



Crl.A(MD)No.55 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated : 04.03.2025

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**AND**

**THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Muniyasamy

... Appellant/Sole Accused

Vs.

The State rep. by  
The Inspector of Police,  
Surakudi Police Station,  
Thoothukudi District.  
(in Cr.No.142 of 2014)

...Respondent/Complainant

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.330 of 2016 on the file of the I Additional District and Sessions Court, Thoothukudi, dated 24.11.2020 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.M.S.Jeyakarthik  
For Respondent : Mr.A.Thiruvadi Kumar,  
Additional Public Prosecutor

### **JUDGMENT**

**G.JAYACHANDRAN, J.**  
**and**  
**R.POORNIMA, J.**

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/sole accused in the judgment dated 24.11.2020 passed by the I Additional District and Sessions Court, Thoothukudi, by convicting and sentencing the appellant for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.2,000/- in default, to undergo three months simple imprisonment.

2. The appellant herein is the sole accused in S.C.No.330 of 2016. Based on the complaint given by one Muthuraj, examined as P.W. 1, the respondent police registered FIR in Crime No.142 of 2014 on 09.09.2014 at about 20.00 hours and took up the investigation. The complaint revealed that on 08.09.2014 at about 2.30 p.m, when the informant along with his brother Marisamy and wife of the deceased and



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few others were removing garbage in a tractor owned by Boopathy, the accused came and picked up quarrel with his brother Marisamy for engaging Boopathy with whom he has enmity. In the force of the quarrel, the accused took a wooden log from nearby and gave a single blow on Marisamy on his head. Marisamy was taken to the Vilathikulam Hospital and thereafter, Government Hospital at Thoothukudi. On 11.09.2014, at about 11.00 a.m Marisamy died. On intimation from the Thoothukudi Hospital, the police has come to know about the incident. However, only on receipt of the written complaint from P.W.1, FIR was registered and forwarded to the Judicial Magistrate and simultaneously, investigation was taken up. On the death of Marisamy, the charge was altered from Section 307 IPC to 302 IPC. Meanwhile, the accused surrendered before the Judicial Magistrate on 12.09.2014 knowing about that the Investigation Officer took the permission of the Court for police custody and the accused was taken into custody by the Investigation Officer on 17.09.2014. Based on the confession given by the accused, a wooden log and cloth were recovered under mahazar Ex.P.5 in the presence of Village Administrative Officer. On completion of the investigation, a final report was filed.



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3. Based on the materials placed, the Sessions Court framed

charge under Section 302 IPC and tried the accused.

4. To substantiate the charges, prosecution marshalled 17 witnesses, 21 exhibits and one material object. On the defence side, no document or oral evidence was let in.

5. The Trial Court after appreciating the evidence found that the occurrence was being witnessed by the brother of the deceased P.W.1 and wife of the deceased P.W.2. The wooden log used was recovered on the confession statement given by the accused. The postmortem report had disclosed that the deceased Marisamy has succumbed to death due to the injury sustained on the head, which caused complication. The blood sample collected from the wooden log -M.O.1 was sent to Laboratory and found that it contains human blood. Therefore, on cumulative assessment of these evidence, the accused was found guilty for the offence under Section 302 IPC and sentenced to undergo life imprisonment with fine of Rs.5,000/- in default three months simple imprisonment. The said findings of the Court below have been challenged in this appeal, on the ground that the trial Court has found



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that P.W.2 is not an eyewitness to the occurrence. Having held so, the evidence of P.W.1 who had deposed that he saw the occurrence along with P.W.2 also falls to the ground and ought to have been disbelieved. Contrarily, the trial Court had solely relied upon the evidence of P.W.1 to convict the accused without considering the improbability in the evidence of P.W.1 and contradictions found in the other prosecution witnesses.

6. The learned counsel would submit that though the case of the prosecution on the charge is that the accused hit the deceased with a wooden log repeatedly, the postmortem report indicates only one external injury near the eye.

7. The earliest document is the Accident Register maintained by the Vilathikulam Hospital. The said Accident Register marked as Ex.P. 6 shows that the injured Marisamy was taken to the hospital by his brother Muthuraj and he has informed the Doctor that the injury was sustained due to his self fall under the influence of alcohol. On medical advice, the patient was shifted to Thoothukudi Government Hospital on 08.09.2014 at about 06.00 p.m., and even there, it was only recorded as



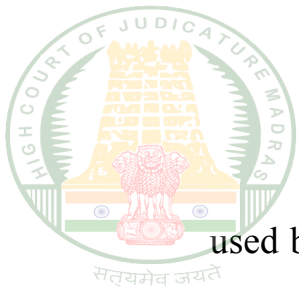
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accidental fall. While so, the FIR which came to be registered on 09.09.2014 at 20.00 hours based on the statement of P.W.1 contains embellished fact implicating the accused with whom the said Boopathy was not in good terms and complaint was fabricated at the instance of Boopathy to fix the appellant. The learned counsel for the appellant would further submit that the delay in registering the FIR and forwarding it to the Judicial Magistrate would enhance the suspicion about the veracity of the complaint and the false implication of the accused.

8. The learned counsel for the appellant submit that though the patient was taken to the Government Hospital, Vilathikulam on 08.09.2014 and thereafter, shifted to Government Hospital, Thoothukudi on the same day, at about 6.00 p.m., the inordinate delay in registering the FIR was not properly explained by the prosecution.

9. He would further submit that the interpolation in athatchi-Ex.P.5 regarding seizure of M.O.1 by inserting a word 'blood stain' in a different hand writing would falsify the case of the prosecution regarding use of M.O.1 to commit the crime. Even P.W.1 who claims to be an eyewitness to the occurrence had not identified M.O.1 as the weapon



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used by the accused to cause injury. P.W.1 in the cross examination was not certain and categorically stated that it is impossible to break (stick) wooden log like M.O.1 and during the investigation, the Investigation Officer showed him a different stick and not M.O.1.

10. The learned counsel heavily relied upon the medical evidence and the ocular evidence which go contrarily regarding the injuries. Even if the case of the prosecution is to be taken into account, the occurrence has happened without any premeditation and out of sudden provocation and in any event, the offence will not attract the ingredients required to punish a person under Section 302 IPC.

11. The sum and substance of the submissions made by the learned counsel for the appellant is that the probability of P.W.1 and P.W. 2 being present at the scene of occurrence is remote. The weapon used to cause injury to the deceased was not identified by the witnesses. The description of M.O.1 varies while the seizure mahazar says that it is 135 cm length; SFL report says, it is 136 cms, whereas the Village Administrative Officer who witnessed the seizure had deposed that the length of wooden log is 185 cm. Above all, P.W.1 has categorically stated



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that M.O.1 is not the weapon shown by the Inspector at the time of investigation.

12. It is also the case of the appellant that the alleged recovery after 10 days of the occurrence from the scene of crime, is also highly doubtful. Pointing out the discrepancy among the witnesses regarding the exact place of occurrence, it is emphatically argued that the occurrence could not have been occurred in the manner in which the prosecution has projected.

13. Per contra, the learned Additional Public Prosecutor would submit that it is a clear case of murder witnessed by two persons, one the brother of the deceased and another wife of the deceased. Though the trial Court had its own reason to hold that P.W.2 the wife of the deceased might have come to the spot subsequently, the evidence of P.W. 1 stands unimpeached and also natural. The occurrence has taken place in the field of the deceased. The accused had come to the scene of occurrence and picked up quarrel with the deceased for engaging Boopathy to lift garbage from the field. It is an unprovoked aggression on the part of the accused to go and picked quarrel with the deceased, the



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alleged motive for falsely implicating the accused carries no merit, since it is not substantiated by any material evidence.

14. As far as the entry in the Accident Register maintained at Vilathikulam Hospital and Thoothukudi Government Hospital, the learned Additional Public Prosecutor would submit that the entries in Accident Register regarding the reason for injury cannot be given undue weightage, since such information is provided to the Doctor not by the person who sustains injury, but the person who accompanies him in most of the cases, who may not be the witness to the occurrence. Even in this case, the entry indicates that the patient was unconscious and brought by his brother. What information given to the Doctor regarding the cause for injury will not carry merit.

15. The injury caused to the victim had fracture on dissection of scalp, skull and dura, diffuse subarachnoid hemorrhage note over both cerebrum and cerebellum. A curvilinear fracture of length 4 cms seen in the left frontal bone with surrounding contusion. This injury correlates with the material object, viz., wooden log. Though the Doctors have opined that this could have been caused by sudden fall, the



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probability of such fall ruled out by the ocular evidence of P.W.1.

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16. The learned Additional Public Prosecutor would submit that the evidence of P.W.1 is wholly reliable and there is no reason to suspect the credibility of the witness and the defence put forth by the appellant that the incident occurred due to sudden provocation is not sustainable, in view of the fact that on the date of occurrence, there is no provocation on the part of the deceased.

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

18. It is a case of a single blow with a wooden log near the eye of the deceased which has caused internal hemorrhage and fracture. The victim of the crime succumbed to the injury after 4 days. He was under treatment as inpatient, but could not recover. The evidence of P.W. 1 as well as P.W.2 proves beyond doubt that the incident has occurred suddenly when the deceased had justified engaging Boopathy for removing the garbage, despite the fact that the accused and Boopathy were not in good terms. The accused has not gone to the spot with any



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intention of causing harm, but due to fit of anger had taken a wooden log found nearby and given a single blow to the deceased and ran away. The blow has caused the death and sufficient to cause death. However, whether the accused had the knowledge to cause the said death or intention to cause death, is the question for consideration.

19. In the considered view of this Court, the accused had neither intention nor knowledge that the blow he caused to Marisamy will cause his death. Therefore, we find that the ingredient enumerated under Section 300 IPC does not attract in this case and it falls only under Section 326 IPC, since the injury is likely to cause death, but not caused with an intention or knowledge. Accordingly, while upholding the finding of the trial Court that the injury caused by the accused has led to the death of Marisamy, however, it does not fall under Section 302 IPC, but only under Section 326 IPC.

20. Accordingly, the sentence imposed by the trial Court stands modified from life imprisonment to rigorous imprisonment for a period of two years with fine of Rs.2,000/- in default, three months simple imprisonment.



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21. In the result,

(i) This Criminal Appeal is partly allowed;

(ii) The conviction under Section 302 IPC passed by the learned I Additional District and Sessions Judge, Thoothukudi, dated 24.11.2020, in S.C.No.330 of 2016 is set aside and the conviction is modified to Section 326 IPC;

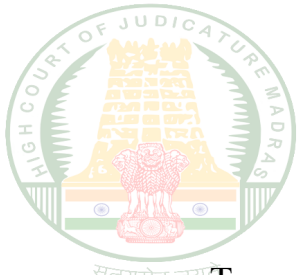
(iv) Accordingly, the sentence of Life Imprisonment passed by the Court below is set aside and the appellant is sentenced to undergo Rigorous Imprisonment for two (2) years and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) and in default to pay the fine amount, to undergo Simple Imprisonment for three months;

(v) The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence; and

(vi) The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence.

**(G.J., J.) & (R.P., J.)**  
**04.03.2025**

Index : Yes / No  
Internet : Yes / No  
NCC : Yes / No  
RM



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To  
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- 1.The I Additional District and Sessions Judge,  
Thoothukudi,
- 2.The Inspector of Police,  
Surakudi Police Station,  
Thoothukudi 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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**G.JAYACHANDRAN J.**  
**AND**  
**R.POORNIMA, J.**

RM

Judgment in  
**Crl.A(MD)No.55 of 2021**

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