



Bail Slip

1 Murugan @ Balamurugan, S/o. Ramachandran, Male, age about 24 years/2018 (Accused No.3), 2 Kumar @ Senthilkumar, S/o. Muniyasamy, Male, aged about 40 years/2018 (Accused No.4), 3 Muniyasamy, S/o. Murugesan, Male, aged about 30 years/2018 (Accused No.2) and 4 Shaik @ Shaik Mohamed, S/o. Ibrahim, Male, aged about 28 years/2018 (Accused No.1) were released on bail vide Court Order dated 09.04.2018, 13.04.2018, 12.04.2018 and 29.10.2018 made in CRL MP(MD) Nos.1575, 1695, 1696 and 6513 of 2018 in CRL A(MD) Nos.106, 110, 111 and 371 of 2018 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.12.2019
Pronounced on : 24.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA
and
THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Crl.A. (MD) Nos.106, 110, 111 & 371 of 2018

Murugan @ Balamurugan	... Appellant/Accused No.3 in Crl.A. (MD) No.106/2018
Kumar @ Senthilkumar	... Appellant/Accused No.4 in Crl.A. (MD) No.110/2018
Muniyasamy	... Appellant/Accused No.2 in Crl.A. (MD) No.111/2018
Shaik @ Shaik Mohammed	... Appellant/Accused No.1 in Crl.A. (MD) No.371/2018

Vs.

State rep. by
The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.
(Cr.No.35 of 2014)

... Respondent/Complainants in all
appeals

COMMON PRAYER: Appeals filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.55 of 2016 on the file of the learned Additional District and Sessions Judge, Ramanathapuram, dated 18.01.2018 and set aside the conviction and sentence imposed against the



appellants.

For Appellants : Mr.S.Sankar(Amicus Curie For A1)
(in Crl.A.Nos.111, 110, 371/2018)
Mr.S.Karthick Subramanian for A2
Mr.S.Muthu Krishnan for A4

Mr.R.Anand for A3
(in Crl.A.No.106/2018)

For Respondent : Mr.R.Anandaraj
Additional Public Prosecutor

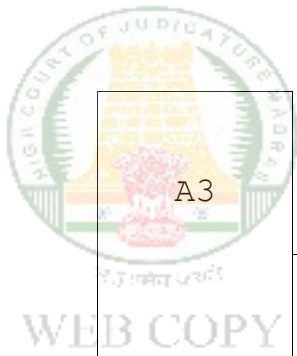
COMMON JUDGMENT**B. PUGALENDHI, J. ,**

The appeals are arising out of the judgment passed by the learned Additional District and Sessions Judge, Ramanathapuram, in S.C.No.55 of 2016. The appellants were tried before the learned Additional District and Sessions Judge, Ramanathapuram, for the following charges:

Accused	Section of Law
A1	341 r/w 34, 302 IPC
A2	341 r/w 34, 302 r/w 34 IPC
A3	341 r/w 34, 302 r/w 34 IPC
A4	302 r/w 109 IPC

The trial Court, in conclusion of the trial, by judgment dated 18.01.2018, found the appellants / accused guilty, convicted and sentenced them as follows:

Accused	Section of Law	Punishment
A1	341 IPC	To undergo simple imprisonment for 15 days and to pay a fine of Rs.500/-, i/d to undergo simple imprisonment for seven days.
	302 IPC	To undergo imprisonment for life and to pay a fine of Rs.5000/-, i/d to undergo simple imprisonment for one year.
A2	341 IPC	To undergo simple imprisonment for 15 days and to pay a fine of Rs.500/-, i/d to undergo simple imprisonment for seven days.
	302 r/w 34 IPC	To undergo imprisonment for life and to pay a fine of Rs.2000/-, i/d to undergo simple imprisonment for six months.



A3	341 IPC	To undergo simple imprisonment for 15 days and to pay a fine of Rs.500/-, i/d to undergo simple imprisonment for seven days.
	302 r/w 34 IPC	To undergo imprisonment for life and to pay a fine of Rs.2000/-, i/d to undergo simple imprisonment for six months.
A4	302 r/w 109 IPC	To undergo imprisonment for life and to pay a fine of Rs.25000/-, i/d to undergo simple imprisonment for one year.

Aggrieved over the conviction and sentence imposed by the trial Court, the appellants / accused have filed the respective appeals.

2. Crl.A.(MD)No.106 of 2018 is filed by the third accused; Crl.A.(MD)No.110 of 2018 is filed by the fourth accused; Crl.A.(MD)No.111 of 2018 is filed by the second accused; and Crl.A.(MD)No.371 of 2018 is filed by the first accused. Since all the appeals emerge out of the judgment of the learned District and Sessions Judge, Ramanathapuram, in S.C.No.55 of 2016, dated 18.01.2018, all of them are taken up together and are disposed of by way of this common judgment.

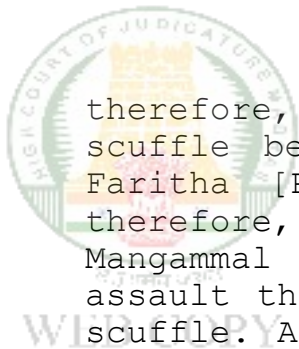
3. For the sake of convenience and clarity, the parties are referred to as per their rank before the trial Court.

4.The facts of the case, in brief, are as follows:

4.1. The deceased Mahalingam was a Carpenter by profession and he was married to PW3, Deepa. PW1, Murugan, is the brother of PW3 and brother-in-law of the deceased. PW4, Gandhi @ Gandhiraj, has informed the deceased that the fourth accused is spreading certain rumors about his wife [PW3] and therefore, the deceased, on 20.01.2014, at about 07.30 pm, went to the house of the fourth accused and quarreled with him.

4.2. Consequent to the same, the fourth accused along with his wife, Janaki, went to the house of the deceased on 21.01.2014, around 08.30 pm and raised an issue that the fourth accused has not informed anything about PW3 to PW4 and insisted to ascertain the same from PW4. Therefore, the deceased and his wife [PW3] along with the fourth accused and his wife, Janaki, went to the house of PW4 and in the meantime, PW3 informed her brother [PW1] about the developments through phone and therefore, PW1 also joined them.

4.3. PW4, Gandhi, when enquired by them, denied that he has not stated anything about the wife of the deceased and therefore, there was a wordy quarrel and a scuffle between the deceased and PW4. At this time, the fourth accused assaulted the deceased and



therefore, PW1 quarrelled with the fourth accused and there was a scuffle between them as well. The Ward Councilor, namely, Inool Faritha [PW5], and other neighbours objected for the same and therefore, they left the place and started the quarrel at Rani Mangammal School Road. In that place, the deceased attempted to assault the fourth accused with his footwear and there was another scuffle. At the request made by Janaki, the fourth accused's wife, the accused nos.1 to 3 came in two motorcycles and the first accused interfered in their quarrel and also pushed the deceased down. The deceased got wild and intimidated the first accused that he would finish him off and quarrelled with him and his wife [PW3] forcibly taken her husband / the deceased to their house.

4.4. On the same day, around 10.15 pm, PW3 informed her brother [PW1] that her husband / the deceased went in angry with a knife. On the information of PW3, PW1 went in search of his brother-in-law / the deceased and found him at Bharathi Nagar, around 10.30 pm, in front of a Private Nursing Home. The accused nos.1 to 3 were quarrelling with him and the first accused pushed the deceased and therefore, the deceased fell down from his bike. Thereafter, the first accused took a knife and stabbed him on his neck repeatedly at the instigation of accused nos.2 & 3 and on seeing Pws.1 & 2, they ran away from the place of occurrence.

4.5. PW1 went to the Police Station and lodged the complaint [Ex.P1] before Thiru Subbaiah, Special Sub-Inspector of Police [PW13], on 21.01.2014 at about 11.00 pm and the same was registered in Kenikarai Police Station Crime No.35 of 2014, under Section 302 IPC. On the information about the registration of the case, Thiru Krishnamoorthy, Inspector of Police [PW14] went to the place of occurrence, prepared an observation mahazar [Ex.P9] and a rough sketch [Ex.P13] in the presence of PW9 and another.

4.6. The Inspector of Police [PW14] recovered a motorcycle, bearing registration no.TN-65-K-5503, belonging to the deceased from the place of occurrence and also recovered a 32 cm knife from the motorcycle, under a cover of mahazar Ex.P10, in the presence of one Karthi [PW9] and another. He also examined the witnesses, who were present in the place of occurrence and thereafter, proceeded to the Government Hospital around 08.00 am and conducted the inquest in the presence of the panchayatars. The inquest report is marked as Ex.P14.

4.7. PW14 also made a request for conducting postmortem through one Ramu, Head Constable [PW11] to the Government Hospital, Ramanathapuram. Dr.Shek Abdullah [PW12], Assistant Professor, Government Headquarters Hospital, Ramanathapuram, received the request and commenced postmortem on 22.01.2014 at 11.00 am and noted down the following external injuries:

"4 x 3 x 4 cm stab injury neck - right side penetrating into trachea. Five 4 x 3 cm stab injury neck - right side. Two 4



x 3 x 6 cm stab injury over right shoulder penetrating ling. Two 4 x 3 cm stab injury left side of neck. 5 x 3 cm abrasion in temporal region. No active bleed from stab site at present."

The Doctor [P12] gave his final opinion in his postmortem certificate [Ex.P11] that the deceased appear to have died of hypovolemic shock due to the vital organs injury.

WEB COPY

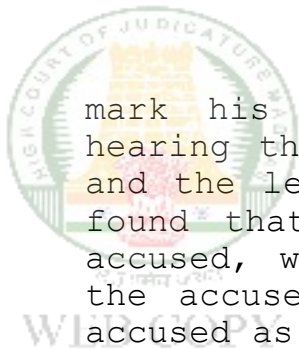
4.8. PW14 arrested the accused 1 to 3 on the same day about 12.30 pm and recorded the confession statement from the first accused and recovered a knife [M01] under a cover of mahazar Ex.P3 in the presence of PW8. He also arrested the fourth accused at about 05.00 pm, near Bharathi Nagar Muthu Bakery. PW14 recovered the bloodstained cloths from the first accused [MOs.2, 6 & 5] as well as from the second accused [Mos.9 & 10]. He also examined the Doctor [PW12], who conducted the postmortem and the further investigation was carried out by one Jesu, Inspector of Police and he filed the final report in this case.

5. During the trial, 14 witnesses were examined and 20 documents were marked, besides 11 material objects. PWs.1 & 2 were examined as eye witnesses to the occurrence and PW3 is the wife of the deceased, who speaks about the motive. PW4 and PW5, though were treated as hostile, they have stated about the occurrence that took place on the previous day. PW6 was examined for the previous occurrence and he also turned hostile. PW7 has witnessed the first accused threw some materials in the septic tank near Bharathi Nagar. PW8 is the Village Administrative Officer, in whose presence the arrest and recoveries from the accused nos.1 & 2 were made. PW9 was examined for the purpose of spot mahazar and the rough sketch and PW10 is the Constable, who despatched the printed FIR [Ex.P12] to the Court. PW11 is the Constable, who delivered the request for postmortem to the Doctor [PW12]. PW12 is the Doctor, who conducted the postmortem and issued postmortem certificate [Ex.P11]. PW13 is the Sub-Inspector of Police, who registered the case and PW14 is the Inspector of Police, who conducted the preliminary investigation and arrested the accused in this case.

6. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though they have stated that there are witnesses in support of their case, they have neither examined any witness nor produced any documents. In conclusion of the trial, the trial Court found the appellants / accused guilty, convicted and sentenced them as stated supra.

7. When the appeals were taken up for hearing on 09.12.2019, a proxy Counsel representing the first accused stated that he has given change of vakalat. Mr.S.Sankar, learned Counsel representing the accused nos.2 & 4 and Mr.R.Anand, learned Counsel representing the third accused made their submissions. The said proxy Counsel, who represented the first accused in the morning session, failed to

<https://www.hispanics.com/india>



mark his presence in the afternoon sessions. Therefore, after hearing the respective learned Counsel for the accused nos.2 to 4 and the learned Additional Public Prosecutor for the State, having found that no one is ready to argue the matter for the first accused, we requested Mr.S.Sankar, learned Counsel who represented the accused nos.2 & 4 to argue the case on behalf of the first accused as well and Mr.S.Sankar has also agreed to the same and made his submissions for the first accused on the next day.

8. Heard Mr.S.Sankar, learned Counsel for the accused 1, 2 & 4; Mr.R.Anand, learned Counsel for the third accused; Mr.R.Anandaraj, learned Additional Public Prosecutor for the respondent / State.

9. The respective learned Counsel for the accused, in unison, have made the following submissions:

9.1. PW3 is the wife of the deceased and PW1 is his brother-in-law. Being close relatives, they are interested witnesses and their evidence cannot be relied upon to convict the accused. Other than the interested witnesses, the prosecution has not examined any independent witness to establish their case.

9.2. The statements of PWs.1 & 2, the eye witnesses, are not clear, as they did not mention about the distance from where they watched the occurrence. Moreover, their conduct is also highly doubtful, as they have not attempted to stop the act of the accused.

9.3. According to the Investigation Officer [PW14], he collected the call details that took place between PW1 & PW3, but, the prosecution has purposely suppressed the same.

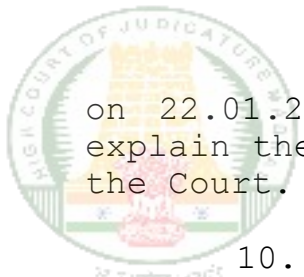
9.4. The occurrence took place in front of a private nursing home and the prosecution has failed to recover the footage from the CCTV camera mounted in the said clinic to establish their case.

9.5. The injuries mentioned in the postmortem are not tallied with the overtacts attributed by PWs.1 & 2 as against the accused.

9.6. The deceased is, admittedly, a drunkard and he is in the habit of creating problems with somebody. That apart, the prosecution has failed to prove the common object on the part of the accused.

9.7. The evidence of PWs.1 & 2 would not make out the offence of abetment and admittedly, there is no motive whatsoever between the accused nos.2 & 3 and the deceased. No specific overtact is made as against the accused nos.2 & 3.

9.8. The alleged occurrence took place on 21.01.2014 at about 10.30 pm and the complaint was lodged and FIR was registered at about 11.00 pm. But the printed FIR reached the concerned Court only



on 22.01.2014, at about 10.15 am. The prosecution has failed to explain the reason for the inordinate delay in forwarding the FIR to the Court.

10. In addition to the aforementioned grounds, the learned Counsel for the fourth accused has raised the following points for the consideration of this Court:

10.1. The name of the fourth accused is not mentioned in the complaint [Ex.P1] and in the First Information Report [Ex.P12]. The fourth accused was implicated only by way of a confession statement. The quarrel between the fourth accused and the deceased with regard to the alleged gossip was over at about 08.30 pm itself and the fourth accused was not at all present during the occurrence at 10.30 pm.

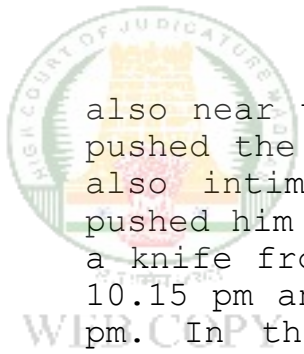
10.2. The fourth accused did not instigate anybody to kill the deceased and there is no evidence to substantiate the same. The fourth accused has made a phone call to some other persons and the same has been connected by the prosecution to establish the instigation. But, the cell phone of the fourth accused was neither seized nor examined.

Therefore, he prays for interference.

11. Per contra, Mr.R.Anandaraj, learned Additional Public Prosecutor for the State made his submissions based on the prosecution evidence and would submit that the prosecution had clearly established the guilt against the accused. Therefore, according to the learned Additional Public Prosecutor, the conviction and sentence imposed by the trial Court on the accused does not require any interference.

12. This Court has paid it's anxious consideration to the rival submissions and also the materials placed on record.

13. The occurrence took place on 21.01.2014, at about 10.30 pm and the complaint was lodged at about 11.00 pm. But the printed First Information Report reached the Court only the next day, ie., on 22.01.2014, at about 10.15 am. Though there is a delay in the First Information Report reaching the Court, the complaint [Ex.P1] was lodged by PW1 at about 11.00 pm on the date of occurrence on 21.01.2014. In the complaint [Ex.P1] itself, PW1 has stated about the previous day occurrence on 20.01.2014 and the subsequent occurrence took place between the deceased and the fourth accused on 21.01.2014 at about 08.30 pm, when the fourth accused and his wife went to the house of the deceased, questioned them as to how the deceased can blame him that he made a gossip. The fourth accused, his wife, the deceased and his wife [PW3] went to PW4's house to ascertain whether the fourth accused informed anything about PW3. For a support, PW3 has called her brother [PW1] and PW1 has also accompanied them and there was a quarrel in the house of PW4 and



also near the Ranimangammal School Road, wherein, the first accused pushed the deceased down and the deceased sustained some injury and also intimidated the first accused. Since the first accused has pushed him down, the deceased with an intention to assault him, took a knife from his house and went to the place of occurrence at about 10.15 pm and at that time, this occurrence had taken place at 10.30 pm. In the complaint [Ex.P1] itself, PW1 has stated about the continuity of these incidents and therefore, the delay in FIR reaching the Court alone cannot be a ground to disbelieve the entire case of the prosecution and the presence of PW1 at the time of occurrence cannot be disbelieved.

14. PW2 is also examined as an eye witness in this case. But, his presence is not mentioned in the complaint [Ex.P1]. He is a close relative of PW1 as well as PW3. But, in his evidence, he has stated that he came to know about the relationship only after the occurrence and the contradictions in his evidence with regard to his relationship with PWs.1 & 3 raises a doubt as to his availability at the time of occurrence. His evidence is not trustworthy, but, on the other hand, the evidence of PW1 is cogent and trustworthy. The entire prosecution case is now revolves around the evidence of PW1 alone and it has to be analyzed carefully.

15. As per the evidence of PW1 and PW3, after the occurrence took place around 08.30 pm on 21.01.2014, the deceased has taken a knife and left the house furiously. According to the Investigation Officer [PW14], he recovered the motorcycle of the deceased bearing registration no.TN-65-K-5503 and a knife from the motorcycle in Ex.P10. Though this weapon is said to have been recovered from the place of occurrence, it was not placed before the Court. It is the admitted case of the prosecution that it is the deceased, who created a problem on the previous day and on the date of occurrence also.

16. PWs.1 & 3 admit in their evidence that the deceased is a drunkard and used to create quarrel with others. On the previous day, it was the deceased, who went to the house of the fourth accused and quarrelled with him, based on the statement alleged to be made by PW4. But, PW4 has denied the same that he did not made any such statement about the deceased's wife to anybody. Even during the occurrence at about 08.30 pm, the first accused is said to have pushed the deceased down and it is the deceased, who intimidated him that he will finish him off and he will not spare him, however, PW3 by scolding the deceased has forcibly taken him to the house. But the deceased was not calm and therefore, at about 10.15 pm, he took a knife and left the house with an intention to kill the accused.

17. During the occurrence at 08.30 pm, when the deceased intimidated the first accused by saying that he will finish him off, the first accused has not assaulted any further. According to PW1, it is pursuant to a wordy quarrel, the first accused pushed him



down, for which, the deceased has stated he would finish him off and at about 10.30 pm, has taken a knife and went in search of the accused. The accused have no intention to commit the murder as projected by the prosecution, however, it is the deceased who went in search of the accused with an intention to attack them and a knife was also recovered from him. Therefore, the deceased is the aggressor in this case.

18. PWs.1 & 2 have stated that on the instigation of the accused nos.2 & 3, the first accused has stabbed the deceased on his neck. But, this overtact is not mentioned in the complaint [Ex.P1] and is exaggerated during the trial in the evidence. In the entire evidence of the prosecution case, the accused nos.2 & 3 have not played any major role even at the time of the occurrence at 08.30 pm and also at 10.30 pm. Though the accused nos.2 & 3 are said to be present in the place of occurrence, no specific overtact has been attributed for the previous occurrence took place at 08.30 pm as well as for the occurrence took place at 10.30 pm in the complaint [Ex.P1]. With the exaggerated version in the evidence alone, it is not safe to sustain the conviction on the accused nos.2 & 3.

19. Admittedly, the fourth accused was not present in the place of occurrence and there is no evidence for any meeting of mind or for any conspiracy between the accused to commit the offence as against the deceased. It was on a sudden quarrel, at the request of the fourth accused's wife, the first accused went in support of the fourth accused and his family and similarly, PW1 went in support of his sister [PW3] and her family. During the quarrel, the first accused is said to have pushed down the deceased and therefore, the deceased got infuriated, intimidated and was taken to his house by his wife [PW3]. Even after returning to the home, the deceased, in order to wreck vengeance, took a knife from the house, went in search of the accused and at that time, the occurrence had taken place.

20. It is an admitted case that the deceased is a drunkard and in the habit of creating quarrel with others. The evidence of PWs.1, 3 and the investigation officer [PW14] prove the fact that the deceased went with a knife with an intention to attack the first accused. PW1 has witnessed the first accused assaulting the deceased at the time of occurrence. There is no personal enmity between the first accused and the deceased. When the deceased was quarrelling with the fourth accused, the first accused went in support of the fourth accused and at that time, he pushed him down. In that incident, the deceased sustained a small injury. Apart from this, the first accused has not acted anything more at the time of previous incident. It is the deceased who took the knife, went in search of the first accused to take revenge for having pushed him down and in that course of the incident, the first accused caused these fatal injuries with knife and this knife [M01] was also recovered pursuant to the confession statement of the first accused.



21. As discussed supra, the deceased is the aggressor in this case. The first accused committed the offence without any intention, but as a self defence. But, he has exceeded the self defense by inflicting four stab injuries, which resulted in the death of the deceased. Therefore, we are inclined to modify the conviction and sentence as against the first accused to Section 304(i) IPC.

22. Insofar as the second and third accused are concerned, even in the previous incident, they are simply said to have accompanied the first accused. Though PW1 has stated that on their instigation only, the first accused committed the offence, this has not been stated in the complaint [Ex.pl]. As we have discussed supra, there is no motive between the first accused and the deceased prior to the occurrence and it is the deceased, who went in search of the accused to take revenge and at that time, the first accused caused the injury. Therefore, the exaggerated version of PW1 implicating the second and third accused cannot be a ground for sustaining the conviction as against the second and third accused. Insofar as the fourth accused is concerned, as stated supra, he is not present in the place of occurrence and the prosecution has failed to establish the meeting of minds. Therefore, we are of the opinion that the conviction as against the accused nos.2 to 4 cannot be sustained.

23. In view of the foregoing reasonings and discussions, we are of the considered opinion that the judgment of the learned Additional District and Sessions Judge, Ramanathapuram, in S.C.No.55 of 2016, dated 18.01.2018, warrants interference and accordingly,

i) insofar as the first accused is concerned, the impugned judgment is modified to the effect that the first accused is found guilty for the offence under Section 304(i) IPC and he is convicted and sentenced to undergo rigorous imprisonment for seven years, with a fine of Rs.5000/-, i/d to undergo simple imprisonment for one year.

ii) insofar as the accused nos.2 to 4 are concerned, the impugned judgment is set aside and they are acquitted from the charges levelled against them.

iii) bail bonds, if any executed, by the accused shall stand terminated and fine amount, if any, paid by the accused nos.2 to 4 shall be refunded.

iv) the trial Court shall take necessary steps to secure the first accused and to commit him to prison, so as to undergo the remaining period of sentence. The first accused is entitled to set off the period of imprisonment already undergone, if any, as per Section 428 Cr.P.C.



24. In fine, the criminal appeals in Crl.A.(MD)Nos.106, 110 & 111 of 2018 are allowed and the criminal appeal in Crl.A.(MD)No.371 of 2018 is partly allowed. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

To

- 1.The Additional District and Sessions Judge,Ramanathapuram.
- 2.The Judicial Magistrate,No.II,Ramanathapuram.
- 3.The Chief Judicial Magistrate,Ramanathapuram.
- 4.The Superintendent,Central Prison,Madurai.
- 5.The Inspector of Police,Kenikkarai Police Station,Ramanathapuram District.
- 6.The District Collector,Ramanathapuram.
- 7.The Superintendent Of Police,Ramanathapuram.
- 8.The Director General Of Police,Mylapore,Chennai.
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Copy To:

The Record Keeper ,Criminal Section(Record)
Madurai Bench of Madras High Court,Madurai.

Delivery Judgment made in
Crl.A. (MD)Nos.106, 110,
111 & 371 of 2018
24.09.2020

NS (CO)

AP(01/10/2020) 11P 12C