

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2010

C O R A M

The Honourable Mr.Justice C.NAGAPPAN  
and  
The Honourable Mr.Justice P.R.SHIVAKUMAR

Criminal Appeal No.134 of 2010

Karuna Jyothi ... Appellant/Accused  
S/o.Subbaiya

Vs.

State rep. by  
The Inspector of Police (L&O)  
J-3, Guindy Police Station  
Chennai - 600 032 ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the sentence and judgment passed by the learned Additional District and Sessions Judge, Chennai Fast Track Court No.I, Chennai in S.C.No.128/2009 dated 30.01.2010 and set aside the same.

For Appellant : Mr.K.Kannan

For Respondent : Mr.Hasan Md. Jinnah  
Additional Public Prosecutor

J U D G M E N T

(Judgment of the court was made by P.R.SHIVAKUMAR, J.)

The sole accused, who stood charged, tried and found guilty as per the charge for an offence of murder punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- with a default sentence to undergo two years simple imprisonment in case of default in payment of fine, by the judgment of the Additional District and Sessions Judge (Fast Track Court No.1), Chennai in sessions case No.128/2009, has brought-forth this appeal challenging the conviction and sentence. For the sake of convenience, the appellant herein is referred to as accused.

2. The case of the prosecution as culled out from the evidence adduced on the side of the prosecution, in brief, is as follows:-

i) P.W.2-Pandiraj is running a Travels by name 'Pavi Travels', having its office at No.66, Kalaimagal Nagar 3<sup>rd</sup> Road, Ekkattuthangal, Chennai-32. P.W.1-Babu, P.W.3-Balachander, the deceased Manikandan and the accused Karuna Jyothi, were all employees of P.W.2 and were employed under him as drivers. P.W.2 had taken an apartment in the building bearing door No.5/4, Bharatiyar Street, Ekkattuthangal, Chennai for the temporary accommodation of his employees. P.W.1, deceased Manikandan and the accused Karuna Jyothi were residing in the said apartment taken on rent by their employer, namely P.W.2. They had the Ayudha Pooja celebration in the Travels office on 08.10.2008 and thereafter P.W.1 and the accused Karuna Jyothi returned to their flat at about 9.00 p.m. Half an hour later the deceased Manikandan came there along with two other persons and at that point of time, he was carrying liquor bottles. Soon after the deceased entered the room along with those two persons, the accused Karuna Jyothi objected for their taking liquor in the room following which the deceased, along with those two persons who accompanied him, went out of the room to have the liquor somewhere else. After a lapse of an hour, the deceased Manikandan alone came back to the room and he was found at that time under the influence of alcohol. He quarreled with the accused Karuna Jyothi stating that he had insulted him in the presence of his friends. Thereafter, accused Karuna Jyothi left the room and P.W.1 and the deceased went to bed. Accused Karuna Jyothi and his employer, namely P.W.2-Pandiraj stayed the night in the Travels office. At about 5.00 a.m on 09.10.2008, by chance P.W.1 woke up and saw the lights were switched on and the accused was about to drop a pestle stone on the deceased who was sleeping in the room. Before ever P.W.1 could get up and prevent the accused from dropping the pestle stone on the deceased, the accused dropped the pestle stone on the head of the deceased, which led to bleeding injuries on the head. Thereafter, he contacted his employer, namely P.W.2 over phone and informed him of the incident. On being woken up by the phone call of P.W.1, P.W.2 realised that the accused had gone out of the office of the Travels. Immediately, P.W.2 contacted his elder brother Easwaramoorthy and asked him to make arrangements in the private hospital by name Balaji Hospital for the admission of the deceased for treatment. Then P.W.2, went to the place of the occurrence in his Tata Indica car bearing Regn.No.TN-09 AS-5128 of which P.W.3-Balachander was the driver. Then the deceased Manikandan was taken to the private hospital, namely Balaji Hospital at Guindy where the deceased was given initial treatment by P.W.12-Dr.Prem Anand after recording Ex.P9-Accident Register. On examination of the deceased Manikandan, P.W.12 found a wound on the back side of the left ear through which

blood was coming out and a crack in the skull. He was informed that the deceased was attacked with a pestle stone at the place of his work at Anbu Street, Ekkattuthangal. After brief treatment at the said hospital, since the condition of the deceased was critical he was referred to the Government General Hospital for better management. The Discharge Summary issued by the hospital authorities at Balaji Hospital, Guindy without signature of P.W.12 is Ex.P10. The original discharge summary without signature is Ex.C1 and a copy of the same signed by P.W.14 before presenting in the court is Ex.C2.

ii) After the deceased was admitted in the above said private hospital, P.W.1 went to Guindy police station and lodged Ex.P1-complaint. P.W.18-Thiru.Thennarasu, Inspector of police received the said complaint and registered a case on the file of J3, Guindy Police Station in Cr.No.1332/2008 for an offence punishable under Section 304 IPC. Ex.P16 is the first information report prepared by P.W.18 for the said purpose. After despatching the complaint and the first information report to the Court, P.W.18 proceeded towards Balaji Hospital. On his arrival at the said hospital, he found the deceased Manikandan in an unconscious stage and hence he was not able to get any statement from him. Therefore, he proceeded towards the place of occurrence, namely the premise bearing door No.5/4, Bharathiyar street, Gandhi Nagar, Ekkattuthangal, Chennai-32 along with P.W.10 - Kandan. P.W.10, on the instructions of the Investigating Officer, namely P.W.18, took the photographs Ex.M.O.5 series using his Digital Camera of the blood stained bed sheet, mat, pillow and a pestle stone which were found in a residential portion of door No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal.

Iii) P.W.4 - Siva is residing at a portion in the first floor of the premises bearing door No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal. He was employed as a Security Officer in a concern. At about 5.00 a.m on 09.10.2008 when he left his house to go to his place of work, he saw the accused Karuna Jyothi emerging from the ground floor portion, opening the gate and running away from there. He did not enquire about the reason for the same as he busily engaged in going to the place of work. But, when he returned at about 8.00 p.m on the same day, he was informed that somebody had caused injury on the head of the deceased Manikandan by dropping a stone on his head and that the deceased had died due to the said injury.

iv) P.W.8 - Ravichandran is the brother of the deceased Manikandan. He was running a plastic company at Kodungaiyur and was residing at No.549, Muthamizh Nagar, Kodungaiyur, Chennai. On the date of occurrence on his return from Thanjavur, he got down from the bus at about 5.30 a.m at Ekkattuthangal bus stop with the intention of the seeing his brother, namely the deceased



Manikandan. At that point of time he saw the accused Karuna Jyothi standing in the said bus stop and called him. But the accused, without responding to the same, left the said bus stop boarding a bus that came there. Thereafter, P.W.8 had a discussion with a friend and went to the place wherein his brother, namely the deceased Manikandan was staying. At that point of time a crowd had been collected therein and he was informed of the occurrence in which the deceased sustained injury and of the fact that he had been taken to the hospital. When he visited the said hospital he found the deceased lying unconscious.

v) The Investigating Officer, namely P.W.18, inspected the place of occurrence in the ground floor of door No.5/4 Bharathiyar Street, Gandhi Nagar, Ekkattuthangal and prepared Ex.P6-observation mahazar and Ex.P17-rough sketch in the presence of P.W.9-Pandian and another witness one Murugan. He also recovered M.O.1-pestle stone, M.O.2-blood stained pillow cover, M.O.3-bed sheet and M.O.4-Mat under Ex.P7-mahazar in the presence of P.W.9 and the above said Murugan. On 09.10.2008 at about 9.00 a.m, P.W.18 arrested the accused Karuna Jyothi at Ashok Nagar bus stop and recorded his confession statement in the presence of Arumugam and Sundarraaj. Meanwhile, the deceased Manikandan, who had been referred to the Government General Hospital on 09.10.2008 succumbed to the injury on the failure of treatment at about 8.20 a.m on 13.10.2008 on the receipt of the death intimation, P.W.18 altered the case into one for an offence punishable under Section 302 IPC under an alteration report and submitted the same to the court. On 13.10.2008 between 10.30 a.m and 11.00 a.m, P.W.18 conducted inquest at the mortuary of the Government General Hospital in the presence of panchayatdars and prepared Ex.P11-inquest report. Based on Ex.P8 - requisition for autopsy, P.W.13-Dr.Sathyamurthy conducted autopsy. During the postmortem, the following injuries were found by him:-

- 1) 2 cm long sutured wound on behind left ear. On removal of sutures, the margins are irregular and contused. (Laceration)
- 2) 2 cm long sutured wound on left pinna of ear. On dissection of scalp

- i) Extensive contusion all over the scalp
- ii) 4 cm long oblique fissure fracture on right temporal bone
- iii) 3 cm long oblique fissure fracture on left temporal bone.

On further dissection: Diffuse sub-dural and sub-arachnoid haemorrhage on both hemisphere of brain with softening of brain. 5 cm long fissure fracture on right and left anterior cranial fossa.

3)Fracture of left zygomatic bone.

vi) At the conclusion of postmortem examination, opining that the deceased appeared to have died of head injury, he issued Ex.P12 - postmortem certificate. P.W.15-A.Mani, who was the then Head constable attached to J-3, Guindy Police Station got M.O.6-Lungi of the deceased from the Medical Officer who conducted autopsy and produced the same before the Investigating Officer who recovered it under Ex.P19 - Form '95'. During the course of the investigation, P.W.18 submitted a request in writing to the Chief Metropolitan Magistrate for recording the statements of witnesses Babu, Pandiraj. On the orders of the Chief Metropolitan Magistrate, marked as Ex.P4, P.W.6, the XV Metropolitan Magistrate, issued summons under Ex.P5 to the above said witnesses and recorded their statements under Section 164 Cr.P.C. The report under which the said statements were sent to the jurisdictional Metropolitan Magistrate, namely IX Metropolitan Magistrate, are Ex.P2 and Ex.P3. The Investigating Officer (P.W.18) submitted Ex.P21-letter of request tot he IX Metropolitan Magistrate to send the material objects recovered in this case, during the course of investigation, for forensic examination. Based on the said letter of request, M.O.1 - Pestle stone, M.O.2 - Pillow cover, M.O.3-Bed sheet and M.O.4 - Mat were sent to the Forensic Laboratory along with Ex.P8-letter of the IX Metropolitan Magistrate, Chennai.

vii) P.W.16, the Assistant Director, Government Forensic Laboratory, Chennai, on examination found human blood stains in all the four material objects, namely pestle stone, pillow cover, bet sheet and mat. The Group of the said blood found in M.Os.2 and 3 were ascertained to be 'O' group, whereas the grouping test in respect of the blood stains found in M.Os.1 and 4 was not fruitful, as the group could not be ascertained. The Chemical Analysis Report and the Serology Report are marked as Exs.P13 and P14.

Viii) P.W.18, after completing the investigation, submitted a final report on 01.12.2008 alleging that the accused Karuna Jyothi committed an offence punishable under Section 302 IPC by causing the fatal injuries on the head of the deceased Manikandan with a pestle stone. Following the procedure for committing the case for trial to the Sessions Court, as the offence alleged was triable exclusively by a Court of Session, the learned IX Metropolitan Magistrate committed the case for trial to the Sessions Court, Chennai. The same was taken on file as S.C.No.128/2009 and was made over to the Additional District and Sessions Judge (Fast Track Court No.1), Chennai for disposal according to law. The accused on appearance denied having committed the offence as stated in the final report and hence necessary charge for an offence punishable under Section 302 IPC was framed. After having the charge read over and explained, the accused pleaded not guilty, pursuant to which a trial was

conducted.

ix) The prosecution examined 18 witnesses as P.Ws.1 to 18, marked 21 documents as Exs.P1 to P21 and produced six material objects as M.Os.1 to 6 in order to prove the charge against the accused. After the evidence on the side of the prosecution was over, the attention of the accused was drawn to the incriminating materials found therein and the accused was questioned under Section 313(1)(b) Cr.P.C. The accused contended that the evidence against him were false and reiterated his plea of innocence. No witness was examined and no document was marked on the side of the defence. Exs.C1 and C2 were marked as court documents.

3. The learned Additional District and Sessions Judge (Fast Track Court No.1), Chennai, heard the arguments advanced on either side, considered the evidence in the light of the points urged in the arguments and upon such consideration, came to the conclusion that the charge against the accused stood proved and held him to be guilty. After informing the accused of the decision to hold him guilty, the learned trial judge questioned the accused regarding punishment under Section 235(2) Cr.P.C and after considering the evidence and the submissions made by the accused regarding the punishment, the trial judge pronounced a judgment convicting the accused for the said offence under Section 302 IPC and imposing a sentence as indicated supra.

4. The above said conviction and the sentence are challenged by the appellant/accused in the criminal appeal on various grounds set out in the appeal petition.

5. The submissions made by Mr.K.Kannan, learned counsel for the appellant and by Mr.Hasan Md.Jinnah, learned Additional Public Prosecutor representing the respondent were heard. The materials available on record were also perused.

6. The point that arises for consideration in this appeal is "whether the conviction and sentence imposed by the trial court on the appellant/accused are erroneous and infirm requiring interference by this court?"

7. The prosecution case mainly rests on the alleged eye witness P.W.1, who incidentally happened to be the person who informed the police regarding the occurrence and the circumstantial evidence adduced through P.W.2, the employer of both the accused and the deceased, P.W.3, another employee of P.W.2 in whose car the deceased, after the occurrence, but before his death, was taken to the private hospital for treatment and P.W.7, the brother of P.W.2, who allegedly made arrangements in advance in the private hospital for the admission of the deceased, on the instructions of P.W.2. Apart from the said witnesses, the prosecution also relies on the



chance witness, namely P.W.4, who is alleged to have seen the accused running past him immediately after the occurrence, while he was leaving the building in which the occurrence allegedly took place. Another chance witness is P.W.8, the brother of the deceased, who has deposed to the effect that on the date of occurrence, he came from his native place Thanjavur by bus, got down at Ekkattuthangal at 5.30 a.m with the intention of meeting his brother, namely the deceased and at that at that point of time he saw the accused standing in the said bus stop, but he did not respond to the call made by P.W.8. Apart from the above said alleged eye witnesses and chance witnesses, whose testimonies have been adduced in proof of the circumstances to show that it was the accused, who could have caused the injury leading to the death of the deceased by throwing a pestle stone on the head of the deceased while he was sleeping. In support of its version regarding the cause of death and the manner in which the injury leading to the death could have been caused, the prosecution relies on the evidence of P.W.12, the doctor who admitted the deceased in the private hospital, namely Balaji Hospital at Guindy, that of P.W.13, the medical officer who conducted autopsy and issued the postmortem certificate (Ex.P12) and that of P.W.14-Dr.Dhanakeerthi to show that a punctured wound could be caused by a crack in the skull when the head is attacked with a heavy object.

8. It is the contention of the learned counsel for the appellant/accused that the testimony of the alleged eye witness P.W.1 is artificial; that the defence lawyer in the court below was able to elicit answers from the prosecution witnesses to show that the actual place of occurrence had been suppressed and another place has been projected to be the place of occurrence and that the vital discrepancies regarding the said aspect and also an admission made by P.W.12, the medical officer who treated the deceased at the first instance, would go to show that the prosecution story was surrounded with reasonable suspicion, the benefit of which should go to the appellant/accused.

9. As per Ex.P1-complaint and the evidence of P.W.1, the story of prosecution reads as follows:

On 08.10.2008, Ayudha Pooja was celebrated in the travels office in which P.W.1, the deceased and the accused were employed and after the celebration, they returned to the flat in No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal, Chennai-32, a portion taken on rent by P.W.2 for temporarily accommodating the employees of his travels, especially the drivers. Half an hour after P.W.1 reached the flat, the deceased Manikandan came there along with two other persons and at that point of time he was carrying liquor bottles with him with the intention of taking the liquor with those two persons in the above said room. The appellant/accused, raised an objection for the said attempt made by the deceased and hence the deceased had to leave the room along

with his friends to have the liquor at some other place. Later on the deceased came alone to the room in an inebriated mood and at that point of time, he quarreled with the appellant/accused state that he had caused insult to him in the presence of his friends and thereafter the appellant/accused left the room and went to the travel office.

10. It is the further statement of P.W.1 that while the deceased and P.W.1 were sleeping, at 5.00 a.m on the date of occurrence, namely 09.10.2008, by chance, he awoke and saw the accused holding the pestle stone in his hands and was about to drop it on the head of the deceased and that before he could get up and prevent the accused from doing so, the accused dropped the pestle stone on the head of the deceased and escaped from the scene of occurrence. It is the further case of the prosecution that, P.W.1, immediately without informing the police, chose to inform his owner, namely P.W.2, who arranged for the treatment of the deceased in a private hospital by name Balaji Hospital, Guindy, Chennai-32. It is curious to note that when the employer was informed by an employee that another employee had committed the above said act of dropping a pestle stone on the head of another employee, the employer chose to make arrangement for his treatment in a private hospital rather than taking him to the Government hospital, in which case the police will be informed immediately by the hospital authorities themselves. On the other hand, P.W.2 seems to have sent his brother, namely P.W.7, in advance to the private hospital to make arrangements for the admission of the deceased.

11. It is the evidence of P.W.2 that on the previous night, he had stayed back in the office itself and the accused also slept with him in the office, but when he was woken up by a phone call from P.W.1, he found the accused was not there. There is some discrepancy in this regard in his evidence which is also relied on by the learned counsel for the appellant. According to P.W.2's statement, on the date of occurrence he slept up to 6.00 a.m. If it was so, how the deceased would have been taken to the hospital before 6.00 a.m, is yet another doubt raised by the learned counsel for the appellant. A careful reading of the evidence of P.W.2 would show that it was his version that he slept approximately upto 6.00 a.m. and he got the phone call from P.W.1 at about 5.00 or 5.15 a.m whereupon he made arrangements for taking the deceased to the hospital for treatment. However, there are certain other minor discrepancies also. According to P.W.12, the deceased had been taken to Balaji Hospital at Guindy on 09.10.2008 at about 5.00 a.m. But P.W.2 says that he got the telephone message from P.W.1 at about 5.00 or 5.15 a.m and thereafter he had to instruct his brother to go to that hospital to make arrangements for the admission of the deceased and call P.W.3 to bring a car for taking the deceased to the hospital. According to P.W.3's evidence, his owner, namely P.W.2 came to the place wherein P.W.3 was staying, at



5.30 a.m on 09.10.2008 and thereafter they together went to the place of occurrence in Bharathiyar Street, Gandhi Nagar, Ekkattuthangal and took the deceased to Balaji Hospital. If the evidence of the Medical Officer, namely P.W.12, is considered in the light of the above said statement of P.W.3 that P.W.2 met him only at 5.30 a.m and only thereafter he took his car and went to the place of occurrence to take the deceased to Balaji Hospital, it would not be quite possible to have the deceased admitted in Balaji Hospital at 5.00 a.m itself. The difference in time may, at the outset, appear to be insignificant because there is only a difference of half an hour or at the maximum one hour. But, as rightly contended by the learned counsel for the appellant, the same gains significance in the light of the other vital discrepancies found in the prosecution case.

12. The following are the other vital discrepancies pointed out. The only injury found on the deceased by P.W.12 at the time of admission was a punctured wound. The only injury noted in the discharge summary marked as Ex.P10 was a small punctured wound behind left ear with a laceration over the pinna of left ear. According to the submissions of the learned counsel for the appellant, such a punctured wound could not have been caused by pestle stone, which is regular in shape. It is not the case of the prosecution that there was any sharp or irregular object in between the head and the ground so that by the force with which the pestle stone was thrown on the head therein caused impression on that sharp or irregular object to make a punctured wound on the opposite side of the head. However, P.W.14-Dr.Dhanakeerthi, Medical Officer in Balaji Hospital, has deposed that when the skull cracks by the fall of a pestle stone, there can be a punctured wound, as found in the head of the deceased. He is a person projected to be the Medical Officer who issued the Discharge Summary and the Discharge summary. The Discharge summary marked as Ex.P10 does not bear the signature of P.W.14. In fact, he was not cited as a witness in the memorandum of evidence submitted with the final report. Subsequently, with the permission of the court, he was examined as P.W.14 and the Discharge summaries issued were marked as Exs.C1 and C2. In C2 alone his signature is found. There is an admission that he forgot to put the signature in C1 and at the time of bringing the certificates to the court he signed C2. Even otherwise that is only a weak evidence, as it is nothing but an opinion and the court has to make its own decision based on overall evidence. P.W.14 himself has not ruled out the possibility of the punctured wound having been made by a sharp edged weapon. In fact that was his earlier version and the possibility of such a wound having been caused in the manner stated by the prosecution is his later version. The said evidence is not a conclusive proof to show that the injury leading to the death of the deceased could have been caused only by the fall of the pestle stone and not by any sharp edged weapon. Other signs of the compression caused by the

fall of heavy pestle stone are also not noted to be present in the body of the deceased.

13. The most vital point that is relied on by the learned counsel for the appellant/accused is that the place of occurrence itself could not be the place as projected by the prosecution and that there is a serious doubt regarding the place of occurrence, which alone shall be enough to disbelieve the prosecution version. According to the learned counsel for the appellant, after the accused denied permission to the deceased to have the liquor in the room, the deceased left the room with the other two persons accompanying him and later on came back leaving the two other persons and at that point of time, the deceased was found fully drunken. P.W.1 has stated that, at 5.00 a.m, when he woke up, he saw the appellant/accused holding the pestle stone and was about to drop it on the head of the deceased. When did he go to sleep - it has not been spoken to.

14. According to P.W.1, a portion in the first floor of door No.5/4, Bharathiyar street, Gandhi Nagar, Ekkattuthangal was the one that was taken on rent by P.W.2 for the stay of his drivers and it was in the said portion in the first floor the occurrence took place. But, P.W.4 has stated that he resides in the first floor, whereas the drivers of the travels are residing in the ground floor. Even as per the observation mahazar (Ex.P6), the place of occurrence was noted as a third portion in the ground floor of the building bearing door No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal. The rough sketch is not clear as to whether the place of occurrence is in the first floor or in the ground floor. The above said discrepancies will show that P.W.1 could not be an eye witness and he could not have witnessed the occurrence as spoken by him. The above said observation shall be strengthened by the fact that at the earliest point of time, the place of occurrence was informed to the Medical Officer in the private hospital as the one in Anbu Street and not Bharathiyar Street. Anbu Street and Bharathiyar Street are admittedly different and they situate at a distance of 1 ½ Kms from each other. There are also materials to show that Anbu Street is the street in which the travel office is being run.

15. There is also a discrepancy as to who provided the particulars regarding the place of occurrence to P.W.12 to be entered in the Accident Register. According to P.W.7, he informed the hospital authorities that the place of occurrence was Bharathiyar Street, but some how or other they wrongly written it as Anbu Street. Though P.W.7 would have gone to the hospital in advance, Accident Register entries could have been made only on the arrival of the deceased. At that point of time, P.W.1, P.W.2 and P.W.3 were there. They could have correctly informed the place of occurrence. The fact that they had not done so, will go to show

that it is an after thought which resulted in the lodging of the complaint at 8.00 a.m showing the occurrence place to be in Bharathiyar street.

16. There is also a delay of three hours in furnishing the information to the police. The delay has not been properly explained. Of course, an attempted explanation has been made to the effect that P.W.1 did not inform the police as he was of the view that informing his owner would be sufficient. At least P.W.2 could have informed the police, which he failed to do. At least the hospital authorities at Balaji Hospital, on the admission of the deceased, could have informed the police and on such information the police could have gone there and recorded statement. That was also not done. It should also be noted that P.W.1 does not have a working knowledge of Tamil, as his mother tongue is Malayalam. It is his evidence that he went to the police station and got the complaint written by another person. But he was not in a position to say the name of the scribe, who scribed the complaint for him. But there is no evidence to the effect that the oral statement of P.W.1 was deduced in writing by police and the same is Ex.P1. The same will render unbelievable, the evidence of P.W.1 in this regard. Therefore, there arises a serious doubt as to the place of occurrence and the manner in which the occurrence would have happened as projected by the prosecution.

17. At the cost of repetition, this court hereby points out that the prosecution case regarding the place of occurrence is marred by uncertainty and contradictions. As per the evidence of the persons projected as eye witness, other witnesses who saw the place of occurrence subsequent to the occurrence and the mahazar witnesses as well as the Investigating officer, the place of occurrence is a flat in the building bearing door No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal. But, in the Accident Register prepared in the private hospital, the earliest document that came into existence the place of occurrence is shown to be in Anbu Street, Ekkattuthangal. As pointed out supra the attempted explanation for such a discrepancy is far from being satisfactory. In addition to that there is utter confusion as to in which floor (ground floor or first floor) of the building in door No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal the occurrence took place. The contradictions in this regard have also been highlighted supra. In the light of the above said discrepancies, it is highly doubtful as to whether P.W.1 could have been the eye witness. The absence of proper explanation for the delay in furnishing information to the police will also add fuel to the suspicion that an occurrence that took place somewhere else has been sought to be projected as the one that occurred in a flat at No.5/4, Bharathiyar Street, Gandhi Nagar, Ekkattuthangal. The court below, has not properly appreciated this aspect and came to an erroneous conclusion. We have no hesitation in holding that the



above finding of the trial court is defective and infirm; that the prosecution has failed to prove its case and prove the guilt of the accused to the hilt without any reasonable suspicion and that the prosecution case is surrounded by reasonable suspicions pointed out supra, the benefit of which, should be given to the appellant/accused. For all the reasons stated above, we come to the conclusion that the appeal shall succeed and the conviction and sentence are liable to be set aside.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused Karuna Jyothi in Sessions Case No.128 of 2009 on the file of the additional District and Sessions Judge, Fast Track Court-I, Chennai are set aside and the appellant/accused Karuna Jyothi is acquitted of the charge of murder under Section 302 IPC. The fine amount paid, if any, is to be refunded to him. The appellant/accused Karuna Jyothi is directed to be released forthwith, if his custody is not required in any other case.

asr/

Sd/-  
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

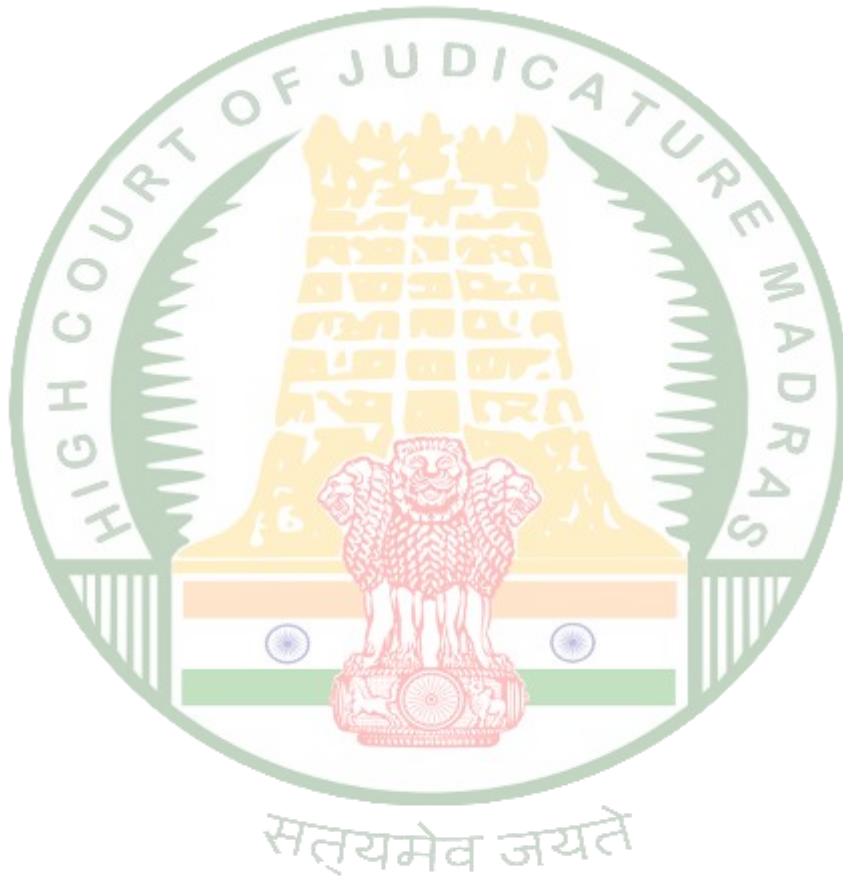
- 1.The Additional District and Sessions Judge,  
(FTC No.I), Chennai.
- 2.Do Through the Prl Sessions Judge,  
Chennai.
- 3.The District Collector,  
Chennai.
- 4.The Director General of Police,  
Mylapore, Chennai.
- 5.The Superintendent of Prison,  
Central Prison  
Puzhal, Chennai-66
- 6.The Inspector of Police (L&O)  
J-3, Guindy Police Station  
Chennai - 600 032

7.The Public Prosecutor,  
High Court, Madras.

+ 1 cc to Mr.K.Kannan, Advocate SR No.55623

BVN(CO)  
SR/18.10.2010

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