



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.[MD].Nos.300 and 304 of 2015 and 49 of 2016

Crl.A.(MD).Nos.300 and 304 of 2015

Mahamani

...Appellant in
Crl.A.(MD).No.300/2015/
Accused No.1

Kamsarajan

...Appellant in
Crl.A.(MD).No.304/2015 /
Accused No.2

Vs.

State rep. by
the Inspector of Police,
Sernthamaram Police Station,
Tirunelveli District.
(Crime No.45/2009)

... Respondents in
both the appeals/
Complainant

PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment, dated 12.10.2015, made in S.C.No.406 of 2009, on the file of the IVth Additional District Sessions Judge, Tirunelveli.

For appellants in both
the appeals

: Mr.R.Anand
for Mr.P.Samuel Gunasingh

For respondent in both
the appeals

: Mr.K.S.Durai Pandian,
Additional Public Prosecutor

Crl.A.(MD).No.49 of 2016

Janakaraj

..Appellant /PW1
Vs

1. State rep. by
the Inspector of Police,
Sernthamaram Police Station,
Tirunelveli District.
(Crime No.45/2006)

..1st respondent/Complainant



2.Mahamani

3.Kamsarajan

4.Navamani

5.Thangarathinam

... Respondents 2 to 5/
Accused Nos.1 to 4

PRAYER: Criminal Appeal filed under Section 372 of Cr.P.C. against the judgment, dated 12.10.2015, made in S.C.No.406 of 2009, on the file of the IVth Additional Sessions Judge, Tirunelveli and set aside the Judgement dated 12/10/15, so far as acquitting the Respondents 2 to 5 here in of the charges framed against them.

For appellant : Mr.K.Chellapandian,
Senior Counsel for
Mr.A.Thiruvadikumar

For 1st respondent : Mr.K.S.Durai Pandian,
Additional Public Prosecutor

For respondents 2 & 3 : Mr.R.Anand
for Mr.P.Samuel Gunasingh

For 4th respondent : Mr.R.Anand,
for Mr.Swarnam J.Rajagopalan

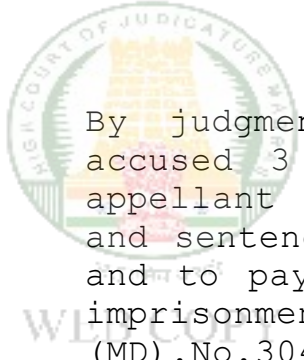
For 5th respondent : Mr.R.Anand,
for Mr.A.Sivasubramanian

COMMON JUDGMENT

(Judgment of the Court was made by **S.NAGAMUTHU, J.**)

The appellants in Criminal Appeal (MD).Nos.300 of 2015 and 304 of 2015 are the accused Nos.1 and 2 respectively in S.C.No.406 of 2009 on the file of the learned IVth Additional Sessions Judge, Tirunelveli. There were two other accused arrayed as accused Nos.3 and 4, who are respondents 4 and 5 in CrI.A.(MD).No.49 of 2016. The trial Court framed as many as seven charges against all the accused as detailed below:

Charge No.	Accused	Offence U/s.
1	A1	U/s.294(b) IPC
2	A1	U/s.307 IPC
3	A2, A3 and A4	U/s.307 r/w 34 IPC
4	A3 and A4	U/s.324 IPC
5	A1	U/s.324 r/w 109 IPC
6	A2	U/s.302 IPC
7	A1, A3 and A4	U/s.302 r/w 34 IPC



By judgment dated 12.08.2014, the trial Court acquitted the accused 3 and 4 from all the charges, however, convicted the appellant in Crl.A.(MD).No.300 of 2015 / A1 under Section 307 IPC and sentenced him to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month and convicted the appellant in Crl.A.(MD).No.304 of 2015 / A2 under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months. The trial Court acquitted A1 and A2 from all the other charges. Challenging the said conviction and sentence, A1 has come up with Crl.A.(MD).No.300 of 2015 and A2 has come up with Crl.A.(MD).No.304 of 2015. Challenging the acquittal of the accused 3 and 4 from all the charges and challenging the acquittal of the accused 1 and 2 from the other charges, as detailed above, the defacto complainant has come up with Crl.A.(MD).No.49 of 2016. That is how all these three appeals are before us for disposal.

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

(a) The accused Nos.1, 3 and 4 are brothers. The 2nd accused is the son of the first accused. They were all residing at Vennilingapuram Village North Street at Door No.279. PWs.1 and 2 are brothers and they are the sons of one Mrs.Pushpam, who is the deceased in this case. Mrs.Pushpam and the mother of accused Nos.1, 3 and 4 were sisters. PWs.1, 2 and the deceased were all residing in the same street. The accused were the neighbours. To be precise, there is a boundary dispute between the accused and the deceased, in respect of the respective houses. Similarly, there was yet another property dispute also between the two families.

(b) It is stated that during the relevant time, PW1 was constructing a house on his land, which is adjoining the land of the first accused. On 26.02.2009 PW1 completed the construction of a pial of the house. It appears that it was constructed on the disputed boundary. At that time the accused 1 and 2 were not there in the house. After completing the construction, around 6.00 p.m., PW1 left for a neighbouring village. The deceased was residing in the ancestral house situated on the east of the building under construction.

(c) It is further alleged that after PW1 had left the village, when the first accused came to the village and found the pial constructed on the disputed boundary, he questioned the deceased as to how PW1 was dare to construct a pial on the disputed boundary, thereby encroaching upon his property. The deceased told him that the construction had been made well within the boundary of PW1's property and there was no such encroachment. She further offered to the first accused that they could measure the property with the help of the surveyor. But, the first accused did not heed to these words of the deceased and he demolished the newly constructed pial on the disputed boundary and then, left for his house. When this incident took place neither

PW1 nor PW2 was in their house.

(d) Around 9.30 p.m., on the same day, PW1 returned to his house and on noticing that the newly constructed pial had been demolished, he enquired his mother. The deceased narrated as to what had happened in his absence and she told him that it was the first accused, who demolished the pial. It is further alleged that at that time, incidentally, the first accused was passing through the main street, just in front of the house of the deceased. On seeing him, PW1 questioned him as to why he demolished the pial. This resulted in a quarrel between PW1 and the first accused. On hearing the commotion, the deceased and PW2 came out of their house and reached the place of occurrence. Similarly, on hearing the commotion, A2 to A4 also came out of their house and reached the place of occurrence. All these accused took out one wooden log each which were lying near the building under construction. PW2 tried to persuade the first accused. The accused were not in a mood to heed to these persuasive words. Suddenly, the first accused took out an aruval and attacked PW2 on his head. PW1 tried to intervene. The accused 3 and 4 with the sticks in their hands attacked him on his right shoulder and right forearm. The deceased rushed towards them and tried to stop further attack by the accused on PW2. The second accused took out an aruval and cut on her neck. She fell down in a pool of blood. The villagers gathered at the place of occurrence. On seeing them, all the four accused ran away from the scene of occurrence.

(e) The deceased died instantaneously. PW1 sent PW2 in an auto to the Government Hospital at Sankarankovil. Then, he rushed to Seranthamaram Police Station at 11.00 p.m. on 26.02.2009. On the said complaint, a case was registered in Crime No.45 of 2009 under Sections 294(b), 323, 307 and 302 IPC against the accused. Ex.P1 is the FIR. The case was taken up for investigation by PW14, the then Inspector of Police. He went to the place of occurrence. Since there was commotion, PW14, without conducting inquest on the body of the deceased, forwarded the same to the Government Hospital at Sankarankovil for being kept in the mortuary. On 27.02.2009, at 10.00 a.m. he prepared an observation mahazar and a rough sketch in the presence of witnesses. He also recovered bloodstained earth and sample earth and a broken brick at the place of occurrence. He examined many witnesses including PW1. On the same day, between 07.30 a.m. to 9.00 a.m. he conducted inquest on the body of the deceased and forwarded the body for postmortem.

(f) PW13 - Dr.Senthilsekar conducted autopsy on the body of the deceased on 27.02.2009 at 10.15 a.m. He found the following injuries on the body of the deceased:

"External injuries:

Cut injury of 28 cms length and 5 cms breadth was found from the left ear through the backside of the neck till the right side of artery. The spinal bone of the neck was found cut between C1 and C2. Muscles and blood vessels were



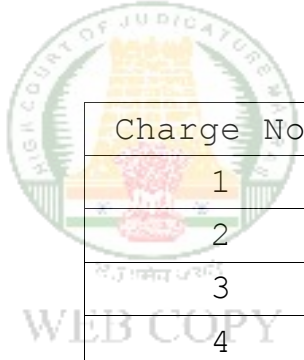
found cut. On dissecting the body, the liver, spleen, lungs, pancreas and kidneys were found pale. Heart was found pale and was empty. There was about 300 gms of partly digested food particles in the stomach. There was no specific odour. The small intestine and the large intestine were found empty. On dissection of the uterus, it was found empty. On breaking the skull, the brain was found pale and soft. Hyoid bone was not found broken. There was no other fracture."

Ex.P20 is the Postmortem Certificate. He gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like aruval. He further opined that the death of the deceased was due to shock and haemorrhage due to the injuries found on the body of the deceased.

(g) On the same day, at 12.30 p.m., PW14 arrested the accused 1, 2 and 4 and on such arrest, all the three accused gave voluntary confessions one after the other in the presence of witnesses. He recorded the same. In pursuance of the said confession, the first accused took the Police and witnesses to the place of hide out and produced a bloodstained aruval. He recovered the same under Ex.P13 mahazar. As per the disclosure statement made by the second accused, he took the police and witnesses to the place of hide out and produced another aruval. PW14 recovered the same under Ex.P7 - mahazar. As per the disclosure statement made by the fourth accused, he took the Police and witnesses to the place of hide out and produced a stick. PW14 recovered the same under Ex.P8. On returning to the Police Station, he forwarded all the three accused to the Court for judicial remand and produced the material objects also to the Court. Then, he recovered the bloodstained clothes from PW2.

(h) On 28.02.2009 at 7.30 p.m. he arrested the third accused in the presence of witnesses. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden a stick. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the stick. PW14 recovered the same under mahazar. Then, he forwarded the accused to the Court for judicial remand and also produced the material objects to the Court. As per the request of PW14, the material objects were sent for chemical examination. The report from the Forensic Lab revealed that there was bloodstains on all the material objects including the weapon recovered from the accused. On completing the investigation, he laid charge sheet against all the accused.

<https://hcservices.ecourts.gov.in> On the above materials the trial Court framed as many as five as charges against the accused as under:



Charge No.	Accused	Offence U/s.
1	A1	U/s.294(b) IPC
2	A1	U/s.307 IPC
3	A1	U/s.325 r/w 109 IPC
4	A3 and A4	U/s.325 IPC
5	A2	U/s.302 IPC

By judgment dated 22.03.2011, the trial Court convicted the first accused under Section 324 IPC and the second accused under Section 302 IPC and sentenced them accordingly. The trial Court acquitted the accused 1 and 2 from the other charges and acquitted the accused 3 and 4 from all the charges.

(j) The second accused filed an appeal in CrI.A.(MD).No.165 of 2011 before this Court, challenging the conviction and sentence passed against him. The first accused did not prefer any appeal. PW1 filed an appeal in CrI.A.(MD).No.49 of 2015 challenging the acquittal of the accused Nos.1, 3 and 4. By a common judgment, dated 01.07.2015, a Division Bench of this Court allowed both the appeals and set aside the conviction and sentence imposed on the accused 1 and 2 and set aside the acquittal of the accused 1 and 2 from other charges and also set aside the acquittal of the accused 3 & 4 and remanded the matter back to the trial Court for altering the charges so as to include a charge against the accused by invoking Section 34 IPC.

(k) On such remand, the trial Court framed the charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 30 documents and 13 material objects were marked.

(l) Out of the said witnesses, PW1, the son of the deceased, has spoken about the previous motive between the two families and the construction of pial on the disputed property by him. He has further stated that on returning to the home in the evening, when he enquired his mother as to who had damaged the newly constructed pial, she told that it was the first accused. When he came out of the house, he saw the first accused going along the street and he questioned him. This resulted in a quarrel. He further stated that on hearing the commotion, A2 to A4 came out of their house. He has also stated that PW2 and his mother also came out of their house. He has further stated about the attack made by the first accused on him, the attack made by the second accused on the deceased and the attack made by the accused 3 and 4 on PW2. He has also stated about the complaint made by him to the Police. PW2 is yet another son of the deceased. He has also stated about the entire occurrence as spoken by PW1. He has also spoken about the injuries caused on him by the accused 3 and 4. PW3 is a neighbour of the deceased. He has also spoken about the occurrence as eyewitness. PW4 has spoken about the arrest of the accused 1, 2 and 4 and the confession made by them and the

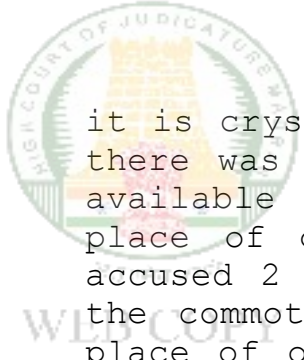
(m)

<https://hcservicesadvisors.governors>

Ex.D1 is the relevant records showing such entries. DW2 is a neighbour of the deceased. He has stated that he witnessed the entire occurrence. According to him, he found that there was a

PW1 was

<https://hcservices.lecountygov.net/services/>

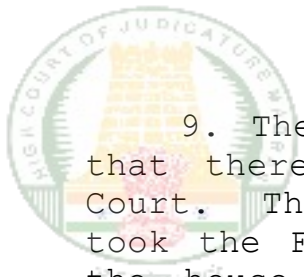


it is crystal clear that in the commotion between the two groups, there was a scuffle. It is also crystal clear from the evidence available that all these accused did not come together to the place of occurrence with any common unlawful object. The accused 2 to 4 rushed to the place of occurrence only on hearing the commotion. Similarly, the deceased and PW2 also came to the place of occurrence only on hearing the commotion. Thus, on the part of the accused, absolutely, there was no chance for any premeditation and premeeting of mind. Therefore, there is no scope to invoke Section 34 of IPC against any of the accused.

6. It is the case that the second accused attacked the deceased with aruval and killed him. Though it is stated by DW2 that in the commotion the deceased had sustained injury and died, the evidences of PWs.1 and 2 and other eyewitness would go to show that it was the second accused who attacked the deceased. The second accused would not have had any intention to kill the deceased at all. In the commotion, in the pell-mell and in the sudden fight, the second accused had taken the weapon lying there and attacked the deceased. The first accused had already sustained injury in the same occurrence, which has been spoken by DW1. This would also indicate that the prosecution party were the aggressors. This is inferable from the fact that for the removal of the pial, when the first accused was passing through the street, it was only PW1, who went near him and quarrelled with him. Thus, there is every reason to hold that the prosecution party were the aggressors.

7. Of-course it is true that in such a situation, the accused 1 and 2 were entitled to protect their person by exercising their right of private defence. But, at the same time, they should have exercised the said right only within the limits and they should not have exceeded. The fact that the second accused had caused the death of the deceased, who was a woman and not armed with weapon, would go to show that they had exceeded their right of private defence. Similarly, though the second accused had caused the death of the deceased and though his act would squarely fall within the third limb of Section 300 IPC, since his act would fall within the second exception to Section 300 IPC, he is liable to be punished for the offence under Section 304(i) IPC. Similarly, the first accused is liable to be punished under Section 324 IPC.

8. The learned counsel for the appellants would submit that non explanation of the injuries found on the first accused is fatal to the case of the prosecution. In our considered view, in the instant case, going by the nature of the injuries allegedly sustained by A1, it cannot be held so. First of all, though the first accused has sustained injuries, he had not taken any steps to explain the nature of the injuries. Therefore, in our considered view, the non-explanation of the injuries found on the first accused would not in any manner cause any dent in the case of the prosecution.



9. The learned counsel for the appellant would next contend that there was enormous delay in handing over the FIR to the Court. This argument also does not persuade us because PW10, who took the FIR has explained the delay by stating that he went to the house of the learned Magistrate at Tenkasi and since the Magistrate was on leave, he went to Shengotta and handed over the same. Thus, the delay has already been explained away. In view of the same, this argument is also rejected.

10. The learned counsel for the appellants would next contend that PW1 has stated that he could not say as to who drafted the complaint. It is true. It only shows the faded memory of PW1. Therefore, on that score, we cannot reject the evidence of PW1.

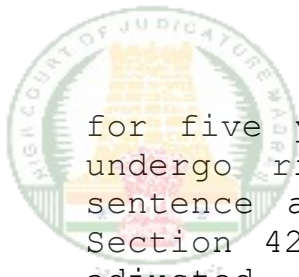
11. From these evidences let in by the prosecution and by considering the evidences of DWs.1 to 3 also, we have every reason to hold that the prosecution party were the aggressors and A1 and A2 had exercised their right of private defence. But, they exceeded their right. Therefore, as concluded, A1 is liable to be punished for the offence under Section 324 IPC and the second accused is liable to be punished under Section 304(i) IPC. So far as the other accused are concerned, absolutely there is no acceptable evidence against them. Though it is stated by the eyewitnesses that they attacked PW2, there was no injury found. The trial Court has disbelieved the evidences of these eyewitnesses as against the accused 3 and 4. We do not find any reason to take a different view, as we find no merit at all in the appeal filed by the defacto complainant.

12. Now, turning to the quantum of punishment, for the offence under Section 324 IPC, we are informed that the first accused was in prison for about 3 months. In our considered view, reducing the sentence to the period of sentence already undergone with a fine of Rs.10,000/- would meet the ends of justice. So far as the second accused is concerned, having regard to his age; family circumstances; economic status; the fact that there was no premeditation; and he had only exceeded in his right of private defence, in our considered view, sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs.20,000/- will meet the ends of justice.

13. In the result, (i) the Criminal Appeal (MD) No.300 of 2015 is partly allowed. The conviction imposed by the trial Court on the appellant / A1 is confirmed, however, the sentence imposed by the trial Court is reduced to the period of sentence already undergone by him and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for four weeks. Fine amount, if any, already paid shall be adjusted.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) the Criminal Appeal (MD) No.304 of 2015 is partly allowed. The conviction and sentence imposed on the appellant / A2 by the trial Court is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment



for five years and to pay a fine of Rs.20,000/-, in default to undergo rigorous imprisonment for four weeks. The period of sentence already undergone by him shall be given set off under Section 428 Cr.P.C. Fine amount, if any, already paid shall be adjusted.

(iii) the Criminal Appeal (MD).No.49 of 2016 is dismissed.

14. On realising the said fine amount, it is directed that the entire amount of Rs.30,000/- shall be paid as compensation to the legal heirs of the deceased. If the legal heirs of the deceased decline or fail to receive the amount within a period of six months from the date of intimation, the said amount shall be added to the Government Exchequer.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The IVth Additional Sessions Judge,
Tirunelveli.

2.The Inspector of Police,
Seranthamaram Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Thiruvadikumar,Advocate in SR.66381

+1cc to Mr.P.Samuel Gunasingh,Advocate in SR.66875

GCG

KK/GSV/SV/19.01.17/11P/7C

Common judgment in
Cr1.A.(MD).Nos.300 and 304 of 2015
Dated:04.11.2016