



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

CRL.A.(MD).No.387 of 2016 &
C.M.P.(MD).No.6840 of 2017

Shanmugaraj .. Appellant/Sole Accused

Vs.

State of Tamilnadu
Represented by its
Inspector of Police,
Surandai Police Station.
Crime No.162 of 2012 .. Respondent/Complainant

PRAYER: Appeal filed under Section 374 (2) Cr.P.C. to set aside the judgment dated 28.09.2016 rendered in S.C.No.124 of 2013 on the file of the III Additional District and Sessions Judge, Tirunelveli, convicting the appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life, and to pay a fine amount of Rs.1000/- in default to undergo rigorous imprisonment for a period of 3 months, by allowing this Criminal Appeal.

For Appellant : Mr.S.Subbiah
Senior Counsel for
M/s.P.Jessi Jeeva Priya

For Respondent : Mr.R.Ramachandran
Additional Public Prosecutor

Judgment Reserved on	18.08.2017
Judgment Pronounced on	31.08.2017

JUDGMENT

(Judgment of the Court was delivered by N.SATHISH KUMAR,J.)

Aggrieved over the judgment of the III Additional Sessions Judge, Tirunelveli, dated 28.09.2016, in S.C.No.124 of 2013, the present appeal has been filed. The Trial Court convicted the

appellant/accused for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and imposed fine of Rs.1,000/-, in default, 3 months Rigorous Imprisonment.

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

The deceased was the Special Sub Inspector of Police and PW1 was the Head Constable at the relevant time. PW1, PW2, the deceased and the accused were working in Surandai Police Station. The accused was transferred on 18.07.2012 to Suthamalli Police Station. The accused was under the impression that only the deceased, Special Sub Inspector of Police, was instrumental for transfer. Therefore accused developed enmity against the deceased.

ii) PW1, PW2, the deceased and the accused in fact were staying together in the house belonging to PW3, one Kanagaraj. On 26.07.2012 at 04.30 p.m., while PW1, deceased and PW2 were ready for leaving for their duty, the accused came in a motor cycle/MO2 bearing registration No.TN 76 L 2250 with a knife/MO1 and stabbed the deceased. Immediately, the accused left the place.

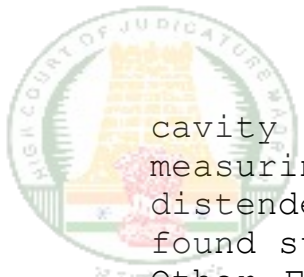
iii) PW1 and PW2 took the deceased in a auto belonging to PW6 and admitted the deceased in Kamala Hospital. After first aid again they took the deceased to the Government Hospital, wherein it was declared that the deceased died. After handing over the dead body to the mortuary, PW1 went to the jurisdictional police station namely Surandai Police Station at about 10 p.m. and give Ex.P1/First Information Report to PW20.

iv) PW20 registered the crime in Crime No.162 of 2012 under Section 302 IPC and forwarded the First Information Report to the Court and a copy to the Inspector of Police. First Information Report is Ex.P19. Then the Inspector of Police, Shankar took up the case for investigation and proceeded to the place of occurrence and prepared Observation Mahazar/ Ex.P20 and draw Rough Sketch/ Ex.P21 and also seized blood stained mat/MO8 under the Ex.P22 mahazar. Thereafter, he also conducted inquest over the dead body on next day and inquest report is marked as Ex.P23 and gave a request to the Medical Officer for postmortem and he also examined the witnesses and recorded their statement.

v) In the meanwhile, PW14/Medical Officer conducted autopsy over the dead body of the deceased and found the following injuries.

"1) An oblique stab injury of size 3 x 1 cm x peritoneal cavity deep seen over front of upper part of abdomen in midline. Margins are regular. Both margin meet as blunt angle on right side sharp angle in left side. It lies 15 cm above from umbilicus, 3 cm below xiphi sternum.

2) Underlying lower part of the body of anterior wall of stomach found stabbed measuring 2.5 x 1.5 cm near greater curvature. Stab injury enters into stomach



cavity and body of post wall of stomach found stabbed measuring 2.5 x 1.5 cm near lesser curvature, Stomach is distended with food materials. Underlying Splenic artery found stabbed.

Other Findings: Peritoneal cavity contain about 1.5 liter of fluid blood. Pleural cavities - nil specific. Heart - normal. Coronaries - patent. Hyoid Bone -Intact. Stomach -contains about 500 gms of partially digested rice particles, no specific smell, Mucosa - Pale. Lungs, Liver, Spleen & Kidneys - c/s pale. Small Intestine - contains about 20 ml of bile stained fluid, no specific smell Mucosa -pale. Bladder -empty. Brain -c/s.pale."

and issued Postmortem certificate Ex.P12 and opined that the deceased died of Haemorrhagic Shock due to stab injury about 6 to 24 hours prior to the postmortem.

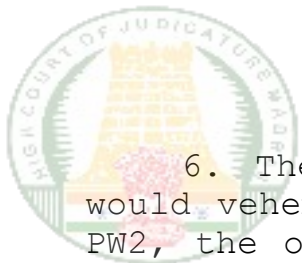
vi) PW12/Doctor, has in fact given first aid to the deceased on the date of occurrence at 4.45 p.m. PW13/Doctor in fact declared the deceased died in the Government Hospital and forwarded the dead body to the mortuary and also given information to the police. Investigation officer in continuation of the investigation examined the witnesses and also recorded their statement.

vii) Thereafter PW21 took up further investigation on 28.07.2012 and examined the witnesses and recorded their statement and also took the accused to the police custody on 04.08.2012 and recorded his confession in the presence of PW10 and one Muthiaya. The admissible portion of the confession is marked as Ex.P6. In pursuant to the admissible portion of the confession of the accused, he also seized MO1/knife and MO2/motor bike from the accused and also sent the material objects to the Court after completing the investigation finally laid the final report as against the accused under Section 302 IPC.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. During trial, on the side of prosecution as many as 21 witnesses were examined and 26 documents were exhibited besides 8 material objects. On the side of the defence 4 document Ex.D1 to Ex.D4 were marked.

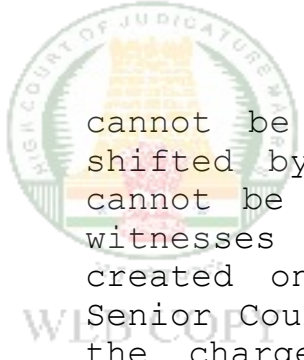
4. Having considered the above materials, the trial Court found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal.

<https://hcservices.courts.gov.in/hcservices/> The learned Senior Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.



6. The learned Senior Counsel appearing for the appellant would vehemently contend that the prosecution relied upon PW1 and PW2, the only eye witnesses to prove the charges. The evidence of PW1 and PW2 creates serious doubt about their presence in the place of occurrence. To substantiate the contention of the prosecution that PW1 and PW2 are present, the prosecution has not come up with the true story. The alleged theory of PW1 and PW2 that they took the deceased to Kamala Hospital and got treated has not been established. No Accident Register copy was marked by the prosecution. PW6, Auto driver, in his evidence also never stated about the presence of PW1 and PW2, who are in uniform. Further, the evidence of PW1 and PW2 that they took the deceased in the auto to the hospital is also cannot reliable, since not even a drop of blood was spread on their dresses. According to the prosecution, after the stab injury caused by the accused, blood was oozing from the deceased. Therefore, the evidence of PW1 and PW2 that their dress did not get strained is also unnatural and creates serious doubt about their presence in the place of occurrence. The prosecution also failed to recover the alleged towel which was used by PW1 and PW2 to stop the bleeding on the place of occurrence. This aspect also creates serious doubt about the prosecution version, whereas PW3 and Ex.B4, accident register copy made by PW12 clearly indicate that PW1 has given a statement before the Medical Officer to the effect that history of the offence not known fully. The above fact also creates a serious doubt about the presence of eyewitnesses.

7. It is the further contention of the learned Senior Counsel that the First Information Report has lodged only at 10 p.m., on 26.07.2012 the reasons assigned by the prosecution is highly artificial and cannot be believable at all. Whereas the evidence of eye witnesses clearly indicate that immediately after the news spread about the death of the Special Sub Inspector of Police, Superintendent of Police also reached the hospital. The jurisdictional Sub Inspector of Police also very much present and they informed about the occurrence at 6 p.m. itself. Therefore PW1 again going to Police Station at 10 p.m. and lodged the First Information is highly doubtful in this case. The same creates serious doubt about the genesis of the occurrence. The First Information report has also reached the Judicial Magistrate only on the next day i.e. 6.30 a.m. The explanation offered by the prosecution through PW18 also unbelievable. The above facts clearly lead to the inference that PW19/First Information Report is nothing but result of exaggeration and deliberation and fabricated at later point of time. Hence, it is submitted by the learned Senior Counsel that once the First Information Report held to be fabricated, the entire prosecution cannot be believable. It is the contention of the learned Senior Counsel that recovery of MO1 and MO2 in pursuance to the alleged confession of the accused is also suffers from serious infirmity and the same



cannot be believable at all. The place of occurrence is also shifted by the prosecution. Hence, the entire prosecution case cannot be relied upon. PW1 and PW2 could not have been the eye witnesses and the General Diary relied upon by the prosecution created only for the purpose of the case. Hence, the learned Senior Counsel submitted that the prosecution has not established the charges against the accused beyond all reasonable doubt. Hence, the accused is entitled to the benefit of doubt.

8. Assailing the arguments made by the learned Senior Counsel, the learned Additional Public Prosecutor submitted that admittedly PW1, PW2, the deceased and the accused were working in the Surandai Police Station. Prior to the occurrence, all of them were staying together in a rented house belonging to PW3 on rent. When that being so, the accused was transferred from the Surandai Police Station to some other police station on 18.07.2012. The accused was under the impression that the deceased, Special Sub Inspector of Police, is the reason for his transfer and developed enmity against him. When that being so, on 26.07.2012, while PW1, PW2 and the deceased were about to leave for their duty at 4.30 p.m., the accused came in a bike with knife and suddenly stabbed the deceased and left the place. PW1 and PW2 who have no axe to grind against the accused and there was no motive whatsoever to falsely implicate the accused. PW1's presence in the place of occurrence also immediately noticed by PW3, house owner and Medical Officer also spoken about the fact that the deceased was brought to the hospital by constables. Hence it is the contention of the learned Additional Public Prosecutor that the evidence of PW1 and PW2 is natural and the same cannot be disbelieved merely because they also police personnel. Merely because there is a delay in filing a First Information Report and despatching the same to the Court, it cannot be held that the entire prosecution has been fabricated one. PW1 all along accompanied the deceased to various hospital and finally after handing over the dead body at Government Hospital, he went to the jurisdictional police station and gave a complaint/Ex.P1 at 10. p.m. In such a situation, the above delay is normal and cannot be attributed with any motive. PW18 clearly spoken about the reason for delay in handing over the First Information Report. Hence, it is the contention of the learned Additional Public Prosecutor that the evidence of PW1 and PW2 eyewitnesses and PW3 clinchingly established the presence of PW1 and PW2 in the place of occurrence. Admittedly there was a single stab injury, merely because PW1 and PW2 dress did not get blood stain that cannot be a ground to disbelieve their presence in the occurrence. MO1 and MO2 also recovered at the instance of the accused which also spoken to by the witnesses and the Investigation Officer. Hence the learned Additional Public Prosecutor submitted that the prosecution has clearly established the guilt of the accused beyond all reasonable doubt. Hence prayed

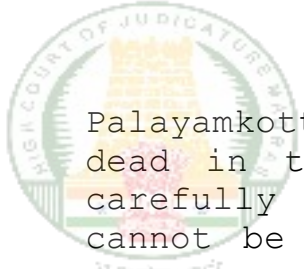
~~Services do not provide the appeal.~~



9. In the light of the above submissions, now the point arises for consideration, is whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?

10. It is undisputed that the deceased in this case was a Special Sub Inspector working at Surandai Police Station at the relevant point of time. Similarly it is not in dispute that PW1, PW2 and accused also constables at the relevant point of time working in the same police station and they stayed together in Surandai Koothanar Street in the house belonging to PW3 is also not disputed by the accused. The motive projected by the prosecution is that the accused was transferred from Surandai Police Station on 18.07.2012 to Suthamalli Police Station and he was under the impression that only the deceased Special Sub Inspector of Police was reason for his transfer. Therefore, he developed enmity as against him. Accordingly, on 26.07.2012 when PW1, PW2 and deceased were about to leave for their job at 4.30 p.m. the accused came there with knife and stabbed the deceased and left the place in a motor cycle. The transfer of the accused from Surandai Police Station to Suthamalli Police Station is also not in dispute. PW16, the Inspector of Police of Surandai Police Station also spoken about the transfer of accused to Suthamalli Police Station and the accused joined duty on 25.07.2012. On the date of occurrence namely 26.07.2012, the accused was in the police station in the morning. However after 4' 0 clock, he was absent, in his police station in respect of which, he has also made General Diary entry. Ex.P15 a copy of the General Diary also marked. From the evidence of PW16, Sub Inspector of Police, it is clearly established one fact that the accused in fact attended the duty at Suthamalli Police Station on 26.07.2012 was found absent after 4' 0 clock from the police station. In respect of which, General Diary entry also produced by the prosecution. There was no reason whatsoever for PW16 to falsely implicate the accused in this case. Therefore, we are constrained to hold that the evidence of PW16 cannot be disbelieved, merely because some discrepancy pointed out by the learned Senior Counsel.

11. Be that as it may, as discussed above, till the transfer of the accused, the accused, deceased, PW1 and PW2 were staying together in the house belonging to PW3. This fact is also not disputed by the accused in the entire cross-examination. PW1, was head constable at the relevant point of time and PW2 is also working in the same police station. In their evidence they spoken about the occurrence and on 26.07.2012, PW1 and PW2 in uniform and at about 4.30 p.m. when PW1, PW2 and the deceased Esakki, Special Sub Inspector of Police were about to leave for their job, the accused came in a motor cycle along with knife and suddenly ~~seized the deceased on the stomach~~ seized the deceased on the stomach. Immediately PW1 and PW2 took the deceased in a auto belonging to PW6 and took him to Kamala Hospital. After first aid, again the deceased was referred to



Palayamkottai Government Hospital. However, doctor declared him as dead in the above hospital. PW1 and PW2 evidence in entirety carefully scanned, their presence in the place of occurrence cannot be doubted, merely because some discrepancy found out in cross examination and also delay in First Information Report and despatching the same for the following reasons;-

i) There was no motive whatsoever for them to falsely implicate the accused, in fact, the accused has also stayed with them till his transfer on 18.07.2012.

ii) Further the evidence of PW3, the house owner. When his evidence carefully scanned, though he was declared hostile by the prosecution, when his evidence in entirety seen the same would clearly indicate that immediately after the occurrence on hearing the cry, PW3 and others rushed to the place of occurrence and found PW1 was holding the deceased. His evidence though not supported the exact occurrence, his evidence with regard to the presence of PW1 and he holding the deceased assumes significance. In fact, the same clearly established the factum of the presence of PW1 in the place of occurrence.

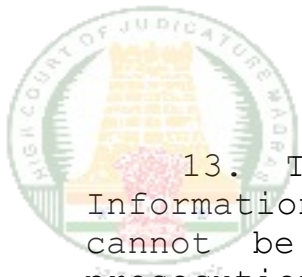
iii) PW6 is the auto driver in whose auto the deceased was taken to the hospital. When his evidence carefully scanned, it could be seen that only as per the direction of PW3, Kanagaraj, house owner, he took the auto the place of occurrence and the deceased was taken to Kamala Hospital in his auto. Though in his entire evidence he has not stated about PW1 and PW2 travelling in the auto, his evidence clearly show that the people living in the same street accompanied in the auto. However, he did not know who came in the auto. Merely because he has not specifically named PW1 and PW2, were travelled in the auto, the presence of PW1 and PW2 in the place of occurrence cannot be disbelieved. Criminal Court cannot expect set reactions from the witnesses with a minute details. Mere omission by PW6 to mention about PW1 and PW2 names, who took the deceased in the auto, the entire prosecution witnesses cannot be discarded.

iv) PW7 ambulance driver evidence clearly shows that in his ambulance only he took the deceased from Kamala Hospital to Government Hospital. At that time, PW1 and PW2 also came in the ambulance. Though one suggestion was put in the cross examination that the police came there after the information, and such admission of PW7 alone cannot be taken into consideration, when the entire evidence read together in fact it established the fact that PW1 and PW2 were in fact very much present with the deceased at the occurrence time till the dead body was handed over to the police. This fact is further fortified by the evidence of PW12, the medical officer worked at Kamala Hospital. Medical Officer PW12 services his evidence has stated that the deceased was brought by the police personnel in a critical stage and he treated the deceased and gave first aid. His evidence also strengthen the



prosecution version that PW1 and PW2 were very much present in the place of occurrence and they accompanied the deceased to the hospital till his death. Though PW12 has not given information to the police, he categorically admitted that since the police themselves admitted the deceased, he has not given any specific information to the police station. This explanation is also quite natural.

12. PW13 Medical Officer evidence when carefully perused, would go to show that while he was working in the Government Hospital, the deceased was brought dead in the hospital. In respect of which he also issued Ex.B4, accident register copy. In fact the above accident register copy also shows that the deceased was brought by PW1. The main contention of the learned Senior Counsel in this case is that the prosecution has suppressed the accident register copy and the same has been marked through the defence and PW1 stated to be an eye witness told the Doctor that the history of the offence was not fully known to him and the same is also recorded by the Medical Officer. That being the case, his presence in the place of occurrence is highly doubtful. Though Ex.B4 shows that there is an entry in the place called history of offence not fully known, it is to be noted that Ex.B4 established the fact that the deceased was brought to the hospital only by PW1. Though the doctor has noted the history of the offence was not fully known that cannot be a ground to hold that PW1 could not be an eyewitness at all. Not knowing the history of offence is one thing and witnessing the occurrence is another aspect. Therefore the witness who seen the occurrence need not expected to know the entire history for such offence. Therefore even assuming that such statement was given by PW1 before the Medical Officer that itself is not a ground to disbelieve the prosecution version about PW1 witnessing the occurrence. It is further to be noted that PW1 has not been confronted with the alleged statement before the Medical Officer. Former statement said to have been made by a witness can be proved only by the manner known to law. The said statement either to be used for contradict or to corroborate the witnesses under Section 145 or 157 of the Indian Evidence Act. When the witnesses themselves have not contradicted with the alleged former statements, then the alleged statement recorded by the doctor is also no use for the defence. At any event merely because PW1 has not stated about the history of entire offence that itself is not a ground to disbelieve his version about seeing the occurrence. PW1 and PW2 in their evidence have stated that they witnessed the occurrence and their presence in the place of occurrence has been clearly supported by PW3 and the Medical Officer of the Kamala Hospital/PW12 and there was no motive whatsoever to implicate the accused, who also working with him at the relevant point of time. Hence, we are constrained to hold that their evidence cannot be



13. The learned Senior Counsel contended that the First Information Report has been registered belatedly, and the same cannot be relied upon, whereas it is the contention of the prosecution that PW1 all along accompanied the deceased in the hospital and after dead body was handed over to the mortuary, he went to the Surandai Police Station and gave an information to PW20 and the First Information came to be registered. On a careful perusal of the entire cross examination of PW1, PW2 and the Medical Officer would clearly show that we have no difficulty in holding that Ex.P1 and Ex.P19, First Information Report, would not have been the first Information at all. Prosecution witness evidence also clearly shows that when the deceased was taking treatment at Surandai, the Sub Inspector of Police, Kannan was very much present and Superintendent of Police also came to the hospital and the deceased family members also informed about the occurrence. Similarly, the prosecution cannot contend that the Ex.P1 is the First Information Report. PW1 and PW2 is also working with the deceased witnessed the occurrence and took the deceased to the hospital. Thereafter again they took him to the Government Hospital. In the meanwhile, the Superintendent of Police and the Sub Inspector of Police, one Kannan is also very much present. All these facts clearly shows that the information relating to the crime is also informed to the police including the jurisdictional police. Therefore any subsequent information referring to the same offence is nothing but a statement recorded during the investigation. Hence, Ex.P1 and Ex.P19 at the most can be used as a statement under Section 161 of Cr.P.C. and it cannot be treated as First Information Report.

14. Merely because Ex.P1 and Ex.P19 are hit by Section 162 of Cr.P.C., whether the prosecution theory can be discarded, we are of the view that even assuming that First Information Report cannot be relied upon as the same is hit by Section 162 Cr.P.C. that itself cannot be a ground to discard the entire prosecution, since the first information report is not a substantive piece of evidence at the most it is only piece of evidence with regard to the information lodged with regard to the crime. When the evidence of witnesses clearly established the specific overt act of the accused, we are of the view that *dehors* the First Information Report, still the prosecution can succeed in establishing the crime as against the accused on the basis of the eye witnesses version and other circumstances relied on by them. When the Medical Officer who conducted autopsy clearly opined that the deceased died due to stab injury on the stomach and also of loss of blood, the homicidal violence also clearly established. Merely because PW1 and PW2 dress did not get any blood stain that itself is not a ground to disbelieve their version. Similarly the evidence of PW1 and PW2 also clearly shows that they also used one towel for tying around the injury. Though the towel has not been seized by the Investigation Officer, the use of such towel also would



have arrested the blood oozing out from the injury. Therefore, it cannot be accepted that in all eventuality when witness are present in the place of occurrence, they also should be drenched with blood. Similarly non seizure of the towel spoken by PW1 is also insignificant. At the most it could be termed as defective investigation or lethargic investigation. Such callous investigation itself cannot be a ground to discard the entire prosecution version.

15. Yet another contention of the learned Senior Counsel is that place of occurrence was shifted. The evidence of PW1 and PW2 clearly shows that the occurrence has taken place inside the house, merely because the witnesses could not give the minute details about the measurements and directions about the room, it cannot be stated that the entire occurrence place itself is shifted by the prosecution witnesses. In the criminal trial witnesses cannot be expected to give minute details about every aspect. The observation of one of the witnesses cannot be expected to be similar that of other witnesses who also seen such occurrence. Observation of each witnesses depends upon their own reaction. Therefore, every minute details cannot be given much importance. It is also to be noted that in all the criminal trials, in every witness evidence, minor discrepancy in their evidence are bound to occur, after several years of the occurrence. Therefore, discrepancies found in the eye witnesses version cannot be given much importance, when the substratum of the prosecution is very much intact and established before Court of law.

16. The learned Senior Counsel relied upon the fact that recovery of MO1 and MO2 is also doubtful in view of the evidence of PW6 and also the newspaper report. A careful perusal of the documentary evidence marked by the defence, namely newspaper report, would indicate that MO2/bike were already seized by the police. Similarly, the knife was also said to have been handed over by Investigation Officer to the Deputy Superintendent of Police much before 04.08.2017. Therefore, the alleged recovery of MO1 and MO2 in pursuant to the confession of the accused is not established without any doubt. Merely because recovery has not been established, that itself cannot be ground to discard the eye witnesses version. The seizure of MO1 and MO2 from the accused though may not established by the prosecution evidence, the fact that PW1 and PW2 clearly spoken in their evidence that MO1 was used by the accused. Therefore merely because the recovery of MO1 from the accused has not been established, the same cannot be a ground to discard the PW1 and PW2 evidence. Hence, we are of the view that PW1 and PW2 evidence clinchingly established the fact that the accused alone caused the stab injury. When there are eye witnesses version available, the motive assumes insignificance. PW1 and PW2 also earlier given 164 Cr.P.C. statement before the Magistrate that also cannot be ignored as there was no motive to implicate



the accused, No other ground to hold that their evidence cannot be relied upon. Now, it has to be seen that whether the act of the accused falls within the ambit of Section 300 of IPC. From a careful perusal of the above section, we have no hesitation to hold that the act of the accused comes within the purview of the murder. Hence, the Trial Court has rightly convicted the accused. Accordingly we hold that the appeal deserves to be dismissed.

17. In the result the criminal appeal is dismissed. The judgment of the III Additional Sessions Judge, Tirunelveli, in S.C.No.124 of 2013, dated 28.09.2016, is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

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Sub-Assistant Registrar

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- 1 The III Additional Sessions Judge, Tirunelveli
2. Do through the Principal Sessions Judge, Tirunelveli
3. The District Munsif cum Judicial Magistrate,
Shenkottai
4. The Director General of Police, Chennai
5. The Superintendent, Central Prison, Palayamkottai,
Tirunelveli District
6. The Inspector of Police,
Surandai Police Station, Tirunelveli.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Madurai Bench of Madras High Court, Madurai

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Judgement made in
CRL.A.(MD).No.387 of 2016 &
C.M.P.(MD).No.6840 of 2017