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Crl.A.(MD) No.452 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.10.2023
Pronounced on	30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) No.452 of 2021

Navamani

... Appellant

Vs.

State through
The Inspector of Police,
South Police Station,
Thoothukudi District.
(Crime No.680/2014)

... Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 [Act 2 of 1974] praying to call for the records pertaining to the Judgment of conviction and sentences passed in S.C.No.332 of 2016 dated 31.01.2019 on the file of the learned Principal Sessions Judge, Thoothukudi and set aside the same as illegal and acquit the appellant.

For Appellant : Mr.G.Karuppasamy Pandian
for Mr.K.Manoharan

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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J U D G M E N T

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the appellant assailing the 'Judgment dated 31.01.2019' [for the sake of convenience and clarity, hereinafter referred to as 'impugned Judgment'] passed by the 'learned Principal Sessions Judge, Thoothukudi' [for the sake of convenience and clarity, hereinafter referred to as 'Trial Court'] in Sessions Case No.332 of 2016 in which the appellant [for the sake of convenience and clarity, hereinafter referred to as Accused as described before the Trial Court] was convicted for the offence punishable under Sections 341, 294(b), 302 and 506(ii) of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [for the sake of convenience and clarity, hereinafter referred to as 'IPC'] and sentenced as follows:-

<i>Accused Provision under which convicted</i>	<i>Sentence</i>
Section 341 of IPC	To undergo Simple Imprisonment for one month and a fine of Rs.500/-.
Section 294(b) of IPC	To undergo Simple Imprisonment for 3 months and a fine of Rs.500/-, in default of payment of fine, to undergo Simple Imprisonment for 15 days.



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Section 302 of IPC	To undergo Imprisonment for Life and a fine of Rs.2,000/-, in default of payment of fine, to undergo Rigorous Imprisonment for 6 months.
Section 506(ii) of IPC	To undergo Rigorous Imprisonment for 7 years and a fine of Rs.1,000/-, in default of payment of fine, to undergo Rigorous Imprisonment for 6 months.
Note:- The period of sentences was ordered to run concurrently. The period of imprisonment, if any already undergone, was ordered to be set off under Section 428 of the Criminal Procedure Code, 1973 (Act No.2 of 1974) [for the sake of convenience and clarity, hereinafter referred to as 'Cr.P.C.']	

2. The case of the prosecution, in brief, is as follows:-

2.1. The deceased Manoharan and accused Navamani were residing in 7th Street, Anna Nagar, Thoothukudi. They were working as masons. Both were friends. On 15.10.2014, the deceased did not go to work and was in his house. On that day, morning, the accused pledged his daughter's bicycle and received a sum of Rs.300/- from the deceased. Later, the accused's wife-Petchiammal found her daughter's bicycle at the deceased's house and tried to take it back to her house. At that time, the deceased stopped and asked her to re-pay the said amount of Rs.300/- received by the accused and then take back the bicycle. In the said course, Petchiammal assaulted the deceased with her slipper. In turn, the deceased attacked Petchiammal with slipper and took back the bicycle to his house.



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2.2. On the same day, i.e. 15.10.2014, at 05.45 p.m., while the deceased was proceeding East from his house and nearing the frontage of one Jegan's house, the accused followed the deceased and assaulted him with a spade striking over his left side head near to the ear and also cut the deceased's head with the edge of spade, due to which, the deceased sustained injuries on his left ear region and head. Further, the accused inflicted a cut on the left shoulder of the deceased. When people witnessing the occurrence tried to come and save the deceased, the accused threatened and prevented them. The deceased died on the spot.

2.3. Then, P.W.1 - wife of the deceased went to the police station and lodged a complaint (Ex.P.1) at 07.00 p.m. Based on the said complaint, P.W.10 – Sub Inspector of Police registered a case against the accused in Crime No.680 of 2014 under Sections 294(b), 341, 302 and 506(ii) of IPC. The First Information Report [FIR] was marked as Ex.P.6. P.W.13 - Inspector of Police, South Police Station, Thoothukudi received the FIR and started investigation. On 15.10.2014 at about 08.00 p.m., he visited the place of occurrence in the presence of witnesses Mr.Kannan (P.W.6) and Mr.Rajamuniasamy (P.W.7) and prepared an Observation Mahazar (Ex.P.13) and Rough Sketch (Ex.P.14). At 09.00 p.m., P.W. 13



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— Inspector of Police seized the blood-stained soil (M.O.4) and sample soil (M.O.5) from the place of occurrence in the presence of the above mentioned witnesses. He conducted inquest over the dead body on the same day in the presence of the above mentioned witnesses. Inquest Report was marked as Ex.P.16.

2.4. On 18.10.2014 at 03.30 p.m., P.W.13 - Inspector of Police arrested the accused in front of Government Hospital, Thoothukudi in the presence of Village Administrative Officer (P.W.8) and Village Assistant (L.W.13). The accused voluntarily gave a Confession Statement in the presence of the said witnesses. The Investigating Officer (P.W.13) recorded the same. The admissible portion of the said Confession Statement was marked as Ex.P.2. Based on the Confession Statement given by the accused, the Investigating Officer (P.W.13) seized blood-stained spade (M.O.1), blood-stained dhoti (M.O.2) and blood-stained shirt (M.O.3) near the Well of the accused in the presence of Village Administrative Officer (P.W.8) and Village Assistant (L.W.13) under the cover of Atthachi (Ex.P.3). Thereafter, P.W.13 examined the Doctor (P.W.9) who conducted Post-Mortem and obtained Post-Mortem Report (Ex.P.5). He thereafter sent requisition (Ex.P.17) to the Court for sending



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the case properties for chemical analysis and also sent requisition (Ex.P18) for chemical analysis of deceased blood which was collected during post-mortem examination. After completion of investigation, the Investigating Officer (P.W.13) filed a Charge Sheet against the accused for the offences under Sections 294(b), 341, 302 & 506(ii) of IPC and filed the same before the Judicial Magistrate No.1, Thoothukudi.

3. The learned Judicial Magistrate registered the case in P.R.C.No. 20/2016. Since the offence under Section 302 of IPC is exclusively triable by Sessions Court, he committed the case file and the Accused to the Trial Court. The Trial Court took the case on its file and numbered it as S.C.No. 332 of 2016. After hearing both sides, the Trial Court framed Charges under Sections 294(b), 341, 302 & 506(ii) of IPC against the accused on 22.03.2017 and read over and explained to him. The accused pleaded not guilty and claimed to be tried. Therefore, trial was ordered. To prove its case, the prosecution examined P.W.1 to P.W.13 (Witnesses) and marked Ex.P.1 to Ex.P.18 (Documents) and M.O.1 to M.O.8 (Material Objects). After full trial, the learned Sessions Judge concluded that the prosecution has proved the charges levelled against the accused and accordingly convicted and sentenced the accused as stated *supra* in paragraph No.1.



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4. Feeling aggrieved with the conviction recorded and sentence imposed by the Trial Court, the Accused has preferred this Criminal Appeal under Section 374(2) of Cr.PC.

5. This Court has perused the case files and the Memorandum of grounds of appeal. The following points arose for consideration:-

- i. Whether the prosecution has proved the charges levelled against the accused under Sections 294(b), 341, 302 & 506(ii) of IPC?
- ii. Whether there exist any reason to interfere with the Impugned Judgement?

Discussion and Decision for point Nos.(i) & (ii)

6. The learned counsel for the accused argued as follows:-

In this case, an earlier complaint was suppressed and Ex.P.1 Complaint was created subsequently. The FIR was registered at 7.00 p.m and the same was sent to the Judicial Magistrate with a delay of 4 hours. Except P.W.1, other private witnesses have not supported the prosecution case. The presence of P.W.1 in the place of occurrence is doubtful, hence P.W.1 could not have witnessed the occurrence. Accordingly, he prayed to allow this appeal.



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6.1. The learned counsel for the accused as an alternate plea argued

as follows:-

On the evening of 15.10.2014, an altercation took place between the wife of the accused and the deceased. During the said altercation, the deceased assaulted the accused's wife with slipper. The said incident was brought to the knowledge of the accused by his wife which caused provocation to the accused. On the same day at 05.45 p.m., while the accused was returning from workplace with a spade, he saw the deceased and there developed some altercation. During the said altercation, the accused out of the provocation caused assaulted the deceased with the spade. Hence the accused had no premeditation or intention to kill the deceased. He further submitted that in the course of said altercation, the accused also got injured. Hence the act of the accused does fall under Exception 1 of Section 300 of IPC. Therefore, he prayed to pass order accordingly.

6.2. In support of his contention, the learned counsel for the accused relied on the decision of the Hon'ble Supreme Court in *Anbazhagan's* case [*Anbazhagan Vs. The State represented by the Inspector of Police, reported in 2023 SCC OnLine SC 857*].



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7. Per contra, the learned Public Prosecutor appearing for the State submitted that the Trial Court believed the evidence of P.W.1 and there is no reason to disbelieve the same; that the accused was arrested on 18.10.2014 at 03.30 p.m. and he voluntarily gave a confession before the Investigating Officer (P.W.13) and the same was duly recorded in the presence of the Village Administrative Officer (P.W.8) and Village Assistant (L.W.13); that the accused led the Investigating Officer (P.W.13) and took out M.O.1 to M.O.3 from the hidden place and handed over the same to the Investigating Officer (P.W.13) and the same were sent to Forensic Science Laboratory (FSL); that T-Shirt Banian (M.O.6), blood-stained pant (M.O.7) and Inner-wear [Jatti] (M.O.8) which were recovered from the dead body were also sent to Forensic Science Laboratory (FSL); that Ex.P.10 Serology Report reveals that blood stains in M.O.2 (Dhoti) belongs to 'O' Group; that the deceased's blood also belongs to 'O' Group; that the prosecution has proved the recovery of M.Os. as per law and that the prosecution has proved the case beyond reasonable doubt and therefore, there is no reason to interfere with the impugned Judgment. Further, he submitted a case law in ***Sudip Kumar Sen's*** case [***Sudip Kumar Sen alias Biltu Vs. State of West Bengal and others, reported in (2016) 3 SCC 26***] for the proposition that the court may act on a testimony



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of a single witness though uncorroborated, provided that the testimony of the single witness is found reliable. Accordingly he prayed to dismiss this appeal.

8. This Court has considered both side arguments and perused the case file.

9. In this case, on the side of prosecution, 5 witnesses (P.W.1 to P.W.5) were examined as ocular witnesses. Out of 5 witnesses, except P.W.1, other witnesses have not supported the prosecution case. P.W.1 is none other than the wife of the deceased. P.W.1 in her evidence has deposed that on 15.10.2014 at 11.00 a.m., the deceased went outside and returned with a bicycle and when she asked about the bicycle, the deceased told that Navamani (accused) received Rs.300/- and gave him the bicycle; that on the same day at about 4.00 p.m., the wife of the accused-Petchiammal found their daughter's bicycle at the house of the deceased and tried to take it back to her house and at that time, an altercation happened between the deceased and the wife of the accused; that in the said course, the wife of the accused assaulted the deceased with slipper and she left without taking the bicycle; that thereafter, at about



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05.00 p.m. when the deceased was nearing the frontage of the house belonging to one Jegan, the accused came from behind with a spade and attacked the deceased on his head due to which the deceased collapsed on the spot; and that she raised alarm and when public witnessing the incident tried to come forward, the accused threatened and prevented them.

10. In her cross-examination, P.W.1 deposed that she went to the police station at about 07.00 p.m. and narrated the incidents and her oral complaint was converted into a written complaint by the police (marked as Ex.P.1) and her signature was obtained on the same by the police. The learned counsel for the accused drew the attention of this Court to a portion of the cross-examination of P.W.1 which reads as under:-

“... சம்பவம் எவ்வளவு நேரம் நடந்தது என்றால் ஒரு நிமிடத்திற்குள்ளேயே அடித்துவிட்டார். நான் மாலை 7.00 மணிக்கு காவல் நிலையத்திற்கு போனேன். சம்பவம் நடக்கும் போது மாலை 5 மணி இருக்கும். காவல் நிலையத்தில் வைத்து என்னிடம் கேட்டார்கள். நான் சொன்னதை எழுதிகொண்டு என்னிடம் கையெழுத்து வாங்கினார்கள்.
...”

11. This Court has carefully considered the above portion of the evidence of P.W.1. P.W.1 has clearly deposed that the occurrence had



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happened at 5.00 p.m., she went to the police station at 7.00 p.m. and narrated the incident and the police in turn reduced it into Ex.P.1 – Complaint and obtained her signature. Hence, the argument that there was an oral complaint earlier and the same was suppressed is incorrect and deserves to be rejected.

12. The accused side put a suggestion to P.W.1 that P.W.1 did not see the occurrence which is why there was a two-hour delay in lodging the complaint. P.W.1 has denied the said suggestion as incorrect. It is to be noted from the evidence of P.W.1 that the occurrence happened at about 5.00 p.m and Ex.P.1 was registered at 7.00 p.m. and the same reached the jurisdictional Magistrate at 10.05 p.m.

13. P.W.12 – Head Constable in his evidence has clearly explained that on 15.10.2014 at 7.40 p.m., after receiving the complaint from Sub Inspector of Police, he went to the Judicial Magistrate No.1, Thoothukudi to hand over the FIR and the original complaint. At that time, the Judicial Magistrate No.1 was on leave. Hence, he went to the house of the In-Charge Magistrate (Judicial Magistrate No.2) and was waiting there till 10.05 p.m. for the Judicial Magistrate No.2 to return from hospital. In



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view of the above evidence, it is clear that there was no delay in registering FIR and sending the same to the jurisdictional Judicial Magistrate.

14. The further argument of the learned counsel for the accused is that if P.W.1 had witnessed the occurrence, she would have also got injured or atleast blood stains would have been found in her dress, but, P.W.1 in her cross-examination has deposed that the blood stains did not get on her dress. Considering the nature and the place of occurrence, this Court is of the view that merely because no blood stains are found in the dress worn by P.W.1, the evidence of P.W.1 cannot be rejected for the reason that her evidence is cogent and corroborated by the medical evidence.

15. The Investigating Officer (P.W.13) arrested the accused on 18.10.2014 at 03.30 p.m. in front of the Government Hospital, Thoothukudi. After arrest, the accused gave a voluntary confession in the presence of the Village Administrative Officer (P.W.8) and Village Assistant Mr.Periyanayagam (L.W.13). The admissible portion of the confession was marked as Ex.P.2. Based on the confession, the



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Investigating Officer (P.W.13) recovered the blood-stained spade (M.O. 1), blood-stained dhoti (M.O.2) and blood-stained Shirt (M.O.3). He sent the same to the Forensic Science Laboratory. FSL Report received reveals that blood stains found in the dhoti (M.O.2) belongs to 'O' Group and the deceased's blood group matches with the blood stains found in the dhoti (M.O.2). Hence, this Court is of the view that the recovery of M.Os. is believable. The evidence of P.W.1 is cogent, trustworthy and inspires confidence of the Court. Hence, no corroboration is necessary for the evidence of P.W.1. In the decision of the Hon'ble Supreme Court in **Sudip Kumar Sen**'s case referred to *supra* which was relied on by the learned Additional Public Prosecutor, it has been held that “*The court may act on a testimony of a single witness though uncorroborated, provided that the testimony of the single witness is found reliable*”. In view of the evidence adduced, the prosecution has established the fact that the accused caused injury to the deceased by using spade (M.O.1) and thereby caused death to the deceased.

16. The Investigating Officer (P.W.13) examined the Post-Mortem Doctor (P.W.9) and obtained Post-Mortem Certificate (Ex.P.5). Ex.P.5 – Post-Mortem Certificate reads as follows:-



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“ Regarding the body of a Male aged about 46 years named as Manoharan.

Requisition received at 11:00 A.M. on 16-10-2014 from the Inspector of Police, Thoothukudi South P.S. with his letter: Cr.No:680/2014 Dt: 15-10-2014.

Body in-charge of Police Head Constable No.761 named Mr.Narayanan.

Identification and caste marks.

- 1) White mark over the right wrist.
- 2) A black mole over the left side of chest.

The body was first seen by the undersigned at 11.15 A.M. on 16-10-2014.

Its condition then was rigor mortis seen all over the body.

Post mortem commenced at 11.15 A.M. on 16-10-2014.

Appearance found at the post mortem:-

Moderately nourished body of a male. Finger and toe nails are blue. Bleeding from nose and left ear noted. Deformity noted in occipital region of the head.

The following ante mortem injuries were noted in the body:-

1. An abrasion of size 6cms x 1cm seen over the left shoulder.
2. An abrasion of size 6cms x 0.5cm seen 5cms above injury no.1.
3. A curved cut wound of size 6cms x 2cms seen in the upper part of left pinna.
4. A curved cut wound of size 3cms x 2 cms x bone deep seen 3cms behind the left ear.
5. A curved cut wound of size 1cm x 1cm x bone deep seen 5cms above left ear.
6. A curved cut wound of size 5cms x 2cms x bone deep seen in the right occipital region.



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On dissection of Scalp, Skull, Dura and Brain:-

A linear fracture of the length 30cms seen extending from right temporal bone to left temporal bone passing through across the middle of occipital bone. Sub arachnoid haemorrhage seen over the left temporal, occipital, parietal and cerebellum. A linear fracture of length 10cms seen extending from foramen magnum to above said fracture.

Other Findings:-

Peritoneal cavity-normal. Pleural cavities-normal. Pericardium-contained about 10ml of straw colored fluid. Heart-normal and chambers empty. Coronaries-patent. Larynx and Trachea-normal. Hyoid bone-intact. Lungs, Liver, Spleen and Kidneys-normal and cut section congested. Stomach-contained about 300ml of straw colored partially digested food particle with fruity odour, mucosa-contested. Small intestine-contained about 100ml of digested food particles with fruity odour, mucosa-contested. Bladder-empty. External genital-normal.

Note:- Blood preserved for biological analysis.

OPINION:-

The deceased would appear to have died of complications of head injury. Death would have occurred 12-24 hrs prior to the autopsy.”

Ex.P.5 – Post-Mortem Certificate reveals that the deceased died due to complications of head injury. Therefore, it is proved that the deceased died due to the head injury caused by the accused.



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WEB COPY 17 (i). Whether the act of the accused amounts to murder is the question now. As stated *supra*, the accused and the deceased were friends and were doing mason work. The above fact has been admitted by P.W.1 in her evidence. Both were residing in the same street. As per the evidence of P.W.1, on the fateful day at 4.00 p.m., there was an altercation between the wife of the accused and the deceased. In the said altercation, the accused's wife assaulted the deceased with slipper. In turn, the deceased also assaulted the accused's wife with slipper. Ex.P.1 – Complaint reveals the said fact and the same has not been denied by the prosecution.

17 (ii). In Ex.P.1 – Complaint, it has been stated as follows:-

... அவளுக்கு கோபம் வந்து என் கணவரை
செருப்பைக்கழட்டி அடித்துவிட்டாள். என் கணவரும்
பதிலுக்கு அவளைச் செருப்பால் அடித்துவிட்டு
சைக்கிளை எடுத்துக் கொண்டு வீட்டில் வந்து
நிறுத்திவிட்டு அண்ணாநகர் மெயின்ரோட்டுக்கு போகிறேன்
என்று சொல்லிவிட்டு மாலை சுமார் 5.45 மணிக்கு
அண்ணாநகர் 7வது தெருவில் ஜெகன் வீட்டுப் பக்கம்
கிழக்கு பார்க்க நடந்து போய்க் கொண்டிருந்தார்.



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அப்போது பேச்சியம்மாள் புருசன் நவமணி வேலைக்கு போய்விட்டு வந்த மண் வெட்டியுடன் வேகமாக என் புருசனுக்கு பின்னால் போனார். நான் நவமணியைப் பார்த்து அவனுக்கு பின்னால் போய்க் கொண்டிருந்தேன். நவமணி என் கணவரைப் பார்த்து ஏல் நில்லுல் என்று சொல்லவும், என் கணவர் நிற்கவும், ... என் பொண்டாட்டிய அடிக்க நீ யார்ல, என் பொண்டாட்டியை அடித்த நீ சாவுல் என்று மண்வெட்டியின் பின்புறத்தால் எனது கணவரின் தலையின் இடது பக்கம் காது ஓரம் ஓங்கி அடித்தான். பின்பு மண்வெட்டி நுனியால் என் கணவரின் தலையின் உயரே கொத்தினான். ...

A reading of the above shows that deceased assaulting the accused's wife with slipper is the reason for the offence.

17 (iii). The aforementioned act (deceased assaulting the accused's wife with slipper) when came to the knowledge of the accused while he was returning from work with a spade, caused sudden provocation to him. According to the prosecution, the accused was arrested on 18.10.2014 in front of the Government Hospital after being discharged from the hospital. From the above facts, it is discernible that the accused was admitted to the Hospital till 18.10.2014 and the accused was injured. So, probably, there would have been an altercation between the accused and the deceased. In



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the course of said altercation, due to the sudden provocation and heat of passion, the accused would have caused injury to the deceased.

17 (iv). It is to be noted that accused and the deceased were friends and were residing in the same street. Hence, the accused has no premeditation or intention to kill the deceased. A petty quarrel happened between the deceased and the accused's wife, in the such quarrel, the deceased had assaulted the accused's wife with a slipper. The aforesaid act had caused provocation in the mind of the accused. The aforesaid act was the reason for the offence.

17 (v). Hence, this Court is of the view that the accused has no premeditation to kill the deceased and the occurrence happened due to the sudden provocation and heat of passion, therefore the act of the accused falls under Exception 4 of Section 300 of IPC which is punishable under Section 304 Part I of IPC.

18. This Court has carefully perused the case file and perused the evidence and materials. There is no evidence available on record to establish the offences punishable under Sections 294(b), 341 & 506(ii) of



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IPC. As stated *supra*, except P.W.1 (wife of the deceased), other witnesses have not supported the prosecution case. Further, there is no evidence available on record to attract the offences under Sections 294(b), 341 & 506(ii) of IPC. Hence, the findings of the Trial Court as far as offences punishable under Sections 294(b), 341 & 506(ii) of IPC are liable to be interfered with.

19. In view of the above discussions, Point Nos.(i) & (ii) are partly answered in favour of the accused and this appeal is liable to be partly allowed. The conviction and sentence imposed by the Trial Court is modified as hereunder.

20. In the result, this Criminal Appeal is partly allowed with the following terms:-

(i) The accused is acquitted from the charges levelled against him under Sections 294(b), 341 & 506(ii) of IPC.

(ii) The conviction of the accused under Section 302 of IPC is altered to one under Section 304 Part I of IPC. For the altered conviction, the accused is sentenced



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to undergo Rigorous Imprisonment for a period of 7 (seven) years with fine of Rs.2,000/- in default thereof, to undergo Simple Imprisonment for a further period of 6 (six) months.

(iii) The period of imprisonment already undergone by the accused in this case is ordered to be given set off under Section 428 of Cr.P.C.

(iv) If the accused has already undergone Rigorous Imprisonment for 7 (seven) years and remitted the fine amount, he shall be released forthwith if he is not required in connection with any other case / cases.

(M.S., J.) (R.S.V., J.)
30.11.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order

JEN

Note:-

- 1. Registry is directed to forthwith communicate this order to Jail Authorities in Central Prison, Palayamkottai.**
- 2. All concerned to act on this order being uploaded in official website of this Court without insisting on**



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certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

- 1.The Inspector of Police,
South Police Station,
Thoothukudi District.
- 2.The Principal Sessions Judge,
Thoothukudi.
- 3.The Superintendent of Prison,
Central Prison, Palayamkottai.
- 4.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

JEN

Pre-Delivery Judgment made
in
Crl.A.(MD) No.452 of 2021

30.11.2023