



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2021

Pronounced on : 28.07.2021

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.206 of 2018
and Crl.M.P.No.4952 of 2018

Sait @ Rajendran
S/o.Thangavel

... Appellant /
Sole Accused

versus

State Represented by
The Inspector of Police,
B-14, Kuniyamuthur Police Station,
Coimbatore - 08.
(Crime No.45 of 2013)

... Respondent /
Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 22.08.2016 passed in S.C.No.158 of 2014 by the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore.

For Appellant : Mr.C.Samivel

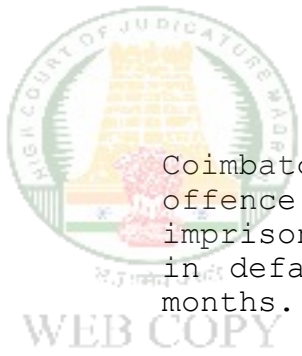
For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

The present appeal is directed against the conviction and sentence dated 22.08.2016 made in S.C.No.158 of 2014, on the file of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore.

2. The appellant herein is the sole accused. He stood charged for the offence under Section 302 of IPC. The accused denied the charge and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Sessions Judge, Magalir Neethimandram (Mahila Court),



Coimbatore, found the appellant / accused is guilty for the offence under Section 302 of IPC and sentenced to undergo imprisonment for life and directed to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for a period of 6 months.

3. Challenging the said conviction and sentence, the accused is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows;

4.1. P.W.1-Maruthachalam and P.W.2-Selvapradeep, are the father and son, residing in their farm house at Indira Nagar, Pudhu Thottam, Kuniyamuthur, Coimbatore. In the said farm, the accused Sait @ Rajendran and his wife, the deceased Kasthuri, are working as labourers. During the relevant point of time, along with their children viz. Parthiban (P.W.3) and Arthi, they also stayed in the same farm. He gets drunk everyday and beats his wife on suspicion. Therefore, during night hours, the deceased Kasthuri, used to stay in the Veranda (pial) of the P.W.1's house along with her children.

4.2. On 12.11.2013, the deceased along with her son [P.W.3] and daughter [Arthi] came to the P.W.1's house and slept in the Veranda as usual. Between 10.00 p.m. to 11.00 p.m., after hearing his mother's screams, P.W.3 woke up and saw that his father was beating his mother. Immediately, he knocked the doors of P.W.1-Maruthachalam and after hearing the noise of P.W.3, P.W.1 and his son P.W.2 also woke up and opened the door, while such a time, they also saw that the accused pushed down her wife Kasthuri, kicked on the chest and stabbed on her neck by using the knife. Immediately, P.W.1 and P.W.3 rushed there by shouting and after seeing them, the accused ran away from the scene of occurrence, thereafter, when they saw Kasthuri, she found dead and hence, P.W.1 went to the Kuniyamuthur Police Station and lodged the complaint, under Ex.P.1, at about 01.00 a.m. on 13.11.2013.

4.3. P.W.13-Mr.Kanagaraj, the then Special Sub Inspector of Police, Kuniyamuthur Police Station, received the complaint and registered a case in Crime No.1282 of 2013 for the offence under Section 302 of IPC. A copy of the printed F.I.R., was marked as Ex.P.24. After registering the case, he handed over the case records to P.W.14 for investigation.

4.4. P.W.14-Mr.Rabi Suji Jose, the then Inspector of Police, Kuniyamuthur, on receipt of a copy of the F.I.R., took the same for investigation. He visited the scene of occurrence



and took the photographs, under Ex.P.4 to Ex.P.8. The CD pertains to the photographs, was marked as Ex.P.9. The receipt for the payment towards the photo, was marked as Ex.P.10.

4.5. After taking photographs, in the presence of P.W.6-Sasikumar, he prepared the Observation Mahazar, under Ex.P.2. He drawn the Rough Sketch and the same, was marked as Ex.P.25. In the presence of the same witness, in the occurrence place, he collected the bloodstained soil (M.O.2) and plain soil (M.O.3), under Ex.P.3 Seizure Mahazar. In the presence of the witnesses, namely, P.W.1-Maruthachalam, P.W.2-Selvapradeep, P.W.3-Parthiban, P.W.4-Kathirvel and Sundaravadivel, he conducted the inquest and prepared the inquest report, under Ex.P.26.

4.6. In continuation of investigation, P.W.14 sent a requisition to the Hospital Authorities of Government Medical College Hospital, Coimbatore, for conducting postmortem. He has also shifted the deadbody from the place of occurrence to the said Hospital. On 14.11.2013, at about 10.05 a.m., P.W.12-Dr.Jayasingh, attached with Government Medical College Hospital, Coimbatore, conducted postmortem and found the following antemortem injuries;

- "1. Old healed nail scratch marks noted over both side breasts measuring 5x4cm.
2. Horizontal stab wound 3x1cm noted over lateral aspect of right lower neck, the posterior end is 8 cm below tip of right mastoid and anterior end is 5 cm right to midline. The wound passes inwards, medically backwards, piercing the posterior aspect of neck muscle 4 cm in depth.
3. Superficial horizontal incised wound 15x1cm x skin deep noted over front of both side neck.
4. Scratch wound 10x0.25cm noted over top of right side root of the neck.
5. Multiple nail mark noted over lower part of front of neck.
6. Reddish contusion 5x2 to 1 cm noted over front of lower neck.
7. Incised wound 2x1x0.5 cm noted over back of right shoulder.
8. Reddish abrasion 2x1cm and 1x0.5cm noted over back of right shoulder.
9. Bite mark 5x3cm noted over left cheek and 3x2 cm noted over left ear."

4.7. He collected the sample blood from the deadbody and sent the same for analysis. Thereafter, he received a report as in blood group test, it was identified that the blood collected from the deadbody belongs to A-group. After receiving



the said report, P.W.12 gave opinion that the deceased would appear to have died of multiple injuries. The postmortem certificate issued by P.W.12, was marked as Ex.P.23. According to him, the injuries found in the deadbody of the deceased Kasthuri could have been caused by M.O.1 weapon.

4.8. Thereafter, on 13.11.2013, at about 14.00 hours, near Anbu Nagar, Tasmac Shop, in the presence of P.W.9-Jayakanthan and Palanisamy, P.W.14 arrested the accused and recorded the confession statement given by him. The signature of P.W.9 found in the confession statement was marked as Ex.P.15. Pursuant to the confession statement, the accused herein brought the investigating team to the bush situated nearby Narayanaguru School and identified bloodstained knife [M.O.1] and bloodstained full sleeve shirt [M.O.4] by saying that the knife now identified was used for the commission of offence. In the presence of the same witnesses, the investigating officer recovered the same, under the cover of seizure mahazar, Ex.P.16. The admitted portion of the confession statement given by the accused, was marked as Ex.P.27.

4.9. In the meanwhile, one Uma, who is the Women Police Constable, identified the deadbody to the Doctor, for postmortem and after completing the postmortem, she collected the red colour blouse, red colour inskirt and bloodstained blue colour floral design saree of the deceased [M.O.5 to M.O.7] and handed over the same to the Investigating Officer, in turn, the said material objects were recovered by P.W.14 under Form-95 [Ex.P.31].

4.10. In the process of investigation, P.W.14 submitted an application before the learned Judicial Magistrate, Additional Mahila Court, Coimbatore (P.W.11), for recording 164 Cr.P.C. statement from the witnesses viz. P.W.1-Maruthachalam, P.W.2-Selvapradeep, P.W.3-Parthiban, P.W.4-Kathirvel and Sundaravadivel. The file related to 164 Cr.P.C. statement pertains to the above 5 witnesses, was marked as Ex.P.22. Further, the Investigating Officer has submitted the application before the learned Judicial Magistrate for sending the collected material objects for chemical examination.

4.11. In turn, P.W.10-Venkateswaran, Junior Assistant of Forensic Science Laboratory, Coimbatore, has received the following items for chemical examination;

- "1. Earth mixed with vegetative matter, on which were dark brown stains.
2. Earth mixed with vegetative matter.
3. A rusty metal knife with a wooden handle and measuring about 26.0cm in length, on which were dark brown stains.



WEB COPY

4. A sandal colour full sleeved shirt, on which were dark brown stains.
5. A ragged red blouse, on which were profuse dark brown stains.
6. A blue saree with brown floral designs, on which were profuse dark brown stains."

4.12. In the process of chemical examination, he found the bloodstain in item nos.1, 3, 4, 5 and 6. According to him, there is no bloodstained in item no.2. In this regard, he sent a Biological Reports, under Ex.P.17 and Ex.P.18 respectively. Further, he sent the above items, to the Director, Forensic Science Laboratory, Chennai, along with the sample blood collected from the deadbody, for detecting the group of the blood and comparison. Thereafter, from the Director of Forensic Science Department, Chennai, he received Serology Reports, under Ex.P.19 and Ex.P.20 and Chemical Report [Ex.P.21]. As per that, the blood in item nos.5 and 6 belongs to 'A' group human blood and the bloodstained found in item nos.1, 3 and 4, is a human blood but the result of grouping test of the same are inconclusive.

4.13. In continuation of investigation, P.W.14 examined the P.W.8-Subramaniam, Assistant Engineer, Tamil Nadu Electricity Board, Kuniyamuthur, in respect to the power available in the occurrence place during the relevant point of time. In this regard, P.W.8 issued certificates under Ex.P.13 and Ex.P.14 stating that there was no power cut between 22.00 hours, on 12.11.2013 and 01.00 a.m. on 13.11.2013 in the area, in which, the occurrence had happened. Thereafter, on receipt of the said certificates, P.W.14 handed over the case records to P.W.15 for further investigation.

4.14. P.W.15-Elango, the then Inspector of Police, Kuniyamuthur, had received the file and after perusal, came to the positive conclusion that the accused committed an offence of homicidal death and accordingly, he filed a final report on 29.05.2014.

5. Based on the above materials, the trial Court framed charges under Section 302 of IPC. The accused denied the same as false and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 15 witnesses have been examined as P.W.1 to P.W.15 and 31 documents were exhibited as Exs.P.1 to P.31. Besides, 7 Material Objects [M.O.1 to M.O.7].

6. Out of the said witnesses, P.W.1-Maruthachalam, is the owner of the farm, in which, both the accused and the deceased, are working as labourers. He speaks about the



occurrence as during the relevant point of time, after hearing hue and cry of the P.W.3, he opened the door wherein P.W.3 informed about the incident. He has further stated that while such time, the accused pushed down his wife Kasthuri and kicked on her neck, chest and stabbed on her neck. In this regard, he lodged a complaint before the Kuniyamuthur Police Station.

7. P.W.2-Selvapradeep, is the son of P.W.1. He also speaks about the occurrence as on the fateful day, at about 11.30 p.m., after hearing the noise, both he and his father opened the door and saw the occurrence, as the accused stabbed his wife on her neck. According to him, near to the occurrence place, electric lamp post was available with light.

8. P.W.3-Parthiban, was the son of the deceased Kasthuri. He claims that his father would get drunk, before the occurrence. About the occurrence, he has stated that as on 12.11.2013, at about 10.00 p.m., while he was in sleeping mood, he heard the hue and cry of his mother and after waking up, he saw that his father was beating his mother, immediately, he informed the same to P.W.1 and P.W.2, while such a time, his father stabbed his mother and the same was witnessed by him along with P.W.1 and P.W.2.

9. P.W.4-Kathirvel, is the resident of Kuniyamuthur. He knows the accused before the occurrence. According to him, he heard the incident and went to the occurrence place. On enquiry, P.W.1 informed that the accused herein murdered his wife.

10. P.W.5-Senthil, is the neighbour to P.W.1. He spoke about the occurrence as on 12.11.2013, at about 11.30 p.m., after hearing the noise from P.W.1's house, he woke up and saw that the accused ran away from the scene of occurrence with knife [M.O.1], which was alleged to be used for the commission of offence. Thereafter, he rushed to the occurrence place and saw the deadbody of the deceased.

11. P.W.6-Sasikumar, is the photographer by profession. On 13.11.2013, at about 2.00 a.m., at the request of the Investigating Officer, he went to the occurrence place and took the photographs. He also stood as witness for the preparation of Observation Mahazar [Ex.P.2] and the recovery of material objects 2 and 3.

12. P.W.7-Gulam, is also a neighbour of P.W.1. He also speaks about the occurrence as on 13.11.2013, at about 11.30 p.m., he heard the noise and thereafter, he saw the accused as he ran away from the occurrence place along with knife.



13. P.W.8-Subramaiam, who was working as Assistant Engineer, Tamil Nadu Electricity Board, Kuniyamuthur, has stated in his evidence as from 12.11.2013 at 22.00 hours to 13.11.2013 at 01.00 a.m., there was no power cut in the occurrence place. In this regard, he issued certificates as requested by the Investigating Officer.

14. P.W.9-Jayakanthan, is the resident of the same village. He is the witness for arrest and recovery. He speaks about the arrest as, on 13.11.2013 at about 2.00 p.m., when he was standing near to the Tasmac Shop, the accused was arrested by P.W.14 and thereafter, the accused gave confession statement, in which, he admitted the offence. Subsequent to that, the accused brought the investigating team to one bush and identified the knife [M.O.1] by saying that the same was used for the commission of offence.

15. P.W.10-Venkateswaran, was working as the Junior Assistant in Forensic Science Laboratory, Coimbatore. He speaks about the examination of the material objects, which were collected during the course of investigation in this case and about the issuing of reports.

16. P.W.11-Tmt.A.Deepa, learned Additional Sub Judge, Dingidul, speaks about the recording of 164 Cr.P.C. statement from the witnesses [P.W.1-Maruthachalam, P.W.2-Selvapradeep, P.W.3-Parthiban, P.W.4-Kathirvel and Sundaravadivel].

17. P.W.12-Dr.Jayasingh, attached with Government Medical College Hospital, Coimbatore, speaks about the process of postmortem, about the nature of injuries sustained by the deceased and about the cause of death.

18. P.W.13-Kanagaraj, P.W.14-Rabi Suji Jose and P.W.15-Elango, are the Police Officers, who have stated about the receipt of the complaint, registration of the case, details of investigation, arrest of the accused, recovery of material objects and about the filing of the final report.

19. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any documents on his side.

20. Having considered all the above, the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, found the accused guilty of murder and convicted



him, as stated in para 2 of this judgment. Aggrieved over the said conviction and sentence, the appellant / accused, is before this Court, with the present appeal.

21. We have heard Mr.C.Samivel, learned counsel appearing for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the State and also perused the materials available on record.

22. The learned counsel appearing for the appellant would contend that before the trial Court, the son of the deceased, was examined as P.W.3, as an eyewitness to the occurrence. As per the case of prosecution, on 12.11.2013, at about 7.00 p.m., he along with the deceased mother and with his sister brought food from home and ate at P.W.1's house, watched television and went to bed at 10.00 p.m., but in this regard, while at the time of giving evidence, he has stated that, on 12.11.2013, at about 7.00 p.m., after having food at their home, he along with his sister and deceased mother came to P.W.1's house and watched television till 10.00 p.m. Therefore, in respect to reaching of occurrence place, the evidence given by P.W.3, is having contradictions.

23. He has further added that the evidence given by P.W.1 and P.W.2 in respect of opening the door, is having lot of contradictions. According to him, the prosecution has failed to prove the blood group pertains to the blood found in the weapon, which is alleged to be used for the commission of offence, further postmortem has not been done immediately on the day of occurrence itself. The trial Court has failed to note that, there is a absolute material contradictions found in the evidence given by the prosecution witnesses. According to him, the conviction and sentence awarded to the accused, is liable to be set aside.

24. Per contra, learned Additional Public Prosecutor appearing for the State would submit that, the contradictions now indicated by the learned counsel appearing for the appellant, are all minor in nature, the finding of blood group, is not a corroborative piece of evidence and therefore, the non-identification of blood group found in the knife, is immaterial to decide the case in favour of the accused. According to him, interference of this Court in the findings arrived at by the trial Court, is unnecessary.

25. We have considered the rival submissions made on either side.

26. Initially, on going through the evidence given by P.W.1, it appears that he saw the occurrence at about 23.00



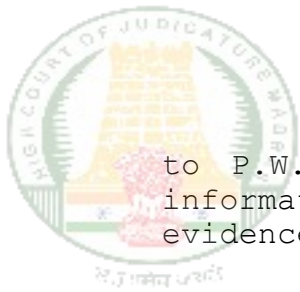
hours, on 12.11.2013. Thereafter, he lodged the complaint immediately in the Kuniyamuthur Police Station. In this regard, on going through the contents of F.I.R., it is found that the complaint pertains to this case, was received on 13.11.2013, at about 1.00 hours and after registering the F.I.R., the said F.I.R. was received by the Magistrate on the same day, at about 16.45 hours. Therefore, the said circumstances reveal the fact that immediately after the occurrence, the case has been registered, based on the complaint given by P.W.1 and thereafter, F.I.R. has been sent to the learned Judicial Magistrate immediately, without any delay. Therefore, the question of delay in lodging the complaint before the Police Station, does not arise in this case.

27. Secondly, before the trial Court, the prosecution attempted to prove their case by way of examining the eyewitnesses. In this regard, P.W.1 to P.W.3 gave evidence in support of the prosecution. P.W.1 and P.W.2 are the father and son residing near to the occurrence place. On conjoint reading of the evidence given by P.W.1 to P.W.3, it seems that on the day of occurrence, after seeing the quarrel happened between the deceased and the accused, the same was intimated by P.W.3 to P.W.1 and P.W.2 and thereafter, they are all saw the occurrence as the accused stabbed his wife and ran away from the occurrence place.

28. Further, in respect to light available from the lamp post, the evidence given by P.W.8 and the certificates issued by them affirms that there was a streetlight in the occurrence place and also the same was lightening during the relevant point of time. Therefore, in the said circumstances, there may be every chance for P.W.1 to P.W.3 to see the occurrence. One another important thing is that, P.W.3, who was the son of the accused, gave evidence against his father. More than that, the evidence given by P.W.1 to P.W.3 in respect to reaching the occurrence place, is cogent and inspire the confidence of this Court.

29. In the said circumstances, in order to corroborate the evidence given by P.W.1 to P.W.3, P.W.5-Senthil and P.W.7-Gulam, who are the neighbours to P.W.1's house gave evidence as during the relevant point of time, they saw the accused with bloodstained knife and further, during such time, the accused ran away from the occurrence place with high speed.

30. Applying Sections 6 and 7 of the Indian Evidence Act, with the factual aspects of this case, the fact deposed by P.W.5 and P.W.7 confirms the evidence given by P.W.1 to P.W.3. If no such occurrence had happened as stated by P.W.1 to P.W.3, it is not necessary for the accused to run away from the occurrence place with high speed. Therefore, the evidence given



to P.W.5 and P.W.7 are admissible in evidence and that such information supplied by them, is nothing but a corroborative evidence to the evidence given by P.W.1 to P.W.3.

31. Yet another thing, which is necessary to decide in this appeal is that, the Doctor, who conducted the postmortem has stated in his evidence as the deceased sustained incised wound measuring 15x1cm x skin deep over front of both sides neck, further, he also saw the incised wound on the backside of the right shoulder in the size of 2x1x0.5cm.

32. Now, considering the said evidence, no doubt the said injury would occur only in the circumstances, if the accused stabbed the deceased as stated by P.W.1 to P.W.3. Further, according to the Doctor, the death would have been appeared only due to said antemortem injuries. Accordingly, the evidence given by the eyewitnesses, are all corroborated through the evidence given by the Doctor, who conducted postmortem.

33. More than that, as per the evidence of P.W.10, the bloodstain found in the material objects, which were collected during the time of investigation, are all having human blood and the same also in support of the case of the prosecution. In otherwise, non detecting of the blood group in some of the material objects, is not always fatal to the prosecution.

34. Therefore, being the reason that the non detecting of the blood group in the weapon used for the commission of offence, is not a significant one to assail the entire case of prosecution. Accordingly, we are of the opinion that the evidence given by P.W.1 to P.W.3 in respect to the occurrence, is very clear and cogent and inspire the confidence of this Court.

35. So far as the criminal cases are concerned, the evidence of an ocular witness, if accepted, is sufficient to warrant conviction though in appropriate cases the Court may as a measure a caution seek some confirming circumstances from other sources. But, here it is a case, the evidence given by the ocular witness, is corroborate through the evidence of medical officer as well as by the experts. Though it was submitted by the learned counsel for the appellant that the evidence given by P.W.1 to P.W.3 are having lot of contradictions, in order to elicit the same, he should have asked the Investigating Officer about the statement given by the P.W.1 to P.W.3 under Section 161 Cr.P.C. But, he has not put a single question before the Investigating Officer.

36. Only by following Section 145 of the Indian Evidence Act, the accused has elicited the contradictions

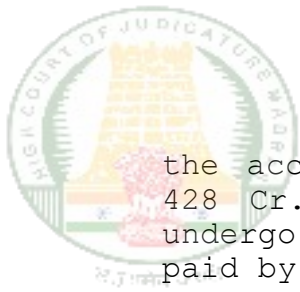


available in the evidence given by the ocular witness. But it is an unfortunate case being the reason that the Advocates are boycotting the Court, the cross examination of the Investigating Officer has not been done on the side of the accused. Further, on the side of the accused, efforts have not been taken to recall the Investigating Officer for the purpose of cross examination. Therefore, without eliciting the contradictions by following the Indian Evidence Act, now arguing as above, is no way affect the case of the prosecution. Therefore, we are of the opinion that during the relevant point of time, the appellant / accused herein by using the knife stabbed his wife.

37. Yet another thing, which is necessitated to decide in this case is that, whether the appellant is having the motive to kill his wife. In this regard, all the eyewitnesses examined on the side of the prosecution had stated in their evidence as before the occurrence, the accused had regularly take liquor and quarrelled with the deceased in a drunken mood. During the time of occurrence, also only after consuming liquor, the appellant / accused made quarrel with the deceased and committed this offence. So, the said circumstances shows that the accused enraged the commission of offence without any motive.

38. Therefore, the evidence produced against the accused does not show that the accused had any motive to cause death of the deceased or have intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause the death of the deceased. Evidence on record also does not establish that the injuries caused on the body of the deceased must in all probability cause his death or likely to cause his death. On the spur of the moment, during the time of quarrelling with his wife, the accused caused injuries on the body of the deceased which caused her death. Therefore, the ingredients of the murder as defined in Section 300 Indian Penal Code, have not been established against the accused and thereby, we are of the opinion that the accused was guilty of culpable homicide not amounting to murder under Section 304(II) Indian Penal Code.

39. Therefore, considering the fact that the accused had no intention to either cause the death of the deceased or cause such bodily injury as is likely to cause death of the deceased, it would be sufficient to impose on the accused a sentence of seven years Rigorous Imprisonment and to impose on him a fine of Rs.1,000/- and in default of payment of fine, a further imprisonment of 6 months Rigorous Imprisonment. It is also directed that the period of sentence already undergone by



the accused shall be given set off, as required under Section 428 Cr.P.C. Since the appellant/accused is in jail, he shall undergo the remaining period of sentence, if any. Fine amount paid by him already is to be adjusted for the fine now imposed.

WEB COPY

40. In fine, the Criminal Appeal is partly allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sri
To

- 1.The Sessions Judge,
Magalir Neethimandram (Mahila Court),
Coimbatore.
- 2.State Represented by
The Inspector of Police,
B-14, Kuniyamuthur Police Station,
Coimbatore - 08.
- 3.The Judicial Magistrate No.VII,
Coimbatore.
- 4.The Superintendent,
The Central Prison,
Coimbatore.
- 5.The Additional Public Prosecutor,
High Court, Madras.

Copy to

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

Criminal Appeal No.206 of 2018
and Crl.M.P.No.4952 of 2018

rr[co]
srg 23/08/2021