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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 20.05.2025*  
*Judgment pronounced on: 02.07.2025*

+ CRL.A. 164/2024

VINOD KUMAR @ RAJU

.....Appellant

Through: Mr. Kanhaiya Singhal,  
Mr. Binwant Singh, Mr. Pulkit Jolly,  
Mr. Rahul Bhaskar, Ms. Ankita  
Makan, Mr. Prasanna, Mr. Ajay,  
Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Aashneet Singh, APP  
for the State.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**SHANKAR**

### **JUDGEMENT**

**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present appeal is preferred under Section 374(2) of the **Code of Criminal Procedure, 1973**<sup>1</sup> filed against the **Judgment dated 03.05.2023**<sup>2</sup> convicting the Appellant for the offence punishable under Section 302 of the **Indian Penal Code, 1860**<sup>3</sup> and the **Order on Sentence dated 24.08.2023**<sup>4</sup> sentencing the Appellant to life imprisonment. In addition, he has been fined an amount of Rs.15,000/- under Section 302 of the IPC, and in the event of default in payment

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<sup>1</sup>Cr.P.C.

<sup>2</sup>Impugned judgement

<sup>3</sup>IPC

<sup>4</sup>Impugned sentencing order



of the fine, he has been directed to undergo simple imprisonment for a period of one month.

2. At this juncture, it will be apposite to advert to the salient facts presented before the Ld. Trial Court, which led to the Appellant's conviction and the subsequent filing of the present Appeal.

3. On 23.04.2018, Constable Ajay Rana (PW-10), who was on duty at Sanjay Gandhi Memorial Hospital, received information, at around 10 a.m., from the on-duty doctor that a woman had been brought in already deceased. He telephonically passed this information to the Police Post at the hospital, and the incident was recorded in the **Daily Diary**<sup>5</sup> No. 11PP (Ex.PW-8/A) by Constable Ishwar (PW-8). The information was then passed on to ASI Jai Kishan, and a copy of the DD was handed over to SI Praveen Atri (PW-17) for further investigation.

4. Upon receiving the DD, SI Praveen Atri, accompanied by Constable Ghanshyam (PW-6) and Constable Somdev (PW-2), went to the emergency ward of the hospital and collected the **Medico-Legal Case**<sup>6</sup> Report No. 1300/18 (Ex.PW-12/A) of the deceased woman, Savita, who had been declared "brought dead". The deceased's body was moved to the hospital mortuary. At the hospital, SI Atri met Ritika (PW-5), the daughter of the deceased, who gave a detailed statement (Ex.PW-5/A). She informed the police that her father, Vinod (the Appellant/ Accused), had a history of domestic abuse towards her mother. The couple had not been on speaking terms for the past four to five months, and the Accused had also stopped

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<sup>5</sup>DD

<sup>6</sup>MLC



providing any household expenses. As per her statement, the Accused was residing separately on the first floor with his own mother.

5. On the morning of the incident, Ritika and her brother Piyush (PW-7) were awakened by a commotion. They rushed out to find their father violently hitting their mother with a hammer (Ex.P1). Ritika stated that her father had one hand around her mother's neck while repeatedly hitting her with the hammer using the other. She managed to snatch the hammer away from him, after which he fled the scene. With the help of a neighbor, *namely*, Karan, they rushed their mother to the hospital. Based on Ritika's statement, SI Atri prepared a rukka (Ex.PW-17/A) and handed it to Constable Ghanshyam (PW-6) for registration of the **First Information Report**<sup>7</sup>.

6. The FIR was registered by Head Constable Rakesh, who was on duty as the DD writer at PS Mangol Puri. He recorded the FIR (Ex.PW-16/C) and made the necessary endorsement on the rukka. He also issued a certificate under Section 65B of the **Indian Evidence Act, 1872**<sup>8</sup> (Ex.PW-16/D). Constable Ghanshyam returned to the spot and handed over the FIR and rukka to Inspector Vijay Kataria (PW-19), who took charge of the investigation. Inspector Kataria summoned the crime team.

7. SI Jagdeep (PW-9), who was in-charge of the crime team, reached the spot with photographer Constable Umed (PW-11). SI Jagdeep conducted an inspection of the crime scene and prepared a report (Ex.PW-9/A). Constable Umed took twenty photographs (Ex.PW-11/A) of the scene and prepared a CD (Ex.PW-11/B), which

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<sup>7</sup>FIR

<sup>8</sup>Evidence Act



was supported by a certificate under Section 65B of the Evidence Act (Ex.PW-11/C).

8. Inspector Vijay Kataria collected various pieces of physical evidence from the crime scene, including bloodstains from a gas stove, a piece of cloth, the hammer used in the assault, hair strands of the victim found on the hammer, blood samples, and earth control. These items were sealed using the seal of PK and were seized via proper seizure memos (Ex.PW-6/B). The hammer was sketched (Ex.PW-17/B), placed in a plastic box, sealed, and seized. Inspector Vijay Kataria was assisted in these actions by SI Praveen Atri and Constable Ghanshyam, who signed the seizure memos. Ritika also helped the inspector in preparing the site plan of the incident location (Ex.PW-19/A).

9. On 24.04.2018, Inspector Vijay Kataria visited the hospital with a private photographer, Mukesh (PW-1). He recorded the statement (Ex.PW-3/A) regarding the identification of the deadbody of the deceased's brother, Rajesh Raju (PW-3), and father, Manohar Lal (PW-4). Subsequently, he applied (Ex.PW-19/B) to the concerned Chief Medical Officer to conduct the postmortem. Brief facts of the case (Ex.PW-19/C) and a death report (Ex.PW-19/D) were prepared for official use.

10. The postmortem was conducted by Dr. Manoj Dhinagra (PW-14), who opined in his report (Ex.PW-14/A) that the cause of death was craniocerebral damage due to blunt force trauma. Mukesh documented the postmortem procedure in a CD, supported by a certificate under Section 65B of the Evidence Act (Ex.PW-1/A). After the autopsy, the doctor handed over two sealed exhibits with sample seals to Constable Ishwar (PW-8), who further delivered them to



Inspector Vijay Kataria. This exhibit (Ex.PW-8/B) was deposited with the ***Malkhana***<sup>9</sup>.

11. On 18.05.2018, Dr. Manoj Dhinagra received a sealed parcel containing the hammer. Upon examination, he confirmed by his report (Ex.PW-14/B) that the injuries mentioned in the postmortem could have been caused by the recovered hammer.

12. On 25.04.2018, based on secret information, the **Investigating Officer**<sup>10</sup>, Inspector Vijay Kataria, located and apprehended, *vide* memo (Ex.PW-17/C), the Accused, who was found consuming alcohol near a wine shop at ITI ground, Delhi. He was arrested and his personal search was conducted *vide* memo (Ex.PW-17/D). A disclosure statement (Ex.PW-17/E) was recorded, and the IO noticed blood stains on the Accused's shirt. The shirt was sealed and seized as evidence *vide* seizure memo (Ex.PW-17/F). The Accused then pointed out the place of incident, which was documented through a pointing-out memo (Ex.PW-17/G).

13. On 19.05.2018, Constable Dharmender (PW-15) prepared a scaled site plan (Ex.PW-15/A) of the incident spot.

14. On 24.05.2018, all collected exhibits were sent to the **Forensic Science Laboratory**<sup>11</sup> through Constable Ghanshyam. Ms. Anita Chari, Scientific Officer (PW-13), submitted her findings in a report (Ex.PW-13/A), which was received by the Police Station with a forwarding letter (Ex.PW-19/E) from the Director of FSL. In the FSL report, the Scientific Officer concluded that the DNA profiling **SDR**<sup>12</sup> performed on the received Exhibits 1, 2, 4, 9 (all containing blood

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<sup>9</sup> MHC(M)

<sup>10</sup> IO

<sup>11</sup> FSL

<sup>12</sup> Short-Chain Dehydrogenases/Reductases



gauze of the deceased), Exhibit 11 (hammer) and Exhibit 13 (shirt of the Accused) was similar to the blood gauze of the deceased.

15. Upon completion of the investigation, a chargesheet was filed against the Appellant/ Accused under Section 302 of the IPC for the alleged murder of his wife Savita.

16. The Ld. Trial Court then framed charges under Section 302 of the IPC against the Appellant/Accused. The Accused pleaded not guilty to the charges and thus the case proceeded for the trial.

17. Upon evaluation of the evidence on record and after the conclusion of the trial, the Ld. Trial Court found the Accused guilty of the offence under Section 302 of the IPC *vide* judgment dated 03.05.2023. Accordingly, the Accused was convicted for the murder of his wife, Savita. Following the conviction, the sentencing order dated 24.08.2023 was passed, whereby the Appellant was sentenced to life imprisonment. Additionally, he was fined an amount of Rs.15,000/- under Section 302 of the IPC, and in the event of default in payment of the fine, he was directed to undergo simple imprisonment for a period of one month. The Court also granted him the benefit under Section 428 of the Cr.P.C. which allows for the set-off of the period already spent in custody against the term of imprisonment.

18. The Ld. Trial Court, in its evaluation, held that the Prosecution successfully established the guilt of the Accused beyond reasonable doubt. The post-mortem report, which revealed that the injuries leading to the victim's death were caused by a hammer blow to the head, remained unchallenged during the trial. The defence was given an opportunity to cross-examine Dr. Manoj Dhinagra (PW-14) but failed to do so, which left the medical opinion intact and credible. This



medical evidence further supported the testimonies of eyewitnesses, who consistently stated that the deceased was attacked with a hammer.

19. The Ld. Trial Court further opined that the Prosecution also established a strong motive for the crime. Testimonies from the deceased's family members, *namely*, her brother, father, and two children, revealed that the relationship between the Accused and the deceased had deteriorated. They often quarrelled, had started living separately shortly before the incident, and the Accused had stopped providing financial support. A complaint had even been filed by the deceased against the Accused. These facts indicated ongoing discord and suggested that the Accused's anger and frustration might have triggered the fatal act.

20. The Ld. Trial Court analyzed the defence evidence and held that the defence presented two witnesses to establish the Accused's innocence. DW-2, a neighbour, claimed to have seen the Accused in the balcony between 9:00 and 10:00 A.M. on the day of the incident, but his statement lacked precision. DW-1, the Accused's mother, stated he was with her at the time, but her testimony conflicted with DW2's and was undermined by her failure to report any false implication to authorities. The Court viewed her statement as biased and uncorroborated.

21. Weighing all evidence, the Court found the testimonies of the Prosecution credible and supported by medical and police records, leading to the conviction of the Accused under Section 302 of the IPC.

22. Being aggrieved, the Appellant filed this Appeal challenging the judgment dated 03.05.2023 and the sentencing order dated 24.08.2023.



### **APPELLANT'S SUBMISSIONS:**

23. The Ld. Counsel for the Appellant/ Accused would submit that the Prosecution failed to establish intent or premeditation, which is crucial to a conviction under Section 302 of the IPC.

24. The Ld. Counsel for the Appellant/ Accused would further submit that domestic rifts are common in marriages and that the presence of long-standing minor disputes cannot be equated with a motive to kill. The Ld. Counsel for the Appellant/ Accused would rely upon the statements of PW-3 (brother of the deceased), as he admitted the couple initially had a good marriage.

25. The Ld. Counsel for the Appellant/ Accused would also submit that the conflict over dowry signatures, cited by the Prosecution as part of the motive, was too trivial and outdated, occurring nearly 18 years earlier, to have driven the Accused to murder.

26. The Ld. Counsel for the Appellant/ Accused would point out several inconsistencies in the testimony of Ritika (PW-5) and submit that her story was fabricated and unreliable; for instance, she contradicted herself regarding where the Accused lived in the house - first claiming it was the first floor and later correcting to the second. Further, Ld. Counsel for the Appellant/ Accused would point out that her statements about the time frame during which her father stopped paying household expenses were also inconsistent. Similarly, conflicting versions were given about who exactly took the hammer from the Accused, whether it was Ritika or her brother. The Ld. Counsel for the Appellant/ Accused would also point out another contradiction that emerged from her initial claim that all three siblings were home during the incident, which later changed to saying her sister was away.



27. The Ld. Counsel for the Appellant/ Accused would also point out the lapses by the police during the investigation. Constable Ghanshyam's statement under Section 161 of the Cr.P.C. differed from his in-court testimony regarding when and how Ritika's statement was recorded and how the initial evidence was gathered.

28. The Ld. Counsel for the Appellant/ Accused would submit that no independent witnesses were examined, and there was no effort to verify the origin of the hammer, which the defence claimed was a common household tool and not a weapon premeditated for murder, and this lack of inquiry into the weapon's procurement undermined the allegation of deliberate intent.

29. The Ld. Counsel for the Appellant/ Accused would argue that the incident appeared to result from a sudden quarrel rather than a calculated act. The use of a household hammer, absence of planning, and lack of any clear provocation or advantage taken by the Accused suggested the act could fall under Exception 4 of Section 300 IPC. The Ld. Counsel for the Appellant/ Accused would further argue that this exception applies when a homicide occurs in the heat of the moment, without premeditation, and without cruelty or undue advantage.

30. To support his arguments, the Ld. Counsel for the Appellant cited numerous case laws including the judgments of the Hon'ble Supreme Court in *Arjun v. State of Chhattisgarh*<sup>13</sup>, *Arumugam v. State*<sup>14</sup> and *Rambir v. State (NCT of Delhi)*<sup>15</sup>, emphasizing that courts have repeatedly held that such sudden altercations do not warrant a murder conviction under Section 302 of the IPC.

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<sup>13</sup>2017 SCC Online SC 128

<sup>14</sup>(2008) 15 SCC 590

<sup>15</sup>(2019) 6 SCC 122



31. The Ld. Counsel for the Appellant/ Accused would emphasize that the hammer blow, which caused only one or two injuries according to the post-mortem report, was not excessively cruel, nor were there signs of repeated or brutal assaults. Furthermore, there was no evidence of significant benefit gained by the Accused through the act and, even Ritika (PW-5) admitted she did not know the reason for the quarrel.

32. The Ld. Counsel for the Appellant/ Accused would highlight the socio economic status of the Appellant, a poor e-rickshaw driver with alcohol dependency, suggesting he lacked the means or capacity for calculated violence.

33. Based on these submissions, the Ld. Counsel for the Appellant/ Accused would urge before this court either to acquit the Appellant entirely or, alternatively, to convert the conviction from Section 302 of the IPC to Section 304-II of the IPC, which pertains to culpable homicide not amounting to murder. It was further requested that the sentence be reduced to the period already undergone by the Appellant, emphasizing his impoverished background and the lack of cruel intent.

#### **RESPONDENT-STATE'S SUBMISSIONS:**

34. The Ld. **Additional Public Prosecutor**<sup>16</sup> for the State would seek to defend the impugned judgment and sentencing order passed by the Ld. Trial Court, asserting that the findings and conclusions reached were both justified.

35. The Ld. APP, relying upon the oral testimonies of the deceased's children, *namely*, Ritika (PW-5) and Piyush @ Siddhartha (PW-7) would contend that, since these witnesses were present at the

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<sup>16</sup> APP



time of the incident and directly observed the murder, their accounts convincingly establish that the Accused committed the crime, particularly given the long-standing quarrels between the Accused and the deceased, which had escalated to such a degree that the deceased had chosen to live separately, prompting the Accused, on the day of the incident, to carry out his premeditated plan to kill his wife using a hammer.

36. The Ld. APP would further submit that, because the injuries inflicted on the deceased's head by the Accused were not only consistent but also so grievous that brain matter emerged from the skull, and this demonstrates the severe and fatal nature of the attack, which, in the ordinary course of nature, was sufficient to cause death.

37. Moreover, the Ld. APP would argue that, since the medical evidence not only confirms that the fatal blow was inflicted on the base of the deceased's head using the hammer recovered from the scene but also establishes that the deceased's blood was found on the Accused's shirt, at the crime scene, and on the hammer itself, the combination of these forensic findings, together with the complete absence of any plausible or credible explanation from the Accused, leads to the inescapable conclusion that he was indeed the perpetrator of his wife's murder.

### **ANALYSIS AND FINDING:**

38. This Court has given its careful and deliberate consideration to the submissions advanced by both parties and has meticulously scrutinized the documents placed on the record.



39. In support of their respective cases, the Prosecution examined a total of 19 witnesses, while the defence presented 2 witnesses before the Ld. Trial Court.

40. A cumulative reading of the testimonies of Rajesh (PW-3), Manohar Lal (PW-4), Ritika (PW-5) and Piyush @ Siddhartha (PW-7) reveals that although the matrimonial relationship between the Accused and the deceased was initially harmonious, over time it became increasingly strained, marked by persistent quarrels and irreconcilable differences. Owing to these escalating disputes, in the months leading up to the incident, the Accused, along with his mother (DW-1), began residing separately on the upper floor of the family home, while the deceased continued to live with the children on the ground floor.

41. With respect to the events on the day of the incident, i.e., 23.04.2018 at around 9:30 a.m., the evidence shows that after hearing the noise of falling utensils and the distressed cries of the deceased, the children, *namely*, Ritika (PW-5) and Piyush @ Siddhartha (PW-7), who were sleeping at the time, rushed out of their room and saw the Accused striking the deceased on the head with a hammer. It was only after the children intervened and managed to snatch the hammer from the Accused's hands that the Accused fled from the scene.

42. The statements of these two eye witnesses, Ritika (PW-5) and Piyush @ Siddhartha (PW-7), are consistent and in complete harmony with each other regarding the circumstances and sequence of events at the crime scene. Although the defence, during cross-examination, sought to highlight minor discrepancies and suggested that a third person was responsible for the fatal assault, portraying the Accused merely as a person who had arrived to help, this Court finds no



credible basis for such a theory. There is no reason to believe that the children would falsely implicate their own father in the brutal killing of their mother; at most, one might expect some degree of exaggeration out of emotional distress, but no such exaggeration is evident here when viewed in light of the corroborative material evidence.

43. Notably, two days after the incident, on 25.04.2018, the Accused was apprehended near a wine shop at ITI Ground, Delhi. Upon arrest, bloodstains were observed on his shirt, and forensic analysis subsequently confirmed that the blood was that of the deceased.

44. In his statement under Section 313 of the Cr.P.C., the Accused not only denied all allegations but also failed to offer any plausible explanation regarding the presence of the bloodstains, merely asserting: *"I am innocent. I have not hit my wife. I reached there only after hearing my wife's voice as I was present on the second floor with my mother."* Furthermore, the Accused or his defence provided no explanation as to why, if he was indeed attempting to help the deceased, he fled the scene and remained untraceable for two days before being apprehended.

45. The postmortem conducted by Dr. Manoj Dhinagra (PW-14), as detailed in his report (Ex. PW-14/A), concluded that the cause of death was craniocerebral damage resulting from blunt force trauma. Subsequently, on 18.05.2025, in response to a query from the IO, the doctor opined, via Ex. PW-14/B, that (a) the injuries are possible with the recovered weapon of the offence i.e. hammer and (b) injuries mentioned are sufficient to cause death in ordinary course.



Significantly, the defence did not challenge or cross-examine the doctor on these points, leaving the medical opinion unshaken.

46. Forensic examination of the physical evidence collected from the crime scene, including bloodstains found on a gas stove, a piece of cloth, the hammer used in the assault, the deceased's blood sample from the mortuary, and the bloodstains on the Accused's shirt, was comprehensively analyzed by Ms. Anita Chari, Scientific Officer (PW-13), whose report dated 19.06.2018 (Ex. PW-13/A) concluded that the DNA profiling performed on all these exhibits matched the blood sample of the deceased. Importantly, no infirmity or contradiction emerged during her cross-examination.

47. Taken cumulatively, the consistent and corroborative eyewitness testimony, *namely*, Ritika (PW-5) and Piyush @ Siddhartha (PW-7), supported by unimpeached medical and forensic evidence, leads this Court to the firm conclusion that the Prosecution has proved its case beyond reasonable doubt, *namely*, that the Accused/Appellant caused the death of his wife, Savita.

48. The central question that now arises for consideration is whether the death so caused amounts to *murder*, punishable under Section 302 of the IPC, or whether it falls within the category of *culpable homicide not amounting to murder*, thereby attracting liability under Section 304 of the IPC.

49. Before embarking upon this crucial inquiry, it is necessary to first delineate the legal framework governing such a determination. In this regard, the landmark judgment of the Hon'ble Supreme Court in ***State of A.P. v. Rayavarapu Punnayya***<sup>17</sup>, laid down the guiding principles and provided a clear exposition on the interplay between

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<sup>17</sup> (1976) 4 SCC 382



Sections 299, 300, 302 and 304 of the IPC. The Court, in that case, articulated the applicable legal tests and set forth a broad outline for distinguishing between murder and culpable homicide not amounting to murder. The relevant paragraphs of the judgement are extracted below:

“11. The principal question that falls to be considered in this appeal is, whether the offence disclosed by the facts and circumstances established by the prosecution against the respondent, is “murder” or “culpable homicide” not amounting to murder.

12. In the scheme of the Penal Code, “culpable homicide” is genus and “murder” its 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.

13. The academic distinction between “murder” and “culpable homicide not amounting to murder” has vexed the courts for more than a century. 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 minutae 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 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

| <u>Section 299</u>                                                                          |          | <u>Section 300</u>                                                                                                 |                       |
|---------------------------------------------------------------------------------------------|----------|--------------------------------------------------------------------------------------------------------------------|-----------------------|
| <u>A person commits culpable homicide if the act by which the death is caused is done —</u> |          | <u>Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done —</u> |                       |
| <u>INTENTION</u>                                                                            |          |                                                                                                                    |                       |
| (a)                                                                                         | With the | (1)                                                                                                                | With the intention of |



|                  |                                                                                         |     |                                                                                                                                                                                                                                                                       |
|------------------|-----------------------------------------------------------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                  | <u>intention of causing death; or</u>                                                   |     | <u>causing death; or</u>                                                                                                                                                                                                                                              |
| (b)              | <u>With the intention of causing such bodily injury as is likely to cause death; or</u> | (2) | <u>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</u>                                                                                                            |
|                  |                                                                                         | (3) | <u>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</u>                                                                                     |
| <b>KNOWLEDGE</b> |                                                                                         |     |                                                                                                                                                                                                                                                                       |
| (c)              | <u>With the knowledge that the act is likely to cause death</u>                         | (4) | <u>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 without any excuse for incurring the risk of causing death or such injury as is mentioned above.</u> |

**14.** Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the “intention to cause death” is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.



15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 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.

16. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, 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 299 and clause (3) of Section 300 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 299 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.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala* [AIR 1966 SC 1874] is an apt illustration of this point.

18. In *Virsa Singh v. State of Punjab* [AIR 1958 SC 465] Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):

“The prosecution must prove the following facts before it can bring a case under Section 300, ‘thirdly’. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the



enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was 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.”

19. Thus according to the rule laid down in *Virsa Singh case* of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be “murder”. Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general — as distinguished from a particular person or persons — being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting to murder”, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. If the answer to this question is in the negative the offence would be “culpable homicide not amounting to murder”, punishable under the *first* or the *second* part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the



**exceptions enumerated in Section 300, the offence would still be “culpable homicide not amounting to murder”, punishable under the first part of Section 304, of the Penal Code.**

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

23. Now let us consider the problem before us in the light of the above enunciation.”

**(Emphasis supplied)**

50. The above paragraph No. 21 of *State of A.P. v. Rayavarapu Punnayya* (*supra*) lays down a threefold test to determine whether an offence qualifies as “murder” or “culpable homicide not amounting to murder”. Upon applying the first test in light of the discussion in the preceding paragraphs, this Court finds the answer in the affirmative.

51. The next step is to apply the second test, *namely*, whether the act of the Accused falls within the definition of culpable homicide as defined under Section 299 of the IPC.

52. To assess the applicability of Section 299, the two core elements to examine are intention or knowledge. The Hon’ble Supreme Court, in *Jai Prakash v. State (Delhi Admn.)*<sup>18</sup>, has elaborated on the distinction between these two mental states. The relevant paragraphs read as under:

“12. Referring to these observations, Division Bench of this Court in *Jagrup Singh case* [(1981) 3 SCC 616] observed thus: (SCC p. 620, para 7)

“These observations of Vivian Bose, J. have become locus classicus. The test laid down in *Virsa Singh case* [1958 SCR 1495] for the applicability of Clause Thirdly is now ingrained in our legal system and has become part of the rule of law.”

The Division Bench also further held that the decision in *Virsa Singh case* [1958 SCR 1495] has throughout been followed as

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<sup>18</sup> (1991) 2 SCC 32



laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The ‘intention’ and ‘knowledge’ of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words ‘intention’ and ‘knowledge’ and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.”

***(Emphasis supplied)***

53. In the present case, the Prosecution has strived upon to establish the intention of the Accused to kill the deceased, relying on the testimonies of Rajesh (PW-3), Manohar Lal (PW-4), Ritika (PW-5), and Piyush @ Siddhartha (PW-7), who all confirmed longstanding matrimonial discord and quarrels between the Accused and the deceased. However, in this Court’s opinion, this alone is insufficient, as mere domestic discord does not, by itself, lead to the conclusion that the husband intended to kill his wife.



54. Furthermore, the Prosecution has failed to present any evidence of an immediate or recent provocation or cause that might have triggered the Accused to kill the deceased at the relevant time. The overall facts show that the couple's relationship was strained, resulting in the Accused residing with his mother on the second floor, while the deceased lived with the children on the ground floor. However, neither the testimonies of PW-3, PW-4, PW-5, nor PW-7 point to any recent quarrel or provocation preceding the fatal assault. Therefore, the applicability of clauses (a) and (b) of Section 299 of the IPC stands ruled out.

55. The focus then shifts to clause (c) of Section 299, which hinges on knowledge, specifically, whether the Accused acted "with the knowledge that the act is *likely* to cause death." Here, the act of striking the deceased on the head with a hammer, in the presence of eyewitnesses, Ritika (PW-5) and Piyush @ Siddhartha (PW-7), clearly indicates that the Accused must have been fully aware that such a blow by a hammer (Ex. PW-17/B) was probable to cause death. There is no evidence suggesting otherwise, nor has the defence provided any contrary explanation regarding the Accused's mental state. Thus, the case would squarely fall under clause (c) of Section 299 IPC.

56. Moving to the third test, the key question is whether this culpable homicide, falling under clause (c) of Section 299, qualifies as murder under clause (4) of Section 300 of the IPC. The law on this point has been succinctly summarized in the celebrated case of ***Emperor v. Mt. Dhirajia***<sup>19</sup>. The relevant paragraph reads as follows:

“10. That is the fourth case in which culpable homicide is murder. We have already found that Mt. Dhirajia must be taken to have

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<sup>19</sup>1940 SCC OnLine All 91



known that what she did must in all probability cause the death of her baby. But this is qualified by the further requirement that “such act” must be “without any excuse for incurring the risk of causing death.....” The construction of this particular passage of S. 300 is well settled. It is well settled that it is not murder merely to cause death by doing an act with the knowledge that it is so imminently dangerous that it must in all probability cause death. In order that an act done with such knowledge should constitute murder it is necessary that it should be committed without any excuse for incurring the risk of causing the death or bodily injury. An act done with the knowledge of its consequences is not prima facie murder. It becomes murder only if it can be positively affirmed that there was no excuse. The requirements of the section are not satisfied by the act of homicide being one of extreme recklessness. It must in addition be wholly inexcusable. When a risk is incurred—even a risk of the gravest possible character which must normally result in death—the taking of that risk is not murder unless it was inexcusable to take it. That, as we understand it, in terms of this case, is the meaning of this passage of S. 300, I.P.C. Now looking at the facts of this case which we need not repeat again, we think that it is not possible to say that Mt. Dhirajia in jumping into this well did so without excuse. We must consider in assessing what is excuse or is not excuse the state of mind she was in. She feared her husband and she had reason to fear her husband. She, was endeavouring to escape from him at dawn and in the panic into which she was thrown when she saw him behind her she jumped into the well. We think she had excuse and that excuse was panic or fright or whatever you like to call it. For these reasons we do not think that Mt. Dhirajia is guilty of murder.”

***(Emphasis supplied)***

57. In the present case, it has been established that the Accused caused the death of the deceased by striking her with a hammer. The postmortem report (Ex. PW-14/A) concluded that the cause of death was craniocerebral damage resulting from blunt force trauma. The postmortem report (Ex. PW-14/A) regarding internal injuries on the body opined “**No Abnormality Detected**”<sup>20</sup>, however, with respect to external injuries, opined as under:

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<sup>20</sup> NOD



**“EXTERNAL EXAMINATION (Injuries etc.):**

1. Laceration, reddish, measuring 5x3 cm, present on the left occipital aspect of the head. Brain matter coming out from fracture site.

Laceration, measuring 5x2 cm x bone deep, present above left ear 2 cm above of size 4x2.”

58. These findings confirm two severe injuries: one on the left occipital area (back-left side of the skull) and another above the left ear. The nature of injuries is grave as that is leading to brain matter coming out from the fracture site.

59. Notably, there were no other external injuries or marks suggesting any prior physical scuffle between the deceased and the Accused.

60. Ritika (PW-5) and Piyush @ Siddhartha (PW-7) consistently testified that, on 23.04.2018 around 09:30 AM, while they were sleeping in a rear room, they were awakened by their mother's cries and the sound of falling utensils. Upon rushing out, they saw their father striking their mother with a hammer.

61. Significantly, neither child reported hearing any verbal quarrel between the Accused and the deceased prior to the assault by the hammer. If there had been a heated exchange that escalated to violence, it is likely the children would have been awakened earlier.

62. Additionally, the mother of the Accused (DW-1) briefly testified that the Accused was with her upstairs and only went to the ground floor after hearing noises. If such noises had been loud or prolonged, the Accused's children, who were in a room immediately adjacent to the scene of the incident, would likely have been alerted and present from the very beginning.



63. Considering the nature and location of the injuries, combined with the surrounding circumstances, this Court finds that the Accused acted with the knowledge that his act was so imminently dangerous that it would, in all probability, cause death or such bodily injury as was likely to cause death. Neither the Accused nor his defence offered any valid explanation or justification for causing such injuries. Therefore, the case squarely falls under clause (4) of Section 300 of the IPC.

64. In the present appeal, the Ld.Counsel for the Appellant/Accused sought to invoke ‘Exception 4’ to Section 300 of the IPC, which states:

“**Exception 4.** —Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

**Explanation.** —It is immaterial in such cases which party offers the provocation or commits the first assault.”

65. The Hon’ble Supreme Court, in *Ghapoo Yadav v. State of M.P.*<sup>21</sup>, summarized the essential elements required for an Accused to claim the benefit of ‘Exception 4’. The relevant paragraph reads as under:

“10. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way

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<sup>21</sup> (2003) 3 SCC 528



the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. **The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.**

*(Emphasis supplied)*

66. It is well established that once the Prosecution has discharged its burden, the Accused bears the responsibility to demonstrate the probable case that the facts fit within the exception. A three-judge bench in *Vijayee Singh v. State of U.P.*<sup>22</sup> summarized this principle as follows:

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<sup>22</sup> (1990) 3 SCC 190



“17. We have noticed that Section 105 requires that when a person is accused of any offence, the burden of proving the *existence of circumstances* bringing the case within any of the General Exceptions or special exception or proviso contained in any part of the Penal Code is on him and the court shall presume the absence of such circumstances. This presumption is rebuttable. In *Parbhoo v. Emperor* [AIR 1941 All 402 (FB)], a Full Bench of seven Judges considered the scope of Sections 102 and 105 of the Evidence Act. The majority agreed with the view taken by the Full Bench in *Damapala case* [AIR 1937 Rang 83]. In *Parbhoo case* [AIR 1941 All 402 (FB)], Bajpai, J. in his concurring judgment observed that Section 105 is stated in two forms, that of a rule as to the burden of proof and that of a presumption and that the burden of proving the guilt of the accused always rests on the prosecution and never shifts and the learned Judge further held that the doubt cast in connection with the right of private defence must be a reasonable doubt and if there is such a reasonable doubt, it casts a doubt on the entire case of the prosecution and that the result is that the accused gets a benefit of doubt. (AIR p. 421) “The presumption laid down in Section 105, Evidence Act, might come into play but it does not follow therefrom that the accused must be convicted even when the reasonable doubt under the plea of the right of private defence or under any other plea contained in the general or special exceptions pervades the whole case.” In *Damapala case* [AIR 1937 Rang 83] Dunkley, J. while concurring with the majority view after discussing the law on the subject observed: (AIR p. 88)

“The conclusion, therefore, is that if the court either is satisfied from the examination of the accused and the evidence adduced by him, or from circumstances appearing from the prosecution evidence, that the existence of circumstances bringing the case within the exception or exceptions pleaded has been proved, or upon a review of all the evidence is left in reasonable doubt whether such circumstances had existed or not, the accused in the case of a general exception, is entitled to be acquitted, or, in the case of a special exception, can be convicted only of a minor offence.”

This case has been followed subsequently by a number of High Courts.

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23. At this stage it becomes necessary to consider the meaning of the words “the court shall presume the absence of such circumstances” occurring in Section 105 of the Evidence Act. Section 4 of the Act explains the meaning of the term “shall presume” as to mean that the court shall regard the fact as proved unless and until it is disproved. From a combined reading of these



two sections it may be inferred that where the existence of circumstances bringing the case within the exception is pleaded or is raised the court shall presume the absence of such circumstances as proved unless and until it is disproved. In Section 3 of the Act meaning of the terms “proved”, “disproved” and “not proved” are given. As per this provision, a fact is said to be “proved” when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved”.

24. The first part of Section 105 as noted above lays down that when a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any of the exceptions or proviso is on him and the latter part of it lays down that the court shall presume the absence of such circumstances. In a given case the accused may discharge the burden by expressly proving the existence of such circumstances, thereby he is able to disprove the absence of circumstances also. But where he is unable to discharge the burden by expressly proving the existence of such circumstances or he is unable to disprove the absence of such circumstances, then the case would fall in the category of “not proved” and the court may presume the absence of such circumstances. In this background we have to examine the meaning of the words “the court shall presume the absence of such circumstances” bearing in mind the general principle of criminal jurisprudence that the prosecution has to prove its case beyond all reasonable doubt and the benefit of every reasonable doubt should go to the accused.

*(Emphasis supplied)*

67. To invoke Exception 4, the defence has to show the probable case that the death was caused: (a) without premeditation; (b) in a sudden fight; (c) without taking undue advantage or acting in a cruel or unusual manner; and (d) due to the fight with the deceased. In the present case, the Accused has failed to establish the occurrence of any sudden fight between himself and the deceased. Indeed, the defence did not advance such a claim before the Ld. Trial Court, nor was any



such suggestion made to any of the Prosecution witnesses during the cross-examination.

68. Notwithstanding, the surrounding facts reveal no additional injuries or signs of a scuffle, nor any indication of a verbal altercation, between the Accused and the deceased, leading up to the fatal assault. As previously noted, even if there had been a verbal exchange, the children would likely have been awakened earlier.

69. Given the history of discord between the Accused and the deceased, an altercation escalating to the Accused fatally beating his wife with a hammer would require evidence of some extraordinary circumstance, which is absent here. Accordingly, this Court concludes that the present case does not fall within the scope of Exception 4 to Section 300 of the IPC.

70. During arguments, the Ld. Counsel for the Appellant/Accused also raised the issue that no effort was made to verify the origin of the hammer. However, it is pertinent to note that this case is primarily built on ocular evidence, i.e., the direct testimony of the Accused's own children; and under the given facts and circumstances, the absence of proof regarding the weapon's origin does not undermine the credibility of these eyewitness accounts. The Hon'ble Supreme Court in *Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala*<sup>23</sup> regarding the strength of the ocular evidence made the following observations:

“17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular

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<sup>23</sup> (2022) 18 SCC 683



evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that Muddamal No. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.

18. The aforesaid discussion leads us to the conclusion that the acquittal by the High Court is based on misappreciation of the evidence and the overlooking of relevant evidence thereby arriving at a wrong conclusion. It is not a case where two views are possible or the credibility of the witnesses is in doubt. Neither is it a case of a solitary uncorroborated witness. The conclusion of the High Court is therefore held to be perverse and irrational. The acquittal is therefore held to be unsustainable and is set aside. In the nature of the assault, Section 304 Part II IPC has no application. The conviction of Respondents 1 to 4 by the trial court is restored.”

*(Emphasis supplied)*

71. In light of the foregoing discussion, this Court finds no merit in the present appeal, and thus, the impugned judgment dated 03.05.2023 and the Order on Sentence dated 24.08.2023 passed by the Ld. Trial Court is upheld.

72. Accordingly, the present appeal, along with any pending application(s), stands disposed of in the above terms.

73. No order to cost.

**SUBRAMONIUM PRASAD, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**JULY 02, 2025/sm**