25. The evidence available on record reveals that frequent quarrels used to take place between the accused and the deceased. The matrimonial discord that had divided the spouses would have had a telling effect on the mental capacity of the accused and the sustained provocation could have led to the murder of the deceased. Had there been any premeditation in the mind of the accused to cause the murder of his wife, definitely, the accused would have chosen to run away from the place of

occurrence and he would not have taken the deceased to the hospital. The sustained provocation gains weight from the fact that on previous occasions the accused had accepted the demand of the deceased for a separate family and that he had been living with her. Even thereafter, leaving the small children at the custody of the husband, the deceased had chosen to be with her mother. Even on the day of occurrence, only at her call, the husband has chosen to come to meet the wife along with the children towards fulfilling her wishes. The quarrel itself has started only on the request of the accused to come and live with him. This very start runs against the theory of murder. A person intending to cause murder could not have a plan to live with her. The strain on the accused might have been on account of the pestering of the deceased to allow her mother to live with them, which was not to the liking of the accused. The deposition of P.W.1, in cross examination, shows that there had been difference of opinion between the couple leading to frequent quarrels.

26. In this regard, useful reference can be had to the decision of the Supreme Court in the case of *Re : Jabamalai Royappan & Anr.* (MANU/TN/0528/1980), wherein the Apex Court, considering the very many pronouncements of the above subject held as under :-

"39. In *Riasat - Vs - State of U.P.* (AIR 13969 SC 73:: 1969 (1) SCWR 208), the facts were that the accused pushed

..... In these circumstances, we think that the only inference which would have been justifiably drawn was that the appellant did not intend to cause the death of Smt. Halima or to cause such injuries as would, in the ordinary course of nature, result in her death; but, he did try to punish her by causing "her severe pain by applying great pressure with the knees. He should therefore, have had the knowledge that the injuries which he was likely to cause, might result in death, even though he was not intending to cause death.

The principles laid down in the above case would on all fours be applicable to the facts of the present case."

27. The above ratio laid down by the Supreme Court in a catena of decisions squarely stand attracted to the case on hand. The totality of circumstance only indicate that the accused might have beaten the deceased not with an intention to cause death, but with the knowledge that by his conduct, he is likely to cause death. Under the circumstance, the act of the accused would definitely stand excluded from Section 302 IPC,

but would fall under Section 304 II IPC.

28. At this juncture, it will be useful to refer to Section 304 IPC, which reads thus:-

"304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

28.1. Distinction between Part I and II of Section 304 IPC.
- When it is proved that the accused had the intention to cause such bodily injury as is likely to cause death, the offence committed is punishable under Section 304 Part I IPC. When he had the grave and sudden provocation to cause death of the deceased, the offence committed is punishable under Section 304 IPC (Bonda Devasu v. State of A.P. (1996) 7 SCC 115 : 1996 SCC (Cri.) 187).

29. Before parting with this case, we would like to place some comments which would be helpful either for the daughters in not listening to the destructive advice from the parents or to the mothers who would not choose to cross laxman rekha.

30. A happy family is but an earlier heaven, said George Bernard Shaw. But, it had been an earlier hell for the entire family of the accused, on account of the death of the deceased. The children have lost their mother, the mother has lost her daughter and the husband has lost his wife. The very object of the creation of the family is destructed on account of the conduct of a person who himself had shown great interest in the creation of the family. The concept of family is different nation wide. Perhaps, for the foreign countries, the word family may indicate an individual, but in an Indian society, the word family includes many generations in the family, even after the marriage of the person. In a joint family system, which is prevalent in the Indian Society, which is basically patriarchal, interference on the maternal side remains as a blockade for the progress in the family. The interference may be in dual ways, i.e., either constructive or destructive. So far as this case is concerned, the circumstances only indicate it is only the destructive interference by the mother of the deceased, that has cost the entire life of the deceased. The evidence indicate that the husband though disliked the presence of the mother has

tolerated her for a period of two years. Even thereafter, the attraction for the daughter had been drawn towards the mother despite the presence of the husband and her children.

31. P.W.5-Chandrasekar is the junior paternal uncle of the deceased. It is he who have given an accommodation for the deceased who would arrive at his house after having a scuffle with her husband. The deceased would stay there for two or three days at Erode. Then, P.W.5 would bring the accused, pacify both the husband and the wife and despatch them to Coimbatore. Thereafter, the deceased came to the house of P.W.5. Subsequently the accused herein had arrived there and he used to have his stay there for two days and would return to Coimbatore thereafter. The evidence of P.W.5 reveals that the husband was in the habit of seeing his wife at times in the night, i.e., without the knowledge of others. This part of the evidence denotes that the husband himself had to see the wife without the knowledge of the mother. That indicates that the mother who is expected to be a bridge between the husband and the wife in case of disharmony has chosen to be a dividing wall between both of them and thus, permanently the mother had been the cause for the permanent separation between the spouse. The parents of the spouse should be the constructor not the destructor of the matrimonial life. It is better that if the mothers, after the marriage of the daughters, understand the boundary line between their family and the family of the daughter.

32. In the result, while we set aside the conviction and sentence imposed on the appellant u/s 302 IPC, however, find him guilty u/s 304 II IPC and, accordingly, convict and sentence him to undergo rigorous imprisonment for a period of two years. The period of incarceration already undergone by the accused shall be set off as ordered by the trial court. Subject to the above modification in conviction and sentence, this appeal is dismissed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ogy/srk

To

1. Additional Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.

2. Do Through The Principal Sessions Judge
Erode.

3. The Chief Judicial Magistrate
Erode.

4. The Superintendent
Central Prison
Coimbatore.

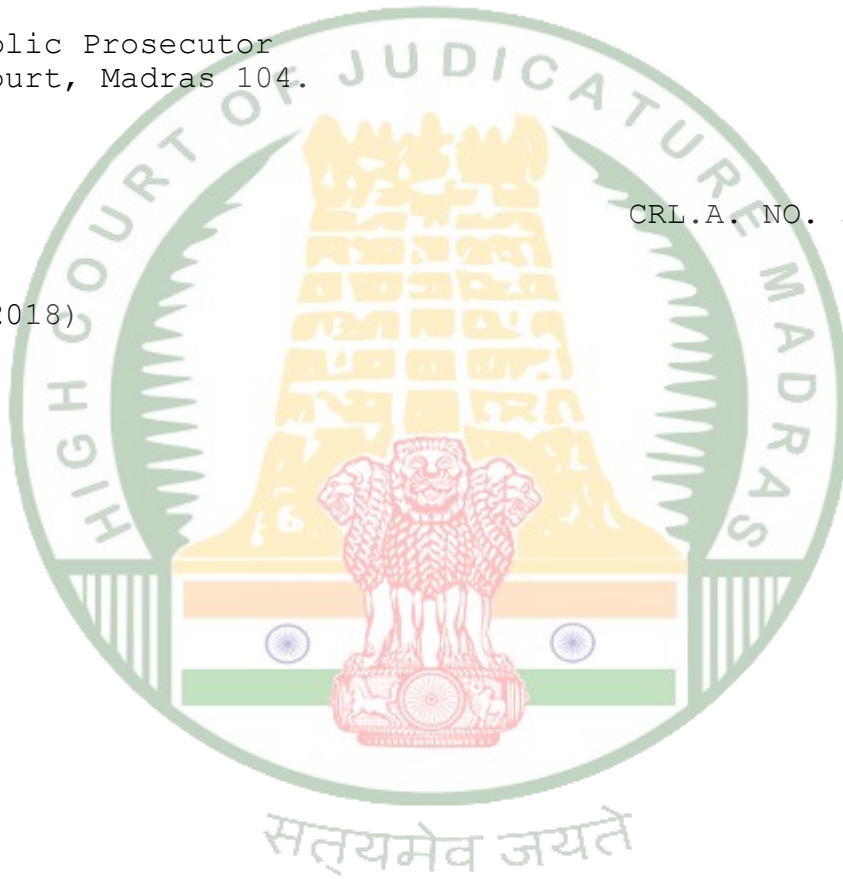
(In duplicate for communication to the detainee)

5. Inspector of Police,
Erode North Police Station,
Erode District.

6. The Public Prosecutor
High Court, Madras 104.

CRL.A. NO. 370 OF 2017

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