

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.12.2016**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.**107 & 461 of 2016**
and Crl.R.C.No.**335 of 2016**

Crl.A.No.107 of 2016

1. Madhaiyan (A1)
2. Shivaji (A2)
3. Ranganathan (A3)

.. Appellants

- Vs -

State rep by Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
(Cr.No.137 of 2011)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Dharmapuri in S.C.No.13 of 2014 dated 04.07.2015.

For Appellants : Mr.A.Padmanaban

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

- - - - -

Crl.A.No.461 of 2016

P.Arjunan

.. Appellant / P.W.1

- Vs -

1. Madhaiyan (A1)

2. Sivaji (A2)
3. Ranganathan (A3)
4. Ponnusamy (A4)
5. Vani (A5)
6. Parthiban (A6)
7. State rep by Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
(Cr.No.137 of 2011)

.. Respondents

Prayer:- Appeal filed under Section 372 of the Code of Criminal Procedure against the judgment passed by the learned Additional Sessions Judge, Dharmapuri in S.C.No.13 of 2014 dated 04.07.2015.

For Appellant : Mr.K.Selvarangan

For Respondents 1 to 6: Mr.A.Padmanabhan

For Respondent 7 : Mr.P.Govindarajan
Additional Public Prosecutor

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Crl.R.C.No.335 of 2016

P.Arjunan

.. Appellant / P.W.1

- Vs -

1. Madhaiyan (A1)
2. Sivaji (A2)
3. Ranganathan (A3)
4. State rep by Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
(Cr.No.137 of 2011)

.. Respondents

Prayer:- Revision filed under Section 397 of the Code of Criminal Procedure to enhance the sentence imposed on the respondents 1 to 3 by the learned Additional Sessions Judge, Dharmapuri in S.C.No.13 of 2014 dated 04.07.2015.

For Appellant : Mr.K.Selvarangan

For Respondents 1 to 3: Mr.A.Padmanabhan

For Respondent 7 : Mr.P.Govindarajan
Additional Public Prosecutor

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COMMON JUDGMENT

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellants in Crl.A.No.107 of 2016 are the accused 1 to 3 in S.C.No.13 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri. There were three other accused in the case who were arrayed as accused Nos.4 to 6. The appellants in Crl.A.No.107 of 2016 are the respondents 1 to 3 in Crl.A.No.461 of 2016 and accused 4 to 6 are the respondents 4 to 6 in Crl.A.No.461 of 2016. Crl.A.No.461 of 2016 has been filed challenging the acquittal. The trial Court had framed as many as six charges against the accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under
1	A1 to A6	120(B) of IPC
2	A1 to A6	148 of IPC
3	A1 to A6	341 of IPC
4	A1 to A6	302 of IPC (2 counts)
5	A1, A2, A5 & A6	307 of IPC
6	A3 & A4	307 r/w 149 of IPC

By judgment dated 04.07.2015, the trial Court acquitted the accused 4 to 6 from all the charges. Similarly, the trial Court acquitted the

accused 1 to 3 also from the charges under Section 120(B) I.P.C. and Section 148 I.P.C. The trial Court, however convicted these accused 1 to 3 under Section 304(i) I.P.C. (2 counts) and sentenced them to undergo rigorous imprisonment for ten years and pay a fine of Rs.2000/- each in default to undergo rigorous imprisonment for six months. The trial Court convicted the accused 1 and 2 under Section 307 I.P.C. and the third accused under Section 307 r/w 34 I.P.C. and sentenced them to undergo rigorous imprisonment for five years and pay a fine of Rs.1000 in default to undergo rigorous imprisonment for three months. The trial Court convicted the accused 1 to 3 under Section 341 I.P.C. and sentenced them to undergo simple imprisonment for one month. Challenging the above conviction and sentence imposed by the trial Court, the accused 1 to 3 have come up with Criminal Appeal No.107 of 2016.

2. The appellant in Crl.A.No.461 of 2016 is the de facto complainant and a victim. Challenging the acquittal of the accused 1 to 3 from certain charges as detailed above and the acquittal of the accused 4 to 6 and also seeking conviction of the accused 1 to 3 under Section 302 I.P.C., he has come up with the said appeal.

3. The appellant / de facto complainant in Crl.A.No.461 of 2016 has filed Crl.R.C.No.335 of 2016 against the accused 1 to 3 seeking

enhancement of punishment for the accused 1 to 3. That is how these three matters are before us for disposal.

4. The case of the prosecution in brief is as follows:

4.1. P.W.1 is a resident of Nallakudlalthalli village in Dharmapuri district. One Mr.Govindraj (hereinafter referred to as D1) and Mr.Murugan (hereinafter referred to as D2) were his brothers. P.W.2 is yet another brother of P.W.1. All of them were residing in the same village.

4.2. The first accused is also a resident of the same village and a distant relative of the deceased and P.W.1. An agricultural land belonging to the first accused is situated by the side of the land belonging to the family of the deceased. The accused 2 and 3 are the sons-in-law of the first accused; the 4th accused is the sister's husband of the first accused; the 5th accused is the daughter of the first accused and the 6th accused is the nephew of the first accused.

4.3. For about 20 years, there was enmity between these two families on account of various issues. The first accused had erected a borewell in his land situated by the side of the land belonging to the deceased. He lifted water from the said borewell and irrigated the lands situated about one and half kilometers away from the said land.

Due to over exploitation of ground water through the borewell, the well in the land of the deceased dried up. The deceased party questioned the authority of the accused in taking water to a distant place. This resulted in police complaint as well as in civil litigation. Thus the enmity was further developed between these two families.

4.4. It is further alleged that some time before the occurrence, the deceased party had damaged the pipeline through which the accused were taking water from the borewell to a distant land. The accused were infuriated by the said incident and it is the immediate motive for the occurrence, it is alleged.

4.5. On 06.04.2011, in the evening, P.W.1 and his brothers Mr.Govindaraj and Murugan (deceased 1 and 2 respectively) went in a motorcycle belonging to their father to Hasthagiriur village to purchase sugarcane for crushing in their mill. They fixed the sugarcane in the village for purchasing and then all the three were returning in the same motorcycle to Puthureddiyur village to purchase some more sugarcane. They met one Suresh S/o Velayutham (P.W.12) and paid advance money to him for purchasing sugarcane from his field.

4.6. After the said transaction, P.W.1, deceased 1 and 2 were returning to their village in the same motorcycle. D1 drove the

motorcycle, D2 sat behind him as a pillion rider and P.W.1 sat further behind D2. When they were proceeding towards Kadathur village, when they were nearing a veraghu mandi stall of one Palani (P.W.16), all these six accused, suddenly emerged there, they were all armed with deadly weapons. The first accused was armed with an iron rod, the second accused was armed with a koduval, the accused 3 and 4 were armed with wooden reaper and accused 5 and 6 were armed with stones. All the accused intercepted the motorcycle.

4.7. As soon as the deceased (D1) stopped the motorcycle, these accused started mounting attack on them. The first accused attacked D1 with iron rod on his head. The second accused attacked him with koduval on his head and other parts of the body. The accused 3 and 4 attacked him with wooden reapers on his head and other parts of the body. The accused 5 and 6 attacked him with stones.

4.8. Similarly, in the same transaction, the first accused attacked D2 with iron rod on his head and other parts of the body. The second accused attacked him with koduval on his head and other parts of the body. The accused 3 and 4 attacked him with wooden reaper on his head and other parts of the body. The accused 5 and 6 attacked him on various parts of the body with stones. In the same transaction, it

is stated that the first accused attacked P.W.1 with iron rod and the second accused cut him with koduval. All the three fell down sustaining serious injuries.

4.9. P.W.2, the brother of the deceased and P.W.3 the brother-in-law of the deceased incidentally came to the place of occurrence on hearing the commotion. According to the case of the prosecution, they also witnessed the occurrence. Then, P.Ws.2 and 3 arranged for a vehicle and took D1, D2 and P.W.1 to the Government Hospital at Dharmapuri. The Doctor, on examining the deceased 1 and 2, declared them dead.

4.10. P.W.18 Dr.Vijayaveeran examined P.W.1 at 10.05 a.m. on 07.04.2011 at the Government hospital at Dharmapuri. At that time, he told the doctor that he was attacked by six known persons with crowbar, knife and stones. P.W.18 found the following injuries on him:

"(i) A lacerated injury measuring 4x1x0.5 cm near the left side of the forehead.

(ii) A lacerated injury 1x0.5x0.5 cm on the right cheek.

(iii) A lacerated injury measuring 2x0.5x0.5 cm on the left side of the forehead.

(iv) complaint of tenderness and contusion on the right side of the lower jaw.

(v) An abrasion 1x1x1 cm near left ankle

(vi) complaint of pain on the left shoulder."

Ex.20 is the wound certificate. He also informed the police about the same.

4.11. P.W.19 the then Sub Inspector of Police of Kadathur Police Station, on receiving intimation from the hospital, rushed to the Dharmapuri Government medical college hospital on 07.04.2011 at 10.00 a.m., recorded the statement of P.W.1 and on returning to the police station, he handed over the same to the Inspector of Police. P.W.22 the then Inspector of Police registered a case in Crime No.137 of 2011 for offences under Sections 147, 148, 341, 302 and 307 I.P.C. (2 counts) against all the six accused. Ex.P1 is the complaint and Ex.P25 is the F.I.R.

4.12. P.W.22 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. He recovered bloodstain earth and sample earth from the place of occurrence. After conducting inquest on the bodies of D1 and D2, he forwarded the same for postmortem.

4.13. P.W.10, Dr.Kaveri conducted autopsy on the body of

Murugan (D2) on 07.04.2011 at 04.25 p.m. and found the following injuries:

"Injuries: (1) A laceration cut clear edge cut clot 6x1 bone depth at left parietal region. (2) A laceration 4x1xbone depth left parietal region cut clear edge cut clot (3) A laceration 5x1xbone depth left parietal region cut clean edge cut clot (4) A laceration 4x1xbonedepth left parieto temporal region cut clean edge (5) A laceration 2x2xbonedep deep left occipital temporal region cut clean edge (6) A laceration 5x2xbonedep deep left occipital region cut clean edge (7) A laceration 4x1xbone depth right occipital region (8) Abrasion 3x1 right side of forehead (9) Abrasion 2x1 over right eyebrow.

Internal: Head – skull (1) # left paritotemporo occipital region 15 cm (2) # paritooccipital region 5x5 cm (multiple) cut teqliteral membranes cut protruding brain, # base of skull extending both sides. Brain – Laceration cut clots 10x6x3 left parieto occipital region. Neck – Hyoid bone intact. Heart empty pale, lung x size c/s pale. Abdomen – stomach empty, bladder empty, liver – normal size c/s pale spleen N size c/s pale."

Ex.P13 is the postmortem certificate. She opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased.

4.14. On the same day at 05.30 p.m. she conducted autopsy on the body of Govindarajan (D1) and found the following injuries:

"Injuries: (1) Laceration 3x2xpenetration into bone over right side of forehead. (2) laceration 2x1xright eyebrow – bone deep. (3) Laceration 5x3 cm right ear cut irregular edge (4) Laceration right occipital 5x3xbone depth (5) Laceration left parietal 4x2x bone depth cut irregular edge. (6) Contusion 5x5 cm right temporal region.

Internal examination: Head Neck (i) # right parietotemporal multiple region 15x7xcut damage the membranes cut protruding brain. (ii) # centre of base of skull (iii) # cut clot in left paranasal sinus cut trackt from right forehead wound. Hyoid intact. Chest: Heart empty pale, lung- pale c/s. Abdomen: Stomach empty; bladder – empty; kidney – normal size c/s pale, liver – normal size c/s pale, spleen normal size c/s pale."

Ex.P15 is the postmortem certificate. She opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased.

4.15. P.W.22, during the course of investigation, collected the blood stained clothes from the bodies of D1 and D2. He examined

P.Ws.1 to 3 and recorded their statements. On 08.04.2011, he arrested the accused 1 to 3 near a petrol bunk at Kadathur village. On such arrest, the accused 1 to 3 gave voluntary confession one after the other in the presence of P.W.4 and another witness.

4.16. In his confession, the first accused disclosed the place where he had hidden an iron rod (crowbar). In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.2. He also produced a bloodstained dothi and a banian (M.Os.12 and 13).

4.17. In his confession, the second accused disclosed the place where he had hidden a koduval and also the bloodstained clothes. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 and a bloodstained shirt and lungi (M.Os.16 and 17).

4.18. The third accused, in his confession has disclosed the place where he had hidden a motorcycle, a shirt, banian and lungi. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced a shirt (M.O.18), a banian (M.O.19), a lungi (M.O.20) and motorcycle (M.O.7). P.W.22 recovered the same under independent mahazars.

4.19. The 4th accused surrendered before the learned Judicial Magistrate, Dharmapuri on 16.06.2011. He was taken into police custody on the orders of the learned Magistrate on 17.06.2011. While in custody, he made a voluntary confession, in which he disclosed the place where he had hidden a motorcycle bearing registration No.TN 29 AN 2711. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.6 motorcycle and the same was recovered. The material objects recovered from the place of occurrence and the material objects recovered from A1 to A3 were all sent for chemical examination and the report revealed that there were human bloodstains on the same. On completing the investigation, he laid chargesheet against all the six accused.

4.20. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case, on the side of the prosecution, as many as 22 witnesses were examined, 30 documents and 33 material objects were marked.

4.21. Out of the said witnesses, P.Ws.1 to 3 have been examined as eyewitnesses. All these witnesses have vividly spoken about the entire occurrence and the overact of all the six accused.

P.W.1 has further spoken about the complaint made by him to the police. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of the material objects from the place of occurrence. He has further spoken about the arrest of the accused 1 to 3, the disclosure statements made by them and the consequential recoveries made out of the said disclosure statements.

4.22. P.W.5, the father of the deceased has spoken about the long standing enmity between the two families and the immediate motive for the occurrence. P.W.6, the wife of D2 and P.W.7, the wife of D1, have spoken only about the motive. P.W.8, an eyewitness to the occurrence has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 has stated that he helped P.Ws.2 and 3 in taking D1, D2 and P.W.1 to the hospital for treatment. P.W.10 has spoken about the postmortem conducted on the bodies of D1 and D2 and her final opinion regarding the cause of death.

4.23. P.Ws.11 and 12 have spoken only on hearsay information and they have not stated anything incriminating. P.W.13 is a police constable who has stated that the Sub Inspector of Police handed over the F.I.R. to him on 07.04.2011 at 12.15 p.m. and he in turn

handed over the same to the learned Magistrate. P.Ws.14 and 15 police constables have stated that they handed over the dead bodies of the deceased D1 and D2 respectively to the Doctor for postmortem.

4.24. P.W.16, who was examined as an eyewitness, has turned hostile. P.W.17 is the wife of P.W.1, she has also spoken only about the motive. P.W.18, Dr.Vijayaveeran, has spoken about the treatment given to P.W.1 in the Government Medical College Hospital at Dharmapuri. P.W.19 has stated that on receiving intimation from the hospital, he went to the hospital and recorded the statement of P.W.1 and on returning to the police station he handed over the same to P.W.22.

4.25. P.W.20, Dr.Ramamoorthy has stated that he took X-rays on P.W.1 for his head and he opined that fractures were suffered by P.W.1 are grievous in nature. P.W.21 has spoken about the confession made by A4 and the consequential recoveries made. P.W.22 has spoken about the registration of the case, the investigation done by him and the final report filed.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false.

On their side they examined five witnesses, however, they did not choose to file any document. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused 1 to 3 alone as detailed herein above but acquitted the rest and that is how the accused 1 to 3 have come up before this Court challenging their conviction. The de facto complainant has come up with the above appeal against acquittal and also filed a revision for enhancement of the sentence.

6. We have heard the learned counsel on either side and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

7. At the outset, we should say that the Criminal Revision Petition No.335 of 2016 is not maintainable before this Court in view of the proviso to Section 372 of Cr.P.C. Further, challenging the acquittal and also seeking enhancement of punishment, the de facto complainant has filed a separate appeal in Crl.A.No.461 of 2016 and therefore this Criminal revision deserves to be dismissed. Further the learned counsel for the revision petitioner also made endorsement not pressing the criminal revision petition No.335 of 2016 and accordingly the same is dismissed.

8. In this case, as we have already pointed out, there was a very strong enmity between the families of the accused and the deceased. There is no denial of the said fact. Thus, in our considered view, the motive for the occurrence stands proved. But simply on that score that there was strong motive on account of the long standing enmity, we cannot rush to the conclusion that these six accused were the perpetrators of the crime.

9. Now turning to the actual occurrence, P.W.1 is admittedly an injured eyewitness. He has spoken vividly about the presence and participation of all the six accused. P.Ws.2 and 3 who are the brother and brother-in-law of the deceased have stated that they came to the place of occurrence on hearing the commotion and they also witnessed the occurrence. The learned counsel for the accused would submit that P.Ws.2 and 3 would not have been present at the place of occurrence at all. We find force in the said argument. P.W.3 during cross examination has stated that when he went to the place of occurrence, already D1, D2 and P.W.1 were found lying with injuries. P.W.3 has stated during cross examination that at the time of occurrence, there was no other person available when he reached the place of occurrence. He found D1, D2 and P.W.1 lying with injuries. Thus, in our considered view, the presence of P.Ws.2 and 3 is highly doubtful. They claim to have been present at the place of occurrence

by chance. They are also inimical witnesses. When that be so, their evidences require very close scrutiny. Further, since they claim to have been present at the place of occurrence by chance, they should, to the satisfaction of this Court, explain as to what was the occasion for them to be present at the place of occurrence. In this case, the explanation offered by them is that they incidentally came to the place of occurrence. This explanation is difficult to be believed. Going by the long standing enmity between the two families, the fact that they have not explained their presence at the place of occurrence and also the fact that they had admitted during cross examination that when they went to the place of occurrence, they found D1, D2 and P.W.1 lying with injuries in a pool of blood, it is difficult to believe the presence of P.Ws.2 and 3. Further, the assailants did not spare even P.W.1. He was also brutally attacked. The enmity was common. Had it been true that P.Ws.2 and 3 were also present at the place of occurrence, the assailants who had equal motive against these two, would not have spared them also. At least some attempt would have been made on them. But P.Ws.2 and 3 have stated that there was no attempt to attack them at all by the assailants. Going by the natural human conduct and having regard to the common enmity, which was so strong for about 20 years, we are of the view that had it been true that P.Ws.2 and 3 were present at the place of occurrence, the assailants would not have simply spared them and on this score also,

we doubt the presence of P.Ws.2 and 3. Therefore, we reject the evidences of P.Ws.2 and 3 as unbelievable.

10. Now what remains is the evidence of P.W.1 alone who is an injured eyewitness. His presence at the place of occurrence cannot be doubted. The injuries sustained by him are grievous injuries on his head and other parts of the body. It is not the case of anyone that these injuries were self inflicted by P.W.1 only to strengthen the case. P.Ws.2 and 3 who had gone to the place of occurrence had found P.W.1 lying along with D1 and D2 with injuries. Then only he was taken to the hospital. Therefore, the presence of P.W.1 stands established. It needs to be mentioned that P.W.16 who was examined as an eyewitness had turned hostile and he has not supported the case of the prosecution in any manner. Thus, the prosecution now relies only on the solitary evidence of P.W.1.

11. When we analyze the evidence of P.W.1, the solitary eyewitness, we need to keep in mind that unless the evidence of the solitary eyewitness inspires the fullest confidence of the Court or in the event there are doubts about his credibility, unless it draws corroboration from other sources on material particulars, it would not be safe to make reliance on the said witnesses. The trial Court has disbelieved him, so far as the presence and participation of accused 4

to 6 is concerned. The trial Court has given cogent reasons for the same.

12. As far as the evidence of P.W.1 is concerned, though his presence cannot be doubted, when we test his veracity, we find it difficult to believe his evidence as against accused 4 to 6 as his version is not corroborated by the medical evidence. Above all, when these accused were questioned under Section 313 Cr.P.C. the accused 1 to 3 have not denied their presence at the place of occurrence. They have tacitly admitted their presence. P.W.14 a constable has stated during cross examination that these three accused (A1 to A3) after the occurrence was over, came to the police station with bloodstains. They were made to sit in the police station. This fact was elicited by the accused during cross examination. It was also suggested to P.W.14 that the accused 1 to 3 had sustained injuries in the very same occurrence. But there is no evidence at all to prove that they sustained injuries. Thus, it is almost the admitted case of the accused 1 to 3 that they were present at the place of occurrence and there were also bloodstains on their clothes. When that be so, it is for the accused 1 to 3 to explain as to how the occurrence had happened. In other words, they have to prove their defence. At this juncture, we are hastened to add that it is not our view that these accused 1 to 3 should have proved their defence

beyond reasonable doubts or in the same vigor in which the prosecution is required to prove its case. They could have proved their defence by establishing simple probabilities, but they have failed. Thus, the admitted presence of the accused 1 to 3, the bloodstains on their clothes as admitted by them would go to further strengthen the evidence of P.W.1 so far as it is against the accused 1 to 3. The evidence of P.W.1 so far as it is against accused 1 to 3 is concerned is duly corroborated by the medical evidence also. Thus, the trial Court, in our considered view was right in holding that the accused 1 to 3 alone participated in the occurrence and indulged in violence which resulted in the death of the deceased 1 and 2 and grievous hurt to P.W.1. So far as accused 4 to 6 are concerned, in our considered view, the trial Court was right in acquitting them.

13. The trial Court, having come to the conclusion that the death of the deceased 1 and 2 was caused by the accused 1 to 3 has, in our considered view, grossly erred in convicting them only for the offence under Section 304(i) I.P.C. It is in evidence that there was a strong motive. It is also in evidence that these three accused were already armed with weapons. Thus, there was premeditation. They came to the place of occurrence knowing very well that the deceased 1 and 2 and P.W.1 would be returning towards Kadathur village by road. They were lying in wait for the deceased. Their presence at the place of occurrence was not accidental. They were lying in wait for

the arrival of D1, D2 and P.W.1 for the purpose of killing them. The weapons used by them were all deadly weapons. Having regard to these facts and the number of injuries, the vital parts of the body where injuries were inflicted and the fact that D1 and D2 died on the way to the hospital, we find that the intention of the accused 1 to 3 was only to cause the death of D1 and D2. Thus, the act of the accused 1 to 3 would squarely fall within the first limb of Section 300 I.P.C. in so far as causing the death of both the deceased are concerned and therefore they are liable to be punished only for the offence under Section 302 I.P.C. (2 counts). But the trial Court has found that the act of the accused 1 to 3 in causing the death of the D1 and D2 would not amount to murder and it is only a culpable homicide. The reason stated for such conclusion by the trial Court is that there would not have been any intention at all for the accused to cause the death of D1 and D2. The trial Court has further held that out of uncontrollable anger they had come to the place of occurrence because the pipe line was previously damaged by the deceased party, the accused had come there and attacked the deceased out of such anger. We are at a loss to understand as how this would bring the act of the accused either under exception 1 or exception 4 or any other exception to Section 300 I.P.C. When the act was done with anger, the same would only reflect the intention. Thus, the trial Court was not right in convicting these accused 1 to 3 under Section

304(i) I.P.C. Instead they should have been convicted only under Section 302 r/w 34 (2 counts).

14. It is true that there was no charge for offence under Section 302 r/w 34 I.P.C. against the accused 1 to 3. Though the charge was under Section 302 I.P.C. (2 counts) simpliciter, in our considered view, convicting the accused 1 to 3 under Section 302 r/w 34 I.P.C. for two counts would not cause any prejudice to them because they were put on notice as to what was the nature of the allegations against them. The trial Court, having framed charge under Section 148 I.P.C., ought to have framed charge against all the accused for offence under Section 302 r/w 149 I.P.C. or by invoking Section 34 I.P.C. At any rate, from the evidences, it is crystal clear that the prosecution has proved that these accused 1 to 3 have committed offence under Section 302 r/w 34 I.P.C., we are inclined to convict them under the said provision for two counts. Therefore, we set aside the conviction of the accused 1 to 3 for the offence under Section 304(i) I.P.C. and instead we convict them under Section 302 r/w 34 I.P.C. (2 counts).

15. So far as the injuries caused on P.W.1 are concerned, the trial Court has convicted the accused 1 and 2 under Section 307 I.P.C. and the third accused under Section 307 r/w 34 I.P.C. We find no reason to interfere with the same. Similarly, the conviction of

these accused for the offence under Section 341 I.P.C. also deserves to be confirmed.

16. Since we have held that the assailants were only three in number, the accused 1 to 3 are entitled for acquittal from the charge under Section 148 I.P.C. Similarly, as held by the trial Court there is no evidence for any conspiracy. Therefore the acquittal of these accused under Section 120(B) I.P.C. and Section 148 I.P.C. deserve to be confirmed.

17. Now turning to the quantum of punishment for offence under Section 302 r/w 34 I.P.C., we are bound to impose the minimum punishment of imprisonment for life and a fine of Rs.2000, in default to under rigorous imprisonment for four weeks for each count as it does not fall under the rarest of rare category. For the offence under Section 307 I.P.C. and Section 307 r/w 34 I.P.C. and Section 341 I.P.C. the sentence imposed by the trial Court is reasonable which deserves to be confirmed.

18. In the result,

(a) the Criminal Revision Petition No.335 of 2016 is dismissed as not pressed.

(b) The Criminal Appeal No.107 of 2016 is dismissed.

(c) The Criminal Appeal No.461 of 2016 is partly allowed in the following terms:

(i) The conviction of the accused 1 to 3 for the offence under Section 304(i) I.P.C. is set aside and instead they are convicted for the offence under Section 302 I.P.C. r/w 34 I.P.C. and sentenced to undergo imprisonment for life and pay a fine of Rs.2000/- in default to undergo rigorous imprisonment for four weeks.

(ii) The conviction and sentence imposed on the accused 1 to 3 for the offence under Section 341 I.P.C. is confirmed.

(iii) The conviction and sentence imposed on the accused 1 and 2 for offence under Section 307 I.P.C. and the conviction and sentence imposed on the third accused for offence under Section 307 r/w 34 I.P.C. are confirmed.

(iv) The acquittal of the accused 4 to 6 from all the charges is confirmed.

(v) The acquittal of the accused 1 to 3 from the other charges is also confirmed.

(vi) The above sentence shall run concurrently.

(vii) The fine amount now imposed shall be adjusted from the fine amount already paid, if any, and the excess, if any, shall be refunded to the appellant.

(viii) It is further directed that the period of detention already undergone by the accused shall be set off under Section 428 Cr.P.C.

(S.N.J.) (V.B.D.J.)
23.12.2016

Index : Yes / No
kk

S.NAGAMUTHU,J.

&

V.BHARATHIDASAN,J.

kk

To

1. The Additional Sessions Judge,
Dharmapuri.
2. The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
3. The Public Prosecutor,
Madras High Court.

Crl.A.Nos.107 & 461 of 2016
and Crl.R.C.No.335 of 2016

23.12.2016

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