



Crl.A.No.430 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

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Selvam
Son of Kupusamy

... Appellant

Vs.

The State of Tamil Nadu
Represented by the Inspector of Police
Kichipalayam Police Station
Salem District
Crime No.563 of 2011

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973 to set aside the judgment and orders passed in S.C.No.132 of 2012 dated 18.03.2014 by the Principal District and Sessions Judge, Salem.

For Appellant : Mr. R. Chakkaravarthy

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



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JUDGMENT

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The appellant was charged for the offence punishable under Section 302 IPC and was convicted by the Principal Sessions Judge, Salem, for the offence punishable under Section 304(ii) IPC. He was sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of three months. The period of sentence already undergone by the appellant was ordered to be set off under 428 Cr.P.C. Challenging the conviction and sentence passed by the trial court, the present appeal is filed by the appellant/accused.

2. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

2.1. Tmt.Kalaiselvi @ Selvi (deceased) is the mother of S.Dinesh Kumar (P.W.1) and Thilaga Bharathi (P.W.2). The appellant Selvam is the father of P.W.1 and P.W.2 and the husband of the deceased.



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2.2. The evidence of P.W.1 and P.W.2 was that their father (appellant) used to pick up quarrel with their mother in an inebriated condition. P.W.1 was working in a battery shop, while P.W.2 was working in Thangamayil Gold shop. They used to leave their house for work in the morning.

2.3. On 22.04.2011, P.W.1 and P.W.2, as usual, left their house in the morning. Since it was a Friday, the owner of P.W.1's shop requested him to buy articles for performing pooja in his shop. His shop was just half a kilometer away from his house. P.W.1, accordingly purchased the articles in a shop nearer to his house and at about 11.30 a.m., he saw his father coming out of his house. At about 1.30 p.m. P.W.1 came back home for lunch. The door of his house was kept open and when he went inside he saw his mother lying on the floor with a bed sheet covering her. P.W.1 thought that his mother was asleep and therefore, called her. Since there was no response from her, he removed the bed sheet and saw a pillow on her face. When he removed the pillow, he saw his mother with injuries on her head and lying in a pool of blood. He raised an alarm and the neighbours rushed to his house. His mother was actually dead.



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2.4. P.W.1 immediately rushed to the shop where P.W.2 was working and informed her about the incident. Thereafter he went to Kichipalayam Police Station and lodged a complaint (Ex.P1) with Thiru.Rajasekaran (P.W.11), the then Special Sub Inspector of Police, Kichipalayam Police Station, Salem, who registered an FIR (Ex.P14) in Crime No.563/2011 on the same day against the appellant for the offence punishable under Section 302 IPC. He placed the entire records before Thiru.Senthil Kumar (P.W.12), the then Inspector of Police, Kichipalayam Police Station, Salem, for investigation.

2.5. Thiru.Senthil Kumar (P.W.12), took up investigation in Crime No.563/2011 of Kichipalayam Police Station, went to the scene of occurrence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P15), in the presence of the witnesses Prasanna (not examined) and Thiagarajan (P.W.5). He recovered two pillows with blood stain (M.O.2 and M.O.3), blood stained cement mortar (M.O.4), ordinary cement mortar (M.O.5), blood stained gunny bag (M.O.6), a white shirt button (M.O.7) and



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a blood stained bed sheet (M.O.15) from the place of occurrence.

Thereafter, he conducted inquest (Ex.P16) on the body of the deceased in the presence of panchayatdhars and then sent the body to the Government Mohan Kumaramangalam Medical College Hospital, Salem, for postmortem.

2.6. Dr. Paneerselvam (P.W.6), conducted autopsy on the body of the deceased and found the following injuries :

- i. *Laceration over left frontal region M-1., 5x1xbone deep, edges are irregular and it is situated 6 cms from the outer end of left eyebrow.*
- ii. *Laceration seen over just above the outer aspect of left eyebrow M-1, 2x0.5x0.5 cms with surrounding abrasion M-2x1.5 cms.*
- iii. *Dark brown abrasion seen over left temple 1.5 x 1.0 cms.*
- iv. *Dark brown abrasion seen on the upper and outer aspect of left cheek M-4x3 cms and it is situated 0.5 cms below the outer aspect of left eye.*



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He also sent the visceral organs of the deceased for analysis to forensic Laboratory, Salem. The Scientific Officer of Forensic Department, Salem, after analysis, submitted the Viscera report (Ex.P7) stating that no poison was detected in any of the visceral organs. Dr. Paneerselvam (P.W.6), thereafter opined that "the deceased would appear to have died of effect of head injury sustained". The postmortem report was marked as Ex.P5 and the final opinion of the doctor was marked as Ex.P6. The dress worn by the deceased (M.O.13 and M.O.14) and the blood stained rubber band (M.O.16) were handed over to the Investigation Officer through the police constable who identified the body to the doctor.

2.7. Thiru.Govindasamy (P.W.7), the Village Administrative Officer, Salem, and Sivaraj, his assistant (not examined) came down to the police station on 23.04.2011 along with the appellant Selvam and submitted the extra judicial confession of the appellant (Ex.P9) along with a special report. In the extra judicial confession the appellant had narrated about the marriage between him and his wife (deceased), the shops where his son and daughter are working and his addiction to alcohol. He had also stated that he he was



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jobless and therefore he would pick up quarrel with his wife demanding money from her. He had further stated that he heard that his wife (deceased) was in relationship with some other person and therefore wanted to finish her life and on 22.04.2011 at about 10.30 a.m. he switched on the television in full volume and hit his wife with a stone on her head. Since blood was oozing out from her head, he put a gunny bag on that in order to hide it and thereafter placed a pillow on her face and pushed it hard and ensured that she was dead. Thereafter he left the house at about 11.30a.m.

2.8. The Investigation Officer arrested the accused and recorded his confessional statement (the admissible portion of which was marked as Ex.P10) in the presence of P.W.7 and his assistant. He also recovered a blood stained dhoti (M.O.8), a white shirt (M.O.9) without the second button and a yellow colour bag (M.O.10) under the cover of a mahazar (Ex.P11) in the presence of the same witnesses.

2.9. Thiru.T.S. Alagesan, Assistant Director, Forensic Laboratory, Salem, detected human blood (group B) on all the material objects (except



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cement mortar piece without blood (M.O.5)) and issued Biological report (Ex.P13).

2.10. Kumuda (P.W.3) and Chokkalingam (P.W.4) close relatives of the appellant and neighbours did not support the case of the prosecution. The other witnesses in particular the son (P.W.1) and daughter (P.W.2) of the appellant corroborated the case of the prosecution in all material particulars.

2.11. Thiru.Senthil Kumar (P.W.12), after completing investigation laid a final report before the Judicial Magistrate No.II, Salem, in P.R.C.No.24/2011 against the appellant for the offence punishable under Section 302 IPC.

2.12. The learned Judicial Magistrate No.II, Salem, after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Sessions, Salem. The Principal Sessions Judge, Salem, took the case on file in S.C.No.132/2012.



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2.13. The learned Principal District and Sessions Judge, Salem, framed a charge under Section 302 IPC against the appellant and the appellant pleaded not guilty.

2.14. In order to bring home the guilt of the accused the prosecution examined 12 witnesses, marked 19 documents and 16 Material Objects.

2.15. The appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

2.16. The learned Principal District and Sessions Judge, Salem, after analysing the oral and documentary evidence on record, found the appellant guilty of the offence only under Section 304 Part II IPC and convicted and sentenced him as stated in Paragraph No.1.



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3. Heard Mr. R. Chakkaravarthy, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent/State.

4. Mr. R. Chakkaravarthy learned counsel for the appellant would contend that this is a case based on the circumstantial evidence and there are several missing links. He pointed out the following discrepancies in the case of the prosecution.

- I. Though P.W.1 saw the dead body of the deceased at about 1.30 p.m, he had lodged the complaint only at 3 p.m and therefore, there is a delay in lodging the complaint.
- II. Though P.W.1 in his evidence had stated that he left his shop where he was working for purchase of certain items, the prosecution has not examined the owner of the shop to prove the version of P.W.1.
- III. It is alleged by the prosecution that the stone (M.O.1) was recovered from the place of occurrence. However, it was not sent to Forensic Lab for analysis.



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IV. Thiru.Rajendran (P.W.8), the Special Sub Inspector of Police, who registered FIR at about 3 p.m had stated that the Inspector of Police was present in the place of occurrence at about 11 a.m in the morning.

V. The extra judicial confession (Ex.P9) cannot be relied upon as it was recorded subsequent to the registration of FIR and it is hit by Section 162 Cr.P.C. He relied on the decision of a Division Bench of this Court in the case of *Arumugam vs. State by Inspector of Police, Namakkal Police Station* reported in *2004-2-LW Criminal 830*.

VI. Though in the rough sketch several houses were shown in and around the house of the victim, the neighbours were not examined on behalf of the prosecution.

5. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.



6. In the decision in *Sharad Birdhi Chand Sarda vs. State of Maharashtra* reported in *AIR 1984 SC 1622* the Hon'ble Supreme Court laid down the following five golden principles of circumstantial evidence to be admitted as evidence in the court of law.

- i. The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved". It is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.
- ii. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.
- iii. The circumstances should be of a conclusive nature and tendency.
- iv. They should exclude every possible hypothesis except the one to be proved.
- v. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of



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the accused and must show that in all human probability the act must have been done by the accused.

7. The prosecution relies on the evidence of P.W.1 and P.W.2, the children of the victim and the appellant and the extra judicial confession (Ex.P9) made by the appellant before Thiru.Govindasamy (P.W.7), Village Administrative Officer, Salem, on 23.04.2011. Based on the complaint Ex.P1 preferred by P.W.1, the Special Sub Inspector of Police had registered FIR on the date of occurrence i.e. 22.04.2011 at about 3 p.m. The extra judicial confession statement was recorded by the Village Administrative Officer only on the next day. In the decision in ***Arumugam vs. State by Inspector of Police, Namakkal Police Station (cited supra)*** a Division Bench of this Court had held thus:

29. The main thrust of the learned counsel for the appellant is, that even assuming that the Village Administrative Officers are not totally barred from recording an extra judicial confession by Rule 72, if the statements are recorded, after the investigation has begun, then it should be hit by [section 162 Cr.P.C.](#)[Section 162 Cr.P.C.](#) prohibits, totally the use of any such statements or any record thereof, whether any police diary or otherwise or any part of such statement or record to be used for any purpose save as provided



under the proviso. Certainly Ex.P4 would not come under the proviso to [section 162](#). It is the specific submission of the learned counsel for the appellant that Ex.P4 comes within the four walls of [section 162](#) Cr.P.C. and for that purpose, much reliance is placed upon the decision in Kali Ram' s case cited supra {(1973) 2 SCC 808}. In the case involved in [the above decision](#), a letter containing narration of facts relating to the crime addressed to a police officer, during the course of investigation was sought to be relied upon, to prove the guilt of the accused, where it seems he had confessed the crime. The letter was not obtained by the police, whereas it seems it was addressed from elsewhere to police officer but during the course of investigation. The Apex Court considering the effect of [Section 162](#) Cr.P.C. laid down the law, which reads thus:

"The prohibition contained in [Section 162](#) related to all statements made during the course of an investigation. The letter which was addressed by 'S' to Station House Officer was in the nature of narration of what, according to 'S' he had been told by the accused. Such a letter would constitute statement for the purpose of [section 162](#), Cr.P.C. The prohibition relating to the use of statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible, except for the purposes mentioned in [Section 162](#), the same would be true of a letter containing narration of facts



addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in [Section 162](#) by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement."

According to the submission of the learned senior counsel for the appellant, the same analogy is applicable to the statement recorded by the Village Administrative Officer also, since Ex.P4 was recorded during the course of investigation. This view is to be taken, in order to prevent the investigating agency to circumvent the prohibition contained in [section 162](#) Cr.P.C. In this view, though Ex.P4 was not recorded by the police officer, since the extra judicial confession is said to have been recorded during the course of investigation, we are of the opinion, Ex.P4 is hit by [section 162](#) Cr.P.C. and in this view it is inadmissible in evidence which should follow, this could not be the strong piece of evidence, to inflict a conviction or to sustain the same.

30. It is pointed out by the learned counsel for the appellant that Ex.P4 extra judicial confession has not reflected the natural conduct of the accused and in this view also, the same should be ignored, placing reliance in a decision in [Thangavelu v. State of T.N.](#) (2002 SCC (Cri) 1382) in which the Apex Court has ruled as follows:

"A perusal of this confession Ext.P-14 gives us an indication of the attempt of the prosecution to build a case against this appellant. This extra-judicial confession is so full of facts starting from about



25 years prior to the date of the incident and graphically details what happened over these years to his sister and his family which actually is the motive suggested by the prosecution for the crime. Ext.P-1 4 is recorded in nearly 4 full pages, it not only speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the natural conduct of an accused if he was voluntarily making a confession. We further notice the unimaginable similarity in Exts.P-14 and P-1 as also in the evidence of PW1 which supports the theory of the defence that there was an attempt by the prosecution to create evidence in this case."

This ruling is the answer for the observation in [Sakthivel](#) case {(2003) M.L.J. (Crl.) 752}. In [Sakthivel](#) case a Bench of this Court observed that minute details had been given by the accused which were only to the exclusive knowledge of the accused and in this view it cannot be said that the same would have been written by the Village Administrative Officer himself. The Apex Court considering the minute details in the extra judicial confession, has taken the view that there was an attempt by the prosecution to create evidence in this case, is probable. In this view also Ex.P4 is clouded with



shadow and requires eradication of the same, for its approval and its reliability, to act upon.

31. The learned counsel would contend that since the extra judicial confession viz., Ex.P.4 itself is not reliable or inadmissible, as the case may be, then the alleged recovery said to have been made on the basis of the extra judicial confession or on the basis of the disclosure statement, also should be held unacceptable, for which we have to subscribe our view. It is the case of the prosecution that in Ex.P.4 itself, the accused had disclosed about the whereabouts of the cycle, M.O.13 and the weapon M.O.12. But unfortunately, the investigating officer would state that he had examined the accused, recorded Ex.P.5 leading to the recovery of M.Os.12 and 13 under Exs.P6 & P.17. If Ex.P.4 is not available, question of Ex.P.5 also would not have come into existence. Our finding is that Ex.P.4 is inadmissible in evidence and therefore, the case projected on behalf of the prosecution that on the basis of extra judicial confession, another confession was obtained from the accused, leading to the recovery, is also not acceptable legally. Further, if the accused had disclosed about the whereabouts of cycle and weapon in Ex.P.4, subsequent, alleged confession also would be inadmissible. In this view, we conclude, the recovery spoken by P.W.16, though supported by P.Ws.7 and 8 is not acceptable to us and they are the documents prepared for the occasion having no evidentiary value.



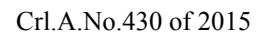
32. *The learned Public Prosecutor would contend that in the dress worn by the accused, Forensic Department have detected 'O' Group human blood as that of the deceased and therefore, it should be taken as strong circumstantial piece of evidence. This contention could be accepted if it is true that the shirt and dothi, M.Os.14 and 15 belonged to the accused and the accused was wearing these dresses at the time of the incident, otherwise it may not be possible to draw a presumption. P.W.3, who claims that she had seen the accused, going to the deceased cattle shed, has not identified these dresses, and P.W.8 who deposed that he had seen the blood stain in the dresses of the accused also, failed to identify these dresses and no attempt is made on behalf of the prosecution even to show these material objects, to these witnesses to identify the same. Here, it is not the admitted position that these dresses were recovered from the accused though claimed so. Though it is the case of the prosecution that bill hook was recovered on the basis of the confession given by the accused, it does not contain human 'O' Group blood, as seen from Ex.P.19, though it does contain human blood. Therefore, on the basis of presumption also, fixing this accused as the murderer is beyond our comprehension.*

33. *The trial Court in our considered opinion has not properly approached the case of the prosecution, taking into consideration the probability and other attending circumstances pointed out supra, whereas drawn a presumption on its own which is not warranted on the basis of the materials available. Because of the improper*



approach, the trial Court has committed an error, in convicting the accused and in this view, we are constrained to set aside the conviction.

8. The extra judicial confession (Ex.P9) was recorded subsequent to the registration of FIR and therefore, no credence can be attached to it as far as the present case is concerned. Therefore, we have to scan the evidence of P.W.1 and P.W.2. P.W.1 and P.W.2 had deposed that their father (appellant) used to pick up quarrel with his mother (deceased) in an inebriated condition and they used to pacify both of them. On the fateful day, as usual, there was a wordy quarrel between the appellant and his wife (deceased) and both P.W.1 and P.W.2 did not therefore take it seriously and left for their work. The shop where P.W.1 is working is just half a kilometer away from his house. Since 22.04.2011 happened to be a Friday, the owner of the shop had requested P.W.1 to purchase certain pooja articles for offering prayers in his shop. P.W.1 accordingly left his shop to purchase the articles in a shop which is closer to his house at about 11.30 a.m. At that time, he saw his father coming out of his house. Subsequently at about 1.30 p.m, P.W.1 went home for lunch. He saw his mother lying in a pool of blood with a bed sheet



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the appellant and they were actually residing with their parents. There is nothing on record to suggest that both P.W.1 and P.W.2 were inimical towards their own father. Their evidence is that their father used to pick up quarrel with their mother (deceased) in an inebriated condition and that both of them would pacify them. P.W.2 in her evidence had stated that on the previous night of the occurrence, there was an altercation between her father and mother and she pacified her mother as she was weeping continuously. On the next day morning both P.W.1 and P.W.2 saw their parents quarrelling with each other and they both left the house for work as the quarrel was not something unusual. The evidence of P.W.1 and P.W.2 inspires confidence of this court. There are no exaggerations in their versions and they also withstood the testimony of cross examination. P.W.1 and P.W.2 point their fingers on their own father. Normally, close blood relatives would not spare the real assailants and foist a false case against someone else. In the instant case, the appellant is the own father of P.W.1 and P.W.2. As already observed, the evidence of P.W.1 and P.W.2 are cogent and natural. They also corroborated each other in all material particulars. Nothing useful was suggested to them during the course of



cross examination to discredit or disbelieve their versions.

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11. When P.W.1 states that he saw his father coming out of his house at about 11.30 a.m and at about 1.30 p.m he saw the dead body of his mother inside his house, the last seen theory comes into play. The time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the appellant being an author of the crime becomes impossible. This is not a case of murder for gain and the intrusion of a third person would not go unnoticed that too in broad day light. There are several houses close to the house of the appellant as per the rough sketch (Ex.P15). The evidence of P.W.1 and P.W.2 clearly shows that the appellant is the perpetrator of the offence.

12. The contention of the learned counsel for the appellant is that though FIR was registered at about 3 p.m., the Special Sub Inspector of Police (P.W.8) in his evidence had stated that the Inspector of Police was present in the house even at about 11 a.m. A perusal of the cross



examination of P.W.8 shows that he went to the scene of occurrence at about 7.45 p.m and that the Investigation officer came down to the place of occurrence only after he reached the place. Therefore, it cannot be stated that the Inspector of Police was present in the place of occurrence in the morning i.e. 11 a.m. The word 'காலை' (morning) has been wrongly typed instead of 'மாலை' (evening) in the deposition. Therefore, this contention of the learned counsel for the appellant cannot be accepted.

13. It is settled law that mere delay in registration of FIR would not affect the case of the prosecution. In the instant case, the FIR was registered at about 3 p.m on the date of occurrence and was sent to the court on the same day. The learned counsel for the appellant contended that P.W.1's shop owner was not examined to prove that he sent P.W.1 to purchase things from a shop. However, P.W.1 had deposed that he used to buy things on every Friday and he is the son of the appellant. He had clearly stated that he saw his father (appellant) coming out of the house while he was proceeding to buy some items from a nearby shop. In the circumstances, it is not necessary for the prosecution to examine the owner of the shop.



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14. It is true that the stone (M.O.1) was not sent to forensic lab for analysis. It is settled law that the appellant cannot take advantage of poor investigation. Moreover, the blood stained dhoti and the shirt worn by the appellant were recovered from him and the appellant has not explained as to how his dress were stained with blood when he was questioned under Section 313 Cr.P.C. There is no missing link as far as the present case is concerned and in the circumstances, I do not see any reason to interfere with the conviction and sentence passed by the trial court.

15. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The conviction and sentence dated 18.03.2014 passed in S.C.No.132 of 2012 by the Principal District and Sessions Judge, Salem is confirmed.
- iii. The accused is directed to surrender before the trial Court viz., the Principal District and Sessions Court, Salem within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.



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Index : yes/no
Speaking /Non speaking Order
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To

1. Principal District and Sessions Court, Salem.
2. The Inspector of Police,
Kichipalayam Police Station,
Salem District.
3. The Section Officer, Criminal Section, High Court, Madras.



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