

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : **06.03.2017**

PRONOUNCED ON : **21.03.2017**

CORAM:

**THE HONOURABLE MR.JUSTICE S.NAGAMUTHU**

and

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

Criminal Appeal No.**12** of **2017**

Rathinavel

.. Appellant

**- Vs -**

State rep by  
The Inspector of Police,  
Harur Police Station,  
Dharmapuri District.  
(Crime No.95 of 2013)

.. Respondent

**Prayer:-** Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal District and Sessions Judge, Dharmapuri in S.C.No.122 of 2014 dated 30.11.2016.

For Appellant : Mr.C.R.Malarvannan

For Respondent : Mr.P.Govindarajan  
Additional Public Prosecutor

Amicus Curiae : Mr.N.Anand Venkatesh

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**J U D G M E N T****(Judgment of the Court was delivered by S.Nagamuthu, J.)**

The appellant, the sole accused in S.C.No.122 of 2014, has come up with this appeal challenging the conviction and sentence imposed on him by the learned Principal District and Sessions Judge, Dharmapuri District. He stood charged for offences under Section 302 I.P.C. and Section 25(1-B) of the Indian Arms Act. By judgment dated 30.11.2016, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months for offence under Section 302 I.P.C. and to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months for offence under Section 25(1-B) of the Indian Arms Act.

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

**2.1.** The deceased in this case was one Mr.Muthumanickam. He was a resident of Chellampatty village in Harur Taluk in Dharmapuri District. P.W.1 is the brother of the deceased. The accused in this case is the paternal uncle of the deceased. There was a common Well for the family of the deceased and the accused, in which, they had right to take water for irrigating their respective lands.

**2.2.** Three days before the occurrence, the electricity motor failed. Though the fault should have been rectified by the family of the deceased and the accused by spending equally, the deceased did not contribute anything for the same. The accused spent money and rectified the defect in the motor. Therefore, the accused told the deceased not to use the motor. This resulted in enmity between their two families.

**2.3.** On 25.01.2013, as per the original arrangement, it was due for the deceased to take water from the Well by operating the motor. But with a view to prevent the deceased from operating the motor, the accused had removed the fuse carrier. However the deceased managed to get back the fuse carrier through a common relative. Since, it was late in the evening on 25.01.2013, the deceased did not take water by using the fuse carrier. Around 06.45 p.m. the accused was found standing in the terrace of his house. On seeing the deceased and P.W.1 in their house, the accused shouted at them. He challenged them to operate the motor if they had the guts. But the deceased and P.W.1 did not took it seriously. The deceased then proceeded to the motor shed near the Well. P.W.1 was following him. When they were nearing the well, the accused came to the said place and shot the deceased with a gun in his hand which hit the chest of the deceased. He fell down in a pool of blood. The accused ran away

from the scene of occurrence.

**2.4.** P.Ws.1 and 2 who witnessed the entire occurrence, then arranged for an ambulance and rushed the deceased to the Government Hospital at Harur. But the Doctor within ten minutes thereafter, declared the deceased dead. Leaving the dead body in the hospital, P.W.1 went to Harur police station and made a complaint at 08.00 p.m. on 25.01.2013. Ex.P.1 is the complaint and Ex.P8 is the F.I.R. The Sub Inspector of Police (P.W.7) registered a case in Crime No.95 of 2013 under Sections 302 I.P.C. r/w Section 25(1) of the Indian Arms Act. He forwarded both the documents to Court, which was received by the learned Magistrate at 09.00 p.m. on 25.01.2013.

**2.5.** P.W.12 took up the case for investigation. He went to the place of occurrence at 09.00 p.m. on 25.01.2013, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered bloodstain earth and sample earth from the place of occurrence. He found two iron pellets lying at the place of occurrence. He recovered the same under a mahazar (vide M.O.8). Then, he examined P.Ws.1 and 2 and few more witnesses and recorded their statement. He held inquest on the body of the deceased between 07.30 a.m. and 1030 a.m. on 26.01.2013 and forwarded the body for postmortem.

**2.6.** P.W.8 Dr.Saravanakumar conducted autopsy on the body of the deceased on 26.01.2013 at 02.00 p.m. He found the following injuries:

*"External injuries: fire arm wound (entry):- (1) situated 1 cm from the right sternal border above the nipple in the right 4<sup>th</sup> intercostal space - circular in shape 1 cm in diameter (2) 1 cm above the biphstenum circular shape 1 cm in diameter (2) 2cm from the right anterior anxillary line - in the 5<sup>th</sup> outer costal space - circular in diameter - 1 cm in diameter. A black colour narrow ring at scin (sic) - "grease dr.dir collar" is present in all boarder (sic) in size 1 cm. Distance between 1 & 2 - 10 cm, 1 & 3 - 12 cm, 2 & 3 - 14 cms. Exit wound: (1) posterior anxillary line in the 7<sup>th</sup> intercostal space circular 1 cm in diameter (2) 10 cm from the spine on the right side 6<sup>th</sup> intercostal space circular diameter 1 cm in diameter (3) 8 cm from spine on right side in the 9<sup>th</sup> inter costal space - 1 cm in diameter circular space in all the exit wounds. No diam collar or root deposit, continuous bleeding present in all wound.*

*Internal examination: Hyoid bone - intact. Ribs - Haemothorac - right side - present. 5<sup>th</sup> and 4<sup>th</sup> rib - right side - gutter with fracture. Sternum - contusion with*

*fracture of xiphisternam. Heart – chambers empty c/s congested. Lungs – perforated wound present in middle and lower off the lung - left lobe – contusion present. Liver – right to be perforated wound along with complete maceration. Kidney – c/s congested; stomach – undigested rice 100 gms present. Bladder – empty. Skull – intact, Brain – solid intact. Traces taken by bullet through body - 1<sup>st</sup> entry wound – through lower lobe of right lung – exit wound 2 Nos. 2<sup>nd</sup> entry wound – through right lobe of liver – exit wound 3 Nos. 3<sup>rd</sup> entry wound – through middle lobe of right lung – exit wound 1 No.”*

Ex.P10 is the postmortem certificate and Ex.P11 is his final opinion. He opined that the said injuries could have been caused by gun shots and he further opined that the death of the deceased was due to shock and hemorrhage due to the the injuries found on the body of the deceased.

**2.7.** P.W.12 during the course of investigation recovered bloodstained clothes from the body of the deceased. On 27.01.2013, at 01.45 p.m. near Vaaleduppu bus stand, he arrested the accused in the presence of witnesses. While in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden a SNML gun. In pursuance of the same, he took the police and

witnesses to his house and produced the gun (M.O.1). He recovered the same under a mahazar (Ex.P7). Ex.P5 is the disclosure statement of the accused, in pursuance of which, M.O.1 was recovered. Then, he forwarded the accused to Court for judicial remand. At his request, the gun and pellets recovered from the place of occurrence and other M.Os were sent for chemical examination as well as for ballistic expert opinion. The analyst report revealed that there were human bloodstains on M.O.1. After getting ballistic expert opinion, P.W.12 concluded that it was this accused who shot the deceased with M.O.1 gun and caused his death and accordingly he laid chargesheet against the accused.

**2.8.** Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused was tried by the learned Principal District and Sessions Judge, Dharmapuri. On the side of the prosecution, as many as 10 witnesses were examined, 18 documents and 6 material objects were marked.

**3.** Out of the said witnesses, P.W.1 (Govindaraj), P.W.2 (Kasthuri) and P.W.3 (Thamizharasi) spoke about the occurrence as eyewitness. At the end of the trial, the learned Principal District and Sessions Judge, Dharmapuri by judgment dated 24.07.2015,

convicted the accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months for the offence under Section 302 I.P.C and to undergo simple imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months for the offence under Section 25(1-B) of the Indian Arms Act. Challenging the said conviction and sentence the appellant / accused filed an appeal in CrI.A.No.634 of 2015.

**4.** The said appeal was heard by a Division Bench of this Court on 26.07.2016. During the course of arguments, the learned senior counsel appeared for the appellant / accused pointed out lot of infirmities and shortcomings in the case of the prosecution more particularly, he pointed out that the pellets recovered from the place of occurrence by the investigating officer, which were also sent for ballistic opinion were not marked in evidence by the prosecution. It was also found that though ballistic opinion was obtained and the same was very much available, the same was not brought on record by way of evidence by proving the same by examining the ballistic expert. It was also found that though the gun (M.O.1) was recovered in pursuance of the disclosure statement made by the accused while in police custody, the said disclosure statement was not brought on

record by way of evidence by proving the same. It was also found that though sanction was issued by the District Collector by order dated 08.09.2013 as required under the Indian Arms Act, the same was also not proved by examining the sanctioning authority. Similarly, there were few more lapses in the evidence collected. Since the Division Bench was convinced that though there were materials collected during the course of investigation and they were also before the trial Court, the learned Public Prosecutor who conducted the case was not diligent enough to bring on record those evidences during trial by proving the same in accordance with law, this Court therefore felt that for the lapses committed by the learned Public Prosecutor, who conducted the trial before the trial Court and for the failure of the trial Court to show due diligence while trying the case, this Court should not allow miscarriage of justice to occur. Therefore, this Court without expressing any opinion regarding the evidence of P.Ws.1 to 3, the eyewitnesses to the occurrence and other evidences let in, decided to remand the case back to the trial Court not for de novo trial, but to allow the prosecution to recall necessary witnesses to duly prove the evidences which were collected during investigation, but omitted to be proved due to inadvertence. Accordingly, this Court remanded the case back by judgment dated 26.07.2016. In the said judgment, this Court gave liberty to the prosecution to recall any witnesses already examined by examining

them for the purpose of further examination in chief and also giving right to the accused to cross examine the witnesses. This Court also gave liberty to both the prosecution as well as the accused to examine any witnesses additionally and also to prove any document or material objects.

**5.** Accordingly, the trial Court again took up the case for trial. But, instead of allowing the parties to let in additional evidence, the trial Court conducted de novo trial. It appears that the trial Court did not understand the purport and spirit of the judgment of this Court dated 26.07.2016 and the trial Court mistook that the said direction was for a de novo trial and to wipe out the entire evidence already on record. Though it is stated before us that when the learned Public Prosecutor and the learned counsel for the accused objected to the said course adopted by the trial Court, there is nothing on record to show that such objection was raised. Records reveal that the learned public prosecutor filed a miscellaneous petition to recall all the witnesses for the purpose of examination. That petition was allowed by the trial Court. Having done so, the trial Court ought to have allowed the prosecution to examine those witnesses in further chief examination and ought not to have examined them like de novo trial.

**6.** In this regard, we may refer to a Division Bench judgment of

Kerala High Court in **Lakshmanan Sundaram Vs. State of Kerala** reported in **1990 CrL LJ 1800**. An important question arose before the Division Bench as to whether the expression "retrial" employed in Section 386 Cr.P.C. would denote only a de novo trial thereby wipe out the entire trial held already. The Division Bench after having considered various judgments of the Hon'ble Supreme Court has held as follows:

*"...We do not think there is anything in Section 386 to indicate that in all these cases and irrespective of the circumstances of the case, accused should be subjected to de novo trial. Once the appellate Court comes to the conclusion that justice requires retrial it is for that Court to consider whether it should be a completely de novo trial or continuance or completion of the trial already commenced. Whether direction of the one or the other type should be issued depends on the facts and circumstances of each case, alleged irregularity or illegality committed by the trial Court or the exact reason which prompts the appellate Court to send back the case. Where the illegality or material irregularity committed by the trial Court has prejudiced the accused or even the prosecution, it will be against public policy to wipe the entire evidence off the record and direct the Magistrate to start again or the accused to face de novo trial*

*from the very beginning. Public interest is not only not served thereby; public interest will be adversely affected thereby. There may be cases where even though the trial Court did not commit any material irregularity or illegality, appellate Court comes to the conclusion for proper reasons that either on account of collusion or otherwise evidence available was not placed before Court and that such evidence is necessary for a proper disposal of the case or in public interest. One way of ensuring it is to have recourse to Section 391 of the Code; but that may not always be convenient or practicable. In such cases recourse may be had to the provisions in Section 386 of the Code enabling retrial and retrial may be ordered from a particular stage. When additional evidence by way of examination of witnesses for prosecution is ordered under Section 391 of the Code that may necessitate further questioning by the Court of the accused under Section 313 of the Code and thereupon the accused may have to get an opportunity to adduce evidence. It may not always be practicable or convenient for the appellate court to go through this entire exercise. In appropriate cases it must be open to the appellate Court to order retrial from a particular stage. We find nothing in the decisions of the Supreme Court or in the provisions of the Code to warrant the view*

*that retrial necessarily means de novo trial. Even where partial retrial is held that amounts to accused being tried again. Retrial could also mean continuation or completion of the original trial. We are of the opinion that such retrial can be ordered under Section 386 of the Code. We affirm the view taken in **Mariyam's case, 1961 Ker LT 33**. With great respect we are unable to agree with the view taken in **Crl. R.P. 371 75 and Rajendran Nair's case, 1978 Ker LT 625**. There is nothing in **Kesavan Nair's case, 1979 Ker LT 635** and **Govindan's case, 1982 Ker LT 27 : (1982 Cri LJ 784)** which goes against the view we have taken."*

7. The Hon'ble Supreme Court in **Nar Singh Vs. State of Haryana** reported in **(2015) 1 SCC 496** falling in line with the above view taken by the Kerala High Court, in similar circumstances, remanded the case to the trial Court in exercise of the power of the appellate Court under Section 386 Cr.P.C. for the limited purpose of questioning the accused under Section 313 Cr.P.C. and to proceed from that stage.

8. Similarly, in **Mohd. Hussain @ Julfikar Ali Vs. The State (Government of NCT) Delhi** reported in 2012 Crl. LJ 4537 the Hon'ble Supreme Court has reiterated the settled position of law in

the following words:

*"A retrial is not second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice."*

**9.** In view of the above settled position of law and in view of the fact that this Court did not order for de novo trial, the evidence already recorded in the original trial held before the judgment of this Court dated 26.07.2016 shall not stand wiped off. Similarly, the trial held by the lower Court after the order of this Court dated 26.07.2016 shall be deemed to be a continuation of the earlier trial and the evidence recorded during such exercise shall be considered only as additional evidence received by the trial Court. In other words, the trial held in pursuance of the judgment dated 26.07.2016, is not a de novo trial and it is only a continuation of the earlier trial.

**10.** The learned counsel for the appellant as well as the learned Additional Public Prosecutor would submit that the trial Court has analysed only the evidence recorded after the judgment dated 26.07.2016 and has failed to consider the evidence recorded originally. They would therefore submit that the evidence recorded on both the occasions may be analysed and on such analysis the correctness of the judgment of the trial Court may be tested. We find justification in the said submission made by the learned counsel for

the appellant as well as the learned Additional Public Prosecutor. Accordingly, we have perused the entire evidence on record both recorded before the judgment of this Court dated 26.07.2016 and the evidence recorded subsequently. Since the accused was questioned in respect of the evidence on both the occasions under Section 313 Cr.P.C., in our considered view, the accused would not have any grievance in respect of the same. Accordingly, we proceed to analyse the evidence recorded on both the occasions.

**11.** We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

**12.** In this case, Mr.Govindaraj, the brother of the deceased has been examined as P.W.1 on both the occasions. Mr.Kasthuri, wife of the deceased has been examined as P.W.3 subsequently, whereas, she was examined as P.W.2 on the first occasion. Mr.Thangaraj is yet another brother of the deceased, who has been examined as P.W.2 now and he was not earlier examined. Thus, P.W.2 Mr.Thangaraj has been examined as additional witness. P.W.1 Mr.Govindaraj has vividly spoken about the entire occurrence on both the occasions. Similarly, P.W.3, Mrs.Kasthuri has also spoken about the occurrence as an eyewitness. P.W.2, Mr.Thangaraj has also spoken about the entire occurrence as an eyewitness. Thus, the prosecution relies on

the eyewitness account of these three witnesses in order to prove that it was the accused who shot the deceased with M.O.1 gun.

**13.** But the learned counsel for the appellant would submit that P.Ws.1 to 3 can not be believed. He would further submit that since these three witnesses were interested witnesses and also inimical towards the accused, their evidence should be rejected.

**14.** In order to appreciate the said submissions made, we have carefully gone through the evidences of these three witnesses. We have gone through the evidences of P.Ws.1 & 3 during the earlier occasion also. Simply because all these three witnesses are the family members of the deceased and that they are inimical towards the accused, their evidence cannot be outright rejected. Prudence requires that their evidence should be closely scrutinized. When we did the said exercise, we find that nothing has been elicited from any of these witnesses to create even a slightest doubt in their credibility. The presence of these witnesses at the place of occurrence was quite natural. After all, the occurrence had taken place just by the side of their house. In fact, P.W.1 Mr.Govindaraj and P.W.2 Mr.Thangaraj were just following the deceased when the deceased was proceeding towards the motor shed. D.W.1 to D.W.3 have also spoken about the presence of P.W.1. It was at that time, the accused came with a gun

and shot the deceased.

**15.** But the learned counsel for the appellant would submit that P.Ws.1 to 3 would not have seen the deceased being shot by the accused as shooting would have taken place without a fraction of a second. It is true, but the fact remains that these witnesses have clearly stated that it was this accused who came with a gun, aimed at the deceased and shot at him. He fled away from the scene of occurrence with the gun. From these facts, in our considered view, the prosecution has clearly established that it was this accused who shot the deceased with a gun.

**16.** The conduct of these three witnesses also assumes much importance. It was P.W.1, who immediately rushed the deceased to the hospital, where, the doctor declared him dead. The learned counsel for the appellant would submit that the doctor who had declared him dead and the accident register which would contain the person who had brought the deceased to the hospital have been suppressed. The learned Additional Public Prosecutor has no explanation for the same. Though, this Court remanded the case back to the trial Court on noticing lot of shortcomings, even after the remand, it did not strike the mind of the prosecution that such an important document namely the accident register should be proved in

evidence and that the doctor who declared him dead should also be examined. Notwithstanding these shortcomings, we find it difficult to disbelieve P.W.1 that it was he who took the deceased to the hospital, where the doctor declared him dead.

**17.** After the deceased was declared dead, P.W.1 had promptly gone to the police station and made a complaint at 08.00 p.m. itself. The case was registered at 08.00 p.m. on 25.01.2014 and the same had reached the hands of the learned Magistrate at his residence at 09.00 p.m. itself. Thus, there is no delay either in registering the case or in forwarding the same to the Court. This prompt launching of the FIR in this case and prompt despatch of the same to the Court without any delay would to some extent, vouch for the truth of the allegations made by P.W.1 against the accused. Thus, Ex.P1 duly corroborates the evidence of P.W.1.

**18.** Now, turning to the medical evidence, P.W.8 Dr.Saravana Kumar who conducted autopsy had found three entry wounds caused by pellets. These three entry wounds were found on the anterior part of the chest of the deceased. Correspondingly, there were internal injuries and there were exit wounds found on the back of the chest of the deceased. So far as the entry wounds are concerned, there was blackening surrounding the entry wounds indicating that the deceased

had been shot from a short range. The doctor has noted that the deceased died due to these gun shot injuries. The only challenge made to the evidence of the doctor during cross examination is that no X-ray was taken on the dead body and that there was no mention about the distance from where the shot would have been made. In our considered view, these shortcomings are not relevant. The fact that there was blackening around the entry wounds would go to show that the deceased would have been shot from a short distance. P.W.8 had thoroughly examined the body and found that there was no pellets embedded in the body. Thus, there was no need for taking any X-ray. From this fact, we hold that the medical evidence clearly corroborates the eyewitness account of P.Ws.1 to 3.

**19.** Now turning to the arrest of the accused, according to the case, he was arrested on 27.01.2013 at Valladupu bus stand. He made a voluntary confession, in which, he disclosed the place where he had hidden the gun. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 gun. Ex.P5 is the disclosure statement. M.O.1 was recovered under Ex.P6 mahazar. It was sent to the ballistic expert's opinion. P.W.10 the ballistic expert, on examination of M.O.1 gun, found that there were smoke particles in the barrel of the gun. M.O.1 was in working condition. He has further opined that the two pellets recovered from

the place of occurrence would have been shot from the said gun. The accused has got no explanation as to how he came to possess the said gun which had no licence. Thus the opinion of the ballistic expert opinion also would corroborate the evidences of P.Ws.1 to 3 that the deceased was shot by the accused with M.O.1 gun.

**20.** From the place of occurrence, the investigating officer had recovered two pellets. It is the contention of the learned counsel for the appellant that when there were three entry wounds and three exit wounds, it is not explained as to what had happened to the third pellet. In this argument, we find no force. These two pellets which had pierced through the body of the deceased were lying near the place of occurrence and they were recovered. The third pellet which pierced the body of the deceased would have fallen somewhere near the place of occurrence and that would not have been found by the investigating officer. The investigating officer had failed to make a thorough search for the third pellet. But that would not give rise to any doubt in the case of the prosecution. These two pellets which were found near the place of occurrence were sent to ballistic expert opinion and P.W.10 has opined that these two pellets would have been shot from M.O.1 gun. This opinion of P.W.10 has not been seriously challenged by the defence. The only challenge is that these pellets would have been fired from some other gun also. It is

impossible to say that these two pellets were shot only from this gun. Only possibility can be spoken by the expert. If these pellets had not hit the person of the body of the deceased, travelled across the body and came out of the body, the smoke particles would have been found on the same. Since, these two pellets had travelled through the body of the deceased, the smoke particles would have been washed off and that is the reason why, on the pellets recovered from the place of occurrence, no smoke particles or any other chemical was noticed during chemical examination. This would again further fortify the case of the prosecution that these two pellets had hit the body of the deceased and came out through the exit wound. Thus the ballistic expert opinion also clearly goes to strengthen the case of the prosecution.

**21.** The learned counsel for the appellant would submit that the gun was not brought by the accused at all and it was brought only by P.W.1. It is the defence of the accused that when P.W.1 had shot at the accused, it accidentally hit the deceased and thus he died. In order to prove this defence, on the side of the accused, during the initial trial, one Mr.Palanivel was examined as D.W.1, but his evidence is not in any way helpful for the accused. During further trial the said witness was not again examined. During the further trial, three witnesses by name Marriammal (D.W.1), Kavitha (D.W.2) and

Rajendran (D.W.3) were examined. Mrs.Marriammal is a relative of the deceased. She has stated about the misunderstanding between the two families. The crux of her evidence is that in the quarrel which occurred at the time of occurrence, P.W.1 Mr.Govindraj, the brother of the deceased came to the place of occurrence with a gun. D.W.1 requested him not to shoot the accused. Thereafter, she heard a bang and then she found the deceased lying and P.W.1 with a gun in his hand. She has further stated that she went to the police and stated the above facts. D.W.2 Mrs.Kavitha is the daughter in law of the accused. She has also spoken the same facts as spoken by D.W.1. She has stated that she was with D.W.1. D.W.3 has spoken about the quarrel. The learned counsel for the appellant would submit that from the evidence of these three witnesses, the defence has proved that it was P.W.1 who shot the deceased by mistake though he aimed at the accused.

**22.** We have gone through the evidence of these three witnesses. In our considered view, their evidence can be only taken to the extent that at the time of occurrence, P.W.1 was present at the scene of occurrence. During cross examination, D.W.2 has stated that on the day of occurrence, she along with D.W.1 was at her house and she was not aware of the quarrel between the deceased and the accused. She has further stated that when she came to the place of

occurrence, she found the deceased lying dead with injuries. D.W.1 has stated during cross examination that she did not see P.W.1 shooting down the deceased. Thus, in our considered view, these three witnesses who were the family members of the accused have been tutored to depose in favour of the defence. We find no truth in their evidence and so we reject the same.

**23.** On a through analysis of the entire materials before us, we find that the prosecution has clearly established that it was this accused who shot the deceased with M.O.1 gun and caused his death. Having come to the said conclusion, now we have to examine as to what was the offence which was committed by the accused by the said act. The fact that the accused had used a firearm, for which he has got no licence, shot the deceased from a close range, that too on the vital part would all go to prove that the intention of the accused was only to cause the death of the deceased. Thus, the act of the deceased would squarely falls within the first limb of Section 300 I.P.C.

**24.** The learned counsel would further submit that assuming that it was this accused who caused the death of the deceased, the act of the accused would squarely fall within the first exception to Section 300 I.P.C. He would further submit that there was a quarrel between

the parties in respect of taking of water from the well. Provoked by the act of the deceased, the accused would have shot him dead. Thus, according to him, he is entitled for exception 1 to Section 300 I.P.C. In this argument also we find no substance. Though there was some quarrel between the accused and the deceased which preceded the actual shooting, the fact that the accused had taken the gun from his house and went to the place of occurrence and shot him from close range would all go to show that there was no provocation at all from the deceased or from the others who accompanied the deceased. The act of the accused was so deliberate which was not actuated by any provocation much less a sudden provocation. Therefore, we are of the view that the act of the accused would not fall under any of the exceptions to Section 300 I.P.C. Therefore, he is liable to be punished under Section 302 I.P.C. For having possessed a firearm and used the same to cause death of the deceased, we hold that the prosecution has proved the charge under Section 25(1-B) of the Arms Act also.

**25.** Now turning to the quantum of punishment, the trial Court has imposed only the minimum punishment, which also does not require any interference at the hands of this Court.

**26.** In the result, we do not find any merit at all in this appeal,

the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the learned Principal District and Sessions Judge, Dharmapuri in S.C.No.122 of 2014 dated 30.11.2016, is hereby confirmed.

**(S.N.J.) (A.S.M.J.)**  
**21.03.2017**

Speaking Order / Non-speaking Order  
Index : Yes / No

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**S.NAGAMUTHU,J.**

**&**

**ANITA SUMANTH,J.**

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To

1. The Principal District and Sessions Judge,  
Dharmapuri.
2. The Inspector of Police,  
Harur Police Station,  
Dharmapuri District.
3. The Public Prosecutor,  
Madras High Court.

**PRE DELIVERY JUDGMENT**  
**in CrI.A.No.12 of 2017**

RESERVED ON : **06.03.2017**

PRONOUNCED ON : **21.03.2017**

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