

BAIL SLIP

CRL APPEAL 817 OF 2008

The Appellant 1 to 3/Accused namely (A1) Rasu (A2) Murugan (A3) Palaniappan were directed to be released on bail by the order of the Court dated on 26/03/2009 and made in Crl.Mp.1/09 in Crl.A. 817/2008.

The Appellant 4 & 5 /Accused namely (A4) Palaniammal (A5) Kamatchi were directed to be released on bail by the Order of the Court dated on 10/12/2008 and made in MP.No.1/2008 in Crl.A. 817/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23..10..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.817 of 2008

1.Rasu [A1]

2.Murugan [A2]

3.Palaniappan [A3]

4.Palaniammal [A4]

5.Kamatchi [A5]

... Appellants /Accused 1 to 5

-Versus-

The State,

Rep. by Inspector of Police,

Andhiyur Police Station,

Bhavani Taluk, Erode District.

[Crime No.51 of 2007]

... Respondent/Complainant

Appeal filed under Section 374(2) of Cr.P.C. challenging the judgement of conviction and sentence dated 18.11.2008 in S.C.No.47 of 2008 by the learned Additional District Sessions Judge [Fast Track Court-IV], Bhavani, Erode District.

For Appellants : Mr.A.K.Kumaraswamy,
Senior Counsel for
Mr.S.Kaithamalai Kumar

For Respondent : Mr.A.Arul, APP

JUDGEMENT

The Appellants are A1 to A5 in S.C.No.47 of 2008 on the file of the learned Additional Sessions Judge, Bhavani, Erode District. There were as many as three charges framed against them. The first charge was under Section 147 of IPC against A1 and A3 to A5 and under Section 148 of IPC against A2 alone; the

second charge was under Section 447 and 307 r/w 449 of IPC against A1 to A5; and the third charge was under Section 302 of IPC against A2 and under Section 302 r/w 149 of IPC against A1 and A3 to A5. After full trial, A2 was convicted for offence under Section 148, 307 r/w 149, 304(i) of IPC and sentenced him to undergo rigorous imprisonment for one year for offence under Section 147 of IPC; to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for further six months for offence under Section 307 r/w 149 of IPC and to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for six months for offence under Section 304(i) of IPC while A1 and A3 to A5 were convicted for offences under Section 147, 307 r/w 149, 304 (i) r/w 149 of IPC and sentenced them to undergo rigorous imprisonment for one year for offence under Section 147 of IPC; to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a further period of six months for offence under Section 307 r/w 149 of IPC and to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months for offence under Section 304(i) r/w 149 of IPC. The appellants were acquitted of by the trial court from the other charges. Aggrieved by conviction and sentences, A1 to A5 are before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Lakshmanan. He was an agriculturists. P.W.2 is the son of the deceased. P.W.1 is the wife of P.W.2 and daughter in law of the deceased. The deceased and P.W.2 were cultivating their lands situated at Pudukkadu in Bhavani Taluk. It is the case of the prosecution that there was a dispute between the accused and the prosecution party over a cart track. A civil suit was filed by the accused party in this regard and there was a decree granted in their favour. While so, on 23.01.2007, when the deceased was doing agricultural work in his field along with P.W.1 and P.W.2, A1 to A5 who came there with deadly weapons attacked them. It is the further case of the prosecution that A1 attacked P.W.2 on his left leg, left hand and on the back of his head with a stick; A2 attacked P.W.2 with a stick on his head ; A4 and A5 caught hold P.W.2 to facilitate the other accused to attack him; A3 attacked P.W.2 with wooden log on his left knee. Thereafter, A4 attacked P.W.2 on his wrists with a stick and A5 attacked P.W.2 on his thigh with a stick. On seeing that P.W.2 was being attacked, when the deceased came to his rescue and attempted to prevent the accused from attacking P.W.2, A2 gave a blow on the left leg of the deceased which resulted in an open fracture of bone. Further, A2 attacked the deceased with a knife on his left leg. The deceased immediately fell down. Thereafter, A1 to A5, after

throwing the sticks and knife, fled away from the scene of occurrence. P.W.1 took P.W.2 and the deceased to the Government Hospital, Andhiyur.

3. P.W.9, who was the then Assistant Surgeon in Andhiyur Government Hospital, examined the deceased and found as many as 7 injuries on him as detailed below:

(1) laceration 5 cms x 1 cm x 1 cm on the back of head in occipital region.

(2) laceration 2 cm x 1/2 cm x 1/2 cm on the left side of head behind ear.

(3) contusion 6 cms x 6 cms on the left fore arm near elbow.

(4) contusion 6 cms x 4 cms with deformity of left fore arm near the wrist.

(5) complained of pain on the right upper arm. (6) complained of pain on the left thigh.

(7) complained of pain on the chest."

He also examined P.W.2. He referred both of them to Erode Government Hospital for further treatment. Ex.P.6 is the Wound Certificate issued for the deceased.

4. In the meant time, on getting intimation from Andhiyur Government Hospital at about 08.00 p.m. 23.01.2007, P.W.12, the then Sub Inspector of Police, Andhiyur, immediately rushed to the hospital where he recorded the statement of P.W.1 as P.W.2 and the deceased were not able to speak then. Then, on returning to the police station, he registered a case in Crime No.51 of 2007 under Section 147, 148, 341, 326 and 323 of IPC and prepared FIR. He forwarded the original FIR to the court and a copy of the FIR to the Inspector of Police along with a statement of P.W.1 for further investigation. On the complaint given by A1, a case in Crime No.50 of 2017 came to be registered by P.W.12 under Section 147, 148, 324 and 323 of IPC against P.W.2 and others. It is the further case of the prosecution that in the mean time, the deceased and P.W.2 were shifted to Erode Government Hospital where they were taking treatment.

5. P.W.11, Dr.Sivakumar, the then Radiologist, Erode Government Hospital, examined P.W.2 who was admitted on 23.01.2007 as inpatient in the hospital. P.W.11, the Doctor, had taken X-Ray on the left forearm of P.W.2 and found fractures in radius and ulna bones. On 25.01.2007, P.W.11 again taken X-Ray on hip bone, right shoulder and chest and he found fracture on scapula of the right shoulder and 9th left rib.

6. In the mean time, P.W.13 taking up the case for investigation, visited the scene of occurrence on 24.01.2007, prepared an observation mahazar (Ex.P.9) and a rough sketch (Ex.P.10) in the presence of P.W.6 and P.W.7. He also recovered

the wooden logs (M.O.1 series) and a soori knife (M.O.2) under a mahazar (Ex.P.11) in the presence of the same witnesses. He also examined few more witnesses at the place of occurrence. Then, he rushed to the Erode Government Head Quarters Hospital where the deceased and P.W.2 were taking treatment. He examined P.W.1 and P.W.2, recorded their statements.

7. In the course of investigation, on 24.01.2017 at about 05.15 p.m., P.W.13 arrested A2 who was standing at the Andhiyur Hospital junction, on being identified by P.W.1 in the presence of witnesses. On returning to the police station, he forwarded the material objects which were already recovered from the place of occurrence, to the court. Thereafter, he forwarded the accused to the court for judicial remand. On 26.01.2017 he rushed to the Coimbatore Government Hospital where the deceased was taking treatment and recorded his statement. P.W.13 was in search of the other accused. In the mean time, the other accused were granted anticipatory bail by the learned Sessions Judge.

8. While so, the deceased-Lakshmanan, who was taking treatment, died in the hospital despite intensive treatment on 03.04.2007. On receiving intimation from the Coimbatore Medical College Hospital that the deceased died in the hospital, P.W.13 altered the penal provisions appropriately and forwarded the alteration report to the court. He rushed to the hospital, conducted inquest on the body of the deceased and prepared an inquest report. Then, he made a request to the doctor for post-mortem.

9. P.W.10, Dr.Menakaskar, the then Tutor, Forensic Medicine, Coimbatore Medical College Hospital, conducted autopsy on the body of the deceased and found the following ante mortem injuries:

(1) On removal of hospital bondage in the right lower limb - open type of wound measuring 10 x 7 cm extending from right upper 2/3rd of leg upto middle 2/3rd. Wound is highly infected. Clotted blood weighing 60 grams seen in side the wound and on dissection, underlying bones of right leg found complete fractured and separated widely and infected with greenish yellow slough.

(2) 2 x 2 cm opened wound with infection seen at medial (inner) aspect of upper 1/3rd of right leg.

He issued Ex.P.7 post-mortem certificate. He opined that the death was due to complication of injury over right leg.

10. P.W.13, examined the doctor and other witnesses, collected post-mortem certificate and other records and on

completing the investigation he laid charge sheet against the accused in Crime No.51 of 2007. He closed the other case in Crime No.50 of 2017, which was registered on the complaint made by the accused party, as "mistake of fact".

11. Based on the above materials, the trial court framed as many as three charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 21 documents and 6 material objects were marked.

12. Out of the above witnesses, P.W.1, the wife of P.W.2 and the daughter in law of the deceased, has spoken to about the dispute between the deceased and the accused over a cart tract and a civil case between them. She has further stated that while so, on 23.01.2007, when the deceased was doing agricultural work in his field along with P.W.1 and P.W.2, A1 to A5 who came there with deadly weapons attacked P.W.2 and the deceased with sticks and knife. She has specifically stated that A1 attacked P.W.2 on his left leg, left hand and on the back of his head with a stick; A2 attacked P.W.2 with a stick on his head; A4 and A5 caught hold P.W.2 to facilitate the other accused to attack him; A3 attacked P.W.2 with wooden log on his left knee. Thereafter, A4 attacked P.W.2 on his wrists with a stick and A5 attacked P.W.2 on his thigh with a stick. On seeing that P.W.2 was being attacked, when the deceased came to his rescue and attempted to prevent the accused from attacking P.W.2, A2 gave a blow on the left leg of the deceased which resulted in an open fracture of bone. Further, A2 attacked the deceased with a knife on his left leg. The deceased immediately fell down.

13. P.W.2, the injured witness, has stated that when there were doing cultivation work on the date occurrence at about 02.00 p.m. the accused who came there armed with deadly weapons attacked him. He has specifically stated that A1 by saying that if you are spared, you would be doing like this, attacked him on his left fore arm, back of head; A3 and A4 caught hold of his hands; A2 attacked him with stick; though he escaped from the attack on the head, the blow fell on his ear which caused a bleeding injury; A3 assaulted him with stick on his left chest, chest, right hand, left upper arm with a stick; A4 attacked him on his left wrist; and A5 assaulted on his thigh with a stick. According to P.W.1 and P.W.2, after the attack made by A2, the deceased immediately fell down. Immediately, thereafter, A1 to A5, after throwing the sticks and knife, fled away from the scene of occurrence. P.W.1 has further stated that she took P.W.2 and the deceased to the Government Hospital, Andhiyur and thereafter, they were shifted to Erode Government Hospital.

14. P.W.3 to 8 have turned hostile and they did not support the prosecution case in any manner. P.W.9 , the Doctor, has stated that on 23.01.2007 when he was on duty at Andhiyur Government Hospital P.W.2 and the deceased were brought before him by P.W.1 for treatment. He found as many as 7 injuries on the deceased. He has further stated that he referred both the deceased and P.W.2 to Erode Government Hospital for further treatment. The deceased was taking treatment at Erode Government Hospital from 23.01.2007 to 27.02.2007. On 03.04.2007, the deceased died. P.W.10 was the doctor in Coimbatore Medical College Hospital. He has spoken about the post mortem conducted on the body of the deceased and his final opinion regarding the cause of the death of the deceased.

15. P.W.11, Dr.Sivakumar, has spoken about the treatment given to the deceased and the X-Ray taken on P.W.2 for the injuries and the treatment given to him. He has also spoken about the injuries sustained by the deceased.

16. P.W.12, the then Sub Inspector of Police attached to Andhiyur Police Station, has spoken about the receipt of information from the hospital, recording the statement of P.W.1 and the registration of the case in Crime No.51 of 2007 under Section 147, 148, 341, 326, 323 of IPC. P.W.13 has spoken about the investigation done and the filing of charge sheet against the accused.

17. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness, but, they marked a Xerox copy of the FIR which was registered based on the complaint given by A1. Their defence was a total denial. Having considered all the above, the trial court convict them as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 to A5 are now before this Court with the present criminal appeal.

18. I have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State and also perused the records carefully.

19. The learned counsel for the appellants would submit that there was a civil dispute over a cart track between the accused and the family of the deceased and there has been a decree in favour of the accused. While so, the deceased along with P.W.1 and P.W.2 on the date of occurrence, engaged in removing the cart track and when the accused intervened, P.W.2 and the deceased quarrelled with the accused and assaulted them and P.W.2 was the aggressor. In the absence of any independent

witness, the trial court ought not to have relied upon the interested testimonies of P.W.1 and P.W.2. He would further submit that though the accused also sustained injuries in the occurrence, the prosecution has failed to explain the injuries on the accused. P.W.12 was not able to find out as to who were the aggressor and the evidence collected in the cross case have not been proved. Therefore, the appellants are entitled for acquittal.

20. The learned counsel for the appellants would, however, submit that the occurrence would not have taken in the manner, as it is projected by the prosecution. He would further submit even assuming that it was A2, who caused injuries to the deceased, more particularly, the injury allegedly caused on the left leg of the deceased, the trial court ought to have considered that the injury caused by A2 would not have been sufficient to cause death in the ordinary course of nature, as dealt within in third limb of Section 300 of IPC and hence, the conviction of the A2 for offence under Section 304(i) of IPC is not sustainable.

21. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, there is no reason to reject the evidences of P.W.1 and P.W.2, of whom, P.W.2 is the injured witnesses. The very fact that P.W.1 took P.W.1 and the deceased to the Government Hospital at Andhiyur and then to the Government Medical College Hospital at Erode, would go to fortify that P.W.1 and P.W.2 were present at the scene of occurrence. He would further submit that the evidences of P.W.1 and P.W.2 are duly corroborated by the medical evidence. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved that it were these accused, who caused injuries on P.W.2 as well on the the deceased and the injury caused by the 2nd appellant on the deceased on his left leg resulted in the death. Thus, according to the learned Additional Public Prosecutor, the trial court was right in convicting the accused under the respective charges which, does not warrant any interference at the hands of this court.

22. I have considered the rival submission and perused the available records carefully.

23. P.W.2 is the injured witness in this case. P.W.1 is the eye witness to the occurrence. No doubt, in this case, the independent witnesses, who alleged to have seen the occurrence have not supported the prosecution case in any manner. It is

the settled law that merely because P.W.2, the injured and P.W.1, the eye witness happen to be the relative of the victim of the crime, their evidence cannot be discarded in toto, if the same is otherwise found to be credible, especially, they support the prosecution in material particulars.

24. Indisputably, there was a civil dispute between the accused and the deceased party and there has been a decree in favour of the prosecution party. There is no dispute with regard to place of occurrence. Admittedly, the deceased, P.W.1 and P.W.2 were working at their field at the time and date of occurrence. P.W.2 the injured witness and P.W.1 the eye witness have vividly spoken about the individual overt acts of each accused. Except suggesting that there was dispute between P.W.2 and the accused; the deceased and P.W.2 were removing cart tract, no other material suggestion is made in the cross examination of either P.W.2 or P.W.1. The substance of the defence is that when P.W.2 and the deceased were removed the cart tract, the accused had gone to the field, questioned P.W.2 and there was a quarrel in this regard with P.W.2 on the date and time of occurrence. Thus, the presence of the accused at the place of occurrence is not in dispute. It could be seen from the evidence of P.W.2 and P.W.1 that it was these accused who had reached the field armed with a civil court decree, intervened with P.W.2 and questioned him as to how he could remove the cart track. The deceased and P.W.1 were also at the field nearby P.W.2. There ensued a quarrel between P.W.2 and the accused party. It could be seen from the evidence of P.W.2, the injured witness and P.W.1, the eye witness that in the midst of the quarrel, A1 to A3 attacked P.W.2 with sticks and when the deceased came to the rescue of P.W.2, A2 assaulted him with stick and thereafter attacked him with knife. P.W.1 only took the deceased and P.W.1 to the hospital. The deceased was later on referred to Erode Government Hospital for higher treatment. There is no evidence in this case even to impliedly suggesting that P.W.2 and the deceased were the aggressors. Merely because P.W.1 and P.W.2 are interested witnesses, their evidences cannot be disbelieved. In fact, P.W.2 has also sustained injuries in the occurrence.

25. P.W.9, the doctor, has stated that he treated P.W.2 for injuries as mentioned under Ex.P.6 Wound Certificate. The X-Rays taken for the injuries on left hip, right shoulder and chest revealed fracture of scapula of right side and 9th rib of left side. According to P.W.9, Doctor, the injuries 4, 5 and 7 mentioned in Ex.P.6 Wound Certificate were in nature. P.W.11, Doctor, has stated that the x-ray taken on left forearm revealed fracture of radius and ulna bones. The deceased had been taking treatment from 23.01.2007 to 27.02.2007 and later on he died. P.W.10, the doctor, has spoken about the ante-mortem injuries

and cause of death of the deceased. Though there is a suggestion to the doctor that the injuries allegedly inflicted on the deceased on his left leg could not have caused his death in the ordinary course, the attack made on his left leg causing open fracture was a grievous one. When there is consistent evidence of P.W.1 and P.W.2 corroborated with the medical evidence of P.W.9, P.W.10 and P.W.11 Doctors and Exs.P.6, Ex.P7 and M.Os.3 and 4 (series), it proves that P.W.2 and the deceased sustained injuries. Thus, we do not find any reason to disbelieve the evidence of P.W.1 and P.W.2.

26. It is admitted that A4, A1 and A2 also sustained injuries but they were all simple in nature. It is the settled position of law that non explanation of injuries by the prosecution by itself may not affect the prosecution case. If the injuries sustained by the accused part are minor and superficial in nature and when the available evidence is so clear and cogent. The crime weapons namely, sticks and knife were recovered from the scene of occurrence by the investigating officer. P.W.2 in his evidence has clearly stated that after the occurrence when accused party were fleeing away, they had accidental fall and sustained injuries and they fled from the scene of occurrence after throwing the crime weapons and the weapon thrown by A2 fell on A4. As already concluded, the testimonies of P.W.1 and P.W.2 are cogent and trust worthy. The recovery of crime weapons was not made at the instance of the accused. Yet, P.W.2 and P.W.1 have spoken about the sticks and knife used by the respective accused. The medical evidence also supports the version of P.W.2 and P.W.1 in this regard. Thus, this court do not find any contradiction much less material contradictions in the evidence of P.W.1 and P.W.2 and the medical evidence do support their versions. P.W.13, the investigating officer, has clearly pinned down that it was the accused who were the aggressors. He has, in fact, brought on record the evidences relating to the counter case including medical records. The injuries found on the accused were of simple in nature. According to P.W.1 and P.W.2 that after the accused, when the fled away from the scene of occurrence, they had accidental fall on the rough agricultural field. But, at the same time, the evidence of P.W.1 and P.W.2 that A4 and A5 initially caught hold P.W.2 to facilitate the other accused to assault and later on, A4 and A5 also assaulted P.W.2 with sticks is not believable. A4 is a lady and she was aged about 50 at the time of occurrence. Though it is alleged that A4 and A5 caught hold P.W.2 to facilitate the other accused to attack him and A4 and A5 also attacked P.W.2. This court is not inclined to believe this part prosecution version.

27. As rightly contended by the learned counsel for the appellants, the prosecution has failed to produce any oral and

documentary evidence to prove that after the deceased was discharged from the Erode Government Hospital, effective steps have been taken to give him treatment for the injuries allegedly sustained in the occurrence. But, this court is of the view that no such evidence is required. It has been proved by the prosecution that the death of the deceased was due to septicaemia due to the open fracture sustained on his left leg. The said injury was caused by A2. The evidence of P.W.11, the doctor, is to the effect that the deceased died of complication of injuries. The available medical records would give rise to an irresistible conclusion that the injury, namely, the injury sustained by the deceased on his left leg is not sufficient in the ordinary course of nature to result in his death.

28. When this court has already concluded that there was no premeditation or motive for A1 to A3 to cause such injuries and A4 and A5 were not guilty of any offence, it has to be necessarily held that common object of the accused as alleged by the prosecution is not proved, conviction of A2 under Section 148 of IPC is not legally sustainable. Consequentially, the conviction of A1 and A3 under Section 147 and 307 r/w 149 of IPC are also not sustainable.

29. Now the question is whether the acts of the accused would constitute offence punishable under Sections 307 and 304 (i) of IPC.

30. Initially, the quarrel was between the accused and P.W.2. In the midst of quarrel, when the A1 to A3 had started attacking the deceased. On seeing his son was being attacked by A1 to A3, the deceased came to the rescue of P.W.2 and intervened which would have further provoked A2. Such provocation need not, always necessarily, be by words. Even by gesture or by act or by conduct, one can provoke the other. In this case, somehow the deceased had provoked the accused, but for that, there would have been no reason for A1 to give a blow on the deceased at all. There was no premeditation for the accused to commit the crime. It was purely sudden. Thus, from the available evidence, this court concludes that when P.W.2 and the deceased were acting against the interests of A1 to A3 despite there has been decree in favour of them over the disputed cart tract, out of provocation, initially A1 to A3 attacked P.W.2 with sticks and followed by A2 attacked the deceased with stick and knife when he came to the rescue of P.W.2 and attempted to intervene. To show that A2 never intended to cause the death of the deceased, the learned counsel for the appellant submitted that the death was no instantaneous and the deceased died after two months of the occurrence and the prosecution has not let in any cogent medical evidence to show that proper treatment was given to the deceased. Had the

deceased been given proper treatment, he would have survived. The submission of the learned counsel for the appellants that the death of the deceased was not direct result of the injuries has substance. In these circumstances, though A1 to A3 have caused injuries to P.W.1 and A2 caused injuries to the deceased, there was no intention. Thus, their acts would at the most, constitute only an offence punishable under Section 335 of IPC. I therefore, hold that A1 to A3 who caused injuries to P.W.1 in grave and sudden provocation are guilty of offence punishable under Section 335 of IPC instead of Section 307 r/w 149 of IPC as convicted by the trial court, while, A2 who caused injuries to the deceased in grave and sudden provocation is guilty of offence punishable under Section 335 of IPC instead of 304(i) of IPC as convicted by the trial court. Therefore, A1 to A3 are liable to be convicted for offence punishable under Section 335 of IPC for having caused grievous hurt to P.W.2 on grave and sudden provocation and in addition, A2 is liable to be convicted for offence punishable under Section 335 of IPC for having caused grievous hurt to the deceased on grave and sudden provocation.

31. In the light of the above said discussion, this court is of the view that the prosecution has failed to prove the charges against A4 and A5 beyond any reasonable doubt and therefore, A4 and A5 are entitled for acquittal from charges under Sections 147 and 307 r/w 149 of IPC. The convictions of A1 to A3 for offence under Section 307 r/w 149 of IPC is modified to one for offence under Section 335 of IPC and the conviction of A2 for offence under Section 304(ii) of IPC is modified to one for offence under Section 335 of IPC.

32. Now, coming to the quantum of sentence, the learned counsel for the appellants would submit that the appellants 1 and 2 were hardly 21 and 22 years old respectively and the 3rd appellant was aged about 57 at the time of occurrence and they had no premeditation or intention to commit the crime. They have got no bad antecedents. They have their families to look after and if they are committed to prison at this length of time, it will completely destroy the family circumstances. Having regard to all these facts, the learned Counsel for the appellant would pray for leniency.

33. In this case, having regard to the all the relevant facts such as the age of the appellants, absence of premeditation, family background pointed out by the learned counsel, the gravity of offence and the nature of the weapon used, the nature of the injury and all the other circumstances, we are of the view that sentencing the Appellants 1 to 3 to pay a sum of Rs.5,000/- for offence under Section 335 of IPC for having caused injuries to P.W.2 and further sentencing the 2nd

Appellant to the period already undergone by him during pre trial and post trial besides to pay a fine of Rs.5,000/- for offence under Section 335 of IPC for having caused injuries to the deceased would meet the ends of justice.

34. In the result, This Criminal Appeal is partly allowed. The conviction and sentence imposed on the Appellants 1 and 3 to 5/A1 to A5 for offences under Sections 147, 307 r/w 149 and 304 (i) r/w 149 of IPC and the conviction and sentence imposed on the 2nd Appellant/A2 for offences under Section 148, 307 r/w 149 and 304 (i) of IPC are set aside and instead, A2 is convicted for offences under Section 335 of IPC in lieu of offence under Section 304(i) of IPC and he is sentenced to the period already undergone by him with a fine of Rs.5,000/- and similarly, the Appellants 1 to 3 /A1 and A3 are convicted for offence under Section 335 of IPC and sentenced only to pay a fine of Rs.5,000/- for offence under Section 335 of IPC in lieu of offence under Section 307 r/w 149 of IPC. The Appellants 4 and 5/A4 and A5 are acquitted from all the charges. The Appellants 1 to 3 shall adjust the fine already paid, if any, towards the fine now imposed and shall pay the balance of fine in default, they shall suffer simple imprisonment for eight weeks. Bail bonds executed by A4 and A5 shall stand cancelled.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

kmk
TO

- 1.The Judicial Magistrate, Bhavani.
- 2.The Chief Judicial Magistrate, Erode.
- 3.The Additional District Sessions Judge
[Fast Track Court-IV], Bhavani,
Erode District.
- 4.The Superintendent,
Central Prison, Coimbatore.
5. The Superintendent,
Central Prison for women, Vellore
.

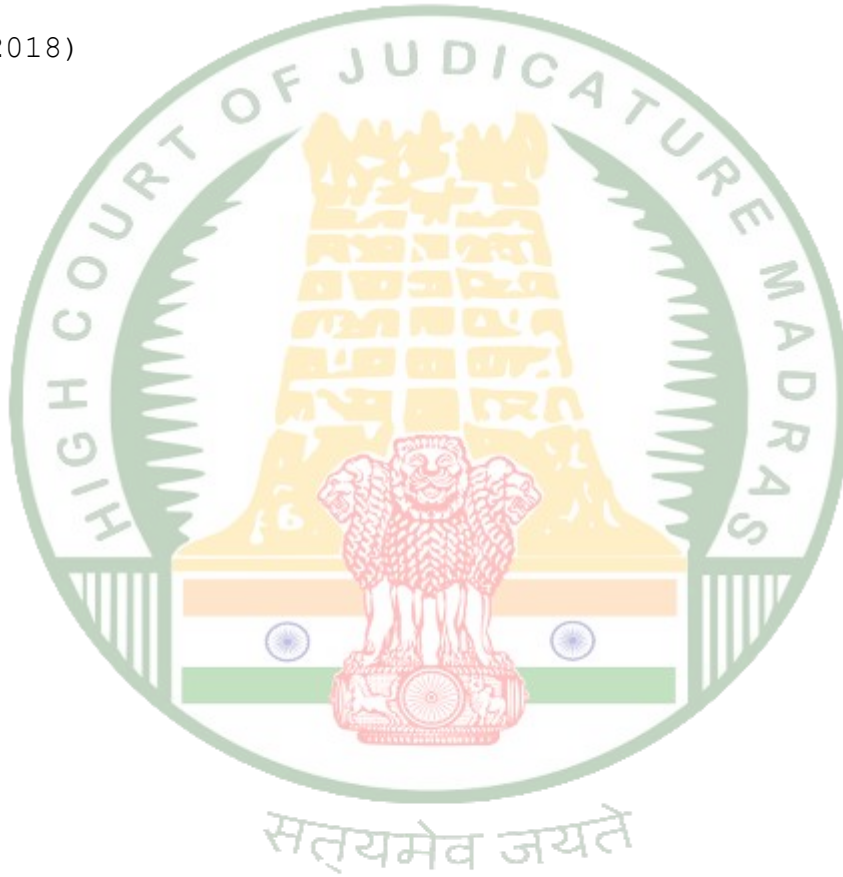
6.The Inspector of Police,
Andhiyur Police Station,
Bhavani Taluk, Erode District.

7.The Public Prosecutor,
High Court of Madras, Madra

+1cc to Mr.A.K.Kumarasamy, Advocate SR.No.74813

Crl.A.No.817 of 2008

VGII (CO)
GN(04/05/2018)



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