

Crl.A.(MD).Nos.871 of 2022 and 284 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2026

CORAM

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

Crl.A.(MD).Nos.871 of 2022 and 284 of 2023

Crl.A.(MD).No.871 of 2022:

1.John

2.Kannan @ Red Kannan @ Vasantharajan

... Appellants / Accused Nos.1 and 2

Vs.

The State rep by its,
The Inspector of Police,
E-1 K.Pudur Police Station,
Madurai District.
(Crime No.1 of 2014)

... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records in S.C.No.439 of 2014 dated 12.09.2022 on the file of the learned I Additional District and Sessions Court, Madurai and to set aside the same.

For Appellants : Mr.C.Mayil Vahana Rajendran
for Mr.J.Vivek



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For Respondent :

Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

Crl.A.(MD).No.284 of 2023:

Arunkumar @ Door

... Appellant / Accused No.3

Vs.

The State rep by its,
The Inspector of Police (L&O),
E-1 K.Pudur Police Station,
Madurai District.
(Crime No.1 of 2014)

... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records in S.C.No.439 of 2014 dated 12.09.2022 on the file of the learned I Additional District and Sessions Court, Madurai and to set aside the same.

For Appellant :

Mr.M.Jegadeesh Pandian

For Respondent :

Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was made by K.K.RAMAKRISHNAN,J.)

The appellants are the accused in S.C. No. 439 of 2014 on the file of the learned I Additional District and Sessions Judge, Madurai. They have



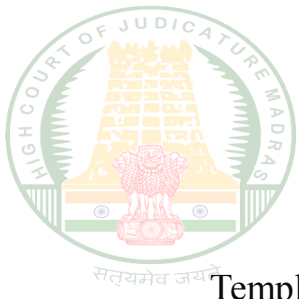
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preferred the present appeals challenging the following conviction and sentence imposed upon them under Section 302 read with Section 34 IPC.

Sentence of law	Sentence of imprisonment	Fine
Section 302 r/w 34 IPC	To undergo life imprisonment	Rs.5,000/- i/d to undergo six months simple imprisonment

2.Brief facts of the case:

2.1. The case of the prosecution, in brief, is that on 31.12.2013 at about 9.00 p.m., when the deceased, Senthilkumar, was at his residence, A1 and A3 came to his house and asked him to accompany them. Despite the objection raised by P.W.1, the mother of the deceased, having regard to prior disputes between the deceased and A1, the deceased went along with A1 and A3. It is the further case of the prosecution that A1 had been frequently demanding money from the deceased, which led to enmity between them earlier. On the fateful day, notwithstanding such antipathy, the deceased accompanied A1 and A3. As the deceased did not return home till late hours, P.W.1 and her family members searched for him. During such search, the deceased was found lying dead near the backside of Kamakshiamman



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Temple with a stab injury and bloodstains. Thereafter, at about 1.00 a.m. on 01.01.2014, P.W.1 lodged a complaint before the respondent police. Based on the said complaint, P.W.13 registered a case in Crime No. 1 of 2014 for the offence under Section 302 IPC and forwarded the same to the inspector of police for investigation. Upon receipt of the FIR, P.W.16 proceeded to the scene of occurrence, prepared the Observation Mahazar and Rough Sketch, and conducted inquest over the body of the deceased in the presence of Panchayatdars. Thereafter, he made necessary arrangements for conducting the post-mortem by sending a requisition through a police constable. During the course of investigation, P.W.16 recovered blood-stained earth and non-blood-stained earth from the place of occurrence in the presence of witnesses, namely P.W.9 and one Balakrishnan. On the same day, he examined P.Ws. 1, 2, and 3, as well as other witnesses, namely P.Ws. 10, 11, and 13. Subsequently, on 02.01.2014, he examined P.W.4. In the meantime, he received information that A1 had surrendered before the learned Judicial Magistrate, Usilampatti. Accordingly, on 03.01.2014, P.W.16 filed a petition seeking police custody of A1, and on 06.01.2014, A1 was taken into police custody. While in custody, A1 gave a voluntary confession in the presence of



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the Village Administrative Officer, pursuant to which the weapon of crime, namely M.O.4 (knife), was recovered. Based on the disclosure made by A1, A2 and A3 were also secured. A2 is stated to have given a voluntary confession, leading to the recovery of a mobile phone. The Investigating Officer thereafter continued the investigation and secured the juvenile accused, who was produced before the Juvenile Justice Board on 09.12.2015. Further, P.W.16 arranged for the conduct of a Test Identification Parade, in which witnesses (including P.Ws.1 and 3) identified the accused before the learned Judicial Magistrate No.VI. On 10.01.2014, the recovered material objects were forwarded to the Court through P.W.15.

2.2. The Investigating Officer also sent requisitions for obtaining chemical analysis and serological reports, including viscera examination. He collected all relevant materials, including records relating to prior cases involving A1 and the deceased (Crime No.181 of 2012), and obtained the post-mortem certificate from PW14, the Doctor who conducted the autopsy. Upon completion of the investigation, and after receipt of the forensic reports, the final report was filed before the learned Judicial Magistrate. The



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case was taken on file in P.R.C. No.21 of 2014 and since the offence was exclusively triable by a Court of Sessions, it was committed to the Sessions Court.

2.3. The learned Sessions Judge took the cognizance in S.C. No. 439 of 2014 and summoned the accused and on their furnished appearance, furnished copies of documents under Section 207 Cr.P.C. and framed charges against them and questioned the accused and they denied the charges and pleaded not guilty and they stood for trial. The prosecution examined P.Ws. 1 to 18, exhibited 20 documents, and produced 8 material objects. Upon completion of prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them. The accused denied the same as false marked mark and did not choose to examine any witness nor marked any document on the defence side.

3. The learned trial Judge, upon appreciation of the oral and documentary evidence, found the accused guilty and convicted them under



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Section 302 read with Section 34 IPC and imposed sentence by judgment dated 12.09.2022 to undergo life imprisonment and directed to pay fine of Rs.5,000/- with default to undergo 6 months simple imprisonment. Aggrieved by the said conviction and sentence, A1 and A2 have preferred Criminal Appeal No. 871 of 2022, and A3 has preferred a separate appeal in Criminal Appeal No. 284 of 2023.

4.Submission of the learned counsels appearing for the appellants:

The learned counsel appearing for the appellant/A2 in Criminal Appeal No. 871 of 2022 would contend that there is absolutely no legally admissible evidence to implicate A2, namely Kannan @ Red Kannan, in the alleged occurrence. It is submitted that none of the so-called eyewitnesses, particularly P.Ws. 7 and 8, have identified A2. Further, even the witnesses examined by the prosecution to establish the “last seen together” theory have not spoken about the presence or involvement of A2. In the absence of any incriminating material, the conviction of A2 under Section 302 read with Section 34 IPC is unsustainable, and hence, A2 is entitled to acquittal.



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Insofar as A3 is concerned, the learned counsel would submit that the only piece of evidence relied upon by the prosecution is the testimony of P.W.1, the mother of the deceased, who stated that A3 accompanied A1 on 31.12.2013 and took the deceased from the house. Except this circumstance, no overt act has been attributed to A3. It is therefore contended that mere accompaniment, without any further evidence establishing common intention or participation in the crime, is insufficient to sustain conviction. On this ground, acquittal of A3 is sought. The learned counsel appearing for A1 in Criminal Appeal No. 871 of 2022 would make elaborate submissions assailing the credibility of the prosecution witnesses. It is contended that P.Ws. 7 and 8 were not present at the scene of occurrence and have falsely deposed before the Court. Their evidence, when tested in cross-examination, reveals material contradictions and renders their presence at the scene highly doubtful. Despite such infirmities, the trial Court erroneously relied upon their testimony to convict the accused. It is further submitted that these witnesses did not disclose their alleged knowledge of the occurrence to any person at the earliest point of time, and their statements were recorded by the Investigating Officer belatedly, for which no proper explanation is



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offered. The statements were forwarded to the Court only on 17.02.2014, thereby creating serious doubt about their genuineness. On this basis, it is argued that P.Ws. 7 and 8 are planted witnesses and their testimony is liable to be discarded. The learned counsel would also contend that the witnesses who speak “last seen together” theory have not supported the prosecution case in material particulars, thereby weakening the chain of circumstances. Without prejudice to the above contentions, it is further argued that even as per the prosecution version, particularly the evidence of P.Ws. 7 and 8, the occurrence arose out of a sudden quarrel between A1 and the deceased. In the course of such quarrel, A1 is alleged to have inflicted a single stab injury. Therefore, it is submitted that the case would not fall under Section 302 IPC but would, at best, attract culpable homicide not amounting to murder under Section 304 Part I IPC, in view of the applicable exceptions to Section 300 IPC. Lastly, it is submitted that A1 has no serious criminal antecedents, except a pending theft case, and is presently leading a normal life turning a new leaf. On these grounds, a plea is made for reduction of sentence.



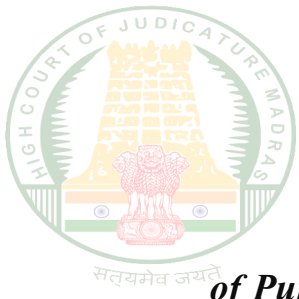
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5. Submission of the learned Additional Public Prosecutor:

The learned Additional Public Prosecutor, upon instructions and on perusal of the records, would submit that P.Ws. 7 and 8 have, in their chief examination, clearly and cogently deposed that due to fear, they did not disclose the occurrence to anyone at the earliest point of time. However, before the Court, they have given a detailed and consistent account of the incident, including the presence of A1 to A3 and the specific overt acts attributed to them. It is further submitted that both P.Ws.7 and 8 have unequivocally stated that A1 inflicted the fatal stab injury on the deceased. These witnesses are independent in nature and have supported the prosecution case in material particulars. Their evidence, according to the learned Additional Public Prosecutor, inspires confidence and is sufficient to sustain the conviction. The learned Additional Public Prosecutor would also contend that the cross-examination of P.Ws. 7 and 8 was conducted after a considerable lapse of time, nearly three years from the date of their chief examination. Due to such delay and lapse of memory, certain answers favourable to the accused may have been given. However, placing reliance on the judgment of the Hon'ble Supreme Court in *Vinoth Kumar -vs- State*



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of Punjab reported in **2015 3 SCC 2020**, it is submitted that where there is inconsistency arising out of delayed cross-examination, the testimony given in chief examination cannot be discarded in toto and must be given due weight. On the above grounds, the learned Additional Public Prosecutor seeks confirmation of the conviction and sentence imposed by the trial Court.

6. This Court has carefully considered the rival submissions and perused the entire materials available on record, including the impugned judgment.

7. The primary question that arises for consideration is whether the conviction and sentence imposed upon the appellants in both the appeals are sustainable in law.

8. Discussion on the involvement of A1 and his overtact:

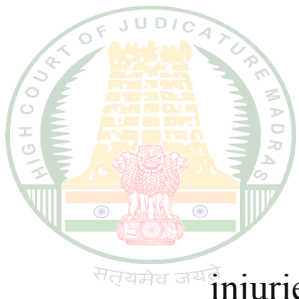
The case of the prosecution rests primarily on testimony of eyewitness. In order to substantiate the occurrence, the prosecution



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examined P.Ws. 7 and 8 as eyewitnesses. P.W.2 is the mother of the deceased, and P.W.1 is the caretaker of P.W.2 and the deceased. According to the evidence of P.Ws. 1 and 2, on the date of occurrence at about 9.00 p.m., while they were present in the house along with the deceased, A1 and A3 came to the house and called the deceased to accompany them. P.W.2, being aware of the prior enmity between the deceased and A1, objected to the deceased going along with them. However, the deceased, disregarding such objection, went along with A1 and A3. P.Ws. 1 and 2 have also spoken about the prior conduct of the deceased, including his habit of consuming alcohol and prior disputes, which provides the background for the occurrence. P.Ws. 7 and 8, the eyewitnesses to the occurrence, have clearly and consistently deposed that a quarrel ensued between A1 and the deceased. In the course of such quarrel, A1 inflicted stab injuries on the deceased. Their testimony is cogent and consistent with respect to the overt act attributed to A1. The ocular evidence of P.Ws. 7 and 8 stands duly corroborated by the medical evidence. P.W.14, the Doctor who conducted the post-mortem, has noted multiple stab injuries on the body of the deceased and opined that the death was due to the infliction of the said



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injuries. The nature of injuries corresponds with the manner of assault spoken to by the eyewitnesses. Thus, the prosecution has clearly established that A1 inflicted the stab injuries on the deceased with the weapon (M.O.1), and that the death of the deceased was a direct consequence of the said injuries.

9. Discussion on the conviction under Section 304(I) of IPC:

The next question that arises for consideration is whether the act of A1 would amount to “murder” punishable under Section 302 IPC or would fall within the ambit of culpable homicide not amounting to murder. From the evidence on record, particularly that of P.Ws.7 and 8, it is evident that the occurrence arose out of a sudden quarrel. The deceased, who was accustomed to consuming alcohol, had gone along with the accused on the night of 31.12.2013 on the eve of new year. P.Ws.7 and 8, on hearing commotion, are stated to have witnessed the occurrence. They have deposed that a quarrel ensued between A1 and the deceased, during which A1 stabbed the deceased with knife. The evidence further indicates that there was a sudden fight between A1 and the deceased, and in the heat of passion,



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A1 inflicted the injuries. The Hon'ble Supreme Court in the case of *Atul Thakuar -vs- State of H.P.* reported in **2018 2 SCC 496** has held that in cases of sudden quarrel, absence of premeditation, and acts committed in the heat of passion, the offence would not fall under Section 302 IPC, notwithstanding the number of injuries inflicted. Applying the above principle to the present case, this Court is of the considered view that the act of A1 would not fall within the ambit of murder under Section 302 IPC. On the contrary, the case would squarely fall under Section 304 Part I IPC. Accordingly, the conviction of A1 under Section 302 IPC is modified to one under Section 304 Part I IPC. Having regard to the nature of the occurrence, the manner of assault, the fact that the act was committed in the heat of passion upon a sudden quarrel, and the surrounding circumstances including the age of A1, this Court deems it appropriate to convict A1 under Section 304(I) of IPC and sentence him to undergo rigorous imprisonment for a period of 10 years. The fine amount imposed by the trial Court is maintained, and the default sentence is also confirmed.



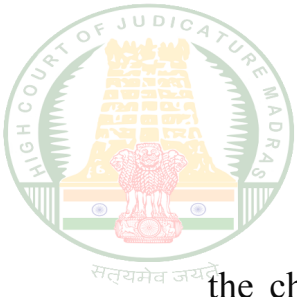
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10. Discussion on the involvement of A2 and A3:

Insofar as A2 and A3 are concerned, the eyewitness P.Ws.7 and 8 have not attributed any specific overt act to them. There is also no material to establish that A2 and A3 shared any common intention with A1 to commit the offence. The evidence of P.Ws.7 and 8, as well as that of the other prosecution witnesses, coupled with the documents collected during the course of investigation and marked in evidence, do not disclose any incriminating circumstance against A2 and A3 to demonstrate their participation in the occurrence or to establish that they shared any common intention with A1 to commit the offence. This Court also finds that their presence and identity has not been satisfactorily established by the prosecution and there is no reliable evidence on record to implicate them in the commission of the offence. There are no incriminating circumstances to show that they acted in furtherance of a common intention so as to attract the provisions of Section 34 IPC. In the absence of convincing evidence establishing either their presence or their participation or the existence of common intention, the conviction of A2 and A3 cannot be sustained. In the absence of cogent and reliable evidence, the prosecution has failed to prove



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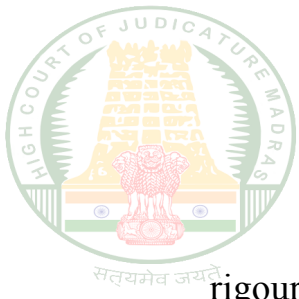
the charges against A2 and A3 beyond reasonable doubt to convict them under Section 302 r/w 34 of IPC. Accordingly, this Court holds that A2 and A3 are entitled to acquittal and are hereby acquitted of all charges.

11. Conclusion:

In the result, Crl.A.(MD) No.871 of 2022 is partly allowed and Crl.A.(MD) No.284 of 2023 is allowed in the following terms:

11.1. Conviction and sentence of imprisonment passed against A2, A3 under Section 302 r/w 34 IPC in S.C.No.439 of 2014 dated 12.09.2022 on the file of the learned I Additional District and Sessions Court, Madurai is set aside and A2 and A3 are hereby acquitted from all charges. Fine amount paid by them is hereby directed to refund them. Bail bond executed by them stands terminated.

11.2. Conviction and sentence of imprisonment passed against A1 under Section 302 r/w 34 IPC in S.C.No.439 of 2014 dated 12.09.2022 on the file of the learned I Additional District and Sessions Court, Madurai is set aside and his conviction and sentence under Section 302 is altered to one under Section 304(I) of IPC and Accused No.1 is sentenced to undergo



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rigorous imprisonment for a period of 10 years with fine of Rs.5,000/- i/d to undergo six months simple imprisonment. Bail bond executed by him is hereby cancelled and the learned Trial Judge is directed to secure him to undergo remaining period of sentence, after deducting the period already undergone as per Section 427 of Cr.P.C.

[N.A.V, J.] & [K.K.R.K,J.]
30.03.2026

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

- 1.The I Additional District and Sessions Court,
Madurai.
- 2.The Inspector of Police,
E-1 K.Pudur Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

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Judgment made in
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30.03.2026