



CrI.A(MD) No. 477 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.09.2023

Pronounced on : 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.477 of 2016

A.Rajkumar

.. Appellant

Vs.

The Deputy Superintendent of Police
Thakkalai,
Arumanai Police Station,
Kanyakumari

...Respondent

PRAYER : Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the conviction and sentence against the appellant in S.C.No.25 of 2003, by the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil, dated 23.11.2016 and acquit the appellant.

For Appellant

: Mr.R.Diwakaran

For Respondent

: M/s.M.Aasha

Government Advocate(Crl.Side)



JUDGMENT

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This Criminal Appeal has been preferred as against the judgment and conviction dated 23.11.2016, passed in Sessions Case No.25 of 2003 by the learned Sessions Judge, Fast Track Mahila Court, Kanyakumari at Nagercoil, wherein, the Trial Court has convicted the accused for the offences under Sections 498A and 304B I.P.C read with Section 4 of the Dowry Prohibition Act. In the Trial Court, the appellant was arrayed as the first accused and the brother of the first accused viz., Kanagaraj was arrayed as the second accused. During pendency of the case, the second accused died and charges abated against him.

2. The prosecution case is that the first accused got married to deceased Viji@Raj Kokila. The second accused is the brother of first accused. The marriage between the first accused and the deceased Viji@Raj Kokila was solemnized on 04.09.1997. At the time of marriage, a sum of Rs. 1,50,000/- and 25 sovereigns of gold jewels were presented as dowry and also 20 cents of land was given to the first accused. After the birth of two children, the first accused demanded Rs.1 lakh and 15 sovereigns of gold



jewels from the deceased Viji@Raj Kokila through her parents. The said demand of dowry was informed to the parents of the deceased. When the same was questioned by the parents of the deceased, the first accused told them that if their daughter has to live happily, they have to pay the demanded dowry. Due to continuous harassment made by the first accused, the deceased committed suicide on 12.05.2001 at about 9.30 p.m by self immolation. Thereafter, the deceased was taken to various hospital whereas lastly, she was admitted in Trivandram Medical College & Hospital, but, on 13.05.2001 at about 8.45 a.m, she died in the hospital. Thereafter, the father of the deceased/P.W.1 has given a complaint before the police and the P.W.16 has registered a First Information Report/Ex.P10 in Crime No.460 of 2001 and thereafter, P.W.17 has investigated the case and P.W.18 further investigated the case and filed a Final Report as against the accused for the offences under Sections 498A and 304B I.P.C read with Section 4 of the Dowry Prohibition Act.

3. After filing of the Final Report, the copies of records relied on by the prosecution were furnished to the accused under Section 207 Cr.P.C.



Thereafter, the case was committed to the Sessions Court, Kanyakumari at Nagercoil and the Sessions Case No.25 of 2003 was assigned and then, the case was made over to the Fast Track Mahila Court, Kanyakumari at Nagercoil.

4. The Trial Court, after hearing both sides, framed charges as against the accused for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act.

5. After framing charges, the charges were read over and explained to the accused. However, the accused denied the charges.

6. The prosecution examined P.W.1 to P.W.18 and marked Exs.P1 to P15 and no material objects were marked. On the side of the defence, D.W.1 was examined and Exs.D1 to D3 were marked.

7. After completion of examination of prosecution witnesses, the Trial Court examined the accused under Section 313(1)(b) Cr.P.C with



regard to the incriminating evidence as against him and he denied the same.

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8. Thereafter, after analysing the oral and documentary evidence adduced on both sides, the Trial Court found the accused guilty and passed the judgment of conviction and sentence as under:

<i>Provisions under which convicted</i>	<i>Sentence</i>
S.498-A IPC	Three years simple imprisonment and to pay a fine of Rs.6,000/-, in default, to undergo two months simple imprisonment
S.304-B IPC	Seven years rigorous imprisonment and to pay a fine of Rs.15,000/-, in default, to undergo one year rigorous imprisonment
S.4 of the Dowry Prohibition Act	Two years simple imprisonment and to pay a fine of Rs.5,000/-, in default, one months simple imprisonment

All the sentences were ordered to run concurrently.

9. Aggrieved by the aforesaid judgment of conviction and sentence passed by the Trial Court, the first accused has preferred this appeal on the



following grounds:

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1. The judgment of Trial Court is not maintainable either in law or on facts and the same is liable to be set aside.
2. The Trial Court failed to consider that the evidence of P.W.1 to P.W.4 were contradictory to one another in the material aspect of demand of dowry by the appellant.
3. The Trial Court failed to consider the delay in more than 20 hours in preferring complaint and registering F.I.R.
4. The Trial Court failed to consider the evidence of P.W.10/the Doctor who attended the deceased at the time of admission in the hospital and who stated that she herself set fire. Further, the Investigation Officer failed to enquire the outpost of the hospital and doctor about the statement given by the deceased.
5. The Trial Court failed to take note that the appellant had purchased a land in the name of the deceased and presented a gold ring to his father-in-law and there is no dispute between them and there is no evidence for demanding dowry.



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6. The Trial Court failed to consider the defence plea that the case

was foisted by P.W.1 in connivance with the police personnel

Mr.Sathyadoss, who is a relative of P.W.1 and P.W.1 wanted the

appellant to settle certain properties in the name of children of the

appellant and the deceased, with P.W.1 as a guardian. But, since the

appellant refused to do so, the complaint was foisted against him.

7. The Trial Court failed to consider the evidence of D.W.1 to acquit

the accused. None of the prosecution witnesses has not spoken about

the demand of dowry and they have only spoken about the addiction

to alcohol.

8. The Trial Court failed to consider that the prosecution has failed to

prove the offence beyond reasonable doubt.

10. The learned counsel appearing for the appellant would contend that the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt and the evidence of the prosecution witnesses are filled with doubts. The evidence of P.W.1 and P.W.2 are contradictory to each other with regard to the demand of dowry. There is no



alleged demand of dowry by the appellant. There is no evidence to prove that soon before the death, there was a demand of dowry due to which, the deceased committed suicide. The evidence of prosecution witnesses with regard to the allegations for the demand of dowry are vague and not specific. The doctor deposed that at the time of admission, the victim also told him that she herself set fire on her. Further, the Trial Court failed to consider that there was a dispute between the prosecution witness and the accused with regard to the transfer of land in favour of the children of the deceased. The deceased and the accused lived happily and the accused also purchased a property in the name of his wife/deceased and the prosecution witnesses have not denied the same and D.W.1, who is sister of the accused also deposed about the land purchased in the name of the deceased and there is no evidence to prove that the accused has caused cruelty and demanded dowry, due to which, she died. Without sufficient evidence, the Trial Court has convicted the accused for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act. The accused is entitled for acquittal by giving benefit of doubt. Therefore, the Trial Court's judgment of conviction and sentence is liable to be set aside by allowing this appeal.



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11. The learned Government Advocate (Crl.Side) appearing for the respondent would contend that the accused has demanded dowry from the deceased and her parents and further, the accused tortured and caused cruelty to the deceased due to which, she committed suicide by pouring kerosene and setting fire on her. P.W.1 to P.W.4 are parents, brother and sister of the deceased, respectively. They categorically deposed about the demand of dowry by the accused and the other witnesses had not deposed about the demand of dowry made by the accused. The case was investigated by the Investigation Officers/P.W.17 and P.W.18 who deposed about the investigation. There is a presumption under Section 113B of the Indian Evidence Act in favour of the prosecution. The prosecution examined P.W.1 to P.W.18 and marked Exs.P1 to P15 and thereby, the prosecution has proved the case as against the accused beyond reasonable doubt and the Trial Court also, after considering all the aspects, convicted and sentenced the accused and hence, this appeal is liable to be dismissed.

12. This Court heard both sides and perused the records.



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13. Upon hearing both sides and perusing the records, judgement of the Trial Court and grounds of appeal, the points for determination in this appeal are as follows:

(a) whether the prosecution has proved the charges levelled against the accused for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act.

(b) whether the judgment of conviction passed by the Trial Court in Sessions Case No.25 of 2003 is sustainable in law and on facts.

14. The prosecution case is that the deceased is the wife of the accused and their marriage was solemnized on 04.09.1997, after gave a birth of second child, the accused demanded dowry from the parents of the deceased and harassed the deceased. Due to the harassment, the deceased died on 13.05.2001 by committing suicide. Therefore, the accused was charged for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act.



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15. In this case, P.W.1 is the *de facto* complainant and the father of the victim and he deposed before the Trial Court that the accused is his son-in-law and the marriage between his daughter and son-in-law was solemnized on 04.09.1997. At that time, he presented a sum of Rs.1,50,000/- in cash, 25 sovereigns gold ornaments and settled 20 cents of land to the first accused. Thereafter, two children were born to them. After the birth of the second child, the accused consumed alcohol and demanded 15 sovereigns of gold jewels and cash of Rs.1,00,000/- and the same was denied by the parents of the deceased. Very often, the accused demanded dowry and sometimes, the sister of the deceased also came to the house of the deceased. On the morning of 08.05.2001, when the sister of the deceased went to the house of the accused, he assaulted the deceased. After two or three days, the sister of the deceased left from her sister's house and went to her house. Immediately, on the morning of 13.05.2001, he received a phone call about his daughter's death. Immediately, he went to Trivandram Medical College & Hospital, where his daughter was unconscious. At that time, both the accused were present. When he asked about the incident to the accused, he told that the



deceased only did the same. When P.W.1 asked her daughter, she showed her fingers as against both the accused and told in slow voice that the accused poured kerosene and set fire on the deceased. Thereafter, he returned to house and then, as requested by the villagers, he gave a complaint before the police. The complaint was marked as Ex.P1. A perusal of Ex.P1, reveals that on 08.05.2001, the *de facto*-complainant's younger daughter went to the house of accused. At that time, the accused assaulted the deceased by demanding 15 sovereigns of gold ornaments and Rs.1,00,000/-. Thereafter, on 12.05.2001, the younger daughter of P.W.1 left from the house of the deceased and came to her house. Thereafter, on 13.05.2001 at about 1.30 p.m, he received a phone call that his daughter died. Immediately, he rushed to Trivandram Medical College & Hospital and saw his daughter with burn injuries and was under treatment. When he asked her about the incident, she replied through gesture by showing his son-in-law and the second accused who abetted the first accused. Therefore, he suspected the death of his daughter.

16. According to the evidence P.W.1, when he saw the deceased in the hospital, she was unconscious, but in the complaint, he has stated that she



was unable to speak, but showed some gesture by pointing her fingers towards her husband. But, in the evidence of P.W.1, he stated that the deceased showed two fingers towards both the accused, but, in the complaint, there is no reference about the showing of two fingers towards both the accused and the complaint was that the deceased showed gesture towards the first accused and there is no reference about the second accused and merely stated that the second accused also abetted the offence. Therefore, there are major contradictions between the evidence of P.W.1 and complaint given by him with regard to the physical condition of deceased and identification of accused by her. Further, as per the evidence of P.W.7, on 12.05.2001 at about 12.30 a.m, P.W.1 came to his house and stated that his daughter was admitted in the hospital and thereafter, he along with P.W.1 to P.W.3 went to hospital. At that time, the deceased was alive and P.W.1 called her, immediately she opened her eyes and moved her two fingers. P.W.7 has not stated anything about the accused and the signs made by the deceased towards the accused. Further, as per the complaint, the accused set fire on the deceased by pouring kerosene, but the prosecution case is that she committed suicide. Therefore, reasonable doubt would arise on the prosecution case and the evidence of



P.W.1 with regard to the occurrence.

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17. P.W.2 is the mother of the deceased and in her evidence, she also stated that the first accused, after the birth of second child, got addicted to alcohol and demanded dowry. Further, the accused intimidated that if they failed to give dowry, he would murder her daughter. In the meantime, on 08.05.2001, her younger daughter went to the house of the deceased. At that time also the first accused assaulted the deceased, and thereafter, on the next day, she committed suicide. Then, she along with her husband, went to Trivandram Medical College & Hospital. At that time, the deceased was unable to speak and she showed two fingers towards the accused.

18. P.W.3 who is the brother of the deceased also stated on the same lines. He also stated that the deceased showed two fingers towards the accused and further, he enquired the neighbours and they told him that the accused demanded dowry but none of the prosecution witnesses has stated about the alleged demand of dowry. Further, the evidence of P.W.1, P.W.2 and P.W.3 is not specific with regard to the date of demand by the accused



and vaguely, they have stated that the accused demanded dowry of one lakh and jewels.

19. According to P.W.1, the accused demanded a sum of Rs. 1,00,000/- and 15 sovereigns of gold jewels; according to P.W.2, the accused demanded Rs.1,00,000/- and 5 sovereigns of gold jewels; according to the evidence of P.W.3, there is no mention about the quantum of money and P.W.4, sister of deceased, also stated that the accused demanded a sum of Rs.1,00,000/- and 15 sovereigns of gold jewels. She also stated about the assault of her sister that on 12.05.2001 at about 8.30 p.m when she was in her sister's house, the accused tortured her sister. There is no specific overt act against the accused. Therefore, the evidence P.W.1 to P.W.4 are contradictory to each other with regard to demand of dowry.

20. In this context, the learned counsel appearing for the appellant drew the attention of this Court that the deceased was admitted in the hospital and she, for the first time opened her mouth and told about the occurrence, that was the first statement given by the deceased. The said doctor was



examined as P.W.10 and he deposed that on 13.05.2001 at about 1.15 a.m, a 24 years lady, namely Viji was brought for treatment for 95% burn injuries and she died on the same day at about 8.45 a.m and stated that she committed for suicide. Further, P.W.13 who admitted the deceased in the hospital, stated that on 13.05.2001 at about 1.00 a.m, he examined the deceased and he also issued a certificate/Ex.P8. At that time, she told that she self immolated (அவர் தனக்குத் தானே மண்ணெண்ணெய் ஊற்றி தீ வைத்துக் கொண்டதாகவும், இரவு 9 1/2 மணிக்கு இவ்வாறு சம்பவம் நடந்ததாக கூறினார்) Therefore, the evidence P.W.13 reveals that the deceased was conscious at the time of admission and she herself told that she self-immolated. At that time, she did not state anything about the involvement of accused in this case. Therefore, there are no any incriminating materials revealed from the evidence of P.W.13 and further, during the cross-examination, P.W.13 stated that he tried to know how she sustained injuries, but she stated that she herself poured kerosene and set fire on her. Therefore, the evidence of P.W.13 reveals that the deceased stated that she had self-immolated, but the deceased did not say anything about the conduct of the accused in this case.



21. Had the accused demanded dowry from the deceased and she set fire due to that demand of dowry, the deceased would have stated about the alleged demand of dowry but she has not stated before the doctor that she set fire due to the harassment made by the accused. When the deceased was able to say about the self-immolation, she ought to have stated about the accused, if the accused demanded dowry, but she has not stated anything about the accused. The evidence of P.W.1 to P.W.4 were also not specific about the demand of dowry as to when the accused demanded dowry. A perusal of evidence P.W.1 to P.W.4 shows that all the witnesses vaguely stated that the accused demanded dowry of 15 sovereigns of gold ornaments and Rs. 1,00,000/-. While so, there is no specific date when he demanded dowry. As per the evidence of P.W.1 to P.W.3, after the birth of the second child, the first accused harassed by demanding dowry, but the date of occurrence is 2001. Therefore, there is no evidence to show that soon before the death of the deceased, she was subjected to cruelty by demanding dowry. When the deceased was alive, the first accused also purchased a land in her name and the same is also not denied by P.W.1 to P.W.4 and the accused also, examined her sister as D.W.1.



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22. D.W.1 who is the sister of the first accused, also deposed about the marriage expenses incurred by the first accused and the property purchased by him in the name of the deceased. Therefore, there is no evidence to show that the accused caused cruelty towards the deceased and the accused demanded dowry and thereby, the deceased died due to the harassment made by the accused.

23. As per the evidences P.W.1 to P.W.4, the deceased was unconscious and was not in a position to speak and she only showed signs. But, if so, how did the prosecution witnesses state that the accused only poured the kerosene towards the deceased and set fire. But, there is no explanation in that regard.

24. It is not a case of the prosecution that the accused committed murder of the deceased. But, the evidence of P.W.1 and P.W.2 show that the accused poured kerosene and set fire, thereby committed murder of the deceased. Therefore, it is clear that P.W.1 to P.W.4 have exaggerated the



incident and deposed before the Court.

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25. Further, the accused only took the deceased to various hospitals for treatment and it shows the conduct of the accused. Further, P.W.1 himself admitted that even after the marriage of the accused with his daughter, they attended the marriage function of the brother of the accused and presented gifts. Therefore, there is no enmity between the parties with regard to dowry prior to the death of the deceased.

26. Further, P.W.4 in her cross-examination, stated that at the instigation of the family members, later on, she gave a statement before the Trial Court and the Police and further, all the prosecution witnesses admitted that the accused only took care of his children.

27. P.W.6 who is the neighbour of the deceased also, in his evidence, stated that on the date of occurrence at 9.30 p.m, when he was lying after his dinner, he heard the cry of the deceased. Immediately, he rushed there and saw the deceased with burn injuries. Immediately, he, along with the accused,



took her to the hospital and at that time, two children of the deceased were also there. When P.W.6 went along with the deceased to the hospital, if any dowry had been demanded by the first accused, the deceased would have certainly stated about the demand of dowry to P.W.6, but, no words were spoken by the deceased with regard to the demand of dowry. Therefore, the available evidence adduced by the prosecution are not sufficient to prove the guilt of the accused for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act. But, the Trial Court without consideration of the abovesaid aspects, wrongly convicted the accused. The Trial Court ought to have given benefit of doubt to the accused, but, without consideration of the abovesaid aspects, wrongly convicted the accused.

28. Therefore, as discussed above, this Court is of the opinion that the prosecution has failed to prove the charges levelled against the accused for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act, beyond reasonable doubt.

29. The learned counsel appearing for the appellant relied on the



judgment of Hon'ble Supreme Court in the case of Charan Singh Vs. State of Uttarakhand, (Crl.A.No.447 of 2012, decided on 20.04.2023) wherein, it was

held as under:

“13.A conjoint reading of Section 304B I.P.C and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:

“32.This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo v.State of Punjab [Shindo v.State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v.State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346]. In the latter pronouncement, this Court propounded that one o the essential ingredients of dowry death under Section 304-B of the Cod is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S.Rao v. Yadla Srinivasa Rao [K.



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Prema S.Rao v.Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was Criminal Appeal No.447 of 2012 subjected to cruelty and harassment “in connection with the demand for dowry”.”

30. Further, he relied on the judgment of the Hon'ble Supreme Court in the case of Rajeev Kumar Vs State of Haryana, (Crl.A.No.967 of 2005, decided on 31.10.2013) wherein, it was held as under:

“On the evidence on record, though the appellant is not guilty of the offence under Section 304B of IPC, he is certainly guilty of offences of abetment of suicide and cruelty. Section 113-A of the Indian Evidence Act states as follows:

113A. Presumption as to abetment of suicide by a married woman. - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.



Explanation.-- For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code. The language of Section 113-A of the Indian Evidence Act makes it clear that if a woman has committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband. The Explanation to Section 113-A of the Indian Evidence Act states that for the purpose of Section 113-A cruelty shall have the same meaning as in Section 498A, IPC. The Explanation to Section 498A, IPC, defines cruelty and Clause (a) of the Explanation states that cruelty means any willful conduct which is of such nature as likely to drive a woman to commit suicide. The dying declaration of the deceased (Ext.PN) as well as the evidence of P.W-5 extracted above are sufficient to establish that the appellant used to fight on petty issues and give beating to the deceased, which drove the deceased to commit suicide. This is, therefore, a clear case where the appellant had committed offences under Sections 498A and 306, IPC.”

31. On a careful reading of the abovesaid judgments, it is clear that to attract the offence under Section 304B I.P.C, an essential ingredient is that the accused himself have subjected the woman to cruelty in connection with the demand for dowry soon before her death and the same has to be proved by the prosecution beyond reasonable doubt and only then, the Court will



presume that the accused has committed the offence of dowry death under Section 113B of the Indian Evidence Act. In the case on hand, the evidence of the prosecution witnesses are filled with doubts and the prosecution failed to prove the demand of dowry by the accused soon before the death of the deceased. Therefore, the abovesaid case laws will be squarely applicable to the present case.

32. In view of the abovesaid discussion, this Court is of the opinion that the prosecution has failed to prove the charges levelled against the accused for the offences under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act, beyond reasonable doubt. Thereby, the judgment of conviction and sentence passed by the Trial Court are unsustainable and are liable to be set aside.

33. In the result, this appeal is allowed and judgment of conviction and sentence passed by the Trial Court in S.C.No.25 of 2003 on the file of the Sessions Court, Fast Track Mahila Court, Kanyakumari at Nagercoil are set aside and the appellant is acquitted of the charges under Sections 498A and 304B I.P.C and Section 4 of the Dowry Prohibition Act and he be set at



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liberty, if he is not required in connection with any other cases. Bail bond, if any, executed shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded.

20.10.2023

Index: Yes/No

Internet : Yes/No

NCC : Yes/No

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Kanyakumari at Nagercoil

25/27



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2. The Deputy Superintendent of Police
Thakkalai,
Arumanai Police Station,
Kanyakumari.
3. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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