



WEB COPY



CRL.A.NO.25 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30 / 08 / 2023

JUDGMENT PRONOUNCED ON: 25 / 09 / 2023

CORAM:

**THE HON'BLE MR.JUSTICE M.SUNDAR
AND
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

CRL.A.NO.25 OF 2021

Mayavan

... Appellant

Versus

State rep. By
The Inspector of Police
Puduchatram Police Station
Namakkal District.
(Crime No.400 of 2016)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the judgment made in S.C.No.1 of 2018 dated 10.11.2020 on the file of the learned Sessions Judge (Fast Track) Mahila Court, Namakkal.

For Appellant : Mr.S.N.Arun Kumar
Mr.W.Camyles Gandhi

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



CRL.A.NO.25 OF 2021

JUDGMENT

WEB C **R. SAKTHIVEL, J.**

This Criminal Appeal is preferred by the appellant / sole accused in S.C.No.1 of 2018 on the file of Sessions Judge (Fast Track) Mahila Court, Namakkal (hereinafterwards referred to as 'trial court' for the sake of brevity and convenience) assailing the judgment passed by the trial court on 10.11.2020 convicting and sentencing him as follows:

<i>Appellant's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
Sole accused	294(b) of IPC	Three months simple imprisonment.
	449 of IPC	Ten years rigorous imprisonment and fine of Rs.1,000/-, in default of payment of fine, six months simple imprisonment
	302 of IPC	LIFE imprisonment and fine of Rs.1,000/-, in default of payment of fine, six months simple imprisonment
	The period of imprisonment already undergone by the accused is ordered to be set off u/s. 428 of Cr.P.C. The sentence of imprisonment are ordered to run concurrently.	



CRL.A.NO.25 OF 2021

2. The case of the prosecution, in brief, is as follows :

(i) The appellant and the deceased are half brother and sister.

They were residing adjacent to each other. There were disputes and frequent quarrels between the appellant and the deceased pertaining to vacant land in front of the deceased's house for around ten years. On 05.10.2016, the deceased had excavated and dug up a trench in the vacant site to raise basement for constructing a bathroom by using the Government subsidy. The accused at about 02.30 p.m., with an intention to insult the deceased, abused her using obscene words, criminally trespassed into the house of the deceased and stabbed her with an intention to kill and thereby caused injury below left breast of the deceased and as the deceased ran out of the house raising hue and cry for her life, the accused chased her and again stabbed her in the abdomen, right upper chest, left hip and right arm using a knife and caused blood injuries. The deceased was admitted to hospital on 05.10.2016 and died on 28.10.2016 in the hospital. Hence the alleged offence.



CRL.A.NO.25 OF 2021

(ii) The Trial Court framed charges under Sections 294(b), 449 and 302 of IPC, against the appellant. Since the appellant / accused denied the charges framed against him, trial was ordered.

(iii) With a view to prove the charges, the prosecution has examined P.W.1 to P.W.16 and marked Ex-P.1 to Ex-P.16 and PMO-1. After full trial, the Trial Court found that the charges framed against the accused are proved beyond reasonable doubt. Hence the punishment imposed as stated supra.

(iv) Aggrieved by the conviction and sentence imposed by the learned Sessions Judge, the appellant / accused has filed this Criminal Appeal.

3. The points that arise for consideration are thus:

(i) Whether the prosecution has proved the charges under Sections 294(b), 449 and 302 of IPC against the appellant beyond reasonable doubt?

(ii) Is there any reason to interfere with the trial



CRL.A.NO.25 OF 2021

court's judgment?

Discussion and Decision to Point Nos.(i) and (ii) :

4. Learned counsel for the appellant/accused argued that the trial Court has not properly appreciated the evidence available on record; that the trial court ought not to have believed the evidence of P.W.1 since P.W.1 had not seen the alleged occurrence directly; that as per the evidence of Doctor Mubeen (P.W.12) who examined the deceased at Namakkal Government Hospital, the deceased was unconscious, hence, she could not have given complaint statement (Ex-P.8).

4.1. Elaborating the said argument, the learned counsel drew our attention to the evidence of Thiru. Manivannan (P.W.14) Sub-Inspector of Police, Puduchathiram Police Station and argued that Ex-P.8 complaint statement could not have been given by the deceased. Further, he drew our attention to P.W.5 and P.W.6 deposition and argued that the deceased name is Kondayee only and she did not have a nick name Athayee. Hence, Ex-P.8 complaint statement itself was an after-thought and created subsequently with



CRL.A.NO.25 OF 2021

a view to falsely implicate the accused in this case.

WEB COPY

4.2. Learned counsel further argued that the deceased was an age old person and died in hospital after 23 days of the alleged occurrence. There is no proximate temporal link between the injury and death. The deceased could have died due to age factor or some other medical ailments also.

4.3. The learned counsel further argued that the accused did not give any confession statement to the police and the alleged confession and recovery of material object (PMO-1) are cooked up stories by the Investigation Agency. Further, he argued that the First Information Report (FIR) was sent to the concerned Judicial Magistrate Court with a delay of 16 hours and alleged witness statements were sent to the concerned Judicial Magistrate Court belatedly which has caused serious doubt over the prosecution case. However, the Trial Court without considering the said aspects, convicted the appellant/accused. Accordingly, learned counsel prayed to allow the appeal and acquit the appellant/accused.

5. Per contra, the learned Additional Public Prosecutor has



CRL.A.NO.25 OF 2021

submitted that the deceased and the appellant are close relatives and P.W.2 to P.W.4, P.W.7 and P.W.8 belong to same locality and are known to each other.

The evidence of P.W.1 and P.W.2 are believable and there is no reason to disbelieve their evidences. The appellant caused stab injury to the deceased in vital parts of her body using PMO-1, a sharp edged knife. Further, the evidence of Dr.Mubeen (P.W.12) who initially treated the deceased at Government Hospital, Namakkal, Dr.Tmt. Dhamayanthirani (P.W.15) who admitted the deceased in Government Mohan Kumaramangalam Medical College Hospital, Salem and Dr.Sangeetha (P.W.10) who conducted post-mortem on the deceased body would clearly establish that the deceased could have died due to injuries found on her body. He further submitted that the prosecution has proved the case beyond reasonable doubt. The trial court after considering all the evidences on record, came to the conclusion that the charges framed against the accused are proved beyond reasonable doubt. Hence, there is no reason to interfere with the said judgment. Accordingly, he has prayed to dismiss the Criminal Appeal.

6. Thiru. Sasikannan (P.W.1) is the son of P.W.5 and grandson of



CRL.A.NO.25 OF 2021

deceased Kondayee. He deposed that the accused and the deceased are half brother and sister and also neighbours; that there was a long standing dispute between the accused and the deceased for the past ten years pertaining to a small extent of land; that he is residing 8 kms away from the scene of occurrence; that on 05.10.2016, the deceased called him to assist in the bathroom construction work; that he reached the deceased house at 01.30 p.m. on 05.10.2016 and at that time, some workmen were working to construct bathroom in front of the deceased house; that the workmen went for lunch at 02.00 p.m.; and that at that time, he went out to his relative's place. He further deposed that when he was coming back and nearing the deceased's house, the accused came to the scene of occurrence, abused the deceased with obscene words and stabbed her on her chest and abdomen area shouting out that 'you don't have land here, after killing you only, I would get the solution to this problem' (உனக்கு இங்கே இடம் ஏது, உன்னை கொன்றால்தான் இதற்கு தீர்வு கிடைக்கும்) that at that time his grandmother (deceased) screamed out 'Save Me! Ayoooh! Ammah! (காப்பாற்றுங்கள்! அய்யோ! அம்மா!); that the accused ran away through a lane near the deceased's house; that he was petrified witnessing the incident from two houses away and he could not react



CRL.A.NO.25 OF 2021

for a while; that the deceased then came out and fell down near Athayee's (P.W.2) house; that then Ayyavoo (P.W.8) and others rushed to the spot; that then 108 Ambulance was called and the deceased was taken to Government Hospital, Namakkal, then the deceased was referred to Government Hospital, Salem by the Doctor; that thereafter police came and recorded statement from the deceased and that the deceased died after 23 days despite treatment.

7. P.W.1 in his cross examination has deposed that the deceased was conscious when she was admitted in Government Mohan Kumaramangalam Medical College Hospital, Salem on 05.10.2016 at 05.00 p.m. and a surgery was performed on her between 08.30 p.m. and 12.00 a.m. that anesthesia was administered to the deceased at 09.00 p.m.; that the deceased came back to her consciousness only 3 days after surgery. He denied the suggestion that Ex-P.8 was created falsely by the police. He further denied the suggestion that he could not have witnessed the alleged occurrence from a distance of 100 mtrs. He further deposed that occurrence happened inside the deceased's house and the accused and the deceased came out of the house one after another. He admitted that he did not see the occurrence directly.



CRL.A.NO.25 OF 2021

WEB COPY

8. Prosecution examined Tmt.Athayee as P.W.2. Her deposition was recorded on 22.10.2018. She deposed that she is residing two houses away from deceased home and she knew the accused and deceased that when deceased fell down near her house saying that the accused shouted at her about the land and stabbed her for digging pits for bathroom construction; that she saw injury on her chest and abdomen; that she bandaged her injuries with a cloth and the deceased was then taken to hospital in an Ambulance; that the deceased died in hospital after 23 days.

8.1. In her cross-examination, she admitted that herself and P.W.1 took the deceased to the hospital; that he did not witness the incident directly. She further deposed that Kondayee told her that 'he stabbed her' (அவன் குத்திவிட்டான்).

9. Thiru. Varadharaj (P.W.3) is also residing in the same locality; he deposed that the deceased died due to blood injuries. He further deposed that on the date of occurrence at about 02.00 p.m., while he was doing



CRL.A.NO.25 OF 2021

electrical work near the deceased house, he heard the hue and cry of the deceased and went to check on the deceased and found the deceased with blood injuries on her body; that four or five persons were there; that the deceased was sitting with injuries near Athayee's (P.W.2) house; that she was taken to the hospital in an Ambulance and that he does not know who caused the injury.

10. Thiru. Perumal (P.W.4) also resides in the same locality where appellant and deceased reside. He deposed that the deceased died due to stab injury. He did not point out the accused.

11. Thiru. Rajendran (P.W.5) is the son of the deceased and father of P.W.1. He did not witness the occurrence. He deposed that after hearing the incident, he went to Government Hospital, Namakkal and saw the deceased at 03.00 p.m. and thereafter, took her to Government Hospital, Salem at 04.00 p.m., and at 07.00 p.m., surgery began. At that time, Sasikannan (P.W.1) Athayee (P.W.2) and his wife were present in the hospital. Further, he deposed that there was a long standing dispute between



CRL.A.NO.25 OF 2021

the accused and the deceased pertaining to a small extent of land situated in front of the deceased's house. He admitted that his mother name is Kondayee and there is no other name for her.

12. Tmt.Sumathi (P.W.6) is the daughter-in-law of the deceased. She deposes along the line of P.W.5's deposition.

13. Thiru. Raju (P.W.7) is the observation mahazar witness. He deposed that on 05.10.2016 at 09.00 p.m., the police came to the scene of occurrence and prepared rough sketch and mahazar.

14. Thiru. Ayyavoo (P.W.8) is a local resident of the appellant and deceased. He did not support the case of the prosecution. Prosecution side cross examined him under Section 154 of The Indian Evidence Act, 1872. Despite cross examination, prosecution could not obtain anything in its favour.

15. Thiru. Rathinasabapathi (P.W.9) is the Village Administrative Officer of Karaikurichi Village. He deposed that Selliyayipalayam comes under his jurisdiction where the offence took place. He further deposed that



CRL.A.NO.25 OF 2021

the deceased owned a vacant land in Natham Survey No.256/18. To that effect, he issued Ex-P.2 certificate.

16. Thiru. Rajamanickam (P.W.11) was the Village Administrative Officer of Navani Village. He deposed about the arrest, confession and recovery of PMO-1.

17. Dr.Mubeen (P.W.12) is working at Government Headquarters Hospital, Namakkal District. He deposed that on 05.10.2016 at about 03.25 p.m., while he was on duty, Thiru. Sasikannan (P.W.1) brought his grandmother (deceased) for treatment. He examined the deceased and found three injuries on her body as follows:

'(1) Laceration of 5 X 3 cm depth unknown with exposed internal organ over left flank region just below left breast.

(2)Laceration of 3 X 2 cm depth unknown over right flank.

(3)Laceration of 4 X 3 X 3 cm over right upper



CRL.A.NO.25 OF 2021

chest.'

WEB COPY

He further deposed that he was informed by Sasikannan (P.W.1) that on 05.10.2016 at 02.30 p.m., a known person caused injury by a sharp edged weapon to the deceased. He further deposed that at the time of examination of Kondayee (deceased), she was unconscious and she was not able to answer the questions put forth by him. He gave first aid treatment and referred the patient to Government Hospital, Salem for further treatment.

18. Thiru. Manivannan (P.W.14) was working as Sub-Inspector in Puduchathiram Police Station. He deposed in his chief examination that on 05.10.2016 while he was on duty at 20.30 hours, he received an intimation from Government Hospital, Salem and he went there and recorded the statement from Kondayee, who was admitted as in-patient. Her statement is marked as Ex-P.8.

18.1. The defense side cross examined the said witness in detail. In his cross examination, he deposed that he reached the hospital at 09.30 p.m., and thereafter, recorded the statement of Kondayee. He further deposed



CRL.A.NO.25 OF 2021

that he registered the FIR on 05.10.2016 at 20.30 hours. He denied the suggestion that Kondayee did not give any statement to him. Further, he denied the suggestion that he obtained thumb impression from Athayee (P.W.2) and based on the thumb impression, Ex-P.8 statement was created as an after-thought implicating the accused in this case.

19. Tmt. Thamayanthirani (P.W.15) is a Doctor who admitted the deceased on 05.10.2016 at 05.00 p.m., in Government Mohan Kumaramangalam Medical College Hospital, Salem. She deposed that the deceased Kondayee was brought in by Sasikannan (P.W.1) and she examined and admitted her in the Intensive Care Unit. The copy of the Accident Register was marked as Ex-P.10. In Ex-P.10, it is mentioned that 'on her examination, the deceased was conscious and oriented'.

20. Thiru. Manikandan (P.W.16) is the Investigating Officer. He deposed that on receipt of FIR No.400/2016 under Sections 294(b), 448 and 307 of IPC, he started investigation on 05.10.2016. On the same day at 09.30



CRL.A.NO.25 OF 2021

p.m., he went to the scene of occurrence and prepared a rough sketch (Ex-P.11) and observation mahazar (Ex-P.1) in the presence of witnesses Raju (P.W.7) and Rathinam. Thereafter, he went to Government Mohan Kumaramangalam Medical College Hospital, Salem and recorded the statement of the deceased and her attender Sasikannan (P.W.1) on 06.10.2016 at 01.00 a.m. On 06.10.2016 at 06.00 a.m., he arrested the accused at Pudhuchathiram Perumal Koil Bus Stop in the presence of Village Administrative Officer Ranamanickam (P.W.11) and Village Assistant Rajendran. The accused gave confession and based on the admissible portion of the confession, 35 cm knife (PMO-1) hidden by the accused was seized by him through a mahazar in the presence of the witnesses Rajamanickam (P.W.11) and Rajendran. He further deposed that on 28.10.2016 at 6'o clock, he received an intimation from the Government Mohan Kumaramangalam Medical College Hospital, Salem that the deceased Kondayee died. Hence, he altered the section of law from Sections 294(b), 448 and 307 of IPC to 294(b), 448 and 302 of IPC. The alteration report is marked as Ex-P.12. After completion of the investigation, he filed a charge sheet against the accused under Sections 294(b), 448 and 302 of IPC.



CRL.A.NO.25 OF 2021

WEB COPY

21. The Investigating Officer in his cross examination, has admitted that in the Ex-P.8 complaint statement 'Athayee' was written in one pen and 'Kondayee' was written in another pen. He admitted that FIR was received by the learned Judicial Magistrate after delay of 15 hours. But he explained that since the FIR was registered on 05.10.2016 at 08.30 p.m., the same was sent to the Judicial Magistrate the next day morning. He further admitted that no blood stain was found inside the house of the deceased. He admitted that Section 161(3) of Cr.P.C., statements were recorded on 05.10.2016 and the same were received by the learned Judicial Magistrate on 20.12.2016 belatedly. Further, he admitted that he did not take any steps to record dying declaration and he did not send PMO-1 for finger print examination. Further, he admitted that he did not send the blood stain found on PMO-1 to the Forensic Sciences Laboratory. He denied the suggestion put forth by the accused that PMO-1 was created for the purpose of the case and that he did not visit the scene of occurrence. Further, he denied the suggestion that the rough sketch and observation mahazar were prepared in the station itself.



CRL.A.NO.25 OF 2021

WEB COPY

22. Learned counsel for appellant drew our attention to the evidence of Tmt.Sumathi (P.W.6) and Thiru. Sasikannan (P.W.1) and persuasively argued that Ex-P.8 complaint could not have been obtained after the incident. Further, the learned counsel drew our attention to the evidence of Dr.Mubeen (P.W.12) and Thiru. Manivannan (P.W.14) and argued that the deceased was unconscious at the time of admission in Government Hospital, Namakkal and subsequently she was admitted to Government Mohan Kumaramangalam Medical College Hospital, Salem and sugery was done to the deceased. Hence, the deceased could not have given a complaint statement (Ex-P.8) to P.W.14. The complaint statement (Ex-P.8) was fabricated with a view to implicate the accused in this case. In short, he submitted that the genesis of the crime itself is doubtful.

23. Per contra, learned Additional Public Prosecutor has submitted that Dr.Dhamayanthirani (P.W.15) who admitted the deceased in



CRL.A.NO.25 OF 2021

Government Mohan Kumaramangalam Medical College Hospital, Salem has clearly recorded in the Accident Register (Ex-P.10) that at the time of admission (i.e., 05.00 p.m., on 05.10.2016) the deceased was conscious and oriented. Sasikannan (P.W.1) has deposed that surgery started only after 09.00 p.m. Further, he submitted that Ex-P.8 complaint statement might be recorded between 05.00 p.m. and 08.30 p.m. on 05.10.2016. He drew our attention to Ex-P.8 statement and submitted that since FIR was registered at 20.30 hours, Ex-P.8 statement might be recorded before 20.30 hours on 05.10.2016.

24. This Court has considered both side submissions.

25. Initially, the deceased was brought to Government Hospital, Namakkal at 05.00 p.m. At the time, she was unconscious. After administering first-aid, she was taken to Government Mohan Kumaramangalam Medical College Hospital, Salem where P.W.15 admitted the deceased in Intensive Care Unit. In the Accident Register, she has noted that at the time of admission, the deceased was conscious and oriented. It is



CRL.A.NO.25 OF 2021

WEB COPY true that Thiru. Manivannan, Sub-Inspector of Police (P.W.14) has stated that he received intimation at 20.30 hours on 05.10.2016 and went to Government Mohan Kumaramangalam Medical College Hospital, Salem and recorded the Kondayee's complaint statement (Ex-P.8) from the deceased. But the FIR was registered at 20.30 hours on 05.10.2016. Hence, Ex-P.8 complaint statement might be obtained before 20.30 hours. In view of documentary evidence, this Court decides that Ex-P.8 statement was recorded before 20.30 hours. The learned Sessions Judge has rightly appreciated the evidence and came to the above conclusion. There is no reason to differ with the learned Sessions Judge in this regard.

26. Thiru.Sasikannan (P.W.1) in his evidence has deposed that he was standing 100 mts away from the scene of occurrence. He clearly deposed that he did not see the occurrence but he heard the hue and cry of his grandmother 'Save Me! Ayoooh! Ammah!' and thereafter, he saw her grandmother and the accused came out of the house one after another. He clearly identifies the accused. Hence, P.W.1's evidence is admissible under Section 6 of the Indian Evidence Act, 1872, which reads as follows:



WEB COPY



CRL.A.NO.25 OF 2021

'6.Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b)...

(d)...

(e)...'

27. Section 6 of the Indian Evidence Act, 1872 is based on the English doctrine of '*Res gestae*'.

28. In view of the facts and circumstances, there is no reason to disbelieve and reject the evidence of P.W.1.



WEB COPY

29. Though the P.W.2 also did not directly see the occurrence, she saw the deceased running out of her house and falling down near her house immediately after the incident. P.W.1 and P.W.2 and others had witnessed the injuries found on the deceased body. P.W.4 evidence did not connect the accused with the crime. However, his evidence is sure that the deceased was murdered by causing stab injury. His evidence strengthens the evidence of P.W.1 and P.W.2. The evidence of P.W.5 and P.W.6 proves that there was a dispute between the deceased and the accused pertaining to the small extent of land in front of the deceased house.

30. Dr.Sangeetha (P.W.10) who conducted the post-mortem on the body of the deceased found the following injuries:

INJURIES:

1.Healing sutured wound over mid abdomen extending from Xiphisternum to the umbilicus M-22 cms with left side drainage tube wound.

2.Healing sutured wound over outer aspect of right side of the chest M-6 cms.



3.Healing laceration over outer aspect of left hip M-

1.5 X 1.5 X 0.5 cms.

4.Healed inter costal drainage tube wound over left fifth axillary line.

5.Healing sutured wound over the under surface of right arm O/D. Muscles sutured in layers.'

INTERNAL EXAMINATION:

O/D HEAD: SCALP – Norma Dura Membrane – Intact, Cranial vault – Intact, Brain – Normal in size C/S Normal, Base of skull – Intact.

O/D THORAX – Thoracic cavity contained 200 ml of straw coloured fluid, RIBS – Fracture left side Ribs 6,7,8 in mid clavicular line with surrounding soft tissue contusion. Heart – Normal in size, C/s. Chambers contained fluid blood, valves and coronaries – Normal, Lungs – Left lung resolving contusion in lower lobe M-6X0.5X0.5 CMS. Both lungs adherent to the chest wall C/s. Normal.

O/D. ABDOMEN: Peritoneal cavity contained 250 ml of straw coloured stained fluid stomach tubed over the greater curvature of the stomach M-4 CMS long, intestine –



CRL.A.NO.25 OF 2021

*Resolving contusion of the descending colon M.5X3.5X0.5
CMS. MUCOSA C/s. Normal Liver – Healing laceration
over the left lobe of the liver, spleen – Resolving contusion
over the spleen M.3X2X0.5 Kidneys – Normal in size, C/s.
Normal, Bladder – Empty, Pelvis, Spinal column – Intact.*

OPINION:

*The deceased would appear to have died of effects of
stab injuries. Time since death – consistent with the death
declaring Doctor (28.10.16 AT 06.00 AM). '*

31. Dr.Sangeetha (P.W.10) who conducted post-mortem has clearly deposed that the deceased died due to stab injuries Prosecution has proved the arrest of the accused by examining P.W.11. P.W.11 deposed about the factum of arrest and the confession. Based on the admissible portion of the confession statement, Investigating Officer recovered PMO-1 which was hidden amidst the firewood. PMO-1 was seized under Ex-P.5.



CRL.A.NO.25 OF 2021

WEB COPY

32. The learned counsel for the appellant / accused submitted that the arrest and recovery are doubtful since no independent witness was cited and examined. This Court is not inclined to accept the above argument as considering the nature of the case, naturally no one would come forward to stand as a witness. Further, merely because P.W.11 is a Village Administrative Officer, his evidence need not be rejected. Further, there is no motive between the appellant / accused and P.W.11.

33. In these circumstances, this Court is of the view that prosecution has proved the arrest and recovery of PMO-1 from the accused. PMO-1 is a knife. Post-mortem Doctor (P.W.10) has deposed that the injury found on the deceased body might be caused by using PMO-1.

34. The evidences of P.W.1 and P.W.2 do inspire confidence. There is no reason to reject the evidence of P.W.1 and P.W.2. The evidence of P.W.1, P.W.2 and P.W.3 and other evidences clearly prove the fact that the accused caused stab injury to the deceased due to which the deceased died.



CRL.A.NO.25 OF 2021

The evidence of the Doctors would clearly establish that the injuries found on the deceased are sufficient in the ordinary course of nature to cause death.

Hence, the question is whether the offence is one of culpable homicide amounting to murder or it is a culpable homicide not amounting to murder.

35. This Court has perused the rough sketch and observation mahazar. The accused and the deceased were residing adjacent to each other. In between their house, only three feet lane is there. Admittedly, both the houses are constructed in Natham land and the deceased and the accused are half sister and brother respectively. As per the evidence of P.W.1, P.W.5 and P.W.6, there was a dispute pertaining to a small extent of land in front of the deceased house. In the disputed land, the deceased wanted to construct a bathroom by using the Government subsidy. On the fateful day, the accused went to work in the morning and returned back at 02.00 p.m. At the time he saw that the deceased dug a pit for the purpose of constructing toilet. This act has caused sudden provocation to the accused. Due to the sudden provocation, the accused entered into the deceased house and caused stab



CRL.A.NO.25 OF 2021

injury to her. Despite treatment, the deceased died 23 days after the occurrence. Admittedly, the deceased and the accused are rustic and illiterate.

Both are coolie workers. As per the evidence available on record, the accused and the deceased have no other land except their house and the disputed land. The disputed land is situated in front of the deceased house. In the absence of the accused, deceased started construction activities which caused grave and sudden provocation to the accused. The accused had knowledge that the deceased would have died if he caused stab injury. The accused has no calculated intention or pre-meditation to kill the deceased. Hence, the act of the accused clearly falls under exception one of Section 300 of IPC which is punishable under Part – I of Section 304 of IPC.

36. The Hon'ble Supreme Court in ***K.M.NANAVATI VS. STATE OF MAHARASHTRA [AIR 1962 SC 605]*** held as follows:

'135.Homicide is the killing of a human being by another. Under this exception, culpable homicide is not murder if the following conditions are complied with : (1)



*The deceased must have given provocation to the accused.
(2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of self-control. (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.'*

In paragraphs 152 and 153 of the said judgment it is held as under:

'152.Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is



WEB COPY



CRL.A.NO.25 OF 2021

neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self- control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

153.The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the



WEB COPY



CRL.A.NO.25 OF 2021

subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.'

37. This Court has perused the entire evidence available on record. P.W.1 clearly deposed that the accused entered the deceased house, using obscene words and caused stab injury. He further deposed that he saw the accused and the deceased came out of the deceased house one after another. Hence, the prosecution has proved that the accused entered into the deceased house with an intention to commit the offence. Hence, the Trial Court's decision that the prosecution has established the charges under Sections 294(b) and 449 of IPC is correct and no need to interfere with the said finding.



CRL.A.NO.25 OF 2021

38. Learned counsel for the appellant / accused submitted that the Investigating Officer has not taken any steps to record dying declaration from the deceased, which is fatal to the prosecution case; that the serology report pertaining to the blood stain found on PMO-1 was not obtained and no explanation was offered in this regard by the Investigating Agency; that the Investigating Officer has not visited the scene of occurrence on the date of occurrence as alleged; that there is no evidence available on record to connect the PMO-1 with the crime; that the statement of the material witness recorded under Section 161(3) rough sketch (Ex-P.11) observation mahazar (Ex-P.1) etc., were all sent to the Judicial Magistrate Court on 26.12.2016 only, which creates suspicion over the prosecution case.

39. This Court has carefully considered the above submissions. It is true that the Investigating Officer has not conducted the investigation properly but the evidence of P.W.1, P.W.2 and other evidences available on record do inspire confidence of this Court. Hence, this Court comes to conclusion that the prosecution has established the case under Sections 294(b), 449 and 304 Part-I of IPC. Hence, failure or omission on the part of



CRL.A.NO.25 OF 2021

the Investigating Officer cannot render the case of the prosecution doubtful, in view of the evidence of P.W.1, P.W.2 and medical evidence which are trustworthy and believable.

CONCLUSION:

40. In view of the foregoing reasons stated supra, the conviction under Section 302 of IPC is liable to be interfered with and the act of the accused attracts exception one of Section 300 of IPC i.e., culpable homicide not amounting to murder, which is punishable under the First Part of Section 304 of IPC. The points are answered accordingly.

41. In the result, this Criminal Appeal is partly allowed in the following manner:

(i) The conviction and sentence imposed by the trial court under Sections 294(b) and 449 of IPC are sustained.

(ii) The conviction under Section 302 of IPC is altered to one under First Part of Section 304 of IPC and imposed punishment of seven



CRL.A.NO.25 OF 2021

years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month.

(iii) The period of imprisonment already undergone by the accused in this case is ordered to be given set off under Section 428 of Cr.P.C., and the sentence of imprisonments are ordered to run concurrently.

(iv) The appellant / accused is on bail vide order passed in Crl.M.P.No.477 of 2021 in Crl.A.No.25 of 2021 dated 28.07.2021. Hence, the learned Sessions Judge, (Fast Track) Mahila Court, Namakkal shall take steps to commit the appellant / accused to jail to undergo the remaining period of sentence.

[M.S., J.]

[R.S.V., J.]

25 / 09 / 2023

Index : Yes
Speaking order
Neutral Citation : Yes
SPP/TK



WEB COPY



CRL.A.NO.25 OF 2021

M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

SPP/TK

To

- 1.The Sessions Judge
(Fast Track) Mahila Court
Namakkal.
- 2.The Inspector of Police
Puduchatram Police Station
Namakkal District.
- 3.The Public Prosecutor
High Court of Madras.

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.25 OF 2021

25 / 09 / 2023