



WEB COPY

Crl.A.(MD) No.29 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Appeal (MD) No.29 of 2018

Marimuthu

... Appellant/Sole Accused

-vs-

State Rep. by
The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
[Crime No.79 of 2015]

... Respondent / Complainant

Prayer: Appeal filed under Section 374 of the Code of Criminal Procedure to call for the records in S.C.No.277 of 2016 on the file of the learned Principal Sessions Judge, Tirunelveli, Tirunelveli District and set aside the judgment dated 31.10.2017 and acquit the appellant of the charges leveled against him.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.M.Chandrasekaran
Addl. Public Prosecutor

J U D G M E N T

S.VAIDYANATHAN,J.

AND

N.ANAND VENKATESH,J.

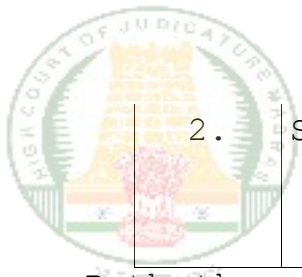
"Murder is an inherently evil act, no matter what the circumstances, no matter how convincing the rationalization.

- Bentley Little, The Ignored

The Appellant herein, who is the Sole Accused in S.C.No.277 of 2016 on the file of the learned Principal Sessions Judge, Tirunelveli, Tirunelveli District, stands convicted by the Trial Court for offences under Sections 342 and 302 IPC as follows:

Sl.No.	Conviction	Sentence
1.	Section 342 IPC	To undergo six months Simple Imprisonment with fine of Rs.500/- in default to pay fine to undergo Simple Imprisonment for One Month.

<https://hcservices.ecourts.gov.in/hcservices/>



2. Section 302 IPC

To undergo Life Imprisonment with fine of Rs.2,000/- in default to pay fine to undergo Simple Imprisonment for Three Months.

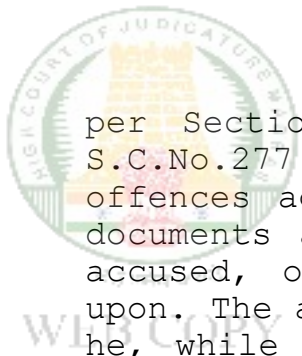
Both the sentences were directed to run concurrently, with further direction to set off the period of remand already undergone by the accused. Aggrieved by the order of the learned Principal Sessions Judge, Tirunelveli, Tirunelveli District, the Appellant has preferred the present Criminal Appeal before this Court

2. The case of the prosecution in nutshell was that the Appellant / accused and the deceased Sivanar are co-brothers and on 17.07.2015 at about 09.15pm, the accused, having suspected that the deceased had developed an illegal intimacy with his wife, had dragged the deceased into his house, when the deceased was walking through the street in front of his house along with his wife. It was alleged by the wife of the deceased / P.W.1 that the accused, after pulling the deceased inside his house, had dashed his head on the floor upwards and hit the face of the deceased with a grinding stone and thereby he caused the death of the deceased. Thereafter, the accused escaped from the scene of occurrence by jumping over the backside wall. It was further alleged by P.W.1 that when she along with P.Ws.3 and 4, who are the daughter and the son of the deceased, went inside the house after breaking open the same, it was found that the deceased was lying with severe injuries. Thereafter, P.W.1 and her daughter (P.W.3) went to the Police Station to prefer a complaint (Ex.P.1) to the Sub-Inspector of Police (P.W.17) at about 23.30 hours on 17.07.2015. Based on the complaint received from P.W.1, an FIR was registered (Ex.P.16) in Crime No.79 of 2015 for offences under Sections 342 and 302 IPC and the same was forwarded to the Court of Judicial Magistrate through P.W.14, a Police Constable.

3. The Inspector of Police (P.W.18), after receipt of the FIR had visited the scene of crime and conducted an inquest on the dead body of the deceased and prepared the Inquest Report (Ex.P.20) and subsequently, forwarded the dead body of the deceased to Tirunelveli Medical College Hospital for conducting Postmortem.

4. On 21.07.2015, the accused had surrendered before the Judicial Magistrate, Melur, Madurai and pursuant to the grant of Police custody, the accused was interrogated by P.W.18 in the presence of P.Ws.11 and 12 and the accused had made a voluntary disclosure statement (Ex.P.21), on the basis of which, the Material Objects in M.Os.4 and 5, which were bloodstained shirt and lungi respectively, hidden near a Water Tank, were recovered.

5. On completion of the investigation, a charge sheet was laid before the Judicial Magistrate, Cheranmahadevi in P.R.C.No.68 of 2015 and was subsequently, committed to the Court of Sessions as



per Section 209 Cr.P.C. for trial, which was taken on file in S.C.No.277 of 2016. The prosecution, in order to substantiate the offences against the accused, had examined 19 witnesses, marked 28 documents and exhibited 8 Material Objects and on the side of the accused, one witness was examined and four documents were relied upon. The accused was questioned under Section 313(1)(b) Cr.P.C. and he, while denying the charges levelled against him had narrated a different story regarding false implication of his name in the crime. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of the offences and convicted him as stated supra.

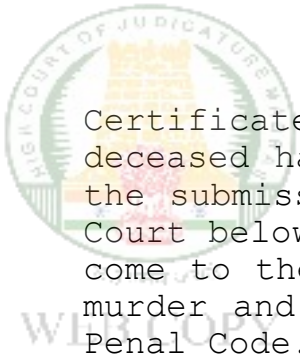
6. The main plea taken by the learned counsel appearing on behalf of the appellant that P.Ws.1 and 2, who are the wife and father of the deceased respectively, had deposed that the accused, after committing the brutal murder, ran away through the backside of his house, but in their cross examination, they had stated that there was no exit in the backside of the house.

6.1. It was the case put forth by the learned counsel for the appellant that the Postmortem Doctor (P.W.10) had opined that the deceased could have consumed alcohol three hours prior to the alleged occurrence and the death might have occurred on account of excess consumption of liquor and a natural death has been converted into a murder so as to rope the accused into the offence due to previous enmity.

6.2. It was argued that though P.W.7 / son of the deceased turned hostile, his earliest version shows that there was no one else in the scene of occurrence at the time of incident and after he raised alarm, P.Ws.1 and 2 had entered into the house of the accused. Therefore, the presence of P.Ws.1 and 2 is highly doubtful, which is fortified by the inquest report (Ex.P.20), as there was no mention about the presence of P.W.2 on the spot.

6.3. It was submitted by the learned counsel for the Appellant that the accused was not at all present in the locality on the fateful day, which is evident from the deposition of Defense Witness No.1 before the Trial Court, stating that the accused had participated in Vaniyadi Sudalai Temple from 10.00am to 8.30pm on 17.07.2015 and he, having missed the bus to go to his native place, stayed back there itself.

7. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the evidence of P.Ws.1 & 2 clearly points out the fact that it was the Appellant, who hit the deceased with grinding stone and there is no ground to suspect the said evidence. He further submitted that the evidence of the postmortem Doctor (P.W.10) and the Postmortem



Certificate, marked as (Ex.P6 in Series 2) clearly indicate that the deceased had died only on account of head injury sustained. It was the submission of the learned Additional Public Prosecutor that the Court below has considered the oral and documentary evidence and has come to the correct conclusion that the appellant has committed the murder and the case squarely falls under Section 302 of the Indian Penal Code.

7.1. In sum and substance, it was the contention of the learned Additional Public Prosecutor appearing for the State that since the prosecution was able to prove the guilt on the part of the appellant/accused beyond any reasonable doubts and that the appellant/accused knowing pretty well about the consequence of attack on the deceased with pestle, attacked her and hence, he is not entitled to any leniency from this Court and prays for the dismissal of this appeal.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. The main contention of the accused was that when there was no ingress and egress in the backside of the house of the accused, the prosecution version regarding the escape of the accused through the backside after jumping a wall is falsified and unacceptable and therefore, it cannot, at any stretch of imagination, be said that the accused could have committed the murder of the deceased.

10. It becomes imperative for this Court to ascertain as to whether there is a way in the backside of the house and if an exit is provided therein, the next aspect to be looked into is whether it gets corroborated with the Rough Sketch (Ex.P18) prepared by the Inspector of Police (P.W.10). On going through the Rough Sketch coupled with the deposition of P.W.7, it can be seen that adjacent to the hall and bedroom, there is a small way and the diagram shows that there is a parapet wall, through which a normal person can easily cross the same. The father of the deceased / P.W.2 had deposed that despite his cry, the accused had murdered the deceased and ran away through backside. The relevant portion of the deposition is extracted hereunder:

.....அப்போது ஆஜர் எதிரி மாரிமுத்துவின் வீட்டருகே வந்து கொண்டிருந்தபோது மாரிமுத்து என் மகனை தடுத்து நிறுத்தி அவனுடைய வீட்டிற்குள்ளே இழுத்து சென்று உள்ளே தள்ளி விட்டான். கதவையும் அடைத்து விட்டான். உடனே எனது மருமகன் ஜின்னலுக்கு அருகே வந்து சத்தம் போட்டார். நானும் சென்று ஜின்னல் வழியாக எதிரியை பார்த்து எதுவும் செய்து விடாதே என்று கத்தினோம். ஆனால் எதிரி அம்மி கல்லால் என் மகனின் முகத்தில் தாக்கி விட்டான். நாங்கள் கதவை உடைக்க முயன்றபோது எதிரி பின் வாசல் வழியாக ஓடிவிட்டான்



11. From the above, it is very clear that there is a way behind the house and even for the sake of argument, if it is taken that there is no backside passage provided, there is every possibility of the accused being nabbed by others, when he tried to escape from the scene of occurrence. The same version has been reiterated by P.W.1 / wife of the deceased in her evidence, which reads as follows:

....ஆனால் எதிரி அம்மி கல்லால் என் கணவர் முகத்திலேயே அடித்தார். அதனால் என் கணவரின் கண்கள், முக்கு உள்ள பகுதி காயமடைந்தது. அந்த இடத்திலேயே என் கணவர் இறந்து விட்டார். எதிரி அவருடைய வீட்டின் பின்பக்கம் உள்ள சுவற்றை தாண்டி குதித்து ஓடிவிட்டார்....

12. The next argument advanced by the learned counsel for the Appellant was that despite the occurrence, having taken place in a busy surrounding, where several houses and shops are situated, except the relatives of the deceased, viz., P.Ws.1 to 4, none of the other witnesses were examined on the side of the prosecution. It is pertinent to mention here that the Hon'ble Supreme Court in the case of Yanob Sheikh Alias Gagu Vs. State of West Bengal, reported in (2013) 6 SCC 428, observed that in order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative. The Hon'ble Supreme Court in yet another case in Raju @ Balachandran & Ors vs State of Tamil Nadu reported in 2012 (12) SCC 701, while considering the distinction between a related witness and an interested witness, had observed as follows:

"28. Before us, only two contentions were advanced by learned counsel for the appellants. Firstly, it was contended that since PW-5 Srinivasan was a related and interested witness, his evidence must be closely scrutinized, and if his testimony is put to close scrutiny, it will be quite clear that he ought not to be believed. Secondly, it was contended that the prosecution case was doubtful since there was no evidence except the unreliable testimony of PW-5 Srinivasan.

29. The first contention relates to the credibility of PW-5 Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW-5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.



30. What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan v. Kalki*, (1981) 2 SCC 752. It was held that:

"True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

31. In light of the Constitution Bench decision in *State of Bihar v. Basawan Singh*, AIR 1958 SC 500 the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In *Basawan Singh*, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held:

"The correct Rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

32. The wife of a deceased (as in *Kalki*), undoubtedly related to the victim, would be interested in seeing the accused person punished - in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in *Kalki* is too narrow and generalized and needs a rethink.

33. For the time being, we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness);



a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

34. In the present case, PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinized with great care and caution.

35. In Dalip Singh v. State of Punjab, 1954 SCR 145 this Court observed, without any generalization, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused - each case has to be considered on its own facts. This is what this Court had to say:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."



36. How the evidence of such a witness should be looked at was again considered in Darya Singh v. State of Punjab, (1964) 3 SCR 397. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said:

"There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it..... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."



37. More recently, in Waman v. State of Maharashtra, (2011) 7 SCC 295 this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon Sarwan Singh v. State of Punjab, (1976) 4 SCC 369, Balraje v. State of Maharashtra, (2010) 6 SCC 673, Prahlad Patel v. State of Madhya Pradesh, (2011) 4 SCC 262, Israr v. State of Uttar Pradesh, (2005) 9 SCC 616, S. Sudershan Reddy v. State of Andhra Pradesh, (2006) 10 SCC 163, State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324, Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 and Vishnu v. State of Rajasthan, (2009) 10 SCC 477 it was held:

"It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care."

38. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words:

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

39. We have gone through the evidence of PW-5 Srinivasan by applying the discerning scrutiny standard and find it difficult to overturn the view expressed by both the Courts in their acceptance of his evidence. His description of the events is simple and straightforward and the cross-examination does not demolish his version



of the events. In fact, the cross-examination is directed more at proving that one Subramaniam may have been the assailant since Veerappan had an illicit relationship with Subramaniam's first wife Periammal. This was ruled out by PW-5 Srinivasan who did not want to shield the real assailant and put the blame for the occurrence on someone else.

40. As far as the second contention is concerned, it overlaps with the first. Both the Trial Court and the High Court have concurrently held that PW-5 Srinivasan was an eye witness to the murder of Veerappan and Marudayi. The conclusion arrived at by both the Courts has not been shown to be perverse in any manner whatsoever nor has it been shown deserving of reversal.

41. The presence of PW-5 Srinivasan at the place of occurrence cannot be doubted in view of the FIR lodged by PW-1 Thangavel and his testimony. Even though PW-1 Thangavel may have turned hostile, the fact remains that a report was made to the police about the homicidal attack on Veerappan and Marudayi. That there was a homicidal attack on them is not in dispute. This is confirmed even by the witnesses who turned hostile. It is also not in dispute that Veerappan died on the spot and that Marudayi was grievously injured. This too is confirmed by the witnesses who turned hostile. That PW-5 Srinivasan took Marudayi to the hospital immediately after she was attacked is confirmed by PW-1 Thangavel. On the basis of these facts, which are evident from the record, there is no option but to accept the conclusion of both the Courts that PW-5 Srinivasan was present at the place of occurrence and was an eye witness to the incident. His testimony is not unreliable but is supported in its essential details by the testimony of the other witnesses.

Conclusion:

42. We find the evidence of PW-5 Srinivasan credible notwithstanding that he was a related and interested witness. Accordingly, we uphold the conviction and sentence awarded to the appellants by the Trial Court and confirmed by the High Court.

43. The appeal is dismissed."

13. A cursory glance at the deposition of P.Ws.1 and 2, who are the prime witnesses to narrate the entire scenario, unearths the fact that the Accused had at first pushed the deceased down and thereafter, attacked the deceased with grinding stone and in order to ascertain as to whether any severe injuries are found on the body of the deceased on account of such attack with stone, it is proper in the circumstances to peruse the Postmortem Certificate (2 series)



dated 18.07.2015 and 15.09.2015, which is marked as Ex.P.6, in which it is stated as follows by P.W.10 / Dr.Sridharan, who had commenced the post-mortem at 03.15 p.m. on 18.07.2015 and had noted the following features in his Post Mortem Certificate:

"IDENTIFICATION AND CASTE MARKS:

1) A scar on left leg. 2) A black mole on right thigh. The body was first seen by the undersigned at 03:15pm on 18.07.2015. Its condition then was rigormortis present all over the body. Post-mortem examination was commenced at 03.15 pm on 18.07.2015.

APPEARANCES FOUND AT THE POST-MORTEM EXAMINATION:

Moderately nourished body of a male. Finger and toe nails are pale. Dried blood stain noted over T-shirt, head, neck, chest and both upper limbs. Head found asymmetrical.

THE FOLLOWING ANTE-MORTEM INJURIES WERE NOTED:

1. Laceration of size 9x2cm x Bone deep noted on occipital region.
2. Crush injury of size 14 x 4cm x Cavity deep noted on forehead, eyebrows and eyeballs. Underlying soft tissues organs found crushed. Both eye balls found crushed. Underlying bones found fractured in to multiple pieces. Diffuse scalp contusion noted all over head. Frontal lobes of brain found lacerated. Base of skull found fractured at multiple places. Subdural and subarachnoid haemorrhages noted on both cerebrum and both cerebellum.

OTHER FINDINGS: Peritoneal cavity and pleural cavities: appear normal. Heart: appears normal, coronary vessels are patent. Hyoid bone: Intact. Stomach: contains about 400gm of partially digested food particles with fruity odour and mucosa pale. Small Intestine: contains 100gm of partially digested food particles with fruity odour and mucosa pale. Lungs, Liver, Spleen and Kidneys: normal, c/s pale, Bladder: empty.

Viscera preserved for chemical analysis.

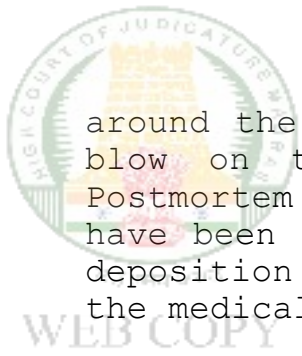
OPINION AS TO THE CAUSE OF DEATH: THE DECEASED WOULD APPEAR TO HAVE DIED OF HEAD INJURY.

Time of Death: 12 to 24 hr prior to Autopsy.

15. In the chief examination, the Doctor (P.W.10) had deposed thus,

2வது காயம் ஒருவர் முகத்தின் மீது எந்த ஒரு கல்லை தூக்கி போட்டாலும் ஏற்பட வாய்ப்புண்டு என்றால் சரிதான்.

In the Postmortem Certificate, it has been specifically stated that both eye balls were found crushed and other injuries are also found



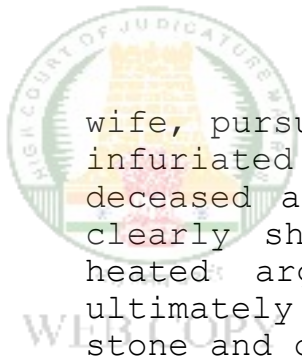
around the head only, which means to say that on account of severe blow on the head, those parts on the head got damaged. The Postmortem Doctor had explicitly indicated that such injuries would have been caused by using a stone. Therefore, it is clear that the deposition given by P.Ws.1 and 2 was duly proved / corroborated with the medical evidence.

14. Though a defence was taken on the side of the accused that the deceased could have died due to excess consumption of alcohol, both the postmortem certificate and the viscera report describe the cause of death otherwise, namely, death on account of head injury. Of course, it is true that the presence of ethyl alcohol was traced out during postmortem, it cannot be said that ethyl alcohol alone is the root cause for the death of the deceased.

15. The next plea raised by the accused that the accused was not at all present in the scene of occurrence, as he attended a festival in a far off place, which is evident from the deposition of D.W.1 produced on the side of the accused. On a careful reading of the cross examination of D.W.1, it could be seen that no specific time has been mentioned as to upto what time the accused was there in the festival and what is the distance between the area in which he stayed back and the place of occurrence. D.W.1 further went on to say that though he was the Village Chief, there is neither document to prove the said leadership nor invitation to establish the factum of the conduct of festival. Moreover, D.W.1 had responded to all the questions only in negative connotation and therefore, the said evidence is far from satisfactory to come to a conclusion in favour of the accused, especially when there is a direct evidence to prove the accused's presence in the scene of crime.

16. At last, the learned counsel for the Appellant has raised the alternative plea of culpable homicide not amounting to murder and thereby attempted to bring this case under Exception 1 to Section 300 IPC, so as to have the benefit of reduction of punishment under Section 304 IPC. In order to substantiate the said argument, the learned counsel brought to the notice of this Court, the charges framed against the appellant. The learned counsel submitted that there used to be frequent quarrels between the appellant and the deceased over a period of time, on the strong belief that the deceased had affairs with the wife of the accused and due to sustained provocation, the accused had caused the death of the deceased and therefore, the appellant can be convicted for culpable homicide not amounting to murder and sentenced under Section 304 (i) of the Indian Penal Code.

17. Let us analyse as to whether there is substance in the alternative plea raised by the accused. A scrutiny of the deposition of P.Ws.1 and 2 unravels the fact that the accused always suspected that the deceased was having extra marital relationship with his



wife, pursuant to which, his wife also started living separately and infuriated by the act of the deceased, the accused had attacked the deceased and caused his death. Thus, the evidence of P.Ws.1 to 2 clearly shows that there were frequent quarrels and exchange of heated argument between the deceased and the accused, which ultimately ended in the accused attacking the deceased with grinding stone and causing his death.

18. In this case, it is found that there was a sustained provocation on the part of the Appellant, leading to the incident. Useful reference can be made in this regard to the judgment of the Hon'ble Division Bench of this Court reported in 2012 (2) MLJ (Crl.) 482 in the case of Poovammal vs. State, wherein it has been held as follows:

"30. Under the English Criminal Law, the provocation must be grave and also sudden. But, by way of judicial thinking, the Indian Criminal Law has gone ahead. (K.M.NANAVATHI Vs. STATE OF MAHARASTRA [A.I.R. 1962 S.C. 605]) In our system, there is the concept of "sustained provocation". It is concerned with the duration of the provocation. There may be incidents/occurrences, which are such that they may not make the offender suddenly to make his outburst by his overtact. However, it may be lingering in his mind for quite sometime, torment continuously and at one point of time erupt, make him to lose his self control, make his mind to go astray, the mind may not be under his control/ command and results in the offender committing the offence. The sustained provocation/frustration nurtured in the mind of the accused reached the end of breaking point, under that accused causes the murder of the deceased.

31. In BOYA MUNIGADU Vs. THE QUEEN (ILR 3 MAD 33), this Court held that the State of the mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in considering whether the subsequent act would be sufficient provocation to bring the case within the Exception.

32. In IN RE, C. NARAYAN (A.I.R. 1958 A.P. 235), it was held that the mental state created by an earlier act may be taken into consideration in ascertaining whether a subsequent act was sufficient to make the assailant to lose his self - control.

33. These aspects were also discussed in NANAVATI (supra) with reference to several English and Indian cases on the aspect of sudden provocation.

34. In SUYAMBUKKANI v. STATE OF TAMIL NADU [1989 LW (Crl.) 86], it is held as under :-



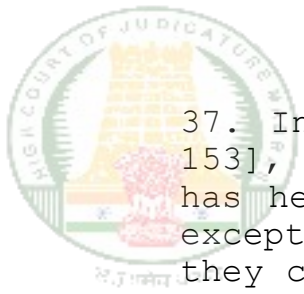
"Though there has been here and there attempts in those decisions to bring the sustained provocation under Exception 1 to Section 300, I.P.C., there is a cardinal difference between provocation as defined under Exception I and sustained provocation. The only word which is common is 'provocation.' What Exception I contemplates is a grave and sudden provocation, whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back may even be a very trifling one. We are, therefore, far from grave and sudden provocation contemplated under Exception 1 to S.300, I.P.C. Sustained provocation is undoubtedly an addition by Courts, as anticipated by the architects of the Indian Penal Code."

35. In SANKARAL ALIAS SANKARAYEE V. STATE [1989 L.W. (Crl.) 468], a Division Bench of this Court has held as under:-

"When there is positive evidence to show that there was grave and sudden provocation at or about the time of occurrence, there would be no difficulty in applying the said principles. There are other type of cases, where there has been sustained provocation for a considerable length of time and there would not have been a real sudden provocation immediately preceding the murder. In such cases, the Courts have given the benefit of Exception 1 to Section 300, I.P.C. on the ground that the provocation which is the route cause for the commission of the offence need not arise at the spur of the moment."

36. In CHANDRAN, IN RE [1988 Mad LW (CRL.) 113] another Division Bench of this Court, while considering the sustained, sudden and grave provocation, would hold as follows :-

"As the prosecution itself is relying on the confessional statement of the accused under Section Ex. P-13, we have no reservation in accepting the case of the accused that he cut the deceased on account of the sudden and grave provocation caused by the deceased and also on account of the sustained provocation the accused has been nurturing for a long period because of the conduct of the deceased in having illicit intimacy with his wife. Hence, we hold that the accused is entitled to Exception 1 to Section 300, I.P.C."



37. In GURUSWAMI PILLAI V. STATE [1991 (1) M.W.N. (Crl.) 153], at page 157, another Division Bench of this Court has held as follows :- "Therefore, though technically the exceptions to Section 300 I.P.C. appear to be limitative they can no longer be considered so, after efflux of time. In fact, Courts have added one more exception known as "sustained provocation' Now that it is clear that the exceptions under S.300, I.P.C. are not limitative, we have to examine whether Nallathangal's syndrome can be considered as one of the exceptions. Since the Code in the structure makes the exceptions limitative, Courts have to show restraint on circumspection in adding exceptions and such additions should be ejusdem generis."

38. In CHINNAN @ CHINNASWAMI AND ANOTHER V. STATE [(1995) (2) M.W.N. (Cr.) 178], another Division Bench of this Court, after referring to the decisions mentioned above, has held as under :-

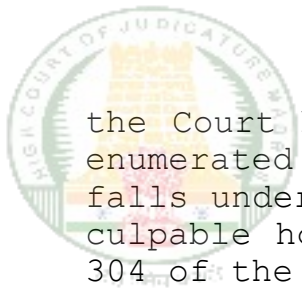
"While we accept the suggestion that the last straw could be considered as grave and sudden in a series of provocations, we are of the opinion that the last straw should at least be in the nature of provocation referred to in the earlier case reported in 1988 L.W. (CRL.) 113."

39. These decisions would show that the Court could add the 'sustained provocation' as one of the Exceptions to Section 300 of the Indian Penal Code.

40. These principles were reiterated in RAJENDRAN & ANOTHER Vs. STATE OF TAMILNADU [1997 - 2 - L.W. (Crl.) 520] and in AIYYASAMY Vs. STATE OF TAMILNADU REP. BY INSPECTOR OF POLICE, PODANUR POLICE STATION, COIMBATORE DISTRICT [2005- 1-L.W. (Cri.) 299]."

19. Therefore, finding that there is some force in the submission made by the learned counsel for the accused and taking into consideration the fact that there is an element of provocation, in other words "sustained provocation", in our considered opinion, this case will fall under Exception 1 to Section 300 of IPC.

20. To bring the case under the above exception, first stage is to see if the accused has done any act, which has caused the death. Once the Court is satisfied with the first stage, it leads to the second stage in order to see if the act of the accused person amounts to "culpable homicide" as defined under Section 299 of the Indian Penal Code and if the answer of this question is found in the affirmative, the Court has to reach the next stage to consider the operation of Section 300 of the Indian Penal Code and see if the act can be brought under any one of the four limbs of Section 300 of the Indian Penal Code. If the answer for this question is in the negative, the offence would be culpable homicide not amounting to murder punishable under the first and second part of Section 304 of the Indian Penal code. If the question is found to be positive, then



the Court has to see if the act comes within any of the exceptions enumerated under Section 300 of the Indian Penal Code and if it falls under the exception, it will again come within the category of culpable homicide not amounting to murder, punishable under Section 304 of the Indian Penal Code.

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21. With the above background, if we analyze the present case on hand, it could be easily presumed that the act of maintaining adultery by the deceased with the appellant's wife, would have certainly been lingering in the mind of the appellant / accused for quite sometime and tormenting him continuously, which, at one point of time, made him to lose his self-control and made his mind to go astray, thereby causing the death of the deceased by attacking him with grinding stone. It is found that the appellant had not voluntarily provoked himself and there were obviously incidents / occurrences, on account of the illegal relationship between the deceased and the wife of the appellant and there were also earlier fights between the parties for a very long time, which is evident from the depositions of P.Ws.1 and 2. Therefore, this Court is convinced that the facts of the present case falls under Exception 1 of Section 300 on the ground of "**sustained provocation**" and consequently, it is a culpable homicide not amounting to murder.

22. Taking into consideration the facts and circumstances of the case and in view of the above discussions, this Court is of the considered view that the conviction and sentence passed by the Court below requires modification, as the facts of the present case clearly falls under Exception 1 to Section 300 of the Indian Penal Code and therefore, the appellant is convicted for "culpable homicide not amounting to murder" and he is sentenced under Section 304 (i) of the Indian Penal code, to undergo Rigorous Imprisonment for a period of seven years.

23. In the result, this Criminal Appeal is allowed in part and the conviction and sentence passed by the Court below dated 31.10.2017 made in S.C.No.277 of 2016 by the learned Principal Sessions Judge, Tirunelveli, Tirunelveli District, is modified in respect of Section 304 (i) of IPC to the extent that the Appellant shall undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- (Rupees Two Thousand only), in default to undergo three months simple imprisonment. Insofar as the conviction and sentence under Section 342 of IPC is concerned, the same is sustained.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)



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To:

1. The Principal Sessions Judge,
Tirunelveli, Tirunelveli District.
2. The Judicial Magistrate, Cheranmahadevi,
Tirunelveli District.
3. -do- Thro The Chief Judicial Magistrate, Tirunelveli.
4. The Superintendent of Central Prison,
Tirunelveli.
5. The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD) No.29 of 2018

05.11.2019

VB(05.12.2019) 17P 9C