



**IN THE COURT OF DISTRICT AND SESSIONS JUDGE,
MAYILADUTHURAI.**

Present: Dr. L.S. Sathiyamurthy, M.A., M.L., Ph.D.,

(J O Code : TN 01523)

District and Sessions Judge, Mayiladuthurai

State of Tamilnadu

Friday, the 13th day of March 2026

Session Case No. 78/2022

CNR.No.TNMY-0100-0475-2022

(Committed by the Judicial Magistrate No.1, Mayiladuthurai in PRC No. 9/2022)

Name of the Complainant	State - Inspector of Police, Kuthalam P.S. (Cr.No. 863/2021)
Name of the accused	A1. Dhivagar, aged 37/2026, S/o. Murthy, Pakiriya Pillai Street, Moovalur. A2. Dinesh, aged 39/2026, S/o. Murthy, Pakiriya Pillai Street, Moovalur.
Charges	A1 U/s. 302 r/w 34 of IPC A2 U/s. 342, 302 r/w 34 of IPC
Plea of the accused	Not guilty
Finding of the Court	In the result, A1 found not guilty for the offences U/s. 302 r/w 34 of IPC and A2 found not guilty for the offences U/s. 342, 302 r/w 34 of IPC. Therefore, the accused persons (A1 and A2) are acquitted from the above said charges U/s. 235(1)

	<p>of Cr.P.C.</p> <p>The bail bond executed by them if any, stands cancelled.</p> <p>The material objects received in C.P.No.7/2023, M.O.1 to M.O.5 are ordered to be destroyed after the appeal time limit is over.</p>
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S.C. No.78/2022

State - Inspector of Police,
Kuthalam P.S.
(Cr.No. 863/2021)

... Complainant.

Vs.

A1. Dhivagar, aged 37/2026,
S/o. Murthy.

A2. Dinesh, aged 39/2026,
S/o. Murthy.

... Accused

This case came up for final hearing on 09.03.2026 in the presence of Thiru. R. Seyon, Public Prosecutor for the District on behalf of State and Thiru. R. Vinoth counsel for A1 and A2 and upon hearing both sides arguments, perusing the case records, evidence, documents and the case having stood over for consideration till this date, this Court delivered the following,

JUDGMENT

Two accused persons who are brothers are facing the charges U/s. 342, 302 r/w 34 of IPC in this case.

THE CASE OF THE PROSECUTION IN BRIEF, IS AS FOLLOWS:

2. One Moorthy and Thangamani are brothers. Both the sons of said Moorthy murdered one Vaithyanathasamy who is the son of Thangamani.

3. There are two wives to the said Thangamani. The 2nd wife's sons are residing near a house of one Vaithiyanathasamy. There is a dispute among them about the common property which was enjoyed without partition. As there was a space constraint in the Dhivakar and Dinesh house, they used to sleep near the said Vaithiyanathsamy's house. It was objected to, by him. Therefore, there is a previous enmity between them in respect of use of the place said to be a common property near the said Vaithiyanathasamy's house.

4. While so at 2.30 PM on 26.11.2021 near about Velu Tailor shop there was a wordy quarrel arose among them. A1 took a wooden log and A2 tightly caught the said Vaithiyanathasamy, A1 gave blows with the wooden log on the left side of the head. The injured Vaithiyanathasamy taken to the Government Hospital, were he died, despite of medical treatment. Therefore, A2 had tightly caught him and A1 gave blows with wooden log. Both of them have caused death of the said Vaithiyanathasamy. On the complaint received from one Mallika, the mother of the deceased person, Kuthalam P.S registered a case and after investigation filed the final report against A1 U/s. 302 r/w 34 of IPC and A2 U/s. 342, 302 r/w 34 of IPC.

5. On being satisfied with *prima facie* case made out against accused persons by taking cognizance of the offences, the learned Judicial Magistrate No.1, Mayiladuthurai has assigned a PRC No.09/2022. After complying with Section 207 Cr.P.C furnished the copies of the final report to the accused persons.

6. As the case is exclusively triable by the Court of Session, committed it to the District Court, Nagapattinam. On receipt of records, this case was taken on file as S.C.No.78/2022 and made over to the District Court, Mayiladuthurai for trial and disposal according to law.

7. On appearance of the accused and on engaging a counsel of their choice, after hearing the learned public prosecutor and the learned counsel for the accused, charges are framed against the accused persons as follows:

A1 U/s. 302 r/w 34 of IPC

A2 U/s. 342, 302 r/w 34 of IPC

8. The contents of the charge were read over and explained to the accused, they denied the same and pleaded not guilty. So, they tried before this court as per the procedures contemplated in Chapter XVIII of Cr P C corresponding to Chapter XIX BNSS, 2023.

THE EVIDENCE ADDUCED BY THE PROSECUTION IN BRIEF IS AS FOLLOWS:

9. The defacto complainant is the mother of deceased person. She spoken to the relationship between the accused person and her family. She heard about the fight between the accused persons and deceased that took place on 25.11.2021. She came to know about the occurrence when she was in her home through one Bala. So she rushed to the Government Hospital, Mayiladuthurai were she could not find her son and returned to home. But later she came to know about her son's death and went to the police station and gave complaint Ex.P1.

10. PW.2 is the brother of the accused person. He stated that the deceased Vaithiyanathasamy is his father's elder brother's son. He also stated that he does not know how the said Vaithiyanathasamy died.

11. One Perumal who examined as PW.3 has heard about the fight occurred between the victim and the accused persons. PW.4 Vasudevan also a hearsay witness and he heard about the death of Vaithiyanathasamy.

12. PW.5 one Poovazhagi is the wife of the deceased person. She made a phone call at 6.00 PM on 26.11.2021 but there was no response from her husband. At about 9.00 PM she came to know from one Raja that her husband was assaulted at 1.30 PM in the Bazar and succumbed to injuries.

13. The Investigating Officer examined as PW.6. He took the case for investigation and FIR registered in Cr. No. 863/2021 U/s. 174(3) of Cr.P.C., marked as Ex.P2. Immediately, after the case was registered the investigating officer inspected the SoC which is the bazar in Moovalur, just opposite to Velu tailor shop and prepared the observation mahazar (Ex.P3) and rough sketch (Ex.P4) in the presence of Manimaran and Mahesh. Thereafter he recorded the statement of the defacto complainant and conducted inquest from 10.00 AM to 11.30 AM in front of the Mortuary. Inquest report is marked as Ex.P5. He gave requisition letter for postmortem through one Ashok kumar Gr-I Police. The said police recovered blood stained color dhoti (MO.1), blood stained White shirt with black lines (MO.2) and prepared special report Ex.P6. He examined the ocular witnesses Balamurugan, Perumal, Vimalraj, Vasudevan, Poovazhagi, Saravanan, Senthilkumar and Kasthuri and recorded their statement. As the deceased was murdered by both the accused person, he altered the provisions of law from Sec. 174(3) of Cr.P.C to Sec. 302 of IPC. The alteration report is marked as Ex.P7.

14. On 28.11.2021 at about 1.00 PM he arrested both the accused near Malliyam Railway station. A1 Dhivakar voluntarily gave confession and it was recorded in the presence of one Raja and Palanivel. The wooden log used for the commission of offence was produced by him and it is exhibited as MO.3. Blood stained shirt of A1 and A2 are exhibited as MO.4 and MO.5. The admitted portion of confession statement of A1 is marked as Ex.P8. The material objects MO.3 to MO.5 are

recovered under a recovery mahazar is marked as Ex.P9. The MOs. collected during the course of investigation were submitted under Form-91 Ex.P10. He also examined Dr. Raveendran who conducted autopsy and recorded his statement and obtained Postmortem report Ex.P11. The Forensic Lab report is marked as Ex.P12. The reports received after the analysis of the material objects and blood stained shirts and dhoti marked as Ex.P13 and Ex.P14. After recording the statement of SI of Police, who registered the case and Mangalanathan, Ashok kumar and Pannerselvam. After completion of investigation he final report against the accused persons U/s. 342, 302 r/w 34 of IPC.

15. After completion of the examination of prosecution witnesses the incriminating circumstances arising out of the prosecution case were put to the accused persons and they examined as per section 313 (1) (b) of Cr.P.C, for which the accused denied their complicity with the offences and stated that it is a false case. No witnesses examined on the side of accused persons.

16. The point for determination in this case is,

Whether the charges framed against A1 U/s. 302 r/w 34 of IPC and A2 U/s. 342, 302 r/w 34 of IPC are proved beyond all reasonable doubt or not? If so the accused persons are liable to be convicted for the charges framed against them, and what is the quantum of punishment?

17. Heard, the learned public prosecutor and the learned counsel appearing for the accused persons and also perused Ex.P1 to Ex.P14 and MO.1 to MO.5.

18. The accused persons are brothers, the deceased person is their cousin brother. It is alleged that there was a dispute regarding a small area near thatched hut of the deceased Vaithiyanathasamy. According to prosecution there was a previous enmity

about the house and enjoyment of a common site near the house of the said Vaithiyanathasamy. A1 and A2 used to sleep there and caused disturbance to the deceased person. In this regard, there was an enmity between them. This material fact has to be proved by the prosecution. In this case there are no independent witnesses or residents of the area where the disputed site is situated who were not examined as witnesses and the witnesses PW.2 to PW.4 have also not spoken to the alleged dispute over the use of common site near the house of the deceased person.

19. PW.1 is the mother of the deceased person, she suffered from a visual ailment and immediately on hearing the fight between the accused persons and her son she said to have rushed to the Government Hospital, Mayiladuthurai. As her vision / eye sight is weak and could not identify her son in the hospital. So, she came back to her home. Later in the evening she came to know that her son had succumbed to injuries caused by the accused person in the fight that took place in the noon hours in front of Velu Tailor shop at Bazar street, Moovalur. So she lodged a complaint Ex.P1. It is not in dispute that the de facto complainant PW.1 is a hearsay witness. She has not seen the occurrence.

20. PW.2 to PW.4 have not spoken anything about the occurrence or overtact of the accused persons. Absolutely there is no substance in their evidence to link the accused persons with the crime.

21. PW.5 is the wife of the deceased person and she also came to know about her husband's death through one Raja who made a phone call to her. In her evidence there is no material to know about the occurrence or role of the accused persons in the commission of the crime.

22. The investigating officer's evidence recorded before this court has not been corroborated by the defacto complainant or any other witnesses examined on the side of the prosecution. There is no witnesses examined to prove the alleged recovery of weapon and dress materials MO.3 to MO.5, on the basis of the alleged confession made by A1.

23. As stated Supra, there is no eye witnesses examined on the side of the prosecution and the available evidence on record are neither sufficient nor cogent to prove the offence. Under such circumstances, inevitable conclusion would be that the prosecution has not proved the charges against the accused persons beyond all reasonable doubts. The accused persons are entitled to the benefits of doubts.

In the result, A1 found not guilty for the offences U/s. 302 r/w 34 of IPC and A2 found not guilty for the offences U/s. 342, 302 r/w 34 of IPC. Therefore, the accused persons (A1 and A2) are acquitted from the above said charges U/s. 235(1) of Cr.P.C.

The bail bond executed by them if any, stands cancelled.

The material objects received in **C.P.No.7/2023**, M.O.1 to M.O.5 are ordered to be destroyed after the appeal time limit is over.

Dictated to the steno-typist, taken by her in short hand, transcribed by her in computer, corrected and pronounced by me in the open court this 13th day of March 2026.

District and Sessions Judge,
Mayiladuthurai.

Prosecution side witnesses:

P.W.1 Mrs. Mallika
P.W.2 Mr. Balamurugan
P.W.3 Mr. Perumal
P.W.4 Mr. Vasudevan
P.W.5 Mrs. Poovazhagi
P.W.6 Mrs. Valli

Prosecution side documents:

Ex.P1 27.11.2021 Complaint
Ex.P2 27.11.2021 First Information Report
Ex.P3 27.11.2021 Observation Mahazar
Ex.P4 27.11.2021 Rough Sketch
Ex.P5 27.11.2021 Inquest Report
Ex.P6 28.11.2021 Special Report
Ex.P7 21.02.2022 Alteration Report
Ex.P8 28.11.2021 Confession Report
Ex.P9 28.11.2021 Seizure Mahazar
Ex.P10 28.11.2021 Form 91
Ex.P11 27.11.2021 Postmortem Report
Ex.P12 20.12.2021 Toxicology Report
Ex.P13 12.01.2022 Biology Report
Ex.P14 14.11.2022 Serology Report

Prosecution side material objects:

M.O.1	Blood stained Green, Blue, White color checked Lungi
M.O.2	Blood stained white and black striped sleeve shirt
M.O.3	Blood stained wooden reaper length about 68.5 cm

M.O.4	Blood stained Orange – Yellow color sleeve shirt of A1 Diwakar with label Lit fit Shirts -1
M.O.5	Blood stained Grey, Sandal White half-sleeve shirt of A2 Dinesh with a black label written Viners Mayiladuthurai

Defence side witnesses and exhibits: Nil.

Defence side material objects: Nil.

District and Sessions Judge,
Mayiladuthurai.

Judgment: (Fair and Draft)
S.C.No.78/2022
13.03.2026