



CrI.A.(MD)No.183 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	05.09.2024
Pronounced on	22.10.2024

CORAM

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

Criminal Appeal(MD)No.183 of 2021

Palanimurugan @ Palani .. Appellant

Versus

State represented by:
The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District. .. Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the conviction imposed against the appellant in judgment dated 18.03.2021 made in S.C.No.115 of 2013 on the file of the I Additional District and Sessions Judge, Tirunelveli by allowing this Criminal Appeal.



For Appellant	Mr.A. Ramesh, Senior Counsel, For Mr.P. Samuel Gunasingh
For Respondent	Mr.T.Senthil Kumar, Additional Public Prosecutor

JUDGMENT

The accused, Palanimurugan @ Palani in S.C.No.115 of 2013 on the file of the I Additional District and Sessions Court at Tirunelveli aggrieved by the judgment dated 18.03.2021, by which judgment he had been convicted for the offence punishable under Sections 341 IPC and sentenced to undergo simple imprisonment for one month and further convicted for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and fine of Rs.1000/- and in default to undergo three months simple imprisonment and further convicted for the offence punishable under Section 307 IPC and sentenced to undergo imprisonment for life and fine of Rs.1,000/- and in default to undergo three months simple imprisonment and further convicted for the offence punishable under Section 506(ii) IPC and sentenced to undergo seven years imprisonment, has filed the present Criminal Appeal. It had further been directed that the sentences imposed shall run concurrently. It was further directed that the



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period of detention, if any, already undergone, should be set off under Section 428 of Cr.P.C.

2.The case of the prosecution is that PW-1, Muthulakshmi was residing along with her husband, Esakki Thevar and her two sons, Mahesh and Lakshmanakumar at Door No.6/11, Andal Street, Thimarajapuram, Palayamkottai. The accused Palanimurugan @ Palani was residing in the nearby house belonging to his mother-in-law, Jeya. It is contended by the prosecution that PW-1, Muthulakshmi had kept straw bales in the waste land on the northern side of her house. The mother-in-law of the accused, Jeya had also similarly kept straw bales on the northern side of the straw bales kept by PW-1. In between there was a thorny bush separating the sets of straw bales. About twenty days prior to the occurrence, it is contended that the accused Palanimurugan @ Palani, his wife Selvi and mother-in-law Jeya had cut the thorny bush fence around their straw bales. That was questioned by PW-1 Muthulakshmi and her son Mahesh. They complained that, if the thorny bushes are cut, then the cows would come and eat the straws. The accused and his family members replied that that was how they would be. They had also threatened PW-1 and her sons. This was said to be



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the cause of enmity between the family of the accused and the family of PW-1.

3.On 27.02.2011, at around 6.45 PM, when PW-2, Lakshmanakumar, the elder son of PW-1, was coming near the house of the mother-in-law of the accused, the accused is said to have wrongfully restrained him. A quarrel ensued. Words were also spoken. PW-1, Muthulakshmi and her younger son Mahesh then questioned the accused as to why he is creating problem. It is the case of the prosecution that the accused with intention to murder had taken a long knife and had cut Mahesh on the right shoulder and left thigh. He collapsed on the ground, injured. This was tried to be prevented by PW-2, Lakshmanakumar. It is stated that the accused also cut the ear, chest, stomach, right hand fingers, left wrist, left little finger with the same knife and caused injuries to PW-2. It is stated that these injuries were caused with intention to commit murder. It is further contended that both the injured sons of PW-1 were taken separately to the Tirunelveli Medical College. The younger son Mahesh was initially alive and later declared dead.



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4.The following ante mortem injuries were found on the deceased,

i) An oblique sutured injury of length 3.5 cm over front of right shoulder near axilla. On removal of suture it appeared as a stab injury of size 3.5 x 2 cm, having depth of 13 cms. The margins of the injury were sharp. Its lower edge was sharp and upper edge was irregular. It cut the underlying soft tissues, muscles, nerves and right axillary artery. It extended up to the front of right scapula and

ii) An oblique gapping sutured cut injury of size 13 x 4 x 3 cm over the upper part of the front of left thigh. It cut the underlying soft tissue and muscle.

5.The cause of death was given as haemorrhage and shock due to stab injury to the right shoulder.

6.The injuries suffered by PW-2, Lakshmanakumar were as follows:

- i)10 x 1 cm lacerated injury on the left side neck;
- ii)3 x 1 x 2 cm lacerated injury on the left chest;
- iii)2x1x1 cm lacerated injury on left stomach;
- iv)2x1x1 cm lacerated injury on left hand; and



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v)1x1x1 cm lacerated injury on the left fore hand.

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7. Thereafter, PW-1, Muthulakshmi lodged a complaint at 9.00 PM. The FIR in Crime No.188 of 2011 was registered at 9.30 PM by the Palayamkottai Police Station, Tirunelveli District for the offences punishable under Sections 341, 307, 302 and 506(ii) IPC. After investigation, the final report was filed before the learned Judicial Magistrate – I, Tirunelveli, who took cognizance of the same as PRC No.84 of 2011. Since the offences under Sections 302 and 307 IPC were exclusively triable by a Court of Sessions, the matter was committed to the Principal Sessions Court, Tirunelveli. It was then made over to the I Additional District and Sessions Court at Tirunelveli. Charges for offences punishable under Sections 341, 302, 307 and 506(ii) IPC were framed and read over and explained to the accused. The accused abjured the charges and claimed to be tried. The prosecution was then called upon to prove the charges. Accordingly, the prosecution examined PW-1 to PW-18 witnesses and marked Exs.P1 to P20 documents and produced MO-1 to MO-9 material objects. On conclusion of the recording of evidence on the side of the prosecution, the accused was questioned with respect to the



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incriminating evidence under Section 313(1)(b) Cr.P.C. His statements were recorded. The accused did not examine any witness nor marked any documents.

8.By judgment dated 18.03.2021, the accused was convicted for the offences punishable under Sections 341, 302, 307 and 506(ii) IPC and sentenced as stated above.

9.The present Criminal Appeal has been filed to set aside the said conviction and sentence.

10.A further detailed narration of the facts would reveal that PW-1, Muthulakshmi and her two sons Lakshmanakumar (PW-2) and Mahesh (deceased) and her husband Esakki Thevar (PW-3) were residing in particularly the adjacent house of the accused at Door No.6/11, Andal Street, Thimarajapuram in Palayamkottai. They had stacked straw bales in the northern side of their house. Similarly, the family of the accused comprising of himself, his wife Selvi and his mother-in-law, Jeya had also stacked their straw bales to the north of the straw bales of PW-1. There was



a thorny bush which acted as a fence between the two set of straw bales.

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11.It is contended that the accused and his family members had cut the thorny bush around twenty days prior to the date of occurrence. This was questioned by PW-1 and her family members. This led to a quarrel. It is in evidence of PW-1 that subsequently on 27.02.2011, at around 6.45 PM, PW-2 Lakshmanakumar who was coming across the house of the accused was accosted by the accused and threatened. They entered into a quarrel. At that time, PW-1 and her younger son Mahesh (deceased) also intervened. The quarrel escalated into violence.

12.It is contended that the accused took a long knife, MO-1 and cut the deceased Mahesh on the left thigh and on his left chest. He collapsed injured and was taken to Tirunelveli Medical College by PW-1 and by an advocate / Selvakumaran (PW-14). He died within half an hour of being admitted. The attack on Mahesh was tried to be prevented by Lakshmanakumar (PW-2). It is in evidence that the accused also cut him indiscriminately causing injuries. He was also taken to Tirunelveli Medical College by Senthilkumaran (PW-13). The injuries were noted by



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Dr.Mahalingam (PW-8).

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13. Thereafter, PW-1 had lodged a complaint, Ex.P1, at 9.00 PM before the Palayamkottai Police Station, consequent to which, FIR in Crime No.188 of 2011 was registered at 9.30 PM for the offences under Sections 341, 307, 302 and 506(ii) IPC. The accused was named in the complaint and in the FIR.

14. The prosecution examined PW-2, Lakshmanakumar, the injured witness and in his evidence, he stated that when he was coming across the house of the accused on 27.02.2011 in the evening at 6.45 PM, the accused was standing outside and picked up a quarrel with him, which escalated into violence and when his mother and his younger brother tried to intervene, the accused with a long knife cut his younger brother Mahesh (deceased) and attacked him also in the ear, chest, stomach and left hand. In his evidence, he identified the knife used for the attack, MO-1.

15. The prosecution further examined PW-3, Esakki Thevar, the father of PW-2 and husband of PW-1, who is said to have also witnessed the



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occurrence.

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16.The prosecution also relied on the evidence of PW-13, Senthilkumaran and PW-14, Selvakumaran. PW-13 had taken PW-2, Lakshmanakumar, to the hospital and PW-14 had taken the deceased, Mahesh, to the hospital. PW-14, Selvakumaran, is an advocate residing in the same street and PW-13, Senthilkumaran is his driver. It is in their evidence that PW-13 after dropping PW-14 in his office / residence had come across the house of the accused and on hearing a noise had rushed to the place. Similarly, PW-14 had also come there. It is claimed that they had both witnessed the occurrence.

17.As stated above, the FIR was registered at 9.30 PM. Investigation was taken up by Muthu (PW-17) who was holding additional charge as Inspector of Police of Palayamkottai Police Station. He had directed the FIR and the complaint copy to be handed over to the learned Judicial Magistrate – I, Tirunelveli by express tapal through Nallasivam (PW-10) who was working as Head Constable in Palayamkottai Police Station. The original FIR and complaint copy were handed over at 11.55 PM to the learned



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Judicial Magistrate – I, Tirunelveli.

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18. Thereafter, PW-17, took up investigation and proceeded to the scene of crime at 10.15 PM. With the help of the electric light, he prepared observation mahazar (Ex.P10) and rough sketch (Ex.P14) in the presence of witnesses Kannan (PW-15) and Nagarajan (not examined). He then arranged for photographs to be taken through the police photographer, Kennedy (PW-12). He then prepared the seizure mahazar (Ex.P11) for seizure of blood stained thread pieces (MO-6). The photographs and the compact disc had been marked as MO-5. He received death intimation (Ex-P16) from the hospital. PW-17 then conducted inquest over the dead body of Mahesh in the presence of witnesses and panchayadars. The inquest report was marked as Ex.P15. He then forwarded the dead body on 28.02.2011 at 9.30 AM for conducting postmortem. The postmortem was conducted by Dr.A.Selvakumar, PW-5.

19. The following ante mortem injuries were found on the deceased:

i) An oblique sutured injury of length 3.5 cm over the front of right shoulder near axila. On removal of suture it appeared as a stab injury of size



3.5 x 2 cm, having depth of 13 cms. The margins of the injury were sharp.

Its lower edge was sharp and upper edge was irregular. It cut the underlying soft tissues, muscles, nerves and right axillary artery. It extended up to front of right scapula and

ii) An oblique gapping sutured cut injury of size 13 x 4 x 3 cm over the upper part of the front of left thigh. It cut the underlying soft tissue and muscle.

20.PW-17 then recorded the statements of Muthulakshmi (PW-1), Lakshmanakumar (PW-2), Esakki Thevar (PW-3), Selvi (PW-7), Madasamy (PW-4), Murugandi Thevar (PW-6). He then arrested the accused on 28.02.2011 at 1.45 PM in the presence of Selvakumaran (PW-16) and Esakkipandian (not examined). The admissible portion of the confession statement was marked as Ex.P12. He then recovered the blood stained knife, MO-1, the lungi worn by the accused MO-8 and the blood stained shirt of the accused MO-7 under the seizure mahazar (Ex.P13). He then forwarded the material object under Form – 95 to the Court to be forwarded for further examination by the Forensic Department. He received the Chemical Analysis Report (Ex.P18) and Serological Report (Ex.P19). The



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Accident Register of Mahesh was marked as Ex.P20.

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21.After completing investigation, PW-17 filed final report before the Judicial Magistrate – I. The final report was taken cognizance as PRC No.84 of 2011. Copies of all the relevant documents were served on the accused under Section 207 Cr.P.C. Thereafter, on completing the formalities under Sections 208 and 209 Cr.P.C. the Judicial Magistrate – I had committed the case to the Principal Sessions Court, Tirunelveli, since, the offences under Sections 307 and 302 IPC were triable exclusively by the Court of Sessions. The case was then made over to the I Additional District and Sessions Court at Tirunelveli and as aforementioned charges under Sections 341, 302, 307 and 506(ii) IPC were framed against the accused. He had denied the charges, but after trial he stood convicted for all the charges and was sentenced as aforementioned. The accused had preferred the present Criminal Appeal questioning such conviction and sentence.

22.Heard arguments advanced by Mr.A. Ramesh, learned Senior Counsel for Mr.P. Samuel Gunasingh and Mr.T. Senthil Kumar, learned Additional Public Prosecutor.



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23.Mr.A.Ramesh, learned Senior Counsel took the Court through the facts of the case and pointed out the cause for quarrel and violence, wherein, the accused was charged with causing fatal injuries to the deceased Mahesh and further causing injuries with intention to cause death on PW-2, Lakshmanakumar. The learned Senior Counsel pointed out the evidence of PW-1, Muthulakshmi with respect to the injuries said to have been caused by the accused on the deceased Mahesh. The learned Senior Counsel pointed out the contradictions in the evidence of the alleged eye witnesses when compared with the actual injuries suffered by the deceased. According to PW-1, there was a stab injury on the right thigh. According to PW-2, there was a stab injury on the thigh. According to PW-3, Esakki Thevar, there was a stab injury on the left thigh. According to PW-4, Madasamy, who is also the uncle of the deceased, there was a stab injury on the left thigh. In the postmortem, it was found that there was an injury on the right shoulder near the axilla and also a gaping sutured cut injury over the upper part on the front of left thigh. This injury had been pointed out by the learned Senior Counsel who stated that it was a sutured injury which would mean that the injury had been suffered earlier and sutured and thereafter was



not a fresh injury.

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24.The learned Senior Counsel further stated that there were contradictions among the witnesses as to whether that injury was on the left or right thigh. The learned Senior Counsel pointed out the improbability of the presence of PW-13 and PW-14, the driver and advocate at the scene of occurrence. He pointed out that PW-13 was wearing a lungi and the learned Senior Counsel wondered as to whether that was a proper dress for a driver of an advocate. He then pointed out their evidence and contested their claim to have been present at the time when the occurrence had taken place.

25.He further pointed that it is the case of the prosecution that according to Exs.P4, PW-2 Lakshmanakumar was taken to the hospital by PW-13 who claimed to be a relative and according to Ex-P20, the deceased Mahesh was taken to the hospital by Selvakumaran, PW-14 who also described himself as a relative. The learned Senior Counsel pointed out that both of them are not relatives of either the injured or the deceased.

26.The learned Senior Counsel then pointed out the photographs said



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to have been taken by PW-12 which were produced as MO-5 and stated that necessary certificate under Section 65(B) of the Indian Evidence Act, 1872 had not been produced by the prosecution and therefore contended that the said photographs were inadmissible in evidence.

27.The learned Senior Counsel further pointed out that it was the evidence of PW-4, PW-6, PW-7 and also of PW-16 that they had also come over to the hospital but contended that they could not have been present in the hospital since they were residing far away.

28.He further pointed out that though the incident is said to have been taken place at 6.45 PM on 27.02.2011, the complaint was lodged only at 9.00 PM and the FIR was registered at 9.30 PM and further, though the distance between the police station and the residence of the Judicial Magistrate – I, Tirunelveli was very short, it had reached the Judicial Magistrate only at 11.55 PM. He pointed out that when cross-examined an explanation was given by PW-10, Nallasivam, Head Constable, who stated that he suffered sudden blood pressure and therefore, delayed in handing



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over the FIR and complaint to the Judicial Magistrate. The learned Senior Counsel stated that this explanation was not stated in the chief examination but stated in the cross-examination and therefore contended that the explanation is false. He therefore contended that the case of the prosecution should suffer owing to the delay in forwarding the FIR and complaint copy to the Judicial Magistrate.

29.He further pointed out that there was a confusion over whether the road where the occurrence is said to have happened was a tar road or cement road.

30.He further pointed out the evidence of PW-1 that she had handed over her blood stained saree to the Investigation Officer and pointed out that the same had not been produced before the Court as a material object. He further pointed out that the serological report Ex.P19 wherein the blood samples did not match. He also pointed out that Ex.P19 in fact referred to an unknown and unrelated FIR in crime number in Crime No.297 of 2011 of Palaya,kottai Police Station.



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31.The learned Senior Counsel then pointed out the injuries said to have been suffered by PW-2 which were described as superficial injuries in the accident register (Ex.P4) and wound certificate (Ex.P5). He therefore contended that a charge under Section 307 IPC should not have been framed in relation to the injuries caused to PW-2.

32.He further pointed out the photographs which had been taken, which reflected that they had been taken on 28.02.2011 at 12.54 hours and therefore, disputed the veracity of the said photographs which had been produced as MO-5.

33.He pointed out that the statements of both PW-1 and PW-2 differed from the statements which they had given under Section 161 Cr.P.C and alleged that during evidence in Court, they had improved upon their version.

34.He further pointed out the evidence of PW-13, Senthilkumaran who stated that his statement had been recorded in the hospital and pointed out that such statement had not been produced before the Court.



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35.He then questioned the evidence of PW-8, Dr.Mahalingam, who had conducted the postmortem and pointed out that the document produced, Ex.P20, the accident register of the deceased Mahesh was a xerox copy and therefore, inadmissible in evidence. He further pointed out that the prosecution had not examined the doctor who had given the initial treatment to the deceased Mahesh.

36.He also pointed out the evidence of the Investigation Officer that he was searching for blood stains and wondered at the nature of investigation conducted. He also questioned the inference of the learned Trial Judge that the blood found on the material objects were human blood but actually the blood groups were A, O and B and stated that they did not match with the blood group of either the deceased or PW-2. Pointing out all these contradictions, the learned Senior Counsel stated that the conviction of the accused has to be set aside by this Court.

37.The learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in **2024 SCC OnLine SC 1910, Allarakha**



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Habib Memon V. State of Gujarat wherein, the Hon'ble Supreme Court had placed reliance on an earlier judgment of the Hon'ble Supreme Court reported in ***(2011) 11 SCC 724, Mustkeem alias Sirajudeen v. State of Rajasthan***, wherein it had been held that the sole circumstance of recovery of bloodstained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. The relevant portion is extracted hereinbelow:-

“19. The AB blood group which was found on the clothes of the deceased does not by itself establish the guilt of the appellant unless the same was connected with the murder of the deceased by the appellants. None of the witnesses examined by the prosecution could establish that fact. The blood found on the sword recovered at the instance of Mustkeem was not sufficient for test as the same had already disintegrated. At any rate, due to the reasons elaborated in the following paragraphs, the fact that the traces of blood found on the deceased matched those found on the recovered weapons cannot ipso facto enable us to arrive at the conclusion that the latter were used for the murder.”

(emphasis supplied)

38.The learned Senior Counsel argued that since the traces of blood did not match with the deceased, the improbability of the material objects



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having been used for the offence was evident and has to be taken note by this Court.

39.The learned Senior Counsel also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2024 SCC OnLine SC 2265, *Raju and Anr. V. State of Uttarakhand***, wherein the Hon'ble Supreme Court had again acquitted the appellant therein holding that there were disparities *“in the oral evidence adduced by witnesses; the medical reports and the opinions, in terms of the nature of injuries suffered.”*

40.The learned Senior Counsel further relied on the judgment of the Hon'ble Supreme Court reported in **(2017) 13 SCC 98, *Krishnegowda V. State of Karnataka***, wherein the Hon'ble Supreme Court had held as follows:

“32. It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad daylight. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy.



The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.

33. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, “witnesses are the eyes and ears of justice”. In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused.

40. As per the evidence of the prosecution witnesses, the accused by using the sharp edge of the weapon assaulted on the right side of the forehead but the doctor's evidence in this regard is that the deceased has not sustained incised wound on the forehead. PW 10 further stated that if a person is assaulted with an object like MO 4 it would result in fracture of frontal bone.

42. Once there is a clear contradiction between the medical and the ocular evidence coupled with severe contradictions in the oral evidence, clear laches in the investigation, then the benefit of doubt has to go to the accused.”

41.The learned Senior Counsel further placed reliance on the judgment of the Hon'ble Supreme Court reported in **(1987) 1 SCC 679, *Amar Singh V. State of Punjab*** with respect to the contention of disparity between the medical and ocular evidence and had held as follows:



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*“10.We are unable to accept the evidence of PW 5 that although a number of blows were given by the accused with their weapons on the ribs and abdomen of deceased, yet such blows did not produce any mark of injury. The medical report submitted by PW 2 shows that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by PW 5. If her evidence that all the accused inflicted injuries on the deceased with their respective weapons has to be accepted, then there would be incised wounds all over the body of the deceased, but the medical report shows that not a single incised wound was found on the body of the deceased. Thus the evidence of PW 5 is totally inconsistent with the medical evidence. This Court in **Ram Narain Singh v. State of Punjab [(1975) 4 SCC 497 : 1975 SCC (Cri) 571 : AIR 1975 SC 1727]** has laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. There is no explanation for the apparent total inconsistency between the evidence of PW 5 and the medical evidence.”*

42.The learned Senior Counsel also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2024 SCC OnLine SC 760, Alauddin & Ors. V. State of Assam** with respect to improvement in evidence from the statement given earlier when the witness was confronted



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during cross-examination with a suggestion about the earlier statement given by him to the Investigation Officer and the Investigation Officer confirming that the witness did not state to him about a material fact. The Hon'ble Supreme Court observed as follows in paragraph 14:

“14. PW-5 stated that at about 8.00 p.m., he saw the deceased, appellant nos. 2, 3 and 4, conversing on the road near Bhojkhowa Girl's School. The deceased requested him to carry his bag as the deceased stated that he was going to campaign for the election. The witness was confronted in his cross-examination with a suggestion that he had not told the police that at 8.00 p.m., while he was going back to his house, he saw the accused conversing with the deceased. PW-11, the Investigating Officer, admitted that PW-5 did not state before him that at about 8.00 p.m., while he was coming from Bhojkhowa, he saw the deceased conversing with the accused. Thus, the material part of the testimony of PW-5 is a significant omission which amounts to contradiction.”

43. On the basis of the material omissions, which amounted to contradictions, the appellant therein acquitted of the charges.

44. Placing reliance on all the aforementioned judgments, the learned Senior Counsel insisted that this Court should allow the present Criminal



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Appeal and set aside the conviction and sentences imposed on the accused/appellant.

45.Mr.T. Senthil Kumar, learned Additional Public Prosecutor appearing for the respondent, however contested and disputed the contentions of the learned Senior Counsel.

46.The learned Additional Public Prosecutor pointed out the quarrel between the family of the accused and the family of the deceased owing to the cutting of the thorny bushes by the accused. These thorny bushes acted as a fence between the haystacks of the family of the accused and the family of the deceased. He then pointed out the actual incident that took place on 27.02.2011 when PW-2 was walking across the house of the accused in the evening at 6.45 PM. The accused had begun the quarrel which further intensified owing to the active participation of PW-1 and the deceased. It finally ended in violence. He stated that the accused at that time had caused injuries on the shoulder and on the thigh of the deceased who did not die immediately but died, after half an hour after being taken to the hospital. In the same course of transaction, when PW-2 tried to prevent the attack, he



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was also attacked by the accused and injuries had been caused.

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47.The learned Additional Public Prosecutor pointed out that documents in this regard had been produced and marked as Exs.P4 and P5 so far as injuries to PW-2 is concerned and as Ex.P20 so far as the injuries to the deceased Mahesh is concerned. He pointed out that immediately on information being received that her son had died in the hospital, PW-1 had gone over to the police station and lodged a complaint (Ex.P1) at 9.00 PM. There was no material delay between the incident and the lodging of the complaint. The FIR was registered at 9.30 PM. It was then forwarded through Nallasivam (PW-10) Head Constable to be handed over to the Judicial Magistrate – I, Tirunelveli.

48.The learned Additional Public Prosecutor pointed out that the FIR and complaint had been received by the learned Judicial Magistrate at 11.55 PM on the very same night. He then pointed out the explanation for the delay was actually given during cross-examination. The witness PW-10 stated that he suffered sudden blood pressure and could not therefore reach the residence of the learned Judicial Magistrate within reasonable time.



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49.The learned Additional Public Prosecutor also pointed out that there could be minor discrepancies in the evidence but stated that the evidence was recorded in the Court after a gap of four years and therefore there could be slight confusion in the minds of the witnesses, as to where the injuries were actually caused by the accused. He also pointed out that Ex.P20 had been registered at 7.30 PM and Ex.P4 at 7.40 PM. The documents contained consecutive serial numbers and therefore, asserted that the documents could not be doubted or questioned.

50.The learned Additional Public Prosecutor also pointed out that there was an injury in the shoulder of the deceased which was a very deep injury touching to the heart and then pointed out the evidence of the doctor who conducted the postmortem, Dr.A.Selva Murugan (PW-5) who had issued Ex.P2 and had given an opinion that the cause of death was the stab injury to the right shoulder. He also pointed out the evidence of Dr.Mahalingam / PW-8 who treated Lakshmanakumar (PW-2) and had issued wound certificate (Ex.P5).



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51.The learned Additional Public Prosecutor further stated that the witnesses spoke about the earlier quarrel, the quarrel just before the incident. There were also eyewitness to the incident. He specifically pointed out the evidence of PW-2 and argued that much credibility must be shown to the evidence of an injured eye witness. He also pointed out the nature of injuries suffered by PW-2 which were at the neck and chest. He stated that the injuries had been categorized as simple injuries only because there was no fracture of the bone but still, the injuries were deep enough. Pointing out all these aspects, the learned Additional Public Prosecutor stated that the conviction and the sentence will have to be sustained by this Court.

52.We have carefully considered the arguments advanced and perused the materials on record.

53.The genesis of the case was a quarrel about 10 days prior to 27.02.2011 when the occurrence for which the accused had been charged had happened. The location of the two houses of PW-1 and of accused will have to be first stated. They were both practically neighbours. PW-1 was



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residing at Door No.6/11, Andal Street, Thimarajapuram, Palayamkottai.

Further north to her house, the accused was residing in his mother-in-law, Jeya's house. PW-1, Muthulakshmi had stacked straw bales to the north of her house in an open waste land. To the further north of such stack, the mother-in-law of the accused Jeya had also stacked her haystack. There was a thorn bush which acted as a fence dividing the two sets of haystacks.

54.It is the case of the prosecution that ten days prior to 27.02.2011, the accused, his wife and his mother-in-law had cut the thorny bushes which acted as a fence. This was raised as an issue by PW-1, Muthulakshmi who complained that if the thorny bushes are cut, then cows will eat the hay.

55.It is the case of the prosecution that owing to this quarrel, there was an enmity between the family of the accused and the family of PW-1.

56.On 27.02.2011 at around 6.45 PM when PW-2, Lakshmanakumar, son of PW-1 and PW-3 and elder brother of Mahesh, the deceased, was coming across the house of the accused, the accused accosted him and a quarrel ensued. This further flared owing to the participation of PW-1 and



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the deceased. Words were exchanged. It escalated to violence. It is contended that the accused took MO-I, knife and cut Mahesh on the right shoulder and on his left thigh. When PW-2, Lakshmanakumar tried to prevent the attack, he was also cut indiscriminately at various parts of his body.

57.It is the contention of the learned Senior Counsel that there had been discrepancies in the evidence of PW-1, PW-2 and PW-3 who said to have witnessed the occurrence whether the accused cut the deceased on the left thigh or on the right thigh or just thigh. We hold that this difference is immaterial as the postmortem report had very clearly stated that there was a deep injury on the left thigh. It must also be kept in mind that the evidence of witnesses were about four years after the occurrence and therefore, what they would only remember is that there was an injury in the thigh but there would always be a confusion in their minds whether it was in the left or right thigh.

58.It was also pointed out by the learned Senior Counsel that the said injury was said to be sutured as found in the postmortem report Ex.P2 and



spoken by PW-5 Dr.Selvamurugan. But however, the actual cause of death was not that particular injury on the thigh but a deeper injury on the right shoulder. The injury on the right shoulder measured 3.5 CM x 2 CM with depth of 13 CM. The margin of the injury were sharp. The lower edge was sharp. It had cut the underlying soft tissues, muscles, nerves and right axillary artery. It extended up to the right scapula.

59.The accident register of the deceased Mahesh was produced as Ex.P20. It also showed a laceration of 3x2 CM over the right shoulder. He was semi-conscious and confused at that time. He was admitted to the causal ward. He died within half an hour. The opinion as to the cause of death was *“Haemorrhage shock due to stab injury to right shoulder”*.

60.It is also to be noted that in the same transaction PW-2 had also suffered injuries. The accident register was marked as Ex.P4 and the wound certificate was marked as Ex.P5. The nature of injures are simple and they are laceration injuries. They are as follows, i) 10 x 1 cm lacerated injury on his left side neck, ii) 3 x 1 x 2 cm lacerated injury on his left chest, iii) 2x1x1 cm lacerated injury on left stomach, iv) 2x1x1 cm lacerated injury on



left had, v) 1x1x1 cm lacerated injury on left fore hand.

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61.The learned Senior Counsel for the accused pointed out the opinion of the doctor that these injuries are simple injuries. But what is crucial is that, they had been caused at the time when PW-2 had tried to prevent further attack of his younger brother, the deceased. Therefore, the intention of the accused was not just to cause simple injuries but actually to cause death.

62.The credibility of an injured witness had been examined by the Hon'ble Supreme Court reported in **2023 SCC OnLine SC 355, Balu Sudam Khalde and Another V. State of Maharastra**, wherein the Hon'ble Supreme Court held that the following principles are to be kept in mind when the evidence of injured witness is to be appreciated:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.



(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

63.In the instant case, the presence of PW-2 cannot be either denied or disputed. The initial quarrel was between him and the accused. This quarrel escalated into violence with the participation of PW-1 and the deceased. He suffered injuries at the same time as the deceased suffered injuries. They were both taken to hospital though separately but at the same time. The accident register, so far as the deceased was issued at 7.30 PM in SL.No.4303772. The accident register so far as PW-2 is concerned was



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issued at 7.40 PM in SL.No.4303773. Therefore, they had been admitted to the hospital within ten minutes of each other. The hospital records also show that there is continuity in the serial numbers of the accident register issued to them. Therefore, the presence of PW-2 is established by this very fact.

64.The learned Senior Counsel appearing for the accused pointed out that while the deceased was taken to the hospital by Selvakumaran (PW-14), the injured (PW-2) was taken to the hospital by Senthilkumaran (PW-13) and they had both categorized themselves as relatives.

65.The fact that they were taken separately is immaterial. One required urgent treatment and Selvakumaran (PW-14) had taken the deceased immediately. PW-2 was taken by Senthilkumaran (PW-13). Whether PW-13 or PW-14 witnessed the occurrence again is immaterial. They were there at that time when both PW-2 and the deceased collapsed and they took them to the hospital. They reached the hospital within 45 minutes from the attack.



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66.The presence of PW-2 is therefore established and when his evidence is tested in the corner stone of the stipulations as laid down in ***Balu Sudam Khalde*** referred *supra*. We hold that the evidence of PW-2 cannot be doubted, must be believed and has greater evidential value and is not exaggerated or immaterial. As a matter of fact, the initial quarrel happened between the accused and PW-2. Therefore, PW-2 was very much present at the time of occurrence. When that quarrel happened, PW-1 and the deceased also joined in the quarrel. It is the evidence of PW-1 that the accused then stabbed the deceased on the right shoulder and on his right thigh. This evidence of PW-1, cannot be brushed aside merely because she stated '*right thigh*' instead of '*left thigh*'. She was witnessing her own son being attacked violently by the accused. This was also witnessed by PW-3, Esakki Thevar, the father of PW-2 and the deceased. In his evidence, he stated that the accused stabbed the deceased on the left thigh. As a matter of fact, both the injuries were given as sutured injuries. It does not mean that had been caused earlier and had been sutured. What it states is that prior to the postmortem, the injuries had been closed and stitched and later when the postmortem was done, the sutures had been opened to determine the length, breadth and depth of the injuries. Therefore, the arguments of the learned



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Senior Counsel by playing upon the word “*suture*” are rejected by us.

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67.The evidence of the Investigation Officer, PW-17, Muthu and the Investigation Officer who filed the final report, PW-18, Francis are consistent. The learned Senior Counsel had questioned the absence of matching blood groups on the material objects, which had been seized, but when there is ocular evidence that would taken precedence over every other evidence, particularly when the ocular evidence is creditable.

68.In the instant case, it must also be kept in mind that the trial took place nearly four years after the death of occurrence and there could be a possibility of there being confusion in the minds of PW-1.

69.But even otherwise, we are deeply conscious of the fact that the entire incident took place owing to a sudden quarrel initially between PW-2 and the accused and later escalated by the presence of PW-1 and the deceased.

70.We hold that the deceased died a homicidal death and that the



accused was culpable for such homicide.

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71.It will still have to be examined whether the occurrence could be brought under any of the exceptions to Section 300 I.P.C. Exception 4 to Section 300 IPC is as follows:

“300. Murder:

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.-It is immaterial in such cases which party offers the provocation or commits the first assault. ”

72.A reading of the aforementioned exception shows that, when homicide occurs owing to sudden fight and in the heat of passion, then a marginal benefit should be given to the accused.

73.In **2023 SCC OnLine SC 1396, Birbal Nath V. State of Rajasthan and Others**, the Hon'ble Supreme Court had held on the possibility that the incident was not pre-meditated that it could then come under culpable homicide not amounting to murder and not of murder. The



accused in that particular case was convicted under Section 304(i) IPC and Section 308 IPC.

74. In the judgment of the Hon'ble Supreme Court reported in (2008)

5 SCC 390, Kotikalapudi Subba Rao Vs. State of Andhra Pradesh and

Another, it had been held as follows:

“12. The residual question is whether Section 302 IPC has application.

13. “6. For bringing in operation of Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

7. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be



Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused : (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

*The aforesaid aspects have been highlighted in **Sridhar Bhuyan v. State of Orissa [(2004) 11 SCC 395 : 2004 SCC (Cri) Supp 98 : JT (2004) 6 SC 299]** , **Parkash Chand v. State of H.P. [(2004) 11 SCC 381 : 2004 SCC (Cri) Supp 87 : JT (2004) 6 SC 302]** at SCC pp. 383-84, paras 6-7, **Sachchey Lal Tiwari v. State of U.P. [(2004) 11 SCC 410 : 2004 SCC (Cri) Supp 105 : JT (2004) 8 SC 534]** , **Sandhya Jadhav v. State of Maharashtra [(2006) 4 SCC 653 : (2006) 2 SCC (Cri) 394]** and **Lachman Singh v. State of Haryana [(2006) 10 SCC 524 : (2007) 1 SCC (Cri) 123]**."*



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75. In the instant case, there was intention to cause death and we hold that the accused knew that a stab injury on the shoulder to a depth of 13 cms would cause death. It had been inflicted with much force. But, it was the result of a sudden quarrel initially between the accused and PW-2 and aggravated to the disadvantage of the accused by the unwarranted intervention by PW-1 and the deceased. Therefore, we hold that the conviction under Section 302 IPC should be set aside and the accused should be convicted for the offence punishable under Section 304(i) IPC.

76. So far as the injuries caused to PW-2 is concerned, we have to give due consideration to the opinion given in the accident register and wound certificate that the injuries were simple injuries but had been caused with a dangerous weapon. We would modify the conviction from Section 307 IPC to Section 324 IPC. Accordingly, we would set aside the conviction under Section 307 IPC and rather modify the same to Section 324 IPC. We would sustain the conviction under Sections 341 and 506(ii) IPC. But however, we would find from the records that the accused had been sentenced to undergo seven years imprisonment for the offence punishable under Section 506(ii) IPC., which is unwarranted and modify



that sentence to one year rigorous imprisonment.

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77.Taking all the factors into consideration, we would set aside the conviction for the offence under Section 302 IPC and modify the same to conviction for offence punishable under Section 304(i) IPC and set aside the conviction for the offence under Section 307 IPC and modify the same to conviction for offence punishable under Section 324 IPC and also modify the sentence imposed under Section 506(ii) IPC. The conviction and sentence of the accused are therefore as follows:

i).We convict the accused for the offence punishable under Section 341 IPC and sentence him to undergo simple imprisonment for one month;

ii).We convict the accused for the offence punishable under Section 304(i) IPC and sentence him to undergo four years rigorous imprisonment. We maintain the fine of Rs.1,000/- and in default, to undergo three months simple imprisonment;

iii).We convict the accused for the offence punishable under Section 324 IPC and sentence him to undergo two years rigorous imprisonment. We maintain the fine of Rs.1,000/- and in default, to undergo three months simple imprisonment;



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iv).We convict the accused for the offence punishable under Section

506(ii) IPC and sentence him to undergo one year rigorous imprisonment;

v).All the aforementioned imprisonments are to run concurrently.

vi).The period already undergone either during remand or subsequent to conviction by the Trial Court judgment shall be set off under Section 428 Cr.P.C.

78.In the result, this Criminal Appeal stands partly allowed.

(C.V.K.J.,) (J.S.N.PJ.,)

22.10.2024

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Index : Yes / No

Neutral Citation : Yes / No

Speaking order : Yes / No



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To

- 1.The I Additional District and Sessions Court,
Thirunelveli.
- 2.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.V. KARTHIKEYAN, J.
AND
J.SATHYA NARAYANA PRASAD, J.

smv

Judgment made in
Crl.A.(MD) No.183 of 2021

22.10.2024