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Crl.A.No.640 of 2021
and
Crl.M.P.No.16492 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 24.11.2022	Judgment Pronounced on 02.01.2023
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CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.A.No.640 of 2021
and
Crl.M.P.No.16492 of 2022

Annamalai, Age 27 years
S/o. Kullaiyan

... Appellant / sole accused

..VS..

State represented by
The Inspector of Police
Virinchipuram Police Station
Virinchipuram
Vellore District.
(Crime No.51 of 2009)

... Respondent/Complainant



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This appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence imposed on the appellant / sole accused passed by the learned Session Judge, Fast Track Magalir Neethi Mandram (Sessions Court), Vellore in S.C.No.133 of 2011 dated 27.09.2018.

For Appellant : Mr.C.R.Malarvannan
for
Mr.V.Rajamohan

For Respondent : Mr.M.Babu Muthu meeran
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by G.CHANDRASEKHARAN, J.,)

Appellant / accused was convicted under Section 302 IPC and Sections 25(1-B) and 25(1)(b) of Arms Act and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- under Section 302 IPC, in default to pay the fine, to undergo Rigorous Imprisonment for one month;



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and three years Rigorous Imprisonment each under Sections 25(1-B) and Section 25(1)(b) of Arms Act and a fine of Rs.1,000/- each, in default to pay the fine, to undergo Rigorous Imprisonment for one month each. Challenging the conviction and sentence, the accused has preferred this appeal.

2. Prosecution case is that PW.1/defacto complainant Thiru.Chinnaiyan is the resident of Aththiyur, Kallangulam Village. PW.2 - Tmt.Rani is his wife and PW.3 - Tmt.Kala is his daughter. Deceased Uma is also his daughter. Deceased Uma was staying with PW.1 along with her son. PW.3 Kala was married to accused Annamalai about two years ago. Due to some quarrel with the accused, PW.3 was also staying with her parents. Accused made two attempts to take his wife along with him and his attempt ended in failure for the reason that the deceased Uma told him that he is harassing PW.3 and therefore, they would not send PW.3 along with him and asked him to come to Aththiyur Kallangulam for living with



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his wife. PW.1 also refused to send PW.3 along with the accused. On 03.02.2009 at about 7 p.m, accused came to the house of PW.1. On the same date at about 9 p.m, PW.1 had gone to the backyard of his house and found the accused with the country made gun under a teakwood tree. Accused threatened to kill PW.1, if he refused to send PW.3 along with him. Deceased Uma asked him why he was doing like that and told him that they would send Kala tomorrow. However accused told her that she was responsible for not sending his wife along with him and everything would be alright if she is eliminated. So saying, he shot the deceased with a country made gun on her left shoulder, left chest, left stomach and left hip. As a result of the injuries suffered, deceased Uma died on the spot.

3. After the case was committed to the Sessions Court, the case was taken cognizance for the offences under Sections 302 IPC and 25(1-B) and 25(1)(b) of Arms Act, 1959. First Additional District and Sessions Judge framed charges against the accused under Sections 302 IPC and



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25(1-B) and 25(1)(b) of Arms Act 1959 and accused denied the charges and demanded trial.

4. During the course of trial, prosecution examined PW.1 to PW.18 witnesses and produced Exs.P1 to P20 documents and M.O.1 to M.O.12 material objects.

5. The case of the prosecution discerned from the evidence of prosecution witnesses, in brief, is as follows:-

PW.1 and PW.2 are the husband and wife and they are the residents of Alleri Sivanathapuram Village. PW.3 and the deceased Uma are their daughters. Evidence of PW.3 shows that the accused used to beat her on a daily basis using crow bar, knife under the influence of alcohol. Therefore, she came to her parent's house. PW.1 and PW.2 have also stated that PW.3 was staying with them when the occurrence had happened. On 02.03.2009, PWs.1, 2, 3 and deceased Uma watched TV in the house of



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their neighbour and came back to their home at about 9 p.m. When PW.1 had gone to the backyard of his house to attend to nature's call, accused threatened him showing the gun and stating that he would kill if he would not send his wife/PW.3 with him. Deceased Uma intervened and told the accused that he can take his wife PW.3 in the morning. PWs.2 and 3 stated in unison that the accused told that only if the deceased Uma is eliminated, PW.3 would live with him and he shot the deceased Uma with the gun. As a result, deceased Uma fell on PW.2 and died of the injuries suffered. Accused ran from the scene of occurrence with his gun. There was no transport facility at that time, therefore, PW.1 informed the President of the Village at about 5 a.m on the next day morning. Ex.P1 is the complaint given by him and M.O.1 is the gun used by the accused for shooting the deceased. PW.7 is the nearby resident. On hearing the noise, he visited the scene of occurrence and saw the deceased lying dead. PW.4 is the younger sister of PW.2. On hearing of the occurrence, she came to the scene of occurrence and found that Uma was dead.



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6. PW.8 is the husband of the President of Aththiyur. At about 4 a.m on 04.02.2009, PW.1 and Chinnaiyan came to his house and told him that his son-in-law (accused) shot dead his daughter. Immediately, he visited the scene of occurrence at 5 a.m and found that Uma's body was kept on a cot. He found small pellet injuries on her body. Then he intimated Virinchipuram police station through phone.

7. PW.14 was working as Sub-Inspector of Police, Virinchipuram police station during 2009. He was on duty on 04.02.2009 and at about 6 am., on the same day, PW.1-Chinnaiyan came to the police station and gave the written complaint. On receiving the complaint, he registered a case in Crime No.51 of 2009 under Section 302 IPC and Section 25(1)(B)(a) of Indian Arms Act. First Information Report is Ex.P12. PW.9 handed over the express First Information Report to Judicial Magistrate No.4, Vellore and to other officials.



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8. PW.18 was working as the Inspector of Police, Vellore circle during 2009. He investigated the case in Crime No.51 of 2009. He visited the scene of occurrence at about 8 a.m and prepared observation mahazar and rough sketch in the presence of PW.5 Jeyavelu and witness Krishnan. He also recovered from the scene of occurrence part of cement floor with blood stains of Uma, plain cement floor, a small cloth piece with the smell of gun powder, broken balrus balls, in the presence of same witnesses. PW.5 corroborated the evidence of PW.18 with regard to preparation of Ex.P2 – Observation Mahazar, Exs.P3 to P5 – Seizure Mahazars, for recovering the aforesaid material objects.

9. PW.18 conducted inquest on the body of the deceased from 9.15 a.m to 11.15 a.m in the presence of Panchayatdars and made arrangement to send the body of the deceased Uma to postmortem. He also made arrangement to take photos of the deceased through PW.10.



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PW.10 took photographs of the deceased Uma and they are M.O.2 series.

PW.11- Head Constable, after taking custody of the body of the deceased Uma, handed over the body to the Government Hospital, Vellore for conducting postmortem.

10. PW.7 was working as Assistant Professor at Government Medical College, Vellore in medico-legal department. Professor Forensic Medicine, Dr.V.Murugesan had performed the postmortem on the body of the deceased Uma on 04.02.2009. He was directed by the Principal to give evidence in this case. On the basis of records, he found that postmortem on the body of the deceased Uma aged 25 years commenced at about 3.15 p.m on 04.02.2009. The appearance of the body at the Post-Mortem was found a moderately nourished female body, cornea hazy, pupils dilated, conjunctiva congested, finger and toe nails were pale, mucous membranes of the mouth, lips and tongue were pale.

Injuries: A reddish brown colour multiple abrasions of ante-mortem



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injuries were seen as follows:

1. 0.5cm x 0.5cm abrasions of 6 nos were seen on the left side of the chest & left side of breast. On dissection, multiple penetrating injuries of size 0.5cm x 0.5 cm seen on the left pleura on the anterior aspect of the middle lobe & lower lobe of the left lung. Thoracic cavity contained 250 ml of fluid blood & 50 gm of clotted blood.
2. 0.5cm x 0.5cm abrasions of 6 nos were seen on the front of the left shoulder joint.
3. 0.5cm x 0.5cm abrasions of 10 nos seen on the front of the left upper arm.
4. 0.5cm x 0.5cm abrasions of 12 nos seen on the back of the left forearm.
5. 0.5cm x 0.5cm abrasions of 15 nos seen on the front of the upper part of the left side of the



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abdomen. On dissection, multiple penetrating injuries were seen on the anterior wall of the stomach & intestines. Peritoneal cavity contained 300 ml of fluid blood & 50 gm of clotted blood. 6 pellets were recovered from the anterior wall of the abdomen.

6. 0.5cm x 0.5cm abrasions of 10 nos seen on the back of the left lumbar region.

HEART: Normal in size. c/s: All chambers contained clotted blood. Coronary vessels: Patent. LUNGS: Normal in size, c/s: Pale. HYOID BONE: Intact. TRACHEA: Empty, Mucosa: Pale. STOMACH: empty. LIVER: Normal in size c/s: Pale. SPLEEN: Normal in size c/s: Pale. KIDNEYS: Normal in size c/s: Pale. INTESTINE: Distended with gas. BLADDER: empty. UTERUS:



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Normal in size. Empty. PELVIS: Intact. SCALP: Intact.

SKULL BONES: Intact, MEMBRANES: Intact.

BRAIN; Normal. c/s: Pale. VERTEBRAL COLUMN &

SPINAL COLUMN: Intact.

OPINION: The deceased would appear to have died of SHOCK
AND HAEMORRHAGE DUE TO GUN SHOT INJURIES.”

11. After the completion of postmortem, PW.11 handed over the body of the deceased Uma to her father PW.1 – Chinnaiyan. The saree, inskirt, jacket of the deceased Uma were handed over to the Inspector of Police and the Inspector recovered them under Form-95. He also handed over the viscera of the deceased to the Forensic Laboratory, Vellore for analysis.

12. On receiving the dress from PW.11, PW.18 sent the seized



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material objects to the Judicial Magistrate. PW.13 was the Head Clerk of Judicial Magistrate No.IV on 17.02.2009. He received the case properties numbering nine concerned in Crime No.51 of 2009 of Virinchipuram police station in C.P.Nos.51, 52, 53, 54 and 55 of 2009.

13. In continuation of his investigation, PW.18 examined witnesses 1 to 10 and 14 and recorded their statements. He arrested the accused Annamalai at about 4 pm on 05.02.2009 at the foothills of Gurumalai in the presence of PW.6 Kamarajan and Senthil @ Senthilkumar. The accused gave a voluntary confessional statement and he volunteered to identify the gun used for firing the deceased Uma. On the basis of his confessional statement, he was taken to the spot along with the witnesses and then the accused had identified the place where the gun was hidden, took and handed over the gun along with the balrus, gun powder, coconut fibre. PW.18 recovered them under seizure mahazar. His evidence is corroborated by PW.6 and he stated that the accused gave a



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confessional statement to PW.18, took a gun from a bush and handed over to the police. As a witness, he signed in the confessional statement and the seizure mahazar. His signature in the confessional statement of the accused is Ex.P6, seizure mahazar is Ex.P7 and the admitted portion of the confessional statement is Ex.P8.

14. PW.18 sent the seized aforesaid material objects to the Court through Form-95. He had also taken steps for sending the M.Os for the examination of Experts in Forensic Science Department.

15. PW.12 was Assistant Director in Ballistic Department of Tamil Nadu Forensic Science Lab and received letter in Dis.No.972 of 2009 dated 06.05.2009 with the properties concerned in C.P.No.54 of 2009 namely (1) a piece of violet colour cloth; (2) an iron ball with the width of 6.2 mm in a paper pocket; (3) a gun measuring 144.5 cm length with a barrel length of 103 cm, bore diameter 0.480 inch with metal



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packing rod concerned in C.P.No.55 of 2009 (4) Dark coarse powder weighing 32 gm in a plastic container (5) rusting irregular iron pallets weighing 142 gm in polythene cover (6) Orange yellow powder weighing 140 gm in plastic container and (7) coconut fibre 2.7gm concerned in C.P.No.55 of 2009. On examination, PW.12 gave an opinion that,

- (i) item 3 is a country made, smooth bore, Single Barrel Muzzle Loading (SBML) gun; it is a firearm as defined in the Arms Act 1959;
- (ii) combustion products of gun powder were detected in the barrel of the gun item 3 indicating that item 3 was used for firing previously; there is no scientific method to determine the time of firing;
- (iii) the gun item 3 was found to be in working condition;
- (iv) combustion products of gun powder namely nitrate, sulphate and thiosulphate were detected in the cloth item 1;
- (v) the pellet item 2 could have been fired from a smooth bored firearm.
- (vi) Ingredients of gun powder namely potassium nitrate, sulphur and



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carbon were detected in item 4; it can be used for firing in the gun item 3 as propellant powder.

(vii) Item 6 was found to be sensitive explosive mixture of potassium chlorate and arsenic sulphide; it can be used for firing in the gun item 3 as primer.

(viii) Items 5 and 7 can be used for firing in the gun item 3 as projectiles and was respectively.

His reports are Ex.P9 and Ex.P11.

16. PW.16 was working as Scientific Assistant Grade-I in Tamil Nadu Forensic Science Lab. On the basis of the request of Judicial Magistrate No.4, he examined the following items:-

Item 1: Small quantity of cement plaster pieces.

Item 2: Small quantity of cement plaster pieces on which were dark brown stains.



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Item3: A torn orange coloured silken sari with pink, green, white and red designs on which were dark brown stains.

Item4: A ragged faded orange coloured in-skirt on which were dark brown stains.

Item 5: A ragged green silken blouse on which were dark brown stains.

He detected blood on item Nos.2,3,4 and 5 and not on item No.1. His report is Ex.P14.

17. PW.15 was Assistant Director of Regional Forensic Science Lab, Vellore. He examined the viscera of the deceased Uma and found no poison in (1) stomach with contents (2) intestine with contents (3) liver and kidney (4) brain (5) preservatives. His report is Ex.P13.

18. PW.15 was examined on behalf of scientific officers Jayanthi



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Sakthisakaran, Vimali Thiyagarajan, Pon Ettiyappan and Dr.P.Kirubakaran for the reason that Jayanthi Sakthisakaran was on medical leave and that the present location of others are not known. On the basis of the records, he gave evidence stating that human blood was detected in cement plaster pieces, saree, inskirt and blouse and the blood found in saree, inskirt and blouse belongs to 'A' Group. The grouping test is inclusive for the human blood found in cement plaster pieces. The earth samples in items 1 and 2 were found to be similar to each other with respect to density, distribution pattern of mud particles. The reports are Exs.P15 and P16.

19. In continuation of his investigation, PW.18 examined postmortem Doctor, Forensic Experts and recorded their statements. The rough sketch prepared by him is Ex.P18. The inquest report is Ex.P19. Admissible portion of confessional statement is Ex.P20. Blood stained cement plaster base is MO.3, plain cement plaster base is MO.4, small cloth with the smell of gun powder is MO.5, broken iron ball is MO.6,



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iron balls used in the gun is MO.7, the dark coarse powder is MO.8, coconut fibre is MO.9, saree is MO.10, jacket is MO.11, inskirt is MO.12. After completing the investigation, he filed final report against accused u/s.302 IPC and Sections 25(1-B) and 25(1)(b) of Arms Act.

20. The accused was questioned about the incriminating evidence available against him from the evidence of prosecution witnesses. Accused stated that the evidence of prosecution witnesses is false and it is a false case. Accused has not examined any witness.

21. The trial Court, on considering the oral and documentary evidence produced in this case and submissions of the learned prosecutor and the learned counsel appeared for the accused/appellant, found that the accused was guilty of the charges framed under Section 302 IPC and Sections 25(1-B) and 25(1)(b) of Arms Act and convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/- under



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Section 302 IPC, in default to pay the fine, to undergo Rigorous Imprisonment for one month; and three years Rigorous Imprisonment each under Sections 25(1-B) and Section 25(1)(b) of Arms Act and fine of Rs.1,000/- each, in default to pay the fine, to undergo Rigorous Imprisonment for one month each. Therefore this Appeal.

22. Learned counsel for the appellant submitted that,

(i) It is claimed by the prosecution eye witnesses, namely, PW.1 to PW.3 that the occurrence said to have been happened at about 9.30 pm on 03.02.2009, however, they claimed that there was no bus transport available and therefore, the President of village was informed only at about 5 am on the next day morning and the President, in turn, informed the police through phone. There is a huge and unexplained delay in giving the complaint to the police. If PW.1 to PW.3 had really seen the occurrence, they would have immediately given the complaint to the police.



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(ii) The fact that there is a huge delay in giving the complaint to the police shown that PW.1 to PW.3 are not the eye witnesses.

(iii) There is also contradiction in the evidence of PW.14, PW.18 and the First Information Report as to the fact that whether PW.1 visited the police station and gave the complaint or the complaint was recorded by PW.14 at the scene of crime and then he registered the First Information Report. The First Information Report shows that the complaint was recorded by PW.14 at the spot, then he came to the police station and registered the First Information Report. While giving evidence, PW.14 and PW.18 gave contradictory evidence stating that the complaint was given by PW.1 in the police station and the First Information Report was registered. The complaint given by PW.1 in the police station is not produced before this Court. Therefore, it creates suspicion as to whether Ex.P1 – complaint is the first complaint given in this case. The complaint given by PW.1 in the police station is suppressed by the police.



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(iv) PW.1 to PW.3 contradict with each other's evidence with regard to the manner in which the occurrence said to have been happened. It strengthens the suspicion as to whether they are the eye witnesses to the occurrence.

(v) The evidence of PW.2 and PW.3 show that all of them including the accused were watching TV before the alleged occurrence. Accused had also dinner in the house of PW.1. PW.2 stated during the course of cross examination that accused did not bring the gun. PW.2's evidence shows that accused and PW.3 were living happily and therefore, the very motive alleged for the occurrence is not true.

(vi) No sanction was obtained for prosecuting the accused for the offence under Sections 25(1-B) and 25(1)(b) of Arms Act.



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23. Learned counsel for the appellant further submitted that all these omissions, contradictions and delay in giving the complaint create a genuine and strong doubt as to whether the occurrence had happened as alleged by the prosecution and whether the accused had committed the act of murder. The trial Court, without properly considering all these aspects in the judgment and given a finding, without properly analysing and appreciating the evidence, that the accused was guilty of the charges framed against him and convicted and sentenced him. The conviction and sentence cannot be sustained in law and liable to be set aside.

24. Per contra, learned Additional Public Prosecutor appearing for the State submitted that the evidence of prosecution witnesses, especially PW.3, clearly proved that accused was harassing PW.3 and therefore, she left him and staying with her parents. When the accused wanted her to come back to him, she and her family members refused his request. Enraged at this, the accused, believing that the deceased was a



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stumbling block, in restitution of his conjugal relationship with PW.3, came to PW.1's house with premeditated intention of killing the deceased and for that purpose, he came along with country made gun and shot her to death. Occurrence had happened at 9.30p.m and that the village in which the occurrence had taken place, is a remote village and there was no transportation available. Therefore, there was a delay in giving the complaint. However, the delay was properly explained. Merely because there are some discrepancies and contradictions in the evidence of prosecution witnesses, the accused cannot take advantage of those discrepancies and contradictions for the reason that they occurred due to lapse of time from the date of occurrence and the date of giving evidence, callousness of police officials in giving evidence and misunderstanding of questions. For the fault of witnesses, prosecution should not be penalised. The contradictions and discrepancies are only minor and natural in nature. Prosecution had scientifically proved from the evidence of witnesses, especially postmortem Doctor and Scientific Officers and Experts that



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MO.1 gun, which was recovered from the accused was, in all probability, used for firing at the deceased Uma, causing her fatal injuries. Therefore, learned Additional Public Prosecutor prayed for confirming the judgment of the trial Court and for dismissal of this Appeal.

25. Points for consideration in this Appeal are

1. Whether the finding of the trial Court in convicting the appellant for the offences under Section 302 IPC and Sections 25(1-B) and 25(1)(b) of Arms Act and sentencing him thereunder, in the light of the submissions made on behalf of the appellant, can be sustained ?
2. Whether this appeal can be allowed?

26. From the case set out by the prosecution and the defence, it is not in dispute that PW.1 and PW.2 are the parents of PW.3 – Kala and deceased Uma. Deceased Uma is elder sister of PW.3 – Kala and she along with her son were staying with PW.1 and PW.2 at the time of



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occurrence. PW.3 was married to the appellant and was living with him in Alleri. Due to domestic issues, PW.3 left the appellant and stayed with her parents. Appellant made attempts to take his wife back to Alleri atleast two times prior to the occurrence and failed.

27. The case of the prosecution is that when appellant asked PW.3 to come with him, deceased Uma objected to that for the reason that the appellant was harassing her sister. Enraged at this and believing that the deceased Uma was responsible for his separation from his wife PW.3, appellant said to have shot deceased Uma to death. From Ex.P17 – postmortem certificate, it is seen that the deceased Uma had multiple abrasions, multiple penetrating injuries on the left side of the chest, left side of the breast, left shoulder joint, left upper arm, left fore arm, upper side of the left abdomen and on the back side of the left lumbar region. On dissection, it was found that she had multiple penetrating injuries on the left pleura and on the anterior aspect of the middle lobe and on the lower



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lobe of the left lung and multiple penetrating injuries on the anterior wall of the stomach and intestine and six pellets were recovered from the anterior wall of her abdomen. PW.17 had given evidence in this regard and the cause of death of the deceased was “shock and hemorrhage due to gun shot injuries”. Hence, there is no hesitation in holding that the deceased Uma died of homicidal injuries.

28. It is the case of the prosecution that the injuries found on the deceased were caused by a firing made from MO.1 country made gun by the appellant. MO.5 – a small piece of cloth with smell of gun powder, MO.6-black colour broken iron ball, MO.7- iron box, MO.8-Sulphar, MO.9 – coconut fibre along with other MOs seized in this case were examined by PW.12. As per his evidence and Ex.P9, MO.1 is a country made gun and it is fire arm as defined in the Arms Act, 1959. MO.1 gun was found to be in a working condition and it was used for firing previously. Item No.2 of the pellet would have been fired from a smooth



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bore fire arm. Items 5 and 7 can be used for firing the gun, namely, MO.1 as projectile and was respectively. The evidence of PW.12 proves that MO.1 gun was found to be in working condition. Item No.2 pellet could have been fired from a smooth bored fire arm. Thus, this Court finds that the prosecution case that MO.1 gun was used for firing the deceased Uma is established.

29. Ex.P13 Viscera report rules out the death of the deceased due to poison. The blood stained cement plaster pieces and saree, inskirt, blouse of the deceased were examined by the forensic expert. It is seen from the evidence of PW.16 and Ex.P14 that blood was detected in these items. Ex.P16 report shows that the blood was human blood. Blood grouping test for saree, inskirt, blouse revealed that the blood belongs to Group-A. From the evidence discussed about, it can be concluded safely that the deceased suffered pellet injuries due to fire from MO.1 gun and as a result of gun shot injuries and the resultant shock and hemorrhage, she



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died.



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30. PW.1, 2 and 3 have given evidence stating that the appellant had alone shot dead the deceased Uma, for the reason that PW.1, 2 and the deceased refused to send PW.3 along with him to Alleri. PW.3 stated that she was beaten by her husband on daily basis under the influence of alcohol and therefore, she left him and stayed with her parents. Her evidence is mostly supported by the evidence of PW.1 and PW.2. Even on the date of occurrence, it is seen from the evidence of PW.3 that the appellant visited the house of PW.1 at 7 pm and asked PW.3 to come with him. Deceased told him to take PW.3 in the morning. Then, PW.1, 2, 3 and the deceased went to watch TV at the neighbour's house. When they returned home at about 9.30 pm, appellant again demanded that PW.3 to come with him. Then he said to have shot the deceased claiming that only if she is eliminated, he would be able to live with his wife. PW.1 and 2 have given evidence corroborating the evidence of PW.3 with regard to the

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background and the manner in which appellant shot the deceased Uma. Though PW.1 to PW.3 had been extensively cross examined on behalf of the appellant, appellant was not able to secure any answer doubting the credibility of the evidence of these witnesses, thereby creating suspicion in their evidence with regard to the occurrence. Of course there are some minor contradictions in the evidence of these witnesses as pointed out by the learned counsel for the appellant. Those contradictions are only inconsequential in nature and that will not create any doubt in the case of prosecution. The combined reading of the evidence of PW.1 to PW.3 clearly proves that the appellant had alone shot dead the deceased Uma for the reason that she objected the appellant to take his wife, PW.3 with him.

31. Learned counsel for the appellant brought to the notice of this Court that there is material contradictions in the evidence of PW.11, PW.14 and PW.18 as to how and where PW.14 received the complaint and registered the First Information Report. It is seen from Ex.P12 – First



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Information Report that PW.14 on receiving the information from PW.8, visited the scene of occurrence and obtained the complaint from PW.1 and came to the police station and registered the First Information Report. However, both PW.14 and PW.18 had given evidence as if PW.1 came to police station and gave the complaint and thereafter, First Information Report was registered. It is patently clear that both the witnesses had given evidence without properly verifying the records. It only shows their irresponsibility in giving evidence without verifying the records. The evidence of PW.1 also confirms that the complaint was received from him from the scene of occurrence. Therefore there is no contradiction as to the place of recording the complaint of PW.1, but the contradictions had crept in for the reason that PW.14 and PW.18 had not properly gone through the records and given evidence. This contradiction would no way affect the case of the prosecution.

32. We have found that the appellant was alone responsible for



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causing pellet injuries found on the body of the deceased Uma by his firing on her with MO.1 country made gun. Whether conviction under Section 302 IPC and sentence imposed thereon is justifiable is the next question.

33. It is the submission of the learned counsel for the appellant that the evidence of PW.2 shows that the accused came at 7 pm in the evening of 03.02.2009, had dinner with PW's, watched TV and then said to have shot the deceased. However, PW.3 stated that the appellant had not seen TV with them and had dinner with them. The appellant is a resident of Alleri, a hill area. MO.1 is a country made gun used by the residents at hill to save their produce and domestic animals from wild animals. Reason for the appellant to shoot the deceased Uma was that she refused to send PW.3 along with him to Alleri. Due to sudden provocation, on account of the refusal on the part of the deceased Uma to send PW.3 along with him, he shot the deceased Uma. PW.2 and PW.3 claimed that the appellant shot the deceased stating that only if the



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deceased Uma is eliminated, PW.3 would come with him. PW.1 has not said anything about the accused's intention to cause death of deceased Uma. It is pertinent here to refer the judgment in ***Kandaswamy Ramaraj ..vs.. The State by Inspector of Police, CBCID***, reported in ***Indian Kanoon*** : <http://indiankanoon.org/doc/136670843>, it is observed in

“ Having perused the evidence on record carefully, and with due regard to the temperament of the appellant during his frequent run- ins with the children, we are of the opinion that the appellant committed the offence in question whilst he was deprived of the power of self-control upon sudden provocation by the children. In our considered opinion, there was no calculated intention or premeditation on his part to commit the murder of the deceased. Hence, the offence committed by the appellant may fall under the first exception to [Section 300](#) of the IPC. Consequently, it can be safely said that the appellant has committed the offence under [Section 304, Part II of the IPC](#). ”



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34. Even in the case on hand, PW.3 frequently picked up quarrel with the appellant, left the matrimonial home and stayed with her parents. Even in her evidence, PW.3 admitted this. Therefore, irritated at PW.3's conduct and also when he tried to take PW.3 with him to his place, he was prevented by deceased Uma, while he was deprived of the power of control and upon sudden provocation given by deceased Uma, he shot her with a country made gun. Unfortunately deceased Uma succumbed to the pellet injuries. The offence committed by the appellant, in the considered view of this Court, may fall under the first exception to Section 300 IPC. Thus, it is safe to convict the appellant under Section 304(i) IPC.

35. In the result,

(i) The conviction of the appellant under Section 302 IPC and the sentence imposed thereon are set aside, instead the appellant is convicted for the offence under Section 304(i) of IPC and sentenced to



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Vellore District.
(Crime No.51 of 2009)

2. The Public Prosecutor
High Court, Madras.

P.N.PRAKASH, J.,

and

G.CHANDRASEKHARAN, J.,

mra

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