



Crl.A(MD)No.149 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)No.149 of 2023

K.Vasanth

... Appellant/Accused No.1

Vs.

State represented by,
The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
(Crime No.29 of 2013).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records and set aside the Judgment dated 30.01.2023 passed in S.C.No.153 of 2014 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari District, Nagercoil.

For Appellant : Mr.V.Sukumar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



WEB COPY



Crl.A(MD)No.149 of 2023

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal is directed as against the Judgment passed in S.C.No.153 of 2014, dated 30.01.2023 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari District, Nagercoil, thereby convicting the accused for the offences punishable under Sections 302 and 307 of I.P.C.

2.The case for the prosecution is that on 24.01.2013, the deceased teased the girls who had come to the temple function at Boothalinga Temple in Boothapandi. As a result, enmity arose between the deceased and the accused. On the same day, at about 09:15 p.m., the deceased narrated the incident to P.W.7 and informed him to arrange a compromise with the accused. Therefore, P.W.7 called the accused to come for a compromise. A.1, along with A.2 to



Crl.A(MD)No.149 of 2023

A.5, arrived at the scene of the crime in an auto, armed with deadly weapons such as knives and a wooden log. Immediately after getting out of the auto, A.1 brutally attacked the deceased and also assaulted P.W.2, causing injuries. A.2 to A.5 obstructed the injured persons. Due to the injuries sustained by the deceased, he died in the hospital.

3.On the complaint, the respondent registered the F.I.R in Crime No.29 of 2013 for the offences punishable under Sections 147, 148, 341, 302 and 324 of I.P.C. After completion of investigation, a final report was filed and the same has been taken cognizance by the trial Court. The Trial Court framed charges for the offences punishable under Sections 147, 148, 302 read with 149, 307 and 341 read with 34 of I.P.C.

4.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.13 and marked Ex.P1 to P17. The prosecution had produced Material Objects M.O.1 to M.O.5. On the

3/21



Crl.A(MD)No.149 of 2023

side of the accused, no witnesses were examined and no documents were produced before the trial Court.

5.On perusal of oral and documentary evidence, the trial Court acquitted A.2 to A.5 and found A.1 guilty for the offences punishable under Sections 302 and 307 of I.P.C. He was sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default, to undergo one year Rigorous Imprisonment for the offence punishable under Section 302 of I.P.C. He was also sentenced to undergo ten years Rigorous Imprisonment for the offence punishable under Section 307 of I.P.C. Aggrieved by the same, the present appeal has been preferred by the appellant/A.1.

6.The learned counsel appearing for the appellant submitted that there was a delay in lodging of the complaint. The alleged occurrence took place on 24.01.2013 at about 09.30 p.m., and the complaint was lodged at about 02.30 a.m., on 25.01.2013,



Crl.A(MD)No.149 of 2023

the next day. In fact, the distance between the alleged scene of the crime and the police station is only 1 km. However, the prosecution failed to explain the delay.

7.P.W.1 categorically admitted that he was tutored by the police, and as such, the evidence of P.W.1 cannot be relied upon to support the case of the prosecution. There are contradictions between the eyewitnesses. The prosecution failed to examine the call detail records of P.W.7, who only called the accused to come for a compromise. P.W.8 also categorically deposed that there was a possibility of an electric power cut at the time of the alleged occurrence. Therefore, the accused were not even identified by any witnesses.

8.Furthermore, the person who suffered injury due to the occurrence, deposed as P.W.2, and turned hostile. No one supported the case of the prosecution for the charge under Section 307 of the



Crl.A(MD)No.149 of 2023

IPC. Moreover, the prosecution failed to prove the recovery of the deadly weapons and also failed to establish the motive for the occurrence. Even then, the Trial Court mechanically convicted the accused, and the same is liable to be set aside.

9. In respect of tutoring the witnesses, the learned counsel appearing for the appellant relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Manikandan v. State by the Inspector of Police [Manu/SC/0283/2024]***, wherein it is held as follows:

“8. Thus, the scenario which emerges is that precisely a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. One can reasonably imagine the effect of “teaching” the witnesses inside a Police Station. This is a blatant act by the police to tutor the material prosecution witnesses. All of them were interested witnesses. Their evidence will have to be discarded as there is a distinct



Crl.A(MD)No.149 of 2023

possibility that the said witnesses were tutored by the police on the earlier day. This kind of interference by the Police with the judicial process, to say the least, is shocking. This amounts to gross misuse of power by the Police machinery. The Police cannot be allowed to tutor the prosecution witness. This conduct becomes more serious as other eyewitnesses, though available, were withheld. We are surprised that both the Courts overlooked this critical aspect. It is pertinent to note that the defence of the accused, as can be seen from the line of cross-examination, was that they were not present at the place of the incident at the time of the incident. PW-2 admitted that accused no.1 was working in another village called Tirrupur. Although available, independent witnesses were not examined by the Prosecution. Therefore, adverse inference must be drawn against the prosecution. Hence, there is a serious doubt created about the genuineness of the prosecution case. The benefit of this substantial doubt must be given to the appellants. Before the appellants were enlarged on bail by this Court, they had undergone incarceration for more than 10 years.”



Crl.A(MD)No.149 of 2023

WEB COPY

12.The learned counsel further submitted that except A.1, all other accused viz., A.2 to A.5 were acquitted by the Trial Court. Since the appellant is also standing in the same footing as the other accused, he is entitled to the relief on the ground of parity. In support of his contention, the learned counsel relied upon the judgment of this Court in ***Crl.A(MD)No.1207 of 2025, dated 19.01.2026 [Rajababu and another v. The Inspector of Police, Tirunelveli District]***, wherein it is held that when there is similar evidence from eyewitnesses against all the accused persons, deposing that all the accused persons had specific allegations and played the same role in the occurrence, the Trial Court cannot convict the appellant alone while acquitting the other accused persons. All the accused will be governed by the principle of parity. The Court cannot make a distinction between the accused, as it would amount to discrimination.



Crl.A(MD)No.149 of 2023

WEB COPY

13.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that there are specific overt acts against the accused, namely the appellant herein, to prove the charges. The Trial Court convicted the appellant alone and acquitted the other accused persons. It cannot be said that the appellant was convicted alone while the other accused persons were standing in the same footing. There are eyewitnesses to the occurrence. Further, the eyewitnesses were examined after a period of six years from the date of the occurrence. Therefore, before giving evidence, they verified the documents and deposed before the Court. It is not the case of the defence that the eyewitnesses were called to the police station and tutored. One of the eyewitnesses admitted that before giving evidence, he verified the documents. However, this does not mean that the prosecution witnesses were tutored by the respondent. The prosecution clearly proved the motive behind the crime. The accused

10/21



Crl.A(MD)No.149 of 2023

were called to compromise the issue between the deceased and the accused, as the deceased had eve-teased some of the girls during the Poodhalinga Swami Temple event, and the same was informed to the accused. Utilizing these circumstances, all the accused persons came with deadly weapons in an auto and immediately assaulted the deceased with deadly weapons. They also attacked another person, who sustained grievous injuries, but they turned hostile. The accident register and medical evidence support the case of the prosecution to prove the charge under Section 302 of the IPC. Therefore, the Trial Court rightly convicted the appellant, and the same does not warrant any interference from this Court.

14.Heard the learned counsel appearing on either side and perused the materials available on record.

15.Admittedly, during the temple festival, the deceased teased some of the girls, and this was informed to the accused.

11/21



Crl.A(MD)No.149 of 2023

Therefore, the accused warned the deceased, and enmity arose between them. While being so, the deceased called the first accused through P.W.7 to resolve the issue. The deceased believed that the accused were coming only to compromise the matter. However, the first accused, along with four others, came to the scene of the crime in their auto, armed with deadly weapons. This indicates that the accused had premeditated to do away with the life of the deceased and arrived at the scene with deadly weapons. Immediately after getting out of the auto, the first accused attacked the deceased with a knife. Due to the injury, the deceased's intestine came out. The occurrence happened in the presence of A.2 to A.5.

16.The brother of the deceased deposed as P.W.1. He categorically deposed about the occurrence, and his testimony is corroborated by other eyewitnesses. The relevant portion of his evidence is as follows:

“21.03.2013ம் தேதி இரவு 7 மணிக்கு

12/21



Crl.A(MD)No.149 of 2023

கலைநிகழ்ச்சி பார்க்க போனார். இரவு 1 மணிக்கு திரும்ப வந்தார். ஆஜர் எதிரிகள் என் தம்பி சுபாஷ் பெண்களை கேலி செய்வதாக சொல்லி வம்பிழுத்ததாக சொன்னார். மறுநாள் காலையில் என் தம்பி மேற்சொன்ன விவரங்களை சொன்னார். நான் அவரிடம் எந்த பிரச்சனைக்கும் போகவேண்டாம் என்று அறிவுரை சொன்னேன். 22, 23 தேதிகளில் என் தம்பி கலைநிகழ்ச்சிக்கு போனபோது எதிரிகள் என் தம்பியை முறைத்து பார்த்துக் கொண்டிருந்ததாக என் தம்பி என்னிடம் சொன்னார். 24ம் தேதி தெற்கு ரதவீதி சுகாதார நிலையத்திற்கு முன்பு சாட்சி ஜேம்ஸ் என்ற ஜெபஸ்டின் அந்த வழியாக வந்ததாகவும், அந்த ஜேம்ஸிடம் என்னிடம் பிரச்சனை வேண்டாம் பேசி முடித்துவிடலாம் என்று என் தம்பி ஆஜர் எதிரிகளை இரவு 9 மணிக்கு மேல் வரச்சொல்லி இருக்கிறார். ஜேம்ஸ், பெர்லின், என் தம்பி சுபாஷ், தினேஷ் ஆகியோர் மேற்சொன்ன இடத்தில் இருந்து சமார் 9.15 மணிக்கு நின்று கொண்டு பேசிக்கொண்டிருந்தார்கள். நான் அவரிடம் என்னவென்று விசாரித்த போது ஏற்கனவே எங்களுக்குள் கலைநிகழ்ச்சியில் ஏற்பட்ட பிரச்சனை குறித்து பேசி முடித்துவிடலாம் என்று எதிரிகளை வரச்சொல்லி இருப்பதாக என்னிடம் சொன்னார். சுமர் 10 நிமிடம் இருக்கலாம். அங்கிருந்து ஒரு ஆட்டோவில் ஆஜர் எதிரிகள் அனைவரும் வந்தார்கள். ஆதர் 1ம் எதிரி ஆட்டோவை நிறுத்தியவுடன் என் தம்பி முன்னே சென்றார். உடனே 1ம் எதிரி நீ பெரிய இவனா என்று சொல்லி கத்தியை எடுத்து என் தம்பியின் இடதுபுற நெஞ்சில்



Crl.A(MD)No.149 of 2023

குத்திவிட்டார். திணைவு என்ன ஆனது என்று ஓடிப்போய் பார்ப்பதற்குள் நீயும்செத்துபோலே என்று சொல்லி அவரது இடதுபுற இடுப்பில் அதே கத்தியால் குத்திவிட்டார். மற்ற எதிரிகள் 4 பேரும் யாரையும் பக்கத்தில் வரவிடாமல் வைத்துக்கொண்டு வீசினார்கள். ஊர்மக்கள் அனைவரும் வருவது தெரிந்தவுடன் அதே ஆட்டோவில் ஏறி வந்த வழியே சென்றுவிட்டார்கள். என் தம்பி குத்துபட்டவுடன் கீழே விழுந்துவிட்டான். ரத்தம் வழிந்து ஓடியது. சாட்சி திணைவு வயிற்றில் கத்தி பட்டதால் குடல் வெளியே விழுந்துவிட்டது. இரண்டு பேரையும் தூக்குவதற்குள் ஆம்புலன்ஸ் அங்கு வந்துவிட்டது. நாங்கள் இருவரையும் தூக்கிக்கொண்டு அரசு மருத்துவமனை பூதப்பாண்டிக்கு கொண்டு சென்றோம். அங்கு மருத்துவர் வந்து பார்த்து இங்கு சிகிச்சை அளிக்கும் சூழ்நிலை இல்லை என்று சொன்னார். அங்கிருந்து ஆசாரிப்பள்ளம் மருத்துவமனை கொண்டு போகும் வழியில் என் தம்பி இறந்துவிட்டான். உடனே திணைவை ஆசாரிப்பள்ளம் மருத்துவமனையில் தீவிர சிகிச்சை பிரிவில் சேர்த்தோம். அவருக்கு 8 நாட்கள் சுயநினைவு திரும்பலில்லை. ஒருமாதத்திற்கு மேல் சிகிச்சையில் இருந்தார்.”

17.Though the accused were called to resolve the issue between the first accused and the deceased, the first accused, along with the other accused, arrived in an auto with deadly weapons,

14/21



Crl.A(MD)No.149 of 2023

WEB COPY

intending to murder the deceased. Immediately after getting out of the auto, without asking anything, they began assaulting the deceased with a knife. There is no specific overt act against A.2 to A.5. This is corroborated by the testimonies of P.W.3, P.W.4, and P.W.5. The injured witness deposed as P.W.2. Although he turned hostile, during cross-examination, he admitted the entire statement made under Section 161 of the Cr.P.C. The first accused is a habitual offender and, apart from the present case, he is involved in three other murder cases. Therefore, P.W.2 was scared to give any evidence. However, the admitted portion of his evidence can still be taken into consideration. He categorically deposed that the accused came in an auto and assaulted the deceased, and they also assaulted him. He was immediately taken to the hospital and was unconscious for eight days; he was treated by doctors for more than a month.

18.The person who informed the accused through phone to come for the compromise deposed as P.W.7. He categorically

15/21



Crl.A(MD)No.149 of 2023

deposed about the occurrence. Although the prosecution did not produce any call detail records regarding the phone call to the accused, this is not fatal to the case on hand, since it is not of major significance. The accused came to the place of occurrence in an auto, based solely on the phone call from P.W.7, which is not disputed by the defence. Further, the occurrence took place on 24.01.2013, and the trial commenced only in February 2019. Therefore, after a period of six years from the date of the occurrence, the eyewitnesses could have gone through their statements and records before deposing before the Court. It cannot be said that they were tutored by the police. There is absolutely no record to show that the eyewitnesses were tutored by the prosecution. It is not the case of the prosecution that they were tutored in the police station. Just before their evidence, they went through the documents and then deposed. Therefore, the judgment relied upon by the learned counsel for the appellant is not applicable to the case at hand.



Crl.A(MD)No.149 of 2023

WEB COPY

19.Insofar as the principle of parity is concerned, it is not applicable to the case on hand for the simple reason that A.2 to A.5 are not standing on the same footing as A.1. According to the prosecution, there was no specific overt act attributed to A.2 to A.5 to attract any of the charges. No witness has spoken about any overt act on their part, and as such, the Trial Court rightly acquitted them. However, insofar as A.1 is concerned, all the prosecution witnesses have spoken about his specific overt act, and he alone assaulted the deceased. Therefore, the principle of parity cannot be applied to the appellant in this case. Hence, the judgment relied upon by the learned counsel appearing for the appellant is not applicable to the case on hand.

20.In view of the above, the prosecution has categorically proved the charge for the offence punishable under Section 302 of the IPC, and the Trial Court rightly convicted the accused. The same does not warrant any interference by this Court.

17/21



Crl.A(MD)No.149 of 2023

WEB COPY

21.Though P.W.2 turned hostile, during his cross-examination, the statement recorded under Section 161 of the Cr.P.C. was confronted to him; however, his evidence is not supported by any medical evidence. The prosecution marked the accident register as Ex.P.2. On a perusal of Ex.P.2, it is revealed that P.W.2 was attacked by 10 known persons. Except the accident register, the prosecution did not produce any medical evidence to show that P.W.2 was admitted in the hospital as an inpatient.

22.Further, he deposed that while he was intercepting A.1, A.1 stabbed him. Therefore, A.1 had no intention to do away with the life of P.W.2. It was only when P.W.2 intercepted A.1, he assaulted him. That apart, P.W.2 was under the influence of alcohol at the time of the occurrence. This is also evident from the accident register marked as Ex.P.4. Therefore, the prosecution failed to prove the charge under Section 307 of the IPC.



Crl.A(MD)No.149 of 2023

WEB COPY

23.In view of the above, the conviction and sentence imposed on the appellant in S.C. No.153 of 2014, dated 30.01.2023, on the file of the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari District, Nagercoil, for the offence punishable under Section 302 of the IPC are confirmed. However, the conviction and sentence imposed against the appellant for the offence punishable under Section 307 of the IPC are set aside, and the appellant is acquitted of the said offence.

24.With the above modification, the Criminal Appeal is partly allowed. The fine amount, if any paid, in respect of the offence under Section 307 of I.P.C shall be refunded to the appellant forthwith. The sentences of imprisonment shall run concurrently. The period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C.



Crl.A(MD)No.149 of 2023

[G.K.I.J.] & [R.P.J.]
20.02.2026

WEB COPY NCC :Yes/No
Index :Yes/No

To

1.The Additional District and Sessions Judge (Fast Track Court),
Kanyakumari District, Nagercoil.

2.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.

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

20/21



WEB COPY



Crl.A(MD)No.149 of 2023

G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

ps

Crl.A(MD)No.149 of 2023

20.02.2026