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CrL.A.No.312 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

CrL.A.No.312 of 2023
and CrL.M.P.No.4252 of 2023

M.Sathick @ Saghul Ameer

... Appellant/sole Accused

v.

State represented by
Inspector of Police
Virinchipuram Police Station,
Vellore District.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.166 of 2018 dated 21.03.2019, on the file of the learned Additional District and Sessions Judge, Fast Track Court, Vellore and set aside the conviction and sentence imposed in judgment dated 21.03.2019 and acquit the appellant.

For Appellant : Mrs.S.Sridevi

For Respondent : Mr.Babu Muthu Meeran



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Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 21.03.2019 in S.C.No.166 of 2018 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Vellore.

2(i) It is the case of the prosecution that the accused and the deceased were close friends; that 1½ years prior to the occurrence, they both went in a two-wheeler in an inebriated condition and met with an accident, as a result of which, the deceased sustained multiple injuries and incurred nearly Rs.1,50,000/- towards treatment and medical expenses; that the deceased demanded the said sum from the appellant stating that he was responsible for the accident; that enraged by the repeated demands made by the deceased, the appellant decided to do away with the deceased; that on 30.01.2016, the appellant caused the death of the deceased, by attacking him indiscriminately on the neck with a knife [paper-cutter] and also assaulted



the deceased with a wooden log on the head and other parts and caused his death.

(ii) It is the further case of the prosecution that PW1, the Village Administrative Officer, found a dead body on 31.01.2016 at 8.30 a.m., near a lake based on the information given by his Assistant Velu; that PW1 found the body of the deceased with injuries to the body and found a broken asha-blade, a Samsung Mobile phone, a wooden log near the dead body; and that PW1 gave a complaint [Ex.P1] to PW5, who registered the FIR [Ex.P6] in Crime No.44 of 2016 for the offence under Section 302 of the IPC.

(iii) Thereafter, PW7, took up the investigation, went to the scene of the occurrence, prepared the Observation Mahazar [Ex.P10] and the Rough Sketch [Ex.P11] and he conducted the inquest on the unidentified dead body in the presence of panchayatars, and prepared the inquest report [Ex.P12]. PW7 seized M.O.1 to M.O.7 under Seizure Mahazar [Ex.P13] in the presence of witnesses. In order to conduct a DNA test to fix the identity of the deceased, PW7 made a request to preserve the femur bone of the



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deceased and sent the body of the deceased for a postmortem. PW7 seized the dress materials of the deceased and examined the brother of the deceased, one Jareena Begum, daughter of the deceased and other important witnesses on 03.02.2016. Then PW7 collected the call details record made from the phone of the deceased, and on the basis of the call records, suspected the involvement of the appellant. On 10.02.2016 at about 12.00 p.m., PW7 arrested the accused, and on his confession, the admissible portion of which is marked as Ex.P34, he recovered the two-wheeler [M.O.16] under Mahazar [Ex.P38 & P39], a mobile phone [M.O.12], and three SIM cards [M.O.13 to M.O.15] under Mahazar [Ex.P40 & P41]. PW7 obtained the DNA Test Report [Ex.P9], and after ascertaining the identity of the deceased, he handed over the investigation to PW8.

(iv) PW8 examined the doctor, who conducted the postmortem and issued the postmortem certificate [Ex.P7]. He filed a final report against the appellant before the learned Judicial Magistrate No.4, Vellore, for the offences under Sections 302 and 201 of the IPC.



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(v) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.166 of 2018 and was made over to the learned Additional District and Sessions Judge, Fast Track Court, Vellore, for trial. The trial Court framed charges as against the accused, and when questioned, the accused pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 11 witnesses as P.W.1 to P.W.11 and marked 41 exhibits as Exs.P1 to P41, and marked 17 material objects as M.O.1 to M.O.17. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused did not examine any witnesses or mark any documents.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant/accused guilty of offence under Sections 302 and 201 of the IPC. The appellant was convicted and sentenced as follows:



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<i>Offence under Section</i>	<i>Sentence imposed</i>
302 IPC	To undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo RI for one year.
201 IPC	To undergo RI for five years and to pay a fine of Rs.2,000/-, in default to undergo RI for one year.
Sentences are ordered to run concurrently.	

Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mrs.S.Sridevi, learned counsel appearing for the appellant/A1, and Mr. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

4. The learned counsel for the appellant submitted that the case, which is based on circumstantial evidence, has not been conclusively established by the prosecution; that the recovery of the bike and the material objects viz., the two-wheeler, a mobile phone, and the SIM cards, does not lead to any inference in favour of the prosecution case; that the motive has not been established by the prosecution; and that the trial Court had relied upon Section 161 statements of the witnesses and the confession of the



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accused to hold the appellant guilty of the offence and had taken into consideration the antecedent of the appellant, which is of no relevance to record a finding of guilt. Therefore, he prayed for the acquittal of the appellant.

5. The learned Additional Public Prosecutor *per contra* submitted that the prosecution had established its case beyond reasonable doubt and there is no reason to interfere with the judgment of the trial Court. Therefore, prayed for the dismissal of the appeal.

6. We have carefully considered the rival submissions and have perused all the relevant records.

7. This is a case of circumstantial evidence. PW1 first found the body on the information given by his Assistant and he gave a complaint Ex.P1 which was registered by PW5; PW2 is the Mahazar witnesses and he had signed in Ex.P13-Mahazar relating to seizure of M.O.1 to M.O.7; PW3 is



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the police photographer; PW4 is the Forensic Science Expert; PW5 is the Sub Inspector of Police, who registered the FIR; PW6 is the postmortem doctor; PW7 is the Investigation Officer; PW8 is another Investigation officer who filed the final report; PW9, is the Sub-Inspector of Police, who speaks about an earlier case registered against the appellant; PW10 is a witness to confession of the appellant and the recoveries made from him; and PW11 is the nodal officer of AIRTEL office.

8. It is the case of the prosecution that when PW1, first saw the body of the deceased, the deceased could not be identified. Photographs were taken by PW3 and marked as Ex.P8, and no evidence has been let in by the prosecution to identify the person in the photographs. However, a DNA test was conducted by taking blood samples from the wife and daughter of the deceased and comparing them with the femur bone of the deceased, which was preserved to ascertain paternity.

9. The prosecution had marked Ex.P9-DNA Test Report, which states as follows:



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“5. The cumulative probability of paternity of the person to whom the femur (of ref.2) belongs for being the father of Ms.Jareena is 99.99999998%.

6. The cumulative chance of exclusion of any random man from the paternity of Ms.Jareena is 99.99999999999999%.”

However, the experts have not been examined. Further, strangely, neither the daughter nor the wife of the deceased were examined by the prosecution, firstly to identify the picture in the photographs and secondly, to state as to whether the blood samples were drawn from them. No evidence has been let in by the prosecution to prove that the blood samples were drawn from the wife and daughter of the deceased. In the absence of the same, one cannot hold on the basis of Ex.P9-DNA Test Report alone that the deceased was the husband of Rahmath Nisha and father of Jareena, the daughter.

10. That apart, the question as to the accuracy of the results by comparison of the DNA profile had come up for consideration in several cases before the Hon’ble Supreme Court. In a recent Judgment in ***Manoj Vs. State of Madhya Pradesh***, reported in (2023) 2 SCC 353. The Hon’ble



Supreme Court held as follows:

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"151. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata [DNA Profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007).] was relied upon. The relevant extracts of the article are reproduced below:

“Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with intercalated proteins. Twenty-three pairs of chromosomes present in each nucleated cells and an individual inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All information about internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases : Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to



trace the male lineage and resolve DNA from males in sexual assault mixtures.

Only 0.1 % of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.

DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed genetic markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA profile unique to an individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoospermic or vasectomized male. Cases in which DNA had undergone environmental stress and biochemical degradation, min ISTRs can be used for over routine STR because of shorter amplicon size.

DNA profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available in the laboratory. The analysis principles, however, remain similar, which include:

- 1. isolation, purification & quantitation of DNA*
- 2. amplification of selected genetic markers*
- 3. visualising the fragments and genotyping*
- 4. statistical analysis & interpretation.*



In mtDNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:

Statistical Analysis

Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

(1) Match : If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.

(2) Exclusion : If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.

(3) Inconclusive : The data does not support a conclusion of the three possible outcomes, only the “match” between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.

In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken into consideration while reporting a match. Paternity or Maternity indices and likelihood ratios are calculated further to support the match.

Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving. DNA evidence can be contaminated when DNA from another source gets mixed with.



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DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling.”(emphasis supplied).

152. In an earlier judgment, Rv.Dohoney & Adams the UK Court of Appeal laid down the following guidelines concerning the procedure for introducing DNA evidence in trials : (1) the scientist should adduce the evidence of the DNA comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinise the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.

153. The Law Commission of India in its Report [185th Report, on Review of the Indian Evidence Act, 2003.], observed as follows:

“DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not “match”, then this will prove a lack of



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identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA “profile” or “fingerprint” is found. It may be, for example, that the relevant profile is found in 1 person in every 1,00,000 : This is described as the “random occurrence ratio” (Phipson 1999, 15th Edn., Para 14.32).

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law.” (emphasis in original)

154. In Dharam Deo Yadav v. State of U.P. [Dharam Deo Yadav v. State of U.P., (2014) 5 SCC 509 : (2014) 2 SCC (Cri) 626] this Court discussed the reliability of DNA evidence in a criminal trial, and held as follows : (SCC pp. 528-29, para 36)

“36. The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. ... DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course,



debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory.”

155. The US Supreme Court in District Attorney's Office for the Third Judicial District v. Osborne [District Attorney's Office for the Third Judicial District v. Osborne, 2009 SCC OnLine US SC 73 : 557 US 52 (2009)] dealt with a post-conviction claim to access evidence, at the behest of the convict, who wished to prove his innocence, through new DNA techniques. It was observed, in the context of the facts, that : (SCC OnLine US SC)

“Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue. ... DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others.”

156. Several decisions of this Court — Pantangi Balarama Venkata Ganesh v. State of A.P. [Pantangi Balarama Venkata Ganesh v. State of A.P., (2009) 14 SCC 607 : (2010) 2 SCC (Cri) 190], Santosh Kumar Singh v.State [Santosh Kumar



Singh v.State, (2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469], State of T.N. v. John David [State of T.N. v. John David, (2011) 5 SCC 509 : (2011) 2 SCC (Cri) 647], Krishan Kumar Malik v.State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61], Surendra Koli v. State of U.P. [Surendra Koli v. State of U.P., (2011) 4 SCC 80 : (2011) 2 SCC (Cri) 92] , Sandeep v. State of U.P.[Sandeep v.State of U.P., (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] , Rajkumar v. State of M.P. [Rajkumar v. State of M.P., (2014) 5 SCC 353 : (2014) 2 SCC (Cri) 570] and Mukesh v. State (NCT of Delhi) [Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673] have dealt with the increasing importance of DNA evidence. This Court has also emphasised the need for assuring quality control, about the samples, as well as the technique for testing in Anil v. State of Maharashtra [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] : (Anil case [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] , SCC p. 81, para 18)

“18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. DNA profile is valid and reliable, but



variance in a particular result depends on the quality control and quality procedure in the laboratory.”

157. This Court, in one of its recent decisions, Pattu Rajan v. State of T.N. [Pattu Rajan v. State of T.N., (2019) 4 SCC 771 : (2019) 2 SCC (Cri) 354], considered the value and weight to be attached to a DNA report : (SCC p. 791, para 52)

“52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.”

158. This Court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance, was to corroborate. This Court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case.”



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11. Therefore, it is seen that DNA testing can be a powerful technique in investigations and criminal trials. However, care has to be taken to ensure that the samples collected are properly documented, packaged, and preserved. In the instant case, there is no evidence to show that blood samples were drawn from the wife and the daughter of the deceased, which were compared with the preserved femur bone. Therefore, we cannot place reliance on the DNA Test Report for fixing the identity of the deceased.

12. Further, we also find that there is absolutely no evidence to connect the appellant to the alleged offence. There was an attempt made to connect the appellant on the basis of some call records said to have been made to show that there were calls from the deceased to the appellant at the relevant point of time and about the movement of the deceased during the relevant point of time. However, the investigating officer [PW7] admitted in the cross examination that, though it is the prosecution case that the appellant used a particular number, the SIM cards are not in his name. No other evidence has been let in to show that those SIM cards were used by



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the appellant. The relevant portion of the evidence in the cross examination, reads as follows:

“இறந்துபோனவர் 787888164 என்ற எண்ணையும், 9655418113 என்ற எண்ணையும் பயன்படுத்தியுள்ளார். இறந்தவரின் மனைவி 9087118774 என்ற எண்ணை பயன்படுத்தியுள்ளார். எதிரியானவர் 8220176287 என்ற எண்ணையும், 9715237892 என்ற எண்ணையும் பயன்படுத்தியுள்ளார் என்பது விசாரணையால் தெரியவருகிறது. இறந்தவரின் மனைவி 774 என்ற எண்ணை உபயோகப்படுத்தினார் என்ற கூறியிருப்பினும் வாடிக்கையாளர் என்ற இடத்தில் அவர் பெயர் இல்லை. அதேபோல் எதிரி பயன்படுத்தியதாக சொல்லப்படும் 287 என்ற எண் எதிரியின் பெயரில் இல்லை, அதேபோல் எதிரியானவர் பயன்படுத்திய 892 என்ற எண்ணும் வாடிக்கையாளர் என்ற இடத்தில் அவர் பெயர் இல்லை.”

13. Even assuming that there were call records, that by itself does not lead to any inference to prove the prosecution case of murder of the deceased by the appellant. Therefore, it is a case of a very shallow investigation conducted by the investigating officer and a poor prosecution, wherein even basic facts have not been established.



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14. Thus, it could be seen that except for the call records, which do not point out the guilt of the appellant, the other circumstances have not been established; the motive has not been established; the wife and daughter whose blood samples were said to have been drawn for comparison with the femur bone have not been examined; and the photographs taken by PW3 have not been identified by anyone. Therefore, there is no evidence to fix the identity of the deceased.

15. It is well settled that in a case based on circumstantial evidence, the circumstances must form a complete chain, pointing out only the guilt of the accused and ruling out any other hypothesis. In the instant case, as stated earlier, the circumstances have not been established and there is no chain of circumstances. The appellant cannot be convicted on the basis of such evidence. Therefore, we have no hesitation in holding that the judgment of the trial Court has to be set aside and the appeal has to be allowed.

16. Accordingly, the Criminal Appeal is allowed, and the appellant is



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acquitted of all the charges. The conviction and sentence imposed upon the appellant in S.C. No.166 of 2018 dated 21.03.2019, on the file of the learned Additional District and Sessions Judge, (FTC), Vellore, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

(M.S.R.,J.) (S.M.,J.)
09.02.2024

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M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
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To

1. The Additional District and Sessions Judge,
Fast Track Court, Vellore.
2. The Inspector of Police,
Virinchipuram Police Station,
Vellore District.
3. The Superintendent,
Central Prison, Salem.
4. The Public Prosecutor,
High Court, Madras

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