

Crl.A.(MD)No.5 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

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Ayyanar

... Appellant/Sole Accused

versus

State rep., by
The Inspector of Police,
Aruppukottai Taluk Police Station,
Virudhunagar District.
Crime No.129 of 2010

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the conviction and sentence imposed by the Court of the Additional District and Sessions Judge, Virudhunagar in S.C.No.110 of 2010 dated 19.12.2017 and allow this criminal appeal.

For Appellant : Mr.N.Anantha Padmanaban
Senior Counsel for M/s.APN Law Associates

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.side)



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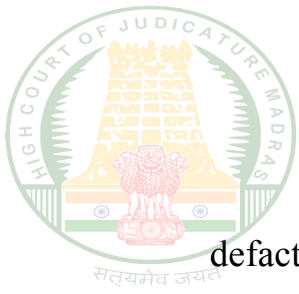
JUDGMENT

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This criminal appeal has been preferred as against the judgment of conviction and sentence, dated 19.12.2017 made in S.C.No.110 of 2010 by the learned Additional District and Sessions Judge, Virudhunagar, thereby convicting and sentencing the appellant to undergo 1 month of simple imprisonment and to pay a fine of Rs.500/-, in default to undergo one week of simple imprisonment for the offence under Section 341 of IPC; to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 1 year of rigorous imprisonment for the offence under Section 304(1) of IPC. The sentences were ordered to run concurrently. Set off under Section 428 of Cr.P.C., is also ordered.

2. The case of the prosecution had arisen on the basis of the complaint, Ex.P12, First Information Report, given by the defacto complainant, P.W.1, registered in Crime No.129 of 2010 at the Aruppukottai Taluk Police Station, for the offences under Sections 341 and 302 of IPC, is as follows:

(a) The deceased Punithakumar, who is the son of P.W.1, defacto complainant, and his wife Ramalakshmi would quarrel frequently. The



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defacto complainant and the accused, who is the brother of Ramalakshmi, used to pacify them. In pursuant to one such quarrel between the couples, six months before the occurrence, the accused had stabbed the deceased and caused injury, however, they got compromised. At this juncture, on 13.03.2010, some quarrel arose between the deceased Punithakumar and his wife. On knowing about the same, on 14.03.2010, the defacto complainant and his younger son Senthilkumar came to the house of the Punithakumar. At that time, the accused was also present there. The accused, defacto complainant and his younger son, Senthilkumar condemned the spouses for the frequent quarrels between them and thereby advised them. In course of such conversation, a quarrel exploded between the accused and the deceased. The defacto complainant and his son interfered and condemned them. All of a sudden, the accused took a knife from his waist and attempted to stab the deceased that had driven away the deceased. The accused chased, restrained the deceased and stabbed him with knife on his upper abdomen resulting in the death of the deceased. It was witnessed by the defacto complainant and his younger son, who attempted to apprehend the accused, but he fled away.

(b) After completion of investigation, charge sheet has been filed against the accused. Since the offence is triable by the Sessions Court, the



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case was committed to the Sessions Court. The trial Judge has taken cognizance in S.C.No.110 of 2010 and after completing the legal mandate of furnishing copies and all other legal formalities, the trial Judge framed charges against the appellant for the offences under Sections 341 and 302 of IPC. When the accused was questioned, he denied the same and claimed to be tried.

(c) During trial, on the side of the prosecution, P.W.1 to P.W.11 were examined and Ex.P1 to Ex.P16 were marked. Besides, M.O.1 to M.O.4 were marked. On the side of the defence, no oral and documentary evidence was let in.

(d) After completion of trial, based on the oral and documentary evidence, the trial Judge has convicted and sentenced the accused as stated supra. Aggrieved over the same, this appeal has been preferred.

3. The learned counsel appearing for the appellant submitted that though the prosecution has cited P.W.1 and P.W.2 as eyewitnesses to the occurrence, the evidence given by P.W.5 during his cross-examination is quite contrary; He stated that P.W.1 and P.W.2 came to the spot, only after crowd gathered around the body of the deceased. P.W.1 and P.W.2 are



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inimical and interested witnesses and therefore, their very presence at the scene of occurrence is doubtful in the light of the above testimony of P.W.5.

The trial Court has convicted the appellant based on the evidence of hearsay witnesses, erroneously treating them as eyewitnesses. The recovery of weapon has not been proved by the prosecution. Moreover, the injury found on the body of the deceased was a lacerated injury, not a cut injury that could be attributed to the weapon allegedly used in the occurrence. The learned counsel for the appellant pleaded that there are strong doubts in the prosecution's case, and the benefit of doubt ought to be given to the appellant.

4. The learned Government Advocate submitted that the presence of the accused in the place of occurrence is not in dispute. On an earlier occasion, there was a quarrel between the accused and the deceased and the accused was always inimical towards the deceased. In this background, the evidence of P.W.1 and P.W.2 is quite acceptable. A single line of P.W.5's evidence during his cross-examination cannot be read in isolation without considering the entire prosecution evidence. The doctor, who was examined as P.W.9, stated in his evidence that even an assault with a sharp weapon might result in a lacerated injury if there is movement or resistance from the body at the time of impact.



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5. P.W.1, who is the defacto complainant and the father of the deceased, stated in his complaint that upon hearing about a quarrel between the deceased and his wife, he proceeded to the house of the deceased. As the accused was also present there, P.W.1 and P.W.2 attempted to mediate between the couples. While the argument escalated, both P.W.1 and P.W.2 tried to pacify them. However, the accused suddenly drew a knife from his waist and attempted to stab the deceased, who immediately ran out of the house. The accused also chased the deceased with the knife in his hands. P.W.1 and P.W.2 also followed them. Approximately 50 feet from the house, near the house of one Pandi, the accused unlawfully restrained the deceased and stabbed him in the stomach. Though P.W.1 and P.W.2 immediately took the deceased to the hospital and succumbed to the injuries and was declared dead.

6. From the evidence of P.W.1 also, the above mentioned facts are corroborated. The postmortem report, marked as Ex.P.11, reveals that the deceased sustained a stab injury measuring 5x2x5 cm over the right upper abdomen. The internal examination further disclosed a lacerated injury measuring 2x2x2 cm on the anterior aspect of the lower lobe of the liver. As per the opinion of the doctor, the deceased appears to have died due to



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hemorrhage resulting from liver injury. The doctor, who conducted the postmortem, examined as P.W.9, stated in his evidence the facts recorded in the postmortem certificate. When the Court inquired whether there was any connection between the external injury and the internal injury found in the liver, the doctor responded that the weapon had penetrated up to the liver from outside, causing an internal injury. He further clarified that a sharp weapon like a knife can cause a lacerated injury to the liver because it is a soft organ, and due to body movement at the time of the attack, it is possible for a knife to inflict such a lacerated injury. The doctor has stated that, regarding the cause of death, the deceased died due to heavy loss of blood resulting from the injury. Therefore, it is established that the accused, having attacked the deceased with a weapon like a knife, caused the fatal injury leading to his death. Since the prosecution has successfully proved the involvement of the accused in the occurrence, the trial Court was justified in finding the accused guilty.

7. The contention of the learned counsel for the appellant is that P.W. 1 and P.W.2 were not present at the place of occurrence, and the evidence of P.W.5 reveals that they only rushed to the spot after hearing about the incident.



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8. However, the evidence of P.W.1 and P.W.2 clearly explains the circumstances that necessitated their presence at the scene. Furthermore, the cross-examination of P.W.1 and P.W.2 disclosed that the accused was indeed at the house of the deceased on the day of the occurrence and was involved in the altercation. He had also stated that shortly before the occurrence the deceased and the accused were sitting together and consumed alcohol.

9. As a quarrel arose between the deceased and his wife, Ramalakshmi, the wife of the deceased called P.W.1, father of the deceased, and reported about the occurrence. Hence, the presence of the accused at the house of the deceased at the time of occurrence is very much probable and it is stated in the evidence of P.W.1. This has been corroborated with the evidence of P.W.2. P.W.5 has stated in his chief examination that the deceased was running and the accused was chasing him with knife in his hand. He has stated that P.W.1 and P.W.2 also chased the deceased.

10. A combined reading of the evidence of P.W.1, P.W.2 and P.W.5, clearly establishes that P.W.1 and P.W.2 were also present at the time of occurrence and witnessed the incident. Hence, the trial Judge was correct in concluding the involvement of the accused in the occurrence. The arrest of



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the accused, the recovery of material objects, and the marking of the recovered items further corroborate the substantive evidence of the witnesses relied upon by the learned trial Judge.

11. The inquest report, marked as Ex.P.14, appears to corroborate the prosecution's version of events. Although it mentions that the accused had caused a stab injury on an earlier occasion, that injury was not serious, and no complaint was filed against the accused in that regard. However, this prior incident does not appear to have created any motive between the deceased and the accused. This is because of their close relationship. Even on the day of the occurrence, it is evident from the evidence of P.W.1 that the deceased and the accused had consumed alcohol together and thereafter entered into a quarrel. It was only the accused, who got provoked during the sudden argument, which led to the incident. However, no eyewitness has stated that the accused followed the deceased with an intention to cause harm or kill him.

12. No doubt, the accused was carrying a deadly weapon like a knife, but there is no evidence to suggest that he had made any prior preparation to murder the deceased on the day of the occurrence. It is possible that, like some others, the accused might have been carrying the knife without any



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specific intent to use it for killing. It appears that the accused, in a fit of anger, chased the deceased with an intention to either threaten or cause injury on him. Therefore, the trial Court was right in concluding that this was not a case of murder punishable under Section 302 of the IPC, but one of culpable homicide not amounting to murder, punishable under Section 304 of the IPC.

13. The learned trial Judge had chosen to convict the accused under Section 304(i) of IPC for having caused a bodily injury, which was likely to cause death, and that the act was done with an intention of causing such injury. In other words, while attacking the deceased, the accused might have been conscious of and intended to cause the death of the deceased by inflicting a serious bodily injury likely to result in death. However, none of the witnesses have stated that the accused shouted or declared any intention to kill the deceased. This indicates that the act of stabbing the deceased was not premeditated. Therefore, the unlawful act committed by the accused, which resulted in the death of the deceased, appears to have been done with the knowledge that such an act might cause death, but without an intention to cause death. In such cases, the offence of culpable homicide not amounting to murder would fall under Part II of Section 304 of the IPC, rather than Part I.



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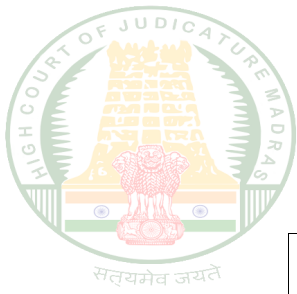
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14. When the accused had no previous motive against the deceased, and the attack occurred due to sudden provocation during an argument on the day of the incident, it cannot be said that the act was committed with an intention to cause death. Since a deadly weapon was used to stab the deceased in the stomach, the act was undoubtedly committed with the knowledge that it was likely to result in death. Therefore, in all fairness, I feel that the accused ought to have been convicted for the offence under Section 304(ii) IPC and not under 304(i) of IPC. Accordingly, the impugned judgment of the learned trial Judge is liable to be interfered with on this limited aspect, and the appeal is partly allowed to that extent.

15. In the result,

(i) This Criminal Appeal is **partly allowed**;

(ii) The impugned judgment passed by the learned Additional District and Sessions Judge, Virudhunagar, in S.C.No.110 of 2010 dated 19.12.2017 is hereby modified as under:



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Findings and Punishment imposed by the Trial Court	Modified by this Court
<u>Section 341 IPC</u> Found guilty, convicted and sentenced to undergo 1 month (S.I) and to pay a fine of Rs.500/-, i/d to undergo 1 week (S.I)	Confirmed
<u>Section 304 (1) IPC</u> Found guilty, convicted and sentenced to undergo 7 years (R.I) and to pay a fine of Rs.1000/-, i/d to undergo one year (R.I)	Modified to Section 304(2) IPC – to undergo 5 years (R.I) and to pay a fine of Rs.1,000/-, i/d to six months (R.I)

iii) It is further directed that the period of detention already undergone by the accused, if any, shall be given set off under Section 428 Cr.P.C and the sentences shall run concurrently.

iv) The trial court shall take steps to secure the accused to commit him to prison to serve out the period of sentence.

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Index : Yes/No
NCC : Yes/No.

Rmk



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To

- 1.The Additional District and Sessions Judge,
Virudhunagar, Virudhunagar District.
- 2.The Inspector of Police,
Aruppukottai Taluk Police Station,
Virudhunagar District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.VR Section.
Madurai Bench of Madras High Court,
Madurai.



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DR.R.N.MANJULA, J.,

Rmk

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