



Crl.A(MD)No.515 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2025

Pronounced on : 28.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.515 of 2021

Karthi @ Karthikeyan

.. Appellant/Sole accused

Vs.

State represented by
The Inspector of Police,
Somarasampettai Police Station,
Somarasampettai,
Tiruchirappalli.
(Crime No.417 of 2014)

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in pertaining to the judgment in S.C.No.65 of 2016 dated 22.10.2021 passed by the II Additional District and Sessions Judge, Tiruchirappalli and set aside the same by allowing the appeal.



WEB COPY



Crl.A(MD)No.515 of 2021

For Appellant : Mr.R.Gandhi, Senior Counsel,
for Mr.R.Alagianambi

For Respondent :Mr.A.Thiruvadikumar,
Additional Public Prosecutor

JUDGMENT

Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

Karthi @ Karthikeyan, the Appellant herein aged about 25 years at the time of the fateful incident, tried for offences under sections 324, 307 and 302 IPC by the II Additional Sessions Judge, Tiruchirapalli, in S.C.No.65 of 2016. Finally, he was held guilty of offences under section 302 IPC and Section 324(2 counts). Sentenced to undergo life imprisonment for the offence under Section 302 IPC with fine of Rs 5000/-, and punished to pay a fine of Rs.2000/- (two counts) for the offence under Section 324 IPC.

2.Challenging the order of conviction and sentence passed in S.C.No. 65 of 2016 dated 22.10.2022, the above Criminal Appeal is filed.



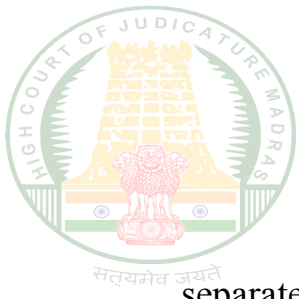
Crl.A(MD)No.515 of 2021

3.Gist of the prosecution case:

WEB COPY

On 20.11.2014 at about 11.30 hrs, the appellant was riding his two wheeler Hero Honda Splender bearing Registration No.TN-48-T-1596 along the street of the de-facto complainant Ms.Kriuthika. He hit a kid by name Karuppan, who was playing in the street. The said Karuppan is the sister's son of the de-facto complainant. This was questioned by the mother of the kid, de-facto complainant(PW-1), her father(Manian – PW.2) and her brother Govindaraj(deceased). Wordy quarrel arose between them. The appellant went to his house came back and attacked Manian with a knife. When Manian defended the attack, he sustained cut injury on the left hand. When Govindraj tried to intervene, Karthi stabbed him on the abdomen thrice. On seeing this, Pothumponnu, the sister of the de-facto complainant came to rescue Govindaraj. The appellant stabbed Pothumponnu on her chest. When the de-facto complainant started raising alarm, the appellant fled with the knife.

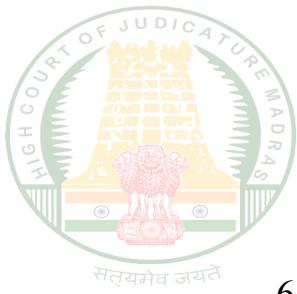
4.Manian and Govindaraj were taken to the Government Hospital at Trichy by the de-facto complainant and others. The said Pothumponnu went



Crl.A(MD)No.515 of 2021

separately to the hospital. The doctors examined Govindaraj and declared 'brought dead'. Manian and Pothumponnu were treated for the injuries. Manian recovered and deposed as PW-2. Pending trial Pothumponnu died, her wound certificate marked as prosecution exhibit.

5.After admitting her father in the hospital, Kiruthika(PW-1) came to the police station and gave the written complaint(Ex.P-1) on 20.11.2014 at 13.30 hrs. The complaint was registered in Cr.No.417 of 2014 by PW-24, the Inspector of Police, attached to Somarasanpettai Police Station, against Karthi for offences under Sections 307 and 302 IPC. The FIR copy was forwarded to the Judicial Magistrate through express post. PW-24 went to the place of occurrence and prepared observation mahazar(Ex P- 2), rough sketch of the scene of crime (Ex.P-12) and recorded the statements of witnesses present. Collected blood stains on the earth and the two wheeler TN-48-T-1596 under mahazar Ex.P.3 and forwarded the material objects to the Judicial Magistrate Court under Form 95.

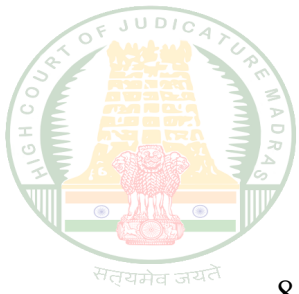


Crl.A(MD)No.515 of 2021

WEB COPY

6.The Investigating Officer, went to the hospital and after conducting the inquest, arranged for the post mortem. The inquest report is Ex.P-13. The Post mortem report of Govindaraj is Ex.P-6. On 21.11.2014, at about 10.00 a.m., the appellant Karthic was arrested at Kirikalmedu Bus Stand. His confession was recorded in the presence of witnesses. On his information, the knife M.O-1(22.5 cm length - plastic handle 11.5 cm; blade 11 cm) used for the assault and the two wheeler used to escape from the scene of crime and the clothes, he was wearing at the time of occurrence with blood stains were recovered under mahazar(Ex.P-15). The soil, Knife and dress materials of the deceased and the accused were sent for chemical analysis. The report says, blood found in the clothes and knife, but not in the soil collected from the scene of occurrence.

7.The final report filed by PW-24 was taken cognizance and case committed to the Principal District and Sessions Judge, Trichy. The II Additional Sessions Court framed charges under section 307 IPC for attempt to murder Manian, Section 302 IPC for the murder of Govindaraj and Section 324 IPC for causing hurt to Pothumponnu.



Crl.A(MD)No.515 of 2021

WEB COPY

8.To prove the charges, the prosecution examined 24 witnesses. Marked 20 exhibits and 10 material objects. Apart from PW-1, her father who is one of the injured witness, mother PW-3, sister Annakili PW-4, who all witnessed the occurrence were examined on the side of the prosecution. The trial Court found the evidence sufficient to hold the accused/appellant guilty of offences punishable under Section 302 IPC and Section 324 IPC (two counts).

9.The judgment of conviction is under challenged in this Criminal Appeal for the following among other grounds:-

a) The evidence of so called eye -witnesses does not corroborate each other. The inconsistency in respect of time, place of occurrence and date among themselves not properly appreciated by the trial Court.

b)The FIR, Final Report and the Postmortem Report not consistent to the other exhibits relied by the prosecution. The evidence of PW-1 is that she gave the complaint Ex.P-1. In the cross examination, she admits that Ex.P-1 is written by more than one person and not by her. The corrections in the time found in the FIR is fatal to the prosecution case. PW-1 to PW-6 are all



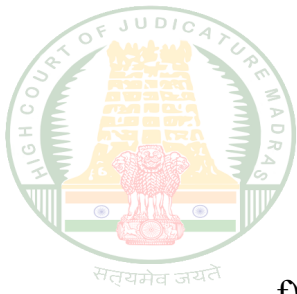
Crl.A(MD)No.515 of 2021

interested witnesses. Undue weightage given to these witnesses, who are not reliable.

c) The time of crime as per the prosecution is 20.11.2014 at 11.30 am. The complaint to the police given only at 1.30 pm. The delay in lodging the complaint not explained. The delay give raise to the probabilities of embellishment.

d) PW-24 the Inspector of Police, who registered the FIR himself had investigated the case and filed final report. This is not permissible under Section 156 and 157 of CrPC. The charges were not framed properly and not properly explained to the accused to defend the case. The conviction is for charges different from the charges framed.

e) Out of 24 witnesses on the side of the prosecution, PW-1 to PW-5 are close family members of the deceased and they are interested witnesses. PWs-2, 6, 7, 9 to 18 turned hostile. PW-19 to PW-24 are official witnesses. Though PW-3 and PW-4 claims to be eye-witnesses, it is doubtful whether they were really witnesses to the occurrence since the vital contradictions in their evidence creates doubt about their presence at the scene of crime.



Crl.A(MD)No.515 of 2021

WEB COPY

f) The confession and recovery of material objects not proved. The prosecution witnesses have not supported the case of recovery. Further, the material object Knife is found in common available freely in market. PW-1 admits that she was shown the knife(M.O.1) by the police and she did not identify the knife used by the accused to the police earlier. She admits after the date of occurrence, she saw the knife only in the Court on the day it was marked as M.O.1. The occurrence was on 20.11.2014. M.O.1 knife was marked through PW-1 after 5 years on 20.02.2019. Thus, it is doubtful whether, the weapon produced before the court is the weapon used in the crime.

10.The learned Senior Counsel for the Appellant further submitted that though the prosecution claims that there was previous enmity between the deceased family and the accused family who are cousins, there was no incident of fight all these years. The accused family and the deceased family were co-existing and living in the houses next to next. The incident which is outcome of a sudden fight over a trivial issue had now put a young boy behind bars for life. The incident which was not a premeditated one and arose out of sudden fight fall under exception to culpable homicide. It is not



Crl.A(MD)No.515 of 2021

a murder to punish him with life sentence.

WEB COPY

11.Submission by the Additional Public Prosecutor for the State:

The learned Additional Public Prosecutor, submitted that, the prosecution case had been clearly established through PW-1 to PW-5. The injured witness PW-2, though declared hostile, his evidence in chief and cross examination supports the case of the prosecution substantially.

12.The accused/appellant is the brother's son of PW-2. In his chief as well in the cross, he had deposed about the fight which lead to the attack. PW-2 had narrated the assault by the accused on his left hand with knife and the injury sustained. He also had showed the injury scar to the Court as a tell tale evidence. The Court has recorded the demeanour of the witness. Further, he had also deposed that his son Govindaraj died due to the stabbing by the accused/appellant. The three stab injuries by the accused with knife on the vital part of Govindraj is the cause for the death and this fact is deposed by all the eye witnesses. The medical evidence opines that the death of Govindaraj was due to the stab injuries to the abdomen. The injuries caused



Crl.A(MD)No.515 of 2021

WEB COPY

with weapon to PW-2 and Pothumponnu is corroborated through the medical evidence.

13.According to the Public Prosecutor, the evidence of the eye witnesses PW-1 to PW-4, the postmortem report(Ex.P-6) and the wound certificates prove the case of the prosecution beyond doubt the guilt of the accused/appellant, who caused the death of Govindaraj with three stabs on his vital. The wound certificate(Ex.P-7) for Pothumponnu and the wound certificate(Ex.P-9) for PW-2, proves the charge of causing hurt to them with weapon which is punishable under Section 324 of IPC.

14.Regarding the plea of sudden fight and fit of anger, the learned Public prosecutor submitted that this case cannot be considered as arising out of sudden fight/fit of anger. The evidence shows that, the accused after the fight had gone to his house and came with knife to attack. He first attacked PW-2 and pushed him down. Thereafter, stabbed Govindaraj thrice on the abdomen and done to death. Thereafter also he did not stop, but left the place only after stabbing Pothumponnu on her left side of the chest. His intention



Crl.A(MD)No.515 of 2021

WEB COPY

and knowledge to cause death of these persons over a petty quarrel will not bring his act under any of the exceptions found in the section.

15.Heard the learned counsels. Records perused.

16.The witnesses for prosecution PW-1, PW-2 , PW-3 and PW-4 are the family members of the deceased and injured. The occurrence took place opposite to their house. They are though closed related, their presence at the time of the occurrence cannot be doubted. The witnesses had clearly deposed that Govindaraj, the son of PW-2 was stabbed to death in front of his house. In the occurrence, PW-2 and his daughter Pothumponnu also sustained injuries at the hands of the appellant.

17.The evidence of PW-2 is clear and simple. He had identified the assailant, who is none other than his own brother's son. He had shown to the Court the scar of the injury and also deposed that his son Govindaraj died due to the stabbing of the appellant.



Crl.A(MD)No.515 of 2021

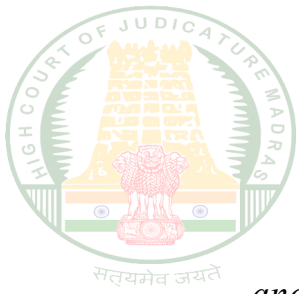
WEB COPY

18.PW-1 is the daughter of PW-2 and the sister of the deceased Govindaraj. PW-1 had deposed that her father(PW-2) was attacked with knife by the appellant. When her brother Govindaraj came to rescue, he was stabbed at the abdomen thrice. The weapon identified by her in the Court. She being the witness to the occurrence, she was able to identify the weapon. In the cross examination, she admits that the knife not shown to her by the police during investigation. We find the knife was recovered based on the confession statement of the accused. The lab reports(Ex.P-17 to Ex.P-19) indicates that the blood stains in the knife belongs to human. PW-21, the doctor, who conducted the post mortem and gave the report(Ex.P-6), had deposed that the deceased Govindaraj had suffered the below ante mortem injuries:-

“A coils of intestines 2.58 meter were protruded from the injury on the left side of the abdomen. After pushing them into the abdominal cavity through the injury, there were stab injuries , on left side of middle part of abdomen 8 cm above the level of Left Anterior Superior iliac Spine;

Three overlapping, oblique stab injuries measuring each 2.5 cm of length and 0.5 cm breadth;

The margin edges of the injuries were clean, well defined



Crl.A(MD)No.515 of 2021

WEB COPY

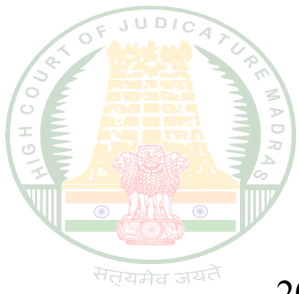
and regular;

Their ends were sharp;

On dissection of the abdomen, dark red fluid and clotted blood 1110 ml in the abdominal cavity; They were traversing through underlying subcutaneous soft tissues and entered into the abdominal cavity creating complete cut injury 2.5 x 0.5 cm on small intestine and perforated injuries 4 x 0.5 cm and 2.5 x 2.5 cm with surrounding dark red extravasation of blood 12 x 12 x 1 cm on the mesentery;

The underlaying blood vessels of intestine were cut and severed:”

19.The ocular evidence and the medical evidence about the injuries on the deceased goes to prove that the death of Govindaraj is due to the stab injuries on the abdomen. The said stab injuries were caused by the appellant. Therefore, the prosecution beyond any doubt had proved that the cause of death is the stab injuries caused by the appellant. Through the evidence of PW-2, the injuries caused with weapon and the wound certificate of Pothumponnu coupled with the eye witnesses evidence, it could be held that the appellant had committed the offence punishable under Section 324 IPC (two counts).



Crl.A(MD)No.515 of 2021

WEB COPY

20.To consider the plea of sudden fight and loss of sense, the exception IV to Section 300 IPC with explanation says, that the attack must have been without any premeditation and in the heat of passion. The act must not be by taking undue advantage of the situation or in a cruel or unusual manner. It is immaterial in such cases, which party offers the provocation or commits the first assault.

21.In this case, the testimonies of the eye witnesses establishes that, the accused while passing through the house of the deceased in the two wheeler had dashed the child of Annakili(PW- 4). The said Annakili is the sister of the deceased. When the accused was reprimanded by PW-2 and others, the accused had stabbed PW-2 with knife and tried to fled. The deceased Govindaraj, who tried to catch the appellant was stabbed repeatedly on the abdomen. Pothumponnu, who came to rescue was stabbed on her chest. The victims are his uncle and cousins. The injuries caused by a knife with blade size about 11 cm. The death is due to the injury on the vital part of the body.



Crl.A(MD)No.515 of 2021

22. Section 300 IPC and Exception IV with explanation reads as below:-

WEB COPY

“300. Murder.— *Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or*

Secondly—

Thirdly—

Fourthly—

Exception 1.-When culpable homicide is not murder.....

Exception 2.....

Exception 3.....

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 having taken undue advantage or acted in a cruel or unusual manner.*

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

23. The ingredients required to consider the Exception IV are:

- 1). Without Premeditation,
- 2). In the course of sudden fight out of heat of passion,



Crl.A(MD)No.515 of 2021

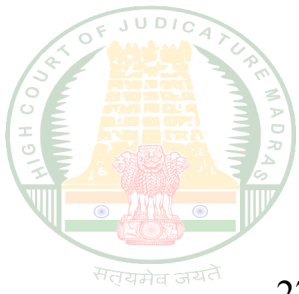
3).No undue Advantage and

4).Must not have acted in a cruel or unusual way.

24.In this case, we find that the above ingredients, which are necessary to place the culpable homicide as not amounting to murder is found and therefore the conviction under section 302 IPC requires modification.

25.The circumstance demonstrates that the appellant had no intention to cause death, though he had knowledge that the weapon used by him to inflict injuries on the abdomen of the deceased may cause death. In the absence of intention to cause death but only knowledge that such bodily injury is likely to cause death, the offence does not fall within the scope of Section 300 IPC, but it will fall within Section 304 Part II of the IPC.

26.We, therefore, hold that the appellant Karthi @ Karthikeyan is guilty for an offence punishable under Section 304 Part II of IPC and not for the offence punishable under Section 302 IPC.



Crl.A(MD)No.515 of 2021

WEB COPY

27.Hence, the conviction of life sentence under Section 302 IPC is, therefore, set aside. The appellant is convicted for offence under Section 304(II) IPC and sentenced to undergo Rigorous Imprisonment for a period of ten years with fine of Rs.5000/-, in default, 6 months to undergo rigorous imprisonment. The period of sentence shall run concurrently. The period so far undergone by the appellant shall be set off.

28.The sentence for the offence under section 324 IPC(two counts) stands confirmed.

29.In the result, the Criminal Appeal is partly allowed.

[G.J.,J] & [R.P., J]
28.04.2025

Index : Yes/No
NCC : Yes/No
Ns



WEB COPY



Crl.A(MD)No.515 of 2021

**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

Ns

To

- 1.The II Additional District and Sessions Judge,
Tiruchirappalli.
- 2.The Inspector of Police,
Somarasampettai Police Station,
Somarasampettai,
Tiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Predelivery Judgement made in
Crl.A(MD)No.515 of 2021**

28.04.2025