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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.220 of 2016

Manikandan @ Mani

.. Appellant/Accused

Vs.

State by:

Inspector of Police,
Tiruvarur Town Police Station,
Tiruvarur
Tiruvarur District.
(Cr.No.449/2012)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the Judgment and conviction passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Court) Thiruvarur in S.C.No.113 of 2014 dated 24.07.2015 convicting the Appellant/Accused for the offence under Section 376 of IPC and sentencing him to undergo R.I. for a period of seven years and to pay a fine of Rs.5000/- in default to undergo Rigorous Imprisonment for a period of six months.

For Appellant : Mr.S.Sathia Chandran

For Respondent : Mr.S.Balaji (Crl.Side)
Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal has been preferred against the Judgment and Conviction dated 24.07.2005 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Court) Thiruvavur in S.C.No.113 of 2014 dated 24.07.2015 convicting the Appellant/Accused for the offence under Section 376 of IPC and sentencing him to undergo R.I. for a period of seven years and to pay a fine of Rs.5000/- in default to undergo Rigorous Imprisonment for a period of six months.

2. The facts as revealed from the prosecution witnesses and other materials are as under :

i) On 18.8.2012, at about 11.00 pm, a complaint, Ex.P1 came to be filed by one Thiagarajan (PW1) contending that himself and his wife had gone to a temple on 18.8.2012 leaving their daughter Mahalakshmi (the deceased) at home and when they were on their way back to home after worshipping, one Mani son of Ekambaram (accused) had informed them that their daughter had committed suicide by hanging by herself and he had admitted her in a private hospital and accordingly, they rushed to Thiruvavur Medical Centre where, they were informed by the Doctor that their daughter died and thereupon, they have taken their daughter to the



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Government Hospital, Thiruvarur in an ambulance where, the Doctor, who was on duty, had declared that their daughter was brought dead and made arrangements for keeping the body in mortuary and thereby, PW1 had sought to conduct enquiry and take action for the death of their daughter.

ii) The Special Special Sub Inspector of Thiruvarur Town Police Station (PW11), on receipt of the complaint, registered the same in Crime No.449 of 2012 under Section 174 Cr.P.C. in F.I.R. - Ex.P6. On 19.8.2012, PW1 had handed over the dead body to the relatives on completion of the post mortem and submitted the case records to the Inspector of Police, Vadapathimangalam, who was in charge of the Station.

iii) The Inspector of Police, P.W.12, who took the case for investigation, visited the scene of occurrence on 19.08.2012 at 6.00 am and prepared observation mahazar (Ex.P2) and Rough Sketch (Ex.P7). Thereafter, he had examined the witnesses viz., Murugan (PW9) and Manirao and recorded their statements. On the same day, P.W.12 had conducted inquest in the presence of Panchayatars and Ex.P8 is the inquest report. PW12 had sent the dead body for post mortem by deputing PW11. Thereafter, he had examined P.W.1 to P.W.9 and recorded their statements.



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iv) PW1 being the father of the deceased deposed that he alongwith his wife had visited to a temple on the date of occurrence viz., on 18.8.2012 and while returning from the temple, the accused had informed them that their daughter had committed suicide and had admitted her in a private hospital and by arranging an auto for them, he had asked them to go to Thiruvarur Medical Centre and accordingly, they rushed to the said hospital where, they were informed that their daughter died and thereafter, they took her to the Government Hospital where also, she was declared dead. He further says that thereafter, they returned to their home and on the next day, he had lodged the complaint, Ex.P1.

v) PW2 is the brother of the deceased. He speaks in his evidence that he is staying at Nagapattinam and is working in a Hotel. His evidence is that on 18.8.2012, he went for his duty and on return, he came to know about the death of his sister by 10.00 pm and thereupon, he went to see her and since the dead body was kept in mortuary, he could see it only on the next day. His further evidence is that a few days prior to the occurrence, his mother and her sister-deceased had come to his house and her sister took him away from their mother and informed that the accused had been teasing her when she goes to college and giving trouble to marry him for which, PW2 had pacified her by saying that he would resolve it by



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conveying the same to the parents of the accused. He also speaks in his evidence that fifteen days prior to that, the accused himself had informed him that he is in love with the deceased and requested him to arrange for the marriage, to which he has not cared.

vi) PW3 is a hearsay witness, who deposes about the information given by PW2 that the accused used to give trouble to the deceased.

vii) PW4 is another hearsay witness. His evidence is that he came to know through another neighbour Kamala (PW6) that the accused used to give trouble to the deceased and due to that only, she had committed suicide.

viii) PW5, Bhuvaneswari, another neighbour of the deceased speaks in her evidence that on the date of occurrence viz., on 18.8.2012, she was informed by the parents of the deceased that they were going to temple and requested her to take care of the deceased. She says that when she went to pick up her children, who were playing near the house of the deceased, she noticed footwear near the door of the house of the deceased and thereupon, she had looked into the house of the deceased as one of the doors was opened and found that the accused was threatening her to marry him as he loves her. On noticing the same, PW5 had reprimanded the



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accused and asked him to leave the house of the deceased. The further evidence of PW5 is that the deceased had informed her that this is the way in which the accused used to give trouble to her. PW5 further speaks in her evidence that at around 7.00 pm on that day, the accused had knocked the door of her house and informed her that the deceased had hanged herself with saree and on his request for help, PW5 went to the house of the deceased and on opening of the door of the house of the deceased, PW5 found the deceased hanging and thereupon, she went to call Kamala and when both of them had once again rushed to the spot, the accused had descended the body and was holding in his hands and then, he had picked up an auto in which, PW5 had sent the victim-Mahalakshmi with PW6-Kamala, PW7-Sathya another neighbour to the hospital for treatment and she had come to know that on the way to hospital, the victim died.

ix) PW6-Kamala, a neighbour of the deceased and also a relative to the deceased. She speaks in her evidence that the deceased had complained her about the teasing and compulsion made by the accused to the deceased to marry him. She speaks in her evidence in correlation with the evidence of PW5.

x) PW7, another neighbour of the deceased speaks in her evidence about her assistance rendered in taking the deceased in auto-



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rickshaw to the hospital. She speaks about the trouble given by the accused to the deceased to marry him as the alleged cause for the suicide committed by the deceased as a hearsay witness.

xi) PW8 is the auto driver, who speaks about his part in picking up the deceased alongwith neighbours to the private hospital for treatment and the declaration of the Doctor that the victim died.

xii) PW9 is a mere witness to the observation mahazar. He speaks in his evidence that he does not know both deceased and the accused.

xiii) After enquiring the prosecution witnesses and on coming to an inference that the victim Mahalakshmi had committed suicide due to the abetment of the appellant, P.W.12 had altered the case from Section 174 Cr.P.C. to Section 306 IPC and Ex.P9 is the alteration report. Thereafter on the same day, at 16.00 hours, he had arrested the accused and sent him to judicial custody. Thereafter, he had recovered M.O.'s 1 to M.O.3 under Form 95 and sent them to Chemical Analysis and thereafter obtained Serological Report (Ex.P10). On completing the preliminary enquiry, P.W.12 handed over the case file to P.W.13 – Inspector of Police for further investigation.

xiv) P.W.13. once again examined the witnesses examined by



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P.W.12 and recorded their statements. Thereafter he examined P.W.10, the Doctor, who conducted post mortem. Ex.P3 is the post mortem report and Ex.P4 is the Viscera Report. He has also examined the Forensic Expert and Scientific officer and obtained report from them.

xv) P.W.10 is the Doctor, who conducted autopsy on the body of the deceased. He deposed that on 19.08.2012 while he was on duty at the request of the Investigating officer had conducted autopsy on the body of the deceased at 12.45 P.M. and on external examination he found ***Rigor mortis present on four limbs. 6X2x0.5 cm, linear oblique ligature mark on the left side of neck between the angle of mandible and hyoid bone. Hyoid bone was found intact. Multiple tiny abrasions present over the skin of the perineal body near the anus. Vagina, freely admits two fingers with altered blood. Fresh paraurethral tear of 4x3x1 cm., involving right lateral vaginal wall present. Laceration of 2x1x1 cm, in left lateral Vaginal wall Laceration of 2x1x1 cm, in fourchette.*** On internal examination, found that ***heart, lungs, livers, Spleen, kidney, spinal cord normal. Stomach contained rice with keera about 250 ml. Uterus found altered blood about 10 ml., endometrial cavity present. Both tubes and ovaries normal. Skull, Brain/Membrane, normal and intact. Viscera sent for chemical analysis. No poison or alcohol***



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declared. He had issued post mortem certificate- Ex.P3, Viscera Report- Ex.P4 and Biological Report- Ex.P5 and had given the following opinion :

“The deceased would appear to have died of Hanging due to carotid sheath compression – vagal Inhibition death.”

xvi) After examining several witnesses and obtaining various reports, the Investigating Officer (P.W.13) completed the investigation and filed final report and the same was taken on file in P.R.C.No.15 of 2014 before the learned Judicial Magistrate, Thiruvavarur for the offence punishable under Section 306 IPC against appellant/accused, viz., Manikandan and the copies of the case materials and documents were furnished to the accused.

xvii) On considering the case materials and documents, the learned Judicial Magistrate, Thiruvavarur has come to the conclusion that the case is exclusively triable by the Court of Sessions and committed the case to the Principal Sessions Judge, Tiruvavarur, who, in turn, made over the case to the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruvavarur in S.C.No.113 of 2014 for trial.

xviii) On appearance of the accused and considering the materials and documents available on record and after hearing submissions made by the prosecution and the accused, the Trial Court



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found *prima facie* materials against the accused for offence punishable under Sections 306 and 376 IPC and accordingly framed charges against the accused/Appellant under Section 306 IPC and 376 IPC. When questioned, the accused pleaded not guilty and sought to be tried.

xvix) To prove the case, the prosecution examined 13 witnesses as P.Ws.1 to 13, marked 10 exhibits as Exs.P1 to P10 and produced three Material Objects as M.O.1 to M.O.3. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, he denied the same. On behalf of the accused, no witness was examined and no exhibit was marked.

xx) After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 24.07.2015 in S.C.No.113 of 2014, acquitted the Appellant under Section 306 IPC, but convicted him under Section 376 IPC and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for 6 months.

3. Challenging the judgment of conviction and sentence, the appellant is before this Court.

4. Mr.Sathia Chandran, learned counsel appearing for the

Appellant, assailing the conviction and sentence made the following



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submissions:-

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i) The Trial Court has committed an error in convicting the appellant for the offence punishable under Section 376 IPC when there is absolutely no material or evidence even of the slightest nature against the appellant.

ii) The Trial Court has grossly erred in framing additional charge against the appellant for offence punishable under Section 376 of IPC without there being any material evidence when the Appellant was originally charge sheeted for offence punishable under Section 306 IPC.

iii) The Trial Court, while rightly acquitting the Appellant from the Charge under Section 306 IPC misled itself in proceeding with the case by convicting the appellant for the offence punishable under Section 376 IPC even when the materials found in the Charge Sheet do not support such a charge.

iv) The Trial Court had failed to appreciate rudimentary principle of criminal law that when there is no allegation of rape by any of the witnesses examined by the prosecution, the mere mentioning by the Medical Officer, PW10 with regard to certain injuries on the private part of the deceased would, by itself, not establish that the deceased was subjected to rape.



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v) The Trial Court has given undue importance to the evidence of P.W.10, Doctor, which would, in no way, prove the charge of rape of the deceased by the appellant.

vi) The Trial Court has failed to appreciate the evidence of P.W.10 in proper perspective, where it has been clearly admitted in the cross examination that there was no mention of presence of semen in the Biological Report; the age of injury was also not mentioned and that the injuries on the deceased do not categorically point out whether it was sexual assault or not. The overall evidence of P.W.10 does not categorically conclude that the deceased was subjected to sexual assault prior to her death and hence convicting the appellant by the Trial Court for the offence punishable under Section 376 IPC is highly erroneous.

vii) When P.W.12 and 13 the Police Officers, who have conducted the investigation, had categorically admitted that none of the witnesses they have interrogated had alleged that the victim was subjected to sexual assault, the Trial Court erred in finding the accused guilty for the offence punishable under Section 376 IPC, which is nothing but perversity of justice.

viii) Even as per the prosecution, it is the appellant, who had made sincere attempts to save the life of the deceased by taking her to a



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nearby hospital, where she was declared as brought dead and hence the conduct of the appellant would prove only his innocence.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that originally the respondent had laid charge sheet for the offences punishable under Section 306 IPC and at the time of framing of charges, the Trial Court, on finding that there was injuries on the private part of the victim, had altered the charges by adding an additional charge for the offence punishable under Section 376 IPC and the Trial Court, taking into consideration the evidence of P.W.10 Doctor, who had conducted the post mortem and also taking into consideration the injuries found on the private parts of the deceased and the evidence of P.W.5, who had lastly seen the appellant in the house of the victim, has found the appellant guilty for offence under Section 376 IPC. However, he would fairly submit that other than the evidence to the effect that the appellant was compelling the victim to marry him, P.W.5 had not spoken anything about commission of violence by the appellant on the victim.

6. In reply, Mr.S.Sathia Chandran, learned counsel appearing for the appellant submitted that the injuries found could be due to so many other factors and though the Doctor, PW10 has stated that there were





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proposal, on 18.08.2012 at about 6.30 pm, when P.W.1 and his wife had gone to the temple and the deceased was alone at home, the accused had entered into the house of the victim and threatened her that she should marry him as he loves her or else he would not let her peacefully and compelled her to tell her decision on the same day. The above incident said to have been witnessed by Bhuvaneswari- P.W.5. She warned the accused and sent him out and in continuation of the same, at 7.00 pm, the victim, having been mentally depressed, had committed suicide by hanging with a saree from the ceiling fan. Originally, final report was filed by the respondents for offence punishable under Section 306 IPC. However, the Trial Court relying on Ex.P3 altered and added the charge to Sections 376 IPC and 306 IPC and on completion of Trial, convicted the appellant/accused for the offence punishable under Section 376 IPC while acquitting him of the charges under Section 306 IPC.

10. On analysis of the evidence of the prosecution witnesses, it is seen that except P.W.5, who is said to be the neighbour of the deceased and alleged to have seen the appellant and the deceased together on the date of occurrence, no independent witness has been examined on the side of the prosecution to point out the guilt of the accused.

11. The evidence of PW5 is also to the effect that on the date of



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occurrence viz., on 18.8.2012, she was requested by the parents of the deceased to take care of her daughter as they were going to a temple and after some time, when she had entered into the house of the deceased, she had seen the appellant inside the house compelling her to marry him and on hearing this, P.W.5 had interfered and criticized the accused for his behaviour towards the deceased in the absence of her parents and the deceased had also appealed to her that the accused used to trouble her in such a way. Other than that nothing has been spoken by PW5 about the involvement of the appellant in attempting to commit rape or sexual assault on the deceased.

12. Peculiarly, in the complaint lodged by P.W.1 there is not even a single averment that the appellant had either harassed the deceased or committed rape on her. He has not made any such allegation even during the course of his examination as P.W.1. P.W.2, the brother of the deceased has stated that he came to know through his sister the deceased that the appellant had been harassing her, however, in his cross examination, he had stated that he had not lodged any complaint about such harassment to the police or he has not complained about the same even to the parents of the appellant or to the any important persons in the

village.



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13. Therefore, virtually, no independent witness has been examined by the prosecution to prove its case that the appellant had either abetted the deceased to commit suicide punishable under Section 306 IPC or committed rape or sexual assault on the deceased or attempted to commit such an offence punishable under Section 376 IPC. Whiles, the Trial Court, surprisingly, framed additional charge against the appellant for the offence punishable under Section 376 and while acquitting the appellant from the charges under Section 306 IPC, had convicted him for the offence under Section 376 IPC, relying on its own perception of medical evidence.

14. The appreciation of evidence of PW10, the Doctor, who conducted the post mortem, appears to be the basis for the conviction rendered by the Trial Court. However, it is relevant to note that P.W.10, during his cross examination, had admitted that no spermatozoa was detected as evidenced by the Biological Report, Ex.P5. He also admits that he had not specified the age of the injuries found on the private parts of the deceased and on the basis of such injuries, it could not be conclusively opined that the deceased could have been raped.

15. Further P.W.12 and P.W.13 , the investigating officers who

had conducted the investigation, have also, in the cross examination,



deposed that none of the witnesses had spoken anything about sexual assault being committed on the deceased. Despite the above aspects, the appellant had also not been subjected to potency test.

16. Such being the scenario, it seems that the Trial Court had tried fishing for evidence against the appellant for the offence punishable under Section 376 when, it is not at all the case of the prosecution. Merely relying on the medical evidence to the effect that some injuries were found on the private parts of the deceased, the age of which was also inconclusive, the Trial Court, ignoring the other hypotheses tried to be projected by the defence, had proceeded to frame additional charge for the offence punishable under Section 376 IPC and convict the appellant thereupon based on assumptions and presumptions.

17. Of course, the court has power to change or alter the charge. Section 216 Cr.P.C. empowers the court in this regard. The relevant provision is extracted hereunder for ready reference.

"216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.



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(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

18. Though the court has got power to alter or frame additional



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charge, it must be done on the materials available viz., complaint or FIR or any material brought on record during the course of trial and it cannot be done arbitrarily. In ***Anant Prakash Sinha alias Anant Sinha vs. State of Haryana and another*** (2016) 6 SCC 105, it has been held by the Apex Court as under:-

"18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if



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subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC."

19. It is an unfortunate case of the death of a lass. PW10, the Doctor, who conducted autopsy, has conclusively given opinion that it is a case of suicide by hanging. The prosecution has also filed the final report for the offence under Section 306 IPC and that alone is the case of the de facto complaint and the witnesses. The entire prosecution case itself is that the appellant had compelled the deceased to marry him and an inference is tried to be drawn that such a compulsion was the cause for the deceased to commit suicide. The Trial Court, while rejecting the case of the prosecution with regard to inference of abetment to commit suicide, without there being even a single piece of evidence for offence under Section 376 IPC, had proceeded to frame additional charge under Section 376 IPC and convicted the appellant thereunder. The additional charge had been framed wrongly construing and placing reliance on Ex.P3, the post mortem report, when the author of the document viz., PW10 himself had admitted that he could not, with certainty, state about the reasons for



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the injury found on the vagina and he could not conclusively opine it to be a case of rape. From the evidence and materials available, this court is of the opinion that the Trial Court has come to the conclusion not based on any legally acceptable evidence but, based on mere assumptions and presumptions, which are not well founded. The finding of the Trial Judge is not corroborated by any reliable evidence, especially, when the medical evidence does not support the case of rape.

20. It is trite law in criminal jurisprudence that burden is on the prosecution to prove the case beyond reasonable doubt. In **Narender Kumar vs. State (NCT of Delhi)** (2012) 7 SCC 171, it has been held as under:-

" in a case of rape, the onus is always on the prosecution to prove, affirmatively, each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case, the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the



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court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt."

21. In the case on hand, as indicated above, the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubt, however, the Trial Court, based on presumptions and assumptions, without any legal evidence, convicted the accused which is liable to be set aside.

22. In view of the aforesaid reasoning, this Criminal Appeal stands allowed and the order of conviction and sentence passed by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruvarur, dated 24.07.2015 in S.C.No.113 of 2014 is set aside. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed, if any, shall stand discharged.

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A.D.JAGADISH CHANDRA, J.

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To

- 1.The Sessions Judge,
Magalir Neethimandram,
(Fast Track Mahila Court)
Tiruvarur.
- 2.The Inspector of Police,
Tiruvarur Town Police Station,
Tiruvarur,
Tiruvarur District.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.A.No.220 of 2016

16.06.2022