

Bail Slip

The Appellant herein/Accused namely Pandi @ Muniyandi, aged 30 years, S/O.Govindasamy was directed to be released on bail as per the order of this court dt:19.6.2013 made in Mp.no.1/13 in Crl.A.No.632/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2019

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.A.No.632/2004

1.Dhandapani

2.Pandi @ Muniyandi

... Appellants/A1
& A2

Vs

The State rep.by
The Inspector of Police
N-1 Royapuram Police Station
Chennai.

..Respondent/Respondent

Prayer:- Criminal Appeal filed under section 374[2] Cr.P.C., against the sentence and conviction passed in SC.No.145/2002 dated 05.02.2004 on the file of the learned VII Additional Sessions Judge, City Civil Court, Chennai.

For Appellants : Mrs.Henrietha Chinnathambi
Legal Aid Counsel

For Respondent : Mrs.S.Thankira, GA [Crl.Side]

JUDGMENT

1. The above criminal appeal is filed by the appellants/accused who are arrayed as A-1 and A-2, challenging the impugned judgment of conviction and sentence imposed on them by the learned VII Additional Sessions Judge, City Civil Court, Chennai dated 05.02.2004 in SC.NO.145/2002. The appellants/accused stood charged and tried for the offences under sections 452 and 307 read with 34 IPC and the Trial Court, vide impugned judgment, had convicted them for the offences under sections 452 and 326 read with 34 IPC and sentenced each of them to undergo 5 years rigorous imprisonment and to pay a fine of Rs.500/-

each with a default sentence of one month rigorous imprisonment for each of the offences u/s.452 and 326 read with 34 IPC. The sentences were ordered to run concurrently. The period of incarceration already undergone by them, was also given set off under section 428 Cr.P.C.

2. The case of the prosecution is that A-1 is the brother-in-law of P.W.1-Pandiyan and A-2 is the friend of A-1 and that after the demise of the wife of P.W.1/sister of A-1, P.W.1 made arrangements to get married for the second time within one year of the death of his wife and enraged by the said decision of P.W.1, A-1 developed enmity and on 18.06.2001 at about 8.30 a.m., with a common intention to do away with the life of P.W.1, both the accused had trespassed into the house of P.W.1 armed with knives and in continuation of the said intention, A-1 had stabbed on the stomach of P.W.1 and A-1 stabbed on the face of P.W.1 and caused grievous injuries. After completion of the investigation, the Final Report had been laid by the Investigating Office against the appellants/accused for the offences under sections 452 and 307 read with 34 IPC.
3. The case was taken on file in CC.No.913/2001 on the file of the learned 16th Metropolitan Magistrate, George Town, Chennai and necessary charges were framed. The accused had denied the charge and sought for trial. In order to bring home the charge against the accused, the prosecution examined 10 witnesses as PW.1 and PW.10 and marked Exs.P.1 to P.11 and M.Os.1 to 4. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313[1][b] Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial and stated that they have been falsely implicated in this case. On behalf of the defence, no oral or documentary evidence was let in.
4. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, had convicted and sentenced the appellants/accused as referred to above, which is challenged in this Criminal Appeal.
5. Mrs.Henrietha Chinnathambi, learned Legal Aid Counsel would submit that the first appellant/A-1, viz., Dhandapani, son of Thangavel, had passed away pending appeal and therefore, the criminal appeal in respect of him got abated.
6. Recording the said submission of the learned Legal Aid Counsel, the criminal appeal in respect of the first appellant/A-1, viz., Dhandapani, S/o.Thangavel, stands ABATED.

7. The learned Legal Aid Counsel appearing for the appellants/Accused while assailing the impugned judgment of conviction and sentence, had put forth the following submissions:
- a) The conviction and sentence imposed by the learned Trial Judge against the appellant on 05.02.2004 in SC.No.145/2002 is illegal and contrary to the evidence before the Court.
 - b) The Trial Court had failed to take into consideration the grave contradictions in the evidence of P.Ws.1 and 2 who are father and son and the eyewitnesses to the occurrence and P.W.1, being the injured witness.
 - c) The injuries stated by P.W.1 in his evidence let in before the Court does not correspond to the injuries mentioned in the Accident Register - Ex.P.11 issued by the doctor - P.W.7 and the injuries mentioned in the Wound Certificate - Ex.P.12 issued by the doctor - P.W.8.
 - d) As per the evidence of P.W.1, A-1 is stated to have inflicted injuries with a knife on the left side of the neck and in the stomach and that A-2 is stated to have inflicted the injury with the knife. However, his evidence is not clear as to which part of the body the 2nd appellant/A-2 had inflicted the injury. Whereas, it the evidence of P.W.2 / the son of P.W.1, who is stated to have witnessed the occurrence and who is said to have given the complaint, that the 2nd appellant/A-2 was having a wooden log and that 1st appellant/A-1 was armed with a knife and that it was the 1st appellant/A-1 who had inflicted the injuries with knife which resulted in the intestines of his father/P.W.1 coming out and that, on hearing the hue and cry, one Selvam, who is the neighbour, had rushed to the scene of occurrence and that, he had taken the injured/P.W.1, father of P.W.2 to the Police Station and thereafter, to Stanley Government Hospital and admitted him.
 - e) P.W.2/son of P.W.1 could not have witnessed the occurrence at all and that the neighbour Selvam, who is stated to have come immediately to the occurrence spot, was not examined by the Investigating Officer, creating a grave doubt and suspicion with regard to the prosecution case.
 - f) The 2nd appellant/A-2 being the friend of the 1st appellant/A-1, had gone to the house of P.W.1/brother-in-law of the 1st appellant/A-1 and the evidence of P.Ws.1 and 2 is not clear as to whether the 2nd appellant/A-2 shared the common intention to inflict injuries on P.W.1 and commit the murder of P.W.1.
 - g) Further, the version of P.W.2 that the entire intestine of P.W.1 came out, is an exaggerated one which is totally contradictory to the medical evidence, thereby belying the version of P.W.2 and creating a suspicion with regard to his presence.
 - h) It is the evidence of P.W.1 that he was taken to the police

station by one Selvam, his neighbour ; whereas it is the case of P.W.2/son of P.W.1 that he took his father to the police station and thereafter, to Stanley Government Hospital. When such being so, the evidence of P.W.1 creates a grave doubt in the prosecution case with regard to the occurrence and the registration of the case and the presence of P.W.2.

- i) Further, as per the evidence of the doctor-P.W.7 and as per Ex.P.7-Accident Register issued by him, he had noted three injuries, viz., [1] a lacerated injury measuring 3 cm on the right side of the abdomen ; [2] a lacerated injury measuring 5x2 cm on the right forehead ; and [3] a lacerated injury on the right index finger. P.W.7 had further stated that the 2nd and 3rd injuries could have been sustained by P.W.1 due to a fall. He had further stated that the first injury was a lacerated injury and that he did not mention about it in the Accident Register-Ex.P.7
- j) It is the evidence of P.W.8-doctor that he had not specifically stated as to which injury is grievous in nature. When that being so, the Trial Court had erred in convicting the appellants/accused without any corroborative medical evidence.

In sum and substance, the learned Legal Aid Counsel appearing for the appellants/accused submitted that the prosecution has not proved the case beyond reasonable doubt and that the impugned judgment of conviction and sentence passed by the Trial Court, warrants interference and prayed for allowing of the appeal.

8. Per contra, Mrs.S.Thankira, learned Government Advocate [Crl.side] appearing for the respondent/State would submit that the prosecution had proved its case beyond reasonable doubt through the injured witness - P.W.1 and the eyewitness - P.W.2 who is the son of P.W.1 and their evidence is also corroborated by the medical evidence through P.Ws.7 and 8-Doctors and Exs.P.7 and 8 - Accident Register and the Wound Certificate. She would further submit that though there are certain lapses in the evidence, the evidence of P.W.1 is cogent and clear and he had specifically stated that the 1st appellant/A-1 had caused injuries on the left side of the neck and stomach. She would also submit that though there are minor discrepancies in the case of the prosecution, the same had not affected the prosecution case in its entirety and would pray for dismissal of the appeal.
9. At this juncture, the learned Legal Aid Counsel appearing for the appellants/A-1 and A-2 submitted that no specific overt act has been attributed to the 2nd appellant/A-2 and further, there is a discrepancy with regard to the weapon used. It is evidence of P.W.2 who is stated to have witnessed the occurrence that A-2 was armed with a wooden

log / stick ; but the same has not been recovered by the Investigating Officer and the evidence with regard to the recovery of the weapons used, raises suspicion.

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.
11. The point arises for consideration is whether the prosecution has proved its case beyond reasonable doubt and whether the Trial Court is right in convicting the appellants/accused for the offences u/s.452 and 326 read with 34 IPC?
12. While analysing the evidence of the prosecution, P.W.1- Pandiyan, had stated that he is a resident of No.21, Grace Garden, 5th Street, Royapuram, Chennai and is doing cut-piece business and that he knew the appellants/accused. He had stated that when he was at his residence on 18.06.2001 at about 8.30 a.m., both the accused came there and tied his son Selvam [P.W.2] and thereafter, A-1 had stabbed him on the left side of the neck and stomach and that A-2/Pandi had also assaulted him using a patta knife. It is the further deposition of P.W.1 that he went to the respondent police station along with a person by name Selvam and had given a complaint under Ex.P.1. Subsequently, he was sent to the hospital for treatment and was enquired by the police. In the cross examination, he had stated that A-1 is the brother of his first wife and that after the demise of his wife, he made arrangements to get married for the second time and that A-1 had questioned P.W.1 about his second marriage at any point of time and had never visited his house earlier. He had further stated that after sustaining injuries, he straightaway went to the police station for lodging the complaint along with his neighbour Selvam [who was not examined] and thereafter, he was sent to the hospital along with the said person.
13. P.W.2-Selvam, son of P.W.1 had stated that he knew both the accused and that on the date of occurrence, i.e., 18.06.2001 at about 8.30 a.m., he was getting ready to go to school and at that time, both the accused/appellants came there and the 2nd appellant/A-2 [Pandi] was armed with a wooden log and the 1st appellants/A-1 [Dhandapani] was armed with a knife. He had further stated that A-1 had attacked his father / P.W.1 with knife on his hand, thumb finger, back, eyebrows due to which the intestine came out. On seeing this, P.W.2 raised an alarm. On hearing the alarm, the neighbour one Selvam rushed to the spot and on seeing Selvam, both the accused fled away from the scene of crime. He had further stated that he took his father / P.W.1 to the police station to lodge the complaint under Ex.P.1 and thereafter, took him to the hospital and that

P.Ws.1 and 2 were accompanied by their neighbour Selvam. In the cross examination, P.W.2 had stated that he did not know as to whether the 1st appellant/A-1 was mentally disturbed about his father contracting second marriage and that A-1 was a Tailor by profession. He had also stated that he did not state anything about A-2 possessing wooden log either in the complaint or in his statement before police.

14. P.W.3-Krishnamoorthy, is a resident of Grace Garden, Royapuram and that he knew both the accused. He is an employee under P.W.1. He had further stated that on hearing about the quarrel ensued at P.W.1's house, he rushed there and he saw injuries on the stomach and finger of P.W.1. Immediately, he and Selvam, the neighbour, took P.W.1 to Stanley Hospital for treatment in an auto. In the cross examination, P.W.3 had stated that he did not know as to how P.W.1 had sustained injuries and that he and Selvam [neighbour] took P.W.1 to the hospital initially and not to the police station.
15. P.W.4-Dhanasekar, who is also a resident of the said place, had stated that he is owning a shop in the same place where P.W.1 is running his business and that he knew both the accused. He had further stated that during afternoon hours on 18.06.2001, on hearing about the occurrence and P.W.1 sustaining injuries, he went to the house of P.W.1 and he saw the police preparing the Observation Mahazar [Ex.P.2] and the Rough Sketch [Ex.P.10]. The police also seized blood stained tiles [M.O.1 series] under Mahazar [Ex.P.3]. P.W.5-Moorthy, is the witness to the confession statement, the admissible portion of which is marked as Ex.P.4, said to have been given by the 1st appellant/A-1 and to the recovery/seizure of the knives and blood stained shirt under Mahazar [Ex.P.5]. In the cross examination, P.W.5 had deposed that on 19.01.2001, he had attested the confession statement of A-1 and the seizure Mahazar and at that time, the accused were not present in the police station and that they were brought to the police station only at 11.00 a.m. He had also stated that he saw two knives at the occurrence scene and that he did not know the contents of the confession statement as well as in the seizure mahazar and he had attested the said documents only upon the requisition made by the police.
16. P.W.6-Bose, is the brother of P.W.1 and that he had stated that he is doing textile business. On receiving the information about his brother sustaining injuries and getting treatment in the Stanley Hospital as an in-patient, he went to see his brother in the hospital on 20.06.2001 and at that time, he saw the police recording the statement of P.W.1 and that P.W.1 had produced the blood stained

lungi [M.O.4] to the police which was seized under the Mahazar [Ex.P.6]. He attested Ex.P.6.

17.P.W.7-Dr.Chandra, was working as the Assistant Professor in Stanley Hospital and on 18.06.2001, while he was on duty, P.W.1 was brought for treatment by Selvam and Krishnamoorthy. On enquiry, P.W.1 had stated to P.W.7 that he was assaulted by two known persons using knife at about 8.30 a.m. on 18.06.2001. He had noted the following three injuries,viz., [1] a lacerated injury on the right side of the stomach measuring 3 cm ; [2] a lacerated injury on the right forehead measuring 5x2cm ; and [3] a lacerated injury on the index finger of the right hand. Ex.P.7 is the Accident Register issued by him. In the cross examination, he had stated that the injuries No.2 and 3 is possible due to a fall on the ground and that though the injury No.1 is a lacerated one, he did not mention about the depth of the same in Ex.P.7.

18.P.W.8-Dr.Ramesh, was the Medical Officer in Stanley Hospital at the relevant point of time and on 18.06.2001, at about 9.15 a.m., he had treated P.W.1 and noted the following injuries under Ex.P.8-Wound Certificate:-

- (1)A lacerated injury on the right eyebrow measuring 5x1 cm.
- (2)An incised wound on the right hand middle finger measuring 2x1 cm.
- (3)An incised wound on the right hand index finger measuring 5cm with the bone protruding.
- (4)An incised wound on the lower lip measuring about 7x1 cm.
- (5)An incised wound on the left hand thumb measuring about 2x1cm.
- (6)An incised wound on the left shoulder measuring about 2x1cm.
- (7)An incised wound on the upper part of the stomach measuring about 3x2x6cm.
- (8)An incised wound on the right side of the back measuring about 2x1 cm.
- (9)An incised wound on the left side hip measuring about 6x0.5cm.
- (10)An incised wound on the left jaw measuring about 6x0.5cm.

He had also noted fractures in the right hand index finger as well as in the left hand thumb. He had issued Ex.P.8-Wound Certificate. However, he has not opined as to which of the above injuries are grievous in nature in Ex.P.8.

19. P.W.9-Sekar, was the Sub Inspector of Police [Law and Order] attached to the respondent Police Station during the relevant time. He had stated that on 18.06.2001, upon receipt of information from the Stanley Hospital, he went to see P.W.1 who was admitted as an In-patient and P.W.1 was unconscious at that time. P.W.9 enquired P.W.2-son of P.W.1 and recorded his statement. Thereafter, he came to the police station at about 11.30 a.m. and registered a

case in Crime No.913/2001 for the offences under sections 341, 452, 307 and 506[2] IPC. Ex.P.9 is the Printed FIR. He forwarded the case diary to the higher officials for further investigation.

20.P.W.10-Saravanan, the Inspector of Police of the respondent police station took up the case for investigation in Crime No.913/2001 on 18.06.2001 and he went to the scene of occurrence at about 11.30 a.m. and in the presence of P.W.4 and one Senthil, he prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.10]. He also recovered the blood stained tile [M.O.1] and the sample tile in the presence of the same witnesses under the Mahazar. He also recorded the statements of the witnesses. Thereafter, he went to the Stanley hospital and recorded the statement of the doctor - P.W.7. On 19.06.2001, he effected the arrest of the accused near the Royapuram Roundtana in the presence of P.W.5 and one Kannan and the appellants/accused came forward to give confession statements voluntarily. The 1st appellant/A-1 in pursuant to the admissible portion of the confession statement produced the knives used at the time of occurrence, blood stained shirt and the said material objects were seized under the Mahazar [Ex.P.11]. The accused were sent to judicial remand. On 20.06.2001, he went to the hospital and recorded the statement of P.W.1/injured witness. The blood stained lungi [M.O.4] of P.W.1 were seized. On 04.07.2001, he recorded the statement of P.W.8-Doctor. On completion of the investigation, he laid the final report against the appellant/accused for the offences u/s.452 and 307 r/w 34 IPC.

21.P.Ws.1 and 2 are said to be the eyewitnesses to the occurrence and P.W.1 is an injured witness. The motive for the occurrence is stated to be the enmity that existed between P.W.1 and the 1st appellant/A-1 on account of P.W.1 making arrangements for getting married for the second time within one year of the death of his first wife / sister of A-1. However, the prosecution did not bring home any evidence to substantiate the said motive other than the evidence of P.W.1 and P.W.2. A close scrutiny of the evidence of P.Ws.1 and 2 would reveal that there are several contradictions as regards preferring complaint to the police. It is the evidence of P.W.1 that soon after the incident, he was taken to the Police Station by one Selvam, who happened to be his neighbour. However, it is the evidence of P.W. 2 that he took his father / P.W.1 to the police station and that it was he who had written the complaint and signed the same and thereafter, he admitted his father / P.W.1 in Stanley hospital. This vital contradiction creates a doubt as to the lodging of the complaint and the presence of P.W.2 during the occurrence.

This contradiction is also probablised by the evidence of P.W.3 who had deposed that soon after seeing P.W.1 with injuries, he along with one Selvam took P.W.1 to the hospital for treatment. Nowhere he had stated that the injured P.W.1 was initially taken to the police station and thereafter to the hospital. This lacuna is also further widened by the evidence of P.W.9-the Sub Inspector of Police who had registered the case after recording the evidence of P.W.1 in the hospital on 18.06.2001. When the evidence of P.W.9 is assumed to be true, then the evidence of P.Ws.1 and 2 falls to ground and their evidence is not a conclusive evidence and it clearly establishes the fact that the prosecution has failed to prove its case beyond all reasonable doubt.

22.Next comes the overt act attributed on each of the appellants/accused. It is the evidence of P.W.1 that the 1st appellant/A-1 had stated that A-1 stabbed him on the left side of neck and stomach and A-2 also stabbed him using a pen knife. Whereas, it is the evidence of P.W.2 that A-1 was armed with a knife while A-2 was armed with a wooden log. P.W.2 also had given a contradictory evidence as regards the injuries sustained by P.W.1. He had stated P.W.1 had sustained injuries on the back, thumb finger, eyebrow due to A-1 stabbing with the knife and also a stab injury on the stomach. If the version of P.W.2 is stated to be true, then the prosecution had failed to recover the wooden log which was said to be in the possession of A-2/Pandi. A threadbare reading of the evidence of P.W.2 reveals that it is an exaggerated version and does not corroborate the evidence of P.W.1. The medical evidence through the doctors, P.Ws.7 and 8 and Exs.P.7 and 8 - Accident Register and Wound Certificate, also did not support the case of the prosecution from any angle. P.W.7 had noted three injuries, all are lacerations in nature, on the right side of the stomach, right forehead and in the right index finger and P.W.8-Doctor had noted as many as 10 injuries on P.W.1 and however, he did not specifically state as to which are all the injuries are grievous in nature. Further, the X-Rays taken in this behalf, were not marked by the prosecution. Thus, the medical evidence has not supported the prosecution in any manner with regard to the overt act of the 2nd appellant/A-2.

23.Thirdly, the arrest of the appellants/accused and the subsequent recovery of the material objects. P.W.5-Moorthy had stated that he was the witness to the recording of the confession statement of A-1 and attesting his signature in the same. He had stated that pursuant to the recording of the admissible statement, two knives [M.O.2] were seized under Mahazar. However, in the cross examination, he would state that at the time of affixing the signatures in the

confession statement of A-1, the accused were not present in the police station and that the accused were brought to the police station on 19.06.2001 at about 11.00 a.m. and he had also stated that he did not know as to where from the accused were arrested and brought to the police station. This evidence of P.W.5 creates a grave doubt in the case of the prosecution. Apart from the other contractions regarding the weapon stated to have been used, the prosecution has also not let in evidence to prove that the 2nd appellant/A-2 shared a common intention with the 1st appellant/A-1 to cause injury on P.W.1.

24. In view of the aforesaid infirmities and illegalities in the case of the prosecution, this Court is of the opinion that the Trial Court had erred in convicting the 2nd appellant/A-2 for the offences under section 452 and 326 read with 34 IPC and the judgment of the Trial Court warrants interference.
25. In the result, the criminal appeal in respect of the 1st appellant/A-1 stands ABATED and the appeal in respect of the 2nd appellant/A-2 stands ALLOWED and the conviction and sentence imposed on the 2nd appellant/A-2 by the learned VII Additional Sessions Judge, City Civil Court, Chennai, in SC.No.145/2002 dated 05.02.2004 are hereby set aside. The 2nd appellant/A-2 is acquitted of all the charges levelled against him.
26. It is reported that the 2nd appellant/A-2 is on bail. Bail bond executed by him stands discharged. Fine amount, if any paid, shall be refunded to him.
27. Before parting with the matter, this court place it on record the commendable service rendered by Mrs. Henrietha Chinnathambi, learned counsel as Legal Aid Counsel for the appellants. She is entitled to remuneration from the Tamilnadu State Legal Services Authority as per the norms.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The VII Additional Sessions Judge
City Civil Court, Chennai.

2. The Principal District and Sessions Judge
Chennai.

3.The XVI Metropolitan Magistrate
George Town, Chennai.

4.The Chief Metropolitan Magistrate
Chennai.

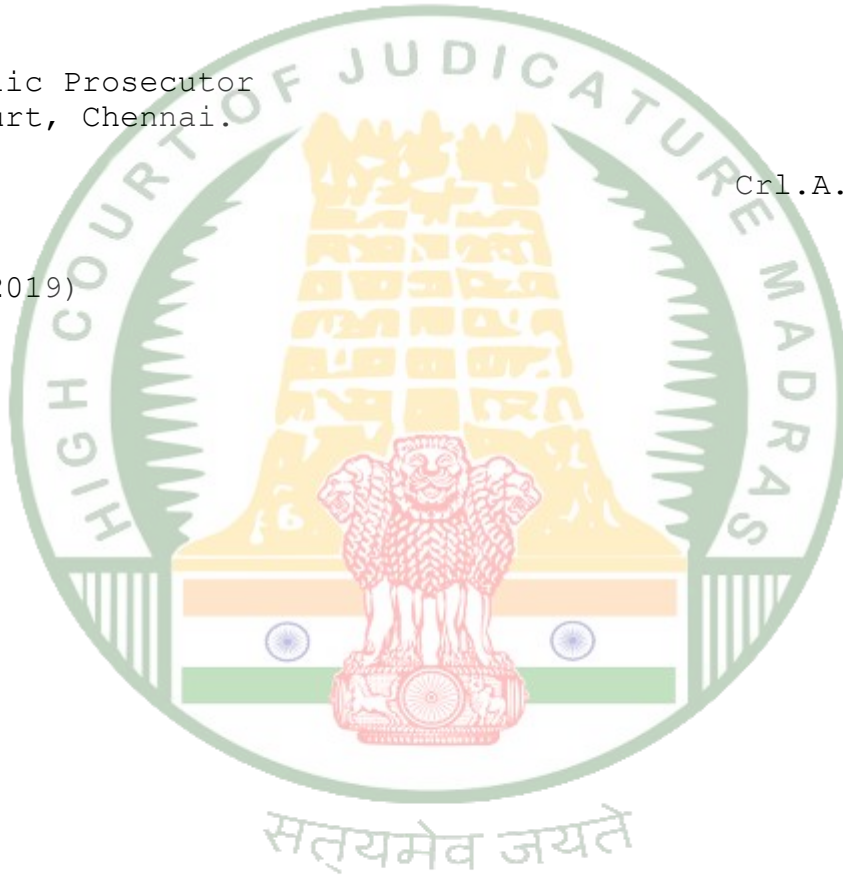
5.The Inspector of Police
N-1 Royapuram Police Station
Chennai.

6.The Superintendant, Central Prison,
Puzhal.

7.The Public Prosecutor
High Court, Chennai.

Crl.A.No.632/2004

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