



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CrI.A.(MD).No.193 of 2015

Mani @ Manikandan

... Appellant/A4

Vs.

The Inspector of Police,
Oomatchikulam Police Station,
Madurai.
(Cr.No.327 of 2011)

... Respondent/Complainant

Prayer: This Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgement dated 09.03.2015 passed in S.C.No.87 of 2014 by the V-Additional Sessions Court, Madurai.

For Appellant : Mr.M.Karunanithi

For Respondent : Mr.A.Ramar

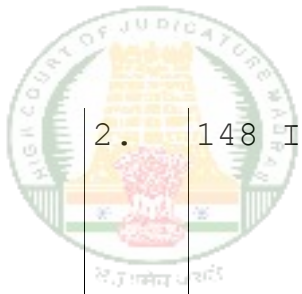
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J.**)

The appellant is the fourth accused in S.C.No.87 of 2014 on the file of the V Additional and Sessions Judge, Madurai. There were as many as 5 charges framed against the appellant/accused under Sections 147, 148, 341, 506(ii) and 302 r/w 149 IPC. By judgment dated 09.03.2015, the Trial Court convicted the appellant/accused under all the charges and sentenced him as follows:-

S.No	Charge	Conviction and sentence
1.	147 IPC	To pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 3 months.



2.	148 IPC	To pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 3 months.
3.	341 IPC	To pay a fine of Rs.300/- each in default to undergo simple imprisonment for 2 weeks.
4.	506(ii) IPC	To pay a fine of Rs.1000/- each in default to undergo simple imprisonment for 3 months.
5.	302 r/w 149 IPC	Imprisonment for life and to pay a fine of Rs.5000/- each in default to undergo R.I. for 6 months.

Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

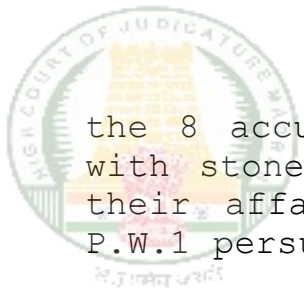
2.The case of the prosecution in brief is as follows:

There are two deceased in this case. The first deceased was one Mr.Manikandavelan (hereinafter referred to as "D1"). The second deceased was one Mr.Viswanathan (hereinafter referred to as "D2"). P.W.1 is the mother of D1 and P.W.4 is the wife of D2. They were all residing at Thirupalai Village. P.W.1 was running a Tea Shop on the main road at Thirupalai. D2 Mr.Viswanathan was running a laundry opposite to the Tea Shop of P.W.1.

3.On 18.04.2011, at about 3.00 pm., P.W.1 was at her house. She received a phone call that water cane had been brought to her Tea shop by the supplier. Therefore, P.W.1 wanted D1 to go to the Tea shop to get the water cane and keep the same in the shop. When D1 had gone to the shop at about 3.30 pm., on 18.04.2011, all the 8 accused were found somewhere near the said Tea shop and they were abusing and eve-teasing the people, who were walking in that area. D1 expressed his displeasure over the same and wanted them to leave way for him to carry the water cane into the shop. But, all the accused refused and instead, they challenged D1. After the scuffle, they left the shop of D1. D1 returned to his house and told about the occurrence to P.W.1.

<https://hcservices.ecourts.gov.in/hcservices/>

4.When D1 was just narrating the occurrence to P.W.1, all



the 8 accused, except A7, had come to the house of P.W.1 armed with stones. They warned P.W.1 that D1 should not interfere in their affairs and if not, he would be done to death by them. P.W.1 persuaded them not to have any grudge against D1.

5. After the accused had left the house of P.W.1, D1 again went to the shop for the purpose of closing the doors. P.W.1 also followed D1. On reaching the shop, P.W.1 was pulling down the shutters. D1 was just standing behind him. At that time, all the 8 accused came to the spot armed with weapons. They indiscriminately attacked D1 with wooden-logs, hands and legs. In the course of the same transaction, it is alleged that the first accused stabbed D1 with knife on the left side of the chest. On hearing the alarm, D2, who was in his shop, at that time, rushed to the place of occurrence to rescue D1. He was also attacked by all the accused and he fell down. Then A2 stabbed him with knife on his stomach. Then, all the accused fled away from the scene of occurrence. P.Ws.1 and 4 cried for help. Then, they took D1 and D2 in an Auto to the Government Medical College Hospital at Madurai. The Doctor examined both D1 and D2 and declared that both were dead. The bodies of the deceased were sent to mortuary.

6. On receiving intimation from the hospital, P.W.13 the then Sub Inspector of Police, Umachikulam Police Station, Madurai, went to the hospital and recorded the statement of P.W.1 at 6.45 pm. On returning to the Police Station, he registered a case in Crime No.327 of 2011 at 8.30 pm on 18.04.2011 under Sections 147, 148, 341, 323, 506(ii) and 302 IPC. Ex.P.1 is the complaint and Ex.P.2 is the FIR. Then he forwarded both the documents to Court and handed the case diary to the Inspector of Police.

7. From the records it is seen that these two documents were received by the learned Judicial Magistrate at 8.50 am. In the mean while, P.W.17 the Inspector of Police proceeded to the place of occurrence and prepared an observation magazor in the presence of the witnesses at 10.00 pm itself on 18.04.2011 showing the place of occurrence. He also prepared a rough sketch in the presence of P.W.6 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he examined few witnesses on the spot. Then at 3.15 am, on 19.04.2011, he arrested A2 at Mandikulam Vilaku in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the Suri Kathi. In pursuance of the same, at 4.30 am, he took the Police and the witnesses to Karuvanur Branch Road at Mandikulam and took out a knife from the hide out. P.W.17 recovered the same under a magazor in the presence of P.W.7 and another witness. On the same day, at 5.30 am at Sathirapatti to Manjampatti Perivu, he arrested A8. On such arrest, A3 had given a voluntary confession, in which, he disclosed the place where he had hidden a Karuvel Kambu. In pursuance of the said confession, he took the



Police and the witnesses to the said place and produced the Karuvel Kambu. On the same day, A7 gave a voluntary confession, in which, he disclosed the place where he had hidden yet another Karuvel Kambu. Accordingly, he took the Police and witnesses to the said place and produced the said Karuvel Kambu. P.W.17 recovered the same in the presence of the witnesses. He returned to the Police Station along with accused and the material objects and forwarded the accused for judicial remand. Then, he recovered the bloodstained lungi and the shirt worn by A1.

8. Then, he proceeded to the Hospital where he conducted inquest on the bodies of both the deceased and prepared Ex.P.22 and Ex.P.23, the inquest reports. He forwarded the dead bodies for conducting postmortem. P.W.15 Dr. Saravanan conducted autopsy on the body of D2 on 19.04.2011 at 1.00 pm. He found a single external injury on the body of the deceased, which is as follows:

"An oblique stab injury 6 cm x 2 cms x muscle deep noted on the outer aspect of middle third of right thigh.

On Dissection: The wound passing upwards, forwards and medially piercing the underlying muscles and femoral vessels about 1000 ml of fluid blood with clots noted in and around the injured area.

He gave opinion that the deceased would appear to have died of stab injury to the right thigh and its corresponding internal injuries sustained by him."

9. P.W.16 Dr. Purusothaman, conducted autopsy on the body of D1. He noticed two external injuries on the body which is as follows:

"An oblique stab wound 4 cm x 2 cm cavity deep noted on outer aspect of upper part of right side of abdomen, one inch below the costal margin in the mid axillary line.

On dissection: the wound was directing downwards, inwards and backwards piercing the outer surface of right lobe of liver measuring 3 cm x 1 cm and ends as a point. Cut section of liver is pale. Peritoneal cavity contains 1000 ml of fluid blood with clots.

2) An oblique stab wound 2 cm x 1 cm x muscle deep noted on palmar aspect of base of the right thumb."

10. Continuing the investigation, P.W.17 made a request to the Court to forward the material objects for chemical examination. Ex.P.18 is the report which states that there were human bloodstains on the material objects including the knife. The blood found on knife was A group and the blood found on dress was also A group. P.W.17 examined the witnesses, collected the medical records and finally laid charge sheet against all the accused.



11. Having considered all the above materials, the Trial Court has framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 17 witnesses were examined, 23 documents were exhibited and 17 material objects were marked. Out of the said witnesses, P.Ws.1 and 4 are the eye witnesses to the occurrence and they have vividly spoken about the same. P.W.2 is the father of D1, who is not an eye witness. According to him, on hearing about the occurrence, he went to the hospital and found her son dead. P.W.3 is the neighbour of P.W.1. He is also an eye witness to the occurrence. According to this witness, at about 5.00 pm, on the date of occurrence, when D1 was trying to carry water cane into the Tea shop, there was quarrel between the accused and D1. In a vague manner, he has further stated that the first accused stabbed D1 and the second accused stabbed D2 and he has not stated anything about the alleged overt-act of the rest of the accused. P.W.5 is the brother of D2. He is not an eye witness and he has stated that on hearing about the occurrence, he went to the hospital and found the deceased dead. P.W.6, Mr.Pandi, has spoken about the fact that in his presence, the observation magazor and the rough sketch were prepared at the place of occurrence and the bloodstained earth and sample earth were also recovered. P.W.7 has stated that in his presence, A2 was arrested on 19.04.2011 at 3.15 am and on his confession, the knife was recovered. He has also spoken about the arrest of the rest of the accused. P.W.8 has also spoken about the confession of the accused and the recovery made. P.W.9 is the Constable, who carried the FIR from the Police station to the Court. According to him, the FIR was handed over to him at 10.30 pm on 18.04.2011 by the Sub Inspector of Police and he carried the same to the house of the learned Judicial Magistrate, Madurai. According to the records, the FIR was received by the learned Judicial Magistrate at 8.50 am on the next day of the occurrence. P.W.11 is the Constable, who carried the dead bodies for postmortem. P.Ws.12 and 13 are the Doctors, who conducted autopsy on the body of the deceased and they have spoken about the autopsy and the cause of death of both the deceased. P.W.14 is the Chemical Analysts, who has spoken about the chemical analysis and the result that there was human blood found on the material objects more particularly, in the knife. P.W.15 Dr.Saravanan has spoken about the postmortem conducted and his opinion. P.W.17 has spoken about the investigation done.

12. When the above incriminating evidences were put to the accused under Section 313 Cr.P.C. he denied the same as false. However, he did not chose to examine any witness on his side nor mark any documents. Having considered all the above, the Trial Court has convicted the accused as stated above.

<https://hcservices.ecourts.gov.in/hcservices/>

13. We have heard the learned counsel for the appellants, the learned Additional Public Prosecutor appearing for the State



and we have also perused the records carefully.

14. Today, when the appeal is taken up for final hearing, the learned counsel for the appellant/fourth accused has submitted that the case of the appellant is considered by the Division Bench of this Court in CrI.A.(MD)No.94 of 2015, dated 10.08.2015 and granted the relief sought for by the appellant herein, wherein in paragraph Nos.16 to 36, the Division Bench of this Court, has observed as follows:-

'16. Before embarking upon discussion regarding the evidence, let us examine the correctness of the charges. As we have already pointed out, charge No.1 is against all the 8 accused under Section 147 IPC. Again all the 8 accused have been charged under Section 148 IPC also. The Trial Court has convicted all the 8 accused under these two charges. In our considered view, the Trial Court was not right in framing charges both under Sections 147 and 148 IPC for the single act of the accused. The conviction and sentence imposed under both these provisions amounts to double jeopardy. It shows that the Trial Court was not apprised of the legal position in this respect.

17. At this juncture, we may refer to Section 71 of the Indian Penal Code, which reads as follows:

"71. Limitation of punishment of offence made up of several offences -

Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished or

Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined a different offence,

the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences."

18. From the above provision, it is crystal clear that the accused cannot be punished both under Section 148 IPC and 147 IPC simultaneously. If the act of the accused which consists of several particulars, constitutes a major offence, charge is to be framed only for the major offence and applying Section 222 Cr.P.C., punishment may be imposed on the accused for the



appropriate offence which has been proved. For example, in a given case, let us assume that a person is stabbed with knife and as a result of the said injury, he dies, here the major offence is under Section 302 IPC, which includes voluntarily causing hurt, which in turn, includes using criminal force against the deceased. In this context, there cannot be charges for criminal force for voluntarily causing hurt, for making attempt to commit murder and then for murder. The whole act of the accused is to be taken into account and the charge is to be framed for the major offence under Section 302 IPC. That is what stated in Section 222 Cr.P.C. and Section 71 IPC. Here, in the instant case, Section 148 IPC is the major offence. The Trial Court ought not to have framed charge under Section 147 as charge has been framed for the major offence under Section 148 IPC. In our considered opinion, not only framing of charges under these two provisions simultaneously against all the accused and also convicting them is illegal.

19. The Trial Court has framed charge No.3 for two offences, ie., against the accused Nos.2,4 and 6 under Section 341 IPC and the accused No.8 under Section 341 (2 counts). Under Section 216 Cr.P.C., for every separate offence, there has to be separate charge framed and there should not be a combination of single charge for different offences. Thus, in our considered opinion, it is also not procedurally correct.

20. The fourth charge is again erroneous, because the Trial Court has framed charge under Section 302 IPC against A1 for having caused the death of D1 and against the accused No.2 under Section 302 IPC for having caused the death of D2. Here again two different offences committed by two different accused have been clubbed together for framing a single charge, which, in our considered opinion, is irregular.

21. The sixth charge is again erroneous. The Trial Court has framed charge under Section 302(ii) r/w 149 IPC against accused Nos.1 to 8 alone. The charge does not specify as to whether it relates to the death of D1 or D2. For two deaths caused, out of the common object, we do not understand as to how the Trial Court has framed a single charge under Section 302(ii) r/w 149 IPC ie., for single count.

22. Because of the above errors committed in framing charges, in our considered view, miscarriage of justice has occurred. All the 8 accused have been convicted both under Section 147 as well as 148 IPC and



accordingly, sentences have also been imposed on them. This certainly amounts to double jeopardy. Next, though two persons have been killed, A3 to A4 have been convicted only in respect of one murder and the other has gone unnoticed. According to the case of the prosecution, all the 8 accused had gathered in the place of occurrence with a common object of causing the death of D1. D2 was never in their mind. In prosecution of the said common object, A1 stabbed D1. When D2 intervened and attempted to rescue D1, in order to accomplish the said common object, A2 caused injury on D2. As a result, both died. Thus, the act of A1 in causing death of D1 and the act of A2 in causing the death of D2 are only in prosecution of the common object and therefore, for the death of D1 and D2, A1 and A2 are equally liable to be punished.

23. Similarly, the accused Nos. 3 to 8, had gathered in an unlawful assembly and as we have already pointed out, only in prosecution of the said common object, the accused Nos. 1 and 2, caused the death of D1 and D2 and therefore, all these accused are liable for punishment under Section 302 r/w 149 (2 counts), ie., in respect of death of both deceased. Unfortunately, there was a single charge under Section 302 r/w 149 IPC and as a result, there was no conviction and sentence in respect of death of one of the deceased. Thus, the Trial Court has committed a serious error in framing charges.

24. Time and again the Hon'ble Supreme Court as well as this Court have held that framing of charges is a serious judicial function of the Trial Court and since there is likelihood of miscarriage of justice on account of errors in framing charges, the Trial Court should bestow its best attention on framing appropriate charges. It is needless to point out that equal duty is cast upon the prosecution also to see that proper charges are framed against the accused. That is the reason why, Section 226 Cr.P.C. mandates that before the Court of Session, the Public Prosecutor shall open the case and apprise the learned Judge as to what are all the evidences collected and what are all the allegations levelled against the accused. In the instant case, the learned Public Prosecutor had not done so. Framing of charges is not the exclusive job of the Trial Court. In our considered view, the learned Public Prosecutor has also to make valuable contribution. We are fully confident that in the days to come, these types of serious errors in framing the charges may not be committed by the Trial Courts.



WEB COPY

25. With this fond hope, let us now go into the facts of the present case. As we have already pointed out, there are 3 eye witnesses to the occurrence. P.W.1 and 4 have spoken about the presence and participation of these accused as well. But, P.W.3 has not stated anything about these accused namely, accused Nos.3 to 8. He has only stated about the presence of A1 and A2 and the injuries caused by them on D1 and D2 respectively.

26. With this background, let us now consider the delay in forwarding the FIR, upon which, much reliance is placed by the learned counsel for the appellants. Even according to the case of the prosecution, the complaint was preferred by P.W.1 to P.W.13 at 6.45 pm at the hospital and the case was registered in the Police Station at 8.30 pm on 18.04.2011 itself. According to P.W.9, who carried the FIR from the Police Station to the Court, it was handed over to him at 10.30 pm. During cross examination, he has stated that the distance between the house of the learned Judicial Magistrate and the Police Station is hardly 8 kilometres. Admittedly, the house of the learned Judicial Magistrate and the Police Station are very well within the Madurai city. P.W.9 has also admitted that he had a motor cycle at that time. He further admitted that it will take hardly half an hour for any one to reach the house of the learned Judicial Magistrate from the Police Station. Had it been true that the FIR was registered at 8.30 pm and the same was handed over to P.W.9 at 10.30 pm on 18.04.2011, by all probabilities, it would have reached the house of the learned Judicial Magistrate somewhere around 11.30 pm at least. But, unfortunately, the FIR had reached the hands of the learned Judicial Magistrate at 8.50 am on 19.04.2011. Thus, there is enormous delay. Absolutely there is no explanation for the said delay at all.

27. In **Marudanal Augusti Vs. State of Kerala reported in CDJ 1979 SC 308**, wherein the Hon'ble Supreme Court has held that when there is enormous delay, which is unexplained, it creates a very strong suspicion in the case of the prosecution. In the said judgment the Supreme Court has held as follows:

"The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without being anything to check the authenticity of their evidence. At any rate, we are fully



WEB COPY

satisfied that the view taken by the Sessions Judge was reasonably possible and, therefore, this was surely not a fit case in which the High Court should have interfered with the order of acquittal of the appellant passed by the learned Sessions Judge. For these reasons, therefore, we allow this appeal, set aside the judgment and order of the High Court and acquit the appellant of the charges framed against him. The appellant shall be released forthwith."

28. Applying the said principle to the facts of the present case, we are bound to hold that the FIR in this case is a doubtful document and the same would not have come into being at 8.30 pm.

29. Apart from that, P.W.1 during cross examination, has categorically admitted that she did not know the names of some of the accused on the date of occurrence. But, strangely, in Ex.P.1 the fathers' name of many of the accused have been mentioned. P.W.1 was duly contradicted with Ex.P.1. Though the father's name of some of the accused have been found in Ex.P.1, during cross examination P.W.1 has tacitly admitted that the father's names of these accused were not at all known to her. If that be so, it is quite strange as to how the father's name of the accused had been mentioned in the FIR, which was allegedly preferred at 8.30 pm. This has not been explained by the prosecution.

30. As rightly pointed out by the learned counsel for the appellants, the accused were arrested at 5.30 am itself on 19.04.2011. After the arrest, the father's names of the accused would have come to light. This was the only source for the investigating officer to mention the fathers' names in the FIR. Therefore, it is doubtful whether Ex.P.1 would have been preferred at 8.30 pm as it is alleged or it would have come into being after 5.30 am ie after the arrest of the accused. With the above serious doubts in the case of the prosecution, if we analyse the evidence of P.Ws.1, 3 and 4, it is crystal clear that it is difficult to believe therein in respect of the participation of these accused.

31. There is yet another reason also for the said doubt. P.Ws.1 and 4 have stated that these accused attacked the deceased with weapons, legs and hands. But, correspondingly, there were no injuries on the bodies of the deceased. Not even a scratch was found. Thus, the medical evidence also does not corroborate the



eye witness account. As we have already pointed out, the eye witness account of P.Ws.1 and 4 is quite contrary to the eye witness account of P.W.3. This contradiction also has not been explained by the prosecution. For these reasons, in our considered view, the participation of A3 to A8 in the occurrence is highly doubtful. By utilizing the enormous delay in filing the FIR, an attempt has been made to rope in as many persons as accused in this case. For these reasons, A3 to A8 are entitled for acquittal.

32.Unfortunately, A4 Mr.Mani @ Manikandan, has not made any appeal before this Court. But, the case against him is inseparable from the case of A3 and 5 to 8. He also stands in the same footing. Therefore, as per judgment of the Hon'ble Supreme Court in **Dandu Lakshmi Reddy vs. State of A.P.** reported in **1999 (7) SCC 69**, in paragraph 25, the Hon'ble Supreme Court has held as follows:

"25.The mother of the appellant Narayanamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if this Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this Court. (vide *Rajaram v. State of M.P.*)"

33.Similar view has been taken by the Hon'ble Supreme Court in **Rajaram and others v. State of M.P.** reported in **(1994) 2 SCC 568**, wherein, in paragraph No.10, the Hon'ble Supreme Court has held as under:

"10.Ram Sahai (accused 4) has not filed any appeal against his conviction and sentence. However, we find that his case is identical to the case of the appellants and there is no distinguishing feature. In our opinion it is therefore appropriate that The benefit of our Judgment should also be made available to Ram Sahai. His conviction is also altered from The one under Sections 302/149 IPC to one under Section 304 Part II read with Section 149 IPC. He is also sentenced to five years' rigorous imprisonment and to pay a fine of Rs.1000. In default to payment of



fine, he shall suffer further rigorous imprisonment for one year. The fine when realised from Ram Sahai shall be paid to PW 7 Sahodara Bai."

34. Similarly in **Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra** reported in **JT 2002 (2) SC 158**, the Hon'ble Supreme Court, after having referred to the Harbans Singh case, has held in paragraph No.8 as follows:

"8. After bestowing our anxious consideration on the fact situation in this case and also the spirit of Article 21 of the Constitution, we hereby order that the conviction passed on the second accused Jabbar shall also stand altered to section 304, part I and a sentence of rigorous imprisonment for ten years be awarded to him. This is done on a parity of reasoning and justice, otherwise glaring injustice would result as for him in a case where his role was by no means more serious than that of the present appellant who was A1 in the case." Though the 4th accused has not made any appeal, he is also entitled for acquittal.

35. In view of the forgoing discussion, we hold that the prosecution has failed to prove the case against the accused Nos.3 to 8 and the conviction and sentence imposed on them is liable to be set aside.

36. In the result, this Criminal Appeal is allowed. The accused Nos.3,5,6,7 and 8 and also the accused No.4 viz., Mani @ Manikandan are acquitted and conviction and sentence imposed on them are set aside. Fine amount if any paid by them shall be refunded to them."

15. In view of the fact that the case of the appellant/fourth accused is also considered by the Division Bench of this Court in CrI.A.(MD)No.94 of 2015, dated 10.08.2015, and granted the relief sought for by the appellant/A4, there is no order is required in this appeal. Accordingly, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/



To

1.The V-Additional Sessions Court, Madurai.

2.The Inspector of Police,
Oomatchikulam Police Station,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Superintendent,
Central Prison,
Madurai.

RJ2/PJL

TE/NGM-MP/SAR-III : 02/06/2016 : 13P/5C

Cr1.A.(MD) .No.193 of 2015
23.05.2016