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CRL A Nos. 679 & 699 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26-03-2026

PRONOUNCED ON: 02-04-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A Nos. 679 & 699 of 2019

Hari @ Harikrishnan

... Appellant in

Crl.A.No.679 of 2019 /A2

Jeyabharathi @ Bharathi @ Jeba

... Appellant in

Crl.A.No.699 of 2019/A1

Vs.

The Inspector Of Police,
D5 Marina Police Station,
Chennai District.

[Cr.No.2322 of 2014]

... Respondent/Complainant
in both cases.

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellants/A1&A2 and sentence imposed on them in S.C.No.171 of 2015 dated 26.08.2019 on the file of the learned VI Additional Sessions Judge, Chennai and set aside the conviction and sentence and allow these appeals.

For Appellant:

in Crl.A.No.679/19

Mr. V. Parthiban

For Mr..R.Chakkaravarthy

in Crl.A.No.699/19

Mr.I.Abdul Basith

For Respondent(s):

in both cases

Mr. S. Raja Kumar,

Additional Public Prosecutor



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CRL A Nos. 679 & 699 of 2019

Common Judgment
(delivered by Sunder Mohan J.)

These Criminal Appeals have been filed by A1 and A2, challenging the judgment dated 26.08.2019 in S.C.No.171 of 2015, on the file of the learned VI Additional Sessions Judge, Chennai.

2 (i) CrI.A.No.699 of 2019, has been filed by A1, who was convicted by the trial Court for the offence under Section 302 r/w 34 of the IPC and sentenced to undergo life imprisonment (no fine amount was imposed).

(ii) CrI.A.No.679 of 2019, has been filed by A2 who was convicted by the trial Court for the offence under Sections 302 and 506(ii) of the IPC and sentenced as follows:

Offence under Section	Sentence imposed
302 IPC	To undergo life imprisonment
506(ii) IPC	To undergo RI for five years
No fine amount was imposed and the sentences imposed were ordered to run concurrently	



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3(i) The gist of the prosecution case is that A1-Jeyabharathi @ Bharathi @ Jeba [appellant in Crl.A.No.699 of 2019] was the wife of the deceased Karthik; that she had an illicit relationship with A2-Hari @ Harikrishnan [appellant in Crl.A.No.679 of 2019]; that since the deceased objected to the said relationship, A1 and A2 decided to do away with the deceased with the help of two other accused who were juveniles at the time of the occurrence; that on 30.09.2014, A1 called the deceased to the Marina Beach opposite to Vivekanandar Illam; that she had also called A2, who in turn called his friends, the juvenile accused; that at about 7.15 p.m., A1 pretended to have a heated conversation with the deceased; that she signalled to the other accused; that A2 and the juvenile accused stabbed the deceased with the knife on the neck and chest indiscriminately; and that the deceased succumbed to the injuries.

(ii) On the complaint [Ex.P1] given by the mother [PW1] of the deceased, an FIR [Ex.P20] in Cr.No.2322 of 2014 was registered by PW24, the Inspector of Police, for the offence under Section 302 of the IPC on the same date at about 9.30 p.m. In the meanwhile, according to the investigating officer [PW24], he received information at about



7.15p.m. that a person aged about 28 years was found dead with injuries on his body. PW24 went to the place of occurrence and found a NOKIA mobile phone near the dead body and found that the deceased had last received a call from A1; that when PW24 attempted to call the said number, the phone was switched off; that thereafter, he called a person by the name Raja, whose name was stored in the mobile phone; and that the said Raja happened to be the brother of the deceased, who was staying in Trichy, who in turn furnished the address and phone numbers of the parents of the deceased.

(iii) PW24, thereafter summoned a constable [PW16], to the occurrence place and directed him to inform the parents. The parents of the deceased [PW1 & PW2] came to the place of occurrence at 9.15 p.m., identified the body of the deceased and thereafter, PW1 lodged the complaint as stated above.

(iv) After registration of the complaint, PW24 had examined Bakkiyam [PW1] and Dhanabal [PW2], the parents of the deceased and examined PW3, PW4, Mani and Durai, who, according to him, were



eyewitnesses to the occurrence. At about 10.30 p.m., he prepared the rough sketch [Ex.P21] and observation mahazar [Ex.P22]. He seized the NOKIA mobile phone [M.O.5], bloodstained earth [M.O.10], earth which was not bloodstained [M.O.11], and a pair of slippers [M.O.12] under the seizure mahazar [Ex.P23].

(v) On 01.10.2014 between 7.00 a.m. and 9.30 a.m., he conducted the inquest and prepared the inquest report [Ex.P26]. Thereafter, PW24 made a request for conducting a postmortem. After the postmortem was conducted, he seized the dress materials of the deceased [M.O.1 to M.O.3] under the seizure mahazar [Ex.P27]. On 04.10.2014, at about 12.30 p.m., PW24 arrested A1 and seized her mobile phone [M.O.13], besides a love letter, said to have been written by A2 to her, under the seizure mahazar [Ex.P29]. He thereafter arrested A2 on 04.10.2014 at about 2.30 p.m. and on his confession, seized a scooter bearing Regn.No.TN02 AQ 5554, a bloodstained knife, blue-coloured jeans pant [M.O.7] and a shirt [M.O.8] under the seizure mahazar [Ex.P31]. He examined the witnesses and after obtaining the postmortem report [Ex.P12], the report of the experts [Ex.P14 to Ex.P19], filed the final



report against the accused for the offence under Sections 120-B, 341, 302, and 506(ii) of the IPC before the learned XIII Metropolitan Magistrate, Egmore, Chennai.

(vi) On the appearance of the accused (A1 & A2), the provisions of Section 207 Cr.P.C. were complied with. The case was committed to the Court of Sessions, i.e., Principal Sessions Court, Chennai and was made over to the learned VI Additional Sessions Judge, Chennai, for trial, which was taken on file as S.C.No.171 of 2015. Since two other accused were juveniles at the time of occurrence, they were tried separately by the Juvenile Justice Board. The trial Court framed charges against A1 for the offences under Sections 120-B and 302 r/w 34 of the IPC and against A2 for the offences under Sections 120-B, 341, 302 and 506(ii) of the IPC and when questioned, the accused pleaded 'not guilty'.

(vii) To prove its case, the prosecution had examined 24 witnesses as P.W.1 to P.W.24 and marked 33 exhibits as Ex.P1 to Ex.P33, besides 13 material objects, viz., M.O.1 to M.O.13. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances



appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.

(viii) The trial Court found A1 not guilty of the offence under Section 120-B and convicted her for the offence under Section 302 r/w 34 of the IPC and sentenced her as stated in para 2(i) of the judgment. Similarly, A2 was not found guilty of the offence under Sections 120-B and 341 of the IPC and the trial Court convicted him for the offences and sentenced him as stated in para 2(ii) of the judgment. Hence, the accused have preferred the instant appeals challenging the said conviction and sentence.

4.(i) Mr.V.Parthiban, the learned counsel for A2/the appellant in Crl.A.No.679 of 2019, would submit that the evidence of eyewitnesses, viz., PW3, PW4 and PW6 do not inspire confidence; that there are contradictions in their evidence as regards the time of occurrence; that all three witnesses were not known to the accused and no Test Identification Parade was conducted; that all of them had seen the accused at the police station and therefore, their identification in Court has no value; that the motive for the occurrence had not been established, as even according to



the prosecution, A1 was not living with the deceased for nearly one year prior to the occurrence; that the fact that there is an illicit relationship between A1 and A2 alone would not prove motive; that the arrest and recovery are also doubtful in view of the evidence of PW7; and that PW24, the investigating officer who collected the call detail records pertaining to A1, A2 and the deceased, had not filed the same in Court and had admitted in his cross-examination that if he had filed the said document, it would have been adverse to the prosecution case. The learned counsel took us through the evidence of the relevant witnesses and pointed out the infirmities in support of his above submissions and prayed for acquittal.

(ii) Mr.I. Abdul Basith, the learned counsel for A1/the appellant in Crl.A.No.699 of 2019, would submit that all the statements of the witnesses recorded under Section 161 (3) Cr.P.C. were sent to the Magistrate six months after they were recorded; that there is an improvement in the deposition of PW3 as regards the time of the occurrence; that all the witnesses had stated to the investigating officer that all the accused would be aged around 30 years, whereas two of the



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accused in this case were juvenile accused; and that an alteration was made in the Accident Register [Ex.P13] which would show that the genesis and the origin of the occurrence had been suppressed by the prosecution and prayed for acquittal.

5. Mr.S.Raja Kumar, the learned Additional Public Prosecutor, *per contra* submitted that minor contradictions with regard to the time of the occurrence would not render the evidence of eyewitnesses unreliable; that the said minor inconsistencies only suggest that they are natural witnesses and they have not been tutored; that the motive for the occurrence has been established by PW11 to PW13, who had stated that A1 and A2 were living together in a rented house; that the eyewitnesses cannot be disbelieved merely because there was no Test Identification Parade and relied upon the judgment of the Hon'ble Supreme Court in ***Mahabir v. State of Delhi***, reported in AIR 2008 SC 2343 and prayed for dismissal of the appeals.



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6.(i) As stated above, the prosecution had examined 24 witnesses.

PW1 is the mother of the deceased and the defacto complainant. She would speak about the information received by her and her husband from the police on the fateful day and the fact of their identifying the body of the deceased at Marina Beach. PW1 deposed that she saw the accused at the police station three days after the occurrence and that only then she came to know of the illicit relationship between A1 and A2. PW2 is the father of the deceased, who corroborates the evidence of PW1.

(ii) PW3 is a stranger to the accused and an eyewitness to the occurrence. He would state that he had seen the accused at the police station three days after the occurrence. PW4 is another eyewitness to the occurrence, whose evidence is similar except for the fact that his version with regard to the time of the occurrence is slightly different. PW5 is a hearsay witness and is of no avail to the prosecution. PW6 is another eyewitness, who would state that the occurrence took place at 3.00 p.m.



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(iii) PW7 is known to A2 and had lent his bike, a Hero Honda Splendor Plus bearing Regn.No.TN25 AJ4843, to A2 on the date of occurrence at about 7.00 p.m. on 30.09.2014. PW8 is the witness to the confession made by A1 and the seizure made pursuant to her confession. PW9 is a relative of the deceased and a witness to the seizure mahazar [Ex.P9]. PW10 is the witness to the seizure mahazar [Ex.P11].

(iv) PW11 is the landlord of the house where A1 and A2 are said to have stayed as tenants between June and September 2014. PW12 is the friend of A2 and would state that A1 and A2 were staying together in a rented house. PW13 corroborates the said fact.

(v) PW14 is the Constable who first went to Marina Beach on learning that a dead body was found with injuries. He deposed that PW24 informed the parents of the deceased about the occurrence and that they came to the place of occurrence and identified the body. PW15 is the constable who had taken the dead body to the Royapettah Government Hospital for the purpose of a postmortem. PW16, is the



Constable, who informed the parents of the deceased about the occurrence on the directions of PW24. PW17 is the Constable who had assisted the investigating officer in handing over the material objects to the Forensic Sciences Laboratory. PW18 is the Women Constable who had assisted the investigating officer in arresting A1.

(vi) PW19 is the Doctor, who conducted the postmortem and found several injuries on the body of the deceased. He had issued the postmortem report [Ex.P12]. PW20 is the Doctor, who made entries in the Accident Register [Ex.P13]. PW21 is the Forensic Science Officer, who had given the Viscera report [Ex.P14] stating that no alcohol or poison was detected in the internal organs of the deceased. PW22 is the Scientific Officer, who found bloodstains in the material objects seized from the deceased and the knife. PW23 is the Deputy Director of the Forensic Sciences Laboratory, who had issued the reports viz., Ex.P17, Ex.P18 and Ex.P19 and had stated that the blood group in none of the objects sent to him except for the jeans pant could be ascertained. PW24 is the investigating officer.



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7. PW1 and PW2 are the mother and father of the deceased. On information, they both went to the occurrence place to identify the dead body of the deceased. They identified the deceased as their son. The identity of the deceased therefore, is not in dispute. PW19, the Doctor who conducted the postmortem and had issued the postmortem report [Ex.P12]. He found five injuries, which were grievous in nature, including two stab injuries on the chest and a stab injury on the abdomen. He had opined that the deceased died of shock and haemorrhage due to multiple stab injuries all over his body. The postmortem report [Ex.P12] and the evidence of PW19 have not been discredited by the defence in any manner. Therefore, the prosecution had established that the deceased had suffered a homicidal death.

8. (i) It is the prosecution case that A1 and A2 had an illicit relationship and therefore they decided to do away with the husband of A1, the deceased herein. Though motive would not be relevant in a case that is sought to be established through eyewitnesses, we are inclined to examine whether the prosecution has proved the motive to the occurrence.



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(ii) It is not in dispute that A1 was the wife of the deceased. PW1, the mother of the deceased, was not aware of the illicit relationship between A1 and A2. She came to know of the said relationship only after the occurrence, as could be seen from her evidence. PW2, the father of the deceased, also was not aware of the alleged illicit relationship. PW1 and PW2 would admit that A1 and the deceased were living separately on account of matrimonial differences. PW11 is the landlord of the premises, where A1 and A2 are said to have stayed as tenants since June 2014. The occurrence took place in September 2014. PW12, a friend of A2 and PW13, who had helped A2 to take the house on rent, corroborate the evidence of PW11.

(iii) Though the learned counsel for the defence would submit that all three witnesses have to be disbelieved, we are of the view that even assuming PW11, PW12 and PW13 are believed, it only reveals that A1 and A2 were living together in a house. PW1's evidence suggests that A1 had left the matrimonial house on account of matrimonial differences. Therefore, we are of the view that apart from proving the extra-marital



affair of A1, the motive to cause the death of the deceased has not been established. There is nothing on record to suggest as to what was the proximate act which provoked A1 and A2 to cause the death of the deceased. We cannot infer motive on the basis of such evidence. Therefore, we are of the view that the alleged motive suggested by the prosecution for the occurrence has not been established.

9. (i) As stated above, the prosecution examined three eyewitnesses, viz., PW3, PW4 and PW6. The other witnesses who speak about the occurrence, viz., PW1, PW2 and PW5, are hearsay witnesses. Therefore, the prosecution case rests primarily on the evidence of these three witnesses, PW3, PW4 and PW6.

(ii) PW3 in his deposition had stated that he was selling a snack ['Rz;ly;'] at the beach and on hearing a noise, he went near the place of occurrence and found three persons stabbing the deceased with knives. He had also stated that the policemen arrived at the spot on information given by a passer-by. PW3 went to the police station 4 or 5 days after the occurrence and was asked to identify A1 and A2, who were present at the



police station and he identified them as the persons who were involved in the occurrence. According to him, the occurrence took place between 6.00 p.m. and 6.45 p.m. on some day in the month of September 2014 (he does not remember the exact date).

(iii) PW4 would state that he went to the beach to meet his friend who was selling tea at the beach, between 7.00 p.m., and 7.30 p.m. on 30.10.2014 and on hearing a noise, he saw three persons stabbing a person with knives; that the police called him to the police station four days after the occurrence; and that he had identified A1 and A2 at the police station. He had identified the accused in the dock.

(iv) PW6 is the other eyewitness examined and she would state that the occurrence took place at 3.00 p.m. We are of the view that PW6 is of no avail to the prosecution, as her deposition is totally contrary to the prosecution case.

(v) PW3 had stated that the occurrence took place between 6.00 p.m. and 6.45 p.m., whereas PW4 had stated that the occurrence took



place between 7.00 p.m. and 7.30 pm. This contradiction would not affect the prosecution case in any manner, as the eyewitnesses cannot be expected to remember the exact time of occurrence. However, PW3 was unable to specify the exact date of occurrence, though he would state that the occurrence took place in the month of September 2014. PW4 would further state that the occurrence took place on 30.10.2014, which is contrary to the prosecution case, that the occurrence took place on 30.09.2014. We cannot brush aside this contradiction as innocuous as PW4 reiterated the said date thrice in his cross-examination.

(vi) In fact, PW3, who had stated the time as 6.45 p.m., had not stated the time of occurrence in his statement given before PW24 during the investigation, as could be seen from the evidence of PW24 in his cross-examination.

(vii) Be that as it may. Admittedly, both PW3 and PW4 are strangers to the accused. No Test Identification Parade was conducted by the police to ascertain the veracity of their statements. PW3 had told the police that three men who were involved in the occurrence would be aged



about 30 years. In fact, PW24, the investigating officer, confirmed that PW3, had stated in his Section 161(3) Cr.P.C. statement that the age of the accused involved in the occurrence would be around 30 years. Both the witnesses have stated that they were made to identify the accused at the police station four or five days after the occurrence. It is well settled that where witnesses have identified the accused persons at the police station and no Test Identification Parade has been conducted, the identification for the first time in Court would be meaningless. This position of law has been reiterated in several decisions of the Hon'ble Supreme Court. We may refer to the observations made in the following decisions.

(a) In ***Ravindra Vs State of Maharashtra*** reported in (1998) 6 SCC 609, the Hon'ble Supreme Court held as follows:

“8.....The identification parades belong to the investigation stage and they serve to provide the investigating authority with materials to assure themselves if the investigation is proceeding on the right lines. In other words, it is through these identification



parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits—and not by showing the suspects or their photographs”.

(b) In *Krishnan Kumar Malik Vs State of Haryana* reported in (2011) 7 SCC 130, the Hon’ble Supreme Court held as follows:

“26.....Admittedly, she was already shown the appellant and the other accused at the police station after they were arrested. Thus, her dock identification in the court had become meaningless”.

(c) The judgment in *Mahabir’s case* [supra], relied upon by the learned Additional Public Prosecutor to substantiate his submission that the witnesses cannot be disbelieved merely because no Test Identification Parade was conducted, would not be applicable to the facts of the instant case, as in that case, the witness had not seen the accused at the police station.



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(viii) PW24 though he deposed that these three eyewitnesses were examined on the same day, would admit that the statements recorded by him were sent to the Court six months after the occurrence. In ***K.Vadivelu and others***, reported in **1975 SCC OnLine Mad 390**, this Court had held that in order to provide judicial safeguard against subsequent fabrication of documents in grave crimes, it is imperative that the documents are despatched by the investigating officers to the Magistrates without any delay and the statements of the witnesses recorded under Section 161(3) of the Cr.P.C., are one of those documents of special importance, which has to be despatched without any delay. Therefore, for the above reasons, a serious doubt arises on the evidence of these two eyewitnesses and we cannot give any credence to their testimonies.

10. (i) PW20 is the Doctor, who had make entries in the Accident Register [Ex.P13]. According to him, the deceased was brought dead at about 10.25 p.m. on 30.09.2014 and he was brought by a constable [PW14]. As against the column, 'Name of the person', in the said Accident Register, it is entered as 'unknown'. However, a perusal of the



original of Ex.P13 would suggest that the said word 'unknown' was circled and thereafter, the name of the deceased and his address were added on 12.02.2015. PW20 in his deposition has stated that he did not make the said alteration in the said Accident Register. PW24 also confirmed that the said entries were made subsequently and it was made on 12.02.2015. There was no reason for altering the Accident Register.

(ii) But what would be more relevant is that at 10.25 p.m., when the entries in the Accident Register were made by PW20, the identity of the deceased was unknown. This would show that the prosecution case that both the parents came to the beach at about 9.15 p.m. and had identified the deceased and thereafter the dead body was taken to the hospital is doubtful. The prosecution therefore has suppressed the genesis and origin of the occurrence. It is well settled that where the genesis and origin of the occurrence are in doubt, then the entire prosecution case has to be looked at with suspicion.

11. (i) Further, we find from the evidence and the record that the arrest of the accused and seizure also could not have taken place in the



manner as alleged by the prosecution. According to PW24 he had arrested A1 at 12.30 p.m., on 04.10.2014, in the presence of a women constable- PW18 and arrested A2 at 2.30 p.m. on the same day. It is the prosecution case that A2 had used the bike belonging to PW7 a Hero Honda Splendor Plus bearing Regn.No.TN25-AJ-4843, at the time of the occurrence and on 02.10.2014 (there is a typographical error in the deposition i.e., date is recorded as 02.10.2011). He was called by the Police from Marina Beach Police station, where he found his vehicle as well as A2 at the police station and he had identified his vehicle.

(ii) We may point out here that the prosecution had not chosen to clarify the discrepancy in the date. If PW7 had seen the accused at the Police station on 02.10.2014, the prosecution case that the accused was arrested only on 04.10.2014 becomes doubtful. Therefore, if the arrest is doubtful, consequently, the seizure on A1's confession also cannot be believed. Hence, we are of the view that the arrest and recovery have not been proved by the prosecution.



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12. It is pertinent to point out here that another aspect in PW7's evidence raises a doubt with regard to the prosecution case. PW7 had deposed that he had handed over his vehicle to the accused at 7.00 p.m., at Padi Kuppam, which is far away from the scene of the occurrence. The prosecution has not chosen to treat this witness as hostile. If the evidence of PW7 on this aspect is accepted, then, the prosecution case that A2 had used the vehicle of PW7 to go to Marina Beach and cause the death of the deceased at 7.15 p.m., becomes doubtful.

13. Above all, it is the prosecution case that before the occurrence, A1 from her mobile phone contacted the deceased on his mobile phone and asked him to come to Marina Beach and that she had also called A2 to bring his friends to do away with the deceased. PW24 would admit in his evidence that he had collected the call detail records of A1, A2 and the deceased and did not produce the same before the Court. In the cross-examination, when questioned as to why he did not produce those records, he admitted that he did not do so since it would go against the prosecution case. The relevant portion of his deposition is extracted herein for better appreciation of his deposition.



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“1 kw;Wk; 2 Mk; vjphpfs; ,UtUk; j';fSf;Fs;
bry;ngbdpy; ngrp bfhz;l;Jf;fhd ifg;ngrp call details
epWtdj;jplkpUe;J bgwg;gl;IJ/ Mdhy; ePjpkd;wj;jpy;
jh;fy; bra;ag;gltpy;iy/ ,we;Jngbd fhu;j;jpdp;
bry;ngbd; call details th';fp cs;nsd;/ mjid
ePjpkd;wj;jpy; jh;fy; bra;atpy;iy/ nkw;go bry;ngbd;
call detailsia jh;fy; bra;jhy; mJ tHf;fpw;F tpnuhjk;
MfptpLk; vd;gjhy; ePjpkd;wj;jpw;F jh;fy;
bra;atpy;iy/”

14. From the above discussion, it could be seen that the prosecution had not established the motive, the arrest and seizure or the alleged calls made between the accused and the deceased prior to the occurrence. The evidence of the eyewitnesses for the reasons stated above cannot be believed. Therefore, in view of the above infirmities, we are of the view that it would be highly unsafe to convict the appellants on the basis of the evidence adduced by the prosecution and we are inclined to set aside the impugned judgment.

15. In the result, the Criminal Appeals are allowed. The conviction



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and sentence imposed upon the appellants/accused vide judgment dated 26.08.2019 in S.C.No.171 of 2015, on the file of the learned VI Additional Sessions Judge, Chennai, are set aside. The appellants/accused are acquitted of the charges. Bail bond, if any, executed shall stand discharged.

(A.S.M.,J.) (S.M.,J.)
02-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ars

To

1. The VI Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
D5 Marina Police Station,
Chennai District.

3. The Public Prosecutor,
High Court, Madras.



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CRL A Nos. 679 & 699 of 2019

**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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**Pre-delivery Common Judgment in
CRL A Nos. 679 & 699 of 2019**

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