



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.03.2022

DELIVERED ON : 07.04.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
and  
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.19 of 2021

1.A.Anthony @ Anthonysamy  
2.R.Sakthivel  
3.R.Dharmar

...Appellants /Accused 1 to 3

Vs.

The State, rep. by  
The Inspector of Police,  
Sivagiri Police Station,  
Thirunelveli District.  
(Crime No.295 of 2010)

... Respondent / Complainant.

**PRAYER:** Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Tirunelveli, in S.C.No.89 of 2014 dated 11.12.2020.

For Appellants : Mr.T.J.Ebenezer Charles  
For Respondent : Mr.S.Ravi,  
Additional Public Prosecutor.

**JUDGMENT**

**R.SUBRAMANIAN, J.**  
**AND**  
**N.SATHISH KUMAR, J.**

This Criminal Appeal has been filed by the appellants / accused 1 to 3 as against the conviction and sentence, dated 11.12.2020, made in S.C.No.89 of 2014, by the learned I Additional District and Sessions Judge, Tirunelveli.

2. The appellants/accused 1 to 3 stood convicted and sentenced to undergo imprisonment as detailed hereunder:

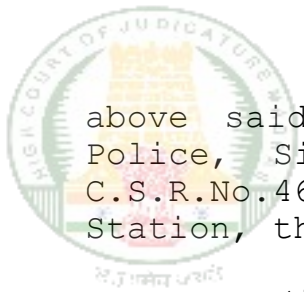


| Rank               | Conviction U/s.                                                                                                                                                                          | Sentence                                                                                                            | Fine amount                                                                                                                                                                      |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Accused<br>1 to 3  | 120-B IPC                                                                                                                                                                                | To undergo life imprisonment                                                                                        | To pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment.                                                                                       |
| Accused<br>1       | 294(b) IPC<br><br>307 IPC<br>(2 counts)<br><br>302 IPC<br><br>Since A1 has been convicted u/s.307 IPC, conviction u/s.326 IPC is not required and thus, acquitted u/s.326 IPC (2 counts) | To undergo three months simple imprisonment<br><br>To undergo life imprisonment<br><br>To undergo life imprisonment | To pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment.<br><br>To pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment. |
| Accused<br>2 and 3 | 302 r/w.34 IPC<br><br>506(ii) IPC                                                                                                                                                        | To undergo life imprisonment<br><br>To undergo seven years imprisonment                                             | To pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment.                                                                                       |

(The aforementioned punishments are ordered to run concurrently by Accused 1 to 3.)

3. The brief facts of the prosecution case, are as follows:

(i) The father of Accused 2 and 3 and father-in-law of Accused 1 is one Ramakrishnan. The said Ramakrishnan and one Udayar are brothers. In the eve of Deepavalli festival, the father of Accused 2 and 3 namely, Ramakrishnan (since deceased) purchased meat on credit from his brother Udayar; as he failed to pay that amount, the said Udayar lodged a complaint against his brother Ramakrishnan on 18.11.2010. For lodging the complaint, he has also availed the help of P.W.1-Murugan who accompanied him to the Police Station. The



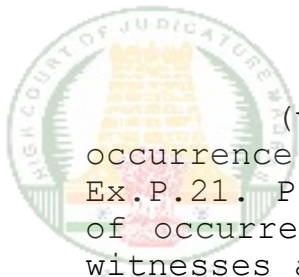
above said complaint was received by P.W.17 - Sub-Inspector of Police, Sivagiri Police Station and the same was treated as C.S.R.No.467 of 2010. As the amount was settled in the Police Station, the petition was closed.

(ii) Aggrieved over the said act of Udayar in lodging the complaint against Ramakrishnan, Accused 1 being the son-in-law, along with the sons of said Ramakrishnan, namely, Accused 2 and 3 conspired to eliminate P.W.1 - Murugan. On 18.11.2010, at about 8.30 p.m., P.W.1, P.W.2, deceased Isravel and P.W.11 Ramachandran were standing at Nalumukku Road, in front of Soundarraaj's house under the street light. At that time, Accused 1 came from the west and abused P.W.1 Murugan in filthy language and tried to stab him with knife. However, P.W.1 escaped from such attack, but, the stab fell on deceased Isravel's stomach. When P.W.1 tried to snatch the knife from Accused 1, Accused 1 stabbed P.W.1 on his left abdomen. P.W.1 just escaped from the attack, however, the deceased has sustained injury. Accused 1 tried to stab the P.W.1 with an intention to kill him, however, he escaped from the attack, but same fell on the stomach of the deceased repeatedly. When P.W.1 tried to hold Accused 1, he stabbed P.W.1 on his left stomach. Similarly, when P.W.2 tried to catch hold Accused 1, he has also abused him and tried to stab him on his neck, however, the same fell on his left chest.

(iii) P.Ws.4, 5 and 11 have also witnessed the occurrence. It is also the case of the prosecution that P.Ws.4, 5 and 11 tried to catch him; at that time, the accused 2, 3 and Ramakrishnan (since deceased) came there and shouted and they also instigated Accused 1. P.W.4 and others took all the injured to Sivagiri Government Hospital.

(iv) P.W.15 - Medical Officer attached to the Government Hospital, Sivagiri, admitted the deceased Isravel, P.W.1 and 2 and noted a 6 x 5 x 3 cm. deep incised wound on the body of the deceased Isravel and issued a Wound Certificate - Ex.P.15. It is stated that he was attacked by one known male person at 8.30 p.m. Similarly, he also noted 6 cm x 4 cm deep stab injury on the upper right side chest vessels of P.W.2 and issued Wound Certificate - Ex.P.16 and he also noted the injury on the P.W.1, measuring 5 x 4 cm deep stab injuries on the middle of left abdomen and issued Wound Certificate - Ex.P.17 and referred the patient to Tirunelveli Government Hospital, for further treatment.

(v) P.W.17 - Sub-Inspector of Police on receiving the intimation from Sivagiri Government Hospital on 18.11.2010 at 21.15 hours, she went to the hospital and recorded the statement - Ex.P.1 from P.W.1 and registered a case in Crime No.295 of 2010 under Sections 294(b), 324 and 506(ii) IPC and prepared FIR-Ex.P.20 and forwarded the FIR to the Judicial Magistrate Court, Sivagiri and the copy was submitted to the Inspector of Police-Investigation Officer.



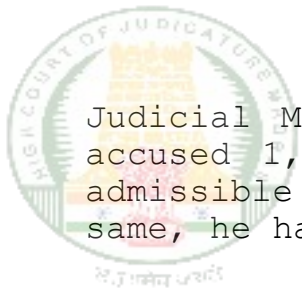
(vi) P.W.18 - Investigation Officer went to the place of occurrence and prepared Observation Mahazar Ex.P.13 and Rough Sketch Ex.P.21. P.W.18 has also collected blood-stained Tar from the place of occurrence under the Seizure Mahazar-Ex.P.22 in the presence of witnesses and recorded their statements. Thereafter, he received the death intimation report from the Government Hospital on 19.11.2010 that the injured Isravel died at 07.45 a.m. Based on the said report, he altered the Sections to 294(b), 324, 302 and 506(ii) IPC and prepared alteration report - Ex.P.23 and forwarded the same to the Judicial Magistrate. Thereafter, he conducted inquest over the dead body in the presence of the Panchayatdhars and prepared an inquest report Ex.P.24. After completion of the inquest, sent the dead body for post-mortem with requisition for conducting autopsy over the dead body, through P.W.14- SSI, Sivagiri Police Station.

(vii) P.W.6 - Forensic Medical Officer conducted autopsy over the dead body of the deceased on 19.11.2010 at 03.15 hours and found the following injuries:

1. Y shaped sutured wound measuring long limb of 16 cms and short limb of 13 cms seen on the front of left lower chest and left upper abdomen. It is 5 cm from below left nipple and 10 cm above and left to the umbilicus. On removal, it was peritoneal cavity deep. Anterior abdominal wall and left lower ribs found sutured. Peritoneal cavity contains 300 ml of fluid blood and about 150 gms of clotted blood. 15 cm long horizontal sutured wound seen on the left lobe of liver. On removal it was 5 cms deep. 3 cm long horizontal sutured wound seen on the left hemi diaphragm (surgical procedure). 0.5 cm long sutured wound seen on the left side of lower end of esophagus.
- 2) 2 x 0.5 cm oblique stab wound noted on the front of left side of chest wall all the level of 6th Inter costal space.
- 3) 3 cm long sutured wound seen on the outer aspect of left chest. On removal, it was pleural cavity deep (surgical procedure).

and issued Ex.P.24 Post-mortem certificate and opined that the deceased would appear to have died of complications of stab injury to the region of abdomen.

(viii) P.W.18, in continuation of investigation, on 20.11.2010 at 16.00 hours, arrested the Accused 2 and 3 at Sinthamani Bus Stop, Puliyangudi and sent them to judicial custody. On 21.11.2010 at 15.15 hours, he arrested the accused Ramakrishnan (since deceased) and sent him to judicial custody. On 26.11.2010, he arrested the Accused 1, who had surrendered before the



Judicial Magistrate, Sivagiri, and recorded the confession of the accused 1, in the presence of P.Ws.9, 11 and one Rajagopal. The admissible portion of the confession is Ex.P.25. Pursuant to the same, he has recovered M.O.1-Knife under Ex.P.22 - Seizure Mahazar.

**WEB COPY** (ix) P.W.7-Assistant of the Judicial Magistrate Court, Sivagiri, deposed that after obtaining order from the Judicial Magistrate, she has forwarded the material objects to the Forensic Science Laboratory along with the requisition letter Exs.P.5 and 6.

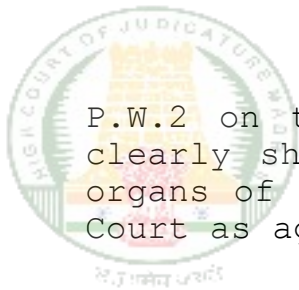
(x) P.W.8 - Assistant Director of Forensic Lab examined the material objects and issued Chemical Analysis Report - Ex.P.7 and Serological Report - Ex.P.8.

(xi) P.W.18, after examining the witnesses, completed his investigation and filed the final report against the accused.

4. The prosecution, in order to bring home the guilt of the accused, examined as many as 18 witnesses as P.W.1 to P.W.18, marked 25 documents as Exs.P1 to P25 and 3 material objects as M.O.1 to M.O.3. On the side of the accused, D.W.1 and D.W.2 were examined and Exs.D.1 to D.3 were marked. After analyzing the oral and documentary evidence, the trial Court has found the accused guilty and convicted the accused as referred above. Assailing the same, the present Criminal Appeal is filed.

5. The learned counsel for the appellant/accused 1 to 3 mainly contended that the conviction against accused Nos.2 and 3 for the offence under Sections 120(b), 302 r/w 34 I.P.C. and other charges are without any basis. It is his contention that there is absolutely no evidence against Accused 2 and 3 for sharing the common intention with Accused 1 for causing the death of the deceased. His contention is that the accused 1 has no intention to kill the deceased and the deceased suddenly intervened and received the injury. Therefore, Accused 1 has to be convicted only for the lesser offence. The theory of conspiracy has been introduced for the first time in the evidence and it is introduced only to implicate entire family members. Therefore, it is submitted finding the guilt of the Accused 2 and 3 by the trial Court is without proper appreciation of evidence and they are entitled to acquittal and submitted that as far as Accused 1 is concerned, it is his contention that he had no intention to kill the deceased. Therefore, he submitted that lesser punishment may be inflicted on him.

6. Whereas Mr.Ravi, learned Additional Public Prosecutor would submit that the accused aimed stab injury on P.W.1, but killed the deceased and therefore, he would be guilty of murder under the doctrine of transfer of malice. The accused not stopping with causing injuries to the deceased, also caused injuries on P.W.1 and



P.W.2 on their vital organs. The evidence of the Medical Officer clearly shows the nature of the injuries inflicted on the vital organs of the body. Therefore, the conviction recorded by the trial Court as against accused 1 has to be maintained.

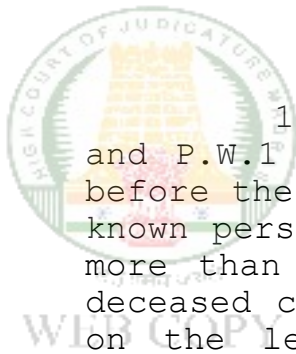
7. The learned Additional Public Prosecutor has fairly submitted that as far as the charge against Accused 2 and 3, the evidence is lacking for sharing the common intention and therefore, he fairly submitted that in the FIR, their presence has never been stated and similarly, the theory of conspiracy has not been established.

8. In the light of the above submissions and materials, we gave our anxious consideration and perused the materials and the motive aspect clearly spoken to by the prosecution witnesses.

9. Ramakrishnan, father of Accused 2 and 3 is the brother of One Udayar. There were some disputes between Ramakrishnan (since deceased) and his brother Udayar over the payment of some petty sum towards purchase of meat by said Ramakrishnan, which resulted in lodging a complaint by the said Udayar against the said Ramakrishnan.

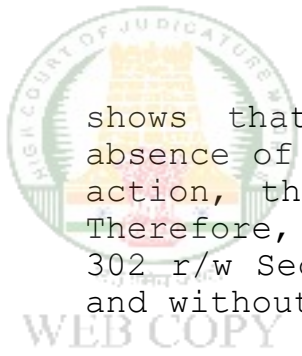
10. P.W.17 entertained the petition and since the money was paid, the petition has been closed. This has been spoken to by P.W.17. Accused 1 being the son-in-law of the said Ramakrishnan, on 18.11.2010 i.e., on the same day, became furious and agitated over the lodging of the complaint against his father-in-law, came with knife M.O.1 and tried to eliminate the deceased since he has accompanied Udayar to Police Station. However, the stab fell on the stomach of the deceased who was present along with P.W.1 and 2 at the relevant point of time. It is also established on record from the evidence of P.W.1 and 2 that not stopping with inflicting a stab on the deceased, Accused 1 has caused stab injuries on abdomen of P.W.1 and also the chest of P.W.2. After receiving the stab injuries, the deceased Isaravel and P.W.1 and 2 injured were taken to the Hospital by the eye-witnesses, viz., P.W.4 and others. The above occurrence was also witnessed by P.W.5 and P.W.11 who have also spoken about the role played by Accused 1 causing stab injuries.

11. P.W.15 - Medical Officer attached to Sivagiri Hospital, admitted the deceased and P.W.1 and 2 on 18.11.2010, at about 9.00 p.m., on the same day, immediately after the occurrence. The occurrence took place at about 08.30 p.m., and the eye witnesses and the injured witnesses have clearly spoken about the occurrence and there was a street light burning. P.W.14 - Electrician working in a Panchayat Office has also spoken that the lights were burning at the relevant point of time in the occurrence place.



12. The Wound Certificate relating to the deceased Isaravel and P.W.1 and 2 injured indicate that they have given a statement before the Doctor to the effect that they have been assaulted by one known person at 08.30 p.m. on 18.11.2010. It is nowhere stated that more than one person attacked them. The Wound Certificate of the deceased clearly shows an incise wound of measuring 6 x 5 x 3 c.m. on the left side upper abdomen has been noted by the Doctor. Similarly, the Wound Certificate relating to P.W.1 issued by the Medical Officer, marked as Ex.A.17 proves the fact that the stab wound measuring 5 x 4 cm depth on the middle of the left abdomen was found on P.W.1. Similarly, Wound Certificate of P.W.2 reveals that a deep stab injury measuring 6 x 4 cm in front of the chest region. Immediately, they were also referred to the Government Hospital, Tirunelveli. In the meantime, after receiving the death intimation from the Hospital, P.W.14 - Sub Inspector of Police rushed to the hospital and recorded the statement of P.W.1 and registered a case in Crime No.295 of 2010. Ex.P.1 is the statement given by P.W.1 before P.W.7. The statement given by P.W.1 marked as Ex.P.1 indicates that only after the occurrence is over, Accused 2 and 3 and their father Ramakrishnan (died) came there and appears to have stated that Accused 1 should not leave anyone. Ex.P.1- the statement/complaint coupled with the information provided to the Medical Officer clearly proves one fact that the alleged attack was caused only by Accused 1. Ex.P.1 does not reflect the presence of Accused 2, 3 and Ramakrishnan (since deceased) when the attack was carried out. Only after the attack has been carried out, they have come to the place of occurrence and appears to have said that they should not leave anyone. Further, a careful analysis of the evidence of P.W.1 and P.W.2 - injured would also indicate that only after the attack was over i.e., the stab injuries were caused by Accused 1, Ramakrishnan and his sons, namely, Accused 2 and 3 came to the place of occurrence and not before that. The evidence of P.W.2 also shows that only Accused 1 caused injury and thereafter, only others came there. The evidence of P.W.4 also indicates that only after the entire occurrence was over, Accused 2, 3 and Ramakrishnan came there and appears to have said that at least one person should be killed.

13. The evidence of P.W.11 also shows that only after the attack made by the Accused 1, Accused 2 and 3 came to the place of occurrence. Analysis of the evidence, makes it very clear that Accused 2 and 3 were never present at the time of attack made by Accused 1. Therefore, to attract the offence under Section 34 I.P.C., there must be a simultaneous consensus of the minds of the persons participating in a criminal action to bring about a particular result to make the accused liable for the offence under Section 34 IPC. The very act should have been done in furtherance of the common intention of all and it must be shown by the prosecution that there was a prior meeting of minds or prearranged plan among the accused to eliminate the deceased. The very FIR itself indicates that Accused 2 and 3 came after the stab injuries caused by accused 1. The first statement before the Medical Officer clearly



shows that only one person caused injuries. Therefore, in the absence of evidence as to the participation of other accused in some action, the common intention or premeditation cannot be inferred. Therefore, the conviction recorded by the trial Court under Section 302 r/w Section 34 IPC against Accused 2 and 3 is without any basis and without any evidence.

14. As far as the charge under Section 120-B IPC is concerned, the trial Court has imposed the maximum punishment. The very Ex.P.1 statement of the injured witness, which is the basis for registering the FIR, does not whisper anything about the previous meeting of the accused for hatching the conspiracy. Whereas in their evidence that P.W.1 and 2 deposed as if, while P.W.1 was returning from market, all the accused were standing near the temple and they were loudly conversing that P.W.1 was a root-cause for lodging the complaint against Ramakrishnan (since deceased) and therefore, he should be eliminated.

15. P.W.2 has also stated that he has also heard conversation. P.W.4 and P.W.5 have not spoken about the alleged conversation between the accused, prior to the occurrence. P.W.11 has also never spoken about the alleged conversation between the accused prior to the occurrence. Therefore, the theory of conspiracy spoken to by P.W.1 and 2 for the first time in the Court, is highly doubtful. The Investigation Officer-P.W.18 has admitted in his cross-examination that P.W.1 and P.W.2 never stated about the alleged theory of conspiracy by the accused during investigation. The same clearly shows that the evidence of P.Ws.1 and 2 with regard to conspiracy theory is nothing but exaggeration. At the same time, merely because their evidence is not believable, their entire evidence cannot be rejected as the Doctrine of Falsus in Uno Falsus in Omnibus is not applicable in India. As the theory of conspiracy spoken to by P.W.1 and P.W.2 is highly unbelievable, the conviction recorded by the trial Court as against the accused under Section 120-B of IPC. is liable to be set aside. The defence side documents, viz., Accident Register copy and the evidence of D.W.1 and D.W.2 also corroborate the prosecution theory of causing injuries. From the above analysis, we are of the definite view that only Accused 1 has caused the injuries. Though it is stated that the accused has no intention to kill the deceased, but accidentally the injuries fell on the deceased. The previous motive of lodging the complaint against the father-in-law of Accused 1 has been clearly established on record.

16. Eye Witnesses evidence proves the fact that Accused 1 came and caused injuries. Even assuming that he has mistakenly caused injuries to the deceased, his act certainly fall within the ambit of the doctrine of transfer of malice as embodied in Section 301 IPC.



17. Section 301 IPC reads as follows :

**301. Culpable homicide by causing death of person other than person whose death was intended –**

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

18. A reading of the above provision makes it clear that when the accused aims at one, but kills another. Even if the accused by mistake or by bad aim causes injury to a person other than the person, whom he intended to kill, is guilty of the crime of the same degree, as if he had achieved his object. In fact, the accused had an intention to cause injury to P.W.1; however, the same fell on the deceased Isravel. Such intended injury causing death of the deceased Isravel, the state of mind of the accused causing such injury is transferred to the deceased and such act definitely falls under the Doctrine of Transfer of Malice. In such case, he would be guilty of murder under Doctrine of Transfer of Malice as embodied under Section 301 IPC. It has been held so in **Jagpal Singh v. State of Punjab, (1991) Cr LJ 597 (SC)**. Therefore, the act of the deceased causing homicidal death of the deceased, which is also clearly spoken to by the Medical Officer, falls within the ambit of Section 301 IPC. Such offence is entirely punishable with the same degree as that of murder. Therefore, the conviction imposed by the trial Court for the offence under Section 302 IPC as against Accused 1, cannot be interfered with.

19. The trial Court has also convicted Accused 1 for the offence under Section 307 IPC for causing injuries to P.W.1 and the evidence of P.W.2 - Medical Officer referred to above clearly shows that stab injuries and incise wound on P.W.1 and P.W.2 were caused on the vital part of the body. Therefore, the offence under Section 307 I.P.C. would be attracted. However, we are of the view that as the Accused 1 is already convicted for life imprisonment for causing murder of the deceased Isravel, the punishment of life imprisonment for section 307 IPC is excessive and the same is modified to 5 years for each count. Further, as the participation of accused 2 and 3 is ruled out, the charge under Section 506(ii) IPC against them is also not made out. Accordingly, the conviction recorded by the trial Court for the offence under Section 506(ii) IPC against the Accused 2 and 3 is also set aside.



20. Accordingly, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the accused 1 to 3, by Judgment, dated 11.12.2020, made in S.C.No.89 of 2014, on the file of the Additional District and Sessions Court, Thirunelveli, is modified as follows:

(i) The conviction recorded by the trial Court against accused 2 and 3 in respect of all the charges, are set aside. Accused 2 and 3 are acquitted from all the charges. Fine amount, if any, paid by the accused 2 and 3 shall be refunded to them. Bail bond executed by the accused 2 and 3 and the sureties shall stand terminated. The accused 2 and 3 are directed to be released forthwith, unless their custody is required in connection with any other case.

(ii) The conviction recorded against Accused 1 under Section 120(b) I.P.C., is set aside, conviction recorded under Section 307 I.P.C., (2 counts) is reduced to 5 years imprisonment for each count, fine imposed by the trial Court is maintained, the conviction recorded under Sections 294(b) and 302 I.P.C. are confirmed.

(iii) The period of sentence already undergone by the accused 1 /first appellant shall be set off under Section 428 of the Code of Criminal Procedure. Bail bond executed by the accused 1 and the sureties shall stand cancelled. The trial Court is directed to take immediate steps to secure the accused 1 to commit him in prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The I Additional District and Sessions Judge,  
Thirunelveli.

2.The Inspector of Police,  
Sivagiri Police Station,  
Thirunelveli District.

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

**COPY TO:**

THE SUPERINTENDENT,  
CENTRAL PRISON,  
PALAYAMKOTTAI.

+1 CC to M/s.T.J. EBENEZER CHARLES, Advocate (SR-17057[F]  
dated 07/04/2022 )

**Judgment delivered in**  
**Crl.A. (MD)No.19 of 2021**  
**07.04.2022**

sj (CO)  
GC (08.04.2022) 11P 6C