

Cr1.A(MD)No.347 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	03.09.2025
Pronounced on	.09.2025

CORAM :

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

Cr1.A(MD)No.347 of 2022

Pitchai

... Appellant/ Accused No.2

vs.

The State,
Rep. By Inspector of Police,
Pamban Police Station,
Pamban.
(Crime No.03/2013)

... Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the judgment made in S.C.No.132 of 2013 on the file of the Additional District and Sessions Judge, Ramanathapuram, dated 12.04.2022 and set aside the same and allow this criminal appeal by acquitting the appellant from all the charges.

For Appellant : Mr.T.Lajapathiroy, Senior Counsel for
Mr.V.R.Shanmuganathan
For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor



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JUDGMENT

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

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This Criminal Appeal has been filed to call for the records relating to the judgment made in S.C.No.132 of 2013 on the file of the Additional District and Sessions Judge, Ramanathapuram, dated 12.04.2022 and set aside the same and allow this criminal appeal by acquitting the appellant from all the charges.

2. A case was registered in Crime No.3 of 2013 for the offences under Sections 449, 302 read with 34 IPC as against the appellant/A2 and another accused/A1. Pending trial, A1 died and therefore, the charge against A1 stood abated and the appellant/A2 alone faced the trial.

3. The case of the prosecution is that on 11.01.2013 at about 03.45 p.m., while A1 was crossing the house of the defacto complainant/PW1, the dog of PW1 barked at A1 and therefore, he attacked the dog by pelting stones. On seeing the same, the defacto complainant quarreled with A1. At that time, the defacto complainant



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was assaulted by A1 by hand and A1 was also assaulted by hand by one

Santhiya Reni who is PW1's brother's son. This is the motive projected

by the prosecution for the commission of the subsequent occurrence.

After the first occurrence at 03.45 p.m., on the same day at 06.45 p.m., A1

along with the appellant/ A2 trespassed into the house of PW1 with the

wooden log with a common intention to murder Santhiya Reni and A1

attacked him with wooden log on his head. Thereafter, both A1 and the

appellant ran away from the scene of occurrence. The victim was

immediately taken to a hospital at Pamban and thereafter he was

referred to Ramanathapuram Government Hospital and thereafter he

was admitted in Hannah Joseph Hospital at Madurai, where, he died on

16.01.2013. On the complaint of PW1, a case in Crime No.3 of 2013 on

the file of the respondent/police for the offences under Sections 449 and

302 read with 34 IPC, was registered against A1 and the appellant.

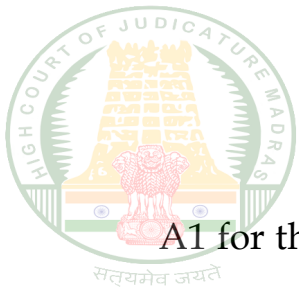
Subsequently, the investigating officer investigated the case, laid the

charge sheet before the jurisdictional Magistrate and after completing

the formalities, the same was committed to the Court of Session in

S.C.No.132 of 2013 on the file of the Additional District and Sessions

Judge, Ramanathapuram. Subsequently, charges were framed against



WEB COPY A1 for the offences under Sections 449, 302 read with 34 IPC and against the appellant/ A2 charges were framed for the offences under Sections 449, 34 read with 302 IPC.

4. In order to substantiate the charges against the accused, on the side of the prosecution, 15 witnesses were examined as PW1 to PW15 and 15 documents were marked as Exs.P1 to P15 besides two material objects as M.O.1 and M.O.2. On the side of the appellant/ A2, no oral or documentary evidence was adduced.

5. After completing the trial and hearing the arguments on either side, the trial Court convicted the appellant for the offences under Sections 449 and 302 read with 34 IPC and sentenced to undergo life imprisonment for the offence under Section 302 read with 34 IPC with a fine of Rs.5,000/- in default to undergo three years rigorous imprisonment and five years rigorous imprisonment was imposed for the offence under Section 449 IPC with a fine of Rs.3,000/- in default to undergo one month rigorous imprisonment. Challenging the said judgment and conviction, the appellant/ A2 has filed the present appeal.



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The learned Senior Counsel for the appellant would contend that the prosecution has failed to establish the common intention of the appellant along with A1 to commit the offence as alleged by the prosecution. None of the prosecution witnesses have deposed about the common intention of the appellant. He would further contend that the specific overt act is alleged only against A1 and it is not the case of the prosecution that the appellant caused injury to the deceased. He would further submit that there was a delay in giving the complaint and sending the FIR to the Magistrate's Court. While the occurrence took place at 06.45 p.m., the complaint was given only at 21.30 hours and though the FIR was registered on 11.01.2013 at 21.30 hours, it was sent to the Magistrate's Court only on 13.01.2014 after a delay of two days. However, the said delay was not properly explained by the prosecution. The defacto complainant/PW1 also sustained injury and the prosecution has not explained the injury sustained by PW1.

7. The learned Senior Counsel would further submit that the doctors who had initially treated the deceased at Pamban Hospital

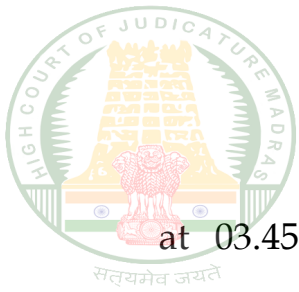


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and Ramanathapuram Government Hospital were not examined by the prosecution. Further, the accident register copy issued by Hannah Joseph Hospital at Madurai shows that the deceased was admitted in their hospital at 10.01 p.m on 11.01.2013. Therefore, it is highly improbable to admit the deceased within three hours from Pampan to Madurai that too after taking treatment in two different hospitals. Thus, the non examination of the doctors at Ramanathapuram itself would falsify the case of the prosecution. Further, PW12 Dr.Arunkumar has categorically admitted that there is no external injury on the head of the deceased. Moreover, Ex.P7-Accident Register copy and Ex.P8-intimation given to police station do not reveal the place of injury and the person who caused the injury. The learned Senior Counsel would also submit that the trial Court failed to note that a counter case in Crime No.4 of 2013 had been registered against PW1 and his sons on the same day. Thus, he would pray for setting aside the judgment of conviction and sentence.

8. The learned Additional Public Prosecutor would submit that in order to take vengeance for the first occurrence happened



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at 03.45 p.m on 11.01.2013, the appellant accompanying with A1,

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at 06.45 p.m., and attacked the deceased victim with a wooden log on the

vital part of the head, due to which, he sustained head injury and

succumbed to the injury. The appellant was accompanied with A1 and

he instigated and shouted at A1 to take away the life of the deceased

victim. He would further submit that PWs.1 to 3 who are the eye

witnesses, have clearly spoken about the involvement of the appellant

and the postmortem doctor also has spoken that the deceased

succumbed to the head injury. Though the appellant did not take part of

the first occurrence which took place at 03.45 p.m., but however, he

accompanied with A1 during the second occurrence at 06.45 p.m and

trespassed into the house of the defacto complainant and the evidence of

PWs.1 to 3 also proved the same and there is a specific overt act against

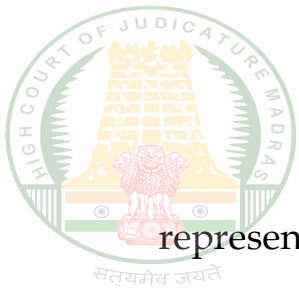
the appellant. He would also submit that the prosecution proved it's

case beyond reasonable doubt and based on the same, the trial Court

convicted and sentenced the appellant as stated above. Thus, he would

pray for dismissal of the appeal. In support of his contentions, he placed

reliance on a decision of this Court in Durai and another vs. State



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represented by the Inspector of Police, Aranthangi Police Station,
Pudukkottai (CrI.A(MD)No.44 of 2022, dated 24.07.2025).

9. Heard both sides and perused the records.

10. Admittedly, there was a first occurrence on 11.01.2013 at 03.45 p.m. At that time, since the dog of the defacto complainant barked at A1, A1 pelted stones against the dog which was questioned by the defacto complainant, in which, there was a wordy quarrel as well as physical assault by each other. In this regard, on the complaint of A1's father, a case was registered against the defacto complainant, Thiraviam, Martin and Athisayam and it is pending in C.C.No.54 of 2024. Subsequent to the first occurrence, on the same day, A1 along with the appellant/ A2 trespassed into the house of the defacto complainant with the wooden log with a common intention to take away the life of the deceased victim. At that time, the appellant raised voice to A1 to take away the life of the deceased victim. A1 also attacked the deceased with the wooden log on his head, in which, the deceased sustained head injury and succumbed to the same. Since the appellant accompanied



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with A1 and also participated in the crime, the case was registered against the appellant. After investigation, charge sheet was laid and after trial, the appellant was convicted and sentenced as stated above.

11. Reading of the evidence of PWs.1 to 3 shows that they have clearly spoken about the involvement of the appellant. They have clearly stated that the appellant along with A1 trespassed into the house of PW1. At that time, the appellant shouted and raised voice to take away the life of the deceased victim and A1 also attacked on the head of the deceased by wooden log and he sustained head injury and subsequently succumbed to the same. The evidence of PW2 and PW3 is corroborated by the evidence of PW1. Therefore, the prosecution has proved the case beyond all reasonable doubt through PWs.1 to 3-eye witnesses. The Doctor evidence and postmortem report also clearly show that the deceased victim died due to the head injury. PWs.1 to 3 have also stated that A1 was possessing wooden log. However, PWs.1 to 3 have not stated that the appellant also attacked the deceased victim. The postmortem report also shows that there was only one blow by A1 on the head of the deceased, in which, he sustained head injury and



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there was no other attack or injury. The evidence of PWs.1 to 3 also

WEB COPY shows that the appellant had not used any weapon nor he attacked the deceased. However, their evidence proves that the appellant trespassed into the house of the defacto complainant and has committed the offence under Section 449 IPC and accordingly, the trial Court convicted and sentenced the appellant to undergo five years rigorous imprisonment for the offence under Section 449 IPC with a fine of Rs.3,000/- in default to undergo one month rigorous imprisonment.

12. As far as the offence under Section 302 read with 34 IPC is concerned, there is no material to show that the appellant participated in the first occurrence at 03.45 p.m and the only allegation against the appellant is that he accompanied with A1 during the second occurrence at 06.45 p.m. The evidence of PWs.1 to 3 and the medical evidence would show that the appellant has not committed the offence under Section 302 read with 34 IPC. Though the charge against A1 was abated on his death, the allegation against the appellant/A2 is that he accompanied with A1, trespassed into the house of the defacto complainant with wooden log and instigated A1 by raising voice to take



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away the life of the deceased. There is no specific overt act against the
appellant regarding attack of the deceased by wooden log.

13. The deceased was attacked in order to take vengeance of the first occurrence and therefore, it is not a pre-planned incident and it is only due to sudden provocation and therefore, it does not fall under Section 302 read with 34 IPC. Further, this Court finds that A1 attacked the deceased with one blow on the vital part of his head. The deceased victim neither died on the spot, nor died immediately soon after the occurrence. The occurrence took place at 06.45 p.m on 11.01.2013 and the injured was admitted in the hospital and died only on 16.01.2013. The medical evidence shows only one injury. Therefore, this Court is of the view that the offence do not fall under Section 302 read with 34 IPC, rather, the offence falls under Section 304(2) read with 34 IPC. Mere defect in the investigation would not vitiate the case of the prosecution. The accused is not entitled to get acquittal on that ground alone.

14. In view of the above, while confirming the conviction under Section 449 of IPC, the conviction under Section 302 read with



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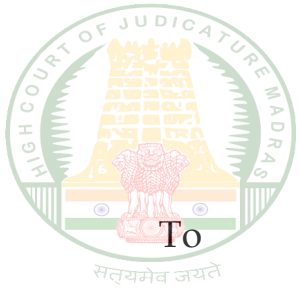
Section 34 of IPC is set aside. Instead, the appellant is convicted under

Section 304(2) read with 34 of IPC and is sentenced to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of Rs.5,000/- in default to under one year simple imprisonment. The sentences shall run concurrently. The trial Court is directed to take steps to secure the accused to undergo the remaining period of sentence. The period of sentence already undergone by the appellant shall be set off under Section 428 of Cr.P.C., as against the substantive sentence.

15. In the result, with the above modification, the Criminal Appeal is partly allowed.

[P.V, J.] [L.V.G, J.]
.09.2025

Index : Yes / No
Neutral Citation : Yes / No
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1. The Additional District and Sessions Judge,
Ramanathapuram.
2. The Inspector of Police,
Pamban Police Station,
Pamban.
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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PRE-DELIVERY JUDGMENT MADE IN
Cr1.A(MD)No.347 of 2022

DATED : .09.2025