



Crl.A(MD)Nos.14 of 2020 and 90 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 31.01.2023

Pronounced on : 15.02.2023

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.A.(MD).Nos.14 of 2020 and 90 of 2021

Crl.A.(MD).No.14 of 2020

Pounthai

....Appellant/ P.W.1

VS.

1.The State represented by
The Inspector of Police,
Periyakulam Police Station,
Theni District.
(Crime No.183/2015)

....Respondent / Complainant

2.Sathish Kumar

3.Krishnaveni

4.Divya

5.Angayan

....Respondents / Accused No.1 to 4

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Crl.A(MD)Nos.14 of 2020 and 90 of 2021

Prayer : Criminal Appeal filed under Section 372 of Criminal Procedure Code to call for the records and set aside the judgment dated 28.11.2019 made in S.C.No.176 of 2015 on the file of Additional District and Sessions Judge, Theni @ Periyakulam.

For Appellant : Mr.C.Muthusaravanan

For R-1 : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.

For R-2 to R-5 : Mr.G.Chandrasekar

Crl.A.(MD).No.90 of 2021

State represented by
The Inspector of Police,
Periyakulam Police Station,
Theni District.
(Crime No.183/2015)

....Appellant/Complainant

VS.

1.Sathish Kumar

2.Krishnaveni

3.Divya

4.Angaiyah

....Respondents/Accused [A-1 to A-4]



Crl.A(MD)Nos.14 of 2020 and 90 of 2021

Prayer : Criminal Appeal filed under Section 378(1) of Criminal Procedure Code to allow this appeal and set aside the judgment of acquittal of the respondents/accused [A-1 to A-4] dated 28.11.2019 in Sessions Case No.176 of 2015 on the file of the Additional District and Sessions Court, Theni @ Periyakulam and convict the respondents/accused [A-1 to A-4] for the charges framed against him.

For Appellant : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.

For R-1 to R-4 : Mr.G.Chandrasekar

COMMON JUDGMENT

SUNDER MOHAN, J.

The above appeals have been filed challenging the judgment of acquittal passed by the learned Additional District and Sessions Judge, Theni @ Periyakulam in S.C.No.176 of 2015. Crl.A.(MD).No.90 of 2021 has been filed by the State and Crl.A.(MD).No.14 of 2020 has been filed by P.W.1, the mother of the deceased.



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2. The case of the prosecution is that the accused/respondents in

Crl.A.(MD).No.90 of 2021 had caused the death of the son of P.W.1 on 24.04.2015 at about 12.30 PM. It is alleged that A1 on the instigation of A2 to A4 had stabbed the deceased on the back of his neck indiscriminately and caused his death. It is the case of the prosecution that A1 is the brother of A3 and A2 is the mother of A1 and A3. A4 is also related to the other accused. The deceased had married his paternal aunt's daughter. A2 is his paternal aunt and A3 is his wife. The deceased and A3 got married in the year 2010. When A3 became pregnant, she left the matrimonial home and lived with her parents. After the child birth, the deceased and A3 lived along with P.W.1 and her husband for two months. Thereafter, the deceased left for Dubai to pursue a job. The deceased came back to India and started a seat cover shop opposite to the house of his parents. Thereafter, it appears that matrimonial disputes arose. The family members on either side it appears had heated verbal exchanges. Thereafter, A3 started living with her parents. In order to reconcile the differences, the deceased along with P.W.1 and few other relatives went to the house of the accused. It is further the case of the prosecution that deceased attempted to take the child and a



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wordy quarrel took place; A2 instigated her son, A1, to do away with the deceased; A4 caught hold of the deceased and A1 stabbed the deceased with knife on the back of his neck indiscriminately and; when P.W.1 attempted to prevent the attack, A3 pushed P.W.1.

3. The prosecution examined 27 witnesses in support of its case and marked 18 exhibits. The defence had marked exhibits D1 to D6 through the prosecution witnesses. The accused denied their involvement when questioned under Section 313 CrPC. The Trial Court on consideration of the evidence and other materials found that the prosecution had not established the case beyond reasonable doubt. The Trial Court based its finding on several grounds, namely;

a) That the FIR, Ex.P12, was sent to the learned Magistrate belatedly. Ex.P12, which was registered at about 1.10 PM, had reached the learned Magistrate only at 5.30 PM. The learned Judge found that this delay has not been explained by the prosecution. The distance between the Police Station and the Court was only 1 Km. This delay coupled with the fact that P.W.1 had admitted that she had given three different complaints has given



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scope for manipulation. The prosecution had suppressed the remaining two complaints alleged to have been given by P.W.1, which would falsify the prosecution case.

b) It is the case of the prosecution that the occurrence took place at 12.30 PM. However, P.W.22, Doctor, had stated that the Inspector, Periyakulam Police Station gave a requisition at 11.00 AM for conducting postmortem of the deceased, Anna Prabhu. He had also stated that he had conducted the postmortem at about 11.45 AM. In such circumstances, the entire prosecution case that the occurrence took place at 12.30 PM cannot be believed.

c) P.W.2 to P.W.4 cannot be treated as eye witnesses in this case in view of their categorical admission that they had not witnessed the occurrence. Hence, the prosecution case rests on evidence of P.W.1 alone. P.W.1's evidence is not cogent and convincing. P.W.1 has made several improvements in her deposition before the Court. During her examination by the Police, she had stated that A1 brought the knife from the kitchen,



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whereas, in her deposition, she stated that A2 gave the knife to A1. Further, during her examination by the Police, she had stated that A1 stabbed the deceased once on the neck. On the other hand, in her deposition, she had stated that A4 caught hold of the deceased and thereafter, A1 stabbed the deceased and when P.W.1 tried to prevent the attack, A3 pushed P.W.1 aside.

d) Further, the evidence of P.W.4 as admitted by him in cross-examination would show that the complaint was prepared only in the evening and after much deliberation.

e) Further, P.W.20 and P.W.26 who are related to the accused had turned hostile. Their evidence would show that all the witnesses, namely, P.W.1 to P.W.4 could not have witnessed the occurrence and all of them reached Periyakulam, where the occurrence is said to have taken place, only at about 2.30 PM.

f) The recovery of M.O.1 knife on the alleged confession of A1 is also doubtful. M.O.1 knife is 18 ½ Cm long, whereas, the forensic expert



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had stated that the knife is 21 Cm long. This also throws doubt on the alleged recovery made on the confession of A1.

4. (i) The learned counsel for the appellant in Crl.A.(MD).No.14 of 2020 submitted that the judgment of acquittal suffers from number of infirmities, which requires interference by this Court. The learned counsel for the appellant submitted that they are aware of the limitations in an appeal against acquittal. However, since the findings of the learned trial Judge are perverse and the reasons for acquittal are unsustainable, the order of acquittal has to be reversed.

(ii) The learned counsel submitted that the learned trial Judge had come to an erroneous conclusion that P.W.1 had given three different complaints and one was registered as an FIR. The other two complaints were suppressed according to the learned trial Judge. However, the reading of evidence of P.W.1 would show that she had not admitted anywhere that she had given three complaints. To the specific question put to her, she had stated that the only complaint given by her was made orally to the



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Sub Inspector of Police, who had written it and she had signed in the said complaint.

(iii) The learned counsel further submitted that based on the above premise, which is not based on evidence, the learned trial Judge came to the conclusion that the delay of 4 hours 20 minutes in sending the FIR to the learned Magistrate was fatal to the prosecution.

(iv) The learned counsel further submitted that the Trial Court made another error in the appreciation of facts by holding that for an occurrence said to have taken place on 24.04.2015 at 12.30 PM, the Investigating Officer had made request to P.W.22, the postmortem Doctor, for conducting postmortem at 11.00 AM on 24.04.2015. The learned trial Judge had failed to notice that the requisition for postmortem was made by the Investigating Officer only on 25.04.2015 at 11.00 AM, i.e., nearly one day after the occurrence. This error in appreciation of facts has led to an erroneous conclusion that the witnesses cannot be believed.



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(v) The learned counsel further submitted that P.W.2, who went along with P.W.1 and the deceased to the house of the accused had stated that since the family members of the accused and the deceased were fighting with each other, he had gone out to smoke a cigarette. Immediately thereafter, he heard a sound and went into the house of the accused and saw A1 standing with a knife in his hand and threatening him. He also saw that the deceased suffered an injury and blood was flowing from his neck. He had called the ambulance. He had also handed over his blood stained shirt to the Investigating Officer. Since it was the prosecution case that P.W.2 was also an eye witness, P.W.2 was treated hostile since he deposed that he did not see the actual attack on the deceased. The learned counsel for the appellant submitted that though he was treated a hostile, the learned trial Judge ought not to have rejected his evidence completely. The evidence of P.W.2 to the extent it supports the prosecution case and consistent with the other evidence on record ought to have been accepted.

(vi) The learned counsel further submitted that P.W.1 to P.W.4 who was related to the accused had no necessity to falsely implicate the accused.

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Minor contradictions and total misreading of the evidence has led the learned trial Judge to disbelieve the evidence of P.W.1. Further, the Trial Court erroneously accepted the evidence of the hostile witnesses, P.W.20 and P.W.26, to come to the conclusion that all the witnesses had come to the scene of occurrence only at 2.30 PM to disbelieve the evidence of P.W.1. The Trial Court also disbelieved the recovery of M.O.1 stating that P.W.6 and P.W.20 who are all related the accused cannot be believed and hence, the Investigating Officer/P.W.27's evidence also has to be rejected. Further, M.O.1 knife measured 18.5 Cm, whereas, the forensic expert P.W.25 had stated that the knife sent to him for examination was about 21 Cm. This was construed as a serious discrepancy by the Trial Court to disbelieve the records and the ocular evidence.

(vii) The learned trial Judge also has made certain surmises and conjectures at Paragraph 126 of the judgment stating that the internal organs of the deceased were not subjected to chemical analysis since the prosecution did not want to expose the fact that the deceased consumed alcohol. This is not based on any record and it is nobody's case that the



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deceased was in an inebriated condition. The other reasons assigned by the learned Judge are either unsustainable or flimsy to record a finding of acquittal.

5. The learned Additional Public Prosecutor for the State reiterated the above submissions and submitted that the finding of acquittal by the learned trial Judge is perverse. The appreciation of evidence by the Trial Court is perfunctory in nature. Most of the observations are based on conjectures and hence prayed that the finding of acquittal has to be reversed.

6. (i) The learned counsel for the respondents in Crl.A.(MD).No.90 of 2021/accused submitted that P.W.20, who was treated as hostile, had stated that P.W.1, P.W.2 and other witnesses had come to the place of occurrence only at 2.30 PM. The Court was right in believing P.W.20, though he was treated hostile by the prosecution to disbelieve P.W.1. He would further state that the expression “hostile witness” is not found in the Indian Evidence Act. The Courts can believe witnesses if they did not support the prosecution case and if their evidence is not otherwise



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discredited. The learned counsel further submitted that P.W.11 and P.W.12, who had turned hostile, had stated that at about 12.30 PM when they went to the house of the accused on hearing a sound, they saw four or five persons running out of the house and saw A2 and A3 in a confused state and they could not explain as to what had happened when enquired. The learned counsel submitted that the evidence of P.W.11, P.W.12 and P.W.26 which was on similar lines though treated hostile was rightly accepted by the learned trial Judge.

(ii) The learned counsel submitted that the Trial Court's finding of acquittal should not be ordinarily interfered with. Further, the Trial Court had the benefit of watching the demeanour of the witnesses and appreciating their statements. Unless strong and compelling reasons exist, the finding of acquittal cannot be interfered with. In the instant case, there is no such compelling reason to reverse the judgment of acquittal. The learned counsel further submitted that if two views are possible, the judgment of acquittal should not be disturbed.



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(iii) The learned counsel relied upon the following judgments of the

Hon'ble Supreme Court in the case of

a) ***C.Muniappan Vs. State of Tamil Nadu*** reported in ***(2010) 9 SCC 567***

b) ***Vinod Kumar Vs. State of Punjab*** reported in ***(2015) 3 SCC 220***
and

c) unreported judgment in the case of ***Rajesh Yadav and another Vs. State of U.P.*** in ***Criminal Appeal Nos.339-340 of 2014*** dated ***04.02.2022***

in support of his submission that merely because a witness has been treated as hostile, his evidence cannot be rejected completely.

(iv) The learned counsel relied upon the following judgments of the
Hon'ble Supreme Court in the case of

a) ***Babu Vs. State of Uttar Pradesh*** reported in ***AIR 1983 SC 308***,

b) ***Ghurey Lal Vs. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** and

c) ***Bannareddy Vs. State of Karnataka*** reported in ***(2018) 5 SCC 790***

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in support of his submission that a judgment of acquittal by the Trial Court cannot be ordinarily interfered with.

7. Heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the State and the learned counsel for the respondents and perused the records.

8. As stated earlier, the accused and the family of the deceased are closely related. Admittedly, there is a matrimonial dispute between A3 and the deceased. It is also the admitted case that the deceased went to the house of the accused on the fateful day. It is the case of the accused that the deceased came along with few henchmen to the house of the accused and started attacking all the accused. In the melee, when A1 attempted to prevent the attack, he sustained injury between the thumb and the index finger and the deceased was attacked by his own henchmen as a result of which he died. Be that as it may. It is the case of the prosecution that P.W. 1 and P.W.2 went along with the deceased and P.W.3 and P.W.4 stayed outside in a shop nearby. P.W.2 had not supported the prosecution case



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only with regard to his witnessing the actual attack on the deceased. In all other aspects, he had supported the prosecution case. His version is that he went out to smoke a cigarette and when he entered the house after hearing a sound, he saw A1 holding a knife. His presence is confirmed by the fact that his blood stained shirt was seized by the Investigating Officer. However, the learned trial Judge in our view had erroneously rejected his evidence. It is now well settled that the expression “hostile witness” is unknown to Indian law. Under Section 154 of the Indian Evidence Act, the party calling the witness can seek permission to put questions which an adverse party can put. This can be done even without discrediting the witness. The memory of the witness can be tapped by putting leading questions which would not be permitted otherwise. In this case, we find that the prosecution though treated as hostile had actually sought permission to put questions which might be put in cross-examination by the adverse party. This Court and the Hon'ble Supreme Court had time and again reminded the Trial Court and the Prosecutors to only seek permission to put questions that may be put in cross-examination when they seek to elicit certain information, which on account of bad memory or for some other



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reason, the witness is unable to state. In the instant case, we find that the prosecution had not intended to discredit the witness. In any event, P.W.2's evidence is definitely in consonance with the other evidence on record, namely, the evidence of P.W.1 and other witnesses. Hence, we hold that the finding of the Trial Court disbelieving the evidence of P.W.2 to the extent it supports the prosecution case is perverse.

9. Further, we find that the learned trial Judge has disbelieved the evidence of P.W.1 stating that in the complaint, she had stated that A1 brought the knife from the kitchen, whereas, in her deposition, she had stated that A2 gave the knife to A1 instigating him to kill the deceased. Further, in the complaint, P.W.1 had not stated that A4 had caught hold of the deceased, whereas, in her deposition, P.W.1 had stated that A4 caught hold of the deceased. Further, in the complaint, she had not stated anything about A3, whereas, in her deposition, she would state that when P.W.1 went to prevent the attack on her son, A3 pushed her aside. The learned trial Judge based upon the above contradictions and on a perverse finding that P.W.1 had admitted that she gave three complaints out of which only one



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was marked and two complaints were suppressed by the prosecution. The finding of the Trial Court that P.W.1 admitted that she gave three versions is baseless. We are unable to comprehend as to how the learned trial Judge had come to such conclusion. On perusal of the evidence of P.W.1, we find that she had not admitted anywhere that she had given three versions of complaints to the Investigating Officer.

10. Further, the learned trial Judge had believed the evidence of the hostile witnesses, P.W.26 and P.W.20, to come to the conclusion that P.W.1 had arrived at the scene of occurrence only at 2.30 PM. Based on the evidence of P.W.20 and P.W.26, who were treated hostile by the prosecution, the Trial Court disbelieved the presence of P.W.1 to P.W.4. In our view, this is an erroneous approach. A reading of evidence of P.W.26 would show that he had only stated that he came to know that the relatives of the deceased came later. Even if the evidence of this hostile witness is to be accepted, it is hearsay. P.W.20 is closely related to the accused. His evidence in our view cannot be relied upon to disbelieve P.W.1 to P.W.4. Therefore, merely because an interested witness who had



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turned hostile had given a version which suits the accused, the version of P.W.1 to P.W.4 ought not to have been disbelieved. As regards the submissions made by the learned counsel for the respondents that their evidence has to be accepted since the expression “hostile witness” is unknown to Indian law, there is no quarrel about that legal proposition. However, as to whether a particular witness has to be believed or not is a question of fact and in all cases, a general rule cannot be made that whenever questions are put under Section 154 of Indian Evidence Act, the witness have to be believed. The nature of the witness and the evidence let in by the witness are all factors to be considered while appreciating the evidence of a witness, who had not supported the prosecution case. For reasons stated, after above the evidence of P.W.20 and P.W.26 cannot be believed.

11. The other reason given by the learned trial Judge to disbelieve the prosecution case, namely, that requisition for postmortem was given at 11.00 AM on 24.04.2015 when it is the case of the prosecution that the deceased died at 12.30 PM on 24.04.2015. It is unfortunate that the learned



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trial Judge has committed this basic error which has led to wrong conclusions. The Trial Court ought to have taken care in verifying the date mentioned in the postmortem certificate and the evidence of P.W.22, the postmortem Doctor, who states that the requisition was made at 11.00 AM on 25.04.2015. This fundamental error has led to several wrong conclusions by the learned trial Judge. The Trial Court also had commented upon the opinion given by the Doctor that the deceased could have died 24 hours prior to the postmortem examination. In our view, this finding of the Trial Court is based on perfunctory reading of the evidence and the documents on record which cannot be sustained. The other reasons, namely, the delay of 4 hours 20 minutes in sending the FIR to the Magistrate in our view has not affected the prosecution case in any manner. The premise on which the learned Judge held that this delay is fatal is that P.W.1 had given three versions which we have held to be incorrect. Hence, the conclusion that the delay is fatal to the prosecution has to be set aside. The difference in size of M.O.1 of about 2 ½ Cm, according to us, does not affect the prosecution case.



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12. However, on a reappreciation of the entire evidence, we find that

P.W.1's presence and P.W.2's presence except for the short time when the actual occurrence took place cannot be disbelieved. However, we find that with regard to the actual occurrence, we are left only with the evidence of P.W.1. The earliest version of P.W.1 is that on the instigation of A2 to A4, A1 attacked the deceased with knife. However, in the subsequent version before the Court, she sought to give specific roles to A2 to A4, which we have elaborated earlier. We find that this is an improvement by P.W.1 in order to implicate A2 to A4. Hence, we discard the evidence of P.W.1 with regard to the involvement of A2 to A4, but P.W.1's version with regard to the involvement of A1 cannot be disbelieved. But, there also we find that the prosecution has not come up with the explanation to the injury of A1. It is said to be self-inflictive. Even as per the evidence of P.W.1, it appears that there was a sudden fight between the family members of the deceased and the accused. In view of the same and coupled with the fact that A1 sustained injury, we cannot rule out the fact that there was a sudden fight between the accused and the deceased. The defence of the accused that five people came along with the deceased to attack them and the deceased died



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due to the attack made by his own henchmen appears to be highly improbable and false. This false plea can be taken as additional circumstances against the accused.

13. We are conscious about the fact that the Appellate Court should be slow in interfering with the finding of acquittal and we agree with the submission made by the learned counsel for the respondents with regard to the law on the subject. However, in the instant case, we find that certain observations made by the learned trial Judge are based on surmises and conjectures such as the prosecution suppressed the fact that the deceased was in an inebriated condition and hence his internal organs were not subjected to chemical analysis. There are several other findings which we have extracted above which are either baseless or on wrong appreciation of the evidence.

14. We are inclined to believe P.W.1 to the extent of A1's involvement in the occurrence. The medical evidence supports the version of the ocular witness. We have no hesitation to conclude that the deceased



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died to the injuries inflicted by A1. A1 has caused the death of the deceased. Further, it is highly probable that the occurrence had taken place due to a sudden fight without any premeditation. A1 is therefore guilty of the offence of culpable homicide not amounting to murder since his act falls within the fourth exception to Section 300 IPC. Hence, we hold him guilty for the offence under Section 304(1) IPC. As regards the other accused, we sustain the judgment of acquittal for the reasons stated above. Since we have held A1 guilty of the offence of culpable homicide not amounting to murder, we are inclined to hear him on the sentence to be imposed on him. Issue notice to A1 for his appearance on 27.02.2023 for hearing on the question of sentence.

[G.J.,J.] [S.M.,J]

15.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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On 15.02.2023, this Court, after re-appreciating the evidence in the light of the appeal against acquittal, has held the accused No.1 is guilty of the offence of culpable homicide not amounting to murder since his act falls within the fourth exception to Section 300 IPC. For questioning the accused regarding the sentence, the matter was adjourned to 27.02.2023.

2. The second respondent/accused No.1 is appeared before this Court today. The second respondent/accused No.1, who found guilty of offence under Section 304(1) IPC, is questioned about the sentence.

He pleads that “ஐயா, நான் எந்த தவறும் செய்யவில்லை. எனது தந்தை நடக்க இயலாமல் ஊனமுற்ற நிலையில் உள்ளார். தாயாரும் உடல்நலம் குறைவில் உள்ளார். இறந்தவரின் குழந்தை எனது தங்கை மகள் அவர்களையும் நான்தான் பாதுகாத்து வருகிறேன். என் மீது கருணை காட்டுங்கள்.”□

3. Considering the facts and circumstances, the following sentence is



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imposed: -

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The second respondent/first accused is sentenced to undergo five years rigorous imprisonment and to pay a sum of Rs.1,000/- as fine, in default, to undergo one month simple imprisonment for having committed the offence under Section 304(1) I.P.C.

4.The second respondent/first accused is directed to surrender before the trial Court within a period of 30 days from today, failing which, the trial Court is directed to issue Warrant and after securing the accused, send him to remand. The period of sentence already undergone by the accused No.1 is ordered to be set off under Section 428 Cr.P.C.

[G.J.,J.] [S.M.,J]

15.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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On 15.02.2023, this Court, after re-appreciating the evidence in the light of the appeal against acquittal, has held the accused No.1 is guilty of the offence of culpable homicide not amounting to murder since his act falls within the fourth exception to Section 300 IPC. For questioning the accused regarding the sentence, the matter was adjourned to 27.02.2023.

2. The accused No.1 is appeared before this Court today (27.02.2023). The accused No.1, who found guilty of offence under Section 304(1) IPC, is questioned about the sentence.

He pleads that “ஐயா, நான் எந்த தவறும் செய்யவில்லை. எனது தந்தை நடக்க இயலாமல் ஊனமுற்ற நிலையில் உள்ளார். தாயாரும் உடல்நலம் குறைவில் உள்ளார். இறந்தவரின் குழந்தை எனது தங்கை மகள் அவர்களையும் நான்தான் பாதுகாத்து வருகிறேன். என் மீது கருணை காட்டுங்கள்.”□

3. Considering the facts and circumstances, the following sentence is

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imposed: -

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The first accused is sentenced to undergo five years rigorous imprisonment and to pay a sum of Rs.1,000/- as fine, in default, to undergo one month simple imprisonment for having committed the offence under Section 304(1) I.P.C.

4.The first accused is directed to surrender before the trial Court within a period of 30 days from today, failing which, the trial Court is directed to issue Warrant and after securing the accused, send him to remand. The period of sentence already undergone by the accused No.1 is ordered to be set off under Section 428 Cr.P.C.

5. Accordingly, the appeals are partly allowed.

[G.J.,J.] [S.M.,J]

27.02.2023

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To
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- 1.The Additional District and Sessions Judge,
The Additional District and Sessions Court,
Theni @ Periyakulam
- 2.The Inspector of Police,
Periyakulam Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

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Judgment made in
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15.02.2023