



Crl.A.(MD)No.179 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
22.02.2024	08.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

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1.Sundar, S/o. Kumar Pandi
2.Chinnadurai, S/o.Mariappan

... Appellants/ A1 and A2

vs.

State Rep. by the
Inspector of Police,
V.K.Puram Police Station,
Tirunelveli District.
(Crime No.178 / 2015)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Cr.P.C., to call for the records from the lower Court relating to S.C.No.640 of 2015, on the file of the IV Additional Sessions Court, Tirunelveli, Tirunelveli District, and set aside the judgment dated 05.03.2020, by acquitting the appellants.



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For Appellants : Mr.K.Prabhu

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.**

This Appeal is preferred by the appellants / Accused Nos.1 and 2 being aggrieved by the judgment of the trial Court, in S.C.No.640 of 2015, dated 05.03.2020.

2. The first appellant /A1 tried for the offences under Sections 294(b) and 302 of I.P.C. The second appellant /A2 tried for the offences under Sections 294(b) and 302 read with Section 109 of I.P.C.

3. The gist of the charges against them was that, on 02.08.2015, at about 11.30 p.m., the appellants / A1 and A2 went to the house of the deceased Jeevankumar, abused him in filthy language and threatened him with dire consequences, for not withdrawing the complaint given on 05.01.2015 against



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them in Crime No.7 of 2015. For using filthy language in the public, both the appellants 1 and 2 alleged to have committed the offence punishable under Section 294(b) of I.P.C. In furtherance of the said transaction, the second appellant / A2, hit Jeevankumar on the left shoulder with stick and to facilitate the first appellant / A1 to stab Jeevankumar on his abdomen, caught hold of the hands of Jeevankumar and aided the first appellant / A1 to commit the offence of murder. In continuation of the said offence, the first appellant / A1 took out a knife concealed in his hip and stabbed Jeevankumar on his abdomen saying that, "How many times I have to tell you to withdraw the complaint, but you are not heeding. I will not leave you alive". The injured Jeevankumar was taken to Tirunelveli Government Medical College Hospital. After six days of treatment as Inpatient, Jeevankumar succumbed to the injury on 06.08.2015 at 07.00 p.m. Thus, for intentionally causing the death of Jeevankumar, which is punishable under Section 302 of I.P.C., charge under Section 302 I.P.C. was framed against the first appellant / A1 and charge under Section 302 read with Section 109 I.P.C. was framed against the second appellant / A2.

4. To prove the charges, the prosecution has examined 12 witnesses, marked 18 exhibits and two material objects.



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5. The trial Court after appreciating the evidence, held that as far as the offence under Section 302 I.P.C. in respect of the first accused and Section 302 read with Section 109 of I.P.C. in respect of the second accused, the prosecution has proved the charges beyond reasonable doubt. Insofar as the charge for the offence under Section 294(b) of I.P.C. is concerned, the trial Court held that the prosecution has failed to prove the charge beyond reasonable doubt. Hence, acquitted the appellants. For the proven charge, namely, under Section 302 I.P.C. as against the first accused, the trial Court sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo two years simple imprisonment. In respect of the second accused, for the proven charge, namely, under Section 302 read with Section 109 of I.P.C., the trial Court sentenced him to life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo two years simple imprisonment.

6. Being aggrieved, both the accused have preferred the present appeal.

7. The appeal is filed based on the ground that the trial Court has not properly appreciated the evidence and the motive for causing murder of Jeevankumar as projected by the prosecution, not been spoken by the witnesses.



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The earliest document in this case, namely, the complaint, which is marked as Ex.P.1, dated 03.08.2015, is supposed to be given by the deceased himself and the same does not lend credence to the case of the prosecution. The ocular evidence of P.W.1 and P.W.2 specifically states that only a single stab injury in the abdomen of the deceased was caused by the first accused. However, the postmortem report revealed that the deceased sustained four antemortem injuries. The occurrence had happened in the night hours. Due to previous enmity, on suspicion, the appellants been fixed as accused without proper identification of the assailants. While the injured had informed the doctor that he sustained injury while he was sleeping in front of his house, the Investigating Officer, who investigated the case, had shifted the scene of occurrence to the opposite side of the house. The Investigating Officer admits that there was no blood stain collected from the scene of crime. The Rough Sketch, Observation Mahazar and the testimony of the Investigating Officer (P.W.12) cause grave doubt regarding the scene of occurrence, which goes to the root of the prosecution case. There is no proximity between the date of occurrence *i.e.*, 02.08.2015 and the death of Jeevankumar *i.e.*, 06.08.2015. While so, convicting the appellants under Section 302 I.P.C. is harsh and disproportionate.



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8. The case of the prosecution unfurled through its witnesses:-

8.1. Jeevankumar (deceased) was a resident of V.K.Puram, Karuthaiyapuram, North Street. The appellants Sundar and Chinnadurai, who are related to each other, were residents of the neighbouring area called 'Sankarapandiyapuram'. On 05.01.2015, at about 11.30 p.m., when Jeevankumar and his friend Anavaratharaj @ Sakthi talking near the compound of Chokkampatti Durai premises, the appellants who were walking along the Street uttering filthy words in drunken state. This was questioned by Jeevankumar. Infuriated by that, Chinnadurai took a brick and hit Jeevankumar on the left side of the head. When Anavaratharaj @ Sakthi tried to stop him, Sundar and Chinnadurai took a stick and attacked Anavaratharaj @ Sakthi over his left shoulder and head. Then, they left the place. About this incident, Jeevankumar lodged complaint to the V.K.Puram Police Station. The case was registered in Crime No.7 of 2015 for offences under Sections 294(b), 336, 323 and 506(ii) I.P.C. against Chinnadurai and Sundar and was under investigation.

8.2. In continuation of this incident, Sundar and Chinnadurai were threatening Jeevankumar continuously to withdraw the complaint given against



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them. Since Jeevankumar refused to yield to their threat, on 02.08.2015 at about 11.30 p.m., when Jeevankumar was chatting with his next door neighbour by name, Thirukumar [P.W.2] near the compound opposite to his house, Sundar and Chinnadurai came and abused him in filthy language for not withdrawing the complaint. Chinnadurai took a wooden stick and hit Jeevankumar on the shoulder. Then he caught hold of the hands of Jeevankumar to facilitate Sundar to stab on the abdomen with a knife. The neighbours hearing the hue and cry rushed to the spot. On seeing them, Sundar threw the knife inside the compound of Shanmugam's house and both ran away.

8.3. The incident was witnessed by Divya (P.W.1), the 15 years old daughter of Jeevankumar. She was preparing for her 10th Standard Exam at the entrance of the house. The injured Jeevankumar was first taken to the Government Hospital at Ambasamuthiram in an ambulance by P.W.2. At Ambasamuthiram Government Hospital, the duty doctor Elayaraja (P.W.7) after examining the injured, noticed a punctured wound 2 x 1 cm depth not measured on the abdomen region. He found the wound was deep so after providing first aid, advised to take the injured to Tirunelveli Head Quarters Government Hospital.



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The accident register copy maintained at Ambasamuthiram Government Hospital is Ex.P9. The injured Jeevankumar was taken to Tirunelveli Government Hospital in the same ambulance. Dr.Priya (P.W.9), the duty doctor at casualty ward in the Tirunelveli Hospital admitted Jeevankumar as inpatient. The Accident Register copy prepared by her is Ex.P10. On receipt of the intimation from the Hospital, P.W.4 Mr.Ramamurthy, the then Head Constable of V.K.Puram Police Station, visited the injured Jeevankumar at the hospital and recorded his statement (Ex.P2). In his statement, Jeevankumar implicated Sundar (A1) as the person, who stabbed him and Chinnadurai (A2), who attacked him with stick on the shoulder and then caught hold of his hands to enable A1 to stab. In the statement (Ex.P2), Jeevankumar signed and his signature is marked as Ex.P1 and identified by his daughter P.W.1. Thirukumar (P.W.2), who witnessed the incident and accompanied the injured to the hospital in the ambulance had attested the statement (Ex.P2) and signed. Based on the information found in the statement, the First Information Report in Crime No.178 of 2015 was registered on 03.08.2015 for offence under Sections 294(b), 342, 323, 324 and 506(ii) I.P.C. against Sundar (A1) and Chinnadurai (A2) .



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8.4. In the course of investigation, Mr.Muthaiah the Special Sub-Inspector of Police visited the scene of crime, prepared Rough Sketch (Ex.P14) and Observation Mahazar (Ex.P3). The knife used by A1 to stab Jeevankumar was recovered near the scene of crime on 03.08.2015 at about 12.30 p.m. under Seizure Mahazar (Ex.P4). Siva (P.W.3) and one Ramasamy (not examined) were witnesses to the recovery of the Knife (M.O.1). At the hospital, Jeevankumar lost his breath on 06.08.2015 at 07.00 p.m. Therefore, the Investigating Officer altered the charges to Sections 342 and 302 IPC and filed Alteration Report (Ex.P15) before the learned Judicial Magistrate, Ambasamuthiram, on 07.08.2015. Dr.Selvamurugan (P.W.11) conducted the autopsy of the deceased Jeevankumar and opined that the deceased would appear to have died of complications of stab injury to the region of abdomen. The postmortem report is marked as Ex.P12. From Muthaiah Special Sub-Inspector of Police, the investigation was taken over by P.W.12 Madasamy, Inspector of Police, who took up the investigation and filed final report.

9. The trial Court after appreciating the oral evidence of P.W.1 to P.W.12, the documentary evidence Exs.P.1 to Ex.P.16 and the Material Objects M.O.1 and



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M.O.2 held A1 guilty of offence punishable under Section 302 I.P.C. and sentenced him to undergo life imprisonment and fine of Rs.5,000/-, in default, two years simple imprisonment. The second accused was held guilty of offence under Section 302 read with Section 109 I.P.C. and sentenced him to undergo life imprisonment and pay fine of Rs.5,000/-, in default, to undergo two years simple imprisonment. The period of sentence already undergone ordered to be set off under Section 428 of Cr.P.C. Both the accused were acquitted from charge under Section 294(b) I.P.C.

10. The learned counsel appearing for the appellants/accused submitted that the case of the prosecution bristles with vital contradictions on all aspects. Firstly, there is no consistency regarding the scene of occurrence. The Rough Sketch and the ocular evidence of P.W.1 differs regarding the direction. The first document in this case is Ex.P9, dated 03.08.2015, recorded at 02.15 a.m. This document is the Accident Register of Ambasamuthiram Government Hospital, where the injured Jeevankumar was taken for treatment first. The duty doctor Dr.Elayaraja (P.W.7) in Ex.P9 had recorded that the patient informed, he was stabbed by two known persons while he was sleeping outside his house. Whereas

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in the complaint Ex.P2 recorded on 05.08.2015 at 09.30 hours, it is stated that Jeevankumar was stabbed by Sundar while Jeevankumar was standing in the Street. P.W.1 had deposed that while the deceased was talking with Thirukumar [P.W.2] near the compound opposite to the house of the deceased, he was stabbed. The Investigating Officer had not recovered any blood stain soil from the scene of crime. All put together, the scene of crime as claimed by the prosecution is highly doubtful.

11. According to the prosecution, Chinnadurai (A2) hit Jeevankumar on the left shoulder with a stick and Sundar (A1) stabbed in the abdomen of Jeevankumar. P.W.7 - Dr.Elayaraja, who gave first aid treatment to the injured, found only one punctured injury and same is noted in the Accident Register [Ex.P9]. No injury noted on the left shoulder of the deceased. Whereas, in the postmortem report [Ex.P12], the doctor has noted four antemortem injuries all around abdomen region. No injury noted on the left shoulder. There is no proper explanation by the prosecution regarding the inconsistency about the number of injuries and nature of injuries.



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12. The incident occurred during late night and the prosecution has failed to establish there was enough lighting to identify the assailants by the witnesses. In the said background, the evidence of P.W.1 and P.W.2, who are interested witnesses, cannot be relied upon.

13. The learned counsel for the appellants also submitted that the trial Court erred in relying upon the statement of the deceased [Ex.P2] given to the Police during investigation. The material alterations in Ex.P2, regarding the time and not recording the statement in the presence of doctor, though it was recorded in the hospital, while the deceased was under treatment and the absence of fitness certificate from the doctor renders Ex.P2 as an unreliable document.

14. In support of his arguments, the learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in **B.N.Kavatakar and another vs. State of Karnataka** reported in **1994 Supp (1) SCC 304**, wherein it was held that the deceased died in the hospital after five days of the occurrence and the opinion of the doctor, who conducted autopsy on the dead body of the deceased was, the death is the result of septicaemia secondary to injuries. So, the

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offence would be one punishable under Section 326 of I.P.C. and not under Section 302 of I.P.C.

15. Per contra, the learned Additional Public Prosecutor submitted that the prosecution had proved the guilt of the appellants to the core. The trial Court has considered the contradictions and inconsistencies alleged by the defence and found the minor contradictions are not fatal for prosecution case which is proved beyond doubt through the eyewitnesses P.W.1 and P.W.2. The statement of the victim [Ex.P2] recorded in the course of the investigation gains significance in this case, since it discloses the identity of the assailants, the overt act of each of the assailants, the motive for the attack and the injury sustained due to the attack. The said injury is the cause for the death. Since Ex.P2 carries all the trappings of a dying declaration to be admitted in evidence under Section 32(1) of the Evidence Act. The entry made in the Accident Register is not a substantive evidence, whereas. the statement of the deceased about the injury and the ocular evidence of P.W.1 and P.W.2 are substantive evidence. The death was caused due to stab injury. Unlike in the case cited supra, it was not due to septicaemia secondary to injuries.



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16. Heard the learned counsels and perused the records.

17. The criminal law been set into motion based on the statement given by the deceased Jeevankumar to the Head Constable Ramamoorthy [P.W.4] attached to V.K.Puram Police Station. The signed statement of the deceased is Exs.P1 and P2. The statement was recorded in the presence of Thirukumar [P.W.2]. A scrutiny of the testimony of P.W.4 reveals that on 03.08.2015, while he was in duty, he received a telephonic information from Tirunelveli Government Medical College Hospital about the medico legal case, wherein Jeevankumar, S/o.Thiagarajan, admitted in the hospital for stab injury. When he went to the hospital, he enquired Jeevankumar and recorded the statement given by him. Jeevankumar signed (Ex.P1) the statement (Ex.P2), which was reduced into writing and the same was attested by Thriukumar [P.W.2]. Based on this statement, a case in Crime No.178 of 2015 for the offences under Sections 294(b), 342, 323, 324 and 506(ii) I.P.C. was registered. The content of the statement discloses the name of the assailants and the specific overt act. The motive for the attack is also spoken in the statement. The said Jeevankumar died on 06.08.2015, *i.e.*, on the 5th day of the incident. In this statement, Jeevankumar



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has specifically stated that he was stabbed with a knife by Sundar [A1], S/o.Kumar Pandi. At that time, he was caught hold by Chinnadurai [A2], S/o.Mariappan.

18. P.W.11 Dr.Selva Murugan, the postmortem doctor had opined that the death would have been caused due to complications of stab injury 'in the region of abdomen'. Dr.S.Raja [P.W.10] had deposed that he was the doctor, who treated the injured Jeevankumar and he had stated that the stab injury had caused the death. Therefore, the statement of Jeevankumar disclosing the cause for his injury and later death due to that injury, makes the statement of Jeevankumar carrying all the trappings of a dying declaration, though it was not given under the expectation of death either by the maker or recorded by the Police under such expectation. There is no doubt about the mental state of the maker when Ex.P2 was recorded. He was conscious as per the ocular evidence of P.W.2 as well as the Accident Register, marked as Ex.P9, dated 03.08.2015 registered at 02.15 a.m., and Ex.P.10, dated 03.08.2015 registered at 03.25 a.m. A suggestion been put to P.W.1, the daughter of the deceased, who was one of the witnesses to the occurrence, that the deceased died without regaining his conscious. This



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suggestion has been strongly denied. There is no material placed by the defence to fortify their suggestion that the deceased was unconscious after the injury at any point of time before his death.

19. Now, having held that the statement Ex.P2 to be treated as a dying declaration, if one seeks for corroboration, there are plenty in this case. Particularly, P.W.1 and P.W.2, who are witnesses to the occurrence, have cogently deposed how the occurrence took place. They have attributed the stab injury to A1 and the overt act of A2, who caught hold of the deceased preventing Jeevankumar from avoiding the stab injury and at the same time, facilitating A1 to stab the deceased.

20. It is contended by the learned counsel for the appellants that, according to P.W.1 and P.W.2, there was only one stab injury. The Accident Register [Ex.P9] also mention only one puncture wound. Whereas, in the postmortem report [Ex.P12], the following four antemortem injuries are noted:-

"1. A vertical 23 cm surgical stapled wound seen in front of middle of abdomen. On removal of stapler pins and sutures in subcutaneous



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layer, the wound extends up to peritoneal cavity.

2. A horizontal 16 cm surgical stapled wound seen in right side of abdomen extending from middle of injury No.1. On removal of stapler pins and sutures in subcutaneous layer, the wound extends up to peritoneal cavity.

3. A horizontal 3 cm stapled wound seen in right costal margin. 3 cm right to anterior midline. On removal of stapler pins, it measures 3 x 1 cm x Cavity deep. Outer edge appears sharp and inner edge appears blunt. On dissection, it passes downwards and backwards and produces a stab of size 3 x 1 x 3 cm in right lobe of liver. Gall bladder found missing in its bed. Peritoneal cavity contains about 500 ml of yellow colour fluid (bile stained). Surgical suture seen in the bed of gall bladder.

4. Surgical drainage wound of size 2 x 1 cm x Cavity deep seen in right side of lower abdomen."

Therefore, it is pleaded that the ocular evidence contradicts with the documentary evidence.

21. A close scrutiny of the above four injuries recorded, it is very clear that except one, all the injuries are surgical injuries. It is to be noted that the puncture wound, which was noticed soon after the injury is recorded by P.W.7 in the



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Accident Register [Ex.P9]. He has specifically deposed that the depth of the injury could not be measured. The postmortem report reveals that the stab injury has injured the liver also. Therefore, even the surgery conducted could not save the life of the deceased. But, taking into account the surgical wounds, an attempt is made by the defence as if the ocular evidence does not correlate with the postmortem report, which is totally a fallacious and erroneous argument.

22. In this case, the direct eyewitness had come before this Court and deposed about the occurrence. P.W.1, the daughter of the deceased, who was a minor at that time, had deposed that there was enmity between her father and A1 and A2 and a case was registered against the accused persons on the complaint given by her deceased father and there was pressure from the accused persons to withdraw the said complaint. The prosecution has marked Ex.P18, which is the final report of the case in Crime No.7 of 2015, which was investigated on the complaint given by the deceased against the appellants.

23. The ocular evidence of P.W.1 (the minor daughter of the deceased), who was pursuing her 10th Standard and had prepared for her examination at late



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night inspires the confidence of this Court. According to her version, she had witnessed the occurrence when her father and Thriukumar (P.W.2), the neighbouring resident were talking. Her evidence is clear and cogent. Though certain questions been put in the cross-examination to the vulnerable child witness, which are in the nature of character assassination, the child has withstood it and had clearly identified both A1 and A2 as the assailants.

24. The learned counsel for the appellants referring to Ex.P.9, the Accident Register maintained at Ambasamuthiram Hospital, submitted that the evidence of P.W.1 and P.W.2 as well as the rough sketch is contrary to the entries made in the Accident Register [Ex.P9]. No doubt, in Ex.P9, it is recorded as if the incident took place when Jeevankumar was sleeping outside his house, but this singular error crept in in the Accident Register cannot overshadow the overwhelming evidence of eyewitnesses and the statement of the victim himself, which was recorded when he was admitted in the hospital. It is also to be noted that P.W.2, friend of the deceased Jeevankumar and next door resident, had been with him at the time of occurrence and after Jeevankumar sustained injury in the assault, he had taken him to the hospital and got him admitted. When P.W.4 recorded the



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statement of Jeevankumar in the hospital, P.W.2 was present and had signed in the statement as a witness. His presence at the time of occurrence cannot be doubted even an inch.

25. In the Accident Register [Ex.P.9], the doctor has recorded that the injured Jeevankumar was brought to the hospital by a neighbour Thirukumar [P.W.2]. He has accompanied the injured in the ambulance to Ambasamuthiram Hospital and thereafter, to Tirunelveli Government Medical College Hospital. When the statement of the deceased [Ex.P2] was recorded at the Tirunelveli Government Medical College Hospital, P.W.2 was present and his signature is form part of Ex.P1. Therefore, the erroneous entry found in the Accident Register [Ex.P9] has to be ignored in the light of the other direct evidence, which is substantive and reliable.

26. Though it is contended that there is no evidence about the presence of light to identify the accused, the said argument to be ignored and brushed aside for two reasons. Firstly, the assailants were seen by P.W.1 and P.W.2 at a very close proximity to the scene of occurrence. They are not strangers, but known



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persons. Secondly, in Ex.P14 Rough Sketch, the presence of lamp post near the scene of occurrence is marked. P.W.1 had specifically deposed that at the time of occurrence, she was sitting in her house entrance and preparing for her 10th Standard Exam with the help of the street light situated in front of her house.

27. Therefore, this Court does not find any defect in the investigation or flaw in marshalling evidence. The trial Court had properly appreciated the evidence and had arrived at a right conclusion, which does not warrant any interference. Hence, this Criminal Appeal is dismissed.

28. The bail bond executed by the appellants shall stand cancelled. The appellants shall surrender before the trial Court within 15 days from today, to undergo the remaining period of sentence, failing which, the respondent Police shall secure them and commit them to prison after expiry of the said 15 days.

Index : Yes
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
08.03.2024



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To

- 1.The IV Additional Sessions Judge,
Tirunelveli, Tirunelveli District.
- 2.The Inspector of Police,
V.K.Puram Police Station,
Tirunelveli District.
- 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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and
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PRE-DELIVERY JUDGMENT MADE IN
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08.03.2024