

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.650 of 2018

Nethaji Subash Chandra Bose @ Nethaji

... Appellant/Accused no.1

Versus

State rep. By

The Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram District.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed upon the appellant by the learned Sessions Judge, Sessions Court No.II, Kancheepuram in S.C.No.18 of 2017 dated 06.10.2018.

For Appellant : Mr. R. John Sathyan

For Respondent : Mrs. M. Prabhavathi,
Additional Public Prosecutor.

J U D G M E N T

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

The present appeal has been filed by the appellant against the judgment passed in S.C.No.18 of 2017 dated 06.10.2018 on the file of the learned Sessions Judge, District Court No.II, Kancheepuram.

2. The appellant is the first accused in the abovesaid case. He stood charged for the offence under Sections 294(b), 352, 307, 302 IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, read with Section 34 IPC.

3. After full pledged trial the learned Sessions Judge, found the accused guilty of the offence under Sections 294(b), 324 and 302 IPC. Accordingly, the appellant/accused was convicted and sentenced to undergo three months simple imprisonment for the offence under Section 294(b) and three

years simple imprisonment for the offence under Section 324 IPC. Further, he was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months rigorous imprisonment for the offence under Section 302 IPC. The trial Court ordered the sentences to run concurrently. Challenging the conviction and sentence the accused is before this Court by way of filing the present criminal appeal.

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

(i) PW1-Gopi, was working as a Store Keeper in KMC Private Company. PW2-Kovendan is his brother. PW3-Selvi is the mother of PWs 1 and 2. PW4-Divya is the daughter-in-law of PW3. The appellant and other three accused in this case are distantly related to PW1. All the accused are residing in the neighbouring house of PW1. A-1 is the son of A-2. A-3 and A-4 are the daughters-in-law of A-2. According to the case of the prosecution, there was a previous enmity between the family of the accused and the deceased with respect to a piece of land.

(ii) On 25.12.2015, being a public holiday on account of Christmas festival, PW1 went to the house of his father Mani and returned back with his wife Divya, PW4. At that time, all the four accused were standing in front of their house and on seeing PW1, the appellant herein, abused PW1 by saying “ஓத்தா தெவியா பையா”. Opposing the same, PW1, requested the accused not to say such words. Immediately all the accused started abusing PW1 with filthy words and also uttered “தெவியா பசங்களா நீங்க இருப்பதால் தான் எனக்கு சொந்தமான மனையில் வீடு கட்ட முடியவில்லை”.

(iii) By saying so, the appellant/first accused, who was in possession of a stick in his hands (வேலிகாத்தான் கொம்பு), assaulted PW1 on the right and left hand. On seeing the same, PW4 cried for help. When PW2 came to the rescue and resisted the attack, he was also assaulted by the appellant by using the same stick [M.O.1]. Further the appellant took the wooden log (சவக்கு கட்டை) M.O.2 from the 2nd accused (since deceased Ponnusamy) assaulted PW1's father viz., Mani, on the back of his head. After such attack, the father of PW1 became unconscious and fell down. When PW3, the mother of PW1 attempted to rescue her husband, the other accused viz., A2 to A4, assaulted her by pulling her hair. After falling down, the accused assaulted her by using wooden log (M.O.2).

(iv) After the occurrence, all the injured went to the Government Hospital, Kanchipuram, for treatment. After initial treatment, PW1 and PW4 were discharged from the hospital.

(v) PW10-Dr.Shalini attached to Government Hospital, Kanchipuram, treated the deceased Mani S/o.Dhanapal at about 4 PM and found a contusion on the left side of the back of the head measuring 8x5cm; bleeding in nose and throat; and lacerated injury on the left leg. She issued an Accident Register Copy under Ex.P9. According to her, the injuries sustained by the deceased Mani are grievous in nature.

(vi) On receipt of the information from the Government Hospital, Kanchi, PW12, Kannan, the then Sub Inspector of Police, Kanchipuram Taluk Police Station, went to the hospital and recorded the statement [Ex.P1] given by PW1. After returning to the police station, at about 6.30 pm, he registered a case in Cr.No.1274 of 2015 under Sections 294(b), 323, 324 and 307 IPC r/w 4 of Tamil Nadu Prohibition of Women Harassment Act, 1998 on 25.12.2015. The printed FIR is marked as Ex.P11. After the registration of the case, he handed over the case records to PW14-Thiru.N.C.Sarathy, for investigation.

(vii) In continuation of investigation, on receipt of the case records from PW12, PW14-Thiru.N.C.Sarathy, the then Inspector of Police rushed to the scene of occurrence and in the presence of PW7-Sekar and PW8-Neelamegam, he prepared an Observation Mahazar and Rough Sketch under Ex.P15 and Ex.P16, respectively. On the same day, at about 9.30am, he arrested the appellant and on examination, the appellant gave voluntary confession, in which he admitted the offence. He gave a confession that if he is taken to his house, he is willing to identify the scene of occurrence and also ready to handover the hidden weapons, which are all used for the commission of offence. In the presence of PW7-Sekar and PW8-Neelamegam, PW14 recorded the said confession statement.

(viii) On the basis of the confession statement recorded from the appellant, he was taken to his house where he produced the stick and the wooden log [M.O.1 and M.O.2, respectively], which were hidden on the backside of his house. The admitted portion of the confession given by the appellant was marked as Ex.P17. The recovery mahazar has been marked as Ex.P18. After recovery, PW14 examined PW7 and PW8 and recorded their statements. He produced the material objects in the Court through Form-95 [Ex.P19], which in turn was sent for chemical examination.

(ix) In the meantime, on 28.12.2015, at about 10.05am, one Ramesh, who is the son-in-law of the deceased Mani, appeared before PW14 in the police station and gave a complaint that the said Mani has died. The complaint given by the said Ramesh is Ex.P20. Immediately on receipt of the complaint, PW14, altered the section of law as 294(b) 323, 324 and 302 IPC read with Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1998. The alteration report is Ex.P21. Thereafter, he went to the Government Hospital and about 16.00 to 17.30 hours, in the presence of panchayatars and witnesses he prepared inquest report under Ex.P22. He recorded the statement from the witnesses and thereafter, through PW11-Murugesan, Grade-I Constable submitted a requisition to the Doctor for conducting autopsy.

(x) PW13-Dr.Narenderan attached to Madras Medical College, Chennai on 29.12.2015 at about 11.15pm, received the requisition from PW11 and conducted autopsy over the dead body of Mani. During the time of autopsy, he found the following injuries.

1. Irregular abrasions covered with dark brown scab:
 - a) 2x1 cm on the back of right elbow;
 - b) 1x1 cm on the back of right wrist;
 - c) 4x2 cm on the inner aspect of left great toe;
 - d) 1x1 cm on the outer aspect of left knee;
 - e) 5x3 cm with intervening normal skin on the left side of groin

2. Surgical sutured curvilinear incised wound 32 cm on the left fronto temporo parietal region of the scalp; On removal of sutures, wound was 32 x 0.5 x 0.5 cm and the margins were loosely adherent; On reflection of scalp: Dark red bruising on the left frontal, left temporal, left parietal, left occipital, right parietal and right occipital regions of the scalp; Fissured fracture 7 cm on the left parietal bone; surgical bony and Durameter deficiency [9x10cm on the left frontal, left parietal, left temporal bone with portions of burr holes on the edges of the deficiency; on removal of calvarium, Dark red extradural hematoma 10 grams on the left parietal region; Diffuse dark red Subdural and Subarachnoid haemorrhage on the surface of both cerebral and cerebellar hemispheres of brain; Brain: Oedematous; Laceration 3x1x1cm on the left temporal lobe of the brain; Laceration 1x1x1cm on the right temporal lobe of the brain; cut section; Normal; Base of Skull: Intact.

Heart: Normal in size; cut section: All chambers contained fluid and clotted blood; Valves; Normal; Coronaries: Patent: Great Vessels: Multiple raised Atheromatous plaques on the inner surface on the root of

Aorta.

Lungs: Normal in size; cut section; Congested.

Larynx and Trachea: Empty; Hyoid bone and other laryngeal cartilages: Intact.

Stomach: Contained 50 ml of dark green coloured fluid with no definite smell; mucosa: patchy areas of congestion.

Liver, Spleen and Kidneys: Normal in size; cut section: Congested

Bladder: Empty.

(xi) PW13 collected the viscera and sent it for chemical examination. After receiving the report from the chemical examiner, he gave opinion that the deceased would have appeared to have died due to the injuries sustained by him in his head. The postmortem certificate issued by PW13 is Ex.P12.

(xii) In continuation of the investigation, PW14, arrested the other accused and recorded their confession statement. Since, he was transferred, he handed over the case records to his successor PW15-Annadurai, for further investigation. PW15-Annadurai, the then Inspector of Taluk Police Station, Arakonam, took the case for further investigation and recorded the statement from the Doctor, who conducted the autopsy. On completion of investigation, he laid a charge sheet against the accused for the offences mentioned above.

5. Based on the materials available, the trial Court framed the charges under Sections 295(b), 352, 307, 302 IPC read with Section 4 Tamil Nadu Prohibition of Women Harassment Act. The accused denied the charges and opted for trial. Therefore, the accused were put on trial.

6. During the course of trial proceedings, in order to prove the case of the prosecution, 15 witnesses have been examined on the side of prosecution as PW1 to PW15. Further, 24 documents were marked as Exs.P1 to P24. Besides, two material objects were marked as M.O.1 and M.O.2. During the time of cross examination, the Accident Registers dated 25.12.2015 relating to the 2nd accused i.e., deceased Ponnusamy were marked as Exs.D1 and D2.

7. Out of the said witnesses, PW1-Gopi, is the son of the deceased Mani. He has spoken about the details of occurrence and the offence alleged to have been committed by the accused. He has further stated about the injury sustained by the deceased and the treatment given to him. Further, he has stated about the death of his father. PW2-Kovendan, who is the brother of PW1 has also stated about the assault made by the accused, towards

the deceased and also the injuries sustained by him during the course of such attack. According to him, at the time of occurrence, the appellant assaulted his father by using wooden logs i.e., M.O.1 and M.O.2, besides, the appellant also assaulted him on his head by using the wooden log.

8. PW3-Selvi and PW4-Divya, are the eye witnesses to the occurrence. They have spoken about the assault committed by the appellant and about the assault committed by the other accused towards the deceased and PW2-Kovendan. PW5-Kabali and PW6-Yegambaram alleged to be the eye witnesses to the occurrence, but they have not supported the case of the prosecution. Both of them were treated as hostile witnesses.

9. PW7-Sekar and PW8-Neelamegam are the witnesses who have attested in the confession statement and recovery mahazar. However, before the trial Court, they have not supported the case of the prosecution. PW9-Kumaresan, is the witness to the confession given by the deceased accused. PW10-Dr.Shalini, attached to Government Hospital, Kanchipuram, has stated about the injuries sustained by the deceased Mani and about the injuries sustained by PW2-Kovendan.

10. PW11-Murugesan, is the Grade-I Constable of Taluk Office Police Station, Kanchipuram. He has spoken about the entrustment of dead body for postmortem. PW13-Dr.Narendar attached to Madras Medical College has spoken about the details of injury sustained by the deceased Mani and about the cause of death.

11. PW12-Kannan, PW14-N.C.Sarathy and PW15-Annadurai, are the police officials, who have stated about the registration of case, mode of investigation conducted and with regard to the laying of the final report before the Magistrate Court.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., all the accused denied the same as false. However, they did not chose to examine any witness. Only two documents were marked on the side of the defense as Ex.D1 and D2.

13. Having considered all the above, the learned Sessions Judge, found the appellant alone guilty for homicidal death and for causing simple injury to PW2 by using the dangerous weapon. He has also come to the conclusion that the appellant committed obscenity in the public place and attempted to outrage the modesty of prosecution witnesses PW3 and 4. Accordingly, the appellant was convicted under section 294(b), 324 and 302 IPC and sentenced for the offences as stated in

Paragraph No.3 of this judgment. In respect to other accused, the trial Court acquitted them for the charges.

14. Aggrieved over the above conviction and sentence, the appellant is before this Court with the present appeal.

15. We have heard Mr. R. John Sathyan, learned counsel appearing for the appellant/accused and learned Additional Public Prosecutor. We have also perused the records carefully.

16. In the trial Court, the prosecution attempted to prove their case through the prosecution witnesses, out of which, PW1 to PW4 were examined as eyewitnesses to the alleged offence.

17. The learned counsel for the appellant submitted that PW1 to PW4 are all chance witnesses. In respect of the assault made by the appellant and other accused, they have given different version before the trial Court. Further, in respect to the injury sustained by the 2nd accused (deceased Ponnusamy), no explanation was offered on the side of the prosecution. In respect to the recovery, the evidence given by the investigation officer was not corroborated through any independent witness. In the said circumstances, the trial Court erred in convicting the appellant/accused and he prayed for allowing this appeal.

18. Per contra, the learned Additional Public Prosecutor would contend that the accused 1 to 4 have attacked the prosecution witnesses one after the other and therefore, it is not possible to expect, the same version from the mouth of all the eye witnesses in respect to the assault made by the accused. She would further contend that in respect of the injuries sustained by the deceased 2nd accused, the said injury is superficial in nature and therefore, the prosecution has not explained the same. According to her though, the evidence given by the investigation officer in respect to the recovery of M.O.1 and M.O.2 is not corroborated through the independent witness, that alone cannot be taken into account for disbelieving the entire case of the prosecution.

19. Upon considering the arguments advanced by either side, it is true that there are minor contradictions in the deposition of PWs 1 to 4. According to PW1, at the time of occurrence, the present accused by using filthy words, abused PW1 and assaulted him on his hands. Further, in the course of some transaction, he assaulted PW2, by using the same wooden log and thereafter, by taking the wooden log, which was in possession of the deceased 2nd accused Ponnusamy, he assaulted

the deceased Mani, on the back of his head.

20. Corroborating the said evidence, PW2, who is also one of the injured, has stated that during the time of occurrence, appellant herein assaulted the PW1 on his hands. Further he has stated that by taking the wooden log from his father i.e. deceased 2nd accused Ponnusamy, he assaulted the deceased on the back of his head. To corroborate the same, PW10-the Doctor who treated PW2 has also stated that during the time of examination, it was noticed that PW2, sustained a lacerated injury on the back of his head, measuring 8x5x1cm. Further, she had issued a certificate stating that there is a contusion, measuring 0.5x0.5cm on the right side shoulder of PW2. According to her, the injuries sustained by PW2 is simple in nature. In this regard, the evidence given by PW1 and PW2 in respect of the assault made by the accused towards the deceased Mani and PW2, is cogent and convincing. PW3 and PW4 have also supported the evidence given by PW1 and PW2 with minor contradictions. In this context, it is relevant and useful to see the judgement of our Hon'ble Apex Court in Sachin Kumar Singhraha Vs. State of Madhya Pradesh, reported in 2019 (8) SCC 371 wherein our Hon'ble Apex Court 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."

21. Therefore, by applying the principles set out in the case referred above to the facts of the present case, we are of the view that PWs 1 to 4, who hails from Village have narrated the occurrence after many days of the occurrence and therefore, there is every possibility for certain minor inconsistencies. However, such minor contradictions does not affect the root of the case of the prosecution and therefore, we are of the considered opinion that the evidences given by PW1 to PW4 are sufficient to sustain the case of the prosecution.

22. The learned counsel appearing on behalf of the

appellant/accused would strongly contend that during the time of occurrence, the deceased 2nd accused has also sustained injury, for which the prosecution has not offered any explanation and the said lapse committed by the prosecution is nothing but fatal to the case of the prosecution. Therefore, he would contend that the appellant is entitled for the relief of acquittal.

23. On considering the submission made by the learned counsel for the appellant, we have perused the wound certificate issued in favour of the second accused, marked as Ex.D1 and D2. In this regard, PW10-Dr.Shalini, who treated the deceased 2nd accused viz., Ponnusamy has stated in her evidence that on the date of occurrence itself, the said Ponnusamy was treated by her. Now, on going through Exs.D1 to D2, though the nature of injury sustained by the said Ponnusamy was not explained by the said doctor, according to her, the said Ponnusamy sustained a contusion and abrasion on his left parietal region. Further, he sustained lacerated injury measuring 1x1cm. The details of injuries stated by the doctor, would establish the fact that the said Ponnusamy sustained a simple injury and the same was superficial in nature. In other words, the witnesses examined on the side of the prosecution, including the investigation officer have not stated about the injuries sustained by the deceased 2nd accused, either in the FIR or at the time of giving evidence.

24. It is the settled preposition that non explanation of injuries sustained by the accused, is fatal to prosecution. However, in this case, considering the fact that the accused sustained a simple injury, it will not have the effect of capsizing the case of the prosecution. In this context, useful reference can be made to the judgment of our Hon'ble Apex Court in Dashrath alias Jolo and Another Vs. State of Chhattisgarh, reported in 2018 (4) SCC 428, wherein our Hon'ble Apex Court, has held as follows:

"8. ..It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question...[vide Takhaji Hiraji v.

Thakore Kubersing Chamansing, (2001) 6 SCC 1454]"

25. Therefore, as per the precedent set out by our Hon'ble Apex Court, only if the injury sustained by the accused in the occurrence is of serious nature, that should be explained properly by the prosecution. But the position of the case in our hand is entirely different. Therefore, since the accused sustained only simple injury, the lapse committed by the prosecution in this aspect would not vitiate the entire case of the prosecution and therefore, the submission made by the learned counsel for the appellant/accused is rejected

26. The next submission made by the learned counsel for the appellant/ accused is that, the recovery of material objects (M.O.1 and M.O.2) is spoken to only by the investigation officer but it is not supported by any independent witness and hence, the same has affected the case of the prosecution.

27. It is true that as per the evidence given by the investigation officer, he arrested the accused, recorded the confession and recovered the material objects 1 and 2 in the presence of PW7 and PW8. Unfortunately, during the time of giving evidence, both PW7 and 8 did not support the case of the prosecution and they were treated as hostile. Thus, there is no doubt that the evidence given by the investigation officer is not corroborated through any independent witness. At the same time, it is not the case of the appellant that the material objects were recovered at his instance. In any event, in such a situation, it is necessary to see whether the non corroboration of the deposition of the investigation officer with respect to the factum of recovery, by any independent witness, will affect the case of the prosecution or not.

28. It is not in dispute, that the assault made by the accused was corroborated through the evidence given by the Doctor. The Doctor in his evidence has stated that the deceased died due to injuries on his head. In the present case, the prosecution witnesses 1 to 4 have clearly deposed about the manner in which the appellant has caused the injuries by using stick. In such circumstances, when the prosecution has proved that the death of the deceased was caused by using a stick, the non-corroboration of the deposition of the investigation officer with respect to recovery, will not assume any significance in this case. Furthermore, the offence committed by the appellant/accused in this case has led to the death of the deceased and it is grave in nature. In this context, it is necessary to see the judgment of our Hon'ble Apex Court in Kattukulangara Madhavan (dead) through Legal Representatives Vs. Majeed and Others, reported in 2017 (2) SCC (Cri) 611 in which

at paragraph No.19, our Hon'ble Apex Court has held as follows:

"14. Justice V. R. Krishna Iyer in Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 held as follows:

"6...The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in Proof of Guilt.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted persons and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent..." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic."

29. Therefore, considering the nature of the offence committed by the appellant/accused, we are of the considered opinion that non corroboration of the deposition of the investigation officer by way of independent witnesses, with respect to recovery of material objects MOs 1 and 2 in this case, will not affect the case of the prosecution.

30. The next submission made by the learned counsel for the appellant/accused is that all the eye witnesses examined on the side of the prosecution for proving the guilt of accused are related to each other and thereby their evidence cannot be accepted in toto.

31. Now, on considering the said submission with the case in our hand it is true all the eyewitnesses examined as PW1 to PW4 are all closely related to the deceased as well as the accused. However, as per the evidence given by PW1 the house of the accused and the deceased are adjacent to each other. In the said circumstances, since the alleged occurrence had happened in the evening hours of 25.12.2015, it is usual that only the family members of the deceased might be present in the place of occurrence and witnessed the occurrence. In this connection, it is relevant to see the following judgments.

(i) In Ashok Kumar Pandey Vs. State of Delhi, reported in (2002) 4 SCC 76, our Hon'ble Apex Court has held as follows:

"It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible."

(ii) In Ganapathi and Another Vs. State of Tamilnadu, reported in 2018 (5) SCC 549, our Hon'ble Apex Court has held as follows:

"15. Merely because the eye-witnesses 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 [See : Maranadu and Anr. Vs. State by Inspector of Police, Tamil Nadu (2008) 16 SCC 529]."

32. Therefore, considering the said precedent set out by our Hon'ble Apex Court, we are of the opinion that only because of the reason that the eyewitnesses are related to each other, that alone cannot be a ground for acquitting the accused from the charges.

33. The last submission made by the learned counsel for the appellant/accused is that the alleged occurrence had happened as a result of wordy altercation made between the deceased and the accused. In other words, the accused is not having any intention to murder the deceased Mani. Therefore, the said act committed by the appellant/accused will not fall within the purview of Section 300 IPC and utmost he has committed the offence of culpable homicide and therefore, he pleaded for mercy.

34. Now, on considering the facts and circumstances of the case, it is true that the prosecution has not established the motive for the appellant to commit the offence of murder. Only on the fateful day, due to the result of wordy altercation, between the deceased and other eyewitnesses, by using the weapon, which is occasionally found in the place of occurrence, the appellant/accused has committed the offence. In fact, the evidence produced against the appellant/ accused does not show that the accused had any motive to cause the death of the

deceased or intend to cause the bodily injury, which is sufficient to cause the death of the deceased. The evidence on record also does not disclose that the injuries caused to the body of the deceased must in all probabilities have caused the death or likely to cause death. On the spur of the movement, during the heated exchange of words, appellant/accused caused injuries on the body of the deceased, which caused his death. Therefore, we are of the considered opinion that the offence committed by the accused will only fall under Section 304(1) IPC and not under Section 302 of IPC. In this regard, the submission made by the learned counsel for the appellant/accused is accepted and therefore, the appeal is partly allowed.

35. In the result, the Criminal Appeal is partly allowed by confirming the Judgment of conviction dated 06.10.2018 passed in S.C. No. 18 of 2017 on the file of the learned Sessions Judge, Sessions Court No.II, Kancheepuram, however, we modify the sentence with respect to the offence under Section 302 of IPC, instead, the accused/appellant is convicted for the offence under Section 304(1) IPC and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default, to undergo rigorous imprisonment for a period of six months. At the same time, we are not inclined to modify the sentence imposed on the appellant in respect of the offence under Sections 294(b) and 324 IPC and they remain unaltered. All the sentences are ordered to run concurrently. The period of sentence already undergone by the appellant accused shall be given set off under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ars/rsh

To

1. The Sessions Judge, District Court No.II, Kancheepuram
2. The Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram District

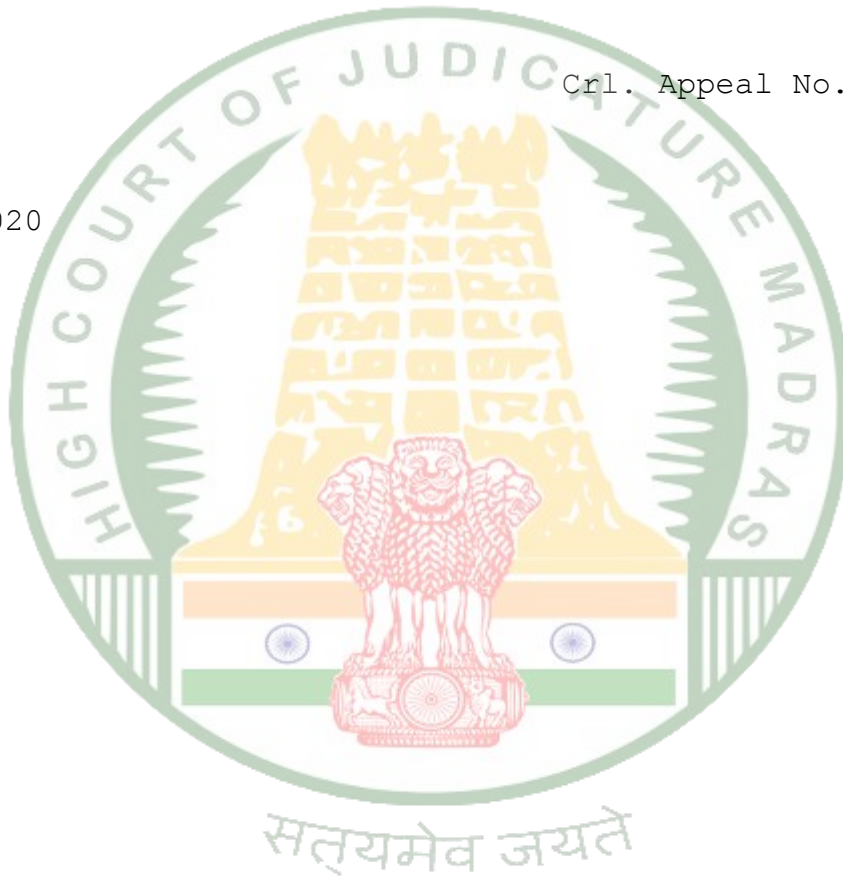
3.The Superitendent
Central Prison
Puzhal Chennai

4.The Public Prosecutor
High Court,
Madras

+1 cc to Mr.R.John Sathyan advocate sr1203

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