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Crl.A.Nos.1263, 1264, 1444, 1475 & 1477 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	24.04.2025
<i>Pronounced on</i>	10.06.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH**AND****THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR****Crl.A.Nos.1263, 1264, 1444, 1475 & 1477 of 2024**

Pratheek Krishnamoorthy	...Appellant in Crl.A.No.1263/24
Krishnamoorthy	...Appellant in Crl.A.No.1264/24
1.John	
2.Senthil	...Appellants in Crl.A.No.1444/24
Kannan	...Appellant in Crl.A.No.1475/24
Vijayakumar	...Appellant in Crl.A.No.1477/24

Vs.

The State represented by The Inspector of Police, E-4, Abhiramapuram Police Station, Chennai – 600 018.	...Respondent in all appeals
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Common Prayer: Criminal Appeals filed under 374(2) of Criminal Procedure Code and 1973/415(2) of BNSS, 2023, to call for the records in S.C.No.108 of 2011 on the file of the learned II Additional Sessions Judge, Chennai and set aside the judgment of conviction and sentence passed by the Trial Court on 03.10.2024 for the offences under Sections 120(B) r/w 302 IPC, 343 r/w 149 IPC, 148 IPC, 302 r/w 149 IPC, 201 r/w 149 IPC.

For Appellant : Mr.R.Vivekananthan

For Respondent : Mr.S.Rajakumar,
Additional Public Prosecutor



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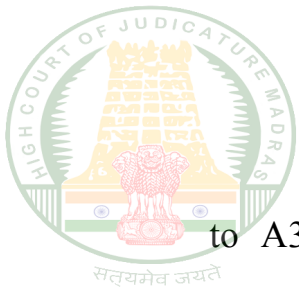
COMMON JUDGMENT

WEB CO **M.S.RAMESH, J.**

All these appeals arise out of a common judgment of the II Additional Sessions Court, Chennai in S.C.No.108 of 2021 dated 03.10.2024 and hence, they are disposed of through a common judgment.

2. For the sake of convenience, the parties in these appeals are referred according to their ranks before the Trial Court.

3. The brief case of the prosecution is that Babu @ Hemakumar (deceased) was the driver of Ezhil Deepa/P.W.4. Kannan (A3) is the driver of Krishnamoorthy (A1) and also maintains all the private cars belonging to A1. A3 was also in close relationship with Pratheek Krishnamoorthy (A2), who is the son of A1. On an earlier occasion, when P.W.4 complained about A3 to her father-A1 and brother-A2 about certain misappropriations committed by him, A3 thought that it was the deceased who had complained about him to P.W.4 and thereby carried a grudge against him. In order to take revenge against the deceased, A3 had spread a rumour to A2 and A3 that P.W.4 was having an illegal affair with her driver (deceased). Enraged on the news of illegal intimacy, A1



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to A3 had conspired together to do away with the deceased and accordingly had engaged henchmen, viz., Vijayakumar (A4), John (A5) and Senthil (A6), for executing their criminal plan. On 30.06.2010, at about 10.00 P.M., A1 to A6 had formed an unlawful assembly armed with deadly weapons and had brutally assaulted the deceased with knives and thereby murdered him. The complaint on this incident in Crime No.323 of 2010 by the deceased's father, was altered from Section 174 Cr.P.C. to Sections 147, 148, 342, 302, 201 read with Section 149 IPC against A1 to A6. On completion of the investigation, a final report was lodged against all the accused charging them for the offences registered against them.

4. Before the Trial Court, the prosecution had examined 36 witnesses, P.W.1 to P.W.36 and marked 44 documentary evidences, Ex.P1 to Ex.P44, apart from 31 material objects, M.O.1 to M.O.31. On the side of the defence, no witnesses or documents were marked.

5. On the strength of the oral and documentary evidences before it, the Trial Court had recorded the guilt of all the accused and sentenced them to undergo the following imprisonment:-



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For the Charge U/s 120(B) r/w. 302 IPC:- The Accused 1 to 6 are sentenced and convicted U/s. 235(2) Cr.P.C., now 258(2) of BNSS to undergo rigorous imprisonment of Ten Years and to pay fine of Rs.25,000/- each.

For the Charge U/s. 342 r/w. 149 IPC:- No separate punishment was imposed for the wrongful confinement since major punishment was awarded U/s.302 of IPC.

For the Charge U/s. 148 of IPC:- No separate punishment was imposed for the wrongful confinement since major punishment was awarded U/s.302 of IPC.

For the Charge U/s.302 r/w. 149 of IPC:- The Accused 1 to 6 are sentenced and convicted U/s.235(2) Cr.P.C., now U/s.258(2) of BNSS Act, to undergo rigorous LIFE IMPRISONMENT. The Accused 1 and 2 being the prime Accused are directed to pay fine amount of Rs.5,00,000/- each in default sentenced to undergo simple imprisonment for another period of one year and the Accused 3 to 6 shall pay a sum of Rs.25,000/- each in default sentenced to undergo simple imprisonment for another period of six months.

For the Charge U/s.201 r/w. 149 of IPC:- The Accused 1 to 6 are sentenced and convicted



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U/s.235(2) Cr.P.C., now U/s.258(2) of BNSS Act, to undergo rigorous imprisonment of Five Years and also to pay a sum of Rs.25,000/- each.

6.1. In order to substantiate their case, the following witnesses were examined by the prosecution.

6.2. Anbazhagan-P.W.1, who is the father of the deceased, was examined to prove that the deceased had left the house on 30.06.2010 and had not returned thereafter. According to him, he had gone to A1's house on 02.07.2010 searching for his son, when he was informed that the deceased was dismissed from service, after paying him the monthly salary, since he was in the habit of chewing tobacco. P.W.1 had also identified the body of the deceased.

6.3. Suguna-P.W.2, who is the mother of the deceased, corroborates the evidence of P.W.1 and had also identified the blood stained clothes of the deceased.

6.4. Similarly, Senthil-P.W.3, who is the brother of P.W.2, also corroborates the evidence of P.W.1.

6.5. The key witness put forth by the prosecution is Ezhil Deepa-P.W.4, who is the daughter of A1 and sister of A2, against whom there was an allegation of illegal intimacy with the deceased. However, P.W.4



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did not support the case of the prosecution and hence was treated as a hostile witness.

6.6. P.W.5, P.W.7, P.W.9, P.W.15, P.W.16, P.W.17 and P.W.19 are other independent witnesses who did not support the case of the prosecution and hence, they were all treated as hostile witnesses. None of these witnesses support the case of the prosecution in any manner.

6.7. Pandyarajan-P.W.6 is the neighbour of A1, who speaks about a car being parked in his building on 30.06.2011 at about 11.00 P.M.

6.8. Ezhumalai-P.W.8 is another driver known to the deceased, who speaks about the quarrel between the deceased and P.W.4 on 25.06.2010.

6.9. P.W.10 to P.W.13 and P.W.18 are witnesses to the confession statements of A1 to A3.

6.10. Thirunavukkarasu-P.W.20 is a petrol bunk supervisor, who speaks about having filled petrol to a car on 30.06.2010.

6.11. Likewise, Kathirvel-P.W.22 is a petrol bunk clerk, who also speaks about filling of petrol to a car on the same day.

6.12. Govindaraj-P.W.21 who is the Forest Range Officer, who reports about the dead body lying in his range. His statement was reiterated by Paramasivan-P.W.24, who is a Sweeper attached to



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Devadarganapatti Police Station.

WEB COPY 6.13. Chandrasekaran-P.W.26, who is a Head Constable, speaks about identifying and accompanying the corpse for postmortem.

6.14. Wilson-P.W.27 is the Sub-Inspector of Police of Abhiramapuram Police Station, who had sent the samples for forensic analysis.

6.15. Dr.Juliya Jayanthi-P.W.28 is a Doctor who conducted the postmortem. According to her testimony, she had received the partly decomposed body on 11.07.2010 and commenced the postmortem at 12.30 P.M. In her postmortem certificate (Ex.P20), she had recorded the following injuries:-

The following ante-mortem injuries were noted over the body:-

1.An extended stab injury of size 8cms x 4cms x 6cms seen over the front of the left thigh. Margins were regular.

On dissection:-

The wound passed downwards and inwards, injuring the underlying muscles, vessels and nerves, with the surrounding bruise.

2.An extended stab injury of size 5cms x 5cms x 6cms seen over the back of the right hip. Margins were regular.



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On dissection:-

The wound passed downwards and inwards, injuring the underlying muscles, vessels and nerves, with the surrounding bruise.

3.A stab injury of size 3.5cms x 2.5cms x 3cms seen over the back of the right side of the neck. Margins were regular, one end pointed and the other end rounded.

On dissection:-

The wound passed downwards and inwards, injuring the underlying muscles, vessels and nerves, with the surrounding bruise.

4.A stab injury of size 4cms x 3cms x 3.5cms seen below injury No.3. Margins were regular, one end pointed and the other end rounded.

On dissection:-

The wound passed downwards and inwards, injuring the underlying muscles, vessels and nerves, with the surrounding bruise.

5.A cut and removed injury of size 6cms x 12cms x 7cms seen over the front of the neck. Margins were regular, one end pointed and the other end rounded.

On examination:-

Trachea of length 6.5cms and oesophagus of length 6cms were missing. The upper and lower cut ends of the trachea and oesophagus were visualized.



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Margins were regular with the surrounding bruise, injuring the surrounding muscles, vessels and nerves.

6.A cut and removed injury of size 8cms x 7.5cms x 2.5cms seen over the genital region.

On examination:-

external genitalia including penis and scrotum were missing. The cut ends of the penis and scrotum were seen. Margins were regular with the surrounding bruise, injuring the surrounding muscles, vessels and nerves.

In her final opinion (Ex.P21), she had recorded that the deceased would appear to have died of injury Nos.5 and 6 sustained by him one or two weeks prior to autopsy.

6.16. V.Geethalakshmi-P.W.33 and Balasubramanian-P.W.34 are the forensic experts who had conducted the superimposition of the skull and DNA analysis respectively.

6.17. A.Murugesan-P.W.35 is the Inspector of Police who had conducted the initial investigation. According to him, after he had taken up the investigation, he had recorded the statements of the witnesses and based on statements, he had arrested A2 on 08.07.2010. As per the voluntary confession statement given by A2, he had visited the crime scene and prepared the rough sketch (Ex.P35) and observation mahazar



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(Ex.P36) in the presence of the witnesses. On receiving the information

of locating and identifying the body within the jurisdiction of the

Devadarganapatti Police Station, he made arrangements for P.W.2 to

identify the body. Thereafter, on 11.07.2010 at 6.30 P.M., he had arrested

A1 near Mandaveli bus stand and recorded his voluntary confession,

based on which, he had seized two cars in the presence of the witnesses.

Since P.W.4 expressed her willingness to give a voluntary statement, she

was produced before the XIV Metropolitan Magistrate on 22.07.2010

and her statement was recorded under Section 164 Cr.P.C. He thereafter

collected evidences from the General Manager of National Highways

Authority of India, Guindy for tracing the car of the accused. In the

meantime, A3 to A6 had surrendered before the Chengalpattu Court and

on 15.07.2010, he took them into Police custody for interrogation. He

thereafter recorded their voluntary confessions, based on which he had

recovered 14 items under seizure mahazar/Ex.P39. At that place, he had

prepared observation mahazar/Ex.P40 and rough sketch/Ex.P41 in the

presence of the witnesses. Based on the confession statements of these

accused, a knife (M.O.25) and blood stained reaper wood (M.O.24) were

recovered under a seizure mahazar/Ex.P42. He conducted further

investigation by enquiring several witnesses till he was transferred to



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another Station.

WEB COPY 6.18. Rayappan-P.W.36 took up the final portion of the investigation and sent the case papers for forensic analysis under Form-95. On completion of the investigation, he had filed the final report charging all the accused, as mentioned above.

7. The learned counsel appearing on behalf of the accused submitted that there was absolutely no evidence before the Trial Court to record the guilt of any of the accused. Being a case that rests on circumstantial evidence, the prosecution has not let in even a single witness to fix the culpability of the crime on the accused and none of the circumstances put forth by them have been established. The learned counsel also drew attention of this Court to the judgment of the Trial Court, wherein reliance has been placed on the statements of the witnesses made under Section 161 Cr.P.C., as well as the confession statement of the accused, which are impermissible. Hence, the learned counsel submitted that the conviction recorded by the Trial Court and the sentences imposed requires to be set aside.

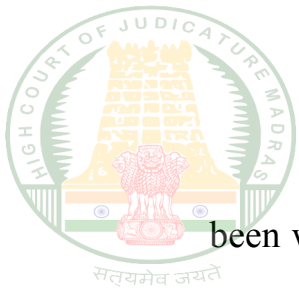


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8. The learned Additional Public Prosecutor would submit that a clear motive was established by the prosecution through P.W.4, who had categorically deposed before the Magistrate under Section 164 Cr.P.C. This apart, he referred to the medical evidences and submitted that this was a case of gruesome murder, where the accused had caused grievous stab and cut injuries on the body of the deceased. Since the motive for A1 and A2 was because of the illegal intimacy which the deceased had with A1's daughter, all of them had cut his penis and scrotum, which act indicates their motive clearly. He also placed reliance on the recovery of the blood stained clothes of the deceased from the lake and submitted that all the accused had clearly intended to cause disappearance of the evidence to the crime and are therefore liable to be punished for the offence under Section 201 read with 149 IPC, apart from the crime of murder.

9. We have given our anxious consideration to the submissions made by the respective counsels.

10. The entire case of the prosecution rests on circumstantial evidences and the law as to appreciation of evidences in such a case has



been well settled. In the case of ***Sharad Birdhichand Sards Vs. State of***

Maharashtra reported in (1984) 4 SCC 116, the Hon'ble Supreme Court

had summarized five essential conditions that is required to be fulfilled to establish a case against an accused based on circumstantial evidences.

Following are those five circumstances:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the



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accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

11. The aforesaid principles have been time and again reiterated by the Hon'ble Supreme Court and had been followed in numerous decisions. With these established principles of law in our minds, we shall now analyze the evidences let in by the prosecution, touching upon the various circumstances let in by them, to prove the guilt of the accused.

Motive:-

12. Two motives have been attributed in this case as against the accused A1 to A3. Incidentally, A4 to A6 are alleged to be the henchmen of A3. According to the prosecution, A3 carried a grudge over the



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deceased, since he felt that the deceased had complained to P.W.4 about the misappropriation of funds by him, when he was also in-charge of handling the maintenance of private cars of A1. In order to take revenge against the deceased, A3 is alleged to have spread a rumour that the deceased had an illegal intimacy with P.W.4, owing to which, A1 and A2 were enraged and all of them had conspired together to get rid off the deceased. In order to substantiate their motive, the statement of P.W.4 under Section 164 of Cr.P.C. was recorded before the Metropolitan Magistrate. Though P.W.4 has stated about the complaint given by her to her father/A1 with regard to the misappropriation of funds by A3, she has categorically denied any relationship with the deceased. However, the statement does not find corroboration during the course of trial, when she denied any knowledge about the case in hand and was therefore treated as an hostile witness by the prosecution.

13. Though several independent witnesses were examined by the prosecution, none of them had spoken about the motive which A1 to A3 had against the deceased. P.W.1, P.W.2 and P.W.3 are the father, brother and mother of the deceased respectively. Even in their testimonies, they only speak about their son going to work on 30.06.2010 and thereafter



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not returning back. They also alleged that P.W.4 had informed P.W.1 that she had a suspicion on A1 to A3 in connection with the missing of the deceased. Apart from these statements, none of them speak about the grudge A3 may have had against the deceased, owing to his complaint to P.W.4 with regard to the misappropriation or of any illegal intimacy between the deceased and P.W.4. In the absence of the same, we are of the affirmed view that the prosecution has miserably failed to establish motive on these accused.

Statement under Section 164 Cr.P.C:-

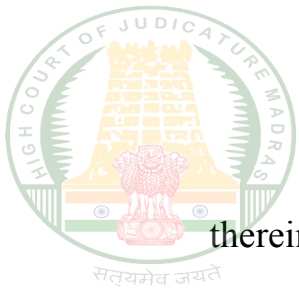
14. It is the claim of the prosecution that P.W.4 had volunteered to give a statement before the Metropolitan Magistrate, which was recorded under Section 164 Cr.P.C. Though P.W.4 speaks about the suspicion she had against A1 to A3 when the deceased had gone missing, none of the other statements made by her would, in any way, help the case of the prosecution. This apart, unless we find some corroborative piece of evidence to support this statement of P.W.4, it is highly unsafe to place reliance on the same and record the guilt of the accused. However, during the course of trial, P.W.4 had turned hostile and did not support the prosecution's case at all.



WEB COPY 15. It is a settled proposition of law that a statement under Section 164 Cr.P.C. is not a substantive piece of evidence but can be used only to corroborate the statement of witness. However, in the instant case, the author of the statement itself had not subsequently supported the prosecution's case and neither do we find any corroboration from the deposition of the other witnesses. While that being so, the statement recorded under Section 164 Cr.P.C. loses its significance and thus, we do not intend to give it any evidentiary value.

Discovery of the route through which the accused had taken the deceased:-

16. The prosecution had examined P.W.20, who is a petrol bunk supervisor and P.W.22, who is a petrol bunk clerk at Tindivanam, as well as P.W.23, who is a Manager working in National Highways Authority of India to substantiate that the vehicle bearing No.TN-04-AE-8070 had passed through the Tollgates and was also filled with fuel. Though P.W.20 and P.W.22 had deposed that the fuel receipts produced by the prosecution were issued from their respective petrol bunks, they had admitted that the registration number of the vehicle was not mentioned



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therein. P.W.23 also states that the certificate issued by him does not refer to the vehicle number in which the deceased was allegedly taken. In the absence of the same, we fail to understand as to how the prosecution can claim to have established that the accused had taken the deceased through these toll plazas and petrol bunks. In our view, the evidences of P.W.20, P.W.22 and PW.23 are very weak pieces of evidences to fix the culpability of the crime on the accused and hence, much reliance cannot be placed on them.

Identification of the body:-

17. The body of the deceased who had gone missing on 30.06.2010 was discovered only on 10.07.2010, in a partially decomposed state. The Investigating Officer had collected samples of the skull and DNAs and through the biological report (Ex.P22) and serological report (Ex.P23), the body was identified to be that of a male aged about 22 years and the DNA analysis also confirms the body to have been the son of P.W.1 and P.W.2.

18. P.W.28, who is the Postmortem Doctor, had recorded several cut and stab injuries on the body of the deceased and had opined that the



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deceased may have died owing to two of the injuries recorded therein.

The recovery of the body and the subsequent postmortem conducted would, at the most, would establish that this is a case of culpable homicide. However, nothing further can be inferred with regard to the culpability of the crime on any of the accused.

Medical Evidence:-

19. From the evidence of the postmortem Doctor (P.W.28), when read along with the postmortem certificate (Ex.P20), we find this case to be one of a gruesome murder, whereby six stab or cut injuries were found on the body of the deceased. In one of the injuries, the entire genital area was found missing and another cut injury measuring 6cms x 12cms x 7cms was seen over the front of the neck. The Doctor's opinion recording the death of the deceased was also due to these major injuries.

20. P.W.33, who is the Forensic Expert, had confirmed that the sample of the skull received by her belong to a male aged about 22 years. P.W.34, who is a DNA Expert also confirms that the body predominantly matches the blood samples of P.W.1 and P.W.2. The medical evidence before us suggests that the police have identified the body and matched it



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of belonging to the son of P.W.1 and P.W.2 and that he was murdered.

However, when there was absolutely no other evidence to even remotely indicate the culpability of the crime on any of the accused, the only evidence of possibility of the commission of murder alone may not suffice to record the guilt of the accused.

21. This is a classic case where the Investigating Officer had conducted a shabby investigation and could not prove even a single piece of evidence to connect the chain of circumstances. However, being curious as to how the Trial Court had recorded the guilt of the accused, we had perused the entire judgment. To our utter dismay, we found that in order to establish one of the main circumstances, namely motive, the Trial Court had placed reliance on the statement of P.W.4 recorded under Section 161 Cr.P.C., as well as under Section 164 Cr.P.C. In the same portion of the judgment, the Trial Court had also relied upon the confession statement of A1 to A3 and observed that these statements were not disproved by the defence. We fail to understand as to how the Trial Court could be insensitive to the basic principles in appreciating the evidences before it and recording the guilt of the accused on the basis of the confession statements of the accused before the Investigation Officer,



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as well as the statements of P.W.4 made under Section 161 Cr.P.C., which are impermissible.

Last Seen Theory:-

22. The Trial Court had recorded that, from the statement of P.W.1 to P.W.3, the deceased left for his job and had gone to A1's Company. This statement has been construed by the Trial Court as a last seen theory. None of the witnesses before the Trial Court had spoken about the deceased in the company of any of the accused at any point of time. If that be so, the Trial Court ought not to have taken into consideration the circumstance of last seen theory and recorded the confession.

23. All the other portions of the judgment of the Trial Court are also equally inappreciable and are not backed by any proper evidence. As such, the entire judgment of the Trial Court requires to be set aside.

24. For all the foregoing reasons, the judgment of the learned II Additional Sessions Judge, Chennai dated 03.10.2024 passed in S.C.No.108 of 2024, is set aside. Consequently, the appellants/accused are acquitted of all the charges and are directed to be released forthwith,



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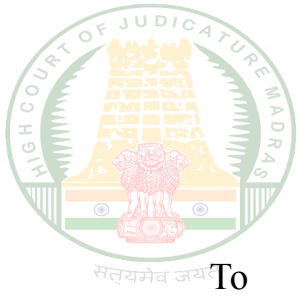
unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded and the bail bonds, if any, executed shall stand discharged.

25. In the result, all the Criminal Appeals stand allowed.

[M.S.R., J] [N.S., J]
10.06.2025

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

Note: Issue order copy on 12.06.2025



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To
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- 1.The II Additional Sessions Judge,
Chennai.
- 2.The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.
- 3.The Inspector of Police,
The Inspector of Police,
E-4, Abhiramapuram Police Station,
Chennai – 600 018.
- 4.The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.

hvk

Pre-delivery judgment made in
Crl.A.Nos.1263, 1264, 1444, 1475 & 1477 of 2024

10.06.2025