



Bail Slip

Pandiaraj S/o.Alagarsamy @ Rasiah, male aged about 37 years (Sole Accused) was released on bail vide Court order dt.09.04.2018 made in Crl.MP(MD)No.1948 of 2018 Crl.A(MD)No.122 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.02.2020

Delivered on : 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.122 of 2018

Pandiaraj ... Appellant/ Sole Accused

Vs.

The State rep. by the Inspector of Police,
Elumalai Police Station,
Madurai District.
(in Crime No.35 of 2015)

... Respondent/Respondent

Prayer : Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set aside the conviction and sentence passed u/s 307, 326 and 302 I.P.C. vide the Judgment dated 22.02.2018, passed by the learned VI Additional District and Sessions Judge, Madurai in S.C.No.292 of 2015.

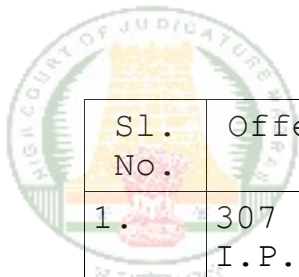
For Appellant : Mr.AR.L.Sundaresan
Senior Counsel for M/s.S.Ravi

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **B.PUGALENDHI, J.**)

The Criminal Appeal is filed by the sole accused in S.C.No.292 of 2015 on the file of the learned VI Additional District and Sessions Judge, Madurai as against the order of the trial Court dated 22.02.2018. The appellant was tried before the trial Court for the commission of offences under Sections 307, 326 and 302 I.P.C. and the trial Court by order dated 22.02.2018, found the appellant guilty for the offences under Sections 307, 326 and 302 I.P.C. and sentenced him as follows:



Sl. No.	Offences	Sentence
1.	307 I.P.C.	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- in default to undergo simple imprisonment for three months
2.	326 I.P.C.	Rigorous Imprisonment for 3 years and fine of Rs.1,000/- in default to undergo simple imprisonment for three months
3.	302 I.P.C.	Life Imprisonment and fine of Rs.1,000/- in default to undergo simple imprisonment for three months

The sentences were directed to run concurrently. As against the conviction and sentence imposed by the trial Court, the appellant has preferred this Criminal Appeal.

2.The case of the prosecution in nutshell is as follows:

2.1.P.W.1-Vanaraja and the accused - Pandiaraj are auto-drivers and P.W.1 was having an auto bearing registration number TN 60 L 6063 and he was operating from Elumalai Pullukattu ground auto stand. The accused Pandiaraj is also having an auto, but he was not a member of the auto stand and he would take passengers to his convenience without maintaining discipline. P.W.1 and others warned the accused on several occasions. But the accused did not change his attitude and on 06.04.2015, the accused picked up passengers in his auto in a similar passion, which was objected by P.W.1 and P.W.1 insisted him to come in cue and to take the passengers. The accused did not oblige and therefore, P.W.1 and other drivers in the auto stand quarrelled with the accused and P.W.1 has also assaulted the accused with his foot wear. The accused left the place stating that he would do away with P.W.1, if he comes to his place at Seelnaickanpatti. On the next day i.e., on 07.04.2015 at about 8,15 a.m. P.W.1 picked up passengers in his auto bearing registration number TN 60 L 6063 and was proceeding from Elumalai. P.W.1 saw the accused at Seelnaickanpatti bus stop. While returning from M.Kallupatti, he boarded two passengers P.W.2 - Saranya and the deceased Maharajan. When they were reaching near Seelnaickanpatti, the accused Pandiaraj came in a Bolero Pickup Van bearing registration number TN 59 AM 6937 on the opposite direction and hit the auto- rickshaw of P.W.1 with an intention to kill him and on account of which, P.W.1 was thrown away from the auto-rickshaw and the other two passengers were also fell down. When P.W.1 attempted to lift the deceased, the accused took a lever from his Bolero vehicle (M.O.2) and assaulted P.W.1. On hearing the news, P.W.3 - Nagamani, uncle of P.W.1 came to the place of occurrence and took P.W.1 and the other two passengers to the Government Hospital at Usilampatti.



2.2.P.W.9 - Dr.S.Barathi of Usilampatti Government Hospital admitted P.W.1 and noted down his injuries and on seeing the condition of the injuries she referred P.W.1 for further treatment to Madurai Government Rajaji Hospital. The accident register issued for P.W.1 is marked as Ex.P.5. On the way to the hospital, one of the passenger Maharajan died and P.W.9, the doctor at Usilampatti has conducted the postmortem for deceased Maharajan on 07.04.2015 at about 1.30 p.m. and the postmortem certificate is marked as Ex.P.6.

2.3.The other injured Saranya - P.W.2 was taken to a private hospital viz., Bala Hospital at Usilampatti and P.W.10 - Balamurali treated P.W.2 and certified that the injuries are grievous in nature and the wound certificate of P.W.2 was marked as Ex.P.7.

2.4.On the intimation from the Government Hospital, Usilampatti P.W.13 - Ganesan, Sub Inspector of Police, Elumalai Police Station went to the Government Hospital, Usilampatti and recorded the statement of P.W.1 and registered a case in Elumalai Police Station Crime No.35 of 2015 under Sections 307, 324 and 302 I.P.C. on 07.04.2015 at 10.00 a.m. The printed F.I.R. was marked as Ex.P.8.

2.5.On receipt of information, P.W.17 - Ramalakshmi, Investigation Officer proceeded to the place of occurrence and prepared an observation mahazar Ex.P.11 and Rough Sketch Ex.P.12 at about 11.00 a.m. in the presence of witnesses P.W.6 and P.W.15. He also recovered the auto-rickshaw bearing number TN 60 L 6015 from the place of occurrence at about 11.15 a.m. under a cover of Mahazar - Ex.P.13. Thereafter, he went to the Government Hospital, Usilampatti and conducted an inquest on the dead body of the deceased Maharajan in the presence of the panchayatars and the inquest report is marked as Ex.P.14. He made a request to the Government Doctor, Usilampatti to conduct postmortem on the deceased.

2.6.P.W.9 - Dr.Bharathi of Usilampatti Government Hospital conducted the postmortem and noted down the following external injuries on the deceased Maharajan:

"External injuries:

- 1.Crush injury over right leg, while, both bones fracture, muscles (NC), Blood vessels (NC) were exposed.
- 2.Contusion left leg 6 x 4 cm.
- 3.Fracture right thigh bone (NC) present both bones (NC) present. Swelling left thigh 10 x 6 cm.
- 4.A cut injury right eye (NC) 6 x 4 x 1cm
- 5.Abrasion right low abdomen 6 x 4cm
- 6.Cut injury over left occipital region 3 x 1 x 1cm



7. Haemorrhage over left (NC) 6 x 4cm

8. Abrasion over right chest and (NC) 6 x 4cm low part.

She also gave an opinion that the deceased would appear to have died of 6-8 hrs prior to autopsy due to shock and Haemorrhage (NC) due to injury to vital organs. The postmortem certificate is marked as Ex.P.6.

2.7.P.W.17 arrested the accused on 07.04.2015 at 4.30 p.m. at Mallapuram junction in the presence of P.W.7 - Manikandan and P.W.14 - Sekar. The accused gave a confession statement, in the presence of the said witnesses and pursuant to the confession statement he recovered the Bolero Pick-up Van bearing registration number TN - 59 AM 6937 (M.O.2) under a cover of mahazar Ex.P.15. He also informed the Forensic Science Department and P.W.8 - Kaja Mohideen - Scientific Assistant of Forensic Science Department examined the occurrence spot and also the vehicles and recommended for scientific analysis of the paints collected from M.Os.1 and 2. The Investigation Officer also examined P.W.10 - Dr. Balamurali of Balu Hospital, where, P.W.2 was taking treatment and collected the wound certificate from P.W.10. The wound certificate of P.W.2 was marked as Ex.P.7. She also collected the wound certificate of P.W.1 and examined the witnesses. After completing the investigation, she filed her final report as against the accused on 01.05.2015 for the offences under Sections 307, 326 and 302 I.P.C.

3. During the trial, 17 witnesses have been examined on the side of the prosecution and 15 documents were marked and 3 material objects were produced in support of the prosecution case. When the incriminating materials were put to the accused under Section 313 CrPC, the accused denied the same. The accused has not examined any witness on his side, but has marked Ex.D.1 - F.I.R. in Crime No.28 of 2009 through P.W.1.

4. The available evidence of the prosecution are as follows:

P.W.1 was examined as an eye-witness to the occurrence and he is also an injured eye-witness. He has supported the case of the prosecution and has stated about the motive for the occurrence. P.W.2 is also an injured eyewitness, however she turned hostile. P.W.3 is the uncle of P.W.1 and he took P.W.1 to Usilampatti Government Hospital for treatment. P.W.4 is the father of deceased Maharajan and he deposed about going to the place of occurrence on receiving the information about the occurrence. P.W.5 was examined to speak about the motive for the occurrence, however, she turned hostile. P.W.6 was examined to speak about the preparation of observation mahazar and recovery of M.O.1. However, he turned hostile. P.W.7 was examined to speak about the arrest and recovery and he turned hostile. However, he accepted his signature in the confession statement and the recovery



mahazar. P.W.8 is the Scientific Assistant and he collected the material objects from the scene of occurrence and he detected the yellow colour paint in the bumper of the Bolero Pickup Van. P.W.9 is the doctor who examined P.W.1 and issued the copy of the accident Register (Ex.P.5). She also conducted postmortem on the body of the deceased and opined that the deceased died due to shock and haemorrhage due to injury to vital organs. P.W.10 is the doctor, who examined P.W.2 and issued Ex.P.7 - Wound Certificate. P.W.11 is the Head Constable who despatched the F.I.R. and complaint to the concerned Judicial Magistrate's Court. P.W.12 is the Head Constable who identified the body of the deceased to the doctor for conducting postmortem and after the postmortem handed over the body to the relatives of the deceased. P.W.13 - is the Sub-Inspector of Police, who registered the F.I.R. P.W.14 was examined to speak about the arrest and recovery, however, he turned hostile. P.W.15 was examined for the observation mahazar and recovery from the place of occurrence, however, he turned hostile. P.W.16 is the doctor who gave treatment to P.W.1 at Government Rajaji Hospital, Madurai. The Investigation Officer was examined as P.W.17.

5. In conclusion of the trial, the learned Trial Judge, by judgment dated 22.02.2018 found the accused guilty of the offences under Sections 307, 326 and 302 I.P.C. and sentenced him as stated in paragraph No.1. As against the conviction and sentence, the present appeal is filed.

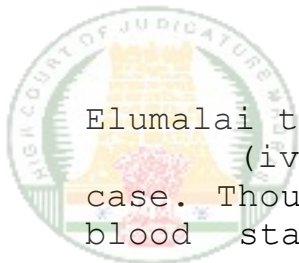
6. Heard Mr. AR. L. Sundareshan, learned Senior Counsel, assisted by M/s. S. Ravi, learned counsel appearing for the appellant/accused and Mr. K. K. Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent.

7. The learned Senior Counsel appearing for the appellant/accused, in support of his case, made the following submissions:

(i) P.W.1 was driving an auto-rickshaw without any valid licence and valid permit, caused the accident and in order to escape from his liability foisted the false complaint as against this accused/appellant as if the accused/appellant dashed his auto-rickshaw with an intention to kill him.

(ii) Excepting the evidence of P.W.1 there is no other evidence to corroborate the case of the prosecution and Ex.D1 would disclose that P.W.1 is in the habit of causing accidents and in one such incident he has caused a fatal accident and a case in Crime No.28 of 2009 was registered against him and the F.I.R. is marked as Ex.D1 through P.W.1.

(iii) Though it is stated that there was an incident between P.W.1 and accused on 06.04.2015, the respondent police has not examined any other auto drivers from the auto stand of



Elumalai to substantiate the case of the prosecution.

(iv) The place of occurrence was not established in this case. Though 3 persons said to have sustained grievous injury, no blood stained articles were recovered from the place of occurrence and sample earth with blood stains have not been seized from the place of occurrence to establish the place of occurrence.

(v) The vehicle involved in the occurrence was not established by the prosecution. The colour of the Bolero Pickup Vehicle was not spoken by any of the witnesses and even in Ex.P.15 - Seizure Mahazar, there is no reference about the colour of the Bolero Pickup Vehicle and despite the advice of the Scientific Assistant - P.W.8 to conduct scientific examination on the materials recovered from the vehicles and the paint recovered from the vehicles, the prosecution has not produced the report of the scientific examination.

(vi) Arrest and recovery were not proved since both P.W.7 and 14, who were examined to speak about the arrest of the accused did not support the case of the prosecution and were treated as hostile and even the admissible portion of the confession of the accused was not marked before the trial Court.

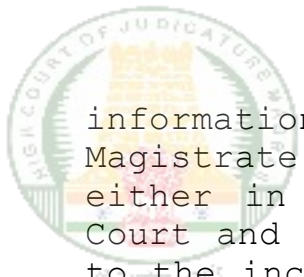
(vii) The earliest information received by the police in this case was suppressed by the prosecution. According to P.W.4, father of deceased when he reached the scene of occurrence, police party were present in the place of occurrence and they only arranged for the ambulance and according to him police has also recorded a statement from him and P.W.1 has also admitted in his evidence that his relatives have informed the police and therefore, the earliest complaint is not placed on record.

(viii) Though P.W.8, the Scientific Expert examined the vehicles, the paint recovered from the vehicles were not sent for chemical analysis and the analysis report is not placed before the Court.

(ix) The motive projected by the prosecution was not at all established by the prosecution and there is no evidence available for the incident said to have taken place on 06.04.2015 and

(x) Though the occurrence has taken place in a field and witnessed by more than 60 persons, none of the persons and the nearby farmers from the agricultural field were examined as witnesses by the prosecution.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent/State has submitted that the prosecution has established its case beyond any reasonable doubt and the evidence of P.W.1 is trustworthy. The occurrence has taken place at about 8.15 a.m. and the injured P.W.1 was taken to the Government Hospital, Usilampatti. On intimation from the hospital, the Sub-Inspector of Police of Elumalai Police Station went to the Hospital around 9.00 a.m. recorded the statement of P.W.1 and also registered a case on 07.04.2015 at about 10.00 a.m. and the first

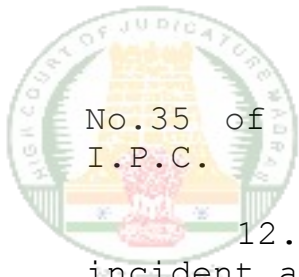


information report Ex.P.8 has also reached the concerned Judicial Magistrate Court at about 3.30 p.m. Hence, there is no delay either in reporting the incident or on the F.I.R. reaching the Court and the complainant - P.W.1, even in the complaint referred to the incident that took place on 06.04.2015 and also reiterated the same in his evidence recorded before the trial Court. The Bolero Pickup vehicle (M.O.2) was recovered pursuant to the confession statement of the accused and the scientific expert has also collected yellow colour paint of the auto-rickshaw at the Bolero Pickup vehicle. The auto-rickshaw came from M.Kallupatti to Elumalai from South to North, whereas the accused came from North to South direction and by referring to the sketch, the learned Additional Public Prosecutor made his argument that the occurrence had taken place on the western end of the road, which would expose the intention of the accused in committing the offence and therefore, there is no reason to interfere with the well considered judgment of the trial Court.

9.This Court paid its anxious consideration to the rival submissions and also perused the available records.

10.Admittedly, both P.W.1 and the accused are auto drivers. P.W.1 and others were having a registered Sankam and were operating auto-rickshaws from Elumalai Bus Stand and the accused without inducting as a member and without maintaining discipline was taking passengers from the bus stop, out of which, there was a dispute between the auto drivers and on the previous day i.e., on 06.04.2015, P.W.1 assaulted the accused with his foot wear, for which, the accused had given a warning and left the place that he would do away with him, if he comes to his village. On the next day, i.e., on 07.04.2015, P.W.1 taken passengers from Elumalai to M.Kallupatti and on his way he found the accused at Seelnaickenpatti bus stop. While returning from M.Kallupattai to Elumalai, P.W.2 and the deceased have boarded the auto-rickshaw and the accused in order to take revenge for the previous day's incident brought his Bolero Vehicle bearing registration number TN 59 AM 6937 and dashed against the auto-rickshaw of P.W.1 bearing number TN 60 L 6063. The occurrence has taken place on 07.04.2015 at about 8.15 p.m. and immediately, the injured were taken to the hospital by P.Ws.3 and 4. In the said incident, P.Ws.1 and 2 and the deceased sustained injuries and on the way to the hospital, the deceased succumbed to the injuries.

11.The occurrence has taken place on 07.04.2015 at about 8.15 p.m. and immediately after the occurrence, the deceased was taken to the hospital at Usilampatti and on information from the Hospital, P.W.13 - Ganesan, Sub-Inspector of Police, Elumalai Police Station has went to Government Hospital, Usilampatti and recorded the statement from P.W.1 and registered the case in Crime



No.35 of 2015 for the offence under Sections 307, 324 and 302 I.P.C.

12.P.W.1 sustained the following injuries in the said incident and the copy of the accident register relating to him was marked as Ex.P.5 through P.W.9 - Dr.Bharathi of Usilampatti Government Hospital:

- 1) Abrasion injury right knee 3 x 2 x 1cm
- 2) Laceration on left forearm 6 x 4cm
- 3) A punctured 1 x 5 x 3cm
- 4) Low punctured present? Fracture left hip joint

Considering the nature of injury he was referred for further treatment at Government Rajaji Hospital, Madurai.

13.P.W.2, passenger of the auto-rickshaw has also sustained serious injuries in the said incident. P.W.2 has taken treatment in a private Hospital belonging to P.W.10 - Balamurali and he has issued the wound certificate for P.W.2 and as per the wound certificate Ex.P.7, P.W.2 sustained the following injuries:

"RTA with multiple injuries with # Mandible with # Right Tibia."

14.The deceased Maharajan is also one of the passengers, who travelled in the auto-rickshaw of P.W.1 at the time of occurrence and in the course of the incident he sustained the following injuries:

1. Crush injury over right leg, while, both bones fracture, muscles (NC), Blood vessels (NC) were exposed.
2. Contusion left leg 6 x 4 cm.
3. Fracture right thigh bone (NC) present both bones (NC) present. Swelling left thigh 10 x 6 cm.
4. A cut injury right eye (NC) 6 x 4 x 1cm
5. Abrasion right low abdomen 6 x 4cm
6. Cut injury over left occipital region 3 x 1 x 1cm
7. Haemorrhage over left (NC) 6 x 4cm
8. Abrasion over right chest and (NC) 6 x 4cm low part.

P.W.9 - Dr.Bharathi conducted the postmortem and gave her opinion that the deceased would appear to have died of shock and Haemorrhage due to injury to vital organs.

15.The auto-rickshaw was recovered from the place of occurrence in the presence of witnesses and the same is marked as M.O.1. On information from the investigation officer - P.W.17, Scientific Expert - P.W.8 went to the place of occurrence and examined the vehicles and collected colourless glass pieces, orange colour plastic mixed glass pieces and an iron piece from the auto containing yellow colour paint. The Bolero Pickup vehicle was recovered by the investigation officer pursuant to the confession of the accused in the presence of P.W.7 and P.W.14 and



the same is also marked as M.O.2. P.W.8, the scientific expert has also examined the Bolero Pickup vehicle and collected the yellow colour paint from M.O.2 and he made a suggestion to the investigation officer to send those materials collected for scientific analysis, but the investigation officer failed to do so.

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16.The witnesses P.W.7 and P.W.14 who were examined for the purpose of arrest and recovery have turned hostile and therefore, the trial Court failed to mark the admissible portion of the confession statement of the accused. However, the signature of P.W.7 in the confession statement was marked as Ex.P.7. Similarly, the witnesses P.W.6 and P.W.15, who were examined for the recovery of auto rickshaw from the place of occurrence have also turned hostile. In this case excepting P.W.1 and the official witnesses almost all the witnesses turned hostile. Victim P.W.2, who travelled in the auto-rickshaw at the time of occurrence and also sustained grievous injuries on 07.04.2015 also turned hostile. However, P.W.2 admitted that on 07.04.2015 at about 7.30 a.m. she boarded the auto-rickshaw of P.W.1 from Ulaipatti Bus Stop and another male person has also boarded the auto and near Eswaran Kovil a vehicle which came opposite to their vehicle collided with their auto-rickshaw despite the brake applied by the auto driver.

17.P.W.1 in his evidence has stated that both the accused and himself were auto drivers and were doing the business at Elumalai Bus Stop and since the accused was taking passengers without maintaining a discipline and order, there was a dispute among the other auto drivers and the accused and on 06.04.2015, there was a quarrel between the accused and the other auto drivers and in that incident he assaulted the accused with his foot wear. On account of which, the accused annoyed and also criminally intimidated P.W.1 that if he comes to his area of Seelnaickenpatti, he would do away with him. On the next day, this occurrence had taken place near Eswaran Temple at Seelnaickenpatti.

18.The accused came in a Bolero Pickup vehicle and with that Bolero Pickup vehicle he hit on the auto-rickshaw of P.W.1 and this evidence of P.W.1 is corroborated by the evidence of P.W.2 to the extent that the vehicle which came in the opposite direction to their auto-rickshaw collided with their auto-rickshaw despite the brake applied by the auto driver. P.W.2 though suffered serious injuries in that incident did not make any claim for compensation under the Motor Vehicles Act as against P.W.1. Even in her evidence, she did not make any averment as against P.W.1 that the auto-rickshaw driver drove the vehicle on the date of occurrence in a rash and negligent manner. Similarly, the other person, Maharaian a co-passenger along with P.W.2 also sustained



injuries and died due to the injuries sustained in the occurrence. The relative of the deceased Maharajan has also not made any claim for compensation as against P.W.1 under the Motor Vehicles Act.

19. Though the witnesses P.W.7 and P.W.14, who were examined for arrest and recovery of Bolero vehicle from the accused have turned hostile, the signature of P.W.7 in the confession statement alone was marked as Ex.P.3 But the vehicle M.O.2 was marked through the investigation officer. The scientific expert - P.W.8, at the request made by the investigation officer, went to the place of occurrence and examined the Bolero vehicle bearing registration number TN 59 AM 6937 and noted down that the right side front glass of the Bolero vehicle was broken and the right side indicator was found broken and he also found yellow colour on the bumper of the Bolero vehicle and the paint of the auto-rickshaw, recovered from the Bolero vehicle was similar to that of the paint found in the auto-rickshaw - M.O.1. He collected those material objects from the vehicles and also made request to the investigation officer to send the same for scientific analysis, but the investigation officer has failed to do the same. Though the report of the scientific expert is not available in this case, the evidence of P.W.8 would disclose that the Bolero vehicle, which was recovered and marked as M.O.2 was having certain damage at the front side bumper and indicators and the yellow colour paint similar to that of the paint found on the auto-rickshaw was also found on the bumper of the Bolero vehicle.

20. As rightly pointed out by the learned Additional Public Prosecutor, the place of occurrence shown in the sketch also discloses the manner in which the occurrence has taken place. The auto rickshaw of P.W.1 was proceeding from Kallupatti to Elumalai from South to North and therefore, he is expected to travel on the western side of the road. The vehicle which hit on the M.O.1 was coming from North to South and hit on the western end of the road, which would disclose that the vehicle driven by the accused hit the auto-rickshaw deliberately to cause the accident. The injury sustained by P.W.1 on the right side was also corroborated by the evidence of the doctor - P.W.9, though the evidence of P.W.1 is not corroborated by P.W.2 and therefore, we do not find any reasons to acquit the accused. The prosecution has established the case beyond any reasonable doubt and the defence has not demolished the prosecution theory and there is no reason for this Court to interfere with the order of the trial Court.

19. In the result, Criminal Appeal is dismissed confirming the judgment dated 22.02.2018, made in S.C.No.292 of 2015 by the VI Additional District and Sessions Judge, Madurai convicting and sentencing the appellant/accused for the offences under Sections 307, 326 and 302 I.P.C. The bail bonds executed by the accused



shall stand cancelled. The period of imprisonment already undergone by the appellant/accused shall be given set off. The respondent is directed to take steps to procure the accused for undergoing the remaining period of sentence.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

sj
To

- 1.The VI Additional District and Sessions Judge,
Madurai.
- 2.The Judicial Magistrate No.2,
Usilampatti.
- 3.The Inspector of Police,
Elumalai Police Station,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S. RAVI, Advocate (SR-17498[F] dated 21/09/2020)

judgment in
Crl. A. (MD) No.122 of 2018
Delivered on
18.09.2020

AC (CO)
KM (25.09.2020) 11P 8C