

Bail Slip

The Accused/ Appellant Muthuvel, S/o.Mookaiya, was released on Bail as per the order of this Court dated 01/11/2018 made in Crl.MP (MD)No.8518 of 2018 in Crl.A(MD)No.481 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.01.2022

Delivered on : 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A. (MD)No.481 of 2018

Muthuvel, S/o.Mookaiya

... Appellant / Sole Accused

-vs-

State through

The Inspector of Police,
Ottapidaram Police Station,
Thoothukudi District.

(Crime No.161 / 2010)

... Respondent / Complainant

Prayer:- Appeal filed under Section 374 of Cr.P.C., to call for entire records relating to the judgment in S.C.No.169 of 2011, dated 19.12.2012, on the file of the learned II Additional Sessions Judge, Fast Track Court No.I, Thoothukudi, and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

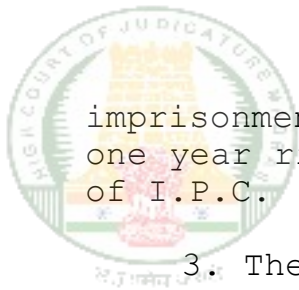
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

Dr. G.JAYACHANDRAN, J.

This Criminal Appeal is directed against the judgment of conviction and sentence passed by the learned II Additional Sessions Judge, Fast Track Court No.I, Thoothukudi, in S.C.No.169 of 2011, vide judgment dated 19.12.2011, holding the appellant guilty of offences punishable under Sections 302 and 506(ii) of I.P.C.

2. The trial Court had sentenced the appellant/accused to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment for the offence under Section 302 of I.P.C. and to undergo five years rigorous



imprisonment and to pay a fine of Rs.500/-, in default, to undergo one year rigorous imprisonment for the offence under Section 506(ii) of I.P.C.

3. The charges framed by the trial Court read as follow:-

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Charge No.1:-

On 06.09.2010 at about 05.00 p.m. near K.Shanmugapuram old Library, the accused Muthuvel, S/o.Mookaiya, with an intention to cause death of Thangavel, S/o.Muthu, attacked him with bill hook on the rear side of his neck, front side of his neck and chest and caused death, thereby, committed an offence punishable under Section 302 of I.P.C.

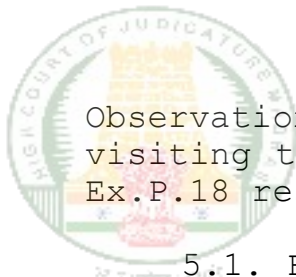
Charge No.2:-

In the course of causing death of Thangavel, when his son Palaniraj tried to save his father, the accused Muthuvel wielded the bill hook and threatened him to kill, if he come near, thereby, committed an offence under Section 506(ii) of I.P.C.

4. To prove the charges, the prosecution has examined 19 witnesses, marked 22 exhibits and 4 material objects.

5. The case of the prosecution as unraveled through the witnesses goes as below:-

The accused and the deceased had previous enmity regarding the land owned by one Mookammal. It was under cultivation of the deceased. The accused acted as a broker and arranged the sale of Mookammal's property to one Kamatchi @ Gandhi. The said Kamatchi @ Gandhi was trying to evict the deceased from the said land. Whereas, the deceased refused to vacate, claim right over the property through an alleged oral sale. While so, on 06.09.2010 at about 05.00 p.m. while the deceased along with Paramasivam [P.W.2] Velsamy [P.W.3] and Karuppasamy @ Karunkannan [P.W.4] was chatting near the Library, the accused came behind the deceased and attacked him with bill hook on his neck. Apart from P.W.2 to P.W.4, who were chatting with the deceased at the time of occurrence, the son of the deceased viz., Palaniraj [P.W.1] standing in the bus stop opposite to the Library also saw the occurrence. At 05.30 p.m. on that day, P.W.1 along with Chinnaraj [P.W.5] went to the Police Station and gave the complaint [Ex.P.1] narrating the incident and the same was reduced into writing by P.W.5. F.I.R. registered in Crime No.161 of 2010 by Nammalwar, Head Constable [P.W.18]. The express F.I.R. [Ex.P.16] was immediately forwarded through P.W.15 - Kingsly Felix, Head Constable, to the learned Judicial Magistrate, Vilathikulam, who received the same at 20.30 hours on the same day. Investigation was taken up by Manickavel, Inspector of Police [P.W.19]. The



Observation Mahazar, Rough Sketch and Inquest Report prepared after visiting the scene of occurrence were marked as Ex.P.2, Ex.P.17 and Ex.P.18 respectively.

5.1. From the scene of crime, the blood stained mud [M.O.2] was recovered and sent for chemical analysis. After four days, i.e., on 10.09.2010, at about 13.00 hours, the accused was arrested and his confession statement was recorded, wherein, apart from disclosing motive for causing the death of Thangavel, the accused had disclosed the fact about the place, where he had thrown the bill hook. The admissible portion of the confession statement given by the accused was marked as Ex.P.20. In the presence of independent witnesses Ganapathy [P.W.12] and Balasubramanian [P.W.13], the bill hook [M.O.1] was recovered under the Bridge between Arulmigu Sri Kasangatha Perumal Kovil and Cross Road. The Mahazar prepared for recovery of bill hook is marked as Ex.P.21 and the signature of the independent witnesses was marked as Ex.P.6 and Ex.P.8.

5.2. The dead body of Thangavel was sent to Thoothukudi Government Hospital for postmortem, accompanied by P.W.16 - Ramasamy, Police Constable with Memo [Ex.P.12]. Dr.Manoharan [P.W.14] conducted autopsy and issued postmortem certificate [Ex.P.9] indicating the following ante-mortem injuries:-

'1. A gapping heavy cut wound of size 23 cms x 5 cms x 10 cms seen over the front of middle of neck at the upper border of thyroid cartilage. It extends from right side of neck which is 5 cms below the right ear to the left side of neck 7 cms below the left ear. The underlying of muscles, nerves, major blood vessels, food pipe, wind pipe and tendons found clean cut.

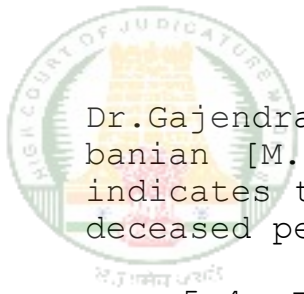
2. A linear pressure abrasion of size 16 cms x 1 cm seen over the middle of the chest.

3. Two parallel linear abrasions of each measuring 13 cms and 12 cms seen $\frac{1}{2}$ cm above the Injury No.2.

4. A gapping heavy cut injury of size 5 cms x 1 cm x muscle deep seen over the left collar bone.

5. A gapping heavy cut wound of size 24 cms x 5 cms x 9 cms seen over the back of neck extending from left side of neck 3 cms below the left ear to right side of neck 3 cms below right ear. The underlying muscles, blood vessels, nerves, vertebral bones found cut and the spinal cord is exposed out.'

5.3. The blood stained clothes removed from the dead body and the blood stained mud collected from the scene of occurrence along with metal bill hook with wooden handle were sent for biological test. The biological test report [Ex.P.14] issued by P.W.17 -



Dr.Gajendra Varadhan indicates the presence of human blood on the banian [M.O.3] and lungi [M.O.4]. The serology report [Ex.P.15] indicates that the blood stains found on the banian and lungi of the deceased person belongs to 'A' group.

5.4. The trial Court on cumulative assessment of the evidence let in by the prosecution, relying upon the ocular evidence of P.W.1 and P.W.2 and the confession of the accused leading to recovery of M.O.1 - bill hook [Aruval], held that the prosecution has proved the charges against the accused.

6. Aggrieved over the conviction and sentence imposed by the trial Court, the accused has preferred this appeal.

7. The learned counsel for the appellant has raised the following points for consideration:-

(i) F.I.R. [Ex.P.16] itself is doubtful one, wherein, the date and month have been corrected. F.I.R. has been written by two different persons, which is admitted by P.W.18. P.W.8 (son of the deceased) deposed that earlier they gave complaint against Kamatchi @ Gandhi and the same was suppressed by the respondent Police. P.W.1 in his cross-examination deposed that he put 3 signatures in the Police Station and did not know the contents written in the said papers.

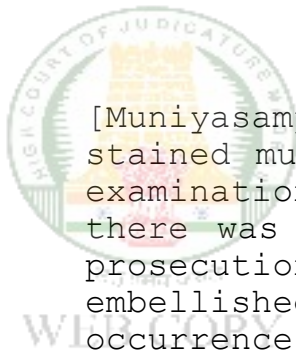
(ii) The date and month in the F.I.R. [Ex.P.16] and the Passport [Ex.P.12] was altered, which creates strong suspicion over the case of prosecution.

(iii) P.W.1 has stated in the chief-examination that the accused left the Aruval [M.O.1] in the place of occurrence itself, but P.W.19, who is the Investigation Officer, has deposed in the chief-examination that M.O.1 was recovered from the thorn bushes [there is no specific place] on the basis of the confession statement given by the accused before P.W.12 and P.W.13, who turned hostile. Therefore, the arrest and confession are not believable one and it creates strong doubt about the presence of P.W.1 at the place of occurrence.

(iv) P.W.1 has stated in the chief-examination as well as Ex.P.1 (Complaint) that he saw the deceased sitting and chatting along with three other persons near the library from the bus stop, which is opposite to the library, at that time, the accused came behind the deceased and caused cut injuries in the neck of the deceased by Aruval. Accordingly, the occurrence should have happened near the library in Keelatheru, which is opposite to the bus stop, and therefore, P.W.1 and P.W.2 cannot have eyewitnesses to the occurrence.

(v) There are two libraries as per Sketch. The occurrence has happened near the library, which is situated opposite to the bus stand. The respondent shifted the place of occurrence and therefore, P.W.1 and P.W.2 cannot have eyewitnesses.

(vi) P.W.19 has deposed in chief-examination that blood stained from the occurrence place in the presence of P.W.10



[Muniyasamy] in Ex.P.4 [Seizure Mahazar], but there was no blood stained mud sent to P.W.17 for chemical analysis. As per chemical examination report [Ex.P.14], the blood stained mud was not sent and there was no blood stain in Item Nos.1, 2 and 5. Therefore, the prosecution story relating to M.O.1 is imaginary, concocted and embellished one. The respondent failed to establish the place of occurrence before the trial Court.

(vii) P.W.2 has deposed in the cross-examination that P.W.1 came to the occurrence place after 10 minutes and P.W.1 fell on the body of the deceased, but blood stained dress of P.W.1 was not recovered. Therefore, the presence of P.W.1 and P.W.2 in the place of occurrence is highly doubtful.

(viii) As per confession, the accused was working as shepherd coolie and cutting trees. As per chemical examination report, M.O.1 is a rusty metal bill hook with wooden handle, but P.W.1, P.W.2 and P.W.19 have stated in the chief-examination that M.O.1 is Aruval, which is used for cutting trees.

(ix) Ex.P.17 (Rough Sketch) was not properly prepared by P.W.19 Investigating Officer and serial number was not mentioned in the sketch for specification.

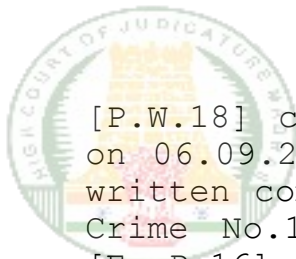
(x) P.W.14 - Dr.Manoharan, who conducted postmortem, has deposed in his cross-examination that there is no possibility to cause injury Nos.2 and 3 by Aruval [M.O.1] and it could be caused by firewood or wooden log and Injury No.2 could be caused by heavy weapon. As per Ex.P.2, there is heavy boulder in the western side of the occurrence place. Therefore, Injury No.2 may be caused by the above said heavy boulder.

(xi) There was no evidence to substantiate the confession statement made by the accused before the Investigation Officer as well as recovery. The confession was not duly corroborated by the medical evidence and the evidence of P.W.1 and P.W.2.

(xii) As per Rough Skecth [Ex.P.17], the head of the deceased laid down towards north, but as per the inquest report, the head of the deceased laid down towards east. It clearly reveals that the investigation was not properly conducted by the Investigation Officer [P.W.19].

(xiii) P.W.1 and P.W.2 are the close blood relatives of the deceased. The independent witnesses turned hostile and did not support the case of the prosecution and the evidence of P.W.1 and P.W.2 was not corroborated by the independent witnesses.

8. The learned Additional Public Prosecutor would submit that though some of the witnesses have turned hostile, the substantial part of the prosecution case has been proved beyond doubt through the witnesses, particularly, P.W.1 and P.W.2. P.W.1 is the elder son of the deceased and one of the eyewitnesses to the occurrence. Immediately, after the occurrence, he along with P.W.5 - Chinnaraj gone to the Police Station and has given the complaint [Ex.P.1] narrating the incident and the same was scribed by P.W.5. The evidence of P.W.1 and P.W.5 regarding the complaint [Ex.P.1] and the



[P.W.18] clearly established the fact that the incident took place on 06.09.2010 at 05.00 p.m. near K.Shanmugapuar old library. The written complaint was given by P.W.1 and the same was registered in Crime No.161 of 2010 at about 17.50 hours. The express F.I.R. [Ex.P.16] was forwarded to the learned Judicial Magistrate, Vilathikulam, through P.W.15 on the same day and the same was received by the learned Judicial Magistrate at 20.30 hours. The initial of the learned Magistrate along with date and time is mentioned on the left hand side top of the printed F.I.R. [Ex.P.16]. Therefore, there can be no doubt regarding the F.I.R., though the last page of the F.I.R. was not written by the same person, who has written the first two pages.

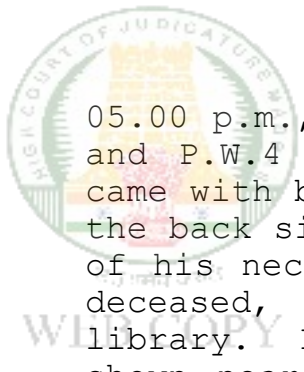
9. Regarding the recovery of M.O.1 bill hook, the learned Additional Public Prosecutor submitted that based on the admissible portion of the confession statement given by the accused, M.O.1 - bill hook was recovered from the bush in the presence of two witnesses P.W.12 - Ganapathy and P.W.13 - Balasubramanian. Though these two independent witnesses have turned hostile, the cut injuries found on the body of the deceased, caused by the accused, has been spoken by P.W.1 and P.W.2, which is sufficient enough to prove the charge for the offence under Section 302 of I.P.C.

10. The learned Additional Public Prosecutor would further submit that minor contradictions in the evidence of P.W.1 and P.W.2 regarding the weapon [M.O.1] and the place, where P.W.1 was standing will not discredit the case of the prosecution.

11. The learned Additional Public Prosecutor would further submit that through P.W.1 - Palaniraj, elder son of the deceased, P.W.2 - Paramasivam, uncle of the deceased, P.W.6 - Subbulakshmi, wife of the deceased, P.W.8 - Selva Ganesh, younger son of the deceased and P.W.9 - Alagu, one of the Villagers, the previous enmity between the deceased and the accused has been established and the motive regarding the land dispute, which was earlier owned by P.W.7 - Mookkammal and sold to one Kamatchi @ Gandhi through the accused has been well established, since the deceased refused to vacate the land and hand over the vacant possession to the purchaser of the land. Therefore, being a gruesome murder in a public place, the learned Additional Public Prosecutor would submit that the judgment of the trial Court convicting the appellant/accused for the offences under Sections 302 and 506 (ii) of I.P.C. and sentenced to undergo life imprisonment for the offence of murder and five years rigorous imprisonment for the offence of criminal intimidation has to be confirmed.

12. Heard the learned counsel appearing for the parties and perused the records.

13. According to the prosecution, the incident took place near K.Shanmugapuram Village. On 06.09.2010, at about



05.00 p.m., when the deceased, P.W.2 - Paramasivam, P.W.3 - Velsamy and P.W.4 - Karuppasamy @ Karunkannan were chatting, the accused came with bill hook [M.O.1] and attacked the deceased from behind on the back side of his neck and thereafter, attacked on the front side of his neck. This was witnessed by P.W.1 - Palaniraj, son of the deceased, who was standing in the bus stand, opposite to the library. In the Rough Sketch [Ex.P.17], the scene of occurrence is shown near old library on the north of Ottapidaram - Vilathikulam Road. The bus stand is opposite to new library, which is on the south of Ottapidaram - Vilathikulam Road. P.W. 19 - Manickavel, Investigation Officer, in the cross-examination, admits that from the new library, one cannot see the place of occurrence.

14. The learned counsel for the appellant relying upon this admission would submit that P.W.1 is a planted witness and he could not have seen the occurrence.

15. A close scrutiny of the portion of the said admission in the cross-examination along with Rough Sketch [Ex.P.17] would show that the old library and new library are on the southern side of Ottapidaram - Vilathikulam Road and therefore, it is correct to say that from the new library, the scene of occurrence could not be seen, since the road bends towards east near the new library. However, the evidence of P.W.1 is that he was standing near the bus stop, which is opposite to the library on the southern side of the road. Therefore, there is nothing to doubt about the presence of P.W.1 at the time of occurrence at the bus stop and witness the occurrence. The other two witnesses viz., P.W.3 - Velsamy and P.W.4 - Karuppasamy @ Karunkannan have turned hostile and had not supported the case of the prosecution. However, a conjoint analysis of the evidence of P.W.1 and P.W.2 though they are close relatives to the deceased, there is no necessity for them to falsely implicate the accused, who is also a relative to them.

16. Regarding the printed F.I.R. [Ex.P.16], which was written by two different persons, though doubt has been raised regarding the content found in the first two pages, which implicates the accused, this Court finds that the complaint [Ex.P.1] was received by the Police at 17.50 hours and recorded in the printed F.I.R. forthwith. The same has been forwarded to the learned Magistrate, Vilathikulam, and reached him within few hours. There is no substance in suspecting manipulation of the F.I.R.

17. From the sequence of events as found from the exhibits, the complaint, which was received at 17.50 hours by P.W.18 - Nammalwar was forwarded to the learned Judicial Magistrate, Vilathikulam, through P.W.15 - Kingsly Felix and reached the learned Judicial Magistrate at 20.30 hours on the same day. The evidence of P.W.8, who is younger son of the deceased, is only a hearsay witness to the extent of proving the motive. In this context,



the confession of the accused also relevant, which discloses the motive.

18. The learned counsel for the appellant referring to the postmortem report [Ex.P.9], which discloses 5 ante-mortem injuries, would state that the eyewitnesses viz., P.W.1 and P.W.2 had spoken only about 2 cut injuries caused by the accused, whereas, 3 cut injuries and 2 linear abrasions were found in the body. Therefore, there is serious doubt about the presence of P.W.1 and P.W.2 in the scene of occurrence.

19. The learned counsel for the appellant would submit that the discrepancies in the injury coupled with failure to prove the recovery of weapon will enure the benefit of doubt in favour of the appellant.

20. Regarding the weapon, P.W.1 had deposed in his chief-examination that the accused after causing the death of Thangavel fled from the scene of occurrence, leaving the bill hook [Aruval] in the scene of occurrence. P.W.2, in the cross-examination, has stated that the bill hook [Aruval] was not at the scene of occurrence. According to P.W.19 - Manickavel, Investigation Officer, on 10.09.2010, he arrested the accused at 13.00 hours on Thoothukudi - Ettayapuram Road, near Arulmigu Sri Kasangatha Perumal Temple. Based on the information given by the accused in the course of his confession, under the Bridge, M.O.1 was recovered. The witnesses for the recovery viz., P.W.12 - Ganapathy and P.W.13 - Balasubramanian have turned hostile and not supported the case of prosecution. M.O.1 - bill hook [Aruval] was sent for biological test and no blood was detected. Under these circumstances, it is to be tested whether the evidence of P.W.1 and P.W.2 is sufficient to hold the accused guilty of murder.

21. P.W.1 and P.W.2 were extensively cross-examined by the defence and their credibility have not been shaken through the cross-examination. No doubt, there is some variations regarding the time of lifting the dead body to the hospital for postmortem, arrival of Police to the scene of occurrence and reaction of P.W.1 immediately on seeing the brutal attack and murder of his father and number of signatures affixed by the witnesses at the Police Station. These discrepancies does not shake the core evidence of P.W.1 and P.W.2 regarding the overt act of the accused, which caused the death of the deceased Thangavel.

22. The learned counsel for the appellant as an alternate submission, pleaded that the deceased cultivating the land of P.W.8 - Mookkammal under mortgage for Rs.4,000/-, refused to vacate the land even after the said Mookkammal sold the property to one Kamatchi @ Gandhi. The sustained provocation caused by the deceased is the mitigating circumstance to alter the case to culpable homicide not amounting to murder.



23. P.W.9, a local Villager, who is a Union Secretary of Indian Communist Party, had spoken about the previous enmity between the deceased and the accused in respect of the land sold by P.W.8 - Mookkammal to one Kamatchi @ Gandhi and objection of the deceased protesting the name transfer of property by Mookkammal in favour of Kamatchi @ Gandhi.

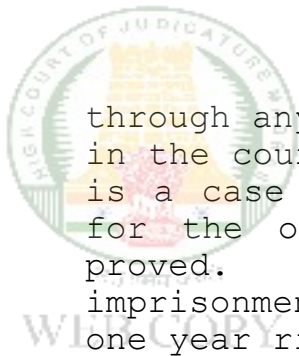
24. The confession statement of the accused, not only discloses the place, where the weapon was hidden, which was taken as admissible portion of the confession by the Police under Section 27 of the Indian Evidence Act, it also discloses the previous enmity and motive for causing the death of the deceased.

25. The ingredient for considering the information received from the accused, who was in Police custody, as admissible in evidence, there must be an information disclosing a fact. Such information may not amount to confession, but must lead to discovery of fact.

26. One of the peculiar facts in this case is, the disclosure of information by the accused for causing the death of the deceased Thangavel is the enmity regarding the sale of ancestral property held by them to one Kamatchi @ Gandhi. According to the confession statement of the accused, the deceased was enjoying the property even after Mookkammal sold the family property to Kamatchi @ Gandhi and the deceased threatened the accused supporting the purchaser. Therefore, the accused was under constant fear that the deceased may kill him, since he has challenged that either the deceased or the accused alone can be alive. This has put the accused under the constant fear of death at the hands of the deceased. Therefore, on 06.09.2010 when the deceased Thangavel was chatting along with others near old library, he came with bill hook [Aruval] and attacked him from behind. The piece of information disclosed by the accused regarding the motive, previous enmity and threat thrown at him by the deceased is to some extent corroborated by the evidence of P.W.8 and P.W.9.

27. This Court is persuaded by the learned counsel for the appellant to consider these piece of information disclosed by the accused to the Police in the course of investigation as a mitigating circumstance to treat this case as culpable homicide, not amounting to murder caused by the accused due to sustained provocation.

28. This Court on considering the legal position and interpretation of Section 27 of the Indian Evidence Act as well as the interpretation of the Hon'ble Apex Court, regarding provocation is unable to endorse the submission made by the appellant's counsel. It is a case where the accused has attacked the deceased from behind with bill hook [Aruval] without any immediate provocation. The



through any evidence. It is a self-serving statement of the accused in the course of interrogation. Therefore, this Court finds that it is a case of culpable homicide amounting to murder and the charge for the offence punishable under Section 302 of I.P.C. is well proved. The sentence imposed on the appellant to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment is therefore confirmed.

29. Regarding the second charge of criminal intimidation, this Court finds that the wielding of knife soon after attacking Thangavel to P.W.1 and P.W.2, is a clear proof that the accused had intention to kill any person, who comes near him. The trial Court has slapped five years rigorous imprisonment and fine of Rs.500/-, in default, to undergo one year rigorous imprisonment for the offence under Section 506(ii) of I.P.C., which has to run concurrently with life imprisonment, this Court is of the view that there is no necessity to interfere with the sentence portion for the offence under Section 506(ii) of I.P.C.

30. In the result, this Criminal Appeal is dismissed and the conviction and sentence is confirmed. The appellant is presently enjoying suspension of sentence, he is directed to surrender before the trial Court within a period of three weeks from today, failing which, the respondent shall secure the appellant and produce him before the trial Court, for committing him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

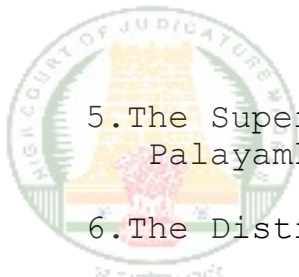
To

1.The II Additional Sessions Judge,
Fast Track Court No.I,
Thoothukudi.

2.The Judicial Magistrate, Senkottai.

3.-do-Through The Chief Judicial Magistrate,
Tirunelveli District.

4.The Inspector of Police,
Ottapidaram Police Station,
Thoothukudi District.



5.The Superintendent, Central Prison,
Palayamkottai.

6.The District Collector, Thoothukudi District.

7.The Director General of Police,
Mylapore, Chennai.

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

Copy to:-

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

Crl.A. (MD)No.481 of 2018
24.01.2022

RD(04.02.2022) 11P 11C