



Crl.A(MD)No.997 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2026

CORAM:

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

**Crl.A(MD)No.997 of 2024
and
Crl.M.P(MD)No.12248 of 2024**

P.Bhuvanesh alias Bhuvaneshwaran ... Appellant/Sole Accused

Vs.

The State represented by,
The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 415(2) of B.N.S.S, 2023, to call for the records and to allow the appeal by setting aside the impugned Judgment and conviction imposed in S.C.No.139 of 2015 dated 20.04.2023 by the Additional District Sessions Court (Fast Track) Nagercoil, Kanyakumari District and may be pleased to acquit the appellant/accused.



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For Appellant : Mr.S.Ananth
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.139 of 2015, dated 20.04.2023, on the file of the Additional District Sessions Court (Fast Track) Nagercoil, Kanyakumari District, thereby convicting the appellant for the offences punishable under Sections 302 and 449 of I.P.C.

2.The case of the prosecution is that the deceased and accused were residing in the same street. While being so, on 16.12.2013, when the deceased had gone out of his house, the accused allegedly had stolen 10 kgs of iron sheets. After enquiry, it was found that the accused had committed the theft and he was warned by the deceased and his daughter. Owing to this, the accused developed a motive to do away with the life of the deceased. On the
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same day, at about 02.30 p.m., the accused trespassed into the house of the deceased and indiscriminately attacked him by taking a plunger from the house of the deceased, causing grievous injuries on his head and face. Subsequently, the deceased succumbed to the injuries.

3.On the basis of the complaint, the respondent registered an F.I.R in Crime No.838 of 2013 for the offences punishable under Sections 450, 294(b) and 302 of I.P.C. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court.

4.On the side of the prosecution, in order to bring the charges to home, they examined P.W.1 to P.W.18 and Exs.P1 to P19 were marked. The prosecution also produced Material Objects M.O. 1 to M.O.8. On the side of the accused, no witnesses were 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 found the accused guilty for the offences punishable under Sections 302 and 449 of I.P.C. He was sentenced to undergo life imprisonment and imposed 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 and imposed a fine of Rs.4,000/- in default, to undergo nine months Rigorous Imprisonment for the offence punishable under Section 449 of I.P.C. Aggrieved by the same, the present appeal has been filed by the appellant.

6.The learned counsel appearing for the appellant submitted that the evidence of P.W.1, who was projected as an eyewitness, is not a believable one. In her complaint dated 16.12.2013, she stated that she went to the deceased's house only after being informed by P.W.2 about a verbal altercation between the accused and deceased. This version is corroborated by her statement



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recorded under Section 161(3) of Cr.P.C. She further stated that she had provided food to her father, namely the deceased, in the morning and thereafter returned back to her matrimonial home. She also stated that P.W.2 had gone to visit her mother, leaving the deceased alone. Therefore, no one was present at the time of alleged occurrence and the prosecution has miserably failed to prove the charges.

7.Further, it was contended that there are contradictions and discrepancies in the evidence of the prosecution witnesses, which are fatal to the case of the prosecution. Despite the same, the Trial Court mechanically convicted the appellant. It was also pointed that the so-called eyewitnesses, namely P.W.1 to P.W.3, had bloodstains in their clothes, but the same were neither recovered nor produced by the respondent and there is no corroborative evidence to support their testimony. In fact, P.W.3 turned hostile and did not support the case of the prosecution.

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8. Even according to the prosecution, P.W.1 to P.W.3 arrived at the scene of crime only after the alleged occurrence. Hence, their evidence is neither trustworthy nor credible. It was further submitted that, even according to P.W.1, the accused trespassed into the house of the deceased and scolded him with filthy language and the deceased, who was in an inebriated state, also abused the accused. There was a wordy altercation for nearly one hour, after which the accused allegedly picked up a plunger from the house of the deceased and attacked him. Therefore, the accused had no motive or intention to do away with the life of the deceased and as such, the prosecution failed to prove the offence under Section 302 of I.P.C.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that, in order to prove the charges, two eyewitnesses were examined as P.W.1 and P.W.2. Though they are close relatives of the deceased, their evidence is cogent and trustworthy and the Trial Court rightly believed their



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testimony and convicted the appellant. On the date of occurrence, ie., 16.12.2013, the appellant had stolen iron sheets from the house of the deceased, which was questioned by the deceased, P.W.1 and P.W.2. In fact, the stolen materials were sold to P.W.8 for Rs.120/-. During investigation, the iron sheets weighing about 10 kgs were recovered and handed over to the Investigating Officer.

10.The deceased had scolded the appellant and as such, the appellant intended to do away with the life of the deceased. Therefore, the prosecution clearly proved the motive and intention behind the crime. Hence, the Trial Court rightly convicted the appellant and it does not warrant any interference of this Court.

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



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12. Admittedly, the appellant and deceased were living in the same street. On 16.12.2013, the deceased suspected that the appellant had stolen iron sheets weighing 10 kgs from his house. The same was informed to P.W.1 and P.W.2, who questioned the appellant regarding the alleged theft. They also insulted him by branding him as a thief. Therefore, the appellant, being fed up and in an aggravated state of mind, went to the house of the deceased at about 02.30 p.m. and questioned the deceased, P.W.1 and P.W.2 as to why false allegations were levelled against him without any proof. As a result, a wordy altercation ensued between the appellant and deceased, which continued for more than one hour. Owing to the provocation by the deceased, the appellant suddenly picked up a plunger available in the house of the deceased and attacked the deceased indiscriminately on his head. Therefore, the deceased sustained multiple injuries and died. This is evident from the deposition of P.W.1 herself. The relevant portion of her deposition is as follows:



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“16.12.2013 அன்று காலை 08.30 மணிக்கு நான் என் அப்பாவிற்ரு சாப்பாடு எடுத்துக் கொண்டு அவர் வசிக்கும் வீட்டிற்கு போனேன். அப்போது என் அப்பா வீட்டில் சேகரித்து வைக்கப்பட்டிருந்த கூரையில் வேயப்படும் சீட்டை எதிரி எடுக்க வந்தார். அப்போது என் அப்பா எடுக்க கூடாது என்று சொன்னார். எதிரி என் அப்பாவை அனாவசியமாக பேசி என் அப்பா, அம்மாவிடம் தகராறு செய்தான். பின்பு அந்த சீட்டை எதிரி எடுத்து சென்று விட்டார். நானும், என் கணவரும் எதிரியிடம் கேட்க போனோம். அப்போது உன் அப்பா ஏசியதால் தான் நானும் ஏசினேன் என்று சொன்னான். நாங்கள் வந்துவிட்டோம். அன்று மதியம் 02.30 மணியளவில் என் வீட்டில் என் அப்பா, நான், என் கணவர், சாட்சி கிறிஸ்டி ஆகியோர் இருந்தோம். அப்போது எதிரி கோபமாக வந்து எங்கள் வீட்டிற்குள் வந்து உலக்கையை எடுத்து என் அப்பாவின் தலையிலும், நெஞ்சிலும், தலையிலும் மாறி மாறி அடித்தான். அந்த சம்பவத்தில் என் அப்பா இறந்து போனார். எதிரி என் அப்பாவை தாக்கிய உலக்கை எங்கள் வீட்டில் உள்ளது. அது என்னிடம் காட்டப்படுவது தான். அது சா.போ.1. நாங்கள் தடுக்க முயற்சித்தோம். எங்களை கீழே தள்ளி விட்டான். என் அப்பாவை உலக்கையால் அடித்துவிட்டு எதிரி உலக்கையுடன் ஓடிவிட்டார். உடனே நாங்கள் கோட்டார் காவல் நிலையம் சென்று சம்பவம் குறித்து புகார் கொடுத்தோம்.”



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13.The above facts are also corroborated by the evidence of P.W.2. P.W.2 is none other than the daughter-in-law of the deceased, who was also present at the time of occurrence. Her evidence clearly corroborates the testimony of P.W.1 During the cross-examination of P.W.1, she deposed as follows:

“நான் சம்பவத்தன்று காலை 08.30 மணியிலிருந்து என் அப்பாவிற்கு சாப்பாடு எடுத்து சென்று அங்கு தான் இருந்தேன். எதிரி என் அப்பா வீட்டிலிருந்து தகர சீட்டை எடுத்த பிரச்சினை 11.15 மணிக்கு நடந்தது. எதிரி தகர சீட்டை எடுக்கும் போது நானும் அங்கு தான் இருந்தேன். தகர சீட்டை எடுக்கும்போது சண்டை நடந்தது. அந்த சண்டையில் காயம் எதுவும் படவில்லை, வாக்குவாதம் தான் நடந்தது. அந்த சண்டைக்கு நான் புகார் எதுவும் கொடுக்கவில்லை. பகல் 02.30 மணிக்கு நானும், என் கணவரும் சென்று எதிரியிடம் கேட்டோம். 1/2 மணி நேரம் அந்த வாக்குவாதம் நடந்திருக்கும். அந்த 1/2 மணி நேர வாக்குவாதத்திற்கு பிறகு நாங்கள் வீட்டிற்கு திரும்பிவிட்டோம். நாங்கள் வீட்டிற்கு திரும்பி வந்து 1/2 மணி நேரத்தில் எதிரி அங்கு வந்தார். அன்றைய தினம் என் அப்பா நிறைய மது அருந்தியிருந்தார். என்



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அப்பாவும் எதிரியை நிறைய திட்டினார். எதிரி எங்கள் வீட்டிற்குள் வரும்போது ஆயுதத்துடன் வரவில்லை. என் அப்பா வீட்டிற்குள் வைத்து எதிரிக்கும், என் அப்பாவிற்கும் 1 மணி நேரம் வாக்குவாதம் நடந்தது. நாங்களும், பக்கத்தில் உள்ள ஆட்களும் விலக்கிவிட்டோம். நாங்கள் 3 போ தான் விலக்கு தீர்க்கும்போது இருந்தோம். விலக்கு தீர்த்ததில் எங்களுக்கு யாருக்கும் காயம் இல்லை. வீட்டில் உள்ள பொருட்கள் எல்லாம் சிதறி கிடந்தது. இந்த சம்பவத்தில் என் அப்பாவிற்கு நிறைய இரத்தக் காயம் ஏற்பட்டது. தடுக்க போன எங்கள் உடைகளிலும் இரத்தக்கறை படிந்தது. பக்கத்தில் உள்ள ஆட்கள் கூடி போலீசுக்கு தகவல் கொடுத்து போலீஸ் உடனே வந்தது. போலீசார் வீட்டிற்குள் வந்து பார்த்தார்கள். போலீசார் பார்வையிடும் போது எங்கள் ஆடைகளில் படிந்திருந்த இரத்த கறையையும் பார்த்தார்கள். அந்த ஆடைகளை நான் போலீசில் கொடுக்கவில்லை.”

14. Therefore, it is clear tht the appellant went to the house of the deceased at about 02.30 p.m., on 16.12.2013 only to question about the allegations levelled against him. There was a wordy quarrel between them for nearly one hour. On that day, the deceased was in an inebriated condition and scolded the appellant using filthy

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language. The appellant did not carry any weapon while entering into the house of the deceased. Due to the escalation of the quarrel and all of a sudden, the appellant picked up a plunger from the house of the deceased and attacked him on his head. Thus, the appellant had absolutely no motive or intention to do away with the life of the deceased. Owing to sudden provocation, he picked up the plunger from the house of the deceased and attacked him. Hence, the prosecution failed to prove the charge under Section 302 of I.P.C. However, the appellant is liable to be punished for the offence punishable under Section 304 Part II of I.P.C.

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



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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 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



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special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

16.Insofar as the offence under Section 449 of I.P.C is concerned, the appellant and deceased's family were well known to each other. Only after allegations of theft were levelled against the appellant, the appellant went to the house of the deceased to question the same. Further, the appellant was residing in the same street where the deceased lived.

17.In order to attract the offence under Section 449 of I.P.C, there must be an intention on the part of the accused to commit an offence punishable with death. As stated supra, the appellant went to the house of the deceased only to question about the allegations made against him. He had absolutely no motive or intention to cause the death of the deceased. Therefore, it cannot be said that he entered



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into the house of the deceased with an intention to commit an offence punishable with death. On sudden provocation, that too, after a wordy quarrel lasting for about one hour, the appellant was provoked by the deceased and as such, picked up a plunger from the house of the deceased and attacked him.

18.It is relevant to extract the provision under Section 449 of I.P.C, which reads as follows:

“449.House-trespass in order to commit offence punishable with death-Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life or with rigorous imprisonment for a term not exceeding ten years and shall also be liable to fine.”



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19.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.139 of 2015, dated 20.04.2023, on the file of the Additional District Sessions Court (Fast Track) Nagercoil, Kanyakumari District, for the offence punishable under Section 302 of I.P.C are set aside. The appellant is convicted for the offence punishable under Section 304 Part II of I.P.C and sentenced to undergo six years Rigorous Imprisonment and to pay a fine of Rs. 5,000/- in default, to undergo six months Simple Imprisonment.

20.The conviction and sentence imposed as against the appellant for the offence punishable under Section 449 of I.P.C are set aside and the appellant is acquitted of the said offence.

21.With the above modification, the Criminal Appeal is partly allowed. It is made clear that if the appellant has already paid any fine, the same shall be adjusted towards the fine amount imposed by this Court. The fine amount, if any paid, in respect of the

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offence under Section 449 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. Consequently, connected Miscellaneous Petition is closed.

**[G.K.I.J.] & [R.P.J.,]
29.01.2026**

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

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

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

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



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G.K. ILANTHIRAIYAN, J.
AND
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