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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.08.2019
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Criminal Appeal (MD)No.512 of 2017

Chinnadurai

... Appellant/Sole Accused

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
East Police Station,
Kovilpatti,
Thoothukudi District.
[Cr.No.382 of 2015]

... Respondent/Complainant

Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment and order passed in S.C.No.75 of 2016, dated 14.09.2017, by the learned II Additional District and Sessions Judge, Thoothukudi.

For Appellant : Mrs.M.Krishnaveni

For Respondent : Mr.S.Chandrasekar

Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**)

The sole accused in S.C.No.75 of 2016 on the file of the Court of II Additional District and Sessions Judge, Thoothukudi, is the appellant. The appellant/sole accused stood charged and tried for the commission of the offences under Sections 302, 324 and 506 (ii) I.P.C. The trial Court, vide impugned judgment dated 14.09.2017, has convicted him for the commission of the offence under Section 302 I.P.C. and imposed the sentence of rigorous imprisonment for life and fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo simple imprisonment for one year. The trial Court has acquitted the appellant/accused for the charges under Sections 324 and 506(ii) I.P.C and the State did not prefer any appeal challenging the said portion of the judgment of the trial Court. Aggrieved by the conviction and sentence imposed, the appellant/accused has filed this appeal.

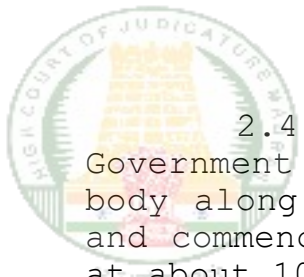


2. Facts leading to the filing of this appeal relevant for the purpose of disposal of this appeal and briefly narrated, are as follows:

2.1. The deceased in this case is one Sundaramoorthy, who is the elder brother of P.W.1 and he was doing business in vessels in Kerala State. About 15 days prior to the date of occurrence, on 14.05.2015, Sundaramoorthy came to his native place in connection with the annual remembrance ceremony of his mother. At about 10.30 p.m., on 14.05.2015, in Valluvar Nagar 2nd Street of Kovilpatti, the appellant/accused along with his friend were conversing and at that juncture, the appellant/accused abused Murugan @ Katta Murugan by using unparliamentary words and P.W.1, who came at that time, has castigated the appellant/accused and proceeded to his home. After sometime, Murugan @ Katta Murugan, deceased Sundaramoorthy, P.W.2, P.W.3 along with P.W.1 went to the house of the appellant/accused and called him out and the appellant/accused came out and infuriated by the act of Sundaramoorthy in castigating the appellant/accused for having abused Murugan @ Katta Murugan and also enraged by the said act, immediately, he took an aruval from his hip and indiscriminately attacked Sundaramoorthy and on account of the same, his two fingers of right hand got severed and suffered fatal injuries and died on the spot. When Murugan @ Katta Murugan tried to prevent the occurrence, he was also attacked by the appellant/accused by inflicting cut injuries and as a consequence, he sustained simple injuries. The appellant/accused also warned P.W.1, P.W.2 and P.W.3 when they made attempts to come near the appellant/accused with dire consequences.

2.2. P.W.1 who is the younger brother of the deceased Sundaramoorthy proceeded to Kovilpatti East Police Station along with P.W.2 and P.W.3 and Murugan @ Katta Murugan and lodged a complaint under Ex.P.1 to P.W.17 - Sub Inspector of Police, who upon receipt of the same, has registered an F.I.R., in Cr.No.382 of 2015 at about 01.00 a.m., on 15.05.2015 for the commission of the offences under Sections 302, 324 and 506(ii) I.P.C. The printed F.I.R., was marked as Ex.P.15. P.W.17 has despatched the original of Ex.P.1 - complaint and Ex.P.15 - F.I.R., through P.W.13 - Head Constable, who received the same at about 02.15 a.m., on 15.05.2015 and handed over the F.I.R., to the jurisdictional Magistrate Court at about 07.30 a.m., on 15.05.2015 and the passport was marked as Ex.P.12. P.W.17, on medical memo, has also sent Murugan @ Katta Murugan to Kovilpatti Government Hospital for further treatment.

2.3. P.W.18 was the Station House Officer of Kovilpatti East Police Station and the F.I.R., was handed over to him in the scene of crime and in the presence of P.W.4 and one Malaiyarasan, has prepared the Observation Mahazar marked as Ex.P.2 and Rough Sketch marked as Ex.P.16. P.W.18 conducted inquest on the body of the deceased in the scene of crime at 03.30 a.m., on 15.05.2015 in the presence of Panchayatdars and the inquest report was marked as Ex.P.17. P.W.18 sent the body along with the requisition through P.W.12 - Head Constable for conducting the post-mortem.



2.4. P.W.14 was the Assistant Surgeon attached to District Government Head Quarters Hospital, Kovilpatti and he received the body along with the requisition at about 08.55 a.m., on 15.05.2015 and commenced the post-mortem at 09.15 a.m., and concluded the same at about 10.15 a.m., and noted the following features:

"Identification and caste marks:

- 1) A scar right thigh.
- 2) A scar below left knee.
- 3) A scar left tendon.

The body was first seen by the undersigned at 9.15 A.M. on 15.05.2015.

Condition then was Rigor mortis present in all four limbs.

Postmortem commenced at 9.15 A.M. on 15.05.2015.

Appearances found at the postmortem:

General Appearances: Body by (NC) symmetrical lies on its back.

Colour of skin - black. Colour - Hair - Black. Eye closed. Nose normal. Mouth normal. Tongue with in the mouth teeth 8 ! 8

7 ! 8

External Injuries:

1) Vertical incised wound of size 8 x 3 x 6 cm over right zygomatic region with incised zygomatic (NC) extending in the (NC) plate.

2) incised wound of size 15 x 3 x 6 cm over right near extending in the right (NC) with exposed cut carotid vessels.

3) incised wound 12 x 2 x 3 cm over right parietal region of scalp with exposed incised (NC) Brain matter.

4) incised wound 8 x 2 x 1 cm right fronto occipital region of scalp exposing the (NC) underlying scalp bones.

5) Incised wound 6 x 2 x 1 cm left scapula region of scalp.

6) Incised (NC) amputated right ring finger (NC) to proximal finger (NC).

7) Incised wound 2 x 1 x ½ prostate middle near.

Opening of skull: Membrane seen incised (NC). Injury No.3 (NC) incised cerebral cutting with 50 ml of blood (NC).



Opening of (NC) region pale.

Opening of Stomach : Organ pale, stomach contains 100 ml of partially digested food particles, bladder empty."

[extracted as such]

After completion of the post-mortem, P.W.14 opined, "*The deceased would appear to have died of shock and haemorrhage due to injuries sustained.*" The post-mortem report was marked as Ex.P.14.

2.5. P.W.18 continued with the investigation and from the scene of crime, has recovered M.O.2 - blood stained earth and M.O.3 - sample earth under a cover of mahazar and sent the articles to the jurisdictional Magistrate Court. P.W.18 recorded the statements of P.W.1, Murugan @ Katta Murugan, P.W.2, P.W.3, P.W.4, P.W.6, P.W.7 and P.W.8 and also P.W.11, P.W.15 and P.W.16 and P.W.18 searched for the accused and at about 02.00 p.m., on 15.05.2015, in the presence of P.W.10 and another has effected the arrest of the accused at Velayuthapuram bus stop and he voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement, marked as Ex.P.8, M.O.1 - aruval was recovered under a cover of mahazar marked as Ex.P.9 and he sent the articles to the jurisdictional Magistrate Court under Form 95. P.W.18 recorded the statements of P.W.10 and another and also P.W.12, P.W.13 and P.W.17 and also sent the articles for chemical analysis through requisition. P.W.9, after conducting chemical analysis has forwarded the report and marked as Exs.P.4 to P.7. P.W.18 also recorded the statement of P.W.14 - Doctor, who conducted the autopsy and on 10.07.2015 recorded the statement of P.W.5 and after completion of investigation, has filed the final report on 20.07.2015 for the commission of the offences under Sections 302, 324 and 506(ii) I.P.C. on the file of the learned Judicial Magistrate No.I, Kovilpatti.

2.6. The Court of Judicial Magistrate No.I, Kovilpatti, took it on file in P.R.C.No.37 of 2015 and the Committal Court, upon filing of the final report, issued summons to the appellant/accused and on his appearance, furnished to him the documents under Section 207 of the Code of Criminal Procedure, 1973. The Committal Court having found that the case is exclusively triable by the Court of Session, committed the case to the Principal District and Sessions Court, Thoothukudi, which in turn, made over the case to the Court of II Additional District and Sessions Judge, Thoothukudi and the said Court took it on file in S.C.No.75 of 2016 and on appearance of the accused, framed the charges under Sections 302, 324 and 506(ii) I.P.C., and questioned him. The appellant/accused pleaded not guilty to the charges framed against him and prayed for trial of the case.

2.7. The prosecution in order to sustain their case, examined P.W.1 to P.W.18, marked Exs.P.1 to P.17 and also marked M.O.1 to M.O.6.

2.8. The appellant/accused was questioned under Section 313 (1) (b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.



2.9. On behalf of the accused, no oral evidence was let in, however, Ex.D.1 - F.I.R., in Cr.No.385 of 2015 registered by Kovilpatti East Police Station, was marked.

2.10. The trial Court on consideration of the oral and documentary evidence and other materials, found him guilty under Section 302 I.P.C., and convicted and sentenced the appellant/accused as stated above and acquitted him for the charges framed under Sections 324 and 506(ii) I.P.C., for which, the State did not prefer any appeal. The appellant/accused aggrieved by the conviction and sentence awarded vide impugned judgment, has preferred this Criminal Appeal.

3. Mrs.M.Krishnaveni, learned Counsel for the appellant/accused has made the following submissions:

The case of the prosecution rests upon the circumstantial evidence. The prosecution has miserably failed to prove the motive aspect as regards the commission of the offence. P.W.14 - Casualty Medical Officer, who treated Murugan @ Katta Murugan has stated that the said injured told him that he sustained injuries on account of falling down and therefore, his presence in the scene of crime as well as the sustainment of injury on account of alleged attack inflicted by the appellant/accused cannot be believed at all. There is a delay in lodging Ex.P.1 - complaint as well as despatch of Ex.P.1 - complaint and Ex.P.15 - F.I.R., to the jurisdictional Magistrate Court, for which, no explanation has been offered by P.W.17 and P.W.18. There is a discrepancy as to the person who has written Ex.P.1 - complaint and there is a conflicting version between the testimony of P.W.17 who registered the F.I.R and the testimony of P.W.18 who conducted the investigation and in the light of the said discrepancy, it is highly doubtful whether Ex.P.1 - complaint was lodged by P.W.1 in the manner as projected by the prosecution. The alleged eyewitnesses projected by the prosecution, namely, P.W.1 to P.W.3 are the interested witnesses and despite the fact that the occurrence took place in a public street, no steps have been taken by the Investigating Officer to examine any independent witnesses. The other material witnesses, namely, P.W.4, P.W.6, P.W.7, P.W.11 and P.W.15 turned hostile and in the light of the material discrepancies among the testimonies of P.W.1 to P.W.3, it is not safe to rely upon their oral testimonies as eyewitnesses to sustain the case of the prosecution. In sum and substance, it is the submission of the learned Counsel for the appellant/accused that in the light of the material discrepancies among the testimonies of P.W.1 to P.W.3, coupled with the fact that the material witnesses had also turned hostile, the trial Court ought to have concluded that the appellant/accused did not commit the offence and since it has recorded an erroneous finding and thereby convicting and sentencing him vide impugned judgment, prays for interference with a consequential acquittal of the appellant/accused. In support of her contentions, she placed reliance on the decisions in (i) **Palaniammal and another v. State represented by Inspector of Police** reported in (2019) 2 MLJ (Cr1) 655 and (ii) **Jayakumar v. State** reported in (2019) 2 MLJ (Cr1) 668.



4. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the case of the prosecution is based upon eyewitness account and not circumstantial. P.W.1 - defacto complainant, who is the younger brother of the deceased has spoken in consonance with Ex.P.1 - complaint and Ex.P.15 - F.I.R came to be lodged without any loss of time and it was also despatched at the early morning hours and in the light of the fact that the case of the prosecution is based upon eyewitness account, it cannot be said that on account of alleged belated lodging of Ex.P.1 - complaint and despatch of original of Ex.P.1, some interpolation has been done. It is further submission of the learned Additional Public Prosecutor appearing for the State that witnesses who have turned hostile did not witness the occurrence, but they have noted the presence of the accused and eyewitnesses near the scene of crime and despite the fact that they did not support the case of the prosecution, has not shaken the core of the case of the prosecution for the reason that the testimonies of P.W.1 to P.W.3 corroborate with each other on all material particulars and it also amply supported by the scientific evidence. In sum and substance, it is the submission of the learned Additional Public Prosecutor appearing for the State that the trial Court on a thorough and proper consideration of oral and documentary evidence, has rightly reached the conclusion of convicting and sentencing the appellant/accused and therefore, prays for the dismissal of this appeal.

5. This Court has paid it's best attention and anxious consideration to the rival submissions and also perused the materials available on record and analysed the oral and documentary evidence and other materials and also gone through the original records.

6. The questions that arise for consideration, are:

(i) Whether the prosecution through the testimonies of witnesses, exhibits and material objects marked, had proved the guilt of the appellant/accused beyond reasonable doubt?

(ii) Whether the reasons assigned by the trial Court in the impugned judgment for convicting and sentencing the appellant/accused are sustainable?

Question No. (i):

7. P.W.1 is the younger brother of the deceased and he lodged the complaint - Ex.P.1 on the file of Kovilpatti East Police Station speaking about the motive aspect as well as specific overt act on the part of the appellant/accused and in his chief examination, he is in consonance with Ex.P.1 - complaint.

8. The learned Counsel for the appellant/accused has drawn the attention of this Court to the chief examination of P.W.1 and would submit that though as per Ex.P.16 - Rough Sketch, the occurrence took place in front of the house of P.W.7, whereas according to the testimonies of P.W.1 to P.W.3, the occurrence took place in front of the house of the appellant/accused and since the



place of occurrence has been shifted, it is very doubtful whether the deceased was actually done to death by the appellant/accused.

9. It is to be noted at this juncture that it is a small lane and the occurrence took place during late night hours on 14.05.2015 and a perusal of Ex.P.16 - Rough Sketch would also disclose that it is a lane and the distance between the house of the appellant/accused and the house of P.W.7 is not much and therefore, this Court is of the considered view that there is no shifting of place of occurrence and even for the sake of arguments, it has been shifted, it is not fatal to the case of the prosecution for the reason that the distance between the house of the appellant/accused and the house of P.W.7 is very minimal.

10. Insofar as the overt act on the part of the appellant/accused is concerned, this Court has scanned the testimonies of P.W.1 to P.W.3. P.W.2 is not related to the deceased, but related to the injured Murugan @ Katta Murugan and P.W.3 is not related to the deceased, but belongs to the caste of the deceased and Murugan @ Katta Murugan. The testimonies of P.W.1 to P.W.3 as to the specific overt act on the part of the appellant/accused are corroborated with each other on all material particulars.

11. It is also the primordial submission of the learned Counsel for the appellant/accused that since the Investigating Officer did not make any attempts to examine any independent witnesses, the testimonies of interested witnesses cannot be relied upon. However, the said submission is liable to be rejected for the reason that P.W.2 is not related to the deceased, but only related to Murugan @ Katta Murugan and P.W.3 belongs to the caste of the deceased and Murugan @ Katta Murugan.

12. It is also brought to the knowledge of this Court that pending trial, on 27.10.2015, immediately after filing of the final report, Murugan @ Katta Murugan who is said to have sustained injuries on account of the attack by the appellant/accused, died and the charge framed under Section 324 I.P.C., against the appellant/accused for having attacked Murugan @ Katta Murugan ended in acquittal.

13. It is a well settled position of law that the evidence of interested witnesses cannot be taken into consideration to sustain the case of the prosecution as to the overt act on the part of the concerned accused. However, this Court while evaluating the said evidence, shall exclude the possibility of false implication.

14. It is also well settled position of law that relationship can never be a factor to affect or corrode the credibility of a witness and it is also not possible for the prosecution to get independent witness to support their case and therefore, it cannot be a hard and fast rule that the evidence of interested witness shall be corroborated by the testimonies of independent witnesses.



15. As already pointed out, P.W.1 is the younger brother of the deceased and P.W.2 and P.W.3 are not related to P.W.1 and their testimonies as to the specific overt act on the part of the appellant/accused amply corroborate the testimony of P.W.1.

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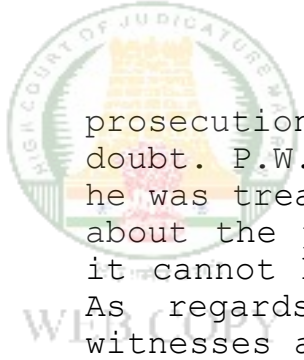
16. It is also the submission of the learned Counsel for the appellant/accused that there is a grave doubt as to Ex.P.1 - complaint came into being and has also drawn the attention of this Court to the testimonies of P.W.17 and P.W.18. P.W.17 - Sub Inspector of Police, Kovilpatti East Police Station, upon receipt of Ex.P.1 - complaint, has registered Ex.P.15 - F.I.R. and in the cross-examination, would state that Ex.P.1 - complaint was written by one Constable and Ex.P.15 - F.I.R., was written by another Constable as per her dictation. P.W.18 - Inspector of Police has also positively accepted the said suggestion and would further state that the investigation did not reveal as to the person who has written Ex.P.1 - complaint as well as Ex.P.15 - F.I.R.

17. It is also to be noted at this juncture that Ex.P.15 - F.I.R., came to be registered at about 01.00 a.m., on 15.05.2015 and it was despatched through P.W.13 - Head Constable at about 02.15 a.m., on 15.05.2015 and as per the testimony of P.W.13, he went to the residence of Judicial Magistrate No.I, Kovilpatti and since it was late night hours, at about 07.30 a.m., on 15.05.2015, he has handed over the original of Ex.P.1 - complaint and Ex.P.15 - F.I.R. and the passport was marked as Ex.P.12.

18. Though it was the vehement and forceful submission of the learned Counsel for the appellant/accused that there was a considerable delay in lodging Ex.P.1 - complaint as well as registration of Ex.P.15 - F.I.R., in the considered opinion of this Court, it is not so, for the reason that the occurrence took place at about 11.00 p.m., on 14.05.2015 and the F.I.R., came to be registered at 01.00 a.m., on 15.05.2015 and P.W.13 - Head Constable took the F.I.R., to the residence of the Judicial Magistrate No.I, Kovilpatti, at about 02.15 a.m., on 15.05.2015 and on account of late night hours, it was submitted by him to the Judicial Magistrate No.I, Kovilpatti, at about 07.30 a.m., on 15.05.2015.

19. It is also to be noted at this juncture that the case of the prosecution is built upon the testimonies of eyewitnesses and therefore, there is no necessity or occasion for the prosecution to introduce the name of the appellant/accused and since this Court has already recorded it's finding that there was no delay in lodging/despatching the F.I.R., the submission made by the learned Counsel for the appellant/accused in that regard is liable to be rejected.

20. It is also the submission of the learned Counsel for the appellant/accused that the other material witnesses namely, P.W.4, P.W.6, P.W.7, P.W.11 and P.W.15 turned hostile and as such, the



prosecution has failed to prove it's case beyond any reasonable doubt. P.W.4 is a witness to Ex.P.2 - Observation Mahazar and though he was treated as hostile, P.W.18 - Investigating Officer has spoken about the preparation of Ex.P.2 - Observation Mahazar and as such, it cannot be said that no Observation Mahazar was prepared at all. As regards the other witnesses, they were treated as hostile witnesses and permitted by the prosecution to cross-examine them and their testimonies would reveal that they have noted the presence of the appellant/accused in the scene of crime and admittedly, they were not eyewitnesses to the occurrence and as such, the said witnesses becoming hostile, did not corroborate the case of the prosecution.

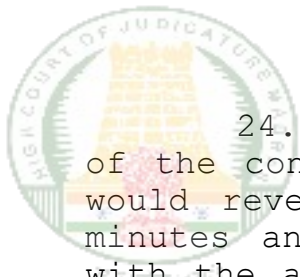
21. The Doctor, who conducted autopsy, namely, P.W.14 would be categorical that the deceased died on account of homicidal violence and it would have been caused by the use of weapon - M.O.1. Though P.W.14 has spoken about the statement of Murugan @ Katta Murugan as to how he sustained injuries, it is not material contradiction for the reason that a specific charge for having caused simple injuries for the commission of the offence under Section 324 I.P.C., was held to be not proved by the prosecution and so also the intimidation of the witnesses for the commission of the offence under Section 506(ii) I.P.C.

22. The case of the prosecution rests upon the eyewitness account and not circumstantial and even for the sake of arguments, if this Court assumed that motive has not been proved, it is well settled position of law that in case of eyewitness account, motive fell into insignificance. Therefore, the prosecution was able to prove that it was the appellant/accused who caused the death of the deceased Sundaramoorthy, elder brother of P.W.1.

23. The decisions relied on by the learned Counsel for the appellant/accused have no application to the facts of the present case for the following reasons:

23.1. The decision in ***Palaniammal and another v. State represented by Inspector of Police*** reported in ***(2019) 2 MLJ (Cr1) 655***, is a case of circumstantial evidence and admittedly, the present case of the prosecution is based upon eyewitness account; and

23.2. The decision in ***Jayakumar v. State*** reported in ***(2019) 2 MLJ (Cr1) 668***, is also not applicable to the facts of the present case for the reason that in the said decision, there are very many infirmities and inconsistencies in the case projected by the prosecution and there appears to be perfunct investigation also and however, in the case on hand, the prosecution was able to prove the guilt of the appellant/accused beyond any reasonable doubt and the trial Court has also rightly appreciated the oral and documentary evidence in proper perspective.



24. Now, coming to the alternate plea as to the modification of the conviction and sentence, the testimonies of P.W.1 to P.W.3 would reveal that there was a wordy altercation went on for 10 minutes and it is their evidence also that the appellant/accused with the aid of M.O.1 - aruval indiscriminately attacked the elder brother of P.W.1 - namely, deceased Sundaramoorthy. Ex.P.14 - post-mortem certificate, as spoken to by P.W.14 - Doctor, would reveal that the deceased sustained 7 incised wounds and on account of vicious attack, the death was instantaneous.

25. In the considered opinion of this Court, on account of the said vicious attack, it cannot be said that the act of the appellant/accused having caused the death of the deceased, would come under the Exception (4) to Section 300 I.P.C and the attack was brutal and the death was also instantaneous and therefore, it is not a fit case wherein the appellant/accused is entitled for modification of conviction and sentence.

Question No.(ii):

26. This Court on an independent application of mind to the entire materials and particularly, the oral and documentary evidence and other materials, is of the considered view that there is no error or infirmity in the reasons assigned by the trial Court for recording the conviction and sentence and finds no merit in this appeal.

27. In the result, this Criminal Appeal is dismissed, confirming the conviction and sentence awarded vide impugned judgment passed in S.C.No.75 of 2016, dated 14.09.2017, by the learned II Additional District and Sessions Judge, Thoothukudi.

Sd/-

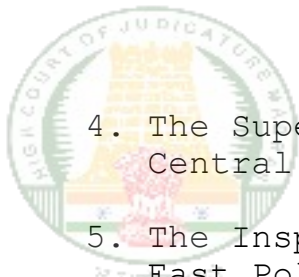
Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The f II Additional District and Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate No.I,
Kovilpatti
3. -Do thro'- The Chief Judicial Magistrate,
Thoothukudi



II

4. The Superintendent,
Central Prison, Palayamkottai
5. The Inspector of Police,
East Police Station,
Kovilpatti, Thoothukudi District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

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

+1 CC to M/s.M.KRISHNAVENI, Advocate (SR-79370[F] dated
02/08/2019)

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