

**BAIL SLIP**

1. The Appellant/1st Accused viz., Gopi was released on bail as per the order of this Court Date: 12.10.2015 and made in MP(MD)No.3 of 2015 in CrI.A(MD)No.251/2014.

2. The Appellant/6th Accused viz Suresh was released on bail as per the order of this Court dated 23.09.2015 and made in MP(MD) No.2/2015 in CrI.A(MD)No.251 of 2014.

3. The Appellant/1.Murali, 2.Manoj, 3.Rajesh, and 4.Rajkumar/Accused Nos.2 to 5 was released on bail as per the order of this Court dated 23.09.2015 and made in MP(MD)No.2/2015 in CrI.A(MD)No.197/2014.

4. The Appellant/Accused 7 & 8 namely 1.Chandramohan and 2. Prabhu were released on bail as per the order of this Court dated 29.09.2015 and made in MP(MD)No.3/2015 in CrI.A(MD)No.197/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

CRL.A[MD].Nos.197 and 251 of 2014

1.Murali
2.Manoj
3.Rajesh
4.Rajkumar
5.Chandramohan
6.Prabhu

: Appellants/Accused Nos.2 to 5, 7 and 8
CRL.A[MD].No.197 of 2014

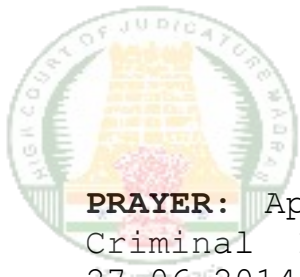
1.Gopi
2.Suresh

: Appellants/Accused Nos.1 and 6
CRL.A[MD].No.- 251 of 2014

Vs.

State through
The Inspector of Police,
Pulivalam Police Station,
Trichy District,
[Crime No.183 of 2012].

: Respondent/Complainant
in both Appeals.



PRAYER: Appeals are filed under Section 374 (2) of the Code of Criminal Procedure against the Judgment and conviction dated 27.06.2014, made in S.C.No.221 of 2013, on the file of the learned Principal SESSIONS Judge, Tiruchirappalli.

For Accused No.1 : Mr.M.Karunanithi
CRL.A[MD].No.- 251 of 2014

For Appellants 2 to 5 : Mr.S.Ashokkumar
CRL.A[MD].No.197 of 2014 Senior Counsel
For Mr.M.Karunanithi

For Appellant No.6 : Mr.K.M.Muthumalai
CRL.A[MD].No.- 251 of 2014

For Appellant Nos.7&8 : Mr.S.Ravi
CRL.A[MD].No.197 of 2014 For Mr.J.Anandkumar

For Respondent : Mr.K.S.Duraipandian
(in both Appeals) Additional Public Prosecutor

COMMON JUDGMENT

[JUDGMENT of the Court was delivered by **S.NAGAMUTHU, J**]

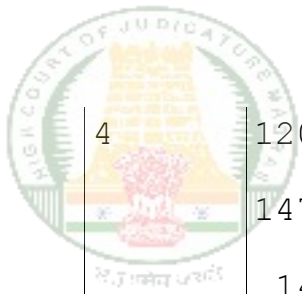
The appellants are the accused Nos.1 to 8 in S.C.No.221 of 2013, on the file of the learned Principal District Judge, Tiruchirappalli. The Trial Court framed as many as five charges, as detailed below.

Charge	Accused	Penal Provisions
1	1 to 8	120-B IPC
2	1 to 8	147 IPC
3	1 to 8	148 IPC
4	1 to 8	307 IPC
5	1 to 8	302 IPC



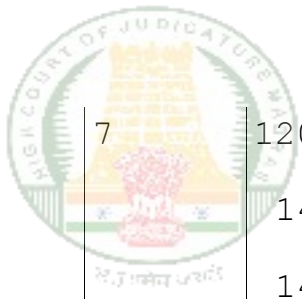
2. By Judgment dated 27.06.2014, the Trial Court convicted the accused, as detailed below:-

Accused	Section of Law	Sentence	Fine amount
1	120-B IPC 147 IPC 148 IPC 307 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for seven years. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.
2	120-B IPC 147 IPC 148 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.
3	120-B IPC 147 IPC 148 IPC 307 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for seven years. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.



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4	120-B IPC 147 IPC 148 IPC 307 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for seven years. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.
5	120-B IPC 147 IPC 148 IPC 307 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for seven years. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.
6	120-B IPC 147 IPC 148 IPC 307 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for seven years. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.



WEB COPY

7	120-B IPC 147 IPC 148 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.
8	120-B IPC 147 IPC 148 IPC 302 IPC	To undergo imprisonment for life. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for fifteen days.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellants have come up with these Criminal Appeals.

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

The deceased, in this case, was one Mr.Sudhakar. PW-1 and PW-2 are the father and mother respectively of the deceased. PW-3 is the brother of the deceased and PW-4 is their neighbour. They are the residents of Gandhi Nagar, Thuraiyur Taluk, Tiruchirappalli District. The accused Nos.1 and 2 hail from the same village. A week before the occurrence, when the deceased was driving a tractor, the accused Nos.1 and 2 came there in a motorcycle and there arose a quarrel between them, on account of some incident. [It is not clear as to what was the cause for the quarrel]. The family members of the deceased entered into the same, pacified the parties and then, the quarrel came to an end. While leaving the place, where the quarrel took place, it is alleged that the accused Nos.1 and 2 threatened the deceased. It is stated to be the motive for the occurrence.

2.2. On 15.09.2012, in the evening, Mandagapadi was celebrated for the deity of Mariamman in the village. PW-1 along with the other family members, namely, PW-2 and PW-3 and the deceased participated. PW-4 - Mr.Barathiraja also participated in the celebration. After the festival was over, all of them were sitting together on the south side of the temple, eating Pongal, which was cooked in the festival for the deity. It was around 08.30 PM. At that time, it is alleged that the accused Nos.1 and 2 came to the said place and developed quarrel with the deceased. When the quarrel was in progress, the accused Nos.3 to 8 came there and



joined hands with the accused Nos.1 and 2. Then, all the eight accused quarreled with the deceased.

2.3. When the quarrel was in progress, Mr.Barathiraja - PW-4 attacked one Mr.Silambarasan, who accompanied the first accused and indulged in the quarrel. The blow fell on the head of Mr.Silambarasan. This infuriated all the eight accused. It is further alleged that the accused Nos.1 and 2 took up aruvals and cut the deceased on his head. The seventh accused attacked PW-4 on his left hand with aruval. The accused Nos.3, 6, 7 and 8 also attacked the deceased with aruvals. The deceased fell down sustaining serious injuries. Then, all the eight accused fled away from the scene of occurrence. Mr.Silambarasan also fled away from the scene of occurrence. Then, PW-1 and the others arranged for 108 Ambulance and took the deceased and PW-4 to the Government Hospital at Thuraiyur. The doctor on duty gave first aid treatment to both and referred them to the Government Hospital at Thuraiyur. When they were taken to the hospital, on his way, the deceased succumbed to the injuries. PW-4 was admitted as an in-patient at the Government Hospital, Trichirappalli. PW-1 and PW-2 brought the dead body of the deceased to the Government Hospital, Thuraiyur. Thereafter, PW-1 went to Pulivalam Police Station and made a complaint at 05.00 AM, on 17.09.2012. In the complaint, he mentioned that only six accused participated in the occurrence. He did not mention about the presence and participation of the accused No.7 - Mr.Chandramohan and the accused No.8 - Prabhu.

2.4. PW-18, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.183 of 2012, under Sections 147, 148, 307 and 302 r/w Section 109 of the Indian Penal Code. EX-P1 is the complaint and EX-P14 is the First Information Report. Then, he forwarded both the documents to the Court, which were received by the learned Judicial Magistrate, at 07.30 AM, on 17.09.2012 and handed over the investigation to the Inspector of Police.

2.5. Taking up the case for investigation, PW-20 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-13 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He also recovered paper plates, which were lying near the place of occurrence. Then, he conducted inquest on the body of the deceased. EX-P21 is the inquest report. Then, he forwarded the dead body for postmortem.

2.6. PW-9 - Dr.P.Madhavan conducted autopsy on the body of the deceased, at 01.45 PM, on 17.09.2012. He noticed the following injuries:-

<https://hcservices.ecourts.gov.in/hcservices/> Contusion of 3" x 3" x 1/2" over the left knee and 2 abrasion: of 1" each on it.



1. A laceration of 2" x 1/2" x 1/4" over the left leg middle 1/3.
2. A contusion of 3" x 3" x 1.2" over the right upper arm above the elbow. 2 small laceration on it
3. A deep laceration of 3" X 3" x 1/2" over the right occipital scalp.
4. A deep laceration of 2" X 1/2" x 1/2" over the right parietal scalp.
5. A deep laceration of 1" x 1/2" x 1/2" over the left temporal scalp.
6. A deep laceration of 3" x 1" x 1/2" over the centre of the scalp.
7. A contusion of 3" x 3" x 1/2" over the left forearm below the elbow.
8. A small abrasion on the right thigh (N.C.) side (1." x 1").

Internally : Cardiac chambers empty. Lungs pale Intact Hyoid bone".

EX-P3 is the postmortem certificate. He gave opinion that the said injuries could have been caused by weapons, like MO-1 to MO-3. He further opined that the death of the deceased was due to shock and hemorrhage due to the injuries.

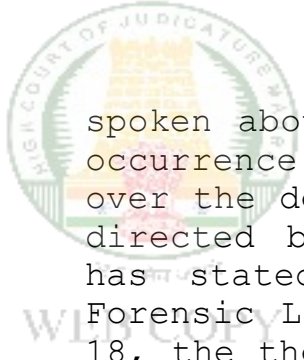
2.7. During the course of investigation, PW-20 recovered bloodstained clothes from the dead body of the deceased and forwarded the same to the Court with a request to forward the same for chemical examination. On 17.09.2012, he arrested the accused Nos.1 to 6 in the presence of the witnesses. On such arrest, the first accused gave a voluntary confession, in which he disclosed the place, where he had hidden the aruvals, wooden logs and a spade. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced MO-1 to MO-3. PW-20 recovered the same under a mahazer. He recovered a Maruthi Van bearing Registration No.TN-48-Y-5361. PW-20 forwarded all the six accused to the Court for judicial custody and handed over the material objects to the Court. He altered the case into one under Sections 120-B, 147, 148, 307 and 302 r/w Section 109 of the Indian Penal Code. EX-P23 is the alteration report. On 23.11.2012, he arrested the accused Nos.7 and 8 and forwarded them to the Court for judicial remand. At his request, the material objects were sent for chemical examination. The report revealed that there were bloodstains on the material objects. The investigation was, thereafter, continued by his successor. PW-21, collected the medical records, examined few more witnesses and on completing the investigation, he laid charge sheet against the accused.



2.8. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 21 witnesses were examined, 23 documents and 9 material objects were marked. Out of the said 21 witnesses, PW-1 to PW-8 were examined as eye-witnesses. But, PW-5, PW-6 and PW-8 have turned hostile and they have not supported the case of the prosecution in any manner. The other eye-witnesses have spoken about the occurrence, including the overt acts of all the eight accused. PW-1 has spoken about the complaint made by him to the police. PW-4, an injured witness, has spoken about the entire occurrence.

2.9. PW-9, Dr.P.Madhavan, has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-10, Dr.Sugriya, has stated that when he was on duty, at the Government Hospital at Thuraiyur, at 11.00 PM, on 16.09.2012, PW-4 and the deceased were brought in 108 Ambulance for treatment. At that time, the deceased was unconscious. He found a cut injury, measuring 10 X 5 X 2 CM on his head. There were also other injuries. The above injuries found on the body of the deceased were registered in the Accident Register maintained by the hospital authorities. He was told by PW-4 and the others that they met with a motor vehicle accident and sustained injuries. PW-10 advised him to be taken to the Government Hospital at Thiruchirappalli. Accordingly, the deceased was taken to the Government Hospital at Tiruchirappalli. When he was examined, PW-4 was conscious and fully oriented. He told that he met with a motor vehicle accident and sustained injuries. PW-10 found a lacerated wound measuring 4 X 1 X 2 CM on the left forearm and a contusion on the left thigh. EX-P5 is the Accident Register. Then, he forwarded PW-4 also to the Government Hospital, at Tiruchirappalli for treatment.

2.10. PW-11, Dr.Z.Mohammed Heneshkan, has stated that on 17.09.2012, when he was on duty, at a Private Hospital, known as "ABC Hospital", PW-4 was brought for treatment. He gave treatment to him. He has further stated that he made entry of the injuries in the record. He opined that the said injury could have been caused by weapons, like MO-1 to MO-3. PW-12, an official from the Tamil Nadu Electricity Board, has stated that there was enough light facility at the place of occurrence and there was no electricity failure. PW-13 has spoken about the preparation of Observation Mahazer and the Rough Sketch. He has also stated about the arrest of the accused Nos.1 to 6 and the confession made by the first accused and the recovery of MO-1 to MO-3, on his arrest. PW-14 has turned hostile and he has not supported the case of the prosecution in any manner. PW-15 has

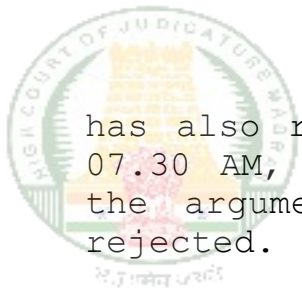


spoken about the occurrence, which was the motive for the present occurrence. PW-16, a Police Constable, has stated that he handed over the dead body to the hospital, after the inquest was over, as directed by the Investigating Officer. PW-17, a Head Constable, has stated that he handed over the material objects to the Forensic Lab, as directed by the learned Judicial Magistrate. PW-18, the then Sub-Inspect of Police, has stated that he handed over the First Information Report and the complaint to the learned Judicial Magistrate. PW-19, the Head Clerk of the Court of learned Judicial Magistrate, Thuraiyur, has stated that he forwarded the material objects to the Forensic Lab for chemical examination, as directed by the learned Judicial Magistrate. PW-20 and PW-21 have spoken about the investigation conducted by them and the filing of final report.

2.11. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this Court with these Criminal Appeals.

3. We have heard the learned counsel appearing for the appellants, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. The learned Senior Counsel for the appellants would assail the genuineness of EX-P1, the complaint. According to him, though it is stated that the alleged occurrence was at 08.30 PM, on 15.09.2012, the First Information Report, in this case, was registered only at 05.00 AM, on 17.09.2012, for which absolutely, there is no explanation given by the prosecution. But, we are not persuaded by the said argument advanced by the learned Senior Counsel. As we have already narrated, the condition of the deceased was very serious. PW-4 had also sustained injuries. Thus, the expectation of PW-1 and the others would have been to rush the deceased to the hospital and admit him so as to save his life. It is not as though the deceased died instantaneously. There was still life. Therefore, PW-4 and the others had taken him to the Government Hospital to save his life. One cannot expect him to rush to the Police Station, without taking the deceased to the hospital to save him. After the deceased was brought to the hospital, the doctor declared him dead. Thereafter, within a reasonable time, he had gone to the Police Station and made a complaint, which cannot be stated to be an inordinate delay. Thus, the delay in making the complaint to the police stands explained away by the prosecution. The First Information Report



has also reached the hands of the learned Judicial Magistrate at 07.30 AM, on 17.09.2012, in which also there is no delay. Thus, the argument of the learned Senior Counsel in this regard is rejected.

5. Then, comes the presence and participation of accused Nos.7 and 8 in the occurrence. In the First Information Report, PW-1 had not mentioned about the presence and participation of the accused Nos.7 and 8 in the occurrence. The accused Nos.7 and 8 were not strangers to PW-1. Had it been true that the accused Nos.7 and 8 were present at the place of occurrence and participated in the occurrence, certainly, he would have mentioned about the same in EX-P1. Though he has stated that all the eight accused came to the place of occurrence and attacked the deceased and PW-4, he has not given any explanation as to why he did not mention the names of all the accused, when he made complaint to the police. Thus, in our considered view, the accused Nos.7 and 8 have been subsequently arrayed as the accused in this case. Thus, an attempt has been made to rope in as many as persons as accused in the case. So far as the availability of light facility at the place of occurrence is concerned, there cannot be any dispute, because, the official from the Tamil Nadu Electricity Board, has stated that there was enough light facility at the place of occurrence and there was no electricity failure.

6. From the narration of the above facts, it is crystal clear that the occurrence was not a premeditated one. PW-1, the deceased, PW-4 and the others were sitting together on the south side of the temple, eating Pongal, which was cooked in the festival for the deity. The recovery of paper plates from the place of occurrence goes to strengthen the case of the prosecution that all these witnesses were actually present, eating pongal at the place of occurrence. It is not as though all the eight accused came to the place of occurrence. It was a local festival. Therefore, there was a huge crowd. It was only in the said crowd, there was a quarrel between the accused Nos.1 and 2 and the deceased. It is not the case of the prosecution that the accused Nos.1 and 2 were armed with any weapon. When the quarrel was in progress, Mr.Silambarasan came there. It is the evidence of PW-1 and the other eye-witnesses that the first blow was caused only by PW-4 on the head of Mr.Silambarasan, who sustained injury. Then, the accused Nos.3 to 8 gathered there. It is stated that at that time, all the eight accused attacked the deceased as well as PW-4 indiscriminately. However, the case of the accused is that not only Mr.Silambarasan, but also other persons, who belonged to their group, by name, Mr.Ramachandran and Mr.Chiranjeevi were also attacked and they have also sustained injuries. It is in evidence that PW-3 had categorically admitted that three persons, on the scene of the occurrence, viz., Mr.Silambarasan, Mr.Ramachandran and Mr.Chiranjeevi were present and sustained injuries.



7. From the evidence of PW-3, it is inferable that there was a clash between two different groups, in which two persons, one on the side of the prosecution party and three persons on the side of the accused party sustained injuries. But, absolutely, there is no explanation given by the prosecution as to how these three persons sustained injuries. Though PW-20 has admitted, during cross-examination, that during the course of investigation, he came to know that three persons, viz., Mr.Silambarasan, Mr.Ramachandran and Mr.Chiranjeevi also sustained injuries in the very same occurrence, he has not examined those three persons. He has also admitted that he did not collect the medical records belonging to those three persons. He has further stated that he did not conduct investigation in respect of the injuries sustained by the said three persons.

8. From the above tacit admission made by PW-20, it is crystal clear that the investigation was not taken done thoroughly to find out the truth. It is a case, where two groups clashed with each other, in which injuries were sustained by the persons on both sides. However, the investigation was not taken in the right direction and instead, the version projected by the prosecution alone was taken into consideration and final report was filed. Thus, the prosecution has not come forward with the true version of the occurrence.

9. In this regard, we may refer to the Judgment of the Hon'ble Supreme Court in **Lakshmi Singh and others, Vs. State of Bihar**, reported in **1976 SCC [Cr1] 671**, wherein, the Hon'ble Supreme Court, in an identical situation, has held that it is the bounden duty of the prosecution to explain the injuries sustained by the accused party also. It is useful to extract the relevant portion of the said Judgment, which reads as follows:-

"Where the prosecution fails to explain the injuries on the accused, two results follow;

(i) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probalilise the plea taken by the appellants.

It was further observed that;

"In a murder case, the non - explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of alteration is a very important circumstance from which the Court can draw the following inferences;

(i). that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and



therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

10. Applying the said principles to the facts of the present case, we are of the considered view that the prosecution has suppressed the material part of the occurrence and the prosecution has not come forward with the true version of the occurrence. We find it very difficult to fully believe the eye-witnesses in the instant case. The origin of the occurrence has not been clearly established by the prosecution.

11. Above all, at 11.00 PM, when the deceased and PW-4 were taken to the hospital by 108 Ambulance, the deceased was unconscious. But, PW-4 was conscious. PW-4 told that he met with a motor vehicle accident and sustained injuries. In the Accident Register, pertaining to the injuries sustained by PW-4, it has been stated by the doctor that PW-4 sustained injuries in a motor vehicle accident. Absolutely, there is no explanation given as to why such a contradictory statement was made to the doctor, at the earliest point of time. This also creates doubt in the case of the prosecution. Admittedly, all the witnesses examined as eye-witnesses in this case are enimical towards the accused and they belonged to a different faction in the village. Though their presence at the place of occurrence cannot be seriously disputed, their veracity is doubtful.

12. In view of the above anomalies discussed hereinabove, the doubts in the case of the prosecution, which are very reasonable, have not been explained away by the prosecution. Therefore, we are of the view that it is very difficult to sustain the conviction and sentence imposed on the appellants and therefore, the appellants are entitled for acquittal.

13. In the result, these Criminal Appeals are allowed; the conviction and sentence imposed on the appellants, by Judgment dated 27.06.2014 made in S.C.No.221 of 2013, on the file of the learned Principal District Judge, Tiruchirappalli, is set aside and the appellants are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar



To

- 1.The Principal Sessions Judge, Tiruchirappalli.
- 2.The Judicial Magistrate, Thuraiyur.
- 3.Do through The chief Judicial Magistrate, Trichy.
- 4.The Superintendent of Police, Trichy.
- 5.The Commissioner of Police, Trichy.
- 6.The District Collector, Trichy.
- 7.The Director General of Police, Chennai.
- 8.The Inspector of Police,
Pulivalam Police Station,
Trichy District.
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.J.Anandkumar, Advocate in SR.No.54926

+2 cc to M/s.M.Karunanithi, Advocate in SR.No.54608&54275

NB

CSL/CK/SAR-III/03.10.2016: 13P/13C

**COMMON JUDGMENT MADE IN
CRL.A[MD].Nos.197 and 251 of 2014
20.09.2016**