

BAIL SLIP

The Appellant/Accused was to be released on bail in and by the order in MP.1/14 in CrI.A.500/14 dt.17.10.2014 on the file of this High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

Reserved on	05.12.2016
Judgment Pronounced on	22.12.2016

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CrI.A.No.500 of 2014

P.Venkatachalam ..Appellant / Accused

Vs.

State rep. By:
Inspector of Police,
Jalakandapuram Police Station,
Salem District
Crime No.355 of 2001 ..Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the Judgment of the Learned 1st Additional District and Sessions Judge, Salem made in S.C.No.86 of 2014 dated 07.08.2014 convicting the Appellant for the offence under Section 304-II of IPC and sentencing herein to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo further period of three months Simple Imprisonment.

For Appellant : Mr.C.D.Johnson

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI.Side)

J U D G M E N T

The Appellant / Accused has preferred the instant Criminal Appeal (as an aggrieved person) as against the Judgment dated 07.08.2014 in S.C.No.86 of 2014 passed by the Learned 1st Additional District and Sessions Judge, Salem. The Learned 1st Additional District and Sessions Judge, Salem while passing the Impugned Judgment in S.C.No.86 of 2014 on 07.08.2014 at Paragraph No.26 had observed the following:

"26. In this case accused has been charged under Sections 307 and 302 IPC. But the evidence produced by the prosecution shows that the Accused and his paternal uncle Arumugam have quarreled with each other and in the quarrel the said Arumugam has taken the wooden log and threatened the Accused for which the Accused has took a stone and throw on him. The stone threw by him has not hit on the Arumugam, again he took out another stone and threw it on the Arumugam at that time the deceased Palaniammal who is the mother of the Accused intervened and she has suffered injury on her head. The act of the Accused shows that the Accused has not caused the death of the mother with intention, only due to the sudden quarrel he took out a stone and threw on the Arumugam. This Court is of the view that since the accused has thrown the stone with a knowledge that it is likely to cause death and the Accused without any intention to cause the death of the deceased Palaniammal cause death to her and the same is punishable under Section 304 Part II of IPC. Accordingly the Accused is hereby liable for conviction under Section 304 Part II of IPC".

and consequently found the Appellant / Accused guilty in respect of an offence under Section 304 Part-II of Indian Penal Code and sentenced him to undergo Five Years Rigorous Imprisonment, besides directing him to pay a fine of Rs.1,000/- and in default of payment of fine, further directed him to undergo Three Months Simple Imprisonment.

2. Insofar as the offence under Section 307 of IPC is concerned, the trial court found the Appellant / Accused not guilty and acquitted him under Section 235(1) of Cr.P.C., Questioning the validity, legality of the Judgment of the trial court dated 07.08.2014 in S.C.No.86 of 2014, the Appellant / Accused has filed the present Appeal by taking a plea that most of the prosecution witnesses (purported to be eye witness) turned hostile, but this aspect of the matter was not appreciated by the trial court in a proper perspective.

3. The Learned Counsel for the Appellant urges before this Court that the trial court had failed to take into consideration that even as per the complaint given by P.W.1 (Palaniammal) wife of Appellant / Accused wherein she had categorically stated that Arumugam, (who died during pending trial) brought the wooden logs and assaulted the deceased on her back side of the head and caused injuries and further resting on the complaint, a case was registered in Crime No.355 of 2011 on 14.08.2011 at about 13.00 hrs in respect of an offence under Section 302 of IPC.

4. The Learned Counsel for the Appellant advances an argument that the copy of the Express First Information Report

was sent to the Learned Judicial Magistrate No.2, Mettur in which the Accused was mentioned as Arumugam. But the Appellant was falsely implicated in the case as an Accused and he was convicted after full trial.

5. The core stand of the Appellant is that even as per the Express First Information Report, investigation in the present case began at 1.00 P.M. on 14.08.2011 and that the deceased in the present case was taken to the hospital by the Appellant / Accused and P.W.1. However, this aspect of the matter was omitted to be taken into account by the trial court. That apart, it is the contention of the Learned Counsel for the Appellant that it remains misery as to how the Appellant was made as an Accused, notwithstanding the fact that the complainant had categorically implicated one Arumugam as an Accused.

6. The Learned Counsel for the Appellant vehemently submits that the entire prosecution is based upon the 'Extra Judicial Confession' purportedly given by the Accused on 14.08.2011 at 7.00 p.m. in the evening before the V.A.O. (who was examined as P.W.9) but the trial court had failed to appreciate that the 'Extra Judicial Confession' in question has legal sanctity in Law.

7. Advancing his arguments, the Learned Counsel for the Appellant brings it to the notice of this Court that the so called 'Extra Judicial Confession' of the Appellant / Accused is a weak piece of evidence and by which no reliance can be placed to face a conviction. The Learned Counsel for the Appellant projects an argument that the trial court had committed an error in accepting the Extra Judicial Confession as 'Gospel Truth'.

8. The Learned Counsel for the Appellant to lend support to his contention that the 'Extra Judicial Confession' of the Appellant, viz., Ex.P.6 is not to be believed and it being the weakness piece of evidence cites the decision of the Hon'ble Supreme Court reported in 1983 Cr.L.J. 149(1) (Heramba Brahma and Another V. State of Assam) at Special Page 152 wherein at Paragraph Nos.18 and 19 it is observed as under:

"18. We are at a loss to understand how the High Court accepted the evidence on this extra-judicial confession without examining the credentials of P.W.2 Bistiram ; without ascertaining the words used; without referring to the decision of this Court to be presently mentioned wherein it is succinctly stated that extra-judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words, the reason or motive for confession and person

selected in whom confidence is reposed. In *Rahim Beg V. State of U.P.*, (1972) 3 SCC 759 : (AIR 1973 SC 343), this Court while examining the evidence as to extra-judicial confession made by two accused to Mohmed Nasim Khann (P.W.4) observed that:

"There was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the two accused would go to Mohmed Nasim Khan and blurt out a confession."

19. So saying, the Court rejected the evidence as to extra-judicial confession. Position in this case is more deplorable. If the High Court had examined the decision of this Court, there would have been no difficulty in rejecting the evidence of extra-judicial confession. It fails to pass all the tests. We reject this evidence of extra-judicial confession, we reject this evidence of extra-judicial confession, as unworthy of belief. We, therefore, find it difficult to subscribe to the reasoning of the High Court that the evidence of Dilip Kumar against the present appellant is corroborated by the evidence in the form of extra-judicial confession."

9. He also relies on the Judgment of this Court in *Raja and Two others V. State*, Sub-Inspector of Police, Kalaiyar Koil Police Station (1995-2-L.W. (Criminal) at Page 513) wherein at Special Page Nos.516 and 517 at Paragraph No.13 it is observed as under:-

"13. The next piece of evidence available regarding the incident is extra judicial confession Ex.P.5 stated to have been given by A.1, Raju to P.W.8, Village Administrative Officer on 06.10.86. Ex.P.5 no doubt reads that at 12.30 a.m., on 20.09.86 A.1 to A.3 discussed about the scandal in the village regarding the relationship between P.W.2, Pandi and Chittu and that at 2 A.M., they went to the house of the deceased and while A.2 Gopal and A.3, Magudan caught hold of the legs and hands respectively of the deceased, A.1 pressed a pillow on her face and killed her. But, as rightly pointed out by Thiru M.Vinayagam, learned defence counsel, the narration in Ex.P.5, appears to be inherently improbable. It gives in detail, the bio-data of A.1 and his family members and proceeds to unfold how the event was accomplished. It is unlikely that a rustic person like A.1, Raju would have given such a lengthy statement taking care of minor details. And we also find that the narration in Ex.P.5 is the verbatim copy of the confession statement given by him

before P.W.12, Inspector which contains the admissible portion Ex.P.7. We are also to bear in mind that the extra judicial confession before the Village Administrative Officer has been made on 06.10.1986 which is nearly two weeks after the occurrence and the commencement of the investigation. Further, P.W.8, Village Administrative Officer, admits in his cross-examination that even though A.1, Raju was available in his house for about 1 ½ hours on the morning of 06.10.86 he did not send word to the Police Station. The Police Station at Kalayarkoil is located next to the house of Village Administrative Officer. The rear portion of the Police Station building is visible from the house of Village Administrative Officer. A.1, Raju does not own either land or house within the jurisdiction of P.W.8 Village Administrative Officer. There is no special reason for A-1, Raju approaching the Village Administrative Officer to make a confession. And as per the evidence of P.W.11, Sub Inspector, A.1, Raju was available with other witnesses during investigation till 21-9-86. While so, it is evident that this confession is only a make belief thought of during the investigation with the assistance of an obliging Village Administrative Officer and it is unsafe to place any reliance on the same. Further, a Division Bench of this Court has pointed out In re Lakshmanan (1971 M.L.J., Criminal 178)

"Under Rule 72 of the Criminal Rules of Practice, the " Village Magistrates are absolutely prohibited from reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun". It was intended to prevent false extra judicial confessions being secured through the help of the village munsif after the commencement of the investigation. The extra-judicial confession itself is a weak evidence and its value becomes less when it is obtained by a person in the position of the village munsif after investigation of the case by the police has started. But on a careful examination of the relevant provisions relating to the matter, it is not possible to state it is illegal or inadmissible in evidence, though the weight to be attached to the same may be a relevant question for consideration on the facts and circumstances of each case.""

10. Also in the aforesaid decision at Page No. 518 at Paragraph No.15 it is observed as follows:

"15. We have already seen that no importance could be attached to Ex.P.5 statement stated to have been given by A.1 Raju before P.W.8 Village Administrative

Officer. While so, the arrest of A.1, his confession as per Ex.P.7, and the consequential recovery of M.O.1 also fail to the ground."

11. The Learned Counsel for the Appellant invites the attention of this Court to the decision of this Court in Sasikumar V. State rep. by Inspector of Police, Karungalpalayam Police Station, Erode (2005-1-L.W. (Crl.) 161) at Special Page 162 wherein among other things it is observed that "Extra Judicial Confession relied upon by the prosecution is not true and voluntary, an not beyond the realm of doubt".

12. Besides the above, the Learned Counsel for the Appellant cites the decision of Hon'ble Supreme Court in Thangavelu V. State of Tamilnadu reported in (2002) 6 Supreme Court Case at Page 498 at Special Page Nos.505 and 506 and at Paragraph No.7, it is observed as under:-

" 7. At this juncture we may take note of the prosecution case that the appellant had made an extra-judicial confession to P.W.12, another VAO on the day following the incident. Though the courts below have not placed any reliance on this confession, we take note of this document for the purpose of appreciating the genuineness of the prosecution case. A perusal of this confession Ext. P-14 gives us an indication of the attempt of the prosecution to build a case against this appellant. This extra-judicial confession is so full of facts starting from about 25 years prior to the date of the incident and graphically details what happened over these years to his sister and his family which actually is the motive suggested by the prosecution for the crime. Ext. P.14 is recorded in nearly 4 full pages, it is not only speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the natural conduct of an accused if he was voluntarily making a confession. We further notice the unimaginable similarity in Exts. P.14 and P.1 as also in the evidence of P.W.1 which supports the theory of the defence that there was an attempt by the prosecution to create evidence in this case."

13. Added further, the Learned Counsel for the Appellant refers to the decision of Hon'ble Supreme Court reported in 1995

Supp (4) Supreme Court Cases 259 (Balwinder Singh V. State of Punjab) at Page 259 wherein it is laid down as follows:

"It is now well-settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof."

14. By way of reply, the Learned Government Advocate (Crl.Side) for the Respondent / Complainant submits that the trial court had come to a definite conclusion that the Appellant/ Accused was responsible for causing the death of the deceased (Palaniammal) and that the Respondent / Prosecution had proved its case beyond reasonable doubt and finally convicted him under Section 304 Part-II of IPC because of the reason that the Appellant / Accused had thrown the stone on Arumugam only due to sudden quarrel and in fact he had no intention to cause death of his mother, Palaniammal. But he threw the stone with a knowledge that it was likely to cause death and imposed a punishment of Five Years Rigorous Imprisonment upon the Appellant / Accused in respect of an offence under Section 304 Part II of IPC and also directed him to pay a fine of Rs.1,000/- and in default of payment of fine, ordered him to undergo further period of Three Months Simple Imprisonment, which does not suffer from any legal infirmities.

15. In the present case, it is quite evident that the Appellant / Accused was levelled with First Charge because of the land dispute between him and his paternal uncle Arumugam, they quarreled with each other on 14.08.2011 and that the said Arumugam had threatened the Appellant / Accused with stick which made the Appellant to throw the stone which had not hit Arumugam and thereby he had committed an offence punishable under Section 307 of Indian Penal Code.

16. The Second Charge that levelled against the Appellant was that in the course of same transaction, the Appellant / Accused picked up another stone and he threw the stone to hit Arumugam but hit the deceased viz., Palaniammal on her head resulting in her death and therefore he had committed an offence punishable under Section 302 of IPC.

17. It comes to be known that the Appellant / Accused's mother was Palaniammal (deceased). The Appellant / Accused's father viz., Palaniappan and one Arumugam (brother of his father) had partitioned the ancestral property among themselves and there was a boundary dispute in respect of the enjoyment of the said land. As a matter of fact, the Appellant / Accused was engaged in agricultural activities in his land and he threw some plants and stones upon the land of Arumugam which were plucked from his lands and Arumugam questioned the conduct of the Appellant / Accused and the Appellant / Accused and Arumugam had quarreled each other. Indeed at about 10.00 a.m., the said Arumugam took out a wooden log and threatened the Appellant with dire consequences. The Appellant got angry and he picked up a stone and threw it on Arumugam. In fact, Palaniammal (mother of the Appellant / Accused- since deceased), who had witnessed the occurrence intervened with a view to put an end to the fight between them. However, the Appellant / Accused threw the stone again, which hit the head of his mother, Palaniammal, who become unconscious at the spot itself. Later the Appellant / Accused called P.W.3 (Mohan) and in the latter's two wheeler, Palaniammal was taken to the hospital of P.W.7, Dr.Elangovan.

18. P.W.7 (Doctor) examined the Appellant / Accused's mother Palaniammal and advised the Appellant and P.W.3 to take her to the Mettur Government Hospital and accordingly, she was taken to Mettur Government Hospital where, the Duty Doctor, on examination found that the Appellant's mother was brought dead.

19. Subsequently, the Appellant / Accused's wife lodged a complaint (in writing) Ex.P.10 before P.W.11 (former S.I.of Police, Jalakandapuram Police Station) as if the deceased was attacked by Arumugam.

20. P.W.11, Inspector, who had received the complaint from P.W.1 at 1.00 p.m. had registered the Ex.P.11, First Information Report in Crime No.355 of 2011 under Section 302 of IPC. However, he transmitted the original F.I.R. to the Learned Judicial Magistrate No.II, Mettur and sent copies of the same to the higher officials, besides forwarding one copy of F.I.R. to P.W.12 for investigation.

21. P.W.12 (I.O. Of Police) on receipt of copy of F.I.R. rushed to the Mettur Government Hospital at 14.00 hrs and prepared Inquest Report, Ex.P.12 in the presence of Panchayators and Witnesses. Furthermore, through the Head Constable with the requisition, Palaniammal's body was sent for conducting the postmortem.

22. It is the evidence of P.W.8 (Doctor) that he received the deceased, Palaniammal's body from Head Constable (Prabhu -

611) and conducted the postmortem at 4.50 p.m. on 14.08.2011 and found the following injuries:

"A contusion about 10 X 5 cm over the left side of parietal region.

Internal examination Hyoid bone preserved. Ribs intact, heart weight 280 grms, chamber empty. Lungs right 440 grams, left 420 grams. C/s Pale. Liver - 1400 grams, C/s pale. Stomach contains 200 grams of undigested food particles, intestine floated with gas, kidney - each 100 gram. C/s Pale. Spleen - 100 grams C/s Pale. Bladder empty. Uterus - normal. Skull : blood clotted seen in the left parietal region. Fracture about 5 cm in length over the fronto-parietal suture line. Left side brain 1000 grm. C/s pale, Hemorrhage seen over left parietal region. Membrane torn over the fracture area. Fracture base of skull. Temporo - Parietal region.

Following viscera preserved. (1) Hyoid bone (2) Stomach with contents (3) Intestine (4) Portion of liver (5) One kidney."

23. As a matter of fact, P.W.8, Doctor had reserved his opinion pending report and Ex.P.3, Postmortem Certificate was issued by him. He had tendered his Final Opinion, (Ex.P.5) as to the cause of death opining that the deceased had appeared to have died about 5-8 hours prior to autopsy 'Due to Head Injury'.

24. It is to be noted that P.W.12 (I.O. Of Police) after examining Palaniappan, Kannupillai etc., recorded their statements. Later, he rushed to the scene of Crime at about 5.45 p.m. and prepared Ex.P.2, Observation Mahajar in the presence of P.W.6 and another. Ex.P.13 was the Rough Sketch. Furthermore, P.W.12 had recorded the statement of P.W.6 and one Radhakrishnan (Witness).

25. In reality, the Appellant / Accused on 14.08.2011 at about 7.00 P.M., had surrendered before P.W.9, (Village Administrative Officer of Surapalli Village) and gave an Extra Judicial Confession, which was recorded in the presence of Village Assistant. Ex.P.6 was the statement recorded by P.W.9, who prepared Ex.P.7, Special Report and later, P.W.9 with the Accused and his Assistant went to the Police Station, handed over the Accused with Statement and Special Report to P.W.12 around 8.45 P.M.

26. P.W.12 (I.O. of Police) enquired the Appellant / Accused in the presence of V.A.O., P.W.9 and his Assistant and based on the disclosure of the Appellant / Accused, M.O.1, Stone was recovered, which was used by the Appellant / Accused in regard to the commission of the crime. In fact, P.W.12 prepared an Alteration Report Ex.P.14 and sent the same to the Learned

Judicial Magistrate. On 15.08.2011, the Appellant / Accused on production before the Learned Judicial Magistrate, was remanded to Judicial Custody. P.W.12 had also examined P.W.1 to P.W.5, P.W.7, Dr.Elangovan, witness, Arumugam and recorded their statements. He examined P.W.10, (Subramani) and P.W.11 (Asaithambi) on 16.08.2011 and recorded their statements. He also examined P.W.8 (Doctor), who conducted the postmortem on 13.12.2011 and obtained a Final Report as to the cause of death of the deceased and laid a final report under Section 304 of IPC against the Appellant.

27. Before the trial court, when the Appellant / Accused was confronted under Section 313 (1) (b) of Cr.P.C. with incriminating materials found against him, he gave a reply stating that a false case was filed against him.

28. In fact, P.W.2 to P.W.5 were treated as 'Hostile Witnesses' by the trial Court. P.W.7 (Dr.Elangovan) in his evidence had stated that with the stone shown before him in Court, if attacked on head there was a possibility to sustain an injury like the one sustained by Palanippan's wife Palaniammal.

29. In the instant case, it was established through the evidence of P.W.8, Doctor before the trial court that the deceased, Palaniammal died due to head injury. In regard to the Extra Judicial Confession, Ex.P.6 (Statement of Appellant / Accused recorded by P.W.9, V.A.O. of Surapalli Village), it is to be pointed out that on 14.08.2011 at about 7.00 P.M., the Appellant / Accused had surrendered before P.W.9 and uttered that while picking herbs and plants in the morning at that time, a quarrel erupted between him and his paternal uncle and he threw a stone to attack his uncle, which hit on the deceased (Palaniammal) and she fainted in the same place. Further, she was taken to a private hospital and subsequently to Mettur Government Hospital where she was brought dead. The Appellant / Accused had surrendered before P.W.9 (V.A.O.) apprehending arrest. In fact, the Extra Judicial Statement, Ex.P.6, furnished by the Appellant / Accused was signed by him and one Pachamuthu (Village Menial) had attested the same with a Special Report, Ex.P.7, the Appellant / Accused was taken to the Jalakandapuram Police Station and he was handed over to P.W.12 (I.O. Of Police) together with Exs.P.6 and P.7.

30. A deeper scrutiny of Ex.P.6 (Statement of Appellant / Accused recorded by P.W.9, V.A.O.) clearly indicates the manner of happening of occurrence and further it unerringly points out that the Appellant / Accused had surrendered before the P.W.9 out of his own volition and made a Statement, Ex.P.6.

31. It is to be pointed out that in Law, an Extra Judicial Confession must be proved like any other fact. It is not

necessary that an 'Extra Judicial Confession' ought to be proved by an independent witness, who bears no animus against the Accused. Moreover, an 'Extra Judicial Confession' if accepted then, it should be accepted in toto.

32. At this juncture, it is represented on behalf of the Respondent / Complainant that the Appellant / Accused's wife, P.W.1 had lodged a complaint as if the deceased (Palaniammal) was attacked by one Arumugam (Paternal uncle of the Appellant) with the aid of wooden log. Furthermore, P.W.1 in her evidence had deposed that the police had obtained a signature in the complaint, but she had affixed her thumb impression in her deposition before the trial court and also proceeded to state (in cross examination) that she does not know to read or write.

33. Before this Court, on behalf of the Respondent / Complainant, a stand is taken that P.W.1 (Appellant's wife) had lodged a complaint to shield her husband as if the deceased Palaniammal was attacked and murdered by Arumugam.

34. Even though an 'Extra Judicial Confession' is a 'Weak Piece of Evidence', a Court of Law can rely upon the same of course based on the attendant facts and circumstances of a given case. A conviction, certainly can be based on an 'Extra Judicial Confession' without there being any corroboration whatsoever. Further, it is not an invariable rule that a Court of Law would not accept the evidence when the substance of alleged statement of an accused and not actual was furnished.

35. At this stage, on perusal of Ex.P.6 (Extra Judicial Confession) of the Appellant / Accused, this Court is of the considered opinion that the same was tendered by the Appellant / Accused without any coercion / compulsion and in short, the same is a voluntary one. After surrendering himself before V.A.O. (P.W.9), the Appellant / Accused had given Ex.P.6, Statement (Extra Judicial Confession) and the same is free from any suspicion or cloud and therefore this Court accepts the same and comes to a resultant conclusion that the Appellant / Accused was responsible for causing the death of Palaniammal (Appellant's Mother) and the Respondent / Prosecuting Agency had proved its case beyond any shadow of doubt.

36. Coming to the aspect of charges being levelled against the Appellant / Accused in terms of ingredients of Sections 307 and 302 of Indian Penal Code, in the present case, it had surfaced through the evidence adduced on behalf of the Respondent / Prosecution that the Appellant / Accused and his uncle Arumugam had quarrelled with each other and when the said Arumugam took a wooden log and threatened the Appellant / Accused, the Appellant / Accused took a stone and threw it on the said Arumugam. But the stone had not hit Arumugam. The

Appellant / Accused took another stone and threw it on the said Arumugam and when his mother (Palaniammal) intervened she sustained injury on the head.

37. In this connection, it is not out of place for this Court to make a pertinent mention that the Hon'ble Supreme Court in the decision Jagriti Devi V. State of H.P. (AIR 2009 Supreme Court 2869) at Special Page 2872 at Paragraph No.18 had observed as under:

"18. Section 299 and Section 300 IPC deals with the definition of culpable homicide and murder respectively. Section 299 defines culpable homicide as the act of causing death; (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that such act is likely to cause death. The bare reading of the Section makes it crystal clear that the first and the second clause of the Section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed. Section 300, IPC, however, deals with murder although there is no clear definition of murder although there is no clear definition of murder provided in Section 300, IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300, IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act amounting to murder has been brought in the numerous decisions of this Court."

38. In the present case on hand, the Appellant / Accused had not caused the death of his mother (Palaniammal) with an intention. However, one cannot brush aside an important fact that due to eruption of sudden quarrel, the occurrence took place. Inasmuch as the Appellant / Accused had thrown the stone with a knowledge that it was likely to cause death, and since he

had no intention to cause his mother's death, his act squarely comes under Section 304 Part II of IPC and as such, he is held guilty by this Court under Section 304 Part II of IPC. In view of the fact that the Appellant / Accused had not committed an offence of 'Attempt to Murder' of Arumugam by throwing the stone, he was rightly acquitted by the trial court in respect of the offence under Section 307 of IPC.

39. In view of the foregoing and also this Court taking note of the important fact that the act of the Appellant / Accused was not a premeditated one and only because of sudden eruption of quarrel, the instant occurrence had taken place, this Court by taking into consideration the peculiar facts and circumstances of the present case in an encircling manner reduces the punishment of Five Years Rigorous Imprisonment imposed upon the Appellant / Accused to that of Three Years Rigorous Imprisonment. However, the fine of Rs.1,000/- imposed by the trial court upon the Appellant / Accused is not displaced by this Court. The Learned Learned 1st Additional District and Sessions Judge, Salem is directed to take necessary steps to secure the presence of the Appellant / Accused and to immure him in prison.

In fine, the Criminal Appeal is allowed in part on above terms.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. Learned 1st Additional District and Sessions Judge, Salem
2. The Public Prosecutor, High Court, Madras.
3. The State rep. By:
Inspector of Police,
Jalakandapuram Police Station,
Salem District
- 4.The Judicial magistrate, Mettur.
- 5.do thro'The Chief Judicial Magistrate,
Salem.

6.The Superintendent,
Central Prison, Salem.

7.The Collector, Salem.

Copy to:
The Section Officer,
Criminal Section, High Court,
Madras.

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Crl.A.No.500 of 2014



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