



Crl.A.No.198 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2025
PRONOUNCED ON : 12.01.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.198 of 2018

Sridhar

... Appellant

Vs.

Inspector of Police,
C2 Elephant Gate Police Station (L & O),
Chennai-79.
(Crime No.724/2013).

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction imposed by the learned IV Additional Sessions Judge in S.C.No.67/2014 dated 26.02.2018.

For Appellant : Mr.M.Ganesh, Legal Aid Counsel

For Respondent : Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor assisted by
Ms.Harshana.T

JUDGMENT

The appellant was convicted *vide* judgment dated 26.02.2018 in S.C.No.67 of 2014 by the learned IV Additional Sessions Judge, Chennai (trial



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Court) and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment for offence under Section 304(ii) of IPC. Challenging the same, present Criminal Appeal filed.

2.In this matter, neither the appellant nor his counsel was present on 17.09.2025, hence, this Court directed the respondent Police to secure the appellant and ensure his presence on 25.09.2025. On 25.09.2025, the appellant appeared before this Court and submitted that he is a daily wager and he has no means to engage an Advocate and he requested for a Legal Aid Counsel to be engaged. Considering the same, this Court by order dated 25.09.2025 appointed Mr.M.Ganesh as Legal Aid Counsel for the appellant.

3.Case of the prosecution is that PW1/defacto complainant lodged a complaint (Ex.P1) to the respondent Police on 26.05.2013 stating that he was residing with two sons viz., Selvan and Muniyandi (Hereinafter referred to as 'Deceased') and daughter in Sowcarpet. PW1's sister has two sons viz., PW2/Chinnathambi and Ajith. PW2/Chinnathambi was working as Tailor along with PW1's second son Muniyandi/deceased. The said Ajith was a vagabond who used to steal articles from his house, sell it, make money and



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enjoy spending. Prior to the occurrence, Ajith sold Nokia cellphone of Chinnathambi/PW2 to the appellant for Rs.1,500/-. On 26.05.2013, PW2, his friend Surya and deceased were proceeding near Kalyanapuram Housing Board G-Block, at that time, saw the appellant, questioned and demanded return of Nokia cellphone sold by Ajith. The appellant replied that if the amount is repaid, he would return the cellphone. At that time, PW2 requested SIM Card and Memory Card (MO1 & MO2) to be returned, the appellant returned the same to PW2. The deceased demanded return of cellphone, heated arguments ensued and there was scuffle between deceased and appellant. The appellant pushed deceased with force stating that only if you are alive you will ask the cellphone, the deceased fell flat on the road, sustained injuries on his skull, blood was oozing out and laid motionless. PW1 followed the deceased, witnessed the scuffle and push by the appellant, thereafter, PW1, PW2 and Surya took the deceased in an Auto to Rajiv Gandhi Government General Hospital, Chennai where PW12, Casualty Doctor examined the deceased, declared brought dead, issued Accident Register (Ex.P5) and death intimation (Ex.P6).

4.PW15, Inspector of Police received the complaint (Ex.P1), registered FIR (Ex.P9) in Crime No.726 of 2013 for offence under Section 320 IPC,



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visited the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P10) in presence of PW7 & PW8, conducted inquest on the body of the deceased and prepared inquest report (Ex.P12). PW9, Head Constable identified the body to PW11, Postmortem Doctor who conducted postmortem and issued Postmortem Report (Ex.P4). PW10 is the Sub Inspector of Police who took photographs of the body. Thereafter, PW15 arrested the appellant in presence of PW13 & PW14, recorded confession statement and on examination of witnesses and collection of documents, filed charge sheet. During trial, prosecution examined PW1 to PW15 and marked Exs.P1 to P12 and MO1 to MO4 produced. On conclusion of trial, the trial Court convicted the appellant as stated above.

5.Learned counsel for the appellant submitted that in this case, the father of the deceased/PW1 is not an eyewitness to the occurrence. PW1 claims that he followed PW2, his friend Surya and his son when they were proceeding near Kalyanapuram Housing Board G-Block and witnessed the scuffle and fight between appellant and deceased. As a father, PW1 would have intervened the fight and will not be mute spectator, hence, PW1's presence at the time of occurrence is highly doubtful. The other eyewitnesses projected against the appellant are PW2, PW3, PW4, PW5 & PW6, of which, PW3,



PW4 & PW5 not supported the case of the prosecution. PW6 claims that 5 to 6 persons standing near the scene of occurrence and talking between them, later when she came back, she came to know one person died. PW6 not identified or named either the appellant or any of the witnesses. Now the only witness is that of PW2, son of PW1's sister. PW2 admits that he, his friend Surya and deceased met the appellant, questioned him and demanded return of Nokia cellphone, the appellant replied that unless money of Rs.1,500/- was paid, which was given to Ajith, brother of PW2, he cannot handover the cellphone. In fact the appellant handed over SIM Card and Memory Card (MO1 & MO2) to PW2. PW2 further admits that it was the deceased who became aggressive, picked up fight with appellant and there was push and pull and the deceased fell down. He further admits that the date of occurrence was on Sunday, all consumed alcohol including the deceased. The admitted position is that the appellant only pushed the deceased once. In case of scuffle and fight who had pushed whom is a relating factor since the deceased fell down, suffered injury, later succumbed to injury and hence, the appellant projected as though he is an aggressor and committed the murder. From the evidence of PW2, it is clear that it was only push and pull, no weapon used and further no offence committed with an intention of causing death or with intention of causing any bodily injury which likely to cause death.



6.Learned counsel for the appellant further submitted that PW1 in his evidence admits he knew the appellant prior to the occurrence. Had he seen the occurrence proper, he would have informed PW12, Casualty Doctor that the deceased was pushed by a known person. On the other hand, in the Accident Register (Ex.P5), PW12 records that on 26.05.2013 at about 09.25 p.m. the deceased was brought by his father/PW1 who informed that his son was pushed by an unknown person. Hence, the presence of PW1 in the scene of occurrence is highly doubtful. PW11, Postmortem Doctor conducted postmortem and found bruises and hemorrhages on the skull and gave opinion that *“The deceased would appear to have died on Head injuries.”* According to the only eyewitness PW2, the appellant pushed the deceased once and the deceased fell down, sustained injuries. It is also the evidence of PW2 that prior to push, there was wordy altercation, scuffle, push and pull. In this case, PW7 & PW8 are witnesses for Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10). PW7 admits he was not present when Exs.P2 & P10 prepared. PW9, PW10 & PW15 are Police personnels. PW13 & PW14 are witnesses for arrest and confession. From the confession statement, there is no recovery. The trial Court though charged the appellant for offence under Section 302 IPC, but convicted the appellant for offence under Section 304(ii) IPC finding there is no intention to murder the deceased but the appellant had



knowledge to cause bodily injury. In view of the above, the conviction of the trial Court is not sustainable, hence, he prays for acquittal.

7.Learned Additional Public Prosecutor strongly opposed the appellant's submissions and submitted that in this case, PW1 is the father of the deceased. PW2 and one Ajith are sons of PW1's sister. The occurrence took place at 09.00 p.m. on 26.05.2013 near Kalyanapuram Housing Board G-Block. PW1, his two sons viz., Selvan and Muniyandi (deceased) and a daughter were living with PW1 at Sowcarpet, Chennai. On the fateful, PW2, his friend Surya and deceased were proceeding near Kalyanapuram Housing Board G-Block and PW1 followed them. At that time, the appellant attacked and pushed deceased shouting “you are done with it”. The deceased fell down became motionless, thereafter, PW1 rushed to the scene, took his son/deceased in an Auto along with PW2 and Surya to Rajiv Gandhi Government General Hospital, Chennai where PW12, Casualty Doctor examined the deceased at 09.25 p.m., declared brought dead and issued Accident Register (Ex.P5) and Death Intimation (Ex.P6). In the meantime, information was sent to the Police and PW1 went to the Police Station lodged a complaint (Ex.P1) to PW15/Inspector of Police who registered FIR (Ex.P9) in Crime No.724 of 2013 for offence under Section 302 IPC at 11.30 p.m., rushed to the scene of occurrence, prepared



Observation Mahazar (Ex.P2), Rough Sketch (Ex.P10) in presence of PW7 &

PW8, examined the witnesses present there, recorded their statements, went to the hospital mortuary, conducted inquest on the body of the deceased between 09.00 a.m. and 11.00 a.m. on 27.05.2013, prepared inquest report, collected MO1 & MO2, sent the same to Court and thereafter to the Forensic Examination through Form-95 (Ex.P3). PW9 is the Head Constable who put in-charge of the body. PW10 is the Sub Inspector of Police who took the photographs of the body. PW9 thereafter identified the body to the Postmortem Doctor/PW11 who conducted postmortem and gave Postmortem Report (Ex.P4) confirming that "*The deceased would appear to have died of Head Injuries.*" PW15 received information about the presence of the appellant near Sub Urban Terminal Railway Station, Moor Market Complex, PW15 went there, arrested the appellant on 27.05.2013 at 03.15 p.m. in presence of PW13 & PW14, recorded the confession, identified the place of occurrence and also the place where he threw Nokia cellphone into Koovam river.

8.He further submitted that in this case, PW1 to PW5 are the eyewitnesses to the occurrence. PW6, a person hails from same area stated that she saw 5 to 6 persons talking between them when she passed by and half



an hour later when she came back, she was informed that one of them done to death. In this case, PW3 to PW5 not supported the case of the prosecution.

But PW1, father of deceased and PW2, Cousin of deceased whose cellphone was taken by the appellant, are the eyewitnesses both clearly speak about the appellant attacking and pushing the deceased forcibly to the ground, shouting “you are done with it”, the deceased fell down, sustained injury and died later. The ocular evidence is in conformity to the medical evidence. The trial Court on the evidence and materials found the case proved against the appellant and rightly convicted him for offence under Section 304(ii) IPC, which needs no interference.

9.Considering the submissions and on perusal of the materials, it is seen that in this case, PW1 to PW6 are projected as eyewitnesses to the occurrence. The reason for the attack on the deceased by the appellant is that PW2's Nokia cellphone valued around Rs.4,500/- was stolen by his brother Ajith, a vagabond and sold to the appellant at a lesser value of Rs.1,500/-. PW2 wanted to recover the cellphone came to his maternal uncle's house (PW1's house). Thereafter, PW2, his friend Surya and deceased were speaking between them and proceeding near Kalyanapuram Housing Board G-Block, at that time, they saw the appellant. PW2 questioned the appellant and demanded



return of mobile phone. The appellant claimed that if the amount of Rs.1,500/- repaid, he would return the mobile phone. PW2 requested return of SIM Card and Memory Card (MO1 & MO2) which was returned, the deceased who is also known to the appellant questioned him and demanded return of the mobile phone. Due to which, there was heated arguments, push and pull. The appellant pushed the deceased, who fell flat on the road, sustained injuries on his skull, became motionless. PW1, who followed PW2, his friend Surya and deceased, claims that he saw the push and assault by the appellant. PW1 admits that the appellant is a known person prior to the occurrence. The deceased was taken to Rajiv Gandhi Government General Hospital, Chennai at about 09.25 p.m. on the same day where PW12, Casualty Doctor examined the deceased, issued Accident Register (Ex.P5) and Death Intimation (Ex.P6) recording the death of the deceased. In the Accident Register (Ex.P5), it is seen that PW1 brought the deceased and he stated that his son was pushed by an unknown person. This confirms that PW1 had not seen the occurrence.

10.Now the other witnesses projected against the appellant are PW2 to PW6. Of which, PW3, PW4, PW5 not supported the case of the prosecution. PW6, a vendor from same area stated that she passed the scene of occurrence at the relevant point of time and saw 5 or 6 persons talking and later when she



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returned, she came to know the death of one person. PW6 not named or identified either the appellant or the witnesses in this case. Added to it, her presence is not spoken by PW1 and PW2. Hence, the presence of PW6 at the relevant point of time is highly doubtful. Now the only witness for the occurrence is PW2. From the evidence of PW2, it is clear that he, his friend Surya and deceased met the appellant Kalyanapuram Housing Board G-Block, demanded return of Nokia cellphone, thereafter there was wordy quarrel, exchange of blows, push and pull between them. PW2 admits that the appellant asked to pay Rs.1,500/- to return back the cellphone, at that time, PW2 requested to return SIM Card and Memory Card (MO1 & MO2), the appellant handed back MO1 & MO2 to PW2. Further evidence of PW2 is that the deceased who is known to the appellant became offensive, abused and demanded the mobile phone from the appellant, thereafter, there was a fight, push and pull, later the deceased was pushed by the appellant once, the deceased fell down, sustained skull injury, later died. This is confirmed by the Doctors PW11 & PW12. What could be deduced from the evidence of PW2 is that he, his friend Surya and deceased met the appellant near Kalyanapuram Housing Board G-Block, questioned and demanded return of mobile phone, due to which, there was heated arguments, scuffle, push and pull and the deceased was pushed down by the appellant once, but there was no force or



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further attack by the appellant. The deceased sustained injury on the skull and succumbed to injury. Admittedly, in this case, no weapon used and prior to the push there was a fight and heated arguments which is confirmed by PW2.

11.Though the appellant attempted to project that the deceased consumed alcohol, due to which, he slipped and fell down, the medical evidence and Forensic Report confirms absence of alcohol. Thus, it is confirmed that the fall was due to push and the death was due to fall. In this case, the injury sustained by the deceased is grievous in nature.

12.In view of the above, the conviction of the appellant for offence under Section 304(ii) IPC is modified to 325 IPC and the sentence is modified to period already undergone by the appellant.

13.In the result, this Criminal Appeal is Partly-Allowed. This Court appreciates Mr.M.Ganesh, Legal Aid Counsel for the appellant for meticulous preparation.

12.01.2026

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

WEB COPY

- 1.The IV Additional Sessions Judge,
Chennai.
- 2.The Inspector of Police,
C2 Elephant Gate Police Station (L & O),
Chennai-79.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
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