



BAIL SLIP

Selvaraj, (49/2016 S/o. Paul, Petitioner/Appellant/Sole Accused is released on bail of this Court dated 09.03.2016 made in CRL.MP(MD).No. 2122 of 2016 in CRL.A(MD).No. 84 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**
Crl.A (MD)No.84 of 2016

Selvaraj : Petitioner/ Appellant/Sole Accused

Vs.

The State, rep by its
The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.
(Crime No.86/2012)

: Respondent/Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and to set aside the conviction and sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari District at Nagercoil in S.C.No.81 of 2013, dated 19.01.2016.

For Petitioner : Mr.S.Veilkani Raju
For Respondent : Mr.M.Muthumanikkam
Government Advocate (crl.side)

JUDGMENT

This present Criminal Appeal is filed against the conviction and sentence, dated 19.01.2016 made in S.C.No.81 of 2013, on the file of the learned Session Judge, Fast Track Mahila Court, Kanyakumari District at Nagarcoil.

2.The appellant is the sole accused. He stood charged for the offence punishable under Sections 294(b) and 307 of I.P.C. After full-fledged trial, the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari District at Nagarcoil, came to the conclusion that the appellant was found guilty under Section 307 of I.P.C, convicted and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months rigorous imprisonment. In respect to the charge under Section 294(b) of IPC, the learned Sessions Judge acquitted the accused. Challenging the said conviction and sentence, the appellant is before this Court, by way of filing the present



Criminal Appeal.

3. The case of the prosecution in brief is as follows:-

(i) PW1- Rukmani, is the mother of the injured Amala Sudha (P.W.2). The accused is her Son-in-law. The marriage between P.W.2 and the accused was solemnized in the year 2000. Out of the said wedlock, P.W.2 was blessed with a female child namely Amala Sheebha, who is P.W.3 in this case. Previous to the occurrence, while at the time the accused is in abroad, in the year of 2009, by utilizing the amount contributed by one Hemalatha, who is the eldest daughter of P.W.1 and by utilizing the amount contributed by P.W.1, P.W.2 purchased the property in her name. In the meantime, in the year of 2011, after returning to India, the accused after suspecting the character of P.W.2, regularly made a quarrel with her. During Such occasion in order to pacify the issue, P.W.1's son used to send two persons from his company to the residence of P.W.2 and apart from that, P.W.1 and the other members of her family used to go to the P.W.2's house.

(ii) On 26.02.2012, P.W.2 contacted the P.W.1 through telephone and at about 11.30 a.m she informed that her husband/accused started to quarrel with her. On hearing the news, P.W.1 along with one Ramesh and Ravi went to P.W.2's house, wherein during such time, the accused was asked the P.W.2 to convey the property to his name, which stands in the name of P.W.2. Further, the accused scolded P.W.2 by using filthy language and thereafter, with the aid of vetaruval, he cut her head, cheek and hand. Immediately, on seeing the same, P.W.1 ran into the bed room and when at the time she questioned the accused, he threatened her by showing the vetaruval. In the meanwhile, after assaulting the P.W.2 as above, the accused came from the bed room with vetaruval and ran away from that place. When Ramesh and Ravi tried to catch the accused, he threatened with vetaruval and ran out of the house. The same was witnessed by P.W.1, P.W.3, P.W.4 and P.W.7.

(iii) Immediately, after the occurrence, with the help of 108 Ambulance, the injured (P.W.2) was brought to the Sree Ram Hospital situated at Virudhunagar, wherein, at 26.02.2012 around 3.40 p.m., PW6-Dr.Ramadas treated to P.W.2 and found the following injuries:-

- 1.Laceration of occipital region of scalp (10X1.5X1.5cm), (7X1.5X1.5CM)
- 2.Laceration of mid line of scalp (6 X 1 X 1.5cm)
- 3.Laceration of neck-posterior aspect (8 X 2 X 1.5cm)
- 4.Laceration of neck-posterior aspect (15 X 5 X 5cm) with para spinal neck muscle completely cut with quadriparesis with cervical cord contusion C4-5 level with fracture of spinous process of C5 and



C6 Vertebra.

5.Laceration of right forearm postero lateral aspect
(15 X 1 X 1.5cm)

6.Laceration of right elbow-lateral aspect (8 X 1 X
1.5cm)

7.Laceration of right thumb-valor aspect PPX region
(6X1X1.5cm) with FPL injury (complete cut)

8.Laceration of left thumb-valor aspect PPX REGION
(3X1X1.5cm) with partial FPL cut.

9.Laceration of left 4th web space volar aspect
(5X1X1cm)

10.Laceration of left cheek with masseter muscle
injury (6X1X1.5cm)

11.Fracture of right lamina of C2 Vertebra

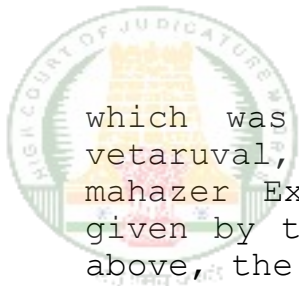
12.Fracture of right facet joint at C4-5 level.

He issued certificate under Ex.P3 stating that the injury Nos.1,2,3,5,6 and 9 are simple in nature and other injuries sustained by P.W.2 was grievous in nature.

(iv) From the hospital, P.W.6 sent intimation to the Police under Ex.P4 and after receipt of the intimation, P.W.12-Thiru.Elango, the then Sub Inspector of Police, South Thamaraikulam Police Station, on 26.02.2012 around 19.00 hours, rushed to Sree Ram Hospital, wherein he found that the injured Amala Sudha was in the stage of unconscious and hence, he returned to the Police Station. In the meanwhile, on 27.02.2012 around 00.30 hours (midnight), P.W.1 went to the police station and lodged the complaint. On receipt of the said complaint, P.W.12 registered a case against the accused in Crime No.86 of 2012 under Sections 294(b), 324 and 307 of I.P.C. The printed F.I.R was marked as Ex.P.10. After registration of the case, he forwarded the original F.I.R to the Court and forwarded the copy of the same to his Superior Officer.

(v) PW14-Thiru.Anbu Prakash, the then Inspector of Police, South Thamaraikulam Police Station, on receipt of the copy of the F.I.R, took up the same for investigation. On the same day around 6.00 a.m.,, he visited the scene of occurrence and in the presence of P.W.8 and one Thaneesh, he prepared an observation mahazar under Ex.P5. He drawn the rough sketch and the same was marked as Ex.P12. He examined the witnesses and recorded their statements. On the same day around 16.00 hrs, in the presence of P.W.10-Albert Manickaraj and P.W.9 Rakshinthampi, he arrested the accused in Puliyur Junction and recorded his confession statement. In the confession statement, the accused admitted the commission of offence and willing to identify the vetaruval, which was used to attack the P.W.2 at the time of occurrence.

(vi) Pursuant to the said confession statement, the accused brought the said team to his house and identified the vetaruval,
<https://hcservices.ecourts.gov.in/hcservices/>



which was hidden on the top of his house. After seeing the vetaruval, the same has been recovered by P.W.14 under cover of mahazer Ex.P14. The admitted portion of the confession statement given by the accused was marked as Ex.P13. After made recovery as above, the accused was sent to the remand.

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(vii) In continuation of investigation, P.W.14 examined P.W.2, P.W.3 and recorded their statements. He submitted an application under Ex.P15 before the learned Judicial Magistrate for recording dying declaration from the injured. In turn, PW13-Thiru.Rishi Roshan, the learned Judicial Magistrate No.II, Nagercoil, recorded the dying declaration of P.W.2 and the same has been marked as Ex.P11. Ultimately, after obtaining the wound certificate from the Doctor, P.W.14 he concluded the investigation and came to a positive conclusion that the accused is liable to be convicted under Section 294(b), 307 I.P.C. He filed the final report accordingly.

4. Based on the materials available on record, the trial Court framed the charge for the offence under Sections 294(b) and 307 of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 14 witnesses were examined as PW1 to PW14 and 15 documents have been exhibited as Ex.P1 to Ex.P15, besides one material object (M.01).

6.(i) Out of the above said witnesses, P.W.1 is the defacto complainant. She has stated the occurrence as after receiving the information from P.W.2, she went to P.W.2's house, wherein the accused asked P.W.2 to convey the property, which stands in the name of P.W.2. During such time, the accused after scolded the P.W.2 by using filthy language, cut her head, cheek and hand with vetaruval and thereafter, he ran away from the scene of occurrence. According to her, the said occurrence was witnessed by P.W.3, P.W.4, P.W.5 and P.W.7. She has further stated that after the said occurrence, on the day itself, in the mid night, she went to the Police Station and lodged a complaint under Ex.P1.

(ii) P.W.2-Amala Sudha is a victim/injured in the alleged occurrence. She spoken about the occurrence as, on 26.02.2012 one Sunday around 9.30 a.m., when at the time after attending the prayer, she along with her daughter (P.W.3) returned to her house, the house was locked. During such time around 10.30 a.m., the accused came there and after opening the lock, compelled her to convey the one immovable property to his name, which stands in her name. Immediately, the same was informed to her mother and in turn, her mother (P.W.1) came to her house at 02.45 p.m. It is the further evidence that during the time of occurrence, after abusing her by using filthy language, in the bed room, the accused with



the vetaruval attacked her and as a result of which, she sustained injury on her head, cheek and hand. When P.W.1 raised alarm, he threatened her and ran away from the scene of occurrence.

(iii) PW3-Selvi.Amala Sheeba, is the daughter of accused, gave evidence as during the relevant point of time, when she was in out of her house, heard the cue and cry of her mother and grand-mother. Thereafter, when she attempted to see the occurrence through window, she found that her father (accused) was with aruval and at the same time, her mother lied over in the bed with injuries. After seeing the same, she shouted as 'daddy daddy' and after hearing the same, the accused was ran away from the said place and while at the time, when she saw P.W.2, there was a injury found on her head, cheek and hand.

(iv) PW4- Thiru.Ramesh, who is the friend of P.W.1's son, spoken about the occurrence as while at the time he was in a car along with one Ravi near to IOB Bank, Thamaraikulam, heard the noise in the house of P.W.2 and afterwords, when at the time he entered into the said house, the accused came out with Aruval.

(v) PW5-Thiru.Soundar Rajan, who is a resident of Thamaraikulam, spoken about the occurrence as, on 26.02.2012 around 3.00 p.m, he saw the crowd in the house of P.W.2 and at the time, when he entered into the said house, he found the P.W.2 with multiple injuries. He has further stated that immediately after seeing the same, he arranged the Ambulance and admitted the injured in the Sree Ram Hospital.

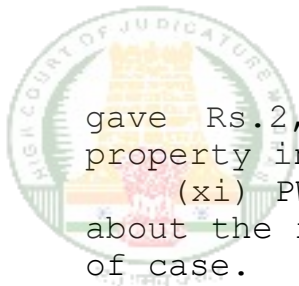
(vi) PW6-Dr.Ramadas, who treated the P.W.2, gave evidence in respect to the nature of injury sustained by P.W.2.

(vii) PW7-Tmt.Selva, who is a neighbour of P.W.2, spoken about the occurrence as during the relevant point of time, she saw a crowd in P.W.2's house and after seeing the same, he went into the P.W.2's house and found that the injured was on the bed with multiple injuries.

(viii) PW8-Thiru.Jegan had given evidence as during the time of occurrence, the Investigation Officer in this case prepared an observation in his presence.

(ix) P.W.9-Rakshinthampi and P.W.10-Albert Manickaraj are the alleged witnesses attested in the confession statement recorded from the accused as well as in the seizure mahazar prepared by the Investigation Officer. Being the reason that they were not supported the case of prosecution, after getting leave from the Trial court, they were treated as hostile witnesses.

(x) PW11- Alexander, who is a resident of South Thamaraikulam, previous to the occurrence in the year 2009, he



gave Rs.2,00,000/- to P.W.2 for the purpose of purchasing the property in her name.

(xi) PW12- Thiru.Elango, the then Sub Inspector of Police spoken about the receipt of complaint from P.W.1 and about the registration of case.

(xii) P.W.13- Thiru Rishi Roshan, the learned Judicial Magistrate at Nagarcoil spoken about the recording of dying declaration from P.W.2.

(xiii) P.W.14-Anbu Prakash, the Inspector of police had given evidence in respect to the investigation and about the filing of final report.

7.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, on his side, he examined two witnesses as DW1 and DW3 and he himself gave evidence as D.W.2.

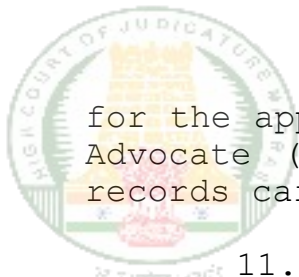
8.Out of the said witnesses, DW1-George Manohara, who is the mediator arranged the marriage of accused with P.W.2 gave evidence as after solemnizing the marriage between P.W.2 and the accused, the accused went away from India and working in Abroad. He has further stated that in the year 2011, when at the time he came to the occurrence village, somebody had informed that P.W.2 is having illicit relationship with one Alexander and thereby, she was driven away from her husband's house. It is the further evidence given by D.W.1 that when the illicit relationship of P.W.2 was informed to the Doctor, wherein P.W.2 was working as a staff, he refused to interfere with the family matters of P.W.2. According to him, in the year 2011, the accused Selvaraj after resigning the job in abroad, returned to India.

(ii) D.W.2 Selvaraj being the accused in this case, gave evidences as at the time of occurrence along with D.W.3, he went to Thiruvananthapuram and Kochi for enquiring about the Visa.

(iii) D.W.3-Poovendran, has also gave a similar evidence as during the time of occurrence, he along with the accused went to Thiruvananthapuram and Kochi for arranging the Visa.

9.Having considered all the above and on considering the arguments advanced by the learned counsel appearing on either side, the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari District at Nagercoil, came to the conclusion that the accused is found guilty under Section 307 of IPC, convicted and sentenced as stated in paragraph No.2 of this judgment. Aggrieved by the said conviction and sentence, the appellant/accused is before this Court with this appeal.

<https://hcservices.ecourts.gov.in/HCServices/> I have heard Mr.M.Veilkani Raj, learned counsel appearing



for the appellant/accused and Mr.M.Muthumanikkam, learned Government Advocate (crl.side) appearing for the State and also perused the records carefully.

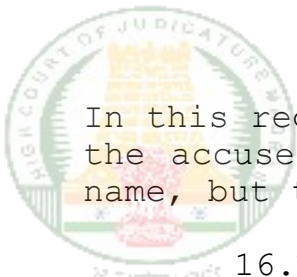
11.The learned counsel appearing for the appellant would contend that in view of the evidence given by P.W7, who is the eye-witness to occurrence, the police officer came to the occurrence place at 3.00 pm itself and therefore, it cannot be held that the present case has been registered upon the complaint given by P.W.1. In this regard, the variation found in the evidence given by P.W.1 and P.W.7 created a doubt whether the alleged FIR has been registered as per the version stated by P.W.1. He has further submitted that the evidence given by P.W.1, P.W.3 and P.W.4 are having lot of contradictions and therefore, it cannot be held that the prosecution has proved his case beyond reasonable doubt. The further submission of the appellant is that P.W2 gave evidence as she saw the P.W1 and P.W3 in the hospital alone and therefore, it cannot be held that both P.W1 and P.W3 would seen the occurrence.

12.The another submission made by the learned counsel appearing for the appellant is that the evidence given by D.W3 would clearly narrate that during the time of occurrence, the accused and D.W.3 was in Thiruvananthapuram and therefore, it cannot be held the alleged occurrence narrated by P.W.2 is a true one. Accordingly, he prayed to allow the appeal by setting aside the conviction and sentence.

13.Per contra, the learned Government Advocate(crl.side) appearing for the respondent Police would contend that, even assuming that the evidence given by P.W1 and P.W3 are not having much significance, the evidence given by P.W2/injured is in respect to the injury sustained by her is in correspondence with the evidence given by the Doctor, who treated P.W2, the same is sufficient to accept the case of prosecution with entirety. It is the further submission made by the learned Government Advocate (crl.side) is that the plea of the alibi taken by the accused has not been proved by producing substantial documents and the same is fatal to the defence. According to him, interference of this Court in the finding arrived at by the trial Court does not require any modification. He prayed to dismiss the appeal.

14.I have considered the rival submissions made by the learned counsel appearing on either side.

15.It is an admitted case of the accused that after the marriage, he went to abroad and returned to the India, only in the year 2011, before that, in the year 2009, by utilizing the amount, which was earned by him in abroad, a property has been purchased in India in the name of P.W2. On the other hand, it is case of the prosecution that the said property has been purchased by P.W2 by



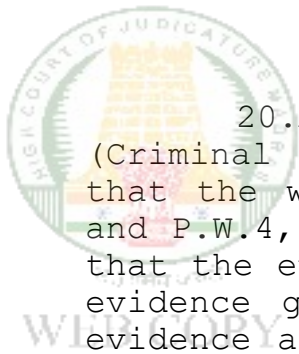
In this regard, both P.W.2 and the accused having a dispute, wherein the accused compelled the P.W.2 to convey the said property to his name, but the same was refused by P.W.2.

16. Now, on going through the evidence let in by P.W.1 to P.W.3, it seems that in the above referred circumstances, the accused regularly made quarrel with P.W.2. In otherwise, the evidence given by them narrate the fact that on the date of occurrence, due to the result of wordy altercation, the accused took the vetaruval and attacked the P.W.2. Therefore, it could be held that without any intention to kill the P.W.2, the accused had attacked the P.W.2. On the other hand, the accused, who is an educated person, attacked his wife with aid of vetaruval on the head and cheek, shows that he is having the knowledge that if his wife is attacked by means of vetaruval on the head, it would likely to cause death of the said person. Therefore, the said act narrated by P.W.2 is within the ambit of Section 307 of I.P.C.

17. It is the submission made by the appellant's counsel that P.W.1, P.W.3 and P.W.4 are the chance witnesses and they have not seen the occurrence as alleged by the prosecution. In this regard, on going through the evidence given by P.W.1 in her chief examination, she has clearly narrated the occurrence as only with the aid of vetaruval, the accused attacked his wife. In otherwise, in her cross examination, she gave evidence that after consulting her relatives, she took the decision for lodging the complaint against the accused, in otherwise, she did not say that she went to the hospital along with the injured.

18. In the said circumstances, even assuming that the evidence given by P.W.1 is a false one, considering the fact that the evidence given by P.W.2 in respect of attack made by the accused, is fully in consonance with the evidence given by the Doctor, this Court cannot hold that the story projected by the prosecution is false one.

19. Before the trial Court, P.W.3, who is the daughter of the accused, gave evidence as while at the time of seeing her father through window, her mother lied over on the bed with injuries. The said evidence shows that she has not seen the attack made by the accused. In otherwise, as per her evidence, during the relevant point of time, the accused alone to be found along with the injured and therefore, it is for the accused to show under what circumstance P.W.2 sustained injury. Similarly, P.W.4 has also stated as when at the time she went inside the P.W.2's house, the accused came out with aruval. The said evidence also reveals the fact that P.W.4 has not witnessed the occurrence. On the other hand, the said evidence is sufficient to hold that during the time of occurrence, the accused was found available with the injured and in the said situation also, it is for the accused to explain the situation under what circumstances P.W.2 sustained injury. In this regard, there was no explanation offered on the side of the accused.



20.As rightly pointed out by the learned Government Advocate (Criminal side) appearing for the respondent Police, even assuming that the witnesses examined on the side prosecution as P.W1, P.W3 and P.W.4, are not eyewitnesses to the occurrence, being the reason that the evidence given by P.W2 /injured is in consonance with the evidence given by the Doctor, I am of the opinion that the said evidence alone is sufficient to accept the case of the prosecution as the accused, while at the time of occurrence, attempted to kill his wife.

21. It is the stand taken by the defence that during to the time of occurrence, the accused was not in the occurrence place. In this regard, D.W.2 and D.W.3 had given evidence as during the relevant point of time, both of them went to Thiruvananthapuram and Kochi for arranging Visa to P.W.2. Therefore, after taking such defence, it is for them to prove the same by producing substantial evidence.

22.At this Juncture, it would be relevant to see Section 106 of Indian Evidence Act. The plea of alibi postulates physical impossibility of the accused at the scene of the offence by reason of his presence at some other place. The plea can succeed, only if it is shown that the accused was so far away at the relevant time that he could not be present at the scene of occurrence. In this regard, in the case of **Dudh Nath Pande Vs The State of U.P.** reported in **AIR 1981 SCC 911**, wherein, our Hon'ble Apex Court has held as follows:-

'The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed. The evidence of the defence witnesses, accepting it at its face value, is consistent with the appellant's presence at the Naini factory at 8-30 A.M. and at the scene of offence at 9.00 A.M. So short is the distance between the two points. The workers punch their cards when they enter the factory but when they leave the factory, they do not have to punch the time of their exit. The appellant, in all probability, went to the factory at the appointed hour, left it immediately and went in search of his prey. He knew when, precisely, Pappoo would return after dropping Ranjana at the school. The appellant appears to have attempted to go back to his work but that involved the risk of the time of his re-entry being punched again. That is how he was arrested at about 2- 30 P.M. while he was loitering near the pan-shop in front of the factory. There is no truth in the claim that he was arrested from inside the factory.

That settles the issue of guilt. We agree with the



view of the High Court and the Sessions Court and uphold the appellant's conviction under section 302 of the Penal Code.''

Accordingly, onus to prove alibi is on the accused as it is a matter within his special knowledge. Plea of alibi when taken by an accused must be conclusively proved by him. It is for the accused to substantiate and make it reasonably probable. Accused pleading alibi must lead evidence to show that he was so far off at the moment of the crime from the place when the offence was committed that he could not have committed the offence. For example, if the accused takes the plea that at the relevant time he was in hospital, it should be necessary on his part to show the entries made in the hospital.

23. Accordingly, though it was stated by D.W.2 and D.W.3, as they were not available at the time of occurrence in the occurrence place, in order to substantiate the same, he has not produced any relevant document, the trial Court while at the time of disposing the case, had also come into the same conclusion that the accused has taken a false plea and the same is sufficient to hold that the accused herein committed the present offence. Accordingly, the stand taken by the accused are all not in the form of disbelieving the case of the prosecution and therefore, the judgment rendered by the trial Court is with full of reasoning and accordingly, I am of the opinion that during the time of occurrence, the accused with the knowledge that if he attacked P.W2 with vetaruval, it may be sufficient cause to sustain multiple grievous injuries to P.W.2 and lead to the death of P.W.2, had committed the offence. Hence, the appellant is liable to be convicted under Section 307 I.P.C.

24. In the light of above discussions stated supra, this Criminal Appeal is dismissed by confirming the conviction and sentence, dated 19.01.2016 by the learned Sessions Judge (Fast Track Mahila Court), Kanyakumari District at Nagarcoil in S.C.No.81 of 2013. The period of imprisonment already undergone by the appellant shall be given set off under Section 428 Cr.P.C. Bail bond, if any, executed by the appellant shall stand cancelled. The trial Court is directed to secure the appellant and commit him to prison for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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To:-

- 1.The Sessions Judge, (Fast Track Mahila Court),
Kanyakumari District at Nagarcoil.
- 2.The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.
- 3.The Principal Sessions Judge (FTC)
Kanyakumari at Nagercoil.
- 4.The Superintendent, Central Prison,
Palayamkottai.
- 5.The Chief Judicial Magistrate
Kanyakumari.
- 6.The Judicial Magistrate No III,
Nagercoil.

Copy to

- 1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 2.The Section Officer, (2C)
Criminal Section records,
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No.84 of 2016
23.09.2021

SRK (CO)
KB(15.11.2021) 11P 10C