



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2026

CORAM

**THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

CRL A Nos.738 of 2019, 155 of 2020 & 237 of 2021

Murugan
S/o Madhu
256, Lakshmanoor, Karatukadu
Akkarapalayam, Salem District

Appellant in Crl A No.738 of 2019

Arumugam
S/o Perumal
T.J.Nagar, Akkarapalayam
Verapandi, Salem

Appellant in Crl A No.155 of 2020

Kumar
S/o Periyasamy
Lakshmanoor, Akkarapalayam
Veerapandi, Salem District

Appellant in Crl A No.237 of 2021

Vs

The State rep.by
Inspector of Police
Kondalampatty Police Station
Salem District
(Crime No.1133/2009)

Respondent in all the Criminal Appeals

Memorandum of Grounds of Criminal Appeals filed under Section 374(2)
of Cr.P.C against the judgment passed by the learned III Additional District &
Sessions Judge, Salem in S.C.No.179 of 2016 dated 30.07.2019.



For Appellants: Mr.B.Vasudevan
in Crl A Nos.738 of 2019 &
237 of 2021
Mr.R.Sankarasubbu
in Crl A No.155 of 2020

For Respondent: Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem

COMMON JUDGMENT
(Judgment of the Court was made by P.Velmurugan J.)

These criminal appeals have been preferred against the judgment passed by the learned III Additional District & Sessions Judge, Salem in S.C.No.179 of 2016 dated 30.07.2019 convicting the appellants for the offence(s) and to undergo the sentence(s) as detailed hereunder:-

Accused	Offence(s) punishable	Sentence(s) imposed
A1	364 IPC	Life imprisonment and fine of Rs.5000/-, in default to undergo 6 months R.I.
	302 IPC	Life imprisonment and fine of Rs.5000/-, in default to undergo 6 months R.I.
	404 IPC	2 years R.I and fine of Rs.1000/-, in default to undergo 1 month R.I
	201 r/w 302 IPC	5 years R.I and fine of Rs.2000/-, in default to undergo 2 months R.I. All the sentences ordered to run concurrently
A2	201 r/w 302 IPC	5 years R.I and fine of Rs.2000/-, in default to undergo 2 months R.I
A3	201 r/w 302 IPC	5 years R.I and fine of Rs.2000/-, in default to undergo 2 months R.I

Challenging the above judgment of conviction and sentence, A1 has preferred Crl A No.237 of 2021, A2 has preferred Crl A No.155 of 2020 and A3 has preferred Crl A No.738 of 2019, respectively. Since the appeals are arising out



of the common judgment, they are taken up together and disposed of by this common judgment. For convenience, the appellants will be hereinafter referred to as A1, A2 & A3 in this judgment.

2. The case of the prosecution runs thus:-

(a) A1 to A3 were the residents of Akkarapalayam Lakshmanur Village. One Kala, D/o Nagaraj also belongs to the above said village. She was married to one Selvam of Harur and since Selvam died 4 years prior to the occurrence, she returned to her parental house with her children. A1 developed illicit intimacy with Kala. Since Kala was engaged in construction works, A1 suspected that Kala was having illicit relationship with another worker and therefore, A1 developed an enmity against her.

(b) Due to such enmity, when PW1 was serving as the Village Administrative Officer of Uthamachozhapuram Village, on 29.10.2009 at about 9.00 A.M., A1 came to his office and gave an extra-judicial confession stating that on 26.10.2009, at about 9.00 A.M., A1 asked his lover Kala to come to Perumal Koil Karadu for a private chat and were enjoying their sweet time; that after sometime, a wordy quarrel arose between A1 and Kala, whereby Kala insisted A1 to marry her and since A1 refused to marry Kala, she asked A1 to simply kill her and infuriated by her words, A1 removed the saree worn by Kala and strangled her neck; that after causing her death, A1 also removed the



golden ear studs, silver anklets worn by Kala along with the cellphone and after keeping the silver anklets and cell phone in the house, at about 3.00 P.M., A1 took the golden ear studs and pledged the same at Sandaipettai jewel shop and while returning to his house with the money, he informed A2 and A3, who are his relatives, that since Kala was insisting him to marry her, angered by her words, he strangled her neck with the help of the saree worn by Kala and hence sought the assistance of A2 and A3 to bury the body of Kala somewhere; that on 27.10.2009, at 12 O' clock midnight, they packed the body of Kala in a gunny bag and threw the same underneath the Thirumanimutharu bridge.

(c) The above statement of A1 was reduced into writing by PW1, the admissible portion of which is marked as Ex.P1. Thereafter, PW1 produced A1 before the Kondalampatty Police Station along with his report, Ex.P2.

(d) PW8, the Sub Inspector of Police, on production of A1 and on receipt of Ex.P2 from PW1 at 10.00 A.M. on 29.10.2009, registered a case in Crime No.1133 of 2009 for the offence under Sections 302, 404, 201 IPC and prepared the First Information Report, Ex.P13. Thereafter, PW8 forwarded the express report along with the copies of FIR, statement of A1 and the report of PW1 to the Court of Judicial Magistrate No.V through the Head Constable, PW10 and also to the concerned higher officials. Thereafter, PW8 produced A1 before PW12, the Inspector of Police for further investigation.

(e) PW12, the Inspector of Police, on receipt of Ex.P13 from PW8, took



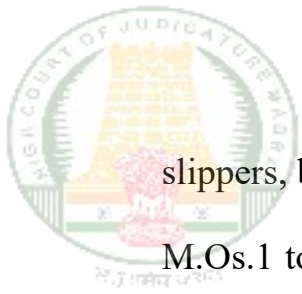
up further investigation on the same day and obtained the voluntary confessional statement of A1, the admissible portion of which is marked as Ex.P4, in the presence of PW1 and his Assistant. Thereafter, he proceeded to the Thirumanimutharu bridge along with A1, where A1 identified the gunny bag containing the body of the deceased and prepared the observation mahazar and drew the rough sketch between 12.15 and 1.15 hours on the same day under Ex.P3 & Ex.P15. He also videographed the same with the help of a photographer. Subsequently, he conducted inquest on the body of the deceased in the presence of the witnesses and panchayatdars and prepared the inquest report, Ex.P16. Thereafter, at 3.15 P.M., he sent the body of the deceased through the Head Constable, PW9 along with a requisition letter for conducting post-mortem.

(f) PW4-Doctor, on receipt of requisition, conducted post-mortem on the decomposed body of the deceased and he found the following external injuries:-

“A dark brown ligature mark seen over front sides and back of neck measuring 22x1x1.50 cms and it is situated 9.5 cms above supra sternal notch and 5.5 cms below mid chin and 8 cms below right mastoid process and 7 cms below left mastoid process.”

He issued the post-mortem certificate, Ex.P11 with his opinion that the deceased would appear to have died of effects of asphyxia due to strangulation based on the toxicology report, Ex.P12.

(g) PW12, continuing further with the investigation, recovered the



slippers, bag, silver thuku povani, water bottle, damaged gunny bag, jute thread, M.Os.1 to 6 under the seizure mahazar, Ex.P5 in the presence of witnesses. At 4.30 P.M., he recovered the silver anklets, cellphone, pawn receipt, bicycle, Mos.7 to 9 produced by A1 under the seizure mahazar, Ex.P9. Thereafter, at 5.30 P.M., he proceeded to the place of occurrence, viz., Perumalkoil karadu, identified by A1, where the deceased was killed and prepared the observation mahazar, Ex.P17. Subsequently, he proceeded to the Sandaipettai Muthumariamman Bankers, where the golden studs of the deceased were pledged and seized the same under the seizure mahazar in the presence of witnesses. At 7.30 P.M., he arrested A2 near the Ariyanur bus stand and obtained his confessional statement. He remanded A1 and A2 to judicial custody. He sent the seized material objects to the Court under Form-91 series under Exs.P18 to P20. He thereafter enquired the witnesses and recorded their individual statements. He also seized the green/red colour bordered saree, rose colour inskirt, white colour jacket, M.Os.11 to 13 under Form-91 mahazar, EX.P21. On 30.10.2009, he enquired the other witnesses and recorded their individual statements. In the meanwhile, he also arrested A3 near the Soolaimedu bus stop and obtained his voluntary confession in the presence of PW1 and his Assistant and remanded him to judicial custody. PW12 examined PW8, PW10, PW11 and obtained their statements. On 17.11.2009, he examined the post-mortem doctor, PW4 and recorded his statement. After completion of



investigation, on 31.12.2009, he filed the final report in Crime No.1133 of 2009 against A1 to A3 for the offence punishable under Sections 364, 302, 404, 201 read with 302 IPC before the Court.

3. The learned Judicial Magistrate No.V, Salem took the charge sheet on file in PRC No.6 of 2010 and after completing the formalities under Section 207 Cr.P.C., committed the case to the Principal District & Sessions Judge, Salem, since the offences are exclusively triable by the Court of Session. The learned Principal District & Sessions Judge took the case on file in S.C.No.179 of 2016 and made over the same to the learned III Additional District & Sessions Judge, Salem for disposal in accordance with law. The learned III Additional District & Sessions Judge, after completing the formalities, framed the charge against A1 for the offence punishable under Sections 364, 302, 404, 201 read with 302 IPC and the charge against A2 & A3 for the offence punishable under Section 201 read with 302 IPC, respectively.

4. During the trial, in order to substantiate the charges framed against A1 to A3, on the side of the prosecution, totally 12 witnesses were examined as PWs.1 to 12 and 21 documents were marked as Exs.P1 to P21, besides 14 material objects as M.Os.1 to 14. On completion of examination of the prosecution witnesses and the incriminating circumstances culled out from the



evidence of the prosecution witnesses were put to A1 to A3 under Section 313 Cr.P.C., they have denied the same as false. However, on the side of the defence, no oral and documentary evidence was let in. On conclusion of trial and upon hearing the arguments advanced on either side, the learned III Additional District & Sessions Judge, Salem found A1 to A3 guilty of the offence(s) and sentenced them to undergo the sentence(s) as mentioned above, leading to the filing of the present appeals before this Court.

5. The learned counsel for the appellants would submit that there is no eye-witness for registration of the case against the appellants. In a case of circumstantial evidence, it is settled that the ingredients of motive, last seen theory and recovery of material object have to be established without any break in chain. Whereas in this case, either the motive or the last seen theory was established, besides the recovery also not proved in the manner known to law. As far as A2 & A3 are concerned, there is no material to prove that they aided A1 to screen the offence committed by A1. Though it is the case of the prosecution that PWs.5 & 6 had witnessed A1 taking the dead body in a gunny bag in the bicycle, admittedly, they have turned hostile and not supported the case of the prosecution. Therefore, the case entirely rests upon the confession given by A1 before PW1 and based on the mere confession made by the co-accused, A2 & A3 cannot be convicted, since there is no corroborative evidence



establishing the confession of the co-accused. The confession of the co-accused is a weak piece of evidence, unless there is corroborative substantive materials to connect the accused in the offence. The learned trial Judge failed to consider these facts. Except the confession made by A1, no other corroborative materials are available as against A2 & A3 that they were seen along with A1 and they helped A1 to screen the offence. Therefore, the judgment of conviction and sentence passed against A2 & A3 for the offence under Section 201 read with 302 IPC is without any substance and the same is liable to be set aside. As far as A1 is concerned, the respondent Police has not proved its case beyond reasonable doubt without a break in chain and there is no last seen theory. PW3, who is the brother of the deceased, is an interested witness and based on the evidence of PW3, it cannot be stated that the prosecution has proved the last seen theory. Further the recovery of the material objects was also not proved. There is no material recovered from A2 & A3. However, the materials came to be recovered from A1 based on the confessional statement given before the police officer. It is settled law that the confession made before the police officer is not admissible in evidence, which is hit by Section 25 of the Evidence Act and therefore the learned trial Judge failed to appreciate both the oral and documentary evidence and since there is no corroborative materials, simply convicted only based on presumption and therefore there is no material to connect A1 for the cause of death of the deceased. The evidence itself shows



that the deceased was having intimacy with several persons and due to that, any one of the persons might have killed her. But there is no material to connect A1 in this case and therefore the judgment of conviction and sentence passed by the trial Court against A1 is liable to be set aside.

6. Per contra, the learned Additional Public Prosecutor would submit that since the husband of the deceased died four years prior to the occurrence, the deceased was living in the paternal grandmother's house. At that time, she used to go for construction works, where she had a relationship with A1. Since A1 was not a married man and he developed intimacy with the deceased and that the deceased asked A1 to marry her, he refused to marry her, but only wanted to have intimacy with her. Since A1 did not marry her, the deceased had developed intimacy with some other persons. Therefore, A1 asked the deceased not to have intimacy with any other person except him, for which she asked him to marry her. Therefore, A1 had enmity with the deceased and asked the deceased to come to a secluded place and while spending their sweet time, asked her not to have any relationship with any other person, for which the deceased asked him that if he is not interested to marry her, he can simply kill her. On hearing such words, A1 got provoked against the deceased and strangled her with the help of the saree of the deceased and he also took the golden ear studs, silver anklets and cellphone and in order to screen the offence, with the help of A2 & A3, A1



packed the body of the deceased in a gunny bag for being buried somewhere else and that subsequently, A1 approached PW1, who is the Village Administrative Officer of Uthamachozhapuram village and made an extra-judicial confession before the VAO and based on his confession, PW1 also produced A1 along with the extra-judicial confession recorded by him with the report before PW8, the Sub Inspector of Police of the respondent police station, who registered a case. Further, A1 voluntarily surrendered before the Village Administrative Officer and made an extra judicial confession, based on which the material objects were also recovered. Based on the confession given by A1, PW14, the Inspector of Police arrested A2 & A3 also and after investigation, laid the final report before the Court. Though the case rests upon the circumstantial evidence, as there was no eye witness, there is no question of break in chain of circumstances and evidence and therefore the trial Court rightly appreciated both the oral and documentary evidence and found A1 to A3 guilty of the offence(s) and convicted and sentenced them to undergo the sentence(s) as stated above. Since there are no merits in these appeals, they are liable to be dismissed.

7. We have heard the respective learned counsel appearing for the appellants and the learned Additional Public Prosecutor for the respondent and also perused the records available on record.



village and informed about the murder of the deceased and he made an extra-judicial confession and PW1 recorded the statement and prepared the special report and produced A1 before the respondent police, who registered the case and subsequently laid the charge sheet.

9. A reading of the entire materials would show that the case rests upon the circumstantial evidence and there is no eye witness. It is a settled proposition of law that for circumstantial evidence, the prosecution has to prove the three ingredients of enmity, last seen theory and also recovery. In order to substantiate the charges, the Village Administrative Officer was examined as PW1, who has clearly deposed that on 29.10.2009, at about 9.00 A.M., A1 approached PW1 and made a confessional statement stating that on 26.10.2009, at about 9.00 A.M., he called his lover to come and meet him at Perumalkoil Karadu and she also came there and both of them enjoyed their sweet time. Subsequently, there was a wordy altercation between them, since the deceased insisted A1 to marry her, otherwise he can simply kill her. Due to that, A1 strangled the deceased with the help of the saree of the deceased and he removed the golden ear studs and also the silver anklets along with the cellphone. At about 3.00 P.M., he also pledged the golden ear studs of the deceased with Muthumariamman bankers. Thereafter, with the help of A2 & A3, he removed the body in a gunny bag and threw the same underneath the



Thirumani Mutharu bridge. Based on the extra-judicial confession, PW1 prepared the special report and handed over A1 to the respondent police, who registered a case and recorded his confessional statement separately. Based on his confession statement, they found the body of the deceased and in the presence of PW1, PW14 recovered the anklets and cellphone handed over by A1 and on production of the pledge receipt, PW14 recovered the golden ear studs from Muthumariamman Bankers, where A1 had pledged the jewels of the deceased. Based on the confession of A1, A2 & A3 were also arrested. Though the father of the deceased was examined as PW2, he has spoken about the enmity between A1 and the deceased and PW3, the brother of the deceased has also spoken about the enmity. PW4 is the doctor who conducted post-mortem on the body of the deceased. From the evidence of PW4, it is seen that the deceased died due to strangulation and also the body was found decomposed. Since the occurrence is alleged to have taken place on 26.10.2009, as per the extra judicial confession made by A1 before PW1, the body was recovered and the post-mortem was conducted on 29.10.2009 after four days of the date of occurrence. From the evidence of PW1 and the extra judicial confession made by A1 and the evidence of the post mortem doctor, it clearly shows that as stated by PW1, the deceased might have died four days before and further though PWs.5 & 6 alleged to have stated that they have seen A1 to A3 with the gunny bag underneath the Thirumani Mutharu bridge and based on the confessional



statement of A1, A2 & A3 were also implicated in this case, however, PWs.5 & 6 have turned hostile and have not supported the case of the prosecution during the trial. Therefore, as against A2 & A3, except the extra judicial confession made by A1, no other materials to show that A2 & A3 were seen together or assisted A1 for carrying the body of the deceased. Therefore, from a reading of the evidence, there is no material to connect A2 & A3 for the commission of the offence, since the charge against A2 & A3 is only for the offence under Section 201 read with 302 IPC for throwing the body of the deceased. Further, there is no direct eye witness and the case rests solely on the circumstantial evidence and there is no material except the confession of A1 to connect A2 & A3. The confession has to be corroborated with some other circumstantial evidence. In this case, there is no circumstantial evidence to connect A2 & A3 for the charged offence under Section 201 read with 302 IPC. Therefore, this Court finds that the prosecution has not proved its case beyond reasonable doubt as against A2 & A3 for the offence under Section 201 read with 302 IPC. Therefore, A2 and A3 are acquitted of the charge and the Crl A Nos.738 of 2019 and 155 of 2020 are allowed setting aside the judgment of conviction and sentence passed by the learned III Additional District & Sessions Judge, Salem in S.C.No.179 of 2016 dated 30.07.2019 against them. A2 & A3 are directed to be set at liberty forthwith unless their custody is otherwise required in connection with any other case. Fine amount, if any paid, shall be refunded to



them forthwith. Bail bond, if any executed, shall stand cancelled.

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10. As far as A1 is concerned, as stated already, the case rests upon the circumstantial evidence. In order to prove the enmity, the prosecution examined PWs1 to 3 and from the evidence of PWs.1,2,3 and Exs.P2 & P4, the prosecution has proved the enmity of A1 against the deceased.

11. As far as last seen theory is concerned, the evidence of PW7 clearly shows that on the date of occurrence, he saw the deceased along with A1 on 26.10.2009 at about 9 O' clock on the side of Perumalkoil road and further he has deposed that he has seen both of them chatting together on several occasions. Therefore, he pleaded that as usual, they were enjoying and that he left the place. Later he came to know that the deceased died. Subsequently, the deceased did not return to the house and they searched her whereabouts. After three days, they came to know about the extra judicial confession of A1 and found the body of the deceased in the place identified by A1 and therefore, the last seen theory also has been proved.

12. As far as recovery is concerned, PW1 clearly stated that A1 voluntarily surrendered before him on 29.10.2009 and made an extra judicial confession and also he made the confession before the respondent police and



also identified the place where the body was thrown. Based on that, the body was identified and also the investigating officer made request to PW4 for conducting post-mortem at the spot where the body was found and he also conducted post-mortem and gave the post mortem certificate, Ex.P11, which also clearly shows that the death was unnatural and it corroborates the evidence of PW1. Further A1 also took the investigating officer and in the presence of PW1 and his Assistant, handed over the material objects to the investigating officer in the presence of PW1. They signed the recovery mahazar and also A1 took the investigating officer to the Muthumariamman Bankers and identified the golden ear studs of the deceased, which were pledged by A1. Therefore, the recovery also has been proved in the manner known to law.

13. Though the confessional statement recorded by the investigating officer is not an admissible evidence, since it is hit by Section 25 of the Evidence Act, however, there is an exemption that in the confession alleging recovery, the recovery portion is admissible. Whereas in this case, the evidence of PW1 is that A1 took the investigating officer to the spot and in the presence of PW1 and his Assistant, the material objects which were hidden by A1 were handed over to the investigating officer in the presence of PW1. A1 also gave an extra judicial confession before VAO and the prosecution substantiated its case by examining the said witness as PW1. On a reading of the materials, this



Court finds that there is no eye witness in this case. However, the prosecution has proved its case by circumstantial evidence by establishing the enmity, last seen theory and recovery of material objects and that there is no break in chain and therefore this Court, while appreciating the oral and documentary evidence, finds that the evidence of PW1 is cogent and consistent and there is no reason to disbelieve the evidence of PW1, who is the Village Administrative Officer and is not an interested witness and there is no material to show that PW1-VAO has enmity with A1. From the evidence of PW7, it is clear that A1 is an unmarried man and the deceased was a widower and both of them were engaged in construction works. At that time, they developed illicit intimacy and since A1 doubted about the fidelity of the deceased, he warned the deceased not to have any illicit intimacy with any other person, for which the deceased asked him to marry her and therefore A1 has taken away the life of the deceased. Therefore, the prosecution has proved its case beyond reasonable doubt as against A1 with cogent and corroborative evidence by satisfying the three ingredients of enmity, last seen theory and also recovery to prove the circumstantial evidence without any missing link. The trial Court rightly appreciated both the oral and documentary evidence and convicted A1 for the charged offences.

14. But, however, this Court, as an appellate Court, while re-appreciating the evidence, finds that even from the evidence of PW1 & PW7, A1 had illicit



intimacy with the deceased and when A1 asked the deceased to come to the place where he asked to meet him, she also went voluntarily and even on that day, she gave company to A1 and enjoyed their sweet time. Therefore, there is no question of either kidnap or abduction of the deceased. Therefore the offence under Section 364 IPC is not made out, since the deceased is a woman aged 40 years and there is no material to show that she was forcibly kidnapped or abducted by A1. Therefore, the conviction and sentence passed by the learned trial Judge against A1 for the offence under Section 364 IPC are set aside. Fine amount, if any paid, shall be refunded.

15. A reading of the materials would show that the deceased voluntarily had illicit intimacy with A1. But on the date of occurrence, there was a wordy altercation and due to that, A1 got provoked and there was no premeditated plan, since A1 doubted the fidelity of the deceased and warned her and therefore on the date of occurrence, on 26.10.2009, the deceased also went there and enjoyed their sweet time and at that time, as a result of wordy quarrel arose between them, due to sudden provocation, A1 committed the offence. Therefore, the offence committed by A1 not falls under Section 302 IPC, but falls under Section 304 (Part II) IPC. Therefore, the conviction and sentence passed by the learned trial Judge against A1 for the offence under Section 302 IPC is set aside, but however, A1 is convicted for the offence under Section 304 (Part II) IPC



and sentenced to undergo 10 years rigorous imprisonment along with fine of Rs.5000/-, in default of payment to undergo six months rigorous imprisonment.

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16. In view of the above, the conviction and sentence passed by the learned trial Judge against A1 for the offence under Section 201 read with 302 IPC are set aside and the fine amount, if any paid, shall be refunded.

17. However, pursuant to the confession given by A1, the golden ear studs worn by the deceased were pledged in Muthumariamman Bankers and the same came to be recovered by the investigating officer in the presence of PW1 and that the other articles viz., silver anklets and cellphone were also handed over by A1 in the presence of PW1 pursuant to his confession, the admissible portion of which is Ex.P4, the offence under Section 404 IPC stands confirmed.

18. In the result, A1 is convicted for the offences under Section 304 (Part II) and 404 IPC and sentenced to undergo 10 years rigorous imprisonment along with fine of Rs.5000/-, in default to undergo six months rigorous imprisonment for the offence under Section 304 (Part II) IPC and to undergo two years rigorous imprisonment along with fine of Rs.1000/-, in default to undergo one month rigorous imprisonment for the offence under Section 404 IPC, which are ordered to run concurrently. Since A1 is on bail, the learned trial



Judge shall take steps to secure A1 and commit him to prison to undergo the remaining period of sentence, if any. The period of imprisonment already undergone by A1 is ordered to be set off under Section 428 Cr.P.C. With the above modification, Crl A No.237 of 2021 stands partly allowed.

(P.VELMURUGAN J.) (M.JOTHIRAMAN J.)
07-01-2026

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

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To

- 1.The III Additional District
& Sessions Judge
Salem
2. The Inspector of Police
Kondalampatty Police Station
Salem District
(Crime No.1133/2009)
3. The Public Prosecutor
High Court, Madras



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CRL A Nos. 738 of 2019 etc.



**P.VELMURUGAN J.
AND
M.JOTHIRAMAN J.**

SS

**CRL A Nos. 738 of 2019,
155 of 2020 & 237 of 2021**

07-01-2026