



CrI.A(MD)No.432 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 10.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

CrI.A(MD)No.432 of 2022

1.Ajith Kumar (abated)*

2.Kannan

3.Ramuthai

... Appellants/Accused No.1 to 3

*(A1 is abated as per order of this
Court dated 29.10.2024)

Vs.

State rep. By

The Inspector of Police,

Gudalur North Police Station,

Theni District.

(Crime No.271/2016)

...Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of the Criminal
Procedure Code to call for the entire records and set aside the conviction
rendered in Judgment dated 27.04.2022 made in S.C.No.64 of 2017 on



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the file of the Additional District and Sessions Judge, (FTC), Theni, by
allowing the Criminal Appeal.

For Appellants : Mr.Gopalakrishna Lakshmana Raja
Senior Counsel
for Mr.S.G.L.Rishwanth – for A2 & A3
abated - A1

For Respondent : Mr.T.Senthil Kumar,
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 to 3 in the judgment dated 27.04.2022 made in S.C.No.64 of 2017 by the Additional District and Sessions Judge, (FTC), Theni, in 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.5,000/- in default to undergo one year rigorous imprisonment and A2 had been convicted for offence punishable under Section 302 r/w 109 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year rigorous imprisonment and A3



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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.5,000/- in default to undergo one year rigorous imprisonment.

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

(a) On 25.10.2016, P.W.1, Periyasamy lodged a complaint under Ex.P1 by contending that on 01.05.2016 and 02.05.2016, A1 and one Manoj picked up a quarrel with his son, the deceased Chellapandi when he had gone to take bath. On 02.05.2016, A1 came to his house, abused him in vulgar language, and damaged the utensils, bureau and other household articles. The complaint was lodged by the deceased against A1 and Manoj. Thus, that existed previous enmity against his son. On 22.10.2016 his son was riding a motorcycle and passing the house of A1, he accidentally scraped the motor cycle of A1 which was parked in front of his house. Thereafter, on 24.10.2016 at about 8'o clock his son was proceeding from his house on the roadside from South to West. The complainant while returning from his work followed him. His wife, Muthupillai P.W.2 was returning from a shop proceeding from North to South. At that time A1 to A3 were standing near the house, abused his son with filthy language. When his wife, P.W.2 questioned



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them, as to why they were shouting at her son, A2 and A3 shouted at her with filthy language, assaulted her with hands and pushed her down. A1 took a knife and stabbed his son Chellapandi on his neck, wrist, chest, right hand joint and other vital parts of the body repeatedly. He sustained grievous injuries and thereafter succumbed to the said injuries. When they raised hue and cry and tried to apprehend A1 he had a fall, sustained an injury on his head. He left the weapon in that place and all the accused fled away from the place of occurrence.

(b) The complaint Ex.P1 was received by P.W.24 Mr.K.Amudhan, Sub Inspector of Police, Gudalur North Police Station and a case in Crime No.271 of 2016 was registered under Sections 341, 294(b), 323, 302 IPC against the accused. Thereafter, he forwarded the FIR (Ex.P.10) to the Judicial Magistrate, Uthamapalayam and copies were forwarded to the concerned officer for reference through Head Constable Anbalagan (P.W.18).

(c) P.W.25 Thiru.John Benjamin, Inspector of Police took up the case for investigation on 25.10.2016, had gone to the place of occurrence and prepared rough sketch (Ex.P12), observation mahazar (Ex.P11) in the presence of witnesses Kannan and Jeya Baskar. He also recovered blood stained Aruval (M.O.1) and blood stained cement earth (M.O.3),



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ordinary earth (M.O.4) under a recovery mahazar (Ex.P13). Thereafter, he conducted inquest over the dead body in the presence of panchayadhars and prepared inquest report (Ex.P14). He made arrangements to have the dead body photographed through one Silambarasan (P.W.23).

(d) Thereafter, he examined the witnesses Periyasamy, Muthupillai, Malaichamy, Selvam, Moovendan and Samayapandi and recorded their statements. Thereafter, he sent the dead body through Head Constable Thiru.Karuppiah (P.W.22) for autopsy and also recovered lungi (M.O.5) from the dead body and forwarded the material objects to Judicial Magistrate. He sent a requisition with prayer to forward the material objects recovered to the Forensic Lab. Thereafter, he arrested A1 in the presence of witness Murugan, (P.W.15) and Muthupandi and recorded his confession statement under (Ex.P3) and recovered the blood stained lungi (M.O.2) under a recovery mahazar (Ex.P24).

(e) Thereafter, he arrested both A2 and A3 and sent them to remand. He also forwarded the material objects under Form-91 through Iyyappan (P.W.19) Head Constable. Thereafter, he made arrangements for recording the statement of witnesses Periyasamy (P.W.1), Muthupillai (P.W.2), Malaichamy (P.W.3) and Moovendan (P.W.5) under



Section 164 Cr.P.C before the Judicial Magistrate. The Judicial Magistrate, Bodinaikanur recorded their statements and the same was marked as Ex.P15 to Ex.P18.

(f) He also recorded the statements of other witnesses. He examined Dr.Maheshwari who had conducted autopsy on the dead body.

(g) P.W.21 Dr.Maheshwari, issued a post-mortem report and final report Ex.P.8 in which she mentioned the injuries as follows :

“Injuries : -

1. an incised wound with clear cut margin in extremely from submandibular region to left side of neck 30x6x3cms size on opening the wound 1x0.5x0.5cms size cut end of trachea seen

2. A large incised wound with clear cut margin over middle of chest extremely from left side of chest upto right shoulder 38x9x6.5cm, on opening the wound linear fracture of right & left 3rd rib: 9cm and 11cm size respectively.

3. An oblique shaped incised cut wound 15x5x15cms size over epigastric region seen. On opening the wound linear fracture of right and left 11th rib, 9cm & 7cm size respectively on opening this wound incised wound 7x0.5x0.5cms size over right lobe of liver seen, and also 6x1.5x1.5cms size incised wound over left lung seen, heart pale and chambers empty, spleen and kidney pale stomach contain 300ml of indigested food



particles. Intestine floated with gas. Bladder empty. Genitals normal.

4. A large incised lacerated wound 17x9x5cms over right upper arm extending for deltoid region upto right axilla. On opening the wound lacerated of deltoid and triceps muscle seen.

5. an irregular lacerated wound over medial aspect of right elbow joint 16x8x3cm exposing lower end of humerus upper end by radius and ulna bone which are crushed.

6. An incised wound with clear cut margin 10x6x2cm line over lower 1/3rd of left upper arm seen

7. an irregular cut wound 4x4x1cm size over left wrist joint present.

8. An incised wound with clear cut margin in 13x6x3cms size over left upper and interscapular region of back. On opening the wound fracture of 4th, 5th, 6th rib present.

9. 14x6x3cms size incised wound and over right lower interscapular region of back, on opening the wound fracture of 5th, 6th, 7th ribs seen.

10. Spine intact. Skull bone intact, Brain and meninges pale.

Death would have been occurred 15 to 17 hours prior to autopsy

The deceased would appear to have died of injury to vital organs lung and liver.”



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(h) He also examined Dr.Vijayendran, who had produced the chemical forensic report under (Ex.C.1) and serology report (Ex.C.2) and recorded his statement.

(i) Thereafter, he altered the Sections of Law against A1 under Sections 341, 294(b), 324 and 302 IPC, against A2 under Sections 341, 294(b) 302 r/w.109 IPC and against A3 under Sections 341, 294(b), 323 and 302 r/w.34 IPC under the alteration report marked as Ex.P19 and submitted the same to the Court. After completing the investigation, the investigating officer filed final charge sheet against the accused.

3. On receipt of the records, the Judicial Magistrate, Uthamapalayam, took up the case in P.R.C.No.3 of 2017 and issued summons to the accused. After the appearance of the accused, copies of the entire records were furnished to them free of cost under Section 207 Cr.P.C.

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



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5. The Principal District and Sessions Judge, Theni, received the case records and numbered it as S.C.No.64 of 2017 and made it over to the Additional District and Sessions Judge (FTC), Theni.

6. On receipt of the records, the Additional District and Sessions Judge (FTC), Theni, framed charges against A1 under Sections 341, 294(b), and 302 IPC, against A2 under Sections 341, 294(b) 302 r/w.109 IPC and against A3 under Sections 341, 294(b), 323 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.

7. On the side of the prosecution, P.W.1 to P.W.25 were examined and Ex.P1 to Ex.P20 were marked. Material Objects M.O.1 to M.O.5 were produced. On the side of the accused, neither oral nor documentary evidence was examined. Court document Ex.C1 and Ex.C2 were marked.

8. On conclusion of trial, the learned Additional District and Sessions Judge (FTC), Theni, convicted the accused by judgment dated



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27.04.2022, against which, the present Criminal Appeal has been filed by the appellants/accused on the following among other grounds :

(i) The prosecution relied upon the evidence of one Muthupillai (P.W.2) mother of the deceased, who has been portrayed as injured witness. But there is nothing on record to show that she sustained injuries as alleged by the prosecution and there are no exhibits marked by the prosecution to support the case. However, the medical evidence is contrary to the ocular evidence and hence, her evidence does not repose confidence and cannot be relied upon. Even with regard to PW1, PW6 and PW13 their evidence are not corroborating with each other and have vital discrepancies especially with PW2's evidence and hence cannot be relied upon. Expunging the above witnesses, all other witnesses are only officials and experts, etc., and as such the prosecution miserably failed to bring home the guilt of the accused.

(ii) The motive also fails and according to the alleged Prosecution case the original motive is between Accused No.1 and one Anand, but the said Anand has not been examined. There is no direct motive between the deceased and the Accused and they have been falsely roped in by enemical witnesses.

(iii) According to the prosecution case the place of occurrence is



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on the road but it is an admitted fact that the body of the deceased was recovered from within the house of the Accused, hence the mode of occurrence as alleged by the prosecution cannot be relied upon. It is crystal clear that the prosecution is not coming forward with clean hands.

(iv) Even according to the evidence let in by the prosecution, it is crystal clear that the deceased was the original aggressor and had set fire to the house of the accused and had damaged the valuables and it is crystal clear that they are not coming forward with the truth especially with regard to the injuries on the accused and the damage especially fire damage caused to the house of the accused.

Hence, they prayed to set aside the judgment of the trial Court and to acquit the accused from all charges.

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

9. The learned Additional Public Prosecutor appearing for the State contended that the prosecution case is supported by the eye witnesses to the occurrence. The motive for the occurrence was spoken by P.W.1, who is the complainant. The eye witnesses P.W.1, P.W.2, P.W.6,



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P.W.7, P.W.8, and P.W.13 clearly stated the facts of occurrence and their evidence was corroborated by medical evidence. The arrest, confession, recovery were duly proved and the Forensic medical evidence also supported the prosecution case. It is false to state that the deceased was the aggressor. The trial Court after appreciating the oral evidence and documentary evidence rightly held the accused guilty of the offence and convicted them, which is proper, and there is no merit in appeal and the same is liable to be dismissed.

10. Now this Court has to decide whether the prosecution has proved the guilt of the accused beyond reasonable doubt, by cogent evidence and whether the judgment of the trial Court is right in conviction or liable to be set aside?

11. We carefully analysed the entire records and evidence.

12. During the argument, it was informed that A1 died on 26.09.2023 and the case against A1 was dismissed as abated.

13. As far as motive is concerned according to the



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prosecution case A1, and one Manoj had previous enmity with the deceased and his friend Anand, but during trial, neither Manoj nor Anand were examined as witness. Further it is not the case of the prosecution that A2 and A3 had any previous enmity or motive to kill the deceased. In Ex.P1, the complainant did not allege any previous motive by A2 and A3 with the deceased. His wife P.W.2 also admitted that she had only heard about the previous incident no personal knowledge of it, and she did not state anything against A2 and A3 regarding motive or previous enmity. In view of the death of A1, we do not decide whether A1 had any previous motive with the deceased.

14. Now, this Court has to decide whether there is any material available to establish that A2 and A3 participated in the crime and facilitated A1 in committing the crime as against the deceased. In Ex.P1, Complaint which was originally given by P.W.1, Periyasamy, the father of the deceased, he stated that on the date of occurrence A1 to A3 and one Juvenile accused abused his son, at that time his wife P.W.2 questioned A1 why her son was abused. There upon A3 and her son Vineeth (juvenile accused) intervened, and state that the deceased created problem for them, and they would not leave him. Assaulted P.W.2 with



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hands and pushed her down. Thereafter A2, assaulted his son with his hands, A1 took out the knife concealed at his hip and inflicted multiple cut injuries all over the body. His son therefore succumbed to injuries.

15. But during trial contrary to contents of the complaint, he deposed that at the time of occurrence A2 and A3 were holding the deceased while A1 inflicted injuries on the deceased. His version of the events was also supported by P.W.2 (mother of the deceased), P.W.6, P.W.8, and P.W.13. However this Court noticed that the Investigating Officer recorded the statement of the above witness and other witnesses on 25.10.2016 immediately on the next day of the occurrence but none of the above witnesses stated A2 and A3 held the deceased when A1 attacked him. Instead, they stated that the deceased was assaulted by A2 with hands, who then instigated his son A1 to kill him. Further the Judicial Magistrate, Bodinaickanur recorded the statement of some of the witness under Section 164 Cr.P.C. viz., P.W.1, P.W.2, P.W.3 and P.W.5 on 14.11.2016 after a lapse of 19 days from the date of the occurrence. P.W.1 and P.W.2, for the first time stated there in that A2 and A3 help with the deceased while A1 attacked him. However, P.W.3, and P.W.5 did not state that A2 and A3 facilitated A1 in killing the deceased. There was



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considerable delay on the part of the Investigating Officer in making arrangements to record the statements of the witnesses before the magistrate, for which there is no explanation on the side of the prosecution. The prosecution cited 11 witness to the occurrence as eyewitnesses, but except P.W.1, and P.W.2, all other witnesses did not support the case of prosecution. However, there are lot of contradictions in the their evidences for example P.W.6 in her testimony stated that P.W.2 went to the house of accused and questioned the accused as to why they had created problem with her son whereupon A1 attacked her. Immediately P.W.2 fell down and became unconscious. She further stated that she went to our house to bring water to help P.W.2 to regain consciousness, and that while returning, she witnessed the occurrence. But she did not say that P.W.2 witnessed the occurrence. P.W.8 and P.W.9 also did not state that P.W.2 witnessed the occurrence. The evidence of eye witnesses did not corroborate each other. On the contrary, their versions were contradictory and inconsistent, and their testimony did not inspire the confidence of this Court. The evidence of eye witnesses did not corroborate each other. On the contrary, their versions were contradictory and inconsistent, and their testimony did not inspire the confidence of this Court.



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16. Even in the inquest report also it was not stated that A2 and A3 held the accused and A1 killed him. The prosecution failed to prove the overt act of A2 and A3 in committing the murder of the deceased along with A1 beyond all reasonable doubt, however the trial Court erroneously convicted them for the offence under Sections 302 r/w 109 IPC and 302 r/w 34 IPC which is liable to be set aside.

17. Further, as per the evidence of P.W.2 she went to the house of the accused and questioned A1, as to why they had a problem with his son, where upon, A3 and the Juvenile attacked her and pushed her down. P.W.2 claimed to have sustained fracture injury for which P.W. 20, Dr. Abu Tahir, who treated her, issued accident register. When P.W.20 was examined, he deposed that P.W.2 had informed him that she was assaulted by four person. The accident registered was marked, as Ex.P20. However, no fracture injury was found. However, tenderness was noticed over the shoulder, left side chest. P.W.20 further stated that, P.W.2, left the hospital without any intimation, and that he could not issue certificate about the nature of injuries. A3 was charged for the offence under Section 323 IPC, however the trial court acquitted A3 for the offence under Section 323 against which the State did not prefer any appeal.



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Further P.W.2 did not specifically state the overt act of each accused.

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18. Though the appellant raised a ground that the deceased was the real aggressor and had damaged the house of the accused and attacked accused No.1, but no documentary evidence was produced to substantiate the same. Hence the said ground is not sustainable.

19. The prosecution failed to establish the crime against the accused beyond all reasonable doubt. Hence the benefit of doubt is given to accused and judgment of the trial Court is liable to be set aside. Since the prosecution has failed to prove the appellants A2, and A3 committed the crime or facilitated the killing of the deceased the punishment awarded under Sections 302 r/w.109 and 302 r/w.34 IPC is liable to be set aside and the accused are hereby acquitted of all the charges.

20. Accordingly, this Criminal Appeal stands allowed and the judgment dated 27.04.2022 passed in S.C.No.64 of 2017 on the file of the Additional District and Sessions Judge, (FTC), Theni, is hereby set aside. The appellants/A2 and A3 are acquitted of all the charges. The



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appellants are directed to be set at liberty forthwith. The bail bonds executed, if any, shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellants/A2 & A3. The appellants are directed to be released forthwith, unless their custody is required in connection with any other case.

(P.V., J.) & (R.P., J.)
10.11.2025

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

RM

Copy to

- 1.The Additional District and Sessions Judge,
(FTC), Theni.
- 2.The Inspector of Police,
Gudalur North Police Station,
Theni 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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AND
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RM

Judgment in
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