



BAIL SLIP

Appellant/Accused No.3, namely Ramesh was directed to be released on bail in and by the order of this Court dated 30.10.2017 made in Crl.MP(MD)No.9738 o 2017 in Crl.A(MD)No.403 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 16.09.2019

JUDGMENT DELIVERED ON : 20.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
Crl.A(MD)No. 403 of 2017

1.Samuthravel

2.Ramesh

... Appellants / Accused Nos.1&3

Vs.

The State represented by,
The Inspector of Police,
Pettai Police Station,
Tirunelveli District.
(Crime No.456 of 2012)

... Respondent / Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment and sentence, dated 24.08.2017, passed in S.C.No.105 of 2015 by the learned III-Additional Sessions Judge, Tirunelveli, Tirunelveli District and to acquit the accused/appellants herein.

For Appellants : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

**JUDGMENT****S.VAIDYANATHAN, J.****AND****N.ANAND VENKATESH, J.**

WEB COPY

This Criminal Appeal has been filed by the appellants, who were ranked as A1 and A3, aggrieved by the Judgment passed by the learned III-Additional Sessions Judge, Tirunelveli, in S.C.No.105 of 2015, convicting and sentencing the accused persons as follows:

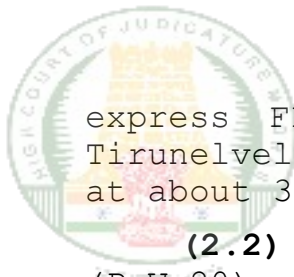
Sl. No.	Rank of the accused	Offence under which convicted	Sentence of imprisonment	Fine amount
1.	A1	Under Section 302 of IPC	Life imprisonment	Rs.2,000/-, in default, to undergo six months Rigorous Imprisonment
2.	A3	Under Section 302 of IPC	Life imprisonment	Rs.2,000/-, in default, to undergo six months Rigorous Imprisonment

2. The case of the prosecution:

A1 and A3 are brothers and A2 and the juvenile accused are the sons of A1. The deceased Kumar is well known to A1 and both of them were friends and used to go for fishing together. On 03.06.2012, there was a quarrel that arose between A1 and one Mariappan (P.W.2), in front of the tea shop belonging to A1. The deceased is said to have intervened and tried to pacify the parties. This is said to have enraged A1 and therefore, there was a motive to do away with the deceased. On 04.06.2012, at about 8.30 p.m., when Lakshmi (P.W.1), mother of the deceased, Mariappan (P.W.2) and the deceased were walking at Thirupani Karisal Kulam North, Mupidathy Amman Kovil Street and were nearing the house of A1, all the accused persons are said to have wrongfully restrained them and abused the deceased in filthy language and started attacking him with Aruval and stick, as a result of which the deceased sustained grievous injuries and P.W.1 also sustained simple injuries and the deceased died on the spot.

Complaint and evidence collected in the course of investigation:

(2.1) P.W.1 gave a complaint (Ex.P.1) to the Special Sub Inspector of Police (P.W.14) on 04.06.2012 at about 9.15 p.m., and based on the complaint, an FIR (Ex.P.6) came to be registered against the accused person in Crime No.456 of 2012 for the offence under Sections 341, 294(b), 323, 302 and 506(ii) of I.P.C. An



express FIR was sent to the learned Judicial Magistrate No.V, Tirunelveli, through P.W.16 and it reached the Court on 05.06.2012 at about 3.20 a.m.

(2.2) The investigation was taken up by the Inspector of Police (P.W.20) and he reached the place of occurrence around 10.15 p.m., and he prepared the observation mahazer (Ex.P.13) and rough sketch (Ex.P.12) in the presence of witnesses (P.W.5 and P.W.6). He conducted the inquest over the body of the deceased and prepared the inquest report (Ex.P.14) and handed over the body of the deceased to the Head Constable (P.W.13) for postmortem and for handing over the body to the relatives. He also sent a requisition for conducting the postmortem (Ex.P.18). He proceeded to recover material objects from the scene of crime and the spot mahazer (Ex.P.15 to Ex.P.17).

(2.3) The Investigating Officer recorded the statements of the witnesses and proceeded to arrest A1 and A3 on 05.06.2012 at about 2.00 p.m., and based on the confession, recovered the hatchet (M.O.6). The material objects (M.O.1 to M.O.6) were sent to the Court under Form 95.

(2.4) The Investigating Officer, thereafter examined the postmortem Doctor and collected the postmortem report (Ex.P.14) and also examined P.W.17 and collected the viscera report (Ex.P.8), Serological Report (Ex.P.9) and Biological report (Ex.P.10).

(2.5) The said Investigating Officer handed over the entire case file to P.W.22, who continued with the investigation and laid the final report before the concerned Court.

3. After the case was committed to the III-Additional District Judge, Tirunelveli, charges were framed against the accused persons for the offences under Sections 341, 294(b), 323, 302 and 506(ii) of I.P.C. The prosecution examined P.W.1 to P.W.22 and marked documents Ex.P1 to Ex.P.20 and material objects M.O.1 to M.O.6. The defence examined D.W.1 and D.W.2 and marked Ex.D.1 and Ex.D2.

4. After the completion of the examination of witnesses, the Court below questioned the accused persons under Section 313(1)(b) of Cr.P.C., by putting all the incriminating materials collected against them, during the course of trial and they denied the same as false.

5. The trial Court after considering the entire facts and circumstances of the case, and after analysing the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts as against A1 and A3 for an offence under Section 302 IPC and acquitted them from all other charges. Insofar as A2 is concerned, he was acquitted from all charges.



Submissions:

6. Mr.V.Kathirvelu, learned Senior Counsel appearing on behalf of the appellants made the following submissions:

- There was a huge delay of six hours in the express FIR reaching the Court and the said delay has not been explained.
- P.W.1 was an injured witness and she was admitted in the hospital only on 05.06.2012 at about 2.05 a.m., with simple injuries and she came out of the hospital even without informing the doctor.
- P.W.1 and P.W.2 have categorically admitted that immediately after the occurrence, the police arrived at the scene of occurrence and therefore, the version of the prosecution that the complaint was given by P.W.1 to P.W.14 at 9.15 p.m., is completely falsified.
- P.W.1 and P.W.2 have categorically admitted in their evidence that they came to the spot only after hearing the cries of the deceased and therefore, they could not be called as an eyewitness in this case.
- P.W.1 and P.W.2 have stated in their evidence that the incident happened near Muppudathiamman Temple and the bus stand, but both places are not found in the rough sketch and whereas the case of the prosecution is that the occurrence took place in front of the house of A1.
- A3 is completely blind and he has been given disability certificate (Ex.D1), which shows that he is 100% visually disabled and the doctor, who gave the certificate, was also examined as D.W.2 and therefore, A3 could not have attacked P.W.1 with stick and on this ground alone A3 is entitled to be acquitted.
- All the witnesses in this case are related witnesses and not a single independent witness has been examined on the side of the prosecution, in spite of the fact that the incident has taken place in a public road.
- P.W.3 and P.W.4 claimed to be eyewitnesses. However, their evidence itself shows that they could not have witnessed the occurrence and the Court below, while rejecting the evidence of P.W.3 and P.W.4, wrongly placed reliance on the evidence of P.W.1 and P.W.2.
- There are lots of contradictions in the evidence of P.W.1 and P.W.2 and P.W.1 was not even cross-examined, since she died during the course of trial and therefore, her evidence cannot be relied upon.
- The motive that has been attributed by the prosecution for the occurrence is completely unbelievable, since, admittedly A1 and the deceased are very close friends and they used to go together for fishing and even as per the prosecution, the

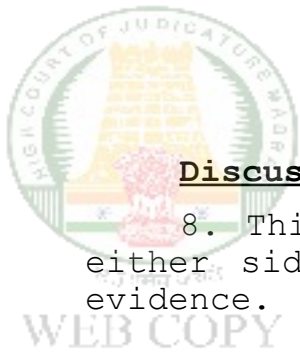


deceased has only intervened in a wordy quarrel between P.W.2 and A1.

- The overt act attributed to the accused persons is completely disproportionate with the injuries found in the body of the deceased, as revealed by the postmortem report and that itself shows that the ocular evidence is completely unreliable. To substantiate this submission, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in ***Pandit Ram Prakash Sharma vs. Kharaiti Lal and another***, reported in ***AIR 1998 SC 2820***.

7. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- There was no reason for P.W.1 to P.W.4 to give a false case against the accused persons. The motive behind the occurrence has been clearly spoken by P.W.2, by citing the incident that took place one day before the occurrence and there is no ground to disbelieve the same.
- There is no dispute regarding the place of occurrence and the incident had taken place in front of the house of A1. This is clear from the evidence of P.W.2, observation mahazer (Ex.P3) and the rough sketch (Ex.P.12). This fact is not only reflected in the complaint but also in the evidence given by P.W.1, who also speak about the same in his evidence.
- P.W.21, who is the doctor, has clearly stated that P.W.1 came for treatment to the hospital at 2.05 p.m., on 05.06.2012 and specifically mentioned that she was attacked by four known persons.
- There was sufficient availability of light in the scene of occurrence and the same is clear from the rough sketch (Ex.P.12) and the evidence of P.W.11, who was working in the Electricity Board.
- The Serological report marked as Ex.P.10 clearly shows that M.O.1 to M.O.5 contained human blood "A" group, which coincided with the blood group of the deceased.
- The overt act spoken by the witnesses need not exactly tally with the injuries found in the postmortem report. In order to substantiate this submission, the learned Additional Public Prosecutor relied upon the judgment of a Division Bench of this Court, dated 02.02.2018, made in Crl.A.No.278 of 2018 (***Josiyakara Murugesan @ Murugesan vs. State, rep. by the Inspector of Police, Mettur Police Station, Salem District***).
- Ex.D1-certificate, which was exhibited by A3 to show that he has 100% visual disablement, was obtained after the incident, i.e., on 31.10.2013 and therefore, the same cannot be relied upon by this Court.



Discussion:

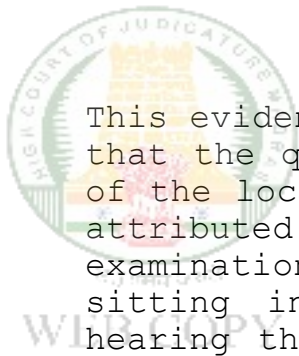
8. This Court has carefully considered the submissions made on either side and also carefully assessed the oral and documentary evidence.

9. The specific charge against the accused persons is that the incident took place on 04.06.2012 at about 8.30 p.m., when P.W.1, P.W.2 and the deceased were proceeding near Thirupani Karisal Kulam North, Mupidathy Amman Kovil Street, in front of the house of A1. P.W.1, who is the mother of the deceased, while examined in-chief by the prosecution, has stated that the incident took place near Mupidathy Amman temple. No such temple is available in the rough sketch. She further stated that A1 attacked with Aruval on the left hand side head of the deceased, on the left ear and the left hand and arm pit. She further stated that A3 had attacked her with stick (M.O.1), thereafter, the accused persons ran away from the scene of crime. She specifically stated that P.W.1 and P.W.2 took the deceased in a cot to the Government Hospital and the police got her thumb impression in the hospital and it was also attested by P.W.2.

10. This witness was not cross-examined since she died during the course of trial. However, her evidence can be relied upon by virtue of Section 33 of the Indian Evidence Act, 1872. This evidence runs contrary to the evidence of the Investigating Officer P.W.20, who specifically stated that the inquest over the body was conducted at the scene of crime. This evidence also runs contrary to the evidence of P.W.14, who clearly says that P.W.1 came to the police station and gave the complaint.

11. While analysing the evidence of P.W.2, it is seen that he is not anywhere talking about the intervention of the deceased during the quarrel between him and A1. He clearly says that it was intervened by the elders belonging to the locality. His evidence becomes very crucial, since the motive for attack on the deceased was his intervention during the quarrel between P.W.2 and A1. This witness proceeds to state that A1 attacked the deceased on the left side of his head, left hand and near the arm-pit with Aruval. A3 attacked P.W.1 with stick. He further states that he went to the police station and gave the complaint. However, he had only been shown as attesting witness to the complaint and his signature has been marked as Ex.P.2.

12. This witness specifically states that the deceased and A1 are very close friends and they used to go for fishing together and there was absolutely no previous enmity between A1 and the deceased.



This evidence coupled with the statement made by P.W.2 to the effect that the quarrel between A1 and P.W.2 was intervened by the elders of the locality, creates a lot of doubt on the motive that has been attributed by the prosecution in this case. In the cross-examination, he has also stated that he and his Aunt (P.W.1) were sitting inside the house and talking and they came out, after hearing the cries of the deceased at the bus stand. This specific admission made by P.W.2 also makes this Court entertain a doubt as to whether P.W.1 and P.W.2 could have actually seen the incident.

13. P.W.3, who is the wife of the deceased, gives her own version about the incident to the effect that she was also present in the scene of occurrence and she talks about the overt act on the part of the accused persons. Curiously, her presence has not been spoken either by P.W.1 or P.W.2. She reiterates the fact that the deceased and A1 are very close friends and even the previous day before occurrence, both of them went together for fishing.

14. P.W.4 is the mother of P.W.3. She also speaks as if she was present in the scene of occurrence and saw the incident. However, P.W.1 to P.W.3 did not state anywhere about the presence of P.W.4 in the scene of occurrence.

15. P.W.7 was an independent witness, who was examined on the side of the prosecution to talk about the incident. However, he turned hostile.

16. It is important to rely upon the postmortem report in this case, which was marked as Ex.P.11. The injuries as found in the postmortem certificate is extracted hereunder:

"1. A horizontal gapping incised like laceration of size 6x1cmxbone deep with abraded margins seen over left side of frontal region.

2. An oblique incised like laceration of size 3x1cmxbone deep with abraded margins seen over middle of forehead.

3. An oblique incised like laceration of size 5x1cmxbone deep over left eyebrow with abraded margins.

4. Abrasion of size 6x3cm over right eye and right cheek. On dissection underlying right maxilla found fractured with surrounding contusion.

5. Abrasion of size 3x3cm over left cheek. On dissection underlying left maxilla found fractured with surrounding contusion.

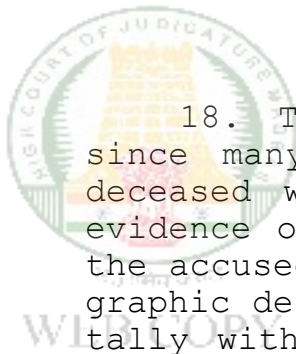


WEB COPY

6. Laceration of size 2x1x1cm over right side of upper lip.
7. Laceration of size 2x1x1cm over left side of upper lip.
8. Laceration of size 1x1x1cm over right side of lower lip.
9. Abrasion of size 2x1cm over left ear.
10. An oblique gapping cut injury of size 3x1x1cm, lies below left ear with a trail of 4 cm in its front end.
11. A laceration of size 3x1cmxbone deep over middle of chin with abraded margins, on dissection underlying mandible fractured and found in multiple pieces.
12. An oblique gapping cut injury of size 6x1x1cm over right side of upper part of neck.
13. A horizontal gapping cut injury of size 5x1x1cm over middle of front of neck. It cuts underlying trachea.
14. A horizontal gapping cut injury of size 3x1x2cm seen over left side of chest near axilla with a trailing of length 6cms in its front.
15. An oblique gapping cut injury of size 6x1x1cm over outer aspect of left wrist.
16. An oblique gapping cut injury of size 6x11cm over outer aspect of left wrist.
17. Abrasion of size 2x1cm over right side of chest.
18. Abrasion of size 2x1cm over left thigh.
19. On dissection of Head:

Scalpel contusion of size 30x15cm seen in left side of head, Depressed fractures of size 7x4cm seen in left side of frontal bone, radiating crack fracture of length 13cms extending to left parietal and temporal bones and 12cms to left anterior cranial fossa and middle cranial fossa. Marked subdural and subarachnoid haemorrhages noted in left side of brain. Laceration of size 7x1x1cm seen in left fronto parietal lobes of brain."

17. P.W.18-the Doctor, who conducted the postmortem, has identified nearly 19 injuries in the body of the deceased and he has stated that injuries 10, 12 to 16 are cut injuries and injuries 1, 2, 3, 6, 7, 8 and 11 are lacerations and injuries 4,5,9,17 and 18 are abrasions. Further, he opined that the deceased had died due to multiple injuries.

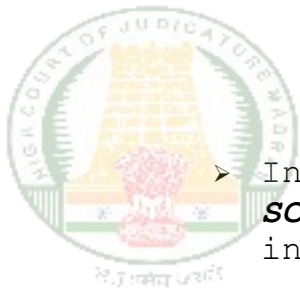


18. The reference to these injuries becomes very important since many of the injuries that were found in the body of the deceased were not accounted for and it is not in line with the evidence of P.W.1 to P.W.4, who have spoken about the overt act of the accused persons. It is true that the witnesses need not state in graphic details about the number of injuries and it need not exactly tally with the injuries found in the postmortem report. However, this discrepancy should not be too wide and completely in mis-match with the ocular evidence.

19. At this stage, it will be relevant to take note of the following judgments of the Hon'ble Supreme Court in this regard.

- In ***Khambam Raja Reddy and another vs. Public Prosecutor, High Court of Andhra Pradesh***, reported in **2007 (1) SCC (Cri) 431**, wherein, the Hon'ble Supreme Court has held in paragraph No.19 as follows:

" 19. The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of *State of M.P. vs. Dharkole alias Govind Singh and Ors.*, reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in *Dharkole's case (supra)* may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts."



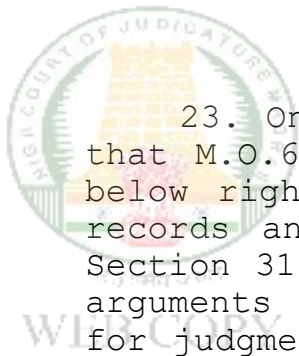
➤ In **State of Uttar Pradesh vs. Dinesh**, reported in **2009 (3) SCC (Cri) 1484**, wherein, the Hon'ble Supreme Court has held in paragraph No.14 as follows:

" 14. Apart from that the medical evidence clearly rules out the manner of infliction of injuries as deposed. Though ocular testimony of witnesses had greater evidentiary value vis-à-vis medical evidence, but when medical evidence totally improbablises the ocular testimony, that becomes a relevant factor in the process of evaluation of evidence. In the instant case the medical evidence totally improbablises the version regarding the manner of assault by both the accused persons as noted above."

20. It is clear from the above judgments that the ocular testimony of the witnesses has a greater evidentiary value than the medical evidence. However, if the variance/contradiction between the ocular evidence and the medical evidence, is too wide and it improbablises the ocular testimony, the same becomes a very relevant factor in the process of evaluation of evidence. In the facts of the present case, the medical evidence is not borne out by the ocular evidence and it is at variance with the ocular evidence and it is not possible to relate the injuries as spoken to by P.W.1 to P.W.4. The non-explanation of many injuries found in the body of the deceased, improbablises the version of the prosecution regarding the incident.

21. This gains significance since the presence of P.W.3 and P.W.4 in the scene of occurrence, is highly doubtful and the contradiction between the evidence of P.W.1 and P.W.2 and the fact that P.W.2 states that he and P.W.1 came out of the house after hearing the cries of the deceased, also makes their presence in the scene of occurrence highly doubtful. Therefore, the wide discrepancy between the ocular and medical evidence becomes very fatal to the case of the prosecution.

22. It is not known as to how A3 was convicted for an offence under Section 302 of I.P.C. The evidence available on record, through deposition of P.W.1 and P.W.2, only shows that he had attacked P.W.1 with stick (M.O.1), no other overt act has been attributed against him. It is not known as to how this overt act will make him liable for the substantial offence under Section 302 of I.P.C.



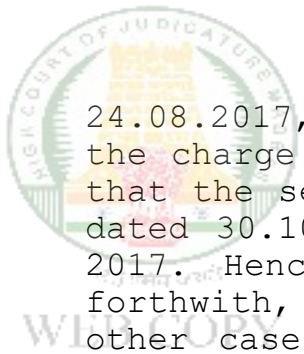
23. One more important aspect that can be seen in this case is that M.O.6, which is the hatchet, was not marked before the Court below right through the proceedings. We went through the original records and found that the accused persons were questioned under Section 313(1)(b) of Cr.P.C., on 01.02.2016. Thereafter, the final arguments were completed and on 03.02.2017, the case was reserved for judgment. However, on 09.02.2017, the Court below *suo motu* reopened the case, and in exercise of its power under Section 311 of Cr.P.C., recalled P.W.2, P.W.3, P.W.4 and P.W.18 and on 03.03.2017, re-examined P.W.2, P.W.3 and P.W.4 in order to elucidate the fact as to the time at which the occurrence took place and whether light was available in the place of occurrence. This exercise looks very artificial since the Court was virtually trying to fill up the *lacuna* in the case of the prosecution. The Court below did not stop with that. The Court again recalled P.W.2, P.W.3 and P.W.4 on 11.04.2017 and for the first time marked the hatchet (M.O.6) that is said to have been used to attack the deceased. On 19.04.2017, the postmortem doctor was recalled and he was questioned regarding the injuries found in the body of the deceased and whether it could be caused with M.O.6.

24. This shows the slipshod manner, in which the investigation has taken place in this case. Even the weapon that was used was not marked before the Court and after the judgment was reserved, the Court *suo motu* recalled and marked the weapon and recalled the witnesses and asked them questions regarding the injury caused with the weapon. This exercise was done by the Court below after the case was reserved for judgment. This is one more important factor that should be taken into consideration by this Court in the present case.

Conclusion:

25. In view of the above discussion, this Court finds that there are too many discrepancies in this case and unfortunately, the same has not been taken note of by the trial Court. Eventhough motive is not a relevant factor in a case, where there is a clear evidence of an eyewitness, motive assumes significance in this case since the version given by the so-called eyewitnesses is unbelievable and cannot be relied upon. A1 and the deceased remained to be close friends till the previous day of the date of occurrence and were going for fishing together and there was no previous enmity and therefore, it defies natural human conduct as understood by a prudent man under the given circumstances, as to why A1 will resort to attacking the deceased indiscriminately and cause his death. In the considered view of this Court, the prosecution has not proved the case beyond reasonable doubts against the accused persons.

26. In the result, this Criminal Appeal is allowed. The judgment of the Court below made in S.C.No.105 of 2015, dated



24.08.2017, is hereby set aside. The appellants are acquitted from the charge under Section 302 of I.P.C. It was brought to the notice that the second appellant/A3 has been enlarged on bail, vide order, dated 30.10.2017, passed by this Court in Crl.M.P.(MD).No.9738 of 2017. Hence A1/first appellant is ordered to be set at liberty forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by them, shall be refunded forthwith. Bail bond, if any, executed by A3, shall stand terminated forthwith.

Sd/-

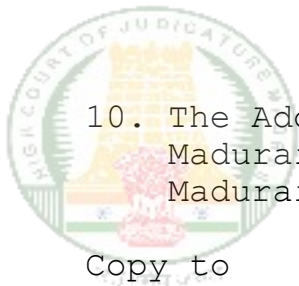
Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The III-Additional Sessions Judge,
Tirunelveli.
2. The Principal Sessions Judge,
Tirunelveli
3. The Judicial Magistrate No.V,
Tirunelveli
4. The Chief Judicial Magistrate,
Tirunelveli District
5. The Inspector of Police,
Pettai Police Station,
Tirunelveli District.
6. The Superintendent,
Central Prison, Palayamkottai
7. The District Collector,
Tirunelveli
8. The Superintendent of Police,
Tirunelveli
9. The Director General of Police,
Mylapore, Chennai 600 004



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

Copy to

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

+1 CC to Mr.K.PRABHU, Advocate (SR-88194[F] dated 20/09/2019)

Judgment made in
Cr1.A(MD)No.403 of 2017
20.09.2019

pjl
MK (03.10.2019) 13P 14C