

Bail slip

(1) The Appellant/Accused Viz., Indira @ Indira kala was directed to be released on bail in and by the order of this Court dated 18.11.2002 made in CrI.MP.No.10985/2002 in CA.No.1240/2002 on the file of the High Court, Madras.

(2) The Appellants/Accused 3 and 5 namely 1). Mustak Ali, (2). Immthiyas Ahmed @ Samsudeen were directed to be released on bail in and by the order of this Court dated 10.10.2002 made in CrI.MP.No.9565/2002 in CA.No.1247/2002 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Criminal Appeal Nos.1240 of 2002,
1247 of 2002 and 616 of 2003

Indira @ Indira Kala ... Appellant/A1 in
CrI.A.No.1240 of 2002

Mustak Ali ... Appellants/A3 & A5 in
Immthiyas Ahmed @ Samsudeen CrI.A.No.1247 of 2002

Shabudeen ... Appellant/A2 in
CrI.A.No.616 of 2003

vs.

State By Inspector
of Police, G.1,
Vepery Police Station ... Respondent
Cr.No.3136/98

Criminal Appeals are filed under Section 374 (2) of Cr.P.C. against the judgment passed by Additional District & Sessions Judge, Fast Track Court II in Sessions Case No.293 of 2000 dated 05.07.2002.

For appellants : Mr. V.Gopinath, Senior Counsel
for Mr.S.Ananthanarayanan for
Appellant in Crl.A.No.1240/2002

Mr.C.Duraipandian for Appellants
in Crl.A.Nos.1247 of 2002 and
616 of 2003.

For Respondent : Mr. V.M.R.Rajendran,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered
by J.A.K.SAMPATHKUMAR, J.)

These appeals arose out of conviction and sentence imposed by the Additional Sessions Judge, Fast Track Court II, Chennai in S.C.No.293 of 2000 convicting the appellants in the following manner:

2. Appellant (A1) in C.A.No. 1240 of 2002 was convicted under Section 302 I.P.C and sentenced to suffer life imprisonment and also to pay a fine of Rs.5,000/- in default 6 months rigorous imprisonment.

3(i). Appellant (A2) in Crl.A.No. 616 of 2003 was convicted under Section 302 I.P.C. and sentenced to undergo life imprisonment and also to pay a fine of Rs.5,000/- in default 6 months rigorous imprisonment .

3(ii). He was also convicted under Section 201 I.P.C. and sentenced to suffer rigorous imprisonment for 7 years and also to pay a fine of Rs.2,000/- in default 3 months rigorous imprisonment.

3(iii). He was also Convicted under Section 382 I.P.C. and sentenced to suffer rigorous imprisonment for 10 years and also to pay a fine of Rs.2,000/- in default 3 months rigorous imprisonment. The sentences shall run concurrently.

4(i).First Appellant (A3) in Crl.A.1247 of 2002 namely Mustak Ali was convicted under Section 201 I.P.C. and sentenced to suffer rigorous imprisonment for 7 years and also to pay a fine of Rs.3,000/- in default 3 months rigorous imprisonment.

4(ii). The second appellant (A5) namely Imithaz Ahmed @ Samsuddin in CrI.A.No.1247 of 2002 was convicted under Section 414 I.P.C. and sentenced to suffer rigorous imprisonment for years.

5. The case against A4 namely Sudhakar ended in acquittal.

6.1. The case of the prosecution is as follows:

The deceased is the wife of P.W.1 and mother of P.W.2 and P.W.3. P.W.8 is the junior paternal uncle of P.W.1. Deceased Anusuya was having finance dealing. She gave loan to several persons.

6.2. Similarly, Anusuya gave loan of Rs.3,00,000/-to the first accused. She also gave loan of Rs.30,000/- to the second accused. But neither A1 nor A2 repaid the loan amount to the deceased. Therefore, the deceased demanded A1 and A2 to repay the loan amount.

6.3. On 10.11.1998, A2 telephoned and stated that he would get money from P.W.15, Akbar and settle the amount due to the deceased on 12.11.1998. On 12.11.1998 at about 10.30 a.m. A4 Sudhakar came to the house of the deceased and took her in the car wherein, two more persons were also present. Then they proceeded to P.W.15, Akbar's house at Anna Nagar. They waited there but could not get any amount. Then they took her to various places and returned to her house at about 5.00 p.m. The Deceased informed about the day's happening to P.W.1.

6.4. On 13.11.1998 at about 9.00 p.m. deceased informed to P.W.1 that she is going to A1 Indira @ Indira Kala's house for collection of loan amount. The deceased went to A1 house at 10.15 a.m. P.W.4 Meena, the servant maid of A1 was present at the time when the deceased came there. P.W.6 being the watchman of the apartment wherein A1 is living saw the deceased entering the house of A1 but did not noticed when she left the house as he was sent out to metro office to pay the bill.

6.5. Then A1 mixed some powder in the bread with vegetables and gave it to the deceased Anusuya. P.W.4 Meena questioned about the same. A1 Indira @ Indira kala replied that it is only Holy Ash. Deceased consumed the same and sat on the sofa. P.W.4 Meena applied some oinment for the leg paid suffered by the deceased. Then A1 Indira @ Indira Kala took the deceased inside the house and asked P.W.4 Meena to bring A2 Shapudeen. P.W.4 Meena went and brought A2 Shabudeen. A2 came along with two other persons to A1's house.

6.6. Thereafter, the deceased was asked to lay down on a pillow. Immediately A1 caught hold the deceased hands and A4 and A5 caught hold of the legs of the deceased. A2 pressed the pillow M.O.1 on the face of the deceased. A3 Mustak Ali was very much present at the time. Thereafter A3 went out and brought M.O.11 Car, to the house of the first accused. Thereafter, A2 to A5 taken the deceased in the car M.O.11 brought by A2. This was seen by P.W.7 Ramadoss.

6.7. P.W.4 Meena infact questioning the attitude of the first accused for which, the first accused asked P.W.4 Meena not to tell to any one regarding the occurrence.

6.8. Meanwhile P.W.1 Ekambaram, husband of the deceased returned to the house at 11.00 a.m. The deceased was not there. Then he enquired one Narendran about the deceased. He informed P.W.1 that deceased left at about 10.00 a.m. Then P.W.1, Ekambaram waited till evening, but the deceased did not turn up. Then at about 6.00 to 7.00 p.m. P.W.1 Ekambaram telephoned to A1's house and enquired about the deceased. A1 stated that the deceased was there around to one to 1 ½ hours. After that she left the place, saying that she had some work to attend. Again at about 7.30 p.m. P.W.1 Ekambaram, husaband of the deceased and P.W.2 Ravichandran, son of the deceased went to the house of A1 and enquired about the deceased. A1 informed that the deceased left the place saying that she had to attend some work.

6.9. On 14.11.1998, at about 10.00 a.m. P.W.1 went to Vepery Police station and gave a report Ex.P.1. At about 10.15 am. P.W.39, Head Constable registered a case of women missing in Crime No.3136 of 1998 under the caption women missing. Ex.P.14 is the F.I.R.

6.10. On hearing the news from the village that a women body is found at Pandur Aeri within the jurisdiction of Tiruvallur Taluk, P.W.20 along with P.W.21 and P.W.22 went there and seen the corpus and thereafter went to Tiruvallur Taluk Police station and gave a report Ex.P.2, which was received by p.w.38 Sub Inspector of Police who inturn registered the same in Cr.No. 922 of 1998 under Section 174 Cr.P.C. Ex.P.11 is the printed F.I.R. P.W.23 to P.W.25 have also seen the corpus at the said place.

6.11. Then P.W.38 Inspector of Police went to the scene of occurrence and prepared a rough sketch Ex.P.12. He prepared Observation Mahazar Ex.P3 and conducted inquest on the body of the deceased Anusuya. Ex.P.13 is the inquest report. Then he sent the body for postmortem through P.W.32. P.W.37 R. Muthulakshmi is the postmortem doctor attached to Government Hospital, Ranipettai. On 15.11.1998 on receipt of requisition from P.W.38 Inspector of

Police, P.W.37 postmortem doctor conducted autopsy on the body of the deceased Anusuya and gave postmortem certificate Ex.P.10. Since, the dead body was highly decomposed, he could not give any opinion regarding the cause of death. Thereafter, P.W.37 received the questionnaire to give opinion regarding the cause of death of the deceased Anusuya from P.W.43 for which, she gave answer for the same. Ex.P.17 is the the report. This Ex.P.17 would amount to recording of evidence under Section 161 Cr.P.C. In fact Ex.P.17 was marked subject to admissibility. After postmortem, the blood stained cloth of the deceased was recovered under Form 95 by P.W.42. Then he sent the same through Court for serological test. Blood stained cloth of the deceased was spoken to in detail by P.W.27 Murali. M.O.2 is saree. M.O.3 is blouse. M.O.4 is inskirt.

6.12. In the meantime, P.W.38 Inspector of Police on 14.11.1998 gave a news to the papers for publication about the death of Anusuya. On 15.11.1998, P.Ws 1 and 2 after seeing the paper came to Tiruvallur Taluk police station to identify the corpus. So, P.W.38, Inspector of Police took them to Government Hospital, Tiruvallur for identification of the deceased. They identified the body of the deceased.

6.13. In pursuance of the identification, P.W 42 Inspector of Police attached to Tiruvallur Taluk Police station, on 15.11.1998 came to know about the case registered under Section 174 Cr.P.C. and hence he altered the offence under Section 174 Cr.P.C. into Sections 302 and 379 I.P.C. He also examined P.Ws 1, 2 and 20 and other witnesses and recorded their statements. Ex.P.15 is the altered F.I.R. Ex.P.16 is the requisition given by P.W.42 to conduct serological report in respect of the blood stained clothes.

6.14. So much so, P.W.43, Inspector of Police, G1, Veppery Police Station, Chennai on the orders of the Commissioner of Police on 18.4.1999, received the case in Crime No.922 of 1998 on the file of Tiruvallur Police station under Section 174 Cr.P.C. which was altered to Section 302 I.P.C. and clubbed the same together with the case in Crime No. 3136 of 1998 on the file of the G1, Veppery Police Station which was filed for women missing and took up investigation. Ex.P.20 is the altered F.I.R.

6.15. On 19.4.1999, P.W.43 Inspector of Police received information that the accused Indira @ Indira Kala had obtained Anticipatory Bail in this Court under Criminal O.P. No.1621 of 1999. On 20.4.1999, he went to Tiruvallur Pandur Village and inspected the place of occurrence. Threafter, he examined the witnesses pertaining to this case. On 26.4.1999 he sent the questionnaire to P.W.37 Dr.Muthulakshmi to find out the cause of death of the deceased Anusuya and obtained a report as per Ex.P.17.

6.16. On 29.4.1999 at about 8.30 a.m. on information, in the presence of witnesses P.W.30 Kandaswamy and Ganesh Kumar, he arrested the accused Shabudeen (A2) and Mustak Ali (A3) at Purasaiwakkam Town Junction and obtained confession statement from them. The statement were attested by the said witnesses. Ex.P.18 is the confession statement of the accused Shabudeen (A2). Ex.P.19 is the confession statement of the accused Mustak Ali (A3). On the same day, he produced them before the XIV Metropolitan Magistrate, Chennai and obtained police custody from 29.4.1999 to 02.4.1999. on the same day, on the identification by the accused P.W.43 Inspector, in the presence of P.W.30 Kandaswamy and witness Ganesh Kumar, seized M.O.11 Maruti Omni Van T.C.V.7808, on production by Bala Murugan at No.8, Venkataraman Street, T.Nagar, Chennai-17 under mahazar Ex.P.7. In fact the said vehicle was given by the accused namely Mustak Ali to P.w.31 Kumar for service on 13.11.1998 and taken the same on 14.11.1998.

6.17. On the same day P.W.4 Meena came to the police station and identified the accused Shabudeen and Mustak Ali. On 02.5.1999 at about 10 a.m., on the identification by the accused Shabudeen P.W.43 Inspector went to the house of the accused Indira @ Indira Kala situated at No.41, 'C' Block, Kadambari Apartment, Ritherdon Road, Purasaiwakkam and prepared observation mahazar and sketch. Ex.P.21 is the sketch. On the identification by the accused Shabudeen, he also seized M.O.1 Pillow under mahazar.

6.18. Thereafter, the accused Shabudeen took P.W.43 along with other witnesses to the pawn broker shop of P.W.29 and informed about the sale of M.Os 5 to 10. P.W.29 who in turn informed P.W.43 Inspector that the accused Immthiyas Ahmed @ Samsudeen (A5) came to his shop and sold the same in the year 1998. P.W.43 Inspector who in turn seized the same under mahazar.

6.19. On 19.5.1999, P.W.43 Inspector examined Mr.Sekar, Inspector of Police (Crime), G1, Vepary police station and came to know that the absconding accused Immthiyas Ahmed @ Samsudeen (A5) concerned in another crime case and lodged in central prison, Chennai. So, on 20.5.1999, he gave a requisition to XIV Metropolitan Magistrate, Chennai for police custody of Immthiyas Ahmed @ Samsudeen (A5) and obtained orders for 2 days police custody. He also obtained confession statement from the accused Immthiyas Ahmed @ Samsudeen in the presence of witnesses Ganesh kumar and Parthasarathy.

6.20. P.W.43 Inspector also taken necessary steps to for recording of 164 statement of P.W.4 from Chief Metropolitan Magistrate, Chennai and obtained orders for the same. Ex.P.8 is the order dated 12.5.1999 issued by the Chief Metropolitan Magistrate,

Chennai for recording of 164 statement of P.W.4 by VII Metropolitan Magistrate. In pursuance of the said order, P.W.35 Civil Judge examined P.W.4 Meena under Section 164 Cr.P.C. and obtained her statement. Ex.P.9 is the 164 statement of P.W.4 Meena.

6.21. On 21.5.1999 at about 7.30 a.m., on information, P.W.43 Inspector arrested the accused Sudhakar (A4) at the junction of Purasaiwakkam Perambur Barax Road in the presence of witnesses Parthasarathy and Ganesh Kumar and obtained confession statement from them. P.W.4 Meena also identified the accused Immthiyas Ahmed @ Samsudeen to P.W.43 Inspector. Thereafter, P.W.43 was transferred from that station. He also examined Inspector of Police, Tiruvallore Police station under Section 161 Cr.P.C. and came to know that the deceased would have been murdered after kidnapping her from Purasaiwakkam Abirami Theatre. He examined P.W.1 and witness Ravi Chandran under Section 161 Cr.P.C. and recorded their statements. Exs.D.1 & D.2 are the dates mentioned in their statement. Though P.W.43 Inspector examined P.W.4 Meena for four times, she did not divulge any of the information.

6.22. Thereafter, P.W.44 Inspector took up further investigation in this matter, perused the case file completed the investigation and filed a final report on 26.7.1999 under Sections 302, 201, 382, 414 read with 120 (B) & 34 I.P.C. against the accused namely Indira@Indira Kala (A1), Shabudeen (A2), Mustak Ali (A3), Sudhakar (A4) and Immthiyas Ahmed @ Samsudeen (A5).

7. Thereafter, prosecution examined P.Ws.1 to 44, marked 21 Exhibits and 11 material objects to prove the guilty act of the accused. Exs.D1 and D2 were marked by the defence side to disprove the case of the prosecution.

8. The trial court, after analysing the entire facts on record came to the conclusion that the accused namely Indira@Indira Kala (A1), Shabudeen (A2), Mustak Ali (A3), and Immthiyas Ahmed @ Samsudeen (A5) have committed the offence (1) under Section 302 (2) 302, 201, 382 I.P.C. (3) 201 I.P.C. and (4) 414 I.P.C. respectively and convicted and sentenced them accordingly for the period referred therein. At the same time, the trial Court acquitted the fourth accused Sudhakar, as he was not found guilty for the charges levelled against him.

9. Heard both sides.

10. Now, we have to find out whether the finding of the trial Court in convicting and sentencing the accused referred above for the offences narrated therein is on the basis of the evidence available on record.

11. To find out truth or otherwise of the prosecution case, the following points are to be proved.

1. Whether Corpus delicti of the accused Anusuya is proved?

2. Whether the death of Anusuya is due to homicide or suicide under the influence of the accused or suicide on her own accord or natural death?

3.If the death is due to homicide, whether the appellants herein are responsible for the same?

Point No.1:

12. Corpus delicti of the accused Anusuya have been proved on the identification by P.W.1 to 3 and P.W.8 who are none other than the husband, son, daughter and junior paternal uncle of P.W.1. In fact, P.W.1 husband of the deceased Anusuya gave a complaint to Vepary Police Station about the missing of his wife Anusuya on 14.11.1998 itself. The complaint of P.W.1 and registration of F.I.R. were marked as Exs.P.1 and P.14. On 14.11.1998, unidentified corpus was found by P.W.20 Village Administrative Officer at Pandur village, Tiruvallur Taluk. Unidentified corpus was seen by P.W.20 to P.W.26. They have also seen that the corpus wearing M.Os 2, 3 and 4. So much so, P.W.20 being the village administrative officer gave a report about the unidentified dead body to P.W.38 being the Sub Inspector of Police, Tiruvallur police station who in turn registered a case in Crime No. 922 of 1998. Ex. P.20 is the complaint and Ex.P.11 is the printed F.I.R. The photo of Anusuya has also been published in all papers. So much so, P.W.38 also gave a news to the papers for publication on 14.11.1998 about the unidentified corpus found at Pandur village. On seeing the paper publication P.W.1 and 2 went to Tiruvallur Taluk Police Station and on their instruction went to Government Hospital and identified the body of the deceased Anusuya in the mortuary. From the narration of events, we are satisfied that the corpus delicti of Anusuya has been proved by prosecution beyond reasonable doubt. There is no contrary evidence on this aspect. There is also no confrontation about his aspect by the defence.

Point No.2:

13. The body of the deceased Anusuya was subjected for postmortem. P.W.37, being the postmortem doctor, conducted autopsy on the body of the deceased Anusuya and submitted the report Ex.P.10. Since, the body was highly decomposed he could not give any opinion regarding the cause of death. Serological report also does not reveal that the death was due to consummation of any

poisonous substance. It is the prosecution case that the accused Indira @ Indira Kala has applied some poisonous substance on the eatable namely bread and vegetable and given it to the deceased for consumption. But the serological report does not reveal anything about the poisonous substance contained in the internal organ of the deceased Anusuya. The statement of P.W.37 regarding this aspect reads as follows:

".. .. . உள் உறுப்புகளை இரசாயண பரிசோதனைக்கு அனுப்பப்பட்டது. அந்த அறிக்கையில் நச்சு தன்மை கொண்ட பொருள் எதுவும் வயிற்றில் இல்லை என்று தெரிவிக்கப்பட்டது. நாவடி எலும்பு, நல்ல நிலையில் இருந்தது. பிரேதம் அழுகிய நிலையில் இருந்ததால் அதைப் பற்றி என்னால் கருத்து எதுவும் கூறமுடியவில்லை."

14. This statement was recorded by the learned Magistrate on 04.04.2002. More so, It is evident on record that on 26.4.1999, P.W.37 postmortem doctor gave answer for the questionnaire sent by the Inspector of Police law and order, Tiruvallur Police station to ascertain the cause of death of the deceased Anusuya. That answer to the questionnaire is marked as Ex.P.17. This Ex.P.17 was marked on 16.5.2002 through P.W.37 postmortem doctor. Answer to Question Nos. 8 and 17 by P.W.37 the postmortem doctor are as follows:

"

8. In the history of the case furnished by the Police along with the post-mortem certificate requisition, a contusion injury in the neck was mentioned by the police, please state that whether it was due to strangulation, smotheration or hanging. Also furnish the internal findings of the contusion. May be due to strangulation or extravasation of blood in the superficial soft tissues.

17. With your above findings what is your opinion about the cause of death Mrs. Anusuya Died of asphyxia due to smothering.

.. .. ."

A1 Indira @ Indira Kala gave 50,000/- to A2 Shabudeen for execution of their proposal and that on the fateful day i.e. on 13.11.1998 at about 10.30 a.m. deceased Anusuya came to the house of the first accused Indira @ Indira Kala for collection of loan amount and that the first accused administered some powder on food substance namely bread and vegetable and gave the same to the deceased Anusuya and that some time later, the deceased Anusuya got some pain on the leg for which, P.W.4 Meena applied Thailam on her leg to relieve the pain and thereafter, A1, A2, A4 and A5 in the presence of A3 executed their plan by pressing pillow on the face of the deceased Anusuya resulting her death and thereafter A2 to A5 took the corpus in the car M.O.11 and abandoned the same at Pandur Village after removing M.Os 5 to 10 from the body of the deceased and sold the same to P.W.29 and misappropriated the sale proceed.

16. The prosecution examined P.W.5 to prove the conspiracy theory. But the witness turned hostile. So, no reliance can be based on the evidence of P.W.5 to sustain conspiracy theory. The main eye witness for the murder of Anusuya by A1 to A5 is only P.W.4. The fact that the deceased came to the house of the first accused at about 10.00 a.m. on 13.4.1998 was infact proved by the prosecution. P.Ws 1 to 3 and P.W.6 asserted the visit of the deceased Anusuya to the house of the first accused on the morning on 13.11.1998. P.W.6 is none other than the watch man of the Kadambari Apartment, No. 41, Ritherdon Road, Purasaiwakkam wherein, the first accused was living. According to the prosecution the act of murder took place between 10.30 am and 11.30 a.m. on 13.11.1998 in the house of the first accused situated at Kadambari Apartment, No.41, Ritherdon Road, Purasaiwakkam.

17. The only evidence on record to substantiate this aspect is evidence of P.W.4. According to the prosecution, woman missing complaint was given on 14.11.1998 by P.W.1 husband of the deceased. First Information Report has been marked in this case. So much so, the corpus of Anusuya abandoned was seen by P.Ws 20 to 25 at Pandur Village within the jurisdiction of Tiruvallur taluk police station on 14.11.1998 itself. A complaint was also lodged and the same was registered under Section 174 Cr.P.C. Corpus was identified by the deceased P.Ws 1,2 & 8 at the mortuary of Government Hospital, Tiruvallur. So, the main point for consideration is whether the deceased Anusuya was murdered between 10.30 a.m. and 11.30 a.m on 13.11.1998 at the house of the first accused Indira @ Indira Kala.

18. Even the evidence on record would show that the deceased Anusuya came to the shop of P.W.13 Magesh on 13.11.1998 at about 3.30 p.m. In the absence of P.W.13, she enquired about P.W.13 from the shop attendant. The evidence of P.W.13 regarding this aspect reads as follows:

".. ..13.11.98 அன்று காலை நான் கடையில் இருக்கிறேனா என்று என் கடை பையனிடம் கேட்டிருக்கிறார். அது சமயம் நான் வெளியில் சென்றிருந்தேன். நான் மாலை திரும்பி வந்தவுடன் அனுகுயா அம்மா என்னை விசாரித்ததாக சொன்னான்."

19. It was ascertained through the witness by P.W.43 that the deceased Anusuya could have been murdered after kidnapping her from Purasaiwakkam Abirami theatre. The evidence of P.W.43 Inspector regarding this aspect reads as follows:

" சென்னை பரசைவாக்கம் அபிராமி தியேட்டர் அருகில் இருந்து கடத்தப்பட்டு கொலை செய்திருக்கலாம் என்று என்னுடைய மாற்றறிகையில் சொல்லியிருக்கிறேன் என்று சொன்னால் சரிதான்."

The altered report of P.W.43 is marked as Ex. P.20. There is a reference about the cause of death of the deceased Anusuya which reads as follows:

" பின்னர் அவர்களது புலன் விசாரணையில் இறந்து போன அனுகுயா 13.11.98 - ம் தேதி மாலை 5 1/2 மணிக்கு சென்னை அபிராமி தியேட்டர் அருகே மோகன் சுப்பிரமணி (எ) சித்திரா மணி பரசைவாக்கம் என்பவரால் பார்க்கப்பட்டுள்ளதாகவும், விரோதம் காரணமாக அவரை சென்னையில் இருந்து 13.11.98-ம் தேதி மாலை 5 1/2 மணிக்கு நான்கு சக்கர வண்டியில் கடத்தி கொலை செய்து சென்னை திருப்பதி நெடுஞ்சாலையில் பாண்டுர் கூட்டுச் சாலையில் இருந்து சுமார் 1/2 கி.மீ. வரை பிரிந்து செல்லும் கிராவல் ரோடு வழியாக கொண்டுச் சென்று பாண்டுர் ஏரிக்கரை ஓரம் வீசி இருக்க வேண்டும் என்றும் இறந்தவருடைய கணக்கு வழக்குகளையும் அவருக்கு ஏற்பட்டிருந்த தொழில் ரீதியாக அவருக்கு ஏற்பட்டிருந்த பகைமைக்கும் கொலைக்கும் காரணமாக அமைந்த உள் நோக்கத்தைய ம் நன்கு ஆராய வேண்டி இவ்வழக்கின் முதல் கட்டம் கடத்தல் சென்னையில் ஆரம்பிக்கப்பட்டுள்ளது என்ற அடிப்படையில் புலன் விசாரணைக்கு சென்னைக்கு மாற்றுதல் செய்துள்ளார்கள்."

20. Moreover, P.W.4 Meena at the time of cross examination has stated that the deceased Anusuya on her own accord on 13.11.1998 left the house of the accused. Her evidence reads as follows:

" 14ந் தேதி விசாரணையில் வேப்பேரி போலிசிடம் 13.11.98 அன்று காலை அனுகுயா அம்மா 1வது எதிரி வீட்டிற்கு வந்து

சாப்பிட்டுவிட்டு போய்விட்டார்கள் என்று சொன்னேன் என்றால் சரிதான். அவர்களே இறங்கி நடந்து போய்விட்டார்கள் என்று சொல்லி இருக்கிறேன் என்று சொன்னால் சரிதான்... .."

This part of evidence of P.W.4 Meena goes into the very root of the prosecution case and demolishes the prosecution theory setup through P.W.4.

21. Now, we have to ascertain whether the evidence of P.W.4 Meena, as spoken to, by implicating A1 to A5 for death of the deceased Anusuya, is trust worthy? P.W.4 Meena alleged that she was very much present at the time of murder of the deceased Anusuya by A1 to A5. In fact, P.W.4 Meena was examined by P.W.43 Inspector, on four occasions. She has not divulged any of these facts to P.W.43 which she has stated before the Magistrate who recorded the same under Section 164 Cr.P.C. which is marked as Ex.P.9. The evidence of P.W.43 regarding this aspect reads as follows:

" சம்பவத்திற்கு முன்பு, மீனாவை ஒரு முறையம், பிறகு மீனாவை 3 முறையம் விசாரித்தேன். மொத்தம் 4 முறை விசாரித்தேன். முதல் விசாரணையில் நீதிமன்றத்தில் சொன்னதை சொல்லவில்லை... .."

22. It implies that P.W.4 Meena divulged her alleged information to P.W.35 for the first time, only on 20.5.1999. P.W.4 Meena did not state any reason for not divulging the alleged incident to P.W.43, though she was subjected for examination on four occasions by him.

23. The trial Court, while accepting the evidence of P.W.4, has stated that P.W.4 could not divulge such information to P.W.43 as she was under threat by the first accused. Whereas, P.W.4 Meena has not stated that out of threat by the first accused, she did not divulge the alleged facts to P.W.43 or to any one. Without any basis, the trial Court has accepted the evidence of P.W.4 as if P.W.4, out of threat by A1, could not divulge the alleged facts to P.W.43.

24. Apart from that P.W.4 admitted in her evidence that the deceased Anusuya on her own accord left the house of the first accused on 13.11.1998. so much so, as per the prosecution case, the deceased Anusuya was found at 5.30 p.m. on the same day at Purasaiwakkam Abirami Theatre and from there only she was kidnapped and murdered. Therefore, the case of the prosecution that Anusuya was murdered on 13.11.1998 between 10.30 to 11.30 a.m at the house of the first accused situated at No.41, 'C' Block, Kadambari Apartment, Ritherdon Road, Purasaiwakkam has to be disbelieved, as

the same is contra to the prosecution case referred in Ex.P.20 by P.W.43.

25. Apart from that, the deceased Anusuya seen alive on the same day at about 3.30 p.m. at the shop of P.W.13 from the narration of events we are of the view that there is no evidence on record to show that the appellants herein have committed the act of murder of the deceased Anusuya on 13.11.1998 between 10.30 a.m. to 11.30 a.m. at the house of the first accused situated at No.41, 'C' Block, Kadambari Apartment, Ritherdon Road, Purasaiwakkam.

26. The lower Court erred in accepting the evidence of P.W.4 to come to a conclusion, by implicating the appellants herein for the death of Anusuya. We do not find any evidence to rope the appellants herein with the offence of murder of the deceased Anusuya, as spoken to by the prosecution. So much so, the prosecution failed to prove the cause of death of Anusuya in this case. The trial Court has not looked into the evidence in right prospective, while arriving at a conclusion that the appellants have committed the act of murder of the deceased Anusuya.

27. There is also a reference in Ex.P.1 that the deceased Anusuya has left the house of the first accused in between 10.00 a.m. to 11.00 a.m. on 13.11.1998. This reference reads as follows:

"... .. பிறகு மாலை 5 மணிக்கு ரித்தாடன் ரோடில் அவளுடைய சினேகிதி வீட்டிற்கு போன் செய்து கேட்டேன், அப்போது மாலை 4 மணிக்கு வீட்டில் இருந்து சென்றுவிட்டதாக கூறிட்டார்கள், பிறகு மீண்டும் 1 மணி நேரம் கழித்து கேட்டபோது காலை 10 மணிக்கு வீட்டிற்கு வந்ததாகவும், 11 மணிக்கு சென்றுவிட்டதாகவும் கூறினார்கள்."

The reference about the visit of the deceased Anusuya to the house of the first accused at 10.00 a.m. and left at 11.00 a.m. on 13.11.1998 is corroborative to the evidence of P.W.4 Meena. In this context also, we can safely come to a conclusion that the appellants are not responsible for the death of the deceased Anusuya.

28. Contra to the prosecution case it is evident that the deceased was seen alive at 3.30 p.m. and also at about 5.30 p.m. as spoken to by the witnesses. Apart from that, P.W.4 Meena has specifically stated that the deceased Anusuya left the house of the first accused on her own accord stating that she had to attend to some other work. It implies that the deceased Anusuya was alive at about 11.30 a.m. on fateful day, while leaving the house of the first accused. In this context also, we can safely come to a conclusion

Moreover, P.W.1 being the complainant of the particular regarding the jewels worn by the deceased at the house. But in his complaint Exhibit 10 about M.Os 5 to 10 worn by the deceased at the house. So much so, M.Os 5 to 10 were not in Court either by P.W.1 or by the relatives. In view of the deficiencies regarding the identification of the deceased in the case of the prosecution asserting that the deceased Anusuya has to be rejected.

The prosecution next asserted that the statement from P.W.29 pawn broker on the identification of the deceased is not worthy to mention that A2 and A3 were arrested on the pursuance of their confession statements, on the same day at 4.00 p.m. from P.W.29. The statement regarding this aspect reads as follows:

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The prosecution next asserted that from P.W.29 pawn broker on the identification worthy to mention that A2 and A3 were arrested in pursuance of their confession statements, on the same day at 4.00 p.m. from P.W.29. regarding this aspect reads as follows:

5 வெள்ளி சரடு- 1 ஆகியவற்றை சாட்சிகள் முன்பு, கைப்பற்றி
கைப்பற்றுவதில் மகசர் தயார் செய்தேன்."

The assertion of P.W.43 is that M.Os 5 to 10 were recovered from P.W.29 on 29.4.1999 at about 4.00 P.M. at the shop of P.W.29 on the identification by A2 Shabudeen. Whereas, the evidence of P.W.29 is contra to the prosecution case on the point of seizure of M.Os 5 to 10.

32. The evidence of P.W.43 Inspector regarding the arrest of A5 reads as follows:

".. . . . /19/5/99ந் தேதி ஜி-1 வேப்பேரி காவல் நிலைய
குற்றப் பிரிவு, ஆய்வாளர் சேகரை விசாரிக்க இவ்வழக்கின்
தலைமறைவு, எதிரி இமித்தியாஸ் ஏற்கெனவே ஒரு குற்ற வழக்கில்
கைது செய்யப்பட்டு சென்னை மத்திய சிறையில் இருப்பதாக அறிந்து
20.5.99ந் தேதி 14 -வது மாஜிஸ்ட்ரேட் முன்பு, மனு தாக்கல் செய்து இ
மித்தியாஸை போலீஸ் காவலில் போலீஸ் விசாரணை செய்ய 2 நாட்கள்
வைத்து விசாரணை செய்தேன்."

P.W.43 asserts that A5 Immthiyas was taken into police custody only on 20.5.1999. The evidence of P.W.29 regarding the seizure of M.Os 5 to 10 reads as follows:

".. . . . ஆஜர் 5வது எதிரி இமித்தியாஸ் என்பவர் என்
கடையில் வந்து கவரிங் வளையல்கள், பொன் குண்டு, தங்க செயின்,
தங்க தாலி, தங்க தோடு, வெள்ளி அறுந்த சரடு ஆகியவற்றை
என்னிடம் கிரயத்திற்கு விற்கார். 1998ம் ஆண்டு மாதம் தேதி
ஞாபாகமில்லை. ஆஜர் 5வது எதிரியிடம் வந்த போலீசார் என்னை
விசாரித்து நான் எதிரியிடம் வாங்கிய நகைகளை திருப்பி
கொடுத்தேன். போலீசார் மகசர் தயாரித்து சாட்சிகள் முன்பு
, நகைகளை பெற்றுக் கொண்டு சென்றுவிட்டார்கள்."

The evidence of P.W.29 coupled with the evidence of P.W.43 sated supra would reveal that M.Os 5 to 10 were recovered from P.w.29 only on 20.5.1999 after the arrest of the fifth accused Immthiyas.

33. There are two different version in the prosecution case regarding the seizure of M.Os 5 to 10 by P.W.43.

1. M.Os 5 to 10 were seized from the shop of P.W.29 on 29.4.1999 on the identification of A2.

2. M.Os 5 to 10 were seized from the shop of P.W.29 only on 20.5.1999 on the identification of A5.

So much so, neither P.W.1 nor other relatives of the deceased have identified M.Os 5 to 10 in Court and marked the same as M.Os. Apart from that P.W.1. has not stated anything in his complaint Ex.P.1 about the jewels worn by the deceased while leaving from the house. Because of the discrepancy and variance between the evidence of the prosecution witness regarding seizure of M.Os 5 to 10 during the course of investigation, we are unable to agree with the contention of the prosecution that the said M.Os were seized only during the course of investigation.

34. Therefore, we are of the opinion that, the case of the prosecution in connecting the fifth accused Immthiyas along with M.Os 5 to 10 to establish the offence of murder of Anusuya, against the accused cannot be accepted.

35. While summing up the prosecution case, we have culled out the proved facts of prosecution case and the latches in the prosecution case in the following ways:

(i) The deceased Anusuya was having financial dealings with several persons including the first and second accused is evident from the evidence of P.Ws 10 to 19. A2 and A5 also have financial dealings as per evidence of PW.14 & 15.

(ii) The corpus of the deceased Anusuya was found on 14.11.1998 at Pandur village within the jurisdiction of Tiruvallur Taluk has been spoken to in detail by P.W.s 20 to 26.

(iii) Though it is alleged that M.Os 5 to 10 belongs to the deceased Anusuya, they were not identified and marked either by P.W.1 or by the relatives of the deceased Anusuya. But they were marked by P.W.28, which is fatal to the prosecution case due to non identification of M.Os by the concerned persons.

(iv) It is the specific case of the prosecution that the deceased was murdered on 13.11.1998 between 10.30 a.m to 11.30 a.m. at the house of the first accused. The charge against the accused reads as follows:

" இரண்டாவதாக / மேற்படி சம்பவத்தின் தொடர்ச்சியாக 1,2 எதிரிகள் 3 முதல் 5 எதிரிகளுடன் கூட்டு சேர்ந்து அனுசுயாவை கொலை செய்ய சதித் திட்டம் தீட்டி, 13.11.98 அன்று காலை 10.30 மணியளவில் பரசைவாக்கம் ரித்தாட்டன் ரோடு காமப்பரி அபார்ட்மென்ட்ஸ் நகரம் பிளாக் என்.10ல் முதல் எதிரியின் வீட்டிற்கு வந்த அனுசுயாவைக்கு மயக்க மருந்த பொடி கலந்த உணவை அளித்ததாகவும், அதனால் மயக்கமாக இருந்த அனுசுயா அந்த வீட்டின் படுக்கை அறைக்கு சென்று படுத்ததாகவும்,

அப்போது 11.00 மணியளவில் 1 முதல் 5 எதிரிகள் அவரை கொலை செய்ய,ம் நோக்கத்துடன் அங்கு கூடி, 2வது எதிரி தலையணையை எடுத்து அனுசுயாவின் முகத்தில் வைத்து அழுத்தியதாகவ,ம், 4,5 எதிரிகள் அனுசுயாவின் கால்களைப் பிடித்துக் கொண்டதாகவ,ம், அதனால் ஏற்பட்ட முச்சுத் திணறல் காரணமாக அனுசுயா இறந்துவிட்டதாகவ,ம், அதனால் முதல் எதிரி, 2 வது எதிரி 4வது எதிரி 5 வது எதிரி ஆகியோர் இ.த.ச பிரிவு, 302ன்படிய,ம், 1முதல் 5 எதிரிகள் இ.த.ச. 302 உ/இ 120-பி-ன்படிய,ம் தண்டிக்கத்தக்க குற்றத்தை செய்துள்ளீர்கள் என்றும்,"

(v) The charge implies that the deceased was done to death on 13.11.1998 at about 11.00 a.m at the house of the first accused. But the evidence on record is otherwise. The evidence of P.W.1 husband of the deceased regarding this aspect reads as follows:

".. . . . நான் மாலை 6 அல்லது 7 மணிக்கு இந்திரா வீட்டிற்கு என் மனைவி வந்தார்களா என்றேன், அதற்கு அவர் இங்கு வந்தார்கள் 1 மணிநேரம் அல்லது 1 1/2 மணி நேரம் இங்கு இருந்து சாப்பிட்டுவிட்டு சென்றார்கள் என்று நான் போன் பண்ணும் போது சொன்னார்கள்."

(vi) The evidence of P.W.2, son of the deceased implies that the deceased Anusuya left alive from the house of the first accused at the relevant point of time. The evidence of P.W.2 regarding this aspect reads as follows:

".. . . . 13/11/98 அன்று மாலை 7.30 மணிக்கு போன் செய்தபோது 1வது எதிரி இந்திரா என் தாயார் காலையில் அங்கு 11.30 மணிக்கு சாப்பிட்டுவிட்டு சென்றார்கள், கால் வலிக்கிறது என்று சொன்னதால் நான் கால் அழுக்கி விட்டேன் என்றார்கள்."

The evidence of P.W.2 implies that the deceased Anusuya left alive from the house of the first accused on the fateful day.

(vii) The evidence of P.W.3 daughter of the deceased also shows that the deceased left alive from the house of the first accused at about 10.00 a.m. on 13.11.1998. Her evidence reads as follows:

".. . . . இந்திரா வீட்டிற்கும் போன் செய்தோம். அப்போது இந்திரா காலை 10 மணிக்கு அம்மா வந்து விட்டு சென்றுவிட்டதாக சொன்னார்கள்."

" பிப்ரவரி மாதம் 1999ல் நானும், அப்பாவும் சென்று 1வது எதிரியிடம் பணம் கேட்டதற்கு அவர்கள் பணம் வாங்கவில்லை என்று சொன்னார்கள்"

[illegible]

" அனுசூயா அம்மா இறந்த அன்றே போலிசார் என்னை விசாரிக்க அழைத்தார்கள் . அப்போது நான் போலிஸ் அதிகாரிகளிடம் இந்த விவரத்தை சொல்லவில்லை . நான் என் கணவரிடமும் இது பற்றி சொல்லவில்லை . நான் நெருங்கிய கொசப்பேட்டையில் உள்ளவர்களிடமும் எதுவும் சொல்லவில்லை "

" . . . பிரேதம் அழுகிய நிலையில் இருந்ததால் இறந்து போனவர் எவ்வளவு நேரத்திற்கு முன்னால் அவர் இறந்திருக்கக் கூடும் என்று என்னால் கணிக்க முடியவில்லை, " " " " " " " " " " " "

பிரேத பரிசோதனை அறிக் கையில் இறப் பின் காரணம் குறித் து
என் னால் கருத் து சொல் ல இயலாது என் று இதற் கு முன் ப
இந் நீதிமன் றத் தில் விசாரித் த போது சொல் லியிருக் கிறேன் .

பாடி அழுகிய நிலையில் இருந்ததால் பிரேத பரிசோதனை அறிக்கையில் கருத்து கொடுக்க முடியவில்லை. தலை முடியை கையால் தொட்டவ, டன் மண்டை ஓட்டின் தலை சதைய, டன் வரக்கூடிய நிலையில் பிரேதம் இருந்தது. மேற் சொன்ன காரணங்களினால் பிரேதம் முழுவதும் அழுகிய நிலையில் இருந்தது. அ.சா.ஆ.10-ல் மேற் சொன்ன காரணங்களினால் உடனடியாக மரணம் குறித்து என்னால் கருத்து தெரிவிக்க முடியவில்லை, நாவடி எலும்பு, நல்ல நிலையில் இருந்தது. இராசயன பரிசோதனைக்கு போய் விட்டு வந்த நாவடி எலும்பு, நச்சு பொருள் இல்லாத இரைப்பை, இவற்றை வைத்தும் என்னால் இறப்பின் காரணத்தை கூற முடியவில்லை."

(xiii) It is also evident that the deceased Anusuya was seen alive on 13.11.1998 at about 3.30 p.m. by one Saravanan S/o. Venkatesan. The evidence of P.W.42 regarding this aspect reads as follows:

" 16/11/98 ல் சரவணன் த/பெ. வெங்கடேசன்
என்பவரை விசாரித்தேன். அவர் என் புலன் விசாரணையில் 13.11.98
அன்று மதியம் சுமார் 3.30 மணிக்கு நான் கடையில் இருக்கும் போது
என் கடைக்கு பக்கத்து வீட்டில் குடியிருக்கும் அனுசுயா அம்மா
எங்க கடைக்கு வந்து வாசலில் நின்று என்னிடம் உங்க கடைஓனா
நரேஷ்டி என்ற நரேந்திரன் இல்லையா என்று கேட்டார் என்று
சொல்லியுள்ளார்."

<https://hcservices.ecourts.gov.in/hcservices/>

(xiv) It is also evident that the deceased Anusuya was found alive at Purasaiwakkam Abirami theatre on 13.11.1998 at about 5.30 p.m. The evidence of P.W.42 regarding this aspect reads as follows:

" 17/11/98 அன்று மோகன் சுப்பிரமணி (எ) சித்திராமன் என்பவரை விசாரித்தேன் அவர் என் புலன் விசாரணையில் நான் 13.11.98 அன்று மாலை சுமார் 5.30 மணிக்கு புரசைவாக்கம் அபிராமி சினிமா தியேட்டர் சென்ற போது மேற்படி சினிமா தியேட்டர் அருகில் அனுகுயா அம்மாவை பார்த்தேன் என்று சொல்லியுள்ளார். "

(xv) The altered report Ex.P.20 sent by Inspector of Police G.1, Vepery Police Station, would also indicate that the deceased Anusuya was seen alive at about 5.30 p.m. on 13.11.1998. The averments regarding this aspect reads as follows:

" பின்னர் அவர்களது புலன் விசாரணையில் இறந்து போன அனுகுயா 13.11.98 -ம் தேதி மாலை 5 1/2 மணிக்கு சென்னை அபிராமி தியேட்டர் அருகே மோகன் சுப்பிரமணி (எ) சித்திரா மணி புரசைவாக்கம் என்பவரால் பார்க்கப்பட்டுள்ளதாகவும், விரோதம் காரணமாக அவரை சென்னையில் இருந்து 13.11.98-ம் தேதி மாலை 5 1/2 மணிக்கு நான்கு சக்கர வண்டியில் கடத்தி கொலை செய்து சென்னை திருப்பதி நெடுஞ்சாலையில் பாண்டுர் கூட்டுச் சாலையில் இருந்து சுமார் 1/2 க.மீ. வரை பிரிந்து செல்லும் கிராவல் ரோடு வழியாக கொண்டுச் சென்று பாண்டுர் ஏரிக்கரை ஓரம் வீசி இருக்கவேண்டும் என்றும் இறந்தவருடைய கணக்கு வழக்குகளையும் அவருக்கு ஏற்பட்டிருந்த தொழில் ரீதியாக அவருக்கு ஏற்பட்டிருந்த பகைமைக்கும் கொலைக்கும் காரணமாக அமைந்த உள் நோக்கத்தைய 13.11.98-ம் நன்கு ஆராய வேண்டி இவ்வழக்கின் முதல் கட்டம் கடத்தல் சென்னையில் ஆரம்பிக்கப்பட்டுள்ளது என்ற அடிப்படையில் புலன் விசாரணைக்கு சென்னைக்கு மாற்றுதல் செய்துள்ளார்கள். "

(xvi). It is also evident that the deceased who was wearing nose ring at the time of occurrence, was not recovered by the police nor anything said about the same. The evidence of P.W.20 regarding this aspect reads as follows:

" இடது காது அறுபட்டிருந்தது. மூக்கில் ஒரு மூக்குத்தி போட்டிருந்தார்கள். "

36. The evidence of P.W.4 Meena cannot be relied, as she admitted at the time of cross examination that the deceased Anusuya left alive from the house of the A1 Indira @ Indira Kala on the fateful day contra to her chief evidence.

37. Whereas the trial Court without taking cognizance of the discrepancy and contradiction culled out from the evidence as narrated supra, came to a wrong conclusion that the appellants/accused have committed the offence referred in the judgment and sentenced them accordingly, resulting into miscarriage of justice and as such, the finding of the trial Court in convicting and sentencing the appellants/accused for the offences referred in the judgment are liable to set aside and accordingly, we set aside the same.

38. In view of the above discussion, the appellants namely Indira @ Indira Kala (A1), Shabudeen (A2), Mustak Ali (A3) and Immthiyas Ahmed @ Samsudeen (A5) are found not guilty and they are acquitted accordingly. Since Indira @ Indira Kala (A1), Mustak Ali (A3) and Immthiyas Ahmed @ Samsudeen (A5) have already been released on bail, the bail bonds executed by them shall stand cancelled and Shabudeen (A2), who is in jail, is ordered to be released forthwith provided there is no detention order pending against him in respect of any other case. The fine already paid, if any, by the accused are ordered to be returned to them.

39. Before parting with the case, we make the following observations:

1. The prosecution has failed to sustain the ground on which the case had been built.

2. Two Propositions are possible from the evidence adduced by the prosecution.

(i) Anusuya Wife of P.W.1 has been murdered on 13.11.1998 at about 10.30 am at the house of A1

or

(ii) Anusuya, wife of P.W.1 has been kidnapped from Abirami theatre Purasaiwakkam on 13.11.98 at about 5.30 p.m has been murdered thereafter.

If the first proposition is true, then the investigating officer, with a view to help the accused, has fabricated the case as if Anusuya was found alive on 13.11.98 at 5.30 p.m. at Purasaiwakkam Abirami cinema theatre.

or

If the second proposition is true, then investigating officer, with a view to help the persons concerned with the offence of kidnapping and murder of Ausuya after 5.30 p.m. on 13.11.1998, has fabricated a case against the accused concerned in the case as if the deceased Anusuya was murdered at the house of A1 on 13.11.1998 at about 11.00 a.m.

In either way the investigating officer concerned in the case has acted in a manner detrimental to public interest, resulting in miscarriage of justice for which necessary action should be taken against him.

ga

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Additional District and Sessions Judge
Fast Track Court - II
Chennai.
- 2.Do thro' The Principal Sessions Judge,
Chennai.
- 3.The II Metropolitan Magistrate
Egmore, Chennai - 8
4. Do Thro' The Chief Metropolitan Magistrate
Egmore, Chennai - 8.
- 5.The officer in charge,
Special Prison for Women
Vellore.
- 6.The Superintendent,
Central Prison,
Vellore.
- 7.The Inspector of Police
G-1, Vepery Police Station,
Chennai 7.

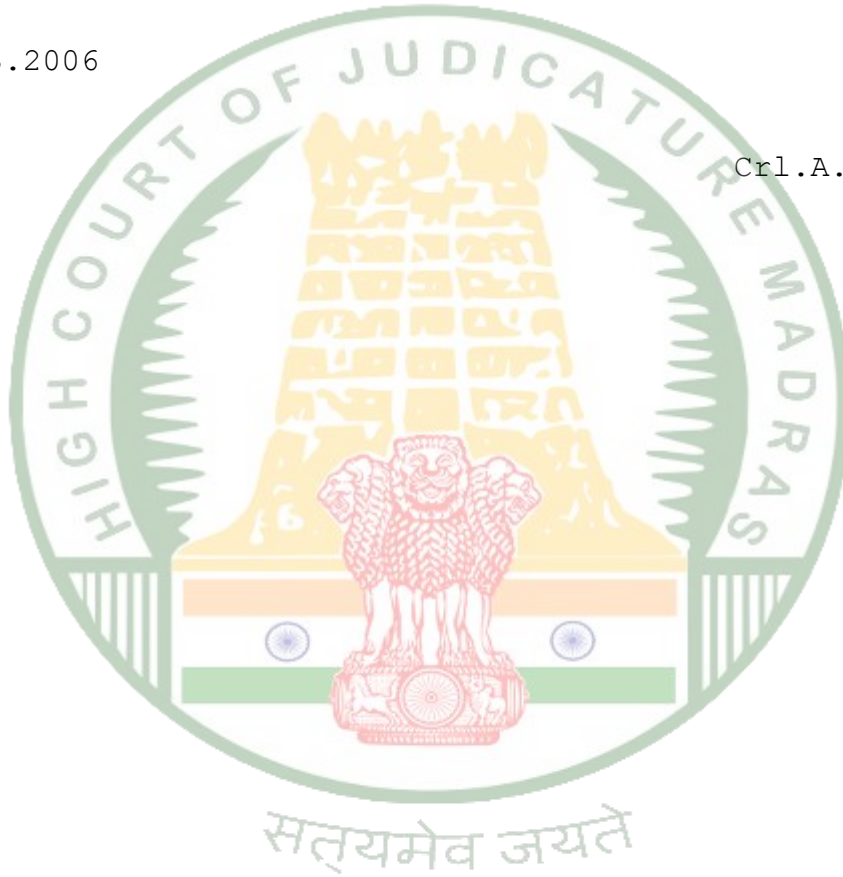
8.The Public Prosecutor,
High Court, Madras

9.The District Collector,
Chennai.

10.The Director General of Police
Mylapore, Chennai-4.

+ 1 cc to Mr.C. Durai Pandian Advocate SR No.9523

JE(CO)
SR/17.3.2006



Judgment in
Crl.A.Nos.1240 of 2002,
1247 of 2002 and
616 of 2003

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