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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.637 of 2018

Rajendran

... Appellant/Accused

Vs.

State represented by
The Inspector of Police,
V-6, Kolathur Police Station,
Chennai.
(Crime No.1593 of 2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to set aside the judgment and order dated 11.01.2017 passed in S.C.No.246 of 2015 on the file of Sessions Court, (Mahalir Neethimandram), Chennai.

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

JUDGMENT

[Delivered by P.N.PRAKASH, J.]

This criminal appeal has been filed against the judgment and order dated 11.01.2017 passed in S.C.No.246 of 2015 on the file of the Sessions Court, (Mahalir Neethimandram), Chennai.

2. The prosecution story runs thus:

2.1 The deceased Hemavathi, who was aged about 52 years at the time of her death, was residing in Flat No.10, 2nd Floor, Annai Dhana Bhakiyam Illam, Girija Nagar East, Kolathur, Chennai. She has two sons, one of them was residing in Singapore and the other one viz., Karthick (P.W.2) lived with Hemavathi in the said apartment. Karthick (P.W.2) was running a textile shop named Kala Textiles, in Kolathur area. Kalavathi (P.W.1) was a



neighbour of Hemavathi and was residing in the adjacent apartment.

2.2 On 20.11.2014, around 12.00 noon, Kalavathi (P.W.1) went to the school of her grandchildren to give them food and returned home by 3.00 p.m. While she crossed the apartment of Hemavathi, she found the main door open and the television in full volume. Out of curiosity she peeped in and found Hemavathi lying in a pool of blood on the floor. Immediately, she called out her neighbours and people assembled there.

2.3 An ambulance was summoned and Hemavathi was rushed to the Kilpauk Medical College and Hospital (for brevity "the KMC Hospital"), where she was examined by Dr.Suresh Babu (P.W.11), who, in his evidence as well in the accident register (Ex.P14), has stated that Hemavathi, aged about 50 years, was brought with injuries to the hospital at 04.30 p.m. by Bharath. When he (P.W.11) enquired Bharath, he seems to have told him that someone has attacked Hemavathi and he does not know the full details. Dr.Suresh Babu (P.W.11), admitted Hemavathi as an in-patient and made necessary entries in the accident register (Ex-P14). Dr.Suresh Babu (P.W.11) found the following injuries on the body of Hemavathi:

- i. Laceration 8x3x2 cms in right side scalp
- ii. Cut injury 4x2x1 cms in right frontal region of scalp
- iii. Laceration 4x3x2 cms in chin
- iv. Laceration 2x1x1 cms in left forearm
- v. Laceration 4x1x1 cms in right side forehead
- vi. Cut injury 8x1x1 cms in neck

2.4 On a written complaint (Ex.P1) given by Kalavathi (P.W.1), Kanthakumar (P.W.15), Inspector of Police, V-6, Kolathur Police Station, registered a case in Crime No.1593 of 2014 at 4.00 p.m. on 20.11.2014 under Section 307 IPC against unknown accused and prepared the printed FIR (Ex.P19), which reached the jurisdictional Magistrate at 11.55 a.m. on 21.11.2014, as could be seen from the endorsement thereon.

2.5 The Investigating Officer (P.W.15), went to the place of occurrence and prepared an observation mahazar (Ex.P3) and rough sketch (Ex-P20) in the presence of witnesses Sivasenthil (P.W.4) and Dilipan (not examined). From the place of occurrence, the Investigating Officer (P.W.15) seized the following material objects under the cover of a mahazar (Ex.P4) :

- i. vegetable cutter (அருவாமணை) (M.O.1);
- ii. mosaic tile piece with bloodstain (M.O.2); and
- iii. mosaic tile piece without bloodstain (M.O.3)

2.6 On 20.11.2014, the Investigating Officer (P.W.15) received intimation from the KMC Hospital that Hemavathi



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succumbed to the injuries and therefore, he altered the case from one under Section 307 IPC to one under Section 302 IPC vide alteration report (Ex.P21), which reached the jurisdictional Magistrate on 21.11.2014, as could be seen from the endorsement thereon.

2.7 The Investigating Officer conducted inquest over the body of Hemavathi and prepared the inquest report (Ex.P22).

2.8 Dr.Sankar (P.W.12), who performed autopsy on the body of Hemavathi, in his evidence as well in the postmortem certificate (Ex.P15), has noted the following injuries:

"INJURIES:

Reddish brown abrasions seen over the following areas:

- Back of lower third of left forearm 0.5 x 0.2 cm, Back of right elbow 3 x 1 cm, Back of upper third of right forearm 1.5 x 1 cm, Back of middle third of right forearm 1 x 0.5 cm, Front of lower third of right thigh 2 x 1 cm.

Laceration :

- Right upper lip 0.5 x 0.2 x 0.2 cm.

Sutured surgical wounds :

- 1 sutured wound 3.5 cm long over lateral aspect of left elbow. On removal of suture, the margins are clean cut and underlying muscles are intact.
- 3 sutured wound 2.5 cm long over front of lower third neck. On removal of sutures, the margins are clean cut and underlying muscles are intact.

Oblique cut injury :

- Oblique cut injury 8 x 1.5 x muscle deep over front of upper third of neck.
- Oblique cut injury 4 x 1 cm x muscle deep left side of chin.
- Oblique cut injury 3 x 0.5 x 0.5 cm left side of chin 1 cm above the previous wound.
- Oblique cut injury 3 x 2 cm x bone deep over root of nose extending into the inner canthus of left eye.
- Oblique cut injury 10 x 3 cm x bone deep over the forehead. On further dissection, multiple comminuted fracture of underlying frontal bone.
- Oblique cut injury 4 x 2 cm x bone deep extending from outer canthus of left eye to middle third of left eyebrow 1 cm below the previous wound.
- Oblique cut injury 4 x 1 cm x scalp deep over right frontal region of scalp.
- Oblique cut injury 1 x 0.5 cm x bone deep above the outer third of right eyebrow.
- Oblique cut injury 4 x 1 x scalp deep over front of right parieto temporal region .
- Oblique cut injury 12 x 0.5-1cm x scalp deep over upper part of back of head in the midparietal region.
- Oblique cut injury 5 x 0.5 cm x scalp deep 5 cm below the



previous wound.

- Oblique cut injury 5 x 1 cm x scalp deep midoccipital region.
- Oblique cut injury 2 x 1 x scalp deep over left parietal region.
- Oblique cut injury 1 x 0.5 x 0.5 cm over back of right ear lobe.
- Oblique cut injury over back of right ear 2 cm above the right mastoid process.
- Oblique cut injury 4 x 1.5 x 0.5 cm over front of upper third of left arm."

2.9 After receiving the viscera report, Dr.Shankar (P.W.12) gave his final opinion, which reads as under:

"The deceased would appear to have DIED OF SHOCK & HEMORRHAGE DUE TO MULTIPLE INJURIES."

2.10 The Investigating Officer (P.W.15), in his evidence has stated that he recorded the statement of Karthick (P.W.2) on 20.11.2014 in the hospital; again on 21.11.2014, he recorded the further statement of Karthick (P.W.2), based on which, he altered the case from one under Section 302 IPC to one under Section 302 r/w 380 IPC and prepared a second alteration report (Ex.P24). However, there is absolutely no material to show as to when the alteration report (Ex.P24) reached the jurisdictional Magistrate, whereas, the first alteration report (Ex.P21) reached the jurisdictional Magistrate on 21.11.2014.

2.11 While the police were clueless as to who had committed the offence, it is the version of the police that on 23.11.2014, around 10.30 a.m., one Arul (P.W.7), friend of the appellant and Karthik (P.W.2), is said to have seen the appellant standing in Periyapalayam bus stand sporting a sad face and so, when Arul (P.W.7) enquired the appellant, he (appellant) confessed to him (P.W.7) that he was in need of money and so, he had murdered his aunt Hemavathi on 20.11.2014, took away her gold chain (M.O.4) and gold ring (M.O.5), pledged the same with Muthoot Finance, obtained money from them, used Rs.70,000/- for discharging his debt and spent the balance amount.

2.12 After hearing the confession story of the appellant, Arul (P.W.7) informed the police at 07.00 p.m. on 23.11.2014. On 24.11.2014, the Investigating Officer (P.W.15) arrested the appellant at 8.00 a.m. and recorded his police confession.

2.13 Based on the confession given by the appellant, the Investigating Officer (P.W.15) seized a Muthoot Finance pawn ticket (Ex.P10) under the cover of a mahazar (Ex.P9) at 9.15 a.m. on 24.11.2014 in Poonamallee bus stand in the presence of



the witnesses Saravanan (P.W.8) and Dhanasekar (not examined).

2.14 Thereafter, the Investigating Officer (P.W.15) took the appellant and the same witnesses to Muthoot Finance, from where, the gold chain (M.O.4) and gold ring (M.O.5) were seized under the cover of a mahazar (Ex.P11) on 24.11.2014 at 9.40 a.m.

2.15 Thereafter, the Investigating Officer (P.W.15) took the appellant to a bush behind the Magistrate Court, Poonamallee and in the presence of the witnesses Saravanan (P.W.8) and Dhanasekar (not examined), recovered bloodstained half-sleeve shirt (M.O.6) at 10.30 a.m. on 24.11.2014 under the cover of a mahazar (Ex.P12).

2.16 From there, the Investigating Officer (P.W.15) took the appellant to the house of one Prakash (P.W.10) in Chembarambakkam and in the presence of the witnesses Saravanan (P.W.8) and Dhanasekar (not examined), recovered cash of Rs.70,000/- at 11.45 a.m on 24.11.2014 under the cover of a mahazar (Ex.P13).

2.17 The bloodstained items, including the half-sleeve shirt (M.O.6), were sent to the Tamil Nadu Forensic Sciences Department and the chemical analysis report (Ex-P17) shows that blood was detected in some of the items, including the kitchen knife (M.O.1), clothes worn by Hemavathi (M.Os.7 to 9) and half-sleeve shirt (M.O.6). However, we do not have the serology report on record.

2.18 After completing the investigation and collecting the various reports, the Investigating Officer (P.W.15) filed a final report in P.R.C.No.39 of 2015 in the Court of V Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 380 and 302 IPC, against the appellant.

2.19 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.246 of 2015 and was made over to the Sessions Court, (Mahalir Neethimandram), Chennai, for trial.

2.20 The trial Court framed charges under Sections 380 and 302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

2.21 To prove the case, the prosecution examined fifteen witnesses and marked twenty four exhibits and nine material objects.



2.22 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. However, the appellant stated that he is handicapped and there is a plate fixed inside his right hand side and as such, he cannot climb upto second floor. No witness was examined from the side of the appellant nor any document marked.

2.23 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 11.01.2017 in S.C.No.246 of 2015, convicted and sentenced the appellant as follows :

S.No.	Provision under which convicted	Sentence
1	Section 380 IPC	Three years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo three months rigorous imprisonment.
2	Section 302 IPC	Life imprisonment and fine of Rs.5,000/- in default to undergo six months rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.24 Challenging the aforesaid conviction and sentences, the appellant has filed the present appeal before this Court.

3. Heard Mr.M.S. Ramesh, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent/State.

4. The prosecution has proved beyond a peradventure the following facts:

- Hemavathi was residing in the 2nd floor portion of Annai Dhana Bhakiyam Illam, Girija Nagar East, Kolathur, Chennai;
- Karthik (P.W.2) is one of the sons of Hemavathi;
- Hemavathi was the aunt of the appellant;
- Hemavathi was found in a pool of blood with multiple injuries by Kalavathi (P.W.1) on 20.11.2014, around 3.00 p.m.; and
- Hemavathi succumbed to the injuries on the same day at 6.30 p.m. in the KMC Hospital.



5. The short point for consideration is, whether the appellant was the perpetrator of the offence.

6. It is the case of the prosecution that the appellant was badly in need of money and so, he came to the house of Hemavathi in the afternoon, around 2.00 p.m., quarrelled with her for money and when she refused to give the same, he murdered her and took away her gold chain (M.O.1) and gold ring (M.O.2), pledged them with Muthoot Finance and raised money.

7. Of course, neither Kalavathi (P.W.1) nor Karthik (P.W.2) has stated that they saw the appellant with Hemavathi on 20.11.2014. In order to prove this fact, the prosecution strongly relied upon the testimonies of Bharath (P.W.5) and Hari @ Harikumar (P.W.6).

8. Bharath (P.W.5) and Hari @ Harikumar (P.W.6), in their evidence, have stated that they are close friends of Karthik (P.W.2) and in that way, they know Hemavathi well; on 20.11.2014, they both came to the house of Hemavathi in order to invite her to accompany them to Thirukkadaiyur temple, which is in Mayiladuthurai District; at that time, both of them saw the appellant in the house of Hemavathi, arguing and quarrelling. They have further stated that they saw the appellant asking Hemavathi to give money and Hemavathi refusing to help the appellant; when they asked Hemavathi as to whether she would accompany them to the temple, Hemavathi told them that she would not and so, they both left her house at 2.30 p.m.; they went to Thirukadaiyur temple and returned on 21.11.2014 and went to Karthik's (P.W.2's) house on 22.11.2014 and thereafter, informed the police as to what they had seen.

9. We would have gladly accepted the testimonies of Bharath (P.W.5) and Hari @ Harikumar (P.W.6), if not, for the following glaring infirmities:

9.1 Dr.Suresh Babu (P.W.11), in his evidence, has stated that Hemavathi was brought to the KMC Hospital by "Bharath" on 20.11.2014 at 4.30 p.m. and when he enquired him, he simply stated that he does not know how Hemavathi had sustained these injuries. The name "Bharath" figures in the accident register (Ex.P14). Bharath is not a popular name in this part of the country to infer that the person named "Bharath" in the accident register (Ex-P14) is not Bharath (PW5). Even if that be, it is for the prosecution to prove this fact. In the absence of proof



by the prosecution that Bharath named in the accident register (Ex-P14) is not PW5, then the benefit of this should go to the accused.

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9.2 If Bharath (P.W.5) had taken his friend's mother Hemavathi to the hospital and admitted her at 4.30 p.m. on 20.11.2014, his evidence in the Court that he went to Hemavathi's house at 2.00 p.m. on 20.11.2014 and saw the appellant quarrelling with her and thereafter, left for Thirukadaiyur temple at 2.30 p.m., appears unbelievable. The prosecution has not explained as to how Bharath's (P.W.5's) name figures in the accident register (Ex-P14).

9.3 More than that, both Bharath (P.W.5) and Hari @ Harikumar (P.W.6) stated that they are close friends of Karthik (P.W.2). They have also stated that on the same evening, i.e., on 20.11.2014 at 8.00 p.m., after they reached Thirukadaiyur temple, which is around 275 kms. away from Chennai, Karthik (P.W.2) telephoned them and told them that his mother has been murdered. Had that been so, the first reaction of Bharath (P.W.5) and Hari @ Harikumar (P.W.6) would have been to tell Karthik (P.W.2) that they saw the appellant quarrelling with his mother around 2.00 p.m. in the flat. Their (P.Ws.5 and 6) evidence that they came on 22.11.2014 and told the police about the argument the appellant allegedly had with Hemavathi on the afternoon of 20.11.2014, appears improbable.

9.4 That apart, if the two young friends of Karthik (P.W.2) had really seen the appellant quarrelling with Hemavathi, they would not have just gone away leaving their friend's mother to fend for herself, rather, they would have stayed there or inter alia informed Karthik (P.W.2) that the appellant has come to his house and is quarrelling with his mother.

10. The next piece of evidence, which the prosecution heavily relies upon is Arul (P.W.7), to whom, the appellant is said to have given an extrajudicial confession in Periyapalayam bus stand on 23.11.2014 at 10.30 a.m.

11. According to Arul (P.W.7), he is a good friend of Karthik (P.W.2) and the appellant.

12. Arul (P.W.7), in his evidence, has stated that the appellant is from Chembarambakkam area, whereas, Periyapalayam



temple is in the North of Madras on the way to Andhra Pradesh. Let us assume that the appellant had gone to Periyapalayam bus stand all the way from Chembarambakkam and was sitting sadly there, when Arul (P.W.7) saw him. If the appellant had confessed to Arul (P.W.7) about the murder, the first thing that Arul (P.W.7) would have done is definitely to inform Karthik (P.W.2) that the murderer of his mother is the appellant, whereas, in the cross-examination of Arul (P.W.7), he has clearly stated that he did not inform Karthik (P.W.2) about this at all, though he has admitted that he had attended the funeral of Karthik's (P.W.2's) mother. This conduct of Arul (P.W.7) is indeed very strange.

13. Now, the most important aspect of the case is the evidence of Karthik (P.W.2). Though Karthik (P.W.2) came into the picture only after the murder, his examination-in-chief was recorded on two days viz., on 15.02.2016 and 09.03.2016.

14. In the chief examination that was recorded on 15.02.2016, Karthik (P.W.2) has stated that after the funeral of his mother, the police came to him and asked him as to whether he is suspecting any person and obtained his mobile call details. He has further stated that the police had taken one Velan, brother of the appellant, into custody; the appellant telephoned him and asked him as to why the police have taken his brother Velan to the police station for enquiry; on the next day, around 10.00 a.m., he (P.W.2) and his brother, who had come from Singapore, were called to the office of the Commissioner of Police and was asked to identify some jewels and at that time, the police told them that the appellant had murdered his mother and had stolen the jewels.

15. If we go by the evidence of Karthik (P.W.2), it appears that Karthik (P.W.2) was called to the office of the Commissioner of Police on 23.11.2014, whereas, according to the police, the arrest of the accused was only on 24.11.2014 and the recovery from Muthoot Finance was only at 9.40 a.m. on 24.11.2014 at Poonamallee.

16. Assuming for a moment that the date given by Karthik (P.W.2) could be wrong, but, his evidence clearly shows that he was not called to the Kolathur Police Station by the Investigating Officer (P.W.15) to identify the seized jewels, but, he appears to have been called by the Commissioner of Police, for identification. Of course, this, by itself, cannot be a reason to disbelieve the police version, but, what concerns



us is the fact that the arrest of the appellant according to the police was at 8.00 a.m. on 24.11.2014 in Poonamallee, which is around 25 kms. away from Chennai.

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17. After the arrest, the police say that they recovered a pawn receipt of Muthoot Finance (Ex-P10) at 9.15 a.m., went to Muthoot Finance and recovered the jewels at 9.40 a.m., recovered bloodstained shirt (M.O.6) of the appellant at 10.30 a.m., went to the house of Prakash (P.W.10) and recovered the sum of Rs.70,000/- at 11.45 a.m.

18. If this had been the tight schedule of the police, we are unable to fathom as to how the seized materials were brought to the office of the Commissioner of Police to be shown to Karthik (P.W.2) in the morning hours.

19. Coming to the recovery of the pawn receipt (Ex-P10), according to the evidence of Meena (P.W.9), the appellant came to Muthoot Finance, Poonamallee Branch, between 4.00 and 4.30 p.m. on 20.11.2014 and pledged the jewels. The pawn receipt (Ex-P10), which was allegedly seized from the appellant, states that for any loan above Rs.5,000/-, signature should have to be obtained on a revenue stamp, whereas, in the pawn receipt (Ex-P10), there is no revenue stamp beneath the alleged signature of the alleged borrower.

20. It is the case of the prosecution that after receiving a sum of Rs.95,000/- from Muthoot Finance, the appellant is said to have paid Rs.70,000/- to Prakash (P.W.10).

21. Prakash (P.W.10), in his evidence, has stated that the appellant was due the sum of Rs.2,00,000/-, in connection with a chit transaction and on 20.11.2014, he (appellant) came and gave Rs.70,000/- to him and promised to pay the balance soon; four days later, Kolathur police contacted him over phone and asked him to come to the police station and hand over the money; accordingly, he went to Kolathur Police Station and handed over Rs.70,000/- to the Inspector of Police, whereas, it is the case of the Investigating Officer (P.W.15) that he went along with the appellant to the house of Prakash (P.W.10) on 24.11.2014 at 11.45 a.m. and seized Rs.70,000/- under the cover of a mahazar (Ex-P13). Strangely, the seizure mahazar (Ex-P13) does not bear the signature of Prakash (P.W.10).



22. In the cross-examination of Prakash (P.W.10), he has stated that he went to the police station on 23.11.2014. If Prakash (P.W.10) had gone to the police station on 23.11.2014, the alleged arrest of the appellant on 24.11.2014 is a farce.

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23. The fact that the appellant is a seriously handicapped person was admitted by Kalavathi (P.W.1) in her cross-examination. The appellant has also stated so, while he was examined by the Court under Section 313 Cr.P.C.

24. Even in the cross-examination of the Investigating Officer (P.W.15), it has been suggested by the defence that on account of the physical infirmity that the appellant suffers, he could not have attacked Hemavathi and caused so many injuries, which suggestion, of course, the Investigating Officer (P.W.15) has denied.

25. What really bothers us is, the police initially registered a case under Section 307 IPC against unknown accused and after the death of Hemavathi, the case was altered to one under Section 302 IPC vide alteration report (Ex-P21), which reached the jurisdictional Magistrate on 21.11.2014. According to the police, in the further examination of Karthik (P.W.2), when they came to know that his mother's jewels had gone missing, further, they altered the case to one under Sections 302 and 380 IPC vide alteration report (Ex-P24) dated 21.11.2014. When the first alteration report (Ex-P21) could reach the jurisdictional Court on 21.11.2014, it is not known, as to why, the second alteration report (Ex-P24) did not reach the Court in and around that time. In fact, there is no Court seal in the alteration report (Ex-P24) at all.

26. Yet another irony in this case is, the cash of Rs.70,000/- was allegedly seized from Prakash (P.W.10), whereas, Muthoot Finance has filed an application under Section 451 Cr.P.C. and has taken Rs.70,000/- from the Court on "no objection" being stated by the police. According to the police, the appellant owed money to Prakash (PW10) and in discharge of that debt, he had given Rs.70,000/- to the latter, which, the police seized on 24.11.2014. In such a case, the money should have been returned to Prakash (P.W.10) and not to Muthoot Finance.

27. Therefore, we find too many infirmities in the prosecution case, which render their story implausible.



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28. In view of the foregoing:

- i. The judgment and order dated 11.01.2017 passed in S.C.No.246 of 2015 on the file of Sessions Court, (Mahalir Neethimandram), Chennai, is set aside;
 - ii. The appellant is acquitted of the charges under Sections 302 and 380 IPC framed against him;
 - iii. Fine amount, if any, paid by the appellant, shall be refunded to him; and
 - iv. The appellant shall be released forthwith, if he is not required in any other case.
- In the result, this criminal appeal stands allowed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

NSD/MTL

To

1. The Session Judge,
(Mahalir Neethimandram),
Egmore @ Allikulam,
Chennai.
2. do-through The Principal Sessions Judge, Chennai.
3. The V Metropolitan Magistrate,
Egmore, Chennai.
4. do-through The Chief Metropolitan Magistrate,
Egmore, Chennai.
5. The Director General of Police,
Mylapore, Chennai-4
6. The District Collector,
Chennai.



7. The Inspector of Police,
V-6, Kolathur Police Station,
Chennai.

8. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

9. The Public Prosecutor,
High Court, Madras.

Copy To:-

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

+1cc to Mr.S.Ramesh, Advocate, S.R.No. 65460

Crl.A.No.637 of 2018

SVI (CO)
TE (20/12/2021)