



Crl.A(MD)No.168 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2026

CORAM:

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

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1.Manickam
2.Karthikeyan
3.Veluchamy
4.Selvaraj
5.Selvi

... Appellants/Accused Nos.1 to 5

Vs.

The State Rep. by its
The Inspector of Police,
Kulithalai Police Station,
Karur District.

In Cr.No.12 of 2020.

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for the records from the lower Court and set aside the judgment passed by the learned Principal Sessions Court / District Court, Karur in S.C.No.2 of 2021, dated 20.01.2023, by allowing this appeal.

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For Appellants : Mr.R.Gandhi
Senior Counsel
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

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

This appeal has been filed as against the Judgment passed in S.C.No.2 of 2021, dated 20.01.2023, on the file of the Principal Sessions Court / District Court, Karur, thereby, convicting the appellants 1 to 4 for the offences punishable under Sections 148, 302 r/w 149 of IPC and convicting the fifth appellant for the offences punishable under Sections 147, 294(b) and 302 r/w 149 of IPC.

2. The case of the prosecution is that due to previous motive, on 11.01.2020 at about 17.30 hours all the accused unlawfully assembled in front of the deceased's house and the first accused attacked the deceased on the backside of his head with

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wooden log, the second accused attacked the deceased with stone and hit on the forehead of deceased. The third accused attacked the deceased on the Mandible part. The fourth accused also attacked the deceased with stone and hit on the left side of the head. Immediately, the deceased was taken to the Government Hospital, Kulithalai and thereafter, he was referred to the Government Hospital, Trichy. He was admitted as Inpatient and died on 14.01.2020 due to the injuries sustained by him.

3. On the basis of the complaint, initially, the respondent police registered an FIR in Cr.No.12 of 2020 for the offences punishable under Sections 147, 148, 294(b), 324 r/w 307 of IPC and thereafter, the case has been altered into Sections 147, 149, 294(b), 302 r/w 149 of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court.



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4. On the side of the prosecution, in order to bring the charges to home, they examined P.W.1 to P.W.17 and Exs.P1 to P24 were marked. The prosecution also produced Material Objects M.O.1 to M.O.3. On the side of the accused, D.W.1 was examined and Ex.D1 was marked.

5. On perusal of the oral and documentary evidence, the trial Court found the accused Nos.1 to 4 guilty for the offences punishable under Sections 148 and 302 r/w 149 of IPC and found the fifth accused guilty for the offences punishable under Sections 147, 294(b) and 302 r/w 149 of IPC. The accused Nos.1 to 4 were sentenced to undergo six months simple imprisonment and was imposed a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment for an offence punishable under Section 148 of IPC. They were further sentenced to undergo Life Imprisonment and were imposed a fine of Rs.2,000/-, in default, to undergo six months simple imprisonment for an offence punishable under Section 302



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r/w 149 of IPC. The accused No.5 was sentenced to undergo three months simple imprisonment and was imposed a fine of Rs.500/- in default, to undergo fifteen days simple imprisonment for an offence punishable under Section 147 of IPC. She was further sentenced to undergo one month simple imprisonment for an offence punishable under Section 294(b) of IPC. She was also sentenced to undergo life imprisonment and was also imposed a fine of Rs.2,000/-, in default, to undergo six months simple imprisonment. Aggrieved by the same, the present appeal has been filed by the appellant.

6. The learned counsel appearing for the appellants submit that even according to the prosecution, the occurrence took place in front of the house of the deceased. When the deceased came to his house, due to simple quarrel between them, they attacked the deceased. The presence of P.Ws.1,2,5 & 6 in the scene of occurrence is highly doubtful as their evidences are totally contrary to each other. The prosecution has failed to examine any independent



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witness to the occurrence. Immediately, after the attack, the deceased was taken to the hospital by P.W.5, who is none other than the father of the deceased. He had categorically stated before the doctor that the deceased was assaulted by one known person, that too, with a stick, however, while lodging the complaint, he implicated the other accused A2 to A5 and it is only after thought. All the accused are family members. Even according to the case of the prosecution, the injuries do not corroborate with the alleged overtact foisted as against A2 to A4. The Accident Register was recorded by P.W.10 and he also categorically deposed and corroborated the Accident Register. Further, the occurrence took place on 11.01.2020 at about 05.30 p.m. The complaint was lodged only on 12.01.2020 at about 1.00 hours. It was sent to the Court only at 11.20 p.m. The said delay is fatal to the case of the prosecution. Further, even according to the case of the prosecution, the first accused had no intention to do away with the life of the deceased. Due to simple wordy quareel, which was happened in front of the

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house of the deceased, the first accused had taken the wooden stick from the fencing and assaulted the deceased. There is absolutely no motive behind the crime as projected by the prosecution. In fact, no one had spoken about the motive. Hence, the prosecution failed to prove the charge under Section 302 of IPC and at the worst, it would only attract the offence punishable under Section 304 Part II of IPC.

7. Insofar as accused Nos.2 to 5 are concerned, the overtact attributed against them was not correlated with the injuries. The Accident Register clearly reveals that they were not present in the scene of occurrence and they did not have any overtact. Subsequently, accused Nos.2 to 5 were added in the FIR only to rope all the family members.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent submits that there was a property dispute between both family members. Due to which, on 11.01.2020



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in order to do away with the life of the deceased, all the accused persons unlawfully assembled and assaulted the deceased. Therefore, he sustained grievous injuries and died. The father of the deceased had taken him to the hospital. He stated before the doctor, who treated the deceased, that one known person assaulted him namely, the first accused only attacked heavily on the deceased with a wooden log. Therefore, it doesn't mean that the other accused did not cause any injuries to the deceased. The entire head of the deceased had sustained grievous injuries and the same had caused the death of the deceased. The doctor, who had treated the deceased deposed as P.W.10 and he categorically deposed and corroborated the Accident Register. There are eye witnesses to the occurrence. Therefore, the prosecution proved the case beyond reasonable doubt. Hence, the Trial Court rightly convicted the appellants, and the conviction does not call for any interference of this Court.



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9. Heard the learned counsel appearing on either side and perused the materials placed on record.

10. Totally there are five accused in this case. Accused Nos.1 to 5 are family members. The father of the deceased and the first accused are brothers. The second accused is the son of the first accused. The fifth accused is the wife of the first accused. The accused Nos.3 & 4 are brothers-in-law of the first accused. The prosecution projected the motive as if, with regard to their ancestral properties there was a dispute between the first accused and the father of the deceased and as such, there was a panchayat between them. However, it was not resolved and as such, the accused decided to do away with the life of the deceased. But, even according to the case of the prosecution, on 11.01.2020 at about 11.00 a.m. there was a wordy quarrel between the mother of the deceased and the fifth accused. The said quarrel was informed to their respective husbands. In continuation of the said quarrel, on the

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same day, at about 5.30 p.m., when the deceased nearer to the his house and questioned about the quarrel, which happened between the mother of the deceased and the fifth accused, all of a sudden, the first accused had lifted the wooden stick, which was lying in the of their house and assaulted the deceased on his head. Therefore, the deceased fell down on the stone. Due to which, he sustained head injuries and died after three days. Immediately, after the occurrence, the father of the deceased had taken him to the hospital and the doctor recorded the Accident Register. The Accident Register was marked as Ex.P10. It was recorded from the statement of the father of the deceased, it revealed that on 11.01.2020 at about 5.30 p.m., one known person attacked the deceased with firewood on his head. Due to which, he fell down on the stone and sustained injuries. The doctor, who recorded the Accident Register had deposed as P.W.10. The relevant portion of the deposition of P.W.10 is as follows:-

“...கடந்த 11.01.2020 அன்று மாலை 6.45
மணியளவில் வீரப்பன் என்பவர் அவரது மகன்
செந்தில்குமார் என்பவரை சிகிச்சைக்காக அழைத்து



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வந்தார். அவரிடம் விசாரித்ததில், 11.01.2020 அன்று மாலை 5.30 மணியளவில் மேற்கண்ட முகவரியில் அடையாளம் தெரிந்த நபர் ஒருவரால் கட்டையால் தலையில் தாக்கப்பட்டு, கல் மேல் கீழே விழுந்ததாக செந்தில்குமாரின் அப்பா கூறினார். மேலும் அவரை பரிசோதித்ததில், அவர் சுயநினைவின்றி இருந்தார். அவரிடமிருந்து சாராய வாடை வந்தது. அவரது மூக்கிலிருந்து இரத்தம் வழிந்தது. இடது புருவத்தில் 2 x 5 x 5 cm, அளவிலான கிழிந்த காயம் இருந்தது. மேலும், வலது தலையில் 2x 0.5 x 0.5cm அளவிலான கிழிந்த காயம் இருந்தது. அவருக்கு முதலுதவி சிகிச்சை அளித்து, திருச்சி அரசு மருத்துவக்கல்லூரி மருத்துவமனைக்கு மேற்சிகிச்சைக்காக அனுப்பி வைத்தேன்.”

11. Thus, it is clear that on the single blow from the first accused, the deceased fell down on the stone and sustained injuries on his head. That apart, the deceased was under the influence of Alcohol at the time of occurrence. There was some wordy altercation between the first accused and the deceased, due to which, the deceased also sustained lacerated wounds on his face and head.

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P.W.10 referred the deceased for higher treatment to the Government Hospital, Trichy, where another Accident Register was recorded. The deceased was taken by his father and another Accident Register was recorded as per the earlier Accident Register, which was marked as Ex.P10. The father of the deceased had deposed as P.W.5. However, he developed the story of the prosecution and deposed that the accused Nos.2 to 5 also had attacked the deceased with stones. It is only after thought and in order to implicate the accused Nos.2 to 5, he made false allegations as against them.

12. The wife of the deceased had deposed as P.W.1. She deposed that the first accused assaulted the deceased with M.O.1 at once. M.O.1 is only a stick. On a single blow, the deceased fell down on the stone. Though P.W.1 denied the suggestion that her husband was a drunkard, the doctor who had examined the deceased, reported that the deceased was under the influence of Alcohol. It shows that, under the influence of Alcohol, the deceased himself

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quarreled with them. Due to the said quarrel, the first accused, all of a sudden had taken the wooden stick from the fence situated in front of the house and assaulted him on his head. Therefore, there was no intention for the accused to murder the deceased.

13. Though other eye witnesses had spoken about the allegations as against the accused Nos.2 to 5, the Accident Register, which was recorded by P.W.10 revealed that the deceased was assaulted by only one known person. Further, the alleged assault committed by the accused Nos.2 to 5 and the injuries were also not corroborated by the post mortem report. Hence, in order to implicate all the family members of the first accused, as an afterthought, they deposed that the others had also beaten the deceased with stones.

14. Now, the point for consideration is whether the prosecution proved the charge under Section 302 of IPC or not?



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15. In order to prove the charge under Section 302 of IPC, the prosecution shall prove that the death is caused with an intention of causing death or if it is done with an intention of causing such bodily injury as the offender known to be likely to cause the death of th person to whom the harm is caused, or if it is done 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 if the person committing the act known that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. However, the exception 4 says that 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 having taken undue advantage or acted in a cruel or unusual manner. Further, it is immaterial in such cases which party offers the provocation or commits the first assault.



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In order to attract 4th exception of Section 300 of IPC, the necessary ingredients are a sudden fight, absence of premeditation, no undue advantage or cruel or unusual act on the part of the offender. These conditions have to be fulfilled to attract the exemption 4 of section 300 of IPC.

16. In this regard, the learned Senior Counsel appearing for the appellants relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Anbazzhagan vs. The state represented by the Inspector of Police*** reported in ***2023 Live Law (SC) 550***. The relevant portion of the judgment is extracted hereunder:-

“60(12). In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury,



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would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

17. Thus, it is clear that when an accused had done the act without premeditation in a sudden fight or quarrel, it would attract charge under Section 304(ii) of IPC. In the case on hand, even according to the case of the prosecution, the deceased was the one who had came to the accused, that too, in a drunken mood and had quarreled with them. Therefore, all of a sudden, the first accused, without any premeditation, had taken a wooden stick from the fence and assaulted the deceased on his head. Therefore, he fell down on the stone and sustained injury on his head. Therefore, the prosecution failed to prove the charge under Section 302 of IPC. But the act done by the first accused clearly attracts Section 304 Part II of IPC and he is liable to be convicted for the offence punishable under Section 304 Part II of IPC.



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18. In this regard, it is relevant to rely upon the judgement of the Hon'ble Supreme Court of India in the case of ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P [2007 (1) SCC (CRI) 500]***, wherein it has been observed as follows:

“18. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters like plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences



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punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances :

- (i) nature of the weapon used;*
- (ii) whether the weapon was carried by the accused or was picked up from the spot;*
- (iii) whether the blow is aimed at a vital part of the body;*
- (iv) the amount of force employed in causing injury;*
- (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;*
- (vi) whether the incident occurs by chance or whether there was any pre- meditation;*
- (vii) whether there was any prior enmity or whether the deceased was a stranger;*
- (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;*
- (ix) whether it was in the heat of passion;*



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(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

19. The above judgment is squarely applicable to the case on hand. The prosecution failed to prove the charge under Section 302 of IPC, however, the appellant is liable to be punished for the offence punishable under Section 304 Part II of I.P.C.

20. Insofar as charge under Section 149 of IPC is concerned, even according to the prosecution, accused Nos.1 to 5 are none other than the own family members residing under the same



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shelter, therefore, there is no question of unlawful assembly. It is relevant to extract Section 149 of IPC:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object:- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

21. Thus, it is clear that it has its foundation on constructive liability which is the sine quo non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in section 141 of IPC. Section 141 of IPC defines an unlawful assembly. It is also

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relevant to extract Section 141 of IPC.

“141. Unlawful assembly:- An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is

First_ To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

second- To resist the execution or any law, or of any legal process; or

Third- To commit any mischief or criminal trespass, or other offence, or

Fourth- By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth- By means of criminal force, or show of



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criminal force, to compel any person to do what he is no legally bound to do, or to omit to do what he is legally entitled to do.”

22. It creates a vicarious liability for the unlawful act committed by any other member of the assembly. The prosecution miserably failed to prove that the accused 1 to 5 unlawfully assembled together with the common object to commit the offence and that they all had knowledge that the offence was about to happen. Therefore, mere presence in an assembly *per se* would not constitute an offence, it does become one when the assembly is unlawful. The prosecution failed to lead evidence to show that a first accused did some overt act to establish that he was a member of the unlawful assembly and thus, this would require the case of each individual to be examined so that mere spectators who just joined the assembly and who were unaware of its motive may not be branded as members of the unlawful assembly. Therefore, the



23. The prosecution also failed to prove the charge under Section 148 of IPC. Since the charge of unlawful assembly itself was failed to be proved and as such, the conviction and sentence imposed under Section 148 cannot be sustained and is liable to be set aside.

25. The conviction and sentence imposed on the first accused under Section 147,148, 302 r/w 149 of IPC are set aside. The first accused is convicted for the offence punishable under Section 304 Part II of I.P.C and sentenced to undergo five years



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Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default, to undergo six months Rigorous Imprisonment.

26. With the above modification, the Criminal Appeal is partly allowed. It is made clear that if the first appellant has already paid any fine, the same shall be adjusted towards the fine amount imposed by this Court. The sentences of imprisonment shall run concurrently. The period of imprisonment already undergone by the first appellant shall be set off under Section 428 of Cr.P.C. The respondent police is directed to secure the accused and produce him before the trial Court for taking further steps. The fine amount, if any, already paid by the appellants 2 to 5 shall be refunded to them.

**[G.K.I.J.,] & [R.P.J.,]
05.02.2026**

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To

- 1.The Principal Sessions Court,
District Court, Karur.
- 2.The Inspector of Police,
Kulithalai Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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