

**BAIL SLIP**

Perumal, S/o.Karuppiyah, Male, aged 32 years-**A2** and

Pandiselvam, S/o.S/o.Karuppiyah, Male, aged 23 years-**A4**

-Were released on bail, by the order of this Court dated 20.03.2018 made in CrI.MP(MD)No.1007 of 2018 in CrI.A(MD)No.68/2018.

AND

M.Malliga, W/o. Murugan, Female, aged 43 years -**A9**

-Was released on bail, by the order of this Court dated 29.01.2018 made in CrI.MP(MD)No.11446 of 2017 in CrI.A(MD)No.505/2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
30-08-2018	06-09-2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.A.(MD)Nos.505 of 2017, 68 and 78 of 2018

and

CrI.M.P.(MD)No.1155 of 2018 in CrI.A.(MD)No.78 of 2018

CrI.A.(MD)No.505 of 2017:

M.Malliga

: Appellant/Accused No.9

Vs.

The State,
Rep. by Inspector of Police,
Thideernagar Police Station,
Madurai,
In Crime No.71 of 2014.

: Respondent/Complainant

Prayer : Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure to set aside the sentences and conviction imposed by the learned First Additional District and Sessions Judge, Madurai, in S.C.No.14 of 2015, dated 09.11.2017, by allowing these Criminal Appeals.

For Appellant

: Mr.A.Haja Mohideen,

For Respondent

: Mr.R.Anandharaj,

Additional Public Prosecutor

CrI.A.(MD)No.68 of 2018:

1.Perumal
<https://hcservices.ecourts.gov.in/hcservices/>
2.Pandiselvam

: Appellants/Accused Nos.2&4

Vs.



State,
Rep. by Inspector of Police,
Thideernagar (L&O) Police Station,
Madurai City,
(Crime No.71 of 2014).

: Respondent/Complainant

Prayer : Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure to set aside the judgment and conviction dated 09.11.2017, by the learned First Additional District and Sessions Judge, Madurai, in S.C.No.14 of 2015, and acquit the appellants.

For Appellants : Mr.S.Kanagarajan
For Respondent : Mr.R.Anandharaj,
Additional Public Prosecutor

Crl.A.(MD)No.78 of 2018:

C.Gopinath : Appellant/Accused No.1
Vs.

State Represented by,
The Inspector of Police,
Thideernagar Police Station,
Madurai District,
Crime No.71 of 2014.

: Respondent/Complainant

Prayer : Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure to set aside the judgment and conviction passed by the learned First Additional District and Sessions Judge, Madurai, in S.C.No.14 of 2015, dated 09.11.2017 and acquit the appellant herein.

For Appellant : Mr.T.Senthil Kumar,
For Mr.T.J.Ebenezer Charles
For Respondent : Mr.R.Anandharaj,
Additional Public Prosecutor

C O M M O N J U D G M E N T

These appeals have been filed by the appellants / Accused Nos.1,2,4 and 9 against the conviction and sentence, dated 09.11.2017, made in S.C.No.14 of 2015 by the learned First Additional Sessions and District Judge, Madurai. There were totally ten accused in this case and A-1 was charged for the offences punishable under Sections 147, 148 and 302 of the Indian Penal Code. Accused Nos.2 to 9 were charged for the offences punishable under Sections 147, 148 and 302 r/w 149 of the Indian Penal Code. After trial, Accused Nos.3,6,7 and 8 were acquitted from their respective charges. Accused Nos.2,4 and 9 were acquitted from the charge under Section 148 IPC. Accused No.5 died and, therefore, the charges stood abated. Accused No.10 is juvenile in conflict with law. However, the



trial Court has found A1 guilty under Sections 148 and 302 IPC and A-2, A-4 and A-9 guilty under Sections 147 and 302 r/w 149 IPC. They have been convicted and sentenced as follows:

Accused	Section of Law	Sentence of imprisonment	Fine amount
No.1	302 IPC	To undergo imprisonment for life.	Rs.10,000/- in default to undergo rigorous imprisonment for one year.
No.1	148 IPC	To undergo rigorous imprisonment for one year	Rs.1,000/- in default to undergo rigorous imprisonment for two months
Nos.2, 4 and 9	302 r/w 149 IPC	To undergo imprisonment for life each.	Rs.10,000/- in default to undergo rigorous imprisonment for one year each.
Nos.2, 4 and 9	147 IPC	To undergo rigorous imprisonment for one year each	Rs.1,000/- in default to undergo rigorous imprisonment for two months each

Since the Accused No.1 is convicted under Section 148 IPC, no separate conviction is recorded for the offence under Section 147 IPC. The sentences were directed to run concurrently.

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

(i) The deceased one Balamurugan @ Palpandi was a member of Arunthathiyar Viduthalai Association, Melavasal, Madurai. During the opening ceremony of their Branch Office on 20.02.2014 at 09.30 p.m., there arose a wordy quarrel between the deceased Balamurugan @ Palpandi and one Vignesh belonged to that area, which resulted in causing of injury to Vignesh by the deceased and his friends. Due to that, there was enmity between the accused and the deceased persons. Thereafter, all the accused along with the juvenile accused went to 'H' Block at about 11.45 p.m., formed themselves into an unlawful assembly having weapons in their hands near the house of one Pattu and chased the deceased and Kannan @ Kuruvi Kannan (P.W.7) and at that time, the deceased ran outside the complex bus stand and towards the first floor open terrace near the Khadicraft Shop. P.W.9-Selvam and P.W.16-Sundara Mahalingam, police personnel, who were on patrol duty, have also seen the accused chasing the deceased after diverting their attention of chain snatching and A-1 attacked the deceased with knife in the said commercial complex on the left side flank and right side abdomen. Accused No.9-Mallika pushed down P.W.16 and all the accused fled away from the place of occurrence. P.W.1-Vellaiammal, the wife of the deceased, after



hearing about the incident, went to the hospital at midnight. Thereafter, she went to the Police Station along with P.W.13-Vadivel and lodged a complaint-Ex.P.1 before P.W.16 at about 02.30 a.m., on 21.02.2014.

(ii) P.W.16, on receipt of complaint-Ex.P.1, registered a case in Crime No.71 of 2014 for the offences under Sections 147, 148 and 302 of the Indian Penal Code under Ex.P.11-First Information Report and sent the complaint and FIR to the Court concerned and copy to the Superior Officers.

(iii) P.W.20-Murugesan, the Investigating Officer, on receipt of a copy of Ex.P.11 on 21.02.2014 at 02.30 a.m., commenced the investigation, proceeded to the place of occurrence at about 03.30 a.m., prepared an Observation Mahazar (Ex.P.3), rough sketch (Ex.P.15) in the presence of P.W.6-Subramani and one Ramar and recovered bloodstained cement slab pieces (M.O.5) and sample cement slab pieces (M.O.6) under Ex.P.4-Athatchi and also examined the witnesses and recorded their statements on the same day. Thereafter, on 21.02.2014, in the morning hours, conducted inquest over the dead body and prepared an inquest report-Ex.P.16 and recovered Lungi (M.O.1), Full hand shirt (M.O.2), Green colour Jatti (M.O.3) and knife (M.O.4) and sent to the Court under Form 91 -Ex.P.17 and gave a requisition Ex.P.7 for conducting post-mortem.

(iv) P.W.15-the Medical Officer, on receipt of Ex.P.7-requisition, conducted autopsy over the dead body of the deceased and found the following injuries:

1. A transversely oblique stab injury measuring 5cm x 1cm x peritoneal cavity deep noted on outer aspect of left lower chest in mid axillary line 12cm below left axilla.

On dissection: The wound found directed downwards, inwards piercing the underlying muscles, vessels and nerves and enters into peritoneal cavity by piercing the peritoneum in 7th inter costal space measuring 4.5cm x 1cm x through and through and pierces the lower 3rd of spleen measuring 4cm x 1cm x 2.5cm and ends as a point.

2. A transversely oblique stab injury with weapon measuring 5cm x 1cm x peritoneal cavity deep noted on front of right side of upper abdomen 4cm away from midline and 15cm below right nipple.

On dissection:- On removal of weapon and on exploration the wound found directed downwards, inwards piercing the underlying muscles, vessels and nerves, piercing the peritoneum 4.5 cm x 1cm x through and through and piercing the measuring 4 cm x 1cm x through and through 6 cm below the middle of transverse colon."

and issued Ex.P.8-Post-Mortem Certificate and after obtaining viscera report (Ex.P.9), gave a final opinion under Ex.P.10 that the deceased would appear to have died of shock and hemorrhage due to external injuries 1 and 2 and their corresponding internal injuries,



12 - 16 hours prior to autopsy.

(v) P.W.20, in continuation of his investigation, arrested Accused Nos.1 to 8 in the presence of P.W.5-Santhosh and P.W.8-Syed Ibrahim and recorded confession from Accused No.1, on the basis of which, he has also arrested A-9 and A-10-Juvenile in conflict with law at 01.30 p.m., on 21.02.2014 and remanded the accused to judicial custody. After completing the investigation, he has handed over the case file to P.W.21-Kannan, who conducted investigation and finally, laid final report as against the accused under Sections 147, 148 and 302 IPC r/w 149 IPC.

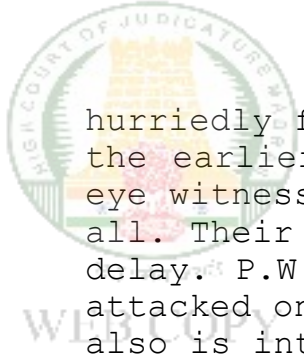
(vi) Based on the evidence and materials, the Trial Court found the accused No.1 guilty under Sections 148 and 302 IPC and Accused Nos.2,4 and 9 guilty under Sections 147 and 302 r/w 149 IPC. The accused denied the same. In order to prove the charges, on the side of the prosecution, P.W.1 to P.W.21 were examined and Exs.P.1 to P.19 and MOs.1 to 6 were marked.

(vii) When the accused were questioned under Section 313 Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied their complicity in the crime and pleaded innocence. However, they neither choose to examine any witness nor to mark any document.

(viii) The trial Court, after considering the oral and documentary evidence, has found the accused Nos.1,2,4 and 9 guilty and accordingly, convicted and sentenced the accused, as stated supra. Aggrieved over the said conviction and sentence, the appellants/accused Nos.1,2,4 and 9 have come up with these appeals.

3. The learned counsel appearing for the appellants in all the three appeals submitted that the genesis of the prosecution has been suppressed by the prosecution. The First Information Report is an afterthought and result of deliberation and embellishment came to be prepared after the Investigating Officer reached the spot and only when the deceased party went on agitation, the entire family members have been implicated as accused in the First Information Report. P.W.1, admittedly, is not an eye witness. Therefore, giving minute details about the overt acts of all the accused in the First Information Report creates serious doubt.

4. It is the further contention of the learned counsel that there is delay in lodging the First Information Report. The delay coupled with the delay in despatching the First Information Report to the Court concerned clearly probabilise the defence theory that the entire family members have been implicated due to political pressure and agitation by the political party. Admittedly, the dead body was received much after the protest by the deceased family. Only to overcome the protest, the First Information Report has been



hurriedly filed against the accused. They were no way connected with the earlier occurrence. The evidence of P.W.4 and P.W.7 said to be eye witnesses are highly improbable. They cannot be eye witnesses at all. Their statements have been reached the Court with an inordinate delay. P.W.7 was an accused in an earlier occurrence, in which, he attacked one Vignesh. Therefore, his evidence is highly doubtful and also is interested to see that the other side is convicted. Further, if really P.W.7 was an eye witness, he could not be an eye witness, for the simple reason that he was examined by the police as per his version only on 01.03.2014. The evidence of P.W.9 and P.W.16, the Special Sub-Inspectors of Police, who were on patrol duty, who allegedly seen the occurrence, is also highly doubtful. P.W.9 and P.W.16, claiming to be eye witnesses, have not reported the murder to the Police Station immediately nor lodged the First Information Report. On the other hand, P.W.16 is stated to have received the complaint Ex.P.1 from P.W.1 at 02.30 a.m., with minute details. This creates serious doubt about the entire prosecution version. One of the accused, namely Accused No.9 is aged about more than 43 years woman. The evidence of P.W.9 and P.W.16 that Accused No.9 pushed them down and fled away from the place of occurrence is also highly improbable and no identification parade was conducted. The occurrence allegedly took place during midnight. P.W.9 and P.W.16 have not seen the accused prior to the occurrence. Therefore, giving minute details about the accused for the first time in the Court also makes their evidence doubtful.

5. It is the further contention of the learned counsel that admittedly, the place of occurrence is a Market Commercial Complex, where CCTV camera is very much available. But, no footage obtained by the Investigating Officer. Police Station is also very near from the place of chasing and the occurrence, which is away from 300 feet. Despite the above fact, P.W.9 and P.W.16 remaining silent without filing First Information Report makes their evidence doubtful. Hence, it is submitted that the entire prosecution is highly doubtful and the accused are certainly entitled for acquittal.

6. The learned Additional Public Prosecution would contend that P.W.4 and P.W.7 in their evidence have clearly spoken about all the accused chasing the deceased due to previous occurrence. P.W.9 and P.W.16, who were on patrol duty, have also seen the accused chasing one person and Accused No.1 caused stab injury and submitted that merely because P.W.9 and P.W.16 have not lodged the formal First Information Report immediately, the same is not fatal to the prosecution. They have seen the accused and they have also identified the accused in Court. Thus, it is submitted that the Trial Court appreciated the evidence properly and rightly found the appellants guilty. Hence, he prayed for dismissal of the appeal.

7. In the light of the above submissions, now, it has to be analyzed whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?.



8. The law, in fact, was set in motion in this case on the basis of Ex.P.1 lodged at 02.30 a.m., by P.W.1. P.W.1 is the wife of the deceased. On the basis of the information about the death of her husband, she went to the Hospital and lodged a complaint Ex.P.1. In Ex.P.1, she has given the minute details about all the ten accused, though she was not an eye witness. The entire prosecution version is that the deceased and his friends on 20.02.2014 at 09.30 p.m., caused injury to one Vignesh. The accused, being the relatives and friends of the said Vignesh, chased the deceased and P.W.7 and caused the death of the deceased. P.W.4 deposed in his evidence that after previous incident, while they were standing along with the deceased, one Nagaraj, Kuruvikannan and Sabari Manikandan, Accused Nos.1,2,4 and 9 came and chased him. P.W.4 ran away through the bus stand and the deceased ran away through the bus stand complex and after 15 minutes, P.W.4 came to know that the deceased succumbed to injuries. Whereas, P.W.7, in his evidence, has stated that A-1, A-2, A-3, A-4, A-5, A-7 and A-9 chased them and, therefore, they were all immediately separated. He has deposed that he was examined by the police on 01.03.2014 while he was arrested in connection with the earlier occurrence. He has stated about the occurrence to the police.

9. It is to be noted that P.W.4's evidence when carefully seen, the Police Station is just opposite to the place where they chased. But, he has not even rushed to the police station immediately. His evidence also clearly makes it clear that at 11.30 p.m., itself the police came to the place of occurrence with ambulance. Similarly, P.W.7 claimed to have seen the occurrence. He has not whispered anything to the police immediately. As per his evidence, only when he was arrested on 01.03.2014, he was examined by the police. Their evidence is against normal conduct of human being. If really they were all part of the deceased gang and the deceased was succumbed to injuries immediately after the alleged chase, the normal conduct of P.W.4 and P.W.7 would have been to rush to the police station, which is just walkable distance and just opposite to the street, but, they have not done so. Further, the conduct in not even intimating P.W.1 at the relevant point of time also makes their evidence improbable and doubtful. It is further to be noted that P.W.4 and P.W.7 were already arrayed as accused in causing injury to one Vignesh. According to the prosecution, the accused are relatives and friends of the said Vignesh, but, there is no material available on record to prove the same.

10. P.W.9 and P.W.16 were on patrol duty at the relevant point of time. According to them, the accused chased one person and P.W.9 and P.W.16 also followed them and saw Accused No.1 causing injury on the deceased with M.O.4-Knife. Thereafter, Accused No.9 pushed them down and then, all the accused ran away from the place of occurrence. It is the evidence of P.W.9 and P.W.16 that the deceased was grappling for his life when they saw him. Therefore, immediately, they called the ambulance and sent the deceased to the



hospital through one Palani Kumar, Head Constable (P.W.11). However, on the way, he succumbed to injuries. Having witnessed the occurrence, P.W.9 and P.W.16, who belonged to the same Police Station, were not even bothered to register the First Information Report and they waited P.W.1 to come to Police Station at 02.30 a.m., and thereafter, they registered the formal First Information Report. The above conduct of P.W.9 and P.W.16 makes their evidence improbable.

11. Admittedly, P.W.9 and P.W.16, as per their version, were on patrol duty. Accused No.9 is the lady aged about more than 43 years. He could not even arrest the Accused No.9, despite, she being a woman and she was not having any weapon in her hand at the relevant point of time. The above evidence of P.W.9 and P.W.16 is against the normal conduct of human being and makes their evidence improbable and unbelievable.

12. The evidence of P.W.4 clearly shows that the police were there with the ambulance at 11.30 p.m. Therefore, the evidence of P.W.9 and P.W.16 witnessing the occurrence at 11.45 p.m., is also highly doubtful. It is further to be noted that P.W.9 and P.W.16 have not acquainted with the accused prior to the occurrence. Therefore, giving the meticulous particulars of the accused at the first time in Court also makes their evidence doubtful. In fact, possibility of knowing the names of the accused after their arrest and deposing before the Court cannot be ruled out. Though P.W.9, P.W.11 and P.W.16, in one voice, have stated that the deceased was grappling for life and was able to say his name and he died only on the way to the hospital, the prosecution has not examined the ambulance driver in this regard to show that in fact, the deceased was alive at the place of occurrence.

13. It is further to be noted that the occurrence place is a bus stand complex. Admittedly, as per the version of the Investigating Officer, there were CCTV cameras fixed and the lights were also burning. There was no reason as to why the prosecution has not even made an attempt to collect the CCTV footage from the place of occurrence, which has not been explained by the Investigating Officer also.

14. It is further to be noted that M.O.4 was removed from the body of the deceased as per the evidence of P.W.15. No attempts whatsoever were made by the prosecution even to find out whether there was any finger print available on the weapon.

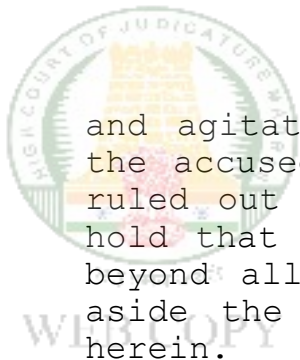
15. P.W.1's evidence shows that the deceased belonged to one set of political party and there was agitation to arrest the accused and they threatened the road roko. They agitated and also insisted that unless the complaint is received as it is, they will not receive the dead body. In the above process, they also conducted a road roko. The above evidence makes it clear that only after threat of agitation and road roko, Ex.P.1 came to be registered against all



the accused. These probabilities further fortified by the delay in filing the First Information Report. Though P.W.9 and P.W.16 are said to be eye witnesses, they have not filed any complaint nor registered the First Information Report themselves. The First Information Report came to be registered at 02.30 a.m. Even after registration, the same has been sent to the Court only at 01.50 p.m., almost 11 hours delay, which has not been explained by the prosecution. Further, statements of eye witnesses P.W.4 and P.W.7 were despatched to the Court with an inordinate delay. Though P.W.4 has stated that only when he was arrested in previous case, he was examined, as per the records, he was arrested on 21.02.2014 itself, but, whereas, statements have been sent to the Court with an inordinate delay i.e., on 28.05.2014. Similarly, P.W.7, in his evidence, has stated that he was examined only on 01.03.2014 by the police. But, as per records, his statement under Section 161(3) Cr.P.C., was also sent to the Court only on 28.05.2014. Whereas, some of the statements of witnesses have been sent to the Court on 28.02.2014. However, the statements of P.W.4 and P.W.7 have been sent to the Court with an inordinate delay, which itself clearly indicates that P.W.4 and P.W.7 were planted as eye witnesses. Admittedly, both are accused in connection with causing injury to one Vignesh. Therefore, their evidence create serious doubt about their witnessing the occurrence. They are more interested in securing conviction of the opposite party. Besides, their conduct in not divulging the occurrence to the police station, which is only 300 feet away from the place of occurrence, makes their evidence unbelievable.

16. Similarly, coming to the evidence of P.W.9 and P.W.16, we are not in a position to believe their evidence, in the light of the discrepancies noted by us. No finger print from the knife was recovered. CCTV footage was also not recovered and the police personnel said to be eye witnesses were remained silent without even commencing investigation till 02.00 a.m. The entire police team visited the spot at 11.30 p.m., itself. Therefore, the theory of the prosecution that the occurrence took place at 11.45 p.m., also clearly creates doubt about the prosecution. These are all the doubts which were further fortified by the delay in despatching the First Information Report and also 161(3) Cr.P.C. statements. Therefore, merely because homicidal violence has been established by the prosecution, in the absence of clinching evidence against the accused, particularly, witnesses are highly interested, the delay in the First Information Report has also not been explained properly, the identification of the accused by P.W.9 and P.W.16 also unreliable, we are of the view that the prosecution has not established the guilt of the accused beyond all reasonable doubt. Thus, the accused are certainly entitled to benefit of doubt.

17. Furthermore, the other person, who was said to have accompanied P.W.4 and P.W.7 namely one Nagaraj, has not been examined by the prosecution. The evidence of P.W.1 clearly indicates that the First Information Report itself registered after road roko



and agitation. Therefore, the possibility of false implication of the accused due to political pressure and agitation also cannot be ruled out in this case. Hence, we have no other option except to hold that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. Accordingly, we are inclined to set aside the judgment of the Trial Court and acquit the appellants herein.

18. In fine, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/Accused Nos.1,2,4 and 9, by Judgment dated 09.11.2017, made in S.C.No.14 of 2015, on the file of the learned First Additional Sessions and District Judge, Madurai, are set aside and the appellants/Accused Nos.1, 2, 4 and 9 are acquitted of all the charges levelled against them. Fine amount, if any, paid by them shall be refunded to them. Since the appellant in CrI.A.(MD)No.78 of 2018/Accused No.1 is confined in Central Prison, Madurai, in view of the judgment of acquittal, he is directed to be released forthwith, unless his custody is required in connection with any other case. Bail bond, if any, executed by the appellants in CrI.A.(MD)Nos.505 of 2017 and 68 of 2018/Accused Nos.9,2 and 4 and the sureties shall stand terminated. Consequently, the connected CrI.M.P.(MD)No.1155 of 2018 in CrI.A.(MD)No.78 of 2018 is closed.

Sd/-

Assistant Registrar(CS-T&P)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The First Additional District and Sessions Judge,
Madurai.

2.-do-thro' The Principal Sessions Judge, Madurai.

3.The Judicial Magistrate No.V,
Madurai.

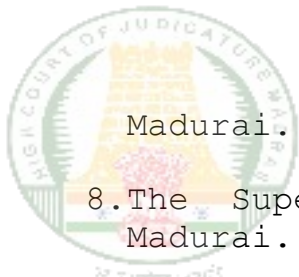
4.-do-thro' The Chief Judicial Magistrate, Madurai.

5.The Superintendent Of Prison, Central Prison,
Madurai.

6.The Inspector of Police,
Thideernagar (L&O) Police Station,
Madurai City,

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

7.The Commissioner of Police,



Madurai.

8.The Superintendent of Police,
Madurai.

9.The District Collector, Madurai.

10.The Director General Of Police,
Mylapore, Chennai-4.

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

Copy to:

The Section Officer,
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1CC TO MR.A.HAJA MOHIDEEN, ADVOCATE IN S.R.NO.82646.

+1CC TO MR.T.J.EBENEZER CHARLES ADVOCATE IN S.R.NO 82614.

SML

DS SKN SAR-1:27.09.2018: 11P/16C

Common Judgment made in
Crl.A.(MD)Nos.505 of 2017, 68 and 78 of 2018
06.09.2018