



## BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2017

| Date of Reserving the Judgment | Date of Pronouncing the Judgment |
|--------------------------------|----------------------------------|
| 25.10.2017                     | 14.11.2017                       |

## CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH  
and  
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.(MD) No.321 of 2017

Shiva @ Pramasivam

... Appellant / Accused

-vs-

State, rep.by  
The Inspector of Police  
Pandanallur Police Station  
Thanjavur District  
(Crime No.91 of 2011)

... Respondent / Complainant

Criminal appeal is filed under Section 374 Cr.P.C., to set aside the Judgment of conviction and sentence along with fine Rs.10,000/- imposed on the Appellant by the I Additional District and Sessions Judge (P.C.R.), Thanjavur, in S.C.No.217 of 2011, dated 12.06.2015.

For Appellant : Mrs.M.Krishnaveni  
(Legal Aid Counsel)

For Respondent : Mr.C.Ramesh  
Addl. Public Prosecutor

J U D G M E N TA.D.JAGADISH CHANDIRA, J.,

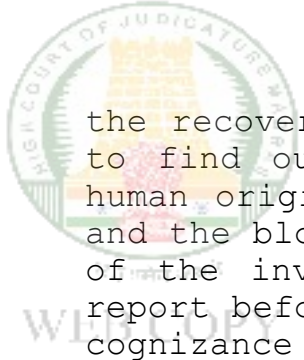
This criminal appeal has been directed against the Judgment, dated 12.06.2015, passed in S.C.No.217 of 2011, by the learned I Additional District and Sessions Judge (P.C.R.), Thanjavur, convicting the appellant under Section 302 I.P.C., and sentencing him to suffer life imprisonment and also to pay a fine of Rs.10,000/-, in default, to suffer a further period of one year



imprisonment.

2. The case of the prosecution in brief is that the appellant / accused and the deceased Elavarasi were living together without getting married for 1 ½ years at various places. Prior to six months from the date of the incident, they were residing in a hut at Melasalai, Kuthalam, belonging to one Bharathimohan for rent. The appellant / accused had earlier been married twice and had subsequently been in a live in relationship with the deceased and that there were quarrels between him and the deceased. One month prior to the incident, the appellant / accused had quarrels with the deceased and thereby, he had attempted to do away with her by mixing poison in the food. On coming to know of the said fact, the *de facto* complainant, namely, Palanivelu, who is the father of the deceased, took the deceased back to his house and taken care of her and since then, the deceased was residing with her parents. On 07.04.2011, at about 09.30 a.m., the appellant / accused went to the house of the *de facto* complainant and asked him to send the deceased with him, but the *de facto* complainant had refused to send his daughter saying that if he sends his daughter / deceased with the appellant / accused, then the appellant / accused would kill his daughter. The appellant / accused, who got enraged by the said words, pushed the *de facto* complainant by the neck resulting in his falling down and when the deceased tried to lift the *de facto* complainant, the appellant / accused with an intention to kill her, took the knife, which he had concealed in his waist and stabbed on her left neck, which resulted in cutting of the blood vessels and due to the hemorrhage and shock, the deceased died on the spot and thereby, the appellant / accused has committed an offence punishable under Section 302 I.P.C.

3. Subsequently, on the same day, the *de facto* complainant lodged a complaint with regard to the said incident before the respondent - Police and the respondent - Police, based on the said complaint, had registered a case in Crime No.91 of 2011 on the same day and immediately after the registration of the case, the respondent - Police went to the scene of occurrence and prepared an observation mahazar and rough sketch and recovered one blood stained pillow under a seizure mahazar in the presence of the witnesses, namely, Subbaiyan and Elangovan (P.W.4). At about 12'o clock, the appellant / accused was arrested by the Investigation Officer in the presence of the witnesses, namely, Rajendran and Palanimurugan, and based on the confession statement given by the appellant / accused, the Investigation Officer took him to the place where he had concealed the knife used in the offence and shirt and lungi worn by him at the time of occurrence and recovered the same under Ex.P9 - Seizure Mahazar in the presence of the witnesses, namely, Rajendran and Palanimurugan (P.W.11). Thereafter, at about 15.00 hours, inquest was conducted on the body of the deceased at P.W.1's house and thereafter, the Investigation Officer had prepared Ex.P13 Inquest Report. Subsequently, the body was sent to the Government Hospital for postmortem to find out the real cause of the death and



the recovered articles were sent to the Forensic Science Laboratory to find out whether the blood appeared in those articles are of human origin and whether the blood found in the recovered articles and the blood of the deceased is one and the same. After completion of the investigation, the Investigation Officer had laid a final report before learned Judicial Magistrate, Kumbakonam, who had taken cognizance of the final report filed and inasmuch as the alleged offence is exclusively triable by the Court of Sessions, the learned Judicial Magistrate furnished the copy of the documents relied on the prosecution side to the appellant / accused under Section 207 Cr.P.C., and committed the case to the file of the learned Principal District and Sessions Judge, Thanjavur, who took the same on file in S.C.No.217 of 2011 and made over the same to the file of the learned I Additional District and Sessions Judge, (P.C.R.), Thanjavur, for trial. Subsequently, the Trial Court framed charges under Section 302 I.P.C., against the appellant / accused and when he was explained and questioned about the charges framed against him, he had denied the charges and sought for trial to prove his case and accordingly, trial was conducted.

4. During the course of trial, on the side of the prosecution, P.Ws.1 to 13 were examined and Exs.P1 to P13 and M.Os.1 to 10 were marked and when the incriminating materials and circumstances were put to the appellant / accused, under Section 313 Cr.P.C., he denied the evidence of the prosecution side as false, however, no oral and documentary evidence was adduced on the side of the defence. After hearing both sides and perusing the oral and documentary evidence adduced, the learned Trial Judge, by Judgment dated 12.06.2015, found the appellant / accused guilty for the offence under Section 302 I.P.C., and sentenced him as stated above. Challenging the said conviction and sentence, the appellant / accused has preferred the present criminal appeal.

5. Heard Mrs.M.Krishnaveni, learned counsel appearing for the appellant / accused and Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State and carefully perused the Judgment of the Court below as well as the materials placed on record.

6. Mrs.M.Krishnaveni, learned legal aid counsel appearing for the appellant / accused submitted that as per the prosecution case, the occurrence took place at 09.30 hours, but the F.I.R., was lodged only at 12.00 Noon and the distance between the place of occurrence and the Police Station is only 12 Kms., and that no plausible explanation was given by the prosecution for the delay of 2 ½ hours in lodging F.I.R. Further, it was submitted that the appellant / accused had no criminal intention to cause the death much less even injury to the deceased and there was no motive at all and in fact, it is the admitted case of the prosecution that he had been repeatedly requesting P.W.1 to send back the deceased / his wife with him and on the refusal by P.W.1 a wordy quarrel ensued between the appellant / accused and P.W.1, and thereby due to sudden

provocation, the occurrence had taken place. Even though M.O.1 / blood stained pillow was recovered from the place of occurrence, it had not been sent to the Forensic Science Lab in order to find out that the blood stained in the pillow is that of the deceased. Furthermore, although some other properties were also recovered, they had also not been sent to the Forensic Science Lab for chemical analysis. The learned counsel further contended that the very purpose of sending the blood stained properties for chemical analysis is only to identify and prove whether it matches with that of the deceased or the accused and that such procedures have not been followed on the side of the prosecution, thereby creating a doubt in the prosecution case. That apart, the Investigation Officer had also not given proper explanation for the same.

7. It was further contended by the learned counsel appearing for the appellant / accused that P.W.1, who is the father of the deceased, is a highly interested witness in this case and P.Ws.2 and 3 are close relatives of the deceased. P.W.11 belongs to the same caste of the deceased and P.W.12 turned hostile. When such being so, it is the bounden duty of the Trial Court to analyze all those aspects. However, the Trial Court has failed to do so. As per the principles of law regarding criminal trial, the father of the victim / deceased being a highly interested person, his evidence cannot be believed in toto without there being any other corroborative evidence that too when the offence is said to have been committed inside a house and that when no other person is said to have witnessed the occurrence and it would be highly unsafe to convict the accused based on such solitary evidence.

8. Further, it is submitted that there are so many contradictions in the evidence of P.Ws.1 to 11, however, those contradictions have not been cleared or clarified through the evidence of P.W.13. In support of the said contention, the cross-examination of P.W.1 has been referred to, which reads as follows:

“அக்கம் பக்கம் இருப்பவர்கள் கேட்பார்களா என்றால் என் வீட்டிற்கு 2 பக்கமும் காலி மனை யாரும் வரவில்லை.

Again he deposed as follows:

என் வீட்டிற்கு பக்கத்தில் முருக வேல் கார் செட்டு வீடு உள்ளது.

P.W.2 in his chief examination deposed that ஓடிவிட்டார் நாங்கள் பிடிக்க ஓடிய போது எதிரி ஓடிவிட்டார். However, in his cross-examination, he deposed that எதிரி அ.சா.1ன் வீட்டிலிருந்து கொல்லைப்பக்கமாக ஓடிவிட்டார். முன் பக்கமாக ஓடவில்லை.

P.W.3 in his cross-examination deposed that எதிரியை பிடிக்க போன போது கத்தியை காட்டி கிட் டே குத்திடு வேன் என்று மிரட்டினார். Further, he deposed that எதிரி அ.சா.1ன் வீட்டின் முன்பக்கமாக ஓடி வந்தார்.

Therefore, it could be inferred that no proper investigation has been done by P.W.13 / Investigation Officer and no valid reason has been assigned by him for the above mentioned contradictions and the prosecution case.

9. The learned counsel for the petitioner further submitted

that P.W.7, the Scientific Officer, has not done any work worthwhile and that his evidence is nothing but a sham and that he had been examined just for the sake of being examined as a prosecution witness, though he had not completed the work assigned to him properly and that Ex.P6 / Biological Report elicited through him is not a valid document since nothing material had been elicited about the blood found in the material object whether it is a human blood or animal blood. Further, though several other witnesses were also examined under Section 161(3) Cr.P.C., by the Investigation Officer no valid reason has been stated by the Investigation officer for dispensing them and not examining before the Trial Court and that if they had been examined, the actual truth could have been brought to light.

10. Further, the learned counsel submitted that the act of single stab would not amount to murder and that even as per the prosecution due to a deep love and possessive nature alone, the appellant / accused on sudden provocation had committed the said offence. The learned counsel submitted that in respect of the relationship between the appellant and the deceased it was worthwhile to refer to the evidence of P.W.11, a neighbour and although had been examined as a witness for the arrest memo, he had deposed during cross examination that "நான் போலிசார் விசாரணை செய்த போது ஆஜர் எதிரி அ.சா.1 வீட்டிற்கு 4-5 முறை சென்றதாகவும் எதிரியும் இளவரசியும் சந்தோசமாக தான் இருந்தார்கள் என்று போலிசார் விசாரித்தபோது சொல்லியுள்ளேன் and thereby it would go to prove that the relationship between the deceased and the appellant was cordial and that the appellant had come to the house four or five times and that he had no intention to kill the deceased. The learned counsel also referred to the suggestion made to the witnesses that with regard to the appellant belonging to a different community than their's and P.W.1 and other witnesses who belonged to the same community had prejudice against the appellant. Further the evidence with regard to the taking of the concealed knife M.O.2 from the waist cannot be believed as it was only P.W.1 who has spoken to about that and that the possession of the knife by the appellant when he had gone to the scene of occurrence cannot be believed without being corroborated by any other witness. The learned counsel for the appellant further contended that each and every case has to be decided on its own facts and the statement of the witnesses should be proved beyond all reasonable doubts. But, the prosecution has failed to prove its case beyond all reasonable doubts.

11. During the course of argument, Mrs.M.Krishnaveni, learned counsel appearing for the appellant / accused strenuously argued that even though the appellant / accused was alleged to have been earlier married twice, the prosecution had not proved the same by any acceptable evidence. Furthermore, the prosecution had not produced any worthwhile evidence in respect of the strained relationship between the appellant and the deceased. Further, on the side of the prosecution, no acceptable evidence had been adduced with regard to the factum of living together in P.W.5's house and thereby, the allegation that the appellant / accused tried to kill



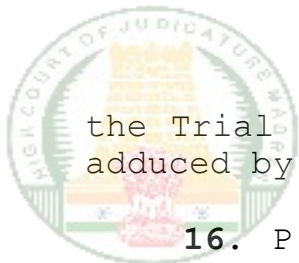
the deceased by giving poison to her could not be believed, when especially no other witness other than P.W.1 has spoken to that effect.

**12.** The learned counsel appearing for the appellant / accused would further submit that inasmuch as P.W.1 / *de facto* complainant is only an interested witness, no reliance could be placed upon his testimony. As per the version of P.W.1, there is only one room in his house, but, P.W.2, in his evidence, deposed that there are two rooms in P.W.1's house. Further, as per the case of the prosecution, there was a wordy quarrel for about fifteen minutes on the fateful day, however no neighbour was examined to prove the said quarrel. Furthermore, even though blood stained pillow and blood stained knife were seized, no serology report was produced to prove that the blood found on them and also on M.O.2 - knife is that of the deceased.

**13.** The learned counsel for the appellant / accused would further submit that the medical evidence had not supported the case of the prosecution as the Postmortem Doctor deposed that there is no stab injury found on the neck of the deceased, but only a cut injury is found and thereby creating a doubt with regard to the weapon M.O.2 - knife. Further, the prosecution failed to attribute any tangible motive for the alleged crime, whereas the appellant and the deceased were happily living together and that the quarrel between the appellant and PW1 ensued only due to the refusal of PW1 to send his daughter, the wife of the appellant despite his request to send her back and as such the appellant / accused had no *mens rea* to kill the deceased and the prosecution had falsely implicated the appellant / accused in this case and the prosecution has failed to prove its case beyond all reasonable doubts. Hence, for all these grounds, the learned counsel for the appellant / accused prayed for setting aside of the conviction and sentence imposed on the appellant / accused.

**14.** Per contra, Mr.C.Ramesh, learned Additional Public Prosecutor vehemently argued that the case of the prosecution was proved by P.W.1, who is none other than the father of the deceased as well as by P.Ws.2 and 3, who are the neighbours, who had come on hearing the noise from P.W.1's house and had seen the appellant / accused, who ran away from the scene of occurrence. P.Ws.4 and 5 had also confirmed the recovery of M.O.1 / blood stained pillow from the scene of occurrence. P.W.7 / Scientific Officer and P.W.8 / Postmortem Doctor had also proved the cause of death of the deceased. P.W.11 also proved the disclosure statement of the appellant / accused and the subsequent recovery of M.O.2. P.W.13 / Investigation Officer had also clearly pointed towards the guilt of the appellant / accused. Hence, the guilt of the accused has been clearly proved by the prosecution beyond all reasonable doubts.

**15.** Before we go into the grounds raised by the appellant / accused challenging the conviction and sentence imposed on him by



the Trial Court, it would be more relevant to refer to the evidence adduced by the witnesses.

**16.** P.W.1, who is the *de facto* complainant and the eyewitness to the occurrence, deposed that his third daughter / deceased was doing coolie work and when she so went for coolie work, intimacy developed between his daughter and the appellant / accused and they lived together in various places and finally, when they were living in a house belonging to P.W.5 / Bharathimohan on rental basis, there were quarrels between them. When such being so, P.W.1 / *de facto* complainant came to know from his daughter / deceased, namely, Elavarasi that due to the quarrel, the appellant / accused tried to kill the deceased by mixing poison in the food and therefore, he took the deceased to his house from the house of the appellant / accused. Thereafter, the appellant / accused attempted to take back the deceased to his house, but P.W.1 / *de facto* complainant refused to send back his daughter / deceased with the appellant / accused. On 07.04.2011, at about 09.30 a.m., when the appellant / accused asked P.W.1 / *de facto* complainant to send the deceased with him, P.W.1 had refused the same saying that the deceased is in her menstrual period and if he sends his daughter / deceased with the appellant / accused, he would kill her. But, the appellant / accused got enraged by the same pushed P.W.1 down and by which, P.W.1 fell down. At that time, when the deceased attempted to lift P.W.1 by saying that all these incidents had happened because of her, the appellant / accused had taken out the knife concealed in his hip and had stabbed on the neck of the deceased and thereafter, seeing the deceased bleeding, the appellant / accused ran away. Thereafter, P.W.1 raised alarm that the appellant / accused was escaping after stabbing the deceased and after hearing the same, P.Ws.2 and 3, namely, Murugavel and Maruthakasi, who were in the nearby Car Shed, chased the appellant / accused, but they could not apprehend him and when P.Ws.2 and 3 returned back to P.W.1's house, they found blood was oozing and the pillow was stained with blood. When P.W.1 had seen the deceased, there was a wound on her neck and she died instantaneously.

**17.** P.W.2 / Murugavel deposed that on 07.04.2011 at about 09.30 a.m., when he and P.W.3 / Maruthakasi were cleaning his Car in a Car Shed situated adjacent to the house of P.W.1, they heard an alarm from the house of P.W.1 and when they had gone there, they found the appellant / accused escaping after stabbing the deceased by a knife and when they chased the appellant / deceased to apprehend him, he ran away.

**18.** P.W.3 / Maruthakasi deposed that on 07.04.2011, at about 09.30 a.m., when he went for selling vegetables, he was talking with P.W.2 near his Car Shed and at that time, he heard a noise that "Come Come" and when he went to the house of P.W.1, he found the deceased lying in a pool of blood and when he chased, the appellant / accused had threatened by showing the knife that if he comes near him, he will stab and therefore, P.W.3 did not proceed



further.

**19.** P.W.4 / Elangovan is the Mahazar witness deposed about the signing in the seizure mahazar.

**20.** P.W.5 / Bharathimohan is the son of the house owner, who had rented the house to the appellant / accused and the deceased and he deposed about the staying of the appellant / accused and the deceased in his mother's house and that he admits that he is a hearsay witness.

**21.** P.W.6 is the Additional Head Clerk in the Judicial Magistrate Court, Kumbakonam and he deposed about the sending of the material objects recovered from the place of occurrence to the Forensic Science Lab.

**22.** P.W.7 / Avina is the Scientific Assistant and she deposed about the analysis of the material objects produced by the respondent Police.

**23.** P.W.8 / Dr.Anbalagan is the Doctor who had conducted the postmortem the deceased and he deposed that the cause of death is due to the shock and hemorrhage inasmuch as the main arteries on the left neck got disrupted. Further, P.W.8 deposed that there was an elliptical cut injury about 7.5 c.m. X 2.5 c.m. X 4 c.m., running left upper side of neck as medial and lateral end extending 1 c.m., from mid neck 3 c.m., from the left mastoid bone and 2 c.m., from the left under the mandible. Further, he deposed that there is every possibility to make such an injury by M.O.2 / knife.

**24.** P.W.9 / Jayaraman, who is the Special Sub Inspector of Police attached to Kumbakonam East Police Station, deposed with regard to the forwarding of the first information report to the file of the learned Judicial Magistrate, Kumbakonam.

**25.** P.W.10 / Balakrishnan, who is the Special Sub Inspector of Police attached to Pandanallur Police Station deposed about the handing over of the body of the deceased to the Government Hospital, Thiruppananthal, for postmortem.

**26.** P.W.11 / Palanimurugan deposed about the signing in the disclosure statement of the appellant / accused and the recovery of M.O.2 / knife from the appellant / accused and he had also spoken to about the relationship between the appellant and the deceased.

**27.** Even though P.W.12 / Vasantha was examined as a prosecution witness, subsequently, she had not supported the case of the prosecution and turned hostile.

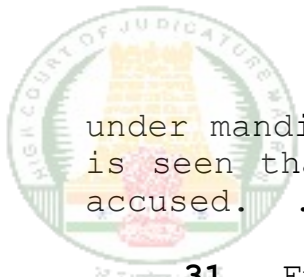
<https://hcservices.courts.gov.in/hcservices/> **28.** P.W.13 / Alagesan, who is the Investigation Officer, deposed about the registration of F.I.R., investigation of the case and filing of the charge sheet before the learned Judicial



Magistrate concerned.

**29.** The core issue to be decided in this case is what is the act committed by the appellant / accused and whether the prosecution has proved its case beyond reasonable doubts and if not whether the conviction and sentence imposed by the Trial Court requires any interference from this Court as argued by the learned counsel for the appellant / accused.

**30.** According to the prosecution, the appellant / accused and the deceased had been living together without marriage and due to the domestic quarrels between them, the appellant / accused had earlier tried to kill the deceased by mixing poison in the food and the *de facto* complainant / father of the deceased, who had come to know about the same, had taken the deceased / daughter to his house and when the appellant / accused came to the house of P.W.1 / *de facto* complainant four to five times requesting P.W.1 to allow him to take back the deceased to his house and that on the date of occurrence due to the refusal of P.W.1 to send his daughter / deceased with the appellant / accused, a wordy quarrel ensued between the appellant / accused and P.W.1 / *de facto* complainant and in the said event, the appellant having got infuriated pushed down P.W.1 / *de facto* complainant and when the deceased attempted to lift P.W.1 / *de facto* complainant, the appellant / accused took a knife / M.O.2 concealed in his hip and stabbed on her left neck and due to the stab by the knife / M.O.2, her arteries were cut and due to the hemorrhage and shock, the deceased died on the spot. The case of the prosecution has been clearly corroborated by the prosecution witnesses, except P.W.12, who has turned hostile. P.W.1 / *de facto* complainant deposed that when he refused to send back the deceased with the appellant / accused, a quarrel ensued between him and the appellant / accused pushed him down and when the deceased tried to lift him, the appellant / accused stabbed on her left neck by M.O.2 / knife concealed in his hip and ran away and when P.W.1 raised alarm stating that the appellant was running after stabbing the deceased P.Ws.2 and 3 attempted to apprehend him by chasing but, they could not catch him. P.W.2 has deposed that on the fateful day, when he was cleaning a Car parked in the Car Shed situated nearby the house of P.W.1, he heard a noise from the house of P.W.1 and when he went to the house of P.W.1, the appellant / accused ran away from the place of occurrence after stabbing the deceased. P.W.3 has categorically deposed that when he was talking with P.W.2 on the date of occurrence, he heard a noise from the house of P.W.1 and when he went the place of occurrence, he found the deceased lying in a pool of blood and when he chased to catch, the appellant / accused had threatened P.W.3 that if he comes near the appellant / accused, he would stab P.W.3. P.W.8 / Postmortem Doctor also deposed that the death caused due to the shock and hemorrhage as the blood vessels were cut. He further deposed that there was an elliptical cut injury about 7.5 c.m. X 4 c.m. running left upper side of neck as medial and lateral end extending 1 c.m., from mid neck 3 c.m., from the left mastoid bone and 2 c.m., from the left



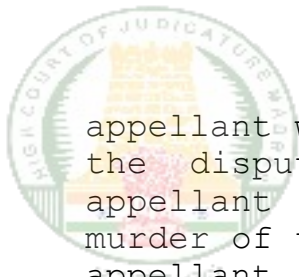
under mandible. Further, from the evidence of P.Ws.11 and P.W.13 it is seen that M.O.2 / knife has been recovered from the appellant / accused. .

**31.** Further, even though one of the prosecution witnesses, i.e., P.W.12 turned hostile, as rightly argued by the learned Additional Public Prosecutor, the same would not affect the prosecution case as it has been clearly proved by the remaining witnesses. Further, it is argued by the learned counsel for the appellant / accused that P.Ws.2 and 3 could not have seen the appellant / accused and they have deposed that they had seen the appellant / accused escaping from the place of occurrence. However, as rightly argued by the learned Additional Public Prosecutor, P.Ws.2 and 3 had not seen the appellant / accused inside the house committing the crime, but they deposed that when they came to the place of occurrence, they had seen the appellant / accused running away and the same is *res gaestae*, which is clearly admissible under Section 6 of the Evidence Act.

**32.** It is the further argument of the learned counsel for the appellant / accused, notwithstanding the fact that the blood stained pillow and blood stained knife were seized, no serology report was produced in order to prove that the blood found on the knife M.O.2 is that of the deceased. However, the learned Additional Public Prosecutor contended that the non-production of the serology report does not affect the case of the prosecution as the serology report is only a corroborative piece of evidence and it is not a substantive piece of evidence.

**33.** The learned counsel for the appellant / accused further argued that as per the version of the Postmortem Doctor, the injury found on the neck of the deceased is not a stab injury, but it is only a cut injury and thereby it creates the doubt in the prosecution case with regard to the weapon alleged to have been used in the offence. Whereas, the contention of the learned Additional Public Prosecutor was that the same Postmortem Doctor deposed that both cut as well as the stab injury can be caused by the knife / M.O.2.

**34.** The learned counsel for the appellant / accused contended that the incident had occurred inside the house of P.W.1. P.W.1 and the appellant / accused alone were present. Even as per the evidence of P.W.1, it is his case that the appellant / accused had been repeatedly asking P.W.1 to send the deceased along with him and even as per the evidence of P.W.1, due to the wordy quarrel that ensued, the appellant / accused had pushed him down and that he had fallen down and when the deceased had attempted to lift P.W.1 up, the appellant / accused is stated to have given a single stab in the left side neck of the deceased. Even though there is a contradiction with regard to the medical evidence, whether it is a lacerated wound or incised wound, however, it is only a single injury. Moreover, it is the case of the prosecution that when the



appellant was only pressurizing P.W.1 to send the deceased with him, the dispute arose and quarrel ensued. If that be so, the appellant / accused would not have had any intention to commit the murder of the deceased, when the evidence of P.W.1 is clear that the appellant / accused had come to his house three or four times to send his wife along with him. Further it has also been corroborated by the evidence of PW 11 the neighbour, who had spoken about the visit of the appellant / accused four or five times to the house of P.W.1 and that the relationship between the appellant / accused and the deceased was cordial.

**35.** Yet another argument put forth by the learned counsel appearing for the appellant / accused is that there is no motive or intention for the appellant / accused to murder the deceased and it is possible that when the appellant / accused went to the house of P.W.1 to take back the deceased with him, a wordy quarrel arose between him and P.W.1 / father of the deceased on his refusal to send back his daughter, the deceased along with him and on sudden provocation, he pushed P.W.1 down and when the deceased tried to lift P.W.1, he had stabbed the deceased accidentally with the knife and that the nature of injury would prove the same. It is the contention of the learned Additional Public Prosecutor that a weapon i.e., knife has been used in the said incident and that there is no need for the appellant / accused to take the knife other than to commit the murder. With regard to this contention the submission of the learned counsel for the appellant is that with regard to the possession of the knife there is no other evidence other than that of PW1 who had deposed that the appellant took out the knife which was concealed in his waist and in such circumstances prayed that the benefit of doubt has to be given to the appellant / accused.

**36.** We now first consider the contention of the learned counsel for the appellant / accused. It is not in dispute that the cause of the death of the deceased is due to the injury inflicted by the appellant / accused. However, it was argued by the learned counsel for the appellant / accused that the injury is an accidental one and that the appellant / accused had no intention to cause the death of the deceased. Inasmuch as the intention of the appellant / accused was to take his wife back and that he had been repeatedly requesting P.W.1 to send her along with him and that the injury caused to the deceased was a result of such grave and sudden provocation and thus, the incident took place on the spur of the moment when the appellant / accused pushed P.W.1 by his neck and he having fallen down, the deceased had attempted to lift him up and at that time, the appellant / accused had inflicted the injury. Taking into consideration the entire evidence, it is seen that it is not the case that the appellant / accused uttered any word to kill anyone and it is the evidence of P.W.1 that immediately after inflicting the injury, the appellant / accused ran away from the scene of occurrence. Therefore, the case of the appellant / accused falls under exception I of Section 300 I.P.C.



37. At this stage, it is relevant to refer to Section 300 I.P.C.

**"300. Murder.**—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or —

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

**Exception 1.**—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos—

**First.**—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

**Secondly.**—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

**Thirdly.**—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

**Explanation.**—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

38. The aforesaid Section provides five exceptions wherein the culpable homicide would not amount to murder. Under Exception 1, culpable homicide is not murder if the offender, whilst deprived of self-control by grave and sudden provocation, causes the death of the person, who gave the provocation or causes the death of any other person by mistake or accident. It is also important to mention at this stage that the provision itself makes it clear by



the *Explanation* provided that what would constitute grave and sudden provocation, which would be enough to prevent the offence from amounting to murder, is a question of fact. Further, the factors which reduce murder to culpable homicide are:

- (a) it should have been committed without premeditation;
- (b) it should have been committed upon a sudden quarrel;
- (c) it should have been committed in the heat of passion;
- (d) it should have been committed without the offender's having taken undue advantage or acted in a cruel or unusual manner.

**39.** As discussed above, while taking into consideration the facts in the above case, it was the intention of the appellant / accused to take his wife along with him and that he had been requesting P.W.1 / father of the deceased four or five times to send her back along with him and that on the refusal, a quarrel had ensued between the appellant / accused and P.W.1 and it could be inferred that it was not the motive or intention of the appellant / accused to kill the deceased. But, there is every possibility that the death could have been caused while the appellant being deprived of the power of self-control by grave and sudden provocation caused the death of the deceased by mistake or accident and in our opinion, we feel that it is the case, which can fall within the Exception 1 of Section 300 I.P.C. In such circumstances, we feel that while confirming the conviction imposed by the Trial Court, it would be appropriate to modify the sentence to ten years rigorous imprisonment.

**40.** Accordingly, we allow the criminal appeal partly. The conviction and sentence of life imprisonment under Section 302 I.P.C., are set aside and the appellant / accused is acquitted of charge under Section 302 I.P.C., and found guilty under Section 304 (i) I.P.C., and convicted thereunder and sentenced to suffer ten (10) years of rigorous imprisonment. The fine amount of Rs.10,000/- imposed by the Trial Court is maintained. In default of payment of fine, the appellant / accused shall undergo rigorous imprisonment for a further period of six months. The period so far undergone shall be given set-off against the sentence of imprisonment under Section 428 Cr.P.C.

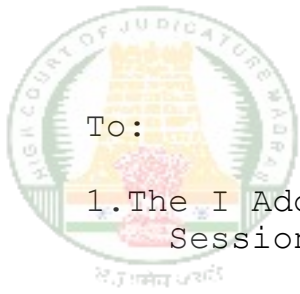
**41.** Mrs.M.Krishnaveni, learned counsel, who has been nominated by the High Court Legal Services Committee to defend the appellant / accused, is entitled to get her remuneration as per the rules and regulations formulated by High Court Legal Services Committee.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar



To:

- 1.The I Additional District and Sessions Judge (P.C.R.), Thanjavur.
- 2.The Principal District Judge, Thanjavur.
- 3.The Second Additional District Munsif Cum Judicial Magistrate, Kumbakonam.
- 4.The Chief Judicial Magistrate, Thanjavur.
- 5.The District collector, Thanjavur.
- 6.Deputy Inspector General of Police, Mylapore, Chennai.
- 7.The Superintendent of Prison, Central Prison, Trichy-20.
- 8.The Inspector of Police, Pandanallur Police Station, Thanjavur District.
- 9.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+2cc to M/s.M.KRISHNA VENI Advocate in SR. No. 87336,87353  
KRK  
JS/KK/SAR.1/24.11.2017/14P-12C

**JUDGMENT**  
**IN**  
**Cr1.A.(MD) No.321 of 2017**

**14.11.2017**