

**In Re: Marappa Gounder**

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**SooperKanoon Citation :** [sooperkanoon.com/818073](http://sooperkanoon.com/818073)

**Court :** Chennai

**Decided On :** May-26-1972

**Reported in :** 1973CriLJ1044

**Judge :** K.N. Mudaliyar and ;Raghavan, JJ.

**Appellant :** In Re: Marappa Gounder

**Judgement :**

**Mudaliyar, J.**

1. Marappa Gounder (Accused-appellant) seeks to appeal from the judgment of the Court of Session of Coimbatore (East) Division at Erode, convicting him of the offence under Section 302 of the Indian Penal Code and sentencing him to death.
2. The accusation against the accused is that he murdered his elder brother, Muthusami Gounder, by stabbing him with a Kutheetti at about 5-30 P.M. on 3-10-1971 at Karunkarattu thottam in Kanak-kampalayam village.
3. P.W. 1 is the elder brother of frse accused and the deceased Muthusami Gounder. P.W. 3 is the father-in-law of Muthusami Gounder (deceased), P.W. 2 is the younger brother of P.W. 3. P.W. 8 is the wife of Muthusami Gounder (deceased). P.W. 9 is the son of the deceased.

4. Marappa Gounder (accused) and Muthusami Gounder (deceased) were brothers. They lived in Karunkarattu thottam in Kanakkampalaya village separately in two different but adjoining houses. They enjoyed the lands in that thottam separately by taking water in turns from the common well situated in that thottam. They have not been on talking terms for sometime past.

5. On the date of the occurrence (3-10-1971) in the forenoon Muthusami Gounder was taking bath in the tub near the common well from which water was being pumped out in his turn for that day. The wife of the accused came there and picked up a quarrel with the deceased Muthusami Gounder. A wordy quarrel ensued and they were ultimately separated. The wife of the accused went away threatening that Muthusami Gounder would be cut to pieces by her husband viz., the accused herein. In pursuance of such a threat, the accused prepared himself to attack his brother, Muthusami Gounder, with a kutheetti.

6. In the evening of the same day Muthusami Gounder and his elder brother (P.W. 1), Pongia Gounder, and his father-in-law (P.W. 3) Raja Gounder, were returning from the shandy. The accused who was waiting for the arrival of Muthusami Gounder, rushed towards him and stabbed at his stomach, chest and right flank with the kutheetti, as a result of which Muthusami Gounder died at the spot. The accused ran away and subsequently he surrendered before the Sub-Magistrate, Gobi-chettipaiayam on 5-10-1971. He had also certain injuries on his person. This is the gist of the prosecution case.

7. The prosecution seeks to prove the case against the accused on the strength of the testimony of P.Ws. 1 to 3, 8 and 9. On 3-10-1971 (Sunday) P.W. 1 met his brother Muthusami Gounder (deceased) at Perundurai and he came to know that the wife of the accused had picked up a quarrel with Muthusami Gounder on that forenoon. P.W. 1 proposed to go to the thottam where the accused was living for the purpose of pacifying his 2 brothers. They were coming along the route from Perundurai to Karunkarattu thottam. On the way they were met by P.W. 2 Marappa Gounder (the junior father-in-law of Muthusami Gounder). P.W. 3 (the father-in-law of the deceased) also joined them. According to P.W. 3 he was informed about the quarrel by Muthusami Gounder's son Palanisami (P.W, 9) in

the afternoon. The son of Muthusami Gounder viz., Palanisami had expressed a fear that the accused might carry out the threat of attacking his father, Muthusami Gounder, on his return. P.W. 2 who joined in the talk, came to know of the happening in the forenoon. He also offered to come to the house to talk to the accused. After talking for sometime near the common well in Karunkarattu thottam, he proceeded towards the house of the accused and talked with the accused. P.W. 2 states that he was unable to control the accused, who was very keen on attacking Muthusami Gounder. P.Ws. 2 and 3 and Muthusami Gounder after conversing for sometime near the common well proceeded towards the house of the accused and Muthusami Gounder (deceased) was then carrying a bag of cotton-seed on his head. He was proceeding first and P.W. 1 was following him and P.W. 3 was coming further behind. They reached the ridge in between the groundnut field and chokam field. The accused saw Muthusami Gounder approaching the house. He covered himself with a bed sheet, as he was having a Kutheetti, He rushed towards Muthusami Gounder and stabbed at his stomach and then at his chest. Muthusami Gounder fell down and a final stab was given at the right flank of the deceased. He died instantaneously. P.Ws. 1 and 3 removed the Kutheetti from the body of Muthusami Gounder. P.Ws. 8 and 9 (wife and son of the deceased) came there rushing on noticing the attack. Then the accused ran away. P.W. 1 proceeded to the house of the village munsif at Sullipalayam. The village munsif was not available. Thereafter he proceeded to the police station at Perundurai and made the complaint Ex. P-I. The police officials accompanied P.W. 1 to the scene of occurrence and the inspector held the inquest over the dead body of the deceased between 10-30 P.M. and 2 A.M.

8. P.Ws. 1 to 3, 8 and 9 were examined during the inquest. The prosecution would have it that there was a quarrel between Muthusami Gounder and the wife of the accused in the forenoon of the day. This has been testified by the 2 witnesses, P.Ws. 8 and 9. P.W. 9 intervened in the quarrel between his father and the wife of the accused and took his father away. They speak of the threat held out by the wife of the accused. P.W. 9 would say that after his father went away to Perundurai Shandy and his mother Rajammal (P.W. 8) went away to sell milk, the accused came to the house of Muthusami Gounder and asked him as to where his father had gone. The accused was further expressing a threat against his father,

Muthusami Gounder. On hearing the threat P.W. 9 proceeded to his grandfather P.W. 3. As noticed by us earlier P.W. 3 proceeded to the thottam of the accused for the purpose of pacifying him.

9. The dead body of Muthusami Gounder was sent over to the Hospital for post-mortem examination. P. W. 4 Civil Assistant Surgeon attached to the Government Hospital, Erode on receipt of the requisition under Ex. P-2 conducted the autopsy over the dead body of Muthusami at 9-30 A.M. on 4-10-1971. He found the following external injuries :

1. transversely placed incised wound over the lower end of the sternum 1'x1/2' bone deep.
2. transversely placed linear abrasion over the lower part of the front of the abdomen on the right side 2' below the umbilicus.
3. A linear abrasion on the upper part of right side front of the chest 2' in length, curved obliquely placed 2' from the axilla.
4. an obliquely placed linear abrasion 1' below the right nipple 1' in length.

On dissection of injury No. 1, he found the injury had gone through the lower end of the sternum situated 1' above the lower end of the sternum, and sternum fractured (2) a penetrating injury 1/2' x 1/4' on the upper part of the anterior wall of the right ventricle. It passed through the right ventricle to the posterior wall of the right ventricle 1' x W. (3) plural cavity contained 2000 C.C. of blood. (4) a small abrasion over the anterior aspect of the medial margin of the lower lobe of right lung. He opined that the deceased would have died of shock and haemorrhage due to injury to the heart viz., injury No. 1 corresponding to internal injuries. He further stated that the deceased could have died about 16 to 20 hours prior to autopsy. Ex. P-3 is the post-mortem certificate as, issued by P.W. 4. He has further stated that the death would have been instantaneous and that injury No. 1 corresponding to internal injuries is necessarily fatal. He has also stated that the injuries could have been caused by a weapon like M. O. 1 which has been identified by P.Ws. 1 to 3, 8 and 9 as the one that was used by the accused to stab at Muthusami

Gounder.

10. The accused surrendered before P.W. 5. Sub-Magistrate, Gobichettipalayam on 5-10-1971. P.W. 5 has stated that he saw injuries on the person of the accused and so he issued directions for sending the accused to the hospital for treatment. P.W. 12, the Civil Assistant Surgeon, Government Hospital. Gobichettipalayam stated that he examined a person sent from the sub-jail Gobichettipalayam. The name of the prisoner is mentioned as Ramasami. He was treated under Out Patient (ticket No. 5358). P.W. 12 stated that he did not find any external injuries on the person of the prisoner. He only complained of chest pain.

11. The accused stated in his statutory explanation under Section 342, Cr.PC that he admitted the relationship and enjoyment of the thottam and taking water in turns for 2 days for each sharer. He denied that he was aware of any wordy quarrel between his wife and the deceased or his having extended any threats to stab at Muthusami Gounder. He asserted that P.Ws. 1 to 3, 8 and 9 were deposing falsely. The accused left for Perundurai Shandy at 9 A.M. on that day. He returned home at 2 P.M. On reaching his house, he heard a cry from behind as raised by his wife and he rushed there and found her being beaten by P.W. 2, Marappa Gounder and the deceased Muthusami Gounder with sticks. He went there and protested, They beat him also. The deceased Muthusami Gounder beat him with the Kutheetti by its wooden portion. P.W. 2 Marappa Gounder beat him with a stick. He was unable to put up with the beating and so he took a knife from his waist and stabbed at somebody. He could not say whom he stabbed or at what part. He rushed from there to the bus stand and took the bus to Gobichettipalayam and on Tuesday (5-10-1971) he surrendered before the Sub-Magistrate. He denied that M. O. 1 Kutheetti is belonging to him or M.O. 5 bed sheet as belonging to

12. Believing the testimony of P.Ws. 1 to 3, 8 and 9 and the testimony of the Doctor, P.W. 4, the learned Sessions Judge held that the evidence as to the manner in which the accused had attacked Mu-thusaijii Gounder as spoken to by P.Ws. 1 to 3, 8 and 9 is quite convincing, and that the accused is liable for the offence of murder. The learned trial Judge rejected the right of private defence

ensuring for the benefit of the accused on the proved facts and the circumstances of the case.

13. The learned Counsel for the appellant argued that the first information report reached the Sub-Magistrate's Court rather delayed and the delay is suspicious in the circumstances of the case. According to the prosecution the occurrence was at 5-30 P.M. The Perundurai Police Station is situated at the distance of 2 or 3 miles. But actually Ex. P-I was given by Pongia Gounder (P.W. 1) at about 9 P.M. The learned Counsel for the appellant attacked this delay stating that to traverse a distance of 3 miles it would not take 3 hours and therefore there is every ground for entertaining the suspicion that the prosecution case has been trimmed and shaped for the purpose of eliminating any benefit of self-defence that might accrue to the advantage of the accused herein. It is true there is no proper reason, nor a rational explanation given by the prosecution as to this long delay. But this long delay in this case per se does not vitiate the contents of Ex. P-I : Nor does it stamp the contents of Ex. P-I with either artificiality or falsity.

14. Another strong criticism has been levelled by the learned Counsel for the appellant that there has been deliberate delay in the preparation of the inquest report and in forwarding the same to the Sub-Magistrate, Gobichettipalayam. We have also noticed that during the inquest the statements of P.Ws. 1 to 3, 8 and 9 were recorded by the investigating Officer. The Inspector of Police, P.W. 14, was questioned about the inquest report. It was suggested to him that Ex. P-15 the inquest report was not ready on 4-10-1971 and it was prepared long after. But P.W. 14 denied the suggestion. It is true that the inquest report was received in the Sub-Magistrate's Court, Gobichettipalayam, on 16-10-1971. Does this long delay really constitute any ground for our coming to the conclusion that the statements of P.Ws. 1 to 3, 8 and 9 have been either shaped or fabricated for the purpose of advancing the prosecution case? We hold 'certainly not' decisively. The prosecution case as embodied in Ex. P-I recorded by P.W. 11 at about 9 P.M. on the date of the occurrence viz., 3-10- 1971, is not different from the later versions as embodied in 161 statements of P.Ws. 1 to 3, 8 and 9. The prosecution case made its appearance as early as 9 P.M. on 3-10-1971. We hold that the mere delay in forwarding the inquest report has absolutely no significance in this case,

more so in the light of the fact that there is only one single accused implicated in this case and also in view of the plea of the accused.

15. There is some criticism made about the correction found in the first information report which was received on 4-10-1971. But it was wrongly stated as 3-10-1971. The offence itself was committed on 3-10-1971. The first information report must have been received on 3-10-1971 at 11 P.M. as the prosecution makes out, or, this must have been received on 4-10-1971 at 10 A.M. We are unable to find any material that by altering and correcting it from 4-10-1971 to 3-10-1971 either the Sub-Magistrate or his office subordinates have advanced the prosecution case in any manner to the prejudice of the accused as long as the defence failed to suggest to P.W. 14 that the first information report received at the office of the Sub-Magistrate even on 4-10-1971 is certainly not in consonance with the contents of Ex. P-I recorded as early as 9 P.M. on 3-10-1971. There is no suggestion made to the investigating officer that some other complaint was given by P.W. 1 and that has been suppressed. No such suggestion was even made to P.W. 1 either. We find no merit in this argument.

16. Another argument has been raised by the learned Counsel for the appellant that the accused is entitled to exercise his right of self-defence and also the right of private defence in view of the statements made by him. P.W. 5 stated that he saw injuries on the person of the accused. Therefore, he directed that the accused may be sent to the hospital for treatment. The prosecution examined P.W. 12 the Civil Assistant Surgeon, Government Hospital, Gobichettipalayam, to say that he examined a person sent from the sub-jail Gobichettipalayam and the name of the prisoner is Ramasami on whom he found no external injuries. The learned Sessions Judge in paragraph 23 observed that on 6-10-1971 the accused was sent to the hospital along with one Rangasami, on the basis of the testimony -of P.W. 13. He noticed that P.W. 12 stated that on 6-10-1971 he examined one prisoner by name Ramasami under O.P. No. 5358. We are unable to find any material to support the conclusion of the learned Sessions Judge that P.W. 12 examined the accused but it has been mistakenly mentioned with reference to the name of Rangasami instead of Marappa Gounder. Even assuming that there was the mistaken mention of Rangasami, the prosecution must have chosen to place

best evidence in regard to the examination of the accused for the injuries on him. P.W. 12 noticed no external injuries. Only he heard about the complaint about the chest pain. But the question is whether it was the accused that was produced before P.W. 12? We have grave doubts about the facts whether the accused was examined at all by P.W. 12. The evidence on this aspect of the matter is highly unsatisfactory. The learned trial Judge noticed the statements of the accused that he was so badly beaten by sticks as to impel him to take the knife and cut at his assailant in self-defence. In such a case, the learned Sessions Judge states that the accused should have received contusions or abrasions. But no injuries on the person were found, so the learned Sessions Judge states. It must be remembered that the Sub-Magistrate (P.W. 5) who has some experience of noticing the injuries on the person surrendering before him or remanding to his custody has stated that he saw injuries on the person of the accused. There is no proper explanation offered by the prosecution in explaining the injuries found on the accused, undoubtedly according to the testimony of P. W. 5. It is the bounden duty of the prosecution to explain the injuries found on the person of the accused particularly in the circumstances pleaded by the accused giving him the benefit of some right to self-defence. In our judgment the failure of the prosecution to offer any explanation in this regard shows that evidence of the prosecution witnesses relating to the incident is not wholly true at any rate. Further the injuries on the person of the accused render the plea taken by the appellants probable. (Vide paragraph 6 of the judgment in Mohar Rai v. State of Bihar, : 1968 CriLJ1479 . The learned trial Judge after having arrived at the erroneous conclusion that there were no injuries on the person of the accused, held that the case of the accused that he stabbed the person with a view to defend himself, is false and therefore the learned Sessions Judge has rejected the plea of the accused. We have no doubt in our minds that the accused had some injuries on his person, according to the testimony of P.W. 5. There is no proper or rational explanation offered by the prosecution. Therefore, we are constrained to attach some value to the statement of the accused which contains the circumstances under which he stabbed Muthusami Gounder. He certainly claims the right of private defence or self-defence in his statement.

17. Even taking his statement at its face value in favour of the accused, we are unable to hold that he is entitled to get wholly the benefit of Section 100 secondly of the Indian Penal Code. We are unable to hold that the assault either on his wife or on him by the prosecution party was such that would reasonably cause the apprehension in the mind of the accused that either grievous hurt or death will otherwise be the consequence of such assault on him or and his wife. Therefore, we have no hesitation in holding that he had exceeded the right of self-defence. We also further find that exception (2) to Section 300 of the Indian Penal Code would avail the accused wholly. Therefore, we find the accused-appellant guilty of the offence under Section 304, Part I of the Indian Penal Code and sentence him to undergo rigorous imprisonment for a period of five years. We set aside the conviction for the offence under Section 302 of the Indian Penal Code and the sentence of death awarded against him. In lieu of it we substitute his conviction for the offence punishable under Section 304, Part I of the Indian Penal Code and sentence him to undergo rigorous imprisonment for a period of five years. Save for the modification of the conviction and sentence as noticed above, the criminal appeal is partly allowed and partly dismissed.