



Crl.A(MD)No.44 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 09.07.2025

Pronounced on : 24.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.44 of 2022

1.Durai

2.Selvarani

... Appellants

Vs.

State, rep. by

The Inspector of Police,

Aranthangi Police Station,

Pudukkottai District.

(Crime No.170/2019)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.100 of 2019 on the file of the Principal District and Sessions Judge, Pudukkottai, dated 30.07.2021 and set aside the same as illegal.



Crl.A(MD)No.44 of 2022

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For Appellant : Mr.C.Mayilvahana Rajendran

For Respondent : Mr.B.Nambiselvan,

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellants/accused Nos.1 and 2 in the judgment dated 30.07.2021 passed by the learned Principal District and Sessions Judge, Pudukkottai, in S.C.No.100 of 2019 by which judgment, A1 had been convicted for offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.400/- in default to undergo one year rigorous imprisonment and A2 had been convicted for offence punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.400/- in default to undergo one year rigorous imprisonment and for offence punishable under Section 342 IPC and sentenced to undergo rigorous imprisonment for a period of one month.



Crl.A(MD)No.44 of 2022

2. The case of the prosecution in brief is as follows:

On 10.04.2019 at about 23.40 hours, Ex.P1 complaint was received from P.W.1, Nagooran with the following averments:

(i) The deceased is the son of the complainant. A1 was employed with him as a mason, A2 is his wife. A1 received a sum of Rs.1,000/- (Rupees One Thousand only) from P.W.1 as an advance. Towards the same, a sum of Rs.600/- (Rupees Six Hundred only) was deducted from out of his salary, the remaining amount Rs.400/- (Rupees Four Hundred only) was due from him. When he requested to repay the same, A1 often created a quarrel with him. On 10.04.2019 morning, his wife Indirani/ P.W.2 went to the house of the accused and demanded the said amount from the 2nd appellant Selvarani. She replied that she would pay the money in the evening.

(ii) On the same day at about 9.00 p.m., A1 came in front of his house and abused him with filthy language. Therefore, he came out with his wife Indira and his sister Nagammal. A2 also came and abused P.W.2 and informed A1 that, she alone demanded money. The complainant and his wife told them that they need not pay but not to use abusive language requested them to return to their house calmly.

(iii) At about 9.15 p.m., his son, deceased Marimuthu returned from his job and after noticing the situation, requested the



Crl.A(MD)No.44 of 2022

WEB COPY

accused, not to quarrel with them. A1 rushed to his house and came out holding a knife and instructed his wife to restrain them, so that he could kill them. A2 held Nagooran's son tightly from behind. Immediately A1 stabbed him with a knife in the right chest, and he fell in a pool of blood. Both A1 and A2 fled away. The complainant and others raised an alarm and his brother Pandiyan (P.W.4), relative Vinoth (P.W.6) came and took his son in a private ambulance to the Government Hospital, Aranthangi at about 10.00 p.m. The Doctor examined him and declared that he was brought dead. Hence, the complaint.

(iv) The complaint (Ex.P1) was recorded by Mr.Prabhu, Sub Inspector of Police (P.W.11) on 10.04.2019, at about 23.45 hours, registered FIR in Crime No.170 of 2019 for the offence under Sections 294(b), 342 and 302 of IPC and forwarded the complaint (Ex.P1) and FIR (Ex.P18) to the concerned Judicial Magistrate Court.

(v) Mr.Raveendran, the Inspector of Police (P.W.12), took up the case for investigation, went to the place of occurrence on 11.04.2019 at about 01.00 hours, and prepared observation mahazar (Ex.P2) and Rough Sketch (Ex.P9) in the presence of witnesses Shanmugam and Suresh. He recovered blood-stained cement stones (M.O.2), ordinary cement stones (M.O.3) under a recovery mahazar (Ex.P3).



Crl.A(MD)No.44 of 2022

(vi) Thereafter, he examined the witnesses and went to

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(vii) In order to find out the real cause of death, the dead body was sent for autopsy through Police Constable Mr.Ramesh 1774 along with a requisition letter.

(viii) He examined the complainant and other witnesses and recorded their statements.

(ix) On 11.04.2019 at about 13.00 hours, he arrested the accused and recorded the confession statement of A1 (Ex.P4) in the presence of witnesses Karthikeyan (P.W.8) and Ayyanar and recovered the Knife (M.O.1) under a recovery mahazar (Ex.P5). Thereafter, he handed over the accused for judicial custody.

(x) Thereafter, he examined other witnesses and recorded their statements. He sent the material objects to the Court on 11.06.2019. On the same day, he sent a requisition letter to the Judicial Magistrate to forward the material objects for chemical analysis and received the Biology report (Ex.C1) and Serology report (Ex.C2).



Crl.A(MD)No.44 of 2022

(xi) On 27.07.2019, he examined Dr.Subbu Sivaraj (P.W.9)

and received the accident register (Ex.P.6). He also examined Dr.Manohari (P.W.10) who had conducted the postmortem and collected the postmortem report (Ex.P7).

(xii) P.W.10, Dr.Manohari, in the postmortem report (Ex.P7) noted the following injuries on the dead body:

"A stab wound obliquely placed one end sharp & another end blend Measuring 1 x 0.5 x into the organ deep present over front of (L) Chest along mid calculiar line 6 cm lateral to central line 7 cm below (L) nipple. On dissection of wound has pierced intercostals space & external pericardium & ends by piecing the (L) ventricle of heart along the Anterior border measuring 5cm depth. Pleural cavity contains 900 ml of blood & blood clots.

Another stab wound obliquely placed 1 x 0.3 cm x muscle deep ends by piercing ribs 4 cm medical to first Wound. Another stab wound of same size(+) over 1cm medical to 2nd wound.

He opined that the deceased would appear to have died of shock Hemorrhage as a result of stab injury."

(xiii) On 10.09.2019, he completed the investigation and altered the section of law from 294(b), 342 and 302 IPC into Sections



Crl.A(MD)No.44 of 2022

294(b), 342 and 302 IPC r/w.34 and the alteration report (Ex.P11), and

also filed a final report against the accused.

3. On receipt of the final report, the Judicial Magistrate, Aranthangi, took up the case in P.R.C.No.14 of 2019 and issued summons to the accused. After the appearance of the accused, copies of the entire records were furnished to him at free of cost under Section 207 Cr.P.C.

4) Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District and Sessions Court, Pudukkottai, under Section 209(A) Cr.P.C. for further action.

5) The Principal District Judge, Pudukkottai, received the case records, numbered it as S.C.No.100 of 2019 and took up the case for disposal according to law, framed charges against A1 under Sections 294(b) and 302 IPC and A2 under Sections 294(b), 342 and 302 r/w.34 IPC. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.



Crl.A(MD)No.44 of 2022

WEB COPY

6) On the side of the prosecution, P.W.1 to P.W.12 were examined and Ex.P1 to Ex.P11 were marked. Material Objects M.O.1 to M.O.3 were produced and Ex.C1 and Ex.C2 were marked. On the side of the accused, no witness was examined and no document was marked.

7) After a full trial, the Court below convicted the accused as follows:

1) A1 had been convicted for offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.400/- in default to undergo one year rigorous imprisonment and

2) A2 had been convicted for offence punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.400/- in default to undergo one year rigorous imprisonment and for offence punishable under Section 342 IPC and sentenced to undergo rigorous imprisonment for a period of one month, against which, the present Criminal Appeal has been filed.

8. The learned counsel for the appellant though raised several grounds assailing the judgment of conviction and sentence, he ultimately restricted his arguments and confined the same to the question



Crl.A(MD)No.44 of 2022

of sentence alone. He submitted that the occurrence took place without premeditation, in the heat of passion, and upon a sudden quarrel. The dispute arose over money transaction. The 1st appellant /A1 received a sum of Rs.1,000/- (Rupees One Thousand only) from P.W.1 as advance from which, a sum of Rs.600/- (Rupees Six Hundred only) was deducted from out of his salary. The remaining amount of Rs.400/- (Rupees Four Hundred only) was due. On the date of occurrence, P.W.2, wife of P.W.1 and mother of the deceased, went to the house of the accused and confronted with A2 for non-payment of the sum of Rs.400/- (Rupees Four Hundred only). A2, had in turn informed her husband viz., the 1st appellant/A1 about the incident. Therefore, A1, proceeded to the house of deceased and questioned them regarding the issue. At that time, the deceased approached and used offending words against A1 and thereby insulting him. The complainant and others tried to attack him. Provoked by their act out of fit and anger, A1 went to his house which was adjacent and took a knife, returned to the scene of occurrence and asked his wife to hold one of the witnesses. A2, caught hold of the victim, and A1 inflicted a single stab injury but unfortunately, the victim succumbed to the said injury. It was submitted that there was neither a premeditated plan, nor any intention or motive to kill the deceased. None of the



Crl.A(MD)No.44 of 2022

prosecution witness have deposed that the accused had any motive to commit murder. The act was committed in a heat of passion as the deceased had provoked him and in a sudden provocation, in a fit of anger the offence occurred without prior planning or deliberation.

9. He referred to the confession statement of the accused, wherein A1 narrated the sequence of events, leading to the occurrence. Relying on the said statement, he referred the judgment reported in **2011 (2) MLJ (Crl) 624, (Ganesan vs. State represented by the Inspector of Police, K.Vilakku Police Station, Theni District)**, whereas this Court has held in paragraph No.17 as follows :

“Thus going by the above facts and the law declared on the aspect of the permissibility of looking into the confession recorded under Section 25 of the Indian Evidence Act to decide on the nature of the offence committed by the accused, we have no hesitation in accepting the plea of the accused that the case herein falls under Section 304(I) I.P.C., by applying Exception 1 to Section 300 I.P.C, thus inviting a sentence of seven years rigorous imprisonment.”

10. The learned counsel for the appellant, contended that the act committed by A1 does not amount to murder punishable under



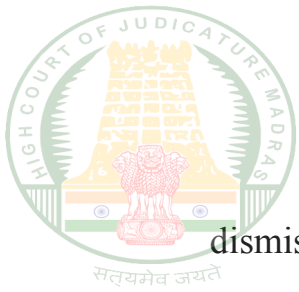
Crl.A(MD)No.44 of 2022

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Section 302 IPC. Instead the act falls within the ambit of Section 304, part ii IPC as it was committed without pre-meditation in the heat of passion and sudden provocation and prays to reduce the sentence from murder to culpable homicide not amounting to murder.

11. He further stated that A2 arrived at the place of occurrence, only upon hearing the quarrel between A1 and others. There is no evidence to suggest that she had any intention, motive or preplan to kill the deceased. It was not established by the prosecution that she had shared any common intention with A1 to kill the deceased, the conviction under Section 34 IPC is liable to be set aside and she should be acquitted from the above charge

12. The learned Additional Public Prosecutor appearing for the State argued that, the case rests on the evidence of eyewitness. P.W.1 to P.W.3, clearly spoken about the occurrence, and there is no delay in the FIR. The motive for the occurrence was spoken by the witnesses. The evidence of eyewitness was corroborating with the medical evidence. Arrest, confession and recovery have been proved. The prosecution proved the guilt against the accused beyond all reasonable doubt and there is no ground to interfere with the order of trial Court and prayed to



Crl.A(MD)No.44 of 2022

dismiss the Criminal Appeal.

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13. Upon careful verification of the records and evidence, it is seen, as per the prosecution case and evidence adduced by P.W.1 that A1 was working under P.W.1 as mason and was residing in the same street along with his family. During the course of employment, he got an advance of Rs.1,000/- (Rupees One Thousand only) from P.W.1. Out of which a sum of Rs.600/- (Rupees Six Hundred only) was deducted from his salary. The remaining amount of Rs.400/- (Rupees Four Hundred only) was still due. On 10.04.2019 P.W.1 asked his wife, P.W.2, to go to A1's house and collect the remaining amount. Accordingly, P.W.2, went to his house and requested A2, wife of A1 to pay the money. A2 informed P.W.2 that she would convey the message to her husband after he returned from his work. On the same day at about 9.00 P.M., A1, came to P.W.1's house, abused him and picked up quarrel. P.W.1, requested A1 not to create trouble, and requested him to go back to his house peacefully. At about 9.15 p.m., P.W.1's son (deceased) arrived and requested A1 to not to create problem and to leave the place. However A1 abused him rushed to his house, returned with a knife and asked his wife A2, to hold him, A2, then held him tightly. A1, stabbed the deceased

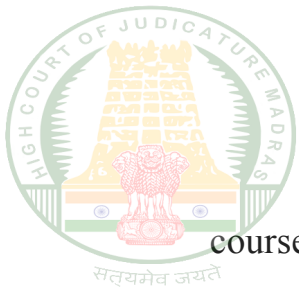


Crl.A(MD)No.44 of 2022

on left side of his chest, resulting in his death. P.W.2, and P.W.3 who are alleged to be witnesses to the occurrence supported the prosecution version. Hence, A1 is liable to be punished under section 302 IPC, A2, having facilitated the commission of the offence by holding the deceased liable to be punished under section 302 r/w 34 IPC.

14. Though P.W.1 to P.W.3, had supported the prosecution version, certain contradiction were noted in their evidences. According to P.W.3 upon seeing the deceased, A1 shouted at him that he would not spare him but kill him. This specific statement was not stated by both P.W.1 and P.W.2.

15. Admittedly, the deceased died as a result of injury inflicted by A1. However the prosecution has failed to establish that the accused had prior enmity or some ill-motive against the deceased. Furthermore, it is not proved that A1 came to the house of P.W.1 with intention to commit murder of the deceased. Even as per prosecution, A1 came to the house of P.W.1 only to question P.W.1's act of sending his wife to his house to demand the return of money. At the time of initial quarrel, deceased was not available in the P.W.1's house. Later, he returned from his work and had an altercation with A1 and during the



Crl.A(MD)No.44 of 2022

course of occurrence, he sustained injury which ultimately led to his death.

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16. Now this Court has to decide whether the prosecution proved that the act of A1 come under the purview of 300 IPC and whether the act of A2, assist A1 to commit the offence in furtherance of common intention?

17. In order to commit murder, as per section 300 IPC, the following ingredients are necessary;

“300.Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—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—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause



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CrI.A(MD)No.44 of 2022

death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 4.—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's having taken undue advantage or acted in a cruel or unusual manner.

Explantation—It is immaterial in such cases which party offers the provocation or commits the first assault.”

18. As per penal provision under Section 300 IPC except the following exceptions culpable homicide is murder.

“Exception 1- 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.

The above exception is subject to the following provisos:-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing. or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in



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Crl.A(MD)No.44 of 2022

the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defense

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding. a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.- 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

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of



WEB COPY



Crl.A(MD)No.44 of 2022

*eighteen years, suffers death or takes the risk of death
with his own consent.”*

19. According to the evidence of P.W.1 to P.W.3, A1 was alone created problem and not by them. However the evidences of P.W. 4, and P.W.5 reveals that they heard the sounds of quarrel between the accused and the members of P.W.1's family. Despite this, there is no clear or consistent evidence available explaining as to how the quarrel escalated and ultimately resulted in the murder. In the absence any other evidence, we are constrained to refer to the confession statement of A1.

20. As per Section 25 of the Indian Evidence Act, 1872 states that no confession made to a police officer shall be proved as against the accused of an offence, which means that any statement made by an accused person to the Police Officer, which is the nature of confession cannot be used as evidence against them in a Court of law but it could be referred in deciding the nature of crime committed.

21. In this connection, we relied upon the **Ganesan's case** *[2011 (2) MLJ (Crl) 624]*, where the facts and circumstances of the above case is similar in nature to the present case in which it was held



Crl.A(MD)No.44 of 2022

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that confession statement, could be referred for deciding the nature of the offence committed. In paragraph No.14 of the above judgment, this Court referred the case reported in ***AIR 1994 SC 610, (Murli Alias Denny vs. State of Rajasthan)*** in which the Hon'ble Supreme Court, pointed out that if the accused had acted on a sudden provocation, exception 1 of Section 300 IPC stood attracted. Referring to the admission found in the statement in favour of the accused, pointed out that when there is no evidence disclosing as to how the quarrel ensued and attack took place, the relevancy of the confessional statement could be taken into account to find out whether the case falls under Exception 1 of Section 300 IPC.

22. Thus applying the ratio declared by this Court, we rely upon the confession statement (Ex.P4) given by the A1 before the Investigating Officer wherein, he stated that during the quarrel with P.W. 1, the deceased intervened and abused him saying that if he was not able to repay the money, he would wear Saree instead of Dhoti. In a fit of rage he attempted to attack the deceased. But the family members of the deceased came together to confront him. He went inside, took a knife came out, and asked his wife to hold some one, his wife caught hold the



Crl.A(MD)No.44 of 2022

WEB COPY

deceased tightly, he delivered a single blow. The victim succumbed to the fatal injury sustained by him. The statement of accused was corroborated with the evidence of P.W.4 and P.W.5. Both of them have stated that prior to the occurrence they heard the noise of persons fighting near the house of P.W.2.

23. The 1st appellant/A1 had no previous enmity or motive to commit the murder. Furthermore, there is no evidence to show that he had intention to commit murder. In fact, it has been established that A1 came to the house of P.W.1 to question regarding his action of sending his wife to his house to demand repayment of money. Subsequently the victim came and engaged in a quarrel with A1 uttering offensive language and provoked A1. Due to the sudden provocation and in a fit of anger, A1 committed the offence. Therefore, the offence committed by A1 falls under exception 4 of 300 IPC and therefore, A1 is liable to be acquitted from the charge under section 300 IPC but punishable under Section 304 IPC.

24. Under Section 304 IPC there are two kinds of punishment that apply to different circumstances;

“1. If the act by which death is caused is done with



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Crl.A(MD)No.44 of 2022

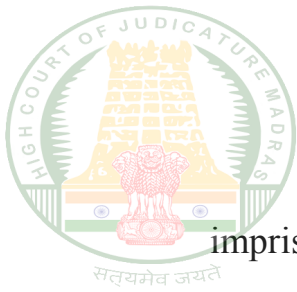
intention of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine.

2. If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as likely to cause death, the punishment of either description for a term which may extend to ten years or with fine or with both.”

25. However this Court has to determine whether the offence committed by A1 is punishable under Section 304 (i) IPC or 304(ii) IPC.

26. In this case, it is not proved that A1 had an intention to cause death, but he had knowledge that such a stab injury on chest, likely to cause death. Hence, he is liable to be punished for the offence under Section 304(ii) IPC.

27. For the reason aforesaid, we are of the considered view that the offence committed by the 1st appellant / A1 does not attract the provision of Section 302 IPC, instead it falls under Section 304(ii) IPC. Accordingly, we modify the conviction of the accused from Section 302 IPC to Section 304(ii) IPC. Consequently, the sentence of life



Crl.A(MD)No.44 of 2022

WEB CON

imprisonment is also modified into sentenced to undergo five (5) years rigorous imprisonment with fine of Rs.400/- (Rupees Four Hundred only) in default, to undergo one month simple imprisonment.

28. Now, we have to decide whether the act done by A2, falls under Section 34 IPC.

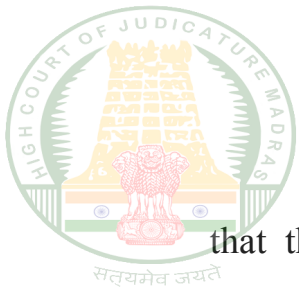
“Section 34 IPC. Acts done by several persons in furtherance of common intention— When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

29. The ingredients of Section 34 IPC are :-

- A. Criminal act done by several persons*
- B. Such act is done in furtherance of common intention of all and*
- C. Each of such persons is liable for that act in the same manner as if it were done by him alone*

Section 34 IPC is not a penal provision. It has been enacted and principal of joint liability into Criminal Act. It is only rule of evidence and does not create substantive offence. Common intention implies prearranged plan.

30. The prosecution must establish through cogent evidence



Crl.A(MD)No.44 of 2022

WEB COPY

that there was prior meeting of minds or a pre-planned arrangement among the accused, and that the act was committed in furtherance and of their common intention. If the prosecution fails to establish this essential ingredient beyond all reasonable doubt the benefit of doubt must be extended to the accused.

31. In this connection, we rely upon the judgment rendered in *Vijendra Singh vs. State of Uttar Pradesh* reported in **2017 (11) SCC 129**, in which the Hon'ble Supreme Court has held as follows:

“20. He has also relied on the decision in Suresh Sakharam Nangare (supra). In the said case, the Court after referring to Section 34 IPC opined that a reading of the above provision makes it clear that to apply Section 34, apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence. It further makes clear that if common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked.

21. In the said case, the Court after analyzing the evidence opined that there is no material from the side of the



WEB COPY



Crl.A(MD)No.44 of 2022

prosecution to show that the appellant therein had any common intention to eliminate the deceased because the only thing against the appellant therein was that he used to associate himself with the accused for smoking ganja. On this factual score, the Court came to hold that the appellant could not be convicted in aid of Section 34 IPC.

22. In this regard, we may usefully refer to a passage from the authority in Pandurang and Ors. v. State of Hyderabad[9]. The three-Judge Bench in the said case adverted to the applicability and scope of Section 34 IPC and in that context ruled that:-

“32. ... It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: Mahbub Shah v. King Emperor[10]. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate



WEB COPY



Crl.A(MD)No.44 of 2022

blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case: Barendra Kumar Ghosh v. King Emperor[11] and Mahbub Shah v. King Emperor (supra). As Their Lordships say in the latter case, “the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice”.

33. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose.”

19. And, again:-

“34. ... But to say this is no more than to reproduce the ordinary rule about circumstantial evidence, for there is no special rule of evidence for this class of case. At bottom, it is a question of fact in



WEB COPY



Crl.A(MD)No.44 of 2022

every case and however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or, as we prefer to put it in the time-honoured way, “the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis”. (Sarkar’s Evidence, 8th Edn., p. 30).”

20. In this context, we may refer with profit to the statement of law as expounded by the Constitution Bench in Mohan Singh (supra). In the said case, the Constitution Bench has held that Section 34 that deals with cases of constructive criminal liability provides that if a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for the act in the same manner as if it were done by him alone. It has been further observed that the essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. The common intention in question animates the accused persons and if the said common intention leads to commission of the criminal offence charged, each of the person sharing the common intention is constructively liable for the criminal act done by one of them. The larger Bench dealing with the concept of constructive criminal liability under Sections 149 and 34



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CrI.A(MD)No.44 of 2022

IPC, expressed that just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a combination of persons sharing the same common intention is one of the features of Section 34. In some ways the two sections are similar and in some cases they may overlap. The common intention which is the basis of Section 34 is different from the common object which is the basis of the composition of an unlawful assembly. Common intention denotes action-in-concert and necessarily postulates the existence of a prearranged plan and that must mean a prior meeting of minds. It would be noticed that cases to which Section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different; may vary in their character, but they are all actuated by the same common intention. Thereafter, the Court held:-

“It is now well-settled that the common intention required by Section 34 is different from the same intention or similar intention. As has been observed by the Privy Council in Mahbub Shah v. King-Emperor (supra) common intention within the meaning of Section 34 implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre- arranged plan and that the inference of



WEB COPY



Crl.A(MD)No.44 of 2022

common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case.”

32. In ***Gadadhar Chandra vs. State of West Bengal*** reported in **2022 (6) SCC 576**, in which the Hon'ble Supreme Court has held as follows:

“14.As consistently held by this Court, common intention contemplated by Section 34 of IPC presupposes prior concert. It requires meeting of minds. It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. In the present case, the non-examination of two crucial eye witnesses makes the prosecution case about the existence of a prior concert and prearranged plan extremely doubtful.”

33. On a careful scrutiny of decision of the Hon'ble Supreme Court make it absolutely clear that section 34 IPC lays down principle of joint liability in doing criminal act and the criminal lagged must have been done in furtherance of common intention. In the present case, it is



Crl.A(MD)No.44 of 2022

not proved that A2 accompanied A1, and arrived at the place of occurrence with pre-arranged plan, and done in furtherance of common intention.

34. None of the prosecution witness have deposed that A2 used any abusive language or issued threats to the victim with an intention to commit murder. Similarly no witness stated that A1 specifically instructed her to hold the victim. However, it has been established through evidences that A1 ran inside the house and brought a weapon asked her to restrain one of the witnesses, so that he would cause injury, she caught hold the deceased from moving. Further it was not established that A2 participated in the criminal act with prearranged plan to eliminate the deceased and have been done in furtherance of common intention. Therefore, in the absence of clear and convincing evidence of shared intent, her role does not attract liability under section 34 IPC. Therefore, we set aside the conviction under section 34 IPC as against A2 and acquit her from the charges of 302 r/w 34 IPC. A2 is liable to be punished for the offence of wrongful confinement under Section 342 IPC. Accordingly, trial Court convicted and sentenced her under the above provision, for which we do not wish to interfere.



Crl.A(MD)No.44 of 2022

WEB COPY

35. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) In so far as the charge under Section 342 IPC is concerned, the order of the trial Court is confirmed.

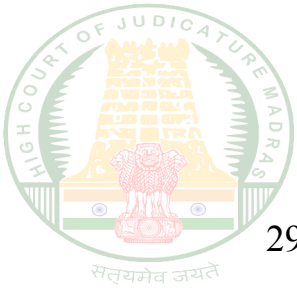
(iii) The conviction under Section 302 IPC as against A1 and conviction under Section 302 r/w 34 IPC as against A2 passed by the learned Principal District and Sessions Judge, Pudukkottai, dated 30.07.2021, in S.C.No.100 of 2019 is set aside.

(iv) The 1st appellant/A1 is sentenced to undergo Rigorous Imprisonment for five (5) years and to pay a fine of Rs.400/- (Rupees Four Hundred only) in default to undergo Simple Imprisonment for one month for the offence under Section 304(ii) IPC.

(v) A2 acquitted from the charge under Section 302 r/w 34 IPC.

(vi) The period of sentence already undergone by the accused 1 & 2/appellants shall be set off under Section 428 Cr.P.C., as against the substantive sentence.

(vii) Suspension of sentence granted by this Court to A2 on 12.04.2022 in Crl.M.P(MD)No.4016 of 2022 and to A1 on



Crl.A(MD)No.44 of 2022

29.11.2022 in Crl.M.P.(MD) No.11237 of 2022, stands cancelled.

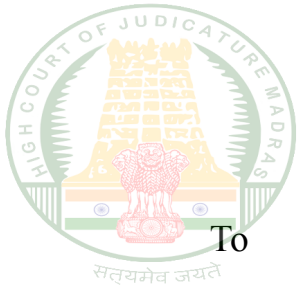
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(viii) The trial Court is directed to secure the accused and commit them to the prison to undergo the remaining period of sentence.

(A.D.J.C., J.) & (R.P., J.)
24.07.2025

Index : Yes / No
NCC : Yes / No

rm



Crl.A(MD)No.44 of 2022

To

WEB COPY

- 1.The Principal District and Sessions Judge,
Pudukkottai.
- 2.The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A(MD)No.44 of 2022

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

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Judgment in
Crl.A(MD)No.44 of 2022

24.07.2025