



Crl. Appeal No. 737 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03-03-2025

Coram :

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.737 of 2016

Chellamuthu

.. Appellant

Versus

State by
The Inspector of Police,
Kachirapalayam Police Station,
Villupuram District.
(Crime No.118/2006)

.. Respondent

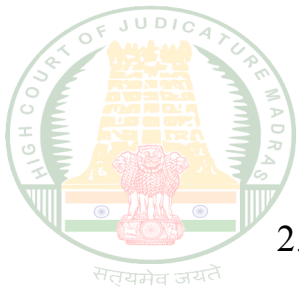
Criminal Appeal is filed under Section 374 of Cr.P.C to set aside the Judgment of conviction and sentence passed by the learned III Additional District Sessions Court at Kallakurichi in S.C.No.324 of 2008 by its judgment dated 28.01.2016.

For Appellant	..	Mr.P.Vijayakumar Legal Aid Counsel
For Respondent	..	Mrs.G.V.Kasthuri Additional Public Prosecutor

J U D G M E N T

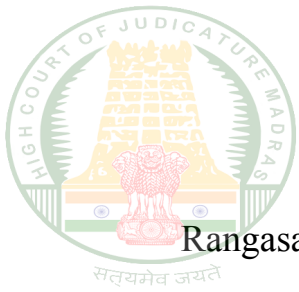
This Appeal had been filed to set aside the Judgment of conviction and sentence passed by the learned III Additional District Sessions Court at Kallakurutchi in S.C.No.324 of 2008, dated 28.01.2016.

2. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:



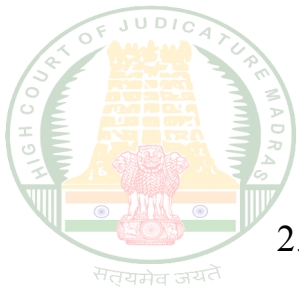
2.1 P.W-5 Jothi is the younger sister of the deceased Rangasamy.

P.W-5 Jothi and the Accused Chellamuthu were drawing water from the common Well using the common pump set for irrigating their respective agricultural lands on turn basis. The coil of the motor pump set burned out. Therefore, for recoiling the pump set, the Accused demanded money from P.W-5 Jothi, for which Jothi refused to pay. She stated that since it is a common pump set, she can pay her share of money required to recoil the pump set. But the Accused demanded payment for the recoiling expenses for the motor pump set exclusively from P.W-5 Jothi. Since P.W-5 refused to take up the entire expenses, the Accused had scolded her in filthy language. The Accused Chellamuthu and P.W-5 are relatives. P.W-5 complained this to her elder brother Rangasamy. On 10.05.2006, by around 12:00 in the midnight, near Ammampalayam Murugan Temple, the elder brother of the P.W-5 Rangasamy saw the Accused Chellamuthu standing near the temple. On seeing Chellamuthu, the elder brother of P.W-5, Rangasamy questioned him as to why he picked up a quarrel with his sister, P.W-5 Jothi and demanded the entire expenses to be met by her instead of sharing it. He also stated that the Accused is well off and why can't he bear the entire expenses. The Accused is alleged to have been infuriated by the enquiries by the elder brother of P.W-5 Rangasamy and retaliated. A wordy quarrel ensued and it resulted in a fisticuffs between the two. In the process, the elder brother of P.W-5



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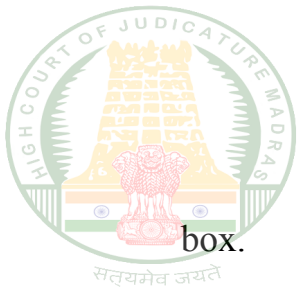
Rangasamy fell to the ground. When he fell on the ground, the Accused Chellamuthu picked up a stone nearby and hit Rangasamy on his mouth, head and chest by sitting on the body of Rangasamy. Hearing the commotion and cries for help, P.W-1 Complainant and father of P.W-5 and Rangasamy rushed towards the Temple along with his relatives. In the street light, they saw the Accused sitting on the body of the Rangasamy and hitting him with a stone. P.W-1 Chinnasamy had removed Accused by force with the help of his relatives. At the time of the commotion, P.W-2 Alagappan, P.W-3 Kalaikovan, P.W-4 Sumathi, wife of injured Rangasamy have accompanied P.W-1 and P.W-5 on hearing the cries of the Rangasamy. P.W-1 helped his son Rangasamy lying injured by holding him along with his relatives and brought him home. As the injured was bleeding from his mouth, he gave him water, but Rangasamy was unable to drink water and died. Since it was late in the night he waited for his relative, who is abroad, to come back to register the complaint. Thereafter, he lodged a complaint only on 12.05.2006 with a delay of two days. They sent for the freezer box and retained the body for two days in the freezer box and only on 12.05.2006, they preferred the complaint. The reason for lodging the complaint with delay is stated by P.W-1 as he waited for the brother of P.W-4/Sumathi, the brother of P.W-4 Sumathi and brother-in-law of the deceased Rangasamy to return from his native. Only on his return to India only the complaint was launched.



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2.2 P.W-13 Meenal, the Sub-Inspector of Police, Kacharapalayam Police Station had on receipt of the complaint under Ex.P-1 from P.W-1 father of the deceased/Chinnasamy registered the F.I.R under Ex.P-6 in Crime No.118 of 2006 for the offense under 302 of I.P.C. She had sent the original complaint under Ex.P-1 and the original F.I.R under Ex.P-6 to the Court of the learned Judicial Magistrate, Kallakurichi and copies of the same to their higher Officials including the Inspector of Police. Since the Inspector of Police, Chinna Salem was holding the full additional charge of Inspector of Police, Kacharapalayam, the same was forwarded to the Inspector of Police, Chinna Salem Police Station.

2.3 On receipt of the copy of the F.I.R and copy of the complaint, the Inspector of Police, Chinna Salem proceeded with the investigation. P.W-16 Inspector of Police, Chinna Salem proceeded to the place of occurrence and the residence of the deceased and the Complainant. He had prepared the Observation Mahazar under Ex.P-2 in the scene of crime near the Ammampalayam Murugan temple and prepared rough sketch under Ex.P-11 in the presence of witnesses, P.W-9 and P.W-10. Also he seized the stone used by the Accused to cause injuries on the deceased Rangasamy on his head and face under M.O-1 in the presence of the same witnesses and prepared the Seizure Mahazar under Ex.P-3. He went to the residence of P.W-1 where in the front portion of the house, the body of the deceased was kept in a freezer



WEB COPY 2.4 The inquest under section 174 of Cr.P.C was done and Inquest

Report was prepared by the P.W-16. During inquest, the Investigation Officer had noted the following injuries on the body of the deceased

- (i) Upper two front teeth on the upper jaw broken.
- (ii) injuries seen on the chest
- (iii) right side shoulder having bite marks
- (iv) right side forehead having bruises
- (v) left wrist having bruises

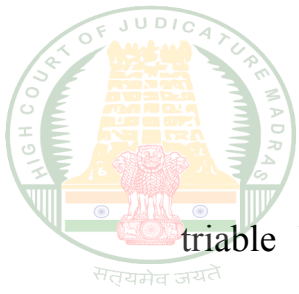
2.5. On the basis of the injuries on the body of the deceased, the Panchayatdars are of the view that the deceased Rangasamy died due to the injury on the head caused by the Accused Chellamuthu on 10.05.2006. The Investigation Officer thereafter sent a requisition letter to the duty Medical Officer of Kallakurichi Government Medical College and Hospital to conduct autopsy. P.W-15 Dr. Udaya Kumar, Duty Medical Officer of Government Hospital, Kallakurichi had on receipt of the body by around 5.20 p.m. identified by the Head Constable Krishna Murthy P.W-14 proceeded with the autopsy. Prior to proceeding with the autopsy, he had observed the following injuries on the body of the deceased. (1) blood was dried oozing from the nostrils (2) front teeth on the upper jaw broken contusion 10 X 5 cms on the right side of the forehead. The Post mortem was completed by 6.20 p.m. He had preserved the internal organs of the deceased to find out if there was any poisonous substance in the body of the deceased and forwarded the internal



organs for forensic examination with preservative. After receipt of the forensic examination, he had issued post mortem certificate under Ex.P-8. He had opined that the death was caused due to the injuries suffered by the deceased between 48 hours to 72 hours, prior to the autopsy.

2.6 The Investigation Officer P.W-16 during the course of investigation, examined the witnesses and recorded their statements. He had examined the witnesses who had stood as witnesses for observation mahazar as well as seizure mahazar and recorded their statements. He had examined the witnesses who stood witnesses for observation as well as the Seizure Mahazar for the rough sketch and the sister, the wife, the sister son, the father of the deceased and a neighbour of the deceased who happened to be direct witnesses to the incident on the alleged date and time of the incident on 10.05.2006 midnight and recorded their statements. He had arrested the Accused and sent him for remand to the Court of the learned Judicial Magistrate. He had examined the Sub Inspector of Police, who had received the complaint under Ex.P-1 and registered the F.I.R in Crime No.118 of 2006. After completion of the investigation, he laid the final report before the Court of the learned Judicial Magistrate-I, Kallakurichi who had taken cognizance of the offenses under 302 IPC.

2.7. The case was taken on file as PRC No.43 of 2006 on the file of the learned Judicial Magistrate-I, Kallakurichi. Since the offence is exclusively



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triable by Court of Sessions, the Judicial Magistrate-I, Kallakurichi had furnished the copies under 207 Cr.P.C to the Accused on his appearance and had committed the case to the Court of the learned Principal Sessions Judge, Villupuram and bound over the Accused to the Court of the learned Principal Sessions Judge, villupuram.

2.8 On receipt of the records in P.R.C.No.43 of 2006 on the file of the learned Judicial Magistrate-I, Kallakurichi by learned Principal Sessions Judge, Villupuram, the case was numbered as S.C.No.324 of 2008. On appearance of the Accused, after hearing the learned Additional Public Prosecutor attached to the Court of the learned III Additional Sessions Judge, Villupuram at Kallakurichi and the learned Counsel for the Accused, the learned Sessions Judge framed the charge under 302 IPC. The Accused denied the charge and claimed to be tried. Therefore, trial was ordered. During trial, the Prosecution examined 16 witnesses as P.W-1 to P.W-16 and marked documents under Ex.P-1 to Ex.P-11 and one material object as M.O-1. On completion of the Prosecution evidence, the incriminating materials available through the evidence of P.W-1 to P.W-16 and Ex.P-1 to Ex.P-11 were put to Accused under Section 313 of Cr.P.C. Thereafter, by the judgment dated 29.01.2015, the learned III Additional District and Sessions Judge, Villupuram at Kallakurichi convicted the Appellant for the offence under Section 304 (2) of IPC and sentenced him to undergo rigorous imprisonment for a period of seven years,



with fine of Rs.2,000/-, in default, to undergo six months imprisonment. The period of sentence already undergone by the Accused was ordered to be set off under Section 428 of the Code of Criminal Procedure.

2.9. Aggrieved by the Judgment dated 28.01.2016, the Appellant has filed the present Criminal Appeal.

3. The learned Counsel for the Appellant submitted that the Appellant/Accused herein and P.W-5 are relatives they had to share the water from the common well through a common pump set. On the alleged date of occurrence, the coil was burned out. Therefore, the Accused demanded P.W-5 to pay money to get it repaired, but she refused. It is the case of the prosecution that the Accused herein abused P.W-5 in filthy language where-upon she is alleged to have informed the same to the elder brother of the deceased. On the same night by around 12 o'clock in the village temple when the Accused was seen by the deceased he is alleged to have questioned the Accused where upon the Accused pushed him down and attacked him with a stone nearby. Also the Accused is alleged to have sat on the chest of the deceased who had fallen to ground. In the course of the attack, the deceased is alleged to have lost his two teeth on the upper jaw. On seeing this, the accused and the deceased were separated. The father of the deceased, who had also come to the scene of occurrence, took him home and attempted to give him water but he could not



drink water. Therefore, he had taken him to hospital, but on reaching hospital he was declared dead.

4. It is the case of the learned Counsel for the Appellant that if what had been stated by the prosecution were to be true, they could have immediately taken him to hospital instead of taking him home. According to the Appellant the case was cooked up and the Accused was framed in this case. The learned Counsel for the Appellant invited the attention of this Court to the charge framed by the learned trial Judge. Originally, the charge was framed under Section 302 of I.P.C. In the trial, those who had supported the theory of the prosecution were P.W-1 to P.W-5. They are all related to the deceased. P.W-1 is the father of the deceased, P.W-2 and P.W-3 are the grandsons of P.W-1. P.W-4 is the wife of the deceased, P.W-5 is the sister of the deceased, with whom the deceased is alleged to have picked up quarrel. They are all interested witnesses. It is the submission of the learned Counsel for the Appellant that the learned III Additional District Sessions Court, Kallakurichi failed to appreciate the evidence in proper perspective. P.W-1 to P.W-5 are all relatives. Believing the evidence of P.W-1 to P.W-5 alone, the learned Sessions Judge convicted the Accused. In the conclusion of the trial, the learned Judge, instead of convicting the Accused for the alleged offence under Section 302 IPC had convicted him for lesser offence of under Section 304 (2) of IPC and



sentenced him to undergo rigorous imprisonment of seven years and fine of Rs.2000/- and in default to undergo six month imprisonment. Aggrieved by the same, the appeal had been filed by the Accused.

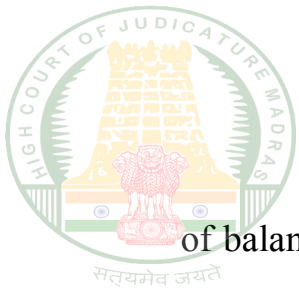
5. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1 to P.W-5. The alleged place of occurrence is 2 Kilometres away from the residence of P.W-5. While so, he could not have seen the occurrence. They are hearsay witness. Above all the complaint had been lodged after two days of the occurrences. The occurrence was on 10.05.2006, whereas the complaint was registered on 12.05.2006. The delay in registering the complaint had not been explained by the prosecution witnesses. It is unnatural that after the death of the deceased the complaint was preferred with a delay of two days. Apart from that, the post-mortem Doctor P.W-15 had in his evidence deposed that by the time the body was handed over for autopsy, it was decomposed and therefore, he could not give cogent reason for the death of the deceased. He had in his cross examination stated that the Investigation Officer had not shown him the material object seized in this case. In his cross examination he had stated that if the person repeatedly attacks the person lying on the ground with a hard objects there is a possibility of a person suffering fracture of the skull. Here it is the case of the prosecution that, the deceased had lost his teeth alone. There were no injuries found on the face except loss of



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teeth. While so, the case of the prosecution is unbelievable. It is the defence of the Accused that the deceased is alleged to have fallen on the ground after consuming alcohol. Considering the previous enmity between P.W-5 and the Accused, a case had been framed up using the circumstances against the Accused. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Sessions Judge in S.C.No.324 of 2008 dated 28.01.2016. The defense of the Accused before the trial Court was total denial exploiting the enmity between P.W-5 and the Accused due to the repair to the motor pumpset of the common well. The case was developed as though the Accused had hit the deceased and caused his death.

6. It is the contention of the learned Counsel for the Appellant that the incident happened roughly one kilometer away from the place of residence of P.W-1/Complainant Chinnasamy, near the Ammampalayam Murugan Temple. There are houses near the Ammampalayam Murugan Temple as per the rough sketch and observation Mahazar prepared by the Investigation Officer/ P.W-16 but none of the inmates of the house of this place was cited as witness. Therefore it is a cooked up case where no independent witnesses had been examined. In the cross examination of the Doctor/P.W-15 who conducted the post mortem, he admitted that if a person is intoxicated and falls due to loss



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of balance by hitting the ground, there is every possibility of a similar injuries on his face. Apart from this, as per the evidence of the prosecution witnesses, when the injured was brought home, they gave water for him to drink. The water did not enter his mouth and he fell unconscious. The deceased died on 10.05.2006 midnight. Instead of proceeding with the registration of the case before the Kacharapalayam Police, they waited for two days for a relative to come back which is found unnatural from the normal human conduct. In the cross examination, the witnesses had spoken that Accused is deaf, he cannot hear. Therefore, the case made out by the prosecution had not been proved but only based on surmises and conjectures, the learned III Sessions Judge, Villupuram at Kallakurichi had awarded seven years rigorous imprisonment and imposed fine of Rs.2,000/- which is perverse

7. Per contra, the learned Additional Public Prosecutor appearing for the Respondent vehemently objected to the line of argument of the learned Counsel for the Appellant. It is the contention of the learned Additional Public Prosecutor that though P.W-1 to P.W-5 are relatives, they are natural witnesses. They had withstood the cross examination. The learned Additional Public Prosecutor also pointed out that P.W-1 was not at all cross examined. The delay for registering the FIR had been explained by them. The learned Sessions Judge had, on proper appreciation of evidence, arrived at a conclusion



that the cause of death was the attack on the deceased by the Accused herein.

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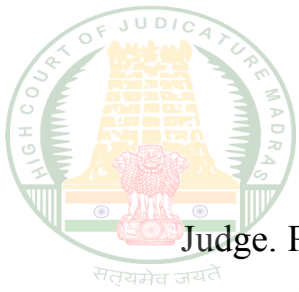
The judgment of the learned Sessions Judge is well reasoned which does not warrant any interference. Further, the learned Additional Public Prosecutor submitted that the judgment of the learned Sessions Judge, is based on proper appreciation of evidence and therefore, this Court cannot replace the conclusion arrived at by the learned Sessions Judge who had the advantage of observing the demeanour of the witness, which is not available for this Court. Therefore, the learned Additional Public Prosecutor seeks to dismiss the Appeal.

Point for consideration:

Whether the judgment of the learned III Additional Sessions Judge, Villupuram at Kallakurichi in S.C.No.324 of 2008 dated 29.01.2015 is perverse warranting interference by this Court?

8. Heard Mr. Vijaya Kumar, the learned Counsel for the Appellant appointed by the Legal Services Committee attached to this Court and Mrs. G.V.Kasthuri learned Additional Public Prosecutor for the Respondent/State.

9. Perused the charge framed against the Accused by the learned trial



Judge. Perused the deposition of the witnesses of P.W-1 to P.W-16, documents marked on side of the prosecution before the trial Court under Ex.P-1 to Ex.P11.

10. On perusal of the deposition it is found that P.W-1 is the important witness in this case, but he was not at all cross examined and that gives a presumption in favor of the prosecution and against the Accused. The other witnesses had withstood the cross examination. P.W-4, wife of the deceased admits that she had not seen the occurrence but on hearing the commotion she rushed up. The nephew of the deceased P.W-3 had stated at that time he was studying XI standard. On hearing the cries, he rushed out along with his grandfather P.W-1 and on reaching near the Murugan Temple, he saw in the street light that his maternal uncle was lying on the ground and on his chest, the Accused was seated and hitting him with a rock. His grandfather and others who accompanied him forcibly removed the Accused from causing any further injuries. As per the cross examination of P.W-3 the place where the accused assaulted the deceased is roughly around half a kilometre. It is to be noted that in the middle of the night or early morning, when people are in deep slumber, cries or commotion cannot be heard from a place which is far away. However, P.W-1, P.W-2, P.W-3 heard the cries of the deceased, to which they are acquainted with. Therefore, it is natural for them to



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rush towards the place from where they heard the cries of the injured. An adult weighing roughly 40 to 50 kilogram seated on the body of a person and hitting on the head itself will prove it to be a disaster. The postmortem certificate under Ex.P-8 indicates that there was pressure on the body as the male genital organ of the deceased was swollen. The postmortem report indicates that there was bruises and contusions which was marked and noted by the Investigation Officer in the Inquest report under Ex.P-9. Apart from all the above, the doctor had noticed dried blood oozing from the nostrils which indicates damage to the brain. Therefore the evidence of P.W-1 cannot at all be doubted. The persons who accompanied P.W-1 on the same night are available as witnesses as P.W2 and P.W-3. P.W-3 is the nephew of the deceased and grandson of the PW1/Complainant. P.W-2/ Alagappan also had spoken the same. He had spoken that there is only less than half a kilometer distance between the place of occurrence and the house of the Complainant/P.W-1. The incident occurred near Ammampalayam Murugan Temple. The village where P.W-1 and the deceased were residents is Venkatampettai.

11. It is true that as per Ex.P-11 rough sketch prepared by the Investigation Officer, there are houses available near the Murugan Temple but the FIR was registered two days after the incident as P.W-1 had given the complaint only after the arrival of the brother in law of the deceased from



abroad. He was waiting for him as per his evidence and only then he had given the complaint. It is found natural for the delay in lodging the FIR. All the witnesses had spoken the same. Since it happens to be between relatives, the persons who are not related to the families will not volunteer to be examined as prosecution witnesses. By the time the complaint under Ex.P-1 was lodged, there was two days delay. Therefore, the Investigation Officer will not be able to get cooperation from the persons who are residing near the place of occurrence.

12. The Investigation Officer/P.W-16 in his cross examination had admitted that it is only 100 meters between the occurrence place and the residence of P.W-1/Complainant and not 1 km as suggested in the cross examination.

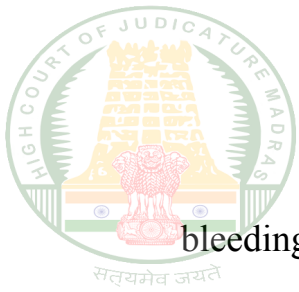
13. It is the suggestion of the learned Counsel for the Appellant that the Deceased died due to fall caused by intoxication, but it is only a suggestion. On perusal of the postmortem report the Doctor who had performed autopsy had not recorded that the body smells alcohol. By that time the body reached the hospital it was almost 48 hours and if there had been alcohol in the body of the deceased he could have observed the smell of alcohol in his report under Ex.P-8. On assessment of evidence it is found that the prosecution had proved



the case against the Accused.

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14. The person who had seen the occurrence is the father of the deceased P.W-1/Chinnasamy and he had spoken about the incident as was observed by him. He had stated that he forcibly removed the Accused from the body of his son and lifted his son took, him with the help of others who accompanied him to home. He gave him water to drink but his son could not drink water. The witnesses who had spoken about the incident namely P.W-1 to P.W-6 had spoken that on the same night he died. The other witness P.W-7 to P.W-12 had stated that they heard about the death of Rangasamy due to the occurrence that took place on the previous night and from early morning itself relatives and villagers thronged the family to console them. On the date of death, the deceased was aged 40 years. The inquest report correlates the postmortem report. In the cross examination of P.W-16 Investigation Officer, he had denied the suggestion of the defense that based on the external appearance of the face of the deceased the persons who were not at all eyewitness to the incident was examined as Panchayatdar's who gave the opinion that the deceased died due to the injuries caused on the face and head of the deceased. Even otherwise from the normal human conduct it can be deducted that a person who suffers injury on the head will face danger to his life. Here the deceased had lost his front teeth on the upper jaw and he was



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bleeding from the nose as observed by the postmortem certificate issued by P.W-15 under Ex.P-8. There was contusions on the right side of the forehead which was observed by the Investigation Officer in the inquest along with the Panchayatdar's which is also recorded by the postmortem doctor under Ex.P-8. Therefore, the death of a 40 year old healthy individual cannot be due to fall due to intoxication. It is only a suggestion and it is to be rejected. Above all, the deceased and the Accused are relatives. Therefore it is to be noted that the persons who are residing nearby the Ammampalayam Murugan Temple will not volunteer to take sides by supporting the Investigation Officer even if they heard the commotion and came to the rescue of the injured person. The persons cited as witnesses in the case dairy file had not been examined in the cross examination.

15. It is to be pointed out that Kandasamy the brother in law of the deceased was cited as a witness and he was not in town as per the complaint under Ex.P1. Therefore it is to be construed that the brother in law was also cited as a witness, but before the trial Court, he was not examined as a witness. As pointed out by the learned Counsel for the Appellant all the witnesses are relatives is true, but they are natural witnesses. On hearing the cries of the injured person in the middle of the night they rushed out from their sleep towards the place from where they heard the cries. Therefore the evidence of



the prosecution witnesses cannot be rejected as false or not true. They are direct witnesses to the incident. Even though the charge was made for the offence under 302 IPC and there was no alternative charge framed by the then learned Session Judge who had framed the charges, the learned Sessions Judge had on proper appreciation of evidence, convicted the Accused for a lesser charge of 304(2). The Appellant was convicted for the offence under Section 304 (2) of IPC since the occurrence had happened in a spur of moment between two relatives and there was no motive for the Appellant accused to cause the death of the deceased. Furthermore, it was the deceased who approached the accused who was standing near the Temple and questioned his acts. Therefore, the conviction under 304(2) is cannot be said to be perverse.

16. The learned Sessions Judge had also relied on the reported decision of the Honourable Supreme Court in the case of ***Sunil Kumar another vs State*** reported in ***2005 (9) SCC 283*** to strengthen the conclusion that delay in lodging the complaint cannot be noted to weaken the case of the prosecution. If the delay is properly explained, then, the Court has to taken note of the same. On perusal of the judgment of the learned Sessions Judge, it is found that the learned Sessions Judge had on proper appreciation of evidence of the prosecution witnesses and the materials available before her had convicted the Accused.



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WEB COPY17. In the light of the above discussion, the point for consideration is answered against the Appellant and in favour of the prosecution. The judgment of the learned III Additional Sessions Judge, Villupuram at Kallakurichi in S.C.No.324 of 2008, dated 29.01.2015 is found to be well reasoned judgment and not perverse warranting interference by this Court.

In the result, **this Criminal Appeal is dismissed** as having no merits. The Judgment of conviction and sentence dated 28.01.2016 passed by the learned III Additional District Sessions Court at Kallakurichi in S.C. No. 324 of 2008 is confirmed.

The learned III Additional District and Sessions Judge, Kallakurichi is directed to issue warrant to the Accused through the Inspector of Police, Kacharapalayam Police Station so as to undergo the remaining period of imprisonment.

The Inspector of Police, Kacharapalayam Police Station is directed to secure the Accused and to send him to prison to undergo the remaining period of sentence of imprisonment as was ordered by the learned III Additional District and Sessions Judge, Kallakurichi.

03.03.2025

vsn/shl



Crl. Appeal No. 737 of 2016

Internet: Yes/No

Index: Yes/No

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SATHI KUMAR SUKUMARA KURUP. J

vsn/shl

To

1. The III Additional District Sessions Judge,
Kallakurutchi.
2. The Inspector of Police,
Kachirapalayam Police Station
Villupuram District
Crime No.118 of 2006.
3. The Section Officer,
V.R Section
High Court of Madras

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