



Bail Slip

Natarajan, Appellant/Sole Accused S/o.Palanivel, is released on Bail, vide Court order dated 09.04.2018 in Crl MP(MD).761 of 2018 in Crl A.52/2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.12.2019

Delivered on : 13.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.52 of 2018

Natarajan

... Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Thuvakudi Police Station,
Trichy District, Trichy.
In Crime No.310 of 2006

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the Judgment dated 14.11.2016 passed in S.C.No.210 of 2008 on the file of the learned III Additional District and Sessions Judge, Trichy and to acquit the appellant/sole accused of the charges.

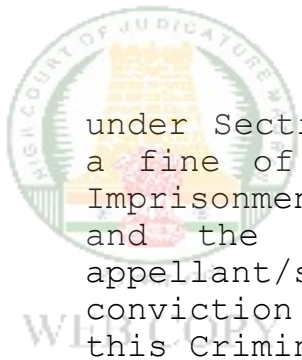
For Petitioner : Mr.E.Somasundaram

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant is the sole accused in S.C.No.210 of 2008 on the file of the III Additional District and Sessions Judge, Tiruchirappalli and he stood charged and tried for the commission of offences under Sections 302 and 201 I.P.C. The trial Court vide judgment dated 14.11.2016, has found him guilty for the commission of offences under Sections 302 and 201 I.P.C. and imposed Rigorous Imprisonment for life and a fine of Rs.3,000/- with default sentence of 3 months Rigorous Imprisonment for the commission of offence



under Section 302 I.P.C., and Rigorous Imprisonment for 7 years and a fine of Rs.1,000/- with default sentence of 3 months Rigorous Imprisonment for the commission of offence under Section 201 I.P.C. and the sentences were ordered to run concurrently. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that the appellant/accused is a mason and the deceased was working as a coolie under the accused. In view of the fact they have close intimacy, the deceased became pregnant and she demanded the accused to marry her. Since the accused was already married and blessed with two female children, afraid of exposure to the villagers to be made by the deceased. Hence, he took her to the place of occurrence, murdered her by using the cloth worn by her and thereafter buried her.

2.2. The prosecution further states that after 8 days when the family members started searching the whereabouts of the deceased, on 29.12.2006, the accused voluntarily approached P.W.1 - K.Periasamy, the Village Administrative Officer in his office and in the presence of P.W.2 - Velusamy, the Village Panchayat President and P.W.3 - A. Muniyandi, Assistant in the Village Panchayat at about 9.30 hours, gave Ex.P.1 - extra-judicial confession admitting that he only killed and buried the deceased and also keeping her ear studs and nose stud in his house. After recording the extra-judicial confession given by the accused, P.Ws.1 to 3 reported the matter to P.W.18 - Jeyachitra, Sub-Inspector of Police, Valavanthan Kottai, Thuvakudi Police Station and lodged a complaint under Ex.P.2, based on which, P.W.18 has registered a case in Crime No.310 of 2006 under Sections 302 and 201 I.P.C. on 29.12.2006 at about 11.30 hours. The printed F.I.R. was marked as Ex.P19.

2.3. P.W.18 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and copy of the same to P.W.19 - Subbian, Inspector of Police and higher officials. P.W.19 at about 11.45 a.m. on 29.12.2006, received the F.I.R. and when he examined the accused, the accused voluntarily came forward to give confession statement in the presence of P.Ws.2 and 3 and as per the admissible portion of the confession statement Ex.P.3, P.W.19 effected recovery of M.Os.1 to 3 and the same was received under cover of mahazar Ex.P.4. Thereafter, he proceeded to the scene of crime in the presence of same witnesses and has prepared Observation Mahazar and Rough Sketch marked as Exs.7 and 20 respectively. He sent requisition to the Tahsildar and to the Government Hospital for exhuming the body and to conduct postmortem.



At about 9.30 a.m. on 30.12.2006, P.W.19 recovered M.O.4 under the cover of mahazar EX.P.4. On the same day, he exhumed the body of the deceased in the presence of P.W.17 - Anand Subramanian, Tahsildar, at the place identified by the accused.

2.4. P.W.17 - Anand Subramanian, Tahsildar, conducted inquest on the body of the deceased and the inquest report is marked as Ex.P.17.

2.5. P.W.14 - Dr.A.Kathikeyan was the Police Surgeon and Professor of Forensic Medicine attached to K.A.P.V. Government Medical College Hospital, Trichy and he conducted postmortem in the same place on 30.12.2006 at 10.00 a.m. The post mortem report is marked as Ex.P.8. He opined that the deceased died of compression of neck. The Final Opinion is marked as Ex.P.10. The D.N.A. Report is marked as Ex.P.11.

2.6. P.W.19 arrested the accused and remanded him to judicial custody. He examined the witnesses and recorded their statements and sent the seized articles under form 95 to the Court of jurisdictional Magistrate and he was transferred on 25.01.2007 and hence he handed over the case diary to P.W.20.

2.7.P.W.20 - A.Kathiravan continued the investigation and examined the Witnesses and recorded their statements. After his transfer P.W.21 - Theivasikamani continued the investigation and he had filed the Charge Sheet on 16.07.2008 on the file of the Court of Judicial Magistrate No.VI, Tiruchirappalli, charging the appellant/accused for the aforesaid offences, who took it on file.

2.8. The Committal Court issued summons to the accused and on his appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Tiruchirappalli, which in turn made over the same to the III Additional District and Sessions Court, Tiruchirappalli, which took it on file in S.C.No.210 of 2008. The appellant/accused was issued with summons and on his appearance, charges under Sections 498-A, 302 and 201 IPC have been framed.

2.9.The prosecution, in order to sustain its case, examined PWs.1 to 26, marked Exs.P1 to P28 and also marked M.Os.1 to 8. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false. The appellant/ accused did not examine any witness or marked any document.

2.10.The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offences and sentenced him as



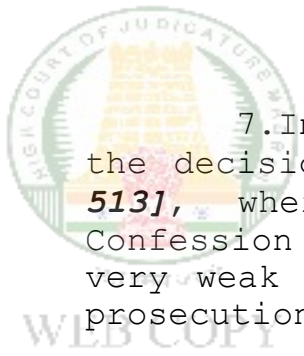
stated above, vide impugned judgment dated 14.11.2016 and challenging the same, the present Criminal Appeal is filed.

3. Mr.E.Somasundaram, learned counsel appearing for the appellant/ accused would submit that the entire case of prosecution has been based only on two things, one is confession given to P.W.1 - Village Administrative Officer and the second is the medical evidence.

4.The learned counsel for the appellant heavily pleaded before us that the learned Trial Court instead of disbelieving the evidence of P.Ws.1 to 3 wrongly believed their evidence. P.W.1 - K.Periyasamy, being the Village Administrative Officer of Valavanthankottai although deposed before the Trial Court that he has recorded Ex.P.1 - Extra-Judicial Confession on 29.12.2006 at about 9.30 a.m. from the accused/appellant Natarajan and produced him along with Extra-Judicial Confession to P.W.18 - Jeyachitra, Sub-Inspector of Police, incharge of Valavanthan Kottai, Thuvakudi Police Station, he clearly admitted that he did not record the confession statement from the appellant/accused properly. He has further clearly admitted that he failed to record the confession of accused in Form No.V. Therefore, the learned trial Court ought not to have believed the evidence of P.W.1.

5.The learned counsel appearing for the appellant further contended that P.W.2 - Mr.Veluchamy being the President of Village Panchayat at the relevant point of time deposed about the recording of Extra-Judicial Confession by P.W.1 and also spoke about the recovery of M.Os.1 to 4 from the house and garden of the accused. He further stated that more than 400-500 persons arrived at V.A.O.'s Office on the date of exhuming the body of the deceased, but none of them from these 400-500 people were examined as a witness and that makes the prosecution case highly doubtful. P.W.1 stated that the body of deceased was exhumed on 29.12.2006 and it was contradicted by P.W.2 by stating that it was not exhumed on 29.12.2006, but it was exhumed on 30.12.2006.

6.The extra-judicial confession by the appellant/accused to P.W.1 - Village Administrative Officer cannot be acted upon as it does not carry any evidentiary value. When there was no direct eyewitness for the alleged killing of the deceased Parvathy, the case of the prosecution rests solely on the circumstantial evidence. Neither motive projected by the prosecution was established nor the extra-judicial confession has been corroborated by other prosecution witnesses. P.W.6, the own brother of the deceased Parvathy himself has turned hostile, likewise P.Ws.7 and 8, also turned hostile. Their testimonies are highly artificial and improbable. Therefore, it cannot be treated as corroborated to place reliance on the confessional statement.



7. In support of his submission, the learned counsel relied on the decision of this Court in **Kannan v. State [(2018) 1 MLJ (Crl) 513]**, wherein the proposition holds that the Extra-Judicial Confession given to P.W.1 - Village Administrative Officer being a very weak piece of evidence having not been corroborated by other prosecution witnesses, cannot be safely trusted to convict any one.

8. He also submitted that all the witnesses are relative witnesses and interested witnesses. P.W.6 - Dhanaraj, the own brother of the deceased turned hostile. P.W.7 Mr. Sundaramoorthy, junior paternal uncle's son of the deceased and P.W.8 - Jayakumar, senior paternal uncle's son of the deceased also turned hostile. When the body of the deceased was said to have been exhumed on 30.12.2006, it was not identified by deceased's mother or brother or paternal uncle's sons. Though P.Ws.6 to 8 turned hostile, the learned trial Court wrongly accepted their evidence and convicted the innocent person.

9. When the appellant being a mason, aged about 25 years, a married man blessed with two female children, he never seen the deceased at any point of time, since there was no connection or whatsoever between them.

10. On the otherhand, it is the case of the prosecution that the deceased is having become four month pregnant due to physical contact with the accused and demanded the accused to marry her. It was further averred that the appellant took the deceased to the place of occurrence and using her cloth compressed her neck and caused her death and thereafter she was buried using M.O.3 - spade. However, there is no ligature mark on the neck portion of the deceased body. If the case of the prosecution that the appellant had killed the deceased, while she was 4 months pregnant lady is true, Ex.P.8 postmortem certificate would have disclosed the presence of the four month old fetus in the deceased body when the same was exhumed on 30.12.2006. Whereas, Ex.P.8 - Postmortem Certificate surprisingly shows that the body of female deceased Parvathi, aged about 25 was exhumed as decomposed body and the body was wearing light brown colour blouse, one red colour and one muddy colour in-skirt, violet colour panties and one red colour half-sari and with a safety pin. But the uterus was absent. This shows that the dead body exhumed never belonged to Parvathy.

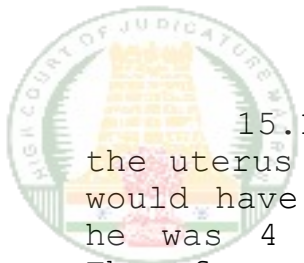
11. When the prosecution case is that the body of the deceased was exhumed 8 days after the date of death, as per the Rules for exhumation, under the written order of the District Magistrate, the body should be exhumed by the police in the presence of revenue officials and a medical officer. Therefore, the conviction and sentence imposed on the appellant/accused is without any evidence and hence, the same is liable to be set aside.



12. In sum and substance, it is the submission of the learned counsel appearing for the appellant/accused that in the light of the gaps and holes and very many infirmities, the case projected by the prosecution against the appellant/accused is not proved beyond any reasonable doubt and therefore, prays for setting aside the impugned judgment of conviction and sentence.

13. Mr. K. K. Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent submitted that when the appellant/accused was working as a mason, the deceased was working under him as a Coolie. Resultantly, they developed close intimacy and finally the appellant became pregnant. Later on when the deceased Parvathi insisted the accused to marry her, she was taken to the place of occurrence and using her own part of the saree (Thuppatta) compressed her neck, caused her death and buried her body. Since the deceased was not found anywhere for a period of 8 long days, there was a search by the family members of the deceased and finally when a complaint was lodged, the appellant on his own approached the Village Administrative Officer P.W.1 - K. Periasamy incharge of Vallavankottai gave his extra-judicial confession and the confession statement has been reduced into writing and marked as Ex.P.1 in the presence of P.Ws.2 and 3. Therefore, the extra-judicial confession given by the accused going to the office of the Village Administrative Officer - P.W.1 - Mr. K. Periasamy having been corroborated by P.Ws.2 and 3. P.W.23 - Lakshmiammal, mother of the deceased also rightly identified the deceased body as her daughter. For the reason that the postmortem certificate Ex.P.8 has shown the uterus was absent, the appellant cannot wriggle out from the charges levelled against him under Section 302 and 201 I.P.C.

14. Referring to the '**A Textbook of Medical Jurisprudence and Toxicology**' authored by **Jaising P Modi**, the learned Additional Public Prosecutor explains that how after death the body starts decomposing and the various stages involved. As per the said book, soon after the death, the eye loses its lustre, the corneal reflex is lost. Similarly, if a lady dies, the virgin uterus being a fibromuscular organ is the last to putrefy and in some of the cases even uterus also rapidly undergoes putrefaction. In most of the cases uterus was found to be decomposed in three to four days after death, and completely destroyed by maggots in four to five days after death, especially during summer. Therefore, when the deceased was killed and buried on 21.12.2006 and when the same was exhumed after 8 days, the uterus might have succumbed to decomposition after three to four days and would have been completely destroyed by maggots in 4 to 5 days after death. Therefore, the arguments advanced by the appellant that since she was a pregnant lady, when her body was exhumed after 8 days the postmortem certificate should have indicated the uterus with 4 months fetus cannot be accepted.



15. In the present case, as the body was exhumed after 8 days the uterus itself would have been destroyed. Moreover, the deceased would have told the appellant/accused to marry her pretending that he was 4 months old pregnant, whereas indeed, she was not so. Therefore, the argument of the accused that the deceased was pregnant at the time of death, on the otherhand no foetus was found in the dead body that proves that the dead body did not belong to the deceased Parvathi cannot be accepted. Because the fact remains that the deceased was killed and buried by the accused and the body was also identified by her own mother. It is clear that when knowing the fact of the deceased became pregnant lady, afraid of exposure to the family members and villagers, he murdered her. The dead body was exhumed in the presence of Tahsildar. The relatives of the deceased viz., mother identified the body of the deceased as her daughter, P.W.6 - Dhanaraj, own brother of the deceased also identified the deceased's body as her sister's body. Therefore, the trial Court has come to the conclusion that the prosecution has proved the case beyond all reasonable doubts. Therefore, such a finding cannot be disbelieved.

16. This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

17. The question arises for consideration is whether the prosecution has proved the guilty of the accused beyond any reasonable doubt in the light of the evidence let in?

18. Moving to the argument of the respondent that the accused was arrested by the then Inspector P.W.19 - Subbaiyan on 29.12.2006 in the presence of P.W.2 - Velusamy, Village President and P.W.3 - A.Muniandi, Assistant in the Panchayat and he has rightly chosen K.Periasamy, Village Administrative Officer of Vallavan Kotttai to give his confession statement, it may be noted that having given his Extra-judicial confession on 29.12.2006 at 9.30 p.m. by coming to the office of the Village Administrative Officer in the presence of P.W.2, who was the President of the Village Panchayat, and P.W.3, who was the Assistant of Village Panchayat he cannot wriggle out of the cover for a clear reason that the Extra-judicial confession has been used for the recovery of M.Os.1 and 2 - year studs and nose stud along with M.O.3 - spade, used for digging the bit for burying the body of the deceased.

19. Again going to the argument of the learned Additional Public Prosecutor that P.W.6 - Dhanaraj brother of the deceased Parvathi deposed that his sister was working as a coolie and she went to work on 29.12.2006 by wearing M.Os.1 and 2, which were taken up from the house of the deceased, surprisingly, when P.W.6 deposed before the trial Court explaining the fact that the deceased was



working as a coolie under the accused and the accused used to carry the deceased Parvathi on his bicycle, the defence has not come forward to cross-examine P.W.6. Once again the defence maintained silence for P.W.8 - Jeyakumar, son of the senior paternal uncle of the deceased Parvathi, also deposed that Parvathi was taken very often in his bicycle, ironically he was also not cross-examined to impeach his evidence. That clearly shows that the accused has not only admitted the offence in the extra-judicial confession but also admitted the offence by not cross-examining P.Ws.6 and 8, who have spoken about the link of the accused with the deceased. Moreover, when the mother of the deceased P.W.23 - Smt.Lakshmiammal also deposed that the deceased was taken by the accused in the year 2006 and she also identified the body of the deceased as her daughter body, the appellant has not even come forward to cross-examine to impeach the evidence of the mother, brother and cousin brother of the deceased. Therefore, when P.W.1 - Village Administrative Officer clearly recorded the extra-judicial confession given by the accused, followed by the said confession statement that the body of the deceased was recovered on 30.12.2006 in the presence of P.W.2 - the President of Village Panchayat, P.W.3, the Panchayat Assistant, P.W.17 - Thasildar and the other revenue authorities and the police officials and subsequently the said body was identified by the mother, brother and cousin brother of the deceased and for the reason that mother of the deceased, brother and cousin brother of the deceased have not been challenged by the appellant, the defence side gave a death blow to their own case, therefore, the trial Court on proper appreciation of oral and documentary evidence rightly reached the conclusion to record the conviction and sentence and in the absence of any infirmities in the judgment of the trial Court, in exercise of its appellate jurisdiction, this Court does not find any space to interfere with the impugned judgment and prays for dismissal of this appeal.

20.Yet another weak argument of the learned counsel appearing for the appellant that the extra-judicial confession by the appellant/accused to P.W.1 - Village Administrative Officer cannot be acted upon as it does not carry any evidentiary value is prone to be repelled as it is settled long time ago that there is no bar to record such extra-judicial confession.

21.This Court in **Crl.A. (MD) No.258 of 2013 dated 13.09.2017** between **Kumar alias Pushpakumar** considered the very issue whether the extra-judicial confession recorded by the Village Administrative Officer can be taken as admissible evidence and held that there is no bar for the Village Administrative Officer to record extra-judicial confession. The relevant portion is as under:

"14. One another contention of the learned counsel for the appellant is that the Village Administrative Officer cannot record extra judicial confession after the commencement of the investigation as per Rule 72 of the



Criminal Rules of Practice. Admittedly, the investigation was already commenced in the morning at 10.00 a.m whereas the extra judicial confession are recorded at 4 p.m. after commencement of the investigation. Whether the Village Administrative Officers are barred from recording any confession after the commencement of investigation? This aspect was considered by the Hon'ble Supreme Court in a judgment reported in 2006 1 CTC 150 [Sivakumar v. State of Inspector of Police] and held that Rule 72 of the Criminal Rules of Practice become redundant since there was no Village Magistrate system is in existence. Accordingly, the Honourable Supreme Court held that there is no bar for the Village Administrative Officer to record the extra judicial confession."

22.Further, with regard to the recovery of the dead body based on the extra-judicial confession to P.W.1, it is pertinent to rely on the decision of the Hon'ble Supreme Court in **State of Maharashtra v. Suresh [(2000) 1 SCC 471]**, which is given as under:

"26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it is concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

23.A mere perusal of the above ratio clearly shows that when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself, the Court can presume that it was concealed by the accused, even if the accused declined to tell the criminal court that his knowledge about the concealment was on account of one the following situation. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there.



24. In the case on hand, the appellant has never denied the recovery of the dead body, DNA Test, the recovery of ear studs, nose stud, spade M.Os.1 to 3. Therefore, in view of above settled legal principles, the trial Court has rightly appreciated the evidence and awarded the sentences impugned. Further, the evidence of P.W.1 has been corroborated by P.Ws.2 and 3. Hence, the contention raised by the appellant that the extra-judicial confession said to have been given by the accused before P.W.1 Mr.K.Periasamy, the Village Administrative Officer has to be treated as weak piece of evidence has no legs to stand and therefore, the said contention is not sustainable.

25. Consequently, based on the confession given by the appellant/ accused before the Village Administrative Officer in the presence of Panchayat President - P.W.2 and Village Assistant - P.W.3, M.Os.1 to 3 have been recovered and the cloth worn by the deceased were recovered. The D.N.A. Test Report clearly shows that the D.N.A. profile of the femur bone of deceased was compared with the DNA profile of P.W.23 - Lakshmiammal, mother of the deceased and it is found the deceased is the daughter of P.W.23 Lakshmiammal and the evidence placed by the mother of the deceased P.W.23 before the trial Court has not been challenged by the appellant. Further, P.W.24 - Pushparani, Scientific Assistant deposed before the trial Court that the skull, item 3 could possibly have belonged to the female individual seen in the photograph, item 1 i.e., deceased Parvathy and filed her Super Imposition Test Report as Ex.P.21. Her evidence was also not challenged by the appellant. The above Super Imposition Test and the DNA report have spoken clearly that the prosecution has proved the case beyond all reasonable doubts. Hence, this Court finds no reason to interfere with the finding of the trial Court that the dead body exhumed on 30.12.2006 is Parvathi that was buried by the appellant after causing death using the cloth belonging to the deceased.

26. According to the learned counsel appearing for the appellant, all the witnesses are relative witnesses and interested witnesses. The evidence of P.W.6 - Mr.Dhanaraj, who is the brother of the deceased, is that his sister was working with accused as coolie and she went to work on 21.12.2006 at about 7.00 a.m. but has not been turned up and then she was finally found her dead has not been challenged by the appellant and such evidence would unmistakably point to the guilt of the accused. He is corroborated by the evidence of P.W.8 Mr.Jeyakumar, cousin brother of the deceased that Parvathy was very often taken by the appellant in his cycle. For the reasons that these two evidences have not been cross-examined by the appellant, the deposition of the prosecution witnesses, which stood the rigour of the cross-examination clearly supports the prosecution version and establishes the guilt of the accused.



complete chain unerringly proceeding towards the only conclusion that the accused had murdered the deceased. The prosecution has established its case beyond all reasonable doubts. Hence, we find no reason to interfere with the well reasoned findings of the trial Court.

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32. In the result, this Criminal Appeal is dismissed confirming the judgment dated 14.11.2016, made in S.C.No.210 of 2008 by the learned III Additional District and Sessions Judge, Tiruchirappalli. The period of imprisonment already undergone by the appellant/accused shall be given set off. The bail bonds executed by the accused shall stand cancelled and the respondent/police is directed to forthwith secure the appellant/accused for committing him to custody so as to undergo the remaining part of sentence.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

sj
To

1. The III Additional District and Sessions Judge,
Tiruchirappalli.
2. The Judicial Magistrate No.VI,
Tiruchirappalli.
3. The Inspector of Police,
Thuvakudi Police Station,
Trichy District, Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

PRE-DELIVERY JUDGMENT IN
CrI. A. (MD)No.52 of 2018

Delivered on

13.12.2019

SJ

TK/SAR /06.01.2020/12P/5C