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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.10.2017

Pronounced on: 31.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

Cr1.A.[MD].No.278 of 2016

Manikandan .. Appellant /Sole accused

Vs.

State rep. by
the Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
(Crime No.145 of 2006)

.. Respondent /Complaint

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 28.03.2013, made in S.C.No.55 of 2006, by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur.

For appellant : Mr.T.Senthil Kumar
For respondent : Mr.R.Ramachandran,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by **R.SUBBIAH, J.**]

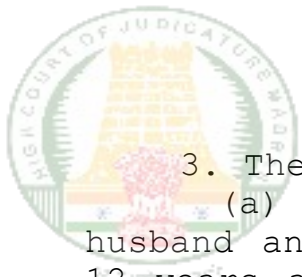
This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 28.03.2013, made in S.C.No.55 of 2006, by the learned Principal Sessions Judge, Virudhunagar at Srivilliputhur.

2.The appellant stood convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
506(ii) IPC	To undergo rigorous imprisonment for one year	

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(Both the sentences were directed to run concurrently.)

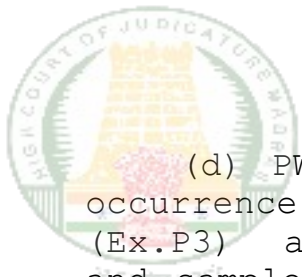


3. The case of the prosecution is consciously narrated below:

(a) The accused and the deceased viz., Murugeswari are husband and wife. The marriage between them was solemnized about 12 years ago. They were blessed with two children. The deceased was working in the Government Hospital at M.Pudupatty as Nurse. The accused was working in a Mill at Usilampatti for some time. Thereafter, he was roaming around without any job and also frequently demanding money from the deceased, due to which there was frequent quarrel between the accused and the deceased. Hence, the deceased went to her parental home along with her child. Two years prior to the occurrence, when the deceased was going for job, the accused had caused a cut injury on the deceased by an aruval. In respect of the same, a complaint is pending at M.Pudupatty Police Station. In such circumstances, the deceased had filed H.M.O.P. on the file of the Sub Court, Virudhunagar for divorce and got an *ex parte* decree of divorce. Even after divorce, the accused continued to pick up quarrel with the deceased demanding money and suspecting her fidelity. On 15.02.2006, the accused came to the house of the deceased and demanded Rs.1 lakh and threatened to kill her. On hearing the hue and cry of the deceased and her children, PW3 came to the house of the deceased. On seeing PW3, the accused ran away from the house of the deceased.

(b) On 17.02.2006 at 7.10 a.m. the deceased came to Sivakasi in Srinivasa Bus and alighted at Rani Anna Nagar Colony Bus-stop, Sivakasi for getting another bus to go to M.Puthupatti for work. PW1 also travelled along with the deceased to Sivakasi for purchasing materials relating to crackers and alighted at Rani Anna Nagar Colony Bus Stop along with the deceased. When they were waiting for bus, the accused came there and questioned the fidelity of the deceased by asking her as to how many husbands she required and how could she deny payment of money to him and having stated so, the accused indiscriminately cut the deceased by using a sickle all over her body, including on her right side neck. The deceased succumbed to the injuries on the spot. When PW1 tried to catch hold the accused, the accused criminally intimidated him. PW1 and one old lady, who was standing in the bus-stop, raised hue and cry. On hearing their hue and cry, PW4 - Panchayat President and some other persons came to the spot. On seeing them, the accused ran away from the scene of occurrence with weapon. Then, PW1 rushed to the Police Station and gave complaint.

(c) PW10 - the then Sub-Inspector of Police, attached to Sivakasi Town Police Station, recorded the statement of PW1 at 8.00 a.m. and registered a FIR in Crime No.145 of 2006 under Section 302 IPC and forwarded the complaint - Ex.P1 and FIR - ~~Ex.P2 to the Court~~ through one First Grade Constable No.2407 by name Saravanan and handed over the file to the Inspector of Police - PW11 for investigation.



(d) PW11 took up the investigation and went to the place of occurrence at 09.30 a.m. and prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P8) and seized bloodstained earth and sample earth from the place of occurrence in the presence of PW7 - VAO and one Paramasivam. Thereafter, he forwarded the dead body to the hospital with a requisition letter to conduct postmortem. Then, he recorded the statement of witnesses.

(e) On receipt of requisition letter for postmortem, PW6 - Dr.Venkatasubramanian, on the same day, at 3.00 p.m., conducted autopsy on the body of the deceased. He found the following injuries on the body of the deceased:

"(1) A deep cut injury on the right side of neck expanding from midline of neck anteriorly to nape of neck with irregular edges and depth of 8 cms exposing the severed muscles, carotids, trachea and cervical vertebral.

(2) A cut injury right ear severing the pinna partially.

(3) A cut injury right cheek 2.5 c.m. x 4 cm x muscle depth.

(4) A cut injury parieto-temporal region of right side 5 cm x 2 cm x bone depth exposing the brain matter.

(5) A cut injury occiput 11 cm x 5 cm x bone depth with fracture of occipital bone.

(6) Two cut injuries left shoulder 5 cm x 3 cm muscle depth (each wound) with 1 cm gap between two wounds.

(7) A cut injury posterior rib cage right side 10 cm x 2 cm x bone depth 5 cm below the scapula.

(8) A cut injury over spine 3 cm x 0.5 cm x muscle depth between two scapula.

(9) An incised wound right breast 8 cm x 5 cm x muscle depth.

(10) A cut injury right below 8 cm x 5 cm x muscle depth.

(11) A cut injury right forearm 3.5 cm x 0.5 cm x muscle depth.

(12) A cut injury right index finger at the level of middle phalanx with hanging proximal part.

(13) A cut injury right thumb at the level of MP joint and hanging right thumb.

(14) A cut injury front of neck left side 2 x 1 cm x muscle depth.

(15) A cut injury above left clavicle 2 x 1 cm x skin depth.

(16) A cut injury left hand extending from left thenar area to distal phalanx of left thumb injuring left I metacarpal bone.



(17) A cut injury over right shoulder 6 cm x 1 cm x skin depth.

(18) A cut injury over right arm 5 cms below right shoulder 8 cm x 0.5 cm x skin depth.

(19) A cut injury 5 cm x 0.5 cm x skin depth above right scapula.

(20) An abrasion back of right knee 4 x 4 cm.

(21) An abrasion front of left knee 3 x 2 cm."

Ex.P2 is the Postmortem Certificate. He gave an opinion that the deceased would appear to have died of injury to vital organs in neck and brain 6 - 10 hours prior to the occurrence.

(f) Due to transfer, PW11 handed over investigation to PW12. On 19.02.2006, PW12 - Inspector of Police took up the investigation and on the same day, at 5.30 p.m., PW12 arrested the accused at Thiruthangal Road. On such arrest, the accused gave a voluntary confession in the presence of PW7 - VAO, in which he disclosed the place where he had hidden the aruval and shirt. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced bloodstained sickle (MO.5), bloodstained shirt (MO.4 and brown colour pant (MO.3). PW12 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. At his request, the material objects were sent for chemical examinations through Court. The chemical examination report (Ex.A4) and serological report (Ex.A5) disclosed that there were human blood of "B" group on all the material objects, including billhook, shirt, etc.

(g) PW12, during the course of investigation, collected the medical records and examined PW17 and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed as many as two charges under Sections 302 and 506(ii) IPC against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution PW1 to PW12 were examined and Exs.P1 to P11 and MOs.1 to 9 were marked.

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, he neither choose to examine any witnesses nor to mark any document.

<https://hcservices.courts.gov.in/hcservices/> 6. The trial Court, after considering the oral and documentary evidence, has found the accused guilty and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said



conviction and sentence, the appellant/accused has come up with this appeal.

7. The learned counsel appearing for the appellant mainly contended that there are lot of contradictions in the evidences of the prosecution witnesses and those contradictions are affecting the root of the case. In this regard, the learned senior counsel for the appellant took this Court through the evidences and documents and submitted as follows:

(a) As per the case of the prosecution, PW1, PW2 and PW4 witnessed the occurrence. But, PW4 turned hostile. PW1 and PW2 are close relatives of the deceased and therefore, they have been purposefully pressed into service by the prosecution in order to prove the case.

(b) The learned counsel for the appellant would further submit that though the occurrence is said to have taken place in a bus-stop, no independent witness was examined and the same is fatal to the case of the prosecution.

(c) He would next submit that though PW1 has stated in the cross examination that he has stated the name of PW2, PW4 and one Mani in the complaint- Ex.P1 as they were also travelled along with him in the bus, the name of PW2 is not mentioned in the complaint - Ex.P1, which creates a doubt about the presence of PW2 at the time of occurrence.

(d) He would further submit that though PW1 has stated in his evidence that the accused attacked the deceased with sickle from her backside, the prosecution agency has denied the same. He would further submit that PW3 has deposed that he only identified the deceased to the Police and PW1 himself has admitted in the cross examination that he informed about the occurrence through phone to PW3, which would go to show that till PW3 identified the deceased, nobody knows, who was involved in the occurrence. Thus, the presence of PW1 is also highly doubtful.

(e) Yet another submission of the learned counsel for the appellant is that though the complaint is stated to be given at 8.00 a.m., the FIR reached the Court only at 11.00 a.m. The said delay was not properly explained and the same is fatal to the case of the prosecution.

(f) The learned counsel for the appellant would further submit that though PW1 stated that in the complaint lodged by him, one Veeralakshmi put her thumb impression, but in the FIR, the thumb impression of Veeralakshmi is not available. Thus, the original

Thus, the learned counsel for the appellant submitted that the occurrence might not have occurred, as projected by the



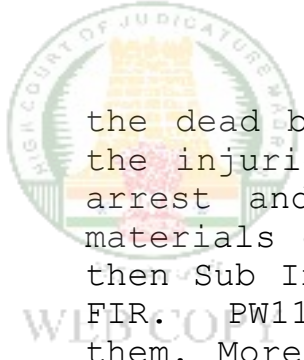
prosecution and the case was cooked up at every stage and the appellant/accused was falsely implicated in this case. Hence, the entire case of the prosecution is liable to be rejected and consequently, this appeal may be allowed.

8. The learned Additional Public Prosecutor submitted that the prosecution has clearly proved its case beyond reasonable doubts through the eyewitnesses - PWs.1 and 2 and the medical evidences. PW3 also corroborated the versions of PW1 and PW2, in respect of motive for the occurrence. Thus, the prosecution has clearly proved the case by cogent and convincing evidences. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

9. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

10. It is a case of brutal murder. The prosecution has examined PW1, PW2 and PW4 as eyewitnesses to the occurrence. PW1 has stated in his evidence that he is a relative of the deceased and that 12 years back the marriage between the accused and the deceased was solemnized. The accused was working in a Mill at Usilampatti and the deceased was working at the Government Hospital, Puduppatti as nurse. There was frequent quarrel between the accused and the deceased. The deceased was living separately at her parental home. Before two years back, the accused attacked the deceased with aruval, in respect of which a complaint was also given. Thereafter, the deceased has also got divorce. For attending duty, she boarded on the bus at Ramalingapuram and alighted at Rani Anna Nagar Bus stop. He has also travelled in the same bus and alighted at the said bus stop. At that time, the accused came there and by shouting at the deceased that as to how many husband she would require and as to how she could fail to give money asked by him, attacked the deceased on her right side neck by an aruval and thereafter, cut the deceased on all over her body. The deceased succumbed to the multiple injuries. At that time, PW2, PW4 and one Mani witnessed the occurrence. When he and others attempted to catch the accused, the accused threatened them with aruval. Then, the accused ran away from the place of occurrence with aruval. He immediately rushed to the Police Station and gave complaint - Ex.P1.

11. The above versions of PW1 have been clearly corroborated by PW2. Further, PW3 has corroborated the earlier occurrences. PW4, who was stated to be an eyewitness by the prosecution, has turned hostile for the reasons best known to him. PW5, who is the deceased and aged about 17 years, has categorically stated about the earlier occurrences. PW6, who had conducted postmortem, has stated that there was 21 cut injuries on



the dead body of the deceased and that the deceased succumbed to the injuries in the vital organs. PW7 - VAO has stated about the arrest and confession of the accused and also seizure of the materials objects. PW8 and PW9 are hearsay witnesses. PW10 - the then Sub Inspector of Police, has stated about the registration of FIR. PW11 and PW12 have stated about the investigation done by them. More over, as per forensic report, human blood of "B" was found on all the material objects, including billhook, shirt, etc.

12. By the categorical evidences of PW1 to PW3 and PW5, the prosecution has clearly proved the motive for the occurrence and by the evidences of PW1 and PW2, and medical evidences and other documents, the prosecution has clearly proved that it was this accused, who cut the deceased by a sickle and caused the death of the deceased and also criminally intimidated PW1 and others.

13. The submission of the learned counsel for the appellant is that PW1 and PW2 are close relatives of the deceased and therefore, their services have been purposefully pressed into service in order to prove the case and and therefore, the evidences of PW1 and PW2 are liable to be discarded. It is his further submission that though the occurrence had happened at a busy locality, no independent witness was examined and the same is fatal to the case of the prosecution.

14. When a similar contention arises for consideration, the Hon'ble Supreme Court in a decision in **State of U.P. Vs. Anil Singh** reported in **1988 (Supp) Supreme Court Cases 686** has held in paragraph Nos.15 to 17 as follows;

"15. On late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and reliable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency



amongst witnesses in our country to back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In *Bankim Chander v. Matangini*, 24 C.W.N. 626 PC, the Privy Council had this to say (at 628):

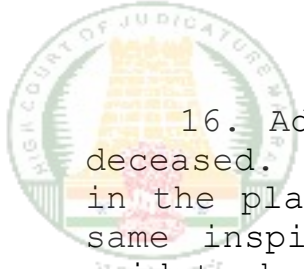
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"That in Indian litigation it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly untrue, since there is, on some occasions, a tendency amongst litigants to back up a good case by false or exaggerated evidence."

16. In *Abdul Gani v. State of Madhya Pradesh* (AIR 1954 SC 31) Mahajan, J., speaking for this Court deprecated the tendency of courts to take an easy course of holding the evidence discrepant and discarding the whole case as untrue. The learned Judge said that the Court should make an effort to disengage the truth from falsehood and to sift the grain from the chaff.

17. It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

15. Thus, it is clear that merely because an eyewitness is a close relative of the deceased, his/her evidence cannot be discarded. But, his/her evidence has to be considered with due care and caution. Further, in a case of this nature, independent witnesses may not come forward to depose, as out of fear, people prefer to run away from the place of occurrence and avoid witnessing the crime, but that does not mean that the case can be discarded only on the ground of non-examination of independent witnesses of the locality.



16. Admittedly, in this case, PW1 and PW2 are related to the deceased. However, they have clearly deposed about their presence in the place of occurrence and witnessing the occurrence, and the same inspires the confidence of the Court. The occurrence was said to have taken place at 7.30 a.m. That is not a busy hour and most of the shops would be closed. The prosecution has also taken efforts and produced independent witnesses - PW8 and PW9, who are having shops in the locality. But, PW8 and PW9 have deposed that they opened their shops lately and that they heard about the occurrence. When that be so, the examination of PW1 and PW2 in this case and non examination of independent witness are not fatal to the case and thus, both the contentions are rejected.

17. Yet another submissions of the learned counsel for the appellant is that though, in the cross examination, PW1 specifically stated that he has mentioned the name of PW2, PW4 and one Mani in the complaint as they had also travelled with him in the bus, in the complaint the names of PW2 and one Mani are not mentioned and therefore, the presence of PW2 is highly doubtful. Of-course, it is true that PW1 has stated in the cross examination that he mentioned the names of PW2 and PW4 and one Mani also in the complaint, but in Ex.P1 the name of PW2 is not specifically mentioned. However, it is stated in the complaint by PW1 that when he attempted to catch the accused, the accused criminally intimidated him and on hearing his hue and cry, PW4 and others came there to catch the accused. When that be so, it is only a minor contradiction and the same does not create any doubt about the presence of PW2.

18. It is also stated by the learned counsel for the appellant that though PW1 has stated in his cross examination that the accused had attacked the deceased in the backside and he has mentioned the same in the complaint as well as during the examination of the Police, it is not mentioned so in the complaint. PW1 has further stated in the complaint that in Ex.P1 one Veeralakshmi has put her thumb impression, but in Ex.P1 there is no such thumb impression and hence, Ex.P1-complaint cannot be believed.

19. It is true that though PW1 has stated in his cross examination that the accused had attacked the deceased in her backside and he had mentioned the same in his complaint and during the examination of Police, it is not mentioned so in the complaint. In the cross examination, PW11 has stated that PW1 did not state so. However, it is mentioned in the complaint that the accused attacked the deceased all over the body. PW6 - Dr.Venkatasubramanian, who had conducted postmortem, has accepted in the cross examination that some of the injuries would not have been caused when the attack was made by standing in front of the accused. When that be so, the version of PW1 can be believed to the effect that the attack was made on the backside also. It



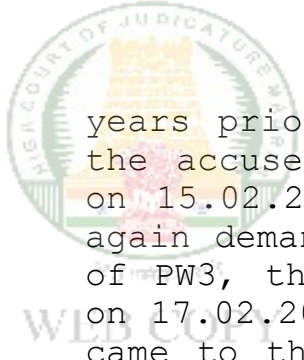
is also true that in the cross examination, PW1 has stated that one Veeralakshmi has put her thumb impression in Ex.P1. But, the said impression is not found in Ex.P1. In fact, PW1 has admitted his signature in Ex.P1. In the cross-examination, PW10 has categorically denied the question put forth by the defence that he had suppressed the complaint in which the said Veeralakshmi had put her signature. Except the above, the defence brought nothing in their favour. More over, the complaint has been given within half an hour of the occurrence and in the complaint itself, the name of the accused has been mentioned. When that be so, such statement of PW1 in the cross examination can be eschewed.

20. Admittedly, the examination of the witnesses were conducted by the trial Court after 6-1/2 years of the occurrence, as the accused was absconding for more than five years and he was arrested only by the execution of NBW. In view of the above elongated time, minor contradictions cannot be ruled out.

21. Yet another submission of the learned counsel for the appellant is that PW3 has stated in his evidence that he identified the dead body of the deceased and therefore, the presence of PW1 is doubtful. PW1 has stated in his cross examination that immediately after the occurrence, he informed about the occurrence to PW3 over phone and PW3 immediately came to the spot and then, they went to the Police Station to give complaint. When that be so, the identification of the dead body shown to the Police by PW3 cannot be fatal at all and it does not create any doubt about the presence of PW1.

22. Yet another submission of the learned counsel for the appellant is that there was a delay of three hours in reaching the FIR to the Court and the same is fatal to the case of the prosecution. According to PW1 and PW2, the occurrence took place at 7.30 a.m. In Ex.P1, it is stated that the complaint has been given at 8.00 a.m. The FIR reached the hands of the learned Magistrate at 11.00 a.m. According to PW10, he forwarded the FIR to the Court through one First Grade Constable No.2407 by name Saravanan. He did not specifically state about the time at which he forwarded the complaint. The said constable was not examined. However, we are of the view that in this case, the delay of three hours cannot be stated to be inordinate. More over, on that score, we find it difficult to discard the evidences of PWs.1 and 2, whose evidences inspire the confidence of the Court. Therefore, this argument is rejected.

23. Having come to the conclusion that it was this accused, who had committed the offence, now, we have to examine as to what was the offence committed by the accused by the said Act. <https://hcservices.ecourt.gov.in/hcservices/> the prosecution, the motive for the occurrence is that the accused was without any job and he was pestering the deceased by suspecting her fidelity and demanding money, and two



years prior to the occurrence, the deceased had cut the hands of the accused with aruval and though the deceased had got divorce, on 15.02.2016 the accused came to the house of the deceased and again demanded money from the deceased and due to the intervention of PW3, the deceased ran away from the house of the deceased and on 17.02.2006, with an intention to kill the deceased, the accused came to the place of occurrence with sickle and caused the death of the deceased by causing as many as 21 cut injuries. Most of the injuries were on vital parts. The weapon used is a dangerous weapon. From these circumstances, it can easily be inferred that the intention of the appellant/ accused was only to cause the death of the deceased. Thus, the act of the accused would squarely fall within the first limb of Section 300 IPC and thus, he is liable to be punished for the offence under Section 302 IPC. His act would not fall under any of the exceptions to Section 300 IPC. It is also proved by the prosecution that the accused criminally intimidated PW1 and PW2 by showing the weapon, when they attempted to stop the attack and to catch him. Thus, the offence of Section 506(ii) IPC is also proved.

24. Now, turning to the quantum of punishment, the trial Court has imposed only the minimum punishments which also require no interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

25. In the result, this criminal appeal fails and the same is, accordingly, dismissed and the conviction and sentence passed by the learned Principal Sessions Judge, Virudhunagar in S.C.No.55 of 2006 against the accused is confirmed.

Sd/-

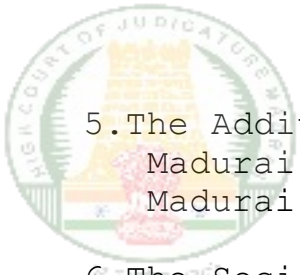
Assistant Registrar(CS-II)

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Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Virudhunagar District at Srivilliputhur.
2. The Judicial Magistrate , Sivakasi.
3. The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
4. The Superintendent of Prison,
Central Prison, Madurai.



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

6.The Secion Officer,V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Gcg

AE/SV MMS/SAR1/22.11.2017/12P/7C

Judgment made in
Crl.A.[MD].No.278 of 2016
Dated: 31.10.2017