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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.10.2021
Pronounced on	25/11/21

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Criminal Appeal No.815 of 2019

Kanu Mandal

...Appellant/A-2

Vs.

The State, Represented by
The Inspector of Police,
Villianur Police Station,
Puducherry.

Crime No.233/2011.

...Respondent/Complainant

PRAYER:This Criminal Appeal filed under Section 374 (2) Cr.P.C., against the conviction and sentence imposed upon the appellant by the learned III Additional Sessions Judge, Puducherry passed in S.C.No.34 of 2015 by a judgement dated 07.09.2017.

For Appellant : Mr.S.Doraisamy

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor
(Pondicherry)

JUDGMENT

R.N.MANJULA, J.

This Criminal Appeal has been preferred by the Appellant/A-2 to set aside the conviction and sentence made in S.C.No. 34/2015 on the file of the learned III Additional Sessions Judge, Puducherry dated 07.09.2017, as tabulated hereunder:



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Sl.No	Provision under which convicted	Sentence
1	Section 302 IPC r/w 34 IPC	Life Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment.

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

The house of the deceased is situated opposite to Abirami Leather Industry, K.S.Nagar, Thondamanatham, near Pathukannu Junction Villiamur, Puducherry. On 12.07.2011 at about 01.30 hours, the second accused along with one Sadu Sardar and Pradip Gosh (case against the other two accused has been already split up in PRC.No.22/2015), in furtherance of common intention of murdering the deceased murdered him by strangulation. Hence they committed the offence under Section 302 r/w 34 IPC. On receiving the complaint (Ex.P1) from PW.1/Vijayadass at about 9.00 hours on 12.07.2011, PW.15/Arumugham, Sub Inspector of Police, Villianur Police Station has registered an FIR (Ex.P25) in Cr.No.233/2011 under Section 302 r/w 34 IPC.

2.1. P.W.16- Dr.S.Baskaran took up the investigation. He went to the place of occurrence at 10.30 am and inspected the place of occurrence and he prepared an Observation Mahazar (Ex.P.26) and Rough Sketch (Ex.P.4) in the presence of the witnesses. He collected the bloodstained mortar (M.O.2), plain mortar (M.O.3) and shirt (M.O.1) from the place of occurrence covered under Mahazar Ex.P.29. The body of the deceased was kept in the Government Hospital Mortuary. He enquired PW.1 and other witnesses and thereafter, he arrested the accused at their residence and sent them for medical examination. When he enquired A1 to A3 they gave confession statements and the same was recorded in the presence of VAO and one Sudhakar. Since the accused spoke in Hindi, their statements were recorded after getting them translated into Tamil by the translators.

2.2. On the basis of their confession, the shirt and pant of A-2 (M.O.5 and M.O.6) and the shirt and pant of A-3 (M.O.8) were recovered under Seizure Mahazar (Ex.P.33). After sending the accused for remand, P.W.16 went to hospital and conducted the Inquest on the body of the deceased in the presence of panchayatars and prepared the Inquest Report (Ex.P.34). Thereafter, he sent the body of the deceased for postmortem. He caused the viscera to be sent to the forensic lab for chemical examination. He enquired the witnesses and the doctor who conducted the postmortem and collected the postmortem certificate (Ex.P.12). He enquired the photographer



Selvaganapathy and other witnesses. After completing the investigation, he filed the charge sheet against the accused for the offence under Sec.302 r/w 34 IPC.

2.3. After taking cognizance of the case, the learned Judicial Magistrate-III, Puducherry, duly complied with the formalities under Sec.207 & 209 Cr.P.C and committed the case to the Sessions Court, Puducherry.

2.4. The case against the accused (A1 and A3) got spilt up and pending in PRC.No.22/2015. And NBWs are pending against them for a long time without execution.

2.5. During the course of the trial on the side of the prosecution, 16 witnesses were examined as PW.1 to 16 and 34 documents were marked as Exs.P.1 to P.34 and 12 material objects have been produced as M.Os.1 to 12. The incriminating circumstances appearing in the evidence of the prosecution witnesses were put to the accused while questioning under Sec. 313 Cr.P.C. and he denied the same as false. On the side of the defence, no witness was examined and no document was marked.

2.6. The trial Court upon hearing both side arguments and on perusal of the oral and documentary evidence, convicted and sentenced the accused as stated supra. Challenging the same A-2 has preferred this Criminal Appeal.

3. The evidence of the prosecution in brief:

PW.1-Vijayadass is residing at No.402, Mariamman Koil Street, Periyapapusamudram. The deceased was residing in the opposite room. On 11.07.2011 at 8.00 p.m, when he was getting ready to go for his work, PW.2 (the brother of the deceased) called PW.1 to come and check the deceased who was lying unconscious and from whose ear and neck blood was oozing out. When PW.1 informed this to the house owner, he told that three persons came to the house of the deceased on the previous night and among them one person had some defects in his eyes.

3.1. Then the matter was informed to the contractor Ramesh. He went along with one Gunasekaran to the house of the accused situated at Manjolai and confronted the accused about their involvement in the offence and then informed it to the Inspector of Police. Since the brother of the accused did not know Tamil, his statement in Hindi was translated into Tamil by PW.1 and prepared it as a compliant. PW.1 gave the said complaint to police and the FIR was registered on the same.



3.2. PW.2-Biswanth Mukerjee deposed in his evidence that he was working in Good Knight Company; the deceased is his younger brother and he was also working in Good Knight Company and was staying one of the rooms opposite to a factory; however at the time of occurrence the deceased was working at NTS paper mill; the accused 1 to 3 were working under the deceased; on the early night of the occurrence PW2 had night shift and he was preparing to go to his Company; during that time the deceased came to his room along with A1 to A3 in order to have drinks with them; PW.2 left along with his colleague Sudir Rai to night shift by leaving the deceased and A1 to 3; when he returned from work on the early morning, he saw the deceased dead at his own room; the house owner informed that during the previous night he heard the noise of a tussle between three persons and the deceased; PW2 went to see the contractor Gunasekaran, under whom the deceased and the accused were working and asked him come to the place of occurrence; after coming there Gunasekaran told PW.2 that he saw the three accused were sleeping in the construction site and later brought them; he gave an oral statement which was translated and reduced into writing by PW1; he told the police that the shirt of the deceased was used to strangle his neck.

3.3. PW.3 went to the place of occurrence along with PW.2 and saw the body of the deceased. PW.3 brought the accused who were working under him. He also informed that there was a fight between the accused and the deceased with regard to purchase of a cell phone; the deceased was having a cell phone which was hidden by A1 and that had resulted in a fight; as the accused were angry with the deceased they had committed the murder.

3.4. PW.4 Ramesh is working as a Supervisor at Pandiyan's company and the deceased was known to him. He knew the deceased. On 12.07.2011 at about 6.30 am to 7.00 am PW.1 informed him that Somnath died at K.S.Nagar; he went to the place of occurrence and saw the body of the deceased. He appeared to have been strangled with a shirt. PW.1, PW.3 and PW.4 went to the construction site and saw all the accused were about to leave by packing their bags; further the accused were under the influence of alcohol and they were got caught by PW.1, PW.3 and PW.4 and then handed over to the Police. He stood as a witness when the police went to the place of occurrence and obtained his signature. The signature in the crime details is marked as Ex.P.2, and his signature in the observation mahazar is marked as Ex.P3 and the rough sketch is marked as Ex.P4. The shirt used to strangle the neck of the deceased was seized which is marked as M.O.1 under the mahazar Ex.P5.



3.5. P.W.5 -Vijayakumar is the supervisor and he deposed that he was asked to come to Government General Hospital and his requisition is marked as Ex.P.9. He went to the Government Mortuary along with Ramesh and Padmanaban and stood as a witness for inquest.

3.6. PW.6-Mala Mukerjee is the mother of the deceased who has stated about seeing the body of her son in the mortuary.

3.7. P.W.7-Vinoon Sagu, is the neighbour of PW.6. He accompanied PW.7 and saw the body of the deceased in the mortuary. He also saw injuries on cheeks and strangulation mark on the neck of the deceased and blood oozing out of the ears.

3.8. PW.8-Dr. Diwakar conducted the autopsy. He noticed the following external injuries on the body of the deceased:

"Diffuse Bruisings:

1. 22cms x 9 cms x over the upper and middle of chest
2. 22 cms x 12 cms x over the pit of the stomach.

Abrasions:

3. 2cms x 2 cms x over the outer aspect of right cheek.
4. 1 ½ cms x 1 ½ cms x over the inner aspect of right cheek.
5. A transverse abrasion of 9 cms x 1 cm x over the middle and front of neck.
6. A contusion of 4 cms x 2 cms, over the right lower and front of neck over the neck muscles.
7. A contusion of 3 cms x ½ cm, over the left side, middle of neck, over the neck muscles."

And he has given his final opinion by stating that the death would have occurred due to strangulation of the neck. The viscera report of the deceased is obtained as Ex.P.12 and there was no poisonous substance detected in it. However, it showed the presence of alcohol.

3.9. PW.9-Pathmanaban deposed that on 12.07.2011 at about 7.00 a.m, he received a phone call from his owner and was informed that one Somnath Mukkerjee was dead and his body was sent for postmortem. As he was asked to come there, he went and was present while the inquest was conducted by the Investigation Officer. He had affixed his signature as one of the panchayators for inquest.

3.10. PW.10-Jothy, was working as Village Administrative Officer during the year 2011. On a call received



from the Revenue Inspector he went to Villianur Police Station along with the Village Assistant. He stood as a witness for the confession statement given in Hindi by all the three accused. And the same was translated into Tamil by one Sudhagar. During the course of the confession, the accused produced the bloodstained shirt from the place where it was hidden by them. They also produced the shirt of the deceased. They were recovered by the Police under Mahazaar and they stood as the witnesses for mahazaar also and affixed their signatures. (Exs.P.17 to 20) They also identified the material objects recovered from the accused and they are marked as M.Os.4 to 7.

3.11. PW.11 Selvaganapathy, Photographer, on receiving the request from the Villianur Circle Inspector on 12.07.2011 in connection with the case went to the place of occurrence and took photographs as instructed. The photographs have been marked as M.Os.10 to 18 and the C.D. containing the photos are marked as M.O.19.

3.12. PW.12-S.Sathiyan, is the scientific expert who had conducted chemical examination on the bloodstained mortar and the plain cement mortar recovered from the place of occurrence and the shirts of the deceased and the accused, has stated that in those objects human blood was detected. In his report Ex.P21, it is stated that the shirts of the deceased and the accused contained human blood and its DNA profiling revealed that it had a male genetic profile and found identical.

3.13. PW.13- Sudhagar is the person who stood as translator for translating the confession statements given by the accused in Hindi and affixed his signature in Exs.P.22 to 24.

3.14. PW.14-Dev Dip Ganguly is the teacher working in the Pondicherry Arvindar Asramam and who is conversant in Bengali. He was appointed to assist the accused. He helped to translate the statement of the witnesses in Bengali in order to enable the accused to understand them. He was also present during the examination of the witnesses for translating their evidence and conveyed the same to the accused in Bengali.

3.15. PW.15-Arumugham, was working as Sub Inspector of Police of Villianur Police Station at the time of occurrence. He received the complaint at about 9.00am, on 12.07.2011. Since the complainant Biswantha Mukherjee did not know Tamil, one Vijayadass translated his statement into Tamil and prepared it as a complaint and gave it to police. A case was registered on the said complaint in Crime No.233/2011 under Sec.302 r/w 34 IPC. The complaint and the First Information Report have been marked as Ex.P.1 and Ex.P.25. After getting instructions from



the Investigation Officer he arranged for photographer, ambulance and sniffer dog to be brought to the place of occurrence.

3.16. PW.16-S.Baskaran, Investigating Officer took up the case for investigation. On 12.07.2011 at about 10.30 am he went to the place of occurrence and prepared the observation mahazar (Ex.P.26) and crime details form (Ex.P.27) along with rough sketch (Ex.P.28). In his presence the photographer took photographs of the scene of occurrence. He also recovered the samples of bloodstained mortar from the scene of occurrence covered under seizure mahazaar (Ex.P.29) and the material objects have been marked as M.O.2 and M.O.3. He also recovered a shirt-M.O.1 from the place of occurrence; he examined the witnesses and arrested the accused on the same day at about 4.00 p.m at their houses. Thereafter, he sent them for medical examination and recorded the confession statements given by the accused in the presence of Village Administrative Officer and the village assistant at the police station. Since the accused had given confession in Hindi, he got it translated with the help of Hindi knowing person PW.13. On the confession given by the accused he recovered the materials used to strangle the deceased. Thereafter he also recovered the shirt and pants (M.Os. 4 to 8) of the accused under seizure mahazaar Ex.P.33. He conducted inquest on the body of the deceased in the presence of the panchayators and the inquest report was marked as Ex.P.34. After conducting the inquest and after the completion of the post mortem, he handed over the body of the deceased to the relatives and sent the viscera to forensic lab. After obtaining the postmortem report and after concluding his investigation he filed charge sheet against the accused. After the conclusion of the trial and on considering the evidence, the learned trial Judge found the accused guilty and convicted and sentenced as supra. Aggrieved over that, the appellant /A2 has filed this criminal appeal.

4. Heard the submissions of Mr S.Doraisamy, learned Counsel for the Appellant and Mr.V.Balamurugane, learned Additional Public Prosecutor, Pondicherry, appearing for the respondent.

5. The learned counsel for the appellant submitted that the trial Court has failed to consider the fact that except the confession statement, there is no other evidence available to connect the accused with the crime; since the accused is from West Bengal, he knew only Bengali and the person who is said to have recorded the confession statement did not know Bengali; the trial Court failed to note that by establishing the



last seen theory alone, it can not come to the conclusion that the appellant/accused is guilty; since the appellant was working under the deceased, it is quite natural to see him along with him; the trial Court failed to note that the house owner who is a vital witness was not examined and his non examination shatters the chain of circumstances; the Investigating Officer did not even enquire about the motive for the occurrence and hence the conviction of the appellant/A2 on the basis of incomplete prosecution evidence is not sustainable.

6. The learned Additional Public Prosecutor for the respondent submitted that the evidence of the witnesses are cogent and clear and the circumstances available in the case interlink with each other and form a complete chain of circumstances which prove the involvement of the appellant/A2 along with the other accused in the occurrence and the learned trial Judge has properly appreciated the evidence and arrived at a correct conclusion by convicting the accused.

7. The point for consideration is

Whether the conviction and sentence of the appellant/accused-2 for the offence under Section 302 IPC r/w 34 IPC by the learned Sessions Judge basing on the materials available on record is fair and proper?

8. Point:- As there is no eyewitness, the prosecution relies on the circumstantial evidence. In the cases of this nature, it has to be established that the circumstances form a complete chain. The facts established should connect with each other and it should lead to the one and only conclusion that the accused is guilty.

9. In this context it is relevant to refer to the judgement of the Hon'ble Supreme Court of India in Sharad vs. State of Maharashtra (AIR 1984 SC 1622). In the said judgement, the Hon'ble Supreme Court has laid down the following five golden principles on circumstantial evidence:

"The following conditions must be fulfilled before a case against an accused can be said to be fully established:

1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a



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legal distinction between 'may be proved' and "must be or should be proved" as was held by Apex Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the following observations were made: [SCC para 19, p.807:SCC (Cri) p.1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3) the circumstances should be of a conclusive nature and tendency.

4) they should exclude every possible hypothesis except the one to be proved, and

5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

10. The above principles have been reiterated in Padala Veera Reddy vs. State of Andhra Pradesh [(1989) Supp (2) SCC 706] as under:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."



11. The case in hand was registered on the basis of the complaint given by PW.1 Vijayadass. PW1 got the information about the occurrence from PW2-Biswanth Mugarjee and went to the place of occurrence and saw the body of the deceased. PW.1-Vijayadass is also residing at a room opposite to the room of PW.2. On 11.07.2011 at about 8.00 pm when PW1 was preparing to go to his night shift, he saw the accused and the deceased at the opposite room, where PW.2-Biswanth Mukerjee was staying.

12. PW.2 has stated in his evidence that his deceased brother was staying in one of the three rooms opposite to a factory. At that time his brother was working in NTS Paper Mill. He knew that the accused persons (Sadu Sardar (A1), Kanu Mondal (A2) and Pradip Gosh (A3)) were working under the deceased; on the fateful night, the deceased invited all the three accused to the room of PW.2 for consuming alcohol. After meeting his brother along with the accused at his house, PW.2 went to his night shift work. When he returned from work on the next day morning, he saw the deceased lying on the floor of his room. The house owner of the premises informed PW.2 that he heard some people were quarrelling with the deceased on the previous night and thereafter PW.2 went to meet PW.3 under whom the accused were working. PW.3 also informed by PW.1 about the death of the deceased and the accused were staying in a house under construction and they were about to leave the place by setting their bags ready. The said fact was spoken by PW.1 who also went to the house of the accused along with PW.3.

13. The evidence of PW.1 and 2 reveals two important circumstances. Firstly, they had seen the deceased lastly with the accused. When PWs.1 and 3 went and saw the accused at their place, after knowing the occurrence, they found them getting ready to leave the place. Secondly, the conduct of the accused has got relevancy to the information given to PW.2 that during the previous night there was a tussle between the accused and three persons. Before leaving to his shift, PW.2 noticed the deceased and the accused were having alcohol at his room. When PW.2 returned from duty he found the accused dead.

14. PW.4's evidence also corroborates with the evidence of PW.3. PW.3 has stated that he joined PW.1 and PW.2 when they went to see the accused and they found them about to leave. He has further stated that the accused appeared to have consumed alcohol. The said evidence corroborates with the evidence of PW.2, who has stated that before he left for his



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night shift, his deceased brother brought the accused to his room for taking alcohol. The viscera report of the deceased also showed that it contained alcohol. In the final opinion given by the doctor after getting the viscera report, it is specifically mentioned as follow:

"Died of asphyxia, as a result of ligature strangulation over the neck. (viscera alcohol:0.18g%)"

15. Dr.Diwakar who had conducted the postmortem and who was examined as PW.8, has also stated the said fact in his evidence. It is also noticed by the doctor that there were injuries on the body of the deceased. Apart from the injuries caused due to strangulation, these injuries which were present on the body of the deceased would pre-suppose a scuffle. The shirt of the deceased which was used for the occurrence was seized from the accused on their confessions.

16. The said shirt and the clothes of the accused which were produced by them to the investigation officer and later sent for scientific examination found to be containing the stains of human blood. And its DNA profile has shown the following:

(i) A male genetic profile could be generated only from the DNA recovered from the Exhibit-1,3,5 and 6 and they were found to be identical.

(ii)DNA recovered from Exhibit-4 was found to be highly degraded and was found refractory to PCR amplification.

Conclusion: Based on the above observation it is concluded that:

The source of the blood stain on cement floor pieces (Exhibit 1) full sleeved shirt (Exhibit-3), half sleeved shirt (Exhibit-5) and full sleeved shirt (Exhibit-6) are from same human male source."

17. The above observation and the conclusion of the scientific expert (PW12) would show that the blood of the deceased was present in the clothes of the accused, which were recovered from them. The blood stains found on the shirts of the accused and the blood stains found on the material objects were also found to be identical. Very same blood was also found on the bloodstained cement mortar recovered from the place of occurrence. The above correlation would show that the blood



leaked from the body of the deceased spread on the shirt of the deceased, the shirt of the accused and the floor of the room. Though it is possible for the witnesses to lie, the circumstance can not lie and more particularly the above scientific evidence could directly connect the accused to the scene of the occurrence.

18. It is submitted by the learned counsel for the appellant that the house owner who had given information to PW.2 about the quarrel that had taken place at the room of the deceased during the previous night is a vital witness and his non-examination is fatal to the case of the prosecution. No doubt the house owner is one of the vital witnesses and the information given by him is also very important to the case of the prosecution. But the accused was last seen with the accused and the same was proved beyond reasonable doubt. The above said last seen theory coupled with the scientific evidence which shows that the blood of the accused found on the shirts of the accused could themselves form a chain without any breakage.

19. It is seen from the judgement of the trial Court that the learned trial Judge has relied on the following proved circumstances:

1. Identification of the dead body
2. Presence of the accused at the scene of crime
3. Last seen of the deceased with the company of the accused persons
4. Conduct of the accused
5. Recovery of material objects as per section 27 of the Indian Evidence Act.
6. Scientific expert opinion.

20. The above proved facts and circumstances would show that even without the evidence of the house owner, there are enough links which would unfailingly connect the accused to the occurrence. The unusual urge shown by the accused to leave the place in a hurried manner will also prove their intention of escaping from the clutches of law.

21. The learned counsel for the appellant /A2 submitted that the motive for the offence was not proved by the prosecution and the investigating officer had omitted to enquire the witness on this aspect. The quarrel among the accused and the deceased during the previous night would show that the accused had some bitterness toward the deceased and they had used this opportunity to do away with him. The other injuries



which were present on the body of the deceased would confirm the fact that there was a tussle and during that course the accused had strangled the deceased with his shirt and killed him.

22. These facts would show that the accused had a clear premeditation to kill the deceased by making use of his shirt as a weapon to strangle him. The quarrel between the accused and the deceased would itself speak about the ill-will they had between themselves. As the accused and the deceased were drunk they would have become less inhibited to bring out the bitterness which they had with each other and that culminated into a quarrel and the murder followed by strangulation.

23. The circumstance that has already been established before this Court coupled with the injuries on the body of the deceased and the presence of the alcohol in his viscera and the opinion of the doctor as to the cause of the death would show the revengeful thought harboured by the accused against the deceased. Since the evidence of the prosecution witnesses coupled with the circumstances established by the prosecution along with the conduct of the accused, the scientific evidence and medical evidence prove that the deceased was murdered by the accused in the manner stated by the prosecution, the learned trial judge has accepted the same and held the accused guilty. Hence we do not find any reason for interference. Thus, the point for consideration is answered against the appellant.

In the result, this Criminal Appeal stands dismissed and the judgement and conviction of the learned III Additional Sessions Judge, Puducherry dated 07.09.2017 passed in Special Case No.34 of 2015, as against the appellant/A-2 is confirmed. Consequently, connected miscellaneous Petition is also closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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1. The III Additional Sessions Judge, Puducherry



2. The Inspector of Police,
Villianur Police Station, Puducherry
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent of Police,
Central Prison, Cuddalore.
5. The Record Keeper, Criminal Section,
High Court, Madras.
6. The Superintendent
Central Prison, Puducherry
7. The Public Prosecutor, Puducherry
8. The Judicial Magistrate No.III, Puducherry
9. The District Collector, Puducherry
10. The Deputy Inspector General
Puducherry
- +1 CC to Mr.S.Doraisamy, Advocate sr 61285

Crl.A.No. 815 of 2019

RSV(CO)
SP(17/12/2021)