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Crl.A.No.371 of 2018



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 24.01.2023**

**PRONOUNCED ON : 28.03.2023**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Crl.A.No.371 of 2018**  
**and Crl.M.P.No.6778 of 2019**

Moorthy,  
S/o.Kesavan

...

Appellant /  
Accused

***versus***

State represented by  
Inspector of Police,  
Shevapet Police Station,  
Salem District.  
(Crime No.65 of 2013)

...

Respondent /  
Complainant

**PRAYER:** Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the judgment of the learned Principal Sessions Judge, Salem in S.C.No.267 of 2013 dated 26.04.2018.

For Appellant : Mr.R.Thamarai Selvan

For Respondent : Mr.R.Murthi  
Government Advocate (Crl. Side)



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### **JUDGMENT**

This Criminal Appeal has been preferred challenging the judgment of the learned Principal Sessions Judge, Salem dated 26.04.2018 made in S.C.No.267 of 2013.

2. The appellant is the first accused, who was found guilty for the offence under Section 304(I) IPC and sentenced him to undergo ten years Rigorous Imprisonment and imposed with a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for six months. The second accused was a minor at the time of occurrence.

### **3.The short facts of the prosecution case are as follows:-**

3.1. The deceased (Palani) was a night watchman of Varathan Iron Godown; on 10.02.2013 at about 11.30 p.m. the accused along with one juvenile Kulpi @ Viji were sitting in the Godown and talking loudly, the deceased who was the watchman of the Godown asked them to leave the place and the deceased went and sat on his cot; thereafter, the appellant and the minor accused Kulpi @ Viji came with an intention to murder the



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deceased and asked them how dare was he to scold them and assaulted him with hands; knowing that the type of attack on the deceased would cause his death, the appellant attacked him on the left side forehead and the minor accused kicked the deceased on his stomach and mouth with wooden reaper; the appellant also got the wooden reaper from him and beat the deceased on the back of his head; in view of the multiple injuries suffered by the deceased he was admitted in the Hospital and he succumbed to his injuries on 17.03.2013; so the accused were charged for the offence under Section 302 r/w 34 IPC; since the other accused was a minor, the case against the minor seems to have got segregated and the case against the appellant was tried before the Sessions Court.

**3.2.** After the charges have been framed and the appellant was questioned, the appellant pleaded innocence and was tried. During the course of trial, on the side of the prosecution, 9 witnesses have been examined as P.W.1 to P.W.9, 23 exhibits were marked as Ex.P.1 to Ex.P.23



and Material Objects were marked as M.O.1 to M.O.3. On the side of the defence, no witness has been examined and no document was marked.

**3.3.** After concluding the trial and on considering the materials on record, the learned trial Judge found the appellant / accused No.1 guilty for the offence under Section 304(I) IPC and convicted and sentenced him to undergo Ten years of Rigorous Imprisonment and imposed a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for six months. Aggrieved over the same, the accused has preferred this Criminal Appeal.

**4.** P.W.1 (Kumar) is the son of the deceased (Palani) and he had given the complaint (Ex.P.1); the owner of the Godown where the occurrence had taken place has been examined as P.W.2 (Sitheswaran); P.W.3 (Mathiyalagan) and P.W.4 (Murugan) were working in the godown; as per the evidence of the prosecution on the day of occurrence i.e. on 10.02.2013 at about 11.30 p.m., P.W.2 and P.W.4 were waiting in the godown in order to load the materials supposed to be delivered to the



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godown; the deceased (Palani) and P.W.3 were the watchmen of the godown; since the deceased (Palani) heard the noise of the appellant at about 11.30p.m., he came out and asked the accused to leave, at that time the minor accused fisted on his face and also kicked him; the other accused who is the appellant herein had assaulted the deceased with wooden reaper on his head; this was witnessed by P.W.3 and he immediately informed the matter to the son of the deceased P.W.1.

5. P.W.1 arrived to the spot immediately and saw his father was seriously injured but conscious; the deceased told P.W.1 that he was attacked by the appellant and the minor accused, when he asked them to leave away; P.W.1 took his father immediately to the Government Hospital, Salem for treatment.

6. The Accident Register was registered by P.W.8 (Dr.Arun) attached to the Government Hospital, Salem. On 10.02.2013 at about 12.00 midnight, P.W.1 brought the deceased to the Hospital and P.W.8 examined him and found that the deceased had sustained head injury and the blood



was oozing out from his nose and the deceased was admitted as an inpatient and he was conscious at that time. The Accident Register copy was marked as Ex.P.12.

7. P.W.5 (B.Varadharajan), Sub Inspector of Police, Shevapet Police Station, on receiving the information from the Government Hospital, Salem, rushed to the Hospital and recorded the statement of the deceased. After coming back to the Police Station, he registered the First Information Report on the statement given by the deceased in Crime No.65 of 2013 for the offences under Sections 294(b), 323, 324 and 506(ii) IPC. The First Information Report was marked as Ex.P.5.

8. Thereafter, P.W.5 proceeded to the scene of occurrence on the next day morning at about 7.15 a.m. and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.6) in the presence of P.W.2 and the deceased. Subsequently, he arrested the accused and remanded to judicial custody on 13.02.2013. The admitted portion of the confession was marked as Ex.P.3. In pursuant to the confession statement given by the accused, the



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wooden reaper used for the occurrence (M.O.3) was seized in the presence of witnesses under Ex.P.4 Mahazar. The statement of the deceased, who was taking treatment in the Hospital was also recorded along with the statement of other witnesses. The charges have been altered from Sections 294(b), 323, 324 and 506(ii) IPC to Section 307 IPC and Alternation Report was marked under Ex.P.17.

9. P.W.9 (A.Sabiyullah), Inspector of Police, Shevapet Police Station, continued the investigation and he also examined the witnesses and recorded the statement. On 13.02.2013, P.W.9 arrested the second accused and recorded his confession statement under Ex.P.18. The second accused took P.W.9 to Vaikkal Pattarai Bus Stop and handed over the blood-stained white full sleeve shirt from the back side of his house and that was seized by P.W.9 under Ex.P.19 Mahazar. He examined the further witnesses and recorded their statements.

10. Thereafter, P.W.7 (N.Sorriyamoorthi), Inspector of Police, Shevapet Police Station continued the investigation; on 17.02.2013 the



death intimation of the deceased was received from the Government Hospital, Salem and he obtained the death report under Ex.P.11 and altered the charges from Section 307 IPC to Section 302 IPC and prepared Alteration Report under Ex.P.13. He proceeded to the Government Hospital, Salem and conducted inquest on the body of the deceased in the presence of panchayatars and witnesses and prepared the Inquest Report under Ex.P.14. He also gave the request for conducting Postmortem on the body of the deceased.

11. P.W.6 (Dr.Kesavalingham), Professor of Forensic Medicine, Government Hospital, Salem, has conducted the Postmortem on the body of the deceased and found the following injuries:-

**“External Injuries:-**

- 1.Healed abrasion over left forehead M-5x2cms
- 2.Healed Bedsore over sacral region M-5x4cms

**Internal Findings:-**

- 1.O/D Head:- Healing reddish brown scalp contusion over B1 frontal region M-6x4cms, cranial, vault-fissured fracture over supra orbital region M-5cms long, brain-resolving sub arachnoid haemorrhage seen over left



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fronto parietal region, base of skull - fissured fracture involving left anterior cranial fossa.

2.O/D Neck:- All neck structures are normal, hyoid bone-intact.

3.O/D thorax:- No ribs fracture, heart-normal in size, chambers-contained fluid blood valves and coronaries patent lungs O/S pale.

4.O/D Abdomen:- Stomach-60ml of brown colour fluid with no specific smell mucosa-pale, liver, spleen and kidneys C/S pale, bladder - empty, pelvis and spinal colum - intact, genitalia - intact.”

**12.** P.W.6 gave Postmortem Certificate under Ex.P.8. The viscera was sent for chemical examination and the chemical report was marked as Ex.P.9. As per the opinion of P.W.6, the deceased would appear to have died due to head injuries.

**13.** P.W.7 seized the blood stained dhoti (M.O.1), blood stained shirt (M.O.2) and gave requisition under Ex.P.15 to the learned Judicial Magistrate for sending the same for chemical analysis. The above materials objects were sent for chemical analysis through Court under Ex.P.16.

**14.** P.W.9 continued the further investigation and gave requisition under Ex.P.22 to the learned Judicial Magistrate for sending the above



material objects for chemical analysis and he got the viscera Report under Ex.P.23 and he examined the remaining witnesses and recorded their statements. After concluding the investigation, Charge Sheet has been filed against the accused under Section 302 r/w 34 IPC.

**15.** After conclusion of the trial, the appellant, who was tried before the learned Principal Sessions Judge, Salem, under Section 313(1) (b) Cr.P.C. with regard to the incriminating materials and the facts available against him. He denied his complicity in the crime. After hearing both sides and on considering the evidence available on record, the learned Principal Sessions Judge, Salem had found the accused guilty for the offence under Section 304(I) IPC and sentenced him as stated *supra*.

**16.** Heard the submissions of Mr.R.Thamarai Selvan, learned counsel appearing on behalf of the appellant and Mr.R.Murthi, learned Government Advocate (CrI.Side) appearing on behalf of the respondent and perused the materials available on record.



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**17.** The learned counsel for the appellant submitted that the contradiction and inconsistencies in the evidence of witnesses were not properly appreciated by the learned trial Judge; even though the deceased was said to be conscious at the Hospital he did not say the name of the accused to the doctor and he had simply stated that he was attacked by unknown accused. The deceased was taking treatment in the Hospital for nearly 37 days after the occurrence and he died only on 17.03.2013. The respondent police without securing the real accused have fabricated the case in such a way that the appellant has caused the occurrence.

**18.** There was a delay in registering the First Information Report and there is no acceptable explanation offered by the respondent. In the complaint statement of the deceased, he has not mentioned about the persons at the time of the occurrence. The treatment summary was not placed before the trial Court and one such important evidence is omitted to be considered. The accused have been erroneously found guilty and hence



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the judgment of the learned Principal Sessions Judge, Salem, should be set aside.

**19.** The learned Government Advocate (Crl. Side) appearing on behalf of the respondent submitted that the learned trial Judge found the accused guilty only after considering the oral, documentary and medical evidence. The evidence of eye-witnesses would also show that it is the appellant who had committed the offence. Since the deceased was attacked by the accused with wooden reaper, knowing pretty well that it would cause the death of the deceased. The accused had motive coupled with intention to kill the deceased and that has been proved with the evidence of the prosecution.

**20.** A poor watchman of P.W.2's godown was killed on the alleged day of occurrence. As per the case of the prosecution, on the alleged day of occurrence the accused 1 and 2 got enraged when the deceased (Palani), asked them to leave from the godown without making noise. They assaulted the deceased with wooden reaper and kicked him with legs. The deceased



was immediately taken to the Government Hospital, Salem and he was admitted there as an inpatient for nearly 37 days. Hence, the complaint statement obtained from the deceased while he was taking treatment at the Hospital has been marked as Ex.P.1.

**21.** According to the complaint statement (Ex.P.1), the deceased was working as the watchman of Varathan Iron Godown at the relevant point of time. On 10.02.2013 at about 11.30p.m. while the deceased was working in the Iron Godown, he heard the noise of someone conversing nearby. When he went there, he saw the accused were conversing by raising their voice. As the accused did not have any business at the place nearby to the godown during that mid night, he asked them to leave. The accused did not take it well, but abused the deceased. The first accused fisted on his nose, mouth and caused bleeding oozing out of his nose and mouth. When the deceased shouted, the appellant / first accused took the wooden reaper nearby and assaulted him on his head and thereafter, the deceased stumbled and fell down; the second accused, who was a juvenile kicked the deceased



by abusing him and he also got the wooden reaper from the first accused and attacked him on the back of his head. In his statement, he had further stated that P.W.3 (Mathiyalagan), noticed him lying with injuries and he immediately informed his son (P.W.1), who rushed to the spot and took him to the Hospital.

**22.** The learned counsel for the appellant submitted that the deceased had not given, this much of details to PW8 doctor who registered the Accident Register. PW8 has stated in his evidence that the deceased told him that he was attacked by unknown persons. However in the complaint statement the names of the accused are mentioned.

**23.** The Accident Register extract was marked as Ex.P.12. It is seen with an one line statement given by the injured. The way in which one line statement has been recorded by the doctor would show that the doctor did not evince any interest in getting the relevant details required for the medico-legal case he was dealing with. There may be difference in the



statement of the injured given to the doctor and to the police. But the patent omission of essential details in the statement of the injured given to the doctor would only show that such statements are written by PW8 in a ritualistic manner.

24. And the fact that the injured was suffering from severe pain and hence he could not be in a mood to give too many details about the occurrence to the doctor. While taking treatment after getting the first-aid, he would have been more sober to give a detailed account of the occurrence to the Investigation Officer who recorded the complaint statement.

25. P.W.5, Sub Inspector of Police, has stated in his evidence that he visited the injured, who was taking treatment in the Hospital at about 6.00a.m on 11.02.2013. The deceased was taking treatment and he was alive for atleast 37 days from the date of the occurrence.

26. Apart from the statement given by the deceased, P.W.3 (Mathiyalagan), who had witnessed the occurrence has also stated about the



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manner in which the occurrence had taken place. It was submitted by the learned counsel for the appellant that the eye-witnesses P.W.2 and P.W.4, who were said to be present in the godown did not state about the presence of P.W.3 (Mathiyalagan). In fact, in the cross examination of P.W.2, it is stated that P.W.2 and P.W.4 were inside the godown. P.W.3 (Mathiyalagan) himself has stated in his evidence that he could see the occurrence as he was just returning from his supper. Since the occurrence had taken place at about 11.00p.m, it would have been possible for P.W.3 for having returned from supper.

**27.** P.W.1 (Kumar) is the son of the deceased and he could reach the place of occurrence immediately after getting the information. Because his house was just a furlong away from the godown. So, P.W.1 rushed to the spot and took the deceased to the Hospital along with the owner of the godown and other staffs. The owner of the premises, who was examined as P.W.2 has stated that the deceased (Palani) and P.W.4 and other witnesses were working in his godown at the relevant point of time. He has stated



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clearly in his evidence that the deceased (Palani) and P.W.3 (Mathiyalagan) were working as watchmen. So it is quite possible for the deceased and P.W.3 to be present at the relevant point of time at the place of occurrence as they were on duty.

**28.** P.W.2 and P.W.4 had come out of the godown and went near the deceased after hearing his noise. They have stated that they had seen the accused attacking the deceased with wooden reaper. He had also stated in his evidence that PW3 had gone to supper and he saw the accused while he was returning. He had further submitted that before they came out of the godown, P.W.3 rushed to the house of the deceased to inform his son about the occurrence. At the time when P.W.1 came to the place of occurrence, he saw P.W.2 and P.W.4 were also present. So the above important evidence of P.W.1 to P.W.4 is very much natural and realistic and it does not suffer from any serious suspicion in order to render it unacceptable.



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**29.** P.W.1 saw his father bleeding and hence he immediately took him in an auto to the Government Hospital, Salem. When the police came and obtained the complaint statement from his deceased father, P.W.1 was also present and he had affixed his signature for attesting the same. The presence of P.W.1 at the time of recording Ex.P.1 complaint is just natural. The combined reading of the evidence of P.W.1 to P.W.4 itself is sufficient to prove the fact that the deceased was attacked by the accused and that was noticed by PW3 who returned from dinner. And that was also noticed by P.W.2 and P.W.4, who came out of the godown on hearing the noise. The evidence of P.W.1 is also quite natural in the given circumstances where he could rush and see his injured father.

**30.** It is the argument of the learned counsel for the appellant that there is contradiction in the statement of P.W.1 with regard to the weapon used for the occurrence. It is submitted that P.W.1 has stated seeing the wooden reaper at the place of occurrence, but the Investigating Officer has stated that the weapon was seized on the confession given by the accused on



the next day of the occurrence. P.W.1 has stated in his cross examination that he had seen the wooden reaper only on the next day at the spot. So there cannot be any quarrel as to the weapon used for the occurrence and the prosecution has established the relevance of the weapon to the occurrence and that it was used by the accused to attack the deceased.

**31.** It is also seen that the injuries present on the body of the deceased also tallied with the manner in which he was attacked by the accused. The deceased succumbed to his injuries after 37 days and even in the Inquest Report also, it has been stated that the deceased was assaulted with a wooden reaper.

**32.** The Postmortem Report of the deceased was marked as Ex.P.8 and that would show that the deceased would appear to have died of effects of head injuries sustained by him. The final opinion to that effect was given by P.W.6 (Dr.Kesavalingham) after receiving the Viscera Report. The Viscera Report is available as Ex.P.9 and the Postmortem Certificate and the



final opinion are available as Ex.P.8 and Ex.P.10. So the combined reading of these documents (Ex.P.8 to Ex.P.10) would show that the deceased had died due to the impact of the head injuries sustained by him during the occurrence.

**33.** The above evidence of the prosecution along with other material objects would prove that the accused had attacked the deceased with wooden reaper at the place of occurrence and that had caused his death. Though the accused were charged for the offence under Section 302 r/w 34 IPC, the learned Principal Sessions Judge had found the accused guilty for the offence under Section 304(I) IPC. The learned trial Judge had come to the conclusion that the accused had committed the culpable homicide not amounting to murder because the materials available on record did not show that the accused had any other previous motive to kill the accused except the fact that they got irritated when the deceased warned them to leave from the place of occurrence.



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**34.** In *Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh* reported in (2006) 11 SCC 444, the Hon'ble Supreme Court has underlined some of the considerations that should be taken into account while evaluating the difference between Sections 302, 304 Part I or 304 Part II I.P.C. as under:-

*"29. Therefore, the Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II,*



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*or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances;*

*(i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”*



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**35.** In the case in hand, the overt act on the part of the accused had not originated from any premeditated plan of murdering the deceased. But the amount of force used by the accused and the type of the weapon used by them would show that they had the knowledge that if they attacked an old man like the deceased that would endanger his life and lead to his death. They were not armed with any weapon when they came to the place of occurrence and the wooden reaper was taken from the place of occurrence in the sudden quarrel picked up by the accused, when the deceased asked them not to shout and vacate the place. There is no previous motive for the accused to kill the deceased and neither was there any previous enmity between the accused and the deceased. The reason for the occurrence is very trivial. And the fact that the accused had survived for 37 days would also fortify the fact that the accused did not have any intention to kill the deceased though they had the knowledge that their acts would lead to the death of the deceased. In view of the above stated reasons, I feel the accused could have been convicted under Section 304 (II) IPC instead of Section 304(I) IPC.



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**36.** In view of the above stated reasons, this Criminal Appeal is **partly allowed** and the judgment of the learned Principal Sessions Judge, Salem, in S.C.No.267 of 2013 dated 26.04.2018 is modified to the extent that the appellant / accused is found guilty for the offence under Section 304 (II) IPC and sentenced him to undergo 5 (five) years Rigorous Imprisonment and to pay a fine of Rs.1,000/, in default to undergo three months Rigorous Imprisonment. If the fine amount has already been paid pursuant to the judgment of the trial Court, it is not necessary for the appellant / accused to pay it once again. The period of sentence already undergone by the appellant / accused shall be set off as per Section 428 Cr.P.C. Consequently, connected Miscellaneous Petition is closed.

**28.03.2023**

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

- 1.The Principal Sessions Judge,  
Salem.
- 2.The Inspector of Police,  
Government of Tamil Nadu,  
Shevapet Police Station,  
Salem District.
- 3.The Public Prosecutor,  
Madras High Court,  
Chennai.



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Crl.A.No.371 of 2018



**R.N.MANJULA, J.**

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**Pre-Delivery Judgment made in**  
**Crl.A.No.371 of 2018**

**28.03.2023**