

Bail Slip

The Appellant/Accused, Kuttimani @ Anbarasunamely A1 , Arivi @ Arivazhagan @ Aravindharaj A2, directed to be released on 08.02.2019 CRL MP.1019 of 2018 in CRL A 652/2017 and the Appellant/Accused viz Manimekala @ Manimegalai-A4, Girija@ Krishna kumari A-5 and Thukkachi @ Thukkaiyammal A-6 were directed to be released on bail on 09.11.2011 in CRL MP.NO.12961/2017 IN CRL A.NO.652/2017 Respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2019

Pronounced on : 27.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.No.652 of 2017

1.Kuttimani @ Anbarasu
2.Arivi @ Arivazhagan @ Aravindharaj
3.Kumar (Deceased)
4.Manimekala @ Manimegalai
5. Girija@ Krishna kumari
6.Thukkachi @ Thukkaiyammal Appellants

-Vs-

State by,
The Inspector of Police,
Sooramangalam P.S.,
Crime No.587 of 2012. ... Respondent

PRAYER : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed against the appellants by the II Additional District and Sessions Judge, Salem dated 14.09.2017 in S.C.No.161 of 2013, allow the appeal.

For Appellants : Mr.S.Kalyanaraman

For Respondent : Mr.R.Prathap Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by M.NIRMAL KUMAR, J.]

This appeal arises out of the conviction and sentence imposed by the learned II Additional District and Sessions Judge, Salem in S.C.No.161 of 2013 dated 14.09.2017, wherein the 1st and 2nd appellants were tried for the offence punishable under Sections 148, 341 and 302 of IPC and the 4th to 6th appellants tried for the offence punishable under Sections 147, 341 and 302 r/w 149 of IPC. Since the 3rd appellant died, hence the charges against him were abated. The learned trial Judge convicted the appellants 1 and 2 and sentenced them to undergo rigorous imprisonment for two years each under Section 148 of IPC and to undergo simple imprisonment for one month each under Section 341 of IPC and imprisonment for life each under Section 302 of IPC and to pay a fine of Rs.3,000/- each in default to undergo simple imprisonment for six months. Similarly, the learned trial Judge has convicted the appellants 4 to 6 and sentenced them to undergo rigorous imprisonment for one year each under Section 147 of IPC and simple imprisonment for one month each under Section 341 of IPC and imprisonment for life each under Section 302 r/w Section 149 of IPC and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for six months. The above said sentences were ordered to run concurrently.

2.The background facts, as projected by the prosecution are as follows:

2.1.On 21.09.2012 at about 07.00 p.m, PW1 and his relative Pradeep were talking to each other near their house. The 1st appellant was standing in front of his house, the deceased teased him as drunkard. The 1st appellant got wild and shouted at the deceased with filthy words and the 2nd appellant, who is the elder brother of the 1st appellant joined him and attacked the deceased. On seeing this, PW1 and Pradeep rushed towards the deceased, intervened and pacified them. As the 1st and 2nd appellants were leaving they abused the deceased again with filthy words and claimed that he would be dealt accordingly. Thereafter at about 10.30 p.m when PW1 was watching TV along with his wife/PW2 and his children/PW3 & PW4, the appellants along with juvenile Tamilarasan assaulted the deceased with wooden logs [M01] and hands and the 4th to 5th appellants and the said Tamilarasan caught hold of the deceased, the 2nd and 3rd appellants assaulted the deceased with wooden logs [M01] on his head and the 1st appellant stabbed with Kuthoosi [M02] in

his abdomen. When PW1 and others rushed to the scene, all the appellants ran away. PW1 questioned the deceased about the happenings. The deceased stated that after he was returning from his natural call and proceeding to his house, the accused had assaulted him. Immediately PW1 called auto of one Sundaram and took the deceased to the Government Hospital, Salem but however he died on the way. The Casualty Medical Doctor Arun declared that he was brought dead. Hence, PW1 went to the police station, lodged a complaint [Ex.P1] to PW8, who registered a case in Crime No.587 of 2012 [Ex.P14] for the offence under Section 147, 148, 341 and 302 of IPC. On completion of investigation and filing of charge sheet, the case, on committal was tried against the appellant in S.C.No.161 of 2012 by the file of the II Additional District and Sessions Judge, Salem. The charge sheet against the juvenile Tamilarasan has been filed before the learned Judicial Magistrate No.II, Salem.

3.Before trial Court, prosecution examined 10 witnesses and marked 20 exhibits and 4 material objects. None were examined and no exhibits were marked on the side of the defence.

4.The available evidence of the prosecution witnesses are as follows:

4.1.PW1 the maternal uncle of the deceased has stated that on 21.09.2012 at about 07.00 p.m he along with one Pradeep on seeing the assault of the 1st and 2nd appellants on the deceased had intervened and pacified them. Thereafter PW1 went to his house. On the very same day at about 10.30 p.m, when PW1 was watching TV along with PW2 to PW4, heard the cry of the deceased, came out from the house, witnessed the 1st appellant assaulting and attacking the deceased with [M02], 4th to 6th appellants caught holding the deceased and the 2nd appellant assaulting him with M01. On seeing this PW1 to PW4 rushed to the scene, by the time all the accused ran away from the place of occurrence. PW1 enquired the deceased about the incident and PW1 took him to hospital by Auto of one Sundaram, where the deceased was examined by Doctor Arun, who declared that the deceased was brought dead. Thereafter PW1 went to the police station, lodged complaint [Ex.P1] at about 01.00 a.m.

4.2.PW2 and PW3 are the wife and daughter of PW1 and PW4 is the younger brother of the deceased, corroborated the version of PW1.

4.3.PW5 Village Administrative Officer on 22.09.2012 at about 09.30 a.m was informed by PW9 about the incident. PW5 accompanied PW9 went to Thiruvagoundanur bypass, in whose

presence PW9 arrested the 1st appellant at about 10.30 a.m and recorded his confession statement [Ex.P2]. Pursuant to which, PW9 seized MO1 Kuthoosi near Kandampatti Bypass under Ex.P3. On 25.09.2012 at about 07.00 a.m PW5 and PW9 went to Thirumagal Bypass Road, arrested the 2nd appellant and recorded his confession [Ex.P4]. Pursuant to which seized the wooden log [MO1] under Ex.P7. On 03.10.2012 at about 04.30 p.m, the 3rd appellant was taken into police custody and he gave confession [Ex.P6]. Pursuant to which PW9 seized another wooden log from a bush under Thirumagal Bypass under Ex.P7. Further PW5 also witnessed the Observation Mahazar [Ex.P8].

4.4.PW6 the another Village Administrative Officer is the witness for arrest of the 4th appellant.

4.5.PW8 the Sub Inspector of Police on receipt of the complaint [Ex.P1] from PW1 registered an F.I.R in Crime No.587 of 2012 [Ex.P14] on 22.09.2012, informed the same to PW9 and has sent the copy of the F.I.R to higher officials and to the Court.

4.6.PW7 the Postmortem Doctor attached to the Government Hospital, Salem on 22.09.2012 conducted Autopsy on the body of the deceased, through whom the Accident Register, Requisition letter of PW9 for conducting postmortem, Postmortem Certificate, Viscera report and the final opinion have been marked under Ex.P9 to Ex.P13 respectively. The following injuries are noted over the body of the deceased:-

"EXTERNAL EXAMINATION:

INJURIES:- 1.A PUNCTURED WOUND SEEN ON THE RIGHT SIDE OF ABDOMEN, ABOUT 1.5 CMS FROM THE MID LINE ^ 7CM ABOVE THE UNBLICUS, WITH TAILING ON THE OUTER ASPECT M,7CMSX0.2CM. 2.REDDISH ABRASION SEEN ON THE RIGHT GREAT TOE M,4CMSX3CMS. 3.ON THE RIGHT 2ND TOE M,2CMSX1CM.

INTERNAL EXAMINATION:

O/D HEAD:-SCALP-CONTUSION SEEN ON THE RIGHT PARIETO OCCIPITAL REIGION M,4CMSX3CMSX0.5CM., CRANIALVAULT, DURAMATER-INTACT, BRAIN-EDEMATOUS, ON C/SPALE., BASE OF SKULL-INTACT.

O/D NECK:-NECK STRUCTURES-NORMAL. HYOID BONE-INTACT.

O/D THORAX-RIIB CAGE0INTACT LUNGS-BOTH LUNGS -EDEMATOUS, ONC/S PALE.HEART- NORMAL IN SIZE, ON C/S CHAMBERRS -EMPTY, VALVES AND CORONARIES PATENT.

O/D ABDOMEN:- PERITONEAL CAVITY-CONTAIN ABOUT 750 ML OF FLUID BLOOD STOMACH- A PUNCTURED

WOUND SEEN CORRESPONDING TO INJURY NO.1 ON THE BLOOD STAINED FLUID WITH FRUITY ODOUR. A MESENTERIC TEAR SEEN M,5CMSX1CM WITH SURROUNDING REGION OF EXTRAVASATION OF BLOOD, LIVER, SPLEEN-NORMAL IN SIZE, ON C/S PALE, KIDNEYS -RIGHT KIDNEY, CONTUSION SEEN OVER THE PERINEPHRIC REGON M.8CMSX4CMSX1CMS. NORMAL IN SIZE ON C/S, PALE, BLADDER-EMPTY."

4.7.PW9 the Investigating Officer on receipt of the F.I.R in Crime No.587 of 2012 from PW8 conducted major portion of the investigation, reached the scene of occurrence at 03.30 a.m, prepared Observation Mahazar [Ex.P8] and Rough Sketch [Ex.P15] in the presence of PW5, conducted inquest in the presence of the witnesses and marked inquest report under Ex.P16, forwarded the body for postmortem, seized the material objects, examined the witnesses, arrested the accused, recorded the confessions of the accused, forwarded the accused to judicial custody. Thereafter, on his transfer on 08.10.2012, PW9 handed over the investigation and the Case Diary to PW10.

4.8.PW10 the Inspector of Police took the investigation in Crime No.587 of 2012 on 08.12.2012 from PW9, obtained various reports and on completion of investigation, filed the charge sheet.

5.Heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing on behalf of the state.

6.The learned counsel for the appellants would submit that PW1 to PW4 are the eye witnesses to the occurrence and they have not stated anything about the availability of light in the scene. Further there is no mention about the availability of light in Observation Mahazar [Ex.P8] as well as in Rough Sketch [Ex.P15]. Through RTI report, it is seen that there was power cut during the relevant time between 09.00 p.m and 10.00 p.m. Thus according to the appellants one thing is clear that there was no source of light available in the place of occurrence and the submissions of PW1 to PW4 as if they were watching TV at their house and hearing the cry of the deceased, came out from their house and witnessing the occurrence is falsified.

7.Further PW1 to PW4 categorically stated that they have been watching TV from 08.30 p.m onwards on 21.09.2012, which itself would falsify the version about their presence in the scene of occurrence. If they had been present in the

occurrence, it is not necessary for PW1 to give an explanation as though he enquired the deceased about what had happened to him and about the accused attacking him. Hence, the very presence of PW1 to PW4 is highly doubtful. Further none of the independent witnesses have been examined as witnesses near the scene of occurrence in this case. PW5 and PW9 have clearly admitted that there are several others in the scene and houses were available near the place of occurrence, but the prosecution has not examined any independent witness in this case. Further the non-examination of Auto Driver Sundaram, who had taken the deceased to the hospital along with PW1 & PW4 and non-examination of Doctor Arun, who had first seen the deceased in the hospital and issued Accident Register [Ex.P9] are fatal.

8.The prosecution did not produce any blood stained articles from the scene of occurrence, Auto and from the dresses of PW1 & PW4. This would falsify the claim that the deceased was taken to the hospital by them in Auto of one Sundaram and there is no mention about the same either in the complaint [Ex.P1] or in the statement of witnesses recorded under Sections 161(1) of Cr.P.C.

9.The learned counsel for the appellant would further submit that the recoveries in this case are doubtful. PW9 is the witness to the recovery of Kuthoosi [MO2] on 22.09.2012 from A1, wooden logs [MO1] on 25.09.2012 and 03.10.2012 from A2 and A3 respectively. But in the remand report of A1 there is a mention about the recovery of the wooden logs, which would falsify the prosecution case. The material object Kuthoosi [MO2] which is said to be blood stained was not sent for forensic study. Further there have been contradictions in the evidence of PW1 to PW4 which have been admitted by PW9 and PW10. Hence, the appellants have been falsely implicated in this case.

10.There is three different version of place of occurrence, the occurrence is said to have been taken place in front of the house of A1. In Ex.P14 the place of occurrence is shown as in front of the house of the deceased and in Observation Mahazar [Ex.P8] it is mentioned that the place of occurrence at the house of A1. Neither PW1 nor PW5 have deposed anything specifically about the alleged place of occurrence. During the course of investigation PW9 has not specifically spoken about the place of occurrence.

11.Further it is highly artificial that A4 to A6 as well as the Juvenile Tamlilarasan said to have caught hold of the deceased while A1 to A3 attacked the deceased with MO1 and MO2. In the evidence of PW7 and Postmortem report [Ex.P11]

there is no injury on the skull of the deceased and PW7 was not certain about the weapons which caused the injuries on the abdomen. Further there is no explanation given by the prosecution as regards the laceration injuries found on the body of the deceased. In any case the appellants act would not come under Section 302 of IPC. Hence, the prosecution has failed to prove the charges against the appellants beyond any reasonable doubt and they are liable to be acquitted from the conviction and sentence passed in S.C.No.161 of 2013.

12.Per contra, the learned Additional Public Prosecutor would submit that on 21.09.2012 there was a wordy quarrel between A1 & A2 and the deceased near Moola Pillaiyar Temple. At that time PW1 and Pradeep intervened and pacified them. Thereafter the deceased as well as A1 and A2 had left to their respective home. At that time A1 and A2 shouted at the deceased that they would not leave him alive. On the very same day at about 10.30 p.m when the deceased was returning after attending natural call, the appellants along with Juvenile Tamilarasan had restrained and prevented him from moving, A4 to A6 caught hold the deceased facilitating A1 to A3 to assault him with the wooden logs [MO1] and Kuthoosi [MO2].

13.He would further submit that PW1 had categorically stated that he witnessed the occurrence, took the deceased to the hospital and lodged the complaint [Ex.P1]. In the complaint the attack and the role played by all the accused has been clearly mentioned. The evidence of PW1 has been corroborated by PW2 to PW4 and PW7. The injuries found on the body of the deceased are in corroboration with the evidence of PW1 to PW4. Further PW7 has stated that the injuries are serious in nature and it could have been caused by MO1 and MO2.

14.PW5 the Village Administrative Officer has been the witness for Observation Mahazar [Ex.P8], Rough Sketch [Ex.P15], arrest of the accused and recovery of material objects. The non-examination of auto driver Sundaram and Casualty Doctor Arun will not affect the case of the prosecution. The fact of the deceased being injured and brought to the hospital and declared dead is not in dispute. Likewise the deceased was taken to hospital on the fateful day, the injuries have been recorded in Accident Register [Ex.P8] and it is a record maintained in the hospital which is not in dispute. Hence, the non-examination of the Doctor Arun, who examined the deceased will no way affect the prosecution case.

15.Though in Ex.C1 there is a mention about all the accused assaulting the deceased with wooden logs [MO1] and

some discrepancies about the place of the occurrence, explanation has been given for the reason. The charge sheet is nothing but a report of the investigating officer and the discrepancies in the final report will no way affect the case. PW1 to PW4 are the eye witnesses who have categorically stated about the occurrence which is also corroborated by the medical evidence of PW7. In such circumstances, the discrepancies found in Ex.C1 is of no consequence. The earlier occurrence at about 07.00 p.m would prove the motive of the accused against the deceased. Hence, the lower Court on proper analysis of the evidence adduced by the prosecution had rightly convicted the appellants.

16.Considering the rival submission and on perusal of the materials this Court finds that PW1 to PW4 are the eye witnesses to the occurrence and PW1 and Pradeep are the witnesses for earlier fight which took place on 21.09.2012 at about 07.00 p.m, who intervened and pacified them. On the same day at about 10.30 p.m, the second occurrence had taken place wherein the entire family members of the appellants have taken part. PW1 to PW4 admittedly were watching TV inside their house, after hearing the cry of the deceased they came out from the house and witnessed the occurrence. According to them, A4 to A6 caught hold the deceased facilitating A2 and A3 to attack the deceased with wooden logs [MO1] on the head and A1 to inflict stab injury on the upper part of the abdomen with Kuthoosi [MO2]. Thereafter when the witnesses were rushing towards the deceased, the accused fled from the scene. Though the deceased was profusely bleeding he was taken to hospital in the auto of one Sundaram, no blood stained articles were seized from the scene of occurrence or from the auto. Likewise no blood stained clothes from PW1 and PW4 were seized and produced.

17.PW5 is the witness for arrest of the accused, recovery of material objects and preparation of Observation Mahazar [Ex.P8]. PW7 the Postmortem Doctor issued Postmortem [Ex.P11] certificate from which, it is seen that there is a "Punctured wound seen on the right side of abdomen and Contusion seen on the right parieto occipital region" and also seen the blood stained fluid with fruity odour, but there is no explanation about the injuries with material objects. It is an admitted fact that no independent witnesses have been examined in this case, though PW5 and PW9 admit that there are others who are residing nearby the occurrence. The wooden logs [MO1] and Kuthoosi [MO2] have not been sent for forensic analysis. Admittedly A4 to A6 are all females, unarmed, their presence in the scene of occurrence is highly doubtful. PW1 to PW4 are from one family and the evidence of these witnesses does not inspire confidence to act upon as regards A4 to A6. The entire

female family members of A3 have been implicated in this case on the strength of 147 r/w Section 302 of IPC, this part of evidence is highly doubtful.

18. In the light of the above it would be unsafe to place reliance upon the evidence of PW1 to PW4 as regards 4th to 6th appellants and to convict them. Hence, the charges against 4th to 6th appellants have not been proved. The finding and sentence of the trial Court as regards the 4th to 6th appellants are hereby set-aside.

19. With regard to A1 and A2, the reason for the fight between the 1st and 2nd appellants is that the deceased had passed lucid and provocative comments against the 1st appellant, which was questioned by the 2nd appellant, who is the brother of the 1st appellant. The deceased has aggravated the situation by making provocation, which led the appellants 1 and 2 to attack the deceased.

20. It is to be seen that the 1st appellant, Loadman contractor having Kuthuosi [MO2] for his work is natural, hence it cannot be said that the 1st appellant has carried MO2 with an intention to attack the deceased. Likewise the wooden logs [MO1] is commonly found in the place of occurrence. Thus MO1 and MO2 have not been held by them with any intention. The death of the deceased occurred only on the provocation of the deceased.

21. Thus the act of the 1st and 2nd appellant would come under clause (ii) of Section 299 of IPC which would come under the exceptions of Section 300 of IPC, thereby making it punishable under Section 304(ii) of IPC.

22. This Court in the celebrated case of "Jabamalai Royappan and Ors. Versus the State reported in MANU/TN/0528/1980" has held as follows:

22. From the above discussion, it emerges that whenever a Court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder" on the proved facts of the case, it will be convenient for the Court to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death of the victim leads to the second stage for considering whether that act of the accused amounts to a "culpable homicide" as

defined in S. 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of S. 300, I. P. C, is reached. This is the stage at which the Court should determine whether the proved facts bring the case within the ambit of any of the four clauses of the definition of "murder" contained in S. 300. If the answer to that question is in the negative, the offence would be "culpable homicide not amounting to murder" punishable under the first or the second part of S. 304, I.P.C., depending respectively, on whether the second or the third clause of S. 299 is applicable. If this question is found in the positive, but the case comes within any one of the exceptions enumerated in S. 300, the offence would be "culpable homicide not amounting still to murder" punishable under the first part of S. 304. As pointed out by the Supreme Court in Rayavarapo Punnayya's case MANU/SC/0180/1976 : A.I.R. 1977 S.C, 45 : 1977 1 S.C.R. 601 the above are only the broad guidelines and not cast-iron imperatives. As a result of the above discussion, it may be laid down that S. 304 will apply to the following classes of cases:

"(1) When the case falls under one or the ; other of the clauses of S. 300. but is covered by the exceptions to that section.

(2) When the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of lower degree of likelihood, which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Cl. (3) of S. 300.

(3) When the act is done with the knowledge that death is likely to ensue, but there is no intention to cause death, on an injury likely to cause death : In such cases there may be either no intention to cause an injury at all, or there may be an intention to cause simple or grievous hurt but not an injury likely to cause death."

The Supreme Court, in Jayaraj v. State of

Tamil Nadu MANU/SC/0124/1976 : A.I.R. 1976 S.C. 1519, has explained the words "intent" and "knowledge" occurring in S. 299, thus :

"As was pointed out by this Court in *Anda v. State of Rajasthan* MANU/SC/0386/1965 : A.I.R. 1966 S.C. 148, 'intent' and 'knowledge' in the ingredients of S 299 postulate the existence of positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause death. The knowledge in the third condition contemplates knowledge of the likelihood of the person."

29. In the present case, even though the injuries to the abdomen, liver and spleen, as the evidence of the medical officer goes, were necessarily fatal, there is no circumstance leading to a presumption that both the accused or any one of them had an intention of actually causing the above injuries which have resulted in the death of the deceased. As pointed out by numerous authoritative judicial pronouncements of the Supreme Court as well as various High Courts, one has to take into consideration the following factors before arriving at any conclusion whether or not the assailant in a criminal case had the intention of causing a particular injury resulting in the death of the victim :

"(1) the presence or absence of motive ; (2) the intention of the accused, or/and (3) the knowledge of the accused. (4) the nature of the weapon used and the nature of the attack, and (5) the nature of the injuries caused."

31. As pointed out by the Supreme Court in *Basdev v. State of Pepsu* MANU/SC/0027/1956 : A.I.R. 1956 S.C. 488, motive is something which prompts a man to form an intention and knowledge is an awareness of the consequence of the Act. In many cases, intention and knowledge merge with each other and mean the same thing more or

less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things. As far as intent or intention is concerned, we must gather it from the attending general circumstances of the case, paying due regard to the degree of various factors.

32. The test laid down by the Supreme Court in Virsa Singh's case MANU/SC/0041/1958 : AIR 1958 SC 465 : 1958 SCR 1495 : 1959 M.W.N. Cri. 34, has often been adopted as the guideline to find out whether the author of an injury, which on objective test has been found to be sufficient in the ordinary course of nature to cause the death of the victim, has intended to cause that particular injury which caused the death.

33. In Hardev Singh v. State of Punjab MANU/SC/0137/1974 : A.I.R. 1975 S.C. 179, the Supreme Court, approving the view taken in Virsa Singh's case 2, pointed out thus:

The question in such a case which falls for determination is whether the causing of the fatal injury was accidental or unintentional or whether some other kind of injury was intended to be inflicted by the assailant. Ordinarily and generally, once the existence of the injury is proved, the intention to cause it would be presumed unless the evidence of the circumstances warrant an opposite conclusion.

23. In the present case the injuries are "Contusion seen on the right parieto occipital region and Punctured wound seen on the right side of abdomen" and the reason for the death is that "The deceased would appear to have died of shock and haemorrhage due to abdominal injury". There is no circumstance leading to a presumption that any one of the 1st and 2nd appellants had an intention of actually causing the above injuries which have resulted in the death of the deceased. As pointed out by numerous authoritative judicial pronouncements of the Supreme Court as well as various High Courts, one has to take into consideration the following factors before arriving at any conclusion whether or not the assailant in a criminal case had the intention of causing a

particular injury resulting in the death of the victim:-

(i)the presence or absence of motive (ii)the intention of the accused, or/and (iii)the knowledge of the accused (iv) the nature of the weapon used and the nature of the attack, and (v) the nature of the injuries caused.

24.In the case on hand the 1st appellant's attack is only to deter the deceased from passing lucid derogatory comments often made. Therefore the motive was not strong enough for causing the death of the deceased. The 2nd appellant did not have any such motive on his part, he being the brother of the 1st appellant is to share the intention of the 1st appellant in giving a decisive hurt to the deceased so as to teach him a lesson and thereby prevent him from continuing his derogatory comments against the 1st appellant.

25.It transpires from the evidence of PW1 to PW4 that the provocative comments were infuriate by the deceased which led to the later attack on the deceased by the accused. The Substratum of the evidence of the prosecution witnesses examined is scrutinized, it shows that the evidence on the part of accused was only a repulsive act and the deceased has caused the provocation. Further the injury are not on the vital parts and the cause of death is due to the "Abdominal Injury". The said Abdominal Injury is near the mid line and umbilicus area, which is 5cm X 1cm which in normal course is not a fatal wound. Therefore, the presumption remains unshaken that the 1st appellant inflicted injuries on the person of the deceased did not have the knowledge that the injuries are sufficient in the ordinary course of nature to cause death or that the said injuries would in all probability cause the death of the deceased. Such is the position of the 2nd accused too. Therefore both the 1st and 2nd appellants cannot be held liable for the offence of murder.

26.In these circumstances this Court finds that the only interference which would have been justifiably drawn is that the appellants did not intend to cause the death of the deceased or to cause such injuries as would in the ordinary course of nature would result in his death.

27.In the instant case, the act of the 1st and 2nd appellant falls within the second clause of Section 299 which comes within exceptions enumerated in Section 300. Hence the act of the 1st and 2nd appellant would be "Culpable homicide not amounting to murder", punishable under the first part of Section 304 of IPC. The injury caused by the 1st and 2nd appellant is not of higher degree of likelihood which is covered by the expression "Sufficient in the ordinary course of nature to cause death" but is of lower degree of likelihood which is generally spoken of as an injury "likely

to cause death" and the case does not fall under clause (3) of Section 300 of IPC.

28.The substratum of the evidence of the prosecution witness on scrutiny shows that the evidence on the part of the 1st and 2nd appellant were to inflict stab injury on the abdomen which is a non vital part, would attract the second clause of Section 299 of IPC punishable under Section 304(i) of IPC.

29.In the result we set-aside the Conviction and Sentence imposed on the 1st and 2nd appellant under Section 302 of IPC for life imprisonment and instead convict them under Section 304(i) and sentence them to undergo 10 years R.I. Subject to the above modification, this Criminal Appeal is Partly-Allowed and the Court below is directed to take appropriate steps to secure the 1st and 2nd appellants to undergo their remaining period of sentence. As concluded earlier, the appeal against the appellants 4 to 6 stands allowed by setting aside the conviction and sentence of the trial Court.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Judicial Magistrate,No.2,Salem.

2.The Do thro the Chief Judicial Magistrate,Salem.

3.The II Additional District and Sessions Judge,
Salem.

4.The District collector,Salem

5.The Director General of Police,chennai

6.The Inspector of Police,
Sooramangalam P.S.,
Salem.

7.The Superintendent of Police, central Prison ,Vellore

8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Kalayanaraman , Advocate SR.No. 72937

CrI.A.No.652 of 2017

A.SK(30/09/2019)