



Crl.A.(MD) No.589 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	18.10.2023
Pronounced on	30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

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Jeyamani
S/o.Jeyaraj

... Appellant

Vs.

State through
The Inspector of Police,
Krishnankovil Police Station,
Virudhunagar District.
(Crime No.2/2012)

... Respondent

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to call for the records relating to the Judgment in S.C.No.129/2012 dated 27.11.2019 on the file of the Sessions Judge (Mahila Fast Track Court), Srivilliputtur, Virudhunagar and set aside the same.

For Appellant : Mr.M.Subash Babu
Senior Counsel
for Mr.C.Susi Kumar.

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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J U D G M E N T

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the appellant assailing the 'Judgment dated 27.11.2019' [henceforth, referred to as 'impugned Judgment' for the sake of brevity] passed by the 'learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Srivilliputtur, Virudhunagar District' [henceforth, referred to as 'Trial Court' for the sake of brevity] in Sessions Case No.129 of 2012 in which the appellant [henceforth, referred to as Accused as per Trial Court's description for the sake of clarity and convenience] was convicted for the offence punishable under Section 302 of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth, referred to as 'IPC' for the sake of brevity] and sentenced to undergo Imprisonment for Life and also ordered to pay a fine of Rs. 10,000/-, in default thereof, to undergo Simple Imprisonment for further a period of 1 year and the period of imprisonment, if any, already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth, referred to as 'Cr.P.C. for the sake of brevity].



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2. The case of the prosecution, in brief, is as follows:-

2.1. The accused and the deceased – Indira, are husband and wife who were residing at Door No.5/557, Transport Nagar, Krishnan Kovil, Srivilliputtur Taluk at the time of occurrence and out of their wedlock, they have two sons namely, Aravind Raj (P.W.1) and Jayasuriya. The accused suspecting the deceased's fidelity, frequently quarrelled with deceased and also frequently tortured her demanding money.

2.2. On the night of 08.01.2012, the accused as usual quarrelled with the deceased suspecting her fidelity. On 09.01.2012 at 3.00 hours, when the deceased was lying down, the accused with an intention to kill the deceased stabbed her with knife indiscriminately. When P.W.1 (son of the deceased and the accused) who was lying on bed in the same room, raised alarm on witnessing the incident, the accused dropped the knife and ran away.

2.3. Then, P.W.1 called his maternal uncle (P.W.2) and aunt (P.W.3) [sister of the deceased] who were residing in the same Street. P.W.2 called '108 Ambulance' and took the deceased to the Government



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Hospital, Srivilliputtur. After first-aid, on the doctor's referral, the deceased was taken to Rajaji Hospital, Madurai. In the meantime, P.W.1 went to the police station and lodged a written complaint (Ex.P.1). The police registered a case in Crime No.2/2012 under Section 307 of IPC.

2.4. On the same day i.e. 09.01.2012, the Inspector of Police [in-charge] (P.W.16) started investigation, inspected the place of occurrence at 6.30 hours, prepared an Observation Mahazer (Ex.P.2) and Rough Sketch (Ex.P.12) in the presence of the Village Administrative Officer [VAO] (P.W.6) and Village Assistant (L.W.8). At 07.00 hours, P.W.16 seized blood-stained knife (P.M.O.1), blood-stained saree (P.M.O.2), red colour blouse (P.M.O.3), blood-stained pillow (P.M.O.4), blood-stained tile (P.M.O.5) and a sample tile without blood stains (P.M.O.6) from the place of occurrence in the presence of the above-mentioned witnesses. Thereafter, P.W.16 arrested the accused in front of Kalasalingam College, Krishnankovil at 10.00 hours. The accused voluntarily gave a confession which was recorded by P.W.16 in the presence of VAO (P.W.6) and Village Assistant (L.W.8). P.W.16 seized 'lungi' (P.M.O.7) worn by the accused and thereafter sent the accused for judicial remand. Then, P.W.16 handed over the case file to the regular Inspector of Police (P.W.17).



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2.5. On 11.01.2012 at 21.10 hours, the deceased passed away despite medical treatment. Hence, P.W.17 altered the Section of law from 307 of IPC to 302 of IPC and filed Alteration Report (Ex.P.14) before the Judicial Magistrate Court No.II, Tirunelveli. On 12.01.2012, P.W.17 went to Rajaji Hospital, Madurai and conducted inquest upon the dead body after which he sent it for post-mortem examination. P.W.17 examined the Doctor who gave first-aid to the deceased and also examined the Doctor who treated the deceased at Rajaji Hospital, Madurai. Further, he sent a requisition letter dated 18.01.2012 to the Chief Judicial Magistrate to record the Statement of P.W.1 - Complainant (son of the accused and deceased) under Section 164 of Cr.P.C. On 20.01.2012, Judicial Magistrate No.I, Srivilliputtur recorded the Statement of P.W.1 under Section 164 of Cr.P.C. The same was marked as Ex.P.16. Further, he examined the witnesses including Forensic Science Officers. After completion of investigation, P.W.17 filed Final Report against the accused under Section 302 of IPC before the Judicial Magistrate.

2.6. Since the offence under Section 302 of IPC is exclusively triable by Sessions Court, the learned Judicial Magistrate No.II,



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Srivilliputtur committed the case file to the Principal District and Sessions Court, Srivilliputtur, Virudhunagar District under Section 209 of Cr.P.C. and directed the accused to appear before the Principal District and Sessions Court, Srivilliputtur, Virudhunagar District. After receipt of the case file, the learned Principal District and Sessions Judge took the case on file as S.C.No.129/2012 and after hearing both sides, framed charge against the accused under Section 302 of IPC. Since the accused denied the charge as not guilty, trial was ordered on 26.02.2014. Thereafter, the case has been transferred to the Trial Court, since the deceased is a woman.

2.7. To prove its case, the prosecution examined P.W.1 to P.W.17 (Witnesses) and marked Ex.P.1 to Ex.P.16 (Documents) and P.M.O.1 to P.M.O.7 (Material Objects).

3. The Trial Court after hearing both sides, concluded that the prosecution has proved the offence under Section 302 of IPC against the accused. Accordingly, the Trail Court convicted and sentenced the accused as stated *supra* in paragraph No.1.



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4. Feeling aggrieved with the conviction recorded and sentence imposed by the trial court, the accused has preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

5. This Court has perused the case file and the Memorandum of grounds of appeal. The following points arose for consideration:-

- i. Whether the prosecution has proved the charges levelled against the accused under Section 302 of IPC?
- ii. Whether there exist any reason to interfere with the Impugned Judgement?

Discussion and Decision for point Nos.(i) & (ii)

6. The learned counsel for the accused argued that at the time of alleged occurrence, P.W.1 was a minor and therefore his evidence cannot be taken into account as there is a possibility of tutoring; that the conviction and sentence rendered by the Trial Court solely based on P.W. 1's evidence is incorrect and that P.W.2 to P.W.5 are all interested and hear-say witnesses and hence, their evidence do not help the case of the prosecution. Therefore, the learned counsel for the accused prayed to allow the appeal and acquit the accused by giving him the benefit of doubt.



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6.1. The learned counsel for the accused as an alternate plea argued that the accused had no intention to kill the deceased; that the accused had not absconded from the locality; the accused himself surrendered before the jurisdictional police station; that the conduct of the accused is relevant to appreciate the case; and that as per the evidence of prosecution witnesses, the alleged offence happened out of sudden provocation. He further submitted that the deceased quarrelled with the accused throughout the night which caused sudden provocation to the accused to stab the deceased with knife and the said fact has been admitted by P.W.1 in his cross-examination and that the act of the accused does fall under Exception - 1 of Section 300 of IPC. Accordingly he prayed to decide the case. In support of his arguments, he relied on the following Judgments:-

- i. Dauvaram Nirmalkar Vs. State of Chhattisgarh, reported in 2022 SCC OnLine SC 955.*
- ii. Anbazhagan Vs. The State represented by the Inspector of Police, Neutral Citation – 2023 INSC 632.*

7. Per contra, the learned Additional Public Prosecutor appearing for the State argued that P.W.1 was pursuing 9th standard and 14 years old



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at the time of occurrence; that P.W.1 witnessed the occurrence and later himself wrote the complaint and filed it with the police; that the deceased gave a statement immediately after the occurrence to P.W.2 to P.W.5 that the accused was quarrelling with her the whole night and then caused the stab injury to her; that after the demise of the deceased, the said oral statement is elevated to the status of oral dying declaration which is admissible under Section 32 of the Indian Evidence Act, 1872 [henceforth, referred to as 'Evidence Act' for the sake of brevity]; that the deceased gave a statement to P.W.9 – Doctor who treated her at Government Hospital, Srivilliputtur that at 03.30 hours [3.30 a.m.] on 09.01.2012, when she was sleeping in her house, the accused stabbed her and the same has been recorded by P.W.9 – Doctor in the Accident Register (Ex.P.6) and the said statement is also, after demise of the deceased, elevated to the status of dying declaration which is admissible under Section 32 of the Evidence Act.

7.1. The learned Additional Public Prosecutor further argued that the accused caused grave injury on vital parts of the deceased with knife. The nature of the weapon and injuries as well as the injured parts of the body show that the accused committed the offence with an intention to



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kill the deceased. Hence, the act of the accused does not fall under

Exception - 1 of Section 300 of IPC but clearly attracts Section 300 of IPC which is punishable under Section 302 of IPC. He further submitted that the Trial Court after considering the entire evidence and material let in, has convicted and sentenced the accused under Section 302 of IPC. Accordingly, he prayed to dismiss the appeal and sustain the conviction and sentence rendered by the Trial Court.

8. This Court has considered both side arguments and perused the case files.

9. The accused and the deceased are husband and wife. P.W.1 – Complainant is none other than their son. Ex.P.1 – Complaint was lodged by P.W.1. At the time of occurrence, P.W.1 was 14-15 years old and pursuing 9th standard. A portion of his deposition reads as follows:-

“ ... என் தகப்பனாரான ஆஜர் எதிரி என் தாயார் மீது அடிக்கடி சந்தேகப்பட்டு சண்டை போடுவார். என் தாயாரிடம் உன் அண்ணன் உன் பெற்றோரிடம் சென்று பணம் வாங்கிவிட்டு வா என தாயாரிடம் கேட்டு அடிக்கடி சண்டை போடுவார். 08-01-2012ம் தேதி இரவு வழக்கம் போல் என் தந்தை தாயாரின் மீது சந்தேகப்பட்டு, பணம் கேட்டு வாக்குவாதம் ஏற்பட்டு அடித்து விட்டார். என் தாயார் அமைதியாக படுத்துவிட்டார். ஒரே ரூமிற்குள் என் தாயார் கட்டிலின் கீழ் படுத்திருந்தார். நான் கட்டிலின் மேல் படுத்திருந்தேன். நான் முழித்துக்கொண்டே படுத்திருந்தேன். மறுநாள் 09-01-2012ம் தேதி அதிகாலை 3.00 மணிக்கு என் தகப்பனார் கத்தியை எடுத்து வந்து என் தாயாரிடம் ஏண்டி ஊர் மேயுற தேவிடியா உன்னை இப்படியே விட்டால்தான் ஊர்மேய்வ என்று சொல்லி கத்தியால் என் தகப்பனார் என் தாயின் இடது பக்க வயிறு, கழுத்து, இடது முன் கை, மாறி மாறி குத்தினார். நான் பயத்தில்



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சத்தம் போட்டு எழுந்துவிட்டேன். லைட் வெளிச்சத்தில் என் தகப்பனார் என் அம்மாவை மாறி மாறி குத்தும் போது நான் பார்த்தேன். என் அப்பா என் அம்மாவை கத்தியால் குத்திக் கொண்டு இருந்தார். நான் அலறி எழுந்து என் தகப்பனார் ஓடிவிட்டார் நான் பயத்தில் சத்தம் போட்டவுடன் என் தகப்பனார் கத்தியை போட்டு விட்டு என்னை பார்த்துவிட்டு ஓடி விட்டார். ...”

10. From the evidence of P.W.1 and Ex.P.1 - Complaint, it can be noted that though P.W.1 was pursuing 9th standard, his evidence and Ex.P.1 – Complaint are clear, cogent and trust-worthy. He is capable of understanding what happened on the fateful day. It is to be noted that the Statement under Section 164 of Cr.P.C. [henceforth, referred to as '164 Statement' for the sake of brevity] has been recorded in this case. This Court has perused the 164 Statement of P.W.1. The deposition of P.W.1 before the Court is wholly believable and there is no reason to disbelieve the same.

11. It is apposite to state here that at the time of occurrence, P.W.1 was 14-15 years old and was pursuing 9th standard. 164 Statement of P.W.1 was recorded by the learned Judicial Magistrate after recording the preliminary questions and answers. After satisfying that P.W.1 was capable of giving statement only, the learned Judicial Magistrate has recorded the 164 Statement of P.W.1. Further, evidence of P.W.1 was



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recorded before the Trial Court on 14.07.2016. At the time of giving evidence, he was 19 years old. The Trial Court fully believed the evidence of P.W.1. Hence, this Court is of the view that there exists no reason to disbelieve P.W.1's evidence.

12. A reference is made to the decision of the Hon'ble Supreme Court in *Alagupandi's* case [*Alagupandi @ Alagupandian Vs. State of Tamil Nadu, reported in (2012) 10 SCC 451 : 2012 SCC OnLine SC 411*]. In paragraph No.36, the Hon'ble Supreme Court has held as follows:-

“36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to



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seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. (Dattu Ramrao Sakhare v. State of Maharashtra [(1997) 5 SCC 341 : 1997 SCC (Cri) 685] and Panchhi v. State of U.P. [(1998) 7 SCC 177 : 1998 SCC (Cri) 1561])”

13. P.W.2 to P.W.4 are residing in the same street. The evidence of P.W.2 to P.W.4 is also clear and cogent. P.W.2 in his evidence has deposed that the deceased told them that the accused was quarrelling with her the whole night and that in the early hours, the accused caused stab injury to her. This evidence has been corroborated by other evidence.

14. The deceased was initially brought to Dr.Ramesh Babu (P.W.9). P.W.9 in his evidence has deposed that on 09.01.2012 while he was on duty, the deceased was brought through '108 Ambulance' for treatment at 3.30 hours (03.30 a.m.). At that time, the deceased stated that her husband caused stab injury to her and the same was recorded by P.W.9 – Doctor in the Accident Register (Ex.P.6). P.W.9 – Doctor deposed that at the time when the above statement was given by the deceased, she was conscious and oriented. P.W.9 – Doctor noted as many as 8 injuries in his



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Accident Register (Ex.P.6). The said injuries are corroborated in the Post-

Mortem Report (Ex.P.7). The deceased died on 11.01.2012 at 21.10 hours.

The Post-Mortem Doctor (P.W.11) has clearly stated that the deceased died due to the stab injuries and cumulative effect of all other injuries and its complications thereof. Post-Mortem Certificate was marked as Ex.P.7.

Ex.P.7 Postmortem Certificate reads as under:-

“Regarding the body of a female, aged about 35 years, name : INDRA

Requisition received at 12.45 P.M. on 12.01.12 from the Inspector of Police, Krishnankoil PS, with his letter Crime No.02/12 dated 12.01.12

Body in-charge of Police Constable No: HC 2087 named: Unknown

Identification and caste marks:

- 1. A Black mole on left side chest.*
- 2. A Black mole on right side cheek.*

The body was first seen by the undersigned at 1.00 PM on 12.01.12

Its condition the was : Rigor mortis present all over the body.

Postmortem commenced at 1.00 PM on 12.01.12



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Appearance found at the postmortem:

Moderately nourished body of a female aged about 35 years. Finger and toe nails blue.

The following ante mortem injuries are noted on the body:

- 1. A sutured stab wound 6cm x 1cm x muscle deep noted on front of right side of neck.*
- 2. A sutured stab wound 3cm x 1cm x muscle deep noted on left side of neck.*
- 3. A sutured stab wound 4cm x 1cm x muscle deep noted on the tip of left shoulder joint.*
- 4. A sutured stab wound 5cm x 1cm x muscle deep noted on front of middle of left upper chest.*
- 5. A sutured stab wound 4cm x 1cm x muscle deep noted on front of left forearm*
- 6. A sutured stab wound 3cm x 1cm x cavity deep noted on left hypochondrium*
- 7. A Transversely oblique sutured wound 4cm x 1cm x cavity deep noted on front of left side of abdomen 2.5cm, below injury No-6.*
- 8. A sutured drainage wound with drainage tube in side noted on flank of left side of abdomen.*
- 9. A sutured laprotomy wound 25cm x 1cm x cavity deep noted on front of abdomen in midline.*



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On dissection of chest: Pleural cavity contains 100ml of yellow coloured fluid.

On dissection of abdomen : Left 1/3rd of transverse colon, splenic flexure and proximal 12cm of descending colon found resected and anastamotic sutures noted between the cut ends of transverse colon and descending colon. Peritoneal layer looks muddy and hyperemic.

On dissection of scalp, skull and dura:

A Subscalpal contusion 8cm x 5cm noted on right occipital region of scalp. Diffused subdural hemorrhage & subarachnoid hemorrhage noted over both the cerebral hemispheres.

OTHER FINDINGS

Peritoneal cavity – described; Pleural cavities – described; Pericardium – contains 15ml of straw colour fluid; Heart – right side fluid blood, left side empty; coronaries – patent; Lungs – cut section congested; Larynx & trachea – normal; Hyoid bone – intact; Stomach – contains 200ml of brown colour fluid, nil specific smell, mucosa – normal; Liver, Spleen & Kidneys – cut section congested; Small



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intestine – contains 20ml of brown colour fluid, nil specific smell, mucosa – normal; Bladder – empty; Uterus – normal, cut section empty; Brain – described.

OPINION:

“THE DECEASED WOULD APPEAR TO HAVE DIED OF INJURY NO-6,2,7 AND CUMULATIVE EFFECT OF ALL OTHER INJURIES AND ITS COMPLICATIONS THERE OFF”

In view of the above, it is clear that the deceased died due to the stab injury caused by the accused.

15. Further, after the death of the deceased, her statement given to P.W.9 – Doctor elevated to the status of Dying Declaration. Further, the said Dying Declaration coupled with the evidence of P.W.1 to P.W.6 establishes that accused caused stab injury to the deceased and the deceased died due to the complications of the stab injury.

16. The Investigating Officer (P.W.16) visited the place of occurrence on 09.01.2012 at 06.30 hours in the presence of P.W.6 and



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L.W.8 and collected blood-stained knife (P.M.O.1), blood-stained saree (P.M.O.2), red colour blouse (P.M.O.3), blood-stained pillow (P.M.O.4), blood-stained tile (P.M.O.5) and a sample tile without blood stains (P.M.O.6) and the same were sent for FSL examination. FSL Report (Ex.P.10) shows that the blood stains found in the above P.M.Os. belongs to 'O' group.

17. The Investigating Officer (P.W.16) arrested the accused on 09.01.2012 and recovered the blood-stained Lungi (P.M.O.7) from the accused. FSL Report (Ex.P.10) shows that the blood stains belongs to 'O' group of blood. The prosecution has proved that the blood of the deceased belongs to 'O' group. Thus, the said evidence proves the place of occurrence and connects the accused with the crime.

18. The learned counsel for the accused has made an alternate plea that the act of the accused does not amount to murder but would come under Exception - 1 of Section 300 of IPC.

19. In this regard, it is apposite to cite the case law in **K.M.Nanavati's case [K.M.Nanavati Vs. State of Maharashtra**



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reported in AIR 1962 SC 605], wherein, the Hon'ble Supreme Court has laid down the conditions which have to be satisfied for the Exception to be invoked. The relevant paragraphs ie., Paragraph Nos.135, 152 & 153 are as follows:

'135.Homicide is the killing of a human being by another. Under this exception, culpable homicide is not murder if the following conditions are complied with : (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of selfcontrol. (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

.....

152.Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life,



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traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self- control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

153.The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to



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bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.'

20. The learned counsel for the accused relied on a decision of the Hon'ble Supreme Court in ***Dauvaram Nirmalkar***'s case referred to *supra*. Considering the facts and circumstances of the said case, the Hon'ble Supreme Court by following the **K.M.Nanavati**'s case referred to *supra*, converted the conviction of the accused from Section 302 to Part I of Section 304 of IPC. In Paragraph No.16 the Hon'ble Supreme Court has held as follows:-

“16. For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be



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mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court. It is in this context we would refer to the case of the prosecution, which is that the deceased was addicted to alcohol and used to constantly torment, abuse and threaten the appellant. On the night of the occurrence, the deceased had consumed alcohol and had told the appellant to leave the house and if not, he would kill the appellant. There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation. There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires. Therefore, we hold that the acts of provocation on the basis of which the appellant caused the death of his brother, Dashrath Nirmalkar, were both sudden and grave and that there was loss of self-control."

It is pertinent to note the distinguishable facts of the said case from the case on hand which are as follows:-

The deceased therein used to frequently consume alcohol, barely interact with the family, and used to debate and quarrel with the accused. The wife of the



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deceased had already left the deceased. As per the evidence on record, the deceased was extremely abusive and ill-tempered. The prosecution did not dispute the said fact. Further, the accused therein himself went to the police station, confessed the crime and admitted his guilt.

21. The learned counsel for the accused also relied on a decision of the Hon'ble Supreme Court in **Anbazhagan's** case referred to *supra*. The facts of the said case have been narrated in paragraph No.61 of the said Judgement which reads as under:-

“61. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.”



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22. After considering the evidence adduced therein, the Hon'ble

Supreme Court has concluded as follows:-

“62. ... We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.”

23. As far as case laws cited by learned counsel for the accused are concerned, it is clear that there were sufficient reasons for sudden provocation to the accused therein. But, in the case on hand, there was a quarrel between the accused and the deceased the whole night. Subsequently, after the deceased had gone to sleep, the accused made a deliberate decision to kill the deceased (his wife) and therefore stabbed her multiple times with a knife. It is clear from the Postmortem Certificate (Ex.P.7) coupled with the evidence of P.W.1 that the accused has stabbed the deceased brutally using a sharp edged weapon i.e., knife. Further, there is no evidence on record to suggest that sudden provocation was caused to the accused.



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24. Considering the facts and circumstances of the case, the nature of injury, the places on the body where injuries were caused and the nature of weapon used, this Court finds no grave or sudden provocation and is of the view that the accused took an undue advantage of the situation and caused brutal and multiple stab injuries to the deceased with an intention to kill the deceased. Hence, the act of the accused does not fall under Exception-1 of Section 300 of IPC. On the other hand, it clearly falls under Section 300 of IPC which is punishable under Section 302 of IPC. Therefore, the Trial Court after considering the evidence has come to a conclusion that the accused has committed murder which is punishable under Section 302 of IPC. There is no reason to interfere with the findings of the Trial Court and Point Nos.(i) & (ii) are answered against the accused and in favour of the prosecution. Hence, this appeal is liable to be dismissed.

25. Resultantly,

- i. This Criminal Appeal is dismissed and the conviction and sentence imposed upon the accused by the Trial Court in Sessions Case No.129 of 2012 *vide* Judgment dated 27.11.2019 are confirmed.



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- ii. The accused is on bail *vide* order dated 04.10.2021 passed in Crl.M.P.(MD) No.6022 of 2021 in Crl.A.(MD) No.589 of 2019. Hence, the Trial Court [The learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Srivilliputtur, Virudhunagar District] shall take steps to commit the accused to jail to undergo the remaining period of sentence.

(M.S., J.) (R.S.V., J.)
30.11.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order

JEN

To

- 1.The Inspector of Police,
Krishnankovil Police Station,
Virudhunagar District.
- 2.The Sessions Judge.
Magalir Neethimandram,
(Fast Track Mahila Court),
Srivilliputtur, Virudhunagar
- 3.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

JEN

Pre-Delivery Judgment made
in
Crl.A.(MD) No.589 of 2019

30.11.2023