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Crl.A(MD).Nos.158 & 160 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	23.06.2026
Pronounced On	:	09.07.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD).Nos.158 & 160 of 2024

Muthupandiyan

... Appellant/ Accused No.2
(In Crl.A(MD).No.158 of 2024)

Nithiyakamala

... Appellant/ Accused No.1
(In Crl.A(MD).No.160 of 2024)

Vs.

The State through,
The Inspector of Police,
Kattuputhur Police Station,
Trichy District.
(Crime No.90 of 2019)

... Respondent / Complainant
(In both petitions)

COMMON PRAYER:- Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, to call for the records in S.C.No.17 of 2021 dated 29.11.2023 on the file of the learned First Additional District and Sessions Judge (PCR), Tiruchirpalli, and set aside the conviction and sentence imposed against the appellant.



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Crl.A(MD).Nos.158 & 160 of 2



(In both petitions)

For Appellant : Mr.T.Lajapathi Roy, Senior Advocate
for Mr.R.Alagumani

For Respondent : Mr.Venkatesh
Counsel For State of TN (Crl.Side)

COMMON JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN.J.**)

The appellants / accused have preferred the present appeals challenging the judgment made in in S.C.No.17 of 2021 dated 29.11.2023 on the file of the learned First Additional District and Sessions Judge (PCR), Tiruchirpalli,, whereby they were convicted and sentenced in the following manner:

Accused. No.	Sentence of Law	Sentence of Imprisonment	Fine
2	Section 302 r/w 34 of IPC	Life Imprisonment	Rs.1,000/-; in default, to undergo 3 months Simple Imprisonment
1	Section 302 r/w 34 of IPC	Life Imprisonment	Rs.1,000/-; in default, to undergo 3 months Simple Imprisonment

2. Facts of the case :

2.1. The deceased child, Luckshigaa Sri, was the daughter of A1, who is the appellant in Criminal Appeal No.160 of 2024. Initially, A1 married P.W.4.



Owing to matrimonial discord, they obtained a decree of divorce. Thereafter,

A1 married A2, who is the appellant in Criminal Appeal (MD).No.158 of 2024.

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After their marriage, A1 and A2 resided in the upstairs portion of the first floor of the house belonging to P.W.1. The prosecution case is that, on 19.05.2018 at about 08.00 a.m., P.W.1 heard the screams of the child Luckshigaa Sri from the upstairs portion of the house. On going there, he allegedly witnessed A1 assaulting the child with a wooden reaper/log and A2 beating her with a PVC pipe. P.W.1 is stated to have reprimanded the accused and instructed them not to assault the child. According to the prosecution, on the following morning, the accused punished the child by forcing her to remain outside the house under the scorching sun for a prolonged period. Consequently, the child became unconscious. She was initially taken to the Government Hospital at Kattuputhur and thereafter, referred to the Government Hospital, Namakkal. Subsequently, she was shifted to the Salem Government Mohan Kumaramangalam Medical College Hospital, where she succumbed to the injuries.

2.2. Following the death of the child, the complaint was lodged by the child's father before P.W.17, the then Sub-Inspector of Police, on 21.05.2019. Based on the said complaint, P.W.17 registered a case in Crime No.90 of 2019 for the offence under Section 302 read with Section 34 IPC and forwarded the

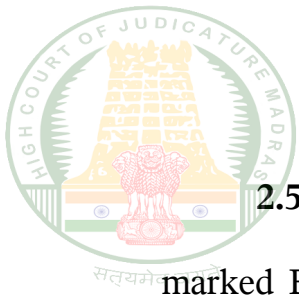


First Information Report to the jurisdictional Court. Thereafter, the investigation was taken up by P.W.19, the Inspector of Police.

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2.3. P.W.19 immediately proceeded to the place of occurrence, prepared the Observation Mahazar and Rough Sketch, conducted inquest over the body of the deceased, and forwarded the body for post-mortem examination. He arrested the accused on 22.05.2019 and recovered the incriminating material objects in the presence of the Village Administrative Officer and other witnesses. Upon completion of the further investigation, including examination of witnesses and collection of scientific and forensic reports, P.W.19 laid the final report before the jurisdictional Court.

2.4. The case was thereafter committed and taken on file as S.C. No.17 of 2021 by the learned trial Judge. Copies of the prosecution records were furnished to the accused under Section 207 Cr.P.C. After hearing both sides, the learned trial Judge framed the necessary charges against the accused. When questioned, the accused denied the charges and claimed to be tried, contending that they were innocent and had been falsely implicated in the case.



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2.5. To substantiate its case, the prosecution examined P.Ws.1 to 19, marked Exhibits P1 to P24, and produced Material Objects 1 to 4. After the evidence on the side of the prosecution was concluded, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him. He denied all the incriminating circumstances as false and pleaded complete innocence. No oral or documentary evidence was adduced on behalf of the defence.

2.6. Upon appreciation of the oral and documentary evidence, the learned trial Judge found the accused guilty of the offences charged, convicted them, and imposed the sentences as detailed in the judgment. Aggrieved by the said conviction and sentence, the present criminal appeal has been preferred.

3. Submission made by the learned counsel for the appellant:

3.1. The learned Senior Counsel appearing for the appellants vehemently contended that the presence of P.W.1 at the place of occurrence is highly doubtful and that the conviction has been founded upon his uncorroborated testimony. According to the learned Senior Counsel, the trial Court failed to appreciate that the evidence of P.W.1 is not fully supported by the medical evidence on record. It was further argued that, despite allegedly witnessing the



occurrence, P.W.1 did not immediately lodge any complaint before the police, thereby making his testimony unreliable and unworthy of acceptance. However, the learned trial Judge erroneously placed reliance upon his evidence and recorded the conviction.

3.2. The learned Senior Counsel further submitted that the accused themselves took the child to the hospital for immediate medical treatment. According to the defence, the child had become unconscious due to prolonged exposure to sunlight and, therefore, the accused cannot be held criminally responsible for her death. It was also contended that the prosecution has failed to establish the requisite intention to attract the offence of murder.

3.3. The learned Senior Counsel alternatively argued that, even assuming the prosecution case to be true, the facts and circumstances would not attract Section 302 IPC and, at the maximum, the case would fall within the ambit of culpable homicide not amounting to murder punishable under Section 304 Part II IPC. Elaborating the submission, the learned Senior Counsel pointed out that even as per the prosecution case, the child was allegedly beaten with a PVC pipe and a wooden stick and was made to stand under the scorching sun, eventually she became unconscious. It was further suggested that the head



injury sustained by the child could have been caused by a fall after she lost consciousness. Therefore, according to the learned Senior Counsel, the materials on record do not establish the ingredients of murder and the appellants are entitled to the benefit of the exception pleaded by them.

4. Per contra, the Counsel for State of TN (Crl.Side) supported the judgment of conviction and sentence:-

4.1. Per contra, the learned Counsel for State of TN (Crl.Side) supported the findings of the trial Court and submitted that the evidence on record clearly establishes a sustained action of cruelty and physical assault, inflicted upon the deceased child by both the accused. It was contended that, on the date of occurrence, the child was brutally assaulted with a PVC pipe and a wooden reaper, which fact has been spoken to by P.W.1 and is fully corroborated by the medical evidence.

4.2. The Counsel for State of TN (Crl.Side) further submitted that the testimony of P.W.1 inspires confidence and stands substantially corroborated by the medical and other circumstantial evidence available on record. According to him, the prosecution has proved beyond reasonable doubt that the death of the child was the direct consequence of the acts committed by the accused and,



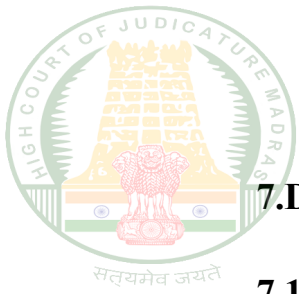
therefore, the offence squarely falls within the ambit of Section 302 IPC. It was also argued that none of the exceptions to Section 300 IPC are attracted to the facts of the present case.

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4.3. The learned Counsel for State of TN (Crl.Side) lastly submitted that the deceased was a helpless minor child who lost her life due to the cruel and inhuman conduct of the accused and, therefore, the case does not warrant any leniency or sympathy. Accordingly, he prayed for dismissal of the appeals and for confirmation of the conviction and sentence imposed by the trial Court.

5. This Court has carefully considered the rival submissions advanced by the learned counsel on either side, perused the entire records, and examined the relevant precedents relied upon by them.

6. The principal question that arises for consideration is *whether the conviction and sentence imposed upon the appellants is legally sustainable?*



7. Discussion and Findings :-

7.1. The deceased was the daughter of A1 and was born through the lawful wedlock between A1 and PW4 and the deceased was aged about five years at the time of the occurrence. Owing to matrimonial discord between A1 and PW4, they got legally separated through divorce proceedings. Subsequently, A1 married A2. After the divorce, the custody of the deceased remained with A1, and the child was residing with A1 and A2. It is the evidence of PW1 that A1 and A2 were residing as tenants in the upper portion of his house. According to PW1, on 19.05.2018 at about 8.00 a.m., he heard the screams of the deceased from the upstairs portion. On rushing there, he witnessed A1 assaulting the child with a wooden reaper/log and A2 assaulting her with a PVC pipe. PW1 further deposed that he reprimanded them not to harass the child. According to PW1, on the following day also, the child was subjected to ill-treatment and was compelled to stand in the scorching sunlight for a prolonged period, as a result she became unconscious. Thereafter, the child was taken to a local hospital and subsequently referred to the District Headquarters Hospital and thereafter to the Government Rajaji Hospital, Madurai, where she succumbed to the injuries. Upon learning of the death of the child, PW1 lodged a complaint before the jurisdictional police.

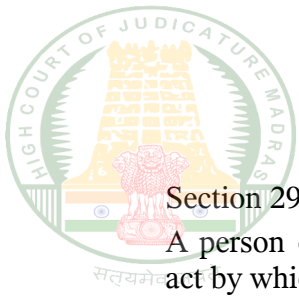


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7.2. The charge framed against the appellants alleges that A1 assaulted the deceased with a wooden reaper/log and that A2 assaulted her with a PVC pipe, and that both accused subjected the child to cruel treatment by forcing her to stand in the hot sun, eventually she collapsed and died. Upon a careful appreciation of the evidence, this Court finds the testimony of PW1 to be cogent, natural, and trustworthy. Nothing substantial has been elicited in cross-examination to discredit his evidence. The testimony of PW1 also stands corroborated by the medical evidence. PW18, the post-mortem doctor, specifically deposed that the injuries found on the body of the deceased could have been caused by a wooden reaper/log and a PVC pipe. Therefore, this Court has no hesitation in holding that A1 and A2 had assaulted the deceased in the manner spoken to by PW1.

7.3. The next question arising for consideration is *whether the acts attributed to the appellants would attract Section 302 IPC or would fall within the ambit of Section 304 IPC?*.

7.4. For a proper appreciation of the issue, this Court has extracted and examined the ingredients of Section 299 IPC, Clause Fourthly of Section 300 IPC, and Section 304 IPC.



Section 299

A person commits culpable homicide if the act by which the death is caused is done—

Section 300

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done—

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Knowledge

(c) with the knowledge that the act is likely to cause death.

(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

From the above, it is clear that if any person commits the act with knowledge that the said act is likely to cause death without intention to cause death and without knowledge that the act is so imminently dangerous that it must in all probability cause death, his case would come under the exception IV of the 302 of IPC and he deserves punishment under Section 304 part II IPC. The Hon'ble Supreme Court in the case of **Anbazhagan v. State of T.N., reported in (2024) 20 SCC 500** made thorough anysis of entire Section 299, 300, 302 part I and part II IPC and the relevant paragraphs are as follows:

“Sections 299 and 300IPC

34. *Sections 299 and 300IPC deal with the definition of “culpable homicide” and “murder”, respectively. In terms of Section 299, “culpable homicide” is described as an act of causing death: (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression “intention” while the latter upon “knowledge”. Both these are positive mental attitudes, however, of different degrees. The mental element in “culpable homicide”, that is, the mental attitude towards*



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the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted above, it would be “culpable homicide”. Section 300IPC, however, deals with “murder”, although there is no clear definition of “murder” in Section 300IPC. As has been repeatedly held by this Court, “culpable homicide” is the genus and “murder” is its species and all “murders” are “culpable homicides” but all “culpable homicides” are not “murders”. (See *Rampal Singh v. State of U.P.* [Rampal Singh v. State of U.P., (2012) 8 SCC 289 : (2012) 3 SCC (Cri) 860])

35. In *State of A.P. v. Rayavarapu Punnayya* [State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 : 1976 SCC (Cri) 659] , this Court, while clarifying the distinction between these two terms and their consequences, held as under: (SCC p. 386, para 12)

“12. In the scheme of the Penal Code, “culpable homicide” is genus and “murder” is specie. All “murder” is “culpable homicide” but not vice-versa. Speaking generally, “culpable homicide” sans “special characteristics of murder”, is “culpable homicide not amounting to murder”. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, “culpable homicide of the first degree”. This is the greatest form of culpable homicide, which is defined in Section 300 as “murder”. The second may be termed as “culpable homicide of the second degree”. This is punishable under the first part of Section 304. Then, there is “culpable homicide of the third degree”. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.”

(emphasis supplied)

36. Section 300IPC proceeds with reference to Section 299IPC. “Culpable homicide” may or may not amount to “murder”, in terms of Section 300IPC. When a “culpable homicide is murder”, the punitive consequences shall follow in terms of Section 302IPC, while in other cases, that is, where an offence is “culpable homicide not amounting to murder”, punishment would be dealt with under Section 304IPC. Various judgments of this Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly,



respectively, stated under Section 300IPC. It would not be necessary for us to deal with that aspect of the case in any further detail.

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39. This Court in *Phulia Tudu* [*Phulia Tudu v. State of Bihar*, (2007) 14 SCC 588 : (2009) 3 SCC (Cri) 221] has observed that the academic distinction between “murder” and “culpable homicide not amounting to murder” has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

Section 299

A person commits culpable homicide if the act by which the death is caused is done—

- (a) with the intention of causing death; or
- (b) with the intention of causing such bodily injury as is likely to cause death; or

- (c) with the knowledge that the act is likely to cause death.

Section 300

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done—

Intention

- (1) with the intention of causing death; or
- (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
- (3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

Knowledge

- (4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

41. Clause (b) of Section 299IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under



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Clause (2) of Section 300IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300IPC, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299IPC, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299IPC and Clause (3) of Section 300IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299IPC conveys the sense of probable as distinguished from a mere possibility. The words “bodily injury...sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.

44. Analysing clause Thirdly and as to what the prosecution must prove, it was held in *Virsa Singh* [*Virsa Singh v. State of Punjab*, 1958 SCC OnLine SC 37 : AIR 1958 SC 465] as under: (SCC OnLine SC paras 15-19)

“15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.



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19. *Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”*

(emphasis supplied)

It was further observed as under: (Virsa Singh case [Virsa Singh v. State of Punjab, 1958 SCC OnLine SC 37 : AIR 1958 SC 465] , SCC OnLine SC para 20)

“20. ... If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

(emphasis supplied)

66.2. *Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five Exceptions enumerated in that section. In the event of the case falling within any of those Exceptions the offence would be culpable homicide not amounting to murder, falling within Part I of Section 304IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299IPC, may be attracted but not any of the clauses of Section 300IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within the 3rd part of Section 299IPC.*

7.5. Applying the above legal principles, this Court finds considerable force in the submission of the learned senior counsel appearing for the appellants that the facts of the case clearly attract the third limb of Section 299 of IPC, namely, that “the act was committed with the knowledge that it was

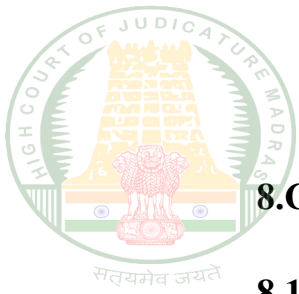


likely to cause death.” and consequently, the case falls within the ambit of

Section 304 Part II of the Indian Penal Code.

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7.6. Even according to the prosecution case, there is no material on record to establish that the appellants intended to cause the death of the child. Equally, the evidence does not prove that they intended to inflict such bodily injury as they knew to be sufficient in the ordinary course of nature to cause death. Thus the essential ingredients of murder under Section 300 of IPC are not established. However the evidence conclusively establishes that they assaulted a five-year-old child with a stick and a plastic pipe and further compelled her to stand under the scorching sun by way of punishment. Any reasonable person is presumed to possess the knowledge that punishing a child of such tender age with such cruel physical assault and making her stand in hot sun was likely to cause death or, at the very least, such bodily injury as was likely to cause death. Consequently, while the requisite intention to commit murder is absent, the appellants must be attributed with the requisite knowledge contemplated under “the third limb of Section 299 of IPC”. Accordingly, this Court is of the view that the case would not fall within the ambit of murder punishable under Section 302 of IPC and their act squarely falls within the scope of culpable homicide not amounting to murder punishable under Section 304 Part II IPC.



8.Conclusion:

8.1. In view of the foregoing findings, the appeals are partly allowed in the following terms:

8.2. The conviction and sentence imposed on the appellants by the learned First Additional District and Sessions Judge (PCR), Tiruchirappalli, in S.C.No.17 of 2021, dated 29.11.2023, for the offence punishable under Section 302 r/w Section 34 IPC, are hereby set aside.

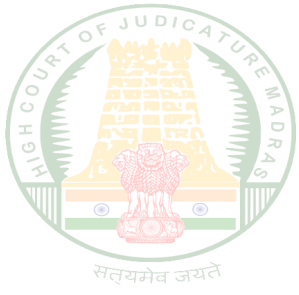
8.3.The conviction under Section 302 r/w Section 34 IPC imposed by the learned First Additional District and Sessions Judge (PCR), Tiruchirappalli, in S.C.No.17 of 2021, dated 29.11.2023 is modified into Section 304(2) r/w 34 of IPC.

8.4. The appellants hereby sentenced to undergo Rigorous Imprisonment for a period of seven years.

8.5.The fine amont imposed against them needs no interference and the same is confirmed.

[N.A.V.,J.] & [K.K.R.K.,J.]
09.07.2026

NCC :Yes/No
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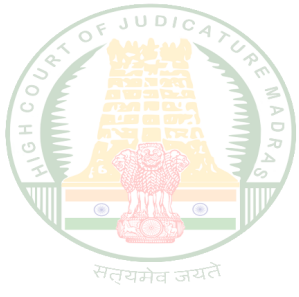


Crl.A(MD).Nos.158 & 160 of 2



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- To
- 1.The First Additional District and Sessions Judge (PCR),
Tiruchirpalli.
 - 2.The Inspector of Police,
Kattuputhur Police Station,
Trichy District.
 - 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A(MD).Nos.158 & 160 of 2

N.ANAND VENKATESH,J.
and
K.K.RAMAKRISHNAN,J.

dss/sbn

Judgment made in
Crl.A(MD).Nos.158 & 160 of 2024

Dated:09.07.2026