



CrI.A.(MD)No.285 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 04.10.2024

PRONOUNCED ON : 24.10.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE Ms.JUSTICE R.POORNIMA**

CrI.A(MD)No.285 of 2020

Veerakumar @ Veerappan

.. Appellant

Vs

The Inspector of Police,
Thevaram Police Station,
Theni District,
Cr.No.95 of 2016.

.. Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the Judgment and order, dated 09.07.2020 in S.C.No.117/2016, on the file of the Additional District and Sessions Judge, (Fast Track), Theni.

For Appellant : Mr.V.Muthuvelan

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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CrI.A.(MD)No.285 of 2020

JUDGMENT

*(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)*

The accused in SC No. 117 of 2016 on the file of the Additional District and Sessions Court, (Fast Track Court), Theni, who suffered a Judgment of conviction, dated 09.07.2020 for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs. 1000/- in default, to undergo one year simple imprisonment, has filed the present criminal appeal.

2.It is the case of the prosecution that the appellant herein Veerakumar alias Veerappan and the deceased Maniraj were friends. Taking advantage of that friendship, it had been contended that Maniraj used to come over to the house of the appellant. The appellant suspected that Maniraj had developed intimacy with his wife Kavitha (P.W.29). There were quarrels between the appellant and his wife Kavitha. She left the marital house and went to her mother's house at Tirupur. This caused enmity between the appellant and the deceased.

2/27



CrI.A.(MD)No.285 of 2020

3.It is stated that on 17.03.2016 at 5.30 p.m., when the deceased was sitting near the bank of Nallukulam in the link road between Keezhachinthalaicheri and T.Sindalaichery at Uthamapalayam Taluk in Theni district, the appellant threw Chilli powder mixed with sand on the face of the deceased and attacked him with an aruval causing injuries on the left eye, nose, left cheek, right forehead, left neck, right hand fingers, backside of the neck and right forearm, owing to which, Maniraj collapsed at that place itself and died.

4.It is claimed by the prosecution that the occurrence was witnessed by P.W.1, Kanagaraj, father of the deceased, P.W.2, Mahendran, brother of the deceased and P.W.4, Vanaraj, who happened to drive a Jeep in that road at that time and P.W.5, Manikandan (declared hostile).

5.It is also the case of the prosecution that the occurrence was also witnessed by P.W.8, Muthulakshmi, P.W.9, Murugeshwari and P.W.10, Jaya.



CrI.A.(MD)No.285 of 2020

6.A complaint in this regard was given by P.W.1, which was marked as Ex.P1. On the basis of Ex.P.1 complaint, FIR Ex.P.9 was registered at 8.00p.m., in Thevaram police station for the offence punishable under Section 302 IPC. The name of accused was given in the FIR.

7.After investigation, final report was filed before the District Munsif-cum-Judicial Magistrate Court, Bodinayakanoor and taken cognizance as P.R.C. No. 10 of 2016. Since the offence under Section 302 IPC is triable exclusively by Court of Sessions, it was committed to the Principal District and Sessions Court, Theni and subsequently made over to the Additional District and Sessions Court, (Fast Track Court), Theni and taken on file as SC No. 117 of 2016. The only charge framed against the accused was under Section 302 IPC. The accused denied the charges and claimed to be tried.

8.To prove the charges, the prosecution has examined the witnesses P.W.1 to P.W.35 and marked documents Ex.P.1 to Ex.P.17.



CrI.A.(MD)No.285 of 2020

They also produced material objects M.O.1 to M.O.10. The accused did not examine any witnesses or produce any document. By Judgment, dated 09.07.2020, the learned Additional District and Sessions Judge, (Fast Track Court), Theni convicted the accused for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment and fine of Rs. 1000/- and in default, to undergo one year simple imprisonment. This Criminal Appeal has been filed challenging the said conviction and sentence.

9.The facts in detail are that the accused and the deceased Veerakumar alias Veerappan and the deceased Maniraj were friends. The accused suspected that Maniraj took advantage of that friendship and developed a relationship with his wife Kavitha, who had been examined as P.W.29. Owing to this hostility, it is alleged that the accused had indiscriminately cut the deceased on 17.03.2016 at 5.30 p.m., when the deceased was sitting on the bank of Nallukulam in the link road between Keezhachinthalaicheri and T.Sindalaichery at Uthamapalayam Taluk.



CrI.A.(MD)No.285 of 2020

10.It is the case of the prosecution that this was witnessed by

P.W.1 Kanagaraj, father of the deceased. He lodged Ex.P.1, complaint before the respondent police station.

11.Based on the said complaint, FIR in Crime No. 95 of 2016 was registered on 17.03.2016 at 8.00p.m., by P.W.33 Radhika, who was the Sub Inspector of Police in the respondent Police Station. The FIR was received by the Court only at 4.35a.m., on 18.03.2016. In her evidence, P.W.33 stated that she had despatched the FIR through express tapal, through the Police Constable, Vetri Vendhan, P.W.23. She identified the FIR as Ex.P.9. She also admitted in her cross examination that she had not filled up the column No. 15, to give the time and date on which, the FIR was despatched to the Court.

12.P.W.23, Vetri Vendhan, in his evidence stated that since the jurisdictional Magistrate was on leave, he had handed the FIR to the Judicial Magistrate, Andipatti.



Crl.A.(MD)No.285 of 2020

13.The investigation was then taken over by P.W.35, Immanuvel Rajkumar, Inspector of Police at Thevaram Police Station. He stated that he went to the scene of crime on 9.15 p.m., on that day. But there was total darkness and there were no houses and it was a forest area. He then went over to the Uttamapalayam Government Hospital and recorded the statements of P.W.1, Kanagaraj, P.W.2, Mahendran and P.W.3, Indira. He then recorded the statements of Iyavu (not examined), Mani (P.W.11), Veerakumar (P.W.7) and Nagendran (P.W.12). He then again on 18.03.2016 at 6.00a.m., went to the scene of crime and in the presence of Muthuraj (not examined) and Ramanathan (P.W.17) prepared Observation Mahazar Ex.P.4 and Rough Sketch Ex.P.12. He further seized the blood stained sand M.O.5 and sand without blood M.O.6, under seizure mahazar, Ex.P.5. He also collected the blood stained sand, M.O.2 and sand without blood, M.O.3 and chilli powder, M.O.5, which were available in the scene of crime under seizure mahazar, Ex.P.6.

14.P.W.35, then conducted an inquest over the dead body of deceased at Uttamapalayam Government Hospital in the presence of

7/27



Crl.A.(MD)No.285 of 2020

Panchayataram. The inquest report was marked as Ex.P.13. He then recorded the statements of Rajesh Khanna (P.W.14), Shiva Kumar (P.W.15), Shivaraman (P.W.13), Muthuraj (not examined), Ubari Antony (P.W.22), Maria Singam (P.W.19) and Ramanathan (P.W.17). He then arrested the accused at 3.00p.m., in the presence of witnesses Andavar (P.W.34) and Nanda Kumar (P.W.16). He then recorded the confession statement of the accused. The admissible portion of the same is marked as Ex.P.14. He then recovered M.O.1 blood stained aruval and M.Os.7 to 10, the clothes worn by the accused. He forwarded the material objects to the Court.

15.P.W.35, then recorded the statements of Vanaraj (P.W.4), Manikandan (P.W.5), Rajaram (P.W.6), Muthulakshmi (P.W.8), Murugeswari (P.W.9), Jaya (P.W.10), Vetrivendhan (P.W.23), Rajendran (P.W.24), Alagaraswami (P.W.28) and Radhika (P.W.33). He also examined the statement of Dr. Azharuddin P.W.32 and Dr. Thyagarajan, P.W.31, who conducted the Post-Mortem.



CrI.A.(MD)No.285 of 2020

16.Dr. Azharuddin, P.W.32, had issued the Accident Register Ex.P.9.

Dr. Thyagarajan, P.W.31, had conducted Post-Mortem and issued the Post-Mortem Certificate Ex.P.7. The following injuries were noted in the Post-Mortem Certificate.

“Appearances found at the postmortem:

The body of a male lying on its back; Rigor mortis present in all four limbs; Blood stain present all over the body;

- 1. Lacerated injury 7cm x 2-3/4cm between right ear and right eyebrow, 5mm deep with exposure of bone.*
- 2. Lacerated injury in lower orbit- left side with awision of left lower eyelid and exposure of bone underlying.*
- 3. Nose- Mid nose cut through injury with division of upper, lower flaps, deep to maxilla; other laceration, between lower nose and upper up deep to maxilla;*
- 4. Laceration below left ear with exposed left mandible of 7x3cm;*
- 5. Neck; Left side root of neck, a lacerated of 7cm x 4cm with exposure of clavicle, great vessels, & underlying muscles*
- 6. Just above injury a laceration 3cm long, stun deep.*



CrI.A.(MD)No.285 of 2020

7. *Just behind injury 5, laceration 5cm x1.5cm*
8. *Laceration 7x4x2cm with exposed underlying muscle and bone in left forearm mid posteriori.*
9. *Laceration 4x2x1cm lower posterior left forearm*
10. *Laceration 3x2x1 left forearm mid 1/3 anterior*
11. *Left hand and wrist laceration 11cm long- exposure of muscle & vessels.*
12. *Almost avulsed right index finger at mid-line region*
13. *Laceration left debouch 4x2x1cm*
14. *Just below posterior 4x12cmx4cm deep with exposure of underlying fractured forearm bone.*
15. *Avulsed at index ring finger at proximal phalanx*

Internal Injuries

1. *Fracture of underlying skull bone corresponding to injury No.1(External), Extending from right temporal region 6cm towards mind line*
2. *Tear of the meningeal covering underlying the above injury internal organs.*
Spleen, kidney, lungs, liver pale, stomach contains partially digested for”



CrI.A.(MD)No.285 of 2020

The cause of death was stated to be injuries to the vital organs.

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17. Thereafter, P.W.35 recorded the statements of Kavitha (P.W.29), Jayarani (P.W.25) and Malliga (P.W.26). He also recorded the statement of Dr. Mani (not examined). He then obtained Forensic Laboratory Reports, Ex.P.16 and Ex.P.17 and completed his investigation and filed final report, charging the accused for the commission of offence under Section 302 IPC.

18. As stated, after trial, the appellant had been convicted and sentenced for the offence punishable under Section 302 IPC to undergo life imprisonment. The present appeal had been filed against that Judgment.

19. Heard arguments advanced by Mr.V.Muthuvelan, learned counsel for the appellant and Mr. S. Ravi, learned Additional Public Prosecutor for the respondents.



CrI.A.(MD)No.285 of 2020

20.The learned counsel for the appellant took the Court through the facts of the case and stated that the presence of P.W.1 and P.W.2 in the scene of crime is highly doubtful and their conduct was not natural and the evidences were unbelievable. The nature of injuries did not correlate with the medical report. He also stated that P.W.2 did not state the correct facts. With respect to the evidence of P.W.4, he pointed out that the medical evidence with respect to the injuries differed from the evidence of P.W.4. He further stated that even the weapon used for the occurrence was not properly identified. He further pointed out that P.W.8, P.W.9 and P.W.10 did not state that they saw the accused assaulting the deceased.

21.The learned counsel for the appellant further stated that the arrest, confession and recovery had also not been proved by the witnesses. With respect to the evidence of P.W.29, wife of the appellant, the learned counsel for the appellant stated that she was living separately and therefore, she had a motive against the accused. Placing all these facts, the learned counsel for the appellant stated that the appeal must be

12/27



CrI.A.(MD)No.285 of 2020

allowed and the conviction must be set aside.

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22.Mr. S.Ravi, learned Additional Public Prosecutor, however, disputed the contentions of the learned counsel for the appellant. The learned Additional Public Prosecutor pointed out that the prosecution had proved the case by establishing the motive namely the fact that the accused suspected the deceased was having relationship with his own wife P.W.29. Further, the occurrence was also witnessed by P.W.1, P.W.2 and P.W.4. The learned Additional Public Prosecutor stated that the motive having been established, the chain of events had also been proved by the prosecution. He further pointed out that owing to the confession made by the accused, the prosecution was able to recover the weapon, M.O.1 used for the offence. Pointing out all these facts, the learned Additional Public Prosecutor argued that the appeal should be dismissed.

23.We have carefully considered the arguments advanced by both sides and perused the materials.



CrI.A.(MD)No.285 of 2020

WEB COPY

24.This is extremely an unfortunate case, where two friends had become enemies owing to suspicion by one of them against the other. The two friends were the accused and the deceased.

25.It is the case of the prosecution that the accused suspected the deceased had developed a relationship with his wife P.W. 29. P.W.29 in her evidence only stated that there were minor issues between her and her husband. She also stated that she had told the deceased not to come home. She stated that in view of the constant harassment and accusations, she went to her mother's house at Tirupur. During cross examination, she stated that no complaint was given relating to this harassments by her against the accused.

26.It is seen that the entire incident happened out of suspicion, which the accused had harboured against the deceased. It is contended that the accused had violently attacked the deceased on 17.03.2016 in the evening at 5.30p.m., when the deceased was sitting on



CrI.A.(MD)No.285 of 2020

the bank of Nallukulam in the link road between Keezhachinthalaicheri and T.Sindalaichery at Uthamapalayam Taluk.

27.The prosecution had examined P.W.1 father of the deceased, who claimed to be an eye witness. In his evidence, he stated that he and P.W.2 were going to T.Sindalaichery to purchase some materials. On the way they saw the deceased sitting next to the pond. P.W.1 stated that he told the deceased to go home. Thereafter, P.W.1 and P.W.2 proceeded further. He further stated that they heard the deceased shouting out. When they turned back, P.W.1 claimed that he saw the accused attacking the deceased. He further stated that thereafter, he had taken the deceased in an Ambulance to Uthamapalayam Government Hospital. In his cross-examination, he admitted that there were many cases registered against the deceased in Thevaram and Kumbai police station. In his cross examination, he further admitted that before he reached the place, his son had already been attacked and lying down dead. He admitted that he went to the scene of occurrence, after receiving information from P.W.2, who was informed by P.W.4 Vanaraj. It is clear



CrI.A.(MD)No.285 of 2020

from the narration of the evidence, this witness is not reliable as he had stated contradictory statements in his chief examination and cross examination. He was then again recalled for further cross examination on the side of the prosecution. However, there is no indication that the Court had declared him as hostile.

28.It is to be noted that in the complaint, P.W.1 had not stated that there was illicit relationship between the deceased and the wife of accused.

29.The prosecution then examined P.W.2, Manoharan. In his evidence, he stated that he went along with P.W.1 to purchase some materials from T.Sindalaichery. They saw the deceased in Nallukulam Kanmai. They asked him to go back home. When they proceeded, they heard the cry of the deceased. When they turned back, P.W.2 stated that he saw the accused cutting the deceased. However, in his cross examination, he admitted that it was only after the assault, he turned around and saw the deceased. Again, the evidence of this witness also



CrI.A.(MD)No.285 of 2020

does not also inspire confidence. He was also cross examined on behalf of the prosecution and being recalled, though there is no record to show that he had been declared hostile.

30. P.W.4 Vanaraj was a chance witness. He was driving a Jeep carrying P.W.8, P.W.9, and P.W.10 back from the Cardamom farm. He stated that when he went to Nallukulam, he saw two persons standing there. He then went there and stopped the Jeep near them. He stated that the accused was assaulting the deceased. He stated that he immediately informed P.W.2. He stated in his cross examination that, at that place there were 30 to 40 persons. He did not inform the Police about the incident. Two days later the police enquired him. He stated that he gave information to P.W.2 and after that P.W.2 went to the scene of crime.

31. It is thus seen that this evidence contradicts the evidences of P.O.W.1 and P.W.2 that they were eyewitnesses. PW2 went to the scene of occurrence after P.W.4 informed him. P.W.1 went to the scene of occurrence after P.W.2 informed him. Both were not present at the



CrI.A.(MD)No.285 of 2020

time of the occurrence. They are both unreliable witnesses. They are also interested witnesses.

32.While carefully analysing the evidence of P.W.1, P.W.2 and P.W.4, the sequence of events do not clearly emanate. Though in the chief examination, they stated that they saw the accused cutting the deceased, however, in the cross examination, they had admitted that they saw the incident, after it had occurred. The evidence of P.W.4 is unreliable in view of the evidence of the passengers in his Jeet, P.W.8, P.W.9 and P.W.10.

33.The passengers in the Jeep of P.W.4 namely, P.W.8, P.W.9 and P.W.10 did not support the case of prosecution. Their evidence was extremely vague. They did not state about the incident. They did not state about the identity of the persons. In fact, they only saw the dead body. In their chief examination P.W.8, P.W.9 and P.W.10 stated that they had only seen the dead body, but not the occurrence. Therefore, there is no corroboration for the evidence of P.W.1, P.W.2 and P.W.4.



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34. In this regard, it is relevant to refer to the decision of ***Nand Lal and others vs. State of Chattisgarh*** reported in ***2023 LiveLaw [SC] 186***, in which, the Hon'ble Supreme Court had placed reliance on the Judgment reported in ***Vadivelu Thevar vs. The State of Madras*** reported in ***[1957] SCR 981*** and held as follows:

*“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in the case of ***Vadivelu Thevar v. The State of Madras***, has observed thus:*

“11.....Hence, in our opinion, it is a sound and well-established Rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may



CrI.A.(MD)No.285 of 2020

convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.....”

33.It could thus be seen that in the category of "wholly reliable" witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of "wholly unreliable" witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a "wholly unreliable" witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”



CrL.A.(MD)No.285 of 2020

35.The evidence of P.W.1, P.W.2 and P.W.4 can only be categorised wholly unreliable.

36.Quite apart from that fact, the other witness whom the prosecution relied on mainly, P.W.12, Nagendiran, was declared hostile. There were no other direct witnesses to the incident.

37.One factor, which has to be considered is that the FIR had been registered at 8.00p.m., on 17.03.2016. This had been handed over only at 4.35a.m., on 18.03.2016 to the Judicial Magistrate. The explanation given was that the regular Magistrate was on leave and that the FIR served on the in-charge Magistrate. Even then, there is no evidence about the time taken to reach the Magistrate and hand over the papers on the Magistrate.

38.The Apex Court in *Rajeevan and another vs. State of Kerala* reported in [2003] 3 SCC 355, the Apex Court in paragraph 15 held as follows:



CrI.A.(MD)No.285 of 2020

*“15.This Court in **Marudanal Augusti v. State of Kerala** [(1980) 4 SCC 425 : 1980 SCC (Cri) 985] while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on the prosecution case, whereas in **Arjun Marik v. State of Bihar** [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] it was reminded by this Court that: (SCC p. 382, para 24).*

*“[T]he forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word ‘forthwith’ occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. **It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.**” (Emphasis supplied)*

39.The prosecution had examined P.W.31, Dr. Thyagarajan who conducted the Post-Mortem. P.W.1 stated that when he saw the body



CrI.A.(MD)No.285 of 2020

there were injuries on the eyes, nose, neck and fingers. In the Post-Mortem Report, Ex.P.7, the list of injuries had been differently noted. There is no proper correlation between the injuries as stated by P.W.1 and as noted in Ex.P.7.

40.The witnesses to the recovery of the material object had also not supported the case of the prosecution. They were declared hostile.

41.The only evidence which would remain would be the evidence of P.W.1, P.W.2 and P.W.4. As stated, they had contradicted their statements given in chief examination, when cross examined. The prosecution should have produced further evidence to corroborate the evidence of P.W.1, P.W.2 and P.W.4. The prosecution also relied on the evidence of P.W.8, P.W.9 and P.W.10. Unfortunately, they did not state anything about the occurrence or the identity of the accused.



CrI.A.(MD)No.285 of 2020

42.The entire case of the prosecution is based on a very shaky foundation. It is relevant to refer the decision of Apex Court reported in **(2016) 10 SCC 519 (Jose @ Pappachan vs the Sub Inspector of Police)**, wherein, the Hon'ble Supreme Court had held as follows:

“56. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of



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CrI.A.(MD)No.285 of 2020

the accused and the other to his innocence, the one favourable to the accused ought to be adopted.” (Emphasis supplied)

43.In the instant case, it is thus seen that the conviction imposed by the learned trial Judge had been based on mere suspicions rather than on proof. The suspicion naturally fell on the accused since, according to the prosecution, he had enmity with the deceased, whom he suspected was having a relationship with his wife. But the prosecution has the burden to prove the case beyond all reasonable doubt. It must be established through credible oral and documentary evidence. The prosecution has failed in that regard. We therefore, hold that the benefit of doubt should be extended to the appellant herein.

44.In the result, Judgment and the conviction and sentence in S.C.No. 117 of 2016, dated 09.07.2020, passed by the I Additional District and Sessions Judge, (Fast Track Court), Theni, is set aside. We acquit the appellant from the charge under Section 302 IPC.



CrL.A.(MD)No.285 of 2020

45.The Criminal Appeal is allowed. The bail bond executed by the appellant if any, shall stands cancelled. The fine amount paid, if any, shall be refunded to the appellant.

[C.V.K., J.] & [R.P., J.]
24.10.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
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To

- 1.The Additional District and Sessions Judge, (Fast Track), Theni
- 2.The Superintendent, Central Prison, Madurai.
- 3.The Inspector of Police,
Thevaram Police Station,
Theni District, Cr.No.95 of 2016.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
ER/VR Section, Madurai Bench of Madras High Court, Madurai.



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CrI.A.(MD)No.285 of 2020

C.V.KARTHIKEYAN, J.

AND

R.POORNIMA. J.

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Pre-delivery Judgment made in
CrI.A(MD)No.285 of 2020

24.10.2024