



**BAIL SLIP**

Appellant/Sole Accused Viz., Muthuraj S/o.Mookandi was released on bail in and by the order this Court, dated 07.04.2016 made in CrI.MP(MD)No.1343 of 2016 in CRL.A(MD)No.332 of 2015

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 05.07.2021**

**DELIVERED ON : 23.12.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

**CRL.A.(MD)No.332 of 2015**

Muthuraj  
S/o.Mookandi : Appellant/Sole Accused

Vs.

State Rep. by  
Inspector of Police,  
Kadambur Police Station,  
Thoothukudi District.  
(Cr. No.3 of 2015) : Respondent/Complainant

**PRAYER:** Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records in Spl.S.C.No.11 of 2015 on the file the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi District and set aside the Judgment dated 18.09.2015 and acquit the appellant from the charges levelled against him.

For Appellant : Mr.A.Thiruvadi Kumar  
For Respondent : Mr.T.Senthil Kumar  
Government Advocate (Crl. Side)

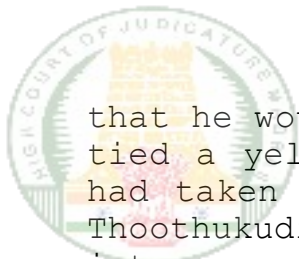
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**JUDGMENT**

This Criminal Appeal is filed to set aside the order passed by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi District in Spl.S.C.No.11 of 2015 dated 18.09.2015.

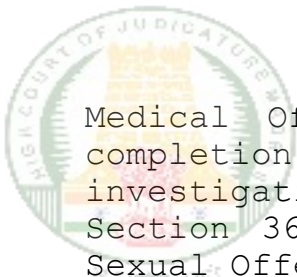
2. The brief facts, which are relevant for consideration in this appeal, as per the Prosecution, are as follows:

2(a). The victim girl was aged 16 years and was living with her parents in Elavenlangal Village. She was working in the Salt Pan at Thoothukudi. She was attending work from the house of one Esakkiammal at Boldenpura. The Accused-Muthuraj was working along with her in the Salt Pan. When both of them were working in Salt Pan, they become colleagues and friends. On 01.01.2015, when the victim girl was in her village viz., Elavenlangal, the Accused came to her house by around 9.30 p.m., induced her by deceitful means



that he would marry her and kidnapped her to Tiruchendur. There, he tied a yellow thread on her neck. The next day on 02.01.2015, he had taken the victim girl to East Kamaraj Nagar, Thalamuthu Nagar, Thoothukudi i.e., his house. There, he forcibly committed sexual intercourse with the victim girl continuously for three days. P.W-1-Rajammal-mother of the victim girl had preferred a complaint to P.W-12-Sub Inspector of Police, Kadambur Police Station on 02.01.2015, the next day of occurrence regarding the girl missing. Based on the complaint under Ex.P-1, P.W-12 had registered a case in Cr.No.3 of 2015 as girl missing under Ex.P-9. He had sent original FIR under Ex.P-9 and the original complaint under Ex.P-1 to the Court of learned Judicial Magistrate - II, Kovilpatti and the copies of the same sent to the higher officials of the Police Department including P.W-14-Inspector of Police.

2(b). P.W-14 had visited the house of P.W-1 and prepared Observation Mahazar under Ex.P-3 and Rough Sketch under Ex.P-12 in the presence of witnesses viz., P.W-5-Ramesh and examined P.W-1 and P.W-3-Parents of the victim girl and P.W-4-elder sister of the victim girl. He had examined P.W-6-Head Master of Saandroar Middle School, Kadambur where the victim girl had studied upto 6<sup>th</sup> Standard and obtained her date of birth from the School records under Ex.P-4. P.W-14 recorded the statement of P.W-6-Maria Antony Viyagulam. He had examined the elder sister of victim P.W-4-Chitra Kala @ Mahalakshmi and from her deposition, the Investigation Officer came to know that the victim had been living with P.W-4 for the past five years from the date of occurrence. P.W-4 objected to the friendship of victim with Esakiyammal and there had been quarrel between the victim and P.W-4 regarding the friendship of the victim with Esakkiyammal. Therefore, she left the house of P.W-4 and stayed with Esakkiyammal. Subsequently, the father of the victim and P.W-4 came to Boldenpuram and quarrelled with the victim and took the victim along with him to his house. She went out from the house of her elder sister and thereby, the mother of the victim lodged a complaint under Ex.P-1. Therefore, the Investigation Officer sent message to the said Esakkiyammal and Esakkiyammal in turn informed the Accused. Therefore, the Accused and the victim appeared before P.W-14-Investigation Officer. On appearance of the victim and the Accused, the Investigation Officer arrested the Accused and sent him for remand. He also secured the victim and with a request for remand of the Accused, he forwarded the Accused and the victim to the Court of the learned Judicial Magistrate with letter of request to forward them to Government Hospital to conduct medical examination regarding the age of victim and regarding commission of sexual intercourse and the potency of the Accused. Accordingly, the Accused was sent for remand by the learned Judicial Magistrate. The learned Judicial Magistrate addressed the duty Medical Officer with requisition to subject the victim and the Accused to medical examination. Based on the medical examination conducted on the victim by P.W-8-Dr.Kaleeswari, Duty Medical Officer and issued Service e-Court Register and on the Accused by P.W-13-Dr.Balaji-Duty



Medical Officer had issued Accident Register under Ex.P-11. On completion of investigation, P.W-14 had laid final report of the investigation under Section 173 of Cr.P.C., for the offences under Section 366 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.

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2(c). On receipt of the final report, the learned Sessions Judge, Fast Track Court had taken cognizance of the offences under Section 366 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012, the Accused was issued with summons and on appearance of the Accused, copies were furnished to the Accused under Section 207 Cr.P.C. After hearing the arguments of the prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi District, had framed charges against the Accused under Section 366 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered.

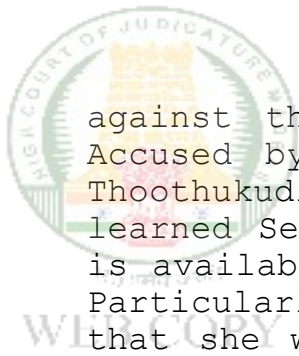
2(d). During trial, the Prosecution had examined the witnesses P.W-1 to P.W-14 and marked documents Ex.P-1 to Ex.P-13.

2(e). From the incriminating evidence available through the witnesses P.W-1 to P.W-14 and Ex.P-1 to Ex.P-13, the Accused was examined under Section 313 Cr.P.C., regarding the incriminating evidence against him. The Accused denied the incriminating evidence against him.

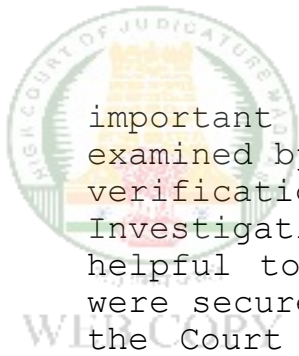
2(f). Since the Accused had not examined any witness as defence witness, the Prosecution had advanced the arguments. The defence counsel argued by way of reply to the Prosecution arguments. After hearing the arguments and on assessment of evidence of the Prosecution witnesses P.W-1 to P.W-14 and Ex.P-1 to Ex.P-13, the learned Sessions Judge, Fast Track Mahila Court had on appreciation of evidence arrived at a conclusion that the Accused is guilty to the charges framed against him. By the judgment dated 18.09.2015, the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi District had convicted the Accused for the offence under Section 366 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo Imprisonment for one year and to pay a fine of Rs.1,000/- for the offence under Section 366 of IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012, in default, to undergo one month Rigorous Imprisonment.

3. Aggrieved by the judgment of conviction and sentence of Imprisonment, the Accused had preferred this Appeal before this Court.

4. Mr.Thiruvadikumar, learned counsel for the Appellant/Accused  
<https://hcservices.courts.gov.in/hcservices/>missions, stated that the finding of guilt recorded



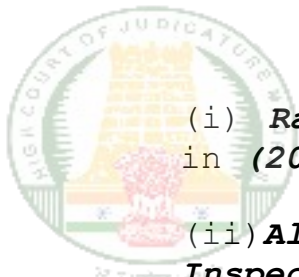
against the Accused, the conviction and sentence imposed on the Accused by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, by the Judgment dated 18.09.2015 is perverse as the learned Sessions Judge had ignored the defence of the Accused that is available in the cross-examination of the prosecution witnesses. Particularly, the victim who was examined as P.W-2, had admitted that she was teased by her father and sister, therefore, she had been staying at Esakkiyammal's home and through the evidence of P.W-4-Chitrakala-elder sister of P.W-2-victim. It is the defence of the Accused that the victim and the Accused were working in the Salt Pan in Thuthukudi and they were friends and acquaintance. In the course of friendship, the victim developed love affair with the Accused which was objected to by P.W-4-Elder Sister of victim with whom P.W-2 had been staying for past several years. Since P.W-4 objected to the relationship and friendship between the victim and the Accused, the victim left the house of P.W-4 and stayed in the house of one Esakkiyammal who was also employed in the Salt Pan. This was also objected to by P.W-4 elder sister of the victim. Therefore, P.W-4 complained to P.W-3, who is the father of P.W-2 and P.W-4. He had come over the residence of Esakkiyammal and objected to the staying of victim in the residence of Esakkiyammal. He had instructed the victim and took her away with him to their residence at Elavelangal. P.W-1 and P.W-3 - the parents of the victim were making arrangements for the marriage of P.W-2-victim within their community, Pallar community which was objected to by the victim. Therefore, she had summoned the Accused to come to their house so that she can go with him. The Accused refused the same. The victim persuaded him. The victim has threatened the Accused as well as her parents that she will commit suicide, if she is forced to marry a person against her wish. In those circumstances, on the persuasion of the victim, the Accused had gone to the village of the victim and P.W-1 to P.W-3 in the night, after 11 O' clock, when the parents of the victim retired to bed, the victim left the house under the pretext of going out to attend the nature's call. She had summoned the Accused to come to her village. When the Accused reached the village, the victim eloped with him. The victim and the Accused had come to his parents house. The house of the Accused which was a one room house and there was no bed room and his own parents and his siblings have to share the place where they lived together for three days. Based on the complaint given by P.W-1-Raja under Ex.P-1 to P.W-12-the Sub Inspector of Police, Kadambur Police Station, P.W-12 had registered the case under Ex.P-9-FIR for the offence under "girl missing" section. In the complaint itself, P.W-1 had informed all the suspicion based on the information given by P.W-4. The suspicion centered around Esakkiyammal. Based on the message given by P.W-14-Inspector of Police, Esakkiyammal had contacted the Accused whereupon the Accused and the victim surrendered before the Police Station. Thereafter, the case was cooked up based on the influence of P.W-1 to P.W-3. It is pertinent to note that the victim had stayed with Esakkiyammal which was objected by P.W-4. P.W-4-complained to their father. This Esakkiyammal is an



important witness regarding the developments, but she had not been examined by the prosecution. That gives doubt about the Prosecution verification. Wantonly Esakkiyammal was left out by the Investigation Officer. The Doctors' evidence in this case is not helpful to the Prosecution case. When the victim and the Accused were secured by the Investigation Officer, they were produced before the Court of the learned Judicial Magistrate. Before the learned Judicial Magistrate, the victim refused to go with her parents. Therefore, the learned Judicial Magistrate had ordered in stay in the Home for Women. These particulars were put to P.W-1-Mother of the victim and P.W-3-Father of victim and P.W-4-Sister of victim who had indirectly admitted those defences. In those circumstances, the learned Sessions Judge failed to appreciate the evidence available in the cross-examination regarding the valuable defence of the Accused. If, on the particular day, the Accused had refused to come to the village of the victim on the apprehension that the victim might have committed suicide, in which case also, the Accused could have been held guilty for the suicide committed by the victim. Therefore, the Accused was caught between the devil and deep sea.

5. Considering the pitiable condition of the Accused, the Accused is not guilty to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi. Even though there is evidence in the cross-examination, the same was ignored by the learned Sessions Judge and mechanically considering the presumption available under Protection of Children from Sexual Offences Act, 2012, the Accused was convicted. Only because of the Accused, the victim was saved from her attempt to end her life. But for the help of the Accused, the victim might not have been alive. The victim belongs to Pallar Community and the Accused belongs to Vannan Community. That is the only issue. If both belong to same community, the parents of the victim could have arranged for the marriage. Therefore, they had foisted the case against the Accused. When the State claims to create an ideal society without caste, creed, colour and religion, as per the constitutional ideals, the society is very much against those ideals, thereby, threatening the Accused who was in love with the prosecutrix and ready to live a decent married life. This is a glaring example of the young lovers being separated by caste by misusing the Provisions of law. Therefore, the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court and plights of the young lovers who succumbed to the evil design of the parents of the victim to separate the young couple.

6. The learned counsel for the appellant/Accused relied on the following rulings:



(i) **Ravinder Singh Gorkhi -vs- State of U.P.** reported in (2006) 2 SCC (Cri) 632.

(ii) **Alamelu and Another -vs- State represented by Inspector of Police** reported in 2011-2-L.W. (Crl.) 684.

(iii) **Smt. Mona Panwar -vs- The Hon'ble High Court of Judicature at Allahabad through its Registrar and others** reported in 2011-2-L.W. (Crl.) 698.

(iv) **Sadashiv Ramrao Hadbe -vs- State of Maharashtra and another** reported in (2007) 1 SCC (Cri) 161.

(v) **Ram Badan Sharma -vs- State of Bihar** reported in (2007) 1 SCC (Cri) 166.

(vi) **Santosh Prasad alias Santhosh Kumar -vs- State of Bihar** reported in (2020) 2 SCC (Cri) 77.

(vii) **Vijayalakshmi and Another -vs- State rep. by the Inspector of Police** reported in (2021) 1 MLJ (Crl) 494.

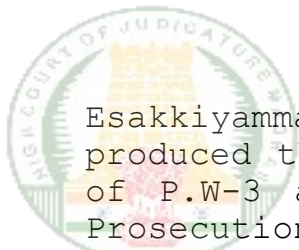
7. Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side), by way of reply to the arguments of the learned counsel for the Appellant/Accused, had submitted that the judgment of conviction and sentence of imprisonment awarded by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi is not perverse. It is as per the provisions of Protection of Children from Sexual Offences Act, 2012 and Section 366 of I.P.C., the assessment of evidence was as per the provision of Indian Evidence Act, the presumption available in cases of this nature where the general presumption regarding the innocence of the Accused is presumed to be not available as per Section 113 of Indian Evidence Act. Therefore, the Accused failed to disprove the Prosecution case. The learned Sessions Judge, Fast Track Mahila Court, Thoothukudi had in her judgment discussed elaborately, the evidence of the prosecution and the appreciation of evidence in Paragraph No.9 to 20. Not only that, in cases of this nature, particularly, offences attracting sexual assault on woman and minor girl, there will not be any independent witnesses. If the learned trial Judge believes the evidence of the victim alone, that will be sufficient to convict the Accused that is the guidelines issued to the learned trial Judges by the Hon'ble Supreme Court. Therefore, by the same guidelines, the judgment of the learned trial Judge, Fast Track Mahila Court, Thoothukudi is not perverse. Therefore, the arguments of the learned counsel for the Appellant/Accused is to be rejected. The Appeal lacks merits and is to be dismissed.



**8. Point for Consideration:**

Whether the judgment of conviction and sentence of imprisonment imposed on the accused by the learned Sessions Judge, Fast Track Mahila Court, Thuthukudi, in Spl.S.C.No.11 of 2015, dated 18.09.2015, is perverse warranting interference by this Court as Appellate Court?

9. On perusal of the evidence of witnesses P.W-1 to P.W-14 and the documents Ex.P-1 to Ex.P-13, the evidence in cross-examination of P.W-1-mother of the victim, P.W-2-victim, P.W-3-father of the victim and P.W-4-elder sister of the victim, what had been argued by the learned counsel for the Appellant/Accused is found unacceptable and unreasonable. P.W-3-Father of the victim had denied the suggestion of the defence that he had hit the victim for the development of friendship with the Accused and staying away from the elder sister's house and in the house of one Esakkiyammal who is the neighbour of P.W-4. This was vehemently denied by P.W-3 in his cross-examination. The same was suggested to P.W-1-mother of the victim. P.W-1 had admitted that when the Inspector of Police summoned Esakkiyammal and she had appeared before Kadambur Police Station. P.W-1 had admitted in her cross-examination that the caste of the Prosecution Witnesses P.W-1 to P.W-4 is Pallar Community and the Accused belongs to Vannan Community and there will not be any marriage between these two communities. P.W-1 had clearly admitted in her cross-examination that the victim was secured by the Police and produced before the learned Judicial Magistrate. As the victim refused to accompany her parents, she was sent to Home for Women where the parents of the victim used to visit daily and on cajoling the victim she came to the parents' house, was admitted by P.W-1 in her cross-examination. P.W-2-victim in her cross-examination had clearly stated that she had persuaded the Accused to come to her Village and take her along with him, otherwise she will commit suicide. Based on her instance, the Accused had come to the Village and took her to his residence. He had tied Thali in Thiruchendur Temple near the sea. She had clearly admitted that in the house of the Accused, there was only one room where five people had to share that room. Therefore, the claim of the Prosecution that on three days, she had stayed in the house of the Accused and had intercourse cannot at all be believed. The victim had clearly stated that she had gone voluntarily with the Accused because she was forced to be married within the community. Therefore, against the parents' wish, she had gone to the Accused. She had clearly stated that Esakkiyammal had produced the Accused and the victim in Kadambur Police Station. The victim had clearly stated that P.W-4-elder sister of the victim and P.W-3 -Father of the victim hit her, because of which, she was forced to stay in the house of Esakkiyammal. The father of the victim had in his cross-examination admitted that when they found their daughter missing from home, he had contacted Esakkiyammal. He had clearly denied the suggestion of the defence that P.W-4 hit the victim for staying in the house of

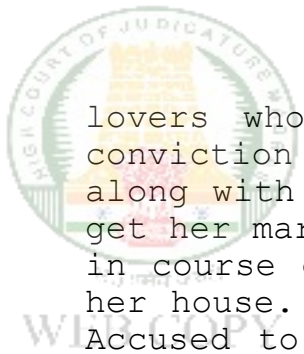


Esakkiyammal. He had denied the suggestion that Esakkiyammal only produced the Accused and the victim before the Police. The denial of P.W-3 and P.W-1 in their cross-examination will not help the Prosecution case as P.W-3 has admitted the harassment meted out by her father and elder sister. P.W-4 had clearly stated in the cross-examination that the victim went out of the house of P.W-4 to stay with Esakkiyammal. Only at the instance of P.W-4, the complaint was given to the Police as girl missing complaint and they had furnished information to the Police. Esakkiyammal knew all facts was admitted by P.W-4 in cross-examination. Therefore, the valuable defence of the Accused, as argued by the learned counsel for the Appellant/Accused, is available in the cross-examination of P.W-1 to P.W-4. Above all, the person, Esakkiyammal had not been examined as witness by the Prosecution. That gives the hint that the case had been foisted as was argued by the learned counsel for the Appellant/Accused that the prosecutrix, a 17 year old girl, who was to be married off by her parents had eloped with the Accused as she was in love affair with the accused. Since the Accused belongs to Vannan Community, the family of the victim had foisted the case is found reasonable and acceptable, considering the prevailing circumstances in the society.

10. The Rulings cited by the learned counsel for the Appellant/Accused regarding the minor who is bound to attain the majority under the earlier Act (As per the Hon'ble Supreme Court) is found acceptable and reasonable.

11. Considering the admission of P.W-2 in the cross-examination that only one room was in the house of the Accused which has to be shared by five roommates where the Accused and the victim stayed in a single room, the possibility of having sexual intercourse by the Accused in the intervening period for three days is found unacceptable and unreasonable. Further, there is no medical evidence submitted by the Prosecution that the Accused committed sexual assault on the victim in the intervening period of three days in the house of the Accused. Therefore, as rightly pointed out by the learned counsel for the Appellant/Accused, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Thiruvarur convicting the Accused for the offences under Section 366 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012, is found perverse.

12. If accepting the arguments of the learned Government Advocate (Crl. Side) that the learned Sessions Judge had on proper appreciation of evidence and in the light of the presumption available against the Accused under the Protection of Children from Sexual Offences Act, 2012 under Section 113 of Indian Evidence Act, is to be applied, then, invariably all the cases will end up in conviction which amounts to defeat the constitutional scheme of enactment of law and constitutional ideals. Whereas in this case, the case had been foisted to separate the young



lovers who belong to two different communities. Therefore, the conviction of a person who was persuaded by the victim to take her along with him to escape from the family where the family wanted to get her married in their own caste was objected to by the victim and in course of the said developments, she was desparate to go out of her house. Considering the teenage of the victim, the denial of the Accused to take her along with him thought of committing suicide for the pressure put on her to get married to a member of her own community, that cannot be considered as sufficient cause. Therefore, the Accused is found to be a victim of circumstances caught between the devil and deep sea. Either way he will face legal complications. Under those circumstances, based on the rulings of the Hon'ble Supreme Court cited by the learned counsel for the Appellant/Accused, the judgment of conviction and sentence imposed on the Accused under Section 366 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 are set aside as perverse. The arguments of the learned Government Advocate (Crl. Side) is rejected.

13. The point for consideration is answered in favour of the Appellant/Accused and against the Respondent/Prosecution. The judgment of conviction and sentence of imprisonment imposed on the accused by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi, in Spl.S.C.No.11 of 2015, dated 18.09.2015, is perverse warranting interference by this Court.

**In the light of the above discussions, this Criminal Appeal is allowed.**

The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Thoothukudi District in Spl.S.C.No.11 of 2015 dated 18.09.2015 is set aside. The bail bond executed by the appellant, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Sessions Judge,  
Fast Track Mahila Court,  
Thoothukudi District.



2. Inspector of Police,  
Kadambur Police Station,  
Thoothukudi District.

3. The Superintendent,  
Central Prison,  
Palayamkottai.

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

**COPY TO:-**

The Section Officer,  
Criminal Section, (Records)  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+1 CC to M/s.N.SUBRAMANI, Advocate ( SR-40358[F] dated 23/12/2021 )

Judgment made in  
CRL.A.(MD)No.332 of 2015  
23.12.2021

GC(03.02.2022) 10P 8C