

Bail Slip

Murali, S/o. Ettiyappan Accused enlarged on Bail by the order of this court vide MP.No.1/2012 in CrI.A.512 of 2012 dated 11.2.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.512 of 2012

Murali ... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police (L & O),
V-3,J.J.Nagar Police Station,
Thiruvallur District.
[Crime No.125 of 2011] ... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned II Additional Sessions Judge, Tiruvallur @ Poonamallee, in S.C.No.102 of 2011 dated 24.07.2012.

For Appellant : Mr.A.Shiv Kumar
For Respondent : Mr.M.Maharaja,
Additional Public
Prosecution

JUDGEMENT

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

The appellant is the sole accused in S.C.No.102 of 2011 on the file of the learned II Additional Sessions Judge, Tiruvallur @ Poonamallee. He stood charged for offences under Sections 302 and 506(ii) of IPC. The trial court, by judgement dated 24.07.2012, convicted the appellant under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of one year for offence under Section 302 of IPC and to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a further period of

six months for offence under Section 506(ii) of IPC. Challenging the above said conviction and sentence, the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Suresh. P.Ws.1 and 2 are the mother and father respectively of the deceased. P.Ws.3, 4 and 5 are his friends. P.W.6 is his wife. The deceased was an auto driver by profession. P.W.2, the father of the deceased owned a share auto rickshaw. On 20.02.2011, P.W.2 wanted the deceased to take the share auto to a workshop and get it repaired. Accordingly, the deceased washed the auto and then took it to the workshop along with his friend Mr.Ruban [P.W.3]. The deceased had gone to a wine shop in Parry Road at Mogappair. The wine shop was in the ground floor and in order to facilitate the consumers to enjoy the drinks, a bar was arranged on the first floor of the building with tables and chairs. There was also a person to serve. The deceased and P.W.3 reached the bar at 11.00 a.m. and started consuming liquor. They continued to drink from 11.00 a.m. onwards. P.Ws.4 and 5 were also in the bar taking liquor. At that time, the accused came to the bar. He also started drinking. On seeing the deceased in the company of P.W.3, the accused questioned the deceased as to why he had joined hands with P.W.3. This resulted in a quarrel. The accused threatened to stab P.W.3 as well as the deceased. Therefore, P.W.3 got down from the first floor and reached the ground floor. On hearing the information about the above quarrel, which was going on for quite some time, P.Ws.1 and 2 came to the wine shop. P.W.3 told them about the quarrel. Therefore, all the three again went into the bar in the first floor. Again there arose quarrel. At that time, in the quarrel, the accused took out a knife and stabbed the deceased on his left upper arm. Then, he ran away from the scene of occurrence. Thus, the occurrence was witnessed by P.Ws.1 to 5.

3. Then, P.Ws.1 to 5 took the deceased to a private nursing home known as "Raj Nursing Home" situated somewhere near the place of occurrence. P.W.11-Dr.Vijakumar Ilango, who was in the said nursing home, examined the deceased at 02.45 p.m. on 20.02.2011. At that time, the deceased was conscious. He told the Doctor that he was stabbed by a known person with knife. P.W.1 recorded the same in the accident register. Ex.P.6 is the accident register. He made suturing of the wound as a first aid and advised him to be taken to the Government General Hospital. Therefore, P.Ws.1 and 2 took the deceased to Rajiv Gandhi Government General Hospital at Chennai.

4. P.W.15-Dr.Bargavi attached to Rajiv Gandhi Government General Hospital, Chennai, admitted the deceased at 04.55 p.m. on 20.02.2011 as in patient after making entry in the accident register. At that time, the deceased was

unconscious. P.W.1 told P.W.15-Doctor that the deceased was stabbed by a known person with knife. Ex.P.10 is the accident register.

5. At 05.30 p.m. on 20.02.2011, P.W.12 Dr.Sagaya Inbasekar, attached to the said Government General Hospital, examined the deceased. The deceased was unconscious. Tracheal tube was fixed through his nose to enable him to breathe. When the Doctor further examined him, he found two sutured wounds on the left upper arm measuring 2 cms and 1 cm in length respectively. Since his condition was bad, treatment was immediately started. A Neuro Surgeon was called and CT scan was taken. The Doctors found that blood was profusely bleeding through both the wounds. So it was suspected that the major blood vessel in the left upper arm might have been injured. Therefore, a Vascular Surgeon and an Orthopedic Surgeon were also called. In the mean while, the condition of the deceased was becoming worse. The anesthetist gave opinion that going by the body condition of the deceased it was not possible to administer anesthesia. Thus, the injured blood vessel could not be corrected. At last, due to hemorrhagic shock the deceased breathed his last at 10.55 p.m. on 20.02.2011. Ex.P.7 is the Accident Register.

6. On getting intimation from the hospital about the admission of the deceased, in the mean while, P.W.16, the Sub Inspector of Police, J.J. Nagar Police Station, rushed to the Rajiv Gandhi Government General Hospital at 07.30 p.m. He recorded the statement of P.W.1 and on returning to the police station, at 09.00 p.m. he registered a case in Crime No.125 of 2011 under Sections 341, 307 and 506(ii) of IPC against the accused. Ex.P.11 is the FIR. He forwarded both the documents to the court which were received by the learned Judicial Magistrate at 03.00 a.m. on 21.02.2011.

7. Taking up the case for investigation, P.W.17, the then Inspector of Police, went to the Government General Hospital, recovered the blood stained clothes from the person of the deceased under a mahazar. Then, he visited the place of occurrence and prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P12) at the place of occurrence in the presence of P.W.9 and another witness. He recovered the blood stained cement/plaster flooring and sample cement/plaster flooring from the place of occurrence under a mahazar (Ex.P5) in the presence of the same witnesses.

8. In the course of investigation, P.W.17 examined P.Ws.1 to 7 and recorded their statements. On getting intimation that the deceased died at 10.45 p.m. on 20.02.2011, he altered the case into one under Section 302 of IPC at 12.30 a.m. on 21.02.2011. Ex.P.13 is the alteration report. Then, he went to the hospital, conducted inquest and prepared an Inquest Report [Ex.P.14]. Then, he forwarded the body for postmortem.

9. P.W.14 Dr. Selvakumar, conducted autopsy on the body at 11.50 a.m. on 21.02.2011 on the body of the deceased. He found the following injuries:-

" Antemortem injuries:-

(1) Two reddish brown abrasions measuring 1 x 0.5 cm and 0.5 x 0.5 cm seen over front of upper part of right side of chest.

(2) A perforating (through and through) wedge shaped stab injury present on the outer aspect of middle 1/3 of left arm measuring 2.5 x 0.5 - 1.2 cm with margins regular, clean cut, inverted, swollen and gaping.

sutures injuries seen over upper and lower ends of stab wound (one on either end).

Blood stained surgical gauze was found packed inside the stab wound track. The direction of the wound was inwards and downwards with extensive extravasation of blood in the surrounding tissues of the track of the wound. Tear of size 1 x 0.5 cm seen in the lower 1/3 of the brachial artery with extensive contusion of the surrounding soft tissues. The exit wound was seen in the lower 1/3 of inner aspect of left arm with clean cut margins.

O/D of chest: Anterior chest wall contusion (sic) red in colour measuring 6 x 4 x 0.5 seen on the right upper part."

Ex.P.9 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock due to loss of blood.

10. P.W.17, in the course of investigation, arrested the accused on 21.02.2011 at 02.00 p.m. in the presence of P.W.8 and another. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden an auto rickshaw, a knife and a shirt. In pursuance of the same, he took P.W.17 and the witnesses to place of hideout and produced M.O.1 knife, M.O.4 shirt and M.O.5 auto-rickshaw bearing Regn. No. TN 02 1857. On returning to the police station, he forwarded the accused to the court for judicial remand and the material objects also to the court. At his request, the above material objects, except auto rickshaw, were sent for chemical examination.

11. P.W.13, the Junior Scientific Officer at Tamil Nadu Forensic Science Department, Chennai, conducted examination and found that there were blood stains on the material objects including the knife and shirt recovered from the accused, in pursuance of his disclosure statement. On

completing the investigation, P.W.17, the investigating officer laid the final report against the accused.

12. Based on the above materials, the trial court framed charges under Sections 302 and 506(ii) of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 17 witnesses were examined, 14 documents and 5 materials objects were marked.

13. Out of the said witnesses, P.Ws.1 to 5 are eye witnesses to the occurrence. P.W.6, the wife of the deceased has stated that she heard about the occurrence and then she went to the place of occurrence. P.W.7 is the Supervisor in the bar. He has stated that at the time of occurrence, he was in the ground floor, that is, in the wine shop. He heard some bickering sound from the first floor and when he came out of the shop, he found some people carrying one injured. He has not stated anything incriminating against the accused. P.W.8 has spoken about the arrest of the accused and the consequential recovery of material objects namely, knife, auto rickshaw and the shirt, out of his disclosure statement. P.W.9 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence and also the recovery of some pieces cement/plaster flooring with blood stains and sample cement/plaster flooring from the place of occurrence by the investigating officer. P.W.10 has spoken about the fact that he carried the dead body and handed over the same for postmortem. P.W.11 is the Doctor. He is running a nursing home in the name and style "Raj Nursing Home. He has stated that at 02.45 p.m. on 20.02.2011, the deceased was brought to his hospital for treatment. He has spoken about the treatment given to the deceased.

14. P.W.15 - the Doctor at Rajiv Gandhi Government General Hospital, Chennai, has stated that at 04.55 p.m. on 20.02.2011, he examined the deceased and gave treatment. P.W.12 has spoken about the treatment given at the said hospital and the death of the deceased. P.W.14-Doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.16 has spoken about the registration of the case and handing over the case diary to the Inspector of Police for investigation. P.W.17, the investigating officer, has spoken about the entire investigation done by him and the filing of final report against the accused.

15. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial.

16. Having considered all the above, the trial court convicted the accused under both the charges and accordingly

punished him as detailed in the first paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

17. We have heard the learned counsel for the Appellant/Accused and the learned Additional Public Prosecutor appearing for the Respondent/State and also perused the records carefully.

18. As we have already narrated above, there are five witnesses to the occurrence. The learned counsel for the appellant would submit that none of these witnesses would have witnessed the occurrence. The learned counsel, taking us through the evidences of P.Ws.1 to 5, pointed out certain contradictions among these witnesses. In our considered view, none of the contradictions pointed out by the learned counsel is so material so as to disbelieve either the presence of P.Ws.1 to 5 at the place of occurrence or doubt their credibility. Thus, their presence at the place of occurrence, in our considered view, has been clearly explained by them. P.Ws.3 to 5 have stated that they had gone to the bar only to consume liquor. The entire occurrence was because P.W.3 had joined hands with the deceased as a friend. P.Ws.1 and 2 have stated that they had gone to the wine shop only after hearing information about the quarrel. By the time when both P.Ws.1 and 2 had gone into the bar, P.Ws.4 and 5 were already present there. It was only at that time, the accused had stabbed the deceased with knife on his left upper arm and ran away. Thus, the evidences of P.Ws.1 to 5 is so cogent and clear which cannot be rejected at all. From these evidences, we find that it was this accused who caused the stab injury on the left upper arm of the deceased.

19. Immediately after the occurrence, as we have already narrated, the deceased was initially taken to Raj Nursing Home, at 2.45 p.m. on 20.02.2011 where Dr.Vijayakumar Ilango [P.W.11] examined him and found that there was stab injury on his left upper arm. The deceased was already struggling to breathe. Therefore, he fixed a tracheal tube to ease the deceased to breathe. Then, he advised to shift the deceased to the Government General Hospital. In the Rajiv Gandhi Government General Hospital, from the evidences of P.W.15-the Doctor and P.W.17-the investigating officer, it is crystal clear that no treatment was actually given. Despite Neuro surgeon, orthopedic surgeon, vascular surgeon and anesthetist were called, they had not decided about the immediate course of treatment. When they decided to go for surgery, the condition of the deceased became bad and he breathed his last.

20. P.W.14-the Doctor, who conducted autopsy on the body of the deceased, opined that the cause of death was due to blood loss. The Doctors mentioned above have stated that from the time at which the deceased was brought till his

demise, the blood was profusely bleeding through the injury and it could not be arrested. It was indicative of injury to the major blood vessel on the left upper arm. Since there was no surgery conducted to correct the injured blood vessel, the blood was oozing out for about 10 hours. Thereafter, the deceased died of shock due to the blood loss. Thus, it has been clearly established that the death was due to the injury caused by the accused. The Doctor [P.W.14], who conducted autopsy has given a clear opinion that the death was due to the effect of stab injury to the left upper arm. Thus, it has been further established that the death of the deceased was caused by this accused.

21. The learned counsel for the appellant made an abortive attempt to assail the case of the prosecution by stating that there was no proper treatment given to the deceased. In effect, his argument was, had there been proper treatment given to the deceased and the bleeding had been arrested, he would have survived. It may be true. Even P.W.11, who treated the deceased at Raj Nursing Home did not even diagnose that there was an injury to the major blood vessel though he noticed that there was extensive bleeding through the injury. However, as a first aid, he simply sutured the external wound. Further, since already the deceased was struggling to breathe due to loss of blood, he fixed a tracheal tube to ease the deceased to breathe. All these measures were taken only as first aid.

22. When the deceased was taken to Rajiv Gandhi Government General Hospital, Chennai, at 4.55 p.m. on 20.02.2011, the Doctor (P.W.15) who admitted the deceased as inpatient, noticed that blood was bleeding profusely through the injury. At 05.30 p.m. another Doctor (P.W.12) had examined the deceased and at that time also there was bleeding through the injury. As we have already narrated, the Specialists from various fields namely, neuro surgeon, orthopedic surgeon, vascular surgeon and anesthetist were all called and they examined the deceased and CT scan and X-Ray had been taken. Certainly, it would have come to light that there was serious injury to a major blood vessel. It was only because of the same, the Doctors decided to go for surgery. But before they could go for surgery, the condition of the deceased became worse and he breathed his last.

23. We find some force in the said argument of the learned counsel for the appellant that if proper treatment had been given to the deceased by correcting the injured major blood vessel to arrest the bleeding, chances of survival would have been more. But, it is no defence in law to say that the deceased would have survived had there been proper treatment given and, therefore, it is not culpable homicide. Section 299 of IPC defines culpable homicide. Explanation (2) to Section 299 of IPC explains as follows:-

"Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented. "

The above said explanation would make it very clear that in the instant case though the death of the deceased might have been averted by correcting the injured major blood vessel, it is no defence to say that the death of the deceased was not a homicide. Therefore, this argument of the learned counsel for the appellant is rejected.

24. Having come to the conclusion that the death of the deceased was caused by the accused by causing a single stab on the left upper arm, it is time for us to examine as to whether the same would amount to culpable homicide. As per the Indian Penal Code, it is not every homicide which is made punishable, instead, a homicide which is culpable alone has been made punishable. In other words, the culpability of the mind of the accused to cause homicide as defined in Section 299 of IPC should be proved by the prosecution. Section 299 of IPC contains three limbs. The Hon'ble Supreme Court has on innumerable occasions dealt with these three limbs so deeply and elaborately, leaving nothing behind for any confusion. The first limb speaks of intention to cause death. The intention is a matter to be gathered from various evidences and circumstances available in the case. Here in the instant case, it is in evidence that the accused and the deceased were a long time friends. P.Ws.1 to 3 have categorically stated that the deceased and the accused were moving closely and they used to go together for even drinking liquor. Thus, there was no motive at all for the accused to cause the death of the deceased. On the day of occurrence, the deceased had gone along with P.W.3 to the bar to consume liquor. At that time, the accused came to the bar for consuming liquor. Thus, the meeting of the accused and the deceased itself was only by chance and it was not an expected one. The quarrel did not take place immediately. The accused had started drinking liquor. At that time, there arose quarrel in which the accused questioned the deceased as to why he had joined hands with P.W.3. On knowing about the quarrel, somebody had informed P.Ws.1 and 2, who were in the house and until they reached the bar, the quarrel was still going on. P.W.3 after seeing the quarrel got down from the first floor and again he joined P.Ws.1 and 2 and went into the bar. At that time, in the midst of quarrel, the accused caused a single stab on the left upper arm of the deceased. From these facts, it is deducible that the accused would not have had the intention to cause the death of the deceased as required under first limb of Section 299 of IPC.

25. The second limb of Section 299 of IPC speaks of intention of causing such bodily injury as is likely to cause death. The accused would not have intended to cause that particular injury to the major blood vessel. In the quarrel he had used the knife and caused injury on the left upper arm. Whether such injury is likely to cause death or not depends upon chances of survival [vide Virsa Singh v. State of Punjab, AIR 1958 SC 465 and Ganesan v. State, 2013 (1) CTC 372]. Here in the instant case, absolutely there is no categorical evidence that chances of survival was less than the chances of death. It is not uncommon that even if a person's hand is amputated, he would survive. Thus, the prosecution has not brought on record any evidence to show that the injury caused by the accused on the left upper arm of the deceased was even likely to cause death. Thus, the act of the accused would not fall under the second limb of Section 299 of IPC also.

26. The third limb of Section 299 of IPC speaks of knowledge that he is likely by such act to cause death. So much degree of knowledge cannot be attributed to a person who causes a single injury on the left upper arm that his act is likely to cause death. Therefore, in our considered view, the third limb of Section 299 of IPC also has not been satisfied. Since, in the instant case, the act of the accused in causing the death of the deceased does not fall under any one of the limbs of Section 299 of IPC, it remains to be only a homicide and not a culpable homicide. Therefore, the appellant cannot be convicted either for culpable homicide under Section 304 of IPC or for murder under Section 302 of IPC. But, at the same time, for having caused that injury on the left upper arm of the deceased, the accused is liable to be punished.

27. Section 320 of IPC defines grievous hurt. As per the said definition, if the injury is in the nature of endangering human life, it is grievous hurt. Here, in the instant case, the injury caused on the deceased has resulted in the death. Though it has not been elicited from the Doctor whether the said injury is in the nature of endangering human life, it is deducible from the nature of the injury that it has resulted in death, it falls in the category of an injury endangering human life. Thus, the act of the accused in voluntarily causing grievous hurt with the dangerous weapon, would make out an offence under Section 326 of IPC. Therefore, he is liable to be punished under Section 326 of IPC.

28. So far as the charge under Section 506(ii) of IPC is concerned, there is no evidence from any of the eye witnesses that the accused criminally intimidated the eye-witnesses. Therefore, the conviction of the appellant under Section 506(ii) of IPC and the sentence imposed on the accused are liable to be set aside.

29. Now, turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged twenty-four years. The deceased was also an young man and was married. They were friends for a long time and the occurrence itself was because the deceased, instead of taking liquor with him, had joined P.W.3 to consume liquor. The occurrence was not premeditated and it was out of a quarrel. The accused had no bad antecedents. There are lot of chances for his reformation. He has got family to take care of. Having regard to all these mitigating as well as the aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for a further period of four weeks for offence under Section 326 of IPC would meet the ends of justice.

30. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant/accused for the offences under Sections 302 and 506 (ii) of IPC are set aside and instead, he is convicted under Section 326 of IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a further period of four weeks. If the appellant/accused had already paid the fine amount, the same shall be adjusted towards the fine amount now imposed. It is directed that the period of detention already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C.

The appellant/accused is acquitted of charge under Section 506(ii) of IPC and fine amount paid, if any, on that account shall be refunded to him.

It is reported that the accused is on bail and, therefore, the learned II Additional Sessions Judge, Tiruvallur @ Poonamallee, shall take steps to secure the appellant/accused and commit him to prison to serve the remaining portion of sentence, if any.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

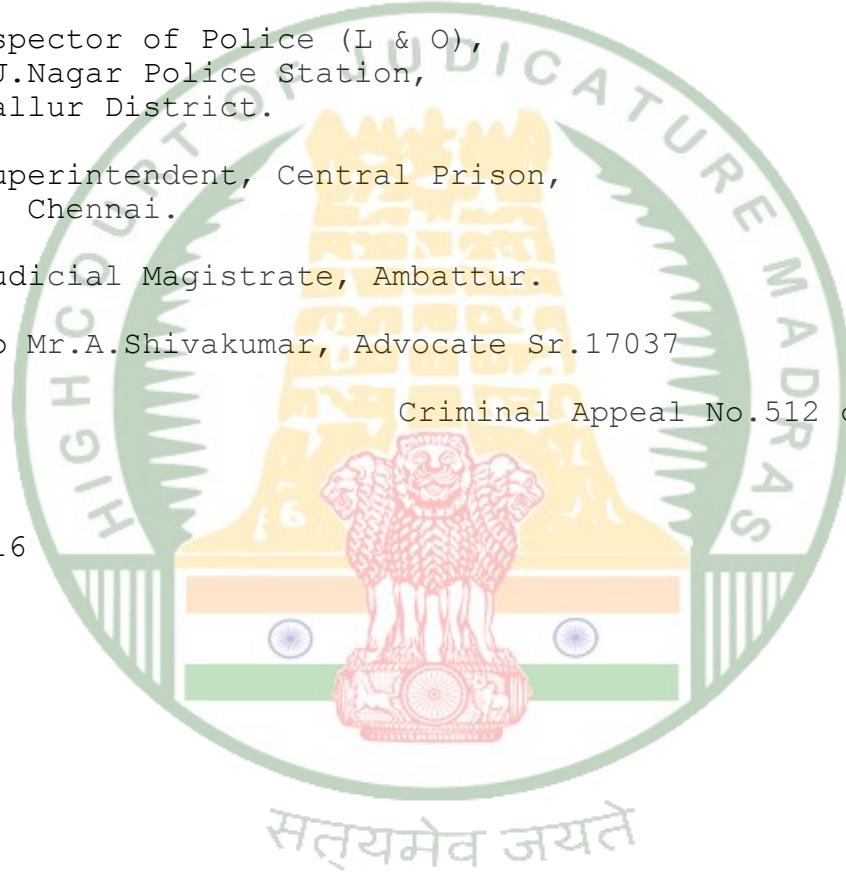
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To

- 1.The II Addl. Sessions Judge,
Poonamallee, Thiruvallur, District.
 - 2.Through The Principal Sessions Judge, Tiruvallur,
 3. The Judicial Magistrate, Ambattur.
 4. The Chief Judicial Magistrate Tiruvellor.
 - 5.The Inspector of Police (I & O),
V-3,J.J.Nagar Police Station,
Thiruvallur District.
 6. The Superintendent, Central Prison,
Puzhal, Chennai.
 7. The Judicial Magistrate, Ambattur.
- + 1 cc to Mr.A.Shivakumar, Advocate Sr.17037

Criminal Appeal No.512 of 2012

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