



Crl.A(MD)Nos.497 and 453 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:23.04.2025
Delivered on: 30.04.2025

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CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.497 and 453 of 2021

Crl.A(MD)No.497 of 2021

Muthulakshmi

...Appellant/De-facto
Complainant

-Vs-

1.State rep.by
The Inspector of Police,
Keeranur Police Station,
Pudukkottai District.
In Crime No.175 of 2019

...1st Respondent/
Complainant

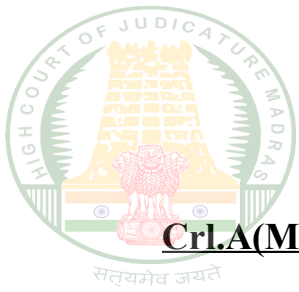
2.Karthick
3.Suresh
4.Dinesh Kumar

... Respondents 2to4/Accused
Nos.2 to 4

PRAYER: Criminal Appeal is filed under Section 378(4) of Cr.P.C., against the judgment and acquittal dated 27.09.2021 passed in S.C.No.1 of 2020 by the learned Additional District Judge for EC and NDPS Act Cases, Pudukkottai.

For Appellant :Mr.P.T.Ramesh Raja,
for Mr.Pon Karthikeyan
For R1 :Mr.S.Ravi,
Additional Public Prosecutor
For R2 to R4 :Mr.T.J.Ebenezer Charles

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Crl.A(MD)No.497 of 2021

WEB COPY P.Sudhagar @ Selvarasu

...Appellant/Accused
No.1

-Vs-

State rep.by
The Inspector of Police,
Keeranur Police Station,
Pudukkottai District.
In Crime No.175 of 2019

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 378(4) of Cr.P.C., to set aside the judgment dated 27.09.2021 passed in S.C.No.1 of 2020 by the learned Additional District and Sessions Judge, (Presiding Officer, Spl. Court for E.C Act) Pudukkottai.

For Appellant	:Mr.AN.Ramanathan
For Respondent	:Mr.S.Ravi, Additional Public Prosecutor

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

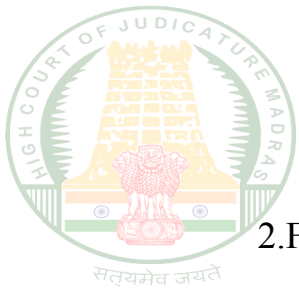
History of the case:

On 12.07.2019, at about 8.00 hours Keeranur Police at Pudukottai District received intimation from the Trichy Government Hospital that a person by name



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Parameswaran aged about 26 years, son of Ganesan, brought to the hospital with injuries by his sister Muthulakshmi. On receipt of the intimation, the Sub-Inspector of Police Mr.Jeyakumar went to the hospital and recorded the statement of Muthulakshmi which disclosed that there was previous enmity between her family and the family members of Palsamy residing in the same street. Whiles, on 11.07.2019 at about 05.00 p.m., in the Puliur Chellayee Amman Temple Festival, while the procession of the deity was going on, her brother Parameswaran along with others was dancing. At that time, offering plate held by one Sudhakar, S/o.Palsamy accidentally, hit and thrown by her brother Parameswaran. The coconut in the offering plate fell down. Infuriated by that, Sudhakar fought with Parameswaran. She and others intervened and prevented further escalation of the fight. After offering prayer at Sangili Karuppar Temple, at about 05.30 p.m., She, her brother and her husband Murugesan were standing outside the temple. Sudhakar, S/o.Palsamy, Karthi, S/o.Settu, Karthick, S/o. Kumar, Suresh, S/o.Jeyasankar, Dinesh S/o.Karupiah, came with wooden logs and attacked Parameswaran, They abusing him with filthy language for hitting the offering plate held by Sudhakar. They also uttered that only on murdering him their anger will subside. Attributing all the five accused assaulted Parameswaran with wooden log over the head and body complaint came to be registered at about 10.00 p.m.



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2.FIR alleging Parameswaran was attacked by 5 persons with wooden logs with an intention to cause his death was registered in Keeranur Police Station in Crime No.175 of 2019 under Sections 147, 148, 294(b) and 307 IPC at about 10.00 hours on 12.07.2019. At the time of complaint, the injured was unconscious and taking treatment in the Government Hospital, Trichy as inpatient. In the complainant, Muthulakshmi has stated that she along with her relative Sathishkumar and Vignesh took the injured to the hospital in a passing vehicle.

3.During the course of investigation, the accused persons were arrested. One of the named accused Karthick, S/o.Kumar, found to be a juvenile and therefore, final report was filed as against Sudhakar(A1), Karthick S/o.Settu(A2) Suresh s/o.Jeyasankar(A3) and Dineshkumar, s/o.Karupaiha. The injured Parameswaran died on 14.07.2019 at about 6.00 p.m. After altering the charges from 307 IPC to 302 IPC, investigation got completed and final report filed against 4 accused and the case against one of the accused by Karthick S/o.Kumar, was split up.

4.On committal to the Court of Sessions in S.C.No.1 of 2022, the Special Court for Essential Commodity Act and Additional Sessions, Pudukkottai, framed the charges under Sections 147, 148, 294(b) and 302 IPC against all the four



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accused.

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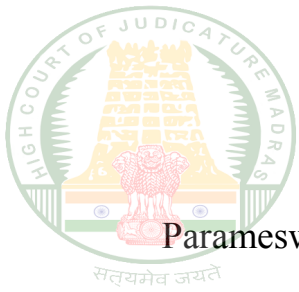
5.To prove the prosecution case, 11 witnesses were examined, 15 documents marked as Ex.P.1 to Ex.P.15. Four R.S.Pathi Wooden Logs were marked as M.O.1 series.

6.The trial Court, on appreciation of the evidence, held that the prosecution established the guilt of A1 for offence under Section 304(ii) IPC. In respect of other accused, the evidence is insufficient, therefore, A2 to A4 were acquitted from all the charges.

7.In the above said background, Crl.A(MD)No.453 of 2021 is preferred by Sudhakar(A1), who suffers conviction and sentence of 4 years rigorous imprisonment for offence of under Section 304(ii)IPC and fine of Rs.10,000/-in default to undergo three months Simple imprisonment. Crl.A(MD)No.497 of 2021 preferred against the acquittal of all the accused persons by the defacto complainant Muthulakshmi.

8.Gist of the prosecution case as per evidence:-

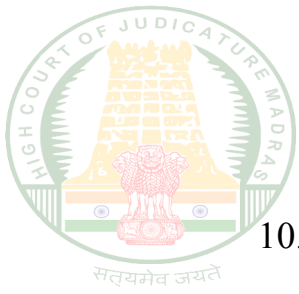
P.W.1-Muthulakshmi, is the de-facto complainant. The deceased



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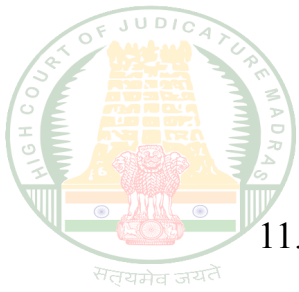
Parameswaran is her brother. Since they all belong to same village, all the four accused in this case are known to her. In her evidence, she had deposed that on 11.07.2019, morning at 05.00 a.m., her brother was dancing in the temple deity procession. In the offering plate of Sudhakar, there was a coconut which accidentally hit by Parameswaran. This ensued quarrel between them. After the quarrel, they left the place. On that day evening at 05.30 p.m., when she along with her husband and son together with her brother Parameswaran returning from Sangili Karuppar Temple, Sudhakar hit Parameswaran on the head. The other four persons followed him and attacked on the head with wooden logs. The injured person was taken to Government Hospital.

9.The Accident Register marked as Ex.P.9, indicates that the injured Parameswaran was admitted in the hospital on 11.07.2019 at about 06.50 p.m. In the accident register report, it is stated that he was brought to the hospital by one Sathishkumar, relative of Parameswaran with alleged history of assault by three known persons using wooden stick at near a temple around 05.30 p.m. Ex.P.9-Accident Register also disclosed that the patient was drowsy. The respondent was in pain stimuli and his breath smelled alcohol. Followed by his admission in the hospital and the intimation from the hospital, complaint been registered based on the information of P.W.1.



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10..The FIR copy is Ex.P.10, it has reached the judicial Magistrate, Keeranur on 13.07.2019 at 10.30 p.m., at the residence of the Judicial Magistrate. P.W.9-Jeyakumar, Sub-Inspector of Police, who registered the FIR in Crime No. 175 of 2019 under Sections 147, 148, 294(b) and 307 IPC, has placed the FIR copy to the Inspector of Police, P.W.10-Ramalingam. The said Ramalingam has taken up the investigation and gone to the spot on 12.07.2019 at 11.30 a.m. He has prepared the observation mahazar marked as Ex.P.6 in the presence of two witnesses. One by name Sakthivel(P.W.3) and another by name Marimuthu. Sathishkumar(P.W.2). They have deposed about the incident occurred at morning 5 'o' clock on 11.07.2019 and the incident which occurred on the same day at 05.30 p.m., P.W.2 had identified Sudhakar and the other accused carrying wooden log, the first hit was by Sudhakar on the head of Parameswaran. Thereafter, rest of them attacked him on the head and body. He had deposed that along with Mutulakshmi(P.W.1), her son Vingesh brought Parameswaran to the hospital, who was unconscious. In the chief examination, the said Sathishkumar(P.W.2) had deposed that to the Doctor, he told that Parameswaran was attacked by 5 persons. Whereas the accident register reads that it was 3 persons, who assaulted Parameswaran. Being a factual contradictions, the trial Court taken note of the contradictions as relevant and acquitted three of the accused persons for want of evidence.

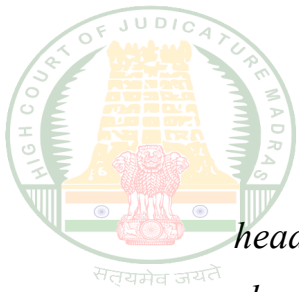


11.Sakthivel, S/o.Marimuthu(P.W.5), who is a witness for observation mahazar and for drawing of rough sketch had deposed in support of the prosecution. He is also one of the eye witnesses for the incident happened on 11.07.2019 at 05.00 a.m as well as 05.30 p.m. The weapon alleged to have been used by the assailant was marked through Sakthivel(P.W.3), S/o.Maniraj,

12.Venkatesh(P.W.6) Village Administrative Officer, is the witness for the confession of Dinesh Kumar(A4).

13..Parameswaran, lost his breath on 14.07.2017, P.W.7-Dr.Selvakumar, who conducted postmortem of the deceased had given postmortem report marked as Ex.P.8, wherein he has opined that the deceased could have died due to the effect of head injuries sustained. The postmortem report indicates that Parameswaran has sustained the following injuries:

(1)Sutured wound present over right side of head front and side 32cm; starts from upper part of midline of forehead and runs backward and sideward ends in front of right extent ear canal. On removal of suture; the wound margins clean cut; brain bulging out; On dissection; Diffuse dark red scalp contusion on left side of head top, front and sides, dark red scalp hematoma on entire right side of head; 3cm thick; Skull; surgical bony defect on right side and top of



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head 12 x 12 cm with burr holes; left side fronto parietal skull cap shows multiple transecting fractures and horizontal suture separation present over an area of 11 x 5 cm with 0.5cm depression at its centre. Membranes cut on right side; Brain; left side fronto parietal dark red contusion 5.5x4x1cm; right side brain soft semi liquefied.

(2)Vertically oblique lacerated wound over left frontal region 4 x 1cm; skin deep; situated 6cm behind left eyebrow 4cm away from midline of head; reddish brown in colour.

(3)Brownish Black abrasion present over;

(a)Left side of forehead, two 4x1cm and 1x1cm, 1cm below the injury no.2

(b)Left side outer end of eyebrow and adjoining face; 3x2cm.

(c)Left shoulder, outer aspect, two 2x1cm and 3x2cm; scratch type

(d)Left side outer aspect of chest, 0.2cm x 0.2cm

(e)Left forearm front and lower part 0.5cmx 0.5cm.

(4)Circular punctured wound 1 cm diameter, bone deep over the right side of head behind right ear, suggestive of therapeutic drainage wound.”

14.Dr.Anbarasan, Casualty Doctor, at Government Hospital, Trichy, speaks about the accident register(Ex.P.9), in the cross-examination he had stated that no external injury found, when Parameswaran was brought to the hospital. In the



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Chief Examination, he had stated that the deceased Parameswaran breath smell alcohol. Jeyakumar, Sub-Inspector of Police, was examined as P.W.9. He had deposed that the FIR in this case was received by him on 12.07.2019. On receiving the intimation from the hospital at 08.00 a.m., on 12.07.2019, he went to the hospital and recorded the statement of Muthulakshmi at 10.00 am. He came back to the Station and registered the FIR in Crime No.175 of 2019. About the investigation and filing of final report is spoken by Ramalingam(P.W10) Inspector of Police.

15.The learned counsel appearing for Sudhakar(A1)/appellant in Crl.A(MD)No.453 of 2021 who was found guilty of offence under Section 304(ii)IPC and suffers sentence of 4 years rigorous imprisonment and fine of Rs. 10,000/-, in default to undergo 3 months simple imprisonment, submitted that the occurrence alleged to have taken place in a place near temple during the festival time. However, there is a substantial delay of giving complaint by about 30 hours. The accident register marked as Ex.P.9 indicates that the said Parameswaran was admitted in the hospital on 11.07.2019 at 06.55 p.m with the alleged history of assaulted by three known persons. No external injury noted. Sathishkumar, who admitted Parameswaran in the hospital, who gave the said information to the duty doctor while deposing before the Court has improvised his earlier statement to the



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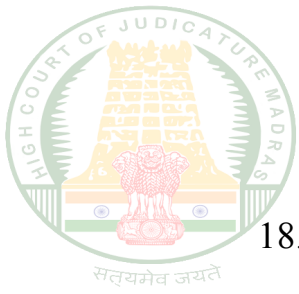
Doctor and had added two more accused persons as assailants.

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16.It is contended by the learned counsel for the appellant Sudhakar(A1) that P.Ws.1, 2, 3, 5 all claim to be the witnesses to the occurrence, they are all close relatives of the deceased Parameswaran. The occurrence had happened in a village, during the festival season. The police has however not examined nutral independent witnesses and the reason for not examining the independent witnesses is not spoken by the investigating officer. The contradictions between the eye witnesses not been properly appreciated by the trial Court, they have not identified which accused caused the fatal blow on the head of Parameswaran. When there is no certainty about the person who caused the injury and the injury which caused the death. At random the appellant cannot be held liable for causing the death of Parameswaran.

17.The learned counsel for the appellant further submitted that it is an admitted case of the prosecution that the deceased Parameswaran was dancing in front of the deity on procession. The accident report says his breath smelled alcohol. P.W.8-Dr.Anbarasan, who admitted the deceased Parameswaran, in the hospital, had deposed that he had recorded that the breath of Parameswaran smell alcohol and he was unconscious, with response to pain stimulier.

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18.The Postmortem Dr.Selvakumar, examined as P.W.7 had deposed that the injury found on the head may also cause due to the accident fall. Out of four injuries, two are surgical injuries, if it is so, it is impossible to believe the case of the prosecution that five persons joined together and hit Parameswaran with four wooden logs which are marked as M.O.1 series.

19.Per contra, the learned counsel appearing for the de-facto complainant in Crl.A(MD)No.497 of 2021, challenging the order of acquittal, submitted that the evidence of P.Ws.1, 2, 3 and 5 is cogent and corroborate with each other eye witnesses to the occurrence. These witnesses speak about the overt act of all the accused including A1. While so, the trial Court ought not to have disbelieved the evidence of P.Ws.1, 2, 3, 5 regarding the presence of these accused persons and their overt act. The confession statement of A1 and A2, recovery of wooden logs, the disclosure of the enmity and the unlawful assembly with weapon to commit the evidence of murder are the proof of the charges. The Court below failed to consider the cogent and clear ocular evidence of the witness and erroneously acquitted the accused 2 to 4.

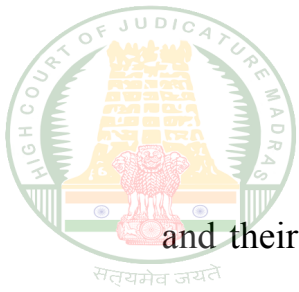
20.It is a case of retaliation and revenge by the accused A1, who with premeditation gathered muscle strength and attacked Parameswaran with intention



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to cause death. All the accused by carrying wooden logs formed unlawful assembly to aid an illegal act and in pursuant to the said unlawful assembly, they all together attacked Parameswaran causing his death. Therefore, conviction of A1 under Section 304(ii) IPC instead of Section 302 IPC and acquittal of other accused from all charges is liable to be reversed.

21.The learned Additional Public Prosecutor appearing for the State submitted that the entry in the accident register is not a conclusive proof. The statement of the complaint, who brought the injured cannot be proper and accurate when the injured was not conscious. Therefore, discrepancy in the accident register marked as Ex.P.9 regarding the number of persons involved in the assault is not fatal to the prosecution case. Likewise, the attack on the head with wooden log had caused internal hemorrhage, but no external injury found, when Parameswaran got admitted in the hospital. Therefore, in the accident register, there is no entry about the external injuries. However, the postmortem report discloses that surgery conducted for internal hemorrhage. The nature of two injuries noted as antemortem injuries, in the postmortem certificate marked as Ex.P.18 as well as the information of P.W.7 the Doctor are suffice to show that the deceased Parameswaran died out of the injuries caused on him by the assailants. P.Ws.1, 2, 3 and 5 all are eye witnesses. They have identified each of the accused



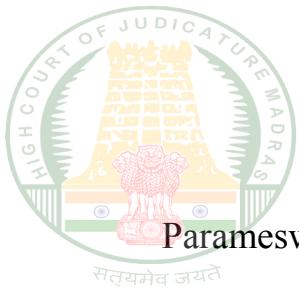
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and their overt act, the trial Court acquitted all the accused persons for offence under Section 148 IPC as well as the offence under Section 302 IPC contrary to the law evidence. The learned Additional Public Prosecutor submitted that all the accused ought to have been convicted for offence under Section 302 IPC, since the death of Parameswaran is a premeditated intention murder, and not a homicide not amounting to murder.

22.The learned Additional Public Prosecutor further submitted that all the four accused along with juvenile had a common intention to cause death of Parameswaran and attributed their overt act as in furtherance of common object.

23.Heard the rival submissions made by the respective counsels.

24.The evidence of P.Ws.1, 2, 3 and 5 indicates that on 11.07.2019 at about 05.00 a.m., in the morning, there was temple deity procession in the village, in which, Parameswaran the deceased was found dancing. It is also the case of the prosecution that the said Parameswaran while dancing hit the offering plate of Sudhakar. At that time, there was quarrel between them. Due to the intervention of the elders, the fight did not escalate further. On that evening, at about 5.30 p.m., all the four accused and the juvenile joined together and had attacked



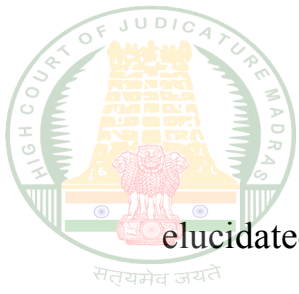
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Parameswaran. The witnesses though had deposed that all the five accused attacked Parameswaran repeatedly with wooden log, it is only at the time of recovery, it is identified that log used by them is R.S.Pathi wooden log.

25.The Doctor, who admitted Parameswaran on the date of occurrence, had not noticed any external injury on the body. The injury found during the postmortem been classified into surgical injuries and antimortem injuries. The injuries 2 and 3 which are extracted above are the injuries which has caused during the fight. There is no evidence to fix among the five persons who caused that injury.

26.The written submission given by the accused under Section 314 IPC invariably points victimisation by the police in connivance with one Rajarajan, Advocate, who intervened and had falsely implicated then in the case. There is some force in the said argument since the FIR not been registered immediately, but after more than 12 hours of the occurrence. It is highly doubtful whether Ex.P. 1 leading to register of Ex.P.10 is the first information received by the police.

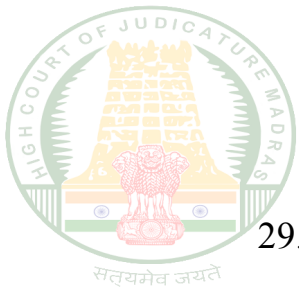
27.The express FIR been received by the Judicial Magistrate only on 13.07.2019 at about 10.55 p.m. In the cross-examination of P.W.10, it has been



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elucidated that he had not obtained any explanation from his subordinate for the delay of FIR which reached the Judicial Magistrate with the delay of more than 36 hours. He also admits that during the course of investigation, he came to know that there is animosity between the family members of the accused and the family members of the deceased and the cases pending between them. He admits that except Sudhakar, the witnesses have not said anything about the specific overt act of the other accused during his investigation. He admits that he had not examined the village headman and others who intervened and prevented the escalation of fight in the morning and all the prosecution witnesses from the village belong to same community of the deceased. Finally, the investigating Officer has also admitted that there are criminal cases against witnesses Sathishkumar(P.W.2), Selvam(P.W.4), Saravanan(not examined) for assault of Settu,(the father of A2) and in those cases, the witnesses are absconding.

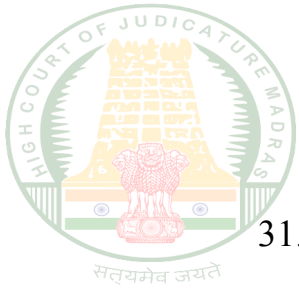
28.The trial Court, on over all appreciation of the evidence and the medical report, had concluded that there is evidence only against A1 for causing injury on the head of Parameswaran. The Postmortem report indicates that the death caused due to the head injury. But there is no evidence to show that Parameswaran caused injury with intention to cause death. It is an act of provocation and consequence of the incident which happened earlier on that day.



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29. Therefore, the trial Court has held that A1 Sudhakar alone liable for offence punishable under Section 304(ii)IPC. The reasoning given by the trial Court is based on the confession available and the improvised statement of the witnesses, implicating A2 to A4. It is a clear after thought which is apparently seen from the delay in registering the FIR as well as in forwarding the same to the Judicial Magistrate. There is no evidence to show that A2 to A4 along with the juvenile had shared the common object with A1 to cause injury to the deceased Parameswaran. Only for A1 there is a motive which has happened on that day when Parameswaran hit down the offering plate of Sudhakar injuring his religious sentiment.

30. In the above said facts and circumstances, we find no error in the conclusion of the Trial Court convicting A1 Sudhakar for offence under Section 304(ii) IPC imposing the sentence of 4 years rigorous imprisonment and fine of Rs.10,000/- in default to undergo three months simple imprisonment and the acquittal of the rest of the accused from all charges.



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31.As a result, both the Criminal Appeals stand dismissed as devoid of merits.

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[G.J., J.] & [R.P., J.]

30.04.2025

NCC : Yes / No

Index : Yes / No

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To

1.The Additional District and Sessions Judge,
(Presiding Officer, Spl. Court for E.C Act)
Pudukkottai.

2.The Inspector of Police,
Keeranur Police Station,
Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai bench of Madras High Court,
Madurai.



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Predelivery Judgment made in
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30.04.2025