



Crl.A.No.911 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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P.Nagaraj

... Appellant/Accused

Vs.

State rep. by,
The Inspector of Police,
Erode North Police Station,
Erode District.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment order passed by the Sessions Court Magalir Neethi Mandram (Fast Track Mahila Court), Erode in S.C.No.14 of 2018, vide his order dated 22.07.2019.

For Petitioner : Mr.R.Shruthan

For Respondent : Mr.M.Babu Muthumeeran,
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was delivered by *M.S.RAMESH, J.*)

The case of the prosecution in brief are as follows:-

1.1. The appellant is the husband of one Seetha, through a marriage that was performed about 14 years prior to 08.05.2017, on which date, an incident had taken place and which is the subject matter of the present appeal. Both the appellant and his wife were engaged as coolies at a weaving mill. Through the marriage, the couple had 3 children.

1.2. On a suspicion that Seetha was having an illicit relationship with one Prabhu, the appellant picked up frequent quarrels with Seetha, owing to which, she had deserted the appellant and was staying with her mother.

1.3. In this background, on 08.05.2017, at about 6 p.m., when Seetha and her mother had gone for shopping, the appellant had approached them and kicked Seetha down. He then took a knife from his



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hip and stabbed Seetha on her back continuously, apart from injuring her mother too. The onlookers had then called 108 ambulance, which took Seetha and her mother to the Government Hospital at Erode, where she was declared as brought dead.

1.4. An F.I.R. in this regard was registered in Crime No.353 of 2017 for the offences under Sections 302 and 307 of IPC and later altered, by including Section 294(b) of IPC. On completion of the investigation, the Inspector of Police filed a charge sheet against the appellant, charging him of having committed the offences under Sections 294(b), 302 and 307 of IPC.

2. During the course of the trial, on the side of the prosecution, 19 witnesses were examined as P.W.1 to P.W.19, 23 documents were marked as Exs.P1 to P23 and 8 material objects were marked as M.O.1 to M.O.8. On the side of the appellant, an Advocate (D.W.1) was examined and through him an agreement for cancellation of the marriage of the appellant with the deceased (Ex.D1) was marked, before the Trial Court.



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3. On a consideration of the oral witnesses let in on the side of the prosecution, namely P.W.1 to P.W.19, as well as Exs.P1 to P23 and the defense witness D.W.1 and Ex.D1, the Trial Court had found the appellant guilty of having committed the offences under Sections 294(b), 302 and 323 of IPC and the Sessions Judge, Magalir Neethimandram, Erode, in its judgment dated 22.07.2019 made in S.C.No.14 of 2018 and consequently convicted and sentenced the appellant to undergo the following punishments:-

<i>Conviction under Section</i>	<i>Sentence</i>
Section 294(b) of IPC	Simple imprisonment for 2 months
Section 302 of IPC	Life imprisonment with a fine of Rs.10,000/- and in default to undergo further simple imprisonment of 1 year
Section 323 of IPC	Simple imprisonment for 4 months
All the sentences shall run concurrently	

4. The judgment of the Trial Court is assailed in the present appeal.

5. The learned counsel for the appellant submitted that the prosecution has miserably failed to establish the motive for the



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occurrence, more particularly, when the appellant and the deceased were separated through D.W.1 and were living separately. He also submitted that among the four eye witnesses, three of the eye witnesses who were chance witnesses and are alleged to have witnessed the occurrence, were treated as hostile witnesses by the prosecution. P.W.1 happens to be the mother of the deceased and being an interested witness, her testimony should not be given due credit. As an alternate submission, he had relied on the principle of sustained provocation, in view of the series of acts of infidelity indulged by the deceased in the past, resulting in a sudden and grave provocation.

6. Per contra, the learned Additional Public Prosecutor submitted that motive has no relevance in a case of eye witness and when the ocular testimony of the eye witness (P.W.1) has not been discredited, the Court does not require a motive to find the appellant guilty. Even otherwise, he submitted that the testimonies of P.W.1 and P.W.13 sufficiently establishes the matrimonial disputes between the accused and the deceased, thereby establishing the motive. He also added that since



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P.W.1 was an injured eye witness, her oral testimony is more credit-worthy and the appellant had failed to discredit her. To the alternate submission of the learned counsel for the appellant, the learned Additional Public Prosecutor submitted that the fact that the appellant had come to the scene of occurrence, armed with a knife and his act of continuously stabbing the deceased and attempting to kill P.W.1, would dis-entitle the appellant to take shield under the principle of sustained provocation.

7. We have given our anxious consideration to the submissions of both the counsels and have perused the evidences let in by both the prosecution, as well as the appellant and have also gone through the original records of the Trial Court.

8.1. On the side of the prosecution, apart from the mother of the deceased (P.W.1), P.W.2, P.W.3 and P.W.4 were also examined as eye witnesses.



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8.2. P.W.13, who is the brother of the deceased, is a hearsay witness of the incident and he speaks about the suspicion of infidelity the appellant had against the deceased and the cruelty meted out to her by him.

8.3. The other official witnesses that were examined on the side of the prosecution are P.W.5, who is the witness to the observation Mahazar.

8.4. Through P.W.6, who is the forensic expert, the prosecution had marked Exs.P4, P5 & P6 relating to the reports touching upon the material objects namely the knife used by the appellant (MO1), 2 pieces of saree (MO2 series), earth with and without blood stains (MO3 & MO4), shirt of the appellant (MO5), blouse and in-skirt of the deceased (MO7 & MO8) respectively. P.W.12 is the Corpse Head Constable, who had accompanied the body of the deceased for post-mortem.

8.5. Through the doctor (P.W.16), the Accident Register of the deceased (Ex.P19) was marked, which evidences that the deceased was



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brought through an 108 ambulance and on her body, laceration wounds of various dimensions were found on the right and left sides of the scapula and that there was no heartbeat or breath on the body.

8.6. P.W.7, is the doctor who had conducted the post-mortem on the body of the deceased and marked the requisition letter for post-mortem as Ex.P7 and the post-mortem certificate as Ex.P8. He also testified the presence of 1 ante-mortem stab injury (3x1) on the left stomach of the deceased; 3 stab injuries on the left chest (3x2); 1 stab injury (3x2x7 cms) on the left forearm; and 7 stab injuries on the scapula (4x2) and rear stomach portion. He rendered his final opinion, holding that the deceased had died 12-24 hours prior to Autopsy, due to shock and haemorrhage.

8.7. P.W.8 is the doctor who had treated the injuries of P.W.1 and marked the Accident Register as Ex.P9, the wound certificate as Ex.P10 and the intimation as Ex.P11, as per which, P.W.1 had a cut injury measuring 3x1/2x1/2 cms on her right hand ring finger and another cut



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injury on her right hand middle finger, measuring 2x1/2x1/2 cms and that they were simple injuries.

8.8. The admitted portion of the confession statement of the appellant was marked as Ex.P14 and the seizure Mahazar as Ex.P15 through P.W.10.

8.9. The photographs of the body of the deceased, along with the certificate under Section 65B of the Indian Evidence Act, 1872, were marked as MO6 series, through a photographer (P.W.11).

8.10. P.W.14 is the Head Constable, who speaks about the registration of an F.I.R against the alleged paramour of the deceased.

8.11. P.W.15 is the Sub Inspector of Police, who had registered the F.I.R (Ex.P18) at 20.00 hrs for the offences under Sections 302 and 307 IPC.



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8.12. The Constable who had taken the F.I.R. to the concerned Judicial Magistrate, was examined as P.W.17, which reveals that the F.I.R., had reached the residence of the Judicial Magistrate, Erode at 9.30 p.m.

8.13. The initial investigation was conducted by P.W.18, which investigation was taken over by P.W.19 and the alteration report (Ex.P23) was marked through him, whereby the offence under Section 294(b) IPC, was included.

9. Some of the material facts in this case are that, the appellant and the deceased were married to each other for about 14 years, prior to the date of the incident. The appellant used to frequently quarrel with the deceased on suspicion that she was having an extra-marital affair with one Prabhu. Owing to this quarrel, the deceased had left the appellant and had come to her mother's (P.W.1) house, along with her three children, stating that she did not intend to live with the appellant.



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However, the appellant used to visit P.W.1's house and scold the deceased with filthy words. Thereafter, both the deceased and the appellant had entered into an agreement for separation of their matrimonial life through Ex.D1. The deceased had then stayed with P.W.1 for about two weeks. Thereafter, she had informed P.W.1 that she is going for work at 'Vijay Tex' and had also taken her last son Ragavan with her. However, she did not return back for about 2 months. On one day, the appellant having found that the deceased was then living with one Prabhu, had come to the house of P.W.1 and scolded her with bad words. After two months, the deceased had returned to P.W.1's house along with her son. During this period, P.W.1 had informed the appellant that the loan which he and the deceased had taken from a self-group, requires to be repaid, to which the appellant had abused her stating that “தேவடியா வருவாள் அவளிடம் வாங்கிக்கொள்” and also assaulted P.W.1 on her head, leading to an injury for which, she was treated with 4 stitches. She had also given a complaint about this incident to the Police. Thereafter, the deceased started repaying the loan amount, through P.W.1.



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10. As per the ocular testimony of P.W.1, on 08.05.2017, at about 6 p.m., the deceased and P.W.1 had gone to a shop to buy a Saree for the deceased. While coming back from the shop near 'Sathy Medicals', the deceased was holding the hands of P.W.1. At that time, the appellant had come in the opposite direction and had abused the deceased with the following bad words and kicked her down:-

“என் மருமகன் நாகரா- எ-களுக்கு எதிற்புறம் இருந்து வந்து ஏண்டி இன்னும் ஊரைச் சுற்றிக்கொண்டு இருக்கிறயாடே தேவிடியா என்று சொல்லி என் மகளை உதைத்து கீழே தள்ளிவிட்டார்,”

11. After the deceased fell down, the appellant had taken a knife (MO1) which he had concealed in his hip and stabbed her 5-6 times. Since the deceased was bleeding, P.W.1 had tried to lift her when the appellant attempted to murder P.W.1 with the knife by abusing her as “தேவிடியாவிற்கு நீ சப்போட்டா”. When P.W.1 had defended herself with her right hand, the knife fell on her right hand's ring and middle fingers, resulting in a cut injury. P.W.1 had then pushed the appellant



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and further stabbed the deceased two more times. According to P.W.1, MO1 appeared to be a knife used for cutting goats.

12. One of the onlookers at the scene, had called 108 ambulance and the deceased was taken to Erode Government Hospital, where she was declared to have been brought dead. According to P.W.1, the incident had occurred around 7 p.m.

13. At about 7.30 pm, P.W.1 had given a complaint to P.W.15, who registered an F.I.R. (Ex.P18) in Crime No.353 of 2017 at 8 p.m. against the appellant, for the offences under Sections 302 & 307 of IPC. P.W.15 had thereafter referred P.W.1 to Erode Government Hospital for the injuries she had sustained on her fingers. She had then sent the express F.I.R. to the Chief Judicial Magistrate through P.W.17.

14. The Inspector of Police (P.W.18) in his oral testimony had stated that after he had received the F.I.R. registered by P.W.15, he commenced the investigation. According to him, he had gone to the scene



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of occurrence and prepared observation Mahazar (Ex.P2), as well as the rough sketch (Ex.P21) in the presence of P.W.5 and one Karthikeyan. In the presence of the same witnesses, he had collected the samples of earth with blood stains (MO3) and without blood stains (MO4). He thereafter, prepared the inquest report at the Erode Government Hospital's Mortuary, wherein, he had examined witnesses and recorded their statements. He then forwarded the request letter for post-mortem through the Head Constable - P.W.12. On receiving information, he had arrested the accused at Kongu Kalaiyarangam on 09.05.2017. The voluntary confession statement given by the appellant was recorded in the presence of P.W.10 and one Ramprasath. The admitted portion of the confession statement was marked as Ex.P14. On the basis of the confession statement, he had recovered MO1, which was a 34 cm knife from behind the 'C.N.C College', together with a blood stained shirt (MO5) and in the presence of the same witnesses, he had prepared a seizure Mahazar (Ex.P15). Thereafter, he had taken steps for remand of the appellant to judicial custody.



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15. The investigation thereafter came to be transferred to P.W.19, who continued by examining further witnesses. He had also examined Head Constable Murugesan (P.W.17), Kalaiselvi (P.W.12), Sundararajan (P.W.14), Seshathiri (P.W.11), Dr.Sheelababu (P.W.16), Dr.Ravichandar (P.W.8), Dr.Ramakrishnakarthi (P.W.7), Mankayarkarasi (P.W.9), Nalina (P.W.6) and Sub-Inspector Veronika (P.W.15) and recorded their statements. On receipt of the medical records and the certificate given by the post-mortem doctor (P.W.7), he had concluded his investigation by holding that the death of the deceased was due to heavy loss of blood and the injury sustained by P.W.1, was a simple injury and that the accused had used filthy language against them. He had filed an alteration report (Ex.P23), altering the offences to Sections 294(b), 302 and 307 of IPC and filed a charge sheet against the appellant for the same offences.

16. Before the Trial Court, apart from P.W.1, the prosecution had also examined Kesavan (P.W.2), Kaliappan (P.W.3) and Vinoth (P.W.4), as eye witnesses. However, all these 3 witnesses were treated as hostile witnesses. P.W.13 is the brother of the deceased and in his oral testimony,



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he has stated that the deceased was living with the appellant and that the deceased had informed him about the suspicion and physical assault caused by the appellant on her. He also deposed that the appellant had once, come to his mother's house and scolded her in filthy words. On the date of occurrence, he was informed about the incident and thereafter, he had met P.W.1 at the Police Station and found her injured in her right hand's ring and middle fingers. He then took his mother for treatment to the Government Hospital.

17. The Accident Register (Ex.P9) and the Wound Certificate (Ex.P10) evidences the cut injury on P.W.1 in her right ring finger, measuring 3x1/2x1/2 cms and the cut injury in the middle finger, measuring 2x1/2x1/2 cms, which stands confirmed through the oral statements of P.W.1, the injured eye witness, as well as P.W.8, the doctor who treated P.W.1.

18. P.W.16 is the doctor working at ESI Hospital, Gobichettipalayam, who had deposed that at about 7 p.m. on 08.05.2017,



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the deceased was brought to her through a 108 ambulance by P.W.12 and on examination, she found that she had the following 6 cut injuries on her right scapula:-

- “1. வெட்டுக்காயம் 4x2x3cm அளவில் வலது பக்க scapula-க்கு கீழே இருந்தது.
2. வெட்டுக்காயம் 2x0.5x1cm அளவில் வலது பக்க scapula-க்கு கீழே இருந்தது.
3. வெட்டுக்காயம் 2x0.5x2cm அளவில் வலது பக்க scapula-க்கு கீழே இருந்தது.
4. வெட்டுக்காயம் 3x2x3cm அளவில் இடது பக்க scapula-க்கு கீழே இருந்தது.
5. வெட்டுக்காயம் 3x1x2cm அளவில் இடது பக்க scapula-க்கு கீழே இருந்தது.
6. வெட்டுக்காயம் 3x1.5x2.5cm அளவில் இடது பக்க scapula-க்கு கீழே இருந்தது.”

Since there was no pulse, she declared the death and sent the body to the Mortuary. The death intimation to the Police in this regard was marked as Ex.P20.

19. P.W.12, who is the Head Constable, had taken the body of the deceased to the Government Hospital for post-mortem. P.W.7 had



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conducted the post-mortem and issued Post-mortem Certificate (Ex.P8) based on the requisition letter (Ex.P7) and found the following injuries on the body of the deceased:-

“1. 3x1x வயிற்றின் உட்பகுதி வரை குத்திய காயம் இடதுபக்க வயிற்றில் இருந்தது அது பிறைநிலா வடிவில் இருந்தது. அந்தக் காயத்தின் முனைகள் கூர்மையாக இருந்தது. அதன் ஓர்-கள் சீராக இருந்தது. அது செந்நிறத்தில் இருந்தது. அந்தக் காயத்தைச் சுற்றி இருந்த மயிர்கால்களில் காயங்கள் இருந்தது.

2. 3x2x நெ-சுக்கட்டின் உட்பகுதிவரை இடது நெ-சுப் பகுதியில் 3 காய-கள் இருந்தன. அதுவும் பிறைநிலா வடிவில் இருந்தது. அதனுடைய முனைகள் கூர்மையாக இருந்தது. மயிர்கால்களில் காயங்கள் இருந்தன. அதுவும் செந்நிறத்தில் இருந்தது.

3. 3x2x7 செ.மீ (சதைவரை ஆழமுள்ள) இடது முன் கையில் குத்துக் காயம் இருந்தது. அதிலும் மயிர்க்கால்களில் காயம் இருந்தது.

4. 4x2x நெ-சுக்கட்டின் உட்பகுதிவரை ஆழமுள்ள 7 குத்துக்காயங்கள் பின்பக்க நெ-சு மற்றும் பின்பக்க வயிற்றுப்பகுதியில் இருந்தது. அதனுடைய முனைகள் கூர்மையாக இருந்தது. மயிர்கால்களில் காயங்கள் இருந்தது. உட்குறு பரிசோதனை செய்தபோது அவரது நெ-சுப்பகுதியில் 2 லிட்டர் அளவுள்ள திரவ நிலையில் உள்ள இரத்தம் இருந்தது. அவரது இடப்பக்க நுரையீரலின் கீழ்ப்பகுதியில் குத்துக்காயம் இருந்தது. அவருடைய இருதயம் இரத்தம் இல்லாமல் காலியாக இருந்தது. வெளிறிய நிலையில் இருந்தது. அவருடைய வயிற்றுப்பகுதியில் 2 லிட்டர் அளவுடைய திரவ நிலையில் உள்ள இரத்தம் இருந்தது. அவருடைய கல்லீரலில் 3x2x1 செ.மீ. அளவில் 2 குத்துக்காயங்கள் வலதுபகுதியில் இருந்தது. அவருடைய இடது சிறுநீரகத்தின் மேல்பகுதியில் இரத்தம் கட்டுகள் (perinephric hematoma) இருந்தன. அவருடைய இடதுபக்க குடல் பகுதியில் கிழிந்த காயங்கள் இருந்தன.



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அவருடைய மண்ணீரல் வெளிர் நிறத்தில் இருந்தது. அதில் எந்த காயமும் இல்லை. சிறுநீர் பை காலியாக இருந்தது. கர்ப்ப பை காலியாக இருந்தது. அவருடைய குரல்வளை எலும்பு உடையாமல் சீராக இருந்தது. அவருடைய தலைப்பகுதியில் எலும்பு முறிவு எதுவுமில்லை. முளை வெளிறிய நிறத்தில் இருந்தது 1400 கிராம் அளவில் இருந்தது.”

He then certified that the deceased would have died 12-24 hours before the post-mortem due to excessive bleeding and shock.

20. P.W.18 had also received the blood stained Saree (MO2), blouse (MO3) and in-skirt (MO8) from the body of the deceased and sent them to the forensic examination, through his Head Constable.

21. P.W.9 had sent the blood stained clothes of the deceased to the Forensic Lab, through Exs.P12 & P13. P.W.6 is the forensic expert who received the inquest and on examination, she opined that it was human blood with B Group. The reports of the Forensic Lab and the report of the Expert are marked as Exs.P4, P5 & P6. P.W.8 speaks about the treatment he had given to P.W.1. According to him, he had found 3x1/2x1/2 cms cut injury in the ring finger and 2x1/2x1/2 cms in the



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middle finger of P.W.1 and had treated her as an out-patient. The Accident Register of P.W.1 was marked as Ex.P9. He had certified her injuries to be simple injuries, through Ex.P10 certificate.

22. Both P.W.18 and P.W.19, who had conducted the investigation, have narrated about the various steps taken by them during the course of investigation.

23. P.W.1, who is the injured eye witness in this case, had narrated in explicit terms with regard to the matrimonial disputes between the appellant and the deceased, touching upon the suspicion over the fidelity of the deceased, as well as the entire sequence of events whereby, the appellant had come to the scene of occurrence, armed with a knife and had repeatedly stabbed the deceased, apart from injuring P.W.1.

24. The defence could not discredit any of her statements and her narration of events. All the material facts that were spoken to by P.W.1 touching upon the occurrence, have been corroborated through the



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medical evidences of the post-mortem Doctor (P.W.1) and P.W.16. The fact that P.W.1 was present in the scene of occurrence and that she had sustained injuries at the time of incident, stands established through the oral testimony of P.W.1 herself and the defence were not able to discredit such statements. This apart, the oral testimony of P.W.8, who is the doctor who treated her injuries in her right hand fingers and the Accident Register (Ex.P9) also confirms the injuries spoken to by P.W.1. All these material facts would substantially establish that P.W.1 was present in the scene of occurrence, when the incident happened.

25. The learned counsel for the appellant would submit that since the other eye witnesses namely P.W.2, P.W.3 and P.W.4 have turned hostile, the case of the prosecution cannot be proved only on the statement of P.W.1, who being the mother of the deceased and an interested witness.

26. P.W.1 is not only an eye witness to the incident, but had also sustained injuries inflicted by the appellant during the occurrence. The



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testimony of an injured eye witness is of a greater evidentiary value than that of the regular eye witness and stands on a higher pedestal. P.W.1 had clearly narrated the circumstances under which, she was holding the hands of the deceased and walking, when they were assaulted by the appellant. She also speaks about the estranged relationship between the appellant and the deceased and the circumstances under which the deceased had come to her house and both of them had gone out for buying a saree, thereby indicating the motive for the incident.

27. In '*Jarnail Singh Vs. State of Punjab*' reported in '(2009) 9 SCC 719', the Hon'ble Supreme Court had placed reliance on '*Shivalingappa Kallayanappa Vs. State of Karnataka*' reported in '(1994) SCC (Cri.) 1694' and held that the deposition of the injured witness, should be relied upon, unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established, in case it is proved that he suffered the injury during the said incident. Likewise, in '*State of Uttar Pradesh Vs Kishan Chand*'



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reported in '**(2004) 7 SCC 629**', a similar view was taken by holding that the witness who sustained injury at the time and place of occurrence, lends support to his testimony that he was present during the occurrence and unless nothing can be elicited to discard his testimony, it should be relied upon. Following the aforesaid decisions, in '**Abdul Sayeed Vs. State of Madhya Pradesh**' reported in '**(2010) 10 SCC 259**', the Hon'ble Supreme Court had held that the testimony of an injured witness should be placed in a higher pedestal. The relevant portion of the order reads as follows:

“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”



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28. In a very recent judgment of the Hon'ble Supreme Court in the case of '**Balu Sudam Khalde and another Vs. The State of Maharashtra**' reported in '**2023 SCC OnLine SC 355**', the aforesaid principles were summed up in the following manner:

“26. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

- (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
- (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*
- (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.*
- (d) The evidence of injured witness cannot*



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be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

29. Merely because P.W.1 happens to be the mother of the deceased, her explicit narration cannot be ignored and thrown out, on the ground that she is an interested witness, more particularly when there are no major contradictions or discrepancies in her statement. Thus, we are unable to appreciate the ground taken by the learned counsel for the appellant and discredit the evidence of P.W.1.



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30. The learned counsel for the appellant submitted that the motive for the occurrence was not established by the prosecution to establish that the appellant had committed the crime. This is not a case of circumstantial evidence, where motive may have relevance. On the other hand, the prosecution has produced an eye witness who was injured during the same incident.

31. The Hon'ble Supreme Court, in several of its judgments, had reiterated the well settled principles that in criminal jurisprudence when the ocular testimony inspires the confidence of the Court, the prosecution is not required to establish motive. Such a principle was held in the following manner in the case of '**Shivaji Genu Mohite Vs. State of Maharashtra**' reported in '**(1973) 3 SCC 219**':-

“In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on



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circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy”

32. The principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime has also been reiterated by the Hon'ble Supreme in '**Bikau Pandey v. State of Bihar**', (2003) 12 SCC 616; '**Rajagopal v. Muthupandi**', (2017) 11 SCC 120; '**Yogesh Singh v. Mahabeer Singh**', (2017) 11 SCC 195. Even otherwise, when P.W.1 had categorically narrated the consistent matrimonial disputes between the deceased and the appellant, his suspicion of infidelity on her, the mental and physical abuse he caused to her, it can be safely inferred from these events, as a possible motive for the incident.



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33. The learned counsel for the appellant also made an alternate submission that in view of the sustained provocation from the deceased, the present case would fall under Exception 1 to Section 300 and placed reliance on the decision of the Hon'ble Supreme Court in the case of ***'Dauvaram Nirmalkumar Vs. State of Chhattisgarh'*** reported in ***'2022 LiveLaw (SC) 650'***.

34. In order to seek protection under the principle of sustained provocation, the appellant is required to first establish that his attack on the deceased and P.W.1 was immediately preceded and precipitated by some sort of provocation conduct, which would satisfy the requirement of sudden or immediate provocation. Even in the case of ***Dauvaram Nirmalkumar (supra)***, it had been held that this principle does not do away with the requirement of immediate or the final provocative act, words or gestures. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation



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and premeditation. When the defence of provocation is taken, it requires to be firstly established as to whether there was an intervening period for the passion to cool and for the appellant to regain dominance and control over his mind. Secondly, the appellant's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation.

35. While applying the test as to whether a reasonable person in these circumstances would have lost self-control in the situation, we are unable to apply the principle of sustained provocation, more particularly, when months after the deceased had left the appellant, he had armed himself with a deadly weapon (MO1) and had inflicted 5-6 stab injuries on the deceased. Further, when P.W.1 had attempted to lift the deceased, he had also attempted to stab her, which was thwarted by P.W.1 and not stopping with that, he had again stabbed the deceased, two more times. Having come to the scene of occurrence, armed with a deadly weapon (MO1), with the sole object of finishing the deceased, the principle of sustained provocation can never be applied to the facts of this case.



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36. The fact that the appellant had abused both the deceased, as well as P.W.1 with obscene words in a public place, has been clearly spoken to by P.W.1, which statements could not be discredited by the prosecution. It is in this background, the Trial Court had found the appellant guilty of having committed the offence under Section 294(b) IPC.

37. Likewise, as discussed earlier, the appellant had armed himself with a knife with an intention to murder the deceased and had inflicted several stab injuries leading to her death and therefore, he is guilty of having committed an offence under Section 302 IPC, which was also the finding of the Trial Court.

38. Insofar as the charge under Section 307 IPC against the appellant is concerned, the evidence against him would reveal that he had gone to the scene of occurrence with an intention of causing death, only



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to the deceased and there is no evidence to show that there was an intention to do away with P.W.1 also. It is in this background, the Trial Court had held that the injury inflicted on P.W.1 was only a simple injury and therefore, had modified the charge into 323 IPC. We do not find any infirmity or illegality in such a modification.

39. Thus, we are of the considered view that the Trial Court had properly appreciated the evidences before it and had placed reliance, mainly on the evidence of P.W.1 and had found the appellant guilty. In the light of the observations and findings rendered by us as above, we do not see any reason to interfere with the judgment of the Trial Court.

40. In the result, there are no merits in the present appeal and accordingly, this Criminal Appeal stands dismissed. No costs.

[M.S.R., J]

[S.M., J]

10.04.2024

Index: Yes

Internet: Yes

Speaking order



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Neutral Citation: Yes

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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

Sni

To

1.The Inspector of Police,
Erode North Police Station,
Erode District.

2.Sessions Court Magalir Neethi Mandram,
(Fast Track Mahila Court), Erode.

3.The Public Prosecutor,
High Court, Madras.

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10.04.2024