



**BAIL SLIP**

1) Lakshmi, W/o. Saivarasu, Female, Aged about 75 years and  
2) Arumugam, S/o. Saivarasu, Male, Aged about 37 Years were released  
on bail vide court order dated 30.12.2009 and 06.01.2010 made in MP  
(MD).1 of 2009 in CRL A(MD).436 of 2009 and MP(MD).1 of 2009 in CRL  
A(MD).437 of 2009 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2019

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl.A(MD)Nos.436 and 437 of 2009

1.Lakshmi ... Appellant in Crl.A.(MD).No.436 of 2009

2.Arumugam ... Appellant in Crl.A.(MD).No.437 of 2009

Vs.

The State represented by  
The Inspector of Police,  
Udayalipatti Police Station,  
Kulathur Taluk,  
Pudukkottai District. ... Respondent in both Crl.As.

**COMMON PRAYER:** Criminal Appeals filed under Section 374 of Cr.P.C.,  
to call for the records from the lower Court and set aside the  
judgment of the Lower Court passed by the Mahila Court and Sessions  
Court, Pudukkottai in S.C.No.149 of 2008 dated 21.12.2009, by  
allowing these appeals.

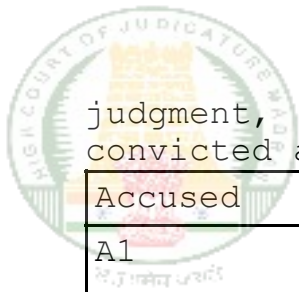
For Appellants : Mr.K.Baalasundharam

For Respondent : Mrs.S.Bharathi  
Government Advocate (Crl.side)

**COMMON JUDGMENT**

These appeals are arising out of the conviction and sentence  
imposed by the Mahila and Sessions Court, Pudukkottai in S.C.No.149  
of 2008, dated 21.12.2009. The accused No.1 has preferred the  
Criminal Appeal No.437 of 2009 and the accused No.2 has preferred  
the Criminal Appeal No.436 of 2009. Since both appeals are arising  
out of a same judgment, the appeals are taken up together and are  
disposed of by way of this common judgment.

2.The appellants were charged by the Trial Court for the  
offences punishable under Sections 498(A) and 304(B) of IPC and by  
<https://hcservices.ecourts.gov.in/hcservices/>



judgment, dated 21.12.2009, the trial Court found them guilty, convicted and sentenced them as follows:-

| Accused          | Penal Provisions | Punishment                                                                                                                    |
|------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------|
| A1<br>அ.ஜெயலலிதா | 304(B) IPC       | To undergo seven years rigorous imprisonment with fine of Rs.2,000/-, in default to undergo three months simple imprisonment. |
|                  | 498(A) IPC       | To undergo one year rigorous imprisonment with fine of Rs.1,000/-, in default to undergo three months simple imprisonment.    |

|    |            |                                                                                                                              |
|----|------------|------------------------------------------------------------------------------------------------------------------------------|
| A2 | 498(A) IPC | To undergo six months rigorous imprisonment with fine of Rs.1,000/-, in default to undergo three months simple imprisonment. |
|----|------------|------------------------------------------------------------------------------------------------------------------------------|

3.The brief fact of the prosecution case, in a nutshell, is as follows:

The deceased, namely, Sakunthalai @ Savitha was married to the first accused, namely, Arumugam, on 17.06.2005 at Pudukkottai and the marriage was an arranged one. P.W.1 and P.W.4 are the father and mother of the bride, namely, Savitha (deceased). The first accused was working as a Constable in the Armed Reserve Division and he is native of Killanur Village in Pudukkottai District and his mother/ A2 was residing there. After the marriage, A1 and the deceased lived together at Pudukkottai as well as at Killanur, the native place of the accused. P.W.6 is the sister of the deceased and she was married to P.W.5 and they were also living at Killanur village, near the accused house.

4.On 19.07.2006 at about 8.00 a.m., there was some dispute between the accused and the deceased, on account of which the deceased consumed poison, went to her sister's [P.W.6's] house and informed her that her mother-in-law has beaten her and also scolded to die and therefore, she consumed poison. The deceased was immediately taken to a private hospital, namely, Team Speciality Hospital at Sathiyamoorthy Road, Opposite to New Bus Stand, Pudukkottai and was admitted in the Hospital on 19.07.2006 at about 10.00 a.m. P.W.2 is the Doctor, who attended the deceased in the hospital and according to him, the deceased was brought to the hospital in an unconscious stage by her husband / accused No.1 and she was admitted in an emergency care and was kept under ventilator support.



5. On 21.07.2006, A1 decided to take his wife to the Thanjavur Government Medical College Hospital and therefore, the deceased was discharged from the Team Hospital on 21.07.2006 at 12.30 p.m and was admitted in the Thanjavur Medical College Government Hospital on the same day at about 01.50 p.m. But, the deceased died in the Medical College Hospital at about 03.30 p.m. Thereafter, the father of the deceased [P.W.1], lodged the complaint [Ex.P.1] before the Sub Inspector of Police, Udayalipatti Police Station [P.W.9] at about 10.00 p.m. P.W.9 recorded the same and registered a case in Crime No.69 of 2006 under Section 174 Cr.P.C., forwarded the same to the Revenue Divisional Officer, Thanjavur (P.W.10). On receipt of the complaint, the Revenue Divisional Officer, Thanjavur proceeded to the Government Medical College Hospital, Thanjavur and conducted an inquest in the presence of the Panchayatars on 22.07.2006 and after completing the inquest, he referred the body for postmortem. On 23.07.2006, the Revenue Divisional Officer concluded his report that due to some matrimonial dispute between the husband (A1) and wife (deceased), the deceased consumed poison.

6. P.W.8 is the Doctor at Thanjavur Medical College Hospital, who conducted the autopsy on 22.07.2006 at about 3.10 p.m. on the body of the deceased, and also issued the postmortem certificate [Ex.P.5] as follows;-

1. There were no evidence of any external or internal injuries noted anywhere in the body.

2. Conjunctival congestion noted in both eyes.

3. Reddish brown coloured frothy fluid found coming out from both nostrils and mouth.

Extremities .. Cyanosed.

Heart .. Normal in size. All the chambers contained dark coloured fluid blood.

Valves .. Normal. Coronary vessels-patent.  
Great vessels-Normal.

Lungs .. c/s both intensely congested and oedematous

Larynx and

Hyoid bone .. Intact.

Stomach .. Contained 200 ml of reddish brown coloured fluid with smell like that of kerosene. Mucosa-intensely congested.

Liver, spleen,

Kidneys .. c/s intensely congested.

Small intestine .. contained 10 ml of reddish brown coloured fluid with smell like that of kerosene. Mucosa -intensely congested.

Bladder .. empty

Uterus .. Enlarged in size. 28cm\*22cm\*10cm. c/s cavity contained a dead



*female foetus of length 26 cm.  
Ovaries-normal. Pelvis -intact.*

*Bones and  
Membranes  
Brain*

*.. intact  
.. surface vessels were congested c/s  
brain was found to be oedematours.*

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7.After verifying the Serological report [Ex.P.6], the Doctor [P.W.8] gave his final opinion as follows:-

*"clinical and post mortem findings are consistent with death due to some organo-phosphorous insecticide poisoning though the nature of which could not be detected by chemical analysis."*

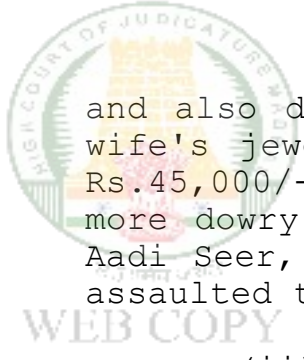
8.The Deputy Superintendent of Police, Thanjavur, [P.W.11] on receipt of the intimation in Crime No.69 of 2006, proceeded to the place of occurrence and prepared an Observation Mahazar [Ex.P.3] and Rough Sketch [Ex.P.12], on 22.07.2006 at 08.00 a.m in the presence of P.W.7 and another. He examined the witnesses P.Ws.1, 3, 4, 5 and 6 and recorded their statements. He was awaiting for the inquest report from the Revenue Divisional Officer for further investigation, but in the mean time, he was transferred. P.W.12 took the further investigation from 17.11.2006 and on receipt of the inquest report, he altered the offences from Section 174 Cr.P.C into Section 304(B) IPC and submitted an alteration report [Ex.P.13].

9.The Deputy superintendent of Police, Erode, [P.W.13] took in-charge of the investigation on 07.05.2007 and proceeded with further investigation in Udayalipatti Police Station Crime No.69 of 2006. He recorded further statement from P.W.1 and also recorded the statement from the accused, Doctor of Team Speciality Hospital [P.W.2], who admitted the deceased and the Revenue Divisional Officer and thereafter filed the final report as against the accused for the offences under Sections 498(A) and 304(B) IPC on 09.08.2007.

10.During the trial, 13 witnesses were examined on the side of the prosecution and 14 exhibits were marked. On the side of the defence, one Seethalakshmi, Deputy Superintendent of Police, who conducted the departmental proceedings, was examined as D.W.1 and 7 exhibits were marked.

11.The available evidences from the prosecution witness are as follows:

(i)P.W.1 is the father of the deceased and he speaks about the complaint lodged by him. According to P.W.1, the marriage between his daughter and the accused No.1 was solemnized 13 months prior to the occurrence and at the time of marriage, 13 sovereigns of gold and house-hold articles were given to the accused family. Being not satisfied with that, the accused have demanded more dowry



and also demanded for a two wheeler and therefore, he pledged his wife's jewels and elder daughters' jewels and mobilized a sum of Rs.45,000/- and gave the same to A1. Even thereafter, A1 demanded more dowry and on 18.07.2006, the accused demanded Rs.10,000/- for Aadi Seer, and when it was unable to meet out by them, the accused assaulted the deceased and also forced to commit suicide.

(ii)P.W.2 is the Doctor of Team Speciality Hospital, who admitted the deceased and also provided her treatment, till her discharge from the Hospital to the Thanjavur Government Medical College Hospital.

(iii)P.W.3 is the maternal uncle of the deceased, but he turned hostile.

(iv)P.W.4 is the mother of the deceased and her evidence corroborates with that of her husband [P.W.1].

(v)P.W.5 is the sister's husband of the deceased and also co-brother of the accused No.1. He speaks about the demand of dowry and according to him, on 19.07.2006, the deceased came to their house, informed them that the accused assaulted her and that she had consumed poison.

(vi)P.W.6 is the sister of the deceased. Her evidence corroborates with that of her husband [P.W.5].

(vii)P.W.7 is the witness for Observation Mahazar.

(viii)P.W.8 is the Doctor, who conducted the postmortem and according to P.W.8, she found 10 ml. of liquor with the colour of reddish grey in the intestine of the deceased and it has the smell like Kerosene. The Doctor has also stated that there was a foetus of 26 c.m. length in the uterus and has opined that the deceased would have died by consuming insecticide.

(ix)P.W.9 is the Sub Inspector of Police, who registered the case in Crime No.69 of 2006 under Section 174 Cr.P.C on 21.07.2006.

(x)P.W.10 is the Revenue Divisional Officer, who conducted the inquest as well as the enquiry under Section 174 Cr.P.C.

(xi)P.W.11 is the Deputy Superintendent of Police, who conducted the preliminary enquiry.

(xii)P.W.12 is the Deputy Superintendent of Police, who altered the offence from Section 174 Cr.P.C., to Section 304(B) IPC based on the final opinion of the Doctor and submitted the alteration report [Ex.P.13].

(xiii)P.W.13 is the Deputy Superintendent of Police, who concluded the investigation and filed the final report.

12.Heard Mr.K.Baalasundharam, learned counsel appearing for the appellants in both the appeals and Mrs.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent/State.



13.The learned counsel appearing for the appellants raised the following points for the consideration of this Court :-

13.1.The deceased was admitted in the Team Speciality Hospital at Pudukkottai on 19.07.2006 and as per the evidence of P.W.2, intimation was given to the respondent police on 20.07.2006 and police also went to the Hospital and recorded a statement from P.W.1. But this statement of P.W.1, recorded at Team Speciality Hospital, has been suppressed. The prosecution case is that based on the complaint lodged by the father of the deceased [P.W.1] , on 21.07.2006 at about 10.00 pm, the case has been registered.

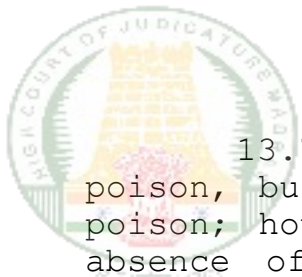
13.2.Even though the complaint was lodged after 62 hours from the occurrence, it was not a specific one and was only on suspicion.

13.3.P.W.10/Revenue Divisional Officer, Thanjavur is not the jurisdictional Officer, to conduct the enquiry as per Section 174 Cr.P.C., as the occurrence took place at Pudukkottai.

13.4.According to the learned counsel for the appellants, the Revenue Divisional Officer [P.W.10] has concluded his enquiry, without examining any independent witness and without any jurisdiction and therefore, no reliance can be given to the report of the Revenue Divisional Officer. Further he had pointed out that in the inquest conducted by the Revenue Divisional Officer, the Panchayatars have not made any specific case as against these accused. As per the inquest report [Ex.P.9], out of some dispute between the Accused No.1 and his wife/ deceased, the deceased consumed poison. There is no specific averment to the effect that there was any demand of dowry, on account of which, the deceased consumed poison.

13.5.He further pointed out that during the enquiry conducted by the Revenue Divisional Officer, the mother of the deceased [P.W.4] has implicated one Selvaraj, brother of A1, also as an accused. But, the investigation officer disbelieved her statement and did not array Selvaraj as an accused in the final report. While so, based on the statement of P.W.4, the trial Court has convicted the accused.

13.6.The learned counsel has also pointed out the contradictions between the evidence of P.Ws.1, 4, 5 and 6 and he also pointed out that even the maternal uncle of the deceased (P.W.3), who was also residing at Killanur village in front of the accused house, did not support the prosecution case and was treated as hostile witness by the prosecution.



13.7.He also pointed out that the deceased died by consuming poison, but the prosecution has failed to establish the nature of poison; how she got the same; and where she consumed it. In the absence of any of such material, it is not proper to fix the responsibility on the accused for the suicide committed by the deceased. He also pointed out that the container of the poison has also not been recovered by the investigation agency and he also pointed out the contradiction with regard to the place of occurrence. Therefore, the learned counsel prays for interference.

14.Per contra, the learned Government Advocate (Crl. Side) appearing for the State made her submissions as follows:

14.1.The deceased died within 13 months from the date of marriage, in a suspicious circumstances. P.Ws.1, 4, 5 and 6, in their evidence, have categorically deposed that the deceased was subjected to harassment for want of dowry and for want of a vehicle. Therefore, P.Ws.1 and 4 were forced to pledge their jewels to mobilize a sum of Rs.45,000/- for the vehicle. Even thereafter, the accused demanded more amount for Aadi Seer and also on the previous date of occurrence, the deceased was tortured by demanding more money and was also slapped by the Accused No.2.

14.2.Relying upon Section 113(B) of the Indian Evidence Act, the learned Government Advocate (Crl. Side) submitted that the demand of dowry has been established through the evidence of P.Ws.1, 4, 5 and 6 and since the deceased was died on a suspicious circumstances, the presumption is against the accused. There is no evidence available for the accused to rebut the presumption and therefore, the conviction has to be sustained.

14.3.The learned Government Advocate (Crl. Side) has also relied upon the following decisions in support of her case:-

(i)Mr.Dhanapal Vs.State reported in 2017-2.L.W.(Crl.) 623

(ii)Mr.Rajinder Singh Vs.State of Punjab unreported judgment in Crl.A.No.2321 of 2009.

(iii)Mr.Jagjit Singh Vs. State of Punjab reported in (2018) 10 supreme Court Cases 593.

(iv)Kans Raj Vs. State of Punjab and others reported in CDJ 2000 SC 277.

(v)S.Murtaza Fazal Ali Vs. State unreported in Crl.A.No.286 of 1977.

15.This Court has paid its anxious consideration to the arguments advanced on either side and also perused the available records.



16.The deceased was married to the accused No.1 on 17.06.2005 and she died by consuming poison within 13 months from the date of marriage. On 19.07.2006, the deceased consumed poison around 08.00 a.m and was taken to a private hospital namely Team Speciality Hospital at Pudukkottai and admitted on the same day at 10.00 a.m. According to the Doctor [P.W.2], she was in an unconscious stage at the time of admission and she was kept under the ventilator support. P.W.2 has deposed that he has explained the medical condition of the deceased to her relatives and they, after discussion among themselves, have decided to take the deceased for further treatment to Thanjavur Government Medical College Hospital, since one Dr.Anantha Ramakrishnan, who is working there, is known to them. As per the evidence of the Doctor [P.W.2], the decision with regard to shifting the deceased from Team Hospital to Thanjavur Government Medical College Hospital was taken jointly by the accused No.1 as well as P.Ws.1, 5 and others. The Doctor has also specifically admitted that the sister of the deceased [P.W.6], was present, when the deceased was shifted to Thanjavur Government Medical College Hospital. P.W.2 would further state that the deceased was admitted in the Government Hospital by her husband/accused No.1. On behalf of the accused, the receipts issued by the Team Speciality Hospital were marked as Exs.D.1 and 2 and according to Ex.D.1 and Ex.D2, it is the accused No.1 who has taken care of the expenses for the treatment of the deceased. But, in contra to the same, P.Ws.1, 5 and 6 would state that against their wish, the accused No.1 has shifted the deceased forcibly to the Government Hospital.

17.The Doctor [P.W.2] in his evidence has specifically stated that since it is a medico legal case, he has duly intimated the respondent police on 20.07.2006 and on the same day at about 04.30 p.m, the Sub Inspector of Police from Udayalipatti Police Station, has examined him in this regard. P.W.9, the Sub Inspector of Police, who registered the complaint [Ex.P..1] has also admitted the intimation from the Team Speciality hospital. The first accused was working as a Constable in Armed Reserve Division. Therefore, pursuant to the registration of a criminal case against him, the Department has initiated disciplinary proceedings against him and during the departmental enquiry, the Doctor [P.W.2] gave a statement that his intimation to the Police station was received by the Head Constable (HC.No.255) one Susai Raj on 20.07.2006 at about 11.15 a.m. and based on the medical intimation, Head constables one Parthasarathy and Neethipathi from the Udayalipatti Police Station came to the Hospital on 20.07.2006 at about 4.30 p.m. and received the MLC- intimation. He further stated that since the deceased was unconscious, they have examined P.W.1 and recorded his statement. Only on the next day, i.e., on 21.07.2006, the deceased was shifted from Team hospital to Thanjavur Government Medical College Hospital.



18.As per the available evidence, it appears that an intimation was given from Team Speciality Hospital to the Udayalipatti police station on 20.07.2006 and two constables from Udayalipatti police station have also visited the Team Speciality Hospital and recorded the statement from P.W.1. As rightly contended by the learned counsel for the appellants, the statement / the complaint recorded from P.W.1 on 20.07.2006 has been suppressed by the prosecution and the case proceeds, as based on the complaint lodged by P.W.1, on 21.07.2006, at about 10.00 p.m.

19. But, the learned Government Advocate (Crl. Side) contended that the complaint was received only on 21.07.2006 at about 10.00 p.m. There is no material to prove that a prior intimation was received by the Udayalipatti police station and therefore, there is no necessity for them to arrange for recording the dying declaration. She strongly relied upon the statement of the deceased's sister [P.W.6] that the deceased, prior to the death, has informed her about the harassment made by A2 at the house of the accused and it would fall under Section 32(1) of the Indian Evidence Act. It has to be treated as dying declaration and as per the evidence, the accused has subjected the deceased to harassment, on account of which, she committed suicide.

20.The statement alleged to be made by the deceased to her sister [P.W.6] on 19.07.2006, cannot be treated as a dying declaration, as this statement has been revealed by P.W.6 only when her statement was recorded on 22.07.2006. Moreover, that statement also reached the Court on 04.09.2007, almost after a year. P.W.6 was very much available in the Team Speciality Hospital from the day one and she has not revealed this statement of her sister either to his father/complainant or to any other person and she revealed the same only before the police and that too after the demise of her sister and therefore, no reliance can be given to the statement and it cannot be treated as that of a dying declaration under Section 32(1) of the Indian Evidence Act.

21.As rightly pointed out by the learned counsel for the appellants, the poison, which is the cause of death, was not identified by the investigation agency and the important aspect as to where she consumed the poison has not been established. The deceased was taken to the Hospital from the house of P.W.6 at Killanur Village. According to P.Ws.1, 5 and 6, the deceased came to Killanur Village and the accused has scolded the deceased and on account of the same, she consumed poison and thereafter, went to P.W.6 's house, informed her and vomited at the house of P.W.6. The prosecution case proceeds as if the deceased, after consuming poison in the house of the accused in Killanur, went to P.W.6's house. No doubt, the accused is native of Killanur Village and P.Ws.3, 5 and 6 are also residing there. But, the Deputy Superintendent of Police [P.W.12] in his evidence, would admit that at no point of time,



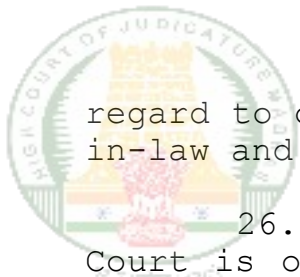
the deceased and the accused have lived together at Killanur village and since the accused No.1 was working as a Constable in the Armed Reserve Division at Pudukkottai, he was residing at Pudukkottai.

22. In view of the specific stand of the investigation officer that the deceased and the accused never lived together at Killanur village, it is hard to believe the deceased went to Killanoor Village for the purpose of consuming poison. Even assuming that the deceased went to Killanur Village, it is not known as to whether she consumed the poison in the accused house or in P.W.6's house. The place of occurrence has not been established by the prosecution beyond any reasonable doubt in this case. The poison bottle, from which she consumed poison, was not recovered from the house of the accused and no steps have been taken by the investigation agency to identify the poison bottle and from where she got the poison. The investigation agency has miserably failed in this case in identifying the poison consumed by the deceased and the place where she consumed.

23. The Revenue Divisional Officer as well as the investigation agency have concluded their enquiry by examining the relatives of the deceased alone. When it is the specific case of the investigation officer [P.W.12] that the deceased and the accused never lived together at Killanur Village, no steps were taken to examine any witness from Pudukkottai to establish that there was any demand of dowry. In the absence of any independence witness, particularly from the neighbours from Pudukkottai, this Court feels that it is not safe to rely upon the evidence of the interested witnesses alone to arrive at the conclusion that there was a demand of dowry. That apart, P.W.4, in her statement before the Revenue Divisional Officer, has also implicated one Selvaraj/brother of the accused that he also demanded dowry, but the same was, later, not considered by the Revenue Divisional officer as it is an exaggerated version.

24. The learned counsel appearing for the appellants has also pointed out the contradictions among the evidence of P.Ws.1, 4, 5 and 6. As per the evidence of P.W.1, the accused is said to have demanded money for at least eight times from the deceased, but the same was not stated by the P.W.4/mother and P.W.6/sister of the deceased.

25. Moreover, the conduct of P.Ws.1, 4, 5 and 6 in not reporting any of the incidents to the police, even after the deceased consuming poison, from 19.07.2006 to 21.07.2006, is doubtful. Admittedly, the accused No.1, was in the Hospital, taken care of his wife/deceased, paid the money and expenses in the hospital. Till such time, it appears, no complaint was lodged by P.W.1. Only after the demise of his daughter, P.W.1 lodged the complaint [Ex.P.1] on 21.07.2006 at 10.00 p.m. Even in the



regard to demand of dowry, but has raised only suspicion on his son-in-law and the accused No.2.

26.In view of the foregoing discussions and reasonings, this Court is of the view that the prosecution has not established it's case beyond any reasonable doubt and it is not safe to sustain the conviction imposed by the trial Court. The appellants/accused are entitled for the benefit of doubt.

27.Accordingly, the conviction and sentence imposed by the learned Mahila and Sessions Judge, Pudukkottai in S.C.No.149 of 2008 dated 21.12.2009, are set aside and the appellants/accused are acquitted from the charges levelled against them. The fine amount, if any, paid by them shall be refunded forthwith and the bail bond, if any, executed by the appellants, shall stand cancelled.

28.In fine, both the appeals are allowed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

vsg  
To

- 1.The Sessions Judge,  
Mahila Court  
and Sessions Court,  
Pudukkottai.
2. The Judicial Magistrate, Keeranur, Pudukkottai District.
3. The Inspector of Police,  
Udayalipatti Police Station,  
Kulathur Taluk,  
Pudukkottai District.
4. The Superintendent, Central Prison, Trichy.
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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Criminal Section,  
Madurai Bench of Madras High Court, Madurai.(2 copies)

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+1 CC to M/s.K.BAALSUNDHARAM, Advocate ( SR-85698[F] dated  
06/09/2019 )

Crl.A(MD)Nos.436 and 437 of 2009  
05.09.2019

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TR(09.12.2020) 12P 9C