

Bail Slip

The appellant namely Arunachalam @ Vinayakam S/o.Chinnamaddappan, was directed to be released on bail as per order of this court dated 08.04.08 made in MP.No.1/08 in CA.No.215/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. A. NO.215 OF 2008

Arunachalam @ Vinayakam ... Appellant

- Vs -

State of Tamil Nadu Rep. by
The Inspector of Police,
Avinashi Police Station ... Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C., to call for the records on the file of the Additional Sessions Judge cum F.T.C. No.4, Coimbatore at Tirupur, Coimbatore District and set aside the conviction and sentence passed in S.C.No.252/2002, dated 22.01.2008.

For Appellant : Mr.T.R.Radhakrishnan

For Respondent : Mr.C.Iyyapparaj, APP

JUDGMENT

The appellant was charged and tried before the learned Additional Sessions Judge, F.T.C.No.4, Coimbatore at Tirupur, for the offences u/s 457 (1) and 394 IPC and the trial court after hearing either side, convicted and sentenced the appellant to rigorous imprisonment for a period of four years u/s 457 (1) IPC and to rigorous imprisonment for a period of eight years u/s 394 IPC. Challenging the said conviction and sentence, the appellant is before this Court.

2. The brief facts necessary for the disposal of this appeal are as under :-

P.W.1 alongwith his family members was residing at Door No.3/757, Bharathidasan Street, Srinivasapuram, Avinashi. On the intervening night of 25.1.99 and early morning hours of 26.01.99, the appellant herein trespassed into the house of P.W.1 and committed robbery by threatening the residents of the house and also caused bodily injury to P.W.1 and his family members. Thereafter, the accused fled away from the scene of occurrence.

3. At about 5.00 a.m., on the early morning hours of 26.1.99, when P.W.8, the Sub Inspector of Police, Avinashi Police Station was on duty, P.W.1 appeared before him and gave the complaint, Ex.P-1, based on which P.W.8 registered a case in Crime No.35/99 for the offences u/s 457(1) and 394 r/w 397 IPC and prepared the printed FIR, Ex.P-4. Since there were bodily injuries on P.W.1, he was referred to the Government Hospital, Avinashi for treatment. P.W.8, thereafter, took up investigation. He went to the scene of occurrence and prepared observation mahazar, Ex.P-2 and prepared rough sketch, Ex.P-8. He examined the witnesses and recorded their statements.

4. On 24.02.1999, at about 8.00 a.m., when P.W.11 was on patrolling duty, he intercepted a motorcycle, in which the accused, was coming and on examining him, the appellant confessed to the crime. Thereafter, the appellant was examined and the appellant gave a voluntary confession statement, the admitted portion of which is marked as Ex.P-6 in the presence of P.W.10 and other witnesses. Pursuant to the said confession, the appellant took the police party along with P.W.10 to the place where he had hidden the gold jewels and the money connected with the present crime and the same were seized under the cover of mahazar, Ex.P-7 in the presence of witnesses. The appellant was brought to the police station and, thereafter, sent to court for judicial remand. On information being given P.W.s 1 and 2 appeared at the police station and identified the jewels. The jewels, M.O.22 series, were sent to court under the cover of mahazar.

5. P.W.1 appeared before P.W.7, the doctor, along with the police memo and he was examined for the injuries suffered by him. Ex.P-3 is the accident register and Ex.P-5 is the discharge summary in respect of P.W.1.

6. P.W.8, continuing with his investigation examined further witnesses and recorded their statements. The seized material objects were sent to court. On completion of the investigation, charge sheet was filed against the appellant herein for the offences noted above.

7. The accused/appellant herein was furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed the charge u/s 457 (1) and 394 IPC. When questioned, the accused/appellant pleaded not guilty.

8. To prove the case, the prosecution examined P.W.s 1 to 11, marked Exs.P-1 to P-8 and M.O.s 1 to 22. When the accused/appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same as false. On the side of the appellant, on witness was examined as D.W.1 and two documents, viz., Exs.D-1 and D-2 were marked. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, convicted and sentenced the appellant as above. Aggrieved by the said conviction and sentence recorded by the trial court, the appellant has filed the present appeal.

9. Learned counsel appearing for the appellant submits that the genesis of the occurrence itself is highly doubtful, as the time of occurrence is at variance as is evident from the deposition of P.W.1 and the FIR, Ex.P-4. It is the evidence of P.W.1 that he gave the complaint at the police station at 5.00 a.m., however, the FIR reveals that the complaint was given at 4.00 p.m. The ambiguity in the timing of the lodging of the complaint creates a doubt on the complaint projected by the prosecution as having been given by P.W.1.

10. It is the further submission of the learned counsel that the evidence of P.W.s 7 and 8 is in contradiction to each other with regard to the date of occurrence. While it is the deposition of P.W.8 that the occurrence had taken place on 25.1.99, however, it is contradicted by P.W.7 deposing that the occurrence had taken place on 26.1.99. The contradiction in the date of occurrence casts a grave doubt in the case projected by the prosecution.

11. It is the further submission of the learned counsel that the identification of the appellant by P.W.1 is doubtful and is a tutored one for the simple reason that the appellant had covered his face and mouth with a muffler. It is the further submission of the learned counsel that the interpolation of jewels by P.W.1 at the time of identification also casts a serious doubt, as at the earliest point of time, P.W.1 had given the list of jewels, which had been stolen from his residence by the appellant. Therefore, interpolating the same at a later point of time is only an attempt on the part of P.W.1 to suit the version projected by the prosecution. It is therefore

submitted by the learned counsel that the prosecution having not proved the case beyond reasonable doubt, which fact has not been appreciated in proper perspective by the trial court and, therefore, the appellant is entitled for an acquittal at the hands of this Court.

12. Per contra, learned Additional Public Prosecutor appearing for the respondent submitted that the deposition of the witnesses are in tandem and that there is no contradiction, worth acceptance, having been elicited by the defence, which strikes at the root of the prosecution case. The contradictions pointed out by the defence are contradictions that are prone to happen over a period of time from the date of occurrence to the date when the case is taken up for trial and so long as the said contradictions does not in any way strike at the substratum of the prosecution case, there would be no impediment for this court to accept the said evidence. The trial court, on proper appreciation of the entire materials placed before it, has come to the categorical conclusion that it was the appellant who had perpetrated the offence and had accordingly convicted and sentenced him and, therefore, no interference is warranted with the well considered findings recorded by the trial court. Additionally, it is also submitted by the learned Addl. Public Prosecutor that not only in this case, but the appellant has involved himself in very many cases and more than 20 crimes are under investigation and that the appellant is a habitual offender and, therefore, no lenience is warranted.

13. Heard the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

14. Time and again it has been consistently held by the various courts that minor contradictions/inconsistencies/discrepancies/embellishments in the evidence of the witnesses will not in any way affect the substratum of the prosecution. Further, it has been held that over a passage of time, there are prone to be contradictions/inconsistencies/discrepancies/embellishments in the evidence of witnesses and so long as it is not material, such contradictions should not be given much weight to throw away the prosecution version.

15. The Hon'ble Apex Court, in the case of State of H.P. - Vs- Lekh Raj (2000 (1) SCC 247), relating to discrepancies in the evidence of the witnesses, held as under :-

"7. In support of the impugned judgment the learned counsel appearing for the respondents

vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish v. State of M.P.* [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person." (Emphasis Supplied)

16. In *Bakhshish Singh v. State of Punjab*, (2013 (12) SCC 187), the Hon'ble Supreme Court, reiterating its ratio laid in a catena of judgments on the question of

contradiction/embellishments in the evidence of witnesses, held as under :

"31. This Court in several cases observed that minor inconsistent versions/discrepancies do not necessarily demolish the entire prosecution story, if it is otherwise found to be creditworthy. In Sampath Kumar v. Inspector of Police [Sampath Kumar v. Inspector of Police, (2012) 4 SCC 124 : (2012) 2 SCC (Cri) 42] this Court after scrutinising several earlier judgments relied upon the observations in Narayan Chetanram Chaudhary v. State of Maharashtra [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546] to the following effect: (Sampath Kumar case [Sampath Kumar v. Inspector of Police, (2012) 4 SCC 124 : (2012) 2 SCC (Cri) 42]

"21. ... '42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person.' (Narayan Chetanram Chaudhary case [(2000) 8 SCC 457 : 2000 SCC (Cri) 1546])"

32. In Sunil Kumar Sambhudayal Gupta v. State of Maharashtra [(2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375] this Court observed as follows:

"30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence,

must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580] .)"

33. The embellishments in the statements of Narinder Banwait (PW 19) referred to above, in our view do not constitute such contradictions which destroy the core of the prosecution case as this Court in Raj Kumar Singh v. State of Rajasthan [(2013) 5 SCC 722] has observed as under:

"43. ... It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labelled as omissions or contradictions. Therefore, the courts must be cautious and very particular in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinise the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief."

17. Yet again, in Rohtash Kumar - Vs - State of Haryana (2013 (14) SCC 434), the Hon'ble Supreme Court had reiterated the long established proposition in the appreciation of evidence of witnesses with regard to the discrepancies in their evidence and in this regard, held as under :-

"24. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do

not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant, details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48], State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] and Vijay v. State of M.P. [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639])"

(Emphasis Supplied)

18. From the above proposition of law laid down by the Hon'ble Apex Court, it is clear that contradictions/discrepancies are prone to happen in the testimony of the witnesses due to passage of time between the occurrence proper and the date of their examination in court and in such circumstances, it is left to the wisdom of the court to analyse their evidence as a whole to cull out the truth or otherwise in their deposition and appreciate the same in proper perspective to arrive at a substantive opinion as to whether such contradiction/discrepancies affect the substratum of the prosecution case.

19. True it is that there are certain contradictions in the evidence of P.W.1 vis-a-vis the FIR, Ex.P-4 with regard to the time of registration of the case. While P.W.1 has stated that he had given the complaint at about 5.00 a.m., whereas it is evident from the FIR that the time the crime was registered is shown as 4.00 a.m. This gap of one hour between the two documents is being highlighted by the learned counsel for the appellant to cast a doubt on the prosecution case. However, it is to be pointed out that such contradictions are prone to occur in the evidence of witnesses, as such evidence is given in court after a considerable gap of time. Human memory is not infallible to remember even the faintest detail and narrate the same in a cogent, clear and also in a sequential manner. The gap between the occurrence and the time when the witnesses are examined in court definitely would lead to certain embellishments in the testimonies of the witness, vis-a-vis the documents. Similarly, contradictions are also prone to occur in the deposition of the various witnesses. However, mere contradictions, if they are minor in nature, would not be a ground to throw out the said evidence in toto to the benefit of the accused, as such an act would only entail in the prosecution case being rejected in all cases, as the witnesses in all the cases are prone to commit certain errors. The cumulative weightage of those errors need to be taken into consideration with reference to either accepting or rejecting their evidence. In the case on hand, on a careful analysis of the testimony of P.W.1 and the entry made in Ex.P-4 reveal that while P.W.1 has stated that he gave the complaint at about 5.00 a.m., in Ex.P-4 it is shown as 4.00 a.m. This is definitely not a major contradiction. Considering the time gap between the date of occurrence and the date of giving evidence in court, the approximate time when P.W.1 is stated to have given the complaint definitely cannot be put against the prosecution to reject the whole case. A cumulative reading of the evidence of P.W.1 coupled with Ex.P-4, leads this Court to the inevitable conclusion that the said contradiction has not much significance to be considered as a material contradiction in order to doubt the prosecution version.

20. Similarly, it is the contention of the learned counsel for the appellant that the evidence of P.W.8 and P.W.7 contradict each other as to the date of occurrence. A perusal of the evidence of P.W.s 7 and 8 reveals that while P.W.8 has stated the date of occurrence as 25.1.99, P.W.7 has stated the date of occurrence as 26.1.99. This contradiction, according to the learned counsel is a major contradiction as the occurrence proper itself has not been conclusively established. Though

such a contention, at face value looks attractive, however, on an in-depth analysis of the case, the said contradiction is only a passing cloud, which does not merit much consideration, for the simple reason that the occurrence had happened on the intervening night of 25.1.99 and 26.1.99. To be more precise, about 2.00 a.m., on the early morning hours. Crossing 12 midnight, the day is generally reckoned as the next day for all purposes, though for practical purpose, the preceding day is counted till sunrise of the next day. In that manner, while P.W.8, the investigating officer has stated that the occurrence had happened on 25.1.99, P.W.7 has deposed that the occurrence had happened on 26.1.99. The intervening night of 25.1.99 and 26.1.99 has been appreciated in their respective perspective by P.W.s 7 and 8 while stating the date of occurrence. Aside from the said discrepancy, the deposition of P.W.s 7 and 8 corroborate each other and a cumulative reading of their evidence conclusively establish that the occurrence had happened on the intervening night of 25.1.99 and 26.1.99 as spoken to by P.W.1 and, thereby, the occurrence proper, as narrated by P.W.1 also stands corroborated. But for the above contradictions, no worthwhile contradiction has been elicited from the witnesses for this Court to doubt the substratum of the prosecution case.

21. One other contention, which has been urged on behalf of the appellant is that the person, who had committed the robbery had covered his face, barring his eyes and, therefore, it would not have been possible for P.W.1 to make an identification.

22. It is to be pointed out that P.W.1 has identified the appellant in court as the person, who had perpetrated the crime at his abode. Equally P.W.2 has in sum and substance corroborated the evidence of P.W.1 on all material aspects. The substantive value of the identification in court is more than the identification of the person in any other manner, as has been the consistent stand of the courts time immemorial. It is further to be pointed out that the identification of P.W.1 has been corroborated by P.W.2, who is the wife of P.W.1 and who was the person, who was held at knife point by the appellant while robbing her jewels. According to the prosecution, the appellant was at the house for a considerable period of time and after having locked P.W.1 and his daughter inside the restroom had threatened P.W.2 to part with her jewels. Therefore, P.W.s 1 and 2 had all the time in the world to acquaint themselves with the characteristics of the appellant to make a positive identification and they have rightfully identified the appellant and, therefore, there is no embargo for this Court to accept her evidence as a substantive evidence with regard to the appellant being the person, who had committed the crime.

23. Therefore, the contradictions in the evidence, as projected by the learned counsel for the appellant, at best, could only be termed as minor contradictions and the said contradictions, in no way, shakes the substratum of the prosecution case. It is also further to be pointed out that P.W.s 1 and 2 have no axe to grind against the accused or to fall in line with the prosecution/investigating agency. The evidence of the other witnesses relating to seizure of the jewels and examination of the appellant are also in consonance with the evidence of the investigating officer and, therefore, this Court has no hesitation to hold that the appellant is the perpetrator of the crime.

24. With regard to the deposition of P.W.1 as to the jewels that were robbed on the fateful night, the interpolation pointed out by the learned counsel for the appellant, does not in any way come to the aid of the appellant. P.W.1, in his evidence in chief has categorically stated that due to the strain faced by him, he had not given the complete details of all the jewels that were taken by the appellant. However, P.W.s 1 and 2 had identified all the jewels in the police station. It is to be pointed out that inspite of detailed cross examination, the defence was not able to breach the evidence of P.W.s 1 and 2 with regard to the occurrence proper and the identification of the jewels. It is common knowledge that while giving complaint, a person normally records all the belongings that were taken away from him in the complaint. But even then, due to the strain faced on account of the incident, certain omissions as to the exact list of articles stolen are prone to occur, which is a natural course of happening. An iota of doubt may arise if even in the complaint all the details of the stolen articles find place. In such a scenario, it is the bounden duty of the Court to analyse the evidence with a fine toothed comb to find out the truth of the matter. In the case on hand, the deposition of P.W.s 1 and 2 is not only cogent and convincing, but equally, the said deposition is natural and P.W.1 has stated the reason for not listing out all the stolen articles in the complaint, which reason is quite normal and acceptable and, therefore, this Court has no hesitation to accept the said evidence at face value.

25. On an overall analysis of the entire materials available on record, this Court is of the considered view that the trial court has adverted to the materials and analysed the oral and documentary evidence in proper perspective and has recorded a convincing finding as to the culpability of the appellant in the commission of the crime and has accordingly

convicted the appellant and this Court finds no reason to interfere with the same.

26. At this juncture, learned counsel appearing for the accused/appellant prays that two decades have passed since the occurrence and the appellant has been under pre-trial incarceration for a substantial period of time and, therefore, this Court, may consider imposition of a lesser sentence.

27. Taking into consideration the submissions advanced on behalf of the accused/appellant, and also considering his age and also the fact that the offence was committed in the year 1999, and that two decades have passed since the commission of the offence, is of the considered view that the sentence imposed by the trial court could be modified for a lesser term.

28. In the result, the criminal appeal is allowed-in-part by confirming the conviction imposed on the appellant by the trial court in S.C. No.252/02. However, the sentence of rigorous imprisonment imposed on the appellant u/s 457 (1) IPC is modified from four years to two years and the sentence of rigorous imprisonment imposed on the appellant u/s 394 IPC is modified from eight years to four years. The sentences are directed to run concurrently. The appellant is entitled for set-off u/s 428 Cr.P.C. The trial court is directed to take steps to secure the appellant and commit him to prison to undergo the balance portion of the sentence imposed on him by this Court above. Bail bonds executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk/GLN

To

1. Addl. Sessions Judge-cum-
FTC No.4, Coimbatore @ Tirupur
Coimbatore District.

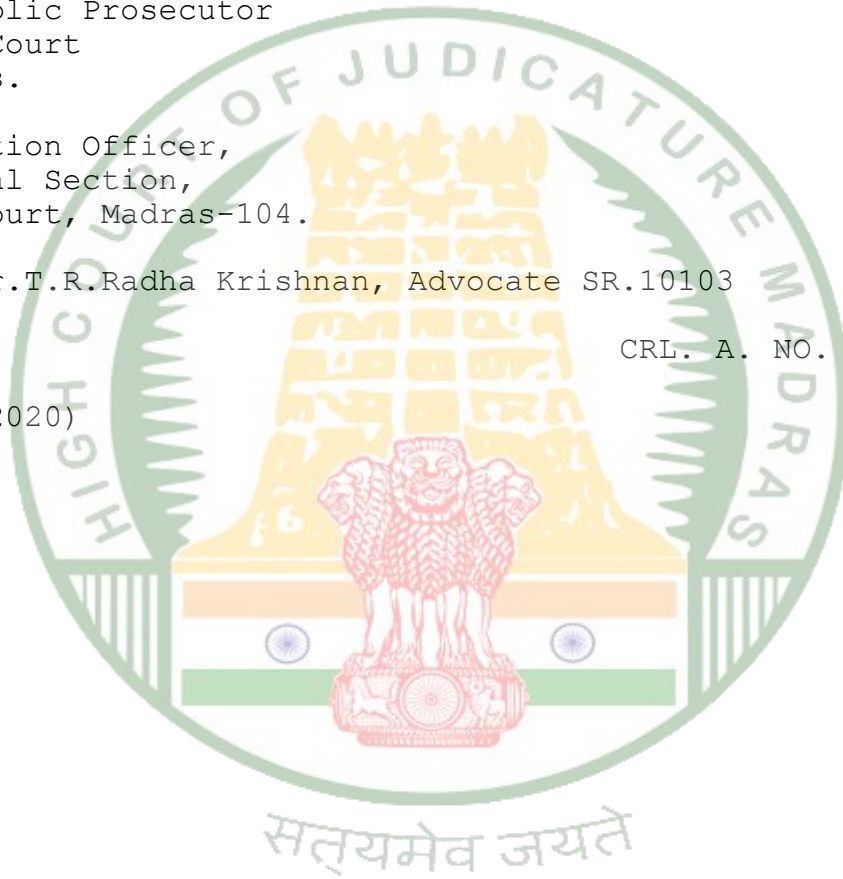
2.The Inspector of Police,
Avinashi Police Station.

- 3.The Judicial Magistrate,
Avinashi.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Director General Of Police,
Mylapore, Chennai-4.
- 6.The Superintendent of Police,
Coimbatore District.
7. The Public Prosecutor
High Court
Madras.
- 8.The Section Officer,
Criminal Section,
High Court, Madras-104.

+2cc to Mr.T.R.Radha Krishnan, Advocate SR.10103

CRL. A. NO. 215 OF 2008

RSV(CO)
CB(30/09/2020)



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