

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.A.No.535/2017

Prakash

.. Appellant / A-1

Vs.

State rep. by,
The Inspector of Police
Pollachi East Circle Police Station
Pollachi Taluk,
Coimbatore District.

.. Respondent

Criminal Appeal filed under Section 374[2] of the Criminal Procedure Code to set aside the judgment dated 27.04.2017 in SC.No.175/2014 on the file of the learned Sessions Judge, Magalir Neethimandram, [Mahila Court], Coimbatore.

For Appellant : Mr.P.V.Selvarajan for
Mr.C.Deivasigamani

For Respondent : Ms.R.Prabavathy, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant is arrayed as A-1 out of three accused in the case in SC.No.175/2014 on the file of the Court of the learned Sessions Judge, Mahalir Needhimandram, [Mahila Court], Coimbatore. Originally, the Trial Court framed charges against A-1 for the offences u/s.302 and 201 read with 511 IPC and u/s.201 r/w 511 IPC as against A-2 and A-3. The Trial Court, under impugned Judgment dated 27.04.2017, acquitted A-1 to A-3 from the charge u/s.201 read with 511 IPC holding that the prosecution has failed to prove the charge beyond all reasonable doubt and however, convicted A-1 u/s.302 IPC and sentenced him to undergo imprisonment for life and a fine of Rs.5000/- with a default sentence of 3 months rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/A-1.

2 The brief facts of the prosecution case, are as follows:-

[a] The deceased Jagadambal is the wife of P.W.2-Nagendrakumar. They are the residents of Sundaragoundanoor village at Pollachi. P.W.3-Rangasamy and P.W.7-Mayilan are

uncles of the deceased Jagadambal. P.W.4-Kaliammal is the friend of Jagadambal. P.W.5-Selvakumar is the husband of P.W.4. A-1 - Prakash and A-2-Sathyabama are husband and wife and earlier, they were residing near the house of P.W.2 and the deceased. P.W.2 was working as a Cook in a College and as he was not given leave, he used to come to home once in a month. In the interregnum, deceased and A-1 had developed illicit relationship and on coming to know of the same, P.W.2 warned his wife. On such warning, the deceased assured P.W.2 that she will not continue the relationship with A-1. On the basis of such assurance given by his wife, he left for his work as usual. Thereafter, A-1 and A-2 left Sundaragoundanoor village and got settled in Oonjavelampatti Village as tenants under P.W.8.

[b] When the matter stood thus, on 04.08.2013, at about 10 to 10.30 a.m., deceased Jagadambal came to P.W.2 and met him in his work place and got a sum of Rs.4000/- from him and informed P.W.2 that she is leaving for her aunt's house. Thereafter, she did not return home. P.W.2 made all efforts to trace his wife ; but the same went in vain. On 05.08.2013 he along with P.Ws.3 and 7 went to All Women Police Station, Pollachi, and gave a complaint regarding missing of his wife. He also informed the police about the illicit relationship between A-1 and his wife. Only on 08.08.2013, upon receipt of information from police to identify a dead body of a lady, he had identified the dead body as that of his wife at the residence of A-1.

[c] P.W.1-Marimuthu, is a Barber by profession and a resident of Oonjavelampatti village. P.W.6-Udayakumar and P.W.8-Thayanna Gounder are also residents of the said village. P.W.8 owns house properties in Oonjavelampatti village and used to let the buildings to various persons on rental basis. Three months prior to the occurrence, A-1 and his wife [A-2] came as tenants in one of his houses on a monthly rent of Rs.1500/-. P.W.1 has introduced A-1 to P.W.8 for renting the house. Since A-1 used to visit the shop of P.W.1 frequently, he became close to him and on one such occasion, A-1 was looking very tired and when P.W.1 enquired about the same, A-1 has informed P.W.1 that he was having illegal intimacy with one Jagadambal, there were frequent quarrel in the family life and sought help of P.W.1 in getting a new house for rent. Accordingly, with the help of P.W.1, A-1 and A-2 had set up a separate residence and were

living in the house of P.W.8.

[d] On 04.08.2013 at about 9.30 a.m., both A-1 and his wife, arrayed as A-2, left the house and thereafter, at about 2.00 p.m., A-1 alone came to the house along with the deceased. When P.W.8 enquired him as to who the lady was, A-1 had told P.W.8 that her name was Jagadambal and she is his relative. On the next day morning, A-1 alone had left the house and thereafter, the house was found locked for 2 or 3 days. When a foul smell emanated from inside the house of A-1, P.W.8 informed P.W.1, who in turn, rushed to the house of A-1 and found the house was locked from outside. Immediately, P.W.1 and P.W.6, who is also the neighbour of P.W.8, broke open the door and found the dead body of the deceased inside the house. As P.W.8 was aged about 70 years, he became panic and P.W.1 immediately lodged a complaint under Ex.P.1 with P.W.14-Dowlath Nisha, Sub Inspector of Police attached to the respondent police.

[e] P.W.11-Ponraj is running a Chicken Stall in Oonjavelampatti village and he has also seen A-1 in the company of a woman and going to his house on 04.08.2013. P.W.9-Sudhagar is running a Cement shop and he is the Vice President of Maakinaampatti village. He had deposed about A-1 meeting him on 14.08.2013 at about 10.00 a.m., and confessing about the crime, viz., murdering of the deceased Jagadambal and screening the evidence along with his wife and friend, and his handing over of the accused to the police along with his Letter under Ex.P.4.

[f] P.W.14-Dowlath Nisha, Sub Inspector of Police, at the relevant time, after the receipt of the complaint from P.W.1 under Ex.P.1 on 08.08.2013 at about 12.00 Noon, registered the crime in Cr.No.379/2013 u/s.302 IPC. Ex.P.13 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.13 to the jurisdictional Court and copies to the higher officials.

[g] P.W.15-Subramani, Inspector of Police [Additional Charge] attached to the respondent police station, at the relevant point of time, on receipt of FIR in Cr.No.379/2013 on 08.08.2013 and went to the place of occurrence at about 1.00 p.m. and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.14] in the presence of P.W.6 and one Mahendran. On the same day, he seized M.Os.4 to 11 under Mahazar - Ex.P.3 in the presence of the same witnesses. He held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses on the same day from 2.00 p.m. to 5.00 p.m. and prepared Ex.P.15-Inquest Report. He took photographs of the scene of crime and the photographs were marked as Ex.P.16 series. He enquired the witnesses and recorded their statements. He forwarded the dead body for autopsy through constable along with a requisition.

[h] P.W.13-Dr.Jeyasingh, District Police Surgeon and Head of the Department of Forensic Science, Government Medical College Hospital at Coimbatore, at the relevant point of time, received the requisition and commenced the postmortem on 09.08.2013 at 12.10 p.m., and found the following injuries:-

"The following antemortem injuries noted over the body:-

On dissection of scalp, skull and dura:-
Sub Scalpal contusion reddish in colour 10x6cm noted over left temporal area. Brain found liquefied with blood tinges noted over surface of the brain. On dissection of neck:- vertical fracture noted over thyroid cartilage with surrounding tissue contusion. Super cornu of thyroid cartilage found fractured with surrounding tissue contusion. Contusion 6x4cm noted on posterior aspect of larynx. Reddish contusion 6x4cm noted over upper part of both thigh.

Other findings:-

- Peritoneal and Pleural Cavities - empty
- Heart-Flabby. Cut Section decomposed.
- Stomach and small intestine found empty.
- Spleen, Kidneys, Lungs and Liver - cut section decomposed.
- Urinary bladder-empty
- Uterus found absent.
- Viscera preserved and sent for chemical analysis.
- Right femur preserved for DNA Profiling."

Ex.P.10 is the Postmortem Certificate and Ex.P.12 is the Final Opinion issued by him, wherein he had stated that "the deceased would appear to have died of violent compression of the neck associated with head injuries and viscera does not contain any poison." Ex.P.11 is the Viscera Report. He had also opined that the death would have occurred 4 to 5 days prior to autopsy.

[i] P.W.15-Investigating Officer, in continuation of his investigation, seized the material objects, viz., M.Os.1 to 3, 14 and 15, worn by the deceased under the cover of Mahazar. He went to the scene of crime and recovered M.O.16-Blood stained earth and M.O.17-sample earth. He sent the material objects under Form 95 [Exs.P.17 and 18] to the Court. Upon his successor joining duty in the Police Station, P.W.15 handed over the Case Diary to P.W.17-Ammadurai, Circle Inspector attached to the respondent Police station.

[j] P.W.17-Ammadurai, Circle Inspector received the Case Diary relating to Cr.No.379/2013 on 11.08.2013, took up the case for investigation. On 14.08.2013, at about 11.00 a.m., P.W.9-Sudhagar, Vice President of Maakinaampatti village appeared before P.W.17 along with A-1 and handed over the letter written in his Letter Pad as well as A-1 to P.W.17. P.W.9 also narrated to P.W.17 as to what had A-1 informed him about his committing murder of deceased Jagadambal. The Investigating Officer enquired A-1 and A-1 came forward to give a voluntary confession statement, admissible portion of which is marked as Ex.P.19 in pursuant to which, he arrested A-2 and A-3 at Chandirapuram Division and they both came forward to give confession statements and the same were recorded in the presence of the witnesses. Pursuant thereof, the Investigating Officer recovered M.O.13-Cellphone of the deceased and other material objects and sent the same to the Court under requisition for sending those articles for chemical analysis. He sent the accused for judicial remand. He altered the offence to one u/s.302, 201 read with 511 IPC. Ex.P.21 is the Alteration Report. Since he was transferred, he handed over the Case Diary to his successor.

[k] P.W.18-Ilamurugan, Inspector of Police took up the case for further investigation and upon receipt of the Chemical Analysis Reports-Exs.P.22 and 23 and on completion of investigation filed the Final Report against A1 to A3 before the learned Judicial Magistrate No.1, Pollachi, who took it on file in PRC.No.7/2014 and issued summons to the accused and on their appearance, furnished them copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Coimbatore District, u/s.209 Cr.P.C., who in turn, had made over the case to the learned Sessions Judge, Mahalir Needhimandram, [Mahila Court], Coimbatore District, who took it on file in SC.No.175/2014 and on appearance of the accused, had framed the charges u/s.302 and 201 read with 511 IPC as against A-1 and u/s.201 read with 511 IPC as against A-2 and A-3 and questioned them. The accused pleaded not guilty to the charge framed against them.

[l] The prosecution examined P.Ws.1 to 18 and marked Exs.P.1 to 23 besides marking M.O.1 to M.O.17.

[m] Accused were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. No oral or documentary evidence was let in on the side of the defence.

[n] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had acquitted A-1 to A-3 of the charge u/s.201 read with 511 IPC ; but however, convicted and sentenced the appellant/accused for the offence u/s.302 IPC as above stated and hence, this appeal.

3 Mr.P.V.Selvarajan, learned counsel representing Mr.C.Deivasigamani, learned counsel for the appellant submitted tht the entire case rests upon the circumstantial evidence and the circumstances relied upon by the prosecution are highly doubtful and are not proved beyond all reasonable doubt. The motive aspect has not been established and the Door number of the house where the dead body was found, itself is doubtful and the last seen theory projected by the prosecution is also unreliable and the identification of the deceased has also not been established scientifically. Hence, the learned counsel for the appellant submitted that the appellant/A-1 is entitled to benefit of doubt and hence, prays for allowing of the appeal. In support of his contention, learned counsel placed reliance on the judgment reported in AIR 1971 SUPREME COURT 2016 [Bakshish Singh Vs. The State of Punjab].

4 Per contra, Ms.M.Prabavathy, learned Additional Public Prosecutor appearing for the State submitted that the prosecution has proved all the circumstances relied on by its and there is no break in any of the circumstances and the Trial Court has rightly appreciated the evidence in a proper manner and had arrived at the correct finding and the same warrants no interference at the hands of this Court and prayed for dismissal of the appeals.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellant / accused beyond all reasonable doubt?

7 The appellant / accused stood charged for offences u/s.302 and 201 read with 511 IPC. At the outset, it is to be stated that the entire prosecution case rests on the circumstantial evidence. The prosecution mainly relied upon two circumstances, viz.,

- [a] Motive ; and
- [b] Last Seen Theory ; and
- [c] Extra-Judicial Confession

8 Before proceeding to consider the above said circumstance, it is relevant to state that it is well settled

that in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime. Keeping in mind, the above said settled principle of law, let us now consider the circumstances relied on by the prosecution.

MOTIVE:-

9 P.W.2-Nagendrakumar, is the husband of the deceased Jagadambal. P.Ws.3 and 7-Rangasamy and Mayilan, are uncles of the deceased. P.W.4-Kaliammal is the friend of the deceased and P.W.5-Selvakumar is the husband of P.W.4. A close scrutiny of their evidence would disclose that originally the deceased and her husband [P.W.2] were residing at Pollachi. It is the specific evidence of P.W.2 that A-1 and his wife [A-2] were also residing nearby and A-1 and deceased developed intimacy, which was warned, not only by her husband - P.W.2 ; but also by her uncles -P.Ws.3 and 7. Thereafter, A-1 and A-2 left the village and started residing in a house under P.W.8-Thayanna Udayar, on rental basis, at Oonjavelampatti Village. P.W.4, a close friend of the deceased, in her evidence, has stated about the illicit relationship between the deceased and A-1. From the above evidence of P.Ws.2, 3, 4 and 7, the prosecution has proved the illegal intimacy between A-1 and the deceased. On a thorough scanning of their evidence, we do not find any material to suspect their version. It is also the version of P.W.2 that on the date of occurrence, i.e., on 04.08.2013, the deceased received a sum of Rs.4000/- from him and thereafter, she did not return back home. Therefore, we are of the view that the prosecution has proved the motive aspect, viz., illicit intimacy between A-1 and the deceased. It is also seen from the evidence of P.W.1-Marimuthu, a barber by profession, that because of this illicit intimacy, fearing that problem may arise in his family, A-1 decided to vacate Sundaravikandanoor village where the deceased was residing and to shift his residence to some other place.

10 It is the evidence of P.W.1 that due to frequent visit of A-1 to his barber shop, he became acquainted with A-1 and on one occasion, A-1 requested P.W.1 to locate him a new house on rent. Accordingly, P.W.1 introduced A-1 to P.W.8, the landlord for house on monthly rent of Rs.1,500/-. It is the evidence of P.Ws.1 and 8 that A-1 and his wife [A-2] had taken the house on rental basis for a sum of Rs.1500/- per month and were residing there as tenants under P.W.8 for more than 3 months prior to the occurrence. Evidence of P.W.1 also reveals that A-1 had also informed P.W.1 about his illicit relationship with the deceased which resulted in frequent quarrel in his marital life. P.W.6-Udayakumar is the neighbour of P.W.8. He has also spoken about the residing of A-1 and his wife as tenants under P.W.8. Thus, from the evidence of P.Ws.1, 8 and 6, the prosecution has proved the fact that A-1 and A-2 were

residing in the house belonging to P.W.8. It is seen that P.W.8 - landlord is aged about 76 years and there was no reason whatsoever for him to give a false evidence against A-1 and A-2 who are in no way connected with him. P.W.11-Ponraj was running a Chicken shop in the village and he has also spoken about A-1 and A-2 residing as tenants in the said village under P.W.8.

LAST SEEN THEORY:-

11 P.W.8 has seen A-1 and A-2 leaving the house on 04.08.2013 at about 09.30 a.m. and thereafter, on the same day, at about 2.00 p.m. A-1 came home along with another lady. When P.W.8 enquired the same, A-1 told P.W.8 that she is his relative. P.W.8 also saw A-1 alone leaving the house on the next day morning, i.e., on 05.08.2013. Two-three days thereafter, a foul smell emanated from the house of A-1 and P.W.8 with the help of others, broke opened the door and found the dead body of the deceased. P.W.8 has categorically stated in his evidence that a woman accompanied A-1 on 04.08.2013 at about 2.00 p.m. to his house and subsequently, was found murdered. Immediately, P.W.1 lodged the complaint. Merely because, P.W.8, in his cross-examination, which was done after six months, has given different door number, the same will not affect the prosecution case in any manner. Admittedly, the dead body was found inside the house where A-1 was residing lastly and the evidence of P.W.8 clearly proves the fact that it was only A-1 who had taken the deceased to his house on 04.08.2013 and on the next day, he alone left the house. From the above facts and evidence, we are of the view that the prosecution has clearly established the circumstance, viz., the LAST SEEN THEORY, against the appellant/A-1.

EXTRA-JUDICIAL CONFESSION:-

12 P.W.9-Sudhakar, is running a Cement Shop in the name and style s "Lashmitha Traders" at Pollachi. He is also the Vice President of Maakinampatti Village. He, in his evidence, has stated that on 14.08.2013 at about 10.00 a.m., A-1 appeared before him and confessed the crime, viz., committing murder of the deceased Jagadambal, along with his wife [A-2] and friend Roobanraj [A-3]. A-1 also requested P.W.9 that he should not be subjected to torture at the hands of police. Therefore, P.W.9 handed over A-1 to the respondent police along with his Special Report [Ex.P.4] written on his Letter Pad. It is seen that P.W.9 is a respectable person in the village and there was no reason for him to implicate A-1 unnecessarily. In fact, his very conduct of giving the Special Report-Ex.P.4 to the police makes his evidence reliable. P.W.9 could even have recorded the confession of A-1 in writing ; but he did not do so and he has produced A-1 before the police and narrated the incident to the police in the form of a letter in his Letter Pad. Only on the

production of A-1 by P.W.9, the Investigating Officer effected the arrest of A-1 formally and recovered the material objects. From the above circumstance, it has been clearly established that the deceased left her house on 04.08.2013 and thereafter, she did not return and she was seen alive lastly in the company of A-1, that too, in his house. Thereafter, her dead body was found in the house of A-1. There was no explanation whatsoever from A-1 in this regard. When the deceased was last seen alive in the company of A-1 and when she happened to be found dead in the house of A-1, it is for A-1 to explain as to what had transpired in between the date on which the deceased was found alive and the date on which her dead body was found in his house. In the absence of any plausible and acceptable explanation from the side of A-1, the same would lead to one of the additional circumstances which goes against him. The evidence of P.W.13-Dr.Jeyasingh, clearly shows that the deceased had died due to homicidal violence. Though the medical officer has found during autopsy that the body was in a decomposed state and could not be identified, it is to be noted that the relatives of the deceased, viz., P.Ws.2, 3, 4 and 7 have identified the dead body as that of Jagadambal and the clothes found on the dead body was also identified by the witnesses as that of Jagadambal's. The Medical Officer also had certified that the death of the deceased would have occurred 4 to 5 days prior to autopsy. Though the Postmortem Certificate [Ex.P.10] shows that the body was in a decomposed state, we have seen the photographs of the dead body of the deceased marked as Ex.P.16, which reveals that the dead body was not fully decomposed and beyond recognition and one could easily identify the dead body. Hence, the contention of the learned counsel for the appellant that the prosecution has not proved the identification of the dead body of the deceased, cannot be countenanced and the same has no relevance at all.

13 In the absence of any explanation forthcoming from the side of the appellant / A-1, we are of the considerable view that the only irresistible conclusion that could be drawn is that it was only the appellant/A-1 who had committed the homicidal violence inside his house only in order to do away the life of the deceased to avoid matrimonial dispute in his family.

14 Learned counsel for the appellant placed reliance upon the judgment of Bakshish Singh's case [cited supra] reported in AIR 1971 Supreme Court 2016, to show that the prosecution in the instant case has not proved the fact that in all human probability, it was the appellant/A-1 who had done the act of committing murder of the deceased Jagadambal. It is relevant to extract paragraph No.9 of the said judgment which reads thus:-

"9 The law relating to circumstantial evidence has been stated by this Court in

numerous decisions. It is needless to refer to them as the law on the point is well settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

15 Absolutely, there is no dispute with regard to the proposition laid down by the Hon'ble Apex Court in the above cited judgment and we are fully agreeable to the said proposition. Here in the instant case, the circumstances projected by the prosecution are satisfactorily proved and they are consistent with the hypothesis of the guilt of the accused and are conclusive in nature. Hence, we are of the view that the said judgment would serve no useful purpose to the appellant/A-1.

16 In the result, the criminal appeal stands DISMISSED. The conviction and sentence imposed on the appellant/A-1 for the offence u/s.302 IPC by the learned Sessions Judge, Mahalir Needhimandram, [Mahila Court], Coimbatore, in SC.No.175/2014 vide Judgment dated 27.04.2017, are hereby confirmed.

17 It is reported that the appellant / A-1 is in jail. He is directed to undergo the remaining period of sentence. The period of sentence already undergone by him, shall be given set-off u/s.428 Cr.P.C.

Sd/-
Assistant Registrar (CS VII)

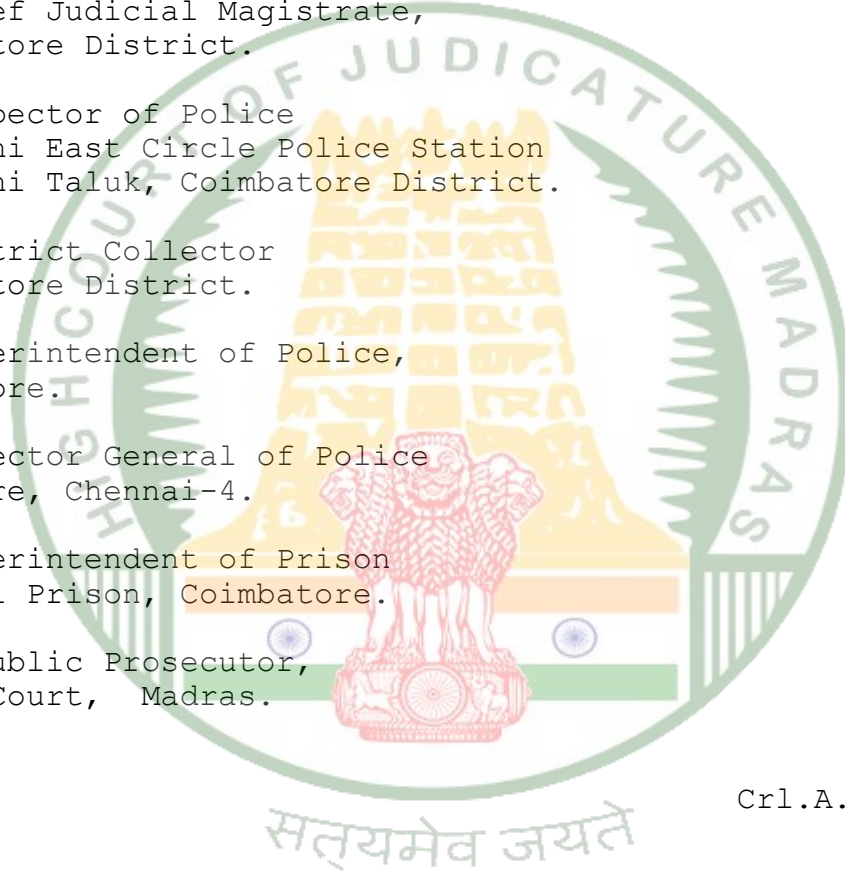
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Sub Assistant Registrar

AP

To

- 1.The Principal District and Sessions Judge
Coimbatore District.
- 2.The Sessions Judge
Mahalir Needhimndram, Mahila Court,
Coimbatore.
- 3.The Judicial Magistrate No.1,
Pollachi.
- 4.The Chief Judicial Magistrate,
Coimbatore District.
- 5.The Inspector of Police
Pollachi East Circle Police Station
Pollachi Taluk, Coimbatore District.
- 6.The District Collector
Coimbatore District.
- 7.The Superintendent of Police,
Coimbatore.
- 8.The Director General of Police
Mylapore, Chennai-4.
- 9.The Superintendent of Prison
Central Prison, Coimbatore.
10. The Public Prosecutor,
High Court, Madras.



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SJ(CO)
GN(09/04/2018)

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