

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.11.2019

JUDGMENT DELIVERED ON : 06.02.2020

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH
and
THE HON'BLE Mr. JUSTICE RMT.TEEKAA RAMAN

Crl.A.Nos.185 and 173 of 2017
and
Crl.M.P.No.4659 of 2017

1. Yuvaraj (A.2)
2. Murali (A.5)

.. Appellants in
Crl.A.No.185/2017

Deva @ Devaraj (A.1)

.. Appellant in
Crl.A.No.173/2017

.. Vs ..

State Rep. by
The Inspector of Police,
Thirumullaivoyal Police Station,
Thiruvallur District.
(Crime No.264 of 2009)

.. Respondent in both
Crl.As./Complainant

Prayer in both Crl.A.Nos.:-- Appeals filed under Section 374
(2) of Cr.P.C. against the judgment dated 01.06.2016 passed by
the learned III Additional Sessions Judge, Thiruvallur
District at Poonamallee, in S.C.No.157 of 2014.

In both Crl.As.

For Appellants in

Crl.A.No.185/2017 : Mr.R.C.Paul Kanagaraj,
for Mr.M.Baskar

For Appellant in

Crl.A.No.173/2017 : Mr.R.Sankarasubbu

For Respondent

in both Crl.As. : Mr.K.Prabhakar,
Additional Public Prosecutor

COMMON JUDGMENT

RMT.TEEKAA RAMAN, J.

The appellant in Crl.A.No.173 of 2017 is the first
accused while the appellants in Crl.A.No.185 of 2017 are A.2
and A.5 respectively in S.C.No.157 of 2014, on the file of the

learned III Additional Sessions Judge, Thiruvallur District at Poonamallee. Including the appellants in both the appeals, there were a total number of six accused.

2. The trial Court framed as many as two charges against the accused as detailed below:

Sl.No	Charges (Section of law)	Accused
1.	Under Section 148 of IPC	A.1 to A.6
2.	Under Section 302 of IPC	A.1 to A.6

By judgment dated 01.06.2016, the trial Court acquitted the sixth accused; however, convicted accused Nos.1 to 5 under both charges and sentenced them accordingly, as detailed below:-

Sl.No	Rank of accused	Conviction	Sentence
1.	A1 to A5	U/s.148 IPC	Rigorous imprisonment for three years.
2.	A1 to A5	U/s.302 IPC	Imprisonment for life, with a fine of Rs.1000/- each, in default, 12 months Rigorous Imprisonment.

Both the sentences were ordered to run concurrently. Challenging the said conviction and sentences, the appellants/accused Nos.1, 2 and 5 alone are before this Court with these appeals.

3. CASE OF THE PROSECUTION, IN BRIEF:-

(a) The deceased in this case was one Mr.Manoharan. He was the husband of P.W.1-Mrs.Renuka. They were residing at 8th Street, Annai Sathya Nagar, Annanur, in Thiruvallur District. All these six accused were also the residents of Annai Sathya Nagar and thus, they were already known to P.W.1. These accused were involved in many crimes and other untoward incidents. They had suspicion that it was the deceased, who acted as informant to the police and informed the police about their involvements in various incidents. All these accused were thus unhappy with the deceased. They had developed grudges against him. This is stated to be the motive for the occurrence.

(b) On 21.06.2009, at around 8.00 p.m., the deceased was at his house. P.W.1 was also there. At that time, the first accused came to the house of the deceased and requested the deceased to come out, so that they could go for a small walk. Following the words of the first accused, the deceased

went along with him. Then, when they were nearing the bath room, situated out side the house of P.W.1, suddenly the first accused took out a knife and stabbed the deceased. The other accused 2 to 5 also rushed towards the said place, surrounding the deceased. The second accused, armed with a knife, cut the deceased on his right hand; the third accused cut him with a knife on the back side of the head; the fourth accused cut him with the knife on the chest; the fifth accused kicked him with his legs and the sixth accused attacked the deceased with an aluminium vessel. The deceased fell down in a pool of blood. P.W.1 and others raised alarm. All the accused ran away from the scene of occurrence with weapons. The deceased died instantaneously.

(c) Immediately thereafter, P.W.1 went to Thirumullaivoyal Police station, situate at a distance of 2 kms., and made a complaint at 9.00 p.m. on 21.06.2009. In the complaint, she mentioned about the presence and participation of accused 1 to 3 alone. P.W.18, the then Inspector of Police, received the complaint and registered a case in Crime No.264 of 2009 under Sections, 147, 148, 447 and 302 of the Indian Penal Code. Ex.P.1 is the complaint, Ex.P.29 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate at 7.00 a.m., on 22.6.2009.

(d) The case was taken up for investigation by P.W.18. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses and also recovered the blood stained earth and sample earth from the place of occurrence. He held inquest on the body of the deceased on the same day and forwarded the body for post-mortem. P.W.10- Dr.Tekkol, conducted autopsy on the body of the deceased on 22.06.2009 at 11.30 a.m. He found the following injuries:

"Injuries:

1) Brown irregular abrasions; a) 8 x 2.5-1 cm, horizontally oblique, on outer part of left side of the forehead and upper part of left side of the face; b) two horizontally oblique linear abrasions 3.5 x 0.3 - 0.1 cm and 3 x 0.4-0.2 cm on the upper part of right side of the chest; c) vertically oblique linear abrasion 5.5 x 0.4-0.2 cm on the upper part of right side of the chest; the abrasion was in plane with the cut injury on the left side of the neck.

2) A horizontally oblique incised wound 2 x 0.3 x 0.3 cm on the front of right shoulder and front and outer aspect of upper two third of right arm.

3) A horizontally oblique incised wound 2 x 0.3 x 0.3 cm on the upper part of left side of the

face.

4) A horizontally oblique incised wound 1.5 x 0.5- 0.3 x 0.5-0.3 cm on the middle part of left ear lobule.

5) A horizontally oblique incised wound 10 x 1- 0.5 x 0.5-0.3 cm on the upper part of right scapular region, back of right shoulder and back of upper third of right arm.

6) An oblique cut wound 20 x 2-0.5 cm x skin deep, on the upper part of left side of the neck, left mastoid and left temporo-occipital region of the scalp; medial margin of the wound was bruised.

7) An oblique cut wound 8 x 1-0.5 cm x skin deep, on the right frontal region of the scalp; the margins were bruised; On reflection of the scalp; Dark red, scalp deep, bruising on the underlying right frontal region of the scalp; calvarium was intact; on opening the calvarium: Membranes were intact; brain was normal in size; C/S-Pale.

8) A horizontally oblique cut wound 21 x 4-2 x 9- 4 cm on the lower part of left side front of the neck, upper part of left side of the chest and upper part of left side of the back; the margins of the wound were regular; the underlying subcutaneous soft tissues, sternomastoid, platysma and the deltoid muscles were cut, the blood vessels of the neck left common carotid artery and the jugular veins were completely cut; complete irregular cut fracture of left clavicle at inner third; complete irregular fracture of first rib on left side at costo-chondral junction and posteriorly, 1 cm from the costo-vertebral junction, with surrounding soft tissue bruising and extravasation of blood; the wound ends as a 7 1 cm cut fracture on left side of the fifth cervical vertebra; the wound enters the right thoracic cavity, with a laceration 4 x 2-1 cm x cavity deep, on the upper part of right pleura; dark red diffuse bruising on the upper border of right pleura; on opening the thoracic cavity: Both the lungs were intact and normal in size; C/S Pale."

Ex.P.6 is the post-mortem certificate. P.W.10-Dr.Tekkol, gave opinion that the injuries found on the deceased could have been caused by a weapon like knife.

(e) P.W.18, the Inspector of Police, Law and Order, Thiruvananthapuram police station, during the course of investigation, recovered the bloodstained clothes from the

body of the deceased and forwarded the same to the Court. On 29.06.2009, accused Nos.1, 3, 4 and 5 surrendered before the learned XIII Metropolitan Magistrate, Chennai. On a request made to the jurisdictional Magistrate, the accused were sent to the police custody by the learned Magistrate. On 29.06.2009, P.W.18 took these accused into the custody. On 30.06.2009, at 8.30 a.m., while in custody, the first accused-Mr.Deva @ Devaraj made a voluntary confession, followed by the 3rd accused-Mr.Kanthan and 4th accused-Mr.Rajbabu and lastly the fifth accused-Mr.Murali. In his confession, the first accused disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced M.O.11, the knife. P.W.18 recovered the same under a mahazar. Similarly, the accused Nos.3 and 4, in their independent disclosure statements, disclosed the place where they had hidden the respective knives. In pursuance of the same, they took the police and witnesses to the place of hide-out and produced the knives. They were also recovered under separate mahazars. The fifth accused, in his disclosure statement, disclosed the place where he had hidden the knife. In pursuance of the same, he produced M.O.13, the knife, from the place of hide-out. On reaching the police station, P.W.18 forwarded all the three accused and handed over the material objects also to the Court. On 7.10.2009, he arrested the sixth accused and forwarded him to the Court for judicial remand. At his request, all the material objects were sent for chemical examination, which reveals that there were human bloodstains on all the material objects, including the knives, recovered from the accused. On completing the investigation, P.W.18 laid charge-sheet against the accused, on 15.10.2009.

4. Based on the above materials, the trial Court framed charges as detailed in paragraph No.2 of this judgement. The accused denied the same. The trial Court proceeded with the trial.

5. During the trial, in order to prove the charges, on the side of the prosecution, as many as 18 witnesses were examined, 47 documents were marked and 17 material objects were produced. Out of the said witnesses, P.Ws.1 to 3 have been examined as eye-witnesses. They have vividly spoken about the entire occurrence, including the individual overt acts of all the six accused.

6. P.W.1 has spoken about the complaint made by her to the police also. P.Ws.4 to 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9, a Constable, has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor for conducting post-mortem, as directed by P.W.18. P.W.10-Dr.Tekkol has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.Ws.11, 13 and 14 have also turned hostile and they

have not supported the case of the prosecution in any manner. P.W.12 has spoken about the photographs taken at the place of occurrence. P.Ws.15 and 16 have spoken about the chemical examination conducted on the material objects and their final opinion. P.W.17, the then Judicial Magistrate, has stated that he recorded the statements of P.W.2 and P.W.3 under Section 164 Cr.P.C., as requested by the investigating officer. P.W.18 has spoken about the investigation done and the final report filed.

7. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any documents. Their defence was a total denial.

8. Having considered all the above, the trial Court convicted the accused Nos.1 to 5 as detailed in paragraph No.2 of this judgment and that is how, these three appellants, who are accused Nos.1, 2 and 5 have come up with these two criminal appeals.

SUBMISSIONS :

9. We have heard Mr.R.C.Paul Kanagaraj, learned counsel for the appellants in CrI.A.No.185 of 2017/A.2 and A.5; Mr.R.Sankarasubbu, learned counsel for the appellant in CrI.A.No.173 of 2017/A.1 and Mr.K.Prabhakar, learned Additional Public Prosecutor appearing for the State and perused the records.

10. Learned counsel for the appellant in CrI.A.No.173 of 2017/A.1 would submit that as per the prosecution theory, the alleged occurrence was at 8.00 p.m. on 21.06.2009 and though it was alleged by the prosecution that the FIR was registered at 9.00 p.m., on 21.06.2009, it was only reached the hands of the learned Judicial Magistrate at 7.30 a.m. on 22.06.2009 and hence, there was a unreasonable delay in forwarding the FIR to the Court and the said delay was not explained by the prosecution and in the absence of any reason by P.W.18- Investigating Officer, it is doubtful whether the FIR was registered at the date and time as projected by the prosecution. So is the submission of the learned counsel for the appellants in CrI.A.No.185 of 2017/A.2 and A.5.

11. Learned counsel for the appellant in CrI.A.No.173 of 2017/A.1 would further contend that while P.W.1, widow of the deceased admitted that all the accused were already known to her for about 20 years, if that be true, it is for the prosecution to explain as to why the names of the accused Nos.4 to 6 were not mentioned in the F.I.R.

12. Learned counsel for the appellants in CrI.A.Nos.185 of 2017/A.2 and A.5 would further submit that during the cross-examination, it is elucidated from P.W.1 that the police

arrived the place of occurrence around 8.30 p.m. and at 9.20 p.m., she went to the police station and made a complaint and therefore, made submissions that the First Information Report is doubtful.

13. Per contra, Mr.K.Prabhakar, learned Additional Public Prosecutor appearing for the State would vehemently oppose these appeals, while admitting that there was some delay in forwarding the F.I.R. to the Court and he would submit that on that score alone, the entire case of the prosecution cannot be thrown out.

14. The learned Additional Public Prosecutor would further submit that there is absolutely no reason to reject the evidence of P.W.1 to P.W.3, who have categorically narrated about the entire occurrence including the overt act attributed against the accused. It is also submitted that though it is true that in Ex.P.1-complaint, P.W.1 failed to mention about the presence and participation of accused 4 to 6, that is immaterial. He would further submit that the medical evidence duly corroborates the eye-witnesses P.Ws.1 to 3. Therefore, the learned Additional Public Prosecutor would submit that there is no artificiality in the evidences of P.Ws.1 to 3. He would further contend that the evidence of P.Ws.1 to 3 are cogent and convincing, which deserve to be accepted. Thus, according to the learned Additional Public Prosecutor, there is no merit in these appeals.

15. It is brought to our notice by the learned Additional Public Prosecutor that the accused Nos.4 and 3 respectively have preferred appeals in CrI.A.Nos.622 and 815 of 2016 and a Division Bench of this Court, by a common Judgment dated 22.02.2017, acquitted the fourth accused alone and convicted the third accused. We have had the benefit of going through the judgment rendered by the Division Bench of this Court.

HOMICIDE :

16. From the oral evidence of P.W.15 and P.W.16, forensic witnesses coupled with the documentary evidence of Exs.P.24 and P.25, we find that the sample soil taken at the place of occurrence with blood and without blood goes to demonstrate that the scene of crime is in front of the house of the deceased, where lights were on, which are discussed infra. On a combined reading of the evidence of P.W.10-Dr.Tekkoll coupled with the documentary evidence of Ex.P.6/Post-mortem Report, we find that the deceased namely, Mr.Manoharan, would appear to have died due to homicidal violence.

SCENE OF THE CRIME :

17. For the reasons stated in the subsequent paragraphs, the scene of the crime has been proved by the prosecution in the manner known to law.

18. A perusal of Ex.P.29 would go to show that the FIR was registered at 9.00 p.m, on 21.06.2009. The distance between the place of occurrence and the Police Station is hardly 2 kms., which is not in dispute and hence, in our considered view that there is no doubt at all in making the complaint by P.W.1. At this juncture, we cannot ignore the fact that P.W.1 is an illiterate woman. Despite that, she had gone to the police station and made a complaint without any delay. Of course, as rightly contended by the learned respective counsel for the appellants, there was delay in forwarding the FIR to the Court. It is well settled that in a case involving multiple number of accused, the delay in forwarding the FIR weakens the case of the prosecution. But it is not the law and on that score alone, the entire case of the prosecution should be discarded. It all depends upon the facts and circumstances of each case. In a case where the evidences of eyewitnesses are so convincing and cogent, though there had occurred some delay on the part of the investigating officer in forwarding the FIR to the Court, on that score, the evidences of such eye-witnesses cannot be disbelieved.

19. With the above principles in mind, we shall examine as to whether the evidence of P.W.1 to P.W.3 are reliable and trustworthy. P.W.1 is the widow of the deceased while P.W.2 is the daughter of the deceased and P.W.3 is the son of the deceased. In Ex.P.1/complaint, the presence and participation of A.1, A.2, A.3 were clearly mentioned and the names of accused Nos.4, 5 and 6 have not been mentioned. P.W.1/widow of the deceased, in chief examination, stated that all these six accused were residing in the same locality and they are known to her personally for about 20 years. P.W.2 and P.W.3 have stated during the investigation that they have mentioned the names of all the accused in this case. The statements recorded under Section 161 of Cr.P.C. are also reached the Court in reasonable time.

20. P.W.2 and P.W.3, who are the daughter and son of the deceased respectively, have given a statement before the learned Judicial Magistrate/P.W.17, who had recorded the statements under Section 164 of Cr.P.C. It remains to be stated that through P.W.2, M.Os.3/bloodstained white baniyan of Komalavalli (P.W.2) and M.O.4/bloodstained Orange baniyan of Hariharan (P.W.3) were marked.

21. Furthermore, as per the evidence of P.W.16/Assistant Director of Forensic Science Department, she has found bloodstains on the dress worn by the witnesses P.Ws.2 and 3 on the date of occurrence and as per the Biology Report/Ex.P.25, both P.W.2 and P.W.3 were present in the scene of occurrence, while the accused assaulted their father in front of their house which lends support to the case of the prosecution.

22. In the chief examination of P.W.2 and P.W.3, they have categorically stated about the overt act of A.5. In the

cross-examination of P.W.2, there is nothing elucidated with regard to the assault made by A.5 on the body of the deceased. The presence of A.5 along with A.1 to A.3 was not disputed in the cross-examination. The presence of P.Ws.1, 2 and 3 in their house at the time of assault made by the accused was established by the prosecution in the manner known to law, in view of the multiple factors as discussed supra.

23. Furthermore, A.1, A.2, A.3, A.4 and A.5 came and called the deceased from his house, when he was eating food along with his family members and near the bathroom in front of the house, they have caused injuries on the deceased with deadly weapons and consequently, the deceased died due to the injuries. Merely because the name of A.5 was un-named in the F.I.R., the case of the prosecution cannot be thrown on that score alone. The entire issues including mentioning the name of the accused and the statements recorded under Section 161 of Cr.P.C. and the same reached the Court within a reasonable time and the involvement of A.5 in the alleged crime were clearly spoken to by the prosecution witnesses. The act of the accused on the body of the deceased with weapon of crime was deposed by P.W.1 coupled with the fact that the presence of A.5 armed with deadly weapons along with A.2 and A.3 were clearly spoken to by P.W.1, P.W.2 and P.W.3 and the presence of A.5 was not specific denial in the cross-examination of P.W.2 and P.W.3.

POINT :

24. It remains to be stated that as per Ex.P.31/Rough Sketch, the places marked as 14, 15 and 16 are street lights and the lights in the locality were burning and the source of light is sufficient enough to see the accused by P.Ws.1 to 3. This aspect was not denied in the defence during the cross-examination also lends support to the case of the prosecution and thus, we find that the presence of A.5 has been clearly spoken to by P.Ws.1 to 3 and the presence of P.W.2 and P.W.3 in the scene of occurrence has been clearly indicated in Ex.P.1/complaint and coupled with the documentary evidence of Ex.P.25-Biology Report, it goes to show the participation of A.5 armed with the deadly weapons at the time of occurrence and his act of stabbing with weapon also lends support to the case of the prosecution.

25. Though P.Ws.1, 2 and 3 are the relative witnesses, their presence in the house at the time of occurrence cannot be doubted, besides their presence has also been substantiated by the medical evidence P.W.16 and their presence is duly corroborated with the documentary evidence Ex.P.25 and the same come into existence immediately after the occurrence.

26. On perusal of the records, these witnesses were not cross-examined on the same day. In other words, only on a petition to recall, the prosecution witnesses have been recalled and cross-examined, after six months. Despite the

passage of six months time, the private prosecution witnesses have clearly spoken about the presence of A.1, A.2 & A.5 and their evidence with regard to the overt act of the respective accused is clear and cogent. The act of the accused on the body of the deceased were spoken to by the witnesses which is found to be duly corroborated by PW.10/Post Mortem Doctor, who had issued Ex.P.6-Post Mortem Certificate and hence, we find that the nature of the injuries found on the body of the deceased as reflected in Ex.P.6 and as spoken to by P.W.10/Doctor stands duly corroborated by the evidence of private prosecution witnesses P.Ws.1, 2 and 3.

27. Taking into consideration the answer elucidated during the cross-examination after six months and also taking into consideration that there is no contradiction on the vital aspects, we hold that the evidence of P.W.1, 2 and 3 are reliable.

28. In this case, though it is stated by P.W.1, during the cross-examination, that the police arrived at the scene of occurrence during the night hours at 8.20 p.m., we cannot hold that the time of arrival of the police was precisely 8.20 p.m. The perception of a poor illiterate woman in respect of time cannot be given any weightage. Therefore, we reject the argument of the learned counsel that the police arrived at the scene of occurrence at 8.20 p.m. itself.

29. The contention of the learned counsel that the evidences of P.Ws.1 to 3 are highly artificial inasmuch as they have spoken about the individual overt acts of all the six accused, meticulously. We find some force in the argument of the learned counsel for the appellants. But, in our considered view, on that score, we cannot reject the evidences of P.Ws.1 to 3. The presence of P.W.1 and P.W.2 at the scene of the crime is clearly proved, since the occurrence has taken place just in front of the house of P.W.1 and the occurrence was during the night hours, and it is quite natural for the family members to be present in the house during the night hours.

30. We can hold that there is some exaggeration on the part of P.Ws.1 to 3, out of anxiety. There can be no doubt that accused Nos.1 to 3 were present at the scene of occurrence, all armed with weapons, to attack the deceased. To that extent, though we are not attaching much importance for the individual overt acts by accused Nos.1, 2 and 5, we hold that these three accused were present and they only caused the death of the deceased.

31. We have no hesitation to hold that A.1, A.2 and A.5 have inflicted the injuries on the body of the deceased which resulted in homicidal death of the deceased Mr.Manoharan. Accordingly, we hold that the oral evidence of P.Ws.1, 2 and 3 coupled with the documentary evidence of Exs.P.1 and P.25 go

to show the participation of A.5 armed with deadly weapons and the association of A.1, A.2 and A.3 has been proved by the prosecution beyond reasonable doubt and thus, the judgment of conviction and sentence rendered by the learned III Additional Sessions Judge, Thiruvallur, in respect of A.5 for the offence under Section 148 and 302 IPC, is well considered and well merited and it does not warrant any interference at this stage. Thus, the conviction and sentence passed by the trial Court as against A.5 namely, Murali, who is the second appellant in Crl.A.No.185 of 2017, are confirmed.

32. As far as the first accused namely, Deva @ Devaraj, who is the appellant in Crl.A.No.173 of 2017 and the second accused namely, Yuvaraj, who is the first appellant in Crl.A.No.185 of 2017 are concerned, their names does find a place in the First Information Report. The overt act attributed by them has been clearly spoken to by P.Ws.1, 2 and 3.

33. In view of the clear and cogent evidence of the private prosecution witnesses coupled with the medical witnesses and the Forensic witnesses, in our considered view that there is nothing on record even slightest doubt in the version of P.W.1 to 3 so far as the presence of A.1 and A.2 are concerned. Accordingly, we find that the judgment of conviction and sentence rendered by the Trial Court under Sections 148 and 302 of IPC as against A.1 and A.2, is well considered and well merited and it does not warrant any interference at this stage.

34. In the result,

[i] Both the criminal appeals are dismissed and the conviction and sentence imposed on A.1/Deva @ Devaraj, A.2/Yuvaraj, and A.5/Murali, by the trial Court in S.C.No.157 of 2014, are confirmed.

[ii] The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Jr1

To

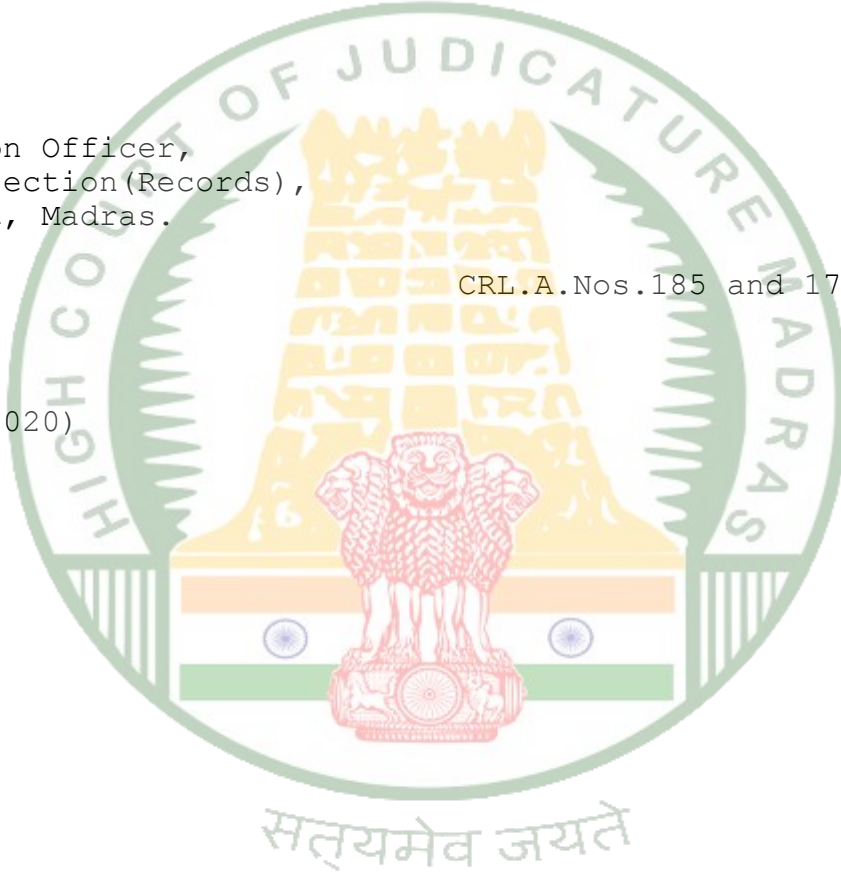
1. III Additional Sessions Judge,
Thiruvallur District,
Poonamallee.
2. The Inspector of Police,
Thirumullaivoyal Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court, Madras.

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The Section Officer,
Criminal Section(Records),
High Court, Madras.

CRL.A.Nos.185 and 173 of 2017

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