



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.12.2021

DELIVERED ON: 20.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH and THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.484 of 2018

Samiyappan ...Appellant

VS.

State rep by
The Inspector of Police,
All Women Police Station,
B-9 Saravanampatti,
Coimbatore District.
(Crime No.708/2011)

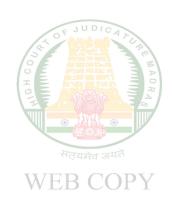
...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 praying to set aside the judgment passed in S.C. No.01 of 2015 dated 29.05.2015 on the file of Mahila Court, Coimbatore District.

For Appellant : Mr. T. Muruganantham

For Respondent : Mr.M.Babu Muthumeeran

Additional Public Prosecutor.





JUDGMENT

(R.HEMALATHA, J.)

The appellant has filed the present appeal against the judgment dated 29.05.2015 in S.C. No.01 of 2015, on the file of Mahila Court, Coimbatore District. S.C. No.1/15 was split up from S.C. No.208/13.

2. The trial court framed the following charges against accused 1 to 4 in S.C. No.208 of 2013.

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 to A3	449 of IPC
2.	A1 to A3	376 r/w 511 of IPC
3.	A1 to A3	392 of IPC
4.	A1 to A3	302 of IPC
5.	A4	414 of IPC

3. The present appellant absconded when the case in S.C. No.208/13 was posted for questioning all the accused under Section 313 of the code of Criminal Procedure after the examination of the prosecution witnesses. Therefore, his case was split up in S.C. No.01 of 2015 and a non bailable warrant was also issued. The trial court proceeded further in S.C. No.208/2013 against the other accused and





convicted A1 and A3 vide judgment dated 29.04.2015 as detailed WEB Chereunder.

S.No.	Rank of Accused	Conviction	Sentence
1.	A1 and A3	U/s. 449 IPC	Life Imprisonment and a fine of Rs.10,000/- each in default, to undergo Simple Imprisonment for three months.
2.	A1 and A3	U/s.376 r/w 511 of IPC	Rigorous Imprisonment for five years with a fine of Rs.10,000/-each, in default, to undergo Simple Imprisonment for three months.
3.	A1 and A3	U/s.302 IPC	Life Imprisonment and a fine of Rs.25,000/- each in default, to undergo Simple Imprisonment for three months.
4.	A1 and A3	U/s. 392 IPC	Rigorous Imprisonment for seven years with a fine of Rs.5,000/- each, in default, to undergo Simple Imprisonment for three months.

The trial court further directed that the sentences shall run concurrently.

The accused No.4 was acquitted.

4. Subsequently, on 27.05.2015, the non bailable warrant against the appellant was executed and the present appellant was produced before the trial court. The trial court questioned the appellant under Section 313 Cr.P.C after remanding him to judicial custody and



also convicted and sentenced him as under.

WEB COPY

S.No.	Rank of Accused	Conviction	Sentence
1.	A2	U/s. 449 IPC	Life Imprisonment and a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for three months.
2.	A2	U/s.376 r/w 511 of IPC	Rigorous Imprisonment for five years with a fine of Rs.1,000/-in default, to undergo Simple Imprisonment for three months.
3.	A2	U/s.302 IPC	Life Imprisonment and a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for three months.
4.	A2	U/s. 392 IPC	Rigorous Imprisonment for seven years with a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months.

The trial court further ordered that the sentences shall run concurrently.

5. The appeal in Crl.A.No.397 of 2015 filed by the accused 1 and 3 was dismissed by this court on 15.07.2016 and the conviction and sentence passed by the trial court was confirmed.

- 6. The case of the prosecution in nutshell is as follows:
- i. The deceased in the instant case was a young girl aged about 17







years. The accused 1 to 3 are friends and accused 4 is the wife of accused No.1. Saleth (P.W.1) and Leema Roslyn (not examined are the parents of the deceased and they were residing with their daughter (deceased) at Door Number.10, Aruna layout, Assisi Ganapathy, Coimbatore. P.W.1 working Nagar, was Government Hospital, Tiruppur, and his wife (mother of the deceased) was a teacher in Government School at S.S. Kulam. The deceased had two brothers. While the older one was working in All India Radio, Chennai, the younger one was studying in an Engineering College at Chennai. Thus, both the brothers were staying in Chennai. The deceased, after completing her XII standard, was at home alone when her parents were away for work.

ii. On the fateful day, i.e. 12.07.2011, P.W.1 and his wife left for work in the morning as usual around 7.30 a.m. leaving the victim girl at home. The theory of prosecution is that the three assailants A1 to A3 trespassed into the house of the victim girl between 12 noon and 1 P.M. knowing that she was all alone and attempted to gang rape her. In the bid to rape her they faced resistance from the girl and while the present appellant caught hold of her hands and

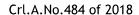






closed her mouth, the accused 1 and 3 tied her hands behind with a rope. The victim girl was molested causing injuries to her breasts, abdomen, neck, lips and other parts. There were nail marks found on her body. The present appellant with the help of the other accused 1 and 3 strangulated her and also stabbed her with a knife (M.O.29) on the neck region many times causing multiple stab injuries and death. The accused 1 to 3 also took away one gold chain with cross weighing 16.800 gm (M.O.1), 3 pairs of studs with stones (M.O.2), Gold balls (M.O.3), a pair of ear stud (M.O.4), a pair of upper ear stud (M.O.5), one ear drop without screw (M.O.6), gold chain with cross (M.O.7), a pair of ear studs (M.O.8), gold chain (M.O.9), one gold finger ring with flower and heart shape (M.O.10) from the steel almirah and from her person and fled the scene with the loot.

iii. P.W.1 who returned home from his work at about 3.30 p.m. found the main door of his house neither locked from inside nor outside. He found his house in a mess. When he called his daughter, there was no response from her. He went inside the bedroom and saw the steel almirah kept open and all the dresses and other materials were strewn around on the floor. His daughter was found lying in

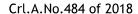






a pool of blood with her hands and legs tied with a rope. P.W.1 was shocked and raised an alarm. He also found gold jewellery missing. On hearing his cries, one Arulraj (not examined) a neighbour came to his house and immediately called the police control room. They in turn, informed B-9 Saravanampatty Police Station. Thiru.Rajadurai (P.W.16), Special Sub Inspector of Police, on receiving information from Police Control Room, went to the scene of occurrence and recorded the statement (Ex.P1) of P.W.1, based on which FIR (Ex.P25) in Crime No.708 /2011 for the offences under Sections 302, 380 IPC against unknown accused was registered by him.

iv. Thiru. Periyasamy (P.W.19), Inspector of Police, in charge of B-9 Police Station, took up investigation in Crime No.708 of 2011, went to the scene of occurrence and prepared an Observation Mahazar (Ex.P3) and a rough sketch (Ex.P30) in the presence of Jagadeesan (P.W.3) and another witness. He also recovered a blood stained hair (M.O.14), a cement colour shirt (M.O.11), blood stained white cloth (M.O.12), blood stained bandage cloth (M.O.13) and a bunch of keys (M.O.15) under the cover of a mahazar Ex.P4 in the presence of the same witnesses. He also

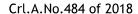






summoned Thiru.Arivarasu, photographer, who took photos (Ex.P17 series) of the deceased and the scene of occurrence both from inside and outside the house. The service of the finger print expert Tmt. Violet Jansi Rani ((P.W.10) was availed by the police, who lifted finger prints from the steel almirah. According to her report (Ex.P12) one of the two finger prints which was lifted from the almirah matched with the left hand thumb of the third accused Ramkumar.

- v. P.W.19 conducted inquest (Ex.P31) on the body of the deceased in the presence of panchayatdhars between 7 p.m. and 10.30 p.m. on the same day, i.e. 12.07.2011 and sent the body for postmortem.
- vi. Dr.Jayasingh P.W.4) conducted autopsy on the body of the deceased on 13.07.2011 at 10.15 a.m. He observed the following injuries:
 - (1) Horizontal stab wound 2 x 0.5 cm x Trachea lumen deep noted over front of left side upper neck, the medial blunt end is 0.5 cm left to midline and lateral sharp end is 4.5 cm below to chin.. The wound passes inwards, backwards, obliquely towards right side neck, just above upper border of thyroid cartilage across the thyro hyoid membrane and passes through

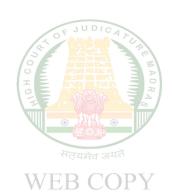






the laryngeal cavity the piercing the right side thyro hyoid membrane and ends into the right common carotid artery by piercing the carotid sheet with surrounding blood clots weighing about 50 gms noted. The total length of wound track is 7 cm.

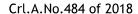
- (2) Horizontal stab wound 2 x 0.5 cm x bone deep noted over left side neck. The medial blunt end is 1 cm left to midline and 1 cm below and lateral to wound No.1 and the lateral shap end is 5 cm below to mandible. The wound passes inward, backwards, obliquely towards right side neck piercing the underlying muscle, vessels and nerves passing just below to esophagus and entering into gap of right side transverse mucous of C-5, C-6 vertebra measuring 1 x 0.5 cm. The total length of wound track is 6 cm.
- (3) Horizontally stab wound 1.5 x 0.5 cm noted over left side neck. The medial sharp end is 3 cm left to midline and 1 cm lower left to wound No.2 and the lateral blunt end is 6 cm below to mandible. The wound passes inward downwards obliquely and medially piercing the muscle, nerves and vessels upto 3 cm muscle deep.
- (4) Horizontal stab wound 1.5 x 05 cm x laryngeal cavity deep noted over middle of neck, 7 cm below to chin at the level of just above to thyroid cartilage. The wound passes inwards, downwards and enter into the





laryngeal cavity.

- (5) A complete transverse pressure ligature abrasion 18 x 2 to 1 cm noted over middle of neck just below to wound No.4. Both ends are overlapping one and above over the right side neck. The right end is 10 cm below to right ear lobe and left end 12 cm below to left ear lobe. The base of the ligature mark soft and intermittently bruised.
- (6) Nail mark abrasion 0.2 x 0.1 cm noted over left side middle of neck, 2 cm left to midline, the concavity noted on towards upward direction.
- (7) Nail mark abrasion 0.2 x 0.1 cm noted over left side upper abdomen, 2 cm left to midline. The concavity noted on towards upward direction.
- (8) Reddish contusion 2 x 1 x 0.5 cm noted over left ileac fossa, 7 cm left to midline.
- (9) Laceration 1 x 0.5 cm x skin deep noted inner aspect of left side lower lip, 0.5 cm left to midline.
- (10)Reddish contusion 1 x 0.5 cm noted over middle of upper lip.
- (11) Curved bite mark 4 x 0.5 cm noted over right upper outer quadrant of the right side breast. Another curved bite mark 3 x 0.5 cm noted over right upper quadrant, 3 cm above and lateral to previous bite mark.
- (12)Reddist contusion 10 x 8 x .5 cm noted over right







- middle and upper lateral quadrant of the right side breast.
- (13) Multiple reddish contusions of varying sizes and shapes noted over upper half of the left side breast.
- (14)Reddish contusion 4 x 3 x 0.5 cm noted on back of left elbow joint.

On dissection of the neck: Reddish contusion 6 cm noted over oateral aspect of right side neck, 1 cm right to midline at the level of thyroid cartilage. Reddist contusion 2 x 2 cm noted over lateral aspect of left lower neck, 1 cm left to midline at the level of 3rd to 5th thyroid ring. Reddish contusion 10 x 3 cm noted on left side parasppinal muscles. Hyoid bone: intact.

Other findings: Peritoneal and pleural catities - empty; Larynx and Trachea contains weighing about 5 gms of clotted blood; Heart - right side chambers contain above few cc of fluid blood, left side chamber empty, coronaries patent; Stomach contains about 150 gms of brown coloured partially digested food particles, no specific smell, mucosa congested; Small intestine: contains about 10 ml of bile stained fluid, no specific smell, mucosa congested; Liver, Spleen, brain, lungs and Kidneys: cut section contested; Urinary bladder empty; Uterus - ormal in size, cut section empty. Old healed hymen tear noted over 3,9 and 11 clock position."

According to the doctor, the deceased would have died of shock and hemorrhage due to multiple stab injuries and the death would have





occurred 12 to 24 hours prior to autopsy. Ex.P5 is the postmortem WEB C certificate and Ex.P6 is the final opinion.

vii.Tmt. Sasisheeba (not examined), the woman police constable, who took the body of the deceased for autopsy, recovered the blood stained dresses (M.O.20 to M.O.25) worn by the deceased and handed over the same to the Investigating Officer under a special report (Ex.P32).

viii.Mary Reeta (P.W.5) was a neighbour, who on 11.07.2011 saw the present appellant/A2 outside the house of the victim on a small vacant plot around 11 a.m. and again the next day when she was returning from the house of another neighbour Sundar, she saw three persons coming out of the house of the deceased. Subsequently, when she came to know about the murder of the victim she could corroborate the chain of events. Similarly Sekar (P.W.12) who happened to pass through the road in front of the house of the victim.

ix. On 01.08.2011 at about 2 p.m., P.W.19, arrested the first accused near Zoological Park, Coimbatore, and recorded his confessional







Based on his disclosure, a gold chain weighing statement. 16.800gms (M.O.1) was recovered from him under the cover of a mahazar (Ex.P15) in the presence of the witnesses Thiru. Baskaran (P.W.11) and Thiru. Vijayraja (not examined). He was also taken to Sri Sakthi Finance, Anuparpalayam, Tiruppur. where he had pledged 4 gold balls, 4 gold ear studs (M.O.2 to M.O.6) and recovered the same under the cover of a mahazar Ex.P16 in the presence of the same witnesses. He sent the first accused to the concerned Magistrate for judicial custody. On the same day at about 6 p.m., P.W.19 arrested the present appellant at Pulavanpatti, Thiruppur, and based on his confessional statement, P.W.19 recovered a gold chain with cross weighing 29.9. gms (M.O.7), a key (M.O.26), blood stained lock (M.O.25) and a mobile phone (M.O.27) from the residence of the appellant under the cover of a mahazar Ex.P.19 in the presence of the witnesses Thiru. Baskaran (P.W.11) and Thiru. Vijayraja (not examined). He also seized a blood stained shirt (M.O.28) and a blood stained knife (M.O.29) hidden by the appellant in a bush near Chellapalayam Signal, Thiruppur. He was subsequently taken to Sri Sakthi Jewellery at Avinashi, where he had pledged a pair of





ear stud weighing 3 gm 200 milligram (M.O.8) and recovered the same under the cover of a mahazar Ex.P.21 in the presence of the same witnesses. On the same day at 9 p.m, the first accused identified the third accused, who was also arrested by P.W.19. A gold chain weighing 30 gms (M.O.9) was recovered from the shirt pocket of the third accused under the cover of a mahazar Ex.P23 in the presence of the same witnesses.

- x. On 02.08.2011, the fourth accused (wife of the first accused) was arrested near Gandhipuram bus-stand and a receipt (M.O.9) bearing No.5622 issued by Sri Sakthi Finance was recovered under the cover of a mahazar Ex.P29 in the presence of Thiru.Venugopal and Thiru.R.Senthil Kumar (both not examined). She was also sent to judicial custody.
- xi. On 11.08.2011, P.W.19 recovered a gold ring (M.O.10) weighing 2.5 gms which was pledged by the first accused with Muthoot Finance under the cover of a mahazar Ex.P11.

xii. Thiru. Gopinathan (P.W.8), the then Judicial Magistrate V, Coimbatore, conducted Identification Parade of all the three







accused on 22.08.2011, in which both P.W.5 and P.W.12 participated and identified all the accused. The report of the Magistrate was marked as Ex.P7.

xiii. After the transfer of P.W.19, Thiru.Devendiran (P.W.20) took up investigation and after receiving the Postmortem Certificate from the doctor, altered the sections of law to 302, 380, 414, 376 r/w 511 IPC and sent the alteration report (Ex.P35) to the Court.

xiv. On the transfer of P.W.20, Thiru. Ilango (P.W.21), the Inspector of Police, recorded the additional statement of P.W.1 and also recovered a two wheeler (M.O.16) used in the commission of offence by the accused under the cover of a mahazar (Ex.P24) in the presence of the witnesses Thiru. Angappan (not examined) and Kathirvel (P.W.14). According to P.W.21, the vehicle was found abandoned. After completing investigation, he altered the sections of law to 449, 392, 302, 414 and 376 r/w 511 IPC and sent the alteration report (Ex.P36) to the court. He also filed the final report against all the accused.

xv.Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused



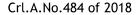




denied. In order to prove the case, the prosecution examined 21 witnesses and marked 36 documents and 31 material objects.

7. Mr.T. Muruganantham, learned counsel for the appellant contended that the present appellant was innocent and was in no way connected to the crime. His main contention was that there was no eye witness to the alleged murder and the entire case of the prosecution is on the weak premise that circumstantial evidence pointed the accusing finger towards the present appellant. According to him, the test Identification Parade was only an empty formality since both the eye witnesses P.W.2 and P.W.5 were already shown the accused and it was easier for them to identify the accused in the Identification Parade. The chain of events did have missing links thereby proving fatal to the case of the prosecution.

8. Per contra, Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor, was categorical in stating that there was no missing link in the chain of events and in fact the prosecution witnesses P.W.5, the neighbour, P.W.6, the house broker (who knew the first accused) and P.W.12 had clearly deposed that they saw all the three accused on 12.07.2011 in the vicinity of the house of the victim and there is no good ground to disbelieve any of them. Moreover, it is also his contention that all the jewellery which were stolen from the house of the





victim as well as those in the person of the victim were recovered from all WEB Cothe three accused and there has been no explanation forthcoming from the learned counsel for the appellant on this aspect.

9. This is a gruesome murder of the victim girl who was only 17 years old when she was found alone in her residence with both her parents out of the house in their respective work places. P.W.6, the house broker has proved to be a crucial witness in that he had taken the first accused to P.W.1 asking for the accommodation available in the first floor of P.W.1's residence on rent. According to him, it so happened that P.W.7 was the one who could get the portion on rent and ironically P.W.7 had paid a sum of Rs.4,00,000/- on 11.07.2011 to P.W.1 and received the key for the portion just a day before the murder took place. P.W.9, the Manager of Muthoot Finance, P.W.13, a Pawn broker owning Sri sakthi Finance were key witnesses when they confirmed that the first accused (in the case of Muthoot Finance) and the fourth accused along with accused 1 to 3 (in the case of Sri Sakthi Finance) had pledged some of the jewels with them respectively and availed loan against them. In fact, P.W.9 of Muthoot Finance confirmed that as per procedure, the photograph of the person who pledged jewels was taken and preserved





along with the xerox copy of the driving license. Both the photo (Ex.P9) WEB C and the driving license copy (Ex.P10) of the first accused were available with Muthoot Finance. These jewels were also identified by P.W.1, the father of the deceased. As already mentioned, P.W.5 and P.W.12 were crucial witnesses in as much as they had seen the accused going in and coming out of the main door of the victim's house and also had identified them in the test Identification parade.

10. No doubt, this case rests on circumstantial evidence in the absence of any direct eye witness. It is well settled that in such cases, the chain of events should be closely knit with no room for any doubt about the involvement of the accused. In the instant case, P.W.1, the father of the victim was the first person to see his house in a ransacked condition and his dearest daughter lying in a pool of blood in the bedroom. Neither P.W.1 nor P.W.6 were cross examined on the aspect of the first accused approaching P.W.1 to take the first floor portion of P.W.1's residence on rent. P.W.6 and the first accused being house brokers knew each other and there was no special reason for P.W.6 to give additional information about the first accused visiting P.W.1's house earlier seeking a portion for rent except for narrating the truth.





11. The recovery of the main weapon knife (M.O.29) from the appellant (A2) based on his disclosure statement clearly shows he played a vital role in the commission of the crime against the innocent victim. Apart from this, a chain (M.O.7), lock and key of the house of the deceased (M.O.25 and M.O.26) were recovered from the house of the present appellant. Absolutely, there is no acceptable explanation for this from the appellant. Even in his statement under Section 313 Cr.P.C., he simply denied the commission of the offence.

department. According to her, on 12.07.2011, she visited the house of the victim on the request of the Investigating Officer (P.W.19) and found the finger prints on the steel almirah. Out of the two finger prints, one was not fit for examination as it was smudged. Therefore, she took photograph of one clear finger print which was compared with the finger prints of the previous offenders kept in the finger print bureau. The finger print tallied with the finger print of the third accused who was earlier involved in Karumuthupatti Police Station Crime No.162 of 2010.





13. This Court in Crl.A. No.397 of 2015, filed by accused 1

WEB Cand 3 has observed thus:

"5. This is a case based on circumstantial evidence. There is no denial of the fact that on 12.07.2011, P.W.1 and his wife had left for their workplace leaving the deceased alone in the house. At around 03.30 p.m. when P.W.1 returned to his house, the deceased was lying dead in a pool of blood with injuries and her hands were found tied with a cloth. According to the medical evidence, the death was due to the stab injuries. Thus, the prosecution has succeeded in establishing that the deceased had died sometime between 07.30 a.m. and 03.30 p.m. on 12.07.2011 and it was a homicide.

6. From the evidence of P.W.1, it is crystal clear that M.Os.1 to 10 the gold jewels which were either worn by the deceased or kept in the bureau of the bedroom were found missing. Thus, the prosecution has proved that the robbery of these valuable gold jewels had taken place from the same transaction in which the deceased was killed."

. . . .

16. From these circumstances, in our considered view, the prosecution has proved beyond any doubt that these two appellants along with the second accused had committed the heinous crimes as charged. The







circumstances proved by the prosecution would form a complete chain without any missing link and unerringly point to the guilt of these two appellants. Thus, the trial Court was right in convicting these two appellants. There is no other hypothesis which would be inconsistent with their guilt.

14. In fact, the evidence of P.W.5, the neighbour of the deceased, was that there was a vacant site between the house of P.W.5 and the deceased and that she had seen the present appellant between 11 a.m and 12.00 noon on 11.07.2011 looking at the vacant site. 12.07.2011, when she was returning home after visiting the house of another neighbour Sundar, she saw all the three accused (including the present appellant) coming out of the house of the deceased. She did not take it seriously that time. In the test Identification Parade, she identified the accused 1 to 3 as the persons who came out of the house of the deceased. Nothing useful was suggested to her during the course of cross examination to discredit or disbelieve her evidence. The pawn receipt and the ledger recovered form Sri Sakthi Finance and the evidence of P.W.13, Manager of Sri Sakthi Finance, clearly reveal that all the three accused along with A4 pledged eight items of gold jewels, which have been



proved to be the stolen articles looted from the victim. Aircell Nodal WEB C Officer (P.W.17), though had spoken about the call details made and received in cell phone No. 8675409836, the prosecution did not adduce a certificate as provided under Section 65B of the Indian Evidence Act from a competent authority. Hence, no credence can be attached to his evidence.

15. However, prosecution has established the guilt of the accused beyond all reasonable doubts by adducing acceptable evidence. The circumstances formed a complete chain without any missing links and there can be no other hypothesis which would be inconsistent with the guilt of the present appellant.

16. The trial court had taken into account the gravity of the offence and sentenced the accused adequately. Thus, we do not find any reason to interfere with the same.

- 17. In the result,
- (i) This Criminal Appeal is dismissed.
- (ii) The conviction and sentence passed by the Additional Sessions





Court, Magalir Needhimandram (Mahila Court), Coimbatore, against the WEB C second accused/appellant in S.C.No.1 of 2015 dated 29.05.2015, is hereby confirmed.

(P.N.P., J.) (R.H.,

J.)

20.01.2022

bga Index : yes/no

Speaking /Non speaking Order

To

- The Inspector of Police,
 All Women Police Station,
 B-9 Saravanampatti,
 Coimbatore District.
 (Crime No.708/2011)
- 2. The the Sessions Judge, Magalir Needhimandram (Mahila Court), Coimbatore
- 3. The Public Prosecutor, High Court, Madras.
- 4. The Section Officer, Criminal Section, High Court, Madras





Crl.A.No.484 of 2018

P.N.PRAKASH, J. and R.HEMALATHA, J.

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Pre-Delivery Judgment in Crl.A.No.484 of 2018

20.01.2022