

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22..06..2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.283 of 2014

Velan @ Velarasan

.... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Marandahalli Circle,
Dharmapuri District.
[Crime No.93 of 2010]

... Respondent /Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Dharmapuri, in S.C.No.118 of 2010 dated 28.11.2013.

For Appellant : Mr.R.John Sathyan Legal Aid Counsel

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

[Judgement of the court was delivered by S.NAGAMUTHU, J..]

The appellant is the sole accused in S.C.No.118 of 2010 on the file of the Principal Sessions Judge, Dharmapuri Division. He stood charged for offences under Sections 302 and 201 r/w 302 of IPC. The trial court, by judgement dated 28.11.2013, convicted the accused under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months. The trial court, however, acquitted the accused from the charge

under Section 201 r/w 302 of IPC. Challenging the above said conviction and sentence, the accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Chinnaramulu Naidu. He was a resident of Mallupatti Village. P.W.1 is his son. The accused is a close relative of the deceased. The accused is also a resident of the same village. The family of the deceased had coconut and mango trees in their Farm. Three days prior to the occurrence, when P.W.1 and the deceased were working in the farm, the accused came there and plucked coconuts from one of the coconut trees belonging to the deceased. On seeing the same, the deceased shouted at him. Immediately, the accused attempted to attack the deceased. P.W.1 made a timely intervention and separated them. Thereafter, the accused left the place. It is alleged that at that time, the accused told that one day or the other, he would cut the deceased. Again on 13.04.2010, P.W.1 and the deceased were proceeding towards the very same farm from their house. On their way, near a mango grove belonging to one Chinnapaiyan, the accused came from the opposite direction with an aruval in his hand and on reaching the deceased, he cut the deceased on his head, right shoulder and back of chest. The deceased fell down in a pool of blood. P.W.1 raised alarm. P.W.2, the sister of the deceased, on hearing the alarm, rushed to the place of occurrence where she found the deceased lying with injuries and the accused was standing there. P.W.1 was crying for help. P.W.3 also rushed to the place of occurrence. According to P.Ws.2 and 3, on seeing them, the accused ran away from the place of occurrence with aruval. The deceased died instantaneously. P.W.1 rushed to Mahendramangalam Police Station and at 10.00 a.m. he made a complaint (Ex.P.1). P.W.10, the then Sub Inspector of Police, on receipt of the same complaint, registered a case in crime No.93 of 2010 under Section 302 of IPC against the accused. Then, he forwarded both the complaint-Ex.P1 and the FIR-Ex.P10 to the court which were received by the learned jurisdictional Magistrate at 02.30 p.m. on the same day. P.W.10, thereafter, handed over the case diary to the Inspector of Police for investigation.

3. P.W.12, taking up the case for investigation, visited the place of occurrence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P11) in the presence of P.W.5 and another. He also recovered some blood stained earth and sample earth under a mahazar (Ex.P3) in the presence of the same witnesses. Then, he conducted inquest on the body of the deceased in the presence of the panchayatars and prepared an inquest report (Ex.P12). After the inquest proceedings were over, P.W.12 forwarded the dead body to the Palacode Government Hospital for postmortem.

4. P.W.7, Dr.G.Balakrishnan, conducted autopsy on the body of the deceased at 04.30 p.m. on 13.04.2010. He found the following injuries on the body of the deceased:-

"External Injuries:

(1) About 18 X 12 X 8 cm incised cut injury present over both occipital region extending b/w both sternocleidomastoid muscles exposed cerebellum and cerebrum stem.

(2) About 6 x 5 x 4 cm size cut injury right forearm exposed bone and muscle.

(3) About 8 x 7 x 4 cm size punctured wound over upper interscapular region.

(4) About 10 x 5 x 4 cm incised cut injury over right parietal region exposed brain matter.

(5) About 8 x 4 x 3 cm size incised wound over inter parietal region.

(6) About 10 x 5 x 4 cm incised cut injury over right 2nd web space present.

Internal Examination:

Chest - No rib fracture. Lungs are normal in size and C/S pale. Heart Chambers are empty. Hyoid bone intact. Stomach contains about 100 ml of undigested food particles with rice. Kidney, liver, spleen are pale. Intestine contain gas and feces. Skull-Fracture present on right parietal both occipital bone. Brain C/S pale. Incised wound present on right parietal lobe and cerebellum."

Ex.P.7 is the postmortem certificate. He gave opinion that all the injuries found on the deceased would have been caused by a weapon like M.O.1-Aruval and the death was due to shock and hemorrhage as a result of injuries to vital organs like brain.

5. P.W.12, in the course of investigation, arrested the accused at 05.00 p.m. on 13.04.2010 at Bengalooranthottam at Mallupatti in the presence of P.W.5, the then Village Administrative Officer of the Village and another witness. On such arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden an aruval. In pursuance of the said disclosure statement, the accused took the police

and the witnesses to the place of hide out and produced the aruval (M.O.1). P.W.12 recovered the same under a mahazar (Ex.P5) in the presence of the same witnesses. On returning to the police station, he forwarded the accused to the court for judicial remand. He also forwarded the aruval and the dress materials including the dress materials removed from the body of the deceased to the court along with a request to send them for chemical examination. After him, P.W.13 continued the investigation. P.W.13 examined the doctor, collected the medical records and finally laid charge sheet against the accused.

6. It needs to be mentioned here that after arrest, the accused did not even move for bail. The learned Judicial Magistrate, Palacode, by order dated 02.11.2010 committed the case under Section 209 of Cr.P.C. to the Court of Sessions for trial. The accused continued to be in judicial custody.

7. When the accused was produced before the Court of Sessions for trial, it was found that he was not capable of understanding the proceedings of the court and he showed symptoms of insanity. Therefore, he was sent to the Institute of Medical Health, Chennai, for examination about his mental health. He was in the said Institute between 14.06.2011 and 22.06.2011. Dr.T.R.Sridhar, the then Assistant Professor, Institute of Mental Health, Chennai, treated him between 14.06.2011 and 22.06.2011. He gave opinion that he was suffering from schizophrenia. Later on, he was examined before the trial court as C.W.1. In his evidence before the trial court, he gave opinion that the accused was of unsound mind and he was incapable understanding the court proceedings and to defend the case. Therefore, the trial court postponed the further proceedings of the case as required under Section Section 328(3) of Cr.P.C. The trial court further directed the accused to be treated in the Institute of Mental Health, Chenani, until he would become alright. Till 31.07.2012, the accused was, thus, treated in the Institute of Mental Health at Chennai. Based on the observations made by the doctor in the said Institute on 31.07.2012, the trial court found that the accused had no active schizophrenia symptoms. Based on the above, the trial court found that the accused was aware of the charges against him and thus, he was fit to stand the trial. The accused was, therefore, sent back to the Central Prison, Salem, from the Institute of Mental Health, Chennai. On the orders of the learned Sessions Judge dated 17.08.2012, when the accused was produced before the trial court, the trial court passed the following Order:-

"Accused Produced from custody. Director of Mental Hospital, Kilpauk, Chennai-10 sent an observation report that at present he had no active psychiatric features and discharged back to Central Prison, Salem. Accused was factually

questioned. He understands what question is put and gives proper answer. I am satisfied that the accused is sane and obeyed and understands the proceedings of the court. The charges framed against the accused under Section 302 and 201 r/w 302 of IPC were read over and explained to him. He understands the questions and denies the charges."

8. Based on the above materials, on 17.08.2012, the trial court framed two charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 14 documents and 10 material objects were marked.

9. Out of the said witnesses, P.W.1 is the eye witness to the occurrence. He has elaborately spoken about the entire occurrence including the occurrence which had taken place three days before the present occurrence. P.Ws.2 and 3 have stated that on hearing the alarm raised by P.W.1, when they went to the place of occurrence, they found the deceased lying in a pool of blood and the accused standing near the deceased with aruval.

10. P.Ws.4 and 5 have stated that when they went to the place of occurrence, on hearing the alarm raised, they found the dead body of the deceased. P.W.5 has further spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of the material objections from the place of occurrence. P.W.6 has spoken about the arrest of the accused, his voluntary confession and the consequential recovery of material object.

11. P.W.7, the doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the case of death. P.W.8, the Head Constable, has stated about the fact that he had taken photographs at the place of occurrence as directed by the investigating officer. P.W.10 has spoken about the registration of the case and handing over of the case diary to P.W.12. P.W.11, the Head Constable, has stated that he carried the dead body to the hospital, as directed by the Inspector of Police, and identified the same to the doctor for postmortem. P.Ws.12 and 13 have spoken about the investigation conducted by them respectively and P.W.13 has further spoken about the filing of charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. On the side of the accused, Dr.T.R.Sridhar, the then Assistant Professor, Institute of Mental Health, Chennai, was

examined as D.W.1, but, however, no documentary evidence was let in. His defence was a total denial.

13. D.W.1, the Doctor, in his evidence, has stated that the accused was suffering from schizophrenia when he was brought before him to the hospital on 14.06.2011. He has further stated that he was in the hospital for a long time undergoing treatment for schizophrenia. He has further stated that the accused would have been suffering from schizophrenia, at least, from six months before the occurrence. He has further stated that the accused was not in a fit state of mind to understand the consequences of what he was doing. In effect, his evidence is that the accused was an insane suffering from schizophrenia.

14. The trial court believing the evidences of P.Ws.1 to 3, more particularly, eye witness account of P.W.1 coupled with the medical evidence, came to the conclusion that it was this accused who caused the death of the deceased. The plea of insanity taken before the trial court was negatived. The trial court was of the view that though it is true that after the occurrence the accused was suffering from schizophrenia, there is no evidence that at the time of occurrence, he was so suffering from schizophrenia. Thus, according to the trial court, as on the date of occurrence, there is no positive evidence that the accused was insane. On this conclusion, the trial court convicted the accused under Section 302 of IPC and, accordingly, sentenced him thereunder. That is how, the accused is now before this court with this criminal appeal.

15. In this appeal, continuously, there was no representation by the counsel on record for the appellant/accused. We, therefore, appointed Mr.R.John Sathyan, the learned counsel and a leading member of the bar, as legal aid counsel to argue the appeal on behalf of the accused. On going through the records, we also found that the accused was schizophrenic. As such, in order to ascertain his present condition, we directed the Superintendent of Central Prison, Vellore, to produce the accused before this court on 17.06.2016. Accordingly, he was produced before this court at 02.15 p.m. on 17.06.2016. We made certain queries with the accused. The learned counsel for the appellant after gathering materials relating to the mental condition of the accused submitted to the court that even now the accused is undergoing treatment for schizophrenia.

16. We heard the learned counsel Mr. John Sathyan, the learned counsel for the appellant/accused and Mr. M. Maharaja, the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records made available.

17. Since the plea of insanity is taken, let us have a quick look into the law laid down by the Hon'ble Supreme Court in *Dahyabhai Chhaganbhai Thakker v. State of Gujarat*, AIR 1964 SC 1563 : 1964 SCR (7) 361 wherein the Hon'ble Supreme Court has held as follows:-

"The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions:

(1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the (1) A.I.R. 1955 Pat. 209. (2) A.I.R. 1956 Nag. 187. (3) [1962] Supp. 1 S.C.R. 567. (4) (1878) 4 Couper 70.

Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence—oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.

(3) Even if the accused was not able to establish conclusively that he was, insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

... ..
... ..

When a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of S.84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.

18. With the above broad principles, as laid down by the Hon'ble Supreme Court, in mind, let us now analyze the evidences let in by the prosecution in the present case. P.W.1 is the eye witness to the occurrence. He has stated that in his very presence the accused cut the deceased. P.Ws.2 and 3 have stated that on hearing the alarm raised by P.W.1 when they rushed to the place of occurrence, they found the deceased lying with injuries and the accused standing by his side with aruval. On seeing them, he fled away from the scene of occurrence. The trial court believed the evidence of these three witnesses to come to the conclusion that it was this accused who caused the death of the deceased. We do not find any reason to take a different view. The evidences of P.Ws.1 to 3 are cogent and convincing and thus, they are reliable. According to the Doctor, who conducted autopsy on the body of the deceased, the death was due to shock and hemorrhage as a result of head injuries and the corresponding internal injury to the brain. Thus, in our considered view the prosecution has proved that it was this accused who caused the death of the deceased.

19. The next important question which we have to decide now is as to, Whether the accused had requisite mens rea to commit the offence of culpable homicide or murder?. The trial court has not gone deep into this question. The evidence of P.W.1 would go to show that three days prior to the occurrence, the accused was found plucking coconuts from the coconut trees belonging to the deceased. The deceased shouted at him. The accused tried to attack him. P.W.1 intervened and separated them. But, the deceased and the accused are close relatives. Absolutely, there is no evidence for motive between them. Plucking of coconuts by the accused in the presence of the deceased and P.W.1 would only give an initial indication that the accused had mental health problem. No sane person would choose such a time to pluck coconuts in the presence of the owner of the farm. It has been stated by P.W.1 that at that time, the accused had stated that he would cut the deceased one

day or the other. We find it difficult to believe this part of the evidence of P.W.1. We cannot have a literal sense to these words so as to draw an inference of mens rea. Mens rea is traceable to the mental faculty of an individual. Man's soul is a drifting faculty to form mens rea. If the man is not under control and the mental faculty is completely lost by the individual, then, there cannot be any mens rea on his part. In other words, a man suffering from insanity cannot have any idea about what he is doing and the consequences thereof. The words of a man who suffers from insanity, therefore, cannot be taken in its literal sense so as to gather intention of the individual. We are, therefore, not prepared to give any weightage for the words allegedly uttered by the accused, as spoken by P.W.1, three days prior to the occurrence.

20. On the day of occurrence, P.Ws.2 and 3, on hearing the alarm raised by P.W.1 immediately rushed to the place of occurrence. But, they did not see the actual assault inflicted by the accused. When they reached the place of occurrence, according to P.Ws.2 and 3, the deceased was lying in a pool of blood with injuries. P.W.1 was standing near the deceased and crying for help. The accused was still standing there with weapon. It was only after the arrival of P.Ws.2 and 3, the accused had left the said place. This conduct of the accused would give another indication that he had some mental health problem.

21. After the accused was arrested, going by his behaviour in court and the responses he showed to the court proceedings, the trial court suspected some mental health problem for him. That was the reason why, he was sent to the Institute of Mental Health, Chennai, for examination. D.W.1, the then Assistant Professor in the Department of Psychiatry, Institute of Mental Health, Chennai, examined and kept him under observation and finally, he came up with the opinion that the accused was suffering from schizophrenia and, therefore, he was unable to understand the proceedings of the court. It was because of this reason, for examining him as C.W.1, the trial court postponed the proceedings after giving a finding that he was not fit to stand the trial. Then, the accused was undergoing treatment for schizophrenia for several months in the Institute of Mental Health, Chennai. After continuous treatment, he was sent back to the Central Prison, Salem. Based on the report of the Institute of Mental Health, Chennai, the trial court gave a finding that he had become fit to be put up for trial. It was on that premise, the trial went on and the accused was convicted.

22. D.W.1 has stated that the accused would have been suffering from schizophrenia, at least, from six months prior to the date of occurrence. The trial court has not appreciated this evidence of D.W.1 instead, the trial court has cast the burden on the accused to prove that he was suffering from schizophrenia on the date of occurrence. The trial court had not considered the law laid down by the Hon'ble Supreme Court in Dahyabhai Chhaganbhai Thakker's case [cited supra] wherein, the Hon'ble Supreme Court has declared that even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

23. Here, in the instant case, the evidences which, we have already pointed out, three days prior to the occurrence, on the day of occurrence and subsequently and from the medical evidence spoken by D.W.1 and also the earlier order of the trial court postponing the trial holding that the accused was not fit to stand the trial would all give sufficient ground to come to the reasonable conclusion that the accused must have been suffering from schizophrenia on the day of occurrence also. The presumption that the accused was not insane is, of course, rebuttable. But, by means of circumstantial evidence, the said presumption has been rebutted. For these reasons, we hold that the accused is entitled for the benefit of Section 84 of IPC. As we have already pointed out, the accused has not yet become fully alright. Though he is in Central Prison, Vellore, as of now, he needs treatment. Though the doctors have certified that the accused, as of now, is fit to stand the trial, they have not opined that the accused is fully cured. From the standard medical books, we could see that paranoid schizophrenia is an illness that lasts all the way through the individual's life. It is a chronic condition. Patients with paranoid schizophrenia, require treatment on a permanent basis, even when symptoms seem to have receded a tempting time for schizophrenia patients to say they are fine and need no more help. Treatment is basically the same for all forms of schizophrenia. There are variations depending on the severity and types of symptoms, the health of the patient, his/her age, as well as some other factors. A team of health care professionals will be involved in treating a person with paranoid schizophrenia. Schizophrenia can affect many areas of the patient's life. Thus, the team will include a wide range of dedicated professionals. Therefore, we cannot allow him to be set at free so as to move in public, as, due to

chronic nature of the disease, the accused may indulge in similar activities in future. The accused requires treatment on permanent basis.

24. In this background, now, let us refer to Chapter 25 of the Code of Criminal Procedure, which contains the provisions as to accused persons of unsound mind. Section 335 of the Code of Criminal Procedure reads as follows:-

"335. Person acquitted on such ground to be detained in safe custody.-

(1) whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,-

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be under clause (a) of sub - section (1) otherwise than in accordance with such rules as the State government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub - section (1), except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall -

(a). be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4). The Magistrate or Court shall report to the State Government the action taken under sub-section (1)."

25. It needs to be mentioned that Indian Lunacy Act, 1912, as referred to in sub-section (2) of Section 335, stands repealed by the Mental Health Act, 1987. Section 24 of the Mental Health Act 1987, reads as follows:-

"24. Procedure on production of mentally ill person-(1). If a person is produced before a Magistrate under sub-section (2) of Section 23, and if, in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall -

(a) examine the person to assess his capacity to understand,

(b) cause him to be examined by a medical officer, and

(c) make such inquiries in relation to such person as he may deem necessary.

(2) After the completion of the proceedings under sub-section (1), the Magistrate may pass a reception order authorising the detention of the said person as an inpatient in a psychiatric hospital or psychiatric nursing home, -

(a) if the medical officer certifies such person to be a mentally ill person, and

(b) if the Magistrate is satisfied that the said person is a mentally ill person and that in the interests of the health and personal safety of that person or for the protection of others, it is necessary to pass such order."

26. As per Section 335(2)(a) of the Code of Criminal Procedure, it is the duty of this Court to pass an appropriate order to detain the appellant in safe custody. As per Section 24 of the Mental Health Act, 1987, this Court is empowered to pass a reception order under the Mental Health Act, 1987, directing the person to be kept in any one of the Licensed Psychiatric Nursing Homes run by the Government. Therefore, we are inclined to issue a reception order to the effect that the Superintendent

of Police, Central Prison, Vellore, shall set the accused at liberty and hand him over to the respondent - Inspector of Police, who shall, in turn, hand over the accused to the Kilpauk Institute of Mental Health, Chennai. Thereafter, the learned Judicial Magistrate, Palacode, having jurisdiction, shall deal with the accused as per the provisions of the Mental Health Act, 1987, without any reference to this Court.

27. In the result, The criminal appeal is allowed in the following terms:-

(i) we set aside the conviction and sentence imposed on the appellant and acquit him from the charge under Section 302 of IPC.

(ii) On releasing the appellant/accused from the prison, the Superintendent, Central Prison, Vellore, shall hand over the accused to the respondent - Inspector of Police, who, in turn, shall hand over the accused to the Kilpauk Institute of Mental Health, Chennai, for safe custody and treatment.

(iii) The operative portion of this order shall be treated as a reception order passed under the Mental Health Act, 1987.

(iv) After the accused is admitted in the Kilpauk Institute of Mental Health, Chennai, it shall be for the learned Judicial Magistrate, Palacode, having jurisdiction, to deal with the accused, as per the provisions of the Mental Health Act, 1987, without any further reference to this Court.

28. Before parting with this judgement, we would like to place on record the good services rendered by Mr.R.John Sathyan, the learned counsel who was appointed to assist the court as a legal aid counsel.

Sd/-

Assistant Registrar(CS III)

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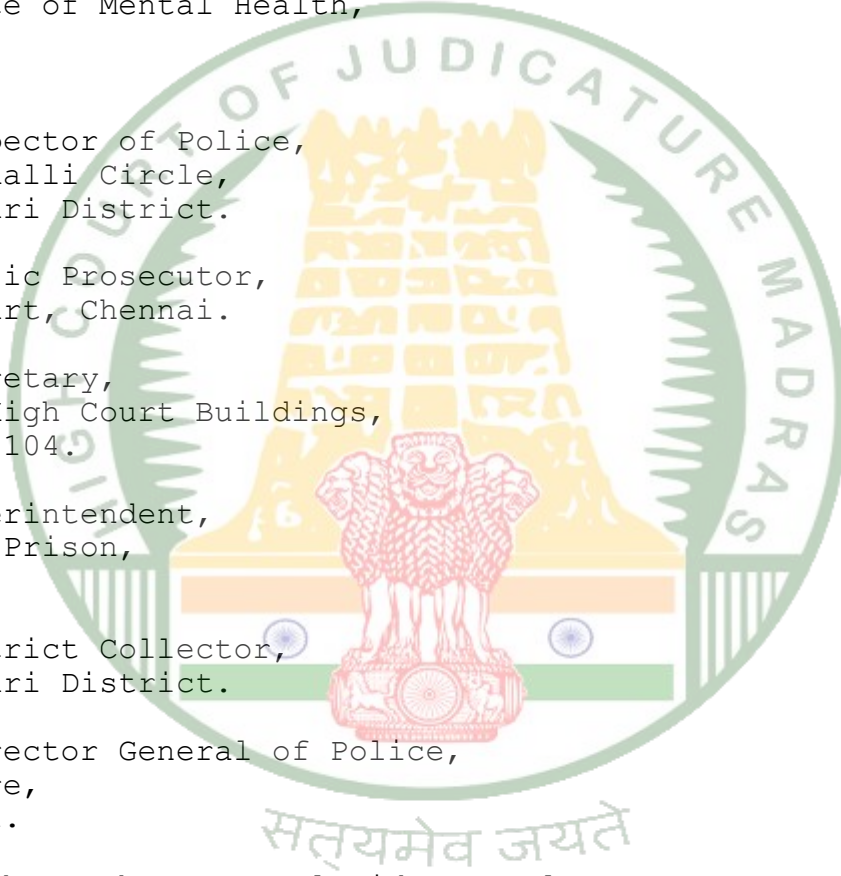
Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Dharmapuri,
Dharmapuri District.

- 1.a.The Judicial Magistrate No.II,
Dharmapuri.
- 2.The Judicial Magistrate,
Palacode,
Dharmapuri District.
- 3.The Chief Judicial Magistrate,
Dharmapuri District.
- 4.The Director,
Institute of Mental Health,
Kilpauk,
Chennai.
- 5.The Inspector of Police,
Marandahalli Circle,
Dharmapuri District.
- 6.The Public Prosecutor,
High Court, Chennai.
- 7.The Secretary,
TNSLA, High Court Buildings,
Chennai-104.
- 8.The Superintendent,
Central Prison,
Vellore.
- 9.The District Collector,
Dharmapuri District.
- 10.The Director General of Police,
Mylapore,
Chennai.
- 11.Mr.R.John Sathyan, Legal Aid Counsel,
High Court, Madras-104.
- 12.The Section Officer,
Criminal Section,
High Court, Madras-104.



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