



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.S.RAVI

CrI.A(MD)No.291 of 2011

Palavesan @ Shankar

.. Appellant/ Accused

Vs.

The State Rep. By
The Inspector of Police,
Murappanad Police Station,
Tuticorin District.

.. Respondent/Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. praying this Court, to set aside the Judgment delivered in S.C.No.178 of 2009 dated 05.09.2011 on the file of the learned Principle Sessions Judge, Thoothukudi and allow this appeal and pass such further orders as may be deemed fit and proper in the circumstances of the case.

For Appellant : Mr.Veera Kathiravan, Advocate
For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

JUDGMENT

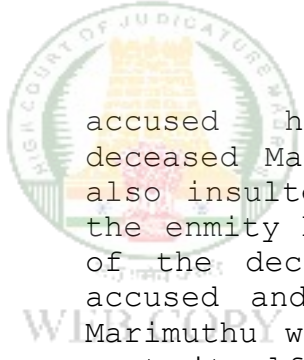
(Judgment of the Court was made by V.S.RAVI,J.)

The appellant is the sole accused in S.C.No.178 of 2009(Crime No.73 of 2009), on the file of the learned Principal Sessions Judge, Thoothukudi. He has been charged for the offences under Sections 302 and 506(ii) I.P.C. The trial Court, by Judgment dated 05.09.2011, convicted him for the offence under Section 302 I.P.C., and sentenced him to undergo Life Imprisonment and also imposed fine of Rs.1,000/- and, in default, to undergo further six months Rigorous Imprisonment and convicted him for the offence under Section 506(i) I.P.C., and sentenced him to pay a fine of Rs.500/- and, in default, to undergo further three months Rigorous Imprisonment and also ordered that the period of remand already undergone by the accused during the period of investigation and trial shall be set off as provided under Section 428 Cr.P.C. Challenging the said Judgment delivered in S.C.No.178 of 2009, the appellant/accused in Crime No.73 of 2009 is before this Court with this present appeal and he has been enlarged on bail as per the Order dated 31.07.2012 of this Court.

2. The brief case of the prosecution is as follows;

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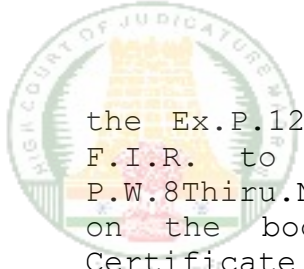
On 01.03.2009, at about 10.30 p.m., the deceased Marimuthu and the P.W.5 Murugan have spoken to each other and at that time, the



accused has gone through the way and on seeing the accused, the deceased Marimuthu abused him that the accused has stolen his goat and also insulted him by using the name of the accused community and due to the enmity between them, at 11.45 p.m, the accused has come to the house of the deceased and the deceased has twisted the right hand of the accused and at that time, the accused brutally attacked the deceased Marimuthu with the help of bill hook and the deceased has died on the spot itself and at that time, the accused threatened the wife and the daughter of the deceased, by saying that they will also be assaulted, if they have come nearer to the place of occurrence and thereby the appellant / accused committed the offences liable for punishment under Sections 302 and 506(ii) I.P.C.

2.1. In order to prove the case of the prosecution, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and also marked 18 exhibits as Ex.P.1 to Ex.P.18 and also Material Objects as M.O.1 to M.O.7.

2.2. P.W.1, Sornam, who is the wife of the deceased has spoken about the occurrence and she has lodged the complaint as per Ex.P.1 and in the said complaint, and one Palani, the President of the village has signed as an attesting witness and P.W.2 Esaki who is the daughter of the deceased has also corroborated the evidence of P.W.1 and P.W.3 Nainar has signed in the Observation Magazar and Athatchi as per Ex.P.2 and Ex.P.3 respectively and he has been treated as a hostile witness, as he has not supported the case of the prosecution. P.W.4 Nallathai who is residing in the opposite house of the deceased, has also corroborated the evidence of the P.W.1. Further, P.W.5 Murugan has stated that on the date of occurrence, the deceased Marimuthu has abused the accused by saying that the accused has stolen his goat and also insulted the accused by using his community name, and he has compromised them at 10.30 p.m., and the police have enquired him. P.W.6 Thiru.Loorthu Francis, Village Administrative Officer has stated that he and his Assistant have signed in the admissible portion of the confession statement as per Ex.P.4 and also they have signed in the Athatchi as per Ex.P.5, for the recovery of M.O.1 Bill hook, M.O.2 Half hand shirt and M.O.3 Cycle. Further, P.W.7 Thiru.Madasamy has stated that he is working as Lineman in the Tamil Nadu Electricity Board and on the date of occurrence, there is no power cut in the place of occurrence. P.W.8 Thiru.Narayanan, Police Constable (Grade-I) has received the Express F.I.R. from the P.W.11 Shanthi, Sub Inspector of Police and submitted to the learned Judicial Magistrate, Srivaikundam on 02.03.2009 at 8.30 a.m, and Ex.P.6 is the Passport and P.W.9 Thiru. Seranthaiyan, Head Constable has handed over the dead body of the deceased, as per the Ex.P.13 Requisition letter, to Thirunelveli Hospital for conducting Postmortem, and after the Postmortem, he has handed over the dead body of the deceased to the relatives and also he has submitted the M.O.4 and M.O.5, namely, the dresses of the deceased to the police station and Ex.P.7 is the passport. Further, P.W.10 Thiru.Ramachandran, Head Clerk of the Court of Judicial Magistrate, Srivaikundam has received the Ex.P.8 Requisition from the Inspector of Police for sending the material objects to the Chemical Analysis Test and the Ex.P.9 is the copy of the Court letter and Ex.P.10 is the Chemical Analysis Report and the Ex.P.11 is the Serology Report. Further, P.W.11 Tmt.Shanthi, Sub Inspector of Police has received the Ex.P.1 complaint from the P.W.1 Sornam and registered a case in Crime No.73 of 2009 and



the Ex.P.12 is the F.I.R and also she has submitted the said Express F.I.R. to the learned Judicial Magistrate, Srivaikundam, through the P.W.8 Thiru. Narayanan. Further, P.W.12 Dr. Mani has conducted Postmortem on the body of the deceased Marimuthu and issued the Postmortem Certificate as per Ex.P.14. P.W.13 Thiru. Rajan, Inspector of Police has taken up the investigation of the present case and he has prepared Rough Sketch and Observation Magazar as per Ex.P.15 and Ex.P.16 respectively and also he has recovered M.O.6 bloodstained cement and M.O.7 sample cement in the Athatchi as per Ex.P.17 and also he has prepared Inquest Report as per Ex.P.18 and he has recorded the confession statement, given by the accused and Ex.P.4 is the admissible portion of the confession statement and he has also recovered M.O.1 Bill hook and M.O.2 shirt in the Athatchi. After, he has been transferred to Coimbatore, P.W.14 Thiru. Martin Premraj, Inspector of Police has enquired Dr. Kannan and he has submitted requisition to the Court for sending the material objects to the Chemical Analysis Test and after completing the investigation, on 01.04.2009, he has filed final report.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent and he is not involved in the case.

4. Having considered all the above materials on record, the trial Court has convicted the accused, as mentioned in the beginning of this judgment and challenging the said judgment, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the Lower Court ought not to have convicted the appellant, when the prosecution has not come forward with the cogent evidences to establish the commission of offence. The evidences of P.W.1, P.W.2 and P.W.4 are not corroborating with each other and they are also, not previously known, the accused. Further, as per the Chemical Analysis Report, the group of bloodstain on the M.O.1 could not be found out and hence, it is liable to be set-aside. After the occurrence, the P.W.1 and P.W.2 have taken the deceased with their hands and therefore, the dresses of P.W.1 and P.W.2 would have sustained bloodstains. But, no bloodstained clothes from P.W.1 and P.W.2 have been seized by the police and hence, P.W.1 and P.W.2 would not have witnessed the occurrence. But, the Lower Court has come to a wrong conclusion that the P.W.1 and P.W.2 are women and so, they have not touched the body of the deceased. The P.W.1 has gone to the police station for lodging the complaint, along with the Panchayat President. But, the said President has not been examined as a witness. Further, the name of the appellant/accused is not known to the P.W.1. The Lower Court has considered only the P.W.1, P.W.2 & P.W.4 who are the interested witnesses. Further, the evidence of the other individual witness P.W.3 has not been considered by the Lower Court and the evidence of P.W.6, who is the Village Administrative Officer, has not been discussed in the Judgment of the Lower Court. The Lower Court has convicted the appellant on the basis of surmises and conjectures.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-



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i) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

ii) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

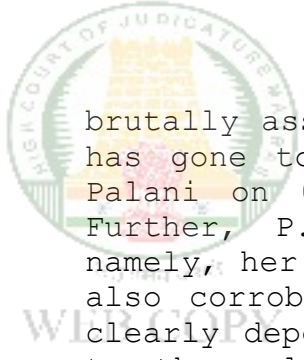
3) Whether it is not safe to convict the appellant for the offence under Section 302 I.P.C, for the reasons stated in the Memorandum of Appeal?

7. Analysis, discussions and findings with regard to the above mentioned points:-

The learned counsel for the appellant has submitted that the conviction and sentence passed by the Lower Court is not sustainable in accordance with law. Further, the conviction of the appellant under Section 302 I.P.C is not correct. Further, the learned counsel for the appellant has submitted that the Lower Court has not appreciated the evidences in proper manner. Further, the recovery and confession are unbelievable in the circumstances of the case. Further, the motive is fragile and does not exist, and the prosecution has failed to prove the case beyond the reasonable doubts. Furthermore, there are no clear and cogent evidences available on record, to convict the appellant under Section 302 I.P.C.

8. On the other hand, the learned Additional Public Prosecutor for the respondent has submitted that it is true that the P.W.1 and the P.W.2 are interested witnesses, being the wife and the daughter of the deceased, but on that flimsy ground, their evidences, which are natural and trustworthy, cannot be discarded. The evidences of P.W.1 and P.W.2 witnesses are natural and they are none else than the wife and the daughter of the deceased. P.W.1 evidence is consistent and corroborative with Ex.P.1, and therefore the same cannot be brushed aside. Through her evidence, the prosecution has well substantiated its case beyond reasonable doubt and her evidence is also corroborated by the medical evidence. Further, the motive has been established by the prosecution. Also, he has submitted that the prosecution has proved the case as against the appellant beyond all reasonable doubts and the Trial court has convicted the accused, after properly appreciating, the evidences and materials on record.

9. P.W.1 Sornam has manifestly deposed that she is the wife of the deceased Marimuthu and her husband has used to graze goats in the open field and during the night hours, her husband used to do the duty of Parotta Master in former Panchayat President Mayandi's shop and she has already known the accused and on 01.03.2009 at 10.15 p.m, the accused has come to their house and scolded her husband, for abusing the accused, regarding the theft of the goat, and after that, the deceased has caught hold of the right hand of the accused and twisted to the back side of the accused, and at that time, the accused has assaulted the deceased with the help of Bill hook, kept at the backside of his body in the banian and thereafter, she has lodged complaint as per Ex.P.1. In the Ex.P.1 complaint also, P.W.1 has specifically pointed out that the accused has

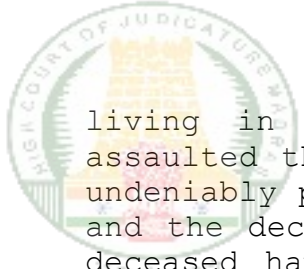


brutally assaulted the deceased with the help of M.O.1 Bill hook and she has gone to the police station along with Panchayat President by name Palani on 02.03.2009 at 00.30 hours and lodged the Ex.P.1 complaint. Further, P.W.1 has also particularly deposed that the P.W.2 Esaki, namely, her daughter has also seen the occurrence. Further, the P.W.2 has also corroborated the evidence of P.W.1. Further, P.W.2 Esaki has also clearly deposed that she has seen the occurrence and the P.W.1 has gone to the police station along with the President of Panchayat by name Palani, and lodged the Ex.P.1 complaint. In the said complaint also, P.W.1 has categorically stated that on 01.03.2009 at 11.45 p.m., the accused has assaulted the deceased with the help of M.O.1 Billhook.

10. Further, the P.W.11 Tmt.Shanthi, Sub Inspector of Police has clearly deposed that on 2.3.2009 at 00.30 hours, the P.W.1 has appeared along with one Palani and lodged the Ex.P.1 complaint and she has registered a case in Crime No.73 of 2009 and prepared printed F.I.R as per Ex.P.12 and she has submitted the said F.I.R to the learned Judicial Magistrate, Srivaikundam and other Higher Officials, through P.W.8 Thiru.Narayanan, Constable. Hence, it is seen that the Ex.P.1 complaint has been lodged without any delay and the said F.I.R has been registered and also the said F.I.R has been submitted to the learned Judicial Magistrate, in the present case, as pointed out by the P.W.8 Grade One Police Constable, as per the Passport of Ex.P.6; on the next day morning, as he has received the Ex.P.12 F.I.R on 02.03.2009 at 1.45 night only.

11. Further, the learned counsel appearing for the appellant has asserted that the P.W.1 has admitted in the cross examination that she does not know the name of the accused and his father's name, before the incident. However, in the Ex.P.12 F.I.R, the name of the accused Palavesam @ Shankar, S/o.Esaki Konar, Valla Nadu have been mentioned. However, the P.W.1 has clearly admitted in her evidence that she has gone to the police station along with one Palani, Panchayat President and informed to the police and the said Palani has also signed as an attesting witness in the Ex.P.1 complaint. Further, P.W.1 has categorically admitted in her evidence that her husband has used to drink Alcohol and no complaint has been filed, regarding the theft of goats with the police and she has also particularly deposed that on the date of occurrence, the deceased has taken rest, after taking food at 10.15 p.m., and thereafter, the accused has assaulted the deceased. Further, the P.W.1 has clearly pointed out that at the time of occurrence, the P.W.2, namely, Esaki has also seen the occurrence. Further, the P.W.2 has also undoubtedly deposed that at about 11.00 p.m., the deceased has taken rest in the cot and at 11.45 hours, the accused came and assaulted the deceased.

12. Further, P.W.3 Nainar has deposed that about attesting in the Observation Magazar of Ex.P.2 and also in the Athatchi of Ex.P.3 and the P.W.13 Thiru.Rajan, Inspector of Police has undeniably deposed that on 2.3.2009, he has gone to the place of occurrence and prepared Rough Sketch as per Ex.P.15 and Observation Magazar as per Ex.P.16 and recovered M.O.6 bloodstained cement and M.O.7 sample cement in the Athatchi as per Ex.P.17. In the said Athatchi only, P.W.3 has signed, as an attesting witness. Further, P.W.4 Nallathai has clearly deposed that on 1.3.2009 at about 11.45 p.m., she has seen the occurrence, as she is

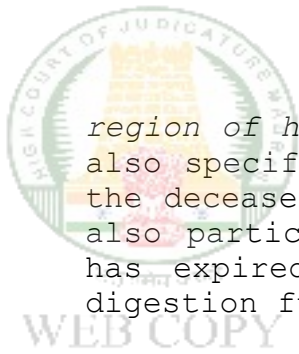


living in the opposite house of the deceased and the accused has assaulted the deceased with the Billhook. Further, the P.W.5 Murugan has undeniably pointed out that about the previous enmity between the accused and the deceased and on 1.3.2009 at about 10.30 p.m., the P.W.5 and the deceased have spoken to each other, near the "Amman" temple. Further, the P.W.5 has clearly pointed out in his deposition that the deceased Marimuthu at that time of speaking to him, has already consumed the Alcohol and the deceased has scolded the accused by his caste name also.

13. Further, the P.W.6 Thiru.Loorthu Francis, Village Administrative Officer has evidently deposed that he and his assistant have signed in the admissible portion of the confession statement as per Ex.P.4 and also they have signed in the Athatchi as per Ex.P.5, for the recovery of M.O.1 Bill hook, M.O.2 Half hand shirt and M.O.3 Cycle. Further, the P.W.13 Thiru.Rajan, Inspector of Police has undoubtedly deposed that he has arrested the accused Palavesam @ Shankar, and also recorded the confession statement and the Ex.P.4 is the admissible portion of the confession statement given by the accused and also, he has recovered the M.O.1 Bill hook and M.O.2 bloodstained shirt in the Athatchi as per Ex.P.5, in the presence of P.W.6, Village Administrative Officer and his Assistant. Further, P.W.7 Thiru.Madasamy has particularly deposed that he has worked as lineman in Tamil Nadu Electricity Board and on 01.03.2009 and 02.03.2009, there is no power cut in the place of occurrence. Further, the P.W.1 and the P.W.2 have also manifestly deposed that they have seen the occurrence, with the presence of the street lights, at the time of the occurrence, as per the details mentioned in the Ex.P.15 Rough Sketch.

14. Further, the P.W.13 Thiru.Rajan, Inspector of Police has specifically deposed that he has gone to the place of occurrence and in the Ex.P.15 Rough Sketch, he has also pointed out the details of the scene of occurrence. Further, the P.W.9 Thiru.Seranthaiyan, Head Constable has also distinctly deposed that on 2.3.2009 at 5.30 hours in the morning, he has handed over the body of the deceased Marimuthu and Requisition letter of Ex.P.13 for conducting Postmortem to Tirunelveli Hospital and also handed over the M.O.4 Banian and the M.O.5 Lungi, namely, the dresses of the deceased to the police and the Ex.P.7 is the Passport. Further, as per the Ex.P.7 Passport, it is seen that the said Passport has been issued to the P.W.9, to hand over the body of the deceased for the Postmortem. Further, the P.W.10 Thiru.Ramachandran, Head Clerk of the Court of Judicial Magistrate, Srivaikundam has clearly deposed that as per the Ex.P.8 requisition of the P.W.13 Inspector of Police, he has sent the material objects in the present case, to Chemical Analysis Test and Ex.P.9 is the copy of Court letter, Ex.P.10 is the Chemical Analysis Report and Ex.P.11 is the Serology Report. In the Ex.P.11, the Assistant Chemical Examiner to Government has clearly pointed out that the Bill hook only has been sent for examination, by the prosecution.

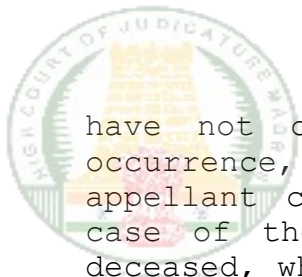
15. Further, the P.W.12 Dr. Mani has evidently deposed that on 2.3.2009, he has conducted Postmortem as per the Ex.P.13 Requisition letter, on the dead body of the deceased Marimuthu and issued the Postmortem Certificate as per Ex.P.14 and in the said Postmortem Certificate, he has clearly pointed out that *the deceased would appear to have died of shock and haemorrhage due to heavy cut injuries to the*



region of head, neck and chest. Further, the P.W.12 Postmortem Doctor has also specifically deposed that he has seen in the stomach of the body of the deceased, 500grams of digested rice food in the body. Further, he has also particularly stated in the cross examination, that if the deceased has expired due to the severe injuries caused to the body, then the digestion function will be stopped.

16. Further, the P.W.13 Thiru.Rajan, Inspector of Police has also distinctly deposed that on 2.3.2009, he has prepared Inquest Report as per Ex.P.18 and also he has prepared the Ex.P.16 Observation Magazar and recovered the material objects in the present case. Further, the P.W.13 Inspector of Police has clearly deposed that the P.W.1 has informed to the P.W.13 that at the time of incident, her husband, namely, the deceased Marimuthu has already taken food. Further, the P.W.14 Thiru.Martin Premraj, Inspector of Police has taken the investigation of the present case on 17.03.2009 and filed final report on 1.4.2009 and he has also particularly admitted that Murappanad police station is 30 kilometers away from the Judicial Magistrate Court, Srivaikundam. Further, the P.W.1 has pointed out in her evidence that before the occurrence has taken place, the deceased has taken food and also taking rest in the cot. According to the P.W.1 and the P.W.2, the accused has come to the scene of occurrence and after wordily quarrel, started attacking the deceased. Even, the P.W.5 has deposed that earlier to the date of occurrence, on 1.3.2009 also, the deceased has scolded the accused by using his caste name. Again, at the time of date of occurrence also, even according to the evidence of P.W.1 and the details mentioned in the Ex.P.1 complaint, the deceased has used filthy language as against the caste name of the accused and also turned the right hand to the backside of the accused and at that time, the accused has taken the M.O.1 Bill hook from the backside of his body from the banian, and assaulted the deceased. In such circumstances, it is clear that the deceased has used the caste name and filthy language as against the accused and the accused who is aged only 24 years, at the time of questioning under Section 313(1)(b) of Cr.P.C., on 18.03.2011, he has got angry and assaulted the deceased. Further, the P.W.1 has undeniably admitted that the deceased has scolded the accused by using filthy language, and the deceased has got the habit of drinking Alcohol. Even, P.W.5 has admitted that prior to the occurrence, the deceased has taken Alcohol, at the time of talking to the P.W.5.

17. According to the evidences of the P.W.1 and the P.W.2, the accused has suddenly appeared and started attacking the deceased only, after the deceased has twisted the right hand of the accused to his backside, and also used filthy language. Though we are prepared to believe that the accused who has assaulted the deceased, to some extent, we have got our own doubts about the very origin of the occurrence, as spoken by P.W.1, P.W.2 and P.W.5. But, at the same time, we wish to reiterate that the evidences of the P.W.1 and P.W.2 cannot be rejected in toto. It is of common knowledge, that the villagers used to have bill hook to do agricultural work. The principle "falsus in uno, falsus in omnibus" is not applicable to Indian Criminal Jurisprudence. If a witness deposes falsely on certain facts, on that score, the entire evidence of the P.W.1 cannot be rejected. If the Court is able to separate the grain from the chaff, then, there can be no impediment to act upon the said evidence. Here, in this case, though P.W.1 and P.W.2



have not come forward with the true version of the origin of the occurrence, their evidences regarding the brutal attack made by the appellant cannot be disbelieved. Therefore, we have no doubt, in the case of the prosecution that the accused, who brutally assaulted the deceased, which resulted in his death.

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18. Further, it is true that the P.W.1 and the P.W.2 are interested witnesses and closely related to the deceased. But, on that ground, their evidences cannot be rightly rejected, if their evidences inspire the confidence of the Court. In the present case, when the accused has only assaulted the deceased with the help of M.O.1 Bill hook, we hold that the evidences of the case of the prosecution, inspire the confidence of the Court. Further, in the presence of the P.W.1 and P.W.2, at the place of occurrence, cannot be doubted. From the careful scrutiny of the entire evidences of the P.W.1 and the P.W.2, even the deceased would not have anticipated that there would occur quarrel like this.

19. Further, the learned counsel appearing for the appellant has submitted that the act of the accused would fall within the fourth limb of under Section 300 I.P.C and also the first exception to Section 300 I.P.C. Thus, according to him, the offence committed by him would fall only under Section 304(ii) I.P.C. But, the learned Additional Public Prosecutor has submitted that the circumstances of the present case would go to prove that the act of the accused would squarely fall within the third limb of Section 300 I.P.C. However, it is crystal clear from the evidences of the P.W.1, P.W.2 and the P.W.5, the deceased has used filthy language and also the caste name of the accused and also twisted the right hand of the accused to the backside and also provoked the accused/appellant herein and the appellant has assaulted the deceased with the M.O.1 Bill hook, kept in the backside of his body in the banian, as clearly admitted by the P.W.1 and thereafter, only the accused has taken the said Bill hook kept in the backside of the body of the accused in the banian and assaulted the deceased.

20. Further, the learned counsel appearing for the appellant has vehemently contended that the said act of the accused would squarely fall within the first exception to Section 300 I.P.C. As already pointed out, that the deceased has used unparliamentary words and also used the caste name of the accused and also twisted the right hand of the accused and turned it to the backside of the accused and at that time, the accused has taken the M.O.1 Bill hook, kept in the backside of the body of the accused in banian, and assaulted the deceased. As already pointed out, there is a quarrel which has been unanticipated and there is a commotion between the accused and the deceased. Further, from the narration of events, we are able to presume, as required under Section 114 of the Indian Evidence Act that the accused would have been provoked, by the deceased, due to the caste name of the accused used by the deceased and also filthy language used by the deceased as against the accused. Further, the accused at his tender age of 24 years, at the time of questioning under Section 313(1)(b) of Cr.P.C, is prone to provocation more than the adults. Because of the provocation that he received at the hands of the deceased, the accused has taken the M.O.1 Bill hook, kept in the backside of the accused in the banian and caused assault to the deceased. At the same time, the Lower Court has clearly observed in Para

26 of the Judgment that the accused has threatened the P.W.1 and P.W.2, but they have not corroborated the version in Ex.P.1. Further, on a careful scrutiny of the entire materials available on records, it is seen that there are no cogent, clear, natural and trustworthy records to hold that the prosecution has not proved the guilt under Section 506(ii) I.P.C., but has proved the guilt under Section 506(i) I.P.C., as pointed out by the Lower Court.

21. On a cumulative consideration of the entire facts and circumstances, mentioned in our considered view that the act of the appellant would fall within the first exception under Section 300 I.P.C. Thus, the act of the accused is punishable as an offence under Section 304(i) I.P.C. Now, turning to the sentence, the learned counsel appearing for the appellant has submitted that the appellant is a young boy, at his 24 years and he is a poor man and he is having the duty of maintaining his family. Further, the accused has no bad antecedent and he has not involved in any other crime subsequent also and there is likelihood of reformation. Having considered all the above mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.25,000/-, in default, to undergo Rigorous Imprisonment for six months for the offence under Section 304 (I) I.P.C would meet the ends of justice.

22. In the result, this Criminal Appeal is partly allowed in the following terms:

i) The conviction and sentence imposed on the accused/appellant/ Palavesan @ Shankar in S.C.No.178 of 2009, on the file of the learned Principal Sessions Judge, Thoothukudi, under Sections 302 and 506(i)I.P.C is set aside and instead, he is convicted under Section 304(i) I.P.C, and sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.25,000/-, and already the fine amount in Receipt No.A105175 dated 07.09.2011 for Rs.1,500/- on the file of the Principal Sessions Judge, Thoothukudi, has been paid by him and therefore, he is directed to pay the balance fine amount of Rs.23,500/-, failing which, to undergo Rigorous Imprisonment for six months.

ii) It is also ordered that the above said total fine amount of Rs.25,000/- is directed to be paid to the P.W.1 Sornam, namely, the wife of the deceased Marimuthu, under Section 357(3) of Cr.P.C.

iii) Consequently, the Lower Court is directed to secure the accused and commit him to undergo the remaining period of sentence and the bail bond executed by the appellant shall stand cancelled.

sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To

1. Principal Sessions Judge,
Thoothukudi.
2. The Inspector of Police,
Murappanadu Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Judicial Magistrate, Srivaikundam.
5. -do- through The Chief Judicial Magistrate,
Thoothukudi.
6. The District Collector, Thoothukudi.
7. The Director General of Police,
Mylapore, Chennai-5.
8. The Superintendent of Police,
Central Prison, Palayamkottai.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.VEERA KATHIRAVAN, ADVOCATE IN SR NO. 58045

PMU

TE/NGM-SS/ 26/11/2015 : 10P/11C

Crl.A. (MD) No.291 of 2011
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