

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

CRL.A.No.233/2017

Saravanan

.. Appellant/Sole
Accused

Versus

The State rep.by
The Inspector of Police
B-13 Pothanur Police Station(L & O)
Coimbatore District.
[Crime No.778/2014]

.. Respondent /
Complainant

Prayer:- Appeal filed under section 374[2] Cr.P.C., against the judgment made in SC.No.45/2016 on the file of the learned I Additional District and Sessions Judge, Coimbatore dated 09.02.2017.

For Appellant : Mr.J.R.Prabhakaran

For Respondent : Mr.R.Ravichandran, GA [Crl.Side]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellant is the sole accused in SC.No.45/2016 on the file of the Court of the learned I Additional District and Sessions Judge, Coimbatore. He stood charged and tried for the commission of the offence u/s.302 IPC, for having committed the murder of his wife Tmt.Sathiya Priya on 20.10.2014 afternoon. The Trial Court, vide impugned judgment dated 09.02.2017, has convicted the appellant / accused for the commission of the said offence and sentenced him to undergo rigorous imprisonment for life and also to pay a fine of Rs.5000/- with a default sentence to undergo three months simple imprisonment. Challenging the legality of the said conviction and sentence, the appellant / accused came forward to file the present appeal.

2 The facts, briefly narrated and are necessary for the disposal of this appeal, are as follows:-

2.1 The appellant / accused, viz., Saravanan, is the husband of the deceased Sathiya Priya and the marriage between them was solemnised, two years prior to the date of occurrence on 20.10.2014 and out of the said wedlock, they were blessed with a female child.

2.2 The appellant / accused always used to suspect the fidelity / character and conduct of his wife and used to quarrel with her and also abuse her and on account of the same, Sathiya Priya used to go to her parental home often and the elders used to mediate and pacify her to enable her to join the company of her husband. Sathiya Priya on one occasion, came to her parental home and informed her parents that since her husband - appellant / accused, continue to abuse her physically, she did not want to go to her matrimonial home and she was again pacified by her parents and on 19.10.2014, the mother of Sathiya Priya, viz., Tmt.Valarmathi [P.W.1], took her daughter to the matrimonial home and on the next day, i.e., on 20.10.2014, for the purpose of inviting her daughter and son-in-law to "Nonbu" prior to Deepavali festival, P.W.1 went to the matrimonial home of Sathiya Priya along with her sister, viz., Tmt.Selvi [P.W.4] at about 3.30 p.m., and at that time, the appellant / accused and his wife Sathiya Priya were quarreling with each other and when P.W.1 enquired her daughter and she told that the appellant / accused - her husband, always used to suspect her fidelity and physically abuse her and that that juncture, the appellant / accused, abused his wife by using filthy words. The wife of the appellant / accused, Sathiya Priya went to the kitchen for the purpose of preparing tea and the appellant / accused followed her, took M.O.1-Koduval, from the slab located in the kitchen and cut her on the left side of the neck and as a consequence, blood started oozing. P.W.1 raised alarm as to the act done by the appellant / accused and on hearing the alarm, three persons, viz., one Kumar, Manjula [P.W.3] and an elderly person, came to the spot and when they made attempts to catch the appellant / accused, dropping the weapon, he ran away from the scene of crime. P.W.1, for the purpose of stopping the oozing blood, put M.O.2-Bedsheet around the neck ; but the blood did not stop and her daughter died on the spot.

2.3 When P.W.1 went out of the house to lodge a complaint, she saw Ranjithkumar [P.W.6] - her sister's son and told him about the act of the appellant / accused and he took her to B-13 Pothanur Police Station and lodged a complaint under Ex.P.1 to P.W.12-Kuppuraj, the Sub-Inspector of Police attached to the said Police Station at the relevant point of time. On receipt of the complaint under Ex.P.1 lodged by P.W.1, he

registered the case in Crime No.778/2014 at about 16.30 hours on 20.10.2014, for the commission of the offence under section 302 IPC. Ex.P.14 is the First Information Report. He despatched the original complaint and the FIR through P.W.10-Kumarapillai, Head Constable attached to the said police station, to the jurisdictional Magistrate Court as well as copies of the same to the Higher Officials. P.W.12 also deputed Constables Sasikala and Tamizhselvi, to guard the spot.

2.4 P.W.13-Sakthivel, was the Inspector of Police / Station House Officer attached to the respondent police station at the relevant point of time and on receipt of the FIR registered by P.W.12, commenced the investigation and proceeded to the scene of crime and in the presence of P.W.7-Senthilkumar and one Balakrishnan, had prepared the Observation Mahazar and the Rough Sketches [one prepared outside the scene of crime marked as Ex.P.15 and the other prepared inside the house, marked as Ex.P.16]. P.W.13 held inquest on the dead body of the deceased Sathiya Priya in the presence of the Panchayatdars and prepared the Inquest Report [Ex.P.17]. He recovered Blood Stained earth ; Sample earth ; Bedsheet [M.O.2] and Koduval [M.O.1] under the cover of Mahazar - Ex.P.5, in the presence of the said witnesses. P.W.13 sent the body of Sathiya Priya to the Government Medical College Hospital, Coimbatore, through Tmt.Tamizhselvi for conducting autopsy.

2.5 P.W.11-Dr.Jeyasingh, was the District Police Surgeon and Associate Professor in the Head of the Department of Forensic Medicine attached to Coimbatore Medical College Hospital at the relevant point of time. P.W.11, on receipt of the requisition along with the body at about 13.00 hours on 21.10.2014, found the presence of rigor mortis all over the body and commenced the postmortem at about 13.05 hours and noted the following features:-

"The following ante mortem injuries noted all over the body:-

1 A transverse cut injury 20x5cmxcervical vertebra deep noted over the upper most part of left side neck, on dissection the wound cutting the underlying left lateral posterior aspect of neck muscle, vessel, nerves and tendons and completely cutting the C-2 vertebra and mandible, the right end is 5cm below the angle of right mouth and the left end is midline of back of the neck.

2 A transverse cut injury 6x1 cm x muscle deep noted over left side neck. 1 cm below to previous wound No.1. The medial end is 8cm lateral to midline [front] at the level of upper end thyroid cartilage.

3 A transverse cut injury 8x2cmsxmucle deep noted left side neck. 2 cm below to wound No.2. The medial end is 7cm lateral to midline at the level of mid thyroid cartilage.

4 A transverse cut injury 7x2 cms bone deep noted over left side neck. The wound cutting the muscle, vessels, nerves, tendons and left side clavicle bone in its medial 1/3rd. The medial end is 6 cm lateral to midline and 1 cm above the middle of clavicle.

5 Stab injury 5x1cmxbone deep noted over left side cheek [ascending ramous]. The medial end is blunt an the lateral end is sharp. The medial end is 2 cm lateral to angle of mouth.

6 Vertical oblique stab wound 5x2 cm x bone deep note over just below the left lower lip.

7 Multiple stab wounds of varying sizes and shapes over an area of 7x6 cmxvarying muscle deep noted over top of right shoulder.

8 Vertical oblique stab would 1x1cmxmucle deep noted over right side chin. The upper end is sharp and the lower end is blunt. The upper end is 2 cm below the right lower lip.

9 Vertically oblique stab would 0.5x0.5cmxmucle deep noted over right side chin, 2 cm below and lateral to wound No.8.

10 Vertically oblique stab would 3x1cmxmucle deep noted over right lower neck, the lower end is sharp and the upper end is blunt. The lower end is 1 cm above the right mid clavicle.

11 Transversely oblique cut injury 6x2 cms x muscle deep noted over inner aspect of lower 1/3rd of left forearm. The lower end is blunt and the upper end is sharp. The lower end is 2 cm above the medial end is wrist joint.

12 Transversely oblique cut injury 5x1 cm x muscle deep noted over 1 cm posterior to previous wound No.11. The lower end is blunt and the upper end is sharp.

13 Transversely oblique cut injury 3x2 cms x bone deep noted over palmar aspect of left little finger at the level of proximal phalanx. The wound cutting

the underlying muscle, vessels, nerves, tendons and proximal phalangeal bone.

14 Vertical stab injury 3x1 cm peritoneal deep noted over midline of upper abdomen, the lower end is sharp and the upper end is blunt, 3 cms below the xiphi sternum. The wound passes inwards backwards entering peritoneal cavity and piercing the liver measuring about 2x0.5x0.5cm peritoneal cavity contains about 500ml of fluid blood.

15 Vertically oblique stab wound 2x1cmxmuscle deep noted over left side abdomen. The lower end is sharp and the upper end is blunt. The lower end is 5cm above and lateral to the umbilicus.

16 Vertically oblique stab wound 2x1cmxmuscle deep noted over left side abdomen, The lower end is sharp and the upper end is blunt. The lower end is 5cm above and lateral to umbilicus.

17 Stab injury two in numbers each measuring 2x1cmxmuscle deep noted over inner aspect of right arm.

18 Vertically oblique stab injury 2x1x1cm noted over right breast, the medial end is sharp and lateral end is blunt. The medial end is 4cm above and lateral to nipple.

19 Vertically oblique stab injury 4x1cmxmuscle deep noted over back of right side chest, the upper end is sharp and lower end is blunt.

20 Vertically Oblique stab injury 1x1x1cm noted back of lower neck.

Other Findings:-

- Pleural and peritoneal cavities - empty.
- Hyoid bone - intact.
- Larynx and Trachea : Cut Section pale.

- Heart - all chambers contain about few cc of fluid blood.
- Stomach contains about 50 ml of yellow colour fluid no specific smell, mucosa pale.
- Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.
- Liver, Spleen, Kidnes, Brain and Lungs - cut section pale.
- Urinary bladder - empty
- Uterus: Normal in size, cut section empty."

P.W.11, preserved the viscera for the purpose of sending it to chemical analysis and opined that the "deceased would appear to have died of shock and hemorrhage due to multiple injuries and its corresponding internal injuries and the death would have occurred 12-24 hours prior to autopsy." The Postmortem Certificate given by him is marked as Ex.P.11. The final opinion as to the viscera was also received and it was marked as Ex.P.13 and as per the said document, "viscera does not contain any poison."

2.6 P.W.13, the Investigating Officer, in continuation of his investigation, examined P.W.1, P.W.4, Selvaraj, Kumar, P.W.2, P.W.3, P.W.7 and Balakrishnan and recorded their statements. The cloth worn by the deceased Sathiya Priya, viz., Blood-stained Nighty - M.O.3 and Blood-stained Inskirt - M.O.6, was recovered by P.W.13 under Form 95 and sent the same to the jurisdictional Magistrate Court and the concerned Police Constable also submitted the Special Report under Ex.P.18. P.W.13, on receipt of the secret information, effected the arrest of the appellant / accused on 21.10.2014 at about 06.00 hours near Kannappa Nagar Lane on Coimbatore - Sanganoor Road in the presence of Sathishkumar - P.W.5, who identified the appellant / accused and one Prakash and the appellant/accused came forward to give a voluntary confession statement in the presence of the said witnesses, the admissible portion of which is marked as Ex.P.2. The appellant / accused stated that he would identify the spot in which he had hidden the cloth worn by him at the time of occurrence and accordingly, the blood-stained pant [M.O.4] and blood-stained half hand shirt [M.O.5] worn by him, was recovered from a thorny bush at Kolapodimalai Road, Pillaiyarpuram, under the cover of Mahazar Ex.P.3. Thereafter, the appellant / accused was brought to the police station and thereafter, sent for remand. P.W.13 examined P.W.5, Prakash, P.W.6, P.W.9 and others and recorded their statements. On 17.12.2014, P.W.13 examined P.W.11, the doctor who conducted the autopsy and recorded his statement and on 30.12.2014, he examined Mr.Vasudevan, who took photographs [Ex.P.19 series] in the scene of occurrence. On the same day, he obtained the final opinion from P.W.11 and on transfer, he handed over the

investigation to his successor, Mr.Prem Anand, the Inspector of Police, who on receipt of the Serologist Reports [Exs.P.6 and 7] and Biological Report [Ex.P.8] and after examining and recording the statement of Mr.Venkateswaran, Junior Forensic Science Officer, who had issued the above reports, concluded the investigation and laid the charge sheet/final report before the Court of the Judicial Magistrate No.7, Coimbatore, who took it on file in PRC.No.38/2015. The Committal Court had summoned the accused and furnished him with the copies of the documents u/s.207 Cr.P.C., and having found that the case is exclusively tried by the Court of Sessions, committed the same to the Principal District and Sessions Court, Coimbatore and the said Court, in turn, had made over the case to the Court of I Additional District and Sessions Judge, Coimbatore, who took it on file in SC.No.45/2016.

2.7 The prosecution, in order to sustain their case, examined P.Ws.1 to 13 and marked Exs.P.1 to 19 as well as M.Os.1 to 6.

2.8 The accused was questioned under section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false. The accused did not file any documents nor let in any oral evidence.

2.9 The Trial Court, on consideration and appreciation of the oral and documentary evidences and other materials, had convicted the appellant/accused for the commission of the offence u/s.302 IPC and imposed the sentence of rigorous imprisonment for life with a fine and default sentence. Challenging the legality of the conviction and sentence of the Trial Court, the appellant/accused has preferred this appeal.

3 Mr.J.R.Prabhakaran, the learned counsel appearing for the appellant / accused made the following submissions:-

- ➔ The FIR was belatedly despatched and P.W.10-Constable who took the FIR also failed to offer any plausible explanation as to the belated submission of the original complaint and FIR to the jurisdictional Magistrate.
- ➔ P.Ws.1 and 4 - mother and aunt of the deceased Sathiya Priya would not have been present in the scene of crime at all and their testimonies as to the witnessing the occurrence, did not corroborate with each other on material particulars.

- The testimonies of P.Ws.2 and 3 as well as P.W.9 as to the appellant / accused fleeing away from the scene of crime also cannot be believed for the reason that there is discrepancy with regard to the time on which, he fled from the scene of crime.
- The murder could not have been caused by use of M.O.1-Koduval for the reason that as per the Postmortem Certificate marked as Ex.P.11 issued by P.W.11, very many stab injuries were also noted and those injuries would not have been caused by using M.O.1-koduval and the said weapon has been planted for the purpose of implicating the appellant / accused.
- The photographs marked as Ex.P.19-series would disclose that the weapon was not found near the body of the deceased and the photographer, viz., Mr.Vasudevan, who took photographs, was also not examined by the prosecution and it also substantiate the defence of the appellant / accused that the weapon was planted to suit the case of the prosecution.
- M.O.1 was also subjected to chemical analysis and as per Exs.P.7 and 8-Serologist Reports, the weapon was tainted with human blood and the result of the Grouping Test, is inconclusive and whereas, in M.Os.2, 4, 5 and 6, it has been noted that the blood group was AB+.

4 Alternately, it is pleaded by the learned counsel appearing for the appellant / accused that even as per the case of the prosecution, a wordy altercation preceded the occurrence and that the appellant / accused, in a heat of passion, has committed the offence and therefore, prays for alteration of conviction and reduction of sentence of imprisonment of life.

5 Per contra, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] appearing for the State would contend that the motive has been proved by the prosecution through the testimonies of P.Ws.1, 2 and 4, as the appellant / accused always used to suspect the fidelity / character and conduct of his wife Sathiya Priya and used to physically abuse her and on account of the same, she also used to go to her parental home often and every occasion, she will be pacified to join the company of her husband. Insofar as the commission of the offence of murder by the appellant / accused, it is the submission of the learned Government Advocate [Crl. Side] that P.W.1-mother and P.W.4-Aunt of the deceased Sathiya Priya had cogently spoken about the specific overt act on the part of the appellant / accused in attacking his wife Sathiya Priya with a lethal weapon, i.e., M.O.1-Koduval, repeatedly which caused very many injuries and the appellant / accused fleeing away from the

scene of occurrence after the commission of the offence had also been spoken to by P.Ws.1 to 4 as well as 9 and their testimonies corroborate with each other on all material particulars. The scientific evidence in the form of Ex.P.11-Postmortem Certificate issued by P.W.11 coupled with the Biological and Serological Reports [Exs.P.6 to 8] would also substantiate the case of the prosecution that M.O.1-weapon was used for the commission of the heinous crime and the material objects, viz., M.Os.2, 5 and 6 were tainted with human blood and grouping test would also indicate that it belonged to the blood group of the deceased [AB +]. Insofar as the missing of M.O.1-Koduval in Ex.P.19 series [photographs], learned Government Advocate [Crl. Side] has drawn the attention of this Court to the Cross-examination of P.W.13 and would submit that marking of the photographs was not objected on account of the fact that Mr.Vasudevan, who took photographs, was not examined and a specific question was also put to the Investigating Officer in that regard and he answered by stating that he did not remember exactly the time in which the photographer came and also stated that the photographer would have arrived to the scene roughly in between 5.15 p.m. and 9.00 p.m. on the date of occurrence, i.e., 20.10.2014 and however, the witness to the Seizure Mahazar, viz., P.W.5,

has spoken about the seizure and it also substantiated by Ex.P.5-Seizure Mahazar and in any event, it can be termed only as a minor / trivial discrepancy. In sum and substance, it is the submission of the learned Government Advocate [Crl.Side] that the prosecution, through the testimonies of the eyewitnesses, viz., P.Ws.1 and 4, coupled with the testimonies of P.Ws.2, 3 and 9 and other evidences, had conclusively proved that it was the appellant / accused who committed the murder of his wife Sathiya Priya and the Trial Court, on a proper appreciation and consideration of the oral and documentary evidences and other materials, had rightly convicted and sentenced the appellant / accused and hence, submitted that the impugned judgment may not warrant interference at the hands of this Court, by exercising its Appellate Jurisdiction and prays for dismissal of this appeal.

6 This Court paid its anxious consideration and best attention to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

7 The following questions arise for consideration:-

[a] Whether the testimonies of the eyewitnesses, viz., P.Ws.1 and 4 coupled with the testimonies of P.Ws.2, 3 and 9 are believable to sustain the case of the prosecution that it was

the appellant / accused alone has committed the offence of murder?

[b] Whether the appellant / accused is entitled for modification of the conviction and sentence if this Court holds that he has committed the murder of his wife?

QUESTION NO.1

8 P.W.1-Valarmathi, is the mother of the deceased Sathiya Priya and mother-in-law of the appellant / accused Saravanan and in the chief-examination, she has spoken about the marriage of her daughter two years prior to the commission of the offence and the frequent quarrel between the appellant / accused and her daughter on account of the fact that the appellant / accused used to suspect the fidelity / character and conduct of his wife and the physical abuse on account of the same. P.W.1 would further depose that on one such occasion, her daughter Sathiya Priya came to her parental home stating that her husband used to suspect her character and used to physically abuse her and by pacifying her, P.W.1 took her daughter to her matrimonial home on 19.10.2014 and went to the house of the appellant / accused on the next day, i.e., on 20.10.2014 for inviting them in connection with Deepavali festival and around 3.30 p.m., when P.W.1 and P.W.4 entered the house, they heard the wordy altercation between the appellant / accused and his wife Sathiya Priya [deceased] and when P.W.1 questioned her daughter, she told that the appellant / accused is suspecting her character and conduct and physically abused her. P.W.1 would further depose that the appellant / accused started abusing his wife in front of her by using unparliamentary language and when the deceased went inside the kitchen for preparing tea, the appellant / accused followed her and took M.O.1-Koduval, lying on the kitchen slab and cut her on the left side of the neck and when P.W.1 raised alarm, the appellant / accused also threatened her and P.W.4 with dire consequences and on hearing the alarm, P.W.3, Kumar and an elderly person came inside and the appellant / accused, on seeing them, dropped the weapon and flee away from the scene of crime and thereafter, she had spoken about the lodging of complaint under Ex.P.1. In the cross-examination, P.W.1 would depose that her daughter was aged 19 years at the time of the occurrence and she was her only daughter and prior to the commission of the offence, for some reason or the other, her daughter used to come to parental home on the ground that her husband - the appellant / accused, always used to suspect her character and conduct and they did not lodge any police complaint for the reason that the said issue could be sorted out through mediatory efforts. She also denied the suggestion that from the hall, she cannot witness the occurrence.

9 P.W.4-Selvi, aunt of the deceased Sathiya Priya / younger sister of P.W.1, in the chief examination, has spoken about the harassment meted out to Sathiya Priya on account of the attitude of the appellant / accused. P.W.4, in the cross-examination, has corroborated the testimony of P.W.1 as to the witnessing of the occurrence and when a specific question was put to her as to why no efforts have been taken to prevent the appellant / accused from doing so, she replied it by saying that since the appellant / accused brandished the weapon-M.O.1, they did not make any attempts.

10 P.W.2-Anbazhagan, is the neighbour of the appellant / accused and in the chief examination, he had stated that on the date of occurrence, on 20.10.2014, the appellant / accused and his wife Sathiya Priya had wordy altercation and on hearing the alarm, he went inside the house of the appellant / accused and found the body of Sathiya Priya and thereafter, his wife also came there ; but the appellant / accused ran away from the scene of crime and the parents of the deceased were standing outside. A suggestion was put to P.W.2 that he did not witness the occurrence and he denied the same. P.W.3 would also depose on similar lines as that of P.W.2 as to the seeing of the appellant / accused fleeing away from the scene of occurrence and denied the suggestion that he did not witness the occurrence.

11 P.W.9-Feroz Ahamed would depose that he knew the deceased and her house was ten houses away from his place of residence and he would further state that on 20.10.2014, when he was conversing with his friend Nedumaran, he saw the appellant / accused with blood stains, passing by and when he called the appellant / accused, he did not stop and went away and on the night hours, he came to know about the murder of Sathiya Priya and on the next day, he went to the police station and P.W.13 asked him whether the appellant / accused has worn the cloth, viz., M.Os.4 and 5 and he answered it in affirmative. In the cross examination, he would depose that he saw the appellant / accused passing by at the distance of 2 feet and he denied the suggestion that he is stating so falsely.

12 The primordial submission of the learned counsel for the appellant / accused is that P.Ws.1 and 4 cannot be treated as the eyewitnesses to the occurrence for the reason that they are the interested witnesses and assuming that they were present inside the house in which the murder took place, they would not have witnessed the occurrence as they were in the hall and according to P.W.2, P.W.1 and her husband were standing outside the house and as such, they would not have witnessed the occurrence. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that P.Ws.1 and 4 were very categorical that the appellant / accused started

abusing his wife using unparliamentary language and when Sathiya Priya went inside the kitchen to prepare tea, the appellant / accused followed her and took M.O.1-Koduval from the slab and attacked her on the left side of the neck. The appellant / accused, fled away from the scene of crime, immediately after committing the offence and it was spoken to by P.Ws.2 and 3 and P.W.9 would depose that he saw the appellant / accused passing by with blood-stained cloth and when he asked him, the appellant / accused did not answer. Thus, the prosecution was able to prove through the testimonies of the eyewitnesses, viz., P.Ws.1 and 4, coupled with the testimonies of P.Ws.2, 3 and 9 that it was the appellant / accused alone has caused the death of his wife by attacking her with M.O.1-Koduval.

13 It is also the submission of the learned counsel for the appellant / accused that in Ex.P.19-photographs series, which was taken on the spot itself, the weapon-M.O.1 is not found and as per Ex.P.5, it was recovered from the scene of crime and in order to connect the appellant / accused with the commission of the crime, the said weapon has been introduced and has also drawn the attention of this Court to the testimony of P.W.13-Investigating Officer that Mr.Vasudevan, who took the photographs [Ex.P.19 series] was not examined. P.W.13 in the cross-examination would depose that he did not remember the exact time, the photographer came to the spot and that the photographer would have taken the photographs after the commencement of the investigation between 5.15 p.m. and 9.00 p.m. He would further depose that it is correct to state that in Ex.P.19 series [photographs], the weapon was not found.

14 PW.7-Senthilkumar was the witness to Ex.P.5-Seizure Mahazar and in the chief examination, he would depose that at about 5.45 p.m. on 20.10.2014, police came to the spot and in his presence, M.Os.1 and 2 and blood stained earth and sample earth were recovered and he signed the said Mahazar and his signature is marked as Ex.P.4 and in the cross-examination, he was very categorical that M.Os.1 and 2 - blood stained Koduval and blood stained bedsheet were found near the body of the deceased and in his presence only, Ex.P.5 was prepared.

15 It is to be pointed out at this juncture that M.O.1-Koduval was also subjected to chemical analysis and as per Exs.7 and 8, the weapon was tainted with human blood and the result for the same, was inconclusive. It is the submission of the learned counsel for the appellant / accused that insofar as M.Os.2, 4, 5 and 6 are concerned, blood group has been identified and whereas, in M.O.1-weapon, the blood group was not identified and coupled with the fact that in the photographs, marked as Ex.P.19 series, the weapon was not found and the defence projected that the weapon has been introduced subsequently, has been substantiated. However, this Court is of

the view that such submission is liable to be rejected for the reason that P.W.7 has spoken about the recovery of the weapon under the cover of Mahazar-Ex.P.5 and P.W.13 in the cross-examination, had deposed that he did not remember the time on which the photographer came to the spot and it would have been between 5.15 p.m. and 9.00 p.m. on 20.10.2014. Therefore, the prosecution has proved the recovery of the weapon.

16 The learned counsel for the appellant / accused has drawn the attention of this Court to Ex.P.11-Postmortem Certificate and the testimony of the doctor who conducted autopsy and would state that in the Postmortem Certificate, very many stab injuries were noted and the said injuries would not have been caused by the use of M.O.1-Koduval. P.W.11 the doctor who conducted the autopsy was specifically cross-examined and he was very categorical that the injuries found on the body of the deceased would have been caused by the use of M.O.1-Koduval. No doubt, it is an Expert Opinion and like any other evidence, it also requires appreciation. It is to be pointed out at this juncture that the expert has given opinion that the murder would have been caused by the use of M.O.1 and it has also been amply established through the testimony of P.W.7 who has witnessed as to the recovery of M.O.1 under Ex.P.5 and that apart, Ex.P.7 - Serological Report would also indicate that the said weapon was tainted with human blood. Thus, the prosecution was able to prove that M.O.1-Koduval was used by the appellant / accused to commit the murder of his wife Sathiya Priya.

17 It is also contended by the learned counsel for the appellant / accused that the FIR came to be registered at about 16.30 hours on 20.10.2014 and as per the testimony of P.W.10-Kumarapillai, Constable, he got FIR at about 5.00 p.m. on 20.10.2014 and went to the residence of the learned Judicial Magistrate No.7, Coimbatore and since he was not available and that he went outside, he waited and handed over the FIR at about 11.45 p.m. and in the cross examination, he would depose that from the Police Station, the Court can be reached within half-an-hour but he handed over the FIR to the jurisdictional Magistrate at his residence at about 11.45 p.m., only for the reason that the concerned Magistrate was out of town. Therefore, this Court is of the view that the delay in handing over the FIR to the jurisdictional Magistrate has been properly explained.

18 This Court is of the view that the delay in despatching the FIR may be pertains to the defence that there is an interpolation or introduction at a later point of time. However, the testimonies of P.Ws.1 and 4 had amply established the case of the prosecution that it was the appellant / accused alone who has committed the murder of his wife Sathiya Priya using a lethal weapon-M.O.1 [Koduval]. Thus, the prosecution

was able to prove its case beyond any reasonable doubt against the appellant / accused.

Therefore, Question No.1 is answered in negative against the appellant / accused.

QUESTION No.2:-

19 The learned counsel for the appellant / accused also made an alternate plea by praying for modification of the conviction and sentence for the reason that admittedly, as per the testimonies of P.Ws.1 and 4, there was a wordy quarrel between the appellant / accused and his wife Sathiya Priya - deceased and enraged by the same, he took the weapon which was lying on the slab in the kitchen and attacked her. The testimonies of P.Ws.1 and 4 would disclose that the appellant / accused was always in the habit of suspecting the fidelity of his wife and used to quarrel with her and also physically abuse her which resulted in his wife being going to her parental home often and after mediatory efforts, P.W.1 used to persuade her daughter to go to her matrimonial home and just a day prior to the occurrence, it was done so.

20 It is pertinent to point out at this juncture that the deceased was aged 19 years and out of wedlock, was blessed with a female child and the postmortem report marked as Ex.P.11 coupled with the testimony of P.W.1, would clearly reveal that the deceased was attacked brutally by the appellant / accused by using M.O.1-Koduval. It is also to be noted that there was no premeditation on the part of the deceased and the appellant / accused had taken an unfair advantage of the situation and without any provocation, had indiscriminately attacked his wife with the lethal weapon and the death was instantaneous. In the considered opinion of the Court, the act done by the appellant / accused would not fall within the exception 4 to section 300 IPC and as such the appellant / accused is not entitled to for any modification of the conviction and sentence.

Therefore, Question No.2 is also answered in negative against the appellant / accused.

21 In the result, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant / accused for the commission of the offence u/s.302 IPC by the learned I Additional District and Sessions Judge, Coimbatore, vide impugned judgment dated 09.02.2017 in SC.No.45/2016 are

confirmed. The period of incarceration already undergone by the appellant / accused is given set-off u/s.428 Cr.P.C.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

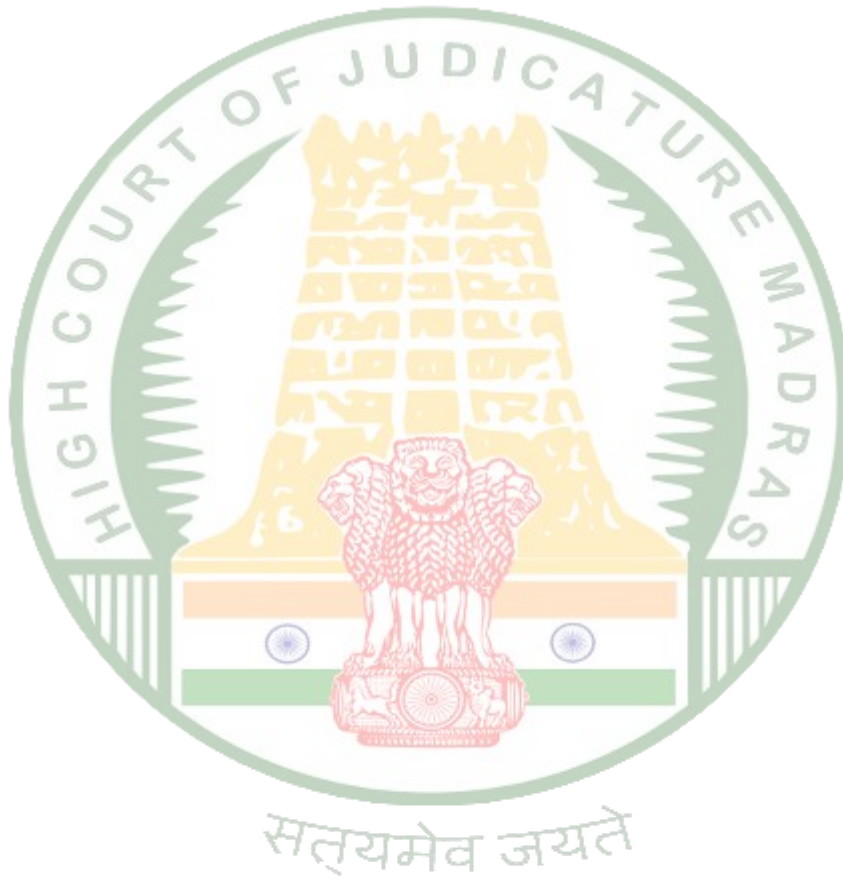
- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Principal District and Sessions Judge
Coimbatore.
- 3.The Judicial Magistrate No.VII
Coimbatore.
- 4.The Chief Judicial Magistrate
Coimbatore.
- 5.The Inspector of Police
B-13, Pothanur Police Station [L&O]
Coimbatore.
- 6.The Superintendent
Central Prison, Coimbatore.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The District Collector,
Coimbatore District.
- 9.The Public Prosecutor
High Court, Madras.

10.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.J.R.Prabhakaran, Advocate sr.no.92040

Cr1.A.No.233/2017

gp(co)
nr 29/01/2018



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