



Crl. Appeal No. 307 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03-03-2025

Coram :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 307 of 2017

1. Arjunan
2. Pushpa @ Jaya
3. Senthil
4. Anbu

.. Appellants

Versus

State rep. by
The Inspector of Police,
Sathiyamangalam Police Station,
Gingee Taluk,
Villupuram District

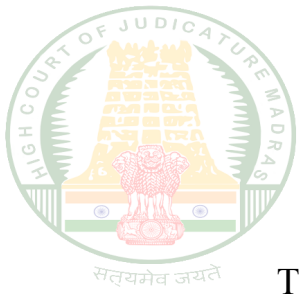
.. Respondent

Criminal Appeal filed under Section 374 Cr.P.C to set aside the order of conviction and sentence passed against the Appellants (A-1 to A-4) passed by the Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Villupuram in S.C.No.291 of 2015 dated 31.05.2017 and acquit them from all the charges.

For Appellants
For Respondent

: Mr. J. Antony James
: Mrs. G.V. Kashthuri
Additional Public Prosecutor

JUDGMENT



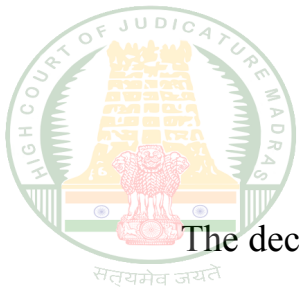
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The Appellants/Accused 1 to 4 have preferred the instant Criminal Appeal questioning the correctness and validity of the judgment dated 31.05.2017 passed in S.C. No. 291 of 2015 passed by the learned Sessions Judge, Fast Track Mahila Court, Villupuram.

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

2.1. The case of the Prosecution is that the deceased in this case is Andal. She is a resident of Paranthanthangal Village, within the jurisdiction of Sathiyamangalam Police Station. The deceased Andal was residing along with her husband Desingh who was a fortune teller. The Accused in this case are residing just opposite to the house of the deceased. On 25.04.2014, some people who had came to the house of the deceased Andal to seek the help of her husband Desingh/fortune teller, were alleged to have plucked mangoes from the Mango tree within the compound of the opposite house. Irked by the same, the family members residing in the opposite house of the deceased are alleged to have picked up quarrel with those persons who visited the house of the deceased to seek fortune teller's help. Subsequently, the quarrel intensified between the members of the opposite house family as they have alleged to have scolded the husband of the deceased Desingh/fortune teller with filthy words.



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The deceased, as wife of the fortune teller, asked them as to why they are using harsh and abusive words against her husband and thus, enmity had developed between the parties. While so, on 27.04.2014 at about 6.30 a.m, when the deceased, wife of fortune teller was putting "kolam" in front of her house, the persons who are residing opposite house, picked up quarrel and came to the house of the deceased Andal, pulled her hair and kicked on her stomach and she cried in pain and became unconscious. Therefore, her husband Desingh took her to Government Hospital, Gingee, from where she was referred to Government Medical College, Villupuram Mundiampakkam for better treatment. However, inspite of treatment given for two days, the deceased died. The husband of the deceased i.e., Desingh/fortune teller had preferred a complaint against the family members of the opposite house for the death of his wife. Based on the complaint given by her husband a case was registered by the Sathiyamangalam Police against the family members residing just opposite house of the deceased in Cr.No.38 of 2014 for the offence under Section 302 of IPC. Ex.P-1 is the complaint given by husband of the deceased Andal. Ex.P-7 is the First Information Report.

2.2. On receipt of a copy of the FIR in Ex.P-7, P.W-10 – Inspector of Police proceeded to the place of occurrence, prepared observation Mahazer under Ex.P-6, Rough Sketch under Ex.P-8 in the presence of witnesses Jothi-P.W-6 and on Sokkanathan. P.W-10 gave a request letter to the duty Medical



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Officer to conduct post mortem over the body of the deceased Andal through

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Police Constable-Selvakumar. The Inspector of Police-P.W-10 also conducted inquest over the body of the deceased in the presence of Panchayadar and witnesses and the report prepared by him under Ex.P-9. P.W-10, in the course of his investigation, examined Arjunan-P.W-4, Pasumalai, Ayyasamy, Mani and Sakthivel and recorded their statements. He arrested Accused 1 to 3 near Alampundi bus stop and sent them to judicial custody with requisition letter to learned Judicial Magistrate, Gingee for their remand. He then proceeded to the place of occurrence and recorded the statement of witnesses P.W-2-Sathyaseelan, P.W-7-Selvi, P.W-3-Kasthuri, P.W-6-Jothi and P.W-5-Dr.Gitanjali. P.W-10 also recorded the statement of Dr. Gitanjali P.W-5 and he also recorded the statement of Scientific Officer of Forensic Department Thiru. Raju and Selvakumar- Police Constable who had identified the body of the deceased to the Doctor and received that body after post-mortem. After completion of the investigation, P.W-10 laid the final report before the learned Judicial Magistrate, Gingee.

2.3. On receipt of the final report along with relevant records, the learned Judicial Magistrate, Gingee had taken the case on file as P.R.C. No. 15 of 2015 for the offences under Section 452 & 302 of IPC. The copies of the final report were furnished to the Accused persons under Section 207 of

Cr.P.C. Since the offence under Section 302 IPC is triable by the Court of

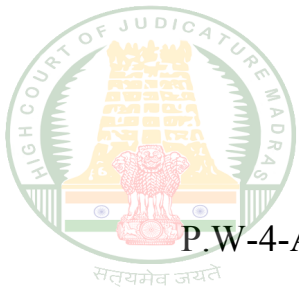


Sessions, the case was made over to the learned Principal Sessions Judge, Villupuram. The Accused were also bound over to the said Court.

2.4. On receipt of the case records, the learned Principal Sessions Judge, Villupuram taken it on file and numbered it as S.C. No. 291 of 2015. On the point of jurisdiction, since the deceased was a women, the case was made over to the file of the learned Sessions Judge, Fast Track Mahila Court, Villupuram, for disposal as per law. On summons, the Accused persons appeared before the learned Sessions Judge, Fast Track Mahila Court, Villupuram. After hearing the Prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court, Villupuram framed charges against the Accused under Section 302 r/w Section 34 of IPC and the charges were read over and explained to the Accused 1 to 4. However, the Accused denied the charges and claimed to be tried. Therefore, trial was ordered.

2.5. During the trial, to prove the charges the Prosecution examined 11 witnesses as P.W-1 to P.W-11 and marked 10 documents as Ex.P-1 to Ex.P-10. On the side of defence one witness was examined as D.W-1 and marked two documents as Ex.D-1 and Ex.D-2.

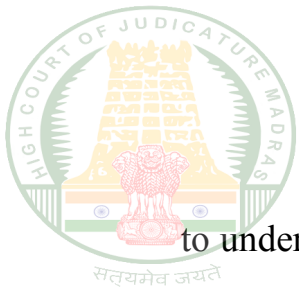
2.6. P.W.1-Desingh had deposed regarding the occurrence and the lodging of the complaint under Ex.P-1. P.W.2-Sathiyaselan son of P.W-1, Desingh and the son of the deceased Andal deposed regarding the occurrence and preferring of complaint by his father P.W-1 Desingh. P.W-3-Kasthuri and



P.W-4-Arjunan had also deposed regarding occurrence. P.W-5 Dr.Gitanjali had deposed regarding the post mortem performed on the body of the deceased and issuance of the post mortem certificate under Ex.P-3. P.W-7-Selvi and P.W.8-Raju remained hostile. P.W.9-Selvakumar Police Constable who accompanied the body of the deceased and P.W.10-Palani Inspector of Police had deposed regarding the registration of FIR and investigation conducted by him.

2.7. After the Prosecution evidence was closed, Accused 1 to 4 were examined under Section 313 of Cr.P.C regarding incriminating evidence available by way of Prosecution witnesses. The Accused 1 to 4 denied the incriminating evidence against them and stated that they have evidence to prove their innocence. The Accused examined Dr. Daranendran as D.W-1 who was serving as Doctor at Government Medical College, Villupuram at Mundiampakkam who treated the deceased. It is through his evidence the Death Certificate of the deceased was marked as Ex.D-1 and the treatment details given to the deceased was marked as Ex.D-2.

2.8. After evidence of the defence was closed, the learned Sessions Judge, Fast Track Mahila Court, Villupuram heard the arguments of the Prosecution and the defence. After completion of the arguments, on perusal of the materials available before the learned Sessions Judge, Fast Track Mahila Court, Villupuram, by judgment dated 31.05.2017, convicted the Accused 1 to 4 for the offence under Section 325 r/w Section 34 of IPC and sentenced them



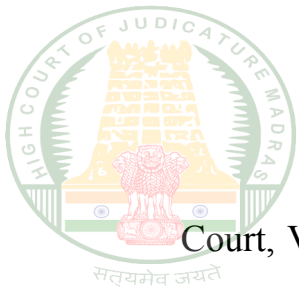
to undergo Rigorous Imprisonment of five years and to pay a fine of Rs.5000/-

each in default, to undergo simple imprisonment of six months. However, they were acquitted of the charge under Section 302 r/w Section 34 of IPC.

2.9. Aggrieved by the judgment of conviction imposed on the Accused 1 to 4 under Section 325 r/w Section 34 of IPC, the Accused 1 to 4 have filed this Appeal, challenging the judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram.

3. It is the contention of the learned Counsel for the Appellants that there is no evidence made available against the Appellants-Accused for having committed the offence under Section 302 IPC. The learned Sessions Judge, Fast Track Mahila Court, Villupuram, therefore, arrived at the conclusion that the death was not caused due to the conduct of the Accused. The learned trial Judge, on a consideration of the Prosecution evidence, did not accept the theory of the Prosecution that the Accused had caused the death of the deceased. However, the learned Sessions Judge, Fast Track Mahila Court, Villupuram erroneously convicted the Accused only under Section 325 r/w Section 34 of IPC without any legally acceptable evidence.

4. It is the contention of the learned Counsel for the Appellants/Accused 1 to 4 that the learned Sessions Judge, Fast Track Mahila



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Court, Villupuram, during the framing of charges, had framed charge only for the offence under Section 302 IPC. Based on the framing of charges, the learned Counsel for the Appellants/Accused 1 to 4 had cross-examined the witnesses only regarding the offence under Section 302 IPC. The learned Sessions Judge, Fast Track Mahila Court, Villupuram, on appreciation evidence may have acquitted the Accused of the charge under Section 302 IPC. However, without any evidence, merely based only on the post mortem report under Ex.P-4 and interested deposition of P.W-1-husband of the deceased and P.W-2 son of the deceased, the learned Judge arrived at the conclusion that the offence under Section 325 r/w Section 34 of IPC is made out. The learned Counsel for the Appellants/Accused 1 to 4 invited the attention of this Court to the deposition of P.W-1-husband of the deceased Andal and P.W-2 son of P.W-1. In their cross examination, both of them admitted that they were not available in the place of occurrence at the time of occurrence. Therefore, they are not eyewitness, but still, the learned Sessions Judge, Fast Track Mahila Court, Villupuram, relied on their deposition to convict the Accused. Except P.W-5 Dr.Gitanjali who conducted the post mortem, the other Doctors have not spoken about the injury in the abdomen of the deceased. The Doctors who treated the deceased at the time when she was undergoing treatment, had not stated anything regarding the injury caused in her abdomen. While so, without any material available, the learned Sessions Judge, Fast Track Mahila Court,

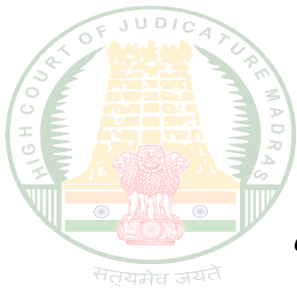


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Villupuram, had convicted the Appellant/Accused for the offence under Section 325 r/w Section 34 of IPC. In any event, without even framing a charge under Sections 325 and 326 IPC convicting the Appellants-Accused for the offence under Section 325 read with 34 of IPC is not proper. In this context, the learned Counsel for the Appellants/Accused 1 to 4 relied upon the following decision of the Hon'ble Supreme Court for the proposition of law that when the Accused committing grave charge had been acquitted on the ground that Prosecution has not proved the case against them, convicting them for the lesser offence without framing a charge is not legally sustainable.

5. In the case of ***Shamnsaheb M.Mulattani vs. State of Karnataka*** reported in ***2001 Supreme Court Cases (Crl) 358*** the Hon'ble Supreme Court has held as follows:

*“But where the case of an Accused is called upon to defend only a charge under **Section 302** IPC, the burden of proof never shifts on to him. It ever remains on the Prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the Accused can wait till the Prosecution evidence is over and then to show that the Prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the Prosecution in such a situation. If that be so, when an Accused has no notice of the offence under **Section 304B** IPC, as he was defending a charge under **Section 302** IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under **Section 304B** IPC and sentenced to the serious punishment prescribed thereunder, because he is deprived of the opportunity to disprove the burden*

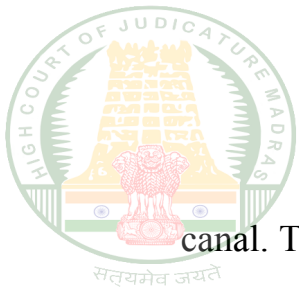


cast on him by law.”

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6. Per contra, Mrs. G. V. Kasthuri, learned Additional Public Prosecutor appearing for the respondent, had vehemently objected to the submission of the learned Counsel for the Appellants/Accused 1 to 4 by stating that there are sufficient evidence to show that P.W-1-husband of the deceased Andal, P.W-2 – son of the deceased Andal were present in the place and time of occurrence. It was they who had taken the deceased, who suffered consciousness loss, after they were kicked in the abdomen by the inmates of the opposite house, to the hospital. Therefore, the evidence of P.W-1 and P.W-2 is supported by the medical evidence through the Doctor who performed autopsy on the deceased.

7. The learned Additional Public Prosecutor relied on the following Ruling to contend that if the charges framed by the Court had not been not proved and the Court could not convict the Accused under Section 302 IPC r/w Section 34 of IPC instead the Court can convict the Accused for lesser offence under Section 325 r/w 34 IPC even though a charge has not been framed. In any event, there are sufficient materials available to show that the Accused have caused injury to the deceased. P.W-5-Dr.Gitanjali has stated that there was blood in the abdomen, particularly in the walls of the alimentary



canal. Therefore, the findings of the learned Sessions Judge, Fast Track Mahila Court, Villupuram, are based on materials and this appeal lacks merits and is to be dismissed.

Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram in S.C.No.291 of 2015, dated 31.05.2017 convicting the Accused 1 to 4 for offence under Sections 325 r/s. Section 34 of the IPC is to be set aside as perverse?

8. Heard Mr. J. Antony James, learned Counsel for the Appellants and Mrs. G. V. Kasturi, learned Additional Public Prosecutor appearing for the Respondent. Perused the deposition of the Prosecution Witnesses P.W-1 to P.W-11 and documents marked on the side of Prosecution as Ex.P-1 to Ex.P-10 and the defence witnesses as D.W-1 and the documents marked on the side of defence as Ex.D-1 to Ex.D-2 and also the judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram in S.C.No. 291 of 2015, dated 31.05.2017.

9. P.W-1 Desingh is the husband of the deceased Andal. P.W-2 Sathiyaselan is the son of the deceased Andal. As per the Prosecution case,



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P.W-1 is a fortune teller. Some people who had visited the house of P.W-1 to meet him and at that time, it is alleged that they have plucked mangoes from the house of the Accused A-1 to A-4, which is opposite to the house of P.W-1. Therefore, there was a wordy quarrel ensued between the visitors and the Accused 1 to 4. The Accused 1 to 4 during such quarrel abused P.W-1 and his wife the deceased. On 27.04.2014 by morning between 6 and 6.30 a.m. when she was cleaning her front yard and putting Kolam, the Accused 1 to 4 alleged to have abused her. She responded by stating that for the mangoes plucked by the visitors, she will pay the Accused. Enraged, the Accused alleged to have pulled her by her hair and kicked her on the abdomen and she fell down. She was taken to Government Hospital, Gingee and discharged. Again she was taken to Gingee hospital in the evening. By this time, the hospital authorities referred her to Villupuram Government Medical College Hospital at Mundiampakkam where she died on 28.04.2014. Therefore, P.W-1 Desingh preferred complaint under Ex.P-1 based on which FIR under Ex.P-7 was registered by P.W-12 who proceeded with the investigation by visiting the place of occurrence, prepared rough sketch under Ex.P-8 and Observation Mahazar under Ex.P-6. He also visited the Villupuram Government Medical College Hospital mortuary, conducted inquest over the dead body of the deceased and prepared the inquest report under Ex.P-9 in the presence of Panchayatdars – Munusamy, Pachayappan, Shankar, Mari and Venkatesan.

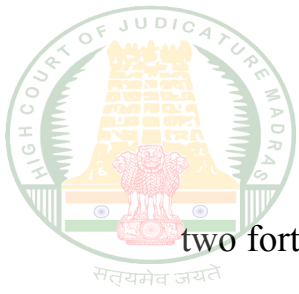


WEB COPY10. P.W-1 had stated that he did not write the complaint under Ex.P-1

and he does not know who had written it. He does not know the contents of the complaint under Ex.P-1. The occurrence, as stated in the Ex.P-1, was narrated by P.W-1 Desingh in his examination in chief. In his cross examination, he had stated that at the time of admission in the Hospital, he had not mentioned the fact that the injured wife who was alive at the time of admission in the hospital, was attacked by the Accused 1 to 4. Also he had not given complaint immediately after the occurrence. Also he had admitted in his cross examination that at the time of alleged occurrence, in the place of the occurrence, in front of his house, if he was available, he too might have suffered injuries. Similarly, the son of P.W-1 and the deceased, P.W-2 Sathyaselan also narrated the incident as was narrated by P.W-1. In his cross examination also, he had admitted that if he had been present in the scene of occurrence, he too might have been injured. Therefore, these two admissions made it clear that they were not available in the place of occurrence at the time of occurrence. Therefore, the reliance placed on the evidence of P.W-1 and PW2, to convict the Appellants-Accused cannot be sustained.

11. The suggestion of the learned Counsel for the defence that the

Accused 1 to 4 are also fortune tellers and there had been rivalries between the



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two fortune tellers residing in the same street cannot be ignored. It is stated by the Counsel for the Appellants that there had been complaint and counter complaint among the Appellants and P.W-1 before the very same Police Station and ultimately it entered into a compromise. However, taking advantage of the death of the deceased due to some ailment suffered by her, P.W-1 has given the complaint against the Appellants by suppressing the complaint and counter-complaint given on the previous day.

12. The postmortem of the deceased was done by P.W-5-Dr.Gitanjali and she opined that the death of the deceased might have been caused by internal bleeding in the internal organs around abdominal area as bleeding was observed on the walls of the alimentary canal (Intestines). The Postmortem report of P.W-5 was marked as Ex.P-4. She had opined under Ex.P-5 that the deceased would have appeared to have died due to the effects of blunt injuries to the abdomen. However, the evidence of Dr. Thagore P.W-11 indicates that he had admitted the deceased while she was alive and he had noted that there was no visible injuries when she was admitted in the hospital. During interrogation, she had stated that she was attacked by five people and she suffered pain in her neck and back. However, there was no visible injuries noticed. He had given first aid and admitted her in the ward. He had issued

Ex.P-10. P.W-11 Dr.Thagore had deposed evidence on behalf of another



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Doctor by name Dr.Indira, based on her recording in the hospital records at Government Hospital, Gingee. He had deposed evidence stating that Dr.Indira had admitted her by noting her injuries on the basis of the statement of the injured woman that she suffered injuries due to attack by four persons and she suffered pain in her neck and back. The Accident Register recorded by the duty Doctor Dr.Indira on whose behalf P.W-11 Dr.Thagore had deposed evidence was marked as Ex.P-10. Therefore, after Prosecution evidence was closed, the Accused has summoned the Doctor who treated the injured woman when she was alive and marked the document under Ex.D-1 and Ex.D-2. Ex.D-1 is the death certificate issued on the death of the deceased. Ex.D-2 is the treatment details. Dr. Daranendran was examined as D.W-1. As per his evidence, the injured woman was admitted by 9.51 p.m. on 27.04.2014. She was aged 42 years and she was drowsy and tired as per the person who accompanied her she had dysentery and vomiting. The stools contained blood. By 12.45 p.m. intervening night on 27/28.04.2014 she died. D.W-1 was cross-examined on behalf of the Prosecution. The suggestion of the Prosecution is that if the injured was attacked by bare hands on her abdominal area, she would have suffered the symptoms as stated by D.W-1 but he had stated that those things were not available when he examined her. The Doctor who had conducted postmortem had observed bleeding in the internal organs around abdominal area and had opined that she suffered death due to injury in the



internal organs. D.W-1 was recalled by the learned Judge and questions were put to him by the Court to confirm that the deceased died due to internal injury.

Therefore, the trial Court had instead of convicting the Accused for the offence under Section 302 r/w. 34 IPC had convicted the Accused for the lesser offence of 325 r/w. 34 IPC.

13. The person who accompanied the injured to the hospital was Mr.Venkatesan, as per the medical records available with the Gingee Government Hospital for which P.W-11 was examined. The said Venkatesan was not examined as a witness before the Court. At the first instance, Dr.Indira who had seen the injured had recorded that the injured woman narrated that she was attacked by 4 persons. The said Dr.Indira was not examined as she was not available. Therefore, the Doctor who worked in the same hospital and who is an associate of Dr.Indira had deposed evidence on behalf of Dr.Indira as P.W-11 and he had stated that the injured had mentioned about the injury on her body. The same is corroborated by Dr.P.W-5 Gitanjali who had performed autopsy on the body of the deceased and found internal bleedings in the organs of the deceased. Under those circumstances, the evidence of D.W-1 is to be rejected. The evidence of P.W-1 and P.W-2 is found cogent. A person aged about 42 years died as per the evidence of Doctor who treated her as she was said to be tired and drowsy, shows she lost blood. The postmortem by P.W-5



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Dr. Gitanjali indicates that there was internal bleedings inside her digestive system. The deceased is appeared to have died due to the blunt injuries in the abdominal area.

14. The ruling cited by the learned Counsel for the Appellant that as per the principles of fair trial, the Accused was not put on notice regarding altered charge under Section 325 r/w. 34 of IPC will not hold good as in the reported ruling it was a case of 302 of IPC which was altered by the Court after appreciation of evidence at the stage of judgment of conviction, convicting the Accused for the offence under Section 304(b) of IPC. Here, it is a lesser offence under Section 325 of IPC. It is not a grave charge as 302 r/w. 34 of IPC. Therefore, the argument of the learned Counsel for the Appellant that the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in S.C.No. 291 of 2015, dated 31.05.2017 is perverse and is to be set aside cannot be accepted and hence, the same is rejected. Therefore, the conviction under Section 325 r/w 34 of IPC is found to be not perverse. However, instead of sentencing the Accused, this Court modifies the sentence of imprisonment and released the Appellants on probation of good conduct for a period of five years.

<https://www.mhc.tn.gov.in/judis> 15. As rightly pointed out by the learned Additional Public Prosecutor



there was enough materials available before the trial Court through the evidence of P.W-1, P.W-2, P.W-5 and P.W-11 regarding the injuries suffered by the deceased, who died without responding to the treatment because of the injuries suffered by her in her internal organs. Therefore, the submission of the learned Additional Public Prosecutor is found reasonable.

16. In the light of the above discussion, the point for consideration is answered in favour of the Prosecution and against the Accused. The judgment of the learned Sessions Judge, Fast Track Mahila Court, Villupuram in S.C.No.291 of 2015 dated 31.05.2017 convicting the Accused 1 to 4 for offence under Sections 325 r/s. Section 34 of the IPC is found proper and the conviction is to be confirmed. However, the sentence alone is to be modified.

In the result, **this Appeal is partly allowed.** The judgment of conviction made on 31.05.2017 in S.C. No. 297 of 2015 alone is confirmed and the sentence is modified. The Appellants are directed to be released on probation on good conduct, if there are no other criminal case pending against them. The discretion is to be exercised by the learned Sessions Judge, Fast Track Mahila Court, Villupuram, based on the report of the Regional Probation Officer. On such probation each of the Accused shall deposit Rs.50,000/- as compensation to the victim/P.W-1 and P.W-2. The amount so deposited shall



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be disbursed equally to P.W-1 and P.W-2 by the learned Sessions Judge, Fast

Track Mahila Court, Villupuram before releasing Accused 1 to 4 on probation.

Also, the learned Sessions Judge, Fast Track Mahila Court, Villupuram shall warn the Accused-1 to 4 that if they indulge in any offence, the probation will be cancelled and the Accused shall undergo the period of imprisonment as per the judgment in S.C. No. 297 of 2015, dated 31.05.2017.

03-03-2025

vsn/srm

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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Crl. Appeal No. 307 of 2017

To

1. The Sessions Judge,
Fast Track Mahila Court,
Villupuram.
2. The Public Prosecutor,
High Court Madras,
Chennai – 600 104.



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SATHI KUMAR SUKUMARA KURUP, J

vsn/srm

Judgment made in
Crl. A. No.307 of 2017

03-03-2025