



BAIL SLIP

Crl.A.No.151 of 2019

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The Appellant/Accused No.1 namely, Vellairaja @ Rajendran, S/o.Chandrasekar, was directed to be released on bail as per order of this Court dated 18.07.2019 made in Crl.Mp.No.4124/2019 in Crl.A.No.151/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.151 of 2019

Vellairaja @ Rajendran ... Appellant/Accused No.1

Vs.

State by The Inspector of Police,

South Police Station, Tiruppur District.

(Cr.No.456 of 2015)

.... Respondent/Complainant

PRAYER :

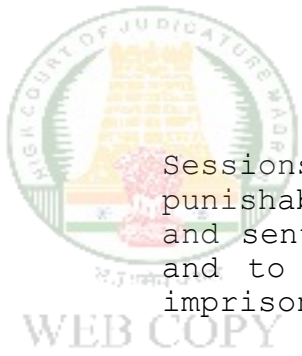
Criminal Appeal is filed under Sections 374(2) of Criminal Procedure Code to set aside the judgment and conviction passed in S.C.No.12 of 2016 dated 04.01.2019 on the file of the I Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.K.V.Sridharan

For respondent : Mr.S.Sugendran, GA (Crl. Side)

J U D G M E N T

The first accused in S.C.No.12 of 2016 has filed the present Criminal Appeal challenging the judgment of conviction and sentence dated 04.01.2019 rendered by the learned I Additional



Sessions Court, Tiruppur, finding him guilty for the offence punishable under Section 304(i) IPC and convicting him thereon and sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for further period of three months.

2. The factual matrix in brief, as revealed from the evidence of the prosecution witnesses and the materials available on record, is as under:-

(i) PW1 Kamalavathi is the wife of the Deceased Paalpandi. A1, A2 and deceased Paalpandi were working as Ironing Masters in a Banian Factory namely Sakthi Tex at Tirupur under the same Contractor.

(ii) On 17.05.2015, the deceased went to Pudur Junction near Saastha Bakery to receive his salary from A1 and A2, since he was informed by the Contractor that it was sent through A1 and A2. On return to his house at 6.00 p.m., the deceased had informed PW1 and PW2 that he was assaulted by A1 and A2 while they had an altercation at that point of time and thereupon, PW1 and PW2 along with the deceased went to Oorkounder Compound to question as to why A1 and A2 assaulted him, but, without replying, A1 and A2 had assaulted PW1 and on being questioned by the deceased, they had once again beat the deceased on his face and chest repeatedly.

(iii) By that time, PW3, Rangaraj, a neighbour and a lady running a grocery shop at the locality pacified them. However, while returning, just after they went a little distance, the deceased fainted. PW1 and PW2 alongwith PW8 Karthickraja, cousin of PW2, who arrived on call from P.Ws.1 and 2, took the deceased to the hospital at Tirupur. PW5, Dr.Jatki Neslin, who examined the deceased, had issued Ex.P3 Accident Register. According to Dr. PW5, the injured died on the way to Hospital and thereby, he instructed for keeping the body in mortuary.

(iv) PW1 and PW8 Karthik Raja went to Tirupur South Police Station and lodged a complaint, Ex.P1.

(v) On receipt of the complaint, Ex.P1 at 9.30 pm on 17.5.2015, PW10, Sub Inspector of Police, Tirupur South Police Station had registered a case in Cr.No.456 of 2015 under Section 302 IPC and sent the FIR, Ex.P9 along with the complaint, Ex.P1 to Judicial Magistrate II, Tiruppur which reached the Court at 6.45 a.m. on 18.05.2015. Subsequently, PW10 sent a copy of the same to PW12, Inspector of Police, South Police Station and other copies to the higher officials.



(vi) PW12, Inspector of Police proceeded to the scene of occurrence and prepared Rough Sketch Ex.P11 and Observation Mahazar Ex.P2 attested by PW3 and another. At 7.00 a.m. on 18.05.2015, PW12 had conducted inquest over the dead body of Paalpandi in the presence of PW1, PW2, PW8 and others and recorded their statements. . Ex.P12 is the Inquest Report. Thereafter, PW12 had sent the body for post mortem.

(vii) PW6, Dr.Kirupakaran, who conducted postmortem, found the following external injuries over the body:-

- (1) Abrasion over left shoulder
- (2) Contusion over left eye ball
- (3) Contusion 5x2cm over left side chest.

The Doctor had not reported any internal injuries. After sending the Viscera and the Hyoid bone to the Scientific expert for examination, the Doctor, PW6 had issued the post mortem certificate, Ex.P4 opining that no poison was detected; hyoid bone was found in tact and the deceased would appear to have died of cardiogenic shock due to Acute Myocardial Infarction. Ex.P5 is the Pathology Report. Ex.P6 is the opinion issued by Dr.S.Peranathan, the Forensic Expert (not examined) finding that the hyoid Bone was found in tact and no anti mortem injury was sustained by Hyoid Bone. Ex.P7 is the final opinion given by PW6. In Ex.P7, the Doctor PW6 had given opinion that the deceased would appear to have died of Cardiogenic Shock due to Acute Myocardial Infarction at about 14 to 20 hours prior to autopsy. PW11, Scientific Officer at Regional Forensic Science Laboratory, Coimbatore had issued his Report Ex.P10 stating that on examination of the stomach and its contents, intestine and its contents, liver, kidney and preservative, no poison was detected.

(viii) At 2.00 p.m. on 18.5.2015, PW12, on receipt of information about the accused, arrested A1 and A2 in the presence of PW9 and another.

(ix) Subsequently, on transfer of PW12, his successor, PW13 Rajasekhar, Inspector of Police took up further investigation and after examination of the Doctor, PW6, he filed the final report against Accused 1 and 2 under Section 302 of IPC.

(x) The case was taken up on file in PRC.No.66 of 2015 on the file of the Judicial Magistrate No.II, Tiruppur and on appearance of A1 and A2 before the Magistrate, they were furnished with copies of documents under Section 207 Cr.PC and thereafter, the Court, finding that the case was exclusively triable by the Court of Sessions, had committed the case under Section 209 Cr.PC to the Principal Sessions Court, Tiruppur.



The case was taken up by the learned Principal Sessions Judge, Tiruppur in S.C.No.12 of 2016 and it was made over to the Trial Court in accordance with law.

3. On appearance of A1 and A2 and after hearing the submissions of the accused and arguments of the counsel on both sides, the Trial Court framed charges against A1 and A2 for the offence under Section 302 IPC and when the charges were read over to the accused, they denied the charges and pleaded not guilty and sought to be tried. During trial, A2 in this case had committed suicide and thereby the charges against A2 got abated.

4. In order to prove the charges against the accused, the prosecution had examined PW1 to PW13 and marked Exs.P1 to PW12 and no Material Object was marked. Though the appellant/accused had denied the charges when he was questioned under Section 313 Cr.P.C.,. he had not chosen to let in any evidence on his side.

5. The Trial Court, after perusing the materials and after hearing the counsel found the accused guilty for the offence under Section 304(i) IPC and convicted and sentenced him as stated above, against which the present Appeal has been filed.

6. Assailing the judgment of conviction and sentence, Mr.K.V.Sridharan, learned counsel appearing for the appellant, would make the following submissions:-

(i) Even accepting the incident to be true, the appellant cannot be found guilty for the offence under Section 304(i) IPC.

(ii) The accused had neither the intention to cause death nor the knowledge that their act would result in the death of the victim. The occurrence took place allegedly during a quarrel and free fight. The deceased along with his wife/PW1 and his son/PW2 are stated to have gone to the house of the appellant to question them with regard to an earlier quarrel. At that time, A2 (since deceased) is stated to have told that the deceased had come to the house and he should not be left and he should be finished and during such time, there was free fight.

(iii) The opinion of PW6/Doctor, who conducted post mortem is that the death was due to Cardiogenic Shock due to Acute Myocardial Infraction and there is no specific evidence the Doctor that the injuries found on the body of the deceased are sufficient, in the ordinary course of nature, to cause death, especially, when the injuries were found to be of not grievous in nature and no corresponding internal injuries were found. In the absence of such evidence that the injuries found on the body



of the deceased are sufficient, in the ordinary course of nature, to cause death, the accused cannot be convicted for the offence under Section 304(i) or 304(ii) IPC.

(iv) The Medical Officer, in his cross examination, has admitted that the three external injuries, found on the body of the deceased, would have been caused by multiple falling also. The Medical Officer has also given opinion that consumption of liquor would also be a cause for Cardiogenic shock. Therefore, the prosecution has failed in this case to establish by evidence of medical experts and rule out the probability, as admitted by the Doctor, PW6 in his cross examination that consumption of liquor would also be a cause of Cardiogenic Shock. The Chemical Examiner was requested to give opinion only with regard to Hyoid bone and presence of poison in the stomach and intestinal contents and no test for alcohol was conducted.

(v) The evidence of the prosecution is that the deceased was attacked with hands and only simple injuries were caused during the occurrence. When there is no evidence that the injuries are sufficient in the ordinary course of nature to cause death, the case of the prosecution will fall only under Section 323 IPC. Therefore, the medical evidence does not support the case of the prosecution.

(vi) Though two persons were charged for the offences, there is absolutely no specific evidence with regard to the injuries stated to have been caused by them and there is no charge against them for having shared a common intention and even as per the evidence of PW1, there was a free fight. The evidence of PW1 and PW2 coupled with the medical evidence would clearly show that the deceased died due to Acute Myocardial Infarction and not on account of the beatings by the appellant.

7. In support of his contention, the learned counsel for the appellant would rely on the judgment of a Division Bench of this Court in Criminal Appeal No.1099 of 2006 dated 30.06.2008 in the case of Panchatcharam v. State rep by Inspector of Police, Arni Taluk Police Station, Arni, Tiruvannamalai District.

8. Mr.S.Sugendran, learned Government Advocate (Criminal Side) appearing for the respondent would submit that the accused and the deceased were co-employees in Tiruppur Sakthi Tex Company and that on 17.05.2015 at about 5.30 pm, the accused had demanded a sum of Rs.250/- from the wages of the deceased and there was a quarrel between them, due to which, the accused had assaulted the deceased and it was informed by the deceased to his wife/PW1 and son/PW2 and thereafter PW1 and PW2 alongwith the deceased had gone to the house of A2 and at that time A2 had



told A1 that they should not leave the deceased and thereafter they had assaulted the deceased with hands resulting in the deceased sustaining injuries and later, had collapsed. He would fairly concede that no weapons were used in the occurrence and that no test was done by the prosecution with regard to presence of alcohol in the viscera and that the Doctor, who conducted the post mortem, had opined that the death was due to Acute Myocardial Infarction.

9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. While analysing the evidence of witnesses, PW1 is the wife of the deceased. She had deposed that her husband/deceased Palpandi was working as Ironing master in a Banian company and she has got two sons. On 17.05.2015, the deceased went to meet the accused near Saastha bakery situated at Pudhur Junction for asking his salary. After return, at about 6.00 pm, he had informed PW1 that there was an altercation between them and that the accused had assaulted him. When PW1 and her son PW2 went alongwith the deceased to question the accused, once again, a quarrel had erupted and the accused were said to have attacked PW1 and the deceased on his face, neck and chest repeatedly. On pacification by the neighbours, the deceased was returning to his house with P.Ws.1 and 2, but, suddenly, he got fainted and fell down and he was taken to hospital by P.Ws.1, 2 and 8, however, on examination, the Doctor had informed that her husband died on the way to hospital.

11. PW1 had deposed that A1/appellant and yet another person (who figured as A2) assaulted her husband and the other person, who attacked her husband was no more by then. She had deposed that she had given a written complaint and on the information given by her, PW2 wrote the complaint and she had signed and gave it to the respondent/police. The said complaint was marked as Ex.P1. The police had enquired her and thereafter the body of her husband was sent to the mortuary and post mortem was conducted on her identification.

12. PW2/Selvakumar is the son of deceased Palpandi. He had corroborated the evidence of his mother PW1. He had deposed that his father was attacked by the accused and on intervention of PW3, Thangaraj and a grocery shop keeper in the neighbourhood, the scuffle had come to an end, however, on the way to their house, his father fainted complaining chest pain and they sprinkled water on him and informed to his brother/Karthickraja, PW8, who came to the spot and took his father to the Government Hospital, Tiruppur, where the Doctor had declared that his father was brought dead and then, he gave a complaint at the police station.



13. PW3/Rangaraj is a resident in Oorgounder Nagar at Perichipalayam. He had deposed that on 17.05.2015 at 7.00 pm, while he was in his house, 2 to 3 persons were fighting inside the neighbourhood compound and also on the street and he had seen the accused attacking the deceased and thereafter, they had dispersed. He had further deposed that the police had come at 10.00 pm and visited the scene of occurrence and the surrounding area and prepared rough sketch. He stood as a witnesses to the observation mahazar marked as Ex.P2 and one Murugeswari stood as second witness. He had also identified the accused produced in court as that of the person who involved in the fight, who resides in the house opposite to his house.

14. PW4/Ravichandran had deposed that on 17.05.2015 at 5.30 pm, while he was having tea with his friend in the Bakery at Perichipalayam, he had seen three persons fighting and later their fight become intense and thereby, he and his friend had disengaged the persons fighting and later they had left the place. He had also identified the accused as one of the persons who took part in the fight and he had later come to know about the death of a person by name Palpandi.

15. PW5/Dr.Jatkin Neslin had deposed that on 17.05.2015, while he was on duty as Assistant Medical Officer in the Tirupur Government Hospital, a person by name Palapandi aged about 45 years was brought by his wife/Kamalavathi to the hospital at about 8.40 pm and on examination, he found that the said person was dead and he advised his staff to keep the corpse in the mortuary for conducting post mortem. The Accident Register issued by him is marked as Ex.P3.

16. PW6/Dr.Kirubakaran had deposed that on 18.05.2015, while he was on duty, he had received an information from the Inspector of Police, Tirupur South Police station requesting to conduct autopsy over the corpse of one Palpandi and based on the identification made by the constable, he conducted autopsy. On examination, he found an old wound scar below right knee and an old would scar over left ankle as identification marks. He had further deposed that he had conducted autopsy on 11.30 hours and found that the body was moderately nourished symmetrical, eyes closed, no discharge from ears and nose, mouth was closed and teeth were in tact. On further examination he found the following injuries :-

" i)abrasion over left shoulder 2x1cm on its back side ii)contusion over left eye ball 3x2cm and iii) contusion left side chest 5x2cm.



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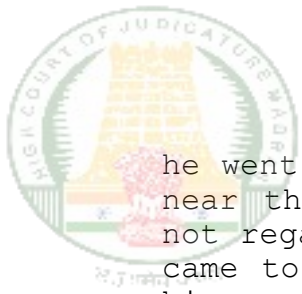
The internal appearance : Ribs intact, Heart congested Dark thick coloured clotted blood 30gm septum pale. Lungs congested hyoid sent for analysis. Stomach contain about 25ml of brown colour fluid. Liver congested. Spleen congested kidneys congested intestine distended with gas bladder empty. Skull bones intact. Membrane intact, brain pale. He had further collected the following organs:- 1)Stomach and its contents 2) Intestine and its contents 3)Sample of liver 4)one kidney 5)Preservative 6) Heart for Histo Pathological examination 7)Hyoid in formalin and sent for chemical analysis."

He had concluded the post mortem on the same day at 12.30 hrs. Thereafter, he had received the chemical analysis report and had given final report. In the final report, he had stated hat he had found fat in the blood vessel to the heart (Atherometous) and he had further deposed that there is a chance of fat in the blood vessels to the persons aged above 40 years. He had found the Hyoid bone in tact and he had given his opinion that the deceased would appear to have died due to Cardiogenic Shock due to Acute Myocardial Infarction at about 14-20 hours prior to the autopsy. The post mortem certificate given by him was marked as Ex.P4. The pathology report was marked as Ex.P5 and the opinion regarding Hyoid bone was marked as Ex.P6 and the final report was marked as Ex.P7.

17. However, in his cross examination, PW6 had deposed that the external injuries which were found in the body of the deceased would have been caused due to the multiple fall by the person and that there was a chance of person having heart attack during stress or depression and that there was also a chance of heart attack in the event of a person consuming alcohol.

18. PW7/Sathishkumar deposed that on 17.05.2015 at 5.30 pm, while he and his friend Ravichandran/PW4 gone to have a tea at Tasty Bakery in Pudhur pirivu at Dharapuram road, he had seen the deceased and two other persons fighting and thereafter he and his friend Ravichandran intervened and withdrawn them from fighting. At that time, the accused had told that they would finish the deceased on the next day and on the next day, he heard about the death of Palpandi. The accused present in the Court was was identified by PW7 as one of the persons who fought with Palpandi.

19. PW8/Karthickraja nephew of the deceased had deposed that on 17.05.2015 Sunday at 7.30 pm, he received a call from his brother/PW2 and he was informed that his uncle was attacked and he was found in an unconscious state. He further deposed that



he went to his uncle's house and saw his uncle lying unconscious near the staircase and even on sprinkling water, his uncle did not regain consciousness and he tried to get an ambulance and he came to know that it would take time and thereafter he had sent his uncle to the Tiruppur Government Hospital by an auto and he had followed them in two wheeler and admitted Palapandi in the hospital, however, after examination, the Doctor had informed that his uncle had died on the way and thereafter, he had informed to his relatives. He had further deposed that subsequently, he enquired his aunty about the incident and lodged a complaint and kept the corpse of his uncle in the mortuary. On the next day, the corpse was identified as that of his uncle and post mortem was conducted. He had further deposed that he went along with the police in their jeep to identify the accused, then he identified the accused who were standing near the new bus stand and the police had arrested them and later he went to attend the funeral of his uncle.

20. PW9/Sugumar had deposed that on 18.05.2015 at 2.00 pm he had gone to Tiruppur bus stand to pick up his friend who were coming from Ooty and when he was waiting, he had seen the police rounding up two persons and they were identified by one person. He had further deposed that the police had arrested the two persons and they gave their confession statement and he had signed as witness to the the confession statement which was marked as Ex.P8.

21. PW10/Sub Inspector of Police deposed that on 17.05.2015 while he was on duty PW1/Kamalavathi had come to the police station at about 21.30 pm and she had given a complaint, based on which, he had registered a case in Crime No.456 of 2015 under Section 302 IPC and forwarded the express FIR/Ex.P9 alongwith the complaint to Judicial Magistrate No.II, Tiruppur and one copy was sent to Inspector of Police/PW12 for investigation and other copies were sent to the concerned superior officers.

22. PW11/Parthasarathy, Scientific Officer at Regional Forensic Science Laboratory, Coimbatore had deposed that based on the requisition of the Medical Officer of Tiruppur Government Hospital, he received the viscera of the deceased on 22.05.2015 and after analysis he had given opinion that as per medical analysis, no toxic substance was found.

23. PW12/Nelson had deposed that he had received the FIR in Crime No.456 of 2015, took up the investigation and visited the scene of occurrence and prepared the observation mahazar/Ex.P2 and rough sketch/Ex.P11 in the presence of the witnesses and on the same day he had examined the witnesses Kamalavathi, Selvakumar, Karthickraja, Rangaraj, Murugeswari and recorded their statements separately. On the next day at 7.00 am, he



conducted inquest over the corpse in front of the panchayatars and prepared inquest report Ex.P12 and examined the witnesses and thereafter, he had sent the corpse to the Tirupur Government Hospital for autopsy in order to know the medical reason for death. Thereafter, he had examined other witnesses and recorded their statements separately. On the same day at about 2.00 pm, based on the secret information, he arrested the accused and recorded their voluntary confession statement and later they were brought to the police station and sent to Judicial custody on the same day. He had received viscera after post mortem and sent it for chemical analysis. On 13.08.2015, he was transferred and thereby he handed over the case files to his successor/PW13.

24. PW13/Rajasekaran, Inspector of Police had deposed that during 2015, while he was working as Inspector of Police, Tiruppur South Police Station, he took up the case registered in Crime No.456/2015 under section 302 IPC for further investigation. He had further deposed that on 29.09.2015, he had enquired the Doctor who confirmed the death of Palpandi and recorded the statement of Dr.Kirubakaran/PW6 who conducted the post mortem and gave final opinion and recorded his statement and filed the final report against the accused under Section 302 IPC.

25. In this case, so far as the motive or intention sought to be attributed on the part of the accused is concerned, it is seen the accused and the deceased being co-employees in a Textile Company, the accused is alleged to have demanded a sum of Rs.250/- from the deceased on 17.05.2015 at 5.30 pm near Saastra bakery and thereupon there was an altercation between them and during such time, the accused were alleged to have assaulted the deceased Palpandi and on receipt of such information, PW1 and PW2 accompanied the deceased to the house of the accused to question the assault, the accused were said to have assaulted the deceased on his face and chest repeatedly and on compromise made by the neighbours, they dispersed and on return to their house, the deceased fell having fainted and on the way to hospital, he died. The occurrence in which the accused were set to have assaulted the deceased is concerned, it is a ramification of the earlier incident on the protest made by P.Ws.1 and 2 at the premises of the accused.

26. Even as per the evidence of PW3/Rangaraj he had seen 2 or 3 persons engaged in a fight and that they had later disbursed after fighting. Even according to the prosecution witnesses, no weapon was used in the quarrel and the accused were alleged to have assaulted the deceased with their bare hands only. Further, the evidence of the prosecution witnesses is not specific and clear as to who inflicted which injury.



After the incident, the deceased had been taken to the hospital where he was declared as "brought dead".

27. On the next day of occurrence, post mortem was conducted by PW6/Doctor, who had given his opinion, that the deceased would appear to have died of Cardiogenic Shock due to Acute Myocardial Infarction at about 14-20 hours prior to the autopsy.

28. It is the contention of the counsel for the appellant that there is no intention for the accused to commit the offence and that the deceased and his wife had gone to the house of the accused and the incident had occurred, only during a rencounter. He further submits that the evidence of the witnesses is not clear as to who inflicted the injury and that PW3 has also spoken that there was a fight among three persons.

29. The learned counsel for the appellant has also submitted that as per the opinion of the Doctor, who conducted post mortem, death could have happened due to consumption of liquor. It is his further contention that though the viscera and Hyoid bone were collected and sent for medical analysis, no examination was done with regard to the consumption of alcohol by the deceased to rule out the probability of consumption of alcohol being root cause for the death. It is the further contention of the learned counsel that the Doctor/PW6 has also not deposed specifically that the injuries found on the deceased could be sufficient, in the ordinary nature, to cause death and in the absence of such evidence, the accused cannot be convicted either under Section 304(i) or under Section 304(ii) IPC.

30. At this juncture, it is apposite to refer to the relevant paragraphs of the judgment of the Division Bench of this Court in CrI.A.No.1099 of 2006 dated 30.06.2008 in the case of Panchatcharam v. State rep by Inspector of Police, Arni Taluk Police Station, Arni, Tiruvannamalai District:-

"15. It is also relevant to note that though the appellant/accused is alleged to have fisted on the chest and kicked on the lower abdomen of the deceased, as seen from the post-mortem certificate, there is no external injury or corresponding internal injury found by the Doctor, namely fracture of ribs or rupture of abdominal vital parts, except blood clot in the congested urethra and bloated scrotum. It is opined by the Doctor that in the absence of any fatal injury, due to the blood clot in the urethra, which was due to the sudden blow to receptor area like penis and lower abdomen, the deceased appeared to have died of



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primary or neurogenic shock. It is pertinent to note that the Doctor has not stated that such internal injury sustained by the deceased is sufficient to cause death in the ordinary course of nature. Therefore, it is very clear from the medical evidence that the death of the deceased is not due to the direct result of any injury. Therefore, the evidence of the eye witnesses coupled with the medical evidence makes it crystal clear that the accused cannot be imputed with having any intention of causing the death of the deceased.

16. In an identical case, the Apex Court in *Pirithi v. State of Haryana*, 1994 Supp (1) SCC 498, held that as per the medical opinion, admittedly, the injury to the testicles was not the direct cause of death and as such the conviction is modified to one under Section 323 IPC. The accused in this case is said to have kicked the deceased on his stomach. Even assuming that the accused has kicked on the testicles, P.W.5, the Doctor has admittedly not found any external or internal injury. It is also to be pointed out that there is no external injury either on the chest or on the stomach and the Doctor has not stated that the deceased died due to the direct cause of any particular injury said to have been caused by the accused. At the risk of repetition, we are constrained to reiterate that the Doctor has not stated in his opinion that the injury sustained by the deceased is sufficient in the ordinary course of nature to cause the death, as there is no external or internal injury of fatal nature. Therefore, on the basis of the medical evidence, the fact remains that the deceased did not die due to any particular injury.

17. That apart, even according to the evidence of the eye witnesses, the second overt act of kicking of the deceased by the accused with his leg is only on the stomach or abdomen and not on the testicles. Therefore, it is clear that at the moment of commission of the crime, the accused could not have had any intention to kill the deceased or had the knowledge that his act of kicking in the lower abdomen may accidentally fall on the private parts, and in consequence of that, even accepting the medical opinion, the deceased,



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who was aged 65 years, would die due to neurogenic shock.

18. In view of the above facts and circumstances of the case, by no stretch of imagination, the accused could be imputed with intention or knowledge of causing the death of the deceased and at the worst, his act would fall only under Section 323 IPC. Therefore, we are left with the inevitable conclusion that the act of the accused would clearly fall under Section 323 IPC for the offence of voluntarily causing hurt. Accordingly, the conviction of the appellant/accused for the offence punishable under Section 302 IPC is modified to that of the offence punishable under Section 323 IPC and the appellant/accused is sentenced to undergo rigorous imprisonment for One Year. Further, we are of the considered view that the the accused/appellant shall pay compensation to the family members of the deceased."

31. Having gone through the evidence on record and taking into consideration the facts and circumstances of this case, this Court is of the opinion that by no stretch of imagination, the accused could be imputed with an intention or knowledge of causing death of the deceased and at the worst, the act of the accused would attract an offence punishable under Section 323 IPC.

32. Accordingly, the appeal stands partly allowed and the conviction of the appellant/accused for the offence punishable under Section 304(i) IPC is set aside and in the alternative, he is found guilty for the offence punishable under Section 323 IPC. It is reported that the accused was arrested on 18.05.2015 and thereafter, he was released on statutory bail. After conviction, the sentence was suspended by an order of this Court dated 18.07.2019 and the appellant has suffered imprisonment for a period of 6-1/2 months and in total, the appellant had suffered imprisonment for a period of 9-1/2 months.

33. In view of the above, the sentence is modified to the period of imprisonment already undergone by the appellant/accused while confirming the sentence of payment of fine. Bail bond, if any executed by him shall stand cancelled and the appellant is not required to surrender.



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34. With the above modification, the Criminal Appeal stands partly allowed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsh/ssk.

To

1. The I Additional District and Sessions Judge No.I, Tiruppur.
2. The Inspector of Police, South Police Station, Tiruppur District.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Judicial Magistrate,
No.II,
Tiruppur.
5. The Chief Judicial Magistrate,
Tiruppur District.
6. The Public Prosecutor,
High Court, Madras 600 104.
7. The Section Officer,
Criminal Section, High Court,
Madras 600 104.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.62474

CrI.A.No.151 of 2019.

EV(CO)
PM/27/01/2022