

**BAIL SILP**

The Appellant/Sole Accused viz. Marudhupandi, M/28 years S/o.Kalyani was released on bail as per the order of this Court Date 18.09.2017 in CRL MP(MD0.NO.5702 of 2017 in CRL A(MD).NO.209 OF 2017 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
02.04.2019	11.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**
AND
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRL.A[MD].No.209 of 2017

Marudhupandi : Appellant/Accused No.1

Vs.

State,
Rep by the Inspector of Police,
Usilampatti Police Station,
Madurai District,
(Crime No.260 of 2016) : Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 25.01.2017 made in S.C.No.42 of 2015, on the file of the learned VI Additional District and Sessions Judge, Madurai.

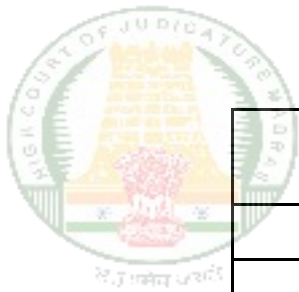
For Appellant : Mr.D.Ramesh Kumar

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

The appellant is the accused No.1 in S.C.No.42 of 2015, on the file of the learned VI Additional District and Sessions Judge, Madurai. There were totally three accused in this case. The Trial Court framed three charges against the accused, as detailed below.



Charge	Accused	Penal Provisions
1	1 and 2	294(b) IPC
2	1 and 2	506(ii) IPC
3	1 to 3	302 r/w 34 IPC

2. By Judgment dated 25.01.2017, the Trial Court, while acquitting accused Nos.2 and 3 of the charges framed against them, has convicted accused No.1 and sentenced him, as detailed below:-

Accused	Section of Law	Sentence of imprisonment	Fine amount
1	302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for three months.

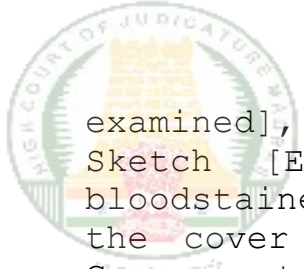
Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:-

Maruthupandi [A-1] is the son of Pandiyammal [A-2] and Kalyani [A-3]. The nephew of Kalyani [A-3] - Muthukumar, S/o.Perumal, is said to have ragged Nagamani, the daughter of the deceased - Pandi, on account of which, there was enmity between the family of Kalyani [A-3] and Pandi's family, pursuant to which, it is alleged that around 04.00 p.m., on 05.08.2014, a quarrel ensued between Pandi and all the three accused, in which Maruthupandi [A-1], Pandiyammal [A-2] and Kalyani [A-3] are said to have attacked Pandi fatally.

3.1. The incident was witnessed by Prasanth [PW-1], who took his father by 108 Ambulance to the Government Hospital, Usilampatti, at 04.15 p.m., on 05.08.2014, where Pandi was examined by Dr.S.Bharathi, [PW-13], who declared him "brought dead", vide copy of the Accident Register [EX-P9]. Thereafter, on the complaint [EX-P1] lodged by Prasanth [PW-1], Rani [PW-15], Sub-Inspector of Police, registered a case in Crime No.260 of 2014, for the offences under Sections 294(b) and 302 IPC, at 22.00 hours, on 05.08.2014 and prepared the printed First Information Report, [EX-P11], which reached the jurisdictional Magistrate at 01.00 a.m., on 06.08.2014, as could be seen from the endorsement made therein. It may be pertinent to state here that the First Information Report was registered only against Maruthupandi [A-1] and Pandiyammal [A-2].

[https://hcservices.courts.gov.in/hcservices/](https://hcservices.courts.gov.in/hcservices) 3.2. The investigation of the case was taken over by Subramanian [PW-19], who came to the place of occurrence and in the presence of witnesses - Kottaisamy [PW-7] and Satheesh [not



examined], prepared the Observation Mahazar [EX-P2] and Rough Sketch [EX-P12]. From the place of occurrence, he seized bloodstained soil [MO-4] and soil without bloodstain [MO-5] under the cover of mahazar [EX-P3]. He went to the mortuary of the Government Hospital, Usilampatti and conducted inquest in the presence of panchayadars and the inquest resport was marked as EX-P13. He gave a requisition for postmortem and accordingly, Dr.Usharani [PW-14] conducted autopsy on the body of the deceased and in her evidence as well in the postmortem certificate [EX-P10], she has stated as follows:-

"Cut injury in right eyebrow 1 X 2 X 2 CM. Bleeding from right ear and mouth. Cut injury in the right ear lobule 2 X 2 X 1 CM. Cut injury in the back of right ear 1 X 2 CM. Liver, Lungs, Spleen, Kidneys pale, Heart empty.

External Examination:-

Cut injury 2 X 1 CM 1/2 CM deep in the right eyebrow. Bleeding present.

Cut injury in the right ear lobule 1 X 2 X 2 cm

Cut injury in the back of right ear and mouth.

Fracture of III rib on left side. 1 X 2 X 2 CM cut injury in the occipital region with bleeding.

Internal examination:-

Skull: Haematoma in all lobes [Temporal, Parietal and Occipital fobes].

Membrane tear in the occipital region.

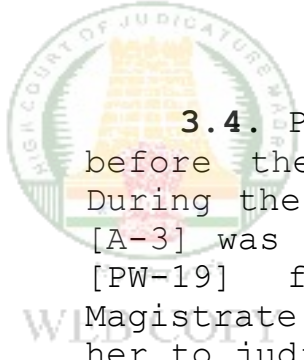
Fracture of the temporal and parietal bone in right side and fracture of occipital bone was also seen [centre of occipit]

Stomach - Partially digested 100 ml food. Liver, Kidneys, Spleen, congested. Hyoid bone intact.

Opinion: The deceased would have died due to haemorrhagic shock due to vital organ injury brain 15-18 hours prior to autopsy. "

3.3. Maruthupandi [A-1] surrendered before a Magistrate, on coming to know of which, the I.O filed necessary application before the Magistrate for taking him into police custody and ultimately, on the orders of the Magistrate, he took Maruthupandi [A-1] into police custody on 12.08.2014 and interrogated him. Based on the disclosure statement made by Maruthupandi [A-1], the I.O seized a casuarina stick measuring 63 cms in length and 23 cms in diameter [marked as MO-1 through Prasanth [PW-1], but, in the Judgment of the Trial Court, it is referred to "as MO-6"], under

<https://hdservices.ecourts.gov.in/hdservices> Mahazar [EX-P6] in the presence of witnesses - Vasumuthu [PW-1] and Satheesh [not examined].



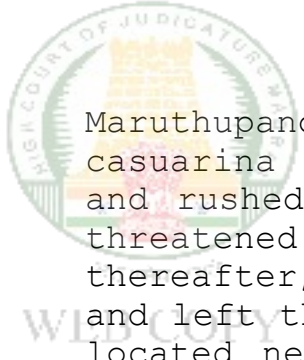
3.4. Pandiyammal [A-2] obtained Anticipatory Bail and appeared before the I.O on 24.08.2014 and her statement was recorded. During the course of investigation, it came to light that Kalyani [A-3] was also involved in the offence and therefore, Subramanian [PW-19] filed an the I.O P14] before the jurisdictional Magistrate. On 25.08.2014, the I.O arrested Kalyani [A-3] and sent her to judicial custody.

3.5. After completing the investigation, the I.O filed final report in PRC.No.35 of 2014 before the learned District Munsif cum Judicial Magistrate, No.1, Usilampatti, for the offences under Sections 294(b), 506(ii) and 302 IPC. On the appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.42 of 2015 and made over to the learned Sixth Additional District and Sessions Judge, Madurai, for trial.

3.6. The Trial Court framed charges against the accused, as detailed in Paragraph No.1, supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 19 witnesses, marked 19 exhibits and six material objects. No witness was examined on the side of the accused nor any document marked. When the accused were questioned about the incriminating circumstances appearing against them, they denied the same. The Trial Court, after considering the evidence on record and hearing either side, by Judgment dated 25.01.2017, while acquitting accused Nos.2 and 3, has convicted accused No.1, as detailed in Paragraph No.2, supra. The appellant is, therefore, before this Court.

4. Heard Mr.D.Ramesh Kumar, learned counsel appearing for the appellant and Mr.R.Anandharaj learned Additional Public Prosecutor appearing for the respondent.

5. Before adverting to the rival submissions, it may be necessary to discuss the eyewitness account. In this case, Prasanth [PW-1], his wife - Bhuvaneshwari [PW-3] and Muthulakshmi [PW-5] were the eyewitnesses. Prasanth [PW-1] has stated that Maruthupandi's [A-1's] nephew - Muthukumar was frequently teasing his [PW-1's] half-sister - Nagamani, which came to his father's notice; his father questioned Muthukumar about this and upbraided him; in order to avoid further unpleasantness, his father shifted his [PW-1's] step-mother - Pappammal and Nagamani to Aundipatti; on 05.08.2014 around 04.00 p.m., Maruthupandi [A-1] and Pandiyammal [A-2] made snide remarks at his father and so, his father went and questioned them; at that time, Maruthupandi [A-1] picked up a casuarina stick [MO-1], that was lying nearby and rushed towards his father; Pandiyammal [A-2] held his father; when Maruthupandi [A-1] aimed a blow on his father's head, his father ducked and the blow fell on Pandiyammal [A-2]; however,



Maruthupandi [A-1] belaboured his [PW-1's] father with the casuarina stick [MO-1]; on seeing this, he [PW-1] raised an alarm and rushed towards his father; on seeing him, Maruthupandi [A-1] threatened him by saying that he would also meet the same fate; thereafter, Maruthupandi [A-1] dropped the casuarina stick [MO-1] and left the place; the incident had occurred near the temple well located nearby his house; the incident was witnessed by Murugan, [not examined], Dineshkumar [PW-2], Bhuvaneshwari [PW-3], Muthulakshmi [PW-5] and Gurudoss [PW-6].

6. Prasanth [PW-1] has further stated that he took his father by 108 Ambulance to the Government Hospital, where the doctor examined his father and told him that he was dead; the police came to the hospital around 08.00 to 08.30 p.m., and asked him to give a written complaint; since Prasanth [PW-1] was in a state of shock, he requested his paternal uncle - Duraimurugan to write the complaint; Duraimurugan wrote the complaint and Prasanth [PW-1] signed it; the complaint was marked as EX-P1; the casuarina stick that was used by Maruthupandi [A-1] to attack his father was identified by Prasanth [PW-1] and was marked as MO-1.

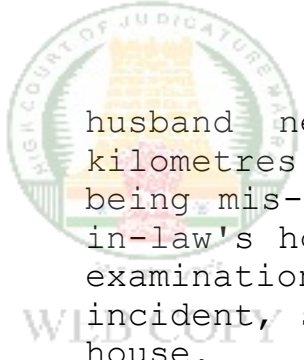
7. In the cross-examination, Prasanth [PW-1] admitted that after the death of his mother, his father married Pappammal through whom Nagamani was born. It was suggested to him that his father had an affair with one Marutha, only on account of which, his mother committed suicide by hanging, which suggestion he denied. He has further stated that his step-mother and half-sister were living in Aundipatti for three and half years prior to the incident. He admitted that the quarrel between his father and the accused went on for about fifteen minutes. He denied the suggestion that it was his father, who had attacked Pandiyammal [A-2] with a casuarina stick and in that scuffle, his father fell down, sustained injuries and died. He denied the suggestion that Maruthupandi [A-1] was not in the place of occurrence. His evidence is generally corroborated by Bhuvaneshwari [PW-3] and Muthulakshmi [PW-5]. However, Dineshkumar [PW-2] and Gurudoss [PW-6], who were cited as eyewitnesses, turned hostile.

8. The submissions made by Mr.D.Ramesh Kumar, learned counsel appearing for the appellant and our reasons therefor are hereunder:-

8.1. Prasanth [PW-1] was not present at the place of occurrence, because, Bhuvaneshwari [PW-3], the wife of Prasanth [PW-1], has stated that they are living two kilometres away from her father-in-law's family.

8.2. Our reasoning:-

Bhuvaneshwari [PW-3] was cross-examined on 14.12.2015, in which she was asked as to where she is living, for which she has stated that for the last one year, she is residing with her



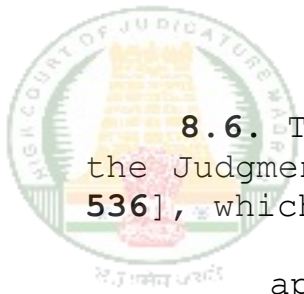
husband near the back side of Pranav Mahal, which is two kilometres away from her father-in-law's house. This answer is being mis-interpreted as if she was living away from her father-in-law's house at the time of the incident. In fact, in the cross-examination, she has clearly stated that at the time of the incident, she and her husband were living in their father-in-law's house.

8.3. This is a case and counter case, inasmuch as the First Information Report registered on the complaint lodged by Pandiammal [A-2] has been suppressed by the police and the procedure set out in PSO.588-A has not been followed and only after a petition under Section 311 Cr.PC was filed for further cross-examination of Subramanian [PW-19], steps were taken by the police to close the case in Crime No.261 of 2014.

Our reasoning:-

8.4. All the eyewitnesses have clearly stated that Pandiyammal [A-2] held the deceased, when Maruthupandi [A-1] mounted the attack. At that time, one blow missed the head of the deceased and fell on Pandiyammal [A-2]. Prasanth [PW-1] has stated this even in his complaint [EX-P1] and therefore, this cannot be called as improvement during his evidence. As stated above, the complaint [EX-P1] has reached the jurisdictional Magistrate at 01.00 a.m., on 06.08.2014. Pandiyammal [A-2] was also treated in the Government Hospital for the injuries sustained by her and on the statement given by her, a case in Crime No.261 of 2014 was registered. In the complaint [EX-P1], Pandiyammal [A-2] has stated that while she was playing snake and ladder with her friends, in her house, the deceased suddenly came inside the house and gave her a blow.

8.5. Thus, there are two versions before us, namely, the version of Prasanth [PW-1], Bhuvaneshwari [PW-3] and Muthulakshmi [PW-5] on one hand and the version of Pandiyammal [A-2] on the other. In the cross-examination of Prasanth [PW-1], Bhuvaneshwari [PW-3] and Muthulakshmi [PW-5], there has not been any suggestion about the counter case. In fact, it has been suggested to Prasanth [PW-1] that the deceased attacked Pandiyammal [A-2] on the head and a struggle ensued, in which the deceased fell down, sustained injuries and died. On the contrary, the injuries sustained by the deceased, which have been set out above, clearly show that the said injuries cannot occur, when a person falls on the ground. Subramanian [PW-19] has stated that he conducted investigation in Crime No.261 of 2014 and closed it as "mistake of fact". It is true that the closure report was not filed immediately, but, it was filed only later. The complaint, the First Information Report, Observation Mahazer, Rough Sketch and the final report, [EX-P15 to EX-P19] were marked by Subramanian [PW-19] and therefore, it cannot be said that there was suppression of material fact.



8.6. The learned counsel placed reliance on Paragraph No.31 of the Judgment of the Supreme Court in **Kumar Vs. State [2018 (7) SCC 536]**, which reads as under:-

"31. In the case on hand, admittedly, the appellant-accused was also injured in the same occurrence and he too was admitted in the hospital, But, the prosecution did not produce his medical record, nor the doctor was examined on the nature of injuries sustained by the accused. The Trial Court, instead of seeking proper explanation from the prosecution for the injuries sustained by the accused, appears to have simply believed what prosecution witnesses deposed in one sentence that the accused had sustained simple injuries only".

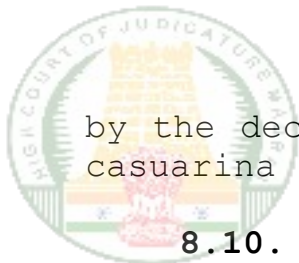
8.7. Our reasoning:-

In the said Judgment, the prosecution had not satisfactorily explained the injuries sustained by the accused. However, in the case at hand, as stated above, even in the complaint, [EX-P1], Prasanth [PW-1] has clearly explained the injuries sustained by Pandiyammal [A-2]. Pandiyammal [A-2] was not the aggressor herself. The aggressor was her son - Maruthupandi [A-1], who is the appellant herein. Pandiyammal [A-2] held the deceased in order to prevent him from escaping and at that time, when Maruthupandi [A-1] struck a blow, the deceased ducked and the blow fell on Pandiyammal's [A-2's] head. Hence, on facts, the Judgment relied upon by the learned counsel for the appellant is distinguishable.

8.8. The nature of the injuries sustained by the deceased could not have been caused by the casuarina stick [MO-1].

8.9. Our view:-

Dr.Ushararni [PW-14], who conducted postmortem and who recorded the injuries in the postmortem certificate, has clearly explained this in her evidence. She has stated that if a person is attacked with a casuarina stick [MO-1] on his head, eyebrows and the places, where there is bone support, lacerated injuries will appear like cut injuries and only on Microscopic examination, the true nature of the injury can be precisely determined. She has further clearly stated that the injuries noted by her could have been caused by the casuarina stick [MO-1], that was shown to her. In the cross-examination, the defence has not challenged this opinion expressed by Dr.Ushararni [PW-14]. In fact, in the cross-examination, she has stated that generally, a sharp edged weapon will cause cut injuries and a blunt weapon, like casuarina stick [MO-1], will cause lacerated injuries. Beyond that, no question has been put to her. Therefore, in the teeth of the clear opinion given by Dr.Ushararni [PW-14] and in the light of the fact that in the cross examination, she has stated that the edges were irregular, we have no reasons to hold that the injuries sustained



by the deceased could not have been caused in the attack with the casuarina stick [MO-1].

8.10. The learned counsel further contended that the complaint [EX-P1] was prepared in consultation with the uncle of Prasanth [PW-1], who is an advocate and that is why, there has been delay in the registration of the case.

8.11. Our finding:-

Prasanth [PW-1] has clearly stated that since he was in a state of shock, he was not able to write the complaint [EX-P1]. He has further stated that he has studied only upto fifth standard. Of course, he has also stated that he can read and write Tamil. In the chief-examination itself, he has stated that he requested his uncle - Duraimurugan to be the scribe. The witnesses have also stated that Duraimurugan is an Advocate. Just because Duraimurugan, who is the uncle of Prasanth [PW-1] and who was the scribe of the complaint, is an Advocate, can an inference be drawn that the averments made in the complaint [EX-P1] are false?. It may be relevant to state here that in the complaint [EX-P1], Prasanth [PW-1] had not implicated Kalyani [A-3]. If Prasanth [PW-1] and Duraimurugan had wanted to distort facts, they could have easily implicated Kalyani [A-3] in the complaint [EX-P1]. The role of Kalyani [A-3] came to light only in the course of investigation and that is why, he was arraigned as Accused No.3 in the alteration report [EX-P14] and in the final report. Prasanth [PW-1] has clearly stated that after his father was declared dead by the doctor in the Government Hospital, Usilampatti, he was sitting by his side and weeping. He has further stated that he went to the Police Station around 08.00 to 08.30 p.m, on 05.08.2014 and since he was not able to write the complaint, he requested his uncle - Duraimurugan to be the scribe. Therefore, we have no reasons to disbelieve the evidence of eyewitnesses on the ground that the scribe of the complaint was an Advocate.

8.12. The learned counsel for the appellant contended that the independent witnesses have turned hostile and only close relatives of the deceased supported the case of the prosecution and therefore, their evidence deserves to be rejected.

8.13. Our reasoning:-

It is true that the independent witnesses have turned hostile, but, even in the complaint, [EX-P1], the presence of Bhuvaneshwari [PW-3] and Muthulakshmi [PW-5] has been mentioned. In this regard, it may not be out of place to refer to the following passage from the Judgment of the Supreme Court in **Dalip Singh Vs. State of Punjab [AIR 1956 SC 364]**:-

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means



and

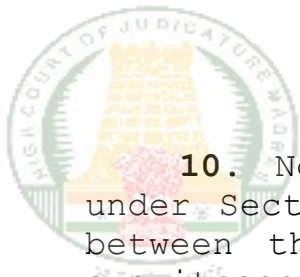
and

and

and

and

and



10. Now, coming to the conviction imposed on the appellant under Section 302 IPC, we find that there were frequent quarrels between the deceased and the family of the appellant. All the eyewitnesses have stated that even on the fateful day, the deceased and Maruthupandi [A-1] were quarrelling near the temple well for about fifteen minutes. While the quarrel was on, it is alleged that in a fit of passion, the appellant picked up a casuarina stick [MO-1], that was lying nearby and attacked the deceased. The appellant was not armed with any weapon. Thus, we find that there are reasonable materials to bring this case within Exception IV to Section 300 IPC r/w Fourth Part of Section 300 IPC. Therefore, we are inclined to modify the conviction imposed on the appellant from one under Section 302 IPC to one under Section 304(II) IPC and sentence the appellant to undergo seven years rigorous imprisonment.

11. In the result,

- this Criminal Appeal is allowed in part.
- The conviction and sentence imposed on the accused/appellant, by Judgment dated 25.01.2017 made in S.C.No.42 of 2015, on the file of the learned VI Additional District and Sessions Judge, Madurai, for the offence under Section 302 IPC is set aside and instead, the accused/appellant is convicted under Section 304(II) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.
- Suspension of sentence granted by this Court on 18.09.2017 in CrI.MP(MD).No.5702 of 2017 in CrI.A(MD).No.209 of 2017 stands cancelled.
- Since the accused/appellant is on bail, it is directed that the Trial Court shall take immediate steps to secure him and to commit him to prison to serve out the period of sentence.
- The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure.
- Fine amount paid, if any, is directed to be adjusted towards the fine amount now imposed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Sixth Additional District and Sessions Judge,
Madurai.

2. The Judicial Magistrate No.I,
Usilampatti.

3. Do Thro' The Chief Judicial Magistrate,
Madurai District.

4. The Inspector of Police,
Usilampatti Police Station,
Madurai District.

5. The Superintendent,
Central Prison, Madurai.

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

Copy to:-

The Records Keeper,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.D.RAMESHKUMAR, Advocate (SR-60312[F] dated 11/04/2019
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**JUDGMENT MADE IN
CRL.A[MD] .No.209 of 2017
11.04.2019**

NB

TK/ (16.05.2019) 11P 10C