



Bail Slip

The Appellant Accused Bala Murugan was directed to be released on Bail as per order of this Court dated 01/08/2018 in Crl.MP(MD)No. 5569 of 2018 in Crl.A(MD)No.317 of 2018 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED :14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.A. (MD) .No.317 of 2018

Bala Murugan

... Appellant /Accused No.1

-vs-

State through
the Inspector of Police,
Oomatchikulam Police Station,
Oomatchikulam,
Madurai District
in Crime No.327 of 2021.

... Respondent

PRAYER : Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the entire records connected to the judgment in S.C.No.87 of 2014, on the file of V Additional Sessions Judge, Madurai, dated 09.03.2015 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Thiruvadikumar

Standing counsel for the State

J U D G M E N T

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

Totally there are eight accused in this case and the appellant is the first accused in S.C.No.87 of 2014, on the file of V Additional Sessions Court, Madurai and they stood charged, which reads as follows:

Charge No.	Rank of the accused	Charge under Section
1.	A1 to A8	147 IPC
2.	A1 to A8	148 IPC
3.	A2, A4 and A6	341 IPC
	A8	341 IPC (2 counts)



4.	A1 and A2	302 IPC
5.	A1 to A8	506(ii) IPC

2. By judgment dated 09.03.2015, the trial Court has convicted all the accused and sentenced them as follows:-

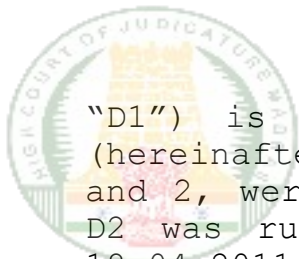
Rank of the accused	Convicted under Section	Sentence Imposed	Fine	Default Sentence
A1 to A8	147I.P.C		Rs.1000/- (each)	3 Months S.I.
A1 to A8	148I.P.C		Rs.1000/- (each)	3 Months S.I.
A2, A4, A5 & A6	341I.P.C		Rs.300/- (each)	2 Weeks S.I.
A8	2341(ii) I.P.C. (2 counts)		Rs.300/- (each)	2 Weeks S.I.
A1 to A8	506(ii) I.P.C.		Rs.1000/- (each)	3 Months S.I.
A1 & A2	302I.P.C .	Life Imprisonment	Rs.5000/- (each)	6 Months R.I.
A1 & A8	302 r/w. 149I.P.C .	Life Imprisonment	Rs.5000/- (each)	6 Months R.I.

3. Challenging the said conviction and sentence, Accused Nos.3, 5 to 8, have separately filed Crl.A.(MD)No.94 of 2015 and a Division Bench of this Court, by judgment dated 10.08.2015, allowed the appeal and acquitted the accused. That apart, the Division Bench has also extended the benefit of acquittal to A4 also, who has not filed any appeal. For A2, even though he was convicted by the trial Court, subsequently, on a Habeas Corpus Petition filed by him claiming that he was a minor at the time of occurrence and he was wrongly convicted by the Sessions Court, this Court set aside the conviction and sentence imposed on A2. A1, the remaining accused is before this Court with this appeal.

4. This is the case of double murder. The case of the prosecution in brief is as follows:

The first deceased Manikandavelan (hereinafter referred to as

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



"D1") is the son of P.W.1 and the second deceased Viswanathan (hereinafter referred to as "D2") is the husband of P.W.4. P.Ws.1 and 2, were running a tea stall, at Thirupalai Main Road, Madurai. D2 was running a laundry shop near to the D1's tea shop. On 18.04.2011, D1's tea shop was closed, due to some festival at Madurai. At about 3.00 p.m., P.W.1 received a phone call from a water supplier to deliver drinking water cans to the shop. So, P.W.1 sent the D1 to open the shop and receive the water cans. At that time, all the eight accused sitting in front of the D1's shop and indulged in eve-teasing, that was questioned by D1. At that time, there was a quarrel and all the accused attacked D1. Thereafter, D1 returned home, all the accused followed D1 up to his house and criminally intimidated him. After sometime, P.W.1, went to the tea shop to lock it and D1 followed her. At that time, all the accused assembled in front of the tea shop and attacked D1. A1 attacked D1 with knife in his thumb and in the abdomen, when P.W.1 raised alarm to save his son, D2 rushed to the scene of occurrence and all the accused attacked him with wooden log, A2 attacked him with knife in his right thigh. During the occurrence, A1 also sustained injury in his thumb. Immediately, P.W.1 and others took D1 and D2 to the Government Hospital, Madurai, in an auto, where they were declared brought dead.

5. On receipt of intimation from the Government Hospital, P.W.13, the Sub-Inspector of Police, working in the respondent police station rushed to the Hospital, where he recorded the statement of P.W.1 at about 6.45 p.m. and registered the F.I.R., in Crime No.327 of 2011 at 8.30 p.m., for the offences under Sections 147, 148, 341, 323, 506 (ii) and 302 I.P.C., and send the same to the Judicial Magistrate, Madurai and copies to the higher officials including the Inspector of Police.

6. P.W.17, the Inspector of Police, on receipt of the F.I.R., proceeded to the scene of occurrence and prepared the Observation Mahazar and Rough Sketch - Ex.P.21, and collected the bloodstained soil and sample soil under mahazar and recorded the statement of the witnesses. On 19.04.2011 at about 3.15 a.m, he arrested A2. On such arrest, he voluntarily given a confession. Based on the admissible portion of the confession, he recovered a knife, thereafter. At about 5.30 a.m., he arrested A3 to A8. On such arrest, A3 has voluntarily given a confession, based on the disclosure statement, he recovered a Karuvelam stick and A7 also given a voluntary confession, based on the disclosure statement, he recovered another stick, thereafter, he sent the accused for remand to Judicial custody. Then, P.W.17, conducted inquest on the dead bodies, in the Government Hospital, Madurai, in the presence of the witnesses and Panchayatars and prepared the Inquest Reports, Exs.P.22 and 23, and he sent the bodies for conducting postmortem autopsy.

7. P.W.15, the Doctor working in the Government Hospital, conducted autopsy on the dead body of D2 at about 1.00



p.m., on 19.04.2011, and prepared the Postmortem Report - Ex.P.19, and found the following injuries:

The following ante mortem injuries are noted on the body:

1. An oblique stab injury 6 cms x 2ms x muscle deep noted on the outer aspect of middlethird of right thigh.

On Dissection:

The wound passing upwards, forwards & medially piercing the underlying muscles and femoral vessels about 1000 ml of fluid blood with clots noted in and around the injured area.

He was of the opinion that the deceased would appear to have died of stab injury to the right thigh and its corresponding internal injuries sustained by him 18 to 22 hrs prior to postmortem'.

8. P.W.16, the another Doctor working in the Government Hospital, Madurai, conducted autopsy on the dead body of D1, and given a Postmortem Certificate - Ex.P.20, which reads as follows:

"1. An oblique stab wound 4 cm x 2 cm cavity deep noted on outer aspect of upper part of right side of abdomen, one inch below the costal margin in the mid axillary line.

On dissection: the wound was directing downwards, inwards & backwards piercing the outer surface of right lobe of liver measuring 3 cm x 1 cm x and ends as a point. Cut section of liver is pale. Peritoneal cavity contains 1000 ml of fluid blood with clots.

2. An oblique stab wound 2 cm x 1 cm x muscle deep noted on palmer aspect of base of the right thumb."

and he was of the opinion that the deceased would appear to have died of shock and haemorrhage due to stab injury in the abdomen and its corresponding internal injuries sustained by him 16 to 20 hours prior to postmortem.

9. Thereafter, P.W.17, arrested A1, at about 12.00 p.m., near Government Hospital, Madurai, and on such arrest, he has voluntarily given a confession. Based on the disclosure statement, he recovered a knife M.O.5, and send him for remand to judicial custody. P.W.17 continued the investigation and recorded the statement of the Doctors, who conducted postmortem autopsy and on completion of investigation, he filed a final report.

10. Based on the above materials, the trial Court framed the charges against the accused as mentioned above. However, the appellant/accused has denied the same. The prosecution in order to sustain their case, examined 17 witnesses, marked 23 documents and also produced 17 material objects.



11. Out of the witnesses examined, P.W.1 is the mother of D1. She spoke about the earlier quarrel between the accused and D1. Subsequently, in front of her tea shop, all the accused assembled and attacked D1. A1 stabbed D1, while D2 trying to prevent them, A2 stabbed in his thigh and caused his death. In the Chief Examination, she has also stated that during the quarrel, A1 also sustained injury. P.W.2 is the father of D1, and he is only a hearsay witness. P.W.3 is the neighbouring shop owner and he is an eyewitness to the occurrence. According to him, there was a wordy quarrel between A1 and D1. At that time, A1 attacked D1, in his abdomen with knife. P.W.4 is the wife of D2. She is also an eyewitness to the occurrence. She spoke about the quarrel between D1 and the accused. Both A1 and A2 attacked D1, while D2 trying to prevent them, A2 attacked him with knife in his thigh and the other accused also attacked him with stick and ran away from the scene of occurrence. P.W.5 is the brother of D2, and he is a hearsay witness, according to him, he went to the Hospital and found the dead body of the deceased.

12. P.W.6 is the witness to the Observation Mahazar and Rough Sketch and also recovery of bloodstained soil and sample soil. P.W.7 is the witness to the arrest and confession of A2 and also recovery of knife used by A2 - M.O.6. P.W.8 also another witness to the confession of A2 and recovery.

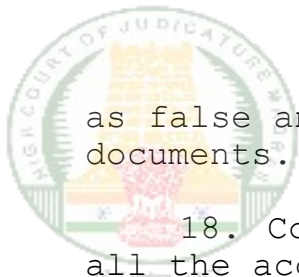
13. P.W.9 is the Constable working in the respondent police station, who handed over the F.I.R., to the Judicial Magistrate Court at about 10.30 p.m., on 18.04.2011. P.W.11 is the another Constable, who has identified the body of D2, for autopsy and handed over the body to his relatives after autopsy.

14. P.W.12 is the Doctor, who received the dead body of D2, and issued the Accident Register - Ex.P.14.

15. P.W.13, is the Sub Inspector of Police, who recorded the statement of P.W.1, in the Hospital and registered the F.I.R., at about 8.30 p.m. P.W.14 is the Analyst working in the Forensic Lab, Madurai. He examined the material objects and given a Chemical Analysis Report - Ex.P.18.

16. P.W.15, the Doctor, who conducted postmortem autopsy on D2, and given a Postmortem Report - Ex.P19. P.W.16 is the another Doctor working in the Government Hospital, Madurai, conducted postmortem autopsy on D1, and issued the Postmortem Certificate - Ex.P20. P.W.17 is the Inspector of Police, who conducted investigation and recorded the statement of the witnesses and filed the final report.

17. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same



as false and they have not examined any witnesses and not marked any documents.

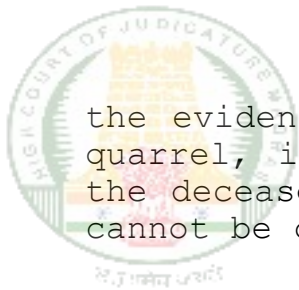
18. Considering all those materials, the trial Court convicted all the accused and sentenced them as stated Supra. Now, challenging the conviction and sentence, A1 is before this Court with this criminal appeal.

19. Mr.R.Alagumani, learned counsel appearing for the appellant would submit that, challenging the conviction and sentence imposed on the similarly placed accused viz., A3, A5 to A8, filed an appeal before this Court in Cr.A.(MD)No.94 of 2015 and a Division Bench of this Court acquitted all the accused including A4, who has not filed any appeal. So far as the appellant/A1, is concerned, he is also similarly placed person. Hence, the benefit of acquittal should also be extended to this appellant and he is entitled for acquittal. The learned counsel for the appellant also make his submissions on the merit of the appeal, and submitted that, the eyewitness to the occurrence Viz., P.Ws.1 and 4 are mother and wife of D1 and D2, they are interested witnesses and there are lot of material inconsistency in their evidence and their evidence cannot be relied upon. That apart, the occurrence took place in a busy main road and number of persons were present and no independent witness has been examined by the prosecution.

20. The learned counsel for the appellant further submitted that the occurrence took place in a quarrel between the accused and the deceased and in the said quarrel, the appellant/A1 also sustained injury, P.Ws.1 and 4 also clearly stated in the cross - examination that A1 also took treatment in the Hospital for the injuries sustained by him. But the prosecution has failed to explain those injuries, thereby suppressed the origin and genesis of the case.

21. The learned counsel for the appellant further submitted that there is a long delay in sending the F.I.R., to the concerned Judicial Magistrate Court, which was not properly explained by the prosecution, which creates a clear doubt and there is a false implication of the accused. The Division Bench also considered the delay and acquitted the other accused. According to the Division Bench, there is a likelihood of false implication in this case. Hence, in those circumstances, it is highly unsafe to rely upon the interested testimonies of P.Ws.1 and 4 to convict A1.

22. The learned counsel further submitted that the appellant convicted along with the other accused for the offences under Sections 147, 148, 506(ii), 302 r/w.149 of I.P.C., and the other accused were acquitted from all the charges. The appellant alone cannot be convicted for the offences under Sections 147, 148, 506 (ii), 302 r/w. 149 of IPC. According to the appellant, so far as



the evidence of P.Ws.1 and 2, the occurrence took place in a wordy quarrel, in which, out of sudden provocation, the accused attacked the deceased and the appellant/A1 has also sustained injury, and he cannot be convicted under Section 302 of I.P.C.

23. Per contra, Mr.A.Thiruvadikumar, learned Standing counsel appearing for the State submitted that, the Division Bench has acquitted those accused merely on the ground that the trial Court did not frame charges properly and the accused cannot be convicted both under Sections 147 and 148 of I.P.C., simultaneously, different offences committed by two different accused are clubbed together into a single charge, and it is irregular and the Division Bench only commented upon the trial Court on the irregularity. So far as the acquittal of the other accused is concerned, the Division Bench, considering the delay in sending the F.I.R., to the Judicial Magistrate Court, which was not properly explained by the prosecution, only doubted the F.I.R. The Division Bench acquitted the other accused mainly on the ground that there is a likelihood of false implication as P.W.1 has clearly stated that she did not aware of the father name of some accused. However, all the accused's fathers name found in the F.I.R. That apart, the medical evidence does not corroborate the evidence of P.Ws.1 and 4. Hence, the Division Bench acquitted A3 to A8. However, the Division Bench also clearly stated that both the A1 and A2 have caused the death and hence, A1 and A2 equally liable to be punished. Apart from that, the Division Bench also considered the evidence of P.W.4, who spoke about the presence of A1 and A2 and the injuries caused on the deceased. Hence, the appellant/A1, cannot take advantage of the acquittal of other accused. The learned Standing counsel further submitted that the occurrence took place in the shop belonging to P.W.1. Hence, the presence of P.W.1 cannot be doubted. So far as P.W.4 is concerned, she was also working along with D2 in their shop, and her presence in the scene of occurrence is natural, both of them categorically stated that A1 in this case attacked D1 and caused his death and A2 attacked D2 and caused his death. Their evidence is consistent and medical evidence also support their evidence and there is no reason to disbelieve them.

24. The learned Standing counsel further submitted that so far as the procedural irregularity committed by the trial Court in framing charges is concerned, unless the accused established that a prejudice is caused to him by irregular framing of charges, on that ground, he cannot be acquitted. So far as the injury sustained by the accused is concerned, except the submission of P.W.1, there is no material available on record to show that the accused sustained injury and he has taken treatment. In the absence of any material, it cannot be held that the accused sustained injury, which has been suppressed by the prosecution. Hence, the trial Court has rightly believed the evidences of P.Ws.1 and 4 and convicted the accused.

<https://hcservices.courts.gov.in/hcservices> considered the rival submissions and perused the



materials available on record.

26. The first question to be decided is whether the benefit of acquittal of A3 to A8, can be extended to this accused and whether the appellant/A1, is also stand in the same footing.

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27. A careful perusal of the judgment of the Division Bench of this Court, in Crl.A.(MD)No.94 of 2015, dated 10.08.2015, it could be seen that, the Division Bench found that the trial Court committed error in framing charges and also made some comments on the trial Court. The Division Bench, while considering the evidence of the eyewitnesses viz., P.Ws.1, 3 and 4, held that there is inconsistency in their evidence regarding the presence of A3 to 8. However, has held that P.W.3 has spoken about the presence of A1 and A2 and the injuries caused by them on the deceased respectively. The relevant portion of the judgment reads as follows:

"25. With this fond hope, let us now go into the facts of the present case. As we have already pointed out, there are 3 eyewitnesses to the occurrence. P.Ws.1 and 4 have spoken about the presence and participation of these accused as well. But, P.W.3 has not stated anything about these accused namely, accused Nos.3 to 8. He has only stated about the presence of A1 and A2 and the injuries caused by them on D1 and D2 respectively."

28. The Division Bench has also taken note of the long delay in sending the F.I.R., to the Judicial Magistrate Court and that the delay was not properly explained. The Division Bench doubted the F.I.R., and the evidence of P.W.1, on the ground that in the F.I.R., the fathers name of all the accused have been given. However, during the trial, P.W.1, has stated that she was not aware of some of the fathers name of the accused. Hence, the Division Bench doubted that there is a likelihood of false implication of the other accused. That apart, even though the eyewitnesses stated that A3 to A8, attacked D1 and D2, with stick and other stone, there is no corresponding injuries found on the dead body of the deceased. Hence, it was held that an attempt was made to rope in A3 to A8. The relevant portion of the judgment reads as follows:

"31. There is yet another reason also for the said doubt. P.Ws.1 and 4 have stated that these accused attacked the deceased with weapons, legs and hands. But, correspondingly, there were no injuries on the bodies of the deceased. Not even a scratch was found. Thus, the medical evidence also does not corroborate the eye witness account. As we have already pointed out, the eyewitness account of P.Ws.1 and 4 is quite contrary to the eyewitness account of P.W.3. This contradiction also has not been explained by the prosecution. For these reasons, in our considered view, the participation of A3 to A8 in the occurrence is highly doubtful. By utilising



the enormous delay in filing the F.I.R., an attempt has been made to rope in as many persons as accused in this case. For these reasons, A3 to A8 are entitled for acquittal."

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29. From the above finding, the Division Bench is of the view that by the enormous delay in sending the F.I.R., the prosecution tried to rope in as many persons as accused and on that ground alone, the Division Bench acquitted A3 to A8. However, the Division Bench did not doubt the testimony of eyewitnesses viz., P.Ws.1 and 4 regarding the participation of A1 and A2 and the overt act attributed on them and hence, as rightly contended by the learned Additional Public Prosecutor, the benefit of acquittal cannot be extended to the appellant/A1.

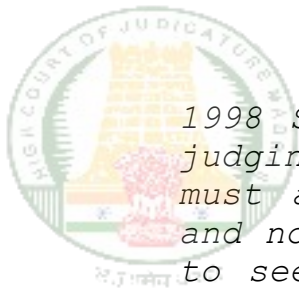
30. Coming to the merit of the case, it is the consistent evidence of P.Ws.1 and 4 that A1 first attacked D1 with the knife near the thumb, and abdomen, thereafter, A2 attacked D2 and caused the injuries. The medical evidence also corroborates the evidence of P.Ws.1 and 4. As already stated, the occurrence took place in front of the tea shop of P.W.1, her presence cannot be doubted. Likewise, P.W.4 is the wife of D2, at the time of occurrence, she along with D2 in their shop. Hence, her presence also cannot be doubted and their evidence is consistent and truthful trustworthy. Merely because, both the eyewitnesses are related to the deceased, we cannot disbelieve their evidences. It is true that while framing charges, the trial Court has committed some defects. There are two deceased in this case. A1 caused the death of D1 and A2 caused the death of D2. Different offence has been committed by A1 and A2. However, the trial Court clubbed both the offences together and framed a single charge for an offence under Section 302 of I.P.C.

31. It is true that there were some defects in framing charges. However, the appellant/A1 is not entitled for acquittal on that defective framing of charges, unless the accused is able to establish that defect in framing the charges has caused real prejudice to him and that, he was not informed as to what was the real case against him, and he could not defend himself properly. It is not the case of appellant he has been prejudiced by the defective framing of charges.

32. The Hon'ble Supreme Court, in number of cases, has held that unless the accused is able to establish that real prejudice was caused by defective framing of charges, on mere technicalities, interference in the conviction is not required.

33. The Hon'ble Supreme Court in the case of **Sanichar Sahni Vs. State of Bihar** reported in **(2009) 7 SCC 198** has held as follows:

"24.The Court in Thakkidiram case (1998) 6 SCC 554 :



1998 SCC 554: 1998 SCC (Cri) 1488) further held that in judging a question of prejudice, as of guilt, the court must act with a broad vision and look to the substance and not to technicalities, and its main concern should be to see whether the accused has a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. In the said case this Court ultimately came to the conclusion that in spite of defect in framing of charge, as no prejudice had been caused to the convicts, no interference was required.

25.A Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. (AIR 1956 SC 116) considered the issue of non-framing of charges properly and conviction of an accused for the offences for which he has not been charged and reached the conclusion as under: (AIR p. 137, para 86-87)

"86...In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out...

87....If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established."

26.This Court in Gurpreet Singh v. State of Punjab (2005) 12 SCC 615 : (2006) 1 SCC (Cri) 191 referred to and relied upon its earlier judgments in Willie (William) Slaney (AIR 1956 SC 116) and State of A.P. v. Thakkidiram Reddy and held that unless there is failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the evidence led against the accused. The Court should not interfere unless it is established that the accused persons were in any way prejudiced due to the errors and omissions in framing the charges against him. A similar view has been reiterated by this Court in Ramji Singh V. State of Bihar (2001) 9 SCC 528 : 2002 SCC (Cri) 760.

27.Therefore, the law on the issue can be summarised to the effect that unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to



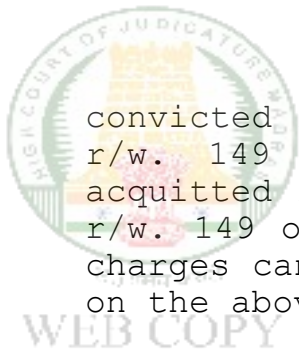
what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory.

34. In the instant case, proper trial was conducted and all the incriminating materials were put against the accused and explained to him properly and he has been given a fair chance to defend himself. Hence, the conviction cannot be interfered with merely on the ground of defect in framing charges. Considering all those materials, especially, the evidence of P.Ws.1 and 4, we are of the considered view that the prosecution has clearly established that, this accused attacked D1 and caused his death and the trial Court also rightly convicted him.

35. From the perusal of evidence of P.Ws.1 and 4, it could be seen that during the occurrence, the appellant/A1, also sustained injury. It is not known what is the nature of the injury sustained by him. It is stated that he was taken treatment in a hospital for sometime. The appellant has not taken any steps to mark those records to establish that he has sustained serious injuries in the occurrence. It is also settled that if the injuries are minor in nature, the prosecution has no obligation to explain the minor injuries sustained by the accused. In such circumstances, without knowing the nature of the injuries alleged to have sustained by the appellant, it cannot be held that the prosecution has suppressed the origin and genesis of the case.

36. The next question arises for consideration is what was the offence that was committed by the accused. During the occurrence, there was a quarrel between the appellant and D1. P.W.1, has also stated that during the scuffle, the appellant also sustained injury in the stomach. P.W.3 is the neighbouring shop owner, he has also spoke about the wordy quarrel between them and it leads to a scuffle and a sudden fight between the appellant/A1 and D1. At that time, A1 attacked D1, in the stomach.

37. P.W.4, in his cross - examination also spoke about the quarrel between the parties and he also seen that the appellant/accused sustained injury. From that, it could be seen that the occurrence has taken place in a wordy quarrel and the accused with the intention to cause injury attacked the deceased with knife in the abdomen, which is sufficient in the ordinary course to cause his death. Hence, the act of the accused would fall under 3rd limb of Section 300 of I.P.C. It is also seen that, the accused acted without any premeditation and in a sudden fight, in a heat of passion, attacked D1. Hence, the act of the accused would fall in fourth exception to Section 300 I.P.C. In such circumstances, this appellant is liable to be punished under Section 304 (i) of I.P.C., not under Section 302 of I.P.C. The appellant has also been



convicted for the offences under Sections 147, 148, 506(ii) and 302 r/w. 149 of I.P.C. Now, all the remaining accused have been acquitted for the offences under Sections 147, 148, 506(ii) and 302 r/w. 149 of I.P.C. Hence, the conviction of the appellant on those charges cannot be maintained. Hence, the conviction of the appellant on the above said charges are liable to be set aside.

38. Coming to the quantum of punishment, the accused is a young man and he has no bad antecedent and it is not a premeditated murder, in a sudden fight, on heat of passion, he attacked the deceased and caused his death, and he has a chance to reform. Considering the mitigating as well as the aggravating circumstances, we are of the opinion that, sentencing him to eight years of rigorous imprisonment will meet the ends of justice.

39. In the result, the appeal is partly allowed and the conviction on the appellant under Sections 147, 148, 506(ii) and 302 r/w. 149 of I.P.C. is set aside and he is acquitted from all the above charges. The conviction under Section 302 of I.P.C., is set aside, instead the appellant is convicted under Section 304(i) of I.P.C., and sentenced to undergo 8 years Rigorous Imprisonment and to pay fine of Rs.5,000/-, in default to undergo six months Simple Imprisonment. The period already undergone by the Appellant/A1 shall be given set off under Section 428 of Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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.

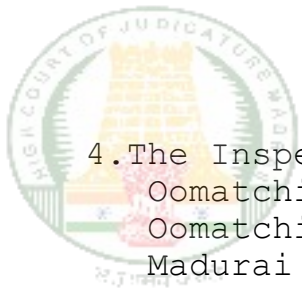
To

1.The V Additional Sessions Court,
Madurai District.

2.The Judicial Magistrate No.2, Madurai.

3.-do- Through the Chief Judicial Magistrate, Madurai.

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



4.The Inspector of Police,
Oomatchikulam Police Station,
Oomatchikulam,
Madurai District.

5.The Superintendent Central Prison, Madurai.

6.The District Collector, Madurai.

7.The Director General of Police,
Mylapore Chennai-4

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

Copy to
The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court, Madurai.

Cr1.A.(MD).No.317 of 2018
14.09.2021

_RD(1.10.2021) 13P 11C