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CrI.A(MD) No.605 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	13.07.2026
Pronounced on	20 .07.2026

CORAM

**THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CrI.A(MD) No.605 of 2023

Narayanan

... Appellant

vs.

The Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar.

... Respondents

Prayer:-Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment of conviction and sentence dated 26.10.2022 passed by the learned Additional District and Sessions Judge, Virudhunagar in S.C.No.197 of 2015.

For Appellant Mr.S.M.A.Jinnah

For Respondent Mr.D.Venkatesh
Counsel for State of Tamil Nadu (CrI.Side)

J U D G M E N T

A.D.JAGADISH CHANDIRA,J.

The instant criminal appeal is filed by the accused (hereinafter referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence dated



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26.10.2022 passed by the learned Additional District and Sessions Judge, Virudhunagar (hereinafter referred to as “the Trial Court”) in S.C.No.197 of 2015 (hereinafter referred to as “the impugned judgment”).

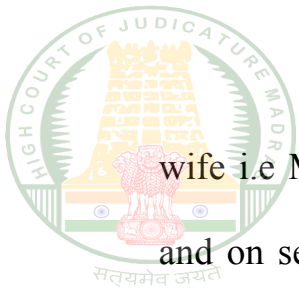
2. *Vide* the impugned judgment, the Trial Court convicted the appellant and sentenced him as tabulated below:

Penal Provision	Imprisonment	Fine amount
294(b) of IPC	One month	-
302 of IPC	Life Imprisonment	Rs.5000/- I/d to undergo six months rigorous imprisonment
341 of IPC	One month simple imprisonment	-
All the sentences shall run concurrently. Period of detention already undergone by the appellant was ordered to be set off		

3. The case of the prosecution, in a nutshell, is as follows;

3.1. The appellant is the younger brother of Lakshmi (PW1) and Karupasamy (hereinafter referred to as “the deceased”) is the son of Lakshmi (PW1).

3.2. On 29.06.2015, the appellant's daughter's marriage was solemnized in Usilampatti and the marriage reception was held at the house of appellant in the evening of the very same day. After the function, the appellant quarreled with his



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wife i.e Muthulakshmi in respect of the gift money received during the marriage and on seeing the said quarrel, the deceased intervened and attempted to resolve the quarrel by approaching the appellant. However, the appellant dismissed the deceased's efforts at the threshold by asking him to restrain himself from interfering in his issues with his wife.

3.3. Thereafter, at around 10:30 p.m. on 29.06.2015, when the deceased was returning home and was near the Kshatriya Girls Higher Secondary School which is situated about 10 feet away from their house, the appellant waylaid the deceased and confronted him by calling him a bastard. On witnessing the quarrel, the said Lakshmi (PW1) attempted to resolve the issue but before she could do so, the appellant suddenly attacked the deceased on the forehead near his eyebrow with a chisel (MO1), owing to which, the deceased fell unconscious. This was also witnessed by Sivaganesan (PW2) who was withdrawing money from the Tamil Nadu Mercantile Bank ATM (for brevity "the ATM") situated opposite to the Kshatriya Girls Higher Secondary School and Kathirvel (PW3) who was returning home *via* the ATM. After attacking the deceased, the appellant fled the scene dropping the chisel (MO1) there.

3.4. Suresh Kumar (PW13) who has a lorry office near the place of occurrence informed the 108 ambulance. By that time, Sivaganesan (PW2) and



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Kathirvel (PW3) took the deceased in their motorcycle to Virudhunagar Government Hospital. On their way, the ambulance also arrived and took the deceased to the Virudhunagar Government Hospital.

3.5. On reaching the Virudhunagar Government Hospital at around 11.00 p.m. on 29.06.2015, Dr. Devi Prabha Kalyani (PW24) admitted and treated the deceased. While treating the deceased, she prepared an accident register (Ex.P11) noting that the deceased had suffered a 2cm x 1cm x 2cm deep lacerated injury on the left side of his forehead and an abrasion on his left ear.

3.6. Subsequently, information from Virudhunagar Government Hospital was sent to one Ramakrishnan, the Sub-Inspector of Police (PW20), Virudhunagar Bazaar Police Station and upon receipt of the information, the said Sub-Inspector of Police (PW20) visited the Virudhunagar Government Hospital, where he found the deceased unconscious. Therefore, he waited for the deceased to regain consciousness and upon him regaining consciousness at about 6.00 a.m. on 30.06.2015, he recorded his complaint statement (Ex.P1). The signature (Ex.P2) of the said Lakshmi (PW1) was also obtained attesting the complaint statement (Ex.P1). Based on the complaint statement (Ex.P1), the said Sub-Inspector of Police (PW20) registered a First Information Report (Ex.P5) in Cr. No.266 of 2015 on the file of the Virudhunagar Bazaar Police Station for the offences punishable



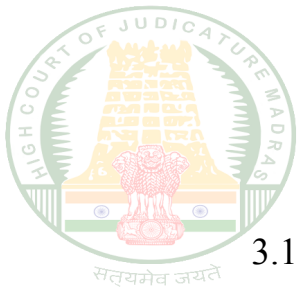
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under Section 294 (b), 324, 341 and 506 (ii) IPC and took up the same for investigation. The Sub-Inspector of Police (PW20) went to the scene of occurrence at around 7.00 AM and prepared an Observation Mahazar (Ex.P6) and Rough Sketch (Ex.P7) in the presence of independent witnesses Kannan (PW8) and Anthonypitchai (PW9). Thereafter, he (PW20) examined various witnesses and recorded their respective statements.

3.7. At about 4.00 p.m., on 01.07.2015, he (PW20) arrested the appellant and sent him for remand.

3.8. On 07.07.2015, he (PW20) received an intimation from the Madurai Rajaji Government Hospital that the deceased had passed away. Hence, due to the change in circumstance, he entrusted the file of the case in Cr. No.266 of 2015 before Murugesan, the In-charge Inspector of Police (PW23), Virudhunagar Bazaar Police Station for further investigation.

3.9. At about 9:00AM, on 08.07.2017, the In-charge Inspector of Police (PW23) took up the case for investigation and went to the Madurai Rajaji Government Hospital and drew an Inquest Report (Ex.P9). Thereafter, he sent the body of the deceased for conducting autopsy through one Vidiवेल्लि, Head Constable (PW19).

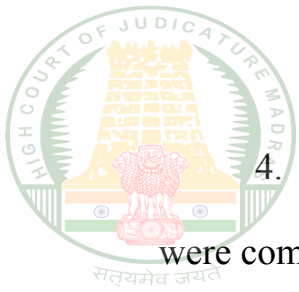


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3.10. Following that, at about 12.10 hrs. on the same day, Dr. Rajavelu (PW22) conducted autopsy on the body of the deceased at the Madurai Rajaji Government Hospital and issued a Postmortem Certificate (Ex.P8) reflecting a 18 cm x 1 cm bone depth 'C' shaped sutured wound on the left temporoparietal region and a 2 cm. x 1 cm. healed wound on the outer aspect of the left upper arm (14 cm. below the shoulder). On observation of the various injuries, the doctor (Ex.P8) opined that the deceased would appear to have died due to the said head injury or its complications.

3.11. Hence, on the basis of the opinion received, the In-charge Inspector of Police (PW23), by way of an alteration report (Ex.P10), altered the offences by including Section 302 IPC. Thereafter, from 20.07.2015, one Ramnarayanan, Inspector of Police (PW21), Virudhunagar Bazaar Police Station, continued the investigation and examined the remaining witnesses and recorded their respective statements.

3.12 Lastly, on 26.08.2015, the final report was filed by the Inspector of Police (PW21), against the appellant for the offences under Sections 294 (b), 324, 341 and 506 (ii) IPC and the same was taken cognizance in PRC No.12 of 2015 by the learned Judicial Magistrate No. I, Virudhunagar.



4.

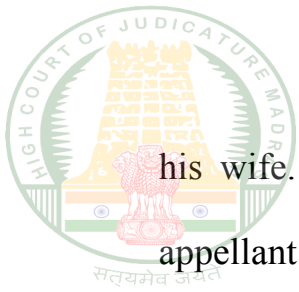
On appearance of the appellant, the provisions of Section 207 Cr.P.C.

were complied with and thereupon, the case was committed to the Court of Session in S.C. No. 197 of 2015 and made over to the Trial Court. The Trial Court framed charges against the appellant for having committed the offences under Sections 294 (b), 324, 341 and 506 (ii) IPC. When the charges were read over and explained to the appellant, he pleaded not guilty.

5. In order to prove the prosecution case, the prosecution examined 24 witnesses as P.W.1 to P.W.24 and marked Ex.P1 to Ex.P11 and M.O.1.

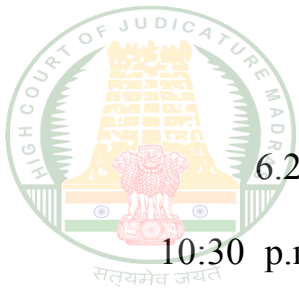
6. The evidence of the key witnesses is as follows:

6.1. The mother of the deceased, Lakshmi (P.W.1.) deposed that the deceased was her second son and the appellant was her younger brother. The appellant's daughter's marriage took place at Usilampati and the reception took place in the appellant's house situated in Periyapettai, Virudhunagar and all the family members attended the same. After the reception, the appellant was quarrelling with his wife in respect of the gift money received and seeing the said quarrel, the deceased intervened and attempted to resolve the quarrel by approaching the appellant. However, the appellant dismissed the deceased's efforts at the threshold by asking him to restrain himself from interfering in his issues with



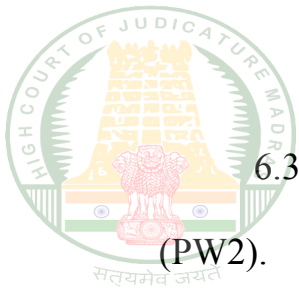
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his wife. Owing to the said tension, all the family members calmed down the appellant and the deceased. Thereafter, she asked the deceased to come home and left for her house, following which, at around 10:30 p.m. on 29.06.2015, when the deceased was near the Kshatriya Girls Higher Secondary School which was situated about 10 feet away from their house, the appellant confronted the deceased by calling him a bastard. On witnessing the quarrel, she attempted to resolve the issue but before she could do so, the appellant suddenly attacked the deceased near his eyebrow with a chisel (M.O.1). Sivaganesan (PW2) and Kathirvel (PW3) were near the said place of occurrence by chance and on witnessing the deceased falling unconscious, they took him in their motorcycle. On their way to the hospital, the ambulance arrived and took the deceased to the Virudhunagar Government Hospital. The Police visited him during the night. However, since the deceased regained conscious only on the next morning i.e. 6:00 a.m. at 30.06.2015, the police took his complaint statement (ExP1). She further deposed that considering the nature of the injuries, the deceased was taken to the Madurai Rajaji Government Hospital and an operation was conducted. Thereafter, treatment was given to the deceased for one week till he eventually succumbed to his injuries on 07.07.2025 at around 7:00 p.m. Autopsy was done and the body of the deceased was returned to her. She identified her signature (Ex P2) in the complaint statement (Ex.P1) and further identified the chisel (M.O.1) as the weapon used by the appellant.



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6.2. Sivaganesan (PW2) deposed that he knew the appellant. At around 10:30 p.m. on 29.06.2015, when he was withdrawing money from the ATM situated opposite to the Kshatriya Girls Higher Secondary School, he witnessed the appellant confronting the deceased by calling him a bastard. While so, the appellant attacked the deceased on the forehead near his eyebrow with a chisel (M.O.1) he had in his hand. On witnessing the same, Lakshmi (PW1) came running towards the deceased and on being startled by the sight of them, the appellant ran away. He along with one Kathirvel (PW3) informed the ambulance and since there was a delay while waiting for the ambulance, they took the deceased in their motorcycle. When they crossed the MGR statue and reached near the bridge, the ambulance arrived and took the deceased to the Virudhunagar Government Hospital. Thereafter, he enquired and found that during the appellant's daughter's marriage reception, the appellant was quarrelling with his wife in respect of the gift money received and hence, the deceased attempted to settle the said quarrel. Keeping such interference by the deceased in mind, the appellant attacked the deceased. He informed whatever he learnt, to the police. He further deposed that the deceased was taken to the Madurai Rajaji Government Hospital where treatment was given to the deceased for one week till he eventually succumbed to his injuries. He identified the chisel (M.O.1.) as the weapon used by the appellant.



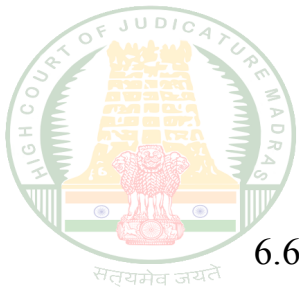
6.3. Kathirvel (PW3) deposed almost on identical lines as Sivaganesan (PW2).

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6.4. Suresh Kumar (PW13) deposed that around 10:00 p.m., when he was at his office he heard a loud sound, upon which he found the appellant attacking his relative on his head with a chisel (M.O.1.). Therefore, he informed the ambulance and since there was a delay in the ambulance reaching the scene, they took the deceased on a motorcycle. On their way to the hospital, the ambulance had reached and took the deceased to the Virudhunagar Government Hospital, after which, he returned to his office and later, after one week, he heard that the deceased had died.

6.5. The father of the deceased, Chandrasekar (PW15) deposed that the deceased, along with his family, attended the appellant's daughter's marriage function where the appellant and the deceased fought as the deceased has sought the gift money received during the marriage. On the same day of the marriage, the appellant, at around 10:30 p.m., attacked the deceased near the Padma Nagar Petrol Bunk. When he chased the appellant, he ran away. The people at the scene helped in taking the deceased to the Government Hospital and from there, the deceased was taken to Madurai for further treatment where he eventually succumbed to his injuries.

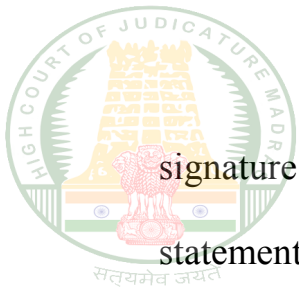
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6.6. Karuppasamy (PW18) deposed that when he was working as a Special Sub Inspector of Police at the Virudhunagar Bazaar Police Station, on 07.07.2015, he received case papers in Crime No.262 of 2015 from the Incharge Inspector of Police (PW23) and handed over the same to learned Judicial Magistrate No. I, Virudhunagar.

6.7. Vidivelli (PW19) deposed that when he was working as Head Constable at the Virudhunagar Bazaar Police Station, at about 7.30 AM on 08.07.2015, he received the passport from the Inspector of Police (PW23) and hence, went to the Madurai Rajaji Government Hospital and identified the body of the deceased. Thereafter, he awaited the conclusion of the autopsy and thereafter, handed over the body of the deceased to the relatives of deceased.

6.8. Ramakrishnan (PW20) deposed that when he was working as the Sub Inspector of Police at the Virudhunagar Bazaar Police Station, at about 11.10 p.m. on 29.06.2015, he received an intimation from the Virudhunagar Government Hospital, subsequent to which, he visited the said hospital, where he found the deceased unconscious. Therefore, he waited for the deceased to regain consciousness and upon him gaining consciousness at about 6.00 AM on 30.06.2015, he recorded the complaint statement (Ex.P1) of the deceased and the



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signature (Ex.P2) of Lakshmi (PW1) was also obtained attesting the complaint statement (Ex.P1). Based on the complaint statement (Ex.P1), he registered an FIR (Ex.P5) in Cr. No.266 of 2015 on the file of the Virudhunagar Bazaar Police Station for the offences punishable under Section 294 (b) IPC, Section 324 IPC, Section 341 IPC and 506 (II) IPC and took up the same for investigation. Later, he went to the scene of occurrence at around 7.00 AM and prepared an Observation Mahazar (Ex.P6) and Rough Sketch (Ex.P7) in the presence of independent witnesses Kannan (PW8) and Anthonypitchai (PW9). Thereafter, he (PW20) examined various witnesses and recorded their respective statements. Further, at about 4.00 p.m., on 01.07.2015, he arrested the accused and sent him for remand. Lastly, on 07.07.2015 he received an intimation from the Madurai Rajaji Government Hospital that the deceased had demised. Hence, due to the change in circumstance, he placed the case file before the In-charge Inspector of Police (PW23) for further investigation.

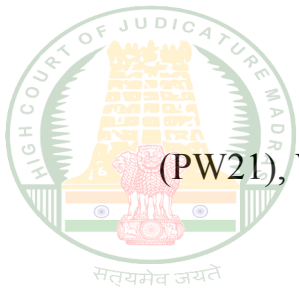
6.9. Ramnarayanan (PW21) deposed that when he was working as the Inspector of Police at the Virudhunagar Bazaar Police Station, he continued the investigation and examined the remaining witnesses and recorded their respective statements. Further, on 26.08.2015, he filed the final report against the appellant for the offences under Sections 341,294(b) and 302 of IPC.



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6.10. Dr. Rajavel (PW22) deposed that when he was working as an Assistant Professor in Madurai Rajaji Government Hospital, at about 12:10 p.m. on 08.07.2015, based on the requisition received from the Inspector of Police at the Virudhunagar Bazaar Police Station, he conducted the autopsy of the body of the deceased and issued a Postmortem Certificate (Ex.P8) reflecting a 18 cm. X 1 cm. bone depth 'C' shaped sutured wound on the left temporoparietal region and a 2 cm. x 1 cm. healed wound on the outer aspect of the left upper arm. On observation of the various injuries, he opined in his Postmortem Certificate (Ex.P8) that the deceased would appear to have died due to the said head injury or its complications.

6.11. Murugesan (PW23) deposed that when he was working as the In-charge Inspector of Police at the Virudhunagar Bazaar Police Station, based on the complaint statement (Ex.P1), an FIR (Ex.P5) was registered in Cr. No.266 of 2015 on the file of the Virudhunagar Bazaar Police Station for the offences punishable under Sections 294 (b), 324, 341 and 506 (ii) IPC and since the deceased had died, the said case was transferred to him for further investigation. Thereafter, on 08.07.2017, he sent the body of the deceased for conducting the autopsy. Since the deceased had died during the investigation of the case, he, by way of an alteration report (Ex.P10), altered the offences already registered, by including Section 302 IPC. Lastly, he handed over the case to one Ramnarayanan, the Inspector of Police



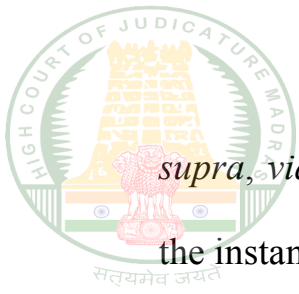
(PW21), Virudhunagar Bazaar Police Station, for further investigation.

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6.12. Dr. Devi Prabha Kalyani (PW.24) deposed that when she was working as an Assistant Doctor at the Virudhunagar Government Hospital, at about 11.00 p.m. on 29.06.2015, the deceased was brought to the said hospital through ambulance. She was informed that a known person had attacked the deceased with a chisel (MO1). The deceased was inebriated. While treating the deceased, she prepared an accident register (Ex.P11) noting that the deceased had suffered a 2 cm. x 1 cm. x 2 cm. deep lacerated injury on the left side of his forehead and an abrasion on his left ear. The deceased was admitted as an inpatient to the male operation wing.

7. After examination of the prosecution witnesses, when the appellant was questioned under Section 313 of Cr.P.C. on the incriminating circumstances appearing against him, he blatantly denied the same as false without offering any explanation whatsoever and he did not examine any witness or mark any document on his side.

8. The Trial Court, after hearing the arguments on both sides, found the appellant guilty and convicted and sentenced him as tabulated at paragraph 2,



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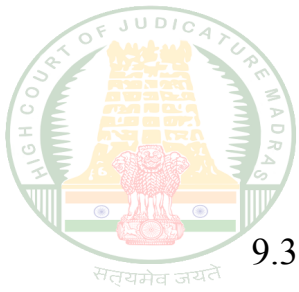
supra, vide the impugned judgment and challenging his conviction and sentence,
the instant criminal appeal has been filed by the accused i.e. appellant.

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9. The learned counsel for the appellant submitted as follows:

9.1. The alleged occurrence is said to have taken place at 10.30 p.m., and therefore, the presence of the eyewitnesses i.e. Lakshmi (PW1), Sivaganesan (PW2), Kathirvel (PW3), Suresh Kumar (PW13) and Chandrasekar (PW15) at the scene of occurrence cannot be believed. Moreso, though the alleged occurrence is said to have taken place in front of the ATM, the prosecution has not taken any earnest effort to obtain and produce the CCTV footage to prove the occurrence and hence, the alleged occurrence itself is highly doubtful.

9.2. The witnesses have all categorically stated that the scene of occurrence is a busy road and therefore, the non-examination of independent witnesses creates a grave doubt in the prosecution's case. Further, in this regard, the Trial Court failed to take into consideration that if the scene of occurrence was indeed a busy road, then, there ought not to have been any delay in the registration of the FIR (Ex.P5).

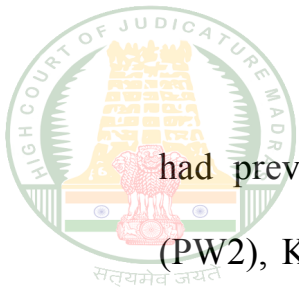


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9.3. In the alternative, the appellant and the deceased are close relatives. The occurrence is alleged to have occurred immediately after the quarrel. The deceased is also said to have been in an inebriated condition. The appellant as well as the deceased are carpenters by profession and hence, the weapon used is also a chisel (MO1) used for carpentry. The occurrence is alleged to have happened on 29.06.2015 and the deceased was initially admitted to the Virudhunagar Government Hospital and thereafter, was shifted to the Madurai Rajaji Government Hospital where he eventually died after 8 days on 07.07.2015. Neither the doctor who had treated the deceased nor the case sheet i.e. treatment history was marked by the prosecution and hence, there is no evidence to conclusively prove that the injury was sufficient to cause the death of the deceased. In such circumstances, an offence under Section 302 IPC cannot be made out and the appellant ought to have been convicted under Section 304 (II) IPC. While sentencing the appellant, his old age may be taken into consideration and a lesser sentence may hence be imposed on him.

10. *Per contra*, the learned counsel appearing for the respondent submitted as follows:

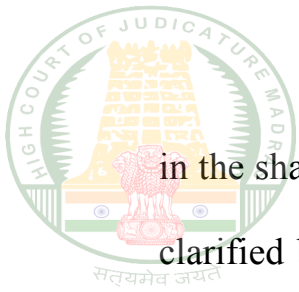
10.1. The occurrence took place while the deceased was returning home from a function at the appellant's house, wherein the appellant and the deceased



had previously quarreled. The eyewitnesses i.e. Lakshmi (PW1), Sivaganesan (PW2), Kathirvel (PW3), Suresh Kumar (PW13) and Chandrasekar (PW15) who were present at the scene of occurrence had also witnessed the appellant's overt act and informed the ambulance and took the deceased to the Virudhunagar Government Hospital. Therefore, the said eyewitnesses have, through their cogent testimonies, categorically established that the appellant attacked the deceased on his forehead with his chisel (M.O.1) inflicting bodily injuries which eventually caused the death of the deceased. The testimony of the eyewitnesses are to be believed as they are cogent with one another and further, even the complaint statement (Ex.P1) of the deceased corroborates with their testimonies by confirming their presence at the scene of occurrence. Therefore, the overt act of the appellant stands proven beyond all reasonable doubt.

10.2. The complaint statement (Ex.P1) itself was lodged by the deceased, when he was admitted to the hospital and therefore, the same may be treated as a dying declaration.

10.3. The weapon used by the appellant is his Chisel (M.O.1) and owing to the nature of the weapon, the deceased has also sustained a linear lacerated injury as confirmed by the Accident Register (Ex.P11). Further, the same is also corroborated by the testimony of Dr. Devi Prabha Kalyani (PW24). The variation



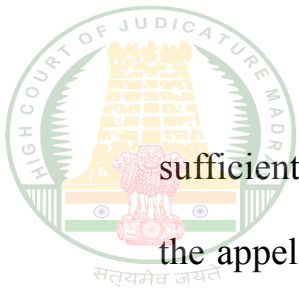
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in the shape of the injury as noted in the Postmortem Report (Ex.P8) has also been clarified by Dr. Rajavelu (PW22) who had confirmed that the 'C' shaped cervical injury was due to the sutures. Therefore, the injury sustained by the deceased stands proven beyond all reasonable doubt.

10.4. When the overt act of the appellant as well as the resultant injury has been categorically proven by the prosecution beyond all reasonable doubt, the Trial Court was right in convicting the appellant for life and therefore, the appeal may be dismissed.

11. We have given our careful and anxious consideration to the rival contentions put forward and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction and sentence.

12. On doing so, this Court finds that it is the case of the prosecution that the appellant caused the death of the deceased by inflicting a bodily injury on his forehead with a chisel (M.O.1). From the materials available on record, this Court further finds the case of the prosecution to be well supported by the evidence of the eyewitnesses i.e. Lakshmi (PW1), Sivaganesan (PW2), Kathirvel (PW3), Suresh Kumar (PW13) and Chandrasekar (PW15). Their testimonies are cogent and

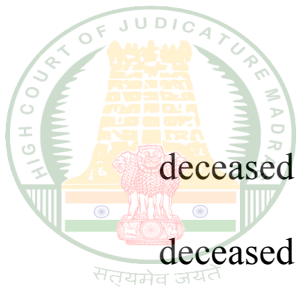


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sufficient to corroborate one another to the extent that all of them have witnessed the appellant attacking the deceased with a chisel (M.O.1) owing to which he fell unconscious and as a collective effort by the eyewitnesses, the deceased was taken to the hospital where he eventually succumbed to his injuries. Contrary to the allegation of the appellant that the presence of the eyewitnesses is doubtful, this Court finds no material whatsoever to doubt the presence of the eyewitnesses and is rather persuaded by the cogency of their testimonies to not only believe their presence but also believe the occurrence.

13. On the other hand, the deceased was taken to the Virudhunagar Government Hospital wherein the attending doctor, Dr. Devi Prabha Kalyani (PW24), while treating the deceased, prepared an accident register (Ex.P11) noting that the deceased had suffered a 2 cm x 1 cm x 2 cm deep lacerated injury on the left side of his forehead and an abrasion on his left ear. Her testimony also corroborates the contents of the accident register (Ex.P11). Therefore, an injury consistent with the weapon i.e. chisel (M.O.1) has also been proved by the prosecution.

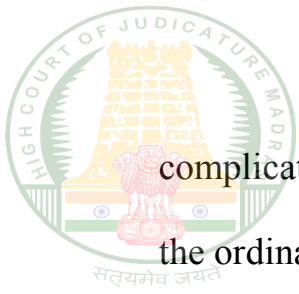
14. Moreso, the Sub Inspector of Police (PW20), on receipt of information from the Virudhunagar Government Hospital, visited the hospital on the night of the occurrence itself and was, in fact, not able to record the statement of the



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deceased only due to him having lost consciousness. Immediately, upon the deceased regaining consciousness, his complaint statement (Ex.P1) was recorded and on the basis of the same, a case was also instantaneously registered. Therefore, the sequence of events is cogent and there is no inordinate delay on the side of the prosecution as alleged by the appellant and therefore, this Court finds no doubt or infirmity in the complaint statement (Ex.P1) or the First Information Report (Ex.P5).

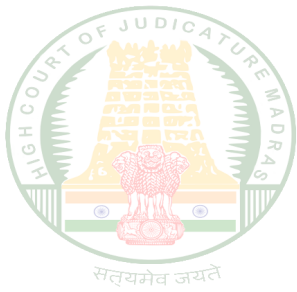
15. However, the contention of the appellant in respect of the failure of the prosecution to prove the proximate cause of death needs to be looked into. As per the prosecution's case, the deceased was initially admitted to the Virudhunagar Government Hospital on 29.06.2015 and later, he was shifted to Madurai Rajaji Government Hospital for further treatment on 30.06.2015 where he eventually succumbed to his injuries on 07.07.2015. On perusal of the records available, this Court finds that there is no material whatsoever to suggest that the bodily injury caused by the appellant's overt act was sufficient to cause the death of the deceased. Further, this Court finds that even the testimonies of both the doctors (PW22 and PW24) do not suggest the said injury was sufficient to cause the death of the deceased. In fact, Dr. Rajavelu (PW22), the doctor who conducted the autopsy, has also issued his Postmortem Certificate (Ex.P8) opining that the deceased would appear to have died due to the said head injury or its



complications but has not deposed that the injury was conclusively sufficient, in the ordinary course of nature, to cause the death of the deceased.

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16. Taking into consideration the nature of injuries and further taking into consideration the long time gap between the time of infliction of the said injury and the time of death of the deceased and upon giving due consideration to the failure of the prosecution to lead evidence as to the nature and particulars of treatment, this Court finds that it cannot be conclusively found that the proximate cause of death was the said injury. Having found so, this Court finds it useful to place reliance on **Harish Kumar v. State (Delhi Admn.) [1994 Supp (1) SCC 462]**, wherein, the Hon'ble Supreme Court has held that when no sufficient material as to the nature of the treatment given to the deceased during his time in the hospital were available on record, even though the injury may have resulted in the death of the deceased, it cannot be conclusively said that it was sufficient to cause death. **Harish Kumar, supra**, has also been followed by various Coordinate Benches of this Court in **Rajan and others v. State by Inspector of Police [2002 LW (Crl) 789]**, **Thamilarasan v. State by Inspector of Police [2004 SCC OnLine Mad 777]**, **Ponnambalam v. State [2017 SCC OnLine Mad 28158]** and **Ramasamy v. State [2019 SCC OnLine Mad 24973]**. Instead of adverting to all these decisions thereby, making this judgment prolix, it would suffice to extract the relevant portion from **Ponnambalam, supra**, which is as follows:



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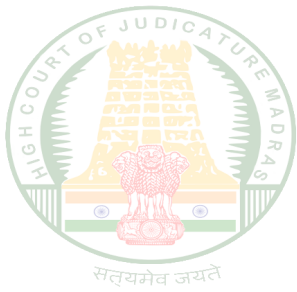
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“42. In *Harish Kumar v. State (Delhi Admn.)*, reported in 1994 Supp (1) SCC 462 : AIR 1993 SC 973, the Honourable Supreme Court has held that:

“6. The next question is what is the offence the appellant had committed. We have seen the evidence. Mr. V.C. Mahajan, learned counsel for the State contended that the appellant came one hour after the initial exchange of words; he came with sharp edged weapon and without any provocation he inflicted the injury on the deceased when he was held back by the acquitted co-accused. That would show that there is an intention to kill him, and as per the doctor the injury was sufficient in the ordinary course of nature to cause the death coming within clause thirdly of Section 300 IPC. It is no doubt true, as rightly contended, that if read in isolation by itself the offence may be murder, but when closely scrutinised the evidence in this behalf, we find that the evidence cannot conclusively show that the offence can be brought within clause thirdly of Section 300 IPC.

7. We have seen the nature of the injuries and also the time gap between the time of infliction of the injury till the date of death which was two days after the injury was inflicted. We have no sufficient material as to the nature of the treatment given to the deceased during those two days.

8. Under these circumstances, though the injury had resulted in the death of the deceased, we cannot conclusively say that it was sufficient to cause his death. Accordingly, the offence would be one falling under Section 304 Part II of IPC. In the result, we set aside the conviction under Section 302 IPC and sentence of life imprisonment and convict the appellant under Section 304 Part II of IPC and impose a sentence of imprisonment for a period of seven years? rigorous imprisonment. The appeal is accordingly allowed to the above extent



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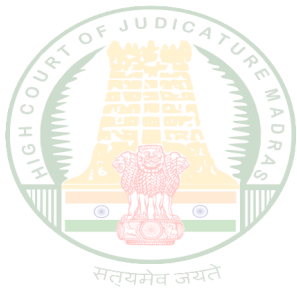
and the appellant shall undergo rigorous imprisonment for a period of seven years.”

43. The decision in *Harish Kumar's case* (cited supra) has been followed by the Division Bench of this Court in *Rajan v. State, rep.by Inspector of Police,*, reported in 2002 - L.W. (CrI.) 789 and also in a later decision of this Court in *Thamilarasan v. State by Inspector of Police, Sirkazhi*, reported in 2004 (1) MWN (Cr.) 208 (DB)., wherein, in Paragraph No. 13, it has been held as follows:

“13. It is also relevant to refer another Division Bench decision of this Court in *Rajan v. State*, represented by Inspector of Police, etc., reported in 2002 (2) L.W. (Cri) 769. It was contended before the Division Bench that even assuming the prosecution has proved its case beyond all reasonable doubts, A-1 cannot be found guilty under Section 302 IPC and at best he can be held guilty only under Section 304 Part II, IPC. In support of the said contention, out of two points referred to, the second point relates to non-examination of the Doctor who treated the deceased at CMC Hospital, Coimbatore. In that case, the deceased died after two days at the CMC Hospital, Coimbatore and that the nature of the treatment given to the deceased during that period has not been made known to the Court by marking the case sheet or by examining the Doctor concerned, who treated the deceased.”

While accepting the said contention, taking note of the fact that the Doctor who treated the deceased at the CMC Hospital, Coimbatore was not examined and case sheet not produced, the Division Bench has concluded thus: (para 15)

“15. We also find substance in the submission that the non-examination of the Doctor, who treated the deceased at the CMC Hospital, Coimbatore and failure to produce the case sheet would come to rescue of the accused from being found guilty under Section 302 IPC. As rightly pointed out by the learned counsel for the appellant, had the case sheet been marked and the Doctor who treated the deceased was examined, the



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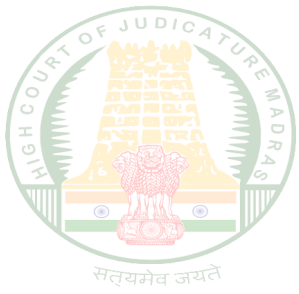


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accused would have been in a position to examine the same and cross examine on the aspects required.”

The Division Bench has also referred to a ruling of the Supreme Court in *Harish Kumar v. State (Delhi Administration)*, reported in 1994 Supp (1) SCC 462 : AIR 1993 S.C. 973 wherein the Supreme Court pointed out that the Court was not given proper materials to examine the nature of the treatment given to the deceased. After referring to the factual details, in the absence of examination of the Doctor, who treated the deceased and other materials like case sheet etc., the Supreme Court has observed thus:

“We have seen the nature of the injuries and also the time gap between the time of infliction of the injury till the date of death which was two days after the injury was inflicted. We have no sufficient material as to the nature of the treatment given to the deceased during those two days in the case before the Division Bench, the deceased died after a period of two days at the C.M.C. Hospital, Coimbatore. Even for the treatment for the period of two days, due to non-examination of the Doctor, who treated the deceased at the said hospital and failure to produce the case sheet, accepted the submissions made by the learned counsel for the appellant and found that A-1 can be held guilty



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only under Section 304 Part II and not under

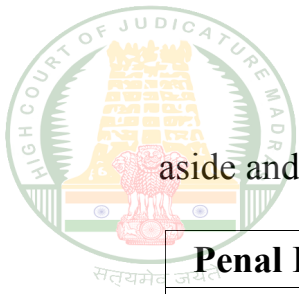
Section 302 IPC.”

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17. Thus, considering the facts of the present case, the evidence on record and keeping in mind the ratio of **Harish Kumar**, *supra*, this Court comes to the inevitable conclusion that since it is not the case of the prosecution that the overt act of the appellant was premeditated and since the injury has not been proven to have caused death in the ordinary course of nature, the present case cannot be brought within the confines of Section 302 IPC and thus, the conviction ought to have been under Section 304 (II) of IPC.

18. Lastly, this Court finds that insofar as the conviction under Section 341 IPC, the same may be sustained as the prosecution has established that the deceased was waylaid by the appellant before being attacked. However, this Court finds that insofar as the conviction under Section 294(b) IPC, the same is unsustainable as it is not the case of the prosecution that the bad words uttered by the appellant caused annoyance to others.

19. In the result, the Criminal appeal stands partly allowed. The impugned judgment of conviction and sentence dated 26.10.2022 passed by the Additional District and Sessions Judge, Virudhunagar in S.C.No.197 of 2015 is set



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aside and the appellant is convicted and sentenced as follows;

Penal Provision	Imprisonment	Fine amount
304(II) of IPC	Five (5) Years Rigorous Imprisonment	Rs.5000/- I/d to undergo three (3) months rigorous imprisonment
341 of IPC	One (1) month simple imprisonment	-

The aforesaid sentences shall run concurrently. The period of detention and imprisonment, if any, already undergone, shall stand set off. The trial Court is directed to take steps to secure the appellant to undergo the remaining period of sentence.

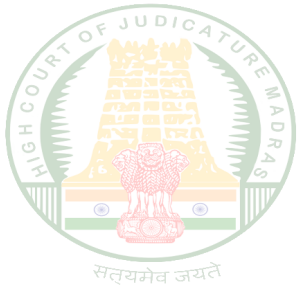
[A.D.J.C.,J.] [R.P.,J]
20.07.2026

Index : Yes/No

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To

1. The Additional District and Sessions Judge
Virudhunagar
2. The Inspector of Police
Virudhunagar Bazaar Police Station
Virudhunagar
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai
4. The Section Officer
Criminal Section (Records)
Madurai Bench of Madras High Court
Madurai.



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CrI.A(MD) No.605 of 2023
A.D.JAGADISH CHANDIRA, J.

and

R.POORNIMA, J.

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Pre Delivery Judgment made
in
CrI.A(MD) No.605 of 2023