

**The Public Prosecutor Vs. Madathi**

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**SooperKanoon Citation :** [sooperkanoon.com/794852](http://sooperkanoon.com/794852)

**Court :** Chennai

**Decided On :** Jan-07-1942

**Reported in :** (1942)1MLJ224

**Appellant :** The Public Prosecutor

**Respondent :** Madathi

**Judgement :**

ORDER

**Horwill, J.**

1. The evidence in this case discloses that the deceased girl, who was about 16 or 17 years of age, had been talking to a cousin of hers in the village on several occasions and that on that account people had been gossiping about her. The third accused told the first accused, the mother of the girl, about this: and she became very incensed with her daughter and took away her jewels, which made the girl sulky and disobedient. The same night she and another daughter, the second accused, dragged the girl towards an empty house with the intention of shutting her up there for the night. When the girl resisted, the first accused took up a heavy piece of wood and struck the deceased a blow on the head which caused the girl to fall to the ground at once. The first accused exclaimed that her daughter was dead. Just then, the third accused, who is the husband of the second accused, came in. Upon hearing what had happened, he advised the other two

accused to hang the girl up to a beam of the house so as to make it appear that she had committed suicide. They accepted his suggestion and the third accused tied her up to a beam. Persons were called in and told that the girl had committed suicide. Within a short time the girl was cremated; so that it was impossible to know precisely the proximate cause of death. On this evidence the learned Additional Sessions Judge of Tinnevely found that the 1st accused killed her daughter and must have known that the blow was likely to cause her daughter's death; but he considered that the mother was 'acting under grave and continuing provocation, brought to a sudden head by the refusal of the girl to go into the house'. He therefore found her guilty under Section 304 (2), Indian Penal Code; and instead of sentencing her to imprisonment, he treated her as a first offender and bound her over under Section 562, Criminal Procedure Code. He found the second accused guilty under Section 323, Indian Penal Code read with Section 109, Indian Penal Code and bound her over similarly. The third accused he found guilty under Section 201 (2), Indian Penal Code and sentenced him to one year's rigorous imprisonment. The Crown preferred an appeal against the acquittal of the 1st accused of the charge under Section 302, Indian Penal Code and also a criminal revision petition for an enhancement of the sentence for the offence of which this accused was convicted.

2. There can be no doubt that the offence was committed under the circumstances set out above. It is argued by Mr. Sridharan that the offence might have been one of a minor nature punishable under Section 323, Indian Penal Code or so. Even if it be true, as Mr. Sridharan suggested, that the girl might have died subsequently after she had been hung to a beam, the 1st accused would still be guilty of an offence punishable under &. 326, Indian Penal Code. The weapon was a very heavy piece of wood and there can be no doubt that the injury caused was a grievous one. If the 1st accused was guilty under Section 326, Indian Penal Code, Section 562, Criminal Procedure Code would not apply; because that offence is punishable with transportation for life. The offence may of course have been murder; but I rejected the appeal of the Crown at the admission stage; because in the absence of a post, mortem certificate it is not easy to say that the 1st accused must have had the requisite knowledge and intention for a conviction under Section 302, Indian Penal Code. As the deceased fell down immediately and

never stirred, everybody there took her as dead, and there is no reason to think that she did not die immediately. The 1st accused (therefore committed at least an offence punishable under Section 304, Indian Penal Code.

3. It is true that the application of Section 562, Criminal Procedure Code was not illegal if the offence was one punishable only under Section 304 (2); but it seems very inappropriate to a case like this. It is ordinarily intended for persons led astray for the first time by force of circumstances or by bad company or evil influence; and in my experience it has rarely been applied to offences punishable under Section 304, Indian Penal Code. The 1st accused seems to have shown no regret at all for her act. She was not, as one might have expected of a mother who kills her child, overcome by grief and contrition. She readily acquiesced in the suggestion of the third accused that they should pretend that the girl had committed suicide. From the evidence of P.W. 12 it is clear that the mother walked to the cremation ground without a tear in her eye. The learned Sessions Judge thought that the accused merely exceeded her right 'to chastise her refractory child; but the conduct of the accused seems to me as unnatural and unmotherly as it was savage. Although I am very reluctant to interfere with the discretion of a Judge as to the sentence, I do not think that I can allow this very inappropriate order to stand. It is therefore set aside and the 1st accused sentenced to five years rigorous imprisonment. I would have awarded a heavier sentence had she not been an old woman.