

**Bail Slip**

That the Appellant/Accused John Hitler was directed to be released on Bail vide Order in CrI. MP(MD)No.1 of 2015 in CrI.A(MD) No.29 of 2015 dated 19.02.2015 on the file of the Madurai Bench of Madras High Court.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	Pronounced on
30.09.2019	16.10.2019

CORAM**THE HONOURABLE MR. JUSTICE V.PARTHIBAN****CRL. A. (MD) NO. 29 OF 2015**

John Hitler

.. Appellant/Accused

- Vs -

State of Tamil Nadu
rep. by Inspector of Police
Thucklay Police Station
Kanyakumari District.
(Crime No.283 Of 2010)

.. Respondent/Complainant

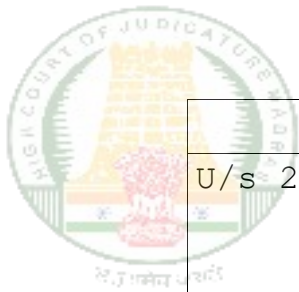
Appeal filed u/s 374(2) of the Code of Criminal Procedure, against the judgment dated 13.01.2015, passed by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil, in S.C. No.73/2012.

For Appellant : Mr. N.Dilip Kumar

For Respondent : Mr. V.Neelakandan, APP

JUDGMENT

The appellant was charged and tried before the learned Sessions Judge, Fast Track Mahila Court, Nagercoil, in S.C. No.73/2012, for the offences u/s 294 (b), 506 (ii) and 307 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and on being found guilty, was convicted and sentenced as under :-



Section	Sentence
U/s 294 (b) IPC	Convicted and imposed a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of one month.
U/s 506 (ii) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of two months.
U/s 307 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of six months.
U/s 4 of the Tamil Nadu Prohibition of Harassment of Women Act	Convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of two months.

The sentences were directed to run concurrently and set off u/s 428 Cr.P.C. was also ordered. Aggrieved by the said conviction and sentence, the appellant/accused has preferred the present appeal.

2. The facts, shorn of unnecessary details, are briefly stated hereunder :-

P.W.1 is the defacto complainant and P.W.2 is the brother of P.W.1. P.W.3 is the friend of P.W.2. It is the case of the prosecution, that with regard to the game of cricket, there was previous enmity between the accused and P.W.2 due to which on 22.4.2010, at about 6.30 p.m., near Alandurai Bus Stand, while P.W.1 tried to climb the motorcycle driven by P.W.2, the accused came there and used obscene and filthy language and, thereafter, the accused pushed the motorcycle in which P.W.2 was sitting and taking a stone, the accused threatened P.W.2 and chased him and also threatened to do away with him and in the course of the same transaction, the accused caused injuries on the abdomen of P.W.1 by kicking her and caused injuries on the front and back of her chest by hitting her with the stone with the intention of murdering P.W.1 and, thereafter, with a view to outraging the modesty of P.W.1, the accused carried her on his shoulder and threw her from atop the Alandurai Bridge in to the pit down below, due to which P.W.1 suffered injuries on the right thigh. Thereafter, the accused went away from the scene of occurrence.



3. P.W.2 and one Boaz, who came to the scene of occurrence at about the point of time, along with the public, who had gathered around the place, lifted P.W.1 and sent her to Thuckalay Government Hospital along with P.W.2 in a vehicle that was coming that way. Thereafter, P.W.1 was shifted to Asaripallam Hospital.

WEB COPY

4. On receipt of intimation from the Government Hospital, Asaripallam, on 23.4.2010, P.W.6, the then Sub-Inspector of Police attached to Thuckalay Police Station, went to the hospital and examined P.W.1 and recorded her statement and returning to the police station at 7.00 p.m., on the basis of the said statement of P.W.1, registered a case in Crime No.283/2010 u/s 294 (b), 324, 506 (ii) and 307 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and prepared FIR, Ex.P-5 and despatched the same to the jurisdictional court as also the higher police officials.

5. On receipt of Ex.P-5, P.W.7, the Inspector of Police, took up investigation at about 20.30 hrs., on 23.4.2010. P.W.6 proceeded to the scene of occurrence and in the presence of P.W.5 and another, prepared observation mahazar, Ex.P-4 and drew rough sketch, Ex.P-6. Thereafter, P.W.7 proceeded to Asaripallam Government Hospital and examined P.W.1 and recorded her statement. Thereafter, P.W.7 returned to the scene of occurrence and examined P.W.2, P.W.3 and other witnesses and recorded their statements. P.W.7 also examined P.W.6 and recorded her statement at the police station. Thereafter, further investigation of the case was handed over to P.W.8.

6. P.W.8, on taking up investigation on 29.4.2010, searched for the accused and came to know that the accused had surrendered before the Judicial Magistrate, Padmanabhapuram and obtained bail. P.W.8 examined the doctor, P.W.4, who treated P.W.1 and issued the accident register, Ex.P-2 and recorded his statement. On completing the investigation, P.W.8 filed the final report against the accused u/s 294 (b), 506 (ii) and 307 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act on 10.1.2011.

7. On the appearance of the accused/appellant, 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.73/12 and made over to the Sessions Judge, Mahila Fast Track Court, Nagercoil, for trial.

8. To prove the case, the prosecution examined P.W.s 1 to 8 and marked Exs.P-1 to P-6. No material objects were marked. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on the side of the appellant.

9. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and

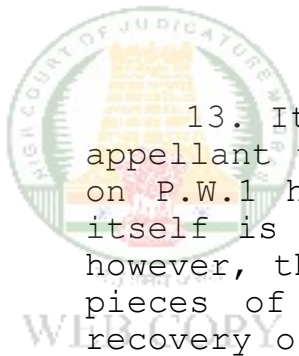


challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

10. Learned counsel appearing for the appellant/accused submitted that though it is the case of the prosecution that the occurrence had taken place in the evening hours in a busy locality, with ample visibility, yet no independent witnesses have been examined, though it is well projected by the prosecution that independent witnesses were available and witnessed the occurrence. No explanation is forthcoming from the prosecution for non-examination of independent witnesses, which is detrimental to the case of the prosecution. It is the further submission of the learned counsel for the appellant that P.W.s 2, the eye witness to the occurrence and P.W.5, the mahazar witness, are brothers and P.W.3 is the friend of P.W.2. Therefore, their testimonies alone cannot be the basis for convicting the appellant, more so when the occurrence had taken place in the early evening hours with good visibility and witnessed by independent witnesses.

11. Learned counsel appearing for the appellant further submitted that though the occurrence had taken place at 6.30 p.m. on 22.4.2010, yet, Ex.P-1, complaint was lodged at 7.00 p.m. on 23.4.2010, after a delay of almost 24 hours, which ultimately culminated into registering of the FIR, Ex.P-5. The delay in lodging the complaint and registering the FIR coupled with the claim raised by P.W.1 under the Motor Vehicles Act for the injury suffered in the road accident, clearly reveal that the injuries were sustained in the road accident and not in the manner projected by the prosecution.

12. It is the further submission of the learned counsel for the appellant that the injuries alleged to have been sustained by P.W.1 have not been proved to have been caused by the appellant. Though P.W.1 had stated that she sustained injuries in her chest, back and hip, yet the accident register, Ex.P-2 coupled with the testimony of the doctor, P.W.4, reveals that no external injuries were found on P.W.1 and that only the right leg of P.W.1 was internally rotated which lead to suspicion of fracture in the right femur bone of P.W.1. P.W.4 was the doctor, who had given immediate medical aid to P.W.1. But the doctor, who subsequently treated P.W.1 were not examined at all by the prosecution. P.W.1 was admittedly shifted to a private hospital and was operated upon for the injury. But neither any materials were marked nor any other doctor was examined to establish the injury suffered by P.W.1. It is therefore contended that in the absence of any documents to establish the injuries suffered by P.W.1, the version of the prosecution that the appellant had kicked P.W.1 on various parts of the body and also hit her with stone and, thereafter, threw her down the bridge are mere fabrication of evidence to sustain the case of the prosecution.

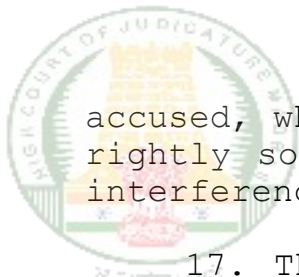


13. It is the further submission of the learned counsel for the appellant that the stone, alleged to have been used to cause injury on P.W.1 had not been recovered. Further, the prosecution theory itself is that the vehicle of P.W.2 was damaged by the appellant, however, the same has also not been proved by recovering the damaged pieces of the vehicle from the scene of occurrence. The non-recovery of the material objects from the scene of occurrence casts a serious doubt into the version projected by the prosecution.

14. It is further contended by the learned counsel for the appellant that the motive, as projected by the prosecution, has not been proved in a manner known to law. It is the submission of the learned counsel for the appellant that other criminal cases have been lodged by P.W.s 2 and 3 against the appellant and in one such case, P.W.2 is stated to be a witness. Therefore, this clearly reveals that the prosecution is trying to falsely implicate the appellant as the aggressor.

15. It is the further submission of the learned counsel for the appellant that though it is the case of the prosecution that P.W.1 was thrown from the top of the bridge, however, the depth of the place from top the bridge has not been established by the prosecution. Further, no injuries coinciding with the said act is found on the body or person of P.W.1, as is evidenced from the accident register, Ex.P-3 and the testimony of P.W.4, the doctor. The non-establishing of the depth of the river bed is detrimental to the prosecution case. Further, there are material contradictions in the evidence of P.W.s 1, 2 and 3 with regard to the distance from which P.W.2 witnessed the act of the appellant throwing P.W.1 from atop the bridge. Further, the rough sketch, Ex.P-5 does not reveal any pit down below the bridge. In view of the material contradictions in the evidence of the witnesses coupled with the non-recovery of the material objects and the medical evidence not supporting the testimony of the ocular witnesses, it is submitted that the appreciation of evidence by the trial court is wholly erroneous and, therefore, the appeal is liable to be allowed.

16. Per contra, learned Addl. Public Prosecutor appearing for the respondent submits that minor contradictions in the evidence of the witnesses cannot be put against the prosecution, when the prosecution has established its case beyond reasonable doubt. It is the submission of the learned Addl. Public Prosecutor that non-examination of independent witnesses does not in any way discredit the material value of the evidence of the witnesses, more so when they are eye witnesses to the occurrence. Further, the mere relationship between the witnesses cannot be a ground to discredit their testimony, when their testimonies are cogent, convincing and have inspired the confidence of the trial court. It is therefore submitted by the learned Addl. Public Prosecutor that the prosecution, through oral and documentary evidence, as also



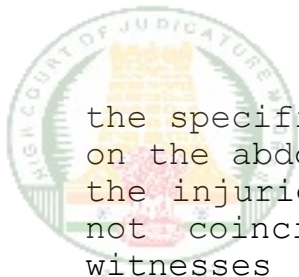
accused, which has been properly appreciated by the court below and, rightly so, convicted and sentenced the accused, which requires no interference at the hands of this Court.

17. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and also perused the evidence and the material portions of the evidence to which its attention was drawn.

18. The first and foremost ground of attack is the inter se interest of the witnesses, though the occurrence had taken place in a busy area and witnessed by independent witnesses. Whether non-examination of independent witnesses would affect the prosecution case is the pivotal question that falls for consideration.

20. A careful analysis of the evidence of P.W.s 2 and 3, coupled with the evidence of P.W.1 reveals that there are very many contradictions in their evidence. While P.W.2 had deposed that when the appellant chased him, he ran a distance of 3 feet, however, P.W.3 deposed that when the appellant chased P.W.2, P.W.2 ran for a distance of 50 to 60 feet, while P.W.1 has deposed that P.W.2 ran for a distance of 10 feet. Equally the deposition of P.W.s 2 and 3 with regard to the depth of the pit from the bridge is also intriguing. While P.W.2 has deposed that the depth is 20 feet, P.W.3 has deposed that the depth is 80 feet. The said contradiction attains much significance due to the fact that curiously, the rough sketch, Ex.P-6 does not reveal anything about the depth of the pit from the bridge. Further, the evidence of P.W.2 reveals that cases have been registered against the appellant by P.W.s 2 and 3 and he has further deposed that while he is a witness in the complaint lodged by P.W.3 against the appellant, P.W.3 deposed to the contrary stating that P.W.2 is not a witness in the case given by him against the appellant. Further, P.W.3 has categorically deposed that when the appellant threw P.W.1 from the bridge into the pit, many people including P.W.3 rushed to the place. It is more curious to note that P.W.5, the mahazar witness also is related to P.W.s 1 and 2. Though one other person, who is an independent witness, has ascribed his signature to the mahazar, yet, the prosecution, for reasons best known, thought it fit not to examine the said independent witness. The above contradictions coupled with the non-examination of independent witness, though many were said to be present at the scene of occurrence, stares at the face of the prosecution case and paints a gloomy and shady picture as to the genesis of the occurrence.

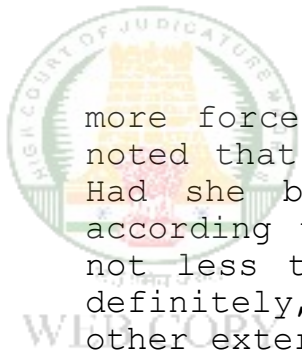
21. Not only there exists the above discrepancies in the testimonies of P.W.s 2 and 3, but their testimonies also do not coincide with the testimony of P.W.4, the doctor, who treated P.W.1 and issued Ex.P-2, accident register. Further, the testimony of P.W.1 is also at variance to the injuries found in the accident register as also the evidence of the doctor. Though it is



the specific case of the prosecution that the appellant kicked P.W.1 on the abdomen and hit P.W.1 with a stone on the chest and back, yet the injuries, as noted by P.W.4 in the accident register, Ex.P-2 do not coincide with the attack as described by the prosecution witnesses through the evidence of P.W.s 1 to 3. The doctor, in unequivocal terms, through oral as well as documentary evidence, had opined that the right leg of P.W.1 had rotated internally and that there is likelihood of fracture and had further noted in the accident register, Ex.P-2 that there are no other external injuries, but the overt acts allegedly attributed by P.W.s 1 to 3 reveal a totally different picture. The documentary evidence and the oral evidence of P.W.4 runs contra to the deposition of P.W.s 1 to 3 with regard to the overt acts attributed to the appellant and hits at the substratum of the prosecution case. In such a backdrop, it would be wholly unsafe to rely on the oral evidence of P.W.s 1 to 3 to discountenance the deposition of P.W.4 as also the accident register, Ex.P-2, which is the earliest document and a contemporaneous piece of evidence, more particularly in the face of non-examination of independent witnesses.

22. Though one injury relating to the spine, which is opined to be grievous in nature, is evidenced in the accident register, Ex.P-2, which, the prosecution, through the evidence in chief has attributed to the throwing of P.W.1 from the bridge by the appellant, however, in cross examination, it has been elicited that the said injury could also be sustained had P.W.1 met with an accident. Further, the answer elicited during cross examination relating to the said injury, which could also be sustained in an accident as well, is further strengthened by the fact that P.W.2, in cross examination, had admitted that P.W.1 had taken treatment and underwent surgery by utilising the Chief Minister's Insurance Scheme. In such a state of evidence, it will be wholly unsafe to rely on the evidence of P.W.s 1 to 3 to discredit the testimony of the doctor, P.W.4 and the documentary evidence, Ex.P-4 and necessarily this Court has to draw an adverse inference from the said evidence of P.W.2. The above answers elicited by the defence in cross also further strengthens the defence theory that the injury sustained by P.W.1 could have been sustained in an accident and not in a manner as projected to by the prosecution.

23. One other fact that stares in the face of the prosecution is that in the earliest document, Ex.P-2, the accident register issued by P.W.4, the injured complainant, P.W.1 had stated that she was pushed from the bridge, whereas the deposition of P.W.1 in Court to the effect that she was thrown from the bridge into the pit seems to be an extrapolated one, to suit the prosecution case. convenience. Even the evidence of P.W.s 2 and 3 on this aspect is the same as P.W.1. When in the earliest document, Ex.P-4, P.W.1 has categorically stated that she was pushed from the bridge by the appellant, the later deposition in court that she was lifted and

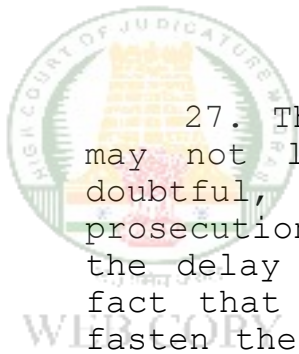


more force to the case of the prosecution. Further, it is to be noted that there were no external injuries on the person of P.W.1. Had she been thrown from the bridge into the pit, which even according to the evidence of the various prosecution witnesses was not less than 10 feet deep and the pit being strewn with stones, definitely, P.W.1 would have suffered bruises and lacerations and other external and internal injuries due to the said fall, which are conspicuously absent as is evident from the accident register, Ex.P-2. It is more curious to note that a person, who is alleged to have been hit with a stone on the chest and back and then thrown not less than ten feet below has not suffered any external or internal injuries except for the fracture to the right leg. Therefore, it is clear from the above that the deposition of P.W.s 1 to 3 runs very much counter to Ex.P-4 and it is nothing but an afterthought and an extrapolation of their evidence at the behest of the prosecution. Further, the evidence of P.W.2 that P.W.1 was operated upon in a private hospital and insurance was claimed from the Chief Minister's Insurance Scheme as an accident injury only goes further to substantiate the defence theory that the injury suffered by P.W.1 could have happened in an accident as suggested and not as projected.

24. One other crucial factor to be taken into consideration is the absence of examination of the doctor, who performed the surgery on P.W.1. It is an admitted fact that eventually P.W.1 took treatment at a private hospital where surgery was performed. However, surprisingly, no materials were produced nor any doctor was examined to establish the nature of the injury suffered by P.W.1 at the hands of the appellant/accused. Therefore, it would be wholly unsafe to rely upon the testimony of the prosecution as a whole to render a verdict of conviction.

25. The above contradictions in the evidence of P.W.s 1 to 3 as against Ex.P-2 and the testimony of P.W.4 coupled with the non-examination of any independent witness and the doctor, who treated and performed surgery on P.W.1, by the prosecution, really hits hard at the substratum of the prosecution theory, thereby, rendering it, prone to serious doubts.

26. Further, the non-recovery of material objects, viz., stone said to have been used by the appellant to attack P.W.1 and to break the motorcycle and the broken parts of the motorcycle, though at first glance may look as a minor omission, however, considering the situation in toto and against the backdrop of the above evidences, which galore with contradictions, the non-recovery of the material objects attain significance. This Court definitely is in agreement with the contention of the learned counsel for the appellant that the non-recovery of material objects is fatal to the case of the prosecution.



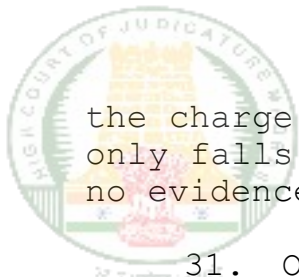
27. The delay in lodging the complaint, though, in all cases, may not lead to the inference that the prosecution theory is doubtful, yet the fact remains that the whole fabric of the prosecution theory having been shredded apart, as discussed above, the delay in lodging the complaint can only be attributed to the fact that it was an afterthought of the prosecution witnesses to fasten the alleged crime on the appellant, in view of the previous enmity between P.W.2 and the appellant. This also gets strengthened by the fact that cases have been lodged by P.W.2 and P.W.3 against the appellant and in one such case lodged by P.W.3 against the appellant, P.W.2 is cited as a witness. P.W.s 2 and 3 being known to each other relatively well, there is all probability that their testimonies have been tuned to be in consonance with each other, though their testimonies, as pointed out above, suffer with material contradictions. Therefore, it is all the more probable that the previous enmity has led to the alleged crime being fastened on the appellant, but one which on the face of evidence adduced before the Court, could not have taken place as projected.

28. On an overall analysis of the materials available on record, both oral and documentary, the inexplicable conclusion that could be arrived at is that the prosecution has miserably failed to prove the charges framed u/s 294 (b), 506 (ii) and 307 IPC. The evidence, both oral and documentary, fall much short of proving the charges framed under the above provision of law.

29. Insofar as the charge relating to Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, the said provision of law reads as under :-

"4. Penalty for (Harassment of Woman) - Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festical, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees."

30. From the evidence on record, it is clear that just because it is alleged that the occurrence had taken place on the road, near the bus stand, the offence u/s 4 has been framed against the appellant. The evidence on record is wholly insufficient, more particularly, except the witnesses stating that obscene language was used by the appellant against P.W.1, nothing relating to the obscene language used has been deposed by the prosecution witnesses. Mere stating that obscene language was used by the appellant would not be suffice to bring the charge u/s 4 of the Act. Suffice to state, as noted above, like for the charges u/s 294 (b), 506 (ii) and 307 IPC,



the charge u/s 4 of the Prohibition of Woman Harassment Act also not only falls short of evidence, but it is also clearly on the basis of no evidence.

31. On an overall appreciation of the entire materials on record, this Court is of the considered view that the non-examination of independent witnesses, the contradictions in the testimonies of P.W.s 1 to 3, the testimonies of P.W.s 1 to 3 not in consonance with the medical testimony, both oral and documentary and the delay in lodging the complaint together attribute an embellished state in the prosecution version, which leaves this Court with no other option, than to overturn the conviction and sentence passed by the court below.

32. For the reasons aforesaid, this Court finds that the judgment of conviction and sentence passed by the trial court is not on less evidence, but on no evidence and, therefore, the same deserves to be set aside by this Court in this appeal.

33. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant by the Sessions Judge, Mahalir Fast Track Court, Nagercoil, in S.C. No.73/2012 dated 13.01.2015 are set aside and the appellant is acquitted of all the charges framed against him. It is reported that the appellant is on bail. Bail bonds, if any, executed by the appellant shall stand cancelled. Fine amounts, if any, paid by the appellant shall stand refunded.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

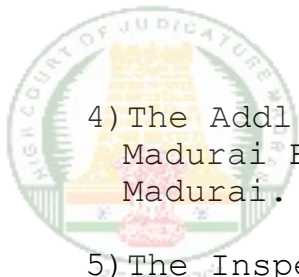
GLN

To

1)The Sessions Judge,
Mahalir Fast Track Court, Nagercoil.

2)The Judicial Magistrate,
Padmanabhapuram.

3)Thro' The Chief Judicial Magistrate,
Kanyakumari @ Nagercoil.



4) The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5) The Inspector of Police,
Thucklay Police Station, Kanyakumari District.

6) The Superintendent of Central Prison,
Palayamkottai, Tirunelveli.

7) The Inspector of Police,
Law College Police Station, Chennai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2)

+1 CC to M/s.N.DILIP KUMAR, Advocate SR-92421.

**JUDGMENT IN
CRL. A. (MD) NO. 29 OF 2015
Pronounced on 16.10.2019**

CS (24.10.2019) 11P 11C