

CrI.A(MD)No.495 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.07.2025

CORAM:

THE HON'BLE DR.JUSTICE R.N.MANJULA

CrI.A(MD)No.495 of 2018

Chockkan

... Appellant

Vs

The Inspector of Police,
Annavasal Police Station,
Pudukottai District
Cr No.19/2015.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to set aside the Judgment and conviction, dated 23.10.2018 by the learned Additional District and Sessions Judge & Essential Commodities Act Cases and Special Court for NDPS Act Case, Pudukottai in SC No.106 of 2015 and acquit the appellant.

For Appellant : Mr.D.Rameshkumar

For Respondent :Mr.A.Albert James
Government Advocate (Criminal)



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JUDGMENT

The present appeal has been filed challenging the Judgment of the learned Additional District and Sessions Judge, Additional District and Sessions & Essential Commodities Act Cases and Special Court for NDPS Act Cases, Pudukottai, dated 23.10.2018 made in SC No.106 of 2015.

2.The appellant is the sole accused, who has been convicted and sentenced in the following manner:

S. No	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	304(ii) IPC	3 years rigorous imprisonment	Rs.1,000/- in default to undergo 3 months simple imprisonment
	506(ii) IPC	3 months simple imprisonment	Rs.250/- in default to undergo 1 week simple imprisonment

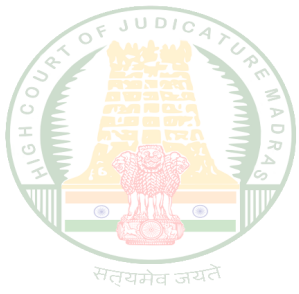
The sentences were ordered to be run concurrently.



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3.The case of the prosecution as it appears from the records is that the deceased is the father of defacto complainant, who had sent the son of the accused by name Raja to Singapore for a job before one year; but the said Raja was mentally disturbed and returned from Singapore to his native place. The deceased Chinnasamy and the wife of the accused brought two Sorcerers to the house of accused to cure Raja. Since the accused disliked the act of the deceased, he quarreled with him, which resulted in misunderstanding between the accused and his wife. So, the accused got angry with the deceased Chinnasamy. On 22.02.2015, at about 03.00 p.m., when the accused and his son PW1 and one Rangasamy were conversing in front of the house of Adaikanakonar, PW4, the accused came there and scolded the deceased that he was suffering only because of him and he would get him away. By saying so, he attacked the deceased with a wooden log on his left side of head, left thigh and both hands. When the son of the deceased and Rangasamy attempted to catch hold of the deceased, he threatened them by saying that he would kill them. The defacto complainant took his father in 108 Ambulance to Thanjavur Medical College Hospital for treatment. But Chinnasamy died on 28.02.2015 at about 2.30p.m., due to the injuries suffered on his head.



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4. On receiving the complaint from the son of deceased, a case in Cr.No.19 of 2015 has been registered on 22.02.2015. After completing the investigation, charge sheet has been filed against the accused under Sections 302, 506(ii) IPC. After taking cognizance of the charge sheet by the learned District Munsif cum Judicial Magistrate, Keeranur in PRC No.15 of 2015 and after observing the legal mandates, the case was committed to the learned Principal Sessions Judge, Pudukkottai. Subsequently, it was made over to the learned Additional District and Sessions Judge, Additional District and Sessions & Essential Commodities Act Cases and Special Court for NDPS Act Cases, Pudukkottai.

5.The learned trial Judge framed charges against the accused under Section 302, 506(ii) IPC and questioned him. As the accused denied the involvement and claimed to be tried, trial was conducted.

6.On the side of prosecution, 16 witnesses were examined as PW1 to PW16 and 16 documents were marked as Ex.P.1 to Ex.P.16 and



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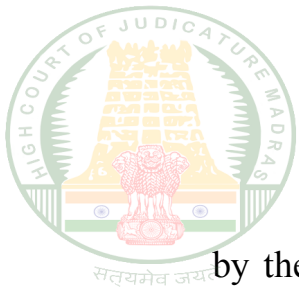
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M.O.1 was marked. When the accused was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of the Code of Criminal Procedure, for which the accused prayed for mercy. No witness was examined on the side of the accused.

7.After observing the legal mandates, consequent to the completion of trial and hearing both sides and on appreciating the evidence on record, the learned trial Judge found him guilty and convicted him for a lesser charge under Section 304(ii), 506(ii) IPC and sentenced him as stated *supra*.

8.Aggrieved over that, the appellant has preferred this appeal.

9.The learned counsel for the appellant submitted that there were injuries on the body of the accused also and that would show the scuffle between the deceased and the accused. Though this fact has been revealed from the evidence of PW1, the respondent police has not investigated on this aspect before filing the charge sheet. So, it is claimed



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by the learned counsel for the appellant that the deceased had quarreled with the accused and during that ,course they attacked each other, then the deceased fell down and sustained injuries. He further submitted that the deceased had already suffered heart disease and that can only be the reason for his death and not due to the injuries.

10.The learned Government Advocate (Crl.Side) appearing for the respondent police submitted that apart from the defacto complainant, other eyewitnesses had also supported the case of prosecution and their evidence would reveal that it was only the accused who had beaten up the deceased and caused his death. He further submitted that the Post-Mortem Certificate and the evidence of PW13, Doctor who had done the Post-Mortem would confirm that the deceased had died only due to the injuries sustained on his head.

11.I have given my anxious consideration to the submissions made on either side and carefully perused the records.

12.In this case, PW1 the son of the deceased, is not only



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giving the complaint but his complaint reveals that he is an eyewitness to the occurrence. As per his complaint, on the day of occurrence on 21.02.2015, at about 3.15p.m., the defacto complainant and his father Chinnaswamy and one Rangaswamy were conversing in front of one Adaikka konar house and during that time, the accused came there and abused Chinnaswamy and hit him with the wooden log on his head and thigh and caused injuries. His evidence would also reveal the same fact.

13.The motive attributed against the accused was not denied by the accused. The accused had developed misunderstanding against the wife of the accused that she was acting along with deceased to bring Sorcerers to his house. As the accused had objected for such act, it created a misunderstanding between the accused and his wife and they started to live separately. The accused thought that this had happened also due to the interference of the deceased in his family affairs. Thus made him to get angry with the deceased.

14.The accused did not have any premeditation to murder the deceased, on the day of occurrence. The accused saw the deceased along



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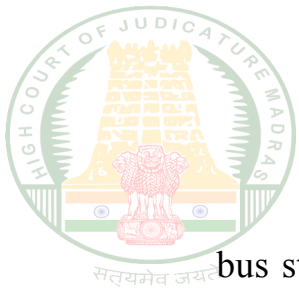
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with PW1 and PW2 in front of PW4's house. The learned trial judge has not chosen to find the accused guilty for the offence of murder.

15.Both PW1 and 2, in their evidence, have stated that the accused was also taking treatment in the Annavasal Government Hospital for the injuries suffered by him. Thereafter, the police had discharged him and kept him in the police station. PW1 had seen the accused in the police station, when he went there to lodge the complaint. PW2 has stated that the accused had attacked the deceased with MO1-Wooden Log and the deceased had attacked the accused with stick.

16.As the occurrence had taken place in front of the house of PW4, he turns to be an important witness. But he turned hostile. PW3 also remains hostile. PW5 and PW6 are also accidental witnesses. But they have also turned hostile.

17.When PW1 himself stated that the accused was available in the police station, PW7, who is the attesting witness in the confession statement of the accused has stated that the accused was arrested in the



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bus stand and during that time, he had given a confession statement and that was used as a weapon for the occurrence was recovered from the confession leading to the recovery.

18.PW10, Doctor examined the deceased, when he was brought to the hospital and he has stated that the deceased had injuries on the right side of his head and left side of his thigh. He further stated that those injuries would have caused due to the attack inflicted on the deceased with a wooden log.

19.Though PW1 and PW2 have stated that the accused had attacked the deceased on the left side, PW10, Doctor has stated that the injuries were found on the right side of his head. There was one lacerated injury, which was found in the front part of his head. The eyewitnesses inaccurately described that the deceased had sustained injuries on his 'left side' alone. But that alone would not make their evidence unreliable.

20.PW1 and PW2 were present at the time of occurrence. The deceased was PW1's father. He would have got agitated and would have



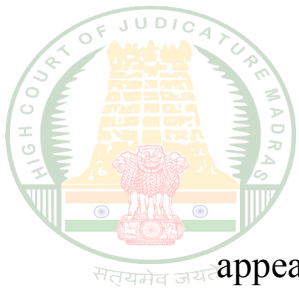
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been confused. As PW1 and 2 were present at the time of occurrence and the deceased was PW1's father, he would have been agitated and hence confused while describing 'right' or 'left' side. Even a normal person sometimes confuses with 'right' or 'left' side. This minor contradiction alone cannot be considered as a doubtful circumstance to doubt the presence of PW1 and 2 at the time of occurrence.

21.Even though the accused had stated that the deceased was suffering from heart disease, there was no medical document to prove the same. But the evidence of PW13, Doctor, who had conducted Post-mortem has stated that the deceased had died only due to the injuries suffered on his head. PW13, doctor has also stated that such injuries can be caused by hitting the deceased with wooden log.

22.From the evidence of PW16, it is seen that the wooden log is a kind of firewood. So there cannot be any preparation in the mind of accused to kill the deceased and the injuries on the body of the accused show that there was a scuffle between the deceased and the accused, under which, the accused had also got injuries. The weapon used by the accused



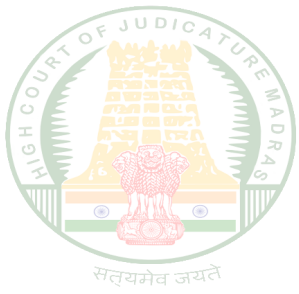
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appears to be a chance weapon and not the one, used for beating.

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23.The learned counsel for the appellant submitted that the accused has acted under self-defense and he ought not to have been convicted under Section 304(ii) IPC. It is further submitted that the investigation agency has not taken any efforts to find out, who is the aggressor in the occurrence.

24.However, the accused did not choose to prefer any complaint by stating that it was the deceased, who had picked up quarrel which ended in the act of self-defense. Even during the cross examination of investigation officer, such a stand was not taken by the accused. The accused has not even suggested to the investigation officer that the injuries on the body of the deceased had caused only due to his fall on. It was suggested to PW16 that the complaint given by the accused was suppressed and his complaint has been returned as per the dictation of the investigation officer.

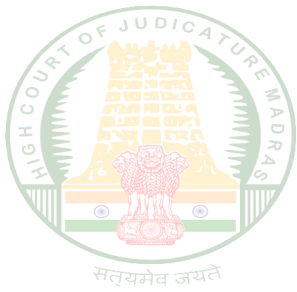


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25.The learned trial judge has observed that PW2 has stated in his evidence that the injuries on both the accused and the deceased were caused when they quarreled by attacking each other.

26.It shows that the accused did not have any intention to cause any fatal injury on the body of the deceased so as to cause his death. No doubt, the accused had attacked the deceased due to a fight. Even the trial Court has observed that there was a scuffle between the deceased and the accused and both of them have attacked each other. Even though the accused had caused a serious injury on the deceased, the investigation officer ought to have investigated on that aspect, who had started the act of aggression at the first instance by obtaining a complaint statement from the accused also. The investigation officer had ignored the injuries on the body of the accused, even though the accused was brought from the hospital after being examined by a Doctor.

27.The statement of the prosecution that he was arrested near the bus stand is not reliable. Even according to PW1, he found the accused at the police station when he went there to lodge a complaint.

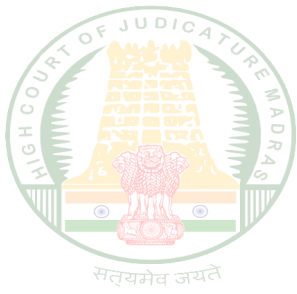


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28.The learned counsel for the appellant in support of his contention cited the decision in ***Durairaj Vs Inspector of Police, Siruganur Police Station, Trichy***, reported in ***2023(1) MLJ (Crl) 474***, wherein, it is held that the accused person retaliated during the course of self-defense and he slightly exceeded his right of private defense and that will not be considered as homicide. For the sake of clarity, the relevant paragraphs of the above judgment is extracted hereunder:

“22. It is now a settled law that if a man has a real justification to exercise his right of private defence, he cannot be held liable if he slightly exceeds his right of private defence, particularly when he is face to face with a murderous attack, for these things cannot be weighed in golden scales. A person, who is exercising his right of private defence, is not expected to modulate his defence step by step or tier by tier and the Court has to look into the overall circumstances and see if the right exercised by the accused is totally disproportionate to the injury sought to be averted.



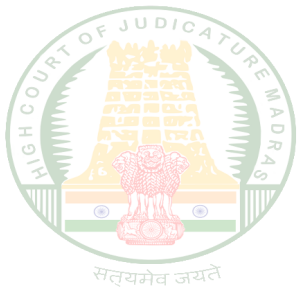
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23. In the present case, there is already an allegation that D1 and D2 along with one Lakshmanan, had caused the murder of one Natarajan and Nagarajan, who are the relatives of the accused persons due to the same property dispute. It is seen that there was exchange of words in the scene of crime and A2 and A3 had sustained head injuries after being attacked with M.O.2 and M.O.3. As a right of private defence, the accused persons retaliated and unfortunately, it ended in the demise of D1 and D2. In the light of a murderous attack faced by the accused persons, it cannot be held that they exceeded their right of private defence.”

29.In the instant case, the accused has not suffered any serious injuries, even though it is accepted that he was attacked by the deceased. So it cannot be the case, where the deceased engaged himself in causing murderous attack on the accused.



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30.In the very same Judgment cited *supra*, it is held that the failure of the prosecution to explain the minor and superficial injuries sustained by the accused cannot overtake the clear, cogent, consistent, independent and creditworthy evidence of the prosecution witnesses.

31.The above principle has been laid down by the Hon'ble Supreme Court in *State of Gujarat v. Bai Fatima* reported in **1975 SCC Crl 384**. In the said Judgment it is held that non- explanation of the injuries sustained by the accused may not affect the case of prosecution, provided, the injuries sustained by the accused are minor and superficial and the evidence available on the side of the prosecution is so clear and cogent, consistent and creditworthy, which can outweigh the effect of the omission on the part of the prosecution to explain the injuries on the accused.

32.In the instant case also, for the injuries suffered by the accused, he was treated as an outpatient and on the same day itself, he was discharged and brought to the police station. On the other hand, the

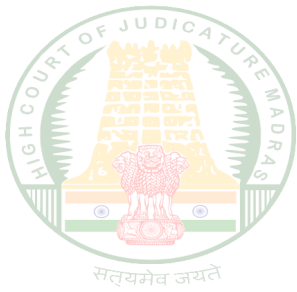


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evidence with regard to the injuries suffered by the deceased and the motive of the accused against the deceased have been explained in accurate and clear terms and hence, the whole of the case of the prosecution cannot be brushed aside, due to the some minor omission on their part. The injuries caused by the accused on the head of the deceased was the reason for his death. To this effect the Post-Mortem Certificate has been given and the Doctor, who had issued the same has also deposed evidence on this aspect. It is right for the learned trial judge to find the accused guilty under Section 304(ii) IPC.

33.The learned counsel for the appellant submitted that the accused is not a habitual offender and he is a senior citizen and hence some indulgence may be shown in the matter of punishment. Considering the fact that the accused is not a habitual offender, this Court is inclined to modify the conviction and sentence imposed on the appellant.



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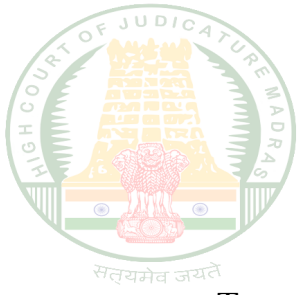
34. In the result,

- *this Criminal Appeal is partly allowed;*
- *the substantive sentence of rigorous imprisonment for a period of 3 years imposed on the appellant/accused under Section 304(ii) IPC is reduced to 2 YEARS and the fine amount already imposed by the trial Court remain unaltered;*
- *the substantive sentence imposed by the trial Court under Section 506(ii) IPC stands confirmed;*
- *the period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C;*
- *the bail bond executed by the appellant shall stand terminated and the trial Court is directed to secure the appellant into custody for serving the remaining portion of the sentence.*

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NCC :Yes/No
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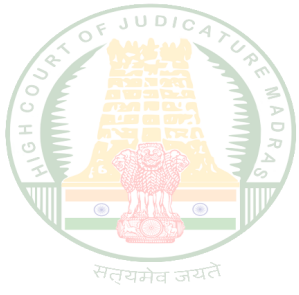
To

1.The Additional District and Sessions Judge,
Additional District and Sessions & Essential Commodities
Act Cases and Special Court for NDPS Act Cases, Pudukottai

2. The Inspector of Police,
Annavasal Police Station,
Pudukottai District
Cr No.19/2015.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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DR.R.N.MANJULA, J.

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JUDGMENT IN

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