

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.11.2016

Coram:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.A.No.592 of 2014

Arokiyaraj

...Appellant/Accused No.1

vs.

State rep. by

The Inspector of Police,
Kottakuppam Police Station,
Villupuram District.

(Crime No.220/2011)

...Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the order of conviction and sentence passed by the learned II Additional District and Sessions Judge, Tindavanam in S.C.No.168 of 2012 dated 30.10.2012.

For Appellant : Mr.P.Pugalenthir

For Respondent : Mrs.M.F.Shabana
Government Advocate (Crl. Side)

J U D G M E N T

The Appellant/Accused No.1 has preferred the instant Criminal Appeal before this Court, as against the judgment dated 30.10.2012 in S.C.No.168 of 2012 passed by the II Additional District and Sessions Judge, Tindavanam.

2.The Learned II Additional District and Sessions Judge, Tindavanam while passing the impugned judgment in S.C.No.168 of 2012 dated 30.10.2012 at para 18 had observed that "as far as injury caused to PW4 Ananth @ Mahesh is concerned he has clearly given evidence with regard to the injuries caused to him by A1 about which it has been already discussed in detail. His evidence is also corroborated by medical evidence. Doctor has also stated that the injury caused to him was dangerous to life. Hence the opinion given by the Doctor that injuries

caused on the abdomen of PW4 was dangerous and so on offence under Section 307 IPC is made out against A1 for causing injury to PW4" and at para 23 among other things inter-alia observed that "... the First Accused (Appellant) has stabbed with a knife on the chest and abdomen which has resulted in death so the offence under Section 304(II) is made out. Hence, the prosecution has proved the guilt of the First Accused under Section 304(II) of IPC regarding the death of Senthil Kumar and found the Appellant/A1 guilty under Section 304(II) of IPC and Section 307 IPC and sentenced him to undergo Rigorous Imprisonment for seven years each. Further, the trial Court had directed the period already undergone by the Appellant/A1 to be set off under Section 428 of Cr.P.C.

3.Before the trial Court, in the main case, on behalf of the Respondent/Prosecution, witnesses P.W.1 to P.W.14 were examined and Ex.P1 to Ex.P16 were marked and also M.O.1 to M.O.6 were marked. However, on the side of the Accused, no one was examined as a defence witness and also, no document was marked.

4.Assailing the validity, correctness and legality of the judgment dated 30.10.2012 in S.C.No.168 of 2012 passed by the Learned II Additional District and Sessions Judge, Tindavanam, the Learned counsel for the Appellant/A1 contends that the conviction and sentence imposed on the Appellant/A1 was an erroneous, improper and an illegal one.

5.The Learned counsel for the Appellant/A1 urges before this Court that the prosecution case had rested on the 'Hearsay Evidence' of P.W.1 to P.W.3 coupled with the evidence of P.W.4 Ananth @ Mahesh (injured during the occurrence). Further, it is represented on behalf of the Appellant that the respondent/prosecution case was that on 23.07.2011 at 10 p.m., P.W.4 and deceased Senthil Kumar were consuming alcohol at the outskirts of the village and the Appellant also consumed alcohol by sitting in a dark place and as such, there was no possibility to see the Appellant/A1 by P.W.4. However, this vital aspect was not taken note of by the trial Court at the time of deliverance of judgment, which resulted in serious miscarriage of justice.

6.The Learned counsel for the Appellant/A1 proceeds to take a plea that the trial Court came to a conclusion from the evidence that P.W.13 (Sakthivel) the Inspector of Police received the FIR (Ex.P13) through P.W.11 Kumaran and aided the investigation at 12.30 midnight and went to the place of occurrence and prepared Observation Mahazar (Ex.P2), Rough

Sketch (Ex.P14) and Seizure Mahazar (Ex.P3) and also seen the deceased body at the occurrence place. However, it is represented on behalf of the Appellant/A1 that P.W.13 (the Investigating Officer) had not conducted any enquiry about the inquest at the occurrence place and as per evidence, the inquest was prepared on 24.07.2011 at PIMS Hospital. Therefore, the trial Court should not have accepted the case of the prosecution.

7.Yet another argument of the Appellant/A1 is that on behalf of the Respondent/State, P.W.5/Natarajan (VAO) was examined in regard to 'Confession and Recovery'. But his evidence is an unbelievable and contradictory one to that of other witnesses and therefore, the trial Court should not have accepted the prosecution version.

8.Finally, it is projected on the side of the Appellant/A1 that the judgment of conviction insofar as the Appellant/A1 passed by the trial Court is an erroneous and illegal one in law and therefore is liable to be set aside in furtherance of substantial cause of justice.

9.At the outset, the case of the prosecution is that P.W.4 (Ananth @ Mahesh) and the deceased Senthilkumar are friends and residents of Chinnamudaliyar Chavadi, Aurovil at Kottakuppam. In fact, P.W.4 and the deceased on 23.07.2011 at about 10.00 p.m., were consuming alcohol at Karuvelam thorny forest, Chinnamudaliyar Chavadi, Aurovil. At that time, the Appellant/A1 (Arokiyaraj) was also consuming alcohol by sitting in a dark place. However, P.W.4 asked the Appellant/A1 to go to a different place since the insects would bite him, for that, the Appellant/A1 gave a reply as to 'who was he to tender such advice' and a wordy quarrel ensued between the deceased Senthil Kumar and the Appellant/A1. During the quarrel, the Appellant/A1 stabbed the deceased Senthil Kumar with knife on his abdomen and he also stabbed P.W.4 on his abdomen. At the same place, Senthil kumar died and indeed, P.W.4 (Ananth @ Mahesh) became unconscious.

10.For the purpose of understanding and better appreciation of the entire case, it is useful for this Court to make a reference to the oral testimony of P.W.1 to P.W.14.

11.P.W.1(Complainant) in her evidence had deposed that he knew the accused and he had seen them on the date of occurrence and she is doing gardening work and that on 23.07.2011 at about 10 p.m., in the night, the people from her village came running in order to her house and that two

persons came to her and asked her as to what was the colour shirt and lungi worn by her husband for which she had replied that her husband was wearing white colour shirt and coffee colour lungi and immediately, she was taken by them.

12.It is the further evidence of P.W.1 that she was taken to the in between place of her house and the Bye-pass road and after Bye-pass road and at a place where cement road was dividing/separating, there was a vacant space and in that, there was a gate fixed and near that pit her husband was lying with injury, with stretched legs, his intestine parts also came out and on the floor there were two cell phones which was taken by her and one hour later, the police came and they took two cell phones of her husband from her and that her husband was taken to the JIPMER Hospital.

13.P.W.1 adds in her evidence that in this regard, she gave a complaint before the police (which was written by them) and in the said complaint she had fixed her thumb impression and Ex.P1 was the complaint and her husband used to go to mason work on the date of occurrence, on the day before the occurrence, at about 7.30 p.m. in the evening her husband went out because of the phone call he received and the people among the crowd informed that one Arokiyasamy (the Appellant/A1) had stabbed and at that time, one Raja was there and both of them were running after stabbing her husband and that, in this connection, she was examined by the police.

14.It is the evidence of P.W.2 that he is doing the mason work and he knew the accused but there was no acquaintance with him that he knew P.W.1 who was the nearby resident and one year before, at about 5.30 a.m. in the morning, he heard that somebody had stabbed Senthilkumar and his signature was asked for the purpose of taking Senthil Kumar body to the Kottakuppam Police Station and he does not know anything about the occurrence and he was examined by the police. As a matter of fact, P.W.2 was treated as an 'Hostile Witness'.

15.P.W.3 in his evidence had deposed that he knew P.W.1 and that he is doing carpentry work and that on 23.07.2011, he was sleeping in his house his wife informed him that Senthil Kumar was stabbed by some persons and that Senthil Kumar was lying in position with his intestine outstretched at Chinnamudaliyar Chavadi, Aurovil at Kottakuppam where cement road was dividing/separating and he had seen his body. Further, he had stated that as to how Senthil Kumar had suffered the injury and was lying, he had not known about it

and he was not examined by the police. Also, P.W.3 was treated as an 'Hostile Witness'.

16.P.W.4 in his evidence had stated that he is doing carpentry work and he knew the accused and P.W.1 and on 23.07.2011 at about 10.00 p.m., in the night, he and Senthil kumar were sitting at Karuvelam thorny forest (kaadu) and at that time, the Appellant/A1 was consuming alcohol brandy and he asked him to consume the brandy in a side place because of the reasons that there were insects and for that the Appellant/A1 informed him 'as to who was he say to him' and because of that there was a wordy quarrel between Senthil kumar and the Appellant/A1 and that the Appellant/A1 stabbed Senthil Kumar on his stomach and further, the Appellant/A1 also stabbed him with knife and because of the stabbing, at one place, there was a blood injury and because of the act of stabbing committed by the appellant/A1, his intestine came out and that Senthil Kumar had died at the place of stabbing.

17.P.W.4 in his evidence had also stated that he became unconscious and was taken to PIMS Hospital, Pondy and at the time of occurrence, accused Raja (A2) was not there and incident took place at Chinnamudaliyar Chavadi, Aurovil at Kottakuppam proceeding to cement road and more particularly, the incident took place at the vacant land compound gate nearby.

18.P.W.5 in his evidence had stated that he is serving as VAO of Thylapuram and during the year 2011, he worked as VAO of Kottakuppam and he was taken to the Police Station by the police at 24.07.2011 and the police on 24.07.2011 took him to the place of occurrence in the early morning at 1.00 a.m., and that police had inspected the place of occurrence and at the place of occurrence, there was a blood stained sand and a Mahazar was prepared for visiting the place and in which, he along with one Sundar had affixed their signature and in Ex.P2 Observation Mahazar, the first signature was that of his.

19.Moreover, P.W.5 had added in his evidence that at the place of occurrence, the police collected the blood stained sand, sand without blood stains for which a Mahazar was prepared, in which, he along with Sundar had affixed their signatures and that Ex.P3 was the Seizure Mahazar and blood stained sand was Ex.M.O.1 and that sand without blood was Ex.M.O.2 and that further the two Accused (A1 and A2) were arrested near Pachaivazhi Amman Temple, Chinnakottakuppam and identified both of them and that out of two accused, he does not know at first who had given the confession statement and in the last part of the confession statement, the Accused had

stated that he had hidden the knife at the thorny plant at Irular residential area and also stated that if he was taken, then, he would produce the said knife and Ex.P4 was the admitted portion of the confession in which, he had signed along with VAO Assistant Sundar. Further, the Accused based on his confession was taken to the said place as informed by him and he produced the knife from the hidden place where he kept the same and for assuming the knife Ex.P5 Mahazar was prepared and in which, he had affixed his signature and also Sundar had affixed his signature. The weapon Knife was marked as Ex.M.O.3.

20.P.W.6 (Forensic Laboratory Junior Grade Scientific Officer) in his evidence (before the trial Court) had stated that on 07.09.2011 while he was in duty, the deceased Senthil Kumar body male aged about 34 years was brought by the Police Constable 1305 Sivakumar through Professor PIMS Hospital, Pondy that the inner parts, for the purpose of chemical examination viz., small intestine, spleen, kidney, blood and safety liquid and he examined all the five articles and found out that there was no alcoholic or any other poisonous substance and his certificate/examination report was Ex.P6 and that he was examined by the police.

21.P.W.7 (Scientific Officer of the Forensic Department, Villupuram) in his evidence had stated that he had received the six case property in Kottakuppam P.S. cr.No.220 of 2011 with the letter of the learned District Munsif cum Judicial Magistrate along with seal and the same was received through one P.C.1305 Sivakumar and that the case property 1 cm length along with a handgrip 33.5 cm length was mentioned as C.P.118 of 2011 and torned full hand shirt with white green design stained black brown colour shirt, one white munda banniyan with stains of black brown colour other properties were received and that in 1 to 5 case properties, blood was found out and in case property No.6, there was no blood and the Forensic examination report was given by him was marked as Ex.P7. Furthermore, in case properties 1 to 4, it was found that there was a human blood and in case property No.2, 3 & 4, the blood was of 'O' group and in case property No.1, the blood that was found could not be definitely stated whether it was of human blood and in case property No.5, it was found out that the blood was in damaged condition.

22.P.W.6 in his evidence had also stated that Ex.P8 was the examination report and the sample blood collected at the time of post mortem of Senthil kumar aged about 34 years was received through the constable and that the said blood was

sent to Forensic Science Department to found out the classification and to which item it belong and the said report was Ex.P9 and Ex.P10 was the report given by the Forensic Science Department and that he was examined by the police.

23.It is the evidence of P.W.8 (Doctor) that presently he was working at PIMS Hospital as Assistant Doctor and on 23.07.2011 about 10.25 p.m., it was informed that one Mahesh of Chinnamudaliyar Chavadi at Vanoor Taluk came to the hospital with cut injuries on his left side lower stomach and that he was examined and it was mentioned that on the same day, at about 10.00 p.m., night time, an injury occurred to him and at the time of examination he was in conscious state and he found the following injuries:

1)A cut injury measuring 12x3 cm on the left side outer portion of stomach. Further, the small intestine was protruding outside due to the injury.

2)The blood was seen frozen at 3x3 cm level from large intestine and small intestine path

3)There was an injury with skin being torn out at small intestine measuring 6 cm and in the said torn out place, the oozing out of blood was seen and near the third injury, the entire muscles at a measurement of 4 cm to 5 cm dead tissues were found and at 1.5x1.5 cm measurement, in the first injury at a distance of 30 cm a hole was seen and he was admitted as an in-patient and provided with treatment and the injuries were of serious in nature for his life and Ex.P11 Certificate was given by him and in fact, the above said injuries mentioned by him can occur with Ex.M.O.3 Knife.

24.It is the evidence of P.W.9 that presently he is working as an Assistant Professor of Forensic Science Medical Section of JIPMER Hospital, Pondy and prior to that, on 24.07.2011, he was working as an Assistant Professor at PIMS Hospital and on that day at 10.30 hrs Constable 1305 (Sivakumar) brought the body of Senthil kumar related to the case in Cr.No.220 of 2011 of Kottakuppam and he commenced his post mortem at 10.30 hrs and the dead body was identified by Sivakumar and the dead body was male body approximately aged about 34 years with ordinary physical capacity of 177 cm height and the body was 66 gm in black colour and all over the body, 'Rigor Mortis' was seen and there was blood stain in

the face, hand and legs etc.

25.P.W.9 in his evidence had also stated that in his Report Ex.P12 he had stated that because of the first injury out of the other injury, deceased would have died and the death of the deceased would have been caused by means of Ex.M.O.3 Knife and that at about 12 noon, he completed his post mortem and that he was examined by the police.

26.It is the evidence of P.W.10 (constable) that he is presently serving as a constable at Kottakuppam police station and on 24.07.2011 when he was on duty, in the same police station, at about 10.00 a.m., the body of one Senthil kumar was brought for post mortem with a requisition and he identified the body with Dr.Sanjay Kumar of PIMS Hospital, Pondy and after completion of post mortem, he received the body of Senthil Kumar and handed over the same to his relatives. Further, Ex.M.O.4 to M.O.6 were the blood stained pale green colour shirt, white colour banian and blood stained lungi respectively which he handed over to the Doctor, was handed over to the Court and through Court sent them to the Forensic Science Laboratory at Villupuram and also, he handed over the blood stained sand and the sand without blood stains and inner parts of the deceased Senthil kumar body to the Forensic Science Department, Villupuram and that he was examined by the police.

27.It is the evidence of P.W.11 (Gr-I Constable) that when he was on duty at Kottakuppam Police Sttion on 24.07.2011, he received an information report in Cr.No.220 of 2011 from the Assistant Inspector through urgent tapal and handed over the same to the Learned Judicial Magistrate, Vanoor and later, he submitted a report in regard to the same, to the police station and that he was examined by the Inspector of Police.

28.P.W.12 (Sub-Inspector of Police) that on 23.07.2011 at about 11.30 in the night, he received the complaint statement of Kumari wife of Senthil kumar of Kottakuppam, Perumal koil Street and registered a case under Section 302 and 307 IPC in Cr.No.220 of 2011 and the printed copy of the FIR was Ex.P13 and later, he sent the printed FIR through urgent tapal to the Concerned Court through one Kumaran and also sent the copy of the FIR of the concerned authority for the purpose of further investigation and that case filed and he was examined by the police.

29.P.W.13 (the then Inspector of police, Kottakuppam) in his evidence had deposed that he is presently serving as Inspector of Land Grabbing Special Cell and on 24.07.2011, he was serving as Inspector of police, Kottakuppam at about 12.30 in the early morning, he received the FIR through the constable and he contacted through phone the VAO Natarajan, his Assistant Sundar and required to come to the place of occurrence at about 1 a.m., in the morning. He went to the place of occurrence and prepared observation Mahazar Ex.P14 in the presence of Natarajan, Assistant Sundar with the help of emergency lamp. When he inspected the place of occurrence, at that place, there was a dead body and since it was night time, he sent the dead body for post mortem to the PIMS Hospital through constable 1305 and seized the 'blood stained sand, sample sand' in front of witnesses through Ananth @ Mahesh at about 1.30 a.m., it is the further evidence of P.W.13 that he conducted an inquest enquiry from morning 7.00 a.m., to 9.00 a.m. in front of PIMS Hospital and later, through same constable sent the deceased body with a requisition to the doctor and their recorded statements of Kumari, Rajalakshmi, Saravanan and Kumaran and recorded their statements and post mortem was Ex.P15 and also examined the Mahesh (P.W.4) who was under treatment and also examined the Sub Inspector of Police, Venkatesan and also seized the blood stained clothes from the body of the deceased under Form 95, which was brought by constable 1305 (after conduct of post mortem) and also recorded the additional statement of Mahesh on 25.07.2011 who was under treatment under PIMS Hospital and based on the secret information he received, he arrested at morning 7.00 am. the Appellant/A1 and Raja (A2) at 7.00 a.m. in front of Chinnamudaliyar chavadi Patchaiaimman koil and that time, VAO, his assistant Sundar were there at 7.15 a.m., the Appellant/A1 came forward voluntarily and gave a confession which was recorded by him and in the said confession the Appellant/A1 stated that if he was taken then, he would identify the hidden knife and the place where it was kept at irular residents area at thorny bush place and the Appellant/A1 on the same day at about 10.30 hrs, took out the knife from the nearby thorny bush at Chinnakottam in the presence of witnesses and he seized the knife in the presence of witnesses through Mahesh and later with the articles seized, he along with the Appellant/A1 produced him before the Court and also on the same day, examined VAO and his Assistant and sent the seized articles to the Court on the same day.

30. Moreover, he gave a requisition letter for sending the seized "Knife, lungi worned by the deceased, banian, shirt, stained sand, sand without blood" and in the course of his investigation, he came to know that the deceased Senthil kumar and Ananth @ Mahesh (P.W.4) were stabbed with the same knife.

31. Since this Court is concerned in the present Appeal preferred by the Appellant/A1, this Court is not traversing upon anything in regard to the other Accused A2 (Raja) who was acquitted by the trial Court in respect of an offence under Section 307 r/w.109 and 302 r/w.109 IPC.

32. As far as the present case is concerned, the evidence of P.W.4 was amply corroborated by the evidence of P.W.9. In fact, there was no previous enmity or any motive between the Appellant/A1 and the deceased Senthilkumar. Just because of the eruption of wordy quarrel, of course, due to consumption of alcohol by the Appellant/A1 and P.W.4, the deceased Senthil kumar was stabbed on his abdomen by the Appellant/A1 with a knife. Only at the spur of the moment or spontaneously occurrence took place and the Appellant/A1 was possessing knife (M.O.3) and with the help of knife he had stabbed the deceased Senthil kumar. As a matter of fact, the injuries sustained by the deceased Senthil kumar had perforated on his 'Heart and Lungs'. Therefore, one can safely conclude that the Appellant/A1 had the requisite knowledge that the injury caused on the chest of Senthil kumar was immensely dangerous one and in all probability, it would cause death, which attracts the ingredients of Section 300(4) of IPC in the considered opinion of this Court. Of course, the injuries caused on the chest and stomach on the deceased Senthil Kumar were of serious nature, especially, on vital part of his body.

33. At this stage, the prime consideration in respect of an offence under Section 304 IPC in a criminal case is the intention/knowledge with which the act which caused the death in question. Moreover, the first part of Section 304 IPC would come into operative play where there is 'Guilty Intention' and the second part applies where there is no such intention but there is 'Guilty Knowledge', as per the decision of the Hon'ble Supreme Court in Mohinder Pal Jolly V. State of Punjab reported in AIR 1979 Supreme Court at page 577.

34. Besides the above, this Court pertinently points out that an offence u/s.304(II) IPC satisfies punishment to 'Culpable Homicide' not amounting to 'Murder'. In fact,

Section 304 IPC itself does not create any different offence. Moreover, 'every case' is to be decided on its own facts and merits. A Court of Law has an onerous duty to apply the relevant provision(s) of Indian Penal Code to the facts of a given case before it, of course, with a clear mind as to the category of case under which a particular case falls and impose necessary punishments, as the case may be.

35. Only owing to sudden eruption of quarrel, the incident had taken place and two stab injuries on the chest and another on the abdomen on Senthil kumar's body had caused his death which clearly satisfies the exception of clause (4) of Section 300 IPC. Because of the clear cut evidence in the present case, especially, that of the evidence of P.W.4, the Appellant/A1 had stabbed the deceased Senthil kumar on the chest and abdomen which ultimately resulted in his death. Therefore, this Court is of the clear cut view that the offence under Section 304(II) IPC is made out against the Appellant/A1 and he was rightly found guilty by the trial Court under Section 304(II) IPC in regard to the death of Senthil Kumar. In short, this Court is in complete agreement with the view taken by the trial Court in finding the Appellant/A1 guilty under Section 304(II) IPC and also under Section 307 IPC. In fact, P.W.4 had also spoken about the injury caused to him by the Appellant/A1, suffice it for this Court to unerringly point out that the evidence of P.W.4 was corroborated by the medical evidence adduced on behalf of the prosecution in the instant case and in fact, the doctor had opined that the injuries caused to P.W.4 by the Appellant/A1 were dangerous one and a case is made out against the Appellant/A1 in respect of Section 307 IPC.

36. Be that as it may, on a careful consideration of the aforesaid detailed upshot and also this Court considering the facts and circumstances of the present case in an integral manner comes to an irresistible conclusion that the Appellant/A1 was quite rightly found guilty in respect of an offence under Section 304(II) IPC and 307 IPC but since the quarrel had erupted suddenly (without there being any previous enmity or any previous motive) this Court on the peculiar facts and circumstances of this case is of the considered view that the imposition of punishment of 7 years R.I. each in respect of an offence u/s. 304(2) and 307 IPC by the trial Court is slightly on the higher side. As such, this Court keeping in mind the facts and circumstances of the present case and also the manner of happening of an occurrence etc., modifies the punishment of 7 years R.I. imposed by the trial Court under Section 304(2) and 307 IPC to 5 years R.I. each

respectively. Viewed in that perspective, the Criminal Appeal succeeds in part.

37. In fine, the Criminal Appeal is allowed in part in above terms.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

DP

To

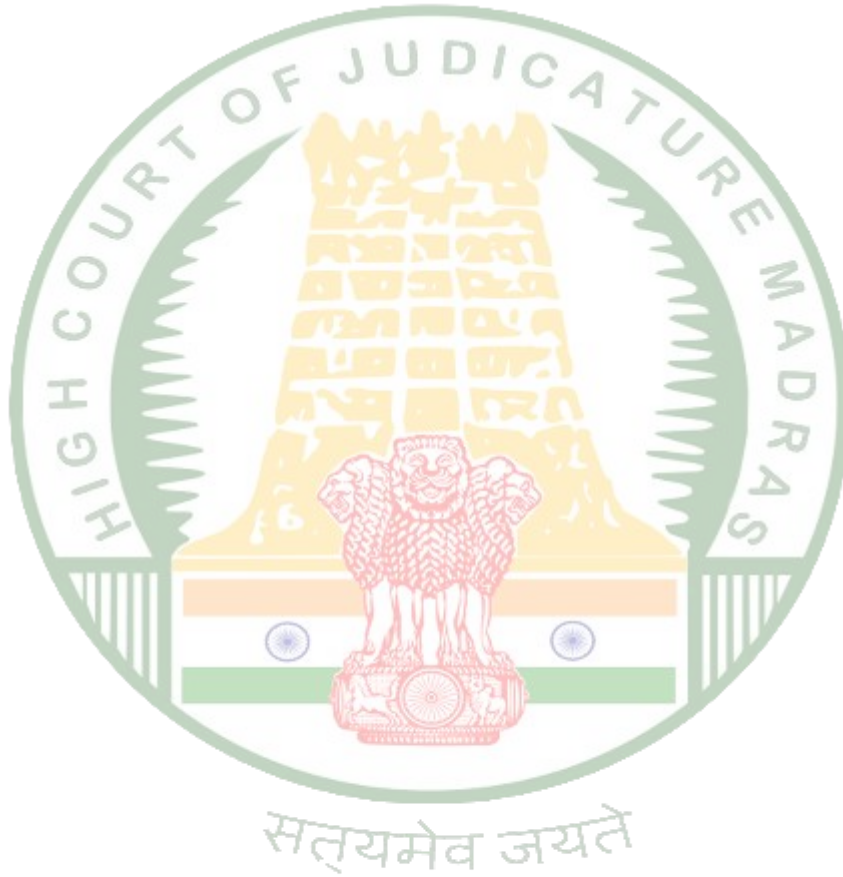
1. The II Additional District and Sessions Court, Tindavanam.
2. -Do- Through The Principal District & Sessions Judge, Villupuram.
3. The Judicial Magistrate, Vanur, Tindivanam District.
4. -Do- Through The Chief Judicial Magistrate, Villupuram.
5. The Inspector of Police, Kottakuppam Police Station, Villupuram District.
6. The Superintendent, Central Prison, Cuddalore.
7. The Director General of Police, Mylapore, Chennai-4.
8. The District Collector, Villupuram District.

9. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Pugalenth, Advocate, S.R.No. 64690

Cr1.A.No.592 of 2014

BR (CO)
PSI(02/12/2016)



WEB COPY