



WEB COPY

Crl.A.(MD)No.466 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.08.2019

DELIVERED ON : 21.08.2019

CORAM

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Criminal Appeal (MD)No.466 of 2017

and

Crl.M.P(MD)No.10580 of 2017

Ayyapillai

... Appellant/
Sole Accused

Vs.

The State of Tamil Nadu,
represented by
The Inspector of Police,
Ambasamuthiram Police Station,
Tirunelveli District.
[Cr.No.37 of 2016]

... Respondent/
Complainant

Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment and order passed in S.C.No.611 of 2016, dated 11.10.2017, by the learned IV Additional District and Sessions Judge, Tirunelveli.

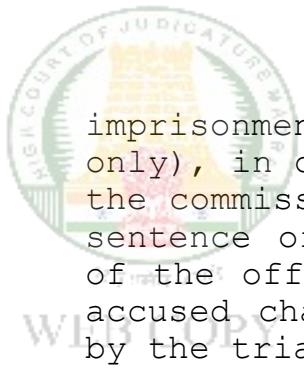
For Appellant : Mr.V.Kathirvelu
Senior Counsel for
Mr.K.Prabhu

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

JUDGMENT

M. SATHYANARAYANAN, J.

The sole accused in S.C.No.611 of 2016 on the file of the Court of IV Additional District and Sessions Judge, Tirunelveli, is the appellant. The appellant/sole accused was charged and tried for the commission of the offences under Sections 294(b), 506(ii) and 302 I.P.C. The trial Court, vide impugned judgment dated 11.10.2017, has found the appellant/sole accused not guilty under Section 506 (ii) I.P.C., and however, found him guilty for the commission of the offences under Sections 294(b) and 302 I.P.C. The appellant/sole accused was convicted and awarded the sentence of rigorous



imprisonment for life and fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo rigorous imprisonment for one year for the commission offence under Section 302 I.P.C. and also awarded the sentence of rigorous imprisonment for one month for the commission of the offence under Section 294(b) I.P.C., and the appellant/sole accused challenging the above said conviction and sentence awarded by the trial Court, vide impugned judgment, has filed this appeal.

2. Facts leading to the filing of this appeal relevant for the purpose of disposal of this appeal and briefly narrated, are as follows:

2.1. P.W.1 is the defacto complainant and brother of the deceased Fakkir Maideen. P.W.2 is the son of P.W.1. P.W.11 is the younger brother of the deceased Fakkir Maideen.

2.2. On 31.01.2016 at about 02.30 p.m., P.W.11 was proceeding to medical shop in his motorcycle for the purpose of getting medicine for his mother and he was waiting opposite to Kala Coffee shop for the purpose of crossing the road. P.W.2 was riding his motorcycle behind P.W.11 and P.W.11 was followed by P.W.2 and at that time, the appellant/accused abused him using with unparliamentary words and asked him as to why he did not want to park his vehicle, viz., "TATA ACE" and also popularly known as "Mini Elephant", despite the fact that he is also a driver. P.W.11 replied to him by stating that who asked him not to park the vehicle and he is not aware of the anything. The appellant/accused pulled his hands and slapped him and pushed him along with his motorcycle and P.W.11 fell down. P.W.11 started his motorcycle and at that time, the appellant/accused took a small piece of brick and threatened to finish him off. P.W.11 fearing for his safety, started riding his motorcycle and it was also witnessed by P.W.2. P.W.11 in that regard lodged a complaint under Ex.P.18 on the file of Ambasamuthiram Police Station, based on which, a case in Cr.No.36 of 2016 was registered for the commission of the offences under Sections 294(b), 352 and 506(ii) I.P.C., against the appellant/accused. The printed F.I.R., was marked as Ex.P.27.

2.3. Subsequently, on the very same day, at about 02.30 p.m., P.W.1 was in his house and his elder brother - deceased Fakkir Maideen, after attending the job, came back to his house and started having tea. At about 02.50 p.m., on 31.01.2016, P.W.2 came and informed that P.W.11 was attacked by the appellant/sole accused and therefore, P.W.1, P.W.2 and deceased Fakkir Maideen proceeded to Kala Coffee shop and when they reached the above said shop at 03.00 p.m., they found the appellant/accused shouting. The elder brother of P.W.1, viz., deceased Fakkir Maideen asked the appellant/accused as to why he attacked his brother - P.W.11 and infuriated by the same, the appellant/accused beat him on the chest and pushed him on a cement slab which was on the southern side of Kala Coffee shop, as a result which, Fakkir Maideen sustained injury on the rear side of

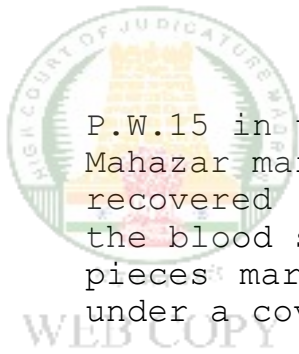


his head. P.W.1 and P.W.2 for the purpose of preventing the appellant/accused, went near him and at that juncture, the appellant/accused took a piece of brick which was lying there and abused P.W.1 and P.W.2 and threatened to finish them off and they were restrained and the appellant/accused started attacking the deceased Fakkir Maideen and took a brick which was kept near the oven of Kala Coffee shop and attacked deceased Fakkir Maideen who was lying and as a result, he sustained injuries on his nose and mouth and the brick also got broken. The said incident was witnessed by P.W.1, P.W.2 and the owner of Kala Coffee shop, namely, P.W.4 as well as by Saleem, Dhiwan Maideen and others and when they raised alarm, the appellant/accused threw the brick and started running and he tripped and fell down and sustained injuries. Fakkir Maideen was found bleeding and in order to arrest the bleeding, a towel was tied and he was taken to Ambasamuthiram Government Hospital and he was admitted at about 03.30 p.m., on 31.01.2016. P.W.10 who examined Fakkir Maideen, declared him dead and thereafter, the body was sent to mortuary.

2.4. P.W.1 dictated the events to P.W.2 in the form of a complaint and P.W.1 subscribed his signature and P.W.2 signed as a witness. P.W.1 and P.W.2 proceeded to Ambasamuthiram Police Station and lodged the complaint under Ex.P.1 to P.W.14 - Sub Inspector of Police, who, upon receipt of the said complaint, registered a case in Cr.No.37 of 2016 against the appellant/accused for the commission of the offences under Sections 294(b), 506(ii) and 302 I.P.C. The printed F.I.R., was marked as Ex.P.21. P.W.14 despatched the original of Ex.P.1 - complaint and Ex.P.21 - F.I.R., through P.W.8 and he handed over the printed F.I.R., and original of Ex.P.1 to the learned Judicial Magistrate, Ambasamuthiram, at 05.00 p.m., on the basis of the passport issued to him under Ex.P.13.

2.5. At about 06.30 p.m., on 31.01.2016, the appellant/accused appeared before P.W.14 and lodged a complaint as to the injuries sustained by him and based upon the complaint lodged by him, P.W.14 registered a case in Cr.No.38 of 2016 for the commission of the offences under Sections 294(b) and 323 I.P.C., against Fakkir Maideen (deceased). The printed F.I.R., was marked as Ex.P.22 and P.W.14 having noted that the appellant/accused sustained injuries on his head, through a medical memo, sent him for treatment and P.W.10 treated him and found that it was simple injury and issued the Accident Register marked as Ex.P.16 and the certified copy of the Accident Register was marked as Ex.P.17.

2.6. P.W.15 was the Inspector of Police attached to Ambasamuthiram Police Station and he received a telephonic information at about 16.25 hours on 31.01.2016 through P.W.14 - Sub Inspector of Police and thereafter, proceeded to the Police Station and after receipt of the F.I.R., took up the investigation and proceeded to the scene of crime at about 04.45 p.m., on 31.01.2016.



P.W.15 in the presence of P.W.5 and another prepared the Observation Mahazar marked as Ex.P.2 and Rough Sketch marked as Ex.P.24 and also recovered the material objects found in the scene of crime, viz., the blood stained brick pieces marked as M.O.1, blood stained cement pieces marked as M.O.7 and sample cement pieces marked as M.O.8, under a cover of mahazar marked as Ex.P.3.

2.7. P.W.15 proceeded to Ambasamuthiram Government Hospital and in the presence of Panchayatdars, conducted inquest on the body of the deceased between 07.00 p.m., and 09.00 p.m., and also examined the witnesses and the inquest report was marked as Ex.P.25. P.W.15 examined P.W.5 and another and also examined the witnesses who were present at the time of inquest.

2.8. P.W.15 for the purpose of finding out the cause of death of Fakkir Maideen, through P.W.9 sent the requisition for conducting the post-mortem and the said requisition was marked as Ex.P.4 and the passport given to P.W.9 was marked as Ex.P.14. P.W.6 was the Assistant Surgeon attached to Government Hospital, Ambasamuthiram and upon receipt of the body along with the requisition, commenced the post-mortem at 11.00 a.m., on 01.02.2016 and concluded the same at about 12.00 noon on 01.02.2016 and noted the following features:

"Appearances found at the post-mortem:

Moderately built body of a male lies on the back Rigor mortis present in four lower limb disappeared in 4 upper limb. Eyes closed. Nose bleeding discharging present. (NC). Teeth 1!7 Tongue inside the mouth. Jaw clenched.

0!5

External Injuries:

1) Laceration right parietal region 6 x 2 x bone depth.

2) Laceration occipital region 6 x 2 x bone depth.

3) Contusion left eye, left cheek 12 x 10 cms.

4) 6! Teeth are broken.

7!

Internal: Heart congested, Chamber contains 15 ml of fluid blood. Liver and spleen congested. Stomach contains 200 ml of brown colour fluid no specific odoure. Kidneys congested. Bladder empty. Small intestine distended with gas. Hyoid intact, skull frontal and parietal bone are fractured (NC) Multiple fragments. Brain matter seen (NC) the fracture gap. Brain congested."

[extracted as such]

After completion of the post-mortem, P.W.10 opined that death would appear to have happened about 14 - 16 hours prior to post-mortem and reserved his final opinion and after receipt of chemical analysis



report, gave the final opinion stating that "the deceased died of shock and haemorrhage due to head injury". The post-mortem report was marked as Ex.P.5.

2.9. P.W.15, at about 09.15 hours on 31.01.2016, examined the appellant/accused, who after treatment came to the police station and he was arrested and in the presence of P.W.13 and another, examined him and he voluntarily came forward to give a confession statement and as per the admissible portion of his confession statement marked as Ex.P.19, blood stained clothes worn by him were recovered under a cover of mahazar marked as Ex.P.20 and the blood stained clothes were marked as M.O.5 and M.O.6.

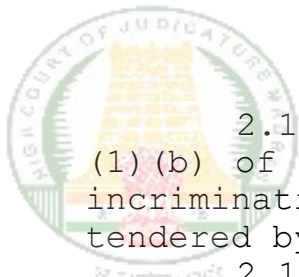
2.10. P.W.15 made a request for conducting chemical analysis of the material objects recovered and examined P.W.10 - Doctor, who conducted the autopsy and P.W.12 - Scientific Assistant. P.W.15 after completion of investigation, filed the final report on the file of the learned Judicial Magistrate, Ambasamuthiram charging the appellant/accused for the commission of the offences under Sections 294(b), 506(ii) and 302 I.P.C.

2.11. P.W.15 also conducted the investigation on the complaint given by the appellant/accused in Cr.No.38 of 2016 and after investigation, found that it was a false complaint and further taking note of the fact that Fakkir Maideen died, closed the complaint as 'mistake of fact' and the said final report was marked as Ex.P.26.

2.12. The Court of Judicial Magistrate, Ambasamuthiram, took the final report filed against the appellant/accused on file in P.R.C.No.22 of 2016 and the Committal Court, upon filing of the final report, issued summons to the appellant/accused and on his appearance, furnished to him the documents under Section 207 of the Code of Criminal Procedure, 1973.

2.13. The Committal Court having found that the case is exclusively triable by the Court of Session, committed the case to the Principal District and Sessions Court, Tirunelveli, which in turn, made over the case to the Court of IV Additional District and Sessions Judge, Tirunelveli and the said Court took it on file in S.C.No.611 of 2016 and on appearance of the appellant/accused, framed the charges under Sections 294(b), 506(ii) and 302 I.P.C., and questioned him. The appellant/accused pleaded not guilty to the charges framed against him and prayed for trial of the case.

2.14. The prosecution in order to sustain their case, examined P.W.1 to P.W.15, marked Exs.P.1 to P.27 and also marked M.O.1 to M.O.8.



2.15. The appellant/accused was questioned under Section 313 (1) (b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

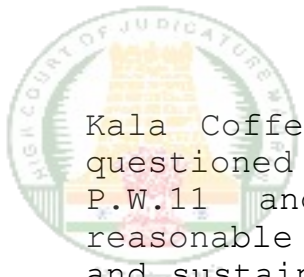
2.16. On behalf of the accused, no oral evidence was let in, however, Ex.D.1 - the complaint given by the appellant/accused in Cr.No.38 of 2016, was marked.

2.17. The trial Court on consideration of the oral and documentary evidence and other materials, found him guilty under Sections 294(b) and 302 I.P.C., and also found him not guilty for the commission of the offence under Section 506(ii) I.P.C. and imposed the sentences as stated above and acquitted him for the charge framed under Section 506(ii) I.P.C., for which, the State did not prefer any appeal. The appellant/accused aggrieved by the conviction and sentence awarded vide impugned judgment, has preferred this Criminal Appeal.

3. Mr.V.Karthirvelu, learned Senior Counsel assisted by Mr.K.Prabhu, learned Counsel for the appellant/accused made the following submissions:

The motive for the commission of the offence had not been established/proved by the prosecution. Admittedly, it is a case and counter and the said position was admitted by P.W.15 - Investigating Officer in his cross-examination and without conducting fair and proper investigation in Cr.No.38 of 2016, which came to be marked as Ex.D.1 registered at the instance of the appellant/accused, it was closed as 'mistake of fact' and therefore, it cannot be said that the appellant/accused was the aggressor. The eyewitnesses, namely, P.W.1 to P.W.4 had made material improvements from that of their statements made during investigation and as such, their testimonies cannot form the basis to convict and sentence the appellant/accused. Alternately, it is argued by the learned Senior Counsel appearing for the appellant/accused that even as per the version of the prosecution, the appellant/accused did not arm himself with any lethal weapons and admittedly, there was some altercation and in the heat of passion, the appellant/accused took a brick which was kept near the oven in the coffee shop of P.W.4 and attacked the deceased and as a consequence, he died and therefore, would plead that the said act comes within the Exception 4 to Section 300 I.P.C. and prays for modification of the conviction and sentence awarded by the trial Court.

4. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State has invited the attention of this Court to the testimony of P.W.11 and would submit that at about 02.30 p.m., on 31.01.2016, the appellant/accused without any justifiable or reasonable cause attacked P.W.11 and it was witnessed by P.W.2 who came back to the house and informed his father and his senior father, namely, the deceased and all of them proceeded to



Kala Coffee shop owned by P.W.4 and the deceased Fakkir Maideen questioned the appellant/accused as to why he attacked his brother - P.W.11 and the appellant/accused without any justifiable or reasonable cause, pushed him and as a result of which, he fell down and sustained injuries on the rear side of his head. While his head hit on the cement slab put up on the drainage, without any justifiable or reasonable cause or provocation on the part of the deceased Fakkir Maideen, the appellant/accused took a brick and perfectly attacked him and as a consequence, he died on the spot and P.W.1 to P.W.4 - eyewitnesses to the occurrence, had clearly testified about the overt act on the part of the appellant/accused and their testimonies were corroborated with all material particulars and it is amply supported by the scientific and other evidence. In sum and substance, it is the submission of the learned Additional Public Prosecutor appearing for the State that since the prosecution was able to prove the guilt on the part of the appellant/accused beyond any reasonable doubt and that the appellant/accused knowing pretty well about the consequence of attack on the deceased with brick, attacked him and hence, he is not entitled to any leniency in the form of modification of conviction and sentence and prays for the dismissal of this appeal.

5. This Court has paid it's best attention and anxious consideration to the rival submissions and also perused the materials available on record and scanned the materials available on record in the form of oral and documentary evidence and also gone through the original records.

6. The moot questions that arise for consideration, are:

(i) Whether the prosecution through P.W.1 to P.W.4 - eyewitnesses supported by other evidence, has proved it's case beyond any reasonable doubt?

(ii) In the light of the alternate prayer made by the learned Senior Counsel appearing for the appellant/accused, whether the appellant/accused is entitled for modification of conviction and sentence ordered by the trial Court?

Question No. (i):

7. P.W.11 is the younger brother of deceased Fakkir Maideen and he has spoken about the incident which took place at 02.30 p.m., on 31.01.2016 and it is also witnessed by P.W.2 - son of P.W.1. P.W.2 came to the house and at that time, P.W.1 and his elder brother were there and he informed about the incident and immediately, P.W.1, P.W.2 and deceased Fakkir Maideen proceeded to Kala Coffee shop owned by P.W.4 and reached the spot at about 03.00 p.m., on 31.01.2016 and they found that the appellant/accused was shouting. When the deceased Fakkir Maideen questioned the appellant/accused as to why he attacked P.W.11, he was abused and in that process, the appellant/accused pushed him down and as a result of which, the rear side of his head hit on the cement slab put up on



the drainage and he was lying. When P.W.1 and P.W.2 went there to prevent such occurrence, they were threatened by the appellant/accused with dire consequences and the appellant/accused took a brick near the oven in Kala Coffee shop owned by P.W.4 and repeatedly attacked Fakkir Maideen on his face. Apart from P.W.1 and P.W.2, the said incident was also witnessed by P.W.3 who was running a mobile shop about three shops away from Kala Coffee shop and apart from that, the owner of Kala Coffee shop, namely, P.W.4 had also witnessed the occurrence. Even for the sake of argument that P.W.1 and P.W.2 can be treated as interested witnesses as to the overt act on the part of the appellant/accused, they have clearly spoken as to the role played by him in the commission of the offence and their testimonies have been corroborated by P.W.3 and P.W.4 - independent witnesses.

8. Though it is urged by the learned Senior Counsel appearing for the appellant/accused that the prosecution has failed to prove any motive, P.W.11 has clearly spoken as to the said fact and from his testimony, it is revealed that the appellant/accused was infuriated as to the complaint with regard to the parking of his vehicle and that is why, on the same day, at about 02.30 p.m., he abused P.W.11 and also slapped him. In the cross-examination of P.W.1 to P.W.4, certain contradictions were elicited and it was also put to P.W.15 - Investigating Officer. This Court, after going through the answers extracted in the cross-examination of P.W.14 as well as P.W.15, is of the opinion that the contradictions elicited were not material and as already pointed out, the testimonies of P.W.1 to P.W.4 as to the witnessing the occurrence, are corroborated with each other on material particulars.

9. It is also the vehement and forceful submission of the learned Senior Counsel appearing for the appellant/accused that P.W.15 - Investigating Officer, in the cross-examination, admitted that it is a case and counter for the reason that on the basis of the complaint given by P.W.1, P.W.14 registered a case in Cr.No.37 of 2016. On the same day, at a later point of time, he registered a case in Cr.No.38 of 2016 on the basis of the complaint given by the appellant/accused as to the injuries sustained by him and since it is a case and counter, both the cases should have been simultaneously investigated and whereas P.W.15 - Investigating Officer has conducted the investigation in Cr.No.37 of 2016 at the first instance and closed the same as 'mistake of fact' and the said procedure is, per se, unsustainable.

10. P.W.14 who registered both the F.I.Rs., would depose that on the basis of the complaint given by the appellant/accused as to the injuries sustained by him on his head, he registered the F.I.R., in Cr.No.37 of 2016 for the commission of the offences under Sections 294(b) and 323 I.P.C., and through medical memo, sent him for treatment and he was treated by P.W.10 and his evidence would



disclose that the appellant/accused sustained simple injuries and accordingly, he issued Ex.P.16 - Accident Register and Ex.P.17 - certified copy of the Accident Register.

11. P.W.15 - Investigating Officer would depose that immediately, he examined P.W.10, who treated him and thereafter, prepared the final report marked as Ex.P.26 and sent the same to the jurisdictional Magistrate Court, closing the same as 'mistake of fact'.

12. A perusal of Ex.P.26 would disclose that immediately after committing the offence, the appellant/accused fled away from the scene of crime and the said fact was also spoken to by P.W.1 to P.W.4 and in that process, he tripped and fell down and as a result of which, he sustained simple injuries as evidenced by Exs.P.16 and P.17, coupled with the testimony of P.W.10 and as such, the points urged by the learned Senior Counsel appearing for the appellant/accused in that regard, are liable to be rejected.

13. The arrest of the appellant/accused and recovery of incriminating articles had been spoken to by P.W.13. P.W.6 who conducted autopsy on the body of the deceased, has opined in his final opinion that the deceased died on account of head injuries and also issued the post-mortem report marked as Ex.P.5. The material objects were also subjected to chemical analysis and as per the evidence of P.W.12 - Scientific Assistant, the serological report and chemical analysis report, marked as Exs.P.12 and P.10 respectively, all the material objects were tainted with "A" Group blood. Therefore, the prosecution had successfully proved that it was the appellant/accused who had fatally attacked the deceased Fakkir Maideen and as a result of the injuries sustained by him, he died.

Question No. (ii):

14. Now, coming to the plea of alteration/modification of conviction and sentence, it is to be noted that P.W.1, P.W.2 and deceased Fakkir Maideen proceeded to Kala Coffee shop and they found that the appellant/accused was shouting. P.W.10 - Doctor, who treated the appellant/accused and issued Ex.P.17, also noted that his breath smells alcohol and he sustained simple injuries. It was Fakkir Maideen who asked the appellant/accused as to why he attacked P.W.11 - younger brother of the deceased Fakkir Maideen and infuriated by the same, the appellant/accused pushed him down and beat on his chest and as a result of which, he fell down on the cement slab on the drainage located near Kala Coffee shop and sustained injury on the rear side of his head and when P.W.1 and P.W.2 went near to prevent further attack, the appellant/accused took a brick which was found lying and threatened them with dire consequences and immediately they backed and thereafter, he immediately took a brick found near the oven in Kala Coffee shop and



attacked the deceased Fakkir Maideen on his head, mouth, jaw and face and as a consequence, the brick got broken and it was also witnessed by P.W.3 and P.W.4 - independent witnesses. Immediately, he fled away from the scene of crime. The testimony of P.W.11 would disclose that the appellant/accused was infuriated by the fact that the parking of his vehicle was objected to and therefore, attacked P.W.11 at an earlier point of time at about 02.30 p.m., on 31.01.2016, which was also led to the registration of the F.I.R., in Cr.No.36 of 2016, marked as Ex.P.27 and the occurrence which led to the death of Fakkir Maideen took place at about within half-an-hour on 31.01.2016.

15. The learned Senior Counsel appearing for the appellant/accused made a submission that the said act on the part of the appellant/accused comes within Exception 4 to Section 300 I.P.C.

16. Whether the provocation was grave and sudden is a question of fact and depends upon the facts and circumstances of case and the evidence let in. It is also to be noted at this juncture that the word 'fight' occurring in Exception 4 to Section 300 I.P.C., is not defined in the Indian Penal Code. Heat of passion requires that there must be no time for the passions to cool down. It is also settled position of law that in order to bring a case under Exception 4 to Section 300 I.P.C., it must be shown that he acted without premeditation in a sudden fight in a heat of passion upon a sudden quarrel and without his having taken undue advantage or acted in a cruel or unusual manner. [Suresh Chand v. State (Delhi) reported in 1972 CrLJ 1416.]

17. It is relevant to extract hereunder paragraph 10 of the decision in Prandas v. State reported in AIR 1954 SC 36:

"10. The question which now arises is whether the High Court was justified in not giving to the appellant, the benefit of exception 4 to Section 300, Penal Code, in spite of the fact that it found most of the ingredients of that provision to have been established. In the opinion of the High Court, the case did not come "within this exception, because "it cannot be said that the appellant had not taken undue advantage or acted in a cruel or unusual manner'. But, beyond this bald statement, there is nothing in the judgment of the High Court to show on what grounds this conclusion is based. According to medical evidence, Prandas had sustained 6 injuries in the course of the occurrence including the fracture of a bone and an injury on the head, and the High Court has not expressly reversed the finding of the Sessions Judge that these injuries were not sustained after Gayaram and his companions



had been assaulted. The High Court has also not expressed its disagreement with the finding of the Sessions Judge that Gayaram was not assaulted after he fell on the ground. As will appear from the judgment of the Sessions Judge, several discrepant statements were made by the witnesses as to the number of blows said to have been dealt by Prandas, and Agardas speaks of one blow only. In these circumstances, it seems to us that the view of the High Court that the appellant is not entitled to the benefit of exception 4 to Section 300, Penal Code cannot be sustained, and that being so, the conviction under Section 302 cannot stand. In our opinion, the case comes within the second part of Section 304, which deals with the punishment for culpable homicide not amounting to murder when the act is done with the knowledge that it is likely to cause death or cause such bodily injury as is likely to cause death. The conviction of the appellant is therefore altered to one under Section 304, and he is sentenced to undergo rigorous imprisonment for five years. His conviction and sentence under Section 323, Penal Code will stand and the sentence passed by the High Court under that section shall run concurrently with the sentence under Section 304, Penal Code."

18. In *Ranjitham v. Basavaraj and others* reported in (2012) 1 Supreme Court Cases 414, the Honourable Supreme Court, in paragraphs 28 and 29 observed as follows:

"28. In *Hari Ram v. State of Haryana* reported in (1983) 1 Supreme Court Cases 193, there was an altercation between the appellant and the deceased. The appellant had remarked that the deceased must be beaten to make him behave. He thereafter ran inside the house, brought out a jeli and thrust it into the chest of the deceased. This Court observed that (SCC.p. 194, para 3) in the heat of altercation between the deceased on the one hand, and the appellant and his comrades on the other, the appellant seized a jeli and thrust it into the chest of the deceased. This was preceded by his remark that the deceased must be beaten to make him behave. Therefore, it does not appear that there was any intention to kill the deceased. This Court, therefore, set aside the conviction of the appellant under Section 302 IPC and instead convicted him under Section 304 Part II IPC and sentenced him to suffer rigorous imprisonment for five years.



29. In Jagtar Singh v. State of Punjab reported in (1983) 2 Supreme Court Cases 342, in a trivial quarrel the appellant wielded a weapon like a knife and landed a blow on the chest of the deceased. This Court observed that the quarrel had taken place on the spur of the moment. There was exchange of abuses. At that time, the appellant gave a blow with a knife which landed on the chest of the deceased and therefore, it was permissible to draw an inference that the appellant could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death but since there was no premeditation, no intention could be imputed to him to cause death. This Court, therefore, convicted the appellant under Section 304 Part II IPC instead of Section 302 IPC and sentenced him to suffer rigorous imprisonment for five years."

19. It is to be noted at this juncture that upon hearing the attack inflicted upon P.W.11 through P.W.2, P.W.1, P.W.2 and deceased Fakkir Maideen proceeded to the spot near Kala Coffee shop and they reached the spot at about 03.00 p.m., on 31.01.2016 and all of them found that the appellant/accused was shouting and deceased Fakkir Maideen questioned him as to why he attacked his younger brother, namely, P.W.11 which led to the assault.

20. It is trite law that Part II to Section 304 I.P.C., comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

21. As already pointed out, the appellant/accused did not arm himself with any lethal weapons, but in a heat of passion, took a brick which was kept near the oven in Kala Coffee shop owned by P.W.4 and attacked the deceased Fakkir Maideen repeatedly on his face and as a result of the same, he died and therefore, the conviction and sentence awarded by the trial Court under Section 302 I.P.C., is to be modified to one of Section 304 Part II I.P.C.

22. In the result, this Criminal Appeal is partly allowed and the conviction and sentence recorded under Section 302 I.P.C., is modified to Section 304 Part II I.P.C., and as a consequence, the sentence of rigorous imprisonment for life awarded by the trial Court under Section 302 I.P.C., is modified to one of rigorous imprisonment for five years. The sentence of fine with default sentence awarded by the trial Court under Section 302 I.P.C., is sustained and so also, the conviction and sentence imposed on the appellant/accused under Section 294(b) I.P.C. The sentences of imprisonment are ordered to run concurrently. The appellant/accused



is also granted set off under Section 428 Cr.P.C. Consequently, Crl.M.P(MD)No.10580 of 2017 is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

To

1.The IV Additional District and Sessions Judge,
Tirunelveli.

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

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

4.The Section Officer, (2 copies)
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

5. The Judicial Magistrate, Ambasamuthiram,
Tirunelveli District.

6. The Superintendent, Central Prison,
Palyamkottai.

7. The Principal District Judge, Tirunelveli.

8. The Chief Judicial Magistrate, Tirunelveli.

9. The District Collector, Tirunelveli District.

10. The Director General of Police,
Mylapore, Chennai-4.

+1 CC to M/s.K. PRABHU, Advocate (SR-82790[F] dated 21/08/2019)

JUDGMENT MADE IN
Criminal Appeal (MD)No.466 of 2017 and
CrL.M.P(MD)No.10580 of 2017
21.08.2019

rsp

MS/10.09.2019/13P.13C

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