



Crl.A.(MD)No.585 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

Orders Reserved On 13.07.2023	Orders Pronounced On 27.07.2023
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Chandran

... Appellant/Sole Accused

Vs.

The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
(Crime No.721 of 2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C., to call for records pertaining to the judgment, dated 07.03.2018, made in S.C.No.33 of 2016, on the file of the Principal District and Sessions Court, Virudhunagar District @ Srivilliputhur and set aside the same by allowing the appeal.

For Appellant	:	Mr.S.Poornachandran
For Respondent	:	Mr.A.Thiruvadikumar Additional Public Prosecutor



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JUDGMENT

WEB C **M.NIRMAL KUMAR, J.**

This appeal has been filed by the appellant/sole accused as against the conviction and sentence, dated 07.03.2018, made in S.C.No.33 of 2016, by the learned Principal District and Sessions Judge, Virudhunagar District @ Srivilliputhur.

2. The appellant / sole accused stood convicted and sentenced to undergo imprisonment as detailed hereunder:-

Conviction under Section	Sentence imposed
u/s.341 I.P.C.	To undergo one month simple imprisonment
u/s.294(b) I.P.C.	To undergo two months simple imprisonment
u/s.302 I.P.C.	To undergo life imprisonment
u/s.506(ii) I.P.C.	To undergo one year rigorous imprisonment

The Trial Court further ordered the sentences to run concurrently and also granted set-off under Section 428 Cr.P.C. The accused/appellant challenging the legality of the conviction and sentence awarded by the Trial Court vide impugned judgment, has filed this Criminal Appeal.



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3. The facts leading to the filing of this appeal, necessary for the disposal of this criminal appeal, are as follows:-

3.1. The deceased in this case was one Murugesaraja. P.W.1 - Venkatesan is his brother-in-law. The deceased Murugesaraja and his wife Saraswathi Ammal were residing at Subbaraja Madam Street, Rajapalayam, Virudhunagar District. Saraswathi Ammal died before commencement of the trial. The appellant/accused in this case, is also the resident of the aforesaid Street. P.W.2 – Ramaraj, who is the brother-in-law of P.W.1, purchased a land, which is adjacent to the accused's house, from one Bharathi [P.W.5] before three years from the date of occurrence and the sale deed has been registered by P.W.6 – Saraswathi, Sub-Registrar, on 22.08.2012 as Document No.6298/2012. P.W.7 – Shyam, who is the real estate broker, helped P.W.2 for purchasing the said land from P.W.5.

3.2. One year prior to the occurrence, when P.W.2 started construction in the said land purchased by him, a dispute arose between P.W.2 and the appellant/accused. P.W.1 [brother-in-law of the deceased], the deceased and his wife and the vendor of the land [P.W.5] pacified the



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dispute. Thereafter, the appellant/accused threatened P.W.1, deceased and his wife. Subsequently, the appellant/accused gave a complaint against P.W.2 before the Rajapalayam North Police Station. After enquiry, the said complaint was closed.

3.3. Thereafter, on 19.11.2015 at about 11.30 a.m. when the deceased was returning from the fair price shop, the appellant/accused waylaid the deceased near the house of the deceased and attacked him with Aruval, which is marked as M.O.1, on his head, near the left ear, left wrist, right shoulder and right hand and thereby, caused the death of the deceased. When P.W.1 - Venkatesan, P.W.2 - Ramaraj, Saraswathi Ammal, wife of the deceased and sister of P.W.1, one Seethalakshmi [Wife of P.W.1], Thayammal and a Mason present there, attempted to catch hold of the appellant/accused, but he fled from the scene of occurrence. Immediately, they took the deceased to the Rajapalayam Government Hospital, where P.W.13 – Dr.Baskaran examined the deceased and declared him brought dead and issued Ex.P.15 Accident Registrar. Thereafter, the wife the deceased and P.W.1 went to the Police Station and lodged a complaint, which is marked as Ex.P.1.



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WEB COPY 3.4. P.W.12 – Viji, Sub Inspector of Police, attached to the said Police Station, on receipt of the complaint under Ex.P.1, registered a case in Crime No.721 of 2015 for the offences under Sections 294(b), 341, 302 and 506(ii) of I.P.C. and forwarded the complaint [ExP.1] and the printed F.I.R. [Ex.P.13] to the jurisdictional Magistrate Court.

3.5. P.W.15 – Rajendran, Inspector of Police, on receipt of the complaint [Ex.P.1] and F.I.R. [Ex.P.13], took up investigation and proceeded to the occurrence place and in the presence of P.W.8 – Malarvizhi, Village Administrative Officer, and Village Assistant – Subramanian, prepared Observation Mahazar and Rough Sketch, which are marked as Exs.P.3 and P.19 respectively and recovered blood-stained cement plaster pieces [M.O.2] and ordinary cement plaster pieces [M.O.3] under Ex.P.4 Recovery Mahazar. He also recovered Cycle [M.O.4], Wedding Thamboolam Bag [M.O.7], Vermicelli Pouch [M.O.5] and Toor Dal [M.O.6] under Ex.P.5 Recovery Mahazar. Thereafter, he conducted inquest over the body of the deceased and prepared Ex.P.20 – Inquest report.



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WEB COPY 3.6. P.W.13 – Dr.Baskaran, conducted postmortem on 19.11.2015 at 05.00 p.m., and gave a postmortem certificate, which is marked as Ex.P.14 and also gave his final opinion [Ex.P.16] stating that the deceased would appear to have died 6 to 8 hours prior to autopsy, due to multiple injuries sustained by him all over the body, particularly damage to the brain, veins, shock and haemorrhage. He also confirmed that the injuries inflicted was by using Aruval.

3.7. P.W.11 – Anandhakumar, Grade – I Police Constable, attached to the said Police Station, was present during postmortem and received the clothes of the deceased and handed over the same to P.W.15, who recovered the same under Form-91 and thereafter, handed over the body of the deceased to his relatives.

3.8. Thereafter, on 21.11.2015 at 09.00 a.m., P.W.15 arrested the appellant/accused in front of Avarampatti Thevar Statue in the presence of P.W.8 – Malarvizhi, Village Administrative Officer and Subramani, Village Assistant and on enquiry, the appellant/accused voluntarily gave confession



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and the same was recorded in the presence of the witnesses. Ex.P.6 is the admissible portion of the confession statement of the appellant/accused.

Pursuant to the same, P.W.15 recovered M.O.1 – Aruval under a cover of Mahazar Ex.P.7 from a bush near Vinayagar Temple. Thereafter, he recovered the shirt of the appellant/accused [M.O.8] and Pant [M.O.9] from the house of the appellant/accused under a cover of Mahazar Ex.P.8. Then, P.W.15 made a request [Ex.P.17] to the Court for forwarding the material objects for chemical examination.

3.9. Thereafter, P.W.14 – Swami Adiyaal, Head Clerk attached to the Court sent the material objects to the Forensic Laboratory for examination under Exs.P.17 and P.18 Requisition Letters.

3.10. Then, P.W.9 – Vairamuthu, Scientific Officer, examined the Material Objects [M.O.1 to M.O.9] and gave Ex.P.9 – Biological Report that except in M.O.1 – Aruval and M.O.3 - Ordinary cement plaster pieces, there were bloodstains in other material objects. Thereafter, P.W.9 sent the bloodstained material objects to the Forensic Laboratory, Madurai, and also sent M.O.2 – Bloodstained cement plaster pieces and M.O.3 - Ordinary cement plaster pieces to the Forensic Laboratory, Chennai. As per Ex.P.10



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– Serologist Report, human blood of 'B' Group found on M.O.2 – Cement plaster pieces, Shirt [Item No.3], Inner wear [Item No.4], Dhoti [Item No.5] M.O.8 – Shirt and M.O.9 – Pant. Further, the Scientific Officer, Chennai, examined M.O.2 and M.O.3 – Cement plaster pieces and gave Ex.P.11 Report, that both were found to be similar to each other.

3.11. Thereafter, P.W.15 examined P.W.10 – Ponraj, Special Tahsildar, Sattur, about the rain on the date of occurrence. He confirmed that there was a rain on 19.11.2015 to 21.11.2015 and his report is marked as Ex.P.12. Finally, on completing the investigation, P.W.15 laid charge sheet against the appellant/accused.

3.12. Thereafter, the learned Principal District Sessions Judge, Virudhunagar District @ Srivilliputhur, took it on file in S.C.No.33 of 2016 and issued summons to the appellant/accused and on his appearance, framed charges under Sections 341, 294(b), 302 and 506(ii) I.P.C. and questioned the appellant/accused and he pleaded not guilty of the charges levelled against him.



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3.13. The prosecution, in order to sustain their case, examined the witnesses namely, P.Ws.1 to 15 and marked Exs.P.1 to P.20, as well as M.Os.1 to 9.

3.14. The appellant/accused was questioned under Section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false. The appellant/accused did not file any documents nor let in any oral evidence.

3.15. The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, convicted and sentenced the appellant/accused as stated above and hence, this appeal.

4. Learned counsel for the appellant submitted that when the motive alleged by the prosecution has not been substantiated as deposed by P.W.2, the Trial Court has completely overlooked that aspect. Secondly, the appellant/accused cannot have any motive at all as alleged by the prosecution for the reason that P.W.2 originally purchased a land adjacent to the land belonging to the appellant/accused from P.W.5, almost 3 years



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prior to the occurrence and when P.W.2 started proceeding to construct a house, damaging a Wall, encroaching into the land belonging to the appellant/accused, there was a wordy quarrel in the process and the deceased intervened. Later, Police complaint given, both agreed to approach Civil Court for the dispute. This dispute is projected as motive for the fatal attack on 19.11.2015, which is without any basis.

4.1. Learned counsel for the appellant further submitted that the motive allegedly placed before the Trial Court has not been substantiated by the prosecution. When P.W.2, who is the brother-in-law of P.W.1, clearly and explicitly deposed before the Trial Court that there was no motive, the prosecution has come out with a case that there is motive between the accused and the deceased.

4.2. Learned counsel for the appellant further argued that there were cut injuries said to have been caused by M.O.1/Aruval, which was recovered after 2 days from the date of arrest. P.W.13 Doctor's evidence does not state that the deceased sustained cut injuries caused by M.O.1, since all the injuries are pierce injuries. The vital aspect has not been



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properly dealt with by the Trial Court and the findings and conclusion arrived at by the Trial Court certainly requires reconsideration by this Court.

4.3. Learned counsel for the appellant further submitted that though the occurrence was said to have taken place on 19.11.2015 at 11.30 a.m., the deceased was taken to the hospital only at 12.30 p.m., in an Ambulance and F.I.R. has been lodged only at 01.15 p.m. on the same day, even though the Police Station is situated only 5 minutes distance from the scene of occurrence. The reason for said delay was not explained.

4.4. Learned counsel for the appellant submitted that according to the prosecution, the deceased attacked the hands of the deceased with Aruval [M.O.1], but no injury was found on the hands of the deceased as per Ex.P.14 Postmortem Report. He further submitted that though in Ex.P.7 Seizure Mahazar of Aruval [M.O.1], it is mentioned that bloodstains were found in M.O.1, P.W.9 Vairamuthu, Scientific Officer, in his evidence, deposed that no bloodstains were found in M.O.1 - Aruval.



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4.5. Learned counsel for the appellant submitted that P.W.3 in his evidence, stated that he has not seen the occurrence and only upon hearing about the same from the wife of the deceased, he came to know about the occurrence. He further submitted that P.W.5 in his chief examination stated he has not seen the occurrence, however, contrarily, in his cross-examination, he deposed that when the deceased was taken to Hospital, the Police were present.

4.6. Learned counsel for the appellant submitted that no Police complaint regarding the earlier scuffle and complaint lodged by the deceased were produced. It is further submitted that though six eyewitnesses projected in this case, except for P.W.1 and P.W.2, close relatives of the deceased, who are interested witnesses, no other independent witnesses present in the scene of occurrence examined. P.W.13 Postmortem Doctor deposed that Aruval was shown to him on 18.12.2015 by P.W.15 Investigating Officer. P.W.14 Head Clerk of the Court, in his evidence, deposed that the properties of the case including Aruval [M.O.1] were produced before the Court on 24.11.2015 and thereafter, sent to Forensic Department.



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4.7. The learned counsel further submitted that the Trial Court passed the impugned judgment based on surmises and conjectures, when no offence has been committed and the same is also not proved. Viewed from any angle, the judgment of the Trial Court is unsustainable in law and hence, the same is liable to be set aside.

5. Learned Additional Public Prosecutor appearing for the State, submitted that it is not true to say that the motive placed before the Trial Court was not established for the reason that even though P.W.2/brother-in-law of P.W.1, has deposed that there was no motive, the appellant/accused cannot get away from other evidences placed in support of the prosecution case, the wordy quarrel between the deceased and the appellant/accused in respect of the civil dispute, the deceased who is a relative of P.W.2, intervened to avoid the altercation between P.W.2 and appellant/accused. When P.W.2 proceeded to put up construction, the deceased objected, picked up quarrel and lodged Police complaint. The deceased intervened, supported P.W.2, during the quarrel, and attended Police Station during enquiry. The appellant/accused developed grudge over the deceased, abused him often, in the process, he was done away by the appellant/accused.



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5.1. Learned Additional Public Prosecutor submitted that in this case, P.W.1 and P.W.2 are eyewitnesses, who have clearly given evidence about the motive and the appellant/accused attacked the deceased with Aruval [M.O.1]. The complaint [Ex.P.1] given by the wife of the deceased was written and attested by P.W.1. The delay in lodging the complaint was for the reason, the deceased was immediately taken to the Government Hospital, Rajapalayam, where P.W.13, recorded the death with time in Ex.P. 15 Accident Register. Thereafter, P.W.1 and his sister came to the Police Station and lodged the complaint. P.W.12 registered F.I.R. P.W.15 took up investigation, visited the scene of occurrence, prepared Observation Mahazar, examined the witnesses in the presence of P.W.8 V.A.O., thereafter, conducted inquest in the presence of witnesses. Ex.P.20 is the Inquest Report. In the report, the name of the appellant/accused, and eyewitnesses are recorded. The appellant/accused was arrested on 21.11.2015. On his confession, M.O.1 Aruval, M.O.8 Shirt and M.O.9 and Pant were recovered. Thus, cogent evidence was produced before the Trial Court.



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5.2. Learned Additional Public Prosecutor further submitted that P.W.13/Dr.Baskaran confirms that there were injuries, which are sufficient to cause the death of the deceased. Further, the bloodstains found in M.O.8 and M.O.9 the clothes of the appellant/accused tallies with the blood group of the deceased. P.W.9 confirms the same by Ex.P.10 Serologist Report.

5.3. Learned Additional Public Prosecutor further submitted that sufficient evidence, both oral and documentary were placed before the Trial Court, which, on proper appreciation, found to be true, proved by the prosecution and convicted the appellant/accused.

5.4. Learned Additional Public Prosecutor further submitted that the appreciation of ocular evidence is a hard task. There is no fixed or straightjacket formula for appreciation of the ocular evidence. In assessing the value of the evidence of eyewitnesses, two principal considerations are, whether in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their



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evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused, raise a definite plea or puts forward a positive case, which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

5.5. In support of the above contentions, the learned Additional Public Prosecutor relied on the judgment of the Hon'ble Supreme Court in **Shahaja alias Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra** reported in **2022 SCC Online SC 883**.

5.6. In fine, it is submitted by the learned Additional Public Prosecutor that the appellant/accused has not given any reason for the presence of blood in M.O.8 and M.O.9. The Trial Court, on cogent and



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convincing reasons and based on oral and documentary evidence, found the appellant/accused guilty of the charges levelled against him and rightly convicted and sentenced him and, therefore, no interference is called for with the conviction and sentence recorded by the Court below.

6. This Court carefully considered the submissions made on either side and also perused the oral and documentary evidence, to which its attention was drawn.

7. In this case, the occurrence is on 19.11.2015 at about 11.30 a.m. P.W.1, his wife Seethalakshmi and PW2, came and met Saraswathi Ammal, wife of the deceased, who was conversing with Thayammal. P.W.2 is another sister's son of P.W.1, who purchased 2 cents of plot from P.W.5, three years prior to the occurrence through P.W.7. The sale deed was registered as Document No.6298/2012 by P.W.6 Sub-Registrar, Rajapalayam.

8. One year prior to the occurrence, *i.e.*, somewhere during the year 2014, P.W.2 made arrangements for construction, the appellant/accused



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made objections, stopped construction, as there is encroachment and damage to his Wall, a quarrel arose, it was P.W.1, his wife Seethalakshmi, deceased, his wife Saraswathi Ammal and P.W.5 intervened. Thereafter, the appellant lodged a complaint, again, the deceased and his wife went to the Police Station along with P.W.2, during enquiry, there was heated exchange of words between the appellant and the deceased and the appellant threatened and warned the deceased would be done away. Thereafter, whenever the appellant saw the deceased and his wife, they were abused. Hence, there was motive, which is proved by the evidence of P.W.1, P.W.2 and P.W.5.

9. On 19.11.2015, the presence of P.W.1, P.W.2 along with Saraswathi Ammal and others is recorded in the complaint Ex.P.1. In this case, Saraswathi Ammal died during the pendency of trial, hence, she could not be examined. P.W.1 has written the complaint, giving sequence of attack made by the appellant/accused using Aruval [M.O.1], the attempt of the deceased to save himself, the brutal attack made by the appellant/accused on the head and other parts of the body of the deceased. The complaint written by P.W.1 on the dictation of Saraswathi Ammal,



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P.W.1 identified the signature of his sister and also attested the complaint.

Since the deceased was taken to Government Hospital, Rajapalayam, by Ambulance, there was some delay in lodging the complaint. It is natural conduct of a normal human to rush the injured person to the hospital first instead of leaving him at the place of occurrence to die. P.W.13 Doctor attached to the Government Hospital, Rajapalayam, on examination, issued Accident Register Ex.P.15, which is recorded at 12.15 p.m. Thereafter, P.W.1 along with his sister, wife of the deceased went to the Police Station and lodged the complaint. P.W.12 Sub Inspector of Police received the complaint, registered F.I.R. [Ex.P.13] at 13.15 hours, forwarded the same to the Court and higher officials. P.W.15 Investigating Officer, on receipt of the F.I.R., visited the scene of occurrence, in the presence of P.W.8 V.A.O., prepared Ex.P.3 Observation Mahazar, Ex.P.19 Rough Sketch, seized the articles present in the scene of occurrence namely, M.O.2, M.O.3, M.O.4, M.O.5, M.O.6 and M.O.7 under the cover of Mahazars Exs.P.4 and P.5. Thereafter, he visited the Hospital and conducted inquest between 15.45 hours and 17.00 hours. The Inquest Report is marked as Ex.P.20. In the Inquest Report, the name of the accused, his overt act, weapon used and the presence of eyewitnesses P.W.1 and P.W.2 are recorded. Thereafter, the



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body was sent for postmortem. P.W.13 conducted postmortem and gave

Ex.P.14 Postmortem Report and his final opinion is marked as Ex.P.16.

From the Postmortem Report, it is seen that the injuries are primarily on the head and piercing injury, fractures on the skull, damages on the brain, cuts on the veins and injury on the right hand and left wrist found and recorded. The medical evidence and the ocular evidence are in conformity with the evidence of eyewitnesses P.W.1 and P.W.2. There is no reason to disbelieve the evidence of P.W.1 and P.W.2.

10. The appellant in this case was arrested on 21.11.2015 in the presence of P.W.8. The admissible portion of confession Ex.P.6 reveal the disclosure of fact, recovery and seizure of M.O.1 Aruval, M.O.8 and M.O.9 Shirt and Pant of the appellant/accused. The seized articles from the scene of occurrence, dress of the deceased and the articles seized from the appellant/accused were sent to forensic examination. P.W.9 Scientific Officer from the Forensic Department, by his reports Exs.P.9 to P.11 confirmed the presence of human blood in M.O.2, M.O.8 and M.O.9 apart from the Shirt and Pant and inner wear of the deceased.



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11. The presence of human blood group 'B' on the shirt M.O.8 and Pant M.O.9 of the appellant/accused is in conformity with the evidence of the eyewitnesses P.W.1 and P.W.2. The grouping of blood based on bloodstained gauze collected from the deceased. There is no explanation by the appellant/accused in this regard. The absence of detection of bloodstains in M.O.1 Aruval will noway affect the case of prosecution, since on the date of occurrence there was rain, but what was the time and duration not questioned and how it would affect the prosecution case, nothing elicited.

12. The collection and seizure of articles are all recorded by contemporary documents, produced before the Trial Court, forwarded to the Forensic Department, which are in conformity with the ocular evidence and prosecution case. The Trial Court had considered all these facts and points raised by the appellant/accused and rightly convicted him. This Court does not find any illegality or infirmity in the judgment of the Trial Court and the same is hereby confirmed. Accordingly, this Criminal Appeal is dismissed. The sentence imposed on the appellant was suspended, pending disposal of this appeal and therefore, bail bond executed by him shall stand



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cancelled/terminated. The respondent/Investigating Officer, as well as the Trial Court are directed to take expeditious steps to secure the custody of the appellant/accused for the purpose of undergoing the remaining period of sentence.

Index : Yes
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Neutral Citation: Yes
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(M.S.R., J.) (M.N.K., J.)
27.07.2023

To

- 1.The Principal District and Sessions Judge,
Virudhunagar District @ Srivilliputhur.
- 2.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH, J.
AND
M.NIRMAL KUMAR, J.

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Pre-delivery judgment made in

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