



CRL.A.NO.867 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02 / 08 / 2023

JUDGMENT PRONOUNCED ON: 29 / 09 / 2023

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.867 OF 2018

Jayapal

... Appellant

Versus

State Represented by
The Inspector of Police
Gudiyatham Town Police Station
Cr.No.793/2015

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to set aside the judgment of conviction by the learned Principal Sessions Judge, Vellore, Vellore District in S.C.No.93 of 2017 dated 03.11.2018.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal is preferred by the appellant / A1 in S.C.No.93 of 2017 on the file of learned Principal Sessions Judge, Vellore, assailing the judgment passed by the trial court on 03.11.2018, in which he was convicted and sentenced to undergo rigorous imprisonment for five years for the offence under part two of Section 304 of 'The Indian Penal Code, 1860' [hereinafter referred to as 'IPC' for the sake of brevity and convenience].

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

2.1. The appellant / A1 and his wife YY (name masked for the sake of privacy) are residing in Pachaiyamman Kovil Street, Dhazayatham, Gudiyatham. Sathish (deceased) was also residing in the same street. It is alleged that YY was in relationship with the Sathish (deceased) outside of marriage. On learning about the relationship between YY and the deceased, the appellant / A1 got wild. During Gangaiaamman Temple Festival, the appellant / A1 voluntarily picked up quarrel with Sathish (deceased) in this



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regard and the appellant / A1 criminally intimidated Sathish (deceased) by uttering 'your death is in my hand' 'உன் சாவு என் கையில்தான்'. After that, on the advice of his brothers, Sathish (deceased) restrained from talking with YY. Despite the said criminal intimidation, on 09.11.2015 at about 04.15 a.m., Sathish (deceased) was talking with YY in YY's house, at that time, the appellant / A1 came from outside, shouted and uttered obscene words against Sathish (deceased) and at the instigation of YY, the appellant / A1 caused stab injuries to Sathish (deceased) with an intention to kill him.

2.2. At that time, P.W.2 Thiru. Muthukumaran who went to drink tea at about 04.15 a.m., saw Sathish sitting in front of the gate of the appellant / A1's house. He went near Sathish and asked about his presence there at that time, for which, Sathish replied that he was stabbed by the appellant / A1. P.W.2 informed the same to the relatives of Sathish i.e., Thiru. Babu (P.W.1), Thiru. Raja (P.W.3), Thiru. Ramesh (P.W.4), Thiru.Kubendiran (P.W.5), Tmt.Prema (P.W.6) and Tmt.Kanthammal (P.W.7). The relatives of the deceased came to the place of occurrence and upon seeing the witnesses, appellant / A1 ran away. Thiru. Raja (P.W.3), Thiru. Ramesh (P.W.4) who are



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residing diagonally opposite the appellant / A1's house, took the injured Sathish to Government Hospital, Gudiyatham. Then, the Doctor therein declared Sathish dead.

2.3. P.W.1 – Thiru. Babu, brother of the deceased Sathish went to Gudiyatham Town Police Station and filed a complaint (Ex-P.1). P.W.16 - Thiru. Chandrasekar, Sub-Inspector of Police, Gudiyatham Town Police Station received the same and registered a case in Crime No.793 of 2015 under Section 302 of IPC.

2.4. On receipt of the case file, P.W.17 - Thiru. Saravanan, Inspector of Police, Gudiyatham Town Police Station rushed to the spot at 06.45 a.m. and prepared observation mahazar (Ex-P.2) and rough sketch (Ex-P.12) in the presence of Hari (L.W.8) and Boopathi (P.W.8). Thereafter, P.W.17 went to Government Hospital, Gudiyatham and conducted inquest on the dead body in the presence of relatives and Panchayatdars between 10.00 a.m. and 12.00 p.m. on the same day. The inquest report was marked as Ex-P.13. On the same day at about 01.15 p.m., P.W.17 arrested the appellant /



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A1 in the presence of witnesses Dharani and Guhanathan. The appellant / A1 gave a voluntary confession statement and as per the disclosure statement, he recovered a knife hidden by the appellant / A1 in his house. Thereafter, he seized the dress worn by the appellant / A1 after giving an alternate dress to him. Thereafter, he sent the dead body for post-mortem. Then, after completion of investigation, he filed final report against the appellant / A1 and YY under Section 302 of IPC before the learned Judicial Magistrate, Gudiyatham.

2.5. The learned Judicial Magistrate, Gudiyatham took the case on file in P.R.C.No.03 of 2017 and issued summons to the appellant / A1 and YY(A2). On their appearance, copy of all materials were furnished to them under Section 207 of 'Code of Criminal Procedure, 1973' [hereinafter referred to as "Cr.P.C." for the sake of brevity and convenience]. After perusing the case file, the learned Judicial Magistrate arrived at a conclusion that the offences are exclusively triable by the Court of Sessions and hence, committed the case to the Principal Sessions Court, Vellore under Section 209(a) of Cr.P.C.



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2.6. The learned Principal Sessions Judge, Vellore took it on file in S.C.No.93 of 2017 under Section 302 read with 114 of IPC. Upon consideration of the materials available on record and after hearing the arguments of the Public Prosecutor and the defence counsel under Section 226 of Cr.P.C, the learned Sessions Judge found that *prima facie* case has been made out to frame charge under Section 302 of IPC against appellant / A1 and accordingly, framed charge against appellant / A1 and discharged YY(A2) under Section 227 of Cr.P.C. The charge was read over and explained to the appellant / A1 in Tamil and the appellant / A1 pleaded 'not guilty' to the charge and claimed that he has to be tried. Hence, trial was ordered.

2.7. The prosecution in order to prove its case, examined 18 witnesses as P.W.1 to P.W.18 and marked Ex-P.1 to Ex-P.14 and MO-1 to MO-5.

2.8. After analysing the oral and documentary evidence, the Trial Court came to the conclusion that the charge under Section 302 of IPC has



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not been made out but the act of the accused / A1 attracts part two of Section 304 IPC. Accordingly, the learned Sessions Judge altered the section from 302 of IPC to part two of Section 304 of IPC and convicted and sentenced the appellant / A1 to undergo five years of rigorous imprisonment.

2.9. Feeling aggrieved with the conviction and sentence, the appellant / A1 has preferred this appeal.

3. The points that arise for consideration in this appeal are as follows:

(i) Whether the prosecution has proved the charge under part two of Section 304 of IPC against the appellant / A1 beyond reasonable doubt?

(ii) Is there any reason to interfere with the Trial Court judgment?



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Discussion and decision for Point Nos.(i) and (ii):

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4. Learned counsel for the appellant / A1 argued that the learned Sessions Judge relied on the testimony of the sole eye witness, which is not believable, while his presence in the scene of occurrence itself is not proved. He further submitted that the sole eye witness had no chance to come to the scene of occurrence; that except the official witnesses, all the other witnesses examined by the prosecution are interested witnesses and the Trial Court miserably failed to appreciate the above said fact; that there are material contradictions as to whether the appellant / A1 was inside or outside the house on that day; that the learned Sessions Judge failed to appreciate that there was a quarrel between the appellant / A1 and the deceased; that the motive for the crime has not been proved and that there are many contradictions and infirmities in the prosecution evidence which creates serious suspicion over the prosecution case. Hence, the learned counsel prays to allow the appeal and acquit the appellant / A1 by granting him the benefit of doubt.



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5. Per contra, learned Additional Public Prosecutor submitted that the Trial Court after considering all the evidences and materials and the nature of the case, has come to the conclusion that the appellant / A1 committed the offence and that the act of the appellant / A1 is not punishable under Section 302 of IPC but on the other hand, attracts punishment under part two of Section 304 of IPC. Accordingly, the learned Sessions Judge convicted and sentenced the appellant / A1. Hence, there is no need to interfere with the conviction and sentence imposed by the learned Sessions Judge. Accordingly, he prayed to dismiss the appeal and to sustain the judgment passed by the Trial Court.

6. This Court has considered the submissions made on either side carefully.

7. P.W.1 is the brother of Sathish (deceased). He did not see the occurrence. He went to the scene of occurrence after hearing the incident from P.W.2 and thereafter, gave complaint Ex-P.1.

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7.1. P.W.2 deposed that he saw the deceased Sathish (deceased) sitting in front of the house of the appellant / A1 at 04.15 a.m. When he enquired Sathish (deceased), he had told him that the appellant / A1 caused stab injury to him. Immediately, he went to Sathish's (deceased) house and informed the same to his relatives.

7.2. P.W.3-Raja is residing opposite the appellant's / A1's house. His evidence corroborates the evidence of P.W.2. Further, he deposed that Sathish (deceased) told him that appellant / A1 caused stab injury to him and he along with P.W.4-Ramesh took the injured Sathish (deceased) to Hospital where the Doctor declared that Sathish (deceased) died. P.W.3 and P.W.4 are residing diagonally opposite the Appellant / A1's house and the same has been proved by rough sketch (Ex-P.12). There is no reason to reject the evidence of P.W.3 and P.W.4. However, they both did not see the occurrence directly. But they have seen the deceased screaming out of pain in front of the Appellant/ A1's house and have heard from the deceased that he was stabbed by Appellant/ A1. P.W.3 and P.W.4. had brought the deceased to the hospital wherein he was declared dead. Hence, the deceased's statement that

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Appellant / A1 caused stab injury to him is relevant and admissible under Section 32(1) of the Indian Evidence Act, 1872. Since the deceased died in the hospital, his statement to P.W.2, P.W.3 and P.W.4 that the appellant caused stab injury to him is elevated to the status of dying declaration.

7.3. P.W.5 - Thiru. Kubendiran is the brother of Sathish (deceased). He deposed along the lines of P.W.1.

7.4. P.W.6 - Tmt.Prema is the wife of Sathish (deceased). She deposed that the appellant / A1 had threatened her husband once pursuant to the filing of nomination in election. She further deposed along the lines of P.W.1 to P.W.5.

7.5. P.W.7 - Tmt.Kanthammal is the maternal aunt of Sathish (deceased). She deposed along the lines of P.W.1, P.W.5 and P.W.6.

7.6. P.W.8 - Thiru. Boopathi is residing in Pachaiyamman Koil Street. He deposed that on 09.11.2015 at 06.30 a.m. on hearing the news that



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the appellant / A1 caused stab injuries to Sathish (deceased), he went to the place of occurrence. At that time, police visited the place of occurrence and prepared rough sketch (Ex-P.12) and observation mahazar (Ex-P.2). He and one Hari stood as witnesses in preparing the observation mahazar and rough sketch.

7.7. P.W.9 - Thiru. Tharani is the Village Administrative Officer of Gudiyatham Town. He deposed that on 09.11.2015, the police arrested one Jayapal (appellant / A1) and that he gave confession statement which the Inspector of Police recorded on his laptop in P.W.9's presence. He further deposed that the appellant / A1 led them all to his house and brought a knife, a black full sleeve shirt and a brown pant and handed them over to the Inspector of Police; that the Inspector of Police seized the said material objects in a mahazar and that P.W.9 along with the Village Assistant signed in the said mahazar marked as Ex-P.4.

7.8. P.W.9 in his cross examination deposed that the Inspector of Police collected blood stain samples in the bedroom of the appellant / A1.

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7.9. P.W.10 - Thiru. Anandaraj is the brother-in-law of deceased Sathish (deceased). He deposed that six months before the incident, in a temple festival held in Gudiyatham, the appellant / A1 pelted stones on the women there. Deceased Sathish (deceased) questioned about the said incident. He deposed that this is the motive for the appellant / A1 to kill the deceased.

7.10. In his cross-examination, he stated that he did not know about the relationship between Sathish (deceased) and YY. But he admitted that he heard about the said relationship subsequently after the death of the deceased.

7.11. P.W.11 - Thiru. Venaktesan deposed that he and Ranjithkumar (P.W.12) went to a Tea shop at 04.00 a.m. on 09.11.2015 through the Pachaiaimman Kovil Street. At that time, they heard an alarming sound from the appellant / A1's house. When he and Ranjithkumar went there, YY and appellant / A1 were there. At that time, YY stated that Sathish (deceased) caused trouble to her repeatedly and hence, she asked the



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appellant / A1 to kill him. Then, the appellant / A1 stabbed the deceased Sathish (deceased) in his chest with a knife. Thereafter, Sathish (deceased) put his hand on his chest and sat there. Thereafter, many people came and took Sathish (deceased) to the hospital in an Auto. He further deposed that the police examined him two days after the occurrence.

7.12. P.W.12 - Thiru. Ranjithkumar deposed that he and Venkatesan (P.W.11) went through Koot Road to drink tea. At that time, someone screamed and raised alarm. But he and his Driver did not visit the place from where the sound was coming. The Prosecution cross-examined P.W.12 under Section 154 of Indian Evidence Act. Despite cross-examination, the prosecution could not obtain anything in its favour.

7.13. This Court has carefully considered the evidence of P.W.11 and P.W.12. The evidence of P.W.12 is quite natural and believable. P.W.11's evidence does not inspire confidence as, if really he had witnessed the occurrence, he would have informed the police. Hence, this court is of the view that the evidence of P.W.11 and P.W.12 is believable to the extent that



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they heard the screaming sound. The same corroborates the evidence of P.W.3 and P.W.4.

7.14. P.W.13 - Thiru. James Anthony Raj is an Officer of Regional Forensic Sciences Laboratory, Vellore. He deposed that there is no poison or alcohol detected in the internal organs of the deceased. He further deposed that he found blood in MO-1 (blood-stained mud), MO-2 (blood-stained knife), MO-3(brown and gray checkered T-Shirt) and MO-4 (Two pieces of blue coloured lungi) and issued EX-P.6 and EX-P.7 certificates.

7.15. P.W.14 - Dr.Maran Babu is the Doctor who conducted post-mortem on the dead body of the deceased. Post-mortem report was marked as Ex-P.9. He deposed that he conducted the post-mortem at 04.00 p.m., on 09.11.2015. He noted the following external injuries on the body of the deceased:

'Punctured Wound Lt. Chest near the Lt. areola size 1cm irregular margin circular in shape bleeding from the wound site. Open thorax,



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massive blood collection in the thoracic cavity injury to (Lt) lung , Heart and aorta 350 gm (Lt.) Lung (Rt.) Lung 300 gm, Liver 1000 gm, spleen 80 gm, kidney 100 gm each. The following viscera sent for chemical analysis report (i) stomach & contents (ii) intestine with contents (iii) liver 1000 gm (iv) kidney (v) preservatives

7.15.1. In his report, he opined that the deceased appears to have died 10 to 12 hours prior to the post-mortem and the death was caused due to injury to vital organs such as heart, lung and aorta, and shock and cardio-respiratory arrest. In his evidence he deposed that the said injury might have been caused by stabbing with MO-2(blood-stained knife).

7.16. P.W.16 - Thiru. Chandrasekar registered the FIR in Crime No.793/2015 under Section 302 read with 114 of IPC.

7.17. P.W.17 - Thiru. Saravanan is the Investigating Officer. He deposed about the investigation, arrest and seizure of MO-1 to MO-5.



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7.18. P.W.18 - Thiru. Madhiyarasan is the Inspector of Police.

He deposed that he examined the Doctor who conducted post-mortem on the dead body of the deceased and the Forensic Sciences Expert and recorded their statements and that thereafter on 05.01.2017, he filed a charge sheet against the appellant / A1 and YY under Section 302 of IPC.

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

9. In the light of the deposition of the post-mortem Doctor and the post-mortem report, it can be seen that the deceased died due to stab injury to vital organs, and sudden shock and cardio respiratory arrest. The doctor deposed that the said injury might have been caused by stabbing with MO-2(blood-stained knife). Further, the arrest and disclosure statement have been proved by the prosecution. MO-2 Knife has been recovered based on the disclosure statement (EX-P.3) which is admissible under Section 27 of the Indian Evidence Act. As stated supra, the statement relating to the cause of his death given by the deceased to P.W.3 and P.W.4 is relevant and admissible



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under Section 32 of the Indian Evidence Act. To be noted, the evidence of P.W.3 and P.W.4 are trustworthy and inspires confidence.

10. The case of the prosecution is that the deceased had a relationship outside of marriage with YY. The said fact has been spoken by P.W.1 and P.W.10 who is the brother and brother-in-law of the deceased respectively. The appellant / A1 put a suggestion to P.W.5 who is the brother of the deceased, that the deceased misbehaved with YY and he denied the same. Hence, from the evidence of prosecution and the defence, it's easily discernible that the deceased had a relationship outside of marriage and the same is the motive for the offence.

11. In this case, the alleged eye witnesses have not seen the occurrence directly but they heard the screaming noise. Other witnesses deposed that they saw the deceased sitting in front of appellant /A1's house with stab injury. The Investigating officer collected MO-1 and MO-2 from the appellant /A1's house. Cumulative reading of evidence converges at the point that the appellant / A1 alone has caused stab injury to the deceased.

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12. As per the medical evidence, it can be inferred that the

deceased died due to culpable homicide committed by the Appellant / A1.

The occurrence happened at 4.00 am . The deceased had went to the appellant / A1's house before 4.00 am. There is no clear evidence as to when the deceased entered into the appellant / A1's house. When the appellant /A1 returned home, he raged out on seeing the deceased and YY together. Naturally, a husband would get provoked when someone has entered into his house at 4.00 am to see his wife. The appellant /A1 is an ordinary man who is doing some vegetable business in the market. Hence, sudden provocation can be inferred from the evidences and discussion above. Though the appellant / A1 had knowledge that the deceased would die if he causes a stab injury, he did not have any intention or pre-meditation to kill the deceased. Hence, the act of the appellant /A1 clearly falls under exception one of section 300 of IPC punishable under Part 2 of Section 304 IPC.

13. 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



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lowest to the highest state of civilization. It is 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 subsequent act caused grave and sudden provocation for



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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.'

14. The Trial court after considering the entire evidence and materials on record, had rightly concluded that the act of the appellant / A1 attracts punishment under part two of Section 304 IPC. There is no necessity to interfere with the Trial Court's conviction and sentence. Point (i) and (ii) are answered accordingly against the appellant / A1 and in favour of the prosecution.

15. Resultantly, this Criminal appeal is dismissed. The conviction and sentence passed by the Principal Sessions Judge, Vellore in Sessions Case.No.93 of 2017 dated 03.11.2018 is hereby confirmed.

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



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To

- 1.The Principal Sessions Judge
Vellore,
Vellore District.
- 2.The Inspector of Police
Gudiyatham Town Police Station
Vellore District.
- 3.The Superintendent of Prison
Central Prison
Vellore.
- 4.The Public Prosecutor
High Court of Madras.



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R.SAKTHIVEL, J.

TK/SPP

PRE-DELIVERY JUDGMENT MADE IN
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