



Crl.A(MD)Nos.28 & 238 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.28 & 238 of 2020

Crl.A(MD)No.28 of 2020:

Senthur

... Appellant /
Accused

Vs.

The State represented by
The Inspector of Police,
Maniyachi Police Station,
Thoothukudi District.
(Crime No.32 of 2017)

... Respondent /
Complainant

Prayer: Criminal Appeal filed under Section 372 of Code of Criminal Procedure, 1973 to call for the records in S.C.No.236 of 2018 on the file of the learned II Additional District and Sessions Judge, Thoothukudi and set aside the judgment dated 05.09.2019 and acquit the accused / appellant.

For Appellant : Mr.P.Banu Prasath

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



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Crl.A(MD)No.238 of 2020:

The State represented by
The Inspector of Police,
Maniyachi Police Station,
Thoothukudi District.
(Crime No.32 of 2017)

... Appellant
Complainant

Vs.

Chendur

... Respondent /
Accused

Prayer: Criminal Appeal filed under Section 378(i) of Code of Criminal Procedure, 1973 to call for the records in S.C.No.236 of 2018 on the file of the learned II Additional District and Sessions Judge, Thoothukudi and set aside the judgment dated 05.09.2019 and convict the accused / appellant.

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

For Respondents : Mr.C.Mayil Vahana Rajendran

COMMON JUDGMENT

Crl.A(MD)No.238 of 2020 has been filed by the State questioning the judgment dated 05.09.2019 made in SC.No.236 of 2018 acquitting the accused



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Senthur under Section 302 of IPC and finding him guilty of the lesser offence

under Section 326 of IPC. Crl.A(MD)No.28 of 2020 has been filed by

Senthur / accused, questioning the very same judgment and seeking total

acquittal. By the impugned judgment, the accused was found guilty for the

offence under Section 326 of IPC and sentenced to 7 years Rigorous

Imprisonment and a sum of Rs.1000/- was levied as fine, in default, sentence to

undergo 6 months Simple Imprisonment was imposed. The appellant was also

found guilty of the offence under Section 294(B) of IPC and a sum of Rs.1000/-

was levied as fine, in default, sentence of 3 months was also imposed. The

appellant was also found guilty for the offence under Section 506(ii) of IPC and

sentenced to undergo 7 years of Rigorous Imprisonment. He was also

sentenced to pay fine of Rs.500/-. Default sentence was also imposed.

2.The case of the prosecution is as follows :

Gopalsamy / deceased used to interact with Shanthi / wife of the

accused. The accused developed suspicion over the same. On 04.10.2017, at

about 09.30 p.m, Sekar / son of Gopalsamy (PW1) and Vasantha / wife of

Gopalsamy (PW2) were talking to each other inside their house. The deceased

was also at home. The accused came there and banged the door with casuarina

stick. PW.1 Sekar came out. The accused employing indecent and foul



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language, asked where his father was. Gopalsamy then accosted him.

Thereupon, the accused questioned him as to why he was talking to his wife though he had repeatedly asked him not to do so. He then hit Gopalsamy successively on his head, left cheek as well as jaw. Gopalsamy was rushed to Government Hospital, Ottapidaram. He passed away at midnight on 05.10.2017.

3.Sekar(PW1) lodged Ex.P1 complaint before the Inspector of Police, Maniyachi Police Station. It was registered as Crime No.32 of 2017 at about 03.00 a.m on 05.10.2017 for the offences under Sections 294(b), 302 and 506(ii) of IPC. PW18 was then working as Inspector of Police, Maniyachi Police Station. He took up the investigation and went to the spot at around 04.00 a.m. He prepared observation mahazar and also rough sketch. He collected the blood stained earth samples. He examined the witnesses and recorded their statements. Inquest was held at 07.00 a.m on 05.10.2017. Ex.P18 is the inquest report. Post-mortem was conducted at around 11.30 a.m. The accused was arrested at around 11.30 p.m near Muramban bus stop. The confession statement was taken from the accused in the presence of the Village Administrative Officer, Ananthi and Village Assistant, Velusamy at around 12.30 p.m. Based on the disclosure statement, casuarina stick MO1 was seized



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from the house of the accused. At around 13.30 hrs, the blood stained cloths of the deceased were seized. After obtaining the forensic reports and examining the medical witnesses, final report was filed before the learned Judicial Magistrate No.1, Kovilpatti.

4.The final report was taken on file in PRC.No.26 of 2018. The case was later committed to the Principal Sessions Court, Thoothukudi and made over to II Additional District and Sessions Judge, Thoothukudi in SC.No.236 of 2018. Charges were framed against the accused for the offences under Sections 294(b), 302 and 506(ii) of IPC. The accused pleaded not guilty and claimed to be tried.

5.The prosecution examined PW1 to PW18. Ex.P1 to Ex.P21 were marked. MO1 to MO6 were also marked. Incriminating circumstances were put to the accused under Section 313 C.r.P.C. He characterized them as false. On the side of the accused, no evidence was adduced. After considering the evidence on record, the trial Court by the impugned judgment dated 05.09.2019 found the accused guilty only in respect of the offences under Sections 326, 294(b) and 506(ii) of IPC. Challenging the acquittal in respect of the offence under Section 302 of IPC, the State has filed Crl.A(MD)No.238 of 2020.



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Challenging the conviction and sentence, the accused filed Crl.A(MD)No.28 of

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6. Heard the learned Additional Public Prosecutor appearing for the State as well as the learned counsel appearing for the accused. They reiterated the respective contentions set out in the memorandum of grounds of Criminal Appeal.

7. The learned Additional Public Prosecutor would submit that the Court below, after accepting the case of the prosecution and the evidence projected by them, arbitrarily found the accused guilty only for the lesser offence under Section 326 IPC. In support of his contention that the Court below had completely misdirected itself in law, the learned Additional Public Prosecutor relied on the decision reported in **(2022) 4 SCC 227 (State of Uttarakhand Vs Sachendra Singh Rawat)** and the decision reported in **(1972) 3 SCC 118 (Gudar Dusadh Vs State of Bihar)**.

8. On the other hand, the learned counsel for the accused submitted that the accused ought to have been acquitted in toto.



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9. We carefully considered the rival contentions and went through the evidence on record.

10. It is beyond dispute that Gopalsamy, father of PW1 and the husband of PW2 died on account of homicidal violence. The only question that calls for consideration is whether there is any legally acceptable evidence to connect the accused Senthur with the crime. In support of their case, the prosecution had examined as many as 3 eye-witnesses. PW1 is none other than the son of the deceased. He deposed that he was in his house on 04.10.2017 at around 09.30 p.m. He heard a loud banging on the door. When he came out, he saw the accused standing outside holding a Casuarina stick in his hand.

11. The accused wanted to know the whereabouts of Gopalsamy. Hearing this, Gopalsamy came out. Immediately the accused attacked the deceased by hitting him on his head, left cheek and jaw. After inflicting the aforesaid injuries, the accused uttered intimidatory remarks and left the spot. Thereupon, Gopalsamy was rushed to Government Hospital, Ottapidaram in a jeep belonging to the Panchayat President, Sudalaimuthu and he was admitted there at around 11.30 p.m. Gopalsamy passed away at around 12.15 p.m. PW1 lodged Ex.P1 complaint before the Maniyachi Police Station at around 03.00



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a.m. PW2 wife of the deceased and mother of PW1 also affixed her signature.

PW1 identified MO1 Casuarina stick as the one with which the accused attacked his father. His testimony could not be shaken during cross examination.

12.PW2 Vasantha was the wife of the deceased Gopalsamy. She deposed that the accused was their neighbour. Shanthi was the wife of the accused. According to PW2, her husband treated the said Shanthi like his daughter. But the accused developed suspicion over their relationship. He used to quarrel with Gopalsamy often in that regard. On 04.10.2017 at around 09.00 p.m, she was present in the house along with her husband and son (PW1). She also deposed regarding the occurrence on the same lines as that of her son. Her evidence also could not be shaken during cross examination. Though PW1 and PW2 are related witnesses, they cannot be characterized as interested witnesses. They are natural witnesses. The occurrence took place right outside the house of the deceased at around 09.30 p.m. A catena of judicial pronouncements of the Hon'ble Supreme Court are to the effect that the evidence of a closely related witness cannot be disbelieved merely on the ground that the witnesses are related to each other or the deceased. If the evidence has a ring of truth to it, is cogent, credible and trustworthy, it should be relied upon. [*Jodhan Vs. State of*



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M.P., (2015) 11 SCC 52] In the facts and circumstances of this case, the son and

wife of the deceased can only be called as natural witnesses.

13.PW3 Balasubramanian is also the resident of the locality. He is an independent witness. He was standing outside his house and chatting with few others at around 09.30 p.m on 04.10.2017. His testimony fully corroborates the evidence of PW1 and PW2. He came to the spot immediately after the occurrence had taken place. He deposed that he joined PW1, PW2 and others in taking Gopalsamy to the hospital. PW7 signed as a witness in the observation mahazar Ex.P3 and the seizure mahazar Ex.P4. PW10 Ananthi was working as Village Administrative Officer in Malaipatti Village and she signed as a witness in the confession statement (Ex.P5) and recovery mahazar (Ex.P6). PW11 was the duty Doctor in Government Hospital Ottapidaram. It was he who admitted Gopalsamy and gave him first aid. He issued Ex.P7 accident register. It was he who issued certificate certifying that Gopalsamy passed away on 05.10.2015 at 00.15 hrs. He conducted post-mortem on 05.10.2017 and issued Ex.P8 post-mortem certificate. He had noted as many as 6 injuries on the body of Gopalsamy. He opined that the deceased Gopalsamy appeared to have died due to the fatal head injury suffered by him. PW17 was working as Sub Inspector of Police and it was he who registered Crime No.32 of 2017



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on the basis of Ex.P1 complaint lodged by PW1 Sekar, son of the deceased.

PW18 was the investigation officer who filed the final report. The learned trial Judge rendered a categorical finding that the motive for the occurrence has been convincingly established by the prosecution. The accused had developed suspicion over the relationship between his wife Shanthi and the deceased Gopalsamy and that was the reason for launching a murderous attack on 04.10.2017 at around 09.30 p.m. The Court below further found that the case of the prosecution has been established by the eyewitnesses PW1, PW2 and PW3. However, after accepting the case of the prosecution as such, the trial Court suddenly came to the conclusion that it would not be in the interest of justice to convict the accused for the offence under Section 302 of IPC. It concluded that the act of the accused is punishable only under Section 326 of IPC and accordingly found him guilty.

14.This approach of the Court below can only be characterized as perverse. It has been proved beyond reasonable doubt that the accused attacked the deceased with MO1 casuarina stick. The accused attacked the deceased on his head, left cheek and also jaw. The attack was with such force that the mandible bone pieces got exposed.



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15. Section 300 of IPC is as follows:

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“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

2ndly.—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—

3rdly.—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—

4thly.—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 death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

The Hon'ble Supreme Court in the decision reported in **(1972) 3 SCC 118 (Gudar Dusadh Vs State of Bihar)** interpreted the third clause in the following terms:

“Clause "3rdly" consists of two parts. Under the first part, it has to be shown that there was an intention on the part of the accused to inflict the particular injury which was found on the body of the deceased. The second part requires that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. So far as the



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first part is concerned, the court has to see whether the injury which was found on the deceased was the one intended by the accused or whether it was accidental without his having intended to cause that bodily injury. Once it is found that the injury was not accidental and that the accused intended to cause the injury which was actually inflicted and found on the body of the deceased, the first part shall be satisfied. The court would then go into the second part of the clause and find in the light of medical evidence as to whether the bodily injury inflicted was sufficient in the ordinary course of nature to cause death. If the court finds that the requirements of both the parts have been satisfied, the case shall be held to be covered by clause "3rdly" unless it falls within one of the exceptions. "

16. In the case on hand, it was the accused who went to the house of the deceased, called him out and attacked him. It shows that the assault was premeditated and the blow on the head of Gopalsamy was not accidental. The blow on the head of Gopalsamy with casuarina stick was given with such force that the mandible bone pieces got exposed. The lacerated injury was 10x4x2 cms over the sub-mandibular region. The accused had struck on the vital part on the body of the deceased. The post-mortem doctor PW11 had also opined that it was the head injury that proved to be fatal. Thus the case of the accused stood covered by the third clause of Section 300 of IPC and he ought to have



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been found guilty of the offence of murder.

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17.The Hon'ble Supreme Court in the decision reported in **(2006) 11 SCC 444 (Pulicherla Nagaraju @ Nagaraja Reddy v State of A.P)** had held that the trial Court should carefully scrutinize the facts and decide the pivotal question of intention with care and caution to decide whether the case falls under Section 302 or 304(i) or 304(ii). Likewise, the Court below should apply its mind and give reason if the case would fall under Exception 4 or one of the Exceptions to Section 300 IPC. In the case on hand, the Court below had not given any reason for acquitting the accused for the offence Section 302 of IPC and finding him guilty for the lesser offence under Section 326 IPC. Reasons have to be assigned for coming to any conclusion. In this case, no reason has been set out at all by the Court below. That is why, we characterise the approach of the trial below as utterly perverse. The impugned judgment finding the accused guilty of the lesser offence under Section 326 of IPC is set aside. The finding of the Court below in respect of the charges under Sections 394(b) and 506(ii) of IPC are maintained. We hold that the case on hand would fall within the third clause of Section 300 of IPC. We find the accused guilty of the offence of murder punishable under Section 302 of IPC.



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18.To hear the accused on the question of sentence, call this case on

WEB C 30.01.2025.

[G.R.S., J.] [R.P., J.]
29.01.2025

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

MGA

To

1. II Additional District and Sessions Judge, Thoothukudi

2.The Inspector of Police,
Maniyachi Police Station,
Thoothukudi District.
(Crime No.32 of 2017)



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G.R.SWAMINATHAN, J

and

R.POORNIMA, J.

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