

Bail Slip

The Appellant in Crl.A No.723 of 2013 viz., P.Suresh S/o Prakash aged 30 Years was directed to be released on Bail as per order of this Court dated 17/03/2014 made in MP No.1 of 2013 in Crl.A.No.723 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2020

PRONOUNCED ON : 17.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.723 of 2013

P.Suresh ... Appellant/Accused No.1

Vs.

State Rep.by
Assistant Commissioner of Police,
Pattabiram Range,
(T-11, Thirunindravur - Incharge)
Crime No.52/09. ... Respondent /Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) Cr.P.C to call for the records and set aside the conviction imposed on the appellant in S.C.No.86 of 2011 dated 23.09.2013 by the Learned Sessions Judge, Tiruvallur Division, (I Additional Sessions Court, Tiruvallur).

For Appellant : Mr.S.Suresh

For Respondent : Mr.R.Ravichandran (Crl.side)
Government Advocate

JUDGMENT

The appellant/Accused No.1 has been convicted under Section 498-A IPC and sentenced to undergo rigorous imprisonment for two years with fine of Rs.2,000/- in default to undergo simple imprisonment for three months and Section 304-B IPC and sentenced to undergo rigorous imprisonment for ten years and the period of sentences imposed on the appellant/accused No.1 had been ordered to run concurrently and he had been acquitted of the charge levelled against him under Section 306 IPC. His mother Krishnaveni(A2), who had been tried along with the

appellant, been acquitted of all the charges put forth against her by the Sessions Court under Section 304-B, 306 & 498-A IPC.) Impugning the conviction and sentence imposed on him, the criminal appeal has been preferred by the appellant/accused No.1.

2. Briefly stated, according to the prosecution case, the accused No.1 was married to the deceased Maheswari on 26.02.2007 and after the marriage, A1 and his mother A2 along with the deceased Maheshwari resided at No.4/1277, Kambar Street, Anna Nagar, Nathambedu, Thiruninravur and both A1 & A2 had subjected the deceased Maheswari on or before 01.02.2009 to cruelty, harassed her and ill-treated her physically and mentally with a view to coerce her in obtaining more dowry amount from her parents and the wilful cruelty acts committed by A1 & A2 were of such a nature, the same drove the deceased Maheswari to commit suicide by setting herself ablaze after pouring kerosene on her body and thereby, A1 & A2 had voluntarily abetted the deceased Maheswari to commit suicide by subjecting her to cruelty in the abovesaid manner and in pursuance of the said abetment caused by A1 & A2, the deceased Maheshwari committed suicide on 01.02.2009 prior to 4.15 P.M. in the abovesaid house and died in the hospital on the same date at about 21.15 hours and thus A1 & A2 have caused the dowry death of the deceased. As she had been subjected to cruelty in connection with the illegal demand of dowry by the accused and the accused had abetted commission of her suicide, in all, according to the prosecution, both A1 & A2 had committed the offences punishable under Section 498-A, 306 and 304-B IPC.

3. The abovesaid case was initially taken on file in PRC No.17 of 2010, on the file of the Judicial Magistrate No.II, Tiruvallur and after furnishing the copies of the documents relied on by the prosecution to sustain the charges levelled against the accused as per law and noting that the charges levelled against the accused should be tried exclusively by the Court of Sessions, it is found that the Judicial Magistrate had committed the case to the Principal Sessions Court, Tiruvallur for trial and resultantly, the case had been made over to the first Additional Sessions Court, Tiruvallur. Upon consideration of the materials placed on record by the prosecution and after hearing the submissions put forth by the prosecution and the accused with reference to the charge sheet levelled against them, the Sessions Court finding a prima facie case that the accused had committed the offences levelled against them, framed charges against both the accused under Sections 498-A, 306 & 304-B IPC.

4. The criminal law had been set in motion in the abovesaid matter based on the complaint lodged by PW1 Raja Bathar, the father of the deceased Maheshwari marked as Ex.P1 and PW8,

Inspector of Police, Tiruninravur Police Station, on the basis of the complaint lodged by PW1, registered the case in Crime No.52 of 2009 under Section 174 (3) Cr.P.C and the registered FIR has been marked as Ex.P5. The file was forwarded to the higher officials for necessary action as per law and it is noted that the Revenue Divisional Officer on receipt of FIR (Ex.P5), on 02.02.2009 conducted the inquest on the dead body of Maheswari in the presence of Panchayatars and examined the Panchayatars, the deceased father and the accused and prepared the inquest report marked as Ex.P8 as well as laid the enquiry report marked as Ex.P9. PW12 Assistant Commissioner of Police, Pattabiram, on receipt of the copy of FIR took up the case for investigation and visited the scene of occurrence and prepared the observation Mahazar Ex.P10 and rough sketch Ex.P11 in the presence of the witnesses as well as seized 5 litre white colour kerosene can MO1 and a match box MO2 under the Mahazar Ex.P12 and examined the witnesses and recorded their statements and took steps for conducting the post mortem of the deceased by sending necessary requisition to the hospital authority and on receipt of the inquest report Ex.P5 and the enquiry report Ex.P9 of the Revenue Divisional Officer (PW11), altered the case to Sections 498-A, 304-B and 306 IPC and the accident register prepared on the demise of the deceased in the hospital has been marked as Ex.P15 and on her demise, PW13 medical officer conducted the autopsy on the dead body of the deceased and concluded that the deceased would appear to have died of Hypovolemic shock and due to burns and issued the postmortem certificate marked as Ex.P4 and the I.O. examined the other witnesses and recorded their statements, the Investigation Officer PW14 took up further investigation and after concluding the same, laid the final report against the accused A1 & A2 under Sections 498-A, 306 and 304-B IPC.

5.To sustain the prosecution case, PWs 1 to 14 were examined and Exs.P1 to 15 were marked. MOs 1 and 2 were marked. On the conclusion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C qua the incriminating evidence tendered against them by the prosecution witnesses and they had denied the same. It is mainly put forth by the accused that the deceased had died due to the injuries sustained on account of stove burst incident. On the side of the accused, no oral and documentary evidence has been adduced and no M.O has been marked.

6.The trial Court, on an appreciation of the materials placed on record and after hearing the submissions put forth by the public prosecutor and the accused, acquitted the accused No.2 viz., Krishnaveni of all the charges put forth against her and acquitted the appellant/A1 of the charge levelled against him under Section 306 IPC, however, convicted the appellant/A1

under Sections 498-A and 304-B IPC and sentenced him to undergo imprisonment as aforesaid. Impugning the same, the criminal appeal has been preferred by the appellant/A1.

7. From the materials available on record, it is found that the appellant had married the deceased Maheshwari on 26.02.2007 and it was an arranged marriage. Further, it could also be gathered that at the time of marriage, the parents of the deceased had gifted 10 sovereigns of Gold to the deceased, 2 sovereigns of Gold to the appellant and presented Rs.20,000/- in cash for the appellant to buy a vehicle and also spent Rs.80,000/- for purchasing the household articles. Out of the wedlock between the deceased and the appellant, a female child was born to them. It is found that the deceased died on 01.02.2009 at 21.15 hours at the hospital. Now, according to the prosecution, the appellant had subjected the deceased to cruelty, harassed and ill-treated her both physically and mentally with a view to coerce her in obtaining more dowry amount from her parents and on account of the same, it is put forth that the deceased, unable to withstand the abovesaid acts committed by the appellant set herself ablaze by pouring kerosene on her body on 01.02.2009 and consequently, died due to the same. Thus, in toto, according to the prosecution, the appellant in particular had committed the offences punishable under Sections 498-A and 304-B IPC.

8. Inasmuch as the deceased had died unnaturally due to the burn injuries sustained by her as aforesaid within 7 years of the date of the marriage, in such view of the matter, the accused is mainly being charged under Section 304 - B IPC. As rightly held by the trial Court, to sustain the charge under Section 304-B IPC, the prosecution should establish the following essential ingredients:

"a. death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

b. such death must have occurred within seven years of her marriage;

c. soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband' and

d. such cruelty or harassment must be in connection with the demand for dowry."

9. The abovesaid principles of law had been enunciated by the Apex Court in the decision reported in (2011) 4 SCC 427 (Bachni Devi & Anr Vs. State of Haryana). As above pointed out, the prosecution case is that the deceased unable to sustain the cruelty, torture and harassment committed by the accused by demanding dowry amount, she had set herself ablaze by pouring kerosene on her body and died due to injuries sustained thereby. The deceased is found to have been admitted in the hospital immediately on 01.02.2009 and it is found that PW13 Dr. Baskaran had admitted her in the hospital and the accident register issued by PW13 has been marked as Ex.P15. As per the evidence of PW13 and the accident register issued by him marked as Ex.P15, it is seen that the deceased had sustained 100% burn injuries and no doubt, in the accident register marked as Ex.P15, it has been mentioned that the deceased had sustained burn injuries due to stove burst. Yet, even as per the evidence of PW13, it is noted that the deceased was three months pregnant at the time of the incident. Further, the deceased died on 01.02.2009 itself and thereafter, the autopsy of the dead body had been conducted by the Post mortem Doctor examined as PW7. The Post mortem certificate issued by PW7 has been marked as Ex.P4. On a perusal of the evidence of PW7 and the post mortem certificate issued by him, it is found that the deceased had sustained 100% antemortem superficial burns involving the face, neck, chest, abdomen, back, buttock, upper limbs and lower limbs and she is reported to have been died of Hypovolemic shock and due to burns. Immediately, it is found that on the next date, the complaint had been lodged by PW1 Rajabathar, the father of the deceased, which has been marked as Ex.P1. The trial Court has properly appreciated the delay aspect in the lodgement of the complaint, hence, no interference is needed to the same. In Ex.P1, it has been clearly mentioned by PW1 that at the time of marriage, he had presented gold jewels and cash both to the deceased as well as the appellant and despite the same, both the appellant and his mother had been insisting the deceased to obtain more amount and thereby, causing cruelty and ill-treatment to her and resultantly, it is found that in Ex.P1, PW1 has clearly stated that the deceased was sent to his house by the appellant and his mother demanding Rs.20,000/- in the month of December, 2008 and as at that point of time, as he was not in possession of the amount, it is put forth by him that he had requested his other son-in-law (PW5) to pledge the jewels and handover the amount and even thereafter, according to PW1, as stated in Ex.P1, on 28.01.2009, the appellant had again driven the deceased from the matrimonial home directing to fetch Rs.20,000/- and the same was apprised to him by his daughter and he had assured that he would arrange the amount immediately and believing his words, his daughter had returned back to the matrimonial home. Further more, he has put forth in Ex.P1 that

he had requested his son Murugan/PW2 to visit the deceased and it is stated that when PW2 Murugan went to see the deceased at her matrimonial home on 01.02.2009, the deceased, on seeing PW2, asked him as to whether their father had sent any amount as requested by her and thereafter, PW2 had assured that the amount would be made ready, however, it is found that subsequently on the same date, the deceased had poured kerosene and set fire to herself and immediately, was rushed to the hospital and subsequently, died. Therefore, it is seen that as rightly noted by the trial Court, in the complaint, PW1 has clearly narrated as to the demand of additional dowry amount on the part of the appellant, in particular, from the deceased repeatedly, despite his demand being satisfied by PW1 without any protest. On the other hand, it is found that inasmuch as the deceased had been persistently tortured, harassed and ill-treated for obtaining the amount as demanded by the appellant often, it is found that the deceased was unable to tolerate the cruelty committed by the appellant in particular and decided to end her life and resultantly, poured kerosene on her body and set herself ablaze. Therefore, it is found that as rightly held by the trial Court, the deceased had died within 7 years of the date of the marriage on account of the cruelty inflicted upon the deceased by the appellant by repeatedly demanding her to bring more amount from her father PW1 and the same had been clearly deposed by PW1 and his son Murugan PW2, the sister of the deceased Saraswathi PW3, another sister of the deceased Vasanthi PW4 as well as the uncle of the deceased viz., Mahalingam, (PW.5) husband of PW3 and as rightly assessed, analysed and appreciated by the trial Court, from the evidence of PWs 1 to 5, in toto, it is found that the deceased had been continuously ill-treated by the appellant insisting her to get more amount from PW1, her father and accordingly, it is seen that soon before her death, the deceased was subjected to cruelty by the appellant during 28.01.2009 and accordingly, it is found that the demand of additional dowry on the part of the appellant had driven the deceased to commit suicide and therefore, it is seen that the prosecution has established the cruelty inflicted upon the deceased by the evidence of PWs 1 to 5 and when from the evidence of PWs 1 to 5, it has been brought home clearly without any doubt or suspicion that soon before her death, the deceased was subjected to cruelty, ill-treatment, harassment by the appellant by repeatedly demanding to fetch amount from her father and in such view of the matter, the trial Court is justified in holding that the deceased was subjected to dowry harassment on the part of the appellant and therefore, the argument put forth by the accused counsel that the cruelty aspect attributed against the appellant has not been established by the prosecution through the evidence of PWs 1 to 5, as such, cannot be countenanced.

10. Inasmuch as the deceased had sustained unnatural death, it is found that the case having been registered under Section 174 Cr.P.C., the matter was referred to RDO and the RDO had conducted the inquest of the deceased and the inquest report has been marked as Ex.P8 and the report of RDO has been marked as Ex.P9. On a perusal of Exs.P8 & P9 in toto, it is found that the RDO had enquired PW1, the father of the deceased as well as her husband (appellant), the mother-in-law of the deceased (A2) and the Panchayat members and finally came to the conclusion that the deceased is found to have sustained death only due to dowry harassment. Following the report of RDO, it is found that the I.O had altered the section and finally laid the final report against the accused for the offences punishable under Sections 498-A, 304-B and 307 IPC.

11. The accused counsel would contend that the deceased is reported to have sustained burn injuries only due to stove burst as reflected in the accident register Ex.P15 and as narrated by PW13 and therefore, according to him, the prosecution has subsequently invented and adduced the theory of the deceased having died due to dowry harassment and further, according to him, DWs 1 to 3 have also deposed about no ill-treatment inflicted upon the deceased by the appellant and that, both the deceased and the appellant had been living peacefully and therefore, according to him, the trial Court had erred in convicting the appellant under Sections 498-A and 304-B IPC.

12. No doubt, in Ex.P15 accident register, it is stated that the deceased had been reported to have sustained burn injuries due to stove burst. However, considering the evidence of Dr.Baskaran PW13 and his 161 statement to the police and also from the post mortem certificate Ex.P4, when it is found that the deceased was totally unconscious and had sustained 100% burn injuries, the deceased would not have disclosed to PW13 as to how she had sustained burn injuries. Therefore, it is found that PW13 had referred to as to what had been apprised to him by the person admitting the deceased viz., Kannan that the deceased had sustained burn injuries due to stove burst. On that score, it cannot be held that the deceased died due to accidental stove burst as sought to be projected by the accused counsel. When according to the prosecution, the deceased had committed suicide by pouring kerosene on her body and setting herself ablaze due to the torture and harassment of the accused by repeatedly demanding additional dowry amount, to say that the deceased had died due to accidental stove burst, as such, cannot be readily accepted, particularly, solely based on the accident register marked as Ex.P15. In this connection, the accused counsel would also rely upon the evidence of DWs 1 to 3 and on a perusal of the evidence of DWs 1 to 3, it is found that both DWs 1 and 3

were also examined by RDO during the inquest and it is found that they had only informed to RDO that on the relevant date as the deceased daughter had been suffering from chicken-pox and as her husband viz., the appellant had consumed Alcohol, following the same, quarrel ensued between the deceased and the appellant, as a result of which, according to them, the deceased had doused herself with kerosene and set herself ablaze and died on account of the same. Therefore, when according to DWs 1 and 3 in particular, when they had only reported to the RDO that the deceased had sustained burn injuries only by pouring kerosene on her body and setting herself ablaze, their evidence that they had been informed by the deceased that there was no problem between her and the appellant and that, she had died due to accidental stove burst, as such, cannot be relied upon and rightly disbelieved by the trial Court. In this connection, DW1 Viswanathan would state that he was informed by the deceased that she sustained burn injuries due to stove burst. However, during the course of cross examination, he would only state that he has ascertained the cause of burn injuries sustained by the deceased through others and moreover, as above pointed out, when according to him at the first instance the deceased had set herself ablaze by pouring kerosene on her body on account of quarrel between her and the appellant, in such view of the matter, as abovesaid, his subsequent evidence that the deceased had informed him that she had sustained burn injuries due to stove burst, as such, cannot be readily accepted. Similarly, DW2 Durairaj has not claimed any direct knowledge about as to how the deceased sustained burn injuries. According to him, he had learnt that the deceased sustained burn injuries only by accidental stove burst from others and therefore, it is seen that he had no direct knowledge about how the deceased had sustained the burn injuries. Therefore, his evidence would be of no use to disbelieve the prosecution case. DW3, Gurunathan has also claimed that he was informed by others that the deceased had sustained burn injuries due to stove burst. Therefore, it is found that he has also no direct knowledge about how the deceased had sustained the burn injuries. As above pointed out, when he has informed the RDO that the deceased set herself ablaze on account of quarrel between her and her husband viz., the appellant, in such view of the matter, the evidence of DW3 as deposed in the Court would be of no use to sustain the defence version. Therefore, as rightly determined by the trial Court, the evidence of DWs 1 to 3 being totally contradictory to their statement put forth to RDO and when it is noted that DWs 1 to 3 have no direct knowledge about the cause for the burn injuries sustained by the deceased, in such view of the matter, the trial Court is found to be totally justified in not accepting the evidence of DWs 1 to 3 for sustaining the defence version that the deceased had died only due to the accidental stove burst.

13. The accused counsel, during the course of arguments, would contend that though before the trial Court, the accused / appellant had taken the defence that the deceased sustained death due to the accidental stove burst, without prejudice to the abovesaid defence version, according to him, as per the report of RDO, when the Panchayat has stated that the deceased had set herself ablaze by pouring kerosene on her body following the quarrel she had picked up with the appellant, according to him, in such view of the matter, the deceased cannot be said to have been died due to dowry harassment committed by the appellant. However, as rightly put forth by the Government Advocate by taking the abovesaid version, the accused had been raising inconsistent versions as regards the cause of death of the deceased and before the trial Court, he having taken the defence that the deceased had died due to the accidental stove burst, cannot now repudiate the abovesaid stand and take up the plea that the deceased had committed suicide by setting herself ablaze following the quarrel with her husband viz., the appellant and therefore, the inconsistent defence version put forth by the accused would only lead to the conclusion that inasmuch as the appellant is endeavouring to escape himself from the offences put against him one way or the other, it is thus found that he has been raising inconsistent pleas and also unable to substantiate the same with acceptable and reliable materials.

14. Further, it is seen that during the pendency of the trial, Ex.D1 had come to have been entered into between PW1 and the accused, wherein, the accused had endeavoured to handover the dowry received by him from the father of the deceased. In Ex.D1 also it has been only stated that the deceased had sustained death by dousing kerosene on her body and setting herself ablaze and Ex.D1 further fortifies the fact that the accused had been repeatedly demanding dowry amount from PW1, as narrated by PW1 and the other relatives of the deceased and the abovesaid document would only belie the defence version that the deceased had sustained burn injuries due to the accidental stove burst.

15. The contention also been put forth that no kerosene smell is observed or perceived from the body of the deceased while conducting autopsy. No doubt, the post mortem Doctor had also not reported about the smell of kerosene at the time of autopsy. However, considering the fact that the deceased had sustained burn injuries all over the body and the same would reveal of 100% in nature, in such view of the matter, as rightly held by the trial Court, since 100% burn injuries are

found on the body of the deceased, there is no possibility of any kerosene smell emanating during autopsy. Therefore, the abovesaid contention put forth by the appellant that on account of absence of kerosene smell from the body of the deceased, the same would rule out the death of the deceased by setting herself ablaze by pouring kerosene on her body, as such, cannot be accepted and rightly rejected by the trial Court.

16.As rightly pointed out above, the trial Court has relied upon the acceptable, reliable and satisfactory evidence of PWs 1 to 5 in arriving at the conclusion that the appellant had been repeatedly driving the deceased to her father's house to fetch more amount as demanded by him and accordingly, when it has been pointed out and established by the prosecution that the deceased had died only due to the dowry harassment committed by the appellant and when the cruelty inflicted upon the deceased by the appellant is also found to be falling within the definition of the cruelty contemplated under Section 498-A IPC and in such view of the matter, the ingredients of Section 304-B IPC having been satisfied by the prosecution beyond any reasonable doubt as above pointed out, the prosecution is entitled to rely upon the presumption under Section 113-B of the Indian Evidence Act and when the accused has failed to discharge the presumption by adducing acceptable and reliable evidence and as above pointed out, when the evidence DWs 1 to 3 cannot at all be relied upon in any manner, in all, it is seen that the trial Court is justified in holding that the accused had committed the offences punishable under Section 498-A and 304-B IPC and the sentence imposed on the accused by the trial Court is also found to be not excessive.

17. In support of his contentions, the counsel for the accused has placed reliance upon the decisions reported in (2004) 10 Supreme Court Cases 769 (Nallam Veera Stayanandam and others Vs. Public Prosecutor, High Court of A.P.) and order of this Court dated 05.10.2018 in CrI.O.P.(MD) No.15407 of 2016 (S.A.Margaret Angel and another Vs. State rep.by the Inspector of Police, C-5 Karimedu (L&O) Police Station, Madurai City, (Crime No.352 of 2014)). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

In the light of the above discussions, the conviction and sentence imposed on the appellant under Sections 498-A and 304-B by the trial Court are sustained and resultantly, the criminal

appeal is dismissed and the trial Court is directed to secure the presence of the appellant/A1 and commit him to prison to undergo the sentence imposed on him as per law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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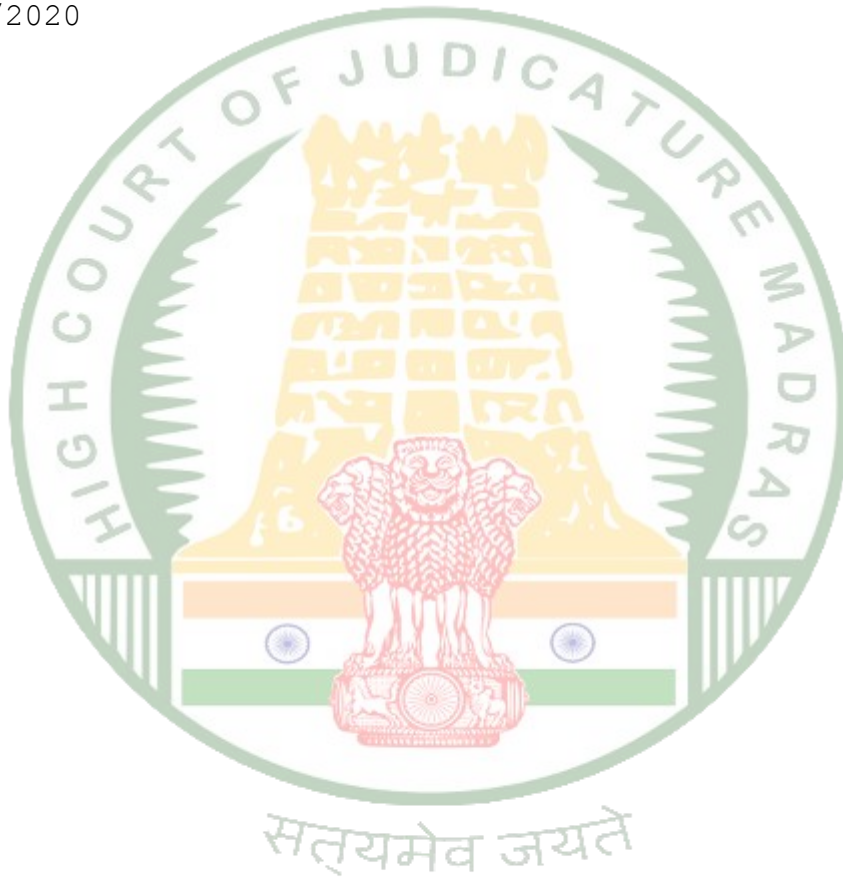
To

- 1.The Assistant Commissioner of Police,
Pattabiram Range,
(T-11, Thirunindravur - Incharge)
Crime No.52/09.
- 2.The Learned Sessions Judge, Tiruvallur Division,
(I Additional Sessions Court, Tiruvallur).
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Additional Sessions Judge No.II,
Tiruvallur.
- 5.The Chief Judicial Magistrate,
Tiruvallur.
- 6.The Assistant Commissioner of Police,
Pattabiram Range, T-11, Thirunindravur
Incharge Cr.No.52/2009.
- 7.The Superintendent,
Central Prison, Puzhal.
- 8.The Principal District Judge,
Tiruvallur.
- 9.The Judicial Magistrate II,
Tiruvallur.

10.The Section Officer,
Criminal Section, High Court, Madras.

Cr1.A.No.723 of 2013

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