



*Crl.A(MD)Nos.255 and 261 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.10.2025

CORAM :

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**  
**and**  
**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**Crl.A(MD)Nos.255 and 261 of 2022**

Chinna Ponnu ... Appellant in Crl.A(MD)No.255/2022/ Accused No.2  
Raman ... Appellant in Crl.A(MD)No.261/2022/ Accused No.1

vs.

The State Rep. by  
The Inspector of Police,  
Palavidhuthi Police Station,  
Karur District. ... Respondent/ Accused in both cases  
(Crime No.127 of 2018)

**Prayer :-**These Criminal Appeals are filed under Section 374 of Criminal Procedure Code, to call for the records and set aside the order of conviction and sentence passed in S.C.No.18 of 2019 dated 01.03.2022 on the file of Additional Sessions Judge, Fast Track Court, Karur District and allow these appeals and acquit the appellants.

For Appellant in  
Crl.A(MD)No.255/2022 : Mr.J.Vijayaraja

For Appellant in  
Crl.A(MD)No.261/2022 : Mr.G.Karuppasamy Pandiyan



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For Respondent : Mr.T.Senthil Kumar  
Additional Public Prosecutor

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### **COMMON JUDGMENT**

(Judgment of the Court was made by **P.VELMURUAN, J.**)

These Criminal Appeals have been filed to call for the records and set aside the judgment of conviction and sentence imposed in respect of the appellants vide judgment made in S.C.No.18 of 2019 dated 01.03.2022 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Karur District and allow these appeals and acquit the appellants.

2. The case of the prosecution is that on 02.08.2018 around 06.30 p.m., the appellants were putting up a thatched fence in their lands by encroaching the lands of PW1. At that time, the husband of PW1/deceased restrained the appellants from putting up the fence by encroaching the lands of his wife. However, without hearing the words of the deceased, the appellants proceeded to put up the fence. Therefore, the deceased restrained them from continuing to put up thatched fence. At that time, A1 took the wooden log and assaulted the husband of PW1



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on his head, back and overhead and when the same was attempted to be prevented by PW1, A2 assaulted PW1 with a stick on her head, left hand and wrist, in which, both PW1 and her husband sustained injuries. The husband of PW1 was immediately taken to Meenakshi Mission Hospital, Madurai, for treatment and thereafter he was shifted to Government Medical College Hospital, Coimbatore. During treatment in the said hospital, he died on 06.10.2018. On the complaint of PW1, the respondent/police initially registered a case in Crime No.127 of 2018 against the appellants for the offences under Sections 294(b) and 307 of IPC. Subsequently on the death of the deceased, the case was altered into Sections 294(b), 307 @ 294, 302, 302 read with 34 and 324 of IPC. After completing the investigation, a final report was filed before the Jurisdictional Magistrate's Court and the same was taken on file in PRC.No.25/2018. After completing the formalities, the learned Magistrate committed the case to the Court of Session, since the offences are exclusively triable by the Court of Session. The learned Additional Sessions Judge, Karur, took the case on file in S.C.No.18/2019 and framed the charges against the 1<sup>st</sup> accused for the commission of offences under Sections 294(b) and 302 of IPC and against the 2<sup>nd</sup> accused for the



offences under Sections 294(b), 302 read with 34 and 326 of IPC. In order to substantiate the case during trial, on the side of the prosecution, totally 17 witnesses were examined as PW1 to PW17 and 22 documents were marked as Exs.P1 to Ex.P22, besides one material object namely, wooden log was exhibited as MO1. The doctor who treated the appellants was examined as DW1 and Accident Register copy of the 1<sup>st</sup> accused was marked as Ex.D1. After completion of the evidence of the prosecution side witnesses, the appellants/accused were questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances made out against them in the evidence rendered by the prosecution witnesses and they denied it as false.

3. On conclusion of the trial and hearing of the arguments on either side, the trial Court by impugned judgment dated 01.03.2022, convicted the 1<sup>st</sup> accused for the offence under Section 294(b) and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 15 days and also convicted the 1<sup>st</sup> accused for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of



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Rs.1,000/- in default to undergo six months simple imprisonment. As

regards the 2<sup>nd</sup> accused, the trial Court convicted her for the offence under Section 294(b) and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 15 days, further convicted the 2<sup>nd</sup> accused for the offence under Section 326 of IPC and sentenced to undergo simple imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 6 months and also convicted the 2<sup>nd</sup> accused for the offence under Section 302 read with 34 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment. The sentences were ordered to be run concurrently. Aggrieved by the judgment and sentence, the appellants/accused have filed the present appeals before this Court.

4. The learned counsel for the appellants would submit that the prosecution has not given any explanation about the injury sustained by A1 and the trial Court also failed to note that the deceased was the aggressor. The trial Court relied on the confession of A1 which



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is not admissible and hit by Section 25 of the Indian Evidence Act.

Further, the deceased not died soon after the occurrence. The occurrence took place on 02.08.2018, whereas the deceased died in the hospital on 06.10.2018 and the deceased was also shifted to several hospitals and he was not given immediate treatment. Therefore, the death was not due to the injuries sustained in the occurrence, whereas it was only due to non giving of proper treatment in time. Therefore, Section 302 of IPC will not attract. Further, he would submit that as far as A2 is concerned, offence under Section 302 read with 34 will not attract. To attract Section 34 IPC, at least two or more persons should have been involved by sharing common intention to kill the person. In this case, there is no material to show that both the appellants had a common intention to kill the deceased. Since PWs 1 and 2 are wife and daughter of the deceased, they are only interested witnesses and there is no independent witness to prove the case of the prosecution and to corroborate the evidence of PW1 and therefore, there is a doubt even in the genesis of the complaint itself. The prosecution has suppressed the first complaint and subsequently foisted the false case against the appellants. The prosecution failed to prove its case beyond reasonable doubt and the



benefit of doubt should have been extended to the appellants. Therefore, the judgment of the trial Court is erroneous and perverse and hence the conviction and sentence imposed by the trial Court is liable to be set aside.

5. The learned Additional Public Prosecutor would submit that when the appellants were fencing their lands, they were also encroaching the lands of PW1 put up fence which was questioned by the husband of PW1/deceased, in which, there was a quarrel between them and during that time, A1 took the wooden log, attacked the deceased on his head and when PW1 attempted to prevent the said attack, A2 assaulted PW1 with a stick on her head, left hand and wrist. Since the deceased sustained head injury, he was immediately brought to the hospital and given treatment. Originally, the case was registered for the offences under Sections 294(b), 307 and 324 of IPC and subsequently during the investigation, since one of the injured/husband of PW1 died, the police altered the sections of law by including the offences under Section 302 and 302 r/w 34 of IPC and filed the charge sheet accordingly. He would further submit that PW1 also sustained injury and took



treatment. Though the trial Court initially framed the charges under Sections 294(b) and 302 of IPC against A1 and Sections 302 read with 34 and 324 against A2, subsequently the charges were also altered by the trial Court i.e., the 1<sup>st</sup> accused was framed with the charges under Sections 294(b) and 302 of IPC and the 2<sup>nd</sup> accused was framed with the charges under Sections 294(b), 302 read with 34 and 326 of IPC.

6. The learned Prosecutor would further submit that in order to substantiate the case on the side of the prosecution, totally 17 witnesses were examined and 22 documents were marked, besides one material object was marked and through the said oral and documentary evidence, the trial Court found that the prosecution has proved its case beyond reasonable doubt. The injury sustained by A1 was duly explained by the prosecution. Even in his confession statement itself, A1 has admitted how he sustained injury. Therefore, the contention of the appellants that the injury sustained by A1 was not explained by the prosecution is not tenable. There is an eye witness in this case and her evidence was corroborated by another eye-witness and also the medical evidence. In cases of this nature, merely because the eye-witnesses are



relatives, it cannot be stated that they are interested witnesses. Since the deceased as well as PW1 sustained injuries and were admitted in hospital, the presence of PW1 cannot be doubted. The medical records, AR entry and the doctors' evidence would clearly show that PW1 also sustained injury in the course of occurrence and therefore, the presence of PW1 is not doubtful and the prosecution has established the presence of PW1. Once the presence of PW1 is established by the prosecution, the injured witness is the best evidence. From the evidence of PW1, it is evident that PW2 was in the house at the time of occurrence and after hearing the noise she came out of the house and witnessed the occurrence. The evidence of PW2 is also corroborated by the evidence of PW1 and further, the medical record namely, AR entry, postmortem certificate and the evidence of the postmortem doctor and also the evidence of the doctors who gave treatment to the deceased clearly show that the deceased died due to the head injury caused by the appellants. Therefore, the prosecution has proved its case beyond reasonable doubt. The trial Court also accepted the case of the prosecution and rightly convicted and sentenced the appellants. Thus, there is no merit in these appeals and the same deserve to be dismissed.



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Heard both sides and perused the records.

8. The specific case of the prosecution is that on 02.08.2018 at about 06.30 p.m., when the appellants were fencing their land, they also encroached the lands of PW1 and put up the fence. At that time, the husband of PW1/deceased restrained the appellants from putting up the fence by encroaching the lands of his wife, but without hearing the voice of the deceased, the appellants proceeded to put up the fence. Therefore, the deceased restrained them from continuing to put up the fence. At that time, A1 took the wooden log and assaulted the husband of PW1 on his head, back and overhead, in which, he sustained injuries. When PW1 attempted to prevent the said attack, A2 attacked PW1 and caused injuries to her. Immediately after the occurrence, the deceased was immediately taken to Madurai Meenakshi Mission Hospital and later he was shifted to Government Medical College Hospital, Coimbatore on 26.09.2018 and during treatment, he died on 06.10.2018. While the deceased was taking treatment, the respondent/police registered the case and after completing the



investigation, they altered the offences by including the offences under Section 302 and 302 r/w 34 of IPC and filed charge sheet before the jurisdictional Magistrate's Court.

9. In order to prove the charges on the side of the prosecution, eye-witness as well as the injured witness who set the law in motion was examined as PW1. Reading of the evidence of PW1 shows that PW1 has categorically stated that the appellants encroached the land of PW1 also and were putting up the fence. When the same was questioned by her husband, A1 attacked him with wooden log on his head and due to that, he sustained severe head injury. He was admitted in the hospital and despite giving best treatment, he succumbed to injuries. To corroborate PW1's evidence, her daughter who was present in the house at the time of occurrence was examined as PW2. Further, in order to ascertain the cause of death, the doctor who conducted the postmortem of the deceased was examined as PW8 and regarding the injury and treatment, the doctors who gave treatment to the deceased were examined as PWs.12 to 14 and Accident Register copy of the deceased was marked as Ex.P13. In order to prove the injuries sustained



by PW1, the doctor who treated PW1 was examined as PW11 and the Accident Register copy of PW1 was also marked as Ex.P12. Therefore, from the medical records and also the Doctors' evidence, the prosecution has established that both the deceased and PW1 sustained grievous injury and the injury sustained by the deceased was head injury and due to that he died despite treatment.

10. Though the learned counsel for the appellants vehemently contended that the 1<sup>st</sup> appellant also sustained injury and the prosecution has not explained about the said injury sustained by A1 which is fatal to the prosecution case, both the accused were arrested and A1 gave confession statement voluntarily. Though the confession statement made by the accused before the police officer is not admissible in evidence, however, the prosecution has explained regarding the injury sustained by A1 through the confession and therefore, the contention of the appellants that the prosecution has not explained about the injury sustained by A1 is untenable. On reading of the materials, it is seen that when the appellants were putting the fence in their land by encroaching the land of PW1 also, the husband of PW1/deceased questioned it. After



the incident, A2 took the wooden log available in the scene of occurrence and ran away. Subsequently based on the confession statement of A1, MO1-wooden log was recovered in the presence of the independent witnesses and therefore the recovered portion was marked. Further, the postmortem certificate of the deceased was marked as Ex.P9 which corroborates the evidences of PW1, PW12 to PW14-doctors who treated the deceased and also the entry in Ex.P13-Accident Register copy of the deceased. Likewise, Ex.P12-Accident Register copy of PW1 corroborates the evidence of PW11-doctor who treated PW1, regarding the injuries sustained by PW1.

11. Though A2 was convicted for the offence under Section 326 IPC, the X-ray taken by PW1 was not marked, however the evidence of PW11-doctor who treated PW1 and the Accident Register Copy-Ex.P12 clearly show that PW1 also sustained grievous injury and therefore mere non marking of the X-ray will not go to the root of the prosecution case. Further, the defect in the investigation and the lapse on the part of the investigating officer will not go to the root of the prosecution case and the accused are not entitled for acquittal on the



ground of defect in the investigation. When PW1 who was the injured witness in this case, was also admitted in the hospital and took treatment and based on the statement given by her in the hospital, the respondent/police registered the case and though the occurrence took place on 02.08.2018, the trial commenced and witnesses were examined after one year therefrom and therefore, mere minor discrepancies or contradictions regarding filing of the complaint will not affect the case of the prosecution.

12. The contradictions / discrepancies pointed out by the learned counsel for the appellants are only minor contradictions which will not go to the root of the prosecution case and that are not major contradictions which would go to the root of the prosecution case. Considering the overall evidence, this Court finds that the evidence of PW1 and PW2 are cogent, consistent and reliable and there is no reason to discard the evidence of PW1 and PW2. Therefore, the prosecution established its case through the eye witnesses and if the evidence of the eye witnesses is reliable and the Court inspires confidence on the said eye witnesses, merely because they are relatives, that cannot be a reason



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to throw away their evidence, unless the Court finds they are interested

witnesses and their evidence is unreliable, whereas, in this case, the accused and the deceased are neighbours. Moreover, there were land boundary dispute and due to that, there was a quarrel between them and some fight between them, in which, the appellants attacked the deceased and PW1 and they sustained injuries, but however, there are no materials to show that the deceased attacked the appellants, whereas the evidence of PW1 clearly shows that only the appellants attacked the deceased and also PW1, thereby there was specific overt act against both the appellants and from the evidence of prosecution witnesses, A1 attacked the deceased with wooden log indiscriminately on his head and due to that, the deceased sustained severe head injury and even the evidence of the doctors, medical records and the postmortem certificate clearly show that A1 caused the injury to the deceased on the vital part. The prosecution has clearly established the same through the oral and documentary evidence and also the medical records. However, injured not died at the spot or immediately soon after the occurrence and he survived for 65 days and therefore, this Court finds that the appellants have not committed the offence under Section 302 and also 302 read with



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34 of IPC and this Court comes to the conclusion that the act committed by the appellants falls under Section 304(ii) of IPC and therefore this Court set aside the judgment of conviction and sentence passed by the trial Court for the offence under Section 302 IPC. Accordingly, the appellants are convicted under Section 304(ii) of IPC and sentenced to undergo each 10 years rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo six months simple imprisonment.

13. Though the learned counsel for the appellants vehemently contended that there was no specific overt act against A2 for committing the offence under Section 326 of IPC, however reading of the evidence of PW1 and also PW11-doctor's evidence and the Accident Register Copy of PW1-Ex.P12, amply prove the overt act against A2 for having committed the offence under Section 326 of IPC and therefore, A2 is convicted and sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo six months simple imprisonment. The conviction and sentence imposed by the trial Court on the appellants for the offence under Section 294(b) is confirmed.



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**WEB COPY** 14. With the above modification, these Criminal Appeals are partly allowed. The period of sentence already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C.

[P.V, J.] [L.V.G, J.]  
14.10.2025

Index : Yes / No  
Neutral Citation : Yes / No  
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To

1. The Additional Sessions Judge,  
Fast Track Court,  
Karur District.

2. The Inspector of Police,  
Palavidhuthi Police Station,  
Karur District.

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

4. The Section Officer  
Criminal (Records) Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VELMURUGAN, J.**  
**AND**  
**L.VICTORIA GOWRI, J.**

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**JUDGMENT MADE IN**  
**Cr1.A(MD)Nos.255 and 261 of 2022**

**DATED : 14.10.2025**