

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :15.11.2016

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Criminal Appeal No.235 of 2015

Velu

... Appellant/Accused

Vs

The State of Tamil Nadu,
rep. By the Inspector of Police,
H6, R.K. Nagar Police Station,
Chennai - 600 021. ... Respondent/Complainant
(Crime No.680/12)

Prayer: Criminal Appeal filed under Section 374 Cr.P.C., to call for the records in S.C.No.139 of 2013 on the file of the 18th Additional Sessions Judge, Chennai and set aside the order dated 31.03.2015 and acquit the Appellant/Accused.

For Appellant : Mr.V.Bhiman

For Respondent : Ms.M.F.Shabana

Government Advocate (Crl. Side)

JUDGMENT

The Appellant/Accused has preferred the instant Criminal Appeal before this Court as against the Judgment dated 31.03.2015 in S.C.No.139 of 2013 passed by the Learned XVIII Additional Sessions Judge, Chennai.

2.The Learned Additional Sessions Judge, Chennai, while passing the Judgment in S.C.No.139 of 2013 dated 31.03.2015, had, among other things, observed that on consideration of the occurrence witnesses of the Prosecution side, it came to light that the Appellant/ Accused had not attacked the deceased Selvam with an intention to commit murder and only due to sudden provocation and also not able to control his emotions, the Appellant/Accused had attacked the Selvam and caused his deceased and therefore, came to the conclusion that the Appellant/Accused had committed an offence in respect of Section 304(ii) I.P.C. and hence, altered the Section 302 I.P.C. to that of Section 304(ii) I.P.C. and ultimately, came to the conclusion that based on the evidence of P.W.1, P.W.2, P.W.6 and P.W.7 (of

the Prosecution) and also resting on the evidence of Doctors' evidence of P.W.8, P.W.12 coupled with the Exs.P.4, P.9 and M.O.6, MO.5, the offence against the Appellant/Accused was held proved under Section 304 I.P.C. and imposed a punishment of 10 years Simple Imprisonment besides a fine of Rs.5000/-, in default of payment of said fine amount, further directed the Appellant/Accused to undergo six months Simple Imprisonment as per Section 235(2) Cr.P.C. Further, it was ordered that the number of days, the Appellant/ Accused was inside the Prison, was ordered to be set off under Section 428 Cr.P.C.

3.Challenging the Judgment of the trial Court dated 31.03.2015 in S.C.No.139 of 2013, the Learned Counsel for the Appellant/Accused contends that the trial Court had failed to take note of the pivotal fact that as per Charge Sheet filed by P.W.16 (I.O.), the Date of Arrest was on 28.05.2012, but he was remanded to custody on the same day which falsified the Arrest Memo, on the subsequent day i.e. 29.05.2012.

4.It is represented on behalf of the Appellant/Accused that in M.O.3-Banian, there were no blood stain contrary to the evidence of the witnesses and Recovery Mahazar, but these aspects were not appreciated by the trial Court in a proper perspective.

5.The Learned Counsel for the Appellant urges before this Court that there were variance/discrepancies in the evidence of P.W.3 and P.W.4 and P.W.7, but the trial Court had failed to consider the same.

6.Advancing his arguments, the Learned Counsel for the Appellant projects an argument that the trial Court had failed to take into consideration that P.W.7 had deposed that the deceased pulled the hands of Shanmugavalli on 28.05.2012 and when he went to the Police Station, he saw the Appellant (Velu) at the Police Station which falsifies all the evidence of the Prosecution, but this aspect of the matter was not considered by the trial Court, which had resulted in miscarriage of Justice.

7.The Learned Counsel for the Appellant proceeds to take a plea that there were no blood stains seen in M.O.6 as deposed by P.W.10 which runs contra to the evidence of witnesses.

8.The Learned Counsel for the Appellant takes a stand that the trial Court had failed to note that the injuries seen on the body of the deceased were contrary to the evidence of purported eyewitnesses.

9.The Learned Counsel for the Appellant brings it to the notice of this Court that P.W.11 (Photographer) before the trial Court had deposed that he took photographs of the dead body at

7.30 p.m. which falsifies the prosecution theory and indeed, the trial Court failed to look into the same.

10.The Learned Counsel for the Appellant comes out with an argument that in fact, the photographs and negatives were handed over to the I.O. (P.W.16) by P.W.11 and admittedly, they were not produced before the Court, which give room for presumption that the prosecution wanted to cover the whole case at the instance of some one.

11.According to the Learned Counsel for the Appellant, the evidence of P.W.12 - Doctor attached to Government Stanley Hospital, Chennai as regards the injuries do not correlate with the evidence of P.W.8. Also that, P.W.14 had stated in his evidence that he was a witness for the recovery of blood stained Banian - M.O.6, but the trial Court had not appreciated this aspect, submitted Serology Report - Ex.P.10.

12.The Learned Counsel for the Appellant contends that P.W.1, P.W.6, P.W.7 (who accompanied the deceased to the hospital) had blood stains on their dresses and the non recovery and the consequent production of the same is fatal to the prosecution, which was not taken into account by the trial Court in a realistic fashion.

13.In the instant case, it comes to be known that the Appellant/ Accused was framed with a charge by the trial Court to the effect that on 28.05.2012 at about 16.15 hours at No.317 Periyar Salai, J.J. Nagar, Korukkupettai, Chennai - 21, the Appellant/Accused, in the Tea Shop along with his wife Shanmugavalli, was doing Tea business and at that time, the deceased Selvam created wordy altercation demanding money and after seeing the same, the Appellant/Accused got annoyed/angry and based on previous enmity, only if something was done against the Selvam, he could run tea Shop and with this conclusion, he took the Sarbath Bottle from the table of shop and by breaking the same, caused stab injuries one after the other on Selvam's left side neck and cheek and as such, he committed an offence under Section 302 I.P.C.

15.Before the trial Court, on behalf of the Respondent/ Prosecution, witnesses P.W.1 to P.W.16 were examined and Exs.P.1 to P.17 were marked. Also M.O.1 to M.O.6 were marked. On the side of the Appellant/Accused, no one was examined as a witness and also no document/no Material Object was marked. As a matter of fact, the Appellant/Accused when he was examined under Section 313 Cr.P.C., he denied the incriminating materials available against him as a false one.

16.P.W.1 (Complainant) in his evidence had deposed that he knew the Appellant/Accused and on 28.05.2012 at Ezhil Nagar, he

was loading the wooden load and while returning near the J.J. Nagar Tea Shop, there was a quarrel going on and when he went and saw the same, his uncle Selvam and the Appellant were indulging in quarrel and in the said quarrel, the Appellant/Accused broke the Sarbath Bottle and with that, he stabbed the left cheek of his uncle and also cut his neck and he along with Kumar took his uncle and he admitted in the Government Stanley Hospital.

17.It is the further evidence of P.W.1 that since in his dress, there was blood, he was sent to the Police Station and in the Police Station, he narrated the incident which was written by the police and in the said complaint, he had affixed his signature and the complaint - Ex.P.1 given by him. Further, he was examined by the Inspector of Police. Continuing further, P.W.1 (in his cross examination) had clearly admitted that for his uncle, because of drinking problem, he had the habit of quarreling with all people and because of the earlier quarrel that erupted between the uncle and the Appellant/Accused, the Appellant/Accused had closed his Tea Shop and further that, the Appellant/Accused had stabbed his uncle with the Sarbath Bottle and the persons in the crowd were simply keeping their hands closed and it was correct to state that he had not made any endeavour to save his sister's husband.

18.P.W.2, in his evidence, had stated that the Appellant/Accused in his Shop is selling Sarbath and Butter Milk and carrying out that business and that the Appellant/Accused broke the bottle from the shop and was keeping in his hand and that Selvam (since deceased) and the Appellant/Accused had quarrelled and at that time, he went there to separate/disburse them, but he had not gone near the Appellant/Accused, because he was keeping a bottle in his hand and that the Appellant/Accused had stabbed Selvam on his left neck and that the said Selvam not in full balance, was shaking for some time and ultimately fell down.

19.It is the evidence of P.W.2 (in cross examination) that he was watching the quarrel like others when the Appellant/Accused and Selvam were indulging in a quarrel and that in the front footsteps of the shop, the quarrel took place. Further, he had not seen what happen to the Selvam (who had fallen down/fell down) and moreover, he went to the hospital along with Selvam's Father-in-Law at evening 5.30 hours and the said Selvam was given at the Emergency treatment Ward.

20.P.W.3 in her evidence had stated that the next door Mary informed him that Velu had stabbed her husband and she along with her daughter came running and saw near the Velu's Tea Shop and at that time, her husband was not there and her husband was taken to the Stanley Hospital by the persons were there together

with her brother Elumalai (as informed to her) and that she went to the Hospital along with her child and her brother informed at the Hospital that his uncle had died and she went to the Hospital at 4.45 p.m. and that she was examined by the Inspector of Police.

21.P.W.4 in his evidence had stated that when he went to the place of occurrence, there his son-in-law was not there and that his son-in-law was taken to the Hospital, as informed by her son over the phone and accordingly, he went to the Government Stanley Hospital where his son-in-law was given the treatment and later they were asked to wait outside and after five minutes, his son informed that his son-in-law had expired and that he had examined by the police.

22.P.W.5 in his evidence had stated that on 28.05.2012 at about 7.45 p.m. after finishing his work when he was proceeding near J.J.Nagar, Periyar Salai Road, there was huge crowd and when he went and saw the same, at that time, the R.K.Nagar Police were conducting enquiry and when he asked as to what had happened, he was informed that a murder had taken place and that after seeing the place of occurrence, the Rough Sketch was being prepared and that the Inspector requested him to be a witness for the preparation of the sketch and that the Inspector inspected the place of occurrence and prepared the Rough Sketch - Ex.P.14 and prepared an Observation Mahazar - Ex.P.2 in which he had affixed his signature. Moreover, from the place of occurrence, the Police took a sample sand and they took broken Sarbath bottle from the place of occurrence for which a Mahazar - Ex.P.3 was prepared in which he had affixed his signature. Also that, he was examined by the Police.

23.It is the evidence of P.W.6 that he had seen the Appellant/ Accused and he is doing the Coolie Work and that on 28.05.2012 at about 4.15 or 4.45 p.m., after finishing his work, he came near the Velan Tea Shop and at that time, Selvam was quarreling with the wife of the Appellant/Accused and that the Appellant/Accused came running from his house and there was a wordy quarrel that took place between the Appellant/Accused and Selvam and that the Appellant/Accused took a Sarbath Bottle from nearby and stabbed Selvam as a result of which, he fell down and when he rose up again. Again the Appellant/ Accused stabbed him and later the Appellant/Accused had run away to his house after stabbing Sevlam and that Selvam fell down unconscious and that Selvam's brother-in-law Elumalai (P.W.1) took him in an Auto to the Hospital and he along with him and one Dass went to the Stanley Hospital and that P.W.1 was taken for enquiry by the Police and that the relatives of Selvam came to the Hospital to see him and that later he went to his and that he was examined by the Police.

24.P.W.6 (in his cross examination) had stated that he was standing near the hospital at the nearby occurrence shop and that the Appellant/Accused stabbed Selvam one time in his cheek and also stabbed him on his neck and that after stabbing the Appellant/Accused went to his house and that the Selvam chased the Appellant/Accused by running and after proceeding for 20 steps Selvam fell down and that the Appellant/Accused went to his house and closed his door. Further, Selvam fell on the door steps of the Appellant/Accused and Selvam's Brother-in-Law came through the outlet path and carried Selvam.

25.P.W.7 in his evidence had stated that on 28.05.2012 at about 4.14 hours, a quarrel broke out between Appellant's wife and Selvam in the Tea Shop and at that time, the Appellant/Accused after seeing Selvam asked as to why he was quarreling with his wife and for which Selvam scolded the Appellant/Accused and later the Appellant/Accused took a bottle and stabbed Selvam on his chest and that Selvam fell down and that the Appellant/Accused again stabbed Selvam on his chest and the injured Selvam was taken to Stanley Hospital in an Auto by his brother-in-law Elumalai, himself and one Kumar @ Mickal and after reaching the Hospital, on examination by the Doctor, it was informed that Selvam died and that he was examined by the police.

26.P.W.7 (in his cross examination) had stated that when they took Selvam to the Hospital in an Auto by carrying him in a lying position at that time it was correct to state that the blood which ousted out from the injury of Selvam fell on the dresses and he came to his house after removing the blood stained dress, he took bath and went to the Police Station and at the Police Station he had not informed that as to who stabbed/cut Selvam and on the next day of the occurrence they went to the Police on 29.05.2012. Proceeding further, it is the evidence of P.W.7 (in cross examination) that after admitting the injured Selvam to the Hospital when he went to the Police Station, he had saw the Appellant/Accused there and that he alone went to the Police Station from the Hospital and he went to the Police Station to inform the Police that after admitting Selvam in the hospital he had died.

27.It is the evidence of P.W.8 Doctor (who conducted postmortem) that on 29.05.2012 when he was on duty as Forensic Science Additional Professor, based on the request of R.K. Nagar Police Station Inspector, he began his postmortem of one Selvam, aged about 28 years (who was brought before him for postmortem examination by one Mohanraj through letter No.15633, which was received by him at 12.15 a.m.) and at about 12.30 a.m. in the afternoon, he is begun his postmortem examination and he found the Regor Mortis person all over the body of the deceased and

the deceased was in hale and healthy condition and prior to his death he had the following injuries:

1. There was a cut injury on left side upper portion of the backside of the hand.
2. There was a lacerated wound at a length of 7 x 2 cm bone deep on the left side below cheek [and it was seen with Bone].
3. One cut injury on the left side neck at a measurement of 2 x 1.5 cm.
4. One cut injury on the left side neck at a measurement 4 x 0.5 cm.
5. A lacerated oblique sloping wound tissue deep at a length of 6 x 4.3 cm and this injuries was found from the centre portion of his body at 5 cm out side and when the said injury was cut and seen, it came to light that the blood vessel proceeding to the brain (carotin Arti) was broken theory and that a projection of the thyroid cartilage of the larynx bone was in proper condition etc.

28. It is the evidence of P.W.8 (Doctor) that Postmortem Report - Ex.P.4 and he is of the opinion that because of the shock and loss of blood and also on the basis of injury found on the neck of the deceased, he would have died.

29. P.W.9 in his evidence had stated that presently he serving as Head Constable of Tiurvotriyur Police Station and that on 29.05.2012 when he was on duty at R.K. Nagar police station as per order of Inspector, he was given with the necessary forms for conducting postmortem on the dead body of Selvam and he took the same and handed over it to the Government Stanley Hospital and that he identify the body and completed the postmortem and received the body and handed over the same to his father and also the visra parts taken from the body [which was handed over to him) was received by him and since he was a delay in taking the same to the Forensic Science Department, he kept the body in the Mortuary and the lungi and inner wear handed over to him by the Doctor, was handed over by him to the Inspector of Police with his Special Report and that his Special Report is Ex.P.5.

30. It is the evidence of P.W.10 that on 27.11.2012 while he was serving as Assistant Chemical Examiner of Serology Department, he received the 5 types of case properties in paper packets sent by the XV Metropolitan Magistrate, George Town in R.K. Nagar Police Station, Crime No.680/2012 and it was received from the Serology Department of the Reception Department for examination and the case properties 1. Mud 2. Mud, 3. Brown colour broken pieces of stained bottle pieces, 4. Stained with Brown colour jatti (inner wear) 5. Stained Brown colour with Yellow and Dark Blue striped Lungi, 6. One white colour cut Banian and on examination of these properties, blood was found out and in case property No.1, 2, 6 in blood stains were found and the case

properties were numbered in their laboratory and a report dated 10.12.2014 was sent to the Court through S.I. of Police Kannan on 14.12.2012 and that Ex.P.6 was the Report.

31.It is the evidence of P.W.10 that in continuation, on 13.05.2013, he went to the Stanley Hospital and that obtained a sample blood on deceased Selvam in Crime No.680/2012 R.K. Nagar Police Station dated 29.05.2012 in examination No.626/2012 and the said sample blood was received at the Blood Discharge Section and on examination, it was found out that a blood belonged to 'O' category/ section and the Report was marked as Ex.P.7 which was sent to the Hospital Officer through Tabal on 02.05.2013.

32.It is the evidence of P.W.11 (Photographer) that on 28.05.2012 he was called by the H6 Police Inspector through telephone and he was asked to come to the Velan Tea Shop at Korukkupettai, Periyar Salai and on his instruction, he went there and he took a photo of the fell down person with stab injury on his neck and also he took photograph of the glass pieces from the place of occurrence and later handed over the said photographs to the Inspector of Police and that he was examined by the Police. P.W.11 (in his cross examination) had stated that the body was found at the footsteps of the Tea Shop and that when he went and saw the stabbed person, he had seen him in a dead state and near the dead body at a distance of 2 feet there were small glass pieces.

33.P.W.12 (Doctor) in his evidence had stated that on 28.12.2012 at about 4.35 hours one Selvam aged about 28 Male person was brought for treatment by his friend Kumar (P.W.6) and on enquiry, Kumar informed him that the known person on 28.02.2012 at about 4.15 hours, at Velan Tea Shop, J.J. Nagar place, Selvam was attacked by bottle and when he examined Selvam, he was not in conscious state and he was finding it difficult to breathe and that the pulse was not in normal state and for Selvam, there was a lacerated injury on his left side cheek at a measurement of 8 x 6 cm and another cut injury on his left side neck in a disarray fashion at a measurement of 4 x 3 cm and there was a slight cut injury on the backside of left side neck at 3 cm measurement 1. lacerated injury was seen on the left upper arm at a measurement of 5 x 3 x 2 cm and blood was coming out of his left side ear and that he was given the first aid treatment and he was admitted as an in-patient and the A.R. copy recorded by him was Ex.P.9.

34.P.W.13 in his evidence had stated that the Stanley Government Hospital Doctor on 30.05.2012 in R.K. Nagar Police Station Cr.No.680/12 had sent the inner parts of the body of Selvam viz., stomach and other articles viz., intestine, liver, kidney blood and after separately examining the same on samples, it was found out that there was no poisonous substance and a

Report in the form of opinion dated 20.06.2012 which was marked as Ex.P.10 and that he informed the necessary details to the Inspector of Police on being examination in this regard.

35.It is the evidence of P.W.14 that he had seen the Appellant/ Accused and there was a crowd near Vaithiyanathan Bridge and he went there to see what was there and he had seen the Appellant examining persons and that the Appellant/Accused gave a confession statement after admitting the occurrence in which the Appellant asked for his signature in which he had affixed his signature and from the nearby electric post box a blood stained cloth was taken by the police for which the police asked for his signature and he also affixed his signature and that he was examined by the police. P.W.14 (in his cross examination) had stated that the police in his presence had not shown him the blood stained cloth, but it was resembled like a cloth and at the time of seeing the same, it was like a Banian and that he had affixed his signature near the bridge viz., Exs.P.11 and P.12.

36.P.W.15 (Law and Order Inspector) in his evidence had stated that on 28.05.2012 when he was serving as Law and Order Inspector of R.K. Nagar Police Station, H6, on receipt of a complaint from Elumalai, he registered the First Information Report in R.K. Nagar P.S. Crime No.680/12 under Section 302 I.P.C. and the F.I.R. was Ex.P.13 and subsequently, he went to the scene of occurrence and after seeing the place of occurrence, in the presence of witnesses Murugan, Siva, he prepared Observation Mahazar and Rough Sketch Ex.P.14 and also in the presence of aforesaid witnesses from the place of occurrence, he seized the blood stained sand, sand without blood stains, broken pieces of Sarbath Bottle through Mahazar and later examined witnesses Murugan, Siva, Anandi, Lakshmanan, Kumar @ Mickal, Doss and recorded their statements. Further, he examined the photographer Selvam (who took photograph of the place of occurrence) and also examined the Stanley Hospital Dr.Venkatesan (P.W.12) and the Head Constable Mohanraj (P.W.9) and recorded their statements. Moreover, on the next day, he arrested the Appellant/Accused near Vaithiyanathan Bridge in the presence of witnesses Seena @ Seenivasan (P.W.14) and obtained a confession statement in the presence of afore-stated witnesses and seized a blood stained Banian (which was produced by the Accused) and the admitted portion in the confession statement was marked as Ex.P.15 and that the blood stained Banian was marked as Ex.P.16 and also he examined Seena @ Seenivasan and obtained their statements. Besides these, he examined the Panchayatdars later viz., Pushparaj, Murthy, Velu, Ravi, Seenivasan and in their presence he conducted an inquest enquiry on the dead body of Selvam and prepared a Report - Ex.P.17 and that the blood stained mud was M.O.1, the sand without blood stain - M.O.2 and Banian with blood stain in white colour -

M.O.3, Jatti written in Star - M.O.4, striped black-blue and yellow colour lungi was M.O.5, the broken Sarbath bottle pieces - M.O.6 and since he was transferred, he had handed over the case file to the Inspector who came after him.

37.P.W.16 in his evidence had deposed that he took up the case in Cr.No.680/12 while he was serving as a H.6 R.K. Police Station inspected (registered under Section 302 I.P.C.) and on examination of the case file, he came to know that the Postmortem Report and Forensic Science Report were yet to be received and he received the Forensic Science Unit and examined one K.B.Devarajan and obtained his statement and also examined one Tmt.Subbulakshmi of the Forensic Science Department and obtained her statement after examining her and later he approached the Doctor who conducted the postmortem and after receiving the postmortem report recorded his statement and that his predecessor had recorded the statement of the concerned persons and on examination, he had not recorded their statements separately and after completion of investigation prepared a final report and after obtaining the opinion in a proper fashion, filed the same before the Learned XV Metropolitan Magistrate on 17.01.2013.

38.P.W.16 (in his cross examination) in candid terms had mentioned that he took out a copy of the final report from the computer and it was correct to state that in the final report, it was mentioned that the Appellant/Accused was arrested on 28.05.2012 and sent for Judicial Custody and further, in the Remand Report, it was correct to state that the Appellant/Accused was arrested on 29.05.2012.

39.In respect of an offence under Section 302 I.P.C., (i) the death of some Homo Sapien should have been caused; (ii) that the said death was caused by the Accused or the death was the consequence of the act of the Accused; (iii) the Accused had committed the death of the said human person (a) with an intention of causing death, or (b) that the accused knew that his act was likely to cause death; or (c) an injury (inflicted or caused) by the Accused was sufficient in the ordinary cause of nature to cause death.

40.It is to be remembered that there must be evidence that (i) an Accused caused death by doing the act which he knew, in all probabilities, to cause death (ii) or the Accused caused such bodily injury to such person as was likely to cause death.

41.In so far as the ingredients of Section 304 I.P.C. are concerned, one cannot ignore an important fact that an offence under Section 304 speaks of 'punishment to culpable homicide not amounting to murder'. As a matter of fact, the term 'Culpable

Homicide not amounting to murder' is liable for punishment in the following cases:

(i) If the act by which death is caused is done with intention of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine.

(ii) If the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

42. It cannot be brushed aside that the ingredients of Section 304 I.P.C. do not create any different offence. It merely provides punishment in a case where there is culpable homicide not amounting to murder. In reality, the Prosecution ought to lead evidence and show to the concerned Court that the case is squarely covered under Section 304 I.P.C.

43. It is to be pointed out that the requisite knowledge or intention of a Homo-Sapien's mind can only be found out through his outward activity/activities, a Judge manning the Court concerned is to apply his thinking judicial mind to see that no conviction can be passed unless the 'intention' or 'knowledge' from the evidence available on record can be conclusively arrived at. It cannot be gainsaid that every conviction as a logical corollary must be visited with an appropriate sentence being passed thereto, by the Court, within the parameters of Law. The exercise of discretion by a Court of Law ought not to be a fanciful or whimsical or capricious one, but must be based on sound exercise of discretion in a clearcut and unbiased manner. No wonder, an unreasoned lenient sentence [in our Acquisitorial System of Criminal Jurisprudence] imposed on an Accused resting on irrelevant and extraneous considerations [other than the available material facts on record] undoubtedly would affect the paramount 'WELFARE OF SOCIETY'. Also that, it is to be pointed out that while quantifying the punishment, a Court of Law is to strike a balance between the aggravating and mitigating circumstances. Indeed, the words 'Aggravating Circumstances' pertain to an offence committed. The words 'Mitigating Circumstances' relate to an Offender/Accused/Deviant, as the case may be.

44. As far as the present case is concerned, it cannot be said that the incident had not taken place and it cannot be denied by anyone in any manner that the stabbed person/injured Selvam later on died at the Stanley Hospital. It is true in the present case, it was wrongly mentioned (obviously, in an inadvertent manner) in the Final Report that the

Appellant/Accused was arrested on 28.05.2012. In fact, the Appellant/Accused was arrested only on 29.05.2012 and he was remanded to Judicial Custody for 15 days. Moreover, the stand of the Respondent/Complainant is that the Appellant/Accused was arrested when he was standing at Vaithiyanathan Bridge at about 13.00 hours in the afternoon and based on the confession given in the present case of witnesses at 13.15 hours, the same was recorded and he was brought to the Police Station at 15 hours and after physical examination of his body, he was handed over at Para of the Police Station. It appears that in the preparation of Final Report, an inadvertent error had crept-in as regards the date of Arrest on 28.05.2012. However, the correct date of Arrest was only 29.05.2012 and because of the slight error committed on the side of the Respondent/Complainant, the case of the Prosecution would not fail. However, this Court is of the considered view that whenever a Final Report is filed/laid before the concerned Court, it is the duty of the concerned I.O./other respective Police Officer concerned to adopt an utmost, cautious, careful and circumspection attitude so that it would not give room for an Appellant/Accused side to take advantage of the same.

45. At this stage, this Court, on a mere running of the eye of the Arrest Report under Cr.P.C. of the Inspector of Police (Law and Order) H.6 Dr.R.K. Nagar P.S., Chennai - 21 in H6 Cr.No.680/2012 under Section 302 I.P.C., is of the considered view that in the said Report, it was latently and patently mentioned that the date of Commission of offence on 28.05.2012 at 19.00 hours and that the name of the arrested person is Velu M/A 35810.Nallaiya No.321, J.J. Nagar, 'E' Street, Korukkupet, Chennai-21 and that he was taken into custody by one Raja Pandi, INS. H6, Police Station near Vaithiya Nathan Palam at 13 00 hrs. 1 ½ kms and that he was brought to the Police Station on 29.05.2012 at 15.00 hrs.

46. Be that as it may, in the present case, the oral testimony of evidence of P.W.1, P.W.2, P.W.6 and P.W.7 are quite cogent, convincing and unimpeachable one, in the considered opinion of this Court. Also that, the evidence of P.W.8 and P.W.12 - Doctors and the seizure of M.Os. like sarbath (juice) bottle pieces and the dresses worn by the deceased at the time of occurrence were recovered by the Respondent/Complainant/Police from the scene of occurrence and since in the instant case out of sudden provocation/by means of a punctured out words/without any premeditation or prior preparedness, the occurrence had taken place viz., the Appellant/Accused had stabbed Selvam on his left side cheek and neck, this Court is of the considered view that the trial Court had rightly found him guilty under Section 304(ii) I.P.C. instead of under Section 302 I.P.C.

47. In so far as the imposition of the punishment is concerned, this Court is of the view that the trial Court had awarded a punishment of 10 years Simple Imprisonment in respect of an offence under Section 304(ii) I.P.C. on the Appellant/Accused and also levied a fine of Rs.5,000/-, which in the considered opinion of this Court, is slightly on the higher side instead of the maximum substantial punishment of imposition of 10 years. Therefore, this Court, considering the fact that the occurrence had took place without any premeditation and it suddenly occurred, is of the earnest view that a punishment of 7 years Simple Imprisonment would serve the ends of Justice. Further, the period of sentence already undergone by the Appellant/Accused is ordered to be set off under Section 428 Cr.P.C. However, this Court is not dislodging the imposition of fine of Rs.5,000/- awarded by the trial Court upon the Appellant/Accused because of the fact that the same is a just, fair and equitable one. Resultantly, the Appeal is succeeds in part.

48. In fine, the Criminal Appeal is allowed in part. Resultantly, the Judgment passed by the trial Court dated 31.03.2015 in S.C.No.139 of 2013 stands modified in above terms.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The XVIII Additional Sessions Judge,
City Civil Court, Chennai.
2. do thro' The Principal Sessions Judge, Chennai.
3. The XV Metropolitan Magistrate, George Town, Chennai.
4. The Chief Metropolitan Magistrate, Egmore, Chennai.
5. The Inspector of Police,
H-6, R.K.Nagar Police Station, Chennai-21.
6. The Superintendent, Central Prison, Puzhal, Chennai.
7. The Public Prosecutor,
High Court, Madras.

ss(co)
krd 14/12

CrI.A.No.235 of 2015