



**Bail Slip**

Alagar S/o.Pichaipandi and Kannapiran S/o.Pichaipandi Appellants/Accused 2 and 4 in Crl.A(MD)No.162/2015 and Pitchaipandi S/o.Alagar and Gopi S/o.Pichaipandi Appellants/Accused 1 and 3 in Crl.A(MD)No.354/2015 were released on bail vide this Court order dated 28.02.2015 and 04.12.2015, in Crl.MP(MD)1/2015 in Crl.A(MD)No.162/2015 and in Crl.MP(MD)1/2015 in Crl.A(MD)No.354/2015 respectively.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Dated : 21.09.2020**

**CORAM**

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**Crl.A.(MD)Nos.162 & 354 of 2015**

1.Alagar  
2.Kannapiran

.. Appellants in Crl.A.(MD)No.162/2015/  
2<sup>nd</sup> and 4<sup>th</sup> Accused

1.Pitchaipandi  
2.Gopi

.. Appellants in Crl.A.(MD)No.354/2015/  
1<sup>st</sup> and 3<sup>rd</sup> Accused

v.

State rep.,by  
The Inspector of Police,  
Thirupuvanam Police Station,  
Sivagangai District.  
Cr.No.492 of 2008

.. Respondent in both appeals

**COMMON PRAYER:** Appeals filed under Section 374 of the Criminal Procedure Code to call for the records in connection with the judgment passed by the Principal Sessions Judge, Sivagangai, in S.C.No.145 of 2009, dated 29.06.2015, and quash the same.

For Appellants : Mr.M.Pitchai Muthu

For Respondent : Mr.A.Robinson,  
Government Advocate (Crl. Side)  
(in both appeals)

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**COMMON JUDGMENT**

Criminal Appeal in Crl.A.(MD)No.162 of 2015 is filed by the accused nos.2 & 4 and Criminal Appeal in Crl.A.(MD)No.354 of 2015 is filed by the accused nos.1 & 3 in S.C.No.145 of 2009 on the file of

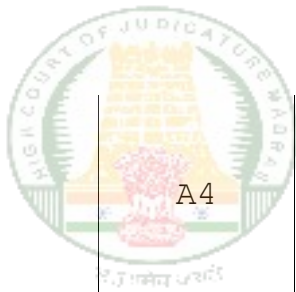


the Sessions Court, Sivagangai. The appellants / accused nos.1 to 4 were tried along with two others, before the trial Court, as follows:

| Accused | Charge                                     |
|---------|--------------------------------------------|
| A1      | 148, 341, 302 r/w 149 & 307 IPC            |
| A2      | 148, 341, 302 r/w 149 & 307 (2 counts) IPC |
| A3      | 148, 341, 302 & 307 IPC                    |
| A4      | 148, 341 & 302 r/w 149 IPC                 |
| A5      | 147, 341, 302 r/w 149 & 307 (2 counts) IPC |
| A6      | 147, 341 @ 302 r/w 149 IPC                 |

The trial Court, in conclusion of the trial, found the accused guilty, convicted and sentenced them as follows:

| Accused | Section of Law | Punishment                                                                                                                              |
|---------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| A1      | 304(ii) IPC    | To undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for three months. |
|         | 326 IPC        | To undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months.  |
| A2      | 324 IPC        | To undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months.    |
|         | 326 IPC        | To undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months.  |
| A3      | 304(ii) IPC    | To undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for three months. |



|    |                    |                                                                                                                                      |
|----|--------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| A4 | 324 (2 counts) IPC | To undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months. |
| A5 | 325 IPC            | To pay a fine of Rs.2000/-, i/d to undergo rigorous imprisonment for three months.                                                   |
| A6 | 323 IPC            | To pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for three months.                                                   |

Insofar as the remaining charges are concerned, the trial Court acquitted the accused. The period of sentence was ordered to run concurrently.

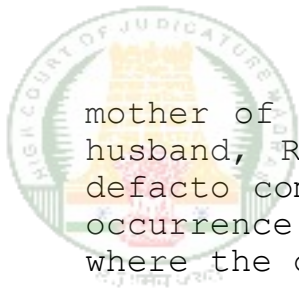
2. Aggrieved by the conviction and sentence, the accused nos.1 to 4 have preferred the present appeals. Since both the appeals are arising out of the same judgment, both of them are heard together and are disposed of by this common judgment. It is also represented that the accused nos.5 & 6 were convicted with fine amount alone and they have also paid the fine amount and have not preferred any appeal.

3. 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 nutshell, are as follows:

4.1. The defacto complainant, Jeyamani and her husband, Marimuthu were residing at Puliyoor Village, Thirupuvanam Taluk, Sivagangai District. Marimuthu, the husband of the defacto complainant is the deceased in this case. The defacto complainant, Jeyamani, also died during the trial. PW1, the brother of the defacto complainant and PW2, their mother are also residing at Puliyoor Village. The accused are also relatives of the prosecution party. The fifth accused, Sembayi is the sister of PW2 and the first accused, Pitchaipandi is the husband of the fifth accused. The accused nos.2 to 4 are the sons and the sixth accused is the daughter of the first and fifth accused.

4.2. The sixth accused, Gomathi, was residing adjacent to the deceased's house at Puliyoor and the other accused were residing in the adjacent village. The defacto complainant was rearing fowl and those fowl used to roam in the house of the sixth accused. On the date of occurrence, certain fowl were found missing and therefore, suspecting that the sixth accused would have killed those fowls, the defacto complainant quarreled with the sixth accused. Pursuant to the same, on behalf of the sixth accused, her father, Pitchaipandi [A1] and her brothers, Gopi [A3], Alagar [A2] and Kanabiran [A4] quarreled with the defacto complainant. On hearing this news, the



mother of the defacto complainant, Pandiyammal [PW2] along with her husband, Rajendran and son, Muthu [PW1] went to the house of the defacto complainant. The defacto complainant informed them about the occurrence took place and therefore, all of them went to the place where the deceased was working and informed him about the incident.

4.3. When all of them were returning near Puliyoor village, the accused persons waylaid them and by saying that for having insulted the sixth accused, all of them are liable to be killed, the first accused attacked the deceased with an Aruval on his left hand. The third accused, with a Sword, attacked the deceased on his head. On sustaining head injury, the deceased fell down and succumbed to the injury. PWs.1 & 2 and the defacto complainant ran to escape from the accused. But the second accused, with an Aruval, attacked PW1 on his left leg and the first accused attacked PW1 on his left hand. When PW2 attempted to prevent the attack, the fifth and sixth accused, with a Stick, attacked PW2 and caused injury on her face. The fourth accused, with a Knife and the second accused, with an Aruval, attacked PW2 on her head.

4.4. The defacto complainant, Jeyamani and her father, Rajendran, ran away from the place and after some time, returned to the place of occurrence along with PW3, another relative and they found that the defacto complainant's husband was dead and PWs.1 & 2 were struggling to life. On arranging for an Ambulance, they took the deceased and the injured to the Government Rajaji Hospital, Madurai.

4.5. Jeyamani along with PW3 went to Thirupuvanam Police Station and lodged a complaint [Ex.P18] on 24.10.2008 at about 08.00 pm, before the Sub-Inspector of Police [PW8]. Thiru Krishnan [PW8], Sub-Inspector of Police, on receipt of the complaint [Ex.P1] from Jeyamani, registered the case in Thirupuvanam Police Station Crime No.492 of 2008, as against the appellants and others for the offence under Sections 147, 148, 341, 323, 324, 307 & 302 IPC. The printed FIR [Ex.P19] was also forwarded and reached the concerned Judicial Magistrate Court on 25.10.2008 at about 02.30 am.

4.6. Dr.Amalraj [PW7], Government Rajaji Hospital, Madurai, attended the first accused on 24.10.2008 at about 05.00 pm and treated his injuries and issued a Wound Certificate in Ex.P13. He noted down the following injuries on the first accused:

*"i) A lacerated wound of 6 x 1 x 1 cm in central head with bleeding.*

*ii) A lacerated wound of 4 x 1 x 1 cm in central head*

*iii) A lacerated wound of 0.5 x 0.5 x 0.5 cm on dorsum of left hand."*

4.7. He also treated the second accused and noted down the injuries sustained by him in the Wound Certificate [Ex.P14] as follows:

*High in presence of swelling, deformity on left forearm.*



- ii) A lacerated wound of 3 x 1 x 1 cm in the right frontal region.
- iii) A lacerated wound of 2 x 1 x 0.5 cm on dorsum of left hand."

4.8. PW2 was brought to the Hospital by her husband, Rajendran, around 05.25 pm on 24.10.2008 and the same Doctor, Dr. Amalraj [PW7] treated her and noted down the injuries sustained by her in the Wound Certificate [Ex.P15] as follows:

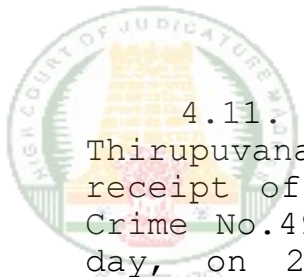
- "i) A lacerated injury of 6 x 2 x 1 cm on the right frontal region.
- ii) A lacerated injury of 3 x 1 x 1 cm on the centre of the head.
- iii) A lacerated injury of 2 x 1 x 1 cm on the left temporal region of head.
- iv) A lacerated injury of 3 x 1 x 1 cm on dorsum of the left hand.
- v) An abrasion of 4 x 4 cm on the back."

4.9. PW1 was brought to the Hospital by PW3 and he was treated by the same Doctor, Dr. Amalraj [PW7] around 05.30 pm. The Doctor [PW7] has noted down the injuries on PW1 in the Wound Certificate [Ex.P16] as follows:

- "i) A lacerated wound of 3 x 1 x 1 cm on the left temporal region.
- ii) A lacerated wound of 10 x 2 x 1 cm on the right palm.
- iii) A lacerated wound of 4 x 1 x 1 cm on the left palm.
- iv) A large lacerated wound of 10 x 2 x 1 cm on the left elbow.
- v) A large lacerated wound of 10 x 2 x 2 cm on the left thigh.
- vi) A lacerated wound of 10 x 2 x 1 cm on the left foot.
- vii) A lacerated wound of 8 x 2 x 2 cm on the right foot."

4.10. The sixth accused was brought to the Hospital by the fifth accused and the Doctor, Dr. Amalraj [PW7] provided treatment and noted down the following injuries in the Wound Certificate [Ex.P17] as follows:

- "i) A lacerated wound of 5 x 1 x 1 cm on the centre of head.
- ii) Contusion injury of swelling 5 x 4 cm on the left cheek.
- iii) Abrasion of 2 x 2 cm on the left chest."



4.11. Thiru Sivakumar [PW9], Inspector of Police, in-charge of Thirupuvanam Police Station at the relevant point of time, on receipt of the information as to the registration of the case in Crime No.492 of 2008, went to the place of occurrence on the same day, on 24.10.2008 at about 09.30 pm, prepared an observation mahazar [Ex.P20] and a rough sketch [Ex.P21] in the presence of PW4 and another. He also recovered earth with and without blood from the place of occurrence [MOs.5 & 6, respectively] under a cover of mahazar Ex.P22, in the presence of the said witnesses. Thereafter, he went to the Government Rajaji Hospital, Madurai, examined PWs.1 & 2; who were taking treatment and also the defacto complainant, Jeyamani; her father, Rajendran; PW3 & PW4 and recorded their statements. On 25.10.2008, from 08.00 am to 10.00 am, he conducted inquest on the body of the deceased in the presence of panchayatars and the inquest report is marked as Ex.P23. After the inquest, he made a request for postmortem through a Grade I Constable, Velmurugan.

4.12. On receipt of the request for postmortem, Dr.Selvaraj [PW6], who was working at the Government Rajaji Hospital, Madurai, conducted the Autopsy on 25.10.2008 at about 10.45 am and has noted down the following ante mortem injuries:

*"1. An oblique antero posterior cut injury 20 cms x 1 cm x brain deep noted on right fronto parietal region.*

*On dissection, the wound found cutting the underlying skull bone measuring 17 cms x 0.5 cm x through and through and the underlying dura and brain measuing 15 x 0.5 cm x 1 cm.*

*2. An oblique cut injury 6 cms x 0.5 cm x bone deep noted over right parietal region.*

*3. An oblique cut injury 7 cms x 2 cms x muscle deep noted over the outer aspect of middle of left upper arm."*

The Doctor [PW6] issued the postmortem certificate [Ex.P12] with his opinion that the deceased would appear to have died of head injury, 17 to 21 hours prior to the Autopsy.

4.13. The investigation officer has also arrested the accused nos.1, 2 & 6 from the Government Rajaji Hospital, Madurai, on 25.10.2008 at about 07.30 pm, when they were taking treatment in the Hospital, after obtaining permission from the learned Chief Judicial Magistrate, Sivagangai and also obtained permission to continue the treatment at Government Hospital under the judicial custody. He also recovered a shirt [MO7], a lungi [MO8] and an underwear [MO9] from the body of the deceased, through a Constable. The accused nos.3 & 4 surrendered before the Judicial Magistrate Court, Nilakottai on 28.10.2008. PW9 has also taken police custody of these accused and recorded their confession statements. Pursuant to the confession statements of the first and second accused, he recovered the Aruvals [MOs.3 & 2, respectively]; pursuant to the confession statement of the third accused, he recovered a Sword [MO1] and recovered a 11 cm knife with iron handle [MO4] pursuant to the confession statement of

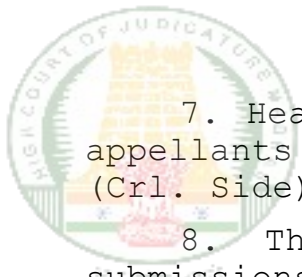


the fourth accused. He examined the Doctor [PW6], who conducted the postmortem and the Doctor [PW7], who attended and treated the accused as well as PWs.1 & 2, recorded their statements, collected the Wound Certificates [Ex.P13 to Ex.P17] and the Postmortem Certificate [Ex.P12].

4.14. The investigation officer [PW9] has also examined Thiru Mangaleswaran, the then Inspector of Police, Manamadurai Police Station and recovered the case details in Crime No.280 of 2008, which was registered as against the second accused [Alagar] and PW1 [Muthu], for the offence under Sections 302 & 380 IPC. He also collected the chemical reports [Ex.P27], examined the scientific experts and filed the final report on 27.01.2009. The final report was taken on file by the learned Judicial Magistrate, Manamadurai, in P.R.C.No.3 of 2009 and committed to the Court of Sessions and the Sessions Court, Sivagangai, has taken the case in S.C.No.145 of 2009.

5. During the trial, on the side of the prosecution, nine witnesses were examined and twenty seven documents were marked, besides nine material objects. The defacto complainant, namely, Jeyamani, is the wife of the deceased and she was not available at the time of trial. PW1 is the brother of Jeyamani and also brother-in-law of the deceased. He is also an injured eye witness. PW2 is the mother of PW1 and mother-in-law of the deceased. She is also an injured eye witness. PW3 is the brother of the deceased, who took the deceased and PWs.1 & 2 to the Hospital and also accompanied Jeyamani to the police station for lodging the complaint [Ex.P1]. PW4, Periyakaruppan, is the witness for the observation mahazar and recovery of material objects from the place of occurrence. But, he did not support the case of the prosecution and was treated as hostile. PW5, Rasu, is the then Village Administrative Officer and he speaks about the confession statement recorded from A1, A2 & A4 and also about the recovery of MOs.2 to 4. PW6, Dr.Selvaraj, is the Doctor, who conducted the Autopsy and issued the postmortem certificate [Ex.P12]. PW7, Dr.Amalraj, is the Doctor, who treated A1, A2 & A6 on the date of occurrence and issued the Wound Certificates, Exs.P13, P14 & P17, respectively. He also treated PWs.2 & 1 and issued the Wound Certificates, Exs.P15 & P16, respectively. PW8 is the then Sub-Inspector of Police, Thirupuvanam Police Station, who received the complaint [Ex.P1] and registered the First Information Report [Ex.P19]. PW9 is the then Inspector of Police, who conducted the 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. Though they have stated that there are witnesses to support their case, they have not examined any witnesses. The trial Court, in conclusion of the trial, convicted and sentenced them as stated supra. As against the same, the accused nos.1 to 4 have preferred the present appeals. A5 & A6 paid the fine amount, as ordered by the trial Court and did not prefer any appeal.



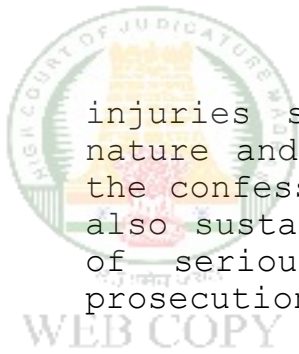
7. Heard Mr.M.Pitchai Muthu, learned Counsel appearing for the appellants / A1 to A4 and Mr.A.Robinson, learned Government Advocate (Crl. Side) appearing for the respondent / State.

8. The learned Counsel for the appellants has made his submissions as follows:

8.1. The basis for the prosecution case that on account of missing of fowl, the occurrence had taken place is not correct and PW1 and A2 are accused in Crime No.280 of 2008 on the file of Manamadurai Police Station, wherein, A2 along with PW1 have committed the offence under Sections 302 & 380 IPC. PW1 gave the stolen articles to sell the same through the second accused and on account of that, there was a dispute between them. PW1 and his family were under the impression that it is because of the second accused, PW1 was caught in the case in Crime No.280 of 2008 on the file of Manamadurai Police Station and therefore, have foisted the present complaint. In fact, apart from the case in Crime No.280 of 2008, several other cases are also pending against PW1 and his evidence is not trustworthy.

8.2. The accused are residing at Sayanapuram Colony and the deceased and PWs.1 & 2, who are residing at Puliyoore, came to the accused house with deadly weapons, in order to assault the accused party and in that occurrence, the deceased sustained injury and died. Therefore, the deceased party are the aggressors in this case. Apart from the deceased, five others have also injured in this case, ie., two from the prosecution side and four from the accused side. It was, in fact, a free fight between the accused and the deceased party and in that incident, the deceased sustained injuries. Since the deceased died in this case, the entire prosecution proceeded as against the accused, without considering their counter complaint. Moreover, the accused injuries are not explained in this case and it has been suppressed by the prosecution. That apart, the medical evidence is not corroborated with the evidence of PWs.1 & 2. Therefore, the benefit of doubt has to be extended to the appellants and he prays for interference.

9. Per contra, the learned Government Advocate (Crl. Side) would submit that though the defacto complainant, wife of the deceased, is also an eye witness to the occurrence, she could not be examined at the time of trial, as she died prior to the trial. PWs.1 & 2 are eye witnesses to the occurrence and they are also injured witnesses. Their evidence is very clear and cogent. Though the occurrence was taken place in front of the house of the accused, it is pursuant to the chain of events that three days prior to the occurrence, an incident took place between the defacto complainant and the sixth accused and consequent to that, this occurrence had taken place on 24.10.2008 and the accused party went to the defacto complainant's house and intimidated that they would do away her husband. The evidence of the Doctor [PW6], who conducted the postmortem as well as the Doctor [PW7], who treated PWs.1 & 2 clearly establish the case of the prosecution and the nature of



injuries sustained by the prosecution witnesses are grievous in nature and that apart, the weapons were also recovered pursuant to the confession statements of the accused. No doubt, the accused have also sustained injuries in this case, but, these injuries were not of serious in nature, which would affect the case of the prosecution. Therefore, he prays for dismissal.

10. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

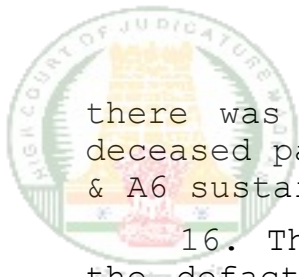
11. The motive for the occurrence, according to the prosecution case, is that the fowl breed by the defacto complainant went to the house of the sixth accused, Gomathi and were found missing and on the pretext that she could have killed the fowl, the defacto complainant raised an issue with the sixth accused, for which, the accused party went to the house of the defacto complainant and intimidated her. When the defacto complainant, her husband / the deceased, PWs.1 & 2 came near Puliyoor, the accused persons waylaid them, quarreled with them and consequent to that, the occurrence had taken place, wherein, the deceased succumbed to the injury and PW1, PW2, A1, A2 & A6 sustained injuries.

12. Admittedly the accused and the deceased party are close relatives. The fifth accused, Sembayi and PW2 are own sisters. The sixth accused, Gomathi, is none other than the daughter of PW2. PW2 and the sixth accused are cousin sisters and apart from this incident, no other previous incident has been referred to by the prosecution for any misunderstanding between them. For missing of fowl, the extent of quarrel between the close relatives, as projected by the prosecution, does not appear to be a proper motive.

13. During the trial, another motive was also attributed for the occurrence that the second accused, Alagar and PW1, Muthu are accused in Crime No.280 of 2008, on the file of Manamadurai Police Station in a case of murder for gain and in that case, while sharing the stolen jewels for selling the same, there was a dispute between both the families. PW1, though admitted the registration of the case against him in Crime No.280 of 2008 and its pendency, refuted that the jewels were not given to the second accused for selling the same. On the other hand, PW2 admit the same in her evidence.

14. But it appears the prosecution witness have consciously avoided this issue in the complaint [Ex.P1] and also in their chief examination. Moreover, the investigation officer [PW9] though recovered the case in Crime No.280 of 2008, failed to examine the concerned Inspector of Police, namely, Thiru Managaleswaran, the investigation officer in that case.

15. Admittedly the occurrence had taken place in front of the house of the accused. The deceased, defacto complainant and PWs.1 & 2 are residing at Puliyoor village, whereas, the accused are residing at Sayanapuram Colony. On the date of occurrence, the deceased party came to the accused house and pursuant to the same,



there was a free fight between the accused party as well as the deceased party, on account of which, the deceased, PWs.1 & 2, A1, A2 & A6 sustained the aforementioned injuries.

16. The injuries sustained by the accused are not mentioned by the defacto complainant in her complaint [Ex.P1]. But, during the evidence, PW1 has stated about the injuries sustained by some of the accused, but not about the injuries sustained by all the accused. PW2 has also not stated about the injuries sustained by the accused. The case was registered on the complaint [Ex.P1] of Jeyamani, which was lodged at about 08.00 pm. Even before that, the first accused went to the Government Rajaji Hospital, Madurai and was treated at about 05.00 pm and the second accused was also treated in the Hospital at about 05.15 pm. Only after the accused went to the Hospital, PWs.1 & 2 were taken to the Hospital. Though A1, A2 & A6 were treated with injuries in the Government Rajaji Hospital, Madurai and the inquest was also conducted by the investigation officer [PW9] in the Government Rajaji Hospital, Madurai, the investigation officer has not taken any steps to examine these accused. The accused have went to the Government Hospital even before the prosecution witnesses reached the Hospital. In fact, the Government Doctors are expected to intimate such issues to the concerned police station. But there is no such reference in this case and this has also been purposely suppressed by the prosecution.

17. The Hon'ble Supreme Court in **Lakshmi Singh and Others v. State of Bihar** reported in (1976) 4 SCC 394, which also deals with the non-explanation of grievous injuries sustained by the accused by the prosecution, in paragraph No.12, after dealing with the facts of the case, has taken note of its earlier judgment in **Mohar Ravi Vs State of Bihar**, reported in AIR (1968) SC 1281, wherein, it is observed as follows:

*"The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W.15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabalised. Under these circumstances the prosecution had a duty to explain those injuries.... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabalise the plea taken by the appellants."*

18. But, at the same time, in the subsequent decision rendered in **Anil Kumar v. State of U.P.**, reported in 2004 (7) SCALE 684, the Hon'ble Supreme Court has held that if the accused injuries are not



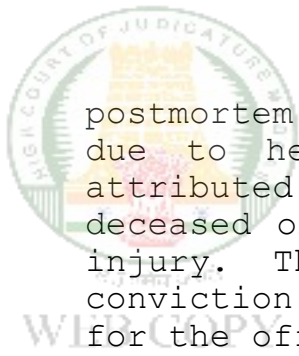
For better appreciation, the relevant portion is extracted as under:

"11. Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries. As observed by this Court in *Ramlagan Singh v. State of Bihar* AIR 1972 SC 2593 the prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In *Hare Krishna Singh v. State of Bihar* AIR 1988 SC 863 it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the court in proof of guilt of the accused beyond reasonable doubt, question of obligation of the prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifling and superficial injuries on the accused are of little assistance to them to throw doubt on the veracity of the prosecution case. (See *Surendra Paswan v. State of Jharkhand* 2003 (12) SCC 360.)"

19. Admittedly, the injuries sustained by the accused are not serious in nature and therefore, the non-explanation of such injuries is not fatal to the case of the prosecution.

20. No doubt, the occurrence was taken place in front of the house of the accused and the deceased party, who are residing at Puliyoor village have come to the accused' house and as rightly pointed out by the learned Counsel for the appellants, they are the aggressors in this case. But the nature of injuries and the weapon used by the accused cannot be taken as a ground that the injuries, on the deceased and the prosecution witnesses, are as a private defense and therefore, it alone cannot be a ground for acquittal.

21. The available evidence would disclose that the deceased party are aggressors and therefore, motive cannot be attributed for the accused for the offence under Section 302 IPC. From the



postmortem certificate [Ex.P23], it is clear that the deceased died due to head injury and the overtact for this head injury is attributed as against the third accused that he assaulted the deceased on his head with the weapon [MO1], which caused the fatal injury. Therefore, there is no reason to interfere with the conviction imposed by the trial Court, as regards the third accused for the offence under Section 304(ii) IPC.

22. However, the conviction under Section 304(ii) IPC as against the first accused is not made out, in the given circumstances of the case and the nature of injury sustained by the deceased. Admittedly, the first accused has assaulted the deceased with the weapon [MO3] and the corresponding injury [injury no.3] is also available in the postmortem certificate [Ex.P23]. But, the said injury is not fatal and therefore, the conviction under Section 304 (ii) IPC cannot be sustained. However, the conviction under Section 326 IPC, as against the first accused stands confirmed, since he caused grievous injury by a dangerous weapon.

23. Insofar as the remaining appellants / accused nos.2 & 4 are concerned, A2 is convicted for the offence under Sections 324 & 326 IPC and A4 is convicted for the offence under Section 324 (2 counts) IPC, ie., for voluntarily causing hurt by dangerous weapon and causing grievous hurt by dangerous weapon. The weapons MOs.2 & 4 were recovered from them and the overtact as against the second accused is that he assaulted PW1 on his left leg and PW2 on her head using the weapon MO2 and the overtact as against the fourth accused is that he assaulted PW2 on her head using the weapon MO4. The corresponding injuries are also available as per the Wound Certificates [Ex.P15 - PW2; Ex.P14 - PW1] and therefore, the conviction imposed by the trial Court as against the accused nos.2 & 4 does not warrant any interference.

24. However, considering the fact that the accused persons and the deceased as well as the prosecution party are relatives and there is no such quarrel among them prior to this incident, this Court is inclined to modify the sentence as follows:

| Accused | Section of Law | Punishment                                                                                                                           |
|---------|----------------|--------------------------------------------------------------------------------------------------------------------------------------|
| A1      | 326 IPC        | To undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months. |



|    |                    |                                                                                                                                                     |
|----|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| A2 | 324 IPC            | To undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months.                 |
|    | 326 IPC            | To undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months.                |
| A3 | 304 (ii) IPC       | To undergo rigorous imprisonment for four years and to pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for three months.              |
| A4 | 324 (2 counts) IPC | To undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, i/d to undergo rigorous imprisonment for three months, for each count. |

25. With the above modifications, both the Criminal Appeals are partly allowed. The trial Court is directed to secure the appellants / accused nos.1 to 4 and confine them, so as to undergo the remaining period of imprisonment. Bail bonds, if any executed, shall stand terminated. Pending miscellaneous petitions, if any, are also closed.

Sd/-

Assistant Registrar (CS-III)

// 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.

To

1.The Sessions Judge,  
Sivagangai.

2.The Principal Sessions Judge,  
Sivagangai.



3.The Judicial Magistrate,  
Manamadurai.

4.The Chief Judicial Magistrate,  
Sivagangai District.

5.The Superintendent,  
Central Prison, Trichy.

6.The District Collector,  
Sivagangai.

7.The Superintendent of Police,  
Sivagangai.

8.The Deputy Inspector General of Police,  
Mylapore, Chennai.

9.The Inspector of Police,  
Thirupuvanam Police Station,  
Sivagangai District.

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

Copy to: The Record Keeper/Section Officer,  
Criminal Section (Records),  
Madurai Bench of Madras High Court,  
Madurai.(2)

**Crl.A. (MD) Nos.162 & 354 of 2015**  
**21.09.2020**

KM(CO)  
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