



Bail Slip

M.Thangaraj@Ponnusamy Appellant/Accused No.1 in Crl.A(MD) No.25/2013, 2nd Respondent/Accused No.1 in Crl.A(MD)No.94/2018, S/o.Marappa Gounder, was released on bail vide Order made in MP (MD)No.2/2014 in Crl.A(MD)No.25/2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2020

Pronounced on : 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A. (MD)Nos.25 of 2014, 93 & 94 of 2018

Crl.A. (MD)No.25 of 2014:

M.Thangaraj ... Appellant/Accused No.1

v.

State of Tamil Nadu
Rep. by the Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
Cr.No.221 of 2011

... Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.53 of 2012 on the file of the Sessions Court, Karur District, dated 14.09.2013 in Crime No.221 of 2011 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.T.Lajapathi Roy

For Respondent : Mr.R.Anandaraj,
Additional Public Prosecutor

Crl.A. (MD)No.93 of 2018:

M.Santhi ... Appellant/Defacto Complainant

v.

1.State rep by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur.
Cr.No.221 of 2011

...1st Respondent/Complainant



2.Dhanam @ Dhanalakshmi

... 2nd Respondent/Accused No.2

PRAYER: Appeal filed under Section 397 R/w 401 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.53 of 2012 on the file of the Sessions Court, Karur District, dated 14.09.2013 and set aside the same and to convict the accused.

For Appellant : Mr.K.Suresh

For Respondents : Mr.R.Anandaraj,
Additional Public Prosecutor for R.1

Mr.T.Lajapathi Roy for R.2

Crl.A. (MD)No.94 of 2018:

M.Santhi

... Appellant/Defacto Complainant

v.

1.State rep by
The Inspector of Police,
Velayuthampalayam Police Station,
Karur.
Cr.No.221 of 2011

...1st Respondent/Complainant

2.Thangaraj @ Ponnusamy

...2nd Respondent/Accused No.1

PRAYER: Appeal filed to call for the entire records connected to the judgment in S.C.No.53 of 2012 on the file of the Sessions Court, Karur District, dated 14.09.2013 and enhance the conviction and sentence imposed against the accused.

For Appellant : Mr.K.Suresh

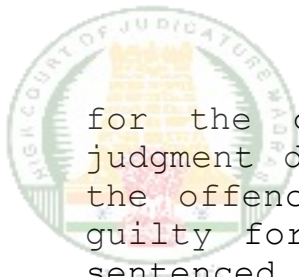
For Respondents : Mr.R.Anandaraj,
Additional Public Prosecutor for R.1

Mr.T.Lajapathi Roy for R.2

COMMON JUDGMENT

B. PUGALENDHI, J. ,

The criminal appeal in Crl.A(MD)No.25 of 2014 is filed by the first accused in S.C.No.53 of 2012, on the file of the Sessions Court, Karur, as against the judgment of conviction and sentence passed by the trial Court in S.C.No.53 of 2012, dated 14.09.2013. The first accused, namely, Thangaraj @ Ponnusamy was tried along with the second accused, namely, Dhanam @ Dhanalakshmi



for the offence under Section 302 IPC. The trial Court, by judgment dated 14.09.2013, found both the accused not guilty for the offence under Section 302 IPC, but, found the first accused guilty for the offence under Section 304(ii) IPC, convicted and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5000/-, i/d to undergo rigorous imprisonment for six months. Aggrieved, the first accused has preferred Crl.A. (MD)No.25 of 2014.

2. The defacto complainant [PW1], namely, Santhi, filed Crl.A(MD)Nos.93 & 94 of 2018 as against the judgment of acquittal of the second accused and the first accused for the offence under Section 302 IPC.

3. Since all the appeals are filed as against the judgment of the learned Sessions Judge, Karur, in S.C.No.53 of 2012, dated 14.09.2013, all the appeals are taken up together and disposed of by way of this common judgment. For the sake of convenience and clarity, the parties are referred to as per their rank before the trial Court.

4. The brief facts of the prosecution case, in a nutshell, are as follows:

4.1. This is a case of double murder. The first accused and the deceased are close relatives. Murugesan [D1] is a patrikin of the first accused. Murugesan [D1] and the first accused are having some lands at Pugalur RS. The first accused has constructed a house in his land in S.No.1079, which is adjacent to the land of Murugesan [D1]. Murugesan [D1] was having a grievance that the first accused has encroached a portion of his land and also constructed the house. While so, the first accused has completed the construction and also performed the house warming ceremony on 03.06.2011. On 17.06.2011, at about 06.45 am, when Murugesan [D1] visited his land along with his Wife [PW1] and Mother, Arukani [D2], they found the boundary stones of their land were removed. Murugesan [D1] and Arukani [D2], by collecting a crowbar from the neighbours, attempted to erect the boundary stones, which were removed and at that time, the first accused and his wife / the second accused abused them with filthy words. The first accused, with a casuarina wooden log, attacked Murugesan [D1] and the second accused took a block stone and threw the same on the head of Arukani [D2]. Both D1 and D2 sustained grievous injuries and PW1 raised hue and cry. On hearing the alarm raised by PW1, PWs.2 to 4 witnessed the occurrence and came to their rescue.

4.2. Both D1 and D2 were taken to the Government Hospital, Velayuthampalayam, where D1 was declared dead. Arukani [D2] was taken to a Private Hospital, namely, Amaravathi Hospital, Karur, at about 07.25 am, on 17.06.2011 and Dr.Velusamy [PW15] provided



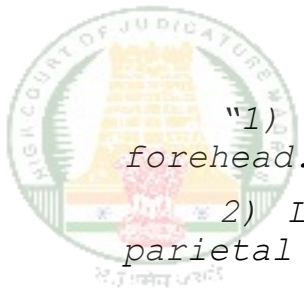
first aid treatment and recorded the injuries in the Accident Register [Ex.P23] and referred the injured [D2] to Kovai Medical Centre Hospital, Coimbatore.

4.3. Dr.Suganthi [PW16], Civil Assistant Surgeon at Kovai Medical Centre Hospital, Coimbatore, admitted the injured [D2] at about 01.55 pm and referred her to the Intensive Care Unit. Dr.S.Yuvaraj [PW18], the Doctor in-charge of the Intensive Care Unit at Kovai Medical Centre Hospital, Coimbatore and Dr.Suresh Jeyapalam [PW17], Neuro Surgeon, Kovai Medical Centre Hospital, Coimbatore provided treatment to Arukani [D2]. Despite their best efforts, Arukani [D2] died in the Hospital on 17.06.2011 at 08.00 pm.

4.4. In the meantime, Santhi [PW1] went to Velayuthampalayam Police Station and gave a written complaint [Ex.P1] to the Sub-Inspector of Police [PW13], Velayuthampalayam Police Station. The Sub-Inspector of Police [PW13] received the complaint at about 09.00 am and registered a case in Crime No.221 of 2011, as against Thangaraj @ Ponnusamy [A1] and Dhanam @ Dhanalakshmi [A2], under Sections 302 and 307 IPC. The printed copy of the First Information Report [Ex.P14] was also sent to the concerned Judicial Magistrate Court and to the Inspector of Police [PW14]. The printed First Information Report [Ex.P14] reached the learned Judicial Magistrate No.II, Karur, on 17.06.2011 at 12.30 hours.

4.5. Thiru. Dineshkumar, the then Inspector of Police, Velayuthapalayam Police Station [PW14], on receipt of the First Information Report, proceeded to the place of occurrence at Chekkumedu, prepared an observation mahazar [Ex.P2] and a rough sketch [Ex.P15] in the presence of one Balasubramaniam [PW4] and another. PW14 arranged for a Photographer, Manikrishnan [PW11], who took photographs from the place of occurrence. PW14 also recovered earth with and without blood in MO4 and MO5, respectively and the broken stones [MO3 series] and a casuarina wooden log with hair [MO1] from the place of occurrence under a cover of mahazar [Ex.P3] in the presence of the said witnesses.

4.6. Thereafter, PW14 went to the Government Hospital, Velayuthampalayam, where the dead body of Murugesan [D1] was kept and he conducted the inquest in the presence of panchayatars on 17.06.2011 from 12.30 to 02.30 pm. The inquest report is marked as Ex.P17. After completing the inquest, he made a request for postmortem through one Velmurugan [PW9], a Grade I Constable and based on that request, Dr.Santha Devi [PW7] conducted the postmortem on the body of Murugesan [D1] on 17.06.2011 at about 02.40 pm and noted down the following external injuries:



"1) Lacerated injury 4 x 1 x bone depth seen on the left forehead.

2) Lacerated injury 7 x 1 x bone depth seen on the right parietal region.

3) Lacerated injury 10 x 1 x bone depth seen on the right parieto occipital region.

4) Lacerated injury 10 x 3 x 3 cm seen on right temporo occipital region."

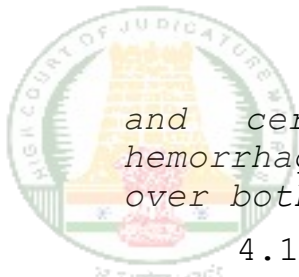
4.7. The Doctor [PW7] gave the postmortem certificate [Ex.P7] with her opinion that the deceased [D1] would appear to have died of shock and hemorrhage due to head injury, 6 to 12 hours prior to the Autopsy.

4.8. On the same day, ie., on 17.06.2011, at about 03.30 pm, the investigation officer [PW14] arrested the second accused at Kandampalayam in the presence of the Village Administrative Officer [PW5] and recorded her confession statement. But, there was no recovery from her.

4.9. On receipt of information from the Kovai Medical Centre Hospital, Coimbatore, that the injured Arukani [D2] succumbed to injury, PW14 altered the offence from Sections 302 and 307 IPC into Section 302 IPC (2 counts) and sent the alteration report in Ex.P19. PW14 went to the Kovai Medical Centre Hospital, Coimbatore, on 18.06.2011 and conducted the inquest on the dead body of Arukani [D2] from 10.00 am to 12.00 noon, in the presence of panchayatars. The inquest report is marked as Ex.P20. He made a request for postmortem of Arukani [D2] through one Mohan [PW10], a Grade I Constable to the Government Medical College Hospital, Coimbatore.

4.10. Accordingly, Dr.Muthiah [PW8], Assistant Professor, Government Medical College Hospital, Coimbatore, conducted the Autopsy on 18.06.2011 at about 12.15 pm and has noted down the following ante mortem injuries on the body of Arukani [D2]:

"C" shaped sutured wound 6 cm in length noted over right parieto temporal region. Sutured wound 4 cm in length noted over left occipital region. On dissection of Scalp, Skull and Dura : Sub scalp hematoma weighing about 5 grams noted over left frontal region. Sub scalp contusion 12 x 8 cm noted over left fronto temporal region, 12 x 7 cm noted over right fronto temporal region, 8 x 8 cm noted over right temporo occipital region and 6 x 4 cm noted over left occipital region. Crack Fracture 9 cm in length noted over right temporo parietal bone. Extra dural clot weighing about 25 grams noted over right temporal lobes. Sub dural clot weighing about 75 grams noted over both cerebral hemisphere



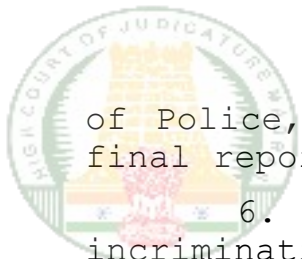
and cerebellum. Diffuse sub dural and sub arachnoid hemorrhages noted over entire brain. Skull base fracture noted over both middle cranial fossa."

4.11. The Doctor [PW8] has also preserved the viscera and sent the same for chemical analysis. He issued the postmortem certificate in Ex.P9, with a final opinion that the deceased [D2] would appear to have died of head injury and its impact. Ex.P10 is the chemical analysis report, which states that the viscera does not contain any poison.

4.12. In the meantime, the first accused surrendered before the learned Judicial Magistrate No.II, Karur, on 17.06.2011 itself and on information from the Court, PW14 submitted a requisition for police custody and took the first accused on police custody on 23.06.2011. Pursuant to the confession statement of the first accused, in the presence of the Village Administrative Officer [PW6], PW14 recovered a bloodstained casuarina tree without hair [MO2], a bloodstained shirt [MO6] and a bloodstained lungi [MO7] under a cover of mahazar Ex.P5 on 24.06.2011. The Investigation Officer [PW14] has also made a request under Ex.P12 for sending the material objects for chemical analysis and also examined PWs.1 to 4 and recorded their statements.

4.13. Thiru Sukumar [PW19], Inspector of Police, conducted the further investigation in this case. He examined Dr.Muthaiah [PW8] and other witnesses and after completing the investigation, filed the final report as against the accused on 04.09.2011, before the learned Judicial Magistrate No.II, Karur. The learned Judicial Magistrate took the same on file in PRC.No.10 of 2012 and committed to the Court of Sessions. The Sessions Court took the case on file in S.C.No.53 of 2012.

5. During the trial, on the side of the prosecution, 19 witnesses were examined and 26 exhibits were marked, besides 12 material objects. PW1 is the wife of Murugesan [D1] and daughter-in-law of Arukani [D2]. PWs.2, 3 & 4 are the residents of Chekkumedu and are examined as eye witnesses. PW5 is the Village Administrative Officer, in whose presence the confession statement of the second accused was recorded and PW6, another Village Administrative Officer, in whose presence the confession statement of the first accused as well as the subsequent recovery was made. Dr.Shanthadevi [PW7] has conducted the Autopsy for Murugesan [D1] and Dr.Muthiah [PW8] has conducted the Autopsy for Arukani [D2]. PW11 is the Photographer. PW13 is the Sub-Inspector of Police, who registered the First Information Report and PW14 is the Inspector of Police who conducted the preliminary investigation. PW15 is the Doctor, who treated Arukani [D2] at Amaravathi Hospital, Karur and PWs.16 to 18 are the Doctors, who treated Arukani [D2] at the Kowai Medical Centre Hospital, Coimbatore. PW19 is the Inspector

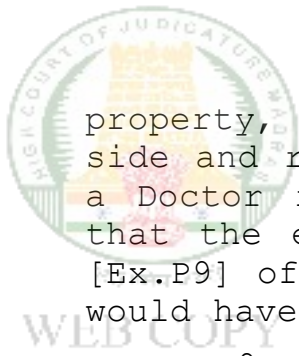


of Police, who conducted the further investigation and filed the final report.

6. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Both the accused have filed a detailed statement under Section 313(4) Cr.P.C. They have also examined one Mukuntha Ramanujam, Taluk Surveyor, Aravankuruchi, as DW1 and one Dr.M.Natarajan, Medical Practitioner at Bhavani as DW2. The invitation for the house warming ceremony of the accused on 03.06.2011 is marked as Ex.D1 and certain photographs were marked as Ex.D2 to D6. A receipt for the complaint of one Ponnusamy as against Balasubramanian [PW4], which was treated as petition enquiry in No.1 of 2011 on the file of the Velayuthampalayam Police Station is marked as Ex.D7 and the application filed by the first accused to the Tahsildar for marking the boundaries and for sub-division on 21.09.2010 along with the orders of the Tahsildar in R.D.R.No.4039 of 2020, dated 22.09.2010 are marked as Ex.D8. The patta issued by the Tahsildar subsequent to the measurements and sub-division dated 08.01.2011 is marked as Ex.D9.

7. The first accused, in his statement, stated that Murugesan [D1] is the son of Poraiya Goundar, who is the younger brother of his father, namely, Marappa Goundar and Murugesan [D1] was jealous on the construction of a new house in his adjacent property by the first accused. The first accused has stated that he preformed the boomi pooja on 04.06.2010, completed the construction and also performed the house warming ceremony on 03.06.2011. Even at the time of construction, when the deceased created some problem, the first accused took steps for measuring the land and after measurement, boundary stones were also laid in the year 2010 itself. On 16.06.2011, Murugesan [D1] removed the boundary stones from the Eastern side and Northern side and the first accused refixed it at the same place. Again, on 17.06.2011, at about 06.15 am, Murugesan [D1] attempted to remove the boundary stones on the Northern side and broke the stones by throwing it on the middle boundary stones. When the first accused questioned the same, Murugesan [D1] tried to assault him with crowbar and out of fear and as a self defense, he attacked Murugesan [D1] with a casuarina wooden log and at that time, Arukani [D2] came in between then and therefore, the blow fell down on her and Arukani [D2] fell down on the boundary stone. Thereafter, Murugesan [D1] took the sickle from Arukani [D2] and attempted to attack the first accused and as a self defense, he attacked him with the casuarina wooden log.

8. DW1, the Surveyor, in his evidence has stated that the first accused made a request in Ex.D8 to measure his land and for issuing a separate patta in S.No.1079/12 and on that basis, he measured the property on 20.11.2010 and after measuring the



property, he also erected three boundary stones on the Eastern side and recommended for issuing patta to the first accused. DW2, a Doctor running a private dispensary at Bhavani, gave evidence that the external injury mentioned in the postmortem certificate [Ex.P9] of Arukani [D2] are not possible through MO3 series, if it would have been dropped from a height of four feet.

9. The trial Court, in conclusion of the trial, found both the accused not guilty for the offence under Section 302 IPC, but found the first accused guilty for the offence under Section 304 (ii) IPC, convicted and sentenced him as stated supra. Aggrieved, the present appeals are preferred by the respective parties.

10. Heard Mr.T.Lajapathi Roy, learned Counsel for the appellant in Crl.A(MD)No.25 of 2014 / private respondent in Crl.A.(MD)Nos.93 & 94 of 2018 and Mr.Suresh, learned Counsel for the appellant in Crl.A(MD)Nos.93 & 94 of 2018 and Mr.R.Anandaraj, learned Additional Public Prosecutor for the State.

11. Mr.T.Lajapathi Roy, learned Counsel for the appellant in Crl.A.(MD)No.25 of 2014 / private respondent in Crl.A.(MD)Nos.93 & 94 of 2018 made his submissions as follows:

11.1. The occurrence took place near the house of the accused and the deceased are the aggressors in this case. The occurrence is pursuant to the act of Murugesan [D1] in attempting to remove the boundary stones laid by the Surveyor [DW1] after due survey and also attempting to assault the first accused. The first accused has started constructing the house in the year 2010 and when Murugesan [D1] raised certain problem with regard to the boundary, the first accused made a request for survey and on the application filed by him, the Surveyor [DW1] has also measured the land in dispute and also fixed the boundaries and laid boundary stones. Thereafter, the construction was also completed and the house warming ceremony was also conducted on 03.06.2011. While so, on 16.06.2011, the deceased with an intention to create problem have removed the boundary stones and when the accused attempted to re-plant the same, the occurrence had taken place.

11.2. The accused has not denied the occurrence. It is on the act of Murugesan [D1], the occurrence had taken place and the first accused assaulted Murugesan [D1] only on a self defense with a casuarina stick, which was lying near the place of occurrence and there was no pre-meditation or intention to commit the offence. Even after the occurrence, the first accused, by himself, went and surrendered before the concerned Judicial Magistrate Court on the same day.

11.3. The Inspector of Police [PW14] has recovered a casuarina wooden log with hair [MO1] from the place of occurrence and this hair is a lengthy hair and also sent for chemical



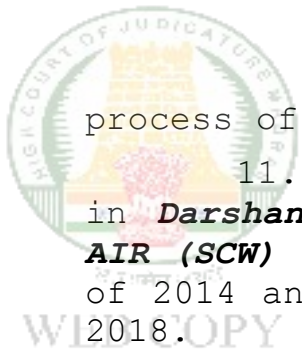
analysis. But the chemical analysis reports were not placed before the Court.

11.4. PWs.1 to 4 are interested witnesses. PW1, the wife of Murugesan [D1] and daughter-in-law of Arukani [D2], is said to have witnessed the occurrence by standing 100 feet away from the place of occurrence. But, she has not lifted her husband [D1] or her mother-in-law [D2] and no blood stained cloths were recovered from her. She did not attempt to prevent the accused and her conduct in standing away from the place of occurrence is quite strange and therefore, she cannot be an eye witness, but inserted as an eye witness for the purpose of this case.

11.5. PW2 is the brother of PW4 and as against PW4, the first accused lodged a complaint on 02.01.2011 on behalf of one Rani and the same was treated as petition enquiry in Ex.D7 and the said complaint was not proceeded with due to the influence of Murugesan [D1]. But the Revenue Divisional Officer conducted an enquiry on the complaint for the damages caused by PW4 to the pipeline of the first accused and Ponnusamy and therefore, PWs.2 & 4 with that enmity gave false evidence as against the accused, as if they have witnessed the occurrence. Though they said to have witnessed the occurrence, PW2 did not accompany the deceased to the Hospital and they did not attempt to prevent the occurrence. They have not lifted the deceased and no blood stained cloths were recovered from them and there are contradictions in their evidence and therefore, it is not proper for the trial Court to convict the first accused on the evidence of PWs.1 to 4.

11.6. By referring the complaint [Ex.P1] and the evidence of PW1, the learned Counsel submitted that PW1, in her complaint has stated that after the occurrence, PW2 arranged for Ambulance and both Murugesan [D1] and Arukani [D2] were taken to Amaravathi Hospital, Karur, and after admitting Arukani [D2] at Karur, taken her husband to Government Hospital, Velayuthampalayam, around 08.00 am and thereafter, went to Velayuthampalayam Police Station and lodged the complaint [Ex.P1]. But, in her evidence, PW1 denied that she did not accompany the deceased to Amaravathi Hospital and her husband was not taken to Amaravathi Hospital and she went straight away to the Velayuthampalayam Police Station and lodged the complaint [Ex.P1]. According to PW1, in her evidence, she stated the incident to the Inspector of Police, who, in turn, directed the Constable to write the complaint and in the complaint prepared by the Police, she signed. Whereas, according to PW13, the Sub-Inspector of Police, who registered the complaint [Ex.P1], he received a written complaint from PW1 on 17.06.2011 at about 09.00 am and based on the written complaint, he registered the case in Crime No.221 of 2011.

11.7. Insofar as the second accused is concerned, she was not at all present at the place of occurrence and was in the



process of sending her children to School.

11.8. The learned Counsel has also relied upon the decision in ***Darshan Singh v. State of Punjab & another***, reported in **2010 AIR (SCW) 832** and prays for allowing the appeal in Crl.A.(MD)No.25 of 2014 and for dismissing the appeal in Crl.A.(MD)Nos.93 & 94 of 2018.

12. Mr.R.Anandaraj, learned Additional Public Prosecutor appearing for the State would submit that the prosecution has examined PWs.1 to 4 and they have narrated the occurrence in a cogent manner. Moreover, the evidence of the Doctors [PWs.7 & 8] who conducted the postmortem and the postmortem certificates in Exs.P7 & P9 would also demonstrate that the deceased [D1 & D2] died consequent to the injuries suffered at the hands of the accused and the wooden casuarina stick [MO1] and the broken stone [MO3 series] were also recovered by the investigation agency. Therefore, the prosecution has proved the case beyond any reasonable doubt. However considering the weapon used and the fact that the occurrence was committed due to a sudden quarrel, the trial Court has acquitted the first accused for the offence under Section 302 IPC, but rightly convicted him for the offence under Section 304(ii) IPC. Therefore, he prays for dismissal insofar as Crl.A.(MD)Nos.25 of 2014 & 94 of 2018 are concerned and prays for interference insofar as Crl.A.(MD)No.93 of 2018.

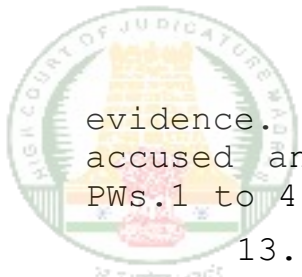
13. Mr.Suresh, learned Counsel for the appellant in Crl.A (MD)Nos.93 & 94 of 2018 has made his submissions as follows:

13.1. There is no injury on the body of the first accused and it is not the case of the defense that the first accused took treatment for any injury. No documents or materials were produced in this regard and in the absence of any injury, the plea of private defense cannot be entertained. Moreover, the accused failed to prove the alleged extraordinary circumstances warranting exercise of right of private defense.

13.2. The trial Court disbelieved the evidence of PWs.2 to 4 that they had previous enmity with the accused and they are interested witnesses. But, there is no previous enmity between PW3 and the accused, even according to the defense version.

13.3. According to the first accused, when he attempted to attack Murugesan [D1] with casuarina wooden log, Arukani [D2] intervened and sustained injuries in her head. Therefore, there is a hair in the casuarina wooden log [MO1] and as such, the non-sending of hair found in MO1 for chemical analysis is not fatal. Moreover, the Doctor [PW8] has also confirmed that the injuries could have been caused through MO3 series.

13.4. Though a plea was raised that the second accused was not at all available in the place of occurrence at the time of occurrence, it has not been substantiated by examining any



evidence. But, on the other hand, the presence of the second accused and the overtact as against her was clearly spoken by PWs.1 to 4.

13.5. There is no discussion by the trial Court with regard to the role played by the second accused, as spoken by PWs.1 to 4, but, has simply concluded that since MO3 series cannot be lifted by the second accused, she could not have been in the place of occurrence.

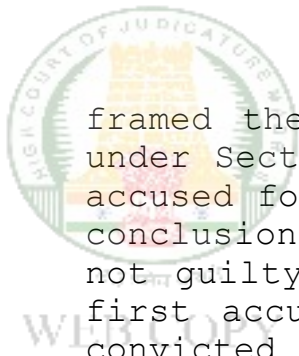
Therefore, he prays for interference.

13.6. In support of his contention, the learned Counsel has also relied upon the following authorities:

- i) MANU/DE/4959/2009, in Mohd.Mohsin v. State.
- ii) (2005) 12 SCC 657, in Bishna @ Bhiswadeb Mahato and Others v. State of WB.
- iii) (2010) 7 SCC 477, in Sikandar Singh and Others v. State of Bihar.
- iv) MANU/SC/0741/1994, in Marwadi Kishor Parmanand and Others v. State of Gujarat.
- v) AIR 2016 SC 5160, in Yogesh Singh v. Mahabeer Singh & Others.
- vi) (2004) 7 SCC 629, in State of U.P. v. Kishan Chand & Others.
- vii) (2002) 6 SCC 81, in Krishna Mochi and Others v. State of Bihar.
- viii) (2010) 9 SCC 567, in C.Muniappan and Others v. State of Tamil Nadu.
- ix) (1974) 3 SCC 277, in State of Punjab v. Jagir Singh and Others.
- x) (2013) 4 SCC 607, in Subal Ghorai and Others v. State of West Bengal.
- xi) (2005) 10 SCC 498, in Ramashish Rai v. Jagdish Singh.
- xii) (1981) 3 SCC 675, in Hari Obula Reddy and Others v. State of Andhra Pradesh.
- xiii) (1977) 4 SCC 452, in Piara Singh and Others v. State of Punjab.

14. This Court paid it's anxious consideration to the rival submissions and also to the available materials.

15. In the occurrence said to have been taken place on 17.06.2011, the husband of PW1, namely, Murugesan [D1] and her mother-in-law, namely, Arukani [D2] succumbed to injuries. On the final report filed by the respondent Police, the trial Court



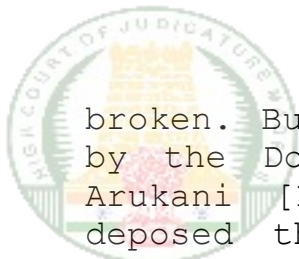
framed the charges as against the first accused for the offence under Section 302 IPC for Murugesan [D1] and as against the second accused for the offence under Section 302 IPC for Arukani [D2]. In conclusion of the trial, the trial Court found both the accused not guilty for the offence under Section 302 IPC, but, found the first accused guilty for the offence under Section 304(ii) IPC, convicted and sentenced him as stated supra. Aggrieved over the judgment of conviction, the first accused preferred Crl.A(MD).No.25 of 2014. The defacto complainant, namely, Santhi [PW1], the wife of Murugesan [D1], preferred Crl.A(MD).No.93 of 2018 as against the order of acquittal passed by the trial Court insofar as the second accused is concerned and Crl.A(MD).No.94 of 2018 as against the order of acquittal passed by the trial Court insofar as the first accused for the offence under Section 302 IPC is concerned.

16. The case of the prosecution is that the first accused and the deceased are having boundary dispute with regard to their property and on account of that, the accused persons, with an intention to kill the deceased, attacked the deceased and committed the offence. In support of the prosecution case, PWs.1 to 4 were examined as eye witnesses and they have stated about the motive and the manner in which the offence was committed in this case. In fact, the accused themselves admitted the commission of offence in their written statement filed under Section 313(4) Cr.P.C., and that on the date of occurrence, the deceased attempted to remove the boundary stones, which were planted after survey and when the first accused questioned the same, the occurrence had taken place on 17.06.2011.

17. The first accused admitted the commission of offence and claimed that he committed the offence in exercise of his right of private defense. But the trial Court has held that the accused is not entitled for the right of private defense, as he has not sustained any injury and even in his defense version, the first accused admitted that he assaulted Murugesan [D1] with a casuarina wooden log [MO1] which could cause death in the ordinary course of nature. However, the trial Court, holding that at the time of assaulting Murugesan [D1], the first accused was not having any intention to commit murder, but only to prevent the act of the deceased, acquitted the first accused under Section 302 IPC and convicted under Section 304(ii) IPC.

18. Insofar as the second accused is concerned, the trial Court has acquitted her on the following grounds:

i) The prosecution projected the case as if the second accused dropped MO3 series stones on the head of Arukani [D2] from a height of four feet, which could have resulted a serious injury. The head of Arukani [D2] would have been smashed and the brain would have come out and also the neck bone would also have been



broken. But, no such fractures were noticed on the deceased [D2] by the Doctor [PW8], who conducted postmortem on the body of Arukani [D2]. The Doctor [DW2] examined by the defense also deposed that if MO3 series stones are dropped from from the height, it would have caused grievous injury on Arukani [D2].

WEB COPY ii) Though the second accused was arrested on the date of occurrence and a confession statement was also obtained in the presence of the Village Administrative Officer [PW5], nothing was recovered pursuant to her confession statement.

iii) MO1, a casuarina stick was recovered from the place of occurrence with a long hair and though the same was sent for chemical analysis, the prosecution has not taken any steps to mark the chemical analysis report. The Investigation Officer did not take any steps to fix the hair found in MO1 either with Murugesan [D1] or with Arukani [D2]. Though scientific methods of advanced analysis are available and it can easily be found out whether the hair is of a male or female, no steps were taken by PW14 to ascertain the same.

19. The Hon'ble Supreme Court, time and again, has laid down certain principles in deciding a case of appeal against acquittal. When there are two views available, the view that is in favour of the accused has to be considered.

20. The principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, following its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**, are as follows:

"23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the

<https://hcservices.hcscs.gov.in/hcservices/> part of the appellate court in interfering with such



conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

21. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

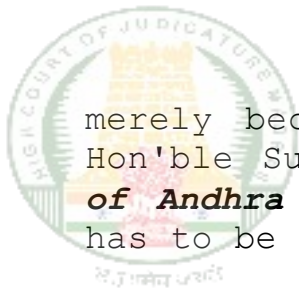
(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

22. No doubt, the evidence of PWs.2 to 4 cannot be discarded



merely because they are relatives and as has been held by the Hon'ble Supreme Court in ***Chakali Maddilety and others, Vs. State of Andhra Pradesh***, reported in ***2010 (12) SCC 72***, their evidence has to be considered with due care and caution.

WEB COPY 23. PWs.2 to 4, though deposed that they witnessed the occurrence, they have not taken any steps to lodge complaint before the Police Station and no bloodstained cloths were recovered from them. PW2 is non-other than the brother of PW4 and he has not accompanied the deceased to the Hospital. PW4 is the son of the third wife of PW3's father. They are all interested witnesses and are having an enmity as against the first accused for having lodged a complaint against PW4.

24. Since two persons suffered injury, the prosecution projected the second accused for the injury of Arukani [D2]. The Doctor [PW15] of Amaravathi Hospital, Karur, in the Accident Register [Ex.P23] has recorded the injuries of Arukani [D2] as follows:

"1.Contusion wound 8 x 6 cm over left frontal region of forehead.

2.Lacerated wound 7 x 3 cm x bone depth over right Temporo Parieto Occipital region.

3.Contusion wound 12 x 10 cm over right Temporo Parieto Occipital region.

4.Lacerated wound 5 x 2 x 1 cm over left Temporo Occipital region.

5.Right Periorbital Oedema present.

6.Bleeding from both nostrils present."

25. Similary, the Doctor [PW8], who conducted the postmortem on the body of Arukani [D2] has noted the following ante mortem injuries:

"C" shaped sutured wound 6 cm in length noted over right parieto temporal region. Sutured wound 4 cm in length noted over left occipital region. On dissection of Scalp, Skull and Dura : Sub scalp hematoma weighing about 5 grams noted over left frontal region. Sub scalp contusion 12 x 8 cm noted over left fronto temporal region, 12 x 7 cm noted over right fronto temporal region, 8 x 8 cm noted over right temporo occipital region and 6 x 4 cm noted over left occipital region. Crack Fracture 9 cm in length noted over right temporo parietal bone. Extra dural clot weighing about 25 grams noted over right temporal lobes. Sub dural clot weighing about 75 grams noted over both cerebral hemisphere



and cerebellum. Diffuse sub dural and sub arachnoid hemorrhages noted over entire brain. Skull base fracture noted over both middle cranial fossa."

26. The case of the prosecution is that the second accused lifted a boundary stone from the upstairs and threw the stone on Arukani [D2] and on account of that, Arukani [D2] sustained the injuries. The photographs in Ex.D2 to D6 expose that the house of the accused was constructed with a height of more than five feet and the second accused is said to have lifted the M03 series and put on Arukani [D2]. If a stone like M03 would have been dropped on Arukani [D2], an aged lady, certainly it would have smashed her head and neck. But the nature of injuries sustained by Arukani [D2] are not corresponding to the overtact as projected by the prosecution. The medical evidence in this case is in contra to the oral evidence.

27. Since Crl.A.(MD)No.92 of 2018 is filed as against the judgment of acquittal insofar as the second accused is concerned, this Court, in view of the aforesaid principles, is not inclined to interfere with the same.

28. The accused in this case have projected the defense theory that the partition was over long back and the properties were also divided. The accused has constructed a house in his property adjacent to Murugesan's [D1's] property. The boomi pooja for the construction of the building was made on 04.06.2010 and the building was also completed and house warming ceremony was also over on 03.06.2011. Even during the construction, it is the first accused who approached the authorities, made a request for measuring his land, demarcated the boundaries and the Surveyor [DW1] has also stated that on the application of the first accused in Ex.D8, he surveyed the land in the year 2010 itself and after demarcation, the patta was also issued to the first accused on 03.01.2011, which is marked as Ex.D9. When the accused has taken genuine efforts by approaching the authorities and demarcating the property, there is no necessity for him to remove the boundary stones. Moreover, even according to PW1, they have planted the boundary stone on 16.06.2011, ie., on the previous day to the occurrence date and the accused removed the same and while re-planting the same, the occurrence had taken place.

29. The occurrence was taken place on 17.06.2011 at about 07.00 am and on the same day, the accused surrendered before the Court. The weapon used in this case is a casuarina stick and the photographs Ex.D2 to D6 disclose that the casuarina sticks were found in front of the newly constructed house and with that casuarina stick, the first accused has caused the injury. The first accused has also fairly admitted the nature of occurrence in the statement filed by him under Section 313(4) Cr.P.C., that when Murugesan [D1] attempted to attack him with a sickle collected



from Arukani [D2], out of fear and as a private defense, he attacked him. This version of the defense is also admitted by the wife of Murugesan [D1], namely, PW1, that her husband Murugesan [D1] attempted to assault the first accused with an Aruval.

30. But, neither the crowbar used for planting the boundary stones nor the sickle used by Murugesan [D1] was recovered in this case. The occurrence was taken place in the early morning hours, pursuant to a quarrel while removing the boundary stone which was planted by a Surveyor after measurement. However, it has resulted in two deaths. The prosecution case as well as the defense case expose that the deceased are the aggressors in this case. As rightly pointed out by the trial Court, though PW1 admitted that her husband, Murugesan [D1] used a sickle to attack the first accused, the first accused has not sustained any injury in the incident and the sickle said to have been used by Murugesan [D1] is also not recovered and therefore, the trial Court rightly found him guilty for the offence under Section 304(i) IPC.

31. In view of the aforesaid discussions and reasonings, this Court is not inclined to interfere with the judgment of the trial Court in acquitting the first accused for the offence under Section 302 IPC and convicting him for the offence under Section 304(ii) IPC.

32. In the result, all the Criminal Appeals are dismissed. The judgment of the learned Sessions Judge, Karur, in S.C.No.53 of 2012, dated 14.09.2013, stands confirmed. Bail bonds, if any, executed by the first accused shall stand terminated and the trial Court shall secure the first accused and commit him to prison, so as to undergo the remaining period of sentence. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1)The Sessions Judge,
Karur.

2)The Inspector of Police,
Velayuthampalayam Police Station,
Karur.

3)The Superintendent of Prison,
Central Prison, Trichy.

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

5)The Section Officer -2 copies
(Record Keeper)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T. LAJAPATHI ROY, Advocate (SR-18130[F] dated
25/09/2020)

Judgment made in
Crl.A.(MD)Nos.25 of 2014,
93 & 94 of 2018
24.09.2020

AL(CO)
KM (08.10.2020) 18P 8C