



Bail Slips

That the Appellant/Accused-2 namely Govindan, S/o.Thirumal Gounder in SC.No.243/07 on the file of the Special Court Principal Sessions Judge, Villupuram was directed to be released on bail as per order of this court dt.24/11/10 made in CrI.Mp.1/10 in CrI.A.672/10 on the file of this court.

That the Appellant/Accused-1, namely Kumar, S/o.Doss in SC.No.243/07 on the file of the Special Court Principal Sessions Judge, Villupuram was directed to be released on bail as per order of this court dt.31/01/2011 made in CrI.Mp.1/10 in CrI.A.779/10 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.Nos.672 and 779 of 2010

1.Govindan	Appellant/A2-CrI.A.672/2010
2.Kumar	Appellant/A1-CrI.A.779/2010

Vs

State by Inspector of Police
Periya Thachur Police Station
Tindivanam Taluk, Villupuram District
(Crime No.19/2006)

Respondent in both CrI.As/Complainant

Prayer:- These Criminal Appeals are filed, against the judgement of conviction and sentence, made in SC.No.243/2007, by the learned Special Court Principal Sessions Judge, Villupuram, dated 05.10.2010.

For Appellants : Mr.M.Soundar Vijay Arul Ram for
Mr.R.C.Paul Kanagaraj

For Respondent : Mr.K.Prabakar, APP



COMMON JUDGMENT

1. These Criminal Appeals are filed, against the judgement of conviction and sentence, dated 05.10.2010, made in SC.No.243/2007, by the learned Special Judge, Principal Sessions Court, Villupuram, (a) acquitting the Appellants/A2 and A1 for the offences under Section 506(2) of IPC read with 3(1)(x) of SC/ST (Prevention of Atrocities) Act, (b) convicting and sentencing the Appellant/A1 for the offence under Section 376 of IPC to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.25,000/- each, in default, to undergo two years Rigorous Imprisonment and (c) convicting and sentencing the Appellant/A2 for the offence under Sections 376 of IPC read with read with 3(2)(v) of SC/ST (Prevention of Atrocities) Act, to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.25,000/- in default, to undergo two years Rigorous Imprisonment.
2. The case of the Prosecution has arisen, on the basis of the complaint, Ex.P1, dated 14.09.2006, given by the victim/ Kanagarani/ Prosecutrix/PW.1, aged about 36 years, belongs to Hindu Adidravidar Community and residing at Perani Railway Colony, alleging that on 12.09.2006 at about 20.00 hours, she was returning to her village in a bus after her work and since she slept, she missed her stop and she got down at Periya Thatchur Bus Stop and was waiting to board another bus to go to her village, viz., Perani Railway Gate Colony and that at that time, the Appellant/A1, who came in a motorcycle, had asked the victim to come with him as he was also going to the same Village and that when the victim refused to go with him, the Appellant/A1 forcibly made her to sit behind him in the motorcycle and was riding the motorcycle towards their village. It is further alleged in the complaint, Ex.P1 that at that time, the Appellant/A2 was coming in a motorcycle, behind them and that the Appellant/A1 stopped the motorcycle near the land of Kavvukannan and forcibly made the victim to get down at that place and the Appellant/A2 also got down at that time and that both the Appellants/A1 and A2 took her to a field and forcibly committed the offence of rape on her, against her will and also criminally intimidated her not to disclose the same to anybody. The Respondent, after investigation, had filed the final report against the Appellant/A1 for the offence under Sections Sections 376 and 506(ii) of IPC and against the Appellant/A2 for the offence Sections 376, 506(ii) of IPC and Section 3(2)(5) of the SC/ST (Prevention of Atrocities) Act.
3. The case was taken on file in PRC.No.10/2007 on the file of the learned Judicial Magistrate No.2, Tindivanam and subsequently, the case was made over to the Court of Special Judge, Principal Sessions Court, Villupuram, in SC.No.243/2007 and necessary charges were framed. The accused had denied the



charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.9 and also marked Exs.P1 to P8. No oral or documentary evidence was let in on the side of the defence.

4. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case, due to political enmity on the instigation of their rivals.
5. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellants guilty and awarded punishments, as referred to above, which is challenged in these Criminal Appeals.
6. This court heard the learned counsel on either side.
7. The learned counsel for the Appellants has assailed the impugned judgement of conviction and sentence, on the following infirmities and grounds:-
- a) The evidence of PW.1, Prosecutrix does not inspire confidence at all, as there are glaring contradictions, exaggerations and embellishments between the First Information Report and the deposition of the PW.1, thereby showing that the complaint is highly imaginary.
 - b) Though the law is well settled that the sole uncorroborated testimony of the Prosecutrix can be accepted to base conviction, it should be beyond reproach and it should inspire confidence. It is a case where a well bodied woman, P.W.1, aged 33 years was stated to have been taken in a motorcycle against her will and thereafter, dragged to a place and subjected to forceful rape by two persons against her will. There was an unexplained delay in lodging the complaint, Ex.P1, given by PW.1, after a delay of three days, on 14.09.2006, though the incident was alleged to have occurred on 12.09.2006, which is fatal to the case of the Prosecution.
 - c) Non examination of persons to whom the Prosecutrix is stated to have informed about the incident immediately after the occurrence and non examination of the scribe who wrote the complaint and non examination of the Panchayatars to whom the Prosecutrix is stated to have made a complaint against the appellants create grave suspicion and doubt in the case of the Prosecution.
 - d) The evidence of the Prosecutrix that she was taken in a motorcycle against her will and that she was taken along a route where there were several houses and that she had raised a hue and cry and no body had come to save her creates a grave suspicion and doubt with regard to the alleged manner of occurrence and improbabilises the entire



case of the Prosecution.

e) The medical evidence belies the version of the Prosecutrix regarding forceful rape by the appellants.

f) Though PW.1 had stated that her inner dress materials were seized by the Respondent, the same were not produced and marked as material objects.

8. The learned counsel for the Appellants has ultimately contended that the impugned judgement of conviction and sentence is against law, weight of evidence and probabilities of the case and that the Prosecution has miserably failed to prove its case beyond all reasonable doubts and that the Trial Court is not correct and justified in convicting and sentencing the Appellants based on evidence that is unworthy of credence and thereby, the Appellants are entitled for acquittal.

9. On the other hand, the learned Additional Public Prosecutor for the Respondent would contend that in a case of rape, the Trial Court can base conviction on the uncorroborated evidence of the Prosecutrix and that her evidence should not be rejected on the basis of minor contradictions and discrepancies and that the absence of injuries on the private parts of the victim or on the body of the victim will not by itself falsify the case of rape. He would further submit that the opinion of the Doctor that there was no evidence of sexual intercourse or rape is not sufficient to disbelieve the evidence of the victim and that the evidence of the Prosecutrix in a case of rape and molestation and other physical outrages should be considered on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. He would further submit that the Prosecution has proved the charges levelled against the accused through the oral testimony of PW.1, victim and hence, the impugned judgement of conviction and sentence does not warrant any interference by this Court.

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

11. The points to be decided are as to (i) whether the evidence of the Prosecutrix, PW.1 inspires confidence to base conviction and the other evidence as well, (ii) whether the Prosecution has proved its case beyond all reasonable doubts, by cogent and convincing evidence and (iii) whether the Trial Court is right and justified in convicting the Appellants/ A1 and A2.

12. Though the Appellant/A1 was charge sheeted for the offences under Sections Sections 376 and 506(ii) of IPC and the Appellant/A2 was charge sheeted for the offence Sections 376, 506(ii) of IPC and Section 3(2)(5) of the SC/ST [Prevention of Atrocities] Act, the Appellants/A1 and A2 were found guilty for the offence under Section 376 of IPC, while they were acquitted for the other offences.



- 13.As per the evidence of the Prosecution, both the victim/ Kanagarani/ Prosecutrix/PW.1 and the Appellant/A1 belonged to Hindu Adidraavidar Community and residing at the same area, viz. residing at Perani Railway Colony. The Appellant/A2 belonged to Hindu Vanniyar Community is residing at Sithoni, Tindivanam Taluk. The husband of the victim passed away four years back and that she has got two children, a boy and a girl.
- 14.A perusal of the entire records shows that the case of the Prosecution mainly rests on the testimony of the Prosecutrix, PW.1.
- 15.Though the sole testimony of the victim can be taken into consideration to base conviction, the evidence of the Prosecution should be cogent, convincing and beyond reproach.
- 16.As per the evidence of PW.1, on the date of occurrence, the victim was working in a Hotel and she boarded Town Bus No.31 to go back to her village and since she slept during the journey, she had missed her bus stop and she was dropped in the next bus stop, namely, Peria Thachur Mandaveli bus stop and she was waiting for another bus to go back to her village. At that time, PW.2, Vasudevan was also sitting in the bus stop. The Appellant/A1, who had come there, in a motorcycle, stopped the bike and asked her to come along with him and she had refused to go along with him. PW.2 had told the Appellant/A1 that she was standing alone and he had asked him to drop the victim in her house. Thereafter, since she has refused to go along with him, A1 had forcibly made her to sit in the pillion of the motorcycle and taken her to the place near Kavvukannan's land and stopped the motorcycle and when she had asked why he had stopped there, A1 had told her that he was fond of her and thereafter, he removed her clothes and stuffed her mouth with clothes forcibly and committed rape on her and thereafter, A2 came there and committed rape forcibly on her, due to which she became unconscious and was lying there and the accused fled away from the place of occurrence. Afternoon, she got up and she came back to her house and informed about it to PW.2.
- 17.Further evidence of PW.1 is that A1 had threatened her not to give any complaint against him and PW.2 is her cousin and therefore, PW.2 informed it to another person in the Village and a complaint was written by that person and it was given to Vikravandi Police Station.
- 18.PW.2 had deposed that he is a Taxi Driver and he knows PW.1 and the accused and that three years prior to the date of giving evidence, at around 8.30 p.m while he was sitting Peria Thachur Mandaveli Bus Stop, the Appellant/A1 came in a motorcycle and at that time, PW.1 was standing alone at the bus stop to get a bus and that he had informed that PW.1 was standing alone and asked him to take her to the Village and he had left the place. In his cross examination, he had stated that he was not aware whether the accused had taken PW.1 along with him.



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- 19.PW.3 is the first cousin of PW.1 and she had deposed that since PW.1's husband died, she used to go to her house often to see her and three years ago, one time when she had gone to PW.1's house, she had seen PW.1 in a depressed mood and when she had questioned her, she had informed her that in the evening, after completing her work in the Ananda Hotel, when she was returning in the bus, she missed the bus stop and she was waiting at Periathachur Mandaveli Bus Stand and that A1 had taken her in a motorcycle and that thereafter, A1 and A2 had repeatedly raped her and that fearing the accused, she did not inform it to anybody for two days. She had further deposed that PW.1 had told her that A1 had offered to give her Rs.500/- or Rs.1000/-, asking her not to inform to anybody and thereafter, PW.1 had gone and given the complaint to the Police Station.
- 20.PW.4 is the Civil Surgeon, in the Government Hospital, Villupuram and he had deposed that on 15.9.2006 at around 9.45 p.m., when he was in duty, the victim PW.1 was produced along with the medical memo by the Respondent police and that when she had examined her, she was conscious and she had informed that she was raped by two persons and she had issued Ex.P2 Accident Register, wherein she had mentioned that "no external injuries any where in the body, including vulva and vagina". On local examination, she had opined that "vulva and vagina well developed, no injuries, vagina-hymen absent". Further, she had opined that "vaginal smear and swab taken and sent for presence of spermatozoa and there was no evidence of either motile or non-motile sperms are seen". In her cross examination, she had stated that when she had examined her, there was no internal or external injury and that there was no indication that she had intercourse recently.
- 21.PW.5 is the Doctor, who examined the accused to prove that the accused are potent. In his cross examination, he had deposed that he cannot conclusively say that the accused had intercourse recently.
- 22.PW.6 is the witness and he had deposed about the community of the victim as well as the accused. He had deposed that the victim and A1 belong to Adidravidar Community and A2 belongs to Vanniar Community. The report regarding accused community was marked as Ex.P5.
- 23.PW.7 is the witness for preparation of observation mahazar Ex.P6. He had deposed that he was not aware of what was written in the observation mahazar and that he had signed without knowing the contents.
- 24.PW.8 is the Sub Inspector of Police, who had received the complaint and registered the First Information Report. He had deposed that while he was working at the Police Station, the victim, PW.1 had appeared before him and given the complaint, based on which, he had registered a case in Cr.No.194 of 2006 for the offences under Sections 506(i), 376 of IPC and Section



3(2)(5) of the SC/ST Act and the First Information Report was marked as Ex.P7. He had deposed that there were several houses between Mandaveli Bus Stop and the place of occurrence and that the victim, PW.1 had not handed over the clothes to him.

25. PW.9, Deputy Superintendent of Police had, after receipt of the case papers, went to the place of occurrence on 15.9.2006 at 6.00 a.m. and prepared the observation mahazar, in the scene of occurrence, in the presence of the witnesses and the said observation mahazar was marked as Ex.P8 and thereafter, he recorded the statements of PW.1 and the other witnesses and that on 15.9.2006, he arrested the accused and produced them before the Medical Office, to prove their potency and thereafter, sent the accused for judicial custody and on the same day, he had subjected the victim to medical examination and on 19.9.2006 he had given a requisition to the Tahsildar, Tindivanam, to issue the communicate certificates in respect of the victim and the accused and on 10.10.2006 obtained the community certificates and thereafter, he had gone to Tindivanam Government Hospital and obtained the statement of Dr. Ravichandran and after obtaining legal opinion, filed the final report against the accused for the offence under Sections 376, 506(ii) of IPC and Section 3(2)(v) of the SC/ST Act.

26. In a case of rape, though it is sufficient and enough to believe the statement and the evidence of the solitary witness, the Prosecutrix, in order to base conviction for the offence of rape, the evidence of the Prosecutrix should inspire confidence, for which a careful scrutiny of the evidence has to be done. In this case, the Prosecutrix/victim has been examined as PW.1.

27. The first and foremost infirmity pointed out by the learned counsel for the Appellant is that it is a case of false implication due to political animosity and that there was a delay in preferring the complaint, Ex.P1, by the Prosecutrix, PW.1. It is seen from the materials on record that there was a delay of two days in lodging the complaint, Ex.P1, by the Prosecutrix, PW.1, inasmuch as though the occurrence took place on 12.09.2006, the complaint, Ex.P1 was made by PW.1, to the Respondent only on 14.09.2006. Thus, there was an inordinate delay of three days, in preferring the complaint, Ex.P1. The First Information Report had reached the Court on the next day at 3.45 p.m. For such a delay in preferring the complaint, Ex.P1 and the First Information Report reaching the Court, there has been no valid and satisfactory explanation, forthcoming from the Prosecution, thereby making the case of the Prosecution suspicious.

28. Further, as per the First Information Report, PW.1 had stated that while she was standing at the bus stop to go back to her Village, A1 had asked her to come with him in the motorcycle and she had refused to go along with him, stating that she will go in a bus. It is the further case of the Prosecutrix that



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the Appellant/A1 had forcibly pulled her hand and made her to sit in the pillion of the motorcycle and took her towards her Village and at that time, A2 had followed them in a motorcycle and A1 had stopped the motorcycle near the land of Kavvukannan and pushed her and at the same time, A2 had also got down from the motorcycle and that both of them had taken her to a land on the south side of the road and threatened her, pushed her, laid her down and when she had raised her alarm, the Appellant/A1 had stuffed her mouth with clothes and raped her and thereafter, A2 had raped her and later, they had threatened her saying that they had also offered to give her Rs.500/- or Rs.1000/- and she should not reveal it to anybody. The victim had further stated that she had come back home and informed after two days to PW.3, when PW.3 had come to her house and thereafter, she had given the complaint. Whereas, in her deposition in the Court, PW.1 had deposed that PW.2, who is her first cousin knows A1 and that PW.2 had informed A1 to take her and drop her in the Village and that while he was taking her in the bike, took her to a place off the road and informed her that he was fond of her and thereafter, stuffed clothes in her mouth and raped her and thereafter, A2 raped her. In her cross examination, she had stated that the distance between the bus stop and her Village is about 1 to 1.5 kms and that there were several houses enroute and when A1 forcibly taken her in the motorcycle, she was raising hue and cry throughout. She had also deposed that she had injuries all over the body and her blouse was torn. Further, she had deposed that the Police had not received her blouse, whereas they received her petticoat and that when she had gone back to her home, her son and daughter and another Aunt were present at home and that she had informed about the incident to her Aunt, immediately and thereafter, she had informed about the incident to one Devadoss who is a elderly person in the Village and that the elders in the Village told her that they will summon the accused and enquire him, whereas they did not enquire the accused and thereby, she had given the complaint to the Police Station after two days. She had further deposed that one Dakshinamoorthy wrote the complaint and thereafter, since the Villagers were against her, she had given the complaint and at that time, she knew that PW.2, Vasu was also had seen her along with A1 and thereby, included his name.

29. Now coming to the evidence of PW.4, Doctor, who had examined PW.1, she had opined that no external or internal injuries was found on the victim. She had also not found any motile or non motile sperms during the examination of her private parts and she had deposed that there was no identification of recent intercourse.

30. As per the evidence of PW.1, she was forcibly taken in a motorcycle and on the way, there were several houses and that she had been raising hue and cry throughout the way. She had



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further stated that the accused by threat forcibly committed rape on her repeatedly in a open place and she became unconscious and that the accused left her there and went away from the scene of occurrence and later she woke up and walked to her house. She had stated that her blouse was torn in the incident and that she had handed over her petticoat to the Police and not handed over her blouse.

31. As per the evidence of PW.1, she had informed about the incident to her aunt, who was present at the house and that she had also informed the elders in the Village and that later, she had narrated the incident to one Dakshinamoorthy and that she had given the complaint. Strangely, in this case, neither the Aunt, to whom PW.1 was said to have disclosed about the incident nor the elders in the Village nor the said Dakshinamoorthy, the scribe, who wrote the complaint, was examined. Though PW.1 had stated that there were several houses enroute, none of the residents of the houses have been examined by the Respondent with regard to the said incident having been happened.
32. Non examination of the scribe, who wrote the complaint and non examination of the elders in the Village, who were stated to have conducted a Panchayat in respect of alleged incident, create a doubt in the case of the Prosecution. Non-examination of the persons in the Village, before whom the accused was said to have taken forcibly the victim in a bike and then she was raising a hue and cry throughout, also create a doubt in the case of the Prosecution.
33. In this case, the independent witness examined to corroborate the evidence of PW.1 is none other the first cousin of PW.1. Though the finding of guilty in a case of rape can be based on uncorroborated evidence of the Prosecutrix and the absence of injuries on the private parts of the victim will not by itself falsify the case of rape, the Court should be cautious against false implication. Further, the evidence of the Prosecutrix regarding subjecting her to forceful rape repeatedly is not supported by medical evidence.
34. In 2014 10 SCC 254 (Munna Vs. State of MP), it was held in paragraph 11, thus:-

"11. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecutrix in view of the statutory presumption under Section 114-A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 IPC has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving



benefit of doubt to the accused."

35. In *Sadashiv Ramrao Hadbe Vs. State of Maharashtra* (2006 10 SCC 92) the Honourable Supreme Court, while reiterating that in a rape case, the accused could be convicted on the sole testimony of the prosecutrix if it is capable of inspiring the confidence in the mind of the court, put a word of caution that the court should be extremely careful while accepting the testimony when the entire case is improbable and unlikely to have happened. In paragraph 9, it was held thus:-

"9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

"10. In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique."

36. In *Narayan Vs. State of Rajasthan* (2007 6 SCC 465), it was held by the Honourable Supreme Court that the evidence of the prosecutrix was full of contradictions. In the backdrop of the allegations made in the FIR that the accused committed rape with the prosecutrix thrice, the Honourable Supreme Court had held that absence of injuries either on her body or private parts ruled out the prosecution case of forcible sexual intercourse.

37. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the prosecutrix appears to be worthy of credence. In this regard, it is also relevant to note the following observations of the Honourable Supreme Court in 2008 15 SCC 133 (*Raju Vs. State of MP*):-

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be



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believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

38. As stated above, this Court finds that there are inherent infirmities in the evidence of PW.1 and the circumstances surrounding it. It is artificial and unimaginable that an able-bodied woman was forcibly taken in a motorcycle through a road along a Village consisting of several houses and thereafter, being taken to a place under threat and repeatedly being raped by the accused against her will, thereby improbabilising the case of the Prosecution.

39. Further, the medical evidence, the attendant facts and circumstances of the case also belies the allegation of rape. The version of the Prosecutrix is improbable and it is difficult to accept the same on its face value, which completely lacks corroboration on material particulars, regarding the incident. Having carefully scrutinized the evidence on record, this Court is of the opinion that the Prosecution has not proved its case beyond all reasonable doubts and consequently, the appellants are entitled to the benefit of doubt and thereby entitled to acquittal from the charges alleged against them.



40. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellants are acquitted of the charges levelled against them. The bail bond, if any executed by the Appellants, shall stand cancelled and the fine amount, if any paid by the Appellants, shall be refunded to them.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The District learned Special Court Principal Sessions Judge,
Villupuram
 - 2.The Inspector of Police, Periya Thachur Police Station,
Tindivanam Taluk, Villupuram
 - 3.The Superintendent,
Central Prision, Cuddalore.
 - 4.The Public Prosecutor, High Court, Madras
- +1cc to Mr.R.C.Paul Kanagaraj, Advocate sr.53311

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