



Bail Slip

The Appellant R.Pandi @ Pandian, Male aged about 42 years was released on bail vide order made in CrI.MP(MD).No.8607/2017 in CrI.A. (MD) .No.376/2017 on 04.10.2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
30.10.2019	07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Appeal (MD) No.376 of 2017

R.Pandi @ Pandian

... Appellant/Sole Accused

-VS-

State Rep. by
The Inspector of Police,
Sempatti Police Station,
Dindigul, Dindigul District.
[Crime No.264 of 2009]

... Respondent / Complainant

Prayer: Appeal filed under Section 374 (2) of the Code of Criminal Procedure to call for the records and set aside the judgment dated 12.04.2016 passed in S.C.No.106 of 2012 on the file of the learned Mahila Court (Fast Track Court), Dindigul and acquit the Appellant / Sole Accused of the charge.

For Appellant : Mr.E.Somasundaram

For Respondent : Mr.S.Chandra Sekar
Addl. Public Prosecutor

J U D G M E N T

S.VAIDYANATHAN, J.
AND
N.ANAND VENKATESH, J.

"Creating a circle of healthy atmosphere by way of pleasing intimacy in the middle of a crowd is different from developing an illegal intimacy with an opposite partner and such kind of illegal intimacy will rather ruin not only the entire family, but also the society. The present case is a perfect example, in which the family of



the accused and the deceased got collapsed on account of their illegal intimacy with each other, which ultimately ended in the death of the wife."

The Appellant herein, who is the Sole Accused in S.C.No.106 of 2012 on the file of the learned Sessions Judge, Mahila Fast Track Court, Dindigul, stands convicted by the Trial Court for an offence under Section 302 IPC as follows:

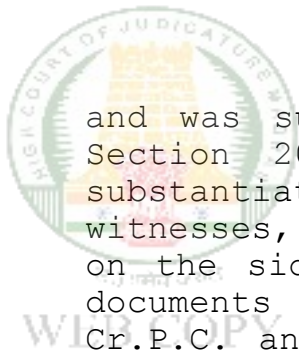
Sl.No.	Conviction	Sentence
1.	Section 302 IPC	To undergo Life Imprisonment with fine of Rs.1,000/- in default to pay fine to undergo Simple Imprisonment for one year.

Aggrieved by the order of the learned Sessions Judge, Mahila Fast Track Court, Dindigul, the Appellant has preferred the present Criminal Appeal before this Court. During pendency of the appeal, this Court, by its order dated 04.10.2017, had suspended the substantive sentence of imprisonment and thereby, the Appellant is on bail now.

2. The case of the prosecution in nutshell was that the Appellant / accused and the deceased Ramathilaka are husband and wife and were blessed with two children. It was alleged by P.W.1, who is the father of the deceased that one day prior to the death of her daughter, the deceased called him over phone and stated that she was not prepared to live with her husband, pursuant to his continuous torture and cruelty, which forced P.W.1 to come to the matrimonial house of his daughter and after extending advice to his son-in-law, he fell asleep.

3. It was further alleged that on the fateful day, viz., 03.08.2009 at about 04.00 a.m., after hearing the screaming sound of the deceased, he came out of his house along with his wife and noticed that the accused / his son-in-law, after attacking her daughter / deceased on her head with Aruval, ran away from the scene of occurrence. It was stated that the accused had developed an illegal intimacy with one Mariammal and when it was questioned by the deceased, the accused had committed murder of the deceased. The deceased, after revealing the truth that her husband had attacked her with Aruval, had succumbed to death and all the neighbours rushed to the scene of occurrence on account of the huge noise raised by P.W.1. Thereafter, P.W.1 went to Sempatti Police Station and gave a complaint to the Sub Inspector of Police (P.W.9) on 03.08.2009 at about 6.30 a.m. Based on the complaint received from P.W.1, an FIR was registered (Ex.P.6) under Section 302 IPC.

4. After a detailed investigation, a charge sheet was laid before the Judicial Magistrate No.2, Dindigul in P.R.C.No.22 of 2010



and was subsequently, committed to the Court of Sessions as per Section 209 Cr.P.C. for trial. The prosecution, in order to substantiate the offence against the accused, had examined 23 witnesses, marked 16 documents and exhibited 3 Material Objects and on the side of the accused, neither any witness was examined nor documents marked. The accused was questioned under Section 313 Cr.P.C. and he denied the charges levelled against him. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of the offence and convicted him as stated supra.

5. The learned counsel appearing on behalf of the appellant has submitted that though P.W.1, who is a solid witness to support the case of the prosecution, had deposed that he witnessed the accused cutting the deceased / his daughter with Aruval, there was no mention about the same in the complaint or Police enquiry. In the 161 statement, it was deposed by him that he had watched the occurrence of murder through a Torch Light and during examination, he did not speak about the Torch Light. Further, the non-examination of the wife of P.W.1, who was sleeping with him on the fateful day creates a cloud over the investigation done by the prosecution.

6. It was the case put forth by the learned counsel for the appellant that there are no corroboration of statements of P.W.1 and P.W.2 on the reasoning that P.W.1 in his deposition had stated that since the deceased had refused to give Rs.200/- to the accused, he murdered her wife, but P.W.2, who is the elder sister of the deceased had stated that on account of the illicit relationship by the appellant with some other woman, the entire incident had taken place.

7. It was argued on the side of the accused that though P.W.7 / Village Administrative Officer (VAO), had recorded the confession statement of the accused in his own hand writing, the same was not marked before the Trial Court for the reasons best known to them, which is fatal to the prosecution as per the judgment of the Hon'ble Division Bench in the case of **Mohan vs. State**, reported in **(2017) 1 MLJ (Cri.) 247**, wherein it has been stated as follows:

"14 . We have gone through the cross examination of P.W.2. During the cross examination he has stated that the accused gave voluntary confession and he reduced the same into writing by his own hand and in the same, the accused signed. But the extra judicial confession, which was alleged to have been handwritten by P.W.2 is not before this court and the same has been suppressed. What is available before this Court as Ex. P.2 is a computer generated document.

15. When P.W.2 was questioned about the discrepancy, he has told during the course of cross examination, that he went to the police station and the



Inspector wanted him to type out the extra judicial confession. Thereafter, with the help of a friend, he typed out the extra judicial confession and got a computer generated copy of the same. He has further admitted that the accused signed in Ex. P.2 in the police station in the presence of Inspector of Police. Thus it is clear that Ex. P.2 came into picture when the accused was very much in the custody of the police. Therefore, Ex. P.2 is not admissible in evidence in view of the bar contained in Section 25 of the Evidence Act. If this Extra judicial confession is rejected as inadmissible, then what remains for the prosecution is the evidence of P.W.5, who has stated that the accused was found somewhere with blood stained clothes around 12.00 midnight on 04.12.2016. In our considered view, assuming that the same is true, based on the timing of the death as deposed by P.W. 11 in his evidence that the deceased had died some time before 6.30 a.m on 05.01.2012, we cannot sustain the conviction.

16. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived of only by following the procedure established by law. The said procedure denotes a fair procedure where the proof of guilt should be made beyond reasonable doubts. In other words, the Court cannot afford to convict an individual on mere surmises or suspicion. In the instant case, the prosecution has not even succeeded in establishing a mere suspicion convicted the appellant/accused only on mere surmise and therefore the same should not be allowed to sustain. We hold that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubts and therefore the appellant/accused is entitled for acquittal.

17. In the result,

"(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District in S.C. No. 86 of 2012, dated 26.07.2013 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him."

Further, in case of any extra judicial confession made by an accused, it requires a thorough corroboration and in this case, none of the witnesses, more particularly the Assistant of VAO, was examined to establish the extra judicial confession given by the accused to P.W.7. It was also submitted by the learned counsel for



the Appellant that the murder had taken place in a crowded residential area, where there were several other residents accommodating in the adjacent buildings and amazingly, none of them were examined by the prosecution and the reason for such non-examination has not been explained by the prosecution.

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8. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the evidence of P.W.1 clearly points out the fact that it was the Appellant, who had attacked the deceased with Aruval and there is no ground to suspect the said evidence. He further submitted that the evidence of the postmortem Doctor (P.W.14) and the Postmortem Certificate, marked as (Ex.P9) clearly indicate that the deceased had died only on account of cut injuries sustained. The learned Additional Public Prosecutor therefore concluded his arguments by submitting 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. In order to substantiate his arguments, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of **Bhagwan Vs. State of Maharashtra in Crl.A.No.385 of 2010** decided on **07.08.2019**, wherein it has been held as follows:

"33....The appellant was drunk, he poured kerosene. The deceased in a natural response to the injuries would be frantic and her reaction would bring her into close contacts with others in a small room including the appellant and their children. No doubt the trial Court has reasoned that the appellant might have tried subsequently for extinguishing the fire. The appellant stands squarely implicated by the dying declaration. The unambiguous words came from the mouth of his deceased wife who cannot be expected to lie as she would be conscious, that she would have to meet her maker with a lie in her mouth. We see no merit in the appeal. The appeal will stand dismissed. As the appellant has been released on bail under orders of this Court, we direct that the bail bond of the appellant be cancelled and appellant shall be taken into custody to serve out the remaining sentence."

9. In sum and substance, it is the submission 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 doubt and that the appellant/accused knowing pretty well about the consequence of attack on the deceased with aruval, attacked her and hence, he is not entitled to any leniency from this Court and prays for the dismissal of this appeal.

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



11. The main contention of the accused was that the confession statement alleged to have been made before the Village Administrative Officer / P.W.7 cannot be taken note of in terms of Rule 72 of the Criminal Rules of Practice and therefore, the evidence of P.W.7 loses its importance and is inadmissible piece of evidence. The Hon'ble Supreme Court in the case of **Sivakumar vs. State Rep. by Inspector of Police**, reported in **2006 (1) SCC 714** makes acceptable a confession recorded by a Village Administrative Officer after the commencement of investigation and held as follows:

"35. Criminal Rules of Practice and Orders, 1931 of the Madras High Court were issued by the High Court in exercise of its power conferred by Article 227 of the Constitution. Rule 72 of the Rules reads thus:

"72. Village Magistrates not to record confession.- Village Magistrates are absolutely prohibited from reducing or writing any confession or statement whatever made by an accused person after the police investigation has begun."

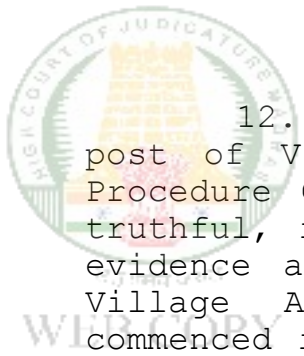
36. The said rule has lost all its significance in view of the fact that now under the Code of Criminal Procedure or any other statute or statutory regulations, the Village Headman is not a Village Magistrate. The post of a Village Magistrate since 1973 does not exist.

37. The Village Administrative Officer, it has not been shown, has been conferred with any power of a Magistrate by reason of the provisions of the Code of Criminal Procedure or otherwise. It has also not been shown that he exercises any judicial or quasi-judicial function. Indisputably, he has no role to play in the matter of an investigation in a criminal case.

38. The Village Magistrates evidently, under the new Code of Criminal Procedure, are not empowered to record any confession or statement either in terms of Section 162 or Section 164 of the Code of Criminal Procedure.

39. For all intent and purport, therefore, Rule 72 of the Criminal Rules of Practice has become redundant and nugatory, logical corollary whereof would be that there does not exist any embargo for an accused person to make an extra-judicial confession before a Village Administrative Officer.

40. We do not, thus, see any reason as to why such an extrajudicial confession could not be made before a Village Administrative Officer."



12. From the above, it is obvious that after abolition of the post of Village Magistrate and after amendment in the Criminal Procedure Code, an extra judicial confession, if it is voluntary, truthful, reliable and beyond reproach, is an efficacious piece of evidence and even if such confession statements are made to the Village Administrative Officer, after the investigation has commenced in a case, it is admissible, if it is not falling within any of the contingencies pointed out under Section 24 of the Indian Evidence Act and its reliability can always be independently tested by Courts. This Court has already considered the scope of acceptance of extra judicial confession and passed a detailed order in **Crl.A (MD)No.264 of 2017 [Mayilraj @ Arockiyam vs.State represented by, The Inspector of Police, Varusanadu Police Station] decided on 31.10.2019.**

13. The next argument advanced by the learned counsel for the Appellant was that despite the occurrence, having taken place in a residential place surrounded by several inhabitants, except the relatives of the deceased, viz., P.Ws.1 to 3, 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 Allias 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. In **Gulam Sarbar Vs. State of Bihar**, reported in **(2014) 3 SCC 401**, it was further observed by the Apex Court as under:-

"19 In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide: Vadivelu Thevar & Anr. v. State of Madras; AIR 1957 SC 614; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638; Mahesh & Anr. v. State of Madhya Pradesh (2011) 9 SCC 626; Prithipal Singh & Ors. v. State of Punjab & Anr., (2012) 1 SCC 10; and Kishan Chand v. State of Haryana



JT 2013(1) SC 222).

20. If the prosecution had not examined the Panchnama witnesses and witnesses to the arrest memos of the appellants, the appellants could have examined them in their defence".

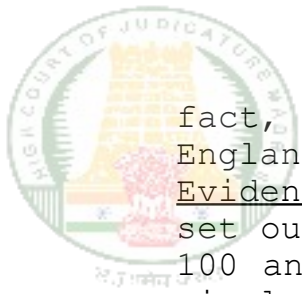
14. As per the deposition of P.W.1, it is clear that he was in the close vicinity of the place of occurrence, as he was called by the deceased just a day prior to the occurrence for solving the problem between her and her husband. Since the occurrence had taken place in the early morning, it cannot be said that the neighbours, who were residing in and around the locality would have witnessed the occurrence and it was P.W.1, who, after hearing a hue and cry, came out of his house and witnessed the commission of the offence by the accused. Merely because other witnesses were not examined and that P.Ws. 1 to 3 are close relatives of the deceased, the theory put forth by the prosecution cannot be completely discarded. The only thing to be ensured by the Court is, as to whether the evidence adduced by such witnesses tallies with the statement made in the complaint and is corroborated by the medical evidence.

15. The Hon'ble Supreme Court in yet another case in **Vadivelu Thevar vs The State Of Madras**, reported in **1957 AIR 614**, held as follows:

"(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that " no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons,



fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 1 100 and 1 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that " Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony,



direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution...."

16. The Hon'ble Supreme Court 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



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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."

17. A cursory glance at the deposition of P.W.1, who is the prime witness to narrate the entire scenario, exhumes the fact that the Accused had attacked the deceased with Aruval and in order to ascertain as to whether any severe injuries are found on the body of the deceased, it is proper in the circumstances to peruse the Post Mortem Report dated 03.08.2009, which is marked as Ex.P.9, in which it is stated as follows by P.W.14 / Dr.Elango Muniappan, who had commenced the post-mortem at 01.00 p.m. on 03.08.2009 and had noted the following features in his Post Mortem Certificate"

"Identification and caste mark:

1) நடுவயிற்றில் கருப்பு, மச்சம்



2) இடது பக்க மார்பில் ஒரு கருப்பு, மச்சம்

The body was first seen by the undersigned at 01:00pm on 03.08.2009. Its condition then was Rigor mortis present in all the four limbs. Post-mortem commenced at 01.00 Pm on 03.08.09.

Appearances found at the Post-mortem:

A Moderately nourished male body lies on its back, symmetrical. Eye lids closed, Tongue-Inside nose frothy discharge present Teeth 8/8-8/8.

External Injuries

- 1.A cut injury of 2 x 1 cm over the right eyebrow.
- 2.A cut injury of 5 x 1 cm bone depth over the centre of forehead.
- 3.A Punctured wound of 1 x 1cm x bone depth over the left cheek below the eye.
- 4.A cut injury of 4 x 1 cm x bone depth over the left parietal region 3 in Nos.

Post-Mortem Examination:

Heart-chambers-Right full, left-empty, Lungs, Liver, Spleen and Kidneys - pale, Hyoid bone - intact, Stomach - partially digested food particles present. Uterus empty, skull - fracture right parietal bone in 3 places with a contusion (NC) the right brain pale fronts parietal region with haemotoma of 300ml present.

Opinion:

The deceased would appear to have died of Shock and Haemorrhage due to **cut injuries** sustained and death could have occurred about 08-12 hours prior to autopsy.

18. In the chief examination, the Doctor had deposed thus,

பிரேதத்திலிருந்த குத்துக்காயம் கூர்மையான கத்தியால் குத்தினாலும் வரும், கூர்மையான கல்லினாலும் குத்தினாலும் வரும். பிரேதத்திலிருந்த வெட்டுக் காயங்கள் கூர்மையான ஆயுதத்தால் வெட்டினால் தான் வரும்.

From the evidence of P.W.14, it could be easily understood that the deceased had died on account of injuries made by a sharp-edged weapon and thus, the deposition given by P.W.1 was duly proved / corroborated with the medical evidence.

19. The contention raised by the accused that even though there was a mention of a Torch Light in the deposition, neither the said Torch Light was recovered nor such fact was described in the complaint, has no substance to get a favourable order of acquittal. When there is a direct evidence, the minor contradiction regarding the dislocation of torch light, will not dilute the incident that has taken place and the offence committed by the accused /



Appellant.

20. 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 his wife on account of strained relationship between them and even on the date of incident, there was a verbal fight between the parties and due to grave and sudden 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.

21. We find some force in the submissions made by the learned Counsel. A scrutiny of the deposition of P.Ws.2 and 3 / sisters of the deceased unravels the fact that the accused always suspected that the deceased was having extra marital relationship with one Sakthivel, a Panchayat President, Athur and infuriated by the same and at the spur of the moment, the accused had attacked the deceased and caused her death. To add further, P.W.1 had also deposed that similarly, the accused was also having an illicit relationship with one Mariammal and after paying a sum of Rs.10,000/- to the said Mariammal, the accused was separated from her. Thus, the evidence of P.Ws.1 to 3 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 Aruval and causing her death. Therefore, in our considered opinion, there is an element of provocation and this case will fall under Exception 1 to Section 300 of IPC.

22. 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.

23. In the present case, it is found that the appellant was completely deprived of the power of self-control due to grave and sudden provocation and he caused death of the deceased by attacking her with Aruval. It is found that the appellant had not voluntarily provoked himself and there were obviously earlier fights between the parties for a very long time and pursuant to the verbal fight that took place on the date of occurrence, the entire incident had occurred. Therefore, this Court is convinced that the facts of the present case falls under Exception 1 of Section 300 and consequently, it is a culpable homicide not amounting to murder.

24. 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.

25. The conviction and sentence passed by the Court below in S.C.No.106 of 2012, is modified to that extent and accordingly, this Criminal Appeal is allowed in part. It is made clear that the appellant shall be entitled for set off in accordance with Section 428 of the Code of Criminal Procedure for the period of detention already undergone by him. The appellant is directed to immediately surrender before the concerned jurisdictional Magistrate and on such surrender, the appellant shall be confined in jail to undergo the remaining period of sentence, if any. It is made clear that if the appellant fails to surrender before the concerned Court, the respondent police shall secure the appellant and produce him before the Magistrate and thereafter, he shall be confined to the prison.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Principal Sessions Judge,
Magila Fast Track Court,
Dindigul.

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



2.The Inspector of Police,
Sempatti Police Station,
Madurai, Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, (2 Copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.E.SOMASUNDARAM, Advocate (SR-96861[F] dated 08/11/2019

Criminal Appeal (MD) No.376 of 2017
07.11.2019

JMN(22.11.2019) 19P : 7C