

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL No. 1520 of 2002
and
CRIMINAL REVISION CASE No. 1236 OF 2002

State by:

Inspector of Police

Velagoundampatty Police Station

Salem.

.. Appellant in Crl.A.No.1520 of 2002

S.V.Kandasamy

.. Petitioner in Crl.R.C.No.1236 of 2002

Vs.

1.Deivasigamani

2.Muthumani

3.K.B.@Barath

4.Balu @ Balan

5.Shanmugam

6.Thangaraj

7.Thangavelu

8.Mani @ Subramani

9.Subramani

10.Palanisamy

11.Sampath

12.Rangasamy

13.Rangan

14.Arumugam

15.Arumugam

16.Murugesan

17.Ganesan

18.Ammasai

19.Ragupathy

20.Murugesan

21.Chinnathambi

22.Natarajan

23.Sengodan

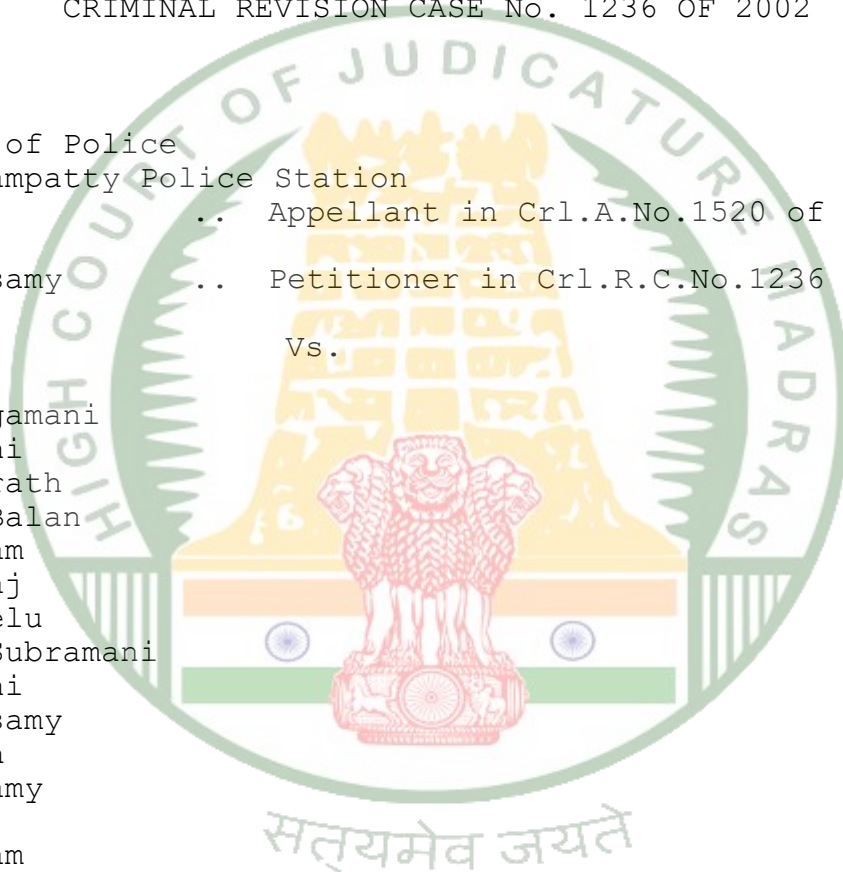
24.Shanmugam

25.Manickkam

26.Moorthy

27.Saminathan

.. Respondents in both Appeals



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28.State rep. by the
Inspector of Police
Velagoundampatti Nallur Police Station
Salem District.

F.I.R.No. 207 of 1997 .. 28th Respondent in CrI.R.C.No.1236/02

Criminal Appeal No.1520 of 2002 is preferred under Section 378 Cr.P.C against the judgment of acquittal passed by the learned Additional District & Sessions Judge, Fast Track Court No.I, Salem, made in S.C.No. 135 of 2000, dated 30.04.2002.

For Appellant : Mr.M.Maharaja
Additional Public Prosecutor

For Respondents : Mr.A.Padmanabhan
for R.1 to R.27

Criminal Revision Case No.1236 of 2002 is preferred under Section 397 read with Section 401 of Cr.P.C. against the judgment of acquittal passed by the learned Additional District & Sessions Judge, Fast Track Court No.I, Salem, made in S.C.No. 135 of 2000, dated 30.04.2002.

For Petitioner : Mr.S.Ananthanarayanan
for Mr.S.M.Nandhie Devan
For Respondents : Mr.A.Padmanabhan
for R.1 to R.27
Mr.M.Maharaja
Additional Public Prosecutor
for 28th respondent

J U D G M E N T

(The judgment of the Court was delivered by S.NAGAMUTHU, J.)

The State has come up with the appeal in CrI.A.No.1520 of 2002, challenging the acquittal of the respondents 1 to 27, who were the accused in S.C.No.135 of 2000 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Salem.

2. The Prosecution Witness No.7 viz., Mr.S.V.Kandasamy, who is the father of one of the deceased, has come up with the Criminal Revision Case No.1236 of 2002, challenging the acquittal of the respondents 1 to 27.

3. The respondents 27 in numbers are the accused in the case. The Trial Court framed total number of seven charges as against the accused as detailed below :-

Sl.No.	Charge Number	Rank of Accused	Offence
1	Charge No.1	Accused Nos.1 to 27	148 IPC
2	Charge No.2	Accused Nos.1 to 27	341 IPC
3	Charge No.3	Accused Nos.7 to 27	427 IPC
4	Charge No.4	Accused Nos.6, 20 & 24	435 IPC
5	Charge No.5	Accused Nos.17 to 19 & 25 to 27	324 IPC
6	Charge No.6	Accused Nos. 1 to 5 & 8 to 11	302 r/w. 34 IPC
7	Charge No.7	Accused Nos.6, 12 to 27	302 r/w. 149 IPC

4. The case of the prosecution in brief is as follows:-

(i) In the Panchayat election held sometime before the alleged occurrence in this case, a woman by name Mrs.Mohana, wife of Sahadevan, who belongs to Mudaliar community, contested against one Mrs.Sampoornam, who belongs to Arunthathiar community. In the same election for the post of Cholasiramani Panchayat Councillor post, one Senthamarai, who belongs to Vetuvagounder community, contested against one Malliga, who belongs to Vellalagounder community. In the said election, the people belonging to Mudaliar community and Vellelagounder community, joined together to oppose the people belonging to Vetuvagounder community and Arunthathiar community people. Thus, on the basis of the caste lines, the Villagers virtually split into two groups. After the election also, this virtual division between the people continued and they became inimical towards each other. In order to bring peace in the Village, the Revenue Divisional Officer also initiated proceedings under Section 107 Cr.P.C., against both the groups, but, that attempt also proved futile.

(ii) There are two deceased in this case, by name, Sathasivam and Vijayakumar. For the sake of convenience, Sathasivam is referred to as D.1 and Vijayakumar as D.2 hereinafter. Sathasivam and Vijayakumar belonged to the group of people comprising of Mudaliar community and Vellalagounder community. All the accused belonged to the opposing group belonging to Vetuvagounder community and Arunthathiar community. On 04.08.1997, at about 9.30 a.m., D.1 was getting ready to go to Tiruchengode. P.W.1-Rajendran belonging to his group joined him. Therefore, they proceeded in a motorcycle towards

Tiruchengode. P.Ws. 3 and 4-Dhandapani and Natrayan respectively, who also belong to the same group, followed them in a TVS-50 motorcycle. When they were nearing Karuvelamaram bus stop in the Tiruchengode road, there was a crowd of people, of whom, most of them were armed with deadly weapons like aruval, stick etc. At that time, incidentally from Tiruchengode one tempo van was proceeding. The relatives of D.1 were the inmates of the said tempo van. When the tempo van reached the place where the crowd of people were standing with weapons, they started mounting attack on the tempo van. The van was extensively damaged. D.1 stopped the motorcycle, rushed towards the crowd and requested them not to attack the tempo van, because, the inmates were all his relatives and guests coming to his house. The people in the tempo van got down and they took to their heels. All the 27 accused were in the crowd and they were armed with weapons. Some of them gave a chase to the inmates of the tempo van. The 1st accused dragged Sathasivam (D.1) and started attacking him. They set fire to the TVS-50 motorcycle and the accused Nos.17, 18, 19 and 25 to 27 attacked, P.W.2-Shamugam and one Jaganathan and caused injuries upon them and the accused Nos.1 to 5 and 8 to 11 attacked D.1 with aruval on various parts of the body, which resulted in his instantaneous death. The rest of the accused, who were members of unlawful assembly aided the other accused to commit murder. The accused Nos. 1 to 5 and 8 to 11 again attacked Vijayakumar (D.2) with aruval and caused his death instantaneously. Thus, two persons were done to death, two persons were injured and two vehicles were damaged extensively.

(iii) Immediately, P.W.1-Rajendran went by walk crossing a distance of 5 k.m. reached Perunkurichi Bus Stand, from where, by bus, he reached his native village and informed P.W.7, the father of the deceased Sathasivam. P.W.7 instructed him to go over to the Police Station and make a complaint. Immediately, P.W.1 went to the Police Station and made a complaint. P.W.22-Mohanraj, the then Sub-Inspector of Police of Nallur Police Station received the complaint from P.W.1 and registered a case in Cr.No.207 of 1997 for the offences under Sections 147, 148, 324, 427 and 363 IPC. At the time when P.W.1 gave a complaint, he was not aware of the fact that Sathasivam (D.1) and Vijayakumar (D.2) had already died. Ex.P.1 is the complaint and Ex.P.30 is the First Information Report. He forwarded both the documents to Court and handed over the Case Diary to the Inspector of Police for investigation.

(iv) P.W.23-Kaliyapillai, the then Inspector of Police took up the case for investigation. On 04.08.1997, at 4.00 p.m., he visited the place of occurrence and prepared an Observation Mahazar (Ex.P.10) and the Rough Sketches (Exs.31 and 32) in the presence of witnesses. He also recovered the broken glass pieces, stones, burnt remains of TVS-50 motorcycle under a

mahazar. As a matter of fact, according to him, after D.1 and D.2 had sustained injuries, they were carried by the assailants into the sugar cane grove belonging to one Ramasamy of Ponnampalayam, where the dead bodies were abandoned. On 04.08.1997, at 6.30 p.m., P.W.23 arrested the accused Thangavelu, who gave a voluntary confession in the presence of P.W.13-Kailasam, Village Administrative Officer and another witness. Then, he took the police and the witnesses to the sugar cane grove of Ramasamy, where the dead bodies were seen lying. Thereafter, P.W.23 altered the case into one under Sections 147, 148, 324, 427, 435 and 302 IPC and forwarded the alteration report to the Court under Ex.P.33-Express Report. Then, he prepared an Observation Mahazar at the place (Ex.P.14), where the dead bodies were lying. Then, he recovered three aruvals and seven sticks, on being produced by the accused Thangavelu. He recovered the same under the mahazar. On 05.08.1997, at 3.30 a.m., he arrested the accused Shanmugham, Rangasamy, Rangan, Arumugam, Arumugam, S/o.Muthusamy, Arumugam, S/o.Kundan, Murugesan, Ganesan, Ammavasai and Raghupathy. Then he forwarded them to Court for judicial remand. He forwarded the body after necessary inquest to the Doctor for postmortem.

(v) P.W.10-Dr.Vedamanickam conducted inquest on the body of D.1 on 05.08.1997 at 10.45 a.m. He found the following injuries on the body of D.1. Ex.P.7 is the Postmortem Certificate. He opined that the death was due to shock and haemorrhage due to the injury to vital organs.

"External Injuries:-

- (1) Semilunar shaped incised injury, where margins were clear, seen above and behind right ear measuring 4"x 3"x base depth on right occipital region of the scalp.
- (2) Incised injury 6"x 4"x base depth, where margins were clear, seen on right occipital region of the scalp measuring 6"x 3"x base depth with lower margin of the overlying skin flap was hanging down. Blood clots present in it.
- (3) Semilunar shaped incised injury, where margins were clear, seen from left frontal to left occipital region of scalp measuring 7"x 2"x Base depth.
- (4) Incised injury, where margins were clear seen from middle of left ear to left cheek measuring 3 1/2"x 2"x minute depth.
- (5) Oval shaped incised injury where margins were clear and contused seen below right collar bone measuring 2 1/2"x 2"x 1" with blood clots present in it.
- (6) Oval shaped incised injury where margins

were clear seen on right side neck measuring 3"x 2"x Minute depth.

(7) Incised injury 3"x 2"x minute depth, where margins were clear seen on middle of lower third of neck. Blood clots present in it.

(8) Horizontally situated incised injury seen on upper third of left arm measuring 3 1/2"x 1/2"x minute depth.

(9) Incised injury 2"x 1/2"x minute depth present on dorsal aspect of left index finger.

(10) Incised injury, where margins were clear, seen on back of middle of left forearm measuring 4"x 3"x minute depth. Blood clots present in it.

(11) Incised injury 2"x 1"x 1" seen below to the injury No.(5) with blood clots present in it.

O/D(12) Upper third of right lung corresponding to external injury No. 5 and 11 was found contused 1"x 1/2" with blood clots present 100 ml in thoracic cavity.

(13) Horizontal fracture 2" in length present on right occipital bone of skull corresponding to external injury No.2 with blood clots present underneath it.

(14) Longitudinal fracture measuring 2 1/2" in length seen in fronto parietal region and left side of skull corresponding to external injury No.(3) with blood clots present underneath it. All Internal organs were pale. Heart chamber empty. Hyoid bone intact. Stomach empty. Bladder empty."

(vi) Similarly, P.W.11-Dr.Thiruvalluvan conducted inquest on the body of D.2 on 05.08.1997 at 12.15 p.m. and he noticed the following injuries. Ex.P.9 is the Postmortem Certificate. He opined that the death was due to shock and haemorrhage due to the injury to vital organs.

"(1) O/E Incised injury Rt cheek 3 " x 1/2 " vertical.

(2) Lacerated injury left pinna of ear involving whole of root

(3) Abrasion 1" x 1" over nose.

(4) Incised injury 2 " x 1/2 " x 1/2 " over the thorax.

(5) Incised injury Elliptical in surface 2" x 1" x 3" over the left chest.

(6) Incised injury 1" x 1/2" x 1" over xipisternum area.

(7) Incised injury right lateral chest (a) 2" x 3/4" x 1/2" (b) 1" x 1/2" x 1/2"

(9) Incised injury 1" x 1/2" x 1/2" over right

chest.

(10) Another injury over right chest 1" x ½" x ½" incised injury.

(a) Right forearm incised injury 5" x 2" x bone depth sore fractured

(b) Incised injury 3" x 2" x bone depth sore fractured.

(11) Left back of forearm incised injury 4" x 2" x bone depth, bone fractured.

(12) Left cavity incised injury involving whole length only attached with skin.

(13) Left middle forearm incised injury 2 x ½" x ½".

(14) Incised injury 2" x ½" x ½" left forearm.

(15) Abrasion 1" x ½" below Right knee.

(16) Trachea cut houlgo

O/D (1) Trachea cut completely 1m horizontal mark.

(2) Elliptical punctured left upper lobe of the limb.

(3) Heart Chambers Empty.

(4) Hyoid Bone intact.

(5) Bladder Empty.

(6) Stomach Empty.

(7) All the internal organs are pale.

(8) All the injuries are of ante mortem inundant.

(9) Brain not injured ; Pale."

(vii) P.W.23 recovered blood-stained earth (M.O.7) and sample earth (M.O.8) from the place of occurrence in the presence of witnesses and forwarded the same to Court. Since, P.W.23 was transferred, he handed over the investigation to P.W.24.

(viii) P.W.24-Rajamuthu, the then Inspector of Police, took up the case for investigation on 07.08.1997. On 09.08.1997, at 1.00 p.m., he arrested the accused K.B.@ Barath, Mani @ Subramani and Palanisamy. On such arrest, the accused Barath gave a voluntary confession, in which, he had disclosed the place, where he had hidden the aruval, but on the confession given by the rest of the accused that aruval had already been recovered. He made a housesearch of the house of Chinnapagounder and recovered two gelatin sticks and other materials. He arrested the other accused on different dates. Finally, he laid the chargesheet against all the accused.

(ix) Based on the above materials, the Trial Court framed the charges as detailed in the paragraph No.1 of this judgment. The appellants/accused Nos.1 to 27 denied the same. During the trial, in order to prove the case of the prosecution, on the

side of the prosecution as many as 24 witnesses were examined and 35 documents and 18 material objects were exhibited. Out of the said witnesses, P.W.1 is an injured eye witness. However, he has stated about the participation of the second accused alone. He was not able to identify the other assailants in the crowd. P.Ws.1, 3, 4 and 5 claimed to be the eye witnesses. P.W.1 has spoken about the complaint preferred by him. He has spoken about the entire occurrence, but, he has spoken only about the presence and participation of accused Nos.1 to 11 alone. P.W.3 has mentioned about only some of the accused viz., A.1 to A.6 and in a vague manner, he has stated that all other accused were also present in the crowd. P.W.4 has spoken about the presence and participation of the accused Nos.1 to 9 and 11 alone. P.W.5 has spoken about the presence and participation of accused No.2 alone in the crowd. P.W.6 was one of the inmates of the tempo van. He has spoken about the extensive damage caused to the tempo van and the inmates of the tempo van. He has also spoken about the injuries caused to P.W.2-Shanmugam and one Jaganathan, but, he has not stated anything about the accused. P.W.7 has spoken about the motive and he is not an eye witness to the occurrence. P.W.8-Dr.Dharmalingam has spoken about the injuries found on one Jaganathan in the same occurrence, but, the said Doctor has not been examined as a witness in this case. P.W.9-Dr.Suganthi has spoken about the Wound Certificate issued to Jaganathan. P.W.10-Dr.Vedamanickam has spoken about the postmortem conducted on D.1 on 05.08.1997 at 10.45 a.m. Ex.P.7 is the Postmortem Certificate. He has given an opinion that the deceased would appear to have died of shock and haemorrhage due to injury to vital organs. P.W.11-Dr.Thiruvalluvan has spoken about the postmortem conducted on D.2 on 05.08.1997 at 12.15 p.m. Ex.P.9 is the Postmortem Certificate. He has given an opinion that the deceased would appear to have died of shock and haemorrhage due to the injury to vital organs. P.W.12-Viswanathan is the brother of D.2. He has spoken only about the fact that he found the dead body of D.2 in the sugar cane grove. P.W.13-Kailasam, the then Village Administrative Officer, has spoken about the Observation Mahazars, Rough Sketches and recovery of Material Objects. P.W.14-Ponmalai, the then Village Administrative Officer, has spoken about the arrest of the three accused, by name, K.B.@ Barath, Mani @ Subramani and Palanisamy. P.W.15-Subbaiyan, the then Village Administrative Officer, has spoken about the arrest of the accused. He has also spoken about the disclosure statement made by one Deivasigamani and the consequential recovery made by him. P.W.16-Lakshmanasamy, who is the Motor Vehicle Inspector, has spoken about the examination conducted on the damaged vehicles. P.W.17-Syed Aslam, Photographer, has spoken about the photographs taken at the place of occurrence. P.W.18-Mohana has spoken about the previous motive. P.Ws.19, 20 and P.W.21 are the Police Constables, who have either forwarded the dead body for postmortem or carried the First Information Report to the

respective destinations. P.W.22-Mohanraj, the then Inspector of Police, is yet another person, who has spoken about the earliest registration of the case in Crime No.207 of 1997. P.W.23-Kaliyapillai, the then Inspector of Police, has spoken about the investigation done and P.W.24-Rajamuthu, the then Inspector of Police, has spoken about the further investigation done and the filing of the final report.

(x) When the appellants/accused Nos. 1 to 27 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied them as false. But, they have not chosen to examine any witness nor to mark any document. Their defence was a total denial. Having considered all the above, the Trial Court found the appellants/accused Nos.1 to 27, acquitted all the accused.

5. We have heard Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State; Mr.S.Ananthanarayanan, learned counsel appearing for the revision petitioner; Mr.A.Padmanabhan, learned counsel appearing for the respondents 1 to 27; and also we have perused the records carefully.

6. The learned Additional Public Prosecutor as well as the learned counsel for the revision petitioner would submit that the evidence of P.Ws. 1 to 5, more particularly, the evidence of P.W.2, who is an injured eye witness, would be sufficient to convict the accused. He would take us through the evidence of these witnesses to point out that there was an unlawful assembly in which the respondent Nos.1 to 27 were the members. He would further submit that in a case of this nature when a huge group of people had gathered and indulged in violence, it would be too difficult for the witnesses to identify each accused.

7. The learned counsel for the respondents 1 to 27 would submit that there are lot of material contradictions between the evidence of P.Ws. 1 to 5. He would further submit that there is no clinching evidence to prove that these respondents 1 to 27 were in the crowd. He would further add that unless, it is clinchingly proved without any doubt that these accused also participated in the crime, the well considered judgment of the Trial Court cannot be reversed.

8. We have considered the above submissions.

9. As we have already pointed out, it is the uniform evidence of five witnesses viz., P.Ws. 1 to 5 that when D.1 had come to the scene of occurrence and when the Tempo van had come from opposite direction to the scene of occurrence already there was a huge crowd of people standing at the place of occurrence, most of them were armed with weapons. The Villagers were

factionous and they were partisan. When that be so, the prosecution is bound to prove the participation of the accused beyond reasonable doubt.

10. Here in this case, P.W.2, who is the injured witness, has stated only about the 2nd accused and his participation. P.W.5 has spoken only about the presence and participation of accused No.2. P.W.1 has spoken about the presence and participation of accused Nos.1 to 11, whereas, P.W.3 has spoken about the presence and participation of accused No.6 alone. P.W.4 has spoken about the participation of accused Nos.1 to 6, 8, 9 and 11. So far as P.Ws. 3, 4 and 5 are concerned, they were not examined immediately after the occurrence. P.W.23, the then Inspector of Police has stated that when he visited the place of occurrence, he made a public call that those persons, who knew about the occurrence can come forward to make statements, but at that time, P.Ws.3, 4 and 5 did not turn up at all. P.W.1 did not even mention in the First Information Report about the death of the deceased. He has further stated in his evidence that he does not know to read and write. He has further stated that in Court, he has spoken only about the presence and participation of some of the accused. It is not explained to the Court, as to how he mentioned the presence and participation of all the respondents (accused Nos.1 to 27) in the First Information Report. This also creates a doubt in the case of the prosecution.

11. As we have pointed out, between the evidence of P.Ws. 1 to 5, there is no consistency and there are lot of contradictions. Simply because, the presence and participation of some of the accused have been spoken by P.Ws. 1, 3 and 4 and more particularly, the presence of accused No.2 has been spoken to by all the five witnesses, we cannot act upon the same, so as to reverse the judgment of the Trial Court. In a Village, which is so partisan, and when there are two groups of people, who are divided on communal lines, false implication is also possible. Unless false implication is ruled out, it is difficult to accept the ocular evidence of the partisan witnesses. As has been well settled by the Hon'ble Supreme Court, when the witnesses are partisan and inimical, their evidence has to be put to test of close scrutiny. In this case, the witnesses do not pass the test of close scrutiny.

12. Further, it is too well settled that presumption of innocence is implicit in Article 21 of the Constitution of India. The said presumption of innocence is doubled, if the Trial Court once records acquittal of the accused. Unless, there are very strong circumstances to rebut the said strong presumption of innocence and unless, it is shown to the Court that there is wrong appreciation of evidence and the judgment is patently erroneous, it is not possible for this Court to interfere with the acquittal of the accused. In such view of the

matter, we do not find any merit at all in the Criminal Appeal as well as in the Criminal Revision. The acquittal of the respondent Nos. 1 to 27 deserves to be confirmed.

13. In the result, the Criminal Appeal and the Criminal Revision are dismissed and the judgment passed by the Additional District and Sessions Judge, Fast Track Court No.I, Salem, in S.C.No.135 of 2000, dated 30.04.2002, acquitting the respondent Nos. 1 to 27, is hereby confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police
Velagoundampatti Nallur Police Station
Salem District.
- 2.The Judicial Magistrate,
Paramathi.
- 3.Thro The Chief Judicial Magistrate,
Salem.
- 4.The Additional District & Sessions Judge,
Fast Track Court No.I, Salem.
- 5.The Public Prosecutor,
High Court, Chennai.
- 6.The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to M/S.s.M.Nandheedevan, Advocate Sr.8048
+1cc to Mr.A.Padmabai, Advocate Sr.1703

CRIMINAL APPEAL No. 1520 of 2002
and
CRIMINAL REVISION CASE No. 1236 OF

ak(CO)
srg(26/02/2016)