



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.02.2022

DELIVERED ON: 21.03.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

Crl.A.Nos.130 of 2018, 190 & 506 of 2019

AND

Crl.M.P.No.3169 of 2018 in Crl.A.No.130 of 2018

Pastor Muniyandi @ Ramesh .. Appellant/A-2
in Crl.A.No.130 of 2018

Vijayakumar .. Appellant/A-1
in Crl.A.No.190 of 2019

Joseph Raja .. Appellant/A-3
in Crl.A.No.506 of 2019

Vs.

State represented by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
(Kadathur Police Station Cr.No.209/2016) .. Respondent/Complainant
in all appeals

Criminal Appeals filed under Section 374 Cr.P.C. against the
judgment and order dated 06.11.2017 passed in Special S.C.No.11 of 2017



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

on the file of the Additional Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode and to set aside the same.

For Appellant : Mr.V.Gopinath
in Crl.A.No.130 of 2018 Senior Counsel for
Mr.J.Nagarajan

For Appellant : Mr.S.Mohamed Ansar
in Crl.A.No.190 of 2019

For Appellant : Mr.V.Arul
in Crl.A.No.506 of 2019

For Respondent : Mr.M.Babu Muthumeeran
in all appeals Addl. Public Prosecutor

COMMON JUDGMENT

P.N.PRAKASH, J.

These criminal appeals are directed against the judgment and order dated 06.11.2017 passed by the Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode in Special S.C.No.11 of 2017.

2. The prosecution story runs thus:

2.1 The victim girl "X" (P.W.2) (name not divulged for the sake of anonymity) is the daughter of one Kannamal and at the time of occurrence, she was studying in X standard in Government Higher Secondary School at



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

Mill Medu, Ukkaram. “X” (P.W.2) was residing with her grandmother Mani

(P.W.1) in Door No.12/398, Periyar Nagar East, Ukkaram and was going to school from there.

2.2. Vijayakumar (A-1) was already a married man with two children and he (A-1) is the brother of Vasanthakumari (P.W.11), who was a neighbour of Mani (P.W.1). Vijayakumar (A-1) was from Kanniyakumari District and used to frequently visit his sister Vasanthakumari (P.W.11) in Ukkaram. Whenever Vijayakumar (A-1) came there, he (A-1) used to speak to “X” (PW2) and thereby, he (A1) got acquainted with her (P.W.2).

2.3. Vijayakumar (A-1) proposed to “X” (P.W.2) and stated that he was madly in love with her and wanted to marry her as his wife and children had deserted him. “X” (P.W.2) fell for the sweet words of Vijayakumar (A-1). Once, while Vijayakumar (A-1) and “X” (P.W.2) were intimately speaking, they were spotted by Mani (P.W.1) and “X” (P.W.2) was chastised and upbraided. On coming to know of this, Vijayakumar (A-1) suggested to “X” (P.W.2) that unless they go away and



get married, they would face trouble frequently from their family members.

Therefore, he (A-1) suggested to "X" (P.W.2) that, on a particular day, he would come in his motorcycle and together, they could elope and get married.

2.4. Accordingly, on 23.08.2016, "X" (P.W.2) came out of her school around 4.30 p.m. and her grandmother Mani (P.W.1) came to fetch her home. At that time, Vijayakumar (A-1) came in a motorcycle and asked "X" (P.W.2) to get on to it. Right in the presence of Mani (P.W.1), "X" (P.W.2) got on to the motorcycle of Vijayakumar (A-1) and they fled.

2.5. Vijayakumar (A-1) took "X" (P.W.2) to the house of Joseph Raja (A-3) in Sular and thereafter, he (A-1) took her to the house of Pastor Muniyandi @ Ramesh (A-2) in Gudalur. Joseph Raja (A-3) also came by bus to the house of Pastor Muniyandi @ Ramesh (A-2) and there, in the presence of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3), Vijayakumar (A-1) married "X" (P.W.2) by tying a "thaali" around her neck and had sex with her that night and thereafter, for



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

several days. Since accommodation in Gudalur was not satisfactory,

WEB COPY Vijayakumar (A-1) brought "X" (P.W.2) to the house of Palanisamy (P.W.5)

in Sulur and took a portion on rent sometime during September 2016 and stayed with her.

2.6. While all these were happening in the life of "X" (P.W.2) after she fled with Vijayakumar (A-1), Mani (P.W.1) gave a written complaint (Ex.P1) to the Inspector of Police, Kadathur Police Station, narrating the events up to kidnapping of "X" (P.W.2) by Vijayakumar (A-1) from the school and requested the police to secure her.

2.7. On the written complaint (Ex.P1), Palanisamy (P.W.20), Sub-Inspector of Police, Kadathur Police Station, registered a case in Kadathur Police Station Crime No.209 of 2016 under Section 366 IPC on 25.08.2016 at 13.30 hours and prepared the printed FIR (Ex.P21), which reached the jurisdictional Court on 29.08.2016 at 10.00 a.m., as could be seen from the endorsement thereon.



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

2.8. The initial investigation was taken over by Akbar Khan (P.W.21),

Inspector of Police, Kadathur Police Station, who went to the place of occurrence and prepared the observation mahazar (Ex.P7) and the rough sketch (Ex.P22).

2.9. While the police were in search of Vijayakumar (A-1) and “X” (P.W.2), it appears that, on suspicion, Vijayakumar (A-1) and “X” (P.W.2) were intercepted by the police around 5.30 a.m. on 13.10.2016 at a check post, when they were going in a motorcycle. Since they were not able to give proper answers, they were brought to the police station and on questioning, it came to light that “X” (P.W.2) is the granddaughter of Mani (P.W.1) and Vijayakumar (A-1) is the accused in Crime No.209 of 2016.

2.10. Accordingly, Vijayakumar (A-1) was placed under arrest on 13.10.2016 at 8.30 a.m. Since “X” (P.W.2) was found to be less than 18 years, Akbar Khan (P.W.21), Inspector of Police, altered the case *vide* alteration report (Ex.P23) by including the provisions of the Protection of Children from Sexual Offences Act, 2012 (for brevity “the POCSO Act”).



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

Since the POCSO Act provisions were invoked, the investigation of the case

was transferred to the file of the All Women Police Station, Gobichettipalayam and the investigation was taken over by Gayathri, (P.W.22), Inspector of Police. The statement under Section 164 Cr.P.C. of “X” (P.W.2) was recorded by the learned Judicial Magistrate No.I, Gobichettipalayam, on 22.10.2016 and the same has been marked as (Ex.P2).

2.11. “X” (P.W.2) was medically examined by Dr.Kalapriya (P.W.17) on 13.10.2016 at 11.35 a.m. *vide* accident register (Ex.P16) and the examination report (Ex.P17) stated that “X” (P.W.2) has been subjected to coitus. Vaginal swabs were taken, but, the scientific report did not disclose the presence of semen.

2.12. “X” (P.W.2) was subjected to age determination test by Dr.Kalyani (P.W.14), who, in her evidence as well in her reports (Exs.P8 & P9), has stated that the age of “X” (P.W.2) would be below 15 years and above 14 years.

7/22

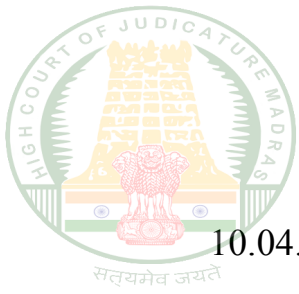


WEB COPY 2.13. The police arrested Pastor Muniyandi @ Ramesh (A-2) on 21.02.2017 and remanded him in judicial custody. However, Joseph Raja (A-3) obtained on anticipatory bail.

2.14. The police examined various witnesses, including Arumairaj (P.W.8), Headmaster of Government Higher Secondary School, Mill Medu and obtained the birth extract from the school record (Ex.P5), which shows the date of birth of "X" (P.W.2) as 10.04.2002.

2.15. The police also examined Gnanasekaran (P.W.18), Sub-Registrar of Births, through whom, the birth certificate of "X" (P.W.2) was marked as Ex.P19, which shows the date of birth of "X" (P.W.2) as 06.04.2002.

2.16. Thus, there is a small discrepancy in the age of "X" (P.W.2), inasmuch as the birth certificate (Ex.P19) shows the date of birth as 06.04.2002, whereas, the school record (Ex.P5) shows the date of birth as



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

10.04.2002. We find that in the birth certificate (Ex.P19), the date of registration has been shown as 10.04.2002. Mani (P.W.1) is an ordinary unlettered peasant and she would have inadvertently given X's (P.W.2's) date of birth as 10.04.2002, while admitting her in the school, instead of 06.04.2002 and that is why, in the school records, (Ex.P5), the date of birth of "X" (P.W.2) is shown as 10.04.2002.

2.17. Be that as it may, the fact remains that "X" (P.W.2) was studying in X standard at the relevant point of time, as could be seen from the evidence of Arumairaj (P.W.8), Headmaster of the school and other school records and therefore, it cannot be said that she was not a minor at the time of the occurrence.

2.18. After completing the investigation, Gayathri (P.W.22), Inspector of Police, filed a final report in the Special Court for the POCSO Act cases, Magalir Neethimandram, (Fast Track Mahila Court), Erode, in Spl.S.C.No.11 of 2017 against Vijayakumar (A-1), Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) for the offences under Section 366

9/22



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

IPC and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006

(for brevity “the PCM Act”) and Sections 6 and 17 of the POCSO Act.

2.19. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the trial Court framed the following charges against them:

<i>Accused</i>	<i>Charges framed against the accused</i>	<i>Punishable under Section</i>
Vijayakumar (A1)	For kidnapping “X” (P.W.2) from her school on the promise of marrying her on 23.08.2016 at 4.30 p.m.	Section 366 IPC
	For tying a “thaali” around the neck of “X” (P.W.2) and marrying her on 25.08.2016 at 7.00 a.m. in the house of Pastor Muniyandi @ Ramesh (A-2) in the presence of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja(A-3)	Section 9 of the PCM Act
	For committing aggravated penetrative sexual assault on “X” (P.W.2) more than once	Section 5 (1) r/w 6 of the POCSO Act
Pastor Muniyandi @ Ramesh(A2) and Joseph Raja (A3)	For solemnizing the marriage of Vijayakumar (A-1) with “X” (P.W.2)	Section 10 of the PCM Act
	For abetting the act of Vijayakumar (A-1)	Section 6 r/w 17 of the POCSO Act

When questioned, all the accused pleaded “not guilty”.

2.20. To prove the case, the prosecution examined 21 witnesses and marked 28 exhibits and a material object [motorcycle of Vijayakumar(A-1)].



CrI.A.Nos.130 of 2018, 190 & 506 of 2019

2.21. When the accused were questioned under Section 313 Cr.P.C.

on the incriminating circumstances appearing against them, they simply denied the same and did not give any explanation whatsoever. No witness was examined nor any document marked on behalf of the accused.

2.22. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.11.2017 in Spl.S.C.No.11 of 2017, convicted and sentenced the accused, as follows:

<i>Accused</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Vijayakumar (A1)	Section 366 IPC	10 rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 2 years simple imprisonment
	Section 9 of the PCM Act	2 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 6 months simple imprisonment
	Section 6 of the POCSO Act	Life imprisonment and fine of Rs.1,000/-, in default to undergo 2 years simple imprisonment
Pastor Muniyandi @ Ramesh (A2) and Joseph Raja (A3)	Section 10 of the PCM Act	2 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment
	Section 6 r/w 17 of the POCSO Act	Life imprisonment and fine of Rs.10,000/-, in default to undergo 2 years simple imprisonment

The aforesaid sentences were ordered to run concurrently.

11/22



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

2.23. Aggrieved by the above conviction and sentences, Vijayakumar

(A-1) has filed Crl.A.No.190 of 2019, Pastor Muniyandi @ Ramesh (A-2) has filed Crl.A.No.130 of 2018 and Joseph Raja (A-3) has filed Crl.A.No.506 of 2019 before this Court.

3. Heard Mr.S.Mohamed Ansar, learned counsel for Vijayakumar (A-1), Mr.V.Gopinath, learned Senior Counsel representing Mr.J.Nagarajan, learned counsel on record for Pastor Muniyandi @ Ramesh (A-2), Mr.V.Arul, learned counsel for Joseph Raja (A-3) and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

4. At the outset, it can be stated without contradiction that the prosecution has proved the following facts beyond a peradventure:

- (a) Mani (P.W.1) is the grandmother of “X” (P.W.2) and both of them were living in Ukkaram village;
- (b) “X” (P.W.2) was studying in X standard in Government Higher Secondary School, Mill Medu; and
- (c) “X” (P.W.2) went missing on 23.08.2016 and was secured on 13.10.2016.

12/22

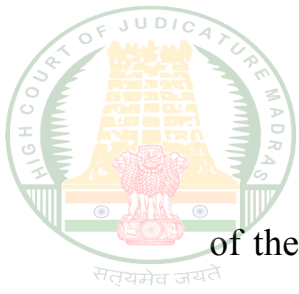


5. Now, coming to the evidence on record, Vasanthakumari (P.W.11),

WEB COPY

in her evidence, has stated that Vijayakumar (A-1) is her elder brother; Mani (P.W.1) is her neighbour and “X” (P.W.2) is the granddaughter of Mani (P.W.1); her brother Vijayakumar (A-1) used to come to her house very frequently and used to engage in conversation with “X” (P.W.2); on 23.08.2016, it was her elder daughter's birthday, for which, Vijayakumar (A-1) came to her house; on that day, she learnt that Vijayakumar (A-1) took away “X” (P.W.2) with him; that information was conveyed to her by her husband Chinnaraj, and so, she contacted her brother Vijayakumar (A-1) in her mobile and spoke to him and asked him as to where he was, for which, he (A-1) stated that he was in Erode; thereafter, her brother became inaccessible over his mobile. She has further stated that she is aware that Mani (P.W.1) had given a police complaint (Ex.P1). Thus, the evidence of Vasanthakumari (P.W.11) shows that on 23.08.2016, Vijayakumar (A-1) had come to her house and on the same evening, “X” (P.W.2) had gone missing.

6. As regards what exactly transpired at the entrance of the school on 23.08.2016 has been stated by “X” (P.W.2) herself and Mani (P.W.1). Both



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

of them have stated that on 23.08.2016, when “X” (P.W.2) came out of the school, around 4.30 p.m., “X” (P.W.2) got into the motorcycle of Vijayakumar (A-1) and left. Therefore, the fact that Vijayakumar (A-1) had kidnapped “X” (P.W.2), a minor from the lawful guardianship of her parents, by enticing her, for the purpose of seducing her to illicit intercourse has been satisfactorily established *via* the evidence of Mani (P.W.1) and “X” (P.W.2) and lodging of the complaint (Ex.P1) followed by registration of the FIR (Ex.P21).

7. As regards what had transpired between 23.08.2016 and 13.10.2016, we have the evidence of “X” (P.W.2), who has stated that Vijayakumar (A-1) took her first to the house of Joseph Raja (A-3) in Sular and from there, he (A-1) took her to the house of Pastor Muniyandi @ Ramesh (A-2) in Gudalur; at Gudalur, on the next day, Vijayakumar (A-1) married her by tying a “thaali” around her neck in the presence of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) and thereafter, they lived as husband and wife till their interception on 13.10.2016 by the police.



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

8. From the evidence of “X” (P.W.2), there is no material to infer that

Vijayakumar (A-1) had forcibly carried away “X” (P.W.2), as it appears that “X” (P.W.2) had voluntarily got onto his motorcycle and had gone with him. However, “X” (P.W.2) has stated that Vijayakumar (A1) did tell her that he was a married man with two children, but, has been deserted by his wife and children. Vijayakumar (A-1) has further struck a sympathy cord in the mind of “X” (P.W.2) saying that he is intensely in love with her and wanted to marry her. Would the same, by itself, be sufficient to exonerate Vijayakumar (A-1) from the charges ?

9. We are afraid that we cannot do it, because, satisfactory materials have been placed before us to show that the date of birth of “X” (P.W.2) is 06.04.2002 and even according to the medical evidence, “X” (P.W.2) was between 14 and 15 years at the time of occurrence. Therefore, consent has no relevance at all in this case, but, can at the most be considered as a mitigating factor, while deciding the question of sentence.



10. As regards the role of Pastor Muniyandi @ Ramesh (A-2) and

WEB COPY

Joseph Raja (A-3), Mr.V.Gopinath, learned Senior Counsel took us through the evidence of “X” (P.W.2) and submitted that Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) were made to believe by Vijayakumar (A-1) that “X” (P.W.2) was over 18 years of age. In this regard, he pointed out the statement of “X” (P.W.2) that when Vijayakumar (A-1) told Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) that “X” (P.W.2) was 18 years, she remained quiet. Therefore, “X's” (P.W.2's) silence meant that she also projected her age as 18.

11. Though this argument did appear at the first blush a little convincing, however, in the cross-examination of “X” (P.W.2), she has clearly stated that she was in school uniform, when she was being taken to the house of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3). Therefore, Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3), who were around 39 and 35 years, respectively, at the time of the incident (as could be seen from their statements under Section 313 Cr.P.C.), cannot be heard to say that they believed “X” (P.W.2) was not a minor.



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

12. That apart, on seeing “X” (P.W.2) in school uniform, their

(A-2 and A-3) first reaction should have been to inform the parents of “X” (P.W.2) as responsible citizens and not entertain the request of Vijayakumar (A-1) to perform marriage with just two persons secretly in the house of Pastor Muniyandi @ Ramesh (A-2).

13. As regards Joseph Raja (A-3), in the cross-examination, it has been suggested to “X” (P.W.2) as under:

“nfs;tp ? ,e;j tHf;fpy; 3tJ vjpup cjtp
bra;jhnu jtpu. ntW jP';F vJt[k;
bra;atpy;iy vd;fpnwd;>
gjpy; ? rupjhd;/”

14. The word “abetment” has been defined under Section 16 of the POCSO Act, which is almost *in pari materia* with the definition of the word “abetment” in Section 107 IPC. However, explanations in both the provisions differ. Explanation II of Section 16 of the POCSO Act reads as follows:

“Explanation II. - Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of



WEB COPY



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

15. Thus, the act of Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) in giving asylum to Vijayakumar (A-1) and “X” (P.W.2) in their house, performing their marriage and facilitating Vijayakumar (A-1) to have sex with “X” (P.W.2) would undoubtedly fall within the meaning of the word “abetment” as defined under Section 16, *ibid.* as punishable under Section 17, *ibid.*

16. That apart, under Section 29 of the POCSO Act, there is a presumption clause, which not only brings in the actual offender, but also the abettor and the burden is on the accused to prove the contrary.

17. Similarly, under Section 30 of the POCSO Act, there is a presumption of *mens rea*, which is required to be discharged by the accused, when the foundational facts are established. The foundational facts that “X” (P.W.2) was a minor; “X” (P.W.2) was carried away by Vijayakumar (A-1) from her school on 23.08.2016; “thaali” was tied around her (“X's”) neck



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

and a sham marriage was solemnized in the house of Pastor Muniyandi @

WEB COPY

Ramesh (A-2) in the presence of Pastor Muniyandi @ Ramesh (A2) and Joseph Raja (A-3); the assertion of “X” (P.W.2) that Vijayakumar (A-1) had sex with her; the evidence of Dr.Kalapriya (P.W.17) that “X” (P.W.2) has had coitus, *etc.*, having been established, then, the reverse burden under Sections 29 and 30 of the POCSO Act would get invoked, which, Vijayakumar (A-1), Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) have not satisfactorily discharged. Thus, the prosecution has proved the charges against the appellants beyond doubt.

18. However, the learned counsel for the appellants prayed for reduction of sentence, by submitting that the proved facts show that the victim girl “X” (P.W.2) and Vijayakumar (A-1) were in love with each other and that “X” (P.W.2) had gone with Vijayakumar (A-1) only on her own volition. They also submitted that “X” (P.W.2) is now married to another person and settled elsewhere.



19. The learned Additional Public Prosecutor, on instructions from the police, confirmed that “X” (P.W.2) has got married to another person and is residing in some other village.

20. Taking into consideration the entire facts and circumstances of the case, the conviction of the appellants under various provisions as set out in paragraph 2.22 is confirmed. As for sentence, we are of the opinion that interests of justice will be served, if the life imprisonment that has been awarded on the appellants is reduced to fixed terms as under :

- i. The substantive sentences of 10 years rigorous imprisonment and 2 years rigorous imprisonment imposed on Vijayakumar (A-1) for the offence under Section 366 IPC and Section 9 of the PCM Act, respectively, are confirmed. However, the substantive sentence of life imprisonment imposed on Vijayakumar (A-1) for the offence under Section 6 of the POCSO Act, is reduced to 14 years rigorous imprisonment, without any remission benefits.
- ii. The substantive sentence of 2 years rigorous imprisonment imposed on Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) for the offence under



WEB COPY



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

Section 10 of the PCM Act is confirmed. However, the substantive sentence of life imprisonment imposed on Pastor Muniyandi @ Ramesh (A-2) and Joseph Raja (A-3) for the offences under Section 6 read with Section 17 of the POCSO Act, is reduced to 10 years rigorous imprisonment.

- iii. The sentence of fine and the default clause therefor imposed by the trial Court on all the appellants shall remain unaltered.
- iv. The trial Court is directed to take steps to secure the appellants, who have been released on appeal bail and commit them to prison for undergoing the remaining period of sentence, if any.

In the result, these Criminal Appeals are disposed of on the above terms. Connected Miscellaneous Petition stands closed.

(P.N.P.,J.) (A.A.N.,J.)

21.03.2022

gya



WEB COPY



Crl.A.Nos.130 of 2018, 190 & 506 of 2019

P.N.PRAKASH, J.
AND
A.A.NAKKIRAN, J.

gya

To

1.The III Additional District and Sessions Judge
Cuddalore, Virudhachalam

2.The Inspector of Police
Karuveppilankurichi Police Station
Cuddalore District

3.The Superintendent of Prison
Central Prison, Coimbatore

4.The Public Prosecutor
High Court, Madras

Crl.A.Nos.130 of 2018
AND
Crl.A.Nos.190 & 506 of 2019

21.03.2022