



**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL No. 1807 OF 2019**

**SIVAKUMAR**

**...APPELLANT**

**VERSUS**

**STATE REP. BY THE INSPECTOR  
OF POLICE**

**...RESPONDENT**

**WITH**

**CRIMINAL APPEAL No. 677 OF 2020**

**SENTHIL @ JANAKIRAM**

**...APPELLANT**

**VERSUS**

**STATE REP. BY THE INSPECTOR  
OF POLICE**

**...RESPONDENT**

**J U D G M E N T**

**MANOJ MISRA, J.**

1. These two appeals impugn common judgment and order of the High Court of Judicature at Madras at Madurai<sup>1</sup> dated 26.03.2019 and 04.04.2019 respectively passed in connected Criminal Appeal (MD) Nos. 85 and 167 of 2017. As these

appeals impugn common judgment and order, they have been heard together and are being decided by a common judgment.

## **FACTS**

**2.** Appellant Senthil (hereinafter referred to as A-1) and appellant Sivakumar (hereinafter referred to as A-2) were tried together along with two other persons, namely, Punitha (hereinafter referred to as A-3) and Jayanthi (hereinafter referred to as A-4) for offences punishable under Sections 294(b), 323, 324 and 302 read with Section 34 of the Indian Penal Code, 1860<sup>2</sup> arising from Crime No. 189 of 2014 registered at Police Station Thiruvudaimaruthur.

**3.** The prosecution case, in brief, is as follows: Ganesan and Kaliyamurthy (the deceased) were real brothers. Ganesan died a decade earlier. A-1 is son of Ganesan whereas A-3 and A-4 are daughters of Ganesan. A-2 is husband of A-3. Ganesan and the deceased shared a common boundary regarding which there was a dispute. On 20.09.2014, at around 11:30 a.m., when the deceased was fencing his property, A-1 to A-4 objected to it. However, the deceased insisted on his right to

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<sup>2</sup> IPC

fence the property which infuriated A-1. As a result, A-1 took an *Aruval* (a sickle like tool used for harvesting crops) and aimed a blow on the deceased. Seeing this, the deceased's brother Kalaivanan (PW-4) intervened to protect the deceased. As a result, the blow fell on PW-4's shoulder. Thereafter, A-1 struck another blow on PW-4's leg and injured his toe. In this melee, when the deceased went to rescue PW-4, A-2 lifted a log and gave a hard blow on the deceased's head. As a result, the deceased fell unconscious. When the deceased was lying unconscious on the ground, A-3 and A-4 attacked the deceased and PW4 with sticks and thereafter, the accused ran away.

**4.** The deceased and PW-4 were rushed to the hospital, where Dr. Kamarul Jamal (PW15) examined the deceased for his injuries and found:

*“A lacerated wound of about 10 x 2 x 1 cm. on the scalp over the left parietal region of the skull.”*

PW-15 referred the deceased for further treatment to another hospital. As a result, the deceased was taken to another hospital and later shifted to yet another hospital, where he died.

**5.** Autopsy report of the deceased notices:

*“One sutured wound measuring 8 x 8 x 1 cm on the left portion of the head”.*

A close examination of the skull revealed a depressed fracture of the skull bone, elliptical in shape, with fracture of parietal left region.

Internal examination revealed:

*“Lacerated injury over left parietal lobe over skull, fracture side, cavity of the brain filled up with blood clots.”*

Cause of death, as per opinion of the doctor, was grievous injury on head and brain.

**6.** PW-4 was also examined for his injuries. As per the injury report, a cut injury was noticed on his right shoulder with contusion, and a cut injury was found on his toe.

**7.** Trial Court charged the four accused (i.e., A-1 to A-4) as under:

Number of Charges	Description of accused	Provisions under which charged
1.	A-1 & A-2	S. 294(b) IPC
2.	A-1	S. 324 IPC
3.	A-2	S. 302 IPC
4.	A-3 & A-4	S. 323 IPC
5.	A-1, A-3 & A-4	S. 302 read with S. 34 IPC

**8.** After considering the evidence on record, the Trial Court, *vide* judgment and order dated 27.02.2017, acquitted A-3 and A-4. However, A-1 and A-2 were convicted and sentenced as follows:

Name of the accused	Provision of law under which convicted	Sentence
Senthil (A-1)	324 IPC	Fine of Rs.5,000. On default, to undergo simple imprisonment for three months
Sivakumar(A-2)	325 IPC	2 years rigorous imprisonment with fine of Rs.10,000. On default, to undergo simple imprisonment for three months

**9.** Aggrieved by acquittal of A-3 and A-4 from all the charges and acquittal of A-1 and A-2 from some of the charges including one punishable under Section 302 IPC, Criminal Appeal (MD) No. 167 of 2017 was preferred by Chandra (i.e., widow of the deceased, who was examined as PW1 in the trial). Whereas A-1 and A-2, aggrieved by their conviction under Sections 324 and 325 IPC, preferred Criminal Appeal (MD) No. 85 of 2017.

**10.** The High Court, *vide* impugned judgment and order dated 26.03.2019, upheld the acquittal of A-3 and A-4. However, the acquittal of A-1 and A-2 for the offence punishable under Section 294(b) IPC was reversed and they were convicted for the said offence. Further, the conviction of A-1 under Section 324 of IPC was affirmed and he was also convicted under Section 304 Part II read with Section 34 IPC. Whereas conviction of A-2 for the offence under Section 325 IPC was altered to one under Section 304 Part II IPC. Thereafter, *vide* order dated 04.04.2019, the High Court sentenced A-1 and A-2 as under:

Sl. No.	Provision of law under which convicted	Accused	Sentence
1.	Section 294(b) IPC	Senthil (A1)	One month rigorous imprisonment
2.	Section 304 (II) read with 34 IPC	Senthil (A1)	Five years rigorous imprisonment, with fine of Rs.1,000/- (Rupees one thousand only), on default, to undergo three months simple imprisonment
3.	Section 324 IPC	Senthil (A1)	Fine of Rs.5,000/-, on default, to undergo simple imprisonment for three months, as imposed by the trial Court
4.	Section 294(b) IPC	Sivakumar (A2)	One month rigorous imprisonment
5.	Section 304 (II) IPC	Sivakumar (A2)	Five years rigorous imprisonment, with fine of Rs.1,000/- (Rupees one thousand only), on

			default, to undergo three months simple imprisonment
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**11.** Aggrieved by the judgment and order of the High Court dated 26.03.2019 and 04.04.2019 respectively, these two appeals have been filed.

**12.** We have heard Sri S. Nagamuthu, learned senior counsel for the appellants; and Mr. Sabarish Subramanian, learned counsel for the Respondent-State.

**SUBMISSIONS ON BEHALF OF SIVAKUMAR (A-2)**

**13.** On behalf of A-2, the submissions are as follows:

(i) There is no evidence on record to justify conviction under Section 294(b) IPC;

(ii) There was no intention of causing such bodily injury as is likely to cause death, and the injury was not inflicted with the knowledge that it is likely to cause death, therefore, A-2 cannot be held guilty of committing culpable homicide.

(iii) Admittedly, the accused and the deceased were related to each other and shared a common boundary regarding which there was a dispute. The incident occurred because the deceased insisted to fence the disputed boundary despite

objection from the accused side. In such circumstances, passions surged and in that heat of the moment a blow was inflicted without aiming the head. As the blow fell on the head accidentally, the offence of culpable homicide is not made out.

(iv) It is clear from medical report(s) that except a solitary injury on the head, no other injury was found on the body of the deceased. Besides, the prosecution case that the deceased was assaulted after he fell down has been disbelieved. In these circumstances, it is clear that there was no intention whatsoever to cause death or such bodily injury which in ordinary course is likely to cause death. Moreover, the blow which struck the head of the deceased was not aimed at his head though it fell accidentally on his head. Hence, conviction of A-2 for the offence punishable under Section 304 Part II is unsustainable. Therefore, the Trial Court was justified in convicting the appellant for offence punishable under Section 325 IPC and not 304 Part II.

#### **SUBMISSIONS ON BEHALF OF SENTHIL (A-1)**

**14.** On behalf of A-1, in addition to the submission that no offence punishable under Section 294 of IPC is made out, it was argued that A-1 cannot be saddled with the liability of culpable

homicide with the aid of Section 34 IPC as there was nothing to establish that A-1 and A-2 shared common intention of causing either death or such bodily injury as in the ordinary course would cause death.

**SUBMISSIONS ON BEHALF OF STATE.**

**15.** *Per contra*, on behalf of the State, it was argued that from the evidence on record it is established that the deceased was abused by using the word “bastard”, therefore, the offence punishable under Section 294(b) IPC is made out. Besides, the High Court was justified in convicting A-2 for the offence punishable under Section 304 Part II IPC and since A-1 was first to attack the deceased, though the blow fell on PW-4, it could be said that he shared common intention with A-2, conviction of A-1 under Section 304 Part II IPC with the aid of Section 34 IPC is justified. It was thus, prayed that the appeals be dismissed.

**DISCUSSION.**

**16.** We have considered the rival submissions and have perused the materials on record. There is no dispute as regards the following facts:

(i) The deceased and the accused were neighbours as well as close relatives who shared a common boundary regarding which they had a dispute.

(ii) The incident occurred because the deceased was fencing the boundary despite objection by the accused.

(iii) Prior to exchange of blows there were hot talks between the deceased and the accused.

(iv) Injuries were caused by use of *Aruval* and a log. *Aruval* is an agricultural tool. There is no evidence that the accused had brought them for assaulting the deceased and PW-4 from some other place. Therefore, probability of those articles being lifted from the spot is high, indicating that in the heat of the moment, those articles were picked up from the spot and used.

(v) Injury caused to PW-4 is not proved to be grievous. Admittedly, A-1 caused injury to PW-4 whereas A-2 caused injury to the deceased. The deceased suffered no other injury except a solitary blow on the head.

**17.** Having taken note of the aforesaid facts, we would first consider whether the offence punishable under Section 294(b) IPC is made out or not. Section 294 IPC reads thus:

**“294. Obscene acts and songs.—** Whoever, to the annoyance of others -  
(a) does any obscene act in any public place, or  
(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,  
shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

**18.** The word “obscene” is not specifically defined in IPC. However, by referring to Section 292 of IPC, it has been construed as something which has the potential to appeal to prurient interest of a person<sup>3</sup>.

**19.** In ***Apoorva Arora & Anr. v. State (Govt. of NCT of Delhi) & Anr.***<sup>4</sup>, this Court, by referring to Section 292 of IPC and Section 67 of Information Technology Act, 2000, observed:

“17. It is evident that “obscenity” has been similarly defined in Section 292 and Section 67 as material which is:  
(i) lascivious; or  
(ii) appeals to the prurient interest; or  
(iii) its effect tends to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.”

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<sup>3</sup> See: Director General, Directorate General of Doordarshan & Others v. Anand Patwardhan & Another, (2006) 8 SCC 433

<sup>4</sup> (2024) 6 SCC 181

Besides, it was observed, obscenity must be judged having regard to contemporary mores and national standards.

Additionally, it was observed:

“41. ... It is well established (as per para 41, SCC) from the precedents cited that vulgarity and profanities do not per se amount to obscenity. While a person may find vulgar and expletive-filled language to be distasteful, unpalatable, uncivil, and improper, that by itself is not sufficient to be “obscene”. Obscenity relates to material that arouses sexual and lustful thoughts, which is not at all the effect of the abusive language or profanities that have been employed in the episode. Rather, such language may evoke disgust, revulsion, or shock. ...”

**20.** Seen in the light of the aforesaid decision, in our view, mere use of the word ‘bastard’, by itself, is not sufficient to arouse prurient interest of a person. More so, when such words are commonly used in modern era during heated conversations. We are, therefore, of the view that conviction of the appellants for offence punishable under Section 294(b) IPC is not sustainable and is hereby set aside.

**21.** Now, we shall examine whether A-1 could be said to have shared common intention to cause such bodily injury to the deceased which resulted in his death. The facts of the case reflect that A-1 charged on the deceased by taking an Aruval in his hand but, when PW-4 intervened, gave two blows to PW-4,

which did not result in any grievous injury. No doubt, it has come in the testimony of PW-4 that A-2 took a log and gave a hard blow on the head of the deceased while uttering that all problems are because of the deceased and it is better that he dies, but this statement is not attributed to A-1. Besides, there is no evidence that A-1 exhorted A-2 to strike the deceased. Thus, upon consideration of the circumstances in which the incident unfolded and the manner in which the deceased was assaulted by A-2, besides there being no reliable evidence to show that A-1 had beaten the deceased after he fell to the ground, in our view, it would not be safe to hold that A-1 shared common intention with A-2 to cause such bodily harm to the deceased as is likely to cause his death. In this view of the matter, the conviction of A-1 under Section 304 Part II read with Section 34 IPC is set aside. However, conviction of A-1 for causing injury to PW-4 and thereby committing offence punishable under Section 324 IPC is confirmed.

**22.** Now we shall consider whether the conviction of A-2 for the offence punishable under Section 304 Part II IPC is justified. Notably, the Trial Court had convicted A-2 for the

offence punishable under Section 325 IPC whereas the High Court found him guilty of the offence punishable under Section 304 Part II IPC.

**23.** To convict an accused for commission of an offence punishable under Section 304 Part II IPC, it must be proved that the accused has committed culpable homicide as defined in Section 299 IPC<sup>5</sup>. The High Court came to the conclusion that A-2 committed culpable homicide because he had knowledge that by his act he is likely to cause death. While holding so, the High Court took notice of the fact that the injury sustained by the deceased discloses fracture of the skull and

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<sup>5</sup> **299. Culpable homicide.** - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

*Illustrations*

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

*Explanation 1.*—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

*Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

there were blood clots in the brain. Further, there was no evidence that the death had occurred on account of improper treatment. The High Court had also noticed the evidence on record which indicated that when A-2 had lifted the log he uttered such words which indicated that A-2 had targeted the deceased, to finish him off.

**24.** On a careful scrutiny of the evidence on record, we do not find any error in the conclusion of the High Court that A-2 is guilty of an offence of culpable homicide. However, whether A-2 was liable to be convicted for culpable homicide not amounting to murder punishable under Section 304 Part I of IPC, is a question which we refrain to address in absence of an appeal by the State, or the victim of the crime, for altering the conviction to a graver offence. In the circumstances, we confirm the conviction of A-2 under Section 304 Part II IPC.

**25.** Now, we shall consider whether the sentence awarded by the High Court is appropriate, or too harsh. High Court convicted A-1 for offence punishable under Section 324, Section

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*Explanation 3.*—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

294(b) and Section 304 Part II read with 34 IPC. In so far as the conviction of A-1 under Section 294(b) and Section 304 Part II read with 34 IPC is concerned, we have already held above that the same is unsustainable. However, we have affirmed his conviction under Section 324 IPC. Under Section 324 IPC, A1 has been awarded fine of Rs. 5,000 and a default sentence of 3 months. As per the custody certificate dated 21.02.2020 annexed along with the memo of appeal, A-1 (Senthil) has served 01 month 25 days of sentence as on 21.02.2020. The record reveals that he was released on bail by order of this Court dated 13.10.2020. In this view of the matter, it appears that the appellant has partially undergone the default sentence awarded to him for the offence punishable under Section 324 IPC. Consequently, we reduce and alter the sentence awarded to A-1 (Senthil) to the period of sentence already undergone.

**26.** In so far as A-2 (Sivakumar) is concerned, since we have affirmed his conviction under Section 304 Part II IPC, it would have to be considered whether the sentence awarded to him needs to be altered or not. The High Court has awarded him five years rigorous imprisonment with fine of Rs. 1,000. The

custody certificate dated 30.04.2019 issued by Central Prison, Madurai indicates that by the date of the certificate, the appellant had served 02 months and 10 days of sentence. The record reveals that by order of this Court dated 29.11.2019, appellant Sivakumar (A-2) was granted bail subject to the satisfaction of the Trial Court. In the circumstances, it appears, the appellant Sivakumar (A2) has, by now, served less than 01 year of sentence.

**27.** Having regard to the fact that the incident is of the year 2014 and was preceded by an altercation between neighbours, who are close relatives, arising from a boundary dispute, and injury was not caused by using a dangerous weapon, but by a log lying on the spot, and only a solitary blow was inflicted in the heat of the moment, we are of the view that ends of justice would be subserved if the sentence awarded to A-2 (Sivakumar), under Section 304 Part II IPC, is reduced to 03 years from 05 years R.I.

**28.** Consequently, both the appeals are partly allowed to the extent mentioned above. Appellant Senthil (A-1) is on bail, he need not surrender. Insofar as appellant Sivakumar (A2) is

concerned, he shall surrender before the Court concerned and serve out the remaining reduced sentence as ordered above.

.....**J.**  
**(PAMIDIGHANTAM SRI NARASIMHA)**

.....**J.**  
**(MANOJ MISRA)**

**New Delhi;**  
**April 06, 2026**