



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.06.2022

CORAM:

**THE HONOURABLE Mr.JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE Mrs. JUSTICE S.ANANTHI**

**Crl. A(MD)No.214 of 2019**

P.Chinnan

: Appellant

Vs.

State represented by the  
Inspector of Police  
Mayiladumparai Police Station  
Theni (Crime No.121/2014)

: Respondent

**PRAYER:** Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 22.10.2018 in S.C.No. 108/2015 on the file of the Additional District and Sessions Judge, Fast Track Court, Theni.

For Appellant

: Mr.P.Andiraj

For Respondent

: Mr.A.Thiruvadikumar

Additional Public Prosecutor

**JUDGMENT****P.N.PRAKASH, J.**

This criminal appeal is filed against the judgment dated 22.10.2018 in S.C.No.108/2015 on the file of the Additional District and Sessions Judge, Theni. By the said Judgment, the trial Court convicted and sentenced the appellant/accused to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months for the offence under Section 302 IPC and to pay fine of Rs.500/-, in default, to undergo simple imprisonment for two months for the offence under Section 341 IPC. Challenging the said conviction and sentence, the appellant has come up in this Criminal Appeal.

**2.The prosecution story runs thus:**

The deceased Kurumban is the elder brother of the appellant Chinnan and the brothers were living in the same street but in different houses, with their respective families. Distance between their two houses was around 100 meters. The appellant was working as a labourer in Kerala and used to come off and on to the village to be with his family. Admittedly, the



WEB COPY

deceased had taken Annaperumayee [P.W.-1], as his third wife and was living with her. Annaperumayee [P.W.-1] was already a married lady and through that marriage, she has a daughter Saranya Devi [P.W.2]. Kurumban's marriage with Annaperumayee [P.W.-1] was allegedly resented by the appellant and his family members and there used to be frequent quarrels between the two families. On the fateful day, namely, 18.10.2014, appellant's wife Ramuthai was grazing her cattle in the lands belonging to the family and when the cattle strayed into the lands of the deceased, a quarrel ensued, in which, the deceased is said to have abused Ramuthai. Therefore, Ramuthai went to the police station and complained. The police summoned the deceased for enquiry and after enquiry, when the deceased was returning home, he was stopped by the appellant and a wordy quarrel ensued between the brothers, in which, it is alleged that the appellant took a pipe, which was lying nearby and attacked the deceased and caused injuries to him. Immediately, the deceased was taken by his wife [P.W.-1] to the Government Hospital, Theni, where the deceased was examined by Dr.Tamilarasi [P.W.25], at 1.45 p.m., on 18.10.2014 and the injuries were recorded in the Accident Register, a copy of which, has been marked as



WEB COPY

Ex.P.13. The deceased was admitted as an inpatient. However, he succumbed to the injuries on the same day. Therefore, on the statement of Annaperumayee [P.W.-1], the Sub Inspector of Police [P.W.23] registered a case in Mayiladumparai Police Station Crime No.121/2014 under Sections 341, 324 and 302 IPC against the appellant and prepared the printed FIR [Ex.P.-9], which reached the jurisdictional Magistrate on 19.10.2014 at 1.45 a.m., as could be seen from the endorsement thereon.

2.1. Investigation of the case was taken over by Sudhanthirarajan [P.W.26], who went to the place of occurrence and prepared the observation mahazar [Ex.P.14] and rough sketch [Ex.P.15]. Thereafter, the investigating officer went to the mortuary and conducted inquest over the body of the deceased and the inquest report has been marked as Ex.P17. Thereafter the body was sent for postmortem to the Government Hospital, Theni, where, Dr.Arunkumar [P.W.23] performed autopsy on the body of the deceased and issued the postmortem certificate [Ex.P.10], wherein, he has noted six injuries, of which, the first injury is on the right temporal-parietal area of the skull. After receipt of the serology report, Dr.Arunkumar [P.W.-23] has



WEB COPY

opined that, “the deceased would appear to have died of head injury”.

2.2. The appellant was arrested by the Investigating Officer on 19.10.2018 and based on his confession, the pipe [M.O.1] allegedly used in the attack, was recovered under the cover of mahazar [Ex.P.8]. After examining various witnesses, the Investigating Officer completed the investigation and filed a final report in PRC No.3/2015 in the Court of the District Munsif-cum-Judicial Magistrate, Andipatti for the offences under Sections 341 and 302 IPC against the appellant.

3. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Theni, in SC No.108/2015 and was made over to the Additional District Court, Fast Track Court, Theni, for trial.

4. The trial Court framed charges under Sections 341 and 302 IPC against the appellant and when questioned, the appellant pleaded not guilty.



WEB COPY

5. To prove the case, the prosecution examined 26 witnesses, marked 19 exhibits and 6 material objects. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked. After considering the evidence on record and on hearing either side, the trial Court, by judgment and order dated 22.10.2018, in S.C.No.108 of 2018, has convicted and sentenced the appellant as under:

| Offence under Section | Conviction and Sentence                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------|
| 341 IPC               | to pay fine of Rs.500/-, in default, to undergo simple imprisonment for two months                           |
| 302 IPC               | life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months |

Aggrieved by the above, the present appeal has been filed.

6. Heard Mr.P.Andiraj, learned counsel for the appellant and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor for the respondent.



WEB COPY

7. The relationship between the parties is not in dispute nor the death of Kurumban. The prosecution case mainly rests on the eyewitness account of Annaperumayee [P.W.1] and Saranya Devi [P.W.2]. Saranya Devi [P.W.2], who is the daughter of Annaperumayee [P.W.1] born through her first husband, has, in her evidence, stated that her mother got married to Kurumban 10 years prior to the incident; thereafter, there has been frequent quarrels between their family and the family of her junior paternal uncle (appellant herein); on the fateful day, the cattle of the appellant strayed into their lands on account of which, her father Kurumban upbraided the appellant's wife and so, she gave a complaint to the police, for which, her father was called to the police station; she [P.W.2] also accompanied her father for enquiry to the police station, where after mediation talks, they returned to the village in the motorcycle of her father; while they were passing through the house of the appellant, the appellant, who was standing in the street, picked up an argument with her father, which later became an altercation and graduated into a quarrel; in the quarrel, the appellant took a pipe that was lying on the road and indiscriminately attacked her father Kurumban, on account of which, he sustained serious injuries and fell



WEB COPY

down; their neighbours immediately intervened and separated them; her father was taken to the hospital and on the same day, he died; Annaperumayee [P.W.1] has substantially corroborated the evidence of Saranya Devi [P.W.2].

8. It is seen that both these witnesses, namely, Annaperumayee [P.W. 1] and Saranya Devi [P.W.2] were examined in chief on 07.12.2015, but they were not cross-examined on the same day. On the contrary, they were recalled under Section 311 Cr.P.C. and were cross-examined on 20.10.2017, nearly two years after they had testified in the Court. The defence was not able to make any serious dent in the testimony of these witnesses, except picking holes as to where the motorcycle of Kurumban was at the time of the occurrence, etc.,

9. Mr.Andiraj submitted that there is absolutely no evidence to show that Ramuthai had given a complaint to the police against the appellant and the policemen from the said police station have also denied that Ramuthai had come to the police station and given a complaint. It is the case of



WEB COPY

Saranya Devi [P.W.-2] that Ramuthai had gone to the police station and orally given a complaint and just because, the police did not record the complaint, it cannot be stated that such an event did not occur, for, to make the police record a complaint sometimes is an herculean task. Mr.Andiraj also contended that there is no material to show where the motorcycle of the deceased was and also no evidence to show as to, who had taken the deceased to the hospital.

10. We find that the house of the deceased and the appellant are in the same street, just 100 meters away. The deceased was returning from the police station in his motorcycle along with Saranya Devi [P.W.-2] and while crossing the house of the appellant, the quarrel had ensued resulting in the attack of the deceased by the appellant. Therefore, on these facts, the non seizure of the motorcycle of the deceased cannot be said to be fatal to the case of the prosecution. Thus, we are satisfied that the deceased had suffered injuries at the hands of the appellant, but the question is whether there was any intention and premeditation. We find from the evidence of Annaperumayee and Saranya Devi [P.Ws.1 and 2] that the appellant had



WEB COPY

come only on that morning from Kerala and on the same day, the quarrel had ensued between the deceased and Ramuthai in connection with which, on the complaint of Ramuthai, the deceased was summoned to the police station and while on his way back home from the police station, the quarrel in question had arisen between the appellant and the deceased. It is not the case of the prosecution that the appellant was armed. Even according to Annaperumayee [P.W.1] and Saranya Devi [P.W.-2], the appellant picked up a pipe, which was lying nearby and hit the deceased. Thus, we find that on the facts and circumstances of the case, the conviction of the appellant under Section 302 IPC may not be proper and therefore, the appellant is convicted of the offence under Section 304 (II) IPC and sentenced to undergo seven years rigorous imprisonment.

11. In the result, the criminal appeal is partly allowed and the conviction of the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304 (II) IPC and sentenced to undergo seven years rigorous imprisonment. As regards the conviction and sentence imposed on the appellant in respect of offence under Section 341 IPC, the



WEB COPY

same shall stand maintained and the sentence are ordered to run concurrently. The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C. The Trial Court is directed to secure the presence of the accused and commit him to prison to undergo the remaining period of sentence.

**[P.N.P., J.] & [S.A.I., J.]**  
**09.06.2022**

Index : Yes/No

Internet : Yes

RR

To

1.The Additional District and Sessions Judge,  
Fast Track Court, Theni.

2.The Inspector of Police  
Mayiladumparai Police Station  
Theni District

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

4.The Record Keeper,  
Vernacular Records Section,  
Madurai Bench of Madras High Court, Madurai.



WEB COPY



12

**P.N.PRAKASH, J  
AND  
S.ANANTHI, J**

**RR**

Judgment made in  
**Crl.A.(MD)No.214 of 2019**

**09.06.2022**