

Bail Slip

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The Appellant/Accused viz Manoharan was directed to be enlarged on bail in and by the order of this court dated 13.12.2006 in Crl.M.P.No.1 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2008

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE K.N.BASHA

Criminal Appeal No.954 of 2006

Manoharan

... Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
Anupperpalayam Police Station,
Tiruppur,
Coimbatore District.
(Cr.No.319 of 2002)

... Respondent/Complainant

* * *

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the Judgment of conviction passed by the learned learned Additional Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur, in S.C.No.43 of 2006 dated 25.07.2006.

* * *

For Appellant : Mr.D.Selvaraju
for M/s.C.S.Saravanan

For Respondent: Mr.N.R.Elango,
Additional Public Prosecutor

J U D G M E N T

(Judgment of the court was delivered by K.N.BASHA, J.)

The sole accused, Manoharan, has come forward with this appeal challenging the impugned judgment of conviction and sentence dated 25.07.2006 passed by the learned Additional Sessions Judge, Fast Track Court No.IV, Coimbatore at Tiruppur, made in S.C.No.43 of 2006 convicting the accused for the offence under Section 302 IPC and sentencing him to undergo life imprisonment and also imposing a fine of Rs.1,000/-.

2. The occurrence in this case is shown to have taken place during the intervening night between 19.06.2002 and 20.06.2002 at Vanjipalayam Railway line wherein the accused pushed the deceased, Manickam, in front of a running train with an intention to murder the deceased as a result of which the body of the deceased was crushed and the deceased died on sustaining injuries and thereby the accused is liable to be punished under Section 302 IPC.

3. The prosecution, in order to bring home the charges against the accused, examined P.Ws.1 to 16, filed Exs.P.1 to P.11 besides marking M.Os.1 to 5.

4. The brief facts of the case as unfolded through the evidence adduced by the prosecution during the course of trial are as follows :

(i) P.W.7 is the wife of the deceased and P.W.8 is the father of the deceased. The accused and the deceased were friends. P.W.7 and the deceased got married 11 years prior to the occurrence and two children were born out of their wedlock. The deceased was working in a banian company as an Iron Master. P.W.7 was used to wash cloths in 2- 3 houses at Thiru.Vi.Ka.Nagar. The accused used to visit the house of the deceased frequently and they used to go out in a TVS 50 vehicle frequently. The accused also used to talk with P.W.7, wife of the deceased. P.W.7 used to talk with him considering him as a brother. The accused frequently used to state to P.W.7 that the deceased was a drunkard and he was always having beard. P.W.7 went to a temple at Palladam Road and at that time, the accused offered to help her as she was going alone, for that, P.W.7 refused to get any help from the accused. On another occasion while P.W.7 was returning alone from a temple, the accused called her to come along with him in his vehicle for that P.W.7 refused. The accused induced her to come along with him and also threatened her that as long as her husband, beardman was alive, she would behave like this.

(ii) On 19.06.2002 at 5.15 p.m., the deceased left the house and thereafter not returned to the house. On the same day at 8.30 p.m., the accused came to the house of P.W.7 and informed her that her husband, the deceased, was sitting along with another lady in a bus proceeding to Pudukottai. At that time also, the accused called her to come along with him. But P.W.7 refused.

(iii) P.Ws.5 and 6, who are also the residents of Tiruppur, stated that on 19.06.2002 at 6 p.m. while they were talking with the deceased sitting in front of P.W.5's house, the accused came there in the TVS 50 bearing registration No.TN 39 D 5422 and took the deceased in that vehicle. After an hour, the accused came again to the house of P.W.5 and questioned him about the whereabouts of the deceased for that, P.W.5 stated to him that as he only taken the deceased, how he can put that question. The accused has not given any reply.

(iv) The accused also informed P.W.8, father of the deceased, at or about the same time to the effect that the deceased was waiting in a Pudukottai bus, for that, P.W.8 informed him that his son would come back wherever he goes. It is stated by P.W.8 that thereafter, the accused informed P.W.8 over the phone that the deceased was found here and there. But the deceased not returned thereafter.

(v) P.W.2, who was working as trackman in the railways, was on duty on the night of 19.06.2002. On 20.06.2002 at 2.30 a.m., he was inspecting the track along with one Appunni and at that time, he found a body at 447/22-24 Kms in the railway track with injuries. Thereafter, he came to Vanjipalayam "A" Cabin and gave a written message to P.W.1, Station Master of Tiruppur Railway Station. P.W.1, in turn, gave the information through Ex.P.1 to Pothanur Railway police.

(vi) P.W.14, the Sub Inspector of Pothanur Railway Police Station, received Ex.P.1 from P.W.1. He registered the case in Crime No.442 of 2002 for the offence under Section 174 Cr.P.C. Ex.P.9 is the First Information Report.

(vii) P.W.14 went to the scene of occurrence. He held inquest on the dead body of the deceased. Ex.P.10 is the inquest report. He prepared the Observation Mahazar, Ex.P.2 and the Rough Sketch, Ex.P.11. He recovered M.Os.1 to 4, bloodstained pieces of lungi, pair of chapels, black colour waist band and bloodstained piece of shirt under Ex.P.3. He sent the body for post-mortem.

(viii) The Doctor, P.W.11, conducted post-mortem on 20.06.2002 at 3.30 p.m. He found the following injuries :
Injuries :

- (1) Loss of scalp, both frontal, both parietal and occipital bone with loss of brain tissue.
- (2) Abrasion 10 X 10 cm in left shoulder with fracture of left humerus with loss of lower 1/3rd of left forearm.
- (3) A lacerated wound 3 X 5 cm on the right elbow with fracture of lower 1/3rd of right humerus.
- (4) Fracture of sternum and all ribs chest cut off after the abdomen at the level of D5 vertebrae lung's, heart not found.
- (5) Abdomen crushed only part of intestine seen, liver, kidney, spleen not seen bladder empty.
- (6) Lacerated injury 10 X 10 cm in the right knee with fracture of patella and lower 1/3rd of right femur.
- (7) Left leg severed just below the left knee and hanging due to skin attachment only.

The Doctor, P.W.11, opined that the deceased would appear to have died due to head injury and crushing of chest-vital organ about 8 - 12 hours prior to post-mortem. Ex.P.7 is the Post-Mortem Certificate.

(ix) P.W.15, Inspector of Pothanur Railway Police Station, took up further investigation on 20.06.2002. P.W.9, who was a Councilor, stated that the accused appeared before her on 24.06.2002 at 12.00 noon. The accused informed P.W.9 that he took the deceased on 19.06.2002 at 7.00 p.m. in his two wheeler for consuming arrack through Vanjipalayam railway track. It is further stated by the accused that he stopped the two wheeler and proceeded along with the deceased in the railway track line and pushed the deceased in front of the running train and the deceased died on sustaining injuries. The accused stated to P.W.9 that he was frightened as he would be beaten by the police. P.W.9 informed the Pothanur Railway police over the phone. Thereafter, she took the accused to Pothanur Police Station and produced the accused along with her report, Ex.P.4.

(x) P.W.15, on production of the accused by P.W.9, arrested him on 24.06.2002 at 2.30 p.m. In pursuance of the admissible portion of the confession of the accused under Ex.P.5, he recovered M.O.5, TVS 50 vehicle under Ex.P.6 in the presence of witnesses. He altered the offence to one under Section 302 IPC and sent the Express First Information Report to the Court. He examined P.Ws.5 to 10 and others and the accused was remanded to judicial custody.

(xi) P.W.16, Inspector of Police, Tiruppur North Police Station, took up further investigation and went to the scene. He examined witnesses, but not recorded separate statements as they have given same statements as that of the statements made before P.W.14. On 17.07.2002, he examined the Doctor, P.W.11, who has conducted post-mortem on the deceased. After examining the remaining witnesses and after receiving post-mortem certificate, Ex.P.7, P.W.16 filed the charge sheet against the accused for the offence under Section 302 IPC on 10.10.2002.

5. When the accused was questioned under Section 313 Cr.P.C. in respect of the incriminating materials appearing against him through the evidence adduced by the prosecution, he has come forward with the version of total denial. The accused has not chosen to examine any witness on his side.

6. Mr.D.Selvaraju, leaned counsel appearing for the appellant, vehemently contended that the prosecution has not proved its case by adducing clear and cogent circumstances implicating the accused. It is pointed out by the learned counsel that as per the evidence of the Doctor, P.W.11, he has conducted post-mortem from 3.30 p.m. to 4.30 p.m. on 20.06.2002 and the deceased could have died 8 to 12 hours prior to the time of post-mortem and therefore, the correct time of the occurrence could not have been fixed. It is contended that the last seen theory, said to have been spoken by P.Ws.5 and 6, is itself not enough to implicate the accused. The learned counsel would contend that P.Ws.5 and 6 stated that the accused took the deceased at 6.00 p.m. on 19.06.2002 but no one seen the accused near the railway track with the deceased. The learned counsel would further

contend that the evidence of P.Ws.9 and 10 to speak about the alleged extra judicial confession given by the accused is also unreliable as P.W.9 is not closely known to the accused to repose confidence on her to give the extra-judicial confession. It is submitted that the prosecution has suppressed the report said to have been given by P.W.7, wife of the deceased, on 22.06.2002 and as such the prosecution has not come forward with true version. The learned counsel would submit that there are several missing links in the circumstances put forward by the prosecution.

7. Per contra, Mr.N.R.Elango, learned Additional Public Prosecutor, contended that the prosecution has proved its case beyond reasonable doubt by adducing clear, clinching and incriminating circumstances against the accused. It is submitted that P.W.7, wife of the deceased, clearly stated about the motive put forward by the prosecution to the effect that the accused was attempting to have an affair with her and as such the accused wanted to eliminate the deceased and thereby killed the deceased. It is submitted that P.W.7 categorically stated that the deceased left the house on 19.06.2002 at 5.15 p.m. and at 8.30 p.m., the accused came there and informed that the deceased was sitting along with one lady in a bus proceeding to Pudukottai and made an attempt to induce P.W.7 to come along with him. P.W.8, father of the deceased, also corroborated the version of P.W.7. It is contended that the last seen theory spoken by P.Ws.5 and 6 is quite clear and natural and both of them are independent witnesses. It is submitted that both P.Ws.5 and 6 categorically stated that the accused took the deceased at 6.00 p.m. on 19.06.2002 in his two wheeler, namely, TVS 50. It is also further pointed out by the learned Additional Public Prosecutor that after an hour, the accused came there and enquired about the whereabouts of the deceased in spite of the fact that the deceased was taken by him and such conduct of the accused shows his guilty mind.

8. It is contended by the learned Additional Public Prosecutor that according to the prosecution, the occurrence took place intervening night between 19.06.2002 and 20.06.2002 and it is impossible for the prosecution to fix the exact time in view of the fact that the case rests on the circumstantial evidence. It is pointed out that P.W.2, the trackman, found the body at 2.30 a.m. on 20.06.2002 and as such the occurrence could have taken place before 2.30 a.m. It is further submitted that the evidence of P.W.9 is quite clear to implicate the accused to the effect that the accused appeared before her on 24.06.2002 and gave the extra-judicial confession and she produced the accused before the Inspector of Police, P.W.15 and thereafter, P.W.15 arrested the accused. It is contended that the evidence of P.W.9 is also corroborated by the evidence of P.Ws.10 and 15. The learned Additional Public Prosecutor would further submit that the prosecution has not suppressed any report said to have been given by P.W.7, wife of the deceased, regarding the occurrence and even assuming, the report said to have

been given by P.W.7 to Tiruppur North Police on 22.06.2002 to the effect of missing the deceased that itself would not affect the main case of the prosecution. Therefore, it is contended that the prosecution has proved its case by adducing incriminating circumstances leading to the only interference of the guilt of the accused.

9. We have given our careful and anxious consideration to the rival contentions put forward by either side and also thoroughly scrutinized the circumstances put forward by the prosecution.

10. The prosecution placed reliance on the following circumstances :

(i) motive to the effect that the accused was attempting to have an affair with P.W.7, wife of the deceased, and as such he wanted to eliminate the deceased;

(ii) last seen theory said to have spoken by P.Ws.5 to 7 as P.W.7 has spoken about the deceased leaving the house at 5.15 p.m. on 19.06.2002 and P.Ws.5 and 6 have spoken about the accused taking the deceased at 6.00 p.m. in his TVS 50 vehicle.

(iii) the extra-judicial confession said to have been given to P.W.9, Councilor, as spoken by P.Ws.9 and 10 and production of the accused by them before P.W.15, the Inspector of Police.

11. It is well settled that in a case rests on the circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime.

12. The prosecution case rests on the circumstantial evidence. The Hon'ble Apex Court in Krishnan V. State represented by Inspector of Police reported in 2008 (4) Supreme 25 reiterated the tests to be satisfied in respect of circumstantial evidence and held as follows:

"This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :-

- i. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established ;
- ii. those circumstances should be of definite tendency unerringly pointing towards guilt of the accused ;
- iii. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else ; and

iv.the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir V. State of Maharashtra AIR 1982 SC 1157."

13. Now let us scrutinize and analyse the circumstances put forward by the prosecution, as stated above, in the light of the above well settled principle of law laid down by the Hon'ble Apex Court in respect of the circumstantial evidence.

14.1. The first and foremost circumstance relied on by the prosecution is the motive put forward against the accused. It is to be seen that P.W.7, wife of the deceased, has spoken about the alleged motive to the effect that the accused made attempts to have illicit affair with her. P.W.7 has categorically stated that the accused used to visit her house frequently as the accused and the deceased were friends and using such acquaintance, the accused used to state to P.W.7 that her husband, the deceased, was a drunkard and he was always found with beard. It is the further version of P.W.7 that while she was proceeding to a temple, the accused offered to help her, but she refused and on another occasion, while she was returning alone from a temple, the accused asked her to come along with him in his two wheeler and such request of the accused was also not accepted by P.W.7. Added to this version of P.W.7, it is further stated by her that the accused also used to behave with her in an indecent manner and inducing her to come along with him separately and went to the extent of stating that she would refuse like this as long as the beardman (deceased) was alive and threatened her. P.W.8, father of the deceased, also stated that he has seen the accused talking with P.W.7. It is pertinent to be noted that P.W.7 fairly stated in the chief examination itself that she has not informed about the misbehaviour of the accused to anyone. It is quite natural for any woman like P.W.7 not to disclose such unpleasant and indecent behaviour of a male person openly to anyone. The version of P.W.7 is quite clear and natural and her evidence in respect of motive is not shattered by the defence during the course of cross-examination. It is also pertinent to be noted that even assuming if not admitting that the prosecution failed to prove the motive that itself is not fatal to the prosecution case, if the other incriminating circumstances are clear and cogent leading to the only inference of the guilt of the accused.

14.2. The Hon'ble Apex Court in Ganesh Lal V. State of Maharashtra reported in 1992 Cri.L.J. 1545 by placing reliance on an earlier decision in Atley V. State of U.P. (AIR 1955 SC 807), wherein it was held that where there is clear evidence that the person has committed the offence, it is immaterial where no motive for commission of the crime has been shown, has held as follows :

"... even in the case of circumstantial evidence, absence of motive which may be one of the strongest links to connect the chain would not necessarily become fatal provided the other circumstances would complete the chain and connect the accused with the commission of the offence, leaving no room for reasonable doubt, even from the proved circumstances."

14.3. The next clinching and incriminating circumstances put forward by the prosecution is the last seen theory, said to have been spoken by P.Ws.5, 6 and 7. It is the categorical version of P.W.7, wife of the deceased, that the deceased left the house on 19.06.2002 at 5.15 p.m. and thereafter, not returned back to the house. P.Ws.5 and 6 categorically stated that while they were sitting in front of the house of P.W.5 and chatting with the deceased on 19.06.2002 at 6.00 p.m., the accused came there in his two wheeler TVS 50 bearing registration No.TN 39 D 5422 and took the deceased in his bike and thereafter, the deceased not returned. Added to the above said versions of P.Ws.5 and 6, it is pertinent to be noted that the accused said to have again met P.W.5 one hour thereafter and asked about the whereabouts of the deceased in spite of the fact that he had taken the deceased at 6.00 p.m. It is relevant to note that the evidence of P.Ws.5 to 7 in respect of the last seen theory is not at all shattered by the defence during the course of cross-examination. The undisputed fact remains that P.Ws.5 and 6 are independent witnesses and there is absolutely no animosity for them to implicate the accused falsely. It is also pertinent to be noted that it is the categorical version of P.Ws.5 and 6 that the accused took the deceased in his two wheeler TVS 50 bearing registration No.TN 39 D 5422 and the said vehicle, M.O.5, was also recovered in pursuance of the admissible portion of the accused under Ex.P.5. Therefore, we are of the considered view that the last seen theory coupled with the recovery of the two wheeler TVS 50 on the basis of the disclosure statement made by the accused is one of the clinching circumstances against the accused and the evidence of P.Ws.5 to 7 are not at all shattered by the defence during their cross-examination.

14.4. Yet another circumstance put forward by the prosecution is the extra-judicial confession said to have been made by the accused to P.W.9, Councilor. It is pertinent to be noted that it is not disputed by the defence that P.W.9 was unknown person to the accused. The fact remains that after the said extra-judicial confession was made by the accused, only P.W.9 took the accused and produced him before the Inspector of Police, P.W.15 and thereafter, P.W.15 arrested the accused. This version of P.W.9 is also corroborated by the version of P.W.10. It is pertinent to be noted that P.W.10 has further spoken about the recovery of the two wheeler TVS 50 in pursuance of the admissible portion of the confession of the accused under Ex.P.5. Therefore, there is absolutely no reason or any ground made out for rejecting the evidence of P.Ws.9 and 10 coupled with the evidence of P.W.15 in respect of the extra-judicial confession made

by the accused to P.W.9 and thereafter arrest and recovery of two wheeler, TVS 50, was effected in pursuance of the admissible portion of the confession of the accused.

14.5. Apart from the above said circumstances, this Court also cannot brush aside the conduct of the accused. As already pointed out, P.Ws.7 and 8 categorically stated that the accused came to their house at 8.30 p.m. and informed them that the deceased was seen with a lady in a bus proceeding to Pudukottai and further the accused informed P.W.8, father of the deceased, over the phone stating that the deceased was found here and there. Added to these versions of P.Ws.7 and 8, namely, wife and father of the deceased, the version of P.W.5 is also relevant to be considered in respect of the conduct of the accused. It is the categorical version of P.W.5 that only the accused took the deceased in his two wheeler at 6.00 p.m. while he was chatting with P.W.6 and the deceased and thereafter, the accused again came to his house alone after one hour and asked him about the whereabouts of the deceased and such conduct of the accused clearly demonstrates the guilty mind of the accused.

14.6. It is well settled by the Hon'ble Apex Court that the conduct of the accused would be relevant under Section 8 of the Evidence Act. The Hon'ble Apex Court has held in Anant Chintaman Lagu V. The State of Bombay reported in AIR 1960 SC 500 that the piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material.

15. As far as the version of the learned counsel for the appellant regarding the suppression of the report said to have been given by P.W.7, wife of the deceased, to Tiruppur North Police Station, we are of the considered view that non-production of such report is not fatal to the prosecution case. It is pertinent to be noted that P.W.7 in her chief examination stated that she has given a report to the police on 22.06.2002 in respect of missing of her husband, but the fact remains that the defence during the course of cross-examination suggested that P.W.7 has not given any report to the police and she has come forward with false version.

16. We are also not able to accept the contention of the learned counsel that the occurrence could not have been taken place in the time as alleged by the prosecution on the basis of the medical evidence as the Doctor stated that the deceased could have died 8-12 hours prior to the post-mortem. It is submitted that according to P.W.11, the Doctor, post-mortem was conducted at 3.30 p.m. on 20.06.2002 and it is also submitted that the occurrence, according to the prosecution took place during the night time between 19.06.2002 and 20.06.2002 and as such the prosecution has not fixed the time of the occurrence. We are not at all impressed in the above said contention of the learned counsel appearing for the appellant. It is

not possible for the Doctor to give a exact time of death. It is relevant to refer the decision of the Hon'ble Apex Court in Pattipati Venkaiah V. State of A.P. reported in (1985) 4 SCC 80 wherein, the Hon'ble Apex Court has held as follows :

"Medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second."

17. In view of the above said reasons, we are of the considered view that the prosecution has put forward clear, cogent and incriminating circumstances without leaving any missing links unerringly pointing to the guilt of the accuse.

For the aforesaid reasons, the appeal is liable to be dismissed and accordingly, dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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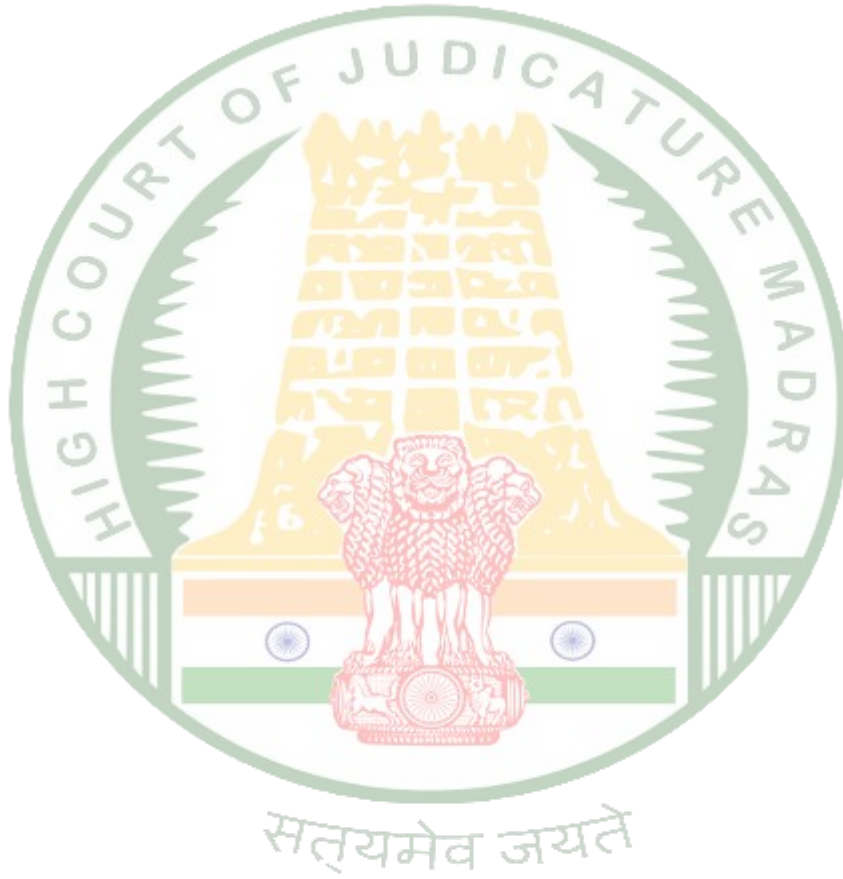
1. The Additional Sessions Judge,
Fast Track Court No.IV,
Coimbatore at Trippur.
2. - do - thro" The Principal Sessions Judge, Coimbatore.
3. The Judicial Magistrate No.I, Tiruppur.
4. - do - thro" the Chief Judicial Magistrate, Coimbatore.
5. The District Collector, Coimbatore District.
6. The Director General of Police, Chennai.
7. The Superintendent, Central Prison, Coimbatore.
8. The Inspector of Police,
Anupperpalayam Police Station,
Tiruppur, Coimbatore District.

9. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr.C.S.Saravanan, Advocate SR NO.33225

Judgment in
Crl.A.No.954 of 2006

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