

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.873 of 2016

D.Parthiban

...
Appellant

Vs

State rep. By
Inspector of Police,
Crime Branch C.I.D.,
Kanchipuram Unit,
Kanchipuram.

...Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned District and Sessions Judge No.2, Kancheepuram, Kancheepuram District in S.C.No.44 of 2012 dated 09.09.2016.

For Appellant : Mr.R.Shanmugasundaram, Senior Counsel
for Mr.A.Gopinath

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

JUDGEMENT

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

The appellant, then a student doing II year Bachelor of Engineering Course in an Engineering college in Kancheepuram District, stands convicted for offence under Section 302 I.P.C., and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months, on the allegation that he killed a fellow student doing II year B.E., course but in a different section due to animosity. The appellant challenges the said conviction and sentence.

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

The deceased in this case was one Mr.Rajkumar, who was hardly aged about 20 years. P.W.1 is his uncle and P.W.21 is his father. The deceased was staying in a hostel attached to the College and doing II year B.E course in ECE branch. He was in the 'B' section. The accused was also doing the same course but he was in the 'A' section and he was also staying in the college hostel. It is alleged that in the hostel, there was a quarrel between the accused and the deceased on a petty matter. Actuated by the said quarrel, it is alleged that on 04.09.2008, the deceased took 10 to 15 fellow students from Mechanical Engineering branch to the class room of the accused and attacked him. The accused sustained injuries. This is stated to be the motive for the occurrence.

3.On 05.09.2008, around 9.40 am, the deceased was sitting in his class room viz., II year ECE 'A' section. The class room of II year ECE 'B' section is adjacent to the 'A' section class room. There was a leisure time between 9.40 am to 10.00 am. At that time, it is alleged that the accused went into the class room of 'B' Section, where the deceased was sitting. There were also other students sitting in the class room. On reaching the deceased, the accused questioned about the earlier occurrence. This resulted in a quarrel. In the said quarrel, it is stated that the accused took out a wooden plank with steel frame lying in a corner of the class room and gave a single blow on the head of the deceased. The deceased sustained head injury and fell down. The occurrence was witnessed by many students in the class room including P.Ws.2 & 3.

4.Thereafter, P.W.2 a fellow student, who witnessed the occurrence, informed P.W.14 - the Head Of the Department, about the occurrence. Then, P.W.14 and others rushed to the class room of 'B' Section and found the deceased lying unconscious with bleeding injury on his head. Thereafter, the deceased was taken to the dispensary attached to the College. In the dispensary, P.W.6 - Dr.Nandini was the Doctor in-charge. She examined the deceased at 10.00 am on 05.09.2008. She found a lacerated injury on the head of the deceased. There was profuse bleeding through the head injury. The deceased was unconscious. Since, the condition of the deceased was so serious, she advised him to be taken to Sri Ramachandra Medical College & Hospital, Porur, Chennai. Accordingly, he was taken to the said hospital and admitted as inpatient. Since his condition was so serious and requiring immediate surgery, the surgery was conducted on the head of the deceased. He continued to be in the hospital as inpatient.

5.While so, on getting information from the college authorities, P.W.1, a resident of Chennai and the uncle of the deceased rushed to the Sri Ramachandra Medical College & Hospital, Porur, Chennai. Even before he could reach, surgery was completed and the deceased was brought to the Intensive Care Unit. He found the deceased continuously unconscious. When he enquired, he was told by somebody from the college that the deceased was attacked by the accused with a wooden plank fitted with steel frame. He was also informed that there were two fellow students who also attacked the deceased with hands.

6.With the above information, P.W.1 rushed to Sriperumbudur Police Station and made a complaint at 6.00 pm on 06.09.2008. Ex.P.1 is the complaint and Ex.P.30 is the F.I.R. Both the documents were sent to the Court which were received by the learned Judicial Magistrate at 11.45 am on 09.09.2008. As stated above, the F.I.R., was registered not only against the accused but also against two other students by name Mr.Vishnu and Mr.Sridhar, for offences under Sections 323, 324 & 307 I.P.C.

7.The case was initially investigated by P.W.31, the Inspector of Police, Sriperumbudur. He went to the place of occurrence, prepared an observation mahazar and a rough sketch. He recovered the blood stained earth and the sample earth from the place of occurrence. He examined many students who were in the class room at the time of occurrence including P.Ws.2 & 3. From such examination, he came to know that Mr.Vishnu and Mr.Sridhar who were arrayed as accused 2 & 3 in the F.I.R., had not involved in the occurrence and therefore, he dropped the case as against them. He altered the case into one under Section 307 I.P.C., against the accused alone and forwarded the report to the Court. Then the case was taken up for further investigation by his successor P.W.32.

8.P.W.32 examined few more eye witnesses and he had taken all the efforts to arrest the accused. On 27.11.2008, he obtained the Wound Certificate and medical records pertaining to the deceased. The deceased underwent treatment there for about three months as inpatient. But, he continued to be unconscious. Thereafter, P.W.21, the father of the deceased got him discharged and kept him in a rented house at Villivakkam and continued the treatment as outpatient. Despite treatment, at last, on 21.06.2009, that was after 7 ½ months of the occurrence, the deceased succumbed to the injuries.

9.P.W.32 altered the case into one under Section 302 I.P.C., on 21.06.2009. On going over to the hospital, he conducted inquest on the body of the deceased between 1.00 pm and 3.00 pm

on 21.06.2009. Then he forwarded the dead body for post mortem.

10.P.W.26 - Dr.V.Sathyamurthy, conducted autopsy on the body of the deceased on 21.06.2009 at 2.55 pm and found the following injuries:-

"Tracheostomy wound in classical site
Eyes found removed (Eye donation). On
Dissection of Head. A curvilinear healed
scar on left Fronto parieto temporal region
of scalp on dissection of scalp Resolving
light brown contusion on left fronto
parietal region of scalp craniotomy defect
12x11cm on Left fronto parieto temporal bone
with 4 burrholes bone flap not in site Dural
defect 4x3 cm full thickness left temporal
region brain bulging thro the defect

On further dissection Flattening of Gyri
and obliteration of sulci
Herniation of cerebellar tonsils and brain
stem cut section Ventricle reduced to a slot
and pale."

Ex.P.8 is the post mortem certificate. He opined that the injuries found on the deceased would have been caused by a blow with M.O.1 - wooden plank with steel frame. He further opined that the death of the deceased was due to the head injury.

11.In the mean while, the accused approached the High Court and secured an order of anticipatory bail under Section 438 Cr.P.C. On 22.06.2009, P.W.32 filed an application before the High Court for cancellation of the said order of anticipatory bail. On 21.07.2009, the said order was cancelled by the High Court and thereafter, on the same day, at 1.40 pm, P.W.32 arrested the accused and after interrogation, he forwarded the accused to Court for judicial remand.

12.When the investigation was still in the hands of P.W.32, on the application filed by the State for cancellation of anticipatory bail granted to the accused, this Court transferred the case to CB-CID. P.W.34, the then Inspector of Police, CB-CID took up the case for investigation. He examined many witnesses including the Doctors who treated the deceased at various points of time. He collected the medical records pertaining to the deceased. On completing investigation, on 09.04.2010, he laid charge sheet against the accused for offence under Section 302 I.P.C.

13.Based on the above materials, the trial Court framed a

lone charge under Section 302 I.P.C., against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 34 witnesses were examined and 34 documents were exhibited, besides 1 Material Object. As a Court documents, the attendance registers of ECE A Section and B Section were marked respectively as Exs.C.1 & C.2.

14.Out of the said witnesses, P.W.1 the uncle of the deceased has stated about the information which he received from the college about the occurrence. He has further stated that he went to the hospital and found the deceased in an unconscious state. He has further spoken about the complaint made by him to the Police. He also spoken about the continuous treatment given to the deceased and the ultimate demise of the deceased. P.Ws.2 & 3 are the fellow students of the deceased. P.W.2 was studying ECE in 'B' section whereas P.W.3 was studying ECE in 'A' Section. They have vividly spoken about the entire occurrence. According to them, actuated by the occurrence on 04.09.2008, in which, the accused was attacked by the deceased, the accused went into the class room of the deceased, developed quarrel and attacked him with a wooden plank fitted with steel frame which was lying in the corner of the class room, on the head of the deceased. They have further stated that the Head Of the Department and others rushed to the class room and the deceased was taken to the dispensary attached to the college and finally to Sri Ramachandra Medical College & Hospital, Porur, Chennai. P.Ws.4 & 5 are also students of the college who were examined to speak about the occurrence. But they have turned hostile and they have not supported the case of the prosecution in any manner.

15.P.W.6 - Dr.Nandini, the Doctor in the dispensary run by the college has stated that on the day of occurrence, at 10.00 am, the deceased was brought to her with a head injury. She found profuse bleeding in the injury. She gave first aid and since, the condition of the deceased was so serious, she advised him immediately to be taken to Sri Ramachandra Medical College & Hospital, Porur, Chennai. She has further stated that on the previous day, the accused came to her with minor injuries for which, she gave treatment.

16.P.W.7, a staff of the college has not stated anything incriminating against the accused and he has stated that he heard about the occurrence and then he took the deceased to the hospital along with the others. He has further spoken about the information passed on to P.W.21, the father of the deceased. P.W.8 is the Administrative Officer of the college. He has also stated the same facts. P.W.9, a student of the college who was

examined to speak about the occurrence has turned hostile and he has not supported the case of the prosecution in any manner.

17.P.W.10, yet another student of the college, has also not supported the case of the prosecution though he was expected to speak about the occurrence. P.W.11, is yet another student of the same college and he has spoken about the occurrence which took place on the previous day. In essence, he has spoken about the motive. P.W.12, yet another student of the said College and hostel mate, has also spoken about the motive for the occurrence. P.W.13, yet another student of the said college has spoken about the motive for the occurrence.

18.P.W.14 is the then Head Of the Department (Maths) in the College. He has stated that on hearing about the information, he immediately rushed to the class room of the deceased where he found the deceased lying on the floor with the head injury. By his side, P.W.2 was there. He has further stated that the deceased told him that he fell down and sustained injury. He has further stated that thereafter, he took him to the hospital for treatment.

19.P.W.15, another student of the college has also spoken about the motive. P.W.16 has spoken about the preparation of observation mahazar; rough sketch; recovery of blood stained earth and the sample earth from the place of occurrence. P.W.17 has spoken about the arrest of the accused. P.W.18 is the brother of the deceased. He has stated that he went to the hospital after hearing about the occurrence. He has not stated anything incriminating about the accused. P.Ws.19 & 20 have turned hostile and they have not supported the case of the prosecution.

20.P.W.21, the father of the deceased has stated about the information received and he in turn informed the same to P.W.1 over phone about the occurrence. He came to the hospital on the next day. He has further spoken about the treatment given to the deceased and throughout treatment, the deceased was unconscious. He has further stated that after three months of treatment, he got the deceased discharged from the hospital and he kept him in a rented house at Villivakkam and from there, he continued the treatment to the deceased as outpatient. The deceased died on 21.06.2009.

21.P.W.22 is a Consultant in the Emergency Department of Sri Ramachandra Medical College & Hospital, Porur, Chennai . He has stated that the deceased was brought to the said hospital at 12.30 pm on 05.09.2008. At that time, it was told that the deceased had slipped and fell down in the bathroom and thus, sustained injury. He has further stated that CT scan taken

immediately suggested that there was large extra dural hemurraghe on left right temporal region with significant mid line shite. Ex.P.5 is the Wound Certificate.

22.P.W.23, Dr.Thanigai, has stated that the deceased was brought to the Government Royapettah hospital at Chennai on 21.06.2009 around 4.30 am. On examination, he found him dead. Ex.P.6 is the Accident Register. Then he informed the same to Police. P.W.24, a Constable has stated that he carried the dead body of the deceased to Doctor for post mortem. P.W.25, Dr.Selvakumar, has spoken about the treatment given to the deceased at the hospital. He has stated that the deceased underwent treatment in Sri Ramachandra Medical College & Hospital, Porur, Chennai from 05.09.2008 onwards either as inpatient or as outpatient. According to him, the deceased was unconscious. He was put on ventilation and immediately surgery was conducted on his head. He underwent treatment in the Neuro Department of the hospital. Since, there was no significant improvement in the condition of the deceased, the family members of the deceased wanted to know whether the same kind of treatment to be continued as outpatient. P.W.25 has further stated that since it would take a longer period for the deceased to recover completely, he also advised the deceased to be taken out so as to continue the treatment as outpatient. Accordingly, he was discharged from the hospital on 27.11.2008. However, the deceased was often brought to the hospital for treatment as outpatient. Again he was admitted in the same hospital as inpatient between 14.02.2009 and 17.02.2009. Thereafter, onceagain, he discharged, he has stated. P.W.26 has spoken about the post mortem conducted on the body of the deceased on 21.06.2009 and his opinion regarding the cause of death. P.W.27 Dr.T.V.Ramakrishnan has also stated about the treatment given to the deceased at Sri Ramachandra Medical College & Hospital, Porur, Chennai. P.W.28, the then Judicial Magistrate has spoken about the summons issued to some of the witnesses. P.W.29, the then learned Judicial Magistrate has stated about the statements of some of the witnesses recorded by her under Section 164 Cr.P.C. P.W.30, the then Judicial Magistrate has recorded the statements of some of the witnesses. P.W.31 has spoken about the registration of the case and the initial investigation done by him. P.W.32 has stated that he continued the investigation after P.W.31. P.Ws.33 & 34 have also spoken about the investigation done and the final report filed by him.

23.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any documents on their side.

24. Having considered all the above materials, the trial Court convicted the appellant/accused for offence under Section 302 I.P.C. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

25. We have heard Mr. R. Shanmugasundaram, learned Senior Counsel appearing for the appellant and Mr. P. Govindarajan, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

26. There is no controversy over the fact that on the day of occurrence, the deceased was in 'B' Section of ECE branch of Rajalakshmi Engineering College at Tandalam. P.Ws. 2 & 3 were the fellow students. There is also no controversy over the fact that the accused was also doing the same course but he was in 'A' Section. It has been stated by a number of witnesses including P.Ws. 2 & 3 that some time before, there was a quarrel between the accused and the deceased, in the hostel. It is also in evidence that on account of the same, on 04.09.2008, the deceased along with 10 to 15 fellow students from Mechanical Engineering group, attacked the accused and caused injuries. The accused also went to P.W. 6 Dr. Nandini for treatment. P.W. 6 has also spoken about the same facts. Thus, in our considered view, the prosecution has clearly established that on 04.09.2008, the deceased had attacked the accused along with his fellow students and that was the motive for the present occurrence.

27. So far as the occurrence is concerned, though, a number of students were examined to speak about the occurrence, all have turned hostile except P.Ws. 2 & 3. P.W. 2 was doing ECE course in 'B' section whereas P.W. 3 was doing ECE course in 'A' section. Class rooms of Sections A and B were situated side by side. It is also in evidence of P.Ws. 2 & 3 that there was a short leisure time between 9.40 am and 10.00 am. At the time of occurrence, P.Ws. 2 & 3 had gone to a nearby room to take water and then returned to their respective class rooms. At that time, the accused who was in 'A' section went to 'B' section of the class room. On reaching the deceased, according to them, the accused developed quarrel questioning him as to why he attacked him, on the previous day. At that time, the accused was not armed with any weapon. The wooden plank (M.O.1) was lying in the corner of the class room, as a waste material. The accused in the said quarrel, suddenly took out the said wooden plank (M.O.1) and inflicted a single blow on the head of the deceased. P.Ws. 2 & 3 are independent witnesses. Their presence at the place of occurrence, cannot be doubted. They have got no motive also against the accused. They have vividly spoken about the entire occurrence. Though these two witnesses have been

extensively cross examined by the learned counsel for the accused, nothing has been brought on record even to create slightest doubt in the case of the prosecution from the evidences of these two witnesses. In our considered view, the prosecution has clearly established that it was this accused who attacked the deceased with the wooden plank (M.O.1) on the head of the deceased which resulted in his death.

28. But, the learned Senior Counsel appearing for the appellant would submit that at the earliest point of time, when the deceased was taken to P.W.6 - Dr. Nandini, she was informed that he had fallen down and sustained injury, on his head. He would further submit that thereafter, when he was taken to Sri Ramachandra Medical College & Hospital, Porur, Chennai also, the Doctor was informed by the attendants of the deceased that the deceased had fallen down and sustained injury. Referring to this earliest statement made by someone, the learned Senior Counsel appearing for the appellant would submit that the same should carry weightage.

29. But, we find no force at all in the said argument. It is crystal clear that immediately after the occurrence, the deceased went into coma and therefore, he would not have made any such statement that he fell down and sustained injury on his head. He was immediately taken to P.W.6, the Doctor who was the Doctor in-charge of the dispensary attached to the college. It is not known as to who made statement to the Doctor that the deceased fell down and sustained injury. The said statement of someone to P.W.6 cannot be treated as substantive evidence, as it is hit by hearsay rule. The said statement being a former statement could be used either to corroborate or to contradict the maker of the statement to P.W.6. But, the maker is not known. Therefore, no weightage could be given to the said statement made by someone to P.W.6 as well as subsequently to P.W.22, the Doctor at the Sri Ramachandra Medical College & Hospital, Porur, Chennai.

30. The learned Senior Counsel appearing for the appellant would next contend that P.W.14, the Head of the Department (Maths) in his evidence, has stated that the deceased told him that when he rushed to the class room, he found the deceased lying and P.W.2 sitting by his side. He would further submit that when he enquired the deceased, he told him that he fell down and sustained injury on his head. Referring to this part of evidence of P.W.14, the learned Senior Counsel would submit that there is no truth in the case of the prosecution that the accused attacked the deceased.

31. This argument, though attractive, does not persuade us at

all. We have to test whether P.W.14 could be believed in this respect. When it is so clear from the medical evidence that due to the head injury, the deceased went into coma instantaneously, in our considered view, P.W.14's evidence that the deceased told him that he fell down and sustained injury cannot be believed at all. Therefore, this part of evidence of P.W.14 is rejected.

32.The learned Senior Counsel would next contend that in the F.I.R., the names of two other persons by name Mr.Vishnu and Mr.Sridhar have also been mentioned as assailants. The learned Senior Counsel would submit that for the reasons best known to the Police, they have been omitted in the final report. Thus, according to the learned Senior Counsel, the prosecution has not come forward with true version of the occurrence.

33.In this argument also, we do not find any force. First of all, Ex.P.1, the complaint, was made by P.W.1, the Uncle of the deceased, who did not witness the occurrence. He went to the hospital on hearing about the occurrence, where he enquired somebody. The information given to him was that the accused attacked the deceased with wooden plank and two other students by name Mr.Vishnu and Mr.Sridhar also attacked the deceased with hands. P.W.31, the subsequent Investigating Officer to whom the case was transferred had verified these facts and had come to the definite conclusion that the said hearsay information which P.W.1 received at hospital about the involvement of Mr.Vishnu and Mr.Sridhar was not correct. Therefore, in our considered view, in the absence of any evidence about the involvement of Mr.Vishnu and Mr.Sridhar in the occurrence, the information passed on by P.W.1 to the Police under Ex.P.1 which is based on some hearsay information, would not carry any evidentiary value. Therefore, we reject the said argument of the learned Senior Counsel.

34.The learned Senior Counsel would next contend that the medical evidence does not corroborate the eye witness account. We have carefully gone through the entire medical records and the oral evidences of number of Doctors who treated the deceased and who have been examined as prosecution witnesses. All have stated that from their evidences, it is seen that there was a single injury on the head of the deceased and the said external injury had corresponding internal injuries. The CT scan taken immediately on the admission of the deceased at Sri Ramachandra Medical College & Hospital, Porur, Chennai revealed that there was a large sub-durable haemorrhage. Surgery was therefore, conducted. Despite the treatment, the deceased died after several months. The Doctor who conducted autopsy has given a clear opinion that the deceased died only due to the head

injury. Thus, in our considered view, the medical evidence duly corroborates the eye witness account of P.Ws.2 & 3. Therefore, from the above evidences, we can safely conclude that it was this accused who caused the death of the deceased.

35. Having come to the said conclusion, now we have to examine as to "What was the offence that was committed by the accused by attacking the deceased with wooden plank?".

36. The learned Senior Counsel would submit that the act of the accused would not fall within the ambit of Section 302 I.P.C. We find force in the said argument of the learned Senior Counsel. It is in evidence that when the accused went to the class room of the deceased, he was not armed with any weapon. The wooden plank was lying in the corner of the class room, as a waste material. The purpose of the accused going to the class room of the deceased was only to question him as to why he along with the fellow students had attacked him and caused injuries. This had quite naturally resulted in a quarrel between the accused and the deceased.

37. P.W.3, in his evidence has stated that during leisure time between 9.40 am to 10.00 am, there was a fight between the accused and the deceased. This would clearly go to show that the wordy quarrel had culminated into a fight. There was no premeditation. Thus, the accused did not intend to cause the death of the deceased at all. Having lost his self-control, due to the quarrel and fight, the accused had taken the wooden plank which was lying there and made a single blow on the head of the deceased. The fact that he did not repeat any more attack on the deceased is also a mitigating fact to be taken note of. This act of the accused, in our considered view, would not fall within the third limb of Section 300 I.P.C., because, he would not have intended to cause a bodily injury which would in the ordinary course of nature cause the death of the deceased. The learned Senior Counsel would submit that there is no medical evidence that the injury caused by the accused would be sufficient to cause the death of the deceased in the ordinary course of nature as required under the third limb of Section 300 I.P.C. It is true that there is no positive medical opinion, in this respect. But, in our considered view, even in the absence of medical opinion going by the fact that the deceased had sustained fracture on the skull, it could be concluded that the said injury was sufficient in the ordinary course of nature to cause the death. Going by the sequence of events, we are inclined to hold that the accused would not have intended to cause the bodily injury to the deceased, which would be sufficient in the ordinary course of nature to cause the death of the deceased.

But, at the same time, it cannot be said that the accused had no knowledge that attacking the deceased with wooden plank on the head would be imminently dangerous to the life of the deceased. We are of the firm view that the accused could be attributed with that much of knowledge as required under fourth limb of Section 300 I.P.C., that the accused knew that his act was so imminently dangerous to the life of the deceased. Thus, the act of the accused, in our considered view, would squarely fall within the fourth limb of Section 300 I.P.C.

38.As we have already pointed out, the occurrence was not a premeditated one. There was a quarrel and fight between the accused and the deceased. It was only in the quarrel and the fight, the accused had taken the wooden plank which was lying there and had given single blow. Thus, the act of the accused, in our considered view would squarely fall within fourth exception to Section 300 I.P.C. Therefore, the accused is liable for punishment only for the offence under Section 304(II) I.P.C., and not under Section 302 I.P.C.

39.Now, turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged 21 years old. It is also brought to our notice that he hails from a poor agricultural family. His father was eking for his livelihood in an Arabian country. The family was run on the small and meagre income of the father of the accused. With great difficulty, his father with an ambition that his son should become an Engineer, had put him in a reputed college in Chennai to pursue Bachelor of Engineering degree course. Unfortunately, the dream of the father has been destabilized by this unfortunate event. Now, the entire family is in peril. The learned Senior Counsel of the accused would submit that considering the plight of the family of the deceased, the accused is prepared to pay a sum of Rs.2,00,000/- as compensation to the family of the deceased. It is also brought to our notice that the entire expenses for the treatment of the deceased was borne by the college authorities. We have also ascertained from the learned Additional Public Prosecutor appearing for the State about the conduct of the accused post conviction. He has been maintaining a good character and conduct in the prison life. There are lot of chances for reformation. In this regard, we would like to refer to the judgment of the Hon'ble Supreme Court in B.G.Goswami v Delhi Administration (1974(3) SCC 85) wherein, in paragraph No.10, it has been held as follows:-

"10.....Now
the question of sentence is always a
difficult question, requiring as it does,

proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case . The main purpose of the sentence broadly stated is that accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future , both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence: it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part judicial thinking while determining this question. In modern civilised societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal . In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of those proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him....."

40. In the light of the above judgment of the Hon'ble Supreme Court, in this case, instead of imposing punishment as a deterrence, we would like to impose punishment on the accused, with an aim to reform him. Having regard to all the above mitigating as well as aggravating circumstances and also having regard to the fact that the accused is ready and willing to pay a sum of Rs.2,00,000/- as compensation to the parents of the deceased, we are of the view that sentencing the accused to undergo rigorous imprisonment for four years and to pay a fine of Rs.2,00,000/- (Rupees two lakhs only) would meet the ends of justice. We further direct that on deposit of the said amount by the accused, the same shall be paid by the trial Court to the

parents of the deceased as compensation.

41. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(II) I.P.C., and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.2,00,000/- (Rupees two lakhs only) in default to undergo rigorous imprisonment for six months. The fine amount, on being realised, shall be paid to the parents of the deceased as compensation by the trial Court. We further direct that the period of sentence already undergone by the appellant shall be given set off as required under Section 428 Cr.P.C.

42. Before concluding, we deem it appropriate to express our desire that the appellant be educated and become a reformed useful citizen of this country so that, his elderly parents as well as the society could be benefitted. Therefore, we direct the Superintendent Central Prison, Puzhal, Chennai, to enable the appellant to apply for any degree course by distance education, if he is so interested, after getting necessary orders from the District Collector, Kancheepuram District and to enable him to pursue his studies.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1. The District Munsif cum Judicial Magistrate,
Sriperumpudur.
2. thro The Chief Judicial Magistrate,
Sriperumpudur.
3. The Sessions Judge No.2,
Kanchipuram.
4. The District and Principal Sessions Judge,
Kanchipuram.
5. The Superintendent,
Central Prison, Puzhal, Chennai.

6. The District Collector,
Kanchipuram.

7. The Director General of Police,
Mylapore, chennai - 4.

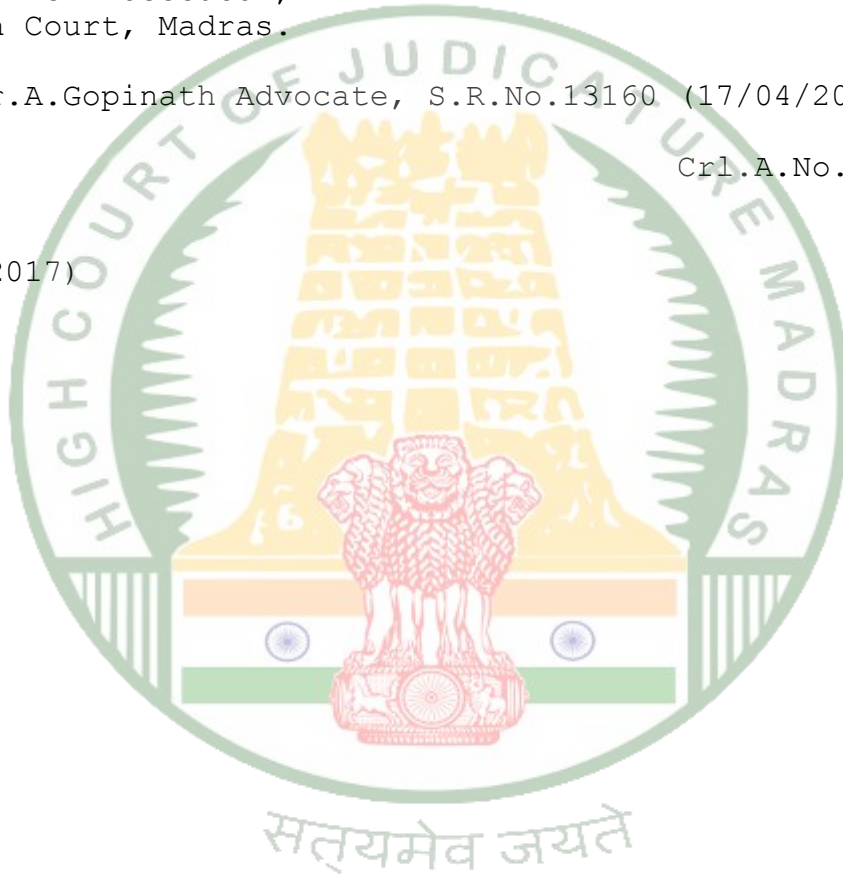
8. Inspector of Police,
Crime Branch C.I.D.,
Kanchipuram Unit,
Kanchipuram.

9. The Public Prosecutor,
High Court, Madras.

+1CC to Mr.A.Gopinath Advocate, S.R.No.13160 (17/04/2017)

Cr1.A.No.873 of 2016

MG (CO)
RS (12/04/2017)



WEB COPY