

Bail Slip

The Appellant / accused namely K.Panneerselvam, released on bail as per the order of this Court dated 1.10.2010 and made in MP (MD)No.1 of 2010 in Crl.A(MD)No.288 of 2010 on the file of the High Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl. A(MD)Nos.288 of 2010 and 273 of 2019

Crl.A(MD) No.288/2010:

K.Panneerselvam

Appellant/Accused No.2

vs.

The Inspector of Police
Velayuthampalayam Police Station
Karur, Karur District
(Cr.No.340 of 2009)

Respondent/ Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 30.07.2010 in S.C.No.2 of 2010 on the file of the Principal Sessions Judge, Karur.

For appellant

Mr.S.Ashokkumar

Senior Counsel for Mr.N.Ananda Kumar

For respondent

Mr.R.Anandharaj

Additional Public Prosecutor

Crl.A(MD) No.273/2019:

P.Palaniammal

Appellant

vs.

1. P.Kaliappan
2. Panneerselvam
3. Periyasamy
4. Pappayee
5. Lakshmi
6. The Inspector of Police
Velayuthampalayam Police Station
Karur, Karur District

Respondents

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 30.07.2010 in S.C.No.2 of 2010 on the file of the Sessions Judge, Karur.

For appellant

Mr.V.Kathirvelu

Senior Counsel for Mr.K.Balasubramani

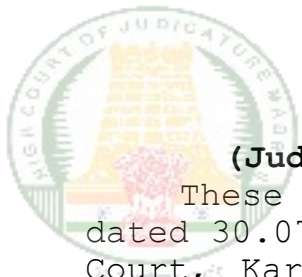
For respondents

Mr.R.Anandharaj for R6

Additional Public Prosecutor

Mr.S.Ashokkumar for R1 to R5

Senior Counsel for Mr.N.Ananda Kumar



COMMON JUDGMENT

(Judgment of the Court was delivered by P.N.PRAKASH, J)

These criminal appeals are filed against the judgment and order dated 30.07.2010 passed in S.C.No.2/2010 on the file of the Sessions Court, Karur. The trial Court, by the said judgment and order, acquitted the accused 1 and 3 to 5/respondents 1 and 3 to 5, however, convicted Panneerselvam (A-2) of the offence under Section 304 (II) IPC and sentenced him to undergo rigorous imprisonment for 10 years and pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month. Challenging the conviction and sentence, Panneerselvam (A-2) is before this Court in Crl.A.(MD) No.288/2010 and challenging the acquittal of accused 1 and 3 to 5/respondents 1 and 3 to 5, Palaniammal (P.W.-1) is before this Court in Crl.A.(MD) No.273/2019.

2 The prosecution story, in a nutshell, is as follows:

2.1 The deceased Periyasamy is the husband of Palaniammal (P.W.-1) and father-in-law of Punitha (P.W.-2). The family of the deceased hails from Melapalayam Punnam Village.

2.2 Panneerselvam (A-2) is the son of Kaliappan (A-1) and Lakshmi (A-5) and grandson of Periyasamy (A-3) and Pappayee (A-4).

2.3 The family of the deceased and the family of the accused were related by blood, inasmuch as the father of the deceased and the grandfather of Periyasamy (A-3) were brothers. Both families were owning properties adjacent to each other and after partition, they were enjoying their respective shares.

2.4 However, there were disputes between the two families with regard to a cart-track that was running across the land of the deceased party from the land of the accused party. The deceased party were objecting to the usage of the said cart-track by the accused party, on account of which, there were frequent quarrels between them.

2.5 While so, on 17.06.2009 (Wednesday), around 7.00 a.m., the deceased, along with his wife Palaniammal (P.W.-1) and daughter-in-law Punitha (P.W.-2), was taking steps to fence the cart-track so as to prevent the family members of the accused and others from using it as a pathway, on coming to know of which, it is alleged that the accused party came to the place of occurrence and questioned the deceased, as a sequel of which, an altercation ensued, in which, the accused party belaboured the deceased with a scimitar (a short, curved sword with an edge on the convex side), resulting in the death of the deceased at the place of occurrence.

3 On the complaint (Ex.P-1) given by Palaniammal (P.W.-1), Karunakaran, (P.W.-11), Inspector of Police registered a case in Crime No.340/2009 under Section 302 IPC on 17.06.2009 at 8.30 hrs.



against Kaliappan (A-1) and Panneerselvam (A-2) and prepared the printed FIR (Ex.P.-17), which reached the jurisdictional Magistrate on 17.06.2009 at 11.50 a.m., as could be seen from the endorsement thereon.

4 The Investigating Officer (P.W.-11) went to the place of occurrence and prepared the observation mahazar (Ex.P-5) and rough sketch (Ex.P-18) in the presence of witnesses Sivasubramanian (P.W.-4) and Subramanian (not examined). Inquest was conducted at the place of occurrence and inquest report was marked as Ex.P-19. The body was sent to the Government Hospital, Velayuthampalayam, for postmortem, where, Dr.Sivaraman (P.W.-5) conducted autopsy on the body of the deceased and issued the postmortem certificate (Ex.P-8).

5 Dr.Sivaraman (P.W.-5), in his evidence as well in the postmortem certificate (Ex.P-8), has noted as follows:

"External injuries:

1. Right hand near completely severed at the level of wrist joint exposing ulna radius bones. Blood vessels nerves muscles severed only toe of skin attached with forearm blood stain dried on whole upper limb.

2. 2 x 2 x 1 cms in size laceration present left preauricular region.

3. Diffuse swelling present over left mandibular region of face.

4. 4 x 3 cms in size abrasion right frontal region of head.

Internal Examination Skull:

Left temporal bone fractured, fracture extending to anteriorly left orbit posteriorly occipital bone, interiorly left temporo mandibular joint medially to petrous part of temporal bone left mandible fracture at the level of body right frontal bone fracture extent to bone base of skull fracture.

Meninges: Ruptured in left temporal region.

Brain:Subdural Haemotoma present in left temporal, occipital right frontal region. Hyoid bone:Intact, Trachea, thorax, ribs, intact. Lungs:pale, Heart:All chamber empty, liver:Pale, stomach:empty, intestine - yellow chyme present. Kidneys - Pale, Spleen : Shrunkered. Bladder - Empty. All internal organs - Pale. The following Viscera preserved for chemical analysis."

6 The samples of visceral organs were sent to the Tamil Nadu Forensic Sciences Laboratory for chemical examination and after obtaining the Biology report (Ex.P-13) and Serology Report (Ex.P-14), final opinion was given by Dr.Sivaraman (P.W.-5) as follows:

"Report:The above five articles were examined, but alcohol (or) other poison was not detected in any of them. So I am of the final opinion: the deceased would appear to



have died of shock & Hemorrhage due to head injury and injury to brain about 6 to 9 hrs prior to autopsy."

7 It appears that in the scuffle, Panneerselvam (A-2) also sustained serious injuries, viz., a cut injury and fracture in his right humerus and he was admitted to the Government Hospital, Velayuthampalayam at 11.30 a.m. on 17.06.2009.

8 Based on the complaint given by Panneerselvam (A-2), a case in Cr. No.341 of 2009 was registered by the same police on 17.06.2009 for the offences under Sections 294(b) and 324 IPC against Periyasamy (deceased in this case).

9 Panneerselvam (A-2) was admitted as an inpatient and according to the prosecution, he left the hospital against medical advice on 23.06.2009 and on the same day, he was arrested by the police at Punnam bus stand.

10 After completing the investigation in Cr. No.340 of 2009, the police filed a final report in PRC No.31 of 2009 in the Court of Judicial Magistrate, No.II, Karur for the offences under Sections 147, 302, 341 read with 149 and 506(II) read with 149 IPC as against Kaliappan (A-1), Panneerselvam (A-2), Periyasamy (A-3), Papayee (A-4) and Lakshmi (A-5).

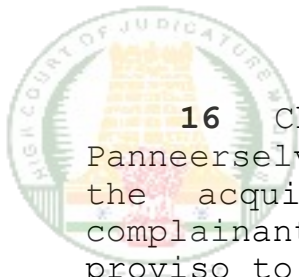
11 As regards Cr. No.341 of 2009, the police filed a closure report closing the case as mistake of fact. The closure report with the documents were marked as Ex.P.25 in this case.

12 The case in Cr. No.340 of 2009 was committed to the Court of Session in S.C.No.2/2010 and was tried by the Sessions Court, Karur.

13 The trial Court framed charges against the five accused for the aforesaid offences and when questioned, they pleaded not guilty.

14 To prove the case, the prosecution examined 12 witnesses and marked 25 documents and 6 material objects. In the cross-examination of the prosecution witnesses, the defence marked three exhibits, viz., Ex.D-1 to Ex.D-3. No witness was examined from the side of the accused nor any material object marked.

15 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.07.2010, acquitted Kaliappan (A-1), Periyasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) of all the charges, but, convicted Panneerselvam (A-2) of the offence under Section 304(II) IPC and sentenced him to undergo 10 years rigorous imprisonment and pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month.



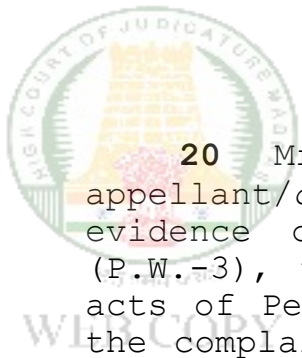
16 Challenging the aforeseid conviction and sentence, Panneerselvam (A-2) has filed Crl.A.(MD)No.288/2010 and challenging the acquittal of the other accused, Palaniammal (*de facto* complainant/P.W.-1) has filed Crl.A.(MD) No.273/2019 under the proviso to Section 372 Cr.P.C.

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17 Heard Mr.V.Kathirvelu, learned Senior Counsel, representing Mr.K.Balasubramani, learned counsel on record for the *de facto* complainant, Mr.S.Ashokkumar, learned Senior Counsel, representing Mr.N.Anandakumar, learned counsel on record for the accused and Mr.R.Anandharaj, learned Additional Public Prosecutor for the respondent State.

18 The entire prosecution case rests on the ocular evidence of Palaniammal (P.W.-1) and Punitha (P.W.-2). At this juncture, it may be relevant to state here that in the complaint (Ex.P-1) that was given by Palaniammal (P.W.-1), which forms the basis for the registration of the FIR, she has stated that while her husband was fencing the pathway, Kaliappan (A-1) and Panneerselvam (A-2) came to the place of occurrence, picked up a quarrel with him and attacked him with a scimitar resulting in his death. There was no reference whatsoever about the presence of Periyasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) at the place of occurrence. However, subsequently, they named Periyasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) in their statement to the police and also in their evidence before the Court.

19 Palaniammal (P.W.-1) and Punitha (P.W.-2), in their evidence, have stated that they are from Melapalayam Punnam Village; they own 2 to 3 acres of land; the accused are their blood relatives and they also own lands adjacent to their lands; the accused were using the pathway that ran through their lands, which was objected to by the deceased; on the date of occurrence, both of them (P.Ws.-1 & 2) had gone with the deceased to fence the pathway; on coming to know of it, all the five accused came to the place of occurrence, picked up a quarrel with them and Kaliappan (A-1) attacked the deceased with a stick that was lying nearby on his head and Panneerselvam (A-2) cut the right hand of the deceased saying that "This hand, which is putting the fence, should be removed"; the deceased died on the spot; the accused dropped the weapons and fled. In the cross-examination, Palaniammal (P.W.-1) has clearly admitted that the accused came to the place unarmed. She has also admitted that the accused came there and questioned the deceased as to why he is fencing the pathway, for which, the deceased said that he alone has the right to use the pathway and that is why, he is closing it. Palaniammal (P.W.-1), in her evidence, has further stated that when the deceased raised alarm after the attack, when she (P.W.-1) and P.W.-2 wanted to go to his rescue, Periyasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) prevented them by saying that they will also suffer the same fate.



20 Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellant/*de facto* complainant (P.W.-1), took us through the evidence of Palaniammal (P.W.-1), Punitha (P.W.-2) and Sivaraj (P.W.-3), wherein, they have stated that they disclosed the overt acts of Periyasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) also in the complaint, but, the Inspector of Police (P.W.-11) advised them to delete their names, saying that the case may go against them and therefore, they did not include the names of Periasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) in the complaint (Ex-P.1)

21 The trial Court has rightly disbelieved this explanation and we have no good reasons to differ. In this case, the complaint was written by Sivaraj (P.W.-3), a close relative of Palaniammal (P.W.-1), which is quite understandable, because she (P.W.-1) is a rustic lady and she would have been in a state of shock. However, the explanation proffered by the three prosecution witnesses, viz., P.Ws.1 to 3, that at the request of the police, they dropped the names of Periasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) in the complaint appears too large a pill for this Court to swallow in the absence of any malice attributed to the Investigating Officer. Even if the benefit of this doubt is extended to the *de facto* complainant and the evidence of Palaniammal (P.W.-1) and Punitha (P.W.-2) that Periasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) were also present in the scene of occurrence is accepted as truth, we are unable to mulct them with criminal liability either with the aid of Section 149 IPC or Section 34 IPC for the following reasons:

- a) Admittedly, it was the deceased party, who had gone to the place of occurrence to fence the pathway;
- b) Only on coming to know of that, the accused had come to that place to question them (deceased party) as to why they are blocking the pathway;
- c) Admittedly, the accused had gone there unarmed;
- d) The deceased party were having with them the scimitar (M.O.-2) for the purpose of fencing the pathway;
- e) The weapons used in this case are a scimitar (M.O.-2) and a stick (M.O.-1), which was lying at the place of occurrence, even according to the prosecution;
- f) The evidence of Palaniammal (P.W.-1) and Punitha (P.W.-2) is to the effect that the attackers were Kaliappan (A-1) and Panneerselvam (A-2). In such circumstances Periasamy (A-3), Pappayee (A-4) and Lakshmi (A-5), being the close relatives of Kaliappan (A-1) and Panneerselvam (A-2) cannot be mulcted with criminal liability, in the absence of any evidence to show that there was common object to commit an offence or that they



shared a common intention for committing an offence; and

- g) If at all the presence of Periasamy (A-3), Pappayee (A-4) and Lakshmi (A-5) at the place of occurrence is believed, the common object of them was to only question the deceased party as to why they were putting the fence in the pathway. Such a common object cannot be termed as an object to commit an offence.

22 We are also aware of the law that an assembly, which initially forms for a lawful object, can turn out into an unlawful assembly in a given circumstance. Such a circumstance does not obtain in this case for the reasons aforesaid.

23 Now, the most crucial aspect is the injuries suffered by Panneerselvam (A-2). Mr. V.Kathirvelu, learned Senior Counsel for the *de facto* complainant, submitted that Panneerselvam (A-2), in his statement to the police in the hospital, based on which, Crime No.341/2009 was registered, has stated that he suffered the injuries at 8.30 a.m. in the Harijan Colony and not at the place of occurrence. At the first blush, Mr.V.Kathirvelu's arguments did sound appealing. However, on a close reading of the evidence of Palaniammal (P.W.-1), it is seen that the place of occurrence is called Ponnayee Thundukadu, which was earlier occupied by Harijans and was an Harijan Colony before. She further admitted that her husband had evicted the Harijans, who were living there. This evidence of Palaniammal (P.W.-1), in the cross-examination, makes it limpid that there was a Harijan colony in the place of occurrence and therefore, Panneerselvam (A-2) had referred to it as Harijan Colony in his complaint and Palaniammal (P.W.-1) has referred to it as Ponnayee Thundukadu in her complaint. Thus, in short, both Palaniammal (P.W.-1) and Panneerselvam (A-2) have referred to the same place only, as the place of occurrence.

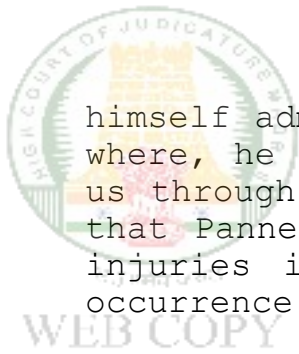
24 Now, the nature of injuries suffered by Panneerselvam (A-2) requires to be addressed. The copy of the Accident Register (Annexure to Ex.P-25) shows that Panneerselvam (A-2) was admitted at 8.50 a.m. on 17.06.2009 in the Government Hospital, Melapalayam and the injuries noted therein are as under:

"Nature of injuries/treatment:

1.A cut injury over right(P.W.-1) cubital area. 10 cm x 2 cm x 2 cm - muscle depth with blood."

He was admitted as an inpatient from 17.06.2009 to 23.06.2009.

25 Mr.V.Kathirvelu, learned Senior Counsel submitted that taking into consideration the serious nature of the injuries suffered by Panneerselvam (A-2), he was referred to the Government Hospital, Karur for better treatment; on 18.06.2009, he was admitted as inpatient in the Government Hospital, Karur, from where, he got



himself admitted to a private hospital by name Amaravathi Hospital, where, he was under treatment till 23.06.2009. Mr.V.Kathirvelu took us through the medical records of Amaravathi Hospital and submitted that Panneerselvam (A-2) had told the doctor that he had sustained injuries in Melapalayam Arjuna Nagar, which is not the place of occurrence.

26 At this juncture, felicitous it is to advert to the judgment of the Supreme Court in **B. Bhadriah and Others vs. State of Andhra Pradesh**¹, wherein, it has been categorically held as follows:

“Casual way of filling up the column in the medical certificate, does not, in any manner, amount to recording a statement of the injured witness”

27 In view of the aforesaid judgment, much credence cannot be placed on the information about the place of occurrence recorded in the second Accident Register, especially, in the light of the fact that, at the earliest point of time, Pannerselvam (A-2) had told the doctor in Melapalayam Government Hospital that he suffered injuries due to the attack by known persons in the Harijan Colony. Mr.Kathirvelu took us through the evidence of Dr.Sivaraman (P.W.-5), postmortem doctor and the postmortem certificate (Ex.P-8) and contended that the ocular evidence of Palaniammal (P.W.-1) and Punitha (P.W.-2) that Kaliappan (A-1) attacked the deceased with a stick on the head, stood corroborated by the 3rd and 4th injuries, and that Panneerselvam (A-2) cut the right hand of the deceased, stood corroborated by the 1st and 2nd injuries.

28 We are in agreement with this submission of Mr.V.Kathirvelu. But, we find that the prosecution witnesses have completely suppressed the cut and fracture injuries suffered by Panneerselvam (A-2), which occurred in the course of the same transaction. We are convinced that Panneerselvam (A-2) had suffered the aforesaid injuries in the course of the same occurrence.

29 Mr.V.Kathirvelu submitted that Panneerselvam (A-2) left the private hospital against medical advice on 23.06.2009, which only shows his guilty conduct. The Inspector of Police (P.W.-11) has stated that he arrested Panneerselvam (A-2) on 23.06.2009 at Melapalayam Punnam bus stand at 11.00 a.m. After Panneerselvam (A-2) was remanded to custody, he continued to take treatment in the Prison Hospital from 24.06.2009 to 20.07.2009, as could be seen from the treatment records that were filed by Panneerselvam (A-2) along with his written statement under Section 313 Cr.P.C., in which, he has stated that he was arrested by the police from the hospital and not at the bus stand, as alleged by the Inspector of Police (P.W.-11). All these circumstances cumulatively show that from the date of occurrence, namely, 17.06.2009 to 20.07.2009, Panneerselvam (A-2) has been continuously under treatment in four hospitals, since he



had suffered a cut injury on his right hand as well a fracture. At this juncture, it may be apposite to extract the observation of the Prison Doctor in the medical certificate:

"This is to certify Mr.Panneerselvam, RP No.6092 S/o.Kaliappan 26 years old Central Prison, Trichy was treated for fracture medical condyle of right humerus in the following days in prison hospital.

DOA : 24/06/09

DOB : 20/07/09"

30 On a close analysis of the injuries noted in the postmortem certificate (Ex.P-8) and in the backdrop of the injuries suffered by Panneerselvam (A-2), we are of the view that, had the deceased suffered the head injury first or the severance of his wrist first, he would not have been in a position to attack Panneerselvam (A-2) and cause a cut injury and a fracture. Dictates of common sense inform us that the deceased, who was already having a scimitar (M.O.-2), has attacked the unarmed Panneerselvam (A-2) first and in retaliation, Kaliappan (A-1) has attacked him on his head with a stick that was lying nearby. Following that attack, the scimitar (M.O.-2) has slipped from the hands of the deceased, which was used by Panneerselvam (A-2) to cause a cut injury on the right hand of the deceased. The fatal injury in this case is the head injury caused by Kaliappan (A-1) with the stick and not the cut injury caused by Panneerselvam (A-2). The trial Court has also returned the same finding in paragraph no.28 of its judgment and order, which is as under:

"From a perusal of entire oral and documentary evidence along with the documents produced by the accused, it has become clear that the 2nd accused questioned the deceased Periyasamy for erecting the fence as seen from Ex.D-2, the certified copy of FIR registered at the instance of the 2nd accused, that resulted in quarrel between the 2nd accused and deceased Periyasamy, Periyasamy enraged over the objection raised by the 2nd accused attacked the 2nd accused with bill hook and caused injury to the 2nd accused. The 2nd accused took the black bubble stick attacked the deceased, the deceased fell down and the bill hook slipped from his hands, the 2nd accused should have picked the bill hook and caused cut injury in the right hand by severing the wrist from the hands. It is true that there is no direct evidence available to prove the above inference by this Court. The available evidence and circumstances would force this Court to infer the above fact."

31 Strangely, after having recorded such a finding, the trial Court has convicted and sentenced Panneerselvam (A-2) by holding that he had exceeded the right of private defence. However, on a thorough reading of the evidence on record, we find that the prosecution witnesses have stuck to utter falsehood by giving a totally different version of the occurrence, roping in Periyasamy



(A-3), Pappayee (A-4) and Lakshmi (A-5) subsequently and completely suppressing the serious injuries that were suffered by Panneerselvam (A-2) .

32 In such perspective of the matter, we are constrained to extend the benefit of doubt to Panneerselvam (A-2) and ergo, the appeal in Crl.A.(MD) No.288/2010 deserves to be allowed and the appeal in Crl.A.(MD) No.273/2019 is liable to be dismissed.

In the result:

- (a) Crl.A.(MD) No.288/2010 preferred by Panneerselvam (A-2) is allowed and Panneerselvam (A-2) is acquitted of the charge under Section 304(II) IPC. Fine amount, if any paid by him, shall be refunded to him. Bail bond shall stand terminated; and
- (b) Crl.A.(MD) No.273/2019 preferred by Palaniammal (P.W.-1/de facto complainant) is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR/cad

To

- 1.The Principal Sessions Judge,Karur
- 2.The Judicial Magistrate No.II,Karur.
- 3.-Do-Thro The Chief Judicial Magistrate, Karur.
- 4.The Inspector of Police,Velayuthampalayam Police Station
Karur,Karur District
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Additional Public Prosecutor
Madurai Bench of Madras High Court,Madurai

+1 CC to M/s.N.ANANDAKUMAR, Advocate (SR-12118[F]

+1 cc to Mr.K.BALASUBRAMANI, Advocate, Sr.No.12074

Common judgment made in
Crl.A. (MD)Nos.288 of 2010 and 273 of 2019
17.03.2020

SMA/29/06/2020/10P/9C