



Crl.A(MD)No.370 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2026

CORAM:

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

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A.Perumalsamy

... Appellant/Accused No.1

Vs.

The State,
Represented by,
The Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District.
Crime No.194 of 2017.

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records related to the impugned Judgment dated 08.03.2023 made in S.C.No.56 of 2018 on the file of the learned Additional District and Sessions Judge, Virudhunagar and set aside the same.



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For Appellant : Mr.S.Ramasamy
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

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.56 of 2018, dated 08.03.2023, on the file of the learned Additional District and Sessions Judge, Virudhunagar, thereby convicting the appellant for the offence punishable under Section 302 of I.P.C.

2.The case of the prosecution is that on 21.06.2017, at about 06.00 p.m., due to previous enmity, the accused conspired to do away with the life of the deceased. A.1 pushed the deceased and assaulted him with a wooden log on his forehead. Thereafter, A.2 and A.3 also attacked the deceased with sticks. When the deceased's sister intervened, A.2 and A.3 pushed her onto the road. Due to the injuries sustained, the deceased died.

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3.On the complaint, the respondent registered the F.I.R in Crime No.194 of 2017 for the offences punishable under Sections 294(b), 341, 323, 324, 307 and 506(ii) of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court. The Trial Court framed charges as against A.1 for the offences punishable under Sections 120-B, 294(b), 341 and 302 of I.P.C and also framed charges as against A.2 and A.3 for the offences punishable under Sections 341, 323, 120-B and 302 read with 34 of I.P.C.

4.On the side of the prosecution, in order to bring the charges to home, they had examined P.W.1 to P.W.22 and Exs.P1 to P15 were marked. The prosecution also produced Material Objects M.O.1 to M.O.6. On the side of the appellant, no one was examined and no documents were produced before the Trial Court.



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5. On perusal of the oral and documentary evidence, the Trial Court acquitted A.2 and A.3 and found A.1 guilty for the offence punishable under Section 302 of I.P.C and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.5,000/- in default, to undergo six months Rigorous Imprisonment. Aggrieved by the same, the appellant has preferred the present appeal.

6. The learned counsel appearing for the appellant submitted that the prosecution failed to prove the motive as well as the conspiracy. Therefore, the Trial Court acquitted A.2 and A.3. Further, even against A.1, the prosecution failed to prove the charges with clinching evidence. According to the prosecution's case, the accused went to the house of the deceased, where a quarrel took place between the deceased and A.1. Initially, the deceased had assaulted the accused, and in order to protect himself from the deceased, A.1 took a wooden log from the deceased's house and



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assaulted him on the forehead. Therefore, the charge under Section 302 of the IPC is not applicable. Even then, the Trial Court mechanically convicted the appellant.

7.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the prosecution clearly proved the motive behind the crime, as there was a dispute regarding the use of a common area situated between the houses of the accused and the deceased. At the time of the incident, the accused went to the deceased's house with an intention to do away with his life. Thereafter, A.1 picked up a wooden log and assaulted the deceased on the forehead, causing grievous injuries that led to his death. This is corroborated by the post-mortem report. As such, the prosecution has proven the charge beyond a reasonable doubt, and the Trial Court rightly convicted the appellant and the same does not warrant any interference.



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

9. Admittedly, the accused and the deceased were neighbors. There was a common land situated between their houses, and a dispute had arisen between both families regarding the use of this land. On 21.06.2017, at about 06.00 p.m., when the accused went to the house of the deceased, a quarrel ensued. The deceased initially attacked A.1 with a wooden stick. In response, A.1 immediately took a wooden log from the deceased's house and assaulted him on the forehead. As a result, the deceased sustained grievous injuries and died. There was no specific overt act against A. 2 and A.3, who are the first and second mothers of A1. The sister of the deceased deposed as P.W.1, and the wife of the deceased deposed as P.W.5. P.W.2 to P.W.4 are the brothers of the deceased.



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10.The relevant portion of the evidence of P.W.1 is as follows:

“இந்நிலையில் என் தம்பி கோபால்சாமிக்கும் ஆஜர் எதிரிகளுக்கும் இடையே காலி இடத்தை புலங்குவதில் பிரச்சனை இருந்து வந்தது என சம்பவத்திற்கு முன்பாகவே என் தம்பி என்னிடம் சொல்லி வந்தார். 21.06.2017ம் தேதி நான் எனது அப்பாலை பார்ப்பதற்காக கோனப்பநேந்தலில் உள்ள எனது தம்பி கோபால்சாமி வீட்டிற்கு சென்றிருந்தோம். அப்போது மணி சுமார் 05.30 முதல் 06.00 மணிக்குள்ளாக இருக்கும். நானும் எனது தம்பி கோபால்சாமி ஆகியோர் எனது தம்பி வீட்டின் முன்பாக அமர்ந்து பேசிக்கொண்டிருந்த போது ஆஜர் எதிரிகள் மூவரும் எங்களை நோக்கி வந்தார்கள் அப்போது 1வது எதிரி கீழே கிடந்த கட்டையை எடுத்து என் தம்பியை பார்த்து உன்னை கொன்றால்தான்டா இந்த இடத்து பிரச்சனை முடியும் செத்து தொலைடா என்று சொல்லி தன்கையில் வைத்திருந்த கனமான கட்டையால் என் தம்பியின் முன் தலையில் ஓங்கி அடித்தார். அதில் என் தம்பியின் மண்டை உடைந்து ரத்தம் கொட்டியது. அப்போது உடன் இருந்த 2, 3 எதிரிகள் கம்பால் என் தம்பியை சரமாரியாக தாக்கினார்கள். தடுக்க சென்ற என்னை கீழே தள்ளவும் நான் தடுமாரி கீழே விழுந்து விட்டேன். பின்னர் 1வது எதிரி என் தம்பியை நெஞ்சில்



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பிடித்து தள்ளவும், என் தம்பி மட்டமல்லாக்க கீழே விழுந்து பின் தலையில் வீங்கிவிட்டது. பின்னர் எதிரிகள் அங்கிருந்து ஓடிவிட்டார்கள்.”

11.Thus, it is clear that the accused went to the house of the deceased, where a quarrel took place. As a result, A1 took a wooden log from the house of the deceased and assaulted him on the forehead.

12.Although there was a motive behind the crime, P.W.10, one of the eyewitnesses, deposed that during the incident, a quarrel and altercation occurred between A.1 and the deceased. The deceased, who was in a drunken state, first assaulted A.1 with a sickle, causing A.1 to fall. After that, A.1 picked up the wooden log and assaulted the deceased on his forehead. The relevant portion of P.W.10's testimony is as follows:



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“ஒரு நாள் மாலை 06.00 மணிக்கு நான் எனது வீட்டருகே உள்ள மாட்டுத் தொழுவத்தில் தண்ணீர்விடப்போன போது அப்போது ஆஜர் எதிரி பெருமாள் வடக்கிருந்து வந்தார். எதிர் பக்கம் என் பின்னால் இருந்து கோபால்சாமி வந்தார். நான் அவர்களிடம் போங்க மாமா சண்டை போட்டுவிடாதீர்கள் என்று சொன்னேன். இரண்ட பேரும் கேட்கவில்லை. கோபால் மாமா எதிரி பெருமாள் மாமாவை அடித்தார். அவரது குச்சி உடைந்துவிட்டது. பெருமாள்சாமி குச்சியால் பெருமாள்சாமியின் முகத்தில் அடிக்கவும் அவர் கீழே விழுந்துவிட்டார். தார் ரோடு என்பதால் பின்தலையில் அடிபட்டு இரத்தம் வந்தது. ஆஜர் எதிரி திருச்சுழிக்கு ஓடிவிட்டார். நான் சென்று கோபால்சாமியை தூக்கிய போது அவர் அங்கேயே விழுந்துவிட்டார் அப்போது மூர்த்தியும், கண்ணனும் வந்து தூக்கி தண்ணீர் கொடுத்தார்கள் அப்போது தண்ணீர் வெளியே வந்தது. அப்போது 108 வந்தது. அவரை மருத்துவமனைக்கு கொண்டு சென்றார்கள். பின்பு மருத்துவமனைக்கு செல்லும் வழியில் அவர் இறந்துவிட்டதாக கேள்விப்பட்டேன் போலீசார் என்னை விசாரித்தார்.

எதிரிகள் தரப்பில் குறுக்கு விசாரணை : இந்த கோபால்சாமி முதலில் பெருமாள் சாமியை அடித்த கம்பு ஓடிந்துவிட்டது என்றால் சரிதான். ஓடிந்துவிழுந்த கம்பை எடுத்து தான் பெருமாள்சாமி அடித்தார் என்றால் இல்லை அவர் தனியாக கம்பு வைத்திருந்தார்.”



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13. Therefore, A.1 did not go to the house of the deceased with the intention of taking his life. The dispute between the two families over the use of the common land led to the incident. On the day of the occurrence, the deceased, in a drunken state, quarrelled with A.1 and attacked him with a stick, causing A.1 to fall. Afterward, A.1 picked up the wooden log and assaulted the deceased on the forehead. Therefore, A.1 had no intention to kill the deceased. Following the incident, the deceased was taken to the hospital by a 108 ambulance. The doctor who recorded the accident register deposed as P.W.20. He stated that the deceased was under the influence of alcohol at the time of the occurrence and was unconscious. As a result, the prosecution failed to prove the charge under Section 302 of the IPC. However, the charge under Section 304 Part II of the IPC is applicable by applying the fourth explanation. The fourth explanation of the IPC is as follows:

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14.It is relevant to extract the first exception of Section 300 of IPC:-

“Exception 1 of Section 300 of IPC:- When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.”

15.In this regard, it is relevant to reply upon judgment 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.



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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 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;



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- (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;*
- (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*



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individual cases which may throw light on the question of intention. Be that as it may.”

16. In this regard, it is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India in ***Criminal Appeal No.1124 of 2022*** in the case of ***Dauvaram Nirmalkar vs. State of Chhattisgarh***. The relevant paragraph is extracted hereunder:-

“12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to [Section 300](#) of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation. The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed



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to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court See the opinion expressed by Goddar, CJ. in R v. Duffy (supra) would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered



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in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.”

17.The above judgment is squarely applicable to the case on hand. Therefore, A.1 committed the offence without premeditation, in the heat of the moment. From the evidence, it is clear that A.1 was provoked gravely and suddenly. While the accused did not intend to cause bodily harm that was likely to cause death, he had the knowledge that the injury was likely to cause death. Therefore, the appellant is liable to be punished under Section 304, Part II of the IPC.

18.Accordingly, the conviction and sentence imposed on the appellant for the offence under Section 302 of I.P.C cannot be

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sustained and are liable to be set aside. However, the appellant is liable to be convicted for the offence punishable under Section 304 Part II of I.P.C.

19.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.56 of 2018, dated 08.03.2023, on the file of the learned Additional District and Sessions Judge, Virudhunagar, are set aside and the appellant is convicted for the offence under Section 304 Part II of I.P.C and is sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months Rigorous Imprisonment.

20.Accordingly, the Criminal Appeal is partly allowed. It is also made clear that if the appellant already paid the fine, it shall be adjusted towards the fine amount imposed by this Court. The sentences of imprisonment shall run concurrently. The period of

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imprisonment already undergone by the appellant shall be set off as per Section 428 of Cr.P.C. The respondent is directed to secure the accused and produce him before the Trial Court for taking further steps in accordance with law.

**[G.K.I.J.] & [R.P.J.,]
16.02.2026**

NCC :Yes/No
Index :Yes/No
Internet :Yes
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To

1.The Additional District and Sessions Judge,
Virudhunagar.

2.The Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District.

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



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AND
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