



BAIL SLIP

Appellant namely Bharathidasan @ Bharathi was released on Bail as per order of this court dated 06.01.2016 made in CRL.MP.(MD).No.60 of 2016 in CRL.A.(MD).No. 3 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.03.2021

Pronounced On : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.2 of 2016

Bharathidasan @ Bharathi ..Appellant/Sole Accused

Vs.

State rep.by
Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai.
(Crime No.226 of 2013).

..Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C, to set aside the judgment dated 14.12.2015 passed by the learned Additional District and Sessions Judge/Special Court for E.C.Act Cases and NDPS Act cases, Pudukkottai in S.C.No.53 of 2013.

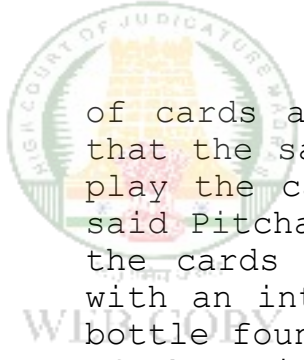
For Appellant	: Mr.D.Ramesh Kumar
For Respondent	: Mr.T.Senthil Kumar, Additional Public Prosecutor

JUDGMENT

The Criminal Appeal is directed against the judgment of conviction passed in S.C.No.53 of 2013, dated 14.12.2015 on the file of the Additional District and Sessions Judge, Special Court for E.C Act cases and NDPS Acts Cases, Pudukkottai.

2.The Appellant is the sole accused in S.C.No.53 of 2013, facing charge under Section 302 IPC on the file of the Additional District and Sessions Court, Pudukkottai.

3. The Inspector of Police, Ganesh Nagar Police Station, Pudukkottai has laid the final report against the accused alleging that the complainant Ganagasabapathy was a share broker; that the deceased Pitchaimuthu is the complainant's aunt's son, that the deceased Pitchaimuthu was a bachelor and was working as a security in a private concern at Trichy, that on 15.05.2013 at about 10.00 am in the ground situated on the back side of TELC Church, when the deceased Pitchaimuthu, witnesses Selvaraj and Murugesan were sitting on the northern side of the ground and more particularly, on the south of the tamarind tree, the accused came to that place with deck



of cards and invited the deceased Pitchaimuthu to play the cards, that the said Pitchaimuthu had replied that he does not know how to play the cards, that when the accused was again insisting him, the said Pitchaimuthu had reiterated that he did not know as how to play the cards and asked the accused to do his work, that the accused with an intention to kill the said Pitchaimuthu, had taken the beer bottle found in that place and broke it and stabbed on the left neck of the said Pitchaimuthu; that the said Pitchaimuthu had died on the spot itself and that therefore, the accused had committed the offence punishable under Section 302 IPC.

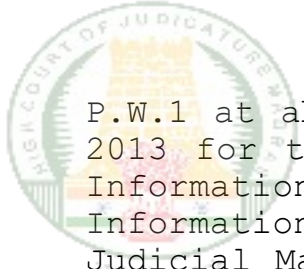
4.The learned Judicial Magistrate has taken the case on file in P.R.C.No.12 of 2013 and furnished the copies of the records under Section 207 Cr.P.C on free of costs. The learned Magistrate, finding that the offence under Section 302 IPC is exclusively triable by the Court of Session, after compliance under Sections 208 and 209 Cr.P.C, had committed the case to the file of Principal Sessions Court, Pudukkottai and the same was taken on file in S.C.No.53 of 2013 and thereafter, the case was made over to the Additional District and Sessions Judge, Special Court for E.C Act cases and NDPS Acts Cases, Pudukkottai. After appearance of the accused, the Sessions Judge, on hearing both the sides and on perusal of the records, being satisfied that there existed a *prima facie* case against the accused, framed a charge under Section 302 IPC and the same was read over and explained to him and on being questioned, the accused denied the charge and pleaded not guilty.

5.The prosecution, in order to prove its case, has examined 9 witnesses as P.W.1 to P.W.9 and exhibited 10 documents as Ex.P.1 to Ex.P.10 and 5 material objects as M.O.1 to M.O.5.

6.The case of the prosecution emerging from the evidence adduced by the prosecution in brief is as follows :

(a) P.W.1 Ganagasabapathy, the defacto complainant and P.W.2 Suresh are friends and are in share market business. The deceased Pitchaimuthu is P.W.1's uncle. On 15.05.2013 at about 10.00 am, P.W.1 and P.W.2 were talking under tamarind tree in T.E.L.C School ground and at that time P.W.1's uncle Pitchaimuthu, P.W.3 Selvaraj and P.W.4 Murugesan were sitting and talking with each other. The accused came to that place with play cards and asked the said Pitchaimuthu to come and play. The said Pitchaimuthu replied that he does not know how to play the cards. The accused by saying that despite his request, he has not come to play the cards, took up the beer bottle lying there, broke it and stabbed on the left neck of the said Pitchaimuthu. Thereafter, the accused ran away towards north side. When P.W.1 lifted his uncle, found that he was dead. Thereafter, P.W.1 had taken the play cards and while proceeding to the Ganeshnagar Police Station, he had thrown away the cards. He visited the Ganeshnagar Police Station and gave a complaint under Ex.P.1.

<https://hcservices.ecourts.gov.in/12services> Sub-Inspector of Police received the complaint from



P.W.1 at about 10.40 am and registered the case in Crime No.226 of 2013 for the offence under Section 302 IPC and prepared the First Information Report under Ex.P.7. Thereafter, he sent the First Information Report and the original complaint to the Court of the Judicial Magistrate, Pudukkottai and sent the copies of the same to his higher officials.

(c) P.W.9 Inspector of Police had taken up the investigation, after receiving the copy of the First Information Report, visited the occurrence place at about 11.30 am on that day itself and inspected the scene of occurrence in the presence of P.W.5 Vidhuthalaikumaran and one Chellapandian and prepared the observation mahazar under Ex.P.2 and drew a rough sketch under Ex.P.8. Thereafter, he recovered blood stained mud and sample mud at the occurrence place (M.O.4 and M.O.5) through the seizure mahazar under Ex.P.3. He conducted the inquest on the body of the deceased at the occurrence place in the presence of the witnesses and Panchayathars between 13 and 16 hours and prepared the inquest report under Ex.P.9. Thereafter, he sent the body of the deceased to the Hospital for postmortem through Head constable.

(d) P.W.6 Dr.Rajaram has conducted the postmortem on the body of the deceased at 04.00 pm and noticed the following injuries :

3x4 penetrating wound over left side of neck ; Rigor mortis present in all four limbs; Internal Examination : Penetrating wound 3x4 cm (L) side of neck ; Probe depth 10cm (+), (L) carotid artery cut, jugular vein cut ; Penetration of trachea and oesophagus ; Hyoid intact.

(e) P.W.6 has then issued a postmortem certificate under Ex.P.4, giving his opinion that the deceased would appear to have died of injury to vital organ.

(f) In the meanwhile, P.W.9 has examined the witnesses and recorded their statements. After postmortem, the Head Constable has submitted a special report under Ex.P.10 along with lunge and shirt (M.O.2 and M.O.3) taken from the body of the deceased.

(g) On 17.05.2013 at 12.00 noon, P.W.9 arrested the accused from Pudukkottai Viswakarmanagar Bus Stop and on enquiry, the accused gave a voluntary confession statement. P.W.9 recorded the same in the presence of P.W.7 Muruganandham and one Selvaraj and in the confession statement, the accused has stated that if he is taken to his place, he will hand over the broken beer bottle. In pursuance of the admitted portion of the confession statement under Ex.P.5, when the accused was taken to his house at Sivanandhapuram 1st Street, he had taken out green broken bottle (M.O.1) with a word 'SNJ' and a label containing the words "British Empire Premium Exclusive Beer" from the backyard of his house and handed over the same to P.W.9, who in turn recovered the same in the presence of the same witnesses through seizure mahazar under Ex.P.6. After returning to the Police Station, he sent the accused for remand. Thereafter, P.W.9 has examined the other witnesses and recorded their statements. He also examined P.W.6 Medical Officer and obtained the postmortem certificate and recorded his statement. After completing



the investigation, he filed the charge sheet on 23.05.2013 against the accused for the offence punishable under Section 302 IPC. With the examination of P.W.9, the prosecution has closed their side evidence.

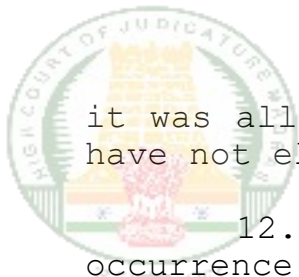
7. When the accused was examined under Section 313(1) (b) of Cr.P.C with regard to the incriminating aspects as against him in the evidence adduced by the prosecution, he denied the same as false and stated that no occurrence was held as alleged by the complainant; that he has no connection with the alleged occurrence, that he was not in the habit of playing cards, that he had not visited the occurrence place and that there existed enmity between him and P.W.1. Though the accused has stated that he is having defence witnesses, he has not let in any evidence subsequently.

8. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the impugned judgment on 14.12.2015, convicting the accused for the offence under Section 304 (part II) IPC and sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months rigorous imprisonment. Aggrieved by the judgment of conviction and sentence, the appellant/accused has preferred the appeal, now under consideration.

9. Whether the impugned judgment of conviction passed in S.C.No.53 of 2013, dated 14.12.2015 on the file of the Additional District and Sessions Judge, Special Court for E.C Act cases and NDPS Acts Cases, Pudukkottai, is liable to be set aside ? is the point for consideration.

10. The case of the prosecution is that on 15.05.2013 at about 10.00 am, the accused had invited the deceased Pitchaimuthu for playing cards, that since the said Pitchaimuthu had refused and directed him to do his business, the accused picked up a beer bottle lying there, broke it and stabbed on the left neck of the said Pitchaimuthu and that thereby the accused had committed the offence of murder. The defence of the accused is that he has no connection with the alleged occurrence, that there existed enmity between him and P.W.1 and that therefore, he was falsely implicated by P.W.1 defacto complainant.

11. During cross examination of P.W.1, it was suggested by defence that there existed previous enmity between the accused and P.W.1 in respect of a canteen and that the said suggestion was specifically denied by P.W.1. When P.W.9 Investigating Officer was in the witness box, a question was put to him as to whether there was any enmity between the P.W.1 and the accused, he would say that if there had been enmity, they would have informed. Except the above suggestions, the defence has neither produced any materials nor elicited any answers from the prosecution witnesses to show that



it was alleged that enmity was in connection with the canteen, they have not elaborated anything further.

12.The prosecution has cited and examined P.W.1 to P.W.4 as occurrence witnesses. P.W.1 in his evidence would say that on 15.05.2013 at about 10.00 am, when he was talking with his friend P.W.2 under the tamarind tree in T.E.L.C School ground, his uncle Pitchaimuthu, P.W.3 and P.W.4 were sitting nearby, that the accused came to that place with playing cards and asked his uncle to come and play with him, that his uncle had replied that he does not know as how to play the cards, that since the deceased had refused, the accused picked up a beer bottle lying there, broke it and stabbed on the left neck of the deceased and that the said Pitchaimuthu had died on the spot itself.

13.P.W.2, P.W.3 and P.W.4 in their evidence before the trial Court would reiterate the version of P.W.1 regarding the manner in which, the incident was occurred. As rightly contended by the learned counsel for the defence, the defence had elicited some contradictions from the evidence of P.W.1 to P.W.4. P.W.1 in his cross examination would say that he had not taken the beer bottle to the Police Station, but the Police recovered the beer bottle from the occurrence place. P.W.2 also in his cross examination would say that the broken bottle and glass pieces were recovered by the Police from the occurrence place. But, according to the prosecution, the broken beer bottle was recovered from the accused, in pursuance of the confession statement given by him.

14.P.W.1 in his evidence would say that in the complaint prepared by him, P.W.2 to P.W.5 and one Selvabackiam had subscribed their signatures along with him. P.W.4 in his cross examination would say that all of them had subscribed their signatures in the complaint. P.W.1 in his evidence would say that after the occurrence, he immediately went to the Police Station and gave the complaint. P.W.2 in his evidence would say that the Police came to the occurrence spot at 10.30 am that after visiting the Hospital, he went to the Police Station. P.W.4 in his evidence would say that they had visited the Hospital with the body of the deceased and that thereafter, the Police came to the Hospital.

15.As already pointed out, it is the specific case of the prosecution that in pursuance of the confession statement given by the accused, when he was taken to his house, he had identified the broken beer bottle and handed over the same and on that basis, the broken beer bottle was recovered by P.W.9. P.W.3 in his cross examination would specifically say that the Police had obtained signature from P.W.1 Ganagasabapathy. P.W.4 also in his evidence would only say that the Police had enquired about the reason for the death of Pitchaimuthu and that all of them had subscribed their signatures. P.W.4 has not stated that he had subscribed his signature to the original complaint given by P.W.1. P.W.2 was not at



all cross examined as to whether he had also subscribed his signature in Ex.P.1.

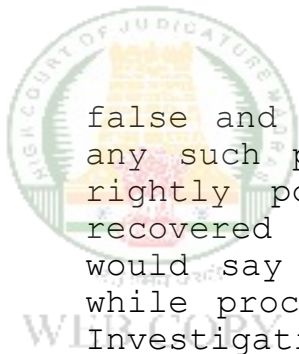
16.It is the specific case of the prosecution that after the occurrence, P.W.1 came to the Police Station at about 10.40 am and gave the complaint, that P.W.8 has received the complaint and registered the case at about 10.45 am and that the complaint and FIR were received by the Jurisdictional Magistrate at 12.00 noon, on 15.05.2013 itself. The contradictions elicited above, are not material enough so as to doubt the version of P.W.1 to P.W.4. More over, the defence has taken a half hearted stand that P.W.1 to P.W.4 were not at all present at the occurrence place and time and as such, they did not witness the alleged occurrence.

17.The defence, during the cross examination of the witnesses, has put forth another version of occurrence and according to the accused, P.W.1 to P.W.4 and P.W.1's uncle all totalling five persons were consuming Alcohol, that there arose disputes between them and started to fight with each other and that the deceased sustained injuries and subsequently succumbed to the injuries. When the above aspect was put to P.W.1 defacto complainant, he would deny the same specifically. Thereafter, P.W.3 alone was cross examined with the above version and he would also deny the same. But, the other two witnesses P.W.2 and P.W.4 were not all cross examined with respect to the same.

18.During cross examination, P.W.1, P.W.2 and P.W.4 would admit that they are not having the habit of consuming Alcohol and P.W.3 alone would admit that he used to consume Alcohol. Whatever it is, by putting the above suggestion, the defence has indirectly admitted the version of the prosecution that P.W.1 to P.W.4 were present at the occurrence time. More over, the accused has also indirectly admitted that he was also present at the occurrence time, as he had narrated a new version of occurrence as if he had witnessed that occurrence.

19.The next contention of the defence is that the prosecution has not come out with a clear case with respect to the occurrence place. P.W.1 would say that the incident was occurred nearby tamarind tree in T.E.L.C school ground; P.W.2 would say that they were sitting in the T.E.L.C school ground; P.W.3 would say that the incident was occurred under the tamarind tree in T.E.L.C school ground and P.W.4 would say that they were talking in the T.E.L.C school ground. As rightly pointed out by the prosecution, T.E.L.C school and Church were in the same campus and the incident was occurred in the T.E.L.C school ground and that therefore, the contradictions elicited above are not sufficient to doubt the occurrence place.

20.According to the defence, the prosecution contention that the deceased was invited the deceased for playing cards is absolutely



false and that is why, the Investigating Officer has not recovered any such playing cards from the occurrence place. Admittedly, as rightly pointed out by the defence, the play cards were not recovered from the occurrence place. But, P.W.1 in his evidence would say that after the occurrence, he had taken the cards and while proceeding to the Police Station, he had thrown away. P.W.9 Investigating Officer would say that the play cards were not available at the occurrence place, that P.W.1 had informed him that he had thrown away the playing cards in the drainage and that since the cards were taken away by the drainage, he could not recover the same.

21. Though the accused has attributed the motive against P.W.1 for implicating him in this case, by alleging that there existed previous enmity with respect to the canteen, as already pointed out, the attempt was not successful for want of evidence or materials. Regarding P.W.2 to P.W.4, the defence has not attributed any valid and acceptable motive for giving evidence against him. As rightly pointed out by the learned Additional Public Prosecutor, the evidence of P.W.1 to P.W.4 regarding the manner of occurrence is very much cogent, credible, reliable and trustworthy and there is absolutely nothing on record to disbelieve or discredit their version.

22. It is the specific case of the prosecution that P.W.9 arrested the accused on 17.05.2013 at about 12.00 noon at Pudukkottai Viswakarmanagar Bus Stop, that the accused had given voluntary confession statement in the presence of P.W.7 Muruganandham and one Selvaraj and the same was recorded by P.W.9 and that in pursuance of the admitted portion of the confession statement, when the accused was taken to his house, he had taken out the broken beer bottle from the backyard of his house and the same was recovered by P.W.9 in the presence of the same witnesses.

23. P.W.9 in his evidence before the Court would reiterate the prosecution case with respect to arrest, confession and recovery. P.W.7 would say in his evidence about the confession statement given by the accused and consequent recovery of M.O.1 beer bottle from the accused. Though P.W.7 and P.W.9 were subjected to cross examination, nothing was elicited by the defence in their favour and their evidence with respect to recording of Ex.P.5 admitted portion of the confession statement and the consequent recovery of M.O.1 under Ex.P.6 Seizure mahazar remained unshaken.

24. Now turning to the medical evidence, P.W.6 Medical Officer, who had conducted postmortem on the body of the deceased would say in clear terms that he noticed 3x4 cm penetrating wound - 10 cm depth over left side of neck and also found (L) carotid artery cut and jugular vein cut and also penetration of trachea and oesophagus and that he has given his opinion that the deceased would die of injury to vital organ. P.W.6 would further



say that the injury noted by him was possible with M.O.1 broken beer bottle. As rightly pointed out by the learned Additional Public Prosecutor, P.W.1 to P.W.4 have identified the M.O.1 broken beer bottle.

25.The defence has taken a stand that the internal organs of the deceased were not sent to chemical analysis and that therefore, the prosecution has miserably failed to prove the actual cause for the death of the said Pitchaimuthu. P.W.6 Medical Officer would admit in cross examination that viscera was not sent for chemical examination. P.W.9 in his evidence would say that though he had attempted to send the viscera to chemical analysis, the Medical Officer had informed that it is not necessary. As rightly contended by the learned Additional Public Prosecutor, except saying that the deceased along with other witnesses had consumed alcohol at the occurrence time, the accused has not raised any other defence, which warrants the chemical examination of viscera.

26.It is not the case of the defence that he has sent any requisition to the Investigating Officer or to the committal Court for sending the viscera to Chemical Examination so as to enable him to prove his defence. As already pointed out, P.W.6 Doctor has specifically held that since the main blood vessels that go to the brain were damaged and that was the reason for the death of the deceased. Hence, non-sending of viscera for chemical examination does not affect the case of the prosecution.

27.Considering the above, the prosecution has clearly proved the occurrence and the involvement of the accused beyond reasonable doubt. As already pointed out, the appellant was charged with the offence under Section 302 IPC. The learned trial Judge, by invoking Exception 4 to Section 300 IPC, has convicted the accused under Section 304 (part II) IPC. At this juncture, it is necessary to refer the decision of Hon'ble Supreme Court in **K.Ravikumar Vs. State of Karnataka** reported in **2015 (2) SCC 638**. In that case, the husband accused after receiving an information that his father was seriously ill, asked his wife to accompany him to leave for Mandya immediately to see his father's condition, that his wife did not agree to leave immediately, but, said that they can go the next day, that the said issue led to heated exchange between them, that the accused losing his mental balance has alleged to have stabbed his wife with knife and then poured kerosene and set her on fire and that thereafter, the accused took his two minor sons and locked the house by leaving his wife in the house in injured condition and left for Mandya The Hon'ble Supreme Court after referring to the various decisions, has held that the accused is entitled to the benefit of Exception 4 to Section 300 IPC and convicted the accused for the offence under Section 304 (part II) IPC. The relevant passages are extracted hereunder :

"14. Keeping in view the approach of this Court



for giving benefit of Exception 4 to Section 300 IPC in cases mentioned above and applying the same to the facts of this case, we are inclined to give benefit of Exception 4 to Section 300 IPC to the appellant by altering his sentence awarded to the appellant punishable under Section 304 Part II IPC. This we say so in the facts of this case for more than one reason. Firstly, even according to the prosecution, there was no premeditation in the commission of crime. Secondly, there is not even a suggestion or we may say conclusive evidence that the appellant had any pre-determined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, incident that occurred was due to sudden quarrel which ensued between the appellant-accused and the deceased-Padma on the issue of going to village Mandya to see the ailing appellant's father. The appellant, on receiving this news, had become upset and, therefore, his insistence to see his ailing father immediately was natural and at the same time, Padma's refusal to leave could lead to heated exchange of words between them. True, it is that it reached to its extreme inasmuch as the appellant in heated exchange of words lost his mental balance and poured kerosene on Padma setting her to burn. However, the fact remains that it was an outcome of sudden outburst and heated exchange with no predetermined motive per se to kill her. Fourthly, no conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued in the last 9 long years between the couple and that too for a cause known to others which could lead to killing Padma or whether any unsuccessful attempt was ever made by the appellant to kill her in past and lastly, we have not been able to see from the post-mortem report that any stab injury on Padma's body was caused nor prosecution was able to prove that any blood stained knife from the place of occurrence was recovered at the instance of the appellant or of any witness.

15. In the light of the aforementioned reasons, which, in our opinion, emerge from the evidence on record, we are of the considered view that these reasons are sufficient to give benefit of Exception 4 to Section 300 IPC to the appellant and enables the Court to hold that the offence in question was not murder but it was an offence of culpable homicide not amounting to murder as specified in Exception 4 to Section 300 and hence punishable under Section 304 part II IPC

16. In the result, we allow the appeal but only to the extent that instead of Section 302 IPC, the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable



under Section 304 Part II IPC and accordingly sentenced to undergo rigorous imprisonment for a period of 10 years. The conviction and sentence imposed under Section 498-A as also the fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered which shall run concurrently."

28. In order to invoke Exception 4 to Section 300 IPC, the following requirements must be satisfied.

- (i) it was a sudden fight ;
- (ii) there was no premeditation ;
- (iii) the act was done in a heat of passion ; and
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

29. It is settled law that for invoking Exception 4, the cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault and the important aspect is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.

30. In the case on hand, admittedly there was no enmity between the deceased and the accused. The prosecution has not attributed any motive against the accused. Even according to the prosecution, there was no premeditation in commission of the offence. Since the invitation of the accused was rejected by the deceased, the accused had acted in a fit of anger. Moreover, as rightly contended by the defence, it is not shown that the accused had taken any undue advantage or acted in a cruel manner. Considering the above, the decision of the learned trial Judge, in extending the benefit of Exception 4 to 300 IPC and thereby convicting the accused under Section 304 (part II) IPC cannot be found fault with.

31. Now turning to the punishment imposed, as already pointed out, the trial Court has awarded Rigorous Imprisonment of three years and fine of Rs.5,000/- in default to undergo 6 months Rigorous Imprisonment. Section 304 IPC provides the punishment of imprisonment of either description for a term which may extend to 10 years or with fine or with both.

32. The trial Court has recorded the statement of the accused given at the time of enquiry under Section 248(ii) Cr.P.C and whereunder, he would say that he is the first offender, that he has to maintain his old parents, his wife and newly born girl child, that he had committed the offence in sudden anger and that he may be excused and released. The trial Court, by considering the age of the accused, his family situation and the new born female child, has decided to award lesser punishment. It is pertinent to mention that the accused, since his invitation for playing cards was refused, had picked up the beer bottle, broke it and stabbed on the neck of the deceased and caused the instant death. Considering the above, the decision by the trial Court is not proper and is not in



accordance with law.

32.It is settled law that the award of the punishment for commission of offence should be proportionate and commensurate with the gravity of offence committed. The Honourable Supreme Court in **Jameel Vs. State of U.P** (Criminal Appeal No.... of 2009) arising **SLR CrI. No.4917 of 2009**, dated 06.11.2009, has specifically held that it was the duty of the every Court to award proper sentence having regard to the nature of offence and the manner in which, it was executed or committed and the relevant paragraph is extracted hereunder :

"10.The general policy which the courts have followed with regard to sentencing is that the punishment must be appropriate and proportional to the gravity of the offence committed. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Court should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime."

33.No doubt, the State has not preferred any appeal under Section 377 of Cr.P.C for enhancement of sentence. At this juncture, it is necessary to refer the decision of the Honourable Supreme Court passed in CrI.A.No.523-527 of 2009, dated 04.11.2011 **[Prithipal Singh and others Vs. State of Punjab and another]**

"14. In Eknath Shankarrao Mukkawar v. State of Maharashtra, AIR 1977 SC 1177, this Court held :

"6. We should at once remove the misgiving that the new Code of Criminal Procedure, 1973, has abolished the High Court's power of enhancement of sentence by exercising revisional jurisdiction, *suo motu*. The provision for appeal against inadequacy of sentence by the State Government or the Central Government does not lead to such a conclusion. High Court's power of enhancement of sentence, in an appropriate case, by exercising *suo motu* power of revision is still extant under section 397 read with Sec. 401 Criminal Procedure Code, 1973, inasmuch as the High Court can "by itself" call for the record of proceedings of any inferior criminal court under its jurisdiction. The provision of Section 401 (4) is a bar to a party, who does not appeal, when appeal lies, but applies in revision. Such a legal bar under Section 401 (4) does not stand in the way of the High Court's exercise of power of revision, *suo motu*, which continues as before in the new Code."

15.In Surendra Singh Rautela @ Surendra Singh Bengali v.State of Bihar (Now State of Jharkhand), AIR 2002 SC 260, this Court reconsidered the issue and held:



"It is well settled that the High Court, suo motu in exercise of revisional jurisdiction, can enhance the sentence of an accused awarded by the trial Court and the same is not affected merely because an appeal has been provided under Section 377 of the Code for enhancement of sentence and no such appeal has been preferred."

(See also: Nadir Khan v. The State (Delhi Administration), AIR 1976 SC 2205; Govind Ramji Jadhav v. State of Maharashtra (1990) 4 SCC 718; and K. Pandurangan etc. v. S.S.R. Velusamy & Anr. AIR 2003 SC 3318).

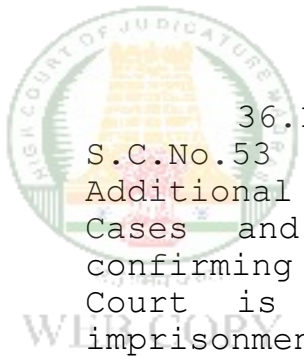
16. In Jayaram Vithoba & Anr. v. The State of Bombay, AIR 1956 SC 146, this Court held that the *suo motu* powers of enhancement under revisional jurisdiction can be exercised only after giving notice/opportunity of hearing to the accused.

17. In view of the above, the law can be summarised that the High Court in exercise of its power under Section 386(e) Cr.P.C. is competent to enhance the sentence suo motu. However, such a course is permissible only after giving opportunity of hearing to the accused."

The Honourable Apex Court has upheld the powers of the High Court to enhance the sentence *suo motu*, but the only condition to be satisfied is that the accused must be given a reasonable opportunity of being heard. Hence, this Court has issued a notice to the accused to show cause as to why the punishment already awarded should not be enhanced.

34.I have heard the learned counsel for the defence as well as the learned Additional Public Prosecutor. The appellant, after receipt of notice, has appeared before this Court along with his Counsel through video conferencing. The learned counsel for the appellant would submit that the punishment already awarded itself is excessive, that directing him to undergo the said sentence would affect his aged parents, his wife and their child and would upset his life and that he may be pardoned and released. He would further submit that any enhancement of sentence would ruin the life of the accused.

35.Considering the nature of the offence and the way in which the offence was committed, this Court is of the clear view that the punishment already awarded by the trial Court on the accused is very much insufficient and is not proportionate to the offence committed. Hence, this Court is inclined to enhance the punishment and the accused is sentenced to undergo rigorous imprisonment for seven years.



36. In the result, the judgment of conviction passed in S.C.No.53 of 2013, dated 14.12.2015 on the file of the learned Additional District and Sessions Judge/Special Court for E.C.Act Cases and NDPS Act cases, Pudukkottai, is confirmed. While confirming the imposition of fine, the sentence awarded by the trial Court is modified and is enhanced to seven years rigorous imprisonment.

37. With the above modification, the Criminal Appeal is dismissed. The appellant/accused is directed to surrender before the trial Court within two weeks from the date of receipt of copy of this judgment and on his failure to surrender, the trial Court is directed to take necessary steps to secure the accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Additional District & Sessions Judge/Special Court for E.C.Act Cases and NDPS Act cases, Pudukkottai.
2. The Judicial Magistrate, Pudukkottai
3. Do thro The Chief Judicial Magistte, Pudukkottai.
4. The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer, (2C)
Criminal Section/Criminal Records
Madurai Bench of Madras High Court, Madurai.

CRL.A(MD).No.2 of 2016
03.08.2021

VR(CO)

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