



CRL.A.NO.265 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2023

JUDGMENT PRONOUNCED ON: 28 / 02 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.265 OF 2017

1.Munusamy
2.Muniappan
3.Ayapponnu @ Palaniammal ... Appellants

Versus

The State
Rep. By the Inspector of Police
Jalagandapuram Circle,
PS Crime No.54/2012
Salem District. ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the judgment passed in S.C.No.153 of 2014 on the file of the II Additional District and Sessions Judge, Salem dated March 13th, 2017.



CRL.A.NO.265 OF 2017

For Appellant : Mr.M.G.Udaya Shankar
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is preferred by the appellants, assailing the 'judgment dated March 13th, 2017 passed in Sessions Case No.153 of 2014' (henceforth 'impugned judgment' for the sake of convenience) by the 'learned Sessions Judge, II Additional District and Sessions Court, Salem' (henceforth 'Trial Court' for the sake of brevity) in which, they were convicted and sentenced as follows:



CRL.A.NO.265 OF 2017

Appellant's Rank	Provision under which convicted	Sentence
A1	449 of IPC	Rigorous Imprisonment for ONE YEAR with a fine of Rs.500/- (Rupees Five Hundred Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	Part II of 304 r/w 34 of IPC	Rigorous Imprisonment for SEVEN YEARS with a fine of Rs.1,000/- (Rupees One Thousand Only), in default thereof, to undergo Simple Imprisonment for SIX MONTHS
	3 of TNPPDL Act	Rigorous Imprisonment for ONE YEAR with a fine of Rs.500/- (Rupees Five Hundred Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
A2	449 of IPC	Rigorous Imprisonment for ONE YEAR with a fine of Rs.500/- (Rupees Five Hundred Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	Part II of 304 r/w 34 of IPC	Rigorous Imprisonment for SEVEN YEARS with a fine of Rs.1,000/- (Rupees One Thousand Only), in default thereof, to undergo Simple Imprisonment for SIX MONTHS
	3 of TNPPDL Act	Rigorous Imprisonment for ONE YEAR with a fine of Rs.500/- (Rupees Five Hundred Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
A3	449 of IPC	Rigorous Imprisonment for ONE YEAR with a fine of Rs.500/- (Rupees Five Hundred Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	Part II of 304 r/w 34 of IPC	Rigorous Imprisonment for SEVEN YEARS with a fine of Rs.1,000/- (Rupees One Thousand Only), in default thereof, to undergo Simple Imprisonment for SIX MONTHS
	3 of TNPPDL Act	Rigorous Imprisonment for ONE YEAR with a fine of Rs.500/- (Rupees Five Hundred Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	342 of IPC	Rigorous Imprisonment for SIX MONTHS
The period of imprisonment already undergone by A1 to A3, if any, was given set off under Section 428 of Cr.P.C. The imprisonment was ordered to run concurrently.		



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2.For the sake of convenience, henceforth the appellants will be individually referred to as A1, A2 and A3 respectively and collectively referred to as the 'accused'.

3.The case of the prosecution, in brief, is as follows:

3.1.The defacto complainant – Seppu @ Perumal and Muniappan (A2) are brothers. They are also neighbours, residing in Chinnagoundempatty. Deceased - Sundaram is the son of defacto complainant. A1 and A3 are son and wife of A2 respectively.

3.2.P.W.1 - Seppu @ Perumal had 1 ½ acre of land at Chinnagoundempatty. Even after the demise of their father, the said land was not partitioned, however, they were enjoying their convenient portions. Besides 60 cents of land was purchased by their mother from one Sengannan, who is none other than their mother's brother. After the demise of their mother, A2 along with his two sisters sold out 45 cents of land to one Vellaiyappan, who is the son of Sengannan, without consent of Seppu @



CRL.A.NO.265 OF 2017

Perumal. Hence, Seppu @ Perumal filed a Civil Suit in Mettur Court.

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3.3. While so, about six months before the incident, the accused had cut about 6 Palm trees standing in the undivided 1 ½ acre of land in the enjoyment of the accused and sold them out. When questioned by Seppu @ Perumal (P.W.1) and deceased-Sundaram, the accused told them to pursue the matter in Court in a defensive tone. Then, about ten days prior to the incident, Seppu @ Perumal and deceased - Sundaram had cut 4 Palm trees in the said undivided land in the defacto complainant's enjoyment and kept them near their house. Since P.W.1 - Seppu @ Perumal had filed Civil Suit against them and deceased - Sundaram chopped the trees in the undivided land, the accused developed enmity and decided to do away with the deceased - Sundaram.

3.4. On the fateful day of May 15th, 2012 at about 09.00 p.m., when P.W.1 - Seppu @ Perumal, his son Sundaram (deceased) and his daughter-in-law Palaniammal were at their house, Muniappan (A2), his son Munusamy (A1) and his wife Ayaponnu @ Palaniammal (A3) trespassed into their house with a common intention to commit offence, abused them in



CRL.A.NO.265 OF 2017

offensive language, vandalized their house and attempted to assault the deceased - Sundaram. Alarmed by this, the deceased - Sundaram proceeded to his mother-in-law's house along with his wife (P.W.2) by traversing one Palaniappan's agricultural land. At that time, with a common intention to cause death of Sundaram, while Palaniammal (A3) caught hold of the deceased – Sundaram, Munusamy (A1) assaulted the deceased - Sundaram with wooden kitchen pestle (களி கிண்டும் துடுப்பு) on his chest, shoulder, back and neck uttering 'செத்து தொலைந்துபோடா' and Muniappan (A2) assaulted deceased-Sundaram with *Koduval* on his right shoulder, right side of the chest and right hand. Then Palaniammal (A3) bit his chest. During the said incident, Munusamy (A1) and Palaniammal (A3) also sustained injuries. Upon witnessing these, the wife of deceased raised alarm and P.W.1, his wife (P.W.3), his son-Govindasamy (P.W.4), his *Sambandi* – Mariammal, one Alegesan (P.W.5) and others in the vicinity rushed to the scene of occurrence. Since the deceased - Sundaram was suffering from intolerable pain, he was swiftly transported to the Government Hospital at Mettur by Govindasamy (P.W.4) and Alagesan (P.W.5) in a motorcycle, where despite receiving treatment, he passed away at 12.30 a.m. (00.30 hours) on May 16th, 2012.



CRL.A.NO.265 OF 2017

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3.5. Upon intimation from Government Hospital, Mettur, the then Sub-Inspector of Police (P.W.13), Jalagandapuram Police Station went to hospital and recorded statement from P.W.1 at 03.00 a.m., on May 16th, 2012 and registered the case in Crime No.54 of 2012 under Sections 452, 427, 341 and 302 of 'The Indian Penal Code, 1860' (hereinafter 'IPC' for the sake of brevity). The then Inspector of Police, Jalagandapuram Police Station (P.W.14) took up the case for investigation, visited the place of occurrence, examined the concerned witnesses and prepared Observation Mahazar (Ex-P.2) and Rough Sketch (Ex-P.16) on May 16th, 2012 at 06.15 a.m. Thereafter, he went to the hospital, conducted inquest on the dead body of the deceased and then sent the body for conducting post-mortem. Then, the Investigating Officer (P.W.14) arrested the accused on the same day at 02.30 p.m. and forwarded them to the Court for judicial remand. After completion of investigation, the Investigating Officer filed charge sheet against the accused under Sections 449, 427, 302, 302 of IPC read with 34 of IPC.

3.6. After appearance of the accused before the learned Judicial



CRL.A.NO.265 OF 2017

Magistrate, they were furnished with relevant copies as required under

Section 207 of 'The Code of Criminal Procedure, 1973' [henceforth 'Cr.P.C.'

for the sake of brevity]. Since the offence under Section 302 of IPC is

exclusively triable by the Court of Sessions, the learned Judicial Magistrate

No.II, Mettur committed the case to the Principal District and Sessions Court,

Salem under Section 209 of Cr.P.C. The learned Principal District and

Sessions Court, Salem made over the case to the 'Trial Court' for disposal in

accordance with law.

3.7.The Trial Court, after hearing both sides and after perusing

the records, found that there are sufficient grounds available on record to

presume that the accused persons committed the offences and hence, framed

charges under Sections 449, 294(b) and 302 of IPC and Section 3 of 'Tamil

Nadu Property (Prevention of Damage and Loss) Act, 1992' [henceforth

'TNPPDL Act' for the sake of brevity] against A1; under Sections 449,

294(b), 302 of IPC read with Section 34 of IPC, and Section 3 of TNPPDL

Act, 1992 against A2 and under Sections 449, 342, 302 of IPC read with

Section 34 of IPC and Section 3 of TNPPDL Act, 1992 against A3. The

charges were read over and explained to the accused who pleaded not guilty



CRL.A.NO.265 OF 2017

and claimed to be tried. Hence, trial was ordered.

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3.8. In order to prove the case, the prosecution examined P.W.1 to P.W.14 and marked 19 documents as Ex-P.1 to Ex-P.19 and marked 9 material objects as M.O.1 to M.O.9. Accused side marked Ex-D.1 through P.W.13 while cross examination.

3.9. After completion of the prosecution side evidence, the accused were questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances against them based on the evidence of the prosecution witnesses. The accused denied the same as false.

3.10. Further, A1 filed written statement under Section 313(5) of Cr.P.C., wherein he has contended that there was a land dispute between the P.W.1's family and his family; that P.W.1's family refused to sell the 60 cents of land along with them; that therefore, the accused sold the said property to one Vellaiappan after leaving aside the share of P.W.1; that, hence, the deceased's family used to pick up quarrel with them; that, on May 15th, 2012 at about 07.00 p.m., P.W.1, deceased - Sundaram and two other female



CRL.A.NO.265 OF 2017

persons barged into their house armed with dangerous weapons and vandalized the house. Further, the deceased - Sundaram assaulted A3 on her head, left hand and left shoulder with *Koduval*; that P.W.1 assaulted A1 on his shoulder with a wooden pestle; that, to save themselves from the attack, they pushed them away and ran away; and that, thereafter, they preferred a complaint in Jalakandapuram Police Station. Further that, noticing the injuries on their body, the police immediately sent them to hospital for treatment; that when they were undergoing treatment on May 16th, 2012 at 03.00 a.m. at Jalagandapuram Government Hospital, the police came and took them to the police station; and that, they have no connection with the death of the deceased - Sundaram.

3.11.The accused side, in order to prove their defence, examined 3 witnesses as D.W.1 to D.W.3 and marked 3 documents as Ex-X.1 to Ex-X.3. Further, certified copy of intimation book dated May 15th, 2012 has been marked as Ex-D.1 during the cross-examination of Sub-Inspector of Police (P.W.11).



CRL.A.NO.265 OF 2017

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3.12.The Trial Court, after hearing the rival submissions and perusing the materials on record, came to the conclusion that A1 and A2 committed the offences punishable under Sections 449, 304 (II) of IPC read with Section 34 of IPC, and Section 3 of TNPPDL Act; and that A3 committed the offences punishable under Sections 449, 304 (II) of IPC read with Sections 34 and 342 of IPC and Section 3 of TNPPDL Act. Accordingly, the Trial Court imposed punishment as stated in paragraph no.1.

3.13.Further, the Trial Court concluded that the offences under Sections 294(b) of IPC was not made out and accordingly, acquitted A1 and A2 from the charge under Section 294(b) of IPC. Notably, no appeal has been preferred against the aforementioned acquittal order against A1 and A2. Hence, this Court is of the opinion that the judgement of the Trial Court with respect to the acquittal of A1 and A2 from the charge under Section 294(b) of IPC has reached finality and therefore, no doubt that there is no need to delve into the same in this Appeal.



CRL.A.NO.265 OF 2017

WEB CC Arguments

4.The learned counsel for the accused has argued that P.W.1 to P.W.3 are related and interested witnesses and their evidence suffer from various inconsistencies and infirmities; that the Trial Court has not appreciated the evidence of P.W.1 to P.W.3 in proper perspective; that the Trial Court has failed to consider the aspect that A2 and A3 had also sustained injuries and the said injuries were not explained by the prosecution; that the Trial Court has not properly appreciated the evidence of D.W.1 to D.W.3 and Ex-D.1 and Exs-X.1 to X3 documents; that the Trial Court has not appreciated the defence theory properly; that the Investigating Officer has not properly investigated the matter and has not investigated about the injuries sustained by the accused persons; that the Trial Court has not considered the dictum laid down by the Hon'ble Supreme Court in **LAKSHMI SINGH VS. STATE OF BIHAR [1976 (4) SCC 394]** with respect to the non-explanation of the injuries sustained by the accused; that the Trial Court has failed to consider the fact that the prosecution has not proved the case beyond reasonable doubt; and that the prosecution suppressed the genesis and origin



CRL.A.NO.265 OF 2017

of the occurrence. Accordingly, he has prayed to allow the appeal, set aside the impugned judgment and acquit the accused. In support of his arguments, the learned counsel for the accused relied on the decisions in Dharam Pal Vs. State of Uttar Pradesh [1981 SCC (Cri) 640]; Mohanlal Gangaram Gehani Vs. State of Maharashtra [1982 SCC (Cri) 334]; Sudhakar @ Sudharasan Vs. State Rep. By The Inspector of Police, Srirangam Police Station, Trichy [2018 (2) LW (Crl) 148]; Periasami and Another Vs. State of Tamil Nadu [1997 SCC (Cri) 121]; Moti Singh Vs. State of Maharashtra [2003 SCC (Cri) 1226]; Nagarathinam and Others Vs. State Represented by Inspector of Police [2006 (3) SCC (Cri) 212]; L.Manoharan and Others Vs. State Inspector of Police, Vadipatti Police Station [2016 (1) LW (Crl) 48]; and Durairaj and Others Vs. State Represented by The Inspector of Police, Siruganur Police Station, Trichy District [2023 (1) LW (Crl) 438].

5.Per contra, learned Additional Public Prosecutor has submitted that, admittedly there was a strained relationship between the accused's family and P.W.1's family pertaining to division of their ancestral properties; that the said dispute was the motive for the case; that the prosecution



CRL.A.NO.265 OF 2017

evidence and the material objects clearly established; that the accused persons attacked the deceased with wooden pestle (M.O.2) and *Koduval* (M.O.1); that in the said attack, A1 and A3 also sustained simple injuries; that the prosecution has not suppressed the injuries sustained by the accused; that P.W.5 is an independent witness and his evidence corroborates the evidence of P.W.1 to P.W.4; and that the evidence of the Doctor (P.W.10) who conducted post-mortem on the body of the deceased coupled with the post-mortem report (Ex-P.12) clearly established that the deceased died due to the effect of blood injuries caused on the right side of the chest and abdomen. He further argued that the Trial Court, after considering the materials and evidence, came to the conclusion that the prosecution proved the offences, in which there is no illegality or irregularity. Accordingly, he has prayed to sustain the conviction recorded and punishment imposed by the Trial Court.

Point for consideration

6.This Court has heard either side and perused the case file. The following points arise for consideration:

14/46



CRL.A.NO.265 OF 2017

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(i) Whether the prosecution has proved the charges levelled against the accused beyond reasonable doubt?

(ii) Is there any reason to interfere with the Trial Court's judgment?

Discussion and Decision for Point No.(i) and (ii)

7.P.W.1 - Seppu @ Perumal and A2 - Muniappan are brothers. A2 and A3 are husband and wife and A1 is their son. P.W.1's and A2's mother purchased 60 cents of land from her brother - Sengannan. After the demise of their mother, there was a dispute with regard to partition of the said property and other family properties among the defacto complainant and his brother and sisters. In the meanwhile, A2 Muniappan along with his two sisters sold their $\frac{3}{4}$ shares out of the 60 cents to one Vellaiappan who is the son of Sengannan without the consent of P.W.1. There is no dispute with regard to the above facts.



CRL.A.NO.265 OF 2017

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8. According to P.W.1, he filed a Civil Suit against Vellaiappan, his brother and sisters before the District Munsif Court, Mettur and the same is pending. The accused side has denied the pendency of the said Suit. Investigation does not reveal anything about the said Suit. However, the oral evidence of P.W.1 and P.W.3 establish that the accused's family and deceased's family had prior animosity over the land dispute. Further that, the accused family cut six Palm trees which stood in the land in enjoyment of the accused's family 15 days prior to the occurrence and P.W.1 cut four Palm trees which stood in the land in enjoyment of P.W.1's family four or five days before the occurrence. To be noted, the Investigating Officer (P.W.14) has noted in the Rough Sketch (Ex-P.16) and Observation Mahazar (Ex-P.2), that pieces of Palm trees were kept near P.W.1's house. From the above, it can be seen that the motive for the alleged offence is the cutting of Palm trees compounded by the prevailing land dispute.

9. P.W.1 - Seppu @ Perumal in his evidence has deposed that A1 had cut six Palm trees standing on the land in enjoyment of accused's family;



CRL.A.NO.265 OF 2017

that, then the deceased cut four Palm trees standing on the land in enjoyment of P.W.1's family, for which the accused abused the deceased using offensive language; that, on May 15th, 2012 at 09.30 p.m., A1 assaulted the deceased with wooden pestle on the deceased's right and left side of chest and neck; and that, A2 assaulted the deceased with *Koduval* on his right and left shoulder while A3 caught hold of the deceased. He further deposed that with a view to escape from the accused, the deceased proceeded to his in-law's house; that, at that time, the accused caught hold of the deceased, and attacked him with wooden pestle and *Koduval*; that, the deceased raised alarm, upon which, Govindasamy (P.W.4), Alagesan (P.W.5) and others came to the place of occurrence; that, Govindasamy and Alagesan took the deceased to hospital where, despite receiving treatment, the deceased passed away at 12.30 a.m. on May 16th, 2012; and that, the police came to the hospital and recorded statement from P.W.1. The statement given by P.W.1 is marked as Ex-P.1. Further, P.W.1 identified M.O.1 *Koduval* and M.O.2 wooden pestle in the Court.

9.1.In his cross examination, P.W.1 has denied the suggestion



CRL.A.NO.265 OF 2017

that the deceased sustained injuries by falling down from Motorcycle while returning from the house of Irusammal one month prior to the occurrence.

P.W.1 further denied the suggestion that he, P.W.2 and P.W.3 and the deceased went to the house of the accused with dangerous weapons and caused damages to the properties and assaulted the accused.

10.P.W.2-Palaniammal is the wife of the deceased. She deposed that on the fateful day, P.W.1 cut 4 palm trees, and questioning the same, the accused quarrelled and fought with the the deceased at 09.00 p.m in Palaniappan's farm land for about one hour. She further deposed about the subsequent events along the lines of P.W.1.

11.P.W.3-Ayaponnu @ Angammal is the wife of P.W.1 and mother of the deceased. She deposed along the lines of P.W.1 and P.W.2. In addition, she deposed that the accused persons damaged the plastic *kudam* (plastic water container) (M.O.3) and Aluminium vessels (M.O.4 to M.O.7) in their house.



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11.1. In her cross examination, P.W.3 deposed that on hearing the noise, she went out and found the deceased lying down with cut injuries on Palaniappan's land; and that A1 and A3 were also injured. She further deposed about the subsequent events along the lines of P.W.1 and P.W.2.

11.2. From the above evidence, it is discernible that P.W.3 did not directly witness the occurrence; she herself has stated that, when she came to the place of occurrence, the deceased was lying down with injuries which means the incident was over by then. Hence, her evidence is reliable and acceptable only to the extent that the accused cut six Palm trees standing in the land in enjoyment of the accused prior to the occurrence; that, then, P.W.1's family cut four Palm trees which stood in the land in enjoyment of P.W.1's family; and that on the fateful day, there was a fight between the accused and the deceased's family, in which, the deceased, A1 and A3 sustained injuries. To be noted, P.W.1 in Ex-P.1 complaint itself, has stated that A1 and A3 sustained injuries in the course of the occurrence.



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12.P.W.4-Govindasamy is none other than the brother of the deceased. Notably, P.W.4 is living in a separate house with his mother (P.W.3). P.W.4 in his cross examination has clearly stated that he and his mother-P.W.3 were inside their house; that, at that time, they heard a noise outside their house; and that, P.W.4 and his mother rushed to the place of occurrence and noticed a crowd of people in the place of occurrence. From the evidence, it is discernible that P.W.4 also could not have witnessed the occurrence directly as he came to the place of occurrence only after the alleged fight between the deceased and the accused got over.

13.P.W.5-Alagesan is P.W.3's nephew. He is residing opposite to the deceased's house and 80 feet away from the scene of occurrence. In his evidence he has deposed that, on May 15th, 2012 at about 07.00 p.m., he returned to his house from his work; that, at about 09.00 p.m., when he was watching Television in his house as usual, the accused's family and the deceased's family were quarrelling with each other in Palaniappan's land; that, upon hearing the noise, he went to the spot; that, at that time, the



CRL.A.NO.265 OF 2017

deceased was lying down; and that, he took the deceased to Government Hospital, Mettur where despite receiving treatment, the deceased passed away.

13.1.From the evidence, it is discernible that P.W.5 did not directly witness the occurrence, but he heard the noise and went to the place of occurrence where he found the deceased lying down.

13.2.In his Cross-examination, he denied the suggestion that, the deceased suffered further injuries and his condition worsened as he fell down from motorcycle on the way to the Hospital.

14.P.W.6-Irusammal is none other than the sister of P.W.3. In her cross examination, she has deposed that there was a fight going on for one hour between the accused and the deceased; that, in the said fight, A3 was also injured; and that, when she went to the place of occurrence, the public had crowded there. She further deposed that P.W.4 and P.W.3 are living in a separate house. From the above evidence, it is easily discernible that P.W.6



CRL.A.NO.265 OF 2017

did not directly witness the occurrence.

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15.P.W.7-Govindaraj was the then Village Administrative Officer of Soorappalli Village. He deposed that on May 16th, 2012 at 06.30 am., the Inspector of Police (P.W.14) inspected the place of occurrence and prepared Observation Mahazar (Ex-P.2) and seized M.O.3 to M.O.7 in his presence under seizure mahazar (Ex-P.3). To be noted, in Ex-P.3 and Ex-P.19 (Form – 91) it has been clearly stated that M.O.3 to M.O.7 were seized from the front yard of the 'accused-Muniappan's house'. Further, the Investigation Officer has also admitted the aforementioned entry in Ex-P.3 and Ex-P.19. Hence, seizure of M.O.3 to M.O.7 is doubtful.

Arrest, Confession and Recovery of M.O.1 and M.O.2

16.P.W.14- Investigation officer has deposed that, he arrested the accused at 2.30 p.m. on May 16th, 2012, in the presence of VAO-Sugavanam (P.W.8) and his village Assistant - Kumar; and that, A1 voluntarily gave confession statement, pursuant to which, he recovered M.O.1 and M.O.2 hidden in A1's house. The admissible portion of the confession of A1 is



CRL.A.NO.265 OF 2017

marked as Ex-P.5. The Seizure Mahazar was marked as Ex-P.4.

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16.1.P.W.8 - Sugavanam is the then Village Administrative Officer of Periyasooragai. He deposed that, on May 16th, 2012 at 02.15 p.m., he and his Village Assistant went to Jalakandapuram Bus Stand; that, the Inspector of Police arrested A1 to A3 and recorded the confession statement of A1; and that, in pursuance of the said statement, A1 handed over wooden pestle (M.O.2) and *Koduval* (M.O.1) which were hidden in his house.

16.2.The learned counsel for the accused invited the attention of this Court to a portion of P.W.2's evidence wherein she has stated that A1 and A3 were admitted in the hospital and the Police arrested them in the Hospital itself and argued that the said fact has further been strengthened by the evidence of P.W.9 - Doctor Manoharan and Ex-P.9 and Ex-P.10 and hence, the arrest, confession and recovery of M.O.1 and M.O.2 as alleged by the prosecution is false.

16.3.This court has perused the Ex-P.9 and Ex-P.10 - Accident Registers along with the evidence of its author – P.W.9. As per the above



CRL.A.NO.265 OF 2017

evidence, A1 and A3 were admitted on May 15th, 2012 at 11.30 p.m. in the same Hospital as the deceased. Then, P.W.9 sent Ex-D.1– Intimation(Admission of A1 and A3) to the Police. Upon receiving Ex-D.1 along with Ex-P.7- Intimation (Admission of the deceased) and Ex-P.8 – Death intimation of the deceased, P.W.13-Tholkappian went to the Hospital and recorded Ex-P.1 - Complaint statement from P.W.1. Thereafter, when he looked for A1 and A3, they were not present in the Hospital. Therefore, he just collected Ex.P.9 and Ex.P.10 - Accident Registers of A1 and A3 respectively and went back to the Station.

16.4.In view of the above evidence, the argument of the learned counsel for the accused does not hold water. This Court finds no reason to disbelieve the evidence of the prosecution with regard to Arrest, Confession and Recovery of M.O.1 and M.O.2 and therefore, holds that the prosecution has proved the same.

Medical Evidence : deceased-Sundaram

17.P.W.9-Dr.Manoharan was working as an Assistant Surgeon at



CRL.A.NO.265 OF 2017

the Government Hospital, Mettur. He deposed that on May 15th, 2012 at about 11.00 p.m., when he was on duty, one Sundaram aged 31 years was brought to hospital by Alagesan (P.W.5). He further deposed that he was informed by the injured - Sundaram that the injured was assaulted by two known male persons and two known females at 09.00 p.m., near his house with wooden log, *koduval*, stone and also by way of biting; that, he examined the injured and found external injuries along with a bite resemblance; that he admitted the injured as in-patient and provided treatment; and that, despite treatment, the injured passed away at 12.30 a.m. on May 16th, 2012. He marked the Accident Register as Ex-P.6. Intimation given to the police is marked as Ex-P.7. Death intimation given by P.W.9 is marked as Ex-P.8.

18.P.W.10 - Dr.Gokularamanan, who conducted post-mortem on the deceased's body, opined that the deceased died 12 to 18 hours before post-mortem, due to the injuries sustained by the deceased in his right side chest and abdomen. Post-mortem report was marked as Ex-P.12. He opined that the injuries noted in the post-mortem report could have been caused by assault with wooden pestle and *koduval*. The post-mortem report reads as



CRL.A.NO.265 OF 2017

hereunder:

Post-mortem commenced on May 16th, 2012 at 02.55 p.m.

Rigor Mortis present all over the body.

“External injuries:

1.A LINEAR SCRATCH ABRASION SEEN ON THE FRONT & TOP OF RIGHT SHOULDER M, 10 CMS X 0.3-0.5 WITH A CUT INJURY ON THE LOWER ASPECT OF THE WOUND WITH 2 SUTURES.

2.A SCRATCH ABRASION ON THE FRONT AND UPPER ASPECT OF RIGHT ARM M. 11 CMS X 0.2 CM – 0.5CM WITH A SUTURED WOUND ON THE LOWER ASPECT OF THE WOUND WITH 2 SUTURES.

3.7CMS BEHIND THE PREVIOUS WOUND A CUT INJURY SEEN M.8 CMS X 0.5 CM X 0.5 CM.

4.A SCRATCH ABRASION SEEN ON THE FRONT OF RIGHT AXILLA M. 8CMS X 0.2 – 0.4 CM.

5.10 CMS INNER TO THE PREVIOUS WOUND ON THE UPPER ASPECT OF THE RIGHT SIDE OF CHEST A SCRATCH ABRASION M. 6 CMS X 0.2 CM.

6.A SCRATCH ABRASION SEEN EXTENDING FROM



CRL.A.NO.265 OF 2017

OUTER ASPECT OF RIGHT SIDE OF CHEST UP TO OUTER ASPECT OF RIGHT SIDE OF ABDOMEN M.23 CMS X 0.2 CM – 0.4 CM.

7.7CMS INNER TO THE PREVIOUS WOUND A SCRATCH ABRASION M 22 CMS X 0.2-0.5 SEEN ON THE RIGHT SIDE OF THE ABDOMEN.

8.AN ABRASION SEEN ON THE UPPER ASPECT OF LEFT SIDE OF CHEST M.3CMS X 2 CMS

9.3 CMS BELOW THE LEFT AND CLAVICLE A CONTUSION SEEN M 5 CMS X 4 CMS X 1 CM

Internal injuries:

O/D head : Scalp – normal, CRANIAL VAULT & DURAMATER – INTACT, BRAIN – EDMATOUS, C/S PALE BASE OF SCULL – INTACT.

O/D NECK : NECK STRUCTURES NORMAL, HYOID BONE – INTACT,

O/D THORAX – RIIB CAGE – FRACTURE OF RIGHT SIDE 8TH & 9TH RIB ON THE MID CLAVICULAR LINE WITH SURROUNDING SOFT TISSUE CONTUSION, LUNGS – NORMAL IN SIZE ON C/S CONGESTED, HEART – NORMAL IN SIZE CHAMBERS EMPTY VALVES AND CORONARIES



CRL.A.NO.265 OF 2017

PATENT.

O/D ABDOMEN : PERTIONEAL, CAVITY CONTAIN ABOUT 750 FLUID BLOOD, STOMACH – CONTAIN PARTLY DIGESTED FOOD PARTICLES ABOUT 130 GMS WITH NO SPECIFIC SMELL MUCOSA – PALE. LIVER – LACERATION SEEN ON THE RIGHT LOBE OF LIVER M, 3 CMS X 2 CMS X 4 CMS, SPLEEN AND KIDNEYS – NORMAL IN SIZE ON C/S PALE BLADDER – EMPTY

PELVIS AND SPINAL COLUMN INTACT, GENITALIA – INTACT

Opinion:

(i) RESERVE PENDING CHEMICAL ANALYSIS REPORT, TIME SINCE DEATH – THE DECEASED WOULD APPEAR TO HAVE DIED 12-18 HRS PRIOR TO AUTOPSY.

18.1.Further, the doctor, after receiving Ex.P.13 - FSL Report, has given a Final Opinion (Ex.P.14) wherein he has opined that, the deceased would appear to have died due to effects of Blunt Injury – right side chest and abdomen.



CRL.A.NO.265 OF 2017

WEB COPY

19.P.W.14-Chakrapani is the then Inspector of Police, Jalakandapuram Police Station. He deposed that he was the Investigating Officer and on May 16th 2012, he received the case file and went to the scene of occurrence at 06.15 a.m., and prepared Observation Mahazar (Ex-P.2) and Rough Sketch (Ex-P.16) in the presence of the witnesses Govindaraj (P.W.7) and Pitchamuthu and seized a plastic water container (plastic *kudam*) (M.O.3) and aluminium vessels (M.O.4 to M.O.7) from the front yard of the house of the defacto complainant under a seizure mahazar at 07.30 a.m; that thereafter, he went to Government Hospital, Mettur and conducted inquest on the body of the deceased in the presence of the Panchayat witnesses and prepared the inquest report - Ex-P.17; that on the same day at 02.30 p.m., he arrested A1 to A3 and recorded the confession statement of A1; that on the basis of the confession statement, he recovered *koduval* (M.O.1) and a wooden pestle (M.O.2) under a seizure mahazar; and that thereafter, he examined the witnesses and filed charge sheet as stated *supra*.

19.1.P.W.14 in his cross examination has admitted that he



CRL.A.NO.265 OF 2017

prepared Ex-P.3 and Ex-P.19 wherein it has been mentioned as M.O.3 to M.O.7 were seized from Muniappan's (A1) house. From a conjoint reading of evidence of P.W.14, Ex-P.3 and Ex-P.19, it is clear that M.O.4 to M.O.7 were neither seized from P.W.1's house nor from the place of occurrence. As alluded *supra*, seizure of M.O.3 to M.O.7 is doubtful.

Charges under Sections 449 of IPC and Section 3 of TNPPDL Act against accused

20.A Hon'ble Division Bench of this Court in Mangalanatha Durai and others Vs. State through the Inspector of Police [2023 SCC Online Mad 3769 = 2023 (1) LW (CrI) 891] has held that even loss or damage to private properties caused during private disputes between the two groups or individuals can be investigated and tried under the provisions of TNPPDL Act, as amended by Act 46 of 1994.

21.As stated *supra*, in view of evidence of Investigating Officer coupled with evidence of Ex-P.3 and Ex-P.19 (Form – 91), seizure of M.O.3



CRL.A.NO.265 OF 2017

to M.O.7 from P.W.1's house is doubtful.

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21.1.Though P.W.3 has deposed that the accused caused damage to M.O.3 to M.O.7, considering the fact that neither P.W.1 nor P.W.2 has stated anything about the accused damaging M.O.3 to M.O.7 in their evidence; that P.W.2 has deposed that the occurrence happened in Palaniappan's ploughed land; and that P.W.3 and P.W.4 are residing in a separate house, coupled with the fact that that P.W.3's evidence was recorded a day after recording P.W.1's and P.W.2's evidence, this Court is of the view that her evidence in this regard is an afterthought and therefore, does not inspire the confidence of this Court.

21.2.Further, to establish an offence under Section 3 of TNPPDL Act, the prosecution should prove that damage or loss has been caused to a tune of Rs.100 or upwards. In this case, though it is mentioned in the Charge Sheet that M.O.3 to M.O.7 are worth Rs.500, none of the witnesses have deposed about the same and the said factum has not been proved by the prosecution. Considering the nature of M.O.3 to M.O.7, this Court can not



CRL.A.NO.265 OF 2017

presume their worth or value.

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21.3.Further, P.W.2 has asserted in her deposition that the occurrence happened in Palaniappan's ploughed land. The same can be inferred from the evidence of P.W.1 and P.W.3 to P.W.5. Therefore, the prosecution has not satisfactorily proved the trespass of the accused into the deceased's house.

21.4.In view of the above discussion, this Court finds that the prosecution has miserably failed to prove that the accused trespassed into the deceased's house and caused damages to M.O.3 to M.O.7 and therefore, failed to prove the offences punishable under Section 449 of IPC and Section 3 of TNPPDL Act. Therefore, Trial Court's conclusion that accused committed offences under Section 449 of IPC and Section 3 of TNPPDL Act is not justifiable. Hence, the said findings is to be interfered with and set aside. Accordingly, this Court sets aside the same and acquits the accused from the charges under Section 449 of IPC and Section 3 of TNPPDL Act.



CRL.A.NO.265 OF 2017

WEB COPY

Charges against A3 under Sections 342 and 304 Part (II) of IPC read with Section 34 of IPC

22.Evidence of P.W.1 and P.W.2 implicates A1 to A3 in the offence. P.W.1 and P.W.2 has deposed that A1 and A3 were injured in course of the incident. A3 has offered a satisfactory defence for her injuries unlike A1 as alluded to *infra*.

22.1.As per Ex-P.10 - Accident Register, A3 was first admitted in the Mettur Government Hospital along with A1 on May 15th, 2012 at 11.30 p.m. As per the evidence of P.W.13, A1 and A3 were not present in the Hospital when he went in search of them. As per P.W.14, he arrested A1 to A3 the next day at 2.30 p.m. Thereafter, A1 to A3 were remanded by magistrate to prison and A3 was taken for treatment to Government Mohan Kumaramangalam Medical College Hospital upon the direction of the Jail Superintendent of Central Jail, Salem.



CRL.A.NO.265 OF 2017

WEB COPY

22.2.Dr. Saravanan of that Hospital has issued Accident Register dated May 16th, 2012 to A3 which forms a part of Ex-X.1. As per the Accident Register in Ex-X.1, A3 has explained the doctor that she sustained the injuries while attempting to console a quarrel between her husband and her husband's brother (P.W.1). Further, A3 was under medical care as in-patient for 3 days there and then discharged with an advise to review before the Medical Officer at Central Prison. Further, after subjecting A3 to X-ray and obtaining radiologist's opinion, the doctor opined that the injuries suffered by A3 were simple in nature. Notably, the prosecution has not cross-examined D.W.1 nor disputed the contents of Ex-X.1 including the statement offered by A3 regarding the cause of her injury.

22.3.In view of the above evidence, this Court is of the view that the aforementioned defence of A3 that she got injured while trying to dissuade a quarrel between her husband and her husband's brother is natural, there is no reason to reject the same and therefore, it inspires the confidence of this Court.



CRL.A.NO.265 OF 2017

WEB COPY

22.4. In view of A3's defence, this Court is of the view that the evidence of P.W.1 and P.W.2 implicating A3 is an exaggerated one; and that A3 did not assault the deceased, on the other hand, A3 got injured when she tried to prevent the quarrel between her husband and her husband's brother; and that A3 has not committed any offence as alleged by the prosecution. Accordingly, A3 is acquitted. A3 is not found guilty under any charges in view of the above discussion.

Charges against A1 and A2 under Section 304 Part (II) of IPC read with Section 34 of IPC

23. Needless to mention that the common law principle “*Falsus in Uno, Falsus in Omnibus*” is not applicable to Indian Courts. It is well settled law that the burden of proof is always with the prosecution to prove its case. The real onus is on the prosecution including proving the manner of occurrence beyond all reasonable doubts. Accused, only has to raise doubts in the mind of the court or satisfy the court that the defence theory put forth



by the accused is a probable version of the occurrence. The right of private defence need not necessarily be exercised for the defence of one's own person. It can also be exercised for the defence of another. The defence theory can be established in the statement under Section 313 or through cross-examination of prosecution witness or by way of adducing defence evidence. Accused can succeed even without entering into the witness box provided the accused could establish the defence theory by other means. Needless to mention that the standard of proof for establishing the defence theory is preponderance of probabilities.

24. In this case, admittedly, P.W.1 to P.W.6 are related witnesses. As discussed *supra*, P.W.1 and P.W.2 alone could have witnessed the alleged occurrence. As discussed *supra*, the evidence of P.W.1 and P.W.2 implicating the accused is believable only with respect to A1 and A2 and not A3. P.W.3 to P.W.6 could not have witnessed the alleged occurrence. P.W.5 has stated that due to the strained relationship prevailing between the accused's family and the deceased's family, they frequently quarrel with each other. The Medical evidence establish that the deceased died due to the effects of Blunt Injury –



CRL.A.NO.265 OF 2017

right side chest and abdomen. Conjoint reading of the evidence of P.W.1 and P.W.2; the evidence of Doctor (P.W.9) who gave treatment to deceased-Sundaram, evidence of post-mortem Doctor (P.W.10) and post-mortem report (Ex-P.12) would establish that A1 and A2 caused injuries to deceased-Sundaram; and that due to the injuries caused by A1 and A2, deceased - Sundaram passed away. Evidence of P.W.1 and P.W.2 and medical evidence established that A1 and A2 had common intention to kill the deceased and A1 and A2 had knowledge that the injury caused by them to the deceased would cause death in the ordinary course of nature. Hence, the act of A1 and A2 would attract the offence of culpable homicide not amounting to murder punishable under Section 304 of IPC. Considering the nature of offence and available evidence on record, the Trial Court decided that the offence under Section 304 (Part II) of IPC read with Section 34 of IPC made out. This Court concur with the said findings. Therefore, the prosecution has proved the offence under Section 304 Part II of IPC against A1 and A2 beyond reasonable doubt. Now, the accused side has to establish its defence.



CRL.A.NO.265 OF 2017

Defence theory:

25.The Defence theory of the accused is as hereunder:

(i)The deceased sustained injuries by falling down from Motorcycle while returning from the house of Irusammal one month prior to the occurrence.

(ii)On May 15th, 2012 at about 07.00 p.m., P.W.1, deceased-Sundaram and two other female persons barged into the accused's house armed with dangerous weapons and vandalized the house. Then, the deceased-Sundaram assaulted A3 on her head, left hand and left shoulder with *Koduval*. Further, P.W.1 assaulted A1 on his shoulder with a wooden pestle. To save themselves from the attack, they pushed them away and ran away. The deceased sustained minor injuries as they pushed him. Thereafter, they preferred a complaint in Jalakandapuram Police Station.

(iii)The deceased suffered further injuries and his condition worsened as he fell down from motorcycle on the way to the Hospital after



the aforementioned incident.

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(iv) In view of *Lakshmi Singh's case* cited *supra*, the prosecution is bound to explain the injuries sustained by the accused.

26. To prove the defence theory, the defence side examined D.W.1 to D.W.3 and marked Ex-X.1 to Ex-X.3 and Ex-D.1 - Intimation to Police about the admission of A1 and A2 in the Government Hospital, Mettur.

27. D.W.2 is Dr. Pradeep, Assistant Surgeon is working at Central Prison Hospital, Salem. He deposed that on May 16th, 2012, A1 was brought to the prison hospital; that A1 had injuries in his left hand and he was treated as an out-patient for three days in the prison hospital; and that that he does not know the nature of injury sustained by A1. He produced Ex-X.2 case sheet. To be noted, D.W.2 did not give any treatment to A1. He deposed based on the records. In Ex-P.9 Accident Register, the following injuries were noted:

"Injury:

(1) Sutured wound of size 2 cm over left wrist.



CRL.A.NO.265 OF 2017

(2) Contusion of size 6 cm X 1 cm over (L) Chest over left

chest and left cheek. Scapula (Patterned contusion).

Patient conscious, oriented, afebrile

PR: 78/min BP: 110/80 mm Hg CUS / M / NAO PA: Soft

First aide given in GH, Jalakandapuram.

Opinion: Reserved.”

28.In the Accident Register, it has also been noted that A1 was given first-aid in Government Hospital, Jalakandapuram. Accident register was marked as Ex-P.9. Though D.W.2 has not opined on the nature of the injury, considering the period and nature of treatment and the nature of injuries, it is easily discernible that it is a simple injury.

29.It is pertinent to note here that, there is nothing on record to show that A2 underwent treatment for his head injury. Further that, the accident registers pertaining to A1 (Ex-P.9) and A3(Ex-P.10) have been annexed along with the charge sheet and the copies of the same were also furnished to the accused.



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30.As far as the first limb of the defence theory (i) is concerned, P.W.3 has admitted that, the deceased fell down from motorcycle, however, denied that he sustained any injuries. Further, the accused did not establish it in any of the aforementioned manner. As far as the second limb (ii) is concerned, there is nothing to show that such an incident took place as alleged. Further, no complaint copy has been filed by the accused to substantiate the factum of complaint made before the Police. As far as the third limb (iii) is concerned, P.W.10 – Post mortem Doctor has deposed that the injuries sustained by the deceased, especially the injury sustained in the liver, could not have been caused due to an accidental fall from a motorcycle and again there is nothing to show that such an accidental fall happened. As far as the fourth limb (iv) is concerned, *Lakshmi Singh's case* is distinguishable from the case on hand for the reason that, the injuries sustained by the accused are all simple and not grievous in nature as alluded to *supra* and hence, *Lakshmi Singh's case* would not be applicable to the case on hand. Therefore, this Court is of the view that A1 and A2 has not established their defence theory.



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31. Therefore, there is no reason to interfere with the conviction recorded by the Trial Court against A1 and A2 for the offence punishable under Section 304 Part (II) of IPC read with Section 34 of IPC. Accordingly, the conviction of A1 and A2 for the offence punishable under Section 304 Part (II) of IPC read with Section 34 of IPC is sustained.

32. As stated supra, the accused's family and the deceased's family had a strained relationship. Considering the relationship, the defence taken and also considering the injuries sustained by the accused, this Court is of the view that the punishment imposed by the Trial Court is not proportionate. Therefore, this Court is of the considered opinion that five years of Rigorous Imprisonment would be a reasonable punishment.

33. Resultantly, the Criminal Appeal is partly allowed in the following manner:

(i) A3 is not found guilty under Sections 449



and 304 Part II of IPC read with Section 34 of IPC, Section 342 of IPC and Section 3 of TNPPDL Act and accordingly, she is acquitted from all the charges levelled against her;

(ii)A1 and A2 are not found guilty under Sections 449 of IPC and Section 3 of TNPPDL Act and accordingly, they are acquitted from the said charges.

(iii)Conviction imposed by the Trial Court against A1 and A2 under Section 304 Part II of IPC read with Section 34 of IPC is sustained. However, punishment imposed for the said offence is modified as hereunder:

A1 and A2 shall undergo Five Years of Rigorous Imprisonment and pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default thereof, shall undergo further period of Three Months of Simple Imprisonment for the offence punishable under Section 304 Part II of



CRL.A.NO.265 OF 2017

IPC.

(iv)The period of detention already undergone by the appellants / A1 and A2 shall be given set off under Section 428 of Cr.P.C.

(v)Thirty days time counting from today is granted to A1 and A2 for surrendering before the Trial Court. If not surrendered within thirty days from today, the Trial Court is directed to take necessary steps to secure A1 and A2 and commit them to the prison to undergo the remaining period of imprisonment.

28 / 02 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK



CRL.A.NO.265 OF 2017

To

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- 1.The II Additional District and Sessions Judge
Salem.
- 2.The Inspector of Police
Jalagandapuram Circle,
Salem District.
- 3.The Public Prosecutor
High Court of Madras.



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CRL.A.NO.265 OF 2017

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.265 OF 2017

28 / 02 / 2024