



Crl. A(MD)No.89 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 08.04.2026

CORAM:

**THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH
AND
THE HONOURABLE Mr. JUSTICE K.K.RAMAKRISHNAN**

Crl. A. (MD)No.89 of 2023

Muthupandi

.. Appellant/Defacto
complainant

Vs.

1.The State through
The Inspector of Police,
Peraiyoor Police Station,
Ramanathapuram District

..1st Respondent/Complainant

2.Muthuvazhivittan
S/o.Kizhavath Thevar
Kidathiraukkai,
Kamudhi Taluk
Ramanathapuram District

3.Velu
W/o.Muthuvazhivittan

.. Respondents /A1 and A2



Crl. A(MD)No.89 of 2023

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Appeal filed under Section 378(1,2) of Criminal Procedure Code, against the judgment dated 30.06.2022 in S.C.No.124 of 2015 on the file of the Additional District Court, Paramakudi.

For Appellant	: Mr.P.Muthusamy
For Respondent	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor for R1 Mr.R.Babu Jeganath for R2 and R3

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J)

This criminal appeal has been filed by the de-facto complainant challenging the judgment passed by the learned Additional District Judge, Paramakudi in SC No.124 of 2015 dated 30.06.2022, wherein, the trial Court had acquitted the respondents 2 and 3/A1 and A2 from all charges.



CrI. A(MD)No.89 of 2023

WEB COPY

2. The case of the prosecution is that on 17.04.2015, when A1 and A2 were collecting wood in a property, which does not belong to them, PW1 and PW2 went to that place and questioned A1 and A2 as to how they can take the wood from the property. As a result, there was a wordy quarrel. On the same day at about 9.30 p.m., the deceased and his children went to the house of the accused persons and questioned them as to how they can take the wood from the property, which is yet to be partitioned. At that point of time, A1, A2 and their son started pelting stones. A2 is said to have slapped the deceased and when he fell down, A1 is said to have attacked the deceased on his chest with stone. The deceased succumbed to the injuries and as a result, an FIR came to be registered based on the complaint given by PW1 in Crime No.22/2015 for offences under Sections 336 and 302 r/w 34 IPC.

3. The respondents 2 and 3 were added as A1 and A2 and their son was included as A3. Since he was a juvenile, he was tried separately before the Juvenile Justice Board.



Crl. A(MD)No.89 of 2023

WEB COPY

4. The FIR was registered by PW13, after receiving the intimation from the Mudukulathur Government Hospital based on the statement recorded from PW1, who was taking treatment in the hospital. The FIR was marked as Ex.P7.

5. PW15 took up the investigation and went to the scene of crime at 1.30 a.m. on 18.04.2015 and prepared the observation mahazar Ex.P2 and rough sketch Ex.P8. He conducted the inquest on the dead body at about 7.00 a.m. in the presence of Panchayatdars and prepared the inquest report Ex.P9.

6. The dead body was sent for postmortem and the postmortem was conducted by PW11 through whom postmortem report (Ex.P6) was marked. The following injuries were noted in the postmortem certificate:

“External injury: Swelling of the right and left chest

2. Abrasion over the left chest 3 x 3 cm size

Opening of thorax: Heart ruptured. Both lungs congested and ruptured. Blood (500ml) collected in the Thoracic cavity. On opening of the abdomen: Liver



Crl. A(MD)No.89 of 2023

WEB COPY congested. All the visceral organ are pale.”

7. The investigating officer recorded the statement of the witnesses under Section 161 of Cr.P.C., and collected all the reports and laid the charge sheet before the District Munsif cum Judicial Magistrate, Kamuthi, which was taken on file in PRC No.25/2015. After service of copies under Section 207 Cr.P.C., the case was committed and made over to the Additional District and Sessions Judge, Paramakudi, which was taken on file in SC No.124/2015.

8. The trial Court framed charges for offence under Sections 336 and 302 r/w 34 IPC and the accused persons denied the charges. The prosecution examined PW1 to PW18 and marked Ex.P1 to Ex.P9 and relied upon MO1.

9. The incriminating evidence were put to the accused, when they were questioned under Section 313 (i)(b) of Cr.P.C. and they denied the same as false.

5/20



Crl. A(MD)No.89 of 2023

WEB COPY

10. The accused persons did not examine any witnesses nor relied upon any documents.

11. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has not proved the case beyond reasonable doubt and accordingly acquitted the accused persons from all charges. Aggrieved by the same, the son of the deceased (PW1) has filed the present appeal before this Court.

12. This Court carefully considered the submissions made on either side and the materials available on record.

13. In the case in hand, PW1 to PW5, who are the sons and daughters of the deceased were examined as eyewitnesses by the prosecution. PW1, PW2 and PW4 were also injured witnesses.



Crl. A(MD)No.89 of 2023

WEB COPY

14. The learned counsel for the appellant submitted that the Court below completely disregarded the eyewitness account of PW1 to PW5, out of which, PW1, PW2 and PW4 were also injured witnesses. The learned counsel further submitted that the eyewitness account coincided with the report of the postmortem Doctor and the cause of death was due to shock and hemorrhage as a result of the chest injury suffered by the deceased.

15. Per contra, the learned counsel for the respondents 2 and 3/A1 and A2 submitted that the Court below has properly appreciated the evidence and has rendered a finding and the same does not suffer from any perversity warranting interference of this Court.

16. The learned Additional Public Prosecutor for the State apart from supporting the case of the appellant submitted that A3, who was a juvenile, was tried by the Juvenile Justice Board and he was convicted for offence under Sections 324 and 336 IPC and since he was a first time offender, he was let out under the Probation of Offenders Act.



Crl. A(MD)No.89 of 2023

WEB COPY

17. When this Court deals with an appeal against acquittal, the judgment can be interfered with only when there is glaring infirmity in the appraisal of evidence or the finding rendered by the trial Court is perverse or arbitrary or where the judgment is based on misreading/omission to consider material evidence on record or there are compelling and substantial reasons for doing so. Useful reference can be made to the judgment of the Apex Court in ***Sampat Babso Kale and another v. State of Maharashtra***, reported in **2019 (4) SCC 739**. This Court must also keep in mind that once the trial Court on assessing the materials acquits the accused and if it is a possible view, the same cannot be reversed in appeal. The latest judgment of the Apex Court in ***Thulasa Reddy v. State of Karnataka*** reported in **2026 (1) MWN (Crl.) 425** can be relied upon for this purpose.

18. Keeping the above law settled by the Apex Court in mind, this Court will go into the findings rendered by the trial Court, after appreciation of evidence.



Crl. A(MD)No.89 of 2023

WEB COPY

19. The trial Court, on appreciation of evidence of PW1 to PW5, has chosen to disregard the same on a flimsy reason that no other independent eyewitness has been examined on the side of the prosecution. The trial Court has completely disregarded the fact that PW1, PW2 and PW4 are injured witnesses and they were also the natural eyewitnesses in this case. If their evidence can be acted upon, there is no need for the prosecution to go in search of independent eyewitnesses.

20. The most relevant evidence that has to be taken into consideration by this Court is the accident register, which was marked as Ex.P5 and the complaint, which was marked as Ex.P1. After the incident, the deceased was taken to PW11, who was the Doctor at Mudukulathur Government Hospital by PW1 and Ex.P5 shows that they came to the hospital at 11.10 pm. PW11 also noted the injury sustained by the deceased at the time of admission in the hospital in Ex.P5 – Accident Register.



Crl. A(MD)No.89 of 2023

WEB COPY

21. The information was sent to PW13, who was the Sub Inspector at about 23.15 hrs., on 17.04.2015. He went to the hospital and recorded the statement of PW1, which was marked as complaint (Ex.P1). In this complaint, PW1 talks about the property dispute between the parties and the manner in which the incident took place on the fateful day. In the complaint, which is the earliest version, it is stated that accused persons started pelting stones and one of the stone hit the left side chest of the deceased and he fell down unconscious. It further states that PW1, PW2 and PW4 also sustained minor injuries.

22. While the evidence was tendered before the Court, PW1 has developed the case as if A2 slapped the deceased and the deceased fell down and A1 attacked him with the stone in the chest. Such a version was given by PW1 to PW5 for the first time before the Court. In the earliest complaint, there was absolutely no whisper about the overt act regarding A2.



Crl. A(MD)No.89 of 2023

WEB COPY

23. In view of the above, this Court holds that there was absolutely no allegation against A2 when the complaint was given. Even in the Accident Register, the allegation is against one known person. When that is so, the case has been developed later as if A2 slapped the deceased and he fell down and thereafter A1 attacked with a stone in the chest of the deceased. Hence, the trial Court acquitting A2 from all charges does not warrant the interference of this Court.

24. Insofar as the involvement of A1 is concerned, the same has been clearly spoken to by the eyewitnesses and the name of A1 is also specifically mentioned in the complaint (Ex.P1) and the overt act has also been mentioned in the complaint. Therefore, there is no doubt in the mind of this Court that A1 was in fact involved in the commission of offence.

25. Having rendered the above finding, this Court must now venture to analyze as to whether A1 has committed the offence of murder.



Crl. A(MD)No.89 of 2023

WEB COPY

26. As could be seen from the complaint as well as the evidence of PW1 to PW5, there was a property dispute and on the date of occurrence, there was a wordy quarrel and the same lead to provocation and spontaneously the accused persons started hurling stones. The stone hurled by A1 hit the deceased on the left chest and he fell down unconscious. The postmortem doctor has opined that the death was of shock and hemorrhage due to chest injury.

27. Homicide involves the killing of one human being by another. If this ingredient is satisfied, the Court has to thereafter see if such a homicide is culpable or not culpable. In other words, the Court has to see if the facts relied upon by the prosecution brings the case within any one of the four limbs of Section 300 IPC. If it falls within any one of the four limbs, it will be a culpable homicide amounting to murder punishable under Section 302 IPC and if it does not fall within any of the four limbs, it will be a culpable homicide not amounting to murder. The punishment is provided under Section 304 IPC.



Crl. A(MD)No.89 of 2023

WEB COPY

28. There may be cases where the death could have taken place, but, however, it will neither fall under the category of culpable homicide amounting to murder nor under the category of culpable homicide not amounting to murder. In such an event, the Court has to see if the facts proved by the prosecution will fall within any of the ingredients of grievous hurt or hurt, as the case may be.

29. At this juncture, it will be relevant to take note of the judgment of this Court in *Nishanth @ Thambu v. State by Inspector of Police, B1, Town Central Police Station, Uthagamandalam, The Nilgiris* reported in **2016 SCC online Madras 4526**. That was a case where there was a sudden fight between the deceased and the accused person and the accused person took a stone lying nearby and pelted the same on the deceased. The stone had hit the head of the deceased. The deceased later died and it was opined by the Doctor that the death was due to the head injury. In such circumstances, this Court analyzed the same in the following manner:

“8. Here, in this case, the prosecution has not proved beyond any doubt that the extradural hemorrhage was as a



Crl. A(MD)No.89 of 2023

WEB COPY

result of the stone pelted by the accused. Therefore, it cannot be conclusively held that the death of the deceased was caused by the accused, though, we have already concluded that the external injury on the head of the deceased was caused by the accused by pelting a stone.

9. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Jani Gulab Shaikh Vs. The State of Maharashtra reported in 1970 SCC (Cr.) 532, wherein, while dealing with identical facts, the Hon'ble Supreme Court in paragraphs 6 to 9 has held as follows:

“6. The question that arises is whether the accused is guilty under Section 304, part II, Section 325 or Section 323, I. P. C, In our opinion the High Court erred in holding that Section 304, part II, applied, The High Court observed :

"We are of the opinion that the accused must be deemed to know that as a result of such forcible push death could have been the likely result. The accused must be deemed to know that the deceased was likely to fall on the cement concrete road and that the force which he was actually using was likely to result in fatal injuries to the deceased. Therefore, though the accused did not intend to cause the death of the deceased and did not intend to cause him injuries sufficient



WEB COPY



Crl. A(MD)No.89 of 2023

in the ordinary course of nature to cause his death and did not intend to cause him injuries which were 12 likely to cause death, at any rate, he must be posted with the knowledge that death was likely to result in the circumstances in which the injuries were caused by him to the deceased." We are unable to agree with High Court that the accused must be posted with the knowledge that death was likely to result in the circumstances the injuries were caused by him to the deceased. It is very rarely that if a man is pushed and he falls on the road the occipital bone gets fractured. Here it is perhaps due to the drunken condition of the deceased that while falling he could not avoid his skull falling on the road At any rate, in our opinion it is difficult to impute knowledge to the accused that death was likely to result by the push he is alleged to have given.

7. If he is not guilty under Section 304, part II, he cannot be convicted under Section 325, because no grievous injury has been inflicted by the accused. There is no evidence to show that injury no. (iii) in column 19 was grievous. 8. The learned counsel for the appellant also tried to show that the accused was justified in pushing him and giving him blows. We are unable to agree with him



WEB COPY



Crl. A(MD)No.89 of 2023

on this matter. The accused could very well have gone away and ignored the deceased who was obviously not behaving normally. 9. In our view the accused is guilty under Section 323, I. P. C. In the result the appeal is partly allowed the conviction entered and sentence given by the High Court altered and the accused convicted under Section 323, I. P. C., instead of Section 304 part II. We understand that he was already undergone imprisonment for about 4 1/2 months. We do not think it is necessary that he should be sent back to jail. Accordingly we award him sentence already undergone. The bail bond executed by him shall stand cancelled.”

10. As held by the Hon'ble Supreme Court in the above judgment, as we have already concluded that in the instant case the death was not caused by the accused, he could be punished only for an offence under Section 323 I.P.C for having caused a hurt on the head of the deceased.

11. Now turning to the quantum of punishment, in our considered view, the maximum punishment provided under Section 323 I.P.C. is imprisonment for one year or fine or both.



Crl. A(MD)No.89 of 2023

WEB COPY

The learned counsel for the appellant submitted that the accused was in jail for about two months both before and after the conviction and that may be treated as sufficient punishment. He further submitted that the accused is prepared to pay compensation to the dependents of the deceased. Having regard to these submissions and also the fact that the occurrence had taken place on the spur of moment without any pre-meditation, we are of the view that the period of sentence 14 already undergone by the accused shall be treated as sufficient punishment besides the accused shall be liable to pay a sum of Rs.50,000/- as compensation to the dependents of the deceased.”

30. The above judgment lays down a clear path to deal with the facts of the present case. There was a sudden fight and spontaneously A1 had hurled a stone on the deceased, which hit on the left chest. He sustained chest injury and died. In the case in hand, the accused person neither had the intention to cause the death nor had the knowledge that his action will result in the deceased sustaining such injury, which will result in his death. It is also seen that the injury sustained by the deceased will also not satisfy



Crl. A(MD)No.89 of 2023

the requirement of a grievous injury defined under Section 320 IPC. Hence, the case in hand can be brought only within the scope of Section 323 IPC.

31. In the light of the above discussion, we hold that A1 is liable to be convicted for offence under Section 323 IPC.

32. Post this case on 29.04.2026 for questioning A1 on sentence.

[N.A.V, J.] & [K.K.R.K, J.]
08.04.2026

NCC : Yes
Index : Yes

RR

To

1.The Additional District Court, Paramakudi.

2.The Inspector of Police,
Peraiyoor Police Station,
Ramanathapuram District.

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

18/20



Crl. A(MD)No.89 of 2023

WEB COPY

4.The Section officer (English Records)
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl. A(MD)No.89 of 2023

**N.ANAND VENKATESH, J
AND
K.K.RAMAKRISHNAN, J.**

RR

**Judgment made in
Crl. A. (MD)No.89 of 2023**

08.04.2026