



BAIL SLIP

Iyappan, S/o.Padmanabhapillai Male, aged 36/16,
Petitioner/Appellant/Accused No.2 released on bail of this Court
Order dated 06.10.2016 made in Crl.MP(MD)No.7252 of 2016 in Crl.A
(MD)No.300 of 2016

N.Mahesh, S/o.Neelakandapillai Male, aged 34,
Petitioner/Appellant/Accused No.3 released on bail of this Court
Order dated 06.10.2016 made in Crl.MP(MD)No.7304 of 2016 in Crl.A
(MD)No.301 of 2016.

Ayyappan S/o.Krishnapillai Male, aged 38,
Petitioner/Appellant/Accused No.4 released on bail of this Court
Order dated 08.09.2016 made in Crl.MP(MD)No.7498 of 2016 in Crl.A
(MD)No.305 of 2016

Ayyappan S/o.Ramanpillai Male, aged 39,
Petitioner/Appellant/Accused No.5 released on bail of this Court
Order dated 08.09.2016 made in Crl.MP(MD)No.7500 of 2016 in Crl.A
(MD)No.305 of 2016

Sasthapillai S/o.Padmanabhapillai Male, aged 42,
Petitioner/Appellant/Accused No.1 released on bail of this Court
Order dated 05.01.2017 made in Crl.MP(MD)No.11420 of 2016 in Crl.A
(MD)No.305 of 2016 and extended on 19.01.2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED : 13.07.2021

JUDGMENT PRONOUNCED : 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A. (MD) Nos.300, 301 and 305 of 2016

Iyappan : Appellant/Accused No.2
in Crl.A. (MD) No.300 of 2016
N.Mahesh : Appellant/Accused No.3
in Crl.A. (MD) No.301 of 2016

1.Sastha Pillai
2.Ayyappan S/o.Krishnapillai
3.Ayyappan S/o.Ramanpillai : Appellants/Accused Nos.1, 4 and 5
in Crl.A. (MD) No.305 of 2016

-vs-

State represented by its
the Inspector of Police,
Eraniel Police Station,
Kanyakumari District.
Crime No.230 of 2007

: Respondent/Complainant
in all Crl.As.,.

COMMON PRAYER:- Criminal Appeals filed under Section 374(2) of the
Code of Criminal Procedure, to call for the records in the judgment
of the Sessions Judge, Fast Track Mahila Court, Kanyakumari at



Nagercoil in S.C.No.142 of 2008, dated 09.08.2016 and set aside the same.

In Crl.A.(MD) No.300 of 2016

For Appellant : Mr.H.Velavadhas
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

In Crl.A.(MD) No.301 of 2016

For Appellant : Mr.C.K.M.Appaji
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

In Crl.A.(MD) No.305 of 2016

For Appellants : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

COMMON JUDGMENT

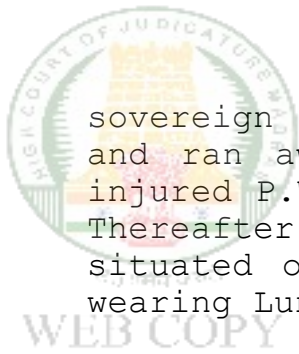
These Criminal Appeals are filed to call for the records pertaining to the judgment of the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil in S.C.No.142 of 2008 dated 09.08.2016 and set aside the same.

2.The case of the prosecution is briefly as follows:-

2.1.In this case, P.W-1-Ambujam is the wife of P.W-4-Thanu Pillai. P.W-2-Chitra and P.W-3-Ajitha are the daughters of P.W-1 and P.W-4. They were residing at Parambuvoyal, Esakkiammal Koil, Aalamoodu, Thalakkulam Village, Kalkulam Taluk, Kanyakumari District.

2.2.On 13.06.2007, after finishing dinner, when P.W-1 to P.W-4 went to sleep at about 11.45 p.m., P.W-1 to P.W-3 heard the sound from the backside of their house. Hearing the sound, P.W-1 to P.W-3 woke up and all the three members came to the hall of their house. When P.W-1 to P.W-3 came to the hall of their house, they saw 5 people standing in the hall. On seeing them, P.W-1 to P.W-3 silently went to the room of P.W-4, who was sleeping on the cot and woke him up.

2.3.When P.W-4, Thanu Pillai went to the hall of the house, all the five people attacked him. On seeing this, P.W-1 to P.W-3 cried for help. P.W-4, who was attacked by the said 5 persons, also raised hue and cry for help. Thereafter, one among the five members came and closed the mouth of P.W-1-Ambujam. At that time, P.W-2-Chitra went to another room and switched on the lights. When the lights were on, all the five persons ran away from the house. One person among 5, who closed the mouth of P.W-2-Chitra, had snatched 1½



sovereign gold chain worth about Rs.6,000/- from the neck of P.W-2 and ran away and one of them among the five persons kicked the injured P.W-4, Thanu Pillai and yelled that 'he died on the spot'. Thereafter, all the five persons ran away jumping the compound wall situated on the backside of the house. All the five persons were wearing Lungi, Shirts and Turbans.

2.4. On hearing the cries, one Neelakanda Pillai, who is the brother of P.W-4 and his son, Manikandan came to the house of P.W-1 for their help. The injured P.W-4 was taken to Arumugam Hospital. P.W-1 had preferred a complaint to P.W-9-Inspector of Police, Eraniel Police Station. On receipt of the complaint under Ex.P-1, a case in Cr.No.230 of 2007 had been registered on 14.06.2007 for the offence under Section 397 of IPC. The original FIR under Ex.P-8 and the original complaint under Ex.P-1 were sent to the Court of the learned Judicial Magistrate, Eraniel. Thereafter, P.W-9-Inspector of Police, Eraniel Police Station, had proceeded with the investigation.

2.5. P.W-9-Inspector of Police, Eraniel Police Station, had visited the house of P.W-1 and prepared a Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-9 in the presence of the witnesses, P.W-5-Madhavan and P.W-8 Raman Pillai and recorded their statements. When he went to the Arumugam hospital, P.W-4 was unconscious. Therefore, he did not record the statement of P.W-4, but subsequently, on suspicion he arrested A-1 to A3 viz., Sastha Pillai, Iyappan and Mahesh on 23.06.2007 at about 03.00 p.m. On his interrogation, A-1-Sastha Pillai voluntarily gave confession and the same was recorded in the presence of the witnesses P.W-7-Manikandan and Saamikumar.

2.6. Based on the confession of A-1, P.W-9-Inspector of Police, Eraniel Police Station recovered M.O-4-1½ sovereign gold chain of P.W-2 under Ex.P-4-Seizure Mahazar, and on the same day, the confession of the other accused were also recorded. Thereafter, from behind the Alamoodu Temple, one iron rod and two wooden sticks were recovered based on the confession of A-3-Mahesh which were marked as M.O-1 to M.O-3 under Ex.P-5-Seizure Mahazar in the presence of the witnesses P.W-7-Manikandan and Saamikumar, by around 07.00 p.m. The accused along with the recovered properties were brought to Eraniel Police Station. After completing formalities, they were sent to the Court of the learned Judicial Magistrate, Eraniel, with escort police along with remand request by P.W-9-Inspector of Police, Eraniel Police Station. Since the accused A-1 to A-3 were arrested on suspicion and remanded to judicial custody, on coming to know of the same, the co-accused surrendered before the Court.

2.7. Later, P.W-9-Inspector of Police enquired P.W-4, Neelakanda Pillai, who is the brother of P.W-4 and other witnesses, P.W-7-Manikandan, Saamikumar, P.W-2 and P.W-3-the daughters of P.W-1 and P.W-4 who is the Doctor treated the injured P.W-4 for the



injuries at Arumugam Hospital. From the materials collected by P.W-9-Investigation Officer, he came to a conclusion that the Appellants herein/Accused 1 to 5 had committed the offence. After Investigation, a final report of the investigation under Section 173 (2) of Cr.P.C., was filed before the Court of the learned Judicial Magistrate, Eraniel.

2.8.On receipt of the final report, the learned Judicial Magistrate, Eraniel, had taken cognizance of the offence under Sections 397 and 457 of IPC. Copies were furnished to the Accused 1 to 5 under Section 207 of the Code of Criminal Procedure. The Accused were questioned regarding their financial capacity to engage a counsel to defend them. They replied that they had resources to engage counsel to defend them. Since the offences are triable by the Court of Sessions, the final report was taken on file as P.R.C.No.26 of 2008 by the learned Judicial Magistrate, Eraniel and the case was forwarded to the Court of the learned District and Sessions Judge, Nagercoil. The Accused 1 to 5 were bound over to appear before the Court of the learned District and Sessions Judge, Nagercoil.

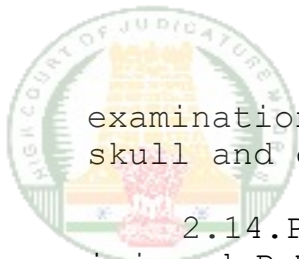
2.9.On receipt of the records from the Court of the learned Judicial Magistrate, Eraniel, the learned District and Sessions Judge, Nagercoil, on perusal of the records and on appearance of the accused took the case and made over the case to file as S.C.No.142 of 2008. Since the offences are alleged against the woman and children, the case was made over to the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil by the learned Principal District and Sessions Judge, Nagercoil.

2.10.On appearance of the Accused 1 to 5 before the Court of the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil, the learned Judge, on consideration of the materials and on perusal of the records, framed charges against the Accused 1 to 5 under Sections 457 and 397 of IPC. The Accused 1 to 5 denied the charges and claimed to be tried. Therefore, the trial was ordered.

2.11.During trial, the defacto complainant, Ambujam was examined as P.W-1. She had narrated the facts and lodging of the complaint under Ex.P-1. She also narrated the occurrence which took place on the night of 13.06.2007. P.W-2 and P.W-3-the daughters of P.W-1 had also corroborated the same.

2.12.P.W-4 is the injured witness. He is the husband of P.W-1 and father of P.W-2 and P.W-3. He had also narrated the incident as spoken by P.W-1 to P.W-3. P.W-1 identified the Accused 1 and 2 only in the Court. P.W-3 had narrated the same facts and identified A-1 in the Court. P.W-4 had identified all the accused in the Court.

2.13.P.W-6-Doctor, Franklin Castro, who had treated the injured P.W-4 at Arumugam Hospital, stated that on 13.06.2007 at about 11.45 hours, he was attending to P.W-4 who was attacked by unknown persons. In his clinical



examination, it was found that P.W-4 had suffered fractures on his skull and chin, which were grievous in nature.

2.14.P.W-7-Manikandan is the son of the elder brother of the injured P.W-4. He had deposed regarding the arrest of the accused A-1-Sastha Pillai and A3-Mahesh that Saamikumar and himself were the witnesses to the arrest of A-1 and A3, confession and recovery, which is Ex.P-3 from A-1-Sastha Pillai of 1½ sovereigns of gold chain marked as M.O-4 and handing over of the same to P.W-9-Inspector of Police, that A-3, Mahesh had given confession based on which, iron rod and wooden sticks were recovered that was marked as M.O-1 to M.O-3 under Ex.P-5-Seizure Mahazar.

2.15.P.W-8, Raman Pillai had, in his deposition, deposed that he was the witness to the Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-9 prepared by P.W-9-Investigation Officer. P.W-9 had, in his deposition, deposed that he had visited the scene of occurrence immediately after registration of the FIR under Ex.P-8 and in the presence of the witnesses, P.W-8-Raman Pillai and P.W-5-Mathavan, he had prepared the Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-9. On suspicion, he had arrested the Accused 1 to 3 on 23.06.2007 at about 03.00 p.m., near Takkalai Vellariela Kulam. The arrest was made in the presence of P.W-7-Manikandan and Saamikumar.

2.16.In the presence of the said witnesses, A-1-Sastha Pillai had given confession to the crime and had handed over the 1½ sovereign of gold chain that was snatched from the neck of P.W-2 on the night of the occurrence, which was seized by P.W-9 and was recorded as M.O-4. On the same day, A-3-Mahesh, had given confession statement, based on which the material objects, M.O-1 to M.O-3 were recovered in the presence of the said witnesses, P.W-7-Manikandan and Saamikumar.

2.17.P.W-9-Investigation Officer had gone to the hospital and recorded the statement of P.W-6-the Doctor, who treated P.W-4-injured. The statement of P.W-4 was not recorded as he was not conscious. Subsequently, he recorded the same. The Accused 1 to 5 were forwarded to the Court of the learned Judicial Magistrate, Eraniel and sent for remand. After completion of the investigation, P.W-9-Investigation Officer laid a final report under Section 173(2) of Cr.P.C., for the offences under Sections 457 and 397 of IPC against all the accused before the Court of the learned Judicial Magistrate, Eraniel.

2.18.Based on the evidence of P.W-1 to P.W-9, the documents, Ex.P-1 to P-10 and the material objects, M.O-1 to M.O-4, the incriminating portions of the evidences were put to the Accused 1 to 5. When the Accused 1 to 5 were examined under Section 313 (1) of Cr.P.C., the Accused 1 to 5 denied the incriminating



evidences available against them stating that both the families are known to each other and there had been a civil dispute between them. Further, they had stated that based on the previous enmity regarding property dispute, the de-facto complainant has given a false complaint.

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2.19. After hearing the arguments on either side, the learned trial Judge convicted the Accused 1 to 5 and sentenced them to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a period of 1 year for the offence under Section 457 of IPC and sentenced the accused 1 to 3 to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.15,000/-, in default, to undergo rigorous imprisonment for a period of 1 year for the offence under Section 397 of IPC and acquitted the Accused 4 and 5 from the charges initiated against them under Section 397 of IPC. Against the same, the Appellants/Accused 1 to 5 had preferred these appeals.

3. Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil dated 09.08.2016 passed in S.C.No.142 of 2008 is to be set aside and the accused 1 to 5 are to be acquitted?

4. Mr. C.K.M. Appaji, learned counsel appearing for the appellant/3rd accused submitted his written arguments. As per his submission, the accused party and the complainant party viz., prosecution witnesses P.W-1 to P.W-4 are relatives. There had been a clash between them. The 3rd accused who is the son of elder brother of P.W-4 is alleged to have married the daughter of A-1. Therefore, there had been animosity between them. Also, there was a property dispute between P.W-4 and A-1. Due to previous enmity, the de-facto complainant had given a complaint and the accused herein were not at all involved in the offences as alleged by the prosecution.

5. The learned counsel for the appellant/3rd accused invited the attention of this Court to the evidence of P.W-1 to P.W-4. P.W-1 had identified the Accused-1 alone in the Court. P.W-2 and P.W-3 had not at all identified any accused. P.W-4 had also stated that 5 persons were presented in his house at the time of occurrence.

6. In the cross-examination of P.W-1 to P.W-4, it was clearly admitted by P.W-1 that the 3rd accused is the son of Neelakanda Pillai, who is none other than the elder brother of P.W-4. He had married the sister's daughter of A-1. Therefore, there had been a dispute between the family of A-1 and the father of A-3, who is none other than the elder brother of P.W-4. The marriage between A-3-Mahesh and the sister's daughter of A-1 was solemnized as love marriage as against the wish of elder brother of P.W-4. Therefore, they were not on talking terms.



7.Already, there had been a property dispute between P.W-4 and the father of A-3. The house, where the occurrence took place was purchased by P.W-4 from A-1 and after purchase, A-1 wanted the house for residential purpose of A-3 and his wife, who is the sister's daughter of A-1, which was refused by P.W-1 to P.W-4. There had been suits filed by P.W-1 to P.W-4 against A-1 and A-3 and the same is now pending before the Sub Court, Padmanabhapuram. The said fact was admitted by P.W-1.

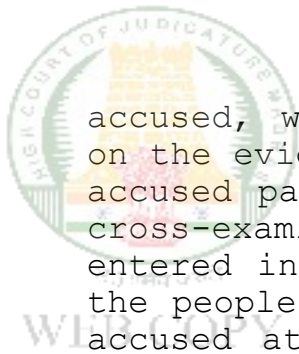
8.To a pointed question regarding the names of the suspects, when P.W-1 lodged a complaint, she had stated that she did not mention that. She had denied the suggestion that this was a foisted case. P.W-2 was cross-examined. In the cross-examination, she had stated that on the next day of the occurrence, the Deputy Superintendent of Police, Colachel had visited the house, where the occurrence took place and made enquiry and at that time, she had mentioned about the suspects. She had clearly identified the 3rd accused as her elder paternal uncle's son. A-3 is the cousin to P.W-2 and A-1 is the maternal uncle of wife of A-3.

9.P.W-3 is the youngest daughter of P.W-1. She was cross-examined on behalf of the accused. She had stated that one of the accused had attacked her mother with knife, but she had not identified the accused in the Court. P.W-4-the injured was cross-examined on behalf of the accused. In the cross-examination, he had clearly admitted the fact that there had been a dispute between A-1 and his family due to the marriage of A-3-Mahesh with the sister's daughter of A-1. When he was admitted in the hospital, he had lost consciousness. When he regained the same, his wife, P.W-1 informed him that they have suspected the involvement of the accused herein.

10.To the pointed question that what is the original dispute between P.W-1 to P.W-4 and the accused, he had clearly stated that after purchase of the site and construction of the house, there had been a claim over the property by A-1. He had clearly stated that when the police enquired, he had stated about the dispute that whenever the accused saw P.W-1, he used to scold her in abusive language. In the cross-examination of P.W-4, he had clearly stated that all the five accused were present in the house and they came into the house only to attack the inmates and they had ample time to take vengeance.

11.P.W-7, who was the witness to the Rough Sketch under Ex.P-9 and Seizure Mahazar under Ex.P-5, in his cross-examination, had admitted that P.W-4 is the paternal uncle. He had clearly stated that he identified the accused only in the Police Station on the request of P.W-4.

12.Mr.H.Velavadhas, learned counsel for the appellant/2nd
<https://hcservices.gov.in/hcservices> C.K.M.Appaji, learned counsel for the appellant/3rd



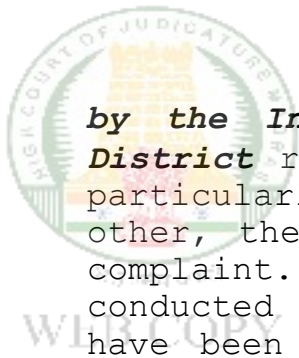
accused, while submitting their written arguments, placed reliance on the evidence of P.W-4 and P.W-7 regarding the dispute between the accused party and the witnesses, which was clearly elicited in the cross-examination of P.W-1 and P.W-4. He submits that when A-1 had entered into the house, it was only a family dispute and since all the people are known, they ought to have mentioned the names of the accused at the earliest point of time, while giving complaint or giving statement under Section 161 Cr.P.C. Therefore, Mr.C.K.M.Appaji, learned counsel for the appellant/3rd accused submits that this is a clear case of framing a false case to wreak vengeance.

13.The learned counsel for the appellant/2nd accused and the learned counsel for the appellant/3rd accused further invited the attention of this Court to the framing of charges by the Court. If the accused were arrested based on identification parade, then the identity of the accused will be established and the conviction awarded by the learned trial Judge can be accepted. Here, there was no identification parade conducted by the Investigation Officer. Even if the occurrence that had taken place, for arguments' sake, is accepted, the offences under Sections 457 and 397 of IPC will not lie.

14.The learned counsel for the appellant/3rd accused submits that Section 457 of IPC is attracted when the accused can be identified, based on the identification parade and if the names of the accused are known to the witnesses, the witnesses should have mentioned the same at the initial stage. In such cases, the trial Court can convict the accused. Therefore, the conviction awarded by the learned trial Judge in his judgment dated 09.08.2016 is not on proper appreciation of facts and law in proper perspective, as per the provisions of the Indian Evidence Act. Therefore, the finding of guilt recorded by the learned trial Judge has to be set aside and the accused 1 to 5 are to be discharged from the charges framed against them and they are to be acquitted.

15.On perusal of the entire materials, evidence through P.W-1 to P.W-9, the documents under Ex.P-1 to Ex.P-10 and the material objects, M.O-1 to M.O-4, it is found that the judgment of the learned trial Judge is found unacceptable considering the evidence in the cross-examination of P.W-1 to P.W-4.

16.The judgments relied on by Mr.C.K.M.Appaji, learned counsel for the appellant/3rd accused in the case of ***Ramesh and others Vs. State represented through the Inspector of Police, Cumbum North Police Station, Cumbum*** reported in (2016) 2 MLJ (Crl) 248, in the case of ***Chitti alias Chittibabu Vs. State represented by the Inspector of Police, Gummidipoondi Police Station, Thiruvallur District*** reported in (2011) 1 MLJ (Crl) 632 and in the case of ***Raj @ Medical Raj @ Raj @ Marchchezhan and others Vs. State represented***



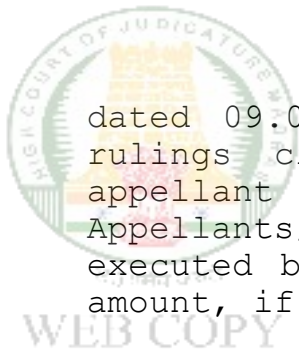
by the Inspector of Police, Avinasi Police Station, Coimbatore District reported in (2012) 3 MLJ (Cr1) 203, are found applicable, particularly, when the accused and the witnesses are known to each other, the names of the accused should have been mentioned in the complaint. Also, if identity was not known, the police could have conducted the identification parade. Only then, the accused could have been identified. Here, the complaint is vague regarding the identity of the accused.

17.P.W-1 to P.W-4 identified the accused in the Court. They admitted in their cross examination that there had been a dispute between the Accused 1 to 5 and the family of P.W-1 to P.W-4 particularly with P.W-4, who is the paternal uncle of A-3. P.W-5 is the brother of A-3. When the trial was taken up in the name of the listed witnesses, Neelakanda Pillai, who is the father of A-3, was removed in the final report as he was no more alive. If that be the case, on suspicion, the witnesses could have mentioned the name of the accused in the complaint. That was not done and how the respondent police secured the accused is not clear before the Court concerned.

18.When there had been a dispute between them, the arrest is suspicious and on arrest, the respondent Police is alleged to have secured 1½ sovereign of gold chain. That is also doubtful considering the animosity between the accused and the witnesses. Therefore, the theory of recovery based on the confession can at best be treated as suspicious. If at the earliest point of time, P.W-4 was taken to the hospital for his injuries, he could have stated that he very well known the persons, who are his relatives, attacked him. If that could be the case, the provision of Section 457 of IPC clubbed with Sections 307 or 326 of IPC might have been a better case for conviction. The complaint and the FIR proceed as though it was the case of decoity, the evidence gives different suggestion.

19.There had been an attempt to attack the witnesses based on the previous enmity of that cannot be a dacoity. As rightly pointed out by the learned counsel for the appellants, it is not a solitary charge for conviction. When there are doubt in the mind of the learned Judge concerned regarding the complicity of the individuals of the nature of the offences committed, the benefit of doubt is to be extended to the accused. In the light of the above discussion, the point for consideration is answered in favour of the Appellants/Accused-1 to 5 and against the prosecution.

In the result, these Criminal Appeals are allowed. The Appellants/Accused-1 to 5 are discharged from all the charges framed against them. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil in S.C.No.142 of 2008



dated 09.08.2016 is found perverse in the light of the reported rulings cited by Mr.C.K.M.Appaji, learned counsel for the 3rd appellant and accordingly, the same is hereby set aside. The Appellants/Accused-1 to 5 are hereby acquitted. The bail bond executed by the appellants, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the appellants.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.

Copy To :-

1.The Sessions Judge (Fast Track Mahila Court)
Kanyakumari at Nagercoil.

2.The Superintendent,
Central Prison, Palayamkottai.

3.The Judicial Magistrate, Eraniel,

4.The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-29812[F] dated 21/09/2021)

Common Judgment made in
Crl.A.(MD) Nos.300, 301 and 305 of 2016

20.09.2021

SRK(CO)

GC/JGB(02.11.2021) 10P 8C