



CrI.A.(MD)No.268 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.08.2024

PRONOUNCED ON : 01.10.2024

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

CrI.A(MD)No.268 of 2020

M.Prasanth

... Appellant

vs

**State represented by the Inspector of Police,
Gudalur South Police Station,
Theni District.
(in Cr.No.30 of 2014)**

...Respondent

PRAYER: Criminal Appeal filed under Section 372(4) of the Criminal Procedure Code, to call for the records to the judgment in S.C.No.16 of 2017 dated 08.06.2020 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Theni and set aside the same and acquit him from the charge levelled against him.

**For Appellant : Mr.R.Venkateswaran
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor**



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JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The sole accused in S.C.No.16 of 2017 aggrieved by the judgment dated 08.06.2020 of the Additional District and Sessions Court (FTC), Theni by which judgment, the appellant/accused was convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.10,000/- in default to undergo further imprisonment of one year simple imprisonment, has filed the present Criminal Appeal.

2.Even before proceeding to state the facts of the case, it must be mentioned that in the FIR, two accused were named, namely, this appellant, Prasanth and Alagumalai, an Advocate. Subsequently, the Investigating Officer had filed an application before the Judicial Magistrate Court at Uthamapalayam to delete the name of Alagumalai from the array of accused.



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3.It is the case of the prosecution that at Kullappa Goundanpatti, many peoples were illegally drawing water using electric motor pumpset from Mullai-Periyar river. The officials of Public Works Department and Electricity Department had confiscated the electric motor pump sets. In this manner, the electric motor pumpset of Alagumalai, a relative of the accused, Prasanth was also confiscated. In this operation to confiscate the electric motor pumpsets, the deceased Raja had assisted the Public Works Department and Electricity Department officials. It is therefore contended that the accused had harboured enmity against the deceased. It is further stated that four days prior to the incident, the accused had threatened Raja that he would kill him.

4.It is further stated by the prosecution that on 07.03.2014 in the night at 07.15 pm, when the deceased Raja was walking across the road near the broiler shop belonging to Alagumalai, the accused called him and stabbed him with knife. When Raja tried to escape, the accused is said to have chased him and again stabbed him on the back. It is further stated that the deceased was then taken to the Cumbum Government Hospital by the eye witnesses, Manikodi (PW-1) Perumal (PW-2) and Chandran (PW-3). Raja



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died that very night at 09.15 pm. Thereafter, PW-1, Manikodi, one of the eye witnesses had lodged a complaint before the Gudalur South Police Station at 10.00 pm. On the basis of the said complaint, FIR in Cr.No.30 of 2014 was registered at 10.00 pm for commission of offence under Section 302 IPC against two accused, Prasanth and Alagumalai. After investigation, an alteration report was filed by the Inspector of Police, Gudalur South Police Station dropping Alagumalai from the array of accused and later, final report was filed alleging commission of offence punishable under Section 302 IPC against the accused Prasanth alone.

5.The final report was taken cognizance as P.R.C. No.25 of 2015 by the Judicial Magistrate, Uthamapalayam. The learned Judicial Magistrate, Uthamapalayam, complied with the conditions stipulated under Section 207 Cr.P.C. and furnished copies of documents to the accused and later, since the offence was triable exclusively by a Court of Sessions, committed the case to the Principal District and Sessions Court at Theni District.

6.The Principal District and Sessions Court at Theni had taken the case on file as S.C. No.16 of 2017 and framed charges under Section 302



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IPC against the accused. When questioned, the accused denied the charges and claimed to be tried. The Session Case was then made over to the Additional District and Sessions Court (Fast Track Court), Theni for trial. During the course of trial, to prove the charge, the prosecution examined PW-1 to PW-14 witnesses and marked Ex-P1 to Ex-P12 exhibits. Further, Ex-C1 and Ex-C2 were marked as Court exhibits. The prosecution also produced MO-1 to MO-7 material objects.

7. On conclusion of trial, by judgment dated 08.06.2020, the appellant/accused was convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs. 10,000/- in default to undergo further imprisonment of one year simple imprisonment. The appellant has filed the present appeal questioning the said conviction and sentence.

8. Among the witnesses, PW-1, Manikodi, PW-2, Perumal, PW-3, Chandran, and PW-4, Baskaran, were examined on the ground that they were eye witnesses to the incident. PW-5, Pushpavalli was the sister of the deceased. PW-6, Anbazhagan, was a witness to the confession statement of



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the accused and subsequent recovery of material objects. PW-7, Eswaran, (declared hostile) was actually running the broiler shop, which was owned by Alagumalai. PW-8, Gobi, was witness for collection of blood stained sand and sand without blood stain from the scene of crime. He was declared hostile during cross examination. PW-10, Murugan, is an official from the Electricity Board who had been examined to depose that there was no power cut in the area on the date and time of the incident. PW-9, Rajeshkannan, PW-11, Kannan and PW-12, Parthiban, were Police Officials. PW-13, Dr.Thiyagarajan, was the Doctor, who conducted postmortem. PW-14, Muthumani, was the Investigating Officer.

9.PW-1, Manikodi, in his evidence stated that he along with PW-2, Perumal and PW-3, Chandran, were taking tea in the tea shop opposite to the broiler shop of Alagumalai. At that time, the deceased Raja had come across the road and was called over by the accused. PW-1 stated that he saw the accused stabbing the deceased on the left side of the neck and when the deceased tried to catch hold of the legs of the accused, the accused again stabbed the deceased on his back and then ran away. PW-1 stated that he then took the deceased in a jeep to the Government Hospital, Cumbum,



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where the Doctor declared Raja as dead. Thereafter, PW-1 came back and lodged a complaint before the Gudalar South Police Station. He identified the complaint, Ex-P1 and also identified the weapon used by the accused as MO-1.

10.PW-1, Manikodi, was cross examined after nearly 1 year. During cross examination, he stated that he did not remember whether the other person named in the complaint, Alagumalai had caught hold of the deceased when the accused stabbed the deceased. In both chief examination and in his cross examination, he stated about the reasons leading to the accused attacking the deceased. He stated that the Public Works Department and Electricity Board officials had launched an operation against illegal drawing of water from Mullai-Periyar River and confiscated the electric motors including the electric motor of Alagumalai. He further stated that the deceased was actively involved in this operation by assisting the officials Public Works Department and Electricity Department. Later, the accused had demanded the deceased to restore the electric motor connection, but the deceased refused to comply. PW-1 stated that this was the reason for the hostility harboured by the accused against the deceased.



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11.PW-2, Perumal and PW-3 Chandran were also examined by the prosecution. Both stated that they were having tea along with PW-1, Manikodi, in the tea shop opposite the broiler shop of Alagumalai and when the deceased was coming towards that side, the accused called him over and stabbed him initially on the left side of the neck and when the deceased tried to catch hold of the legs of the accused, again on the back. They both also stated that the deceased was taken to hospital but later died of the injuries.

12.Though there were minor contradictions in the evidence, they both stated that the animosity between the accused and the deceased was that the electric motor pumpset of Alagumalai, a relative of the accused, was confiscated by the Public Works Department and Electricity Department officials, since it was alleged that it was used for illegal drawing of water from Mullai-Periyar River. In that operation, the deceased had assisted the officials. He later refused to restore the service connection to the electric motor pump set of Alagumalai.

13.The prosecution also examined PW-4, Baskaran, who was having a grocery shop and also stated about the quarrel between the deceased and



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the accused and the accused stabbing the deceased in the neck and when the deceased tried to catch hold of the legs of the accused, the accused stabbing the deceased again on the back.

14.The prosecution thus relied on evidence of PW-1 to PW-4 to speak about the incident which had happened.

15.PW-10 stated that there was continuous electricity supply during night at 07.03.2014 and there was no interruption in the power supply.

16.Thereafter, the prosecution further examined PW-12, Parthiban Sub Inspector of Police, Gudalur South Police Station, who had received the complaint from PW-1, and had registered the FIR, Ex-P6, in Cr.No.30 of 2014 at 10.00 pm against two accused, Prasanth and Alagumalai for commission of offences punishable under Sections 342 and 302 IPC. In his evidence, PW-12 stated that immediately after registering the FIR, he had forwarded the complaint and the FIR through express tapal, Ex-P6 and through PW-11, Police Constable, Kannan, handed it over to the Judicial Magistrate. It was handed over to the Judicial Magistrate at Bodi, who was



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in-charge of Judicial Magistrate Court, Uthapalayam at 03.00 am on 08.03.2014.

17.The prosecution further examined PW-14, Muthu Mani, the Investigating Officer. He stated that he received information about the registration of the FIR and immediately, proceeded to the scene of crime at 11.15 pm. He then with the help of the street light prepared observation mahazar, Ex-P4 and rough sketch, Ex-P8 in the presence of witnesses, Gobi (PW-8) and Theivam (not examined). He then collected the blood stained sand and sand without blood stain, which were produced during trial as MO-3 and MO-4. He recorded the statement of Gobi (PW-8) and Theivam (not examined). He then conducted inquest over the dead body of the deceased in the hospital in the presence of panchayatars on 08.03.2014 between 07.00 am and 08.00 am and prepared inquest report, Ex-P9. He then recorded the statements of Manikodi, PW-1, Perumal, PW-2, Chandran, PW-3, Baskaran, PW-4, Theivam (not examined), Indirani (not examined) and Pushpavalli (PW-5). He then recorded the statement of Electricity Board wire man, Murugan, PW-10.



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18.PW-14, the Investigating Officer then arrested the accused, Prasanth, in the presence of witnesses, Anabalgan (PW-6) and Selvendran (not examined). He then recorded the confession statement of the accused. The admissible portion was marked as Ex-P2. On the basis of the confession, he recovered the blood stained knife used by the accused and the blood stained dhoti of the accused which were produced as MO-1 and MO-2. He then forwarded the material objects under Form-91 to the Judicial Magistrate Court. He then recorded the statement of Dr.Sasikala who initially treated the deceased at the time of admission and marked the accident register as Ex-P10. The said Doctor was not examined in Court, since she was on maternity leave.

19.PW-14 then forwarded the material objects MO-3 and MO-4 for forensic examination. He then filed a petition to record the statement under Section 164 Cr.P.C., of Manikodi, PW-1, Perumal, PW-2 and Chandran, PW-3. The statements recorded were marked as Ex-P11 series. He then arrived the conclusion that the second accused mentioned in the complaint and in the FIR, namely, Alagumalai was not directly involved in the offence and therefore, filed an alteration report to drop the said Alagumalai from the



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list of accused. This petition was marked as Ex-P12. He then examined and recorded the statement of Dr.Thiyagarajan, PW-13 who conducted the postmortem. The postmortem report was marked as Ex-P7. PW-13, Dr.Thiyagarajan in his report, Ex-P7 had given the list of injuries as follows:

“1.A stab injury of size of 4 cm x 1 cm near the root of neck of the left side just above the left clavicle; on probing the bound side extends downwards and medially for about 15 cms.

2.Another stab injury of about 2 cms x 05. cm below the right scapula on the right side of back, on probing the wound extends 0.5 cm deep.”

20.He further stated that on dissection of wound No.1, the wound extended through the apex of the lateral lung arch of aorta and upper border of heart. He had given an opinion that the cause of death was due to shock and hemorrhage due to injuries in the vital organs.

21.PW-14 then filed final report before the Judicial Magistrate Court against the accused, Prasanth charging him with commission of offence punishable under Section 302 IPC. During cross examination, when questioned whether he had recorded the statement of Alagumalai, he stated



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that he did not record the statement, since Alagumalai was absconding. On all other aspects, he withstood the cross examination.

22.The learned Additional District and Sessions Judge (FTC) Theni, on appreciation of evidence came to the conclusion that the prosecution had established the case beyond reasonable doubt and therefore, convicted the appellant/accused for offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.10,000/- in default to undergo further imprisonment of one year simple imprisonment. He also directed that the period of remand must be set off under Section 428 of Cr.P.C., in the period of sentence.

23.He further stated that PW-8 Gobi who was a witness for observation mahazar and rough sketch and seizure of material objects from the scene of crime had deposed in affirmation during his chief examination, but when he was cross examined after six months, had denied the statements in his chief examination. The learned Additional District and Sessions Judge (FTC) Theni declared him as hostile and had also directed that he should be proceeded under Section 344 Cr.P.C., for giving false evidence.



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24.The accused has filed the present appeal questioning conviction and sentence passed against him.

25.The point to be determined is whether the conviction and sentence against the appellant/accused should be upheld or modified or set aside?

26.Heard arguments advanced by Mr.R.Venkateshwaran, learned Counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

27.Mr.R.Venkateshwaran, learned Counsel appearing for the appellant took the Court through the facts of the case and pointed out that it was the other individual who was named in the complaint, namely, Alagumalai, who had direct cause for grievance against the deceased, since during the operation conducted by Public Works Department and Electricity Department officials, the officials had confiscated the electric motor of Alagumalai. The learned Counsel also pointed out that PW-1 had initially stated that Alagumalai had held the deceased and the accused then stabbed the deceased. He further stated that the Investigating Officer, PW-14 had



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filed an alteration report dropping Alagumalai from the list of accused and asserted that it was so done only to protect Alagumalai.

28.The learned Counsel also pointed out that Alagumalai was the owner of the broiler shop, where the accused was standing, when the deceased came there and the incident happened. He also pointed out that Alagumalai was an Advocate and therefore, argued that the appellant had been wrongfully arrayed as an accused. The learned Counsel also pointed out the discrepancies between the evidence of PW-1, PW-2 and PW-3 and stated that it is their case that the appellant had stabbed the deceased on the neck and the deceased had turned around and caught hold of the legs of the appellant and at that time, the second injury was caused on the back which was only inadvertent

29.The learned Counsel argued that the appellant had no direct motive against the deceased and it was a sudden quarrel which was the reason for the incident. He therefore argued that the offence would come under Exception 4 to Section 300 I.P.C., and that the appellant could be convicted only for offence under Section 304 Part II IPC, since the appellant



had no intention to cause death and did not have the knowledge that the injuries caused by him would cause death. The injuries caused were owing to sudden quarrel and the accused was also in an agitated state of mind.

30.In this connection, the learned Counsel for the appellant placed reliance on the following judgments:

(1)(2010) 2 MLJ (Crl) 246, (Eenamuthu vs State represented by the Inspector of Police), wherein, a Division Bench of this Court had in quite similar circumstances, held as follows:

“10.....It is stated that A-1 and A-3 were armed with wooden log and A-1 caused injury on the chest of the deceased. On perusal of the evidence of P.Ws.1 and 2, it appears that the appellant delivered a single blow and he did not attempt further. The injuries inflicted by another accused, who was acquitted by the trial Court also was fatal to cause the death of the deceased, for, the positive medical opinion is that the death was due to multiple injuries. In view of the admitted case of the prosecution that the appellant inflicted a single blow, we could discern that the appellant did not intend to cause the death of the deceased. However, having regard to the medical evidence especially about the nature of injury caused on the chest of the deceased with wooden log we could find that the appellant was having sufficient knowledge, that such injury may result in the death of the deceased.”



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(1.a)The Division Bench had in the said case after examining the earlier judgments of the Hon'ble Supreme Court modified the conviction from under Section 302 IPC to one under Section 304 Part II IPC and sentenced the accused therein to rigorous imprisonment of five years.

(2)(2012) 3 MLJ (Crl) 145 (Ebenezer vs State represented by Inspector of Police), wherein, a Division Bench of this Court on appreciation of evidence had held as follows:

“33.Thus, it is seen that due to the sudden provocation the accused had lost his power of self control and beaten the deceased to death. The occurrence had taken place during a sudden fight. There was no premeditation. The accused did not bring any weapon along with him. In a fit of anger, suddenly, he had picked up a stick lying in front of the house of the deceased and with that he had assaulted the deceased on his head. The medical evidence of P.W.14 shows that the deceased sustained serious injuries on his head. There was fracture also. The accused had caused him injury on a vital part of his body. The accused assaulted him wishing his death.

34.In the facts and circumstances, the offence committed by the accused will fall under Exception 1 to Section 300 of IPC. It will not be murder. It will be culpable homicide not amounting to murder. It is punishable under Section 304 Part I of IPC.”



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31. In view of the above pronouncements, the learned Counsel for the appellant argued that the conviction under Section 302 IPC should be interfered with by this Court.

32. Mr. A. Thiruvadi Kumar, learned Additional Public Prosecutor however disputed and contested the statements made by the learned Counsel for the appellant. The learned Additional Public Prosecutor pointed out the motive for the attack by the accused against the deceased. He pointed out that the Public Works Department and Electricity Department officials had launched an operation to confiscate motor pumpsets used to draw water unlawfully from Mullai-Periyar river. The deceased had assisted the officials in that operation. The motor pump set of Alagumalai, uncle of the accused was also confiscated. The learned Additional Public Prosecutor stated that the accused had requested the deceased to restore the electricity service connection, but the deceased had refused to do so. He pointed out that this was a direct motive for enmity to be harboured by the accused against the deceased.



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33.He then pointed out the evidence of PW-1, PW-2 and PW-3, which were consistent and stated that they had all deposed witnessing the accused calling the deceased when he crossed the broiler shop run by PW-7 Eswaran owned by Alagumalai and had stabbed the deceased in the left side of the neck which was a vital portion of the body and also again on the back.

34.The learned Additional Public Prosecutor then pointed out the evidence of PW-13, Dr.Thiyagarajan, who conducted the postmortem and issued postmortem certificate, Ex-P7 wherein, the reason for the death had been given as owing to injuries to vital organs. The learned Additional Public Prosecutor therefore stated that the accused had deliberately and intentionally stabbed the deceased on the neck with knowledge and intention that such injuries would cause death. The learned Additional Public Prosecutor stated that the prosecution had marshalled all the witnesses and had proved the charge beyond reasonable doubt. He therefore stated that the appeal should be dismissed.



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35. We have carefully considered the arguments advanced and perused the materials records.

36. The accused is a close relative of Alagumalai, Advocate, at Kullappa Goundanpatti within the jurisdiction of respondent Police, Gudalur South Police Station.

37. It is the case of the prosecution that finding several persons drawing water unlawfully from Mullai-Periyar river, the Public Works Department and Electricity Department officials had launched an operation to confiscate the electric motor pumpsets and to cut the electricity service connection. The deceased, Raja was working as a contract electrician and assisted the Public Works Department and Electricity Department officials in this operation. The motor pump set of Alagumalai was also confiscated. It is on evidence by PW-1 that Alagumalai and also the accused, Prasanth had requested the deceased Raja to restore the electricity connection and return back the motor pumpset, but the deceased refused to do so and had stated that it was only the officials who could so restore/return the electric motor pumpset. The prosecution had projected this incident as motive for



the accused stabbing the deceased.

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38.The occurrence took place around 07.15 pm on 07.03.2014. PW-1, PW-2 and PW-3 were taking tea in the opposite tea shop of the broiler shop owned by Alagumalai, which was run by Eswaran, PW-7. It is the evidence of PW-1, PW-2 and PW-3 that when the deceased came across the street, the accused who was in the broiler shop called him over and stabbed him on the left side neck initially. PW-1 had mentioned in the complaint, Ex-P1, that Alagumalai had held the deceased, when the accused stabbed him. But during his chief examination, he stated that the deceased tried to escape and held the legs of the accused, at that time, the accused had stabbed the deceased on the back. Thereafter, the accused had run away.

39.The sequence of events were thus that initially when the accused stabbed the deceased on the neck, the deceased tried to catch hold of the legs of the accused. Naturally, he had to bend down. The accused stabbed him on the back. The injuries were noted as follows:

“1.A stab injury of size of 4 cm x 1 cm near the root of neck of the left side just above the left clavicle; on probing the bound side extends downwards and



medially for about 15 cms.

2. Another stab injury of about 2 cms x 05. cm below the right scapula on the right side of back, on probing the wound extends 0.5 cm deep.”

40.PW-1 had then taken the deceased to the Government Hospital at Cumbum and after two hours, at around 09.15 pm, the Doctor declared him as dead. The accident register had been marked as Ex-P10. In the accident register, it had been stated that the deceased was attacked by two known persons around 07.30 pm. Thus, the consistent evidence was about two persons. However, an alteration report in Ex-P12 had been filed by PW-14, Investigating Officer, dropping Alagumalai from the list of accused. During evidence, if further evidence had surfaced against the role of Alagumalai, the trial Court could have invoked Section 319 Cr.P.C., and could have arrayed him as further accused. But during the evidence in Court, the fact that Alaguamalai held the deceased and then the accused stabbed the deceased had not been stated by any of the witnesses.

41.A further analysis of the evidence of the witnesses reveals that the entire incident happened owing to a quarrel which took place at the spur of



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the moment. The accused had demanded restoration of electricity supply and return of the motor pumpset. That request was refused and denied by the deceased. PW-1, PW-2 and PW-3 had seen the incident, but were not in a position to hear whether any quarrel took place between the accused and the deceased just prior to the incident. The accused stabbed the deceased on the left neck and when the deceased tried to pull his legs, had caused another injury on the back. It is therefore clear that the deceased died a homicidal death. It is also clear that it was the accused who was culpable for such death.

42.The only point to be now examined is whether the incident should be brought under Exception 4 of Section 300 IPC as urged by the learned Counsel for the appellant.

43.Exception 4 to Section 300 IPC is as follows:

“Section 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



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which party offers the provocation or commits the first assault.”

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44.The factors which stated are that sudden quarrel should be to such an extent that it should disturb the mental status of the accused. He must then, in the heat of passion, react in a manner violently, but without knowledge that his action would cause death and with or without intention, cause death.

45.In the instant case, the fact that after the first stab injury, the deceased had caught hold of the legs of the accused would also show that at that time, the second injury had suddenly happened and certainly not premeditated. The first injury was quite deep in the neck portion, but again, it will have to be examined whether there was any quarrel before the said attack and whether the accused knew that this injury would cause death and had intention to cause death. It is a fact that the injury was caused in the neck portion. But again, a slight leverage should be given to the fact that it was a single stab and there was not a repeated stab except for the second stab which could be caused owing to the deceased trying to catch hold of



the legs of the deceased, thereby, his bent body coming in close proximity to the accused, who must have been put off balance and in that jerky moment could have landed a stab injury on the back of the deceased.

46.In **(2010) 2 MLJ (Crl) 246**, referred supra, the Division Bench had referred to earlier decisions of the Hon'ble Supreme Court, which are extracted hereunder:

(1)The Hon'ble Supreme Court in ***Gokul Parashram Patil Vs. State of Maharastra*** reported in **1981 CrL.L.J 1033**, had held as follows:

"When the solitary blow given by the accused to the deceased was on the left clavicle a non vital part and the accused did not know that the superior venacava would be cut as a result of that wound, the injury though sufficient in the ordinary course of nature to cause death was not one intended by the accused. Thus, to such a case illustration (c) to Section 300. Thirdly was not attracted. Accordingly, accused could be convicted not under S.302 but under S.304 Part II. A sentence of 5 years' R.I. held, would meet the ends of justice under the circumstances of the case".

(2)In yet another decision, the Hon'ble Supreme Court in ***Karam Singh Vs. State of Punjab*** reported in **1993 CrL.L.J 3673(1)**, ruled thus:

"The contusions on the chest and Injuries Nos.5



to 7 resulted in the fracture of the ribs which caused his death. The doctor in his evidence has admitted that the fracture of the ribs could have in turn caused the rupture of the liver and the spleen. Under these circumstances, it is difficult to hold that the appellant intended to cause the injuries to the liver and the spleen which unfortunately proved to be fatal. Having regard to the nature of the weapon used and the parts of the body on which blows were dealt, it is difficult to hold that he intended to cause the death or intended to cause that particular injuries to the liver and the spleen. However, under the circumstances he must be attributed to have the knowledge that by dealing such blows he was likely to cause the death of the deceased in which case the offence is one punishable under Section 304 Part II, I.P.C. In the result the conviction under Section 302, I.P.C and the sentence of life imprisonment awarded against the appellant by the High Court are set aside. Instead the appellant is convicted u/S.304".

(3)In ***Chuttan and others Vs. State of M.P.*** reported in ***AIR 1994 SC***

1398, wherein, it was observed:

"Out of these injuries only one injury appears to be serious and that could have been caused with a stick. What is more, even according to the prosecution, the injured deceased was left unattended for nearly 20 hours at the site itself. No doubt the explanation is that the witnesses were afraid but in judging the intention, the main requirements of Clause I or Clause III of S.300, IPC of these aspects become relevant. Having given our earnest consideration to the manner in which the blows were dealt and the parts of the body on which they were dealt and the manner in which the weapons were used, we find it difficult to conclude that the intention of the appellants was to cause death or to cause such injuries which were



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sufficient in the ordinary course of nature to cause death. But they can be attributed the knowledge that by causing such injuries they were likely to cause death of the deceased. Accordingly, the conviction of the appellants under S.302, IPC and the sentence of imprisonment for life awarded thereunder are set aside. Instead they are convicted under S.304, Part II IPC and sentenced to undergo R.I. For five years. Their conviction under S.325, IPC and the sentence of three years R.I. are however, confirmed. The sentences are directed to run concurrently. In the result, the appeal is partly allowed to the extent indicated above".

47.The ratio laid down by the Hon'ble Supreme Court is that the injury though sufficient in the ordinary course of nature to cause death, was not one intended by the accused. Even in the instant case, it is difficult to hold that the accused intended to cause death of the deceased. He had a reason for grievance, but not directly. He was a stranger to the motor pumpset controversy or to the electricity connection being cut. It was Alagumalai who suffered owing to confiscation of motor pumpset and electricity connection being cut.

48.The Hon'ble Supreme Court in the judgment reported in **(2009) 16 SCC 361, Felix Ambrose D'souza -vs- State of Karnataka**, while dealing with the plea of mitigation and conversion of conviction from offence



punishable under Section 302 IPC to offence punishable under Section 304

part II IPC had held as follows:-

7. The learned counsel for the appellant in the alternative has made a submission that, at any rate, the facts even held proved, could not be considered to be just and sufficient to warrant a conviction under Section 302 IPC and if at all conviction under Section 304 part II IPC alone could have been rendered possible. Though the learned counsel for the respondent - state strongly insisted that keeping in view the gravity of the offence and the brutal manner in which it has been committed with the background of animosity and ill-will there was no need for altering the nature of offence and that the finding of the High Court in this regard may not call for any interference. As noticed earlier and having regard to the materials and the evidence on record as spoken to even by the prosecution witnesses there does not appear to be any premeditated plan or intention to either put an end to the life of the deceased or cause any injury with the intention of causing his death or causing such bodily injury which within the knowledge of the accused was likely to cause his death even in the ordinary course of nature. Irrespective of the silent nature ill-feelings which existed between the parties, it appears to have surfaced with a violent turn on the fateful day due to



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sudden quarrel which even according to the prosecution witnesses, commenced with an altercation and attempts to break open the lock which was said to have been placed on the door of the store room by the appellant in addition to the one part by the father and the deceased. In the tussle and altercation and an attempt to break the lock by the deceased with an hammer in his hand and attempts made by the appellant to physically prevent the deceased from so doing, and physical use of force in the process, passions seem to have flared up beyond proportion all of a sudden, perhaps neither anticipated nor intended by either of them. The prosecution version itself lends credence and support to the plea of sudden provocation on the spur of moment. Therefore, we are of the view that the High Court was not right in arriving at the conclusion to convict the appellant under Section 302 IPC. In our considered view, on the proved facts the only offence that could reasonably be said to have been made out and for which the appellant could be convicted would be under Section 304 part II IPC and to this extent we partly allow the appeal and set aside the order of conviction under Section 302 IPC and instead convict him under Section 304 part II IPC.”



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49. In view of the above reasons, we would set aside the conviction passed under Section 302 IPC, but rather modify the same to conviction for offence punishable under Section 304 Part II IPC and sentence the accused to rigorous imprisonment for four years. We would retain the fine amount and the default sentence.

50. The Criminal Appeal is therefore partly allowed as aforementioned setting aside the conviction under Section 302 IPC and modifying the same to Section 304 Part II IPC and sentencing the accused to undergo four years rigorous imprisonment and retaining the fine of Rs.10,000/- and in default one year simple imprisonment. The trial Court is directed to secure the accused to serve out the remaining portion of the sentence. The period of remand and any part portion of the sentence already undergone by the accused is directed to be set off under Section 428 of Cr.P.C.

[C.V.K., J.] & [J.S.N.P., J.]
.09.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

- 1.The Additional District and Sessions Judge (Fast Track Court), Theni.
- 2.The Superintendent, Central Prison, Madurai.
- 3.The Inspector of Police,
Gudalur South Police Station,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.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.

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Judgment made in
Crl.A(MD)No.268 of 2020

01.10.2024