



Crl.A(MD)Nos.111, 112 and 165 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 04.03.2024

Delivered on : 28.03.2024

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

Crl.A(MD)Nos.111, 112 and 165 of 2020

Crl.A(MD).No.111 of 2020

1.M.Rabiya Begun
2.M.Jeniffer Fathima

... Appellants/Accused
Nos.2&4

Vs.

The State of Tamil Nadu,
Represented by its
Thenkarai Police Station,
Theni District,
Theni.
(Crime No.430 of 2014)

... Respondent/Complaint

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the judgment dated 17.02.2020 in S.C.No.87 of 2016 on the file of the Mahila Fast Track Court, Theni in Crime No430 of 2014 on the file of the respondent police and set aside the same and acquit the appellants/accused Nos.2 & 4.



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For Appellants : Mr.V.Kathirvelu, Senior Counsel
for Mr.V.Neelakandan
For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

Crl.A(MD).No.112 of 2020

M.Riyaz Ahmad

... Appellants/Accused
No.3

Vs.

The State of Tamil Nadu,
Represented by its
Thenkarai Police Station,
Theni District,
Theni.
(Crime No.430 of 2014)

... Respondent/Complaint

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the judgment dated 17.02.2020 in S.C.No.87 of 2016 on the file of the Mahila Fast Track Court, Theni in Crime No430 of 2014 on the file of the respondent police and set aside the same and acquit the appellants/accused Nos.2 & 4.

For Appellant : Mr.V.Kathirvelu, Senior Counsel
for Mr.V.Neelakandan
For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

Crl.A(MD).No.165 of 2020

M.Yasar Arabath

... Appellants/Accused No1

Vs.



Crl.A(MD)Nos.111, 112 and 165 of 2020

The State of Tamil Nadu,
Represented by its
Thenkarai Police Station,
Theni District,
Theni.
(Crime No.430 of 2014)

... Respondent/Complaint

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of the judgment dated 17.02.2020 in S.C.No.87 of 2016 on the file of the Mahila Fast Track Court, Theni in Crime No430 of 2014 on the file of the respondent police and set aside the same and acquit the appellants/accused Nos.2 & 4.

For Appellant : Mr.J.Lawrance
For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

JUDGMENT

DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

The above criminal appeals have taken together, as all of them arising out of the single order passed by the learned Sessions Judge in S.C.No.87 of 2016 against the four accused.



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2.The criminal appeal in Crl.A(MD)No.165 of 2020 was filed by the first accused, and the criminal appeal in Crl.A(MD)No.111 of 2020 was filed by the second and fourth accused and Crl.A(MD)No.112 of 2020 was filed by the third accused.

3.There are four accused in these cases. The first accused is the husband of the deceased. The second accused is the mother of the accused and third and fourth accused are the brother and sister of the first accused.

4.It is the case of the prosecution that the first accused and the deceased got married on 26.10.2014. The first accused is a person of salacious nature and used to torture the deceased sexually. It is also the case of the prosecution that all the accused have harassed the deceased by demanding dowry. While so, the first accused has left the deceased in her parental home on 30.10.2014 at about 06.30 p.m. Thereafter, in the intervening night between 30/31.10.2014 at about 00.30 hours, the deceased committed suicide. Immediately, after the occurrence, the deceased was taken to the hospital. On receipt of information from the hospital, the Sub-Inspector of Police(P.W.7) reached the Government Hospital, Periyakumal and received a complaint from



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the mother of the deceased viz, Ameena Begum and registered the FIR on 31.10.2014 at about 02.30 hours in Crime No.430 of 2014 under Section 174 Cr.P.C.

5. According to P.W.7, immediately after the registration of the FIR, she had forwarded the copy of the FIR to the Executive Magistrate and to the Investigating Officer. On receipt of FIR, P.W.13-Investigating Officer took the case for investigation and visited the scene of occurrence at about 03.45 p.m., and has also prepared observation Mahazar and rough sketch in the presence of one Farakatthulla and P.W.5-Jiavur Raghman and has also recorded the statement of P.W.1-Abdul Kalam Asath and P.W.3-Afsalkhan and other witnesses. After enquiring the witnesses, he altered the FIR on 01.11.2014 from Section 174 Cr.P.C., to Sections 498(A) and 306 IPC. In furtherance thereto, the first accused was arrested and remanded to judicial custody. He has also made arrangements for postmortem. During the investigation, he came to know that the deceased has committed suicide on account of demand of dowry. Hence, he again altered the FIR from Section 306 IPC to Section 304(B) IPC. Thus, after completion of investigation, he laid a charge sheet before the concerned Magistrate Court.



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6.Before the trial Court, the prosecution relied 13 witnesses, 14 documents and one material object. On behalf of the accused, they relied upon one witness as D.W.1 and two documents were marked as Ex.D.1 and Ex.D.2.

7.The trial Court, after having considered the oral and documentary evidence, has convicted all the accused for an offence under Section 304(B) IPC. However, in respect of the first accused life imprisonment was imposed and to the other accused, 10 years of rigorous imprisonment was ordered.

8.Aggrieved with the said order, all the accused have preferred the instant criminal appeals.

9.The learned Senior Counsel appearing for the appellants would vehemently submit that there was only 5 days from the date of marriage and the date of occurrence. Thus, the deceased lived with the first accused only for five days, and that the deceased had stress as she had a love affair during the college days and that the instant marriage was solemnized by her parents against her wish. It is the further submission of the learned Senior Counsel that when the deceased was with the accused, she was living happily and such factum could



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be elicited through the prosecution witnesses. It is also the case of the learned counsel for the appellants that there is no proof for demand of dowry and that, there are numerous reasonable doubt in the prosecution case. However, the trial Court, without appreciating the evidence in its right perspective, has convicted all the accused wrongly. Hence, he prays to interfere with the order of the trial Court.

10.Per contra, the learned Additional Public Prosecutor would vehemently contend that all the witnesses had spoken about the salacious conduct of the first accused, which factum could be elicited through the postmortem doctor, who has found so many injuries near the private part of the deceased. According to the learned Additional Public prosecutor, the witnesses had categorically spoken about the demand of dowry. Therefore, it is the submission of the learned Additional Public Prosecutor that the findings recorded by the trial Court is well merited. Hence, he prays to dismiss the appeals.

11.We have given our anxious consideration to either side submissions.



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12.If we go by the facts of the case, the matrimonial bond of the deceased and the first accused were short lived to a period of five days only. To put it differently, it last only for 120 hours. Within this 120 hours of the marital life, the deceased committed suicide. Therefore, in order to find out the truth of the prosecution case, it is the duty of this Court to scan the trajectory and proclivity of this 120 hours.

13.Before we get into the disputed factual aspects, it is an admitted fact that the marriage took place on 26.10.2014. On the next day, viz., 27.10.2014, the deceased and the accused came to the deceased's parental home where the first accused and the deceased stayed there upto 28.10.2014 evening. Though there were certain vague reference about the contusion on the face of the deceased found, while she was in her parental home through the evidence of P.W.3, and that up to 28.10.2014 evening both the deceased and the first accused were together happy and had no complaint against each other.

14.Therefore, now the case narrow down to find out the conduct of the parties between 28.10.2014 evening till the deceased decided to commit suicide.



15.It is the specific case of the prosecution that all the accused had demanded dowry with the deceased and denigrated her. Apart from that, the first accused being a person of salacious nature has also caused sexual torture to the deceased.

16.In order to understand the requirement of ingredient to prove the charge under Section 304(B)IPC, this Court deems it appropriate to extract Section 304(B) IPC.

“[304B. Dowry death.-- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”



17.A harmonious reading of Section 304(B) IPC would mandate that to bring home the charge under Section 304(B) IPC the following mandatory ingredients has to be proved by the prosecution.

“(i)the death of the woman was caused due to burns, bodily injuries or due to unnatural circumstances.

(ii)the death should be within 7 years of marriage.

(iii)It is shown that soon before death victim was subjected to cruelty or harassment by her husband or any relative of the husband.

(iv)the cruelty or harassment was for or in connection with any demand of dowry.”

18.All the prosecution witnesses during the chief examinations have stated that there was a dowry demand and that there was a sexual torture caused to the deceased. The findings of the trial Court is pulsuated with nature of injury sustained by the deceased and carried away with the same without gone into the essential requirements to prove the charge under Section 304(B) IPC. In order to attract charge under Section 304(B) IPC, apart from bodily injuries or unnatural circumstances of the death, such death should have proximate and live link with the harassment of the accused on account of the demand of



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dowry. Therefore, before this Court proceed further towards the injuries sustained by the deceased, it is appropriate to find out whether the prosecution has proved the demand of dowry.

19.At this juncture, it is pertinent to mention here that under Section 304(B) of IPC there is a presumption in favour of the prosecution that if any unnatural death have taken place, within a period of 7 years of marriage, it must be presumed that the same is dowry harassment. But, still such existence of dowry harassment has to be proved by the prosecution. But such proof is not beyond reasonable doubt, but only based upon the preponderance of probability.

20.In this connection, in order to exfoliate the truth, let us appreciate the evidence of the prosecution witnesses. If we look at the evidence of prosecution, they relied upon P.W.1-Abdulkalam Aasath and P.W.3-Afsalkhan, who are the brothers of the deceased and P.W.2-Ajis, who is the father of the deceased. The prosecution also rely PW.4 who is the relative of the deceased. Only through these four witnesses, the prosecution attempts to prove the demand of dowry and the dowry harassment. If we harmoniously look at the



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evidence of the above witnesses, no doubt in their chief examinations, all of them have invariably stated about the demand of dowry and the denigration faced by the deceased. According to the prosecution witness, the deceased was perturbed, while she was in her parental home.

21. But, whether such evidence inspires the confidence of this Court that too with the degree of proof based upon preponderance of probability, has to be analyzed. In this regard, as we have discussed elsewhere in the order, up to 28.10.2014 there was no complaint against the accused. Such factum could be established through P.W.3's evidence. The P.W.3 though has stated about the dowry harassment and other incidents, during his cross-examination he has categorically admitted that up to 28.10.2014 there was no complaint and the deceased was resplendent and stayed happily in their house. For ready reference, this Court deems it appropriate to extract the admission made by P.W.3, who is none other than the brother of the deceased:

“.....26.10.2014ம் தேதி திருமண தேதிக்கு பிறகு 28.10.2014ம் தேதி இரவு வரை இரண்டு நாட்களாக முதல் எதிரியும் எனது அக்காவும் எங்கள் வீட்டில் தான் இருந்தார்கள். இரண்டு பகல் ஒரு இரவு இருந்தார்கள். அப்போது அவர்கள் சந்தோசமாக இருந்தார்களா என்றால் இருந்தார்கள்.....”



22.Apart from that, the learned Senior Counsel for the appellants has

also invited the attention of this Court in respect of the admission made by P.W.1, who is another brother of the deceased. For ready reference this Court deems it appropriate to extract the relevant admission for easy analysis of this case.

“கோட்டாட்சியரிடம் நான் நடந்தவற்றை எழுதி கொடுத்தேன். தற்போது என்னிடம் காட்டப்படும் ஆவணம் நான் சொல்ல சொல்ல வருவாய் கோட்டாட்சியர் முன்பாக எழுதி கொண்டார்கள். அதில் நான் படித்து பார்த்து சரி என்று எழுதிய பிறகு கையெழுத்து போட்டேன். 29ம் தேதி நான் யாசர் அரபாத் வீட்டிற்கு போனோம் என்றால் 30ம் தேதி நாங்கள் போனோம். நானும் எனது அம்மாவும் போனோம். நாங்கள் சென்றதற்கு காரணம் எனது தங்கை எங்களை பார்ட் வேண்டும் என்று சொன்னதால் நாங்கள் சென்றோம். எனது தங்கை வா என்று கூப்பிட்டது 30ம் தேதி காலையில் சுமார் 8 மணியளவில் எனது தங்கை எங்களை கூப்பிட்டார். நான் வருவாய் கோட்டாட்சியர் விசாரணையில் முதன் கிழமை 29.10.2014ம் தேதியன்று இரவு எனது தங்கை மினாயில் குடித்து கேள்விபட்டு நானும் எனது அம்மாவும் எனது தங்கை வீட்டிற்கு போனோம் என்று உள்ளதா என்றால் உள்ளது. அங்கு நடந்த சம்பவத்தை பற்றி எனது அப்பாவுக் தொலைபேசியில் தொடர்பு கொண்டு சொன்னோம். எனது அப்பா அப்போது ஊரில் இல்லை நாங்கள் சொல்லவும் எனது தந்தை மாப்பிள்ளை நல்லவர் என்றும் தங்கையை நல்லபடியாக பார்த்து கொள்வார் என்று கூறினார். வியாழன் அன்று எனது தங்கையை எங்கள் வீட்டில் விட்டு விட்ட சென்று விட்டார் என்று நான் சொல்லியிருக்கிறேன். என்னிடம் தொலைபேசியில் தங்கையை நல்லபடியாக பார்த்து கொள் என்று கூறினார். வீட்டில் வந்து விடுவதற்கு 15 நிமிடத்திற்கு முன்னர் மாப்பிள்ளை மட்டும் தனியாக வந்து



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உன் தங்கை 10 வருடங்கள் ஆனாலும் மனம் மாறும் வரை காத்திருந்து உன் தங்கையை ஏற்று கொள்கிறேன் என்று கூறினார் என்றால் உள்ளது எனது தங்கை கல்லூரியில் படிக்கும் போது ஒருவரை காதலித்தார். ஆதனால் அவசரமாக எனது தங்கைக்கு திருமணம் நடத்தினோம். ஆனால் திருமணம் முடிந்த பிறகும் யாரும் விரும்பவில்லையென்று குரான் மீது சத்தியம் வாங்கினார் என்று உள்ளதா என்றால் உள்ளது எனது பெரியப்பா அப்துல் மஜீஸ் எனது தங்கை எனது பெரியப்பா வீட்டிற்கு வந்த உடன் எனது தங்கை பார்த்து உங்கள் பெயரை கெடுத்து விட்டேன் நான் சாக போகிறேன் என்று கூறியிருக்கிறார்.”

23.Even P.W.2, who is the father of the deceased has admitted that the first accused is a man of good behaviour. Such admission could be established through the following evidence of P.W.2:

“அ.சா.1 எனது மகன் போய் சொல்லமாட்டான். அசா1 ஆர்டிஓ விசாரணையில் 29.10.2014ம் தேதி அன்று இரவு மினாயில் குடித்ததாக கேள்விபட்டு தானும் தனது தாயாரும் அவர் வீட்டிற்கு போய் சம்பவத்தை கேள்விபட்டு எனக்கு தொலைபேசியில் தொடர்பு கொண்ட போது மாப்பிள்ளை நல்லவர் என்றும் தனது தங்கையை நல்லபடியாக பார்த்து கொள்வார் என்று சொன்னதாக சொல்லியிருக்கிறார் என்றால் அது உண்மை தான். இந்த விபரத்தை ஏன் நான் ஆர்டிஓவிடமும் டிஎஸ்பியிடமும் நீதிமன்ற விசாரணையில் சொல்லவில்லையென்றால் மனநலம் சரியில்லாமல் இருந்ததால் அந்த விபரம் சொல்ல முடியவில்லை.”



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24.To crown it all, the following admission would also support the case of the appellants that the deceased had impregnable love and affection with her friend and not happy with the marriage that is the reason why, she attempted suicide even in the appellants' residence. The same is fortified from the following admission of P.W.2:

“எனது மகள் மினாமில் குடித்த விபரத்தை முதல் எதிரி தடுத்து விட்டு எனது மகன் மற்றும் மனைவிக்கு தகவல் சொல்லி அவர்கள் பார்த்தார்கள் என்றும் அந்த தகவலை எனது மகன் எனக்கு தொலைபேசி மூலம் சொன்னார் என்றால் சரிதான்.”

25.The prosecution also relies P.W.4 evidence, who is none other than the relative of the deceased. She was only hearsay evidence and her evidence does not inspire the confidence of this Court. However, her statement is only projecting the alleged sexual torture caused to the deceased.

26.It is the case of the appellants that the deceased faced with the dichotomy of having love with her friend, and had to lead a life with another man viz., the first accused. From the evidence of P.W.1, it emerges that only to avoid the opprobrium to his parental home, she had accepted the marriage. But still she was not in a position to pursue the marriage by transcending her past



memory, which turn into her first attempt for consumption of phenyl in the accused house.

27.The first attempt of suicide is undisputed fact. In view of the above attempt, it would have prompted and necessitated the first accused to safely keep the custody of the deceased with her parents. From the evidence of P.W.1, it comes to our light that the first accused took all the efforts for the safe stay of her deceased wife as she was being perturbed. Though the prosecution has projected a case that the deceased had a feeling of rancour against the first accused and their family, the evidence of P.W.1, P.W.2 and P.W.3 as extracted herein above, would run counter to the prosecution case and would only probablise the case of defence theory of compulsion against the deceased to join the appellant forgetting her past affair.

28.No doubt, there is a injury to the deceased, but who caused such injury is the question to be considered. But unless there is a proof of demand of dowry, and proximity and live link of that demand the death will not attract Section 304(B) IPC. As already stated up to 28.10.214 both the deceased and the first accused lived happily. The witnesses came to know about the demand



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of dowry, when she arrived her parental home on 30.10.2014. But, even before that the deceased attempted for suicide. No one impute such attempt with the demand of dowry. Such finding draws strength from the evidence of P.W.1 and P.W.2. Therefore, this Court hold that the evidence of P.W.1, P.W.2 and P.W. 3 regarding the demand of dowry does not inspire the confidence of the Court and their statement is parrot like saying. Therefore, this Court is of the firm view that the endogenous vantage of Section 304(B) of IPC qua the demand of dowry has not been proved by the prosecution even within the parameter of preponderance of probability.

29.The next aspect, for which, there is a overwhelming evidence through P.W.1 to P.W.4 is in respect of sexual torture by the first accused by biting on the chest, back and other places of the deceased. It is not stated in the evidence that the deceased was beaten up by the accused, but there is a pointed and specific allegation that there was a sexual torture by way of biting the deceased on various places. In this connection, the prosecution relied upon the postmortem report, in which, the following injuries are found:

“The following ante mortem injuries were noted over the body:-



*1)Dark Red coloured contusion of size 2.5cms x 1.5cms
seen over the left cheek*

*2)Dark Red coloured contusion of size 2 cms x 2 cms seen
over the left shoulder.*

*3)Dark Red coloured contusion of size 2 cms x 2 cms seen
over the left shoulder below injury no.(2)*

*4)Dark Red coloured contusion of size 1 cm x 1 cm seen
over the right cheek.*

*5)Dark Red coloured contusion of size 1cm x 1cm seen
over the front of the right forearm.*

*6)Dark Red coloured contusion of size 3cms x 3 cms seen
over the left gluteal region.*

*7)Dark Red coloured contusion 3cms x 2 cms seen over
the medial aspect of the left leg.*

*8)Dark Red coloured contusion 3cms x 3cms seen over the
lateral aspect of the left leg.*

*9)Dark Red coloured contusion of size 4cms x 2 cms seen
over the medial aspect of the right thigh.*

*10)Dark Red coloured contusion of size 4 cms x 1.5 cms
seen over the medial aspect of right leg.*

*11)Dark Red coloured contusion of size 2cms x 2.5cmz
over the medial aspect of right leg below injury No.10*

*12)Dark Red coloured contusion 2cms x 2 cms seen over
the lateral aspect of the right leg.*

13)Dark Red coloured contusion of size 1cm x 1 cm seen



over the outer aspect of the left elbow.

14)Dark Red coloured contusion of size 2cms x 2cms seen over the right loin.

15)Dark Red coloured contusion of size 2cms x 2 cms seen over the right loin.

16)Dark Red coloured contusion of size 2.5cms x 1.5 cms seen over the left loin.

17)Dark Red coloured contusion of size 2cms x 2cms seen over the middle of the back.

18)An oblique incomplete ligation mark of 15cms in length, 2cms in breadth was found on front and sides of neck, leaving a gap of 8 cms at the back of the neck.

Anatomical Landmarks:-*An oblique ligation mark of length 12.5cms was situated 8cms below the right mastoid process, 8 cms below the chin and 2cms below the left mastoid process and 6.5 cms above the supra sternal notch.*

On bloodless dissection of the neck:*The base of the ligation mark was hard, pale, glistening and parchment like. There was no extravasation of blood either on the superficial or deep planes of the neck.*

19)On Dissection of abdomen:-

Dark Red coloured peri-renal contusion of size 6 cms x 5cms seen over right kidney.

Dark red coloured peri-renal contusion of size 7 cms x 5 cms was seen over left kidney.”



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30. In the said injuries, the injuries Nos.1 to 17, are contusion injuries and these are all the injuries projected as a sexual torture through bite. But, the learned counsel for the appellants would contend that when a specific case of biting was projected, in the absence of any bite mark in the body of the deceased, the question of incriminating the first accused with the alleged injuries will not at all surface.

31. We are in full agreement with the above submission. If we look at all the evidence, such as consuming phenyl by the deceased, in turn, the attempt of the accused to arrange the safe stay of the deceased in her parental home, and fervent plea made by the first accused to P.W.1, to take care of her wife, to top of it all, the promise of the first accused to P.W.1 that he would reunite with the deceased, if she forget her past life, in the back ground of absence of bite mark on the body of the deceased would cumulatively project that there was a possibility of causing injuries to the deceased by somebody else.

32. Therefore, this Court is of the firm view that as found herein before, there is a reasonable doubt over the proof for demand of dowry by the accused. Further there are also reasonable doubt exist in respect of the



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connection between the first accused and the alleged injuries found on the deceased body. Therefore, this Court is of the firm view that the benefit of such reasonable doubts has to be given to the accused. But the trial Court without appreciating the evidence in its right perspective landed in to a wrong conclusion which needs interference by this Court by allowing these appeals.

33.In the result, the Criminal Appeals are allowed and the judgment dated 17.02.2020 passed in S.C.No.87 of 2016 by the learned Sessions Judge, Fast Track Mahila Court, Theni, is hereby set aside and the accused is acquitted from all the charges and set at liberty. Bail bond, if any, stands cancelled. Fine amount, if any, paid, the same shall be refunded to the accused.

(G.J.,J.) (C.K.,J.)
28.03.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No



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DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.
Ns

To

- 1.The Mahila Fast Track Court,
Theni.
- 2.The State of Tamil Nadu,
Thenkarai Police Station,
Theni District, Theni.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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28.03.2024