

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 27.01.2020

Pronounced on : 21.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.120 of 2018
and
Crl.M.P.No.2720 of 2018

1.Raja Guru
2.Bala Krishnan

...

Appellants /
Accused 1 & 2

versus

State, represented by
The Inspector of Police,
Nannilam Police Station,
Thiruvarur District.

...

Respondent /
Complainant

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Principal District and Sessions Judge, Thiruvarur in S.C.No.35 of 2017 dated 22.11.2017.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

J U D G M E N T

[Judgment of this Court was made by R.PONGIAPPAN, J.]

The present appeal has been filed by the appellants / accused against the judgment passed in S.C.No.35 of 2017 dated 22.11.2017 on the file of the learned Principal District and Sessions Judge, Thiruvarur.

2. The appellants are arrayed as A-1 and A-2 in the above said case. The first accused stood charged for the offences under Sections 294(b), 302 and 307 of IPC. Similarly, the second accused stood charged for the offences under Sections

294(b), 302 r/w 34 and 307 of IPC. Both the accused denied all the charges and opted for trial. Therefore, they were put on trial on the charges. After full-fledged trial, the learned Principal District and Sessions Judge, Thiruvavarur, found the first accused as he is guilty for the offences under Sections 294(b), 302 and 307 of IPC. Further, she found the second accused as he is guilty for the offences under Sections 302 r/w 34 and 323 of IPC. Accordingly, both the accused were convicted and sentenced as follows:-

	Sl.No.	Offence	Period of Punishment
A-1	1	302 IPC	Sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for six months.
	2	307 IPC	Sentenced to undergo Rigorous Imprisonment for eight years and to pay a fine of Rs.500/-, in default to undergo Rigorous Imprisonment for three months.
	3	294(b) IPC	To pay a fine of Rs.300/-, in default to undergo Simple Imprisonment for two weeks.

	Sl.No.	Offence	Period of Punishment
A-2	1	302 r/w 34 IPC	Sentenced to undergo Life Imprisonment and to pay a fine of Rs.500/-, in default to undergo Rigorous Imprisonment for six months.
	2	323 IPC	To pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for two weeks.

Challenging the above said conviction and sentence, both the accused are before this Court with the present Criminal Appeal.

3. The case of the prosecution in brief, is as follows:- P.W.1 [Baskaran] is the resident of Nemmeli Village. Both the accused are related to P.W.1 as "pangali". The house belongs to the accused situated on the Western Side of P.W.1's house. The deceased Radha was the father of P.W.1. On 25.04.2015 at about 8.00p.m., when the rain water was stagnated in front of the house of the first accused, he came to the house of P.W.1 and abused the deceased by saying "Fr;rp;fhhp kfnd. njtoah kfnd". While at the time of making abuse, both the deceased Radha and P.W.1 were having dinner. After hearing the abusive

words, both of them came out from their house, immediately, on seeing the deceased and P.W.1, the first accused Raja Guru by using the crow-bar assaulted the deceased Radha on his head. In the course of same transaction, second accused Bala Krishnan by using the spade handle assaulted the deceased on his chest. Further, he assaulted the P.W.1 and causing injury on his left hand. On seeing the same, P.W.1 cried as not to attack the deceased Radha. However, the first accused by using the same crow-bar assaulted P.W.1 on his head. Likewise, the second accused by using the same spade handle assaulted P.W.1 on his left hand. At that time when P.W.1 attempted to ran away from the scene of occurrence, both the accused chased him and made a life threat. However, after crossing five houses situated in the same street, P.W.1 fell down and thereafter, P.W.5 [Mahalingam] made arrangements for admitting the deceased and P.W.1 in Nannilam Government Hospital.

4. P.W.11 [Dr.Akila] attached to the Nannilam Government Hospital, on 25.04.2015 at about 9.45p.m., while she was on duty examined the deceased Radha and found that he was in the stage of unconscious, hence, she referred the deceased to Thiruvarur Government Medical College Hospital for further treatment. In this regard, she issued the Accident Register copy, which was marked as Ex.P.10. On the same day, at about 9.55p.m., she examined P.W.1 and found the following injuries:-

- "1) Injury on left index finger / metacarpal.
- 2) Contusion on left wrist.
- 3) Lacerated wound in the abrasion in left arm, fore arm"

5. Thereafter, P.W.11 referred P.W.1 also to Thiruvarur Government Medical College Hospital for further treatment. She issued Accident Register copy under Ex.P.11.

6. In the meantime, on 25.04.2015, P.W.9 [Tamilvanan], the then Special Sub-Inspector of Police, Nannilam Police Station, received the information from Thiruvarur Government Medical College Hospital, about the admission of P.W.1 and deceased Radha for treatment. On 26.04.2015, at about 03.00a.m., he rushed to the Thiruvarur Government Medical College Hospital and recorded the statement from P.W.1 under Ex.P.1. Thereafter, he returned to the Police Station and registered a case in Crime No.85 of 2015 for the offences under Sections 294(b), 307 and 302 of IPC. Ex.P.7 is the printed First Information Report. After registration of the case, he handed over the First Information Report to P.W.13 for investigation.

7. P.W.13 [Periyasamy], the then Inspector of Police, Nannilam Police Station, received a copy of the First Information Report and took up the same for investigation. On 26.04.2015 at about 8.15a.m., he visited the scene of occurrence and in the presence of P.W.6 [Ramesh], he prepared an

Observation Mahazar under Ex.P.2, he drawn the Rough Sketch under Ex.P.15. Thereafter, he recorded the statements from the witnesses, who attested in the Observation Mahazar. On the same day, after receiving the death intimation of deceased from Government Hospital, Thiruvarur, at about 11.15a.m., he went to the Hospital and in the presence of witnesses and panchatyars, near to the Mortuary in Thiruvarur Government Medical College Hospital, he conducted enquiry and prepared a Inquest Report under Ex.P.16. The death intimation was marked as Ex.P.20.

8. After the preparation of Inquest Report, P.W.13 entrusted the dead body of the deceased Radha to P.W.8 [Kamalanathan], who is the Head Constable of Nannilam Police Station, with a direction to make arrangements for conducting autopsy. He has also submitted a requisition letter to the Dean, Thiruvarur Government Medical College Hospital for conducting autopsy.

9. P.W.12 [Dr.Bawankumar], the then Assistant Surgeon in Thiruvarur Government Medical College Hospital, on 26.04.2015 received the requisition letter given by P.W.13 and conducted autopsy over the dead body of the deceased Radha. During the time of post-mortem, he found the following injuries:-

"Ante mortem injuries:-

Deformity noted over left side of head. On dissection of Scalp: Contusion noted over entire surface of the Scalp. On dissection: Depressed fracture of left parietal and occipital bones noted. On opening the Skull: Sub-dural hematoma of 100 grams noted over left side of Brain.

Other findings:-

Thoracic cavity: 80ml of blood noted over left thoracic cavity. Peritoneal cavity, empty. Ribs: Fracture of left 3rd, 4th, 5th and 6th ribs noted. Hyoid bone: Intact. Heart: chambers empty, C/s pale, Coronaries: - patent. Stomach: 10grams partly digested food particles seen, mucosa: pale. Small intestine: empty. mucosa: pale. Lungs, Liver, Spleen. Kidneys: C/s pale. Brain: Sub dural hemorrhage about 100 grams over left side of the Brain seen, c/s pale. Urinary bladder: empty."

10. P.W.12 preserved viscera and then on the request made by the Investigating Officer through the Judicial Magistrate, he sent the same for chemical examination. Ex.P.19 is the Viscera Report. It was stated by the Forensic Department that there is no poisonous substance found in the dead body. Accordingly, after receiving the report, P.W.12 gave opinion as the deceased would appear to have died of Sub-dural haematoma in Brain due to head injury, which is ante-mortem in nature. The

Post-mortem Certificate and the Final Opinion given by P.W.12 were exhibited as P.13 and P.14 respectively. The requisition letter sent by P.W.13 was marked as Ex.P.12.

11. After completing the process of post-mortem, P.W.8 [Kamalanathan] collected the lungi from the dead body and thereafter, he handed over the same to P.W.13 along with the Special Report, which was marked as Ex.P.6.

12. In the meantime, on 26.04.2015 at about 3.00p.m., the first accused [Raja Guru] surrendered before P.W.7 [Sudha], who is the then Village Administrative Officer, Nemmeli Village. Consequently, as per the direction given by the Tahsildhar, P.W.7 handed over the first accused to P.W.13 along with her Report. The Report given by P.W.7 was exhibited as P.3.

13. In continuation of the investigation, P.W.13 received the Special Report from P.W.7 along with the first accused, subsequently on interrogation, he gave confession statement by admitting the offence and willing to hand over the Material Object, which was used for the commission of offence. The said confession statement given by the first accused was recorded in the presence of P.W.7 and one Subramanian. As per the confession statement, the first accused brought the Investigating Officer and the witnesses to his house and identified the crow-bar and spade handle, which were hidden in his house. The crow-bar and spade handle are marked as M.O.1 and M.O.2 respectively. Similarly, on 29.04.2015 at about 15.00hours, near Thiruvavarur Bus Stand P.W.13 arrested the second accused Bala Krishnan and thereafter, both the accused were sent to judicial custody.

14. In the meantime, P.W.10 [Dr.Rajmohan], found fracture in the left elbow of P.W.1 and another one injury on the left index finger. After identifying the same, he gave necessary treatment to the said injuries. After completing treatment, he issued Discharge Summary under Ex.P.8. The Accident Register copy issued by the same Doctor has marked as Ex.P.9. However, P.W.1 discharged from the Hospital against the medical advise.

15. In continuation of investigation, after recovering the Material Objects, P.W.13 made arrangements for sending the same to the learned Judicial Magistrate, Nannilam, through Ex.P.21 [Form 95]. After sending the same, he concluded the investigation and laid a Final Report under Sections 294(b), 307, 302 r/w 34 of IPC.

16. Based on the above materials available, the trial Court framed the charges against A-1 under Section 294(b), 302 and 307 of IPC. Similarly, charges have been framed against A-2 for the offences under Sections 294(b), 302 r/w 34 and 307 of

IPC. Both of them denied the same as false and opted for trial. In order to prove the case of prosecution, as many as 13 witnesses were examined on the said of prosecution, as P.W.1 to P.W.13 and 21 documents were marked as Ex.P.1 to Ex.P.21, besides 3 Material Objects.

17. Out of the said witnesses, P.W.1 [Baskaran] is the son of the deceased Radha, he has also sustained injury in the occurrence. He has spoken about the abuse made by A-1 and about the assault made towards him and towards the deceased by A-1 and A-2. He has also spoken about the treatment given to him and about the treatment given to the deceased. Finally, he has spoken about the death of the deceased Radha and about the lodging of complaint before P.W.9.

18. P.W.2 [Maniyammal] is the wife of the deceased Radha. She has stated about the occurrence, the abuse made by the accused towards the deceased and also about the details of attack made by the accused towards the deceased and P.W.1. Further, she is the witness to the treatment given to P.W.1 and the deceased.

19. P.W.3 [Deepa] is the daughter-in-law of the deceased Radha. She is residing along with her husband in the neighbouring house of P.W.1. She has spoken about the occurrence as stated by P.W.1 and P.W.2.

20. P.W.4 [Madhan] is also an eye-witness to the occurrence. Though he was cited as a eye witnesses to the occurrence, he did not support the case of prosecution. Hence, the learned Public Prosecutor treated him as a hostile witness. Even in the cross examination made by the learned Public Prosecutor, he is not supported the case of prosecution.

21. P.W.5 [Mahalingam] is also related to the deceased Radha. He has spoken about the occurrence, particularly, about the attack made by the accused and about the weapons used at the time of occurrence. He has made arrangements for admitting the deceased and P.W.1 in the Nannilam Government Hospital and Thiruvarur Government Medical College Hospital.

22. P.W.6 [Ramesh] has spoken about the preparation of Observation Mahazar and Rough Sketch by the Investigating Officer.

23. P.W.7 [Sudha], is the Village Administrative Officer. She has spoken about the surrender of the accused. According to her, first accused herein surrendered before her and in-turn she handed over the accused to the Investigating Officer along with the Special Report. She has spoken about the

confession statement given by the first accused and about the recovery made in the house of the first accused.

24. P.W.8 [Kamalanathan] is the then Head Constable of Nannilam Police Station, he has spoken about the entrustment of the dead body for post-mortem and about the recovery of M.O.3 from the dead body.

25. P.W.9 [Tamilvanan] is the Special Sub-Inspector of Police, Nannilam Police Station, he has stated about the receiving of complaint from P.W.1 and about the registration of the case.

26. P.W.10 [Dr.Rajmohan] working as Orthopedician in Thanjavur Government Medical College Hospital has stated about the treatment given to P.W.1 and about the injury sustained by him.

27. P.W.11 [Dr.Akila] is also a Doctor attached to Nannilam Government Hospital. She has stated about the first aid given to P.W.1 and to the deceased.

28. P.W.12 [Dr.Bawankumar] is also a Doctor. He has spoken about the injury sustained by the deceased and about the details of post-mortem. He has also stated the opinion in respect to the cause of death.

29. P.W.13 [Periyasamy], the then Inspector of Police, Nannilam Police Station is the Investigating Officer in this case. He has stated about the examination of eye-witnesses, arrest of accused, manner of investigation conducted by him and with regard to the laying of final report before the Magistrate Court.

30. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false, however, they did not choose to examine any witnesses nor did they mark any documents on their side.

31. Having considered all the above, the learned Principal District and Sessions Judge, Thiruvarur, found the appellants guilty for the offences under Sections 294(b), 302 and 307 of IPC. Accordingly, A-1 was convicted for the offences under Sections 294(b), 302 and 307 of IPC. Similarly, A-2 was convicted for the offences under Sections 302 r/w 34 and 323 of IPC. Both the accused were convicted and sentenced as detailed in the second paragraph of this judgment. Challenging the said conviction and sentence, the appellants / A-1 and A-2 are now before this Court with the present Criminal Appeal.

32. We have heard Mr.R.Sankarasubbu, learned counsel appearing for the appellants, Mrs.M.Prabhavathi, learned

Additional Public Prosecutor appearing for the State and also perused the records carefully.

33. The learned counsel appearing for the appellants would contend that in respect of the attack made by the accused, the evidence given by the eye-witnesses are all contradictory in nature. As per the evidence of P.W.7 [Village Administrative Officer], both the accused surrendered before her and thereafter, she handed over the accused before the Investigating Officer along with the Special Report. But as per the evidence given by P.W.13 [Investigating Officer], the second accused was arrested by him and not as stated by P.W.7. So, in respect of the arrest of accused made by P.W.13, the evidence given by the prosecution witnesses are having the contradictions and it affect the case of the prosecution. He would further contend that the First Information Report has been registered belatedly. According to him, the recovery of the weapons alleged to be used for the commission of offence are not sent to chemical examination, which is also one of the strong reason that the prosecution failed to prove his case. He would further contend that the learned Principal District and Sessions Judge, Thiruvarur, while at the time of disposing the case, not properly appreciated the evidence let in by the prosecution witnesses in prospective manner.

34. Per contra, the learned Additional Public Prosecutor appearing for the State would contend that the witnesses examined in this case are examined after a long gap from the date of occurrence and hence, there may be a possibility for giving contradictory evidence in respect to the occurrence. According to her, the contradiction available in the evidence indicated by the learned counsel for the appellants is minor in nature. She would further contend that picking the isolated evidence for deciding the entire case is against the settled principles of law. According to her, the whole evidence given by the prosecution witness will clearly prove the case of prosecution beyond reasonable doubt. Hence, she prayed to dismiss this appeal.

35. Upon considering the rival submission made by either side, before the trial Court the First Information Report which is the earliest document was marked as Ex.P.7 through P.W.9. As per the said document, the occurrence had happened on 25.04.2015 at about 20.00 hours and the information was received to the Police Officers on 26.04.2015 at about 7.00a.m. Accordingly, there was a delay of 11.00 hours in lodging the complaint. In this regard, on going through the evidence of P.W.1 and P.W.4, it is clear that after the occurrence, both the deceased and P.W.1 were admitted in the Nannilam Government Hospital, in which, they were given with first aid and

thereafter, both of them referred to Thiruvavarur Government Medical College Hospital.

36. In the said circumstances, the evidence given by Orthopedician [P.W.10] proves that P.W.1 sustained grievous injury. Further, it is alleged on the side of the prosecution that only due to the attack made by the accused, the deceased sustained head injury and as a result of which, he died. So, on considering the nature of injury sustained by P.W.1 and the deceased, it is probable that they must first go to the Hospital for getting treatment. In the said circumstances, we cannot expect that they approached the Police Officers immediately after the occurrence for registering the case. So, it cannot be said that the case was registered belatedly, in otherwise the delay in lodging the complaint before the Police is properly explained.

37. The next submission made by the learned counsel for the appellants is that in respect to the assault made by the accused, the witnesses, who are all examined on the side of the prosecution have stated different versions. In this regard, now on going through the evidence given by P.W.1, he has stated before the trial Court as at the time of occurrence, the first accused [Raja Guru] in this case by using the crow-bar assaulted the deceased and causing injury on the head of deceased. Further, he again attacked the deceased and causing injury on the left hand. The second accused [Bala Krishnan] by using the spade handle assaulted the deceased in the chest. Similarly, the first accused by using the same crow-bar assaulted the P.W.1 and thereby P.W.1 sustained injury in the head, further the second accused by using the same spade handle assaulted the P.W.1 and causing injury in the left hand. P.W.2 and P.W.3 had also stated the occurrence as stated by P.W.1. On conjoint reading of evidence given by P.W.1 to P.W.3, it is clear that at the time of occurrence, both the accused assaulted the deceased on the head and chest. Further, both of them attacked P.W.1 on his head and left hand. In this occasion, on going through the evidence given by the Doctor [P.W.10], who treated P.W.1 has clearly stated that during the time of examining the P.W.1, he found P.W.1 and the deceased had fracture in the left index finger and left elbow.

38. On the other hand, the Doctor [P.W.12], who conducted post-mortem over the dead body of the deceased Radha has stated in his Post-mortem Certificate as fracture of left parietal of the deceased and also there was a fracture of left 3rd, 4th, 5th and 6th ribs. So, the evidence given by the Doctor is wholly corroborated the evidence of the eye-witnesses in respect to the injury sustained by the accused. In otherwise, it cannot be said that the minor contradiction arising in the evidence of eye-

witnesses are immaterial in nature. In fact, since the witnesses are examined after a long gap from the date of occurrence, it is natural there may be some contradiction will happened in respect to the occurrence. In this regard, it is necessary to consider the judgment of our Honourable Apex Court in SACHIN KUMAR SINGHRAHA vs. STATE OF MADHYA PRADESH reported in (2019) 8 SCC 371, in which, it has held as follows:-

"12. The Court will have to evaluate the evidence before it keeping in mind the rustic nature of the depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole."

39. Moreover, in respect of the weapons said to have been used by the accused, the Doctor has gave opinion as the injury sustained by the deceased and P.W.1 would likely to occur when they were stuck by the said weapons. Therefore, we are of the considered opinion that the ocular witnesses stands corroborated by medical evidence and independent witness. Hence, the findings arrived at by the trial Court is proper. Accordingly, the submission made by the learned counsel for the appellants in respect to the discrepancies found in the evidences which given by the ocular witnesses cannot be a ground for allowing the appeal.

40. The learned counsel appearing for the appellants would further contend that since the incident took place in the middle of the road, many people may have seen the occurrence. But on the side of the prosecution, except P.W.1 to P.W.5, none of the individual witnesses were examined to prove the occurrence and therefore, the evidence given by P.W.1 to P.W.5 cannot be relied on to find out the guilt of the accused. Since P.W.1 to P.W.5 are related to the deceased.

41. In this regard, the learned Additional Public Prosecutor appearing for the State would contend that though the witnesses examined on the side of the prosecution are closely related with each other alone cannot be a ground for disbelieving the evidence given by them. In the said circumstances, it is relevant and useful to consider the judgment of our Honourable Apex Court in GANAPATHI vs. STATE OF TAMIL NADU reported in (2018) 5 SCC 549, wherein it has

observed as follows:-

"15. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made."

42. Applying the above said principles laid down by our Honourable Apex Court, in this case also though the witnesses are related to each other it was decided as that alone cannot be a ground for disbelieving their evidences. In fact, scrutiny over the evidence of the said witnesses alone sufficient for testifying the evidences. As rightly pointed out by the learned Additional Public Prosecutor that already the evidence given by the eye witnesses are corroborated through medical evidence. Hence, further scrutiny is unnecessary in this case.

43. In respect to the arrest of accused. It is true as per the evidence of P.W.7 [Village Administrative Officer], both the accused surrendered and thereafter, both of them were handed over to the Investigating Officer, but according to the evidence given by P.W.13 only after made recovery from the first accused, the second accused was arrested. So, in respect to the arrest of the second accused, exactly there is a clear contradiction is available from the evidence of the Village Administrative Officer and the Investigating Officer as the second accused was arrested as stated by P.W.13 or not. However, considering the fact that there was no recovery made through P.W.2, the different version stated by the prosecution witnesses alone is not sufficient to hold that the case of the prosecution is a false one.

44. The learned counsel appearing for the appellants would contend that though as per the confession made by the first accused, M.O.Nos.1 and 2 were recovered by the Investigating Officer, the same have not been sent for chemical examination. Hence, the story put forth by the prosecution is a false one.

45. On considering the said submission with the relevant records put forth by the prosecution, it is true after recovering the Material Objects, none of the same were sent to chemical examination, for deciding the said issue, it is relevant and necessary to see the Seizure Mahazar [Ex.P.5], through which the property was recovered by P.W.13. On going through the said document, at the time of recovering M.O.1 and M.O.2, they are not having any blood stains materials. So, in the said circumstances, it is not necessary for the Investigating Officer to send the same for chemical examination. In fact for the reason that there was no blood stains found in the weapons, sending the same for chemical examination is waste of investigation time. Therefore, in this aspect, the submission made by the learned counsel for the appellants is not sufficient to accept the case of accused.

46. Finally, the learned counsel appearing for the appellants would contend that the alleged assault made by the appellants in respect to the death of the deceased Radha is due to sudden provocation. Previously, A-1 and A-2 are not having any motive for killing the deceased. Accordingly, concluding the case as the accused committed an offence of murder is not within the purview of Section 300 IPC and therefore, he prayed for some leniency.

47. For considering the said submission, it is necessary to consider the judgment of our Honourable Apex Court in LAVGHANBHAI DEVJIBHAI VASAVA vs. STATE OF GUJARAT reported in (2018) 4 SCC 329, in which, it has held as follows:-

"7. This Court in Dhirendra Kumar v. State of Uttarakhand [2015 SCC OnLine SC 163] has laid down the parameters which are to be taken into consideration while deciding the question as to whether a case falls under Section 302 IPC or Section 304 IPC, which are the following:

- (a) The circumstances in which the incident took place;
- (b) The nature of weapon used;
- (c) Whether the weapon was carried or was taken from the spot;
- (d) Whether the assault was aimed on vital part of body;
- (e) The amount of the force used.
- (f) Whether the deceased participated in the sudden fight;
- (g) Whether there was any previous enmity;
- (h) Whether there was any sudden provocation.
- (i) Whether the attack was in the heat of

passion; and

(j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.

8. Keeping in view the aforesaid factors it becomes evident that the case of the appellant would fall under Section 304 IPC as the incident took place due to a sudden altercation which was a result of delay in preparing lunch by the deceased. The appellant picked up a wooden object and hit the deceased. The medical evidence shows that not much force was used in inflicting the blow to the deceased. The prosecution has not set up any case suggesting that relationship between the husband and wife was not cordial, otherwise. Manifestly, the incident took place due to sudden provocation and in a heat of passion the appellant had struck a blow on his wife, without taking any undue advantage. We are, therefore, of the opinion that it was an offence which would be covered by Section 304 Part II IPC and not Section 302 IPC."

48. So, applying the principles laid down by our Honourable Apex Court with the case in our hand, it is true before the occurrence both the accused and the victim are not having any enmity upto the level of committing murder. Both the accused were got angry only because of the reason that the rain water was stagnated in front of the house of A-1, so the said circumstances will made it clear that the accused are not having any motive and premeditation. Therefore, we are of the opinion that it was an offence which would be covered by Section 304(II) IPC and not under Section 302 of IPC. In respect to the conviction and sentence imposed upon the A-1 for the offence under Section 307 of IPC though according to the evidence of P.W.1 to P.W.3, A-1 attacked the P.W.1 on his head, as per the evidence given by the Doctor [P.W.10], who treated the P.W.1, he has sustained fracture in the left elbow and in the left index finger. In the said circumstances, as per the evidence of P.W.1 to P.W.3, 2nd appellant alone attacked the P.W.1 and causing injury in the left elbow. The trial Court without considering the said vital aspect convicted the A-1 for the offence under Section 307 of IPC. Hence, the conviction and sentence imposed upon the A-1 for the offence under Section 307 IPC is set aside.

49. In fine, the Criminal Appeal is partly allowed. The conviction and sentence imposed upon the appellants / accused by the learned Principal District and Sessions Judge,

Thiruvarur in S.C.No.35 of 2017 dated 22.11.2017 is modified and the appellants 1 and 2 are convicted under Sections 304(II) instead of 302, 302 r/w 34 of IPC respectively. For the offence under Section 304(II) of IPC, both the accused were sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Rigorous Imprisonment. With regard to the other offences i.e. Sections 294[b] IPC against A-1 and 323 IPC against A-2 are concerned, the conviction and sentence awarded by the learned Principal District and Sessions Judge, Thiruvarur, is confirmed. It is ordered to run the sentences concurrently. It is also directed that the period of sentence already undergone by the appellants shall be given set off, as required under Section 428 Cr.P.C. Since the appellants/A-1 and A-2 are in jail, they shall undergo the remaining period of sentence, if any. Fine amount paid by them already is to be adjusted for the fine now imposed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Sri

To

- 1.The Principal District and Sessions Judge,
Thiruvarur.
- 2.The Inspector of Police,
Government of Tamil Nadu,
Nannilam Police Station,
Thiruvarur District. सत्यमेव जयते
- 3.The Superintendent,
Central Prison,
Trichy.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.A.No.120 of 2018
and Crl.M.P.No.2720 of 2018

EV(CO)
GN(16/07/2020)