



Crl.A.(MD)No.367 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
05.03.2024	21.03.2024

CORAM:

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

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Muthalraj, S/o.Seeni Naicker

... Appellant/Sole Accused

VS.

State through Inspector of Police,
Thiruvengadam Police Station.
(Crime No.47 / 2015)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside the order of conviction and sentence, dated 30.11.2020, passed by the learned I Additional Sessions Judge, Tirunelveli, in S.C.No.812 of 2016, for the offence under Section 302 I.P.C. in 2 counts to undergo imprisonment for life (2 counts) concurrently and to pay a fine of Rs.1,000/- for each count and in default, to undergo 3 months simple imprisonment and allow this Criminal Appeal and acquit the appellant.



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For Appellant : Mr.M.Michael Bharathi
For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

JUDGMENT

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

Muthalraj is the sole accused in S.C.No.812 of 2016, on the file of I Additional District and Sessions Court at Tirunelveli. He was tried for double murder and punished to undergo life imprisonment (two counts). Being aggrieved, the present appeal is filed.

2. The facts leading to this appeal:-

2.1. Mr.Paramasivan, Village Administrative Officer, Maiparai Village [P.W.1], on 21.03.2015 at about 06.10 p.m. received a phone call from the Village Panchayat President Mr.Durairaj informing him about the mysterious murder of Jeyaraman and Dhanalakshmi in his Village. On reaching the spot along with his Assistant Mr.Chelladurai at 06.30 p.m., P.W.1 saw the body of Jeyaraman face smashed near maize haystack of his land. A short distance away, on the path



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leading to the land of one Selvaraj, he saw the body of Dhanalakshmi, W/o.Jeyaraman with bleeding injuries on her cheek and ear. P.W.1 after gathering information from the Villagers went to the Tiruvengadam Police Station and gave a written complaint at about 08.00 p.m.

2.2. Based on the complaint of Paramasivan [P.W.1], F.I.R. was registered in Crime No.47 of 2015 under Section 302 of I.P.C. naming Muthalraj, the appellant herein as the sole accused by Mr.Jegan, Sub - Inspector of Police [P.W. 17]. The case was taken up for investigation by Mr.Sankareshwaran, Inspector of Police [P.W.20]. He went to the scene of crime, prepared observation mahazar, the rough sketch of the scene of occurrence and recovered soil with blood stain and without blood stain. Recovered wooden log, a pair of black colour footwear, a green colour with white, red and yellow checkered towel found near the body of Jeyaraman. He also prepared the observation mahazar, the rough sketch of the scene of crime, where the body of Dhanalaksmi lying. He collected soil with blood stain and soil without blood stain. Conducted inquest and sent the corpses to the Hospital for autopsy.



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2.3. His further investigation disclosed that the accused Muthalraj has committed the crime due to previous enmity he had with the family of the deceased. His daughter Sivarani, working as Police Constable, had fallen in love with the son of the deceased and stopped sending money to the appellant / accused. Therefore, he earlier attempted to murder Kannan, the son of the victims. In that attempt, he failed and facing criminal prosecution. This time he successfully accomplished his criminal act by causing death to both father and mother of Kannan with whom his daughter had affair.

2.4. The accused was arrested on 22.03.2015. From the disclosure of fact found in his confession statement, the blood stain shirt and blood stain reaper concealed under a bush was recovered. On completion of investigation, final report laid before the learned Judicial Magistrate, Sankarankovil, by Mr.Kamaraj, Inspector of Police [P.W.21], who took over the investigation from Mr.Sankareshwaran.

2.5. After serving copy of documents relied by the prosecution to the accused, the case was committed to the Court of Sessions at Tirunelveli. The learned I Additional District and Sessions Judge, Tirunelveli, took cognizance of



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the case in S.C.No.812 of 2016 and framed charge under Section 302 I.P.C. (two counts) against the accused and proceeded with the trial.

2.6. To prove the charge, prosecution marshalled 21 witnesses. 28 documents and 13 material objects were marked. After appreciation of evidence and hearing the reply of the accused against the incriminating evidence, the trial Court found the accused guilty of offence punishable under Section 302 I.P.C. and sentenced to undergo imprisonment for life (two counts) concurrently and to pay a fine Rs.1,000/- for each count and in default, to undergo three months simple imprisonment.

3. The grounds of appeal against the conviction and sentence imposed by the trial Court's judgment dated 30.11.2020.

3.1. The learned counsel appearing for the appellant submitted that though the prosecution has marshalled several persons as witnesses to the occurrence, except P.W.2, P.W.7 and P.W.9 none had deposed against the accused. Even these three witnesses had made several self-contradictory and inconsistent statements, which renders their testimony unbelievable. The prosecution witnesses P.W.3, P.W.4, P.W.6 P.W.8, P.W.10 and P.W.11 turned hostile. Their hostility substantially



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demolish the testimony of other witnesses particularly, the evidence of P.W.2, P.W.7 and P.W.9, who claim to have been present at the time of occurrence. They are all chance witnesses, but prosecution could not establish the reason for their presence in the scene of crime at the time of occurrence. Hence, their testimony is unreliable. The blood stained shirt of the accused alleged to have been recovered on the disclosure in the confession statement, does not lead to any incriminating conclusion about the matching of the blood group of the deceased and the blood group found in the shirt of the accused. The blood group of the accused not drawn for comparison. The witnesses to recovery of the shirt had turned hostile.

3.2. He further contended that the occurrence as per the eyewitnesses is on 21.03.2015 at about 05.30 p.m. The first information to the Police, not from the eyewitnesses or any public, but from the Village Administrative Officer, a Government Servant. On his information, the F.I.R. was registered at 08.00 p.m. The copy of the F.I.R. received by the Judicial Magistrate only on 22.03.2015 at 09.00 am. The delay in registration of the F.I.R. and the delay in forwarding it to the learned Judicial Magistrate creates grave suspicion about the prosecution case.



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3.3. According to the appellant, the below contradictions in the prosecution evidence has not been properly appreciated and considered by the trial Court:-

(i) P.W.1 is the Village Administrative Officer, who set the law into motion by lodging the complaint (Ex.P1). According to his complaint, he came to know about the occurrence through P.W.6, who informed him about the murder of two persons in his Village. However, P.W.6 has turned hostile and has not supported the version of P.W.1 about passing the information of the double murder. P.W.1 admits that he is residing outside the territory of his service jurisdiction. It is a breach of service rules and liable for disciplinary action as observed by the Division Bench of this Court in **K.S.Vivekanandam vs. The Chief Secretary, Government of Tamil Nadu** reported in **2011 (5) CTC 515**. Therefore, he is not a witness worthy to rely.

(ii) The explanation given by P.W.15 for the delay in dispatching the F.I.R. to the learned Judicial Magistrate does not carry any merit, since the reasoning is very flimsy and will not satisfy any person with prudence.

(iii) The case of murders, where the husband and wife were killed in the public place and their corpses found at two different places, not properly investigated by the Police. According to the prosecution, two murders have



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happened within a span of 10 to 15 minutes. P.W.2, P.W.7 and P.W.9 claim that they have seen the occurrence. P.W.2 says, while grazing the cattle near the poultry shed of Azhagarsamy, he saw the accused attacking Jeyaraman with the wooden log. His presence in the scene of crime as deposed is highly doubtful, since neither in the Rough Sketch (Ex.P22), where the corpse of Jeyaraman shown nor in Ex.P26, where the corpse of Dhanalakshmi shown, the poultry shed of Azhagarsamy not found.

(iv) According to the testimony of P.W.7 and P.W.9, they went to the scene of occurrence only after hearing the attack on Jeyaraman. They had deposed that they saw the accused causing injury to Dhanalakshmi using a reaper. P.W.7 had deposed that she went to the spot after hearing Jeyaraman was attacked. The information was given by a boy, whose name she is unable to recollect. P.W.7 and P.W.9 admit that there were several persons near the public water tap collecting water. None of those public were examined as witness by the prosecution. P.W.7 is the relative [Sambandhi] of the deceased. Her son has married the younger brother's daughter of the deceased.

(v) P.W.9 had deposed that she followed Dhanalakshmi, who is her mother-in-law after hearing the news of the gruesome attack of her father-in-law



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Jeyaraman. Dhanalakshmi was running ahead of her to the spot and she saw the accused hitting Dhanalakshmi with a wooden reaper, when Dhanalakshmi questioned the accused as what he had done to her husband. In the cross examination, P.W.9 admits that she know about the attack of her father-in-law, only through her mother-in-law and she does not know who informed her mother-in-law about that incident. In the cross examination, she has further stated that when she and her mother-in-law left the house, the Villagers also followed them. She has admitted that within 20 feet from the scene of occurrence, there is a public water tap and more than 10 persons were collecting water in that tap at the relevant time, but none of them came to the scene of occurrence. Though she had deposed that Krishnasamy (P.W.2) and Subbulakshmi (P.W.9) were present in the spot at the time of occurrence, in the evidence of P.W.2, there is whisper about the presence of P.W.7 and in the evidence of P.W.9, the presence of P.W.7 was not mentioned. Likewise, the presence of P.W.9 at the time of occurrence, is not spoken by P.W.2 or P.W.7. Therefore, the testimony of P.W.7 as well as P.W.9 has to be rejected for lack of corroboration. The prosecution version that P.W.2, P.W.7 and P.W.9 were by chance present and saw the scene of crime by chance is highly improbable.



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(vi) P.W.12, the daughter of the accused in her evidence had categorically stated that she had been continuously sending her salary to her father till her marriage, which took place after the occurrence. Therefore, the motive projected by the prosecution totally found to be false.

(vii) P.W.2 being a resident of Nadupatti Village, his presence at Maiparai Village on the date of occurrence is highly doubtful. If he had really witnessed the occurrence, he should have been the first person to inform the Police. His silence and not complaining it to the Police makes his presence at the scene of crime highly doubtful. Also, he had not said anything about the presence of P.W.7 and P.W.9 at the scene of crime. P.W.2 has admitted in the cross examination that he is brother of the deceased Jeyaraman. After the murder of his brother, he attempted the life of the accused and the case is registered against him for attempt to murder. In the chief examination, he has stated that when he was grazing his cattle near the poultry shed of Azhagarsamy, he saw the occurrence. His further evidence is that at that time, he was chatting with Azhagarsamy (P.W.3) and Thirupathiraj (P.W.4). Both P.W.3 and P.W.4 have not supported the evidence of P.W.2. However, the trial Court has relied on the evidence of P.W.2, the

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uncorroborated interested witness, to convict the accused, Instead, the trial Court ought to have disbelieved the evidence of P.W.2 that he saw the incident when he was chatting with P.W.3 and P.W.4.

4. Per contra, the Additional Public Prosecutor submitted that it is a case of double murder witnessed by more than one person. P.W.2, P.W.7 and P.W.9 had witnessed the occurrence from three different places and the witnesses seeing each other at the time of occurrence is not a sole test to believe their evidence. These witnesses have categorically narrated the sequence of events and the act of the accused. The witnesses to prosecution had spoken about the enmity between the two families. It has been admitted by the daughter of the deceased as well as the other witnesses, that the accused had previous cases of grave offences. Both the victims and the accused are close relatives. Therefore the witnesses are common relatives to both sides. Hence, no motive could be attributed to the witnesses, since they are related to the deceased persons.

4.1. The learned Additional Public Prosecutor further submitted that, it is a case of pre-planned murder committed by the appellant/accused on developing



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animosity over more than a year. For being deprived of finance assistance from his daughter, which he was enjoying before his daughter fell in love with P.W.5, he made an attempt to kill P.W.5 during the month of February, 2014. Having failed in his attempt, he had decided to do away the parents of P.W.5. Accordingly, on 20.03.2015, he had gone to the field of Jeyaraman and brutally attacked him with wooden log. Dhanalakshmi, the wife of Jeyaraman, who heard the news, rushed to the spot and when she questioned the accused, she was also done to death by wooden reaper. The intention of the accused to cause death of Jeyaraman and Dhanalakshmi is candidly exposed from the manner in which the injuries were caused.

4.2. The learned Additional Public Prosecutor further submitted that P.W.2 is the natural witness, who was grazing cattle near the field and was able to see the occurrence. P.W.9 is the daughter-in-law of Jeyaraman and Dhanalakshmi. Her testimony is also natural and without any blemish. She rushed to the spot on hearing that her father-in-law been brutally attacked by the accused and she has been following her mother-in-law Dhanalakshmi. Near the spot, on seeing Dhanalakshmi rushing towards him and questioning him, the accused has taken



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the wooden reaper and had attacked on her ear and nose, causing fracture leading to death. There can be no exception to the conduct of the accused for this gruesome murder.

4.3. The learned Additional Public Prosecutor also submitted that the trial Court after due consideration of the evidence both direct and circumstantial, has held the accused is guilty of offence punishable under Section 302 I.P.C. The witness withstood the ordeal of cross examination, which has rightly inspired the confidence of the trial Court. Since P.W.2 had not lodged the complaint to the Police immediately, his presence in the spot cannot be doubted. The evidence of P.W.2 read along with the evidence of P.W.7 and P.W.9 are sufficient to prove the guilt of the appellant/accused.

5. Heard the learned counsel on either side and perused the grounds of appeal.

6. The case of the prosecution as spelt in the charge is that, Jeyaraman and Dhanalakshmi are the parents of one Kannan [P.W.5]. The daughter of the



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accused by name Sivarani [P.W.12] was working as a Woman Police Constable.

She fell in love with Kannan, who is none other than her uncle's son. Due to this affair, she slowly stopped sending money to her father [the appellant herein].

Therefore, due to the said grudge, on 21.03.2015 at about 05.45 p.m., the accused went to the haystack of Jeyaraman, hit him on the head with a wooden log and killed him. When Dhanalakshmi came to that place on hearing the news, the accused again attacked Dhanalakshmi with a wooden reaper and caused her death. The incident was witnessed by Krishnasamy [P.W.2], who was grazing his cattle near the poultry shed of Azhagarsamy [P.W.3]. Subbulakshmi [P.W.7] when she was on her way to the house of one Sreenivasan to collect money for the cotton which she sold, she witnessed the accused hitting Dhanalakshmi. P.W.9 had deposed that she is the daughter-in-law of the deceased persons. When she and her mother-in-law were at home, they heard the information that the accused had attacked Jeyaraman. She and her mother-in-law Dhanalakshmi ran to the field, where they have stocked haystack. Dhanalakshmi on seeing the accused when questioned him as to what he had done to her husband, the accused took wooden reaper and hit Dhanalakshmi on her ear and caused her death.



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7. Though each of these three eyewitnesses had deposed what they saw and how they happened at the place of occurrence, the learned counsel for the appellant submit that they are not independent witnesses but interested witnesses. Such an argument in this case, does not find any favour since the testimony of these three witnesses when read together, cogently explain the nature of occurrence and corroborate to each other.

8. Eyewitnesses for an occurrence are supposed to be deposed what they saw in connection with the crime. To believe that witness, it is not necessary that he/she should say who are all the other witnesses present and saw the incident. Unlike proof of a Will for which the witness should not only say he/she signed the document, but should also say the executant signed in his/her presence. In criminal cases, the Court expects the witness to speak about the relevant fact. If the crime is a murder, the eyewitness is expected to speak about who did the crime and or what leads to the death. In the instant case, P.W.2 a chance witness, who happened to be present in the place of occurrence while grazing his cattle. P.W.7 was the neighbouring Villager, who came to Maiparai Village to collect money for the cotton which she already sold. P.W.9 is the daughter-in-law of the



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deceased persons. She had rushed to the spot along with her mother-in-law after hearing that her father-in-law was brutally attacked by the accused. In such course, she had seen the accused hitting her mother-in-law and then, the crushed body of her father-in-law Jeyaraman, a short distance away.

9. Having clearly and cogently explained how they were present in the place of occurrence, there is no reason to doubt their evidence as suspicious or not reliable. As put it by the Hon'ble Supreme Court in **Thangaiya vs. State of Tamil Nadu [(2005) 9 SCC 650]**, murders are not committed with previous notice to witnesses; soliciting their presence. If the murder is committed inside the dwelling house, the inmates of the house are the natural witnesses. If murder is committed in a Street, only passerby will be the witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. Hence, in this case, the veracity of the evidence of P.W.2, P.W.7 and P.W.9 cannot be brushed aside. The credibility of these witnesses has been tested through cross examination and found to be reliable. Therefore, the judgment cited by the learned counsel for the appellant reported in **AIR 1941 Privy Council 11 (Ismail Ahmed Peepadi vs. Momin Bibi and**



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others), which caution the Court that, though the 'chance witness' is not necessarily a false witness, it is proverbially rash to rely upon such evidence, need not be applicable, since the witnesses had convincingly assigned reason for being present at the place of occurrence.

10. Apart from Krishnasamy (P.W.2), Subbulakshmi (P.W.7) and Subalakshmi (P.W.9), the other witnesses for prosecution, who were supposed to speak about the incident turned hostile. Kannan [P.W.5], who is the son of the deceased Jeyaraman and Dhanalakshmi had spoken about enmity between his family and the family of the accused. The attempt of the life of P.W.5 by the accused earlier also spoken by the prosecution witness. Therefore, since because P.W.12 and others had deposed that she was sending money to her father and he had no grudge over it may not be a reason to hold that there was no motive to kill. When the ocular evidence is cogent and clear, search for motive not necessary. Even otherwise, the ill-will between the two families admitted by all, including P.W.12, the daughter of the accused. Therefore, any failure to prove the motive will in noway dent the prosecution case.



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11. The hostility of recovery witnesses at the most will render the recovery become unproved. However, the same cannot overshadow the ocular evidence of witnesses, who had seen the occurrence. P.W.9 the daughter-in-law of deceased persons, who is one of the eyewitnesses seen the accused hitting Dhanalakshmi with wooden reaper [M.O.2] and she had identified the weapon.

12. The daughter of the accused Sivarani [P.W.12] has spoken about the relationship between her family and the family of the deceased. She has married Kannan [P.W.5]. Dhanalakshmi (deceased), who is the mother of Kannan is the maternal aunt of P.W.12. Therefore, admittedly, the victim family and the accused family are closely related. Therefore, the plea that the witnesses are related to the deceased become insignificant and merit less. Further, the testimony of related witness are trustworthy, inspire the confidence of this Court. Particularly, the daughter of the accused [P.W.12] herself had deposed incriminating her father by admitting in the cross examination that her father was particular about her salary rather than her wish. Further, when the suggestion was put against her as to whether her father never interfered in her love affair, she had denied it emphatically.



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13. Dr.Senthilsekaran [P.W.14], who conducted autopsy on the bodies of the deceased Jeyaraman and Dhanalakshmi, had given the reports, which are marked as Ex.P13 and Ex.P15 respectively. He has opined that the injuries found on the body of deceased Jeyaraman might have been caused by M.O.1 and injuries to Dhanalakshmi might have been caused by M.O.2. Mr.Arunachalam, Grade - II Police Constable [P.W.15] had deposed that he was entrusted to deliver the express F.I.R. at the Judicial Magistrate Court, Sankarankovil, on 21.03.2015. After receiving the F.I.R. copy at 21.15 hours, he reached the Judicial Magistrate Court, Sankarankovil, at about 22.30 hours. Since the learned Judicial Magistrate, Sankarankovil, was on leave, the learned Judicial Magistrate at Tenkasi was in-charge for Sankarankovil Judicial Magistrate Court. Since it was late night, he stayed at Sankarankovil and delivered the F.I.R. copy on the next day at 09.00 a.m. The Passport is marked as Ex.P16. His testimony explains the delay for reaching F.I.R. to the learned Judicial Magistrate. This Court does not find any inordinate delay in either registering the F.I.R. or in forwarding the copy to the learned Judicial Magistrate. In addition to that, the delay whatever alleged is satisfactorily explained.

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14. At the risk of repetition, it is to be stated that, the contradictions and hostility of most of the prosecution witnesses had not caused any probability that the accused may not be the perpetrator of the crime. The testimony of P.W.2, who had been subjected to incise in the cross examination, he withstood the same. On scrutiny of the testimony of P.W.2, both in Chief and in Cross, it is clear that he was present at the scene of occurrence. Further, his testimony is so natural, simply plain and limpid.

15. A specific question has been put by the trial Court to Subbulakshmi [P.W.7] regarding the distance between her native Village and the place of occurrence. This witness had deposed that it is nearby, but when the Court has put pointed question about the measurement, she had shown the compound wall of the Court campus, which in the assessment of the Court about 500 feet.

16. Minor discrepancies, which are quite natural for any natural witness. Therefore, such minor contradictions cannot be given undue weightage to discard the testimony of the witnesses, which have otherwise inspired the confidence of the Court. When the evidence of direct witness is sufficient to prove the guilt of



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the accused, there need be no other corroboration. Therefore, this Court is of the firm view that the finding of the trial Court that the prosecution has proved the case beyond reasonable doubt, is perfectly in order. Thus, this Criminal Appeal is liable to be dismissed.

17. Accordingly, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant / accused by the learned I Additional Sessions Judge, Tirunelveli, in S.C.No.812 of 2016, dated 30.11.2020, stands confirmed.

18. In view of dismissal of this appeal, the bail bond executed by the appellant / accused shall stand cancelled. The appellant / accused 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 him and commit him to prison to undergo the remaining period of sentence.

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NCC : Yes
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[G.J., J.] & [C.K., J.]
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To

- 1.The I Additional Sessions Judge,
Tirunelveli.
- 2.The Inspector of Police,
Thiruvengadam Police Station.
Tenkasi 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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PRE-DELIVERY JUDGMENT MADE IN
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