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Crl.A.(MD) No.67 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	29.11.2023
Pronounced on	22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) No.67 of 2020

Kalidass
S/o.Krishnasamy Thevar

... Appellant

Vs.

State represented by
Inspector of Police,
Kayathar Police Station,
Kayathar,
Thoothukudi District.
(Crime No.300 of 2017)

... Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to set aside the Judgment and Conviction dated 09.01.2020 passed by the I Additional District and Sessions Court, Thoothukudi in S.C.No.28 of 2018 and acquit the appellant.

For Appellant : Mr.N.Pragalathan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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J U D G M E N T

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the appellant assailing the 'Judgment dated January 09th, 2020' [henceforth 'impugned Judgment' for the sake of brevity] passed by the 'I Additional District and Sessions Court, Thoothukudi' [henceforth 'Trial Court' for the sake of brevity] in Sessions Case No.28 of 2018 in which the appellant [henceforth 'accused' for the sake of convenience and clarity] was convicted for the offence punishable under Section 302 of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth 'IPC' for the sake of brevity] and sentenced to undergo Imprisonment for Life and to pay a fine of Rs.5,000/-, in default thereof, to undergo Rigorous Imprisonment for a further period of 2 years. The period of imprisonment already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth referred to as 'Cr.P.C.' for the sake of brevity].

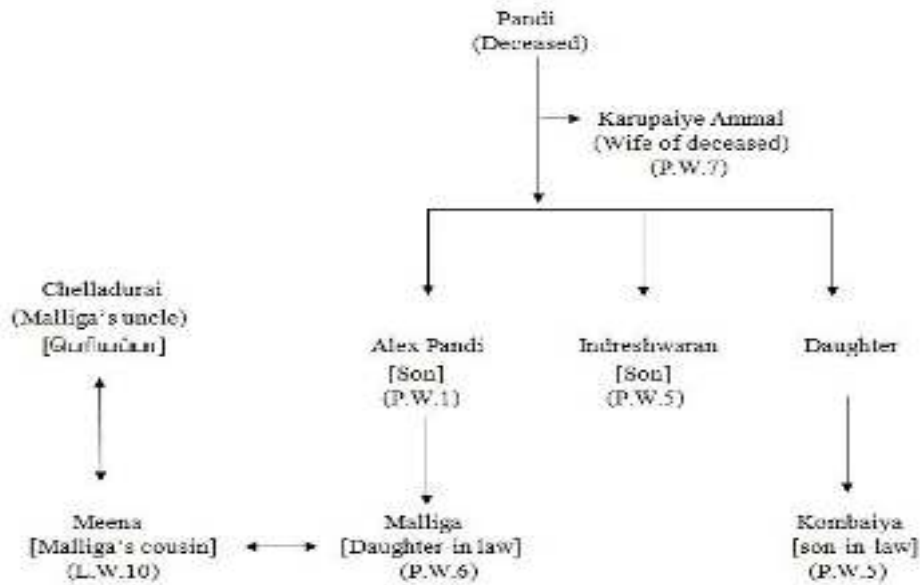
2.The case of prosecution case, in brief, is as follows:

2.1. The deceased-Pandi is the father of Alexpandi (P.W.1). Karupaiye Ammal (P.W.7) who is a former Panchayat President, is the



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wife of the deceased and mother of P.W.1. Malliga is the wife of P.W.1, working as a Clerk in the Panchayat Office. They all were living in North Ilandaikulam. Meena is Malliga's cousin (பெரியப்பா மகள்). The accused fell in love with Meena. For ease of understanding, the above-mentioned relationships are represented through the following diagram:



2.2. Since Meena's family felt that the conduct and attitude of the accused were not good, they decided not to marry the Meena to accused. The accused, erroneously attributing this decision to the deceased, harboured enmity against the deceased, due to which, he used to verbally abuse and threaten the deceased over phone. Further, about one year



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before the incident, an F.I.R. was registered against the accused for threatening the deceased and Meena with a billhook. This intensified the accused's enmity towards the deceased.

2.3. There is a water tank near North Ilandaikulam Kaaliamman Temple. Madasamy (P.W.9) would usually operate the valve attached to the tank and in the absence of Madasamy, the deceased *qua* husband of a former Panchayat President, would operate it.

2.4. The accused was further enraged when Meena (L.W. 10) refused to talk to him, near North Ilandaikulam South Street on August 11th, 2017. That day, in the absence of Madasamy (P.W.9), at about 18.00 hours in the evening, the deceased bent down to operate the valve attached to the tank whereupon the accused appeared and intentionally dropped a Black Stone (கருங்கல்) at the nape of the deceased. The deceased raised alarm and fell down. Then the accused verbally abused the deceased and dropped the same stone again on the deceased's face and ran away, passing threats to kill P.W.1 as P.W.1 along with the people around chased him. Then P.W.1 took the deceased in his Tata Sumo to Tirunelveli VJ Private Hospital where the deceased was declared brought



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dead. Then the deceased was taken to Government Hospital, Tirunelveli.

Then at about 21.30 hours on the same day, P.W.1 lodged Written Complaint (Ex.P.1) at Kayathar Police Station, pursuant to which F.I.R (Ex.P.10) was registered in Crime No:300/2017.

2.5. Upon receiving the case files, the Investigation Officer (P.W. 19) went to the scene of occurrence at 22.45 hours on the same day and prepared Rough Sketch (Ex.P.11) and Observation Mahazar (Ex.P.2) in the presence of the witnesses Chelladurai (P.W.10) and Ganesan (P.W. 11). Then he collected blood-stained Soil (M.O.2), sample Soil without blood stains (M.O.3) and blood-stained Black Stone (கருங்கல்) (M.O.1) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of the same witnesses. Thereafter, he conducted inquest over the dead body at Government Hospital, Tirunelveli on the next day i.e., on August 12th, 2017 and prepared Inquest Report (Ex.P.12). Then, he sent requisition for postmortem. Then he examined the witnesses and recorded their statements. He then altered the Sections from 294(b) and 302 of IPC to 294(b), 302 and 506(ii) of IPC. The Alteration Report is marked as Ex.P.13. He then sent blood-stained white blue khaki checked Lungi marked as M.O.6, blood-stained white shirt marked as M.O.7, khaki



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colour brief (Jatti) marked as M.O.8 and rose and white color towel marked as M.O.9 received after post mortem along with blood-stained Soil (M.O.2), sample Soil without blood stains (M.O.3) and blood-stained Black Stone (கருங்கல்) (M.O.1) to Judicial Custody under Form 95.

2.6. At 08.00 hours on August 12th, 2017, the Investigation Officer (P.W.19) arrested the accused at Kattalangulam in the presence of the witnesses Velladurai (L.W.15) and Shanmugapandi (P.W.12). Then the accused voluntarily gave a confession, the admissible portion of which is marked as Ex.P.4. Pursuant to the confession, Investigation Officer seized from the accused the blood-stained white green checked Lungi (M.O.4) and blood-stained blue checked half-sleeve Shirt (M.O.5) and sent the same to Judicial Custody. Thereafter, on August 21st, 2017, the Investigation Officer (P.W.19) sent a requisition to the Judicial Magistrate No.2, Kovilpatti for sending all the 9 properties to Regional Forensic Science Laboratories, Tirunelveli (RFSL) for forensic analysis of the blood stains found in them. The consequent Chemical Report and Serology Report are marked as Ex.P.15 and Ex.P.16 respectively.



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WEB COPY 2.7. After completion of investigation, he filed Final Report under Section 294(b), 302 and 506(ii) of IPC against the accused before the Judicial Magistrate.

2.8. The Judicial Magistrate No.2, Kovilpatti registered the case on file as PRC.No.51/2017. After furnishing copies under Section 207 of Cr.P.C to the accused, he committed the case file to the Trial Court under Section 209(a) of Cr.P.C. since the offence under Section 302 is exclusively triable by Sessions Court.

2.9. The Trial Court after receiving the case file, assigned Sessions Case No.28 of 2018 and framed charges under Sections 294(b), 302, 506(ii) of IPC against the accused, read over and explained the charges to the accused in Tamil. Since the accused pleaded not guilty, trial was ordered.

2.10. Before the Trial Court, to prove its case, the prosecution examined P.W.1 to P.W.19 (Witnesses) and marked Ex.P.1 to Ex.P.16 (Documents) and M.O.1 to M.O.9 (Material Objects). The defence side



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neither examined any witness nor marked any document or material object.

2.11. The Trial Court after hearing either side, concluded that the prosecution has proved the charge levelled against the accused under Section 302 of IPC and acquitted the accused for the charges under section 294(b) and 506(ii). Accordingly, the Trial Court convicted and sentenced the accused as stated *supra* in paragraph no.1.

2.12. Feeling aggrieved with the conviction recorded and sentence imposed by the Trial Court, the accused has preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

Arguments

3. Mr.N.Pragalathan, the learned counsel for the accused argued that the Trial Court has not appreciated the evidence of witnesses as per law; that there are contradictions in the evidence of P.W.1 to P.W.4 and P.W.14 Doctor; that the prosecution suppressed the earlier complaint registered at 18.30 hours; that the prosecution withheld the witness Meena creating serious doubts in the prosecution's case; that the alleged ocular



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witnesses are interested witnesses and cannot be relied upon; and that there was a delay in registering FIR with no explanation assigned for the same . Accordingly, he prayed to allow this Criminal Appeal, set aside the impugned Judgment and acquit the accused. As an alternative plea, he pleaded that the act of the accused would attract *Exception 1* of Section 300 of IPC.

3.1. In response to the above arguments, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor for the respondent-State submitted that the prosecution has clearly proved the motive behind the crime and further, the motive has not been disputed by the accused; that P.W.1 to P.W.4 are ocular witnesses and their evidences are clear and cogent and there is no reason to disbelieve their evidence and the same have been corroborated by medical evidence; that the prosecution proved the case beyond the reasonable doubt; that the Trial Court believed the testimony of the ocular witnesses and motive-witnesses, and after perusing the entire evidence and materials, has concluded that the prosecution proved the offence punishable under Section 302 of IPC. Accordingly, he prayed to dismiss this Criminal Appeal and sustain the Trial Court's Judgment.



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WEB COPY 4. This Court has perused the case file and heard either side. The following points arose for consideration:-

- i. Whether the prosecution has proved the charges levelled against the accused under Section 302 of IPC?
- ii. Whether there exist any reason to interfere with the Impugned Judgement?

5. To be noted, the Respondent-State has not preferred any appeal against the acquittal of the accused for the charges punishable under Section 294(b) and 506(ii) of IPC. Needless to mention that the above finding of the Trial Court has reached its finality and there is no need to discuss the same in this appeal.

Discussion and Decision for Point Nos.(i) and (ii)

6. In this case, prosecution examined P.W.1 to P.W.4 as ocular witnesses.

6.1. P.W.1 who is none other than the son of the deceased, in his chief-examination deposed that he is living in North Ilandaikulam practicing agriculture; that his mother Karupaiye (P.W.7) is a former



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Panchayat President; that the accused was in unrequited love with Meena who is his wife-Malliga's cousin (பெரியப்பா மகள்); that since the conduct and attitude of the accused were not good, Meena's father-Chelladurai decided not to marry Meena to accused; that the deceased *qua* Panchayat President warned the accused to stop pursuing his love for Meena; that erroneously attributing Meena's family's decision to the deceased, the accused harboured enmity against the deceased and verbally abused and threaten the deceased over phone; that then a complaint was lodged in Kayatharu Police Station against the accused and his parents for threatening the deceased and Meena with a billhook in the month of May; that from then on, accused's enmity against the deceased intensified and the accused began verbally abusing the deceased over phone and he also once threatened to kill the deceased.

6.2. He further deposed that Madasamy (P.W.9) would usually operate the valve attached to the water tank near Amman temple and in the absence of Madasamy, the deceased would operate it; that at 18.00 hours on August 11th, 2017 when he was engaged in a conversation with 4 others near Amman Temple, the deceased bent down to operate the valve attached to the water tank in the absence of Madasamy (P.W.9),



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whereupon the accused appeared and intentionally dropped stone at the deceased's nape; that the deceased raised alarm and fell down; that then the accused verbally abused the deceased and dropped the same stone again on the deceased's face and ran away, passing threats to kill P.W.1 as P.W.1 along with the 4 others chased him; that then P.W.1 took the deceased in his Tata Sumo to Tirunelveli VJ Private Hospital where the deceased was declared brought dead.

6.3. He, in his cross-examination admitted that an FIR has been lodged in Kayathar Police Station alleging that accused's brother Sangili Pandian caused injury on the deceased's head; that the deceased as Panchayat President used to settle petty disputes in the Village and while so, he would rebuke and warn both the parties to settle the dispute; and that the accused had filed a complaint with Kayathar Police alleging that the deceased, P.W.1 and P.W.1's uncle assaulted him during temple festival.

6.4. Ayyakannu (P.W.2) in his chief-examination deposed that only he was present near the crime scene; that he raised alarm upon witnessing the incident; that upon hearing his alarm, the accused ran away; that then



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the deceased's family members came to the crime scene and took the deceased to Hospital.

6.5. In his cross-examination, he deposed that the police came to the place of occurrence between 18.30 and 19.00 hours and that only on his information the deceased's family members came to the crime scene and took the deceased to Hospital.

6.6. Kombaiya, S/o.Shunmugapandian (P.W.3) who is none other than the son-in-law of the deceased, in his chief-examination deposed that on August 11th, 2017 at 18.00 hours, he witnessed the deceased opening the valve while he was driving his tractor along that way; that upon the witnessing the incident, he, P.W.1 and others took the deceased to Hospital.

6.7. Kombaiya, S/o.Krishnasamy Thevar (P.W.4) in his chief-examination deposed that on August 11th, 2017, he came to Amman Temple to offer his prayers; that he was engaged in a conversation with the deceased; that he then went to attend the nature's call while the deceased went to open the valve attached to the water tank; that he then



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heard the alarm of the deceased and rushed to the scene of occurrence raising alarm; that the accused dropped a stone on the deceased and ran away; that people around gathered; and that the deceased was taken to Hospital in a Tata Sumo.

6.8. Indreshwaran (P.W.5) is the another son of the deceased. Malliga (P.W.6) is the wife of P.W.1 and Karupaiye Ammal (P.W.7) is the wife of the deceased. They deposed that upon learning about the incident , they rushed the deceased to Hospital where the doctors declared that the deceased was brought dead.

6.9. Dr.E.Vinothkumar Philip (P.W.14), who was the duty doctor at VJ Hospital on the fateful day, deposed that the deceased was brought to the Hospital with injuries on his face; that since his medical condition was serious, he referred him to the Government Hospital, Tirunelveli and issued Ex.P.7 to that effect. In his cross-examination, he deposed that the deceased already had a band-aid and IV Cannula in his hand. He further deposed that there were too many villagers but no responsible person to enquire; that the blood relatives were not found; that due to the above-mentioned reasons, he could not enquire about anything, particularly



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about the band-aid and IV Cannula and that Ex.P.7 was issued only when police investigated him after 2 weeks.

6.10. Dr.E.Priya (P.W.13), Government Hospital, Tirunelveli deposed that the deceased was brought dead to the Hospital at 20.05 hours on August 11th. 2017.

6.11. Dr.Selvamurugan (P.W.15) who is the Post-mortem doctor deposed that he did not find any sign of band-aid, intravenous injection and prior medical treatment in the deceased's body. Post-mortem Certificate (Ex.P.9) issued by him is reproduced hereunder:

“APPEARANCE FOUND AT THE POST MORTEM:

Moderately nourished body of a male. Finger and toe nails blue.

THE FOLLOWING ANTEMORTEM INJURIES WERE NOTED:

- 1) Abrasion of size 2 x 1cm over right side of forehead near eyebrow.
- 2) Laceration of size 3 x 1 x 1cm over right eyebrow and right upper eyelid.
- 3) Abrasion of size 2 x 1cm over right lower eyelid.



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- 4) Abrasion of size 4 x 3cm over right cheek near nose.
- 5) Abrasion of size 3 x 2cm in right cheek near right ear.
- 6) Laceration of size 4 x 2cm x Bone deep over left side of nose.
- 7) Abrasion of size 4 x 2m over right side of nose.
- 8) Abrasion of size 2 x 1cm over middle of upper lip.
- 9) Abrasion of size 3 x 2cm over middle of lower lip.
- 10) Abrasion of size 5 x 3cm in chin.
- 11) Laceration of size 2 x 1 x 1cm in inner aspect of lower lip.
- 12) Abrasion of size 7 x 5cm over occipital region.
- 13) Abrasion of 1 x 1cm over back of right elbow.
- 14) Abrasion of size 2 x 1cm over back of right forearm.
- 15) Abrasion of size 2 x 1cm over right knee.

On dissection of Head & Face: Scalp contusion of size 15 x 10cm noted in frontal region and 10 x 7cm in occipital region. Nasal bone and right upper jaw (maxilla) found fractured with surrounding contusion. Crack fracture of length 7cm noted in occipital region. Both anterior cranial fossa bones found in multiple pieces.

OTHER FINDINGS:

Heart: Normal, and coronary vessels patent.

Larynx & trachea: Filled with blood stained fluid.

Hyoid bone: Intact.



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Stomach: Contains 50gms of partially digested food particles mixed with altered blood no specific smell and mucosa congested.

Lungs, Liver, Spleen, Kidneys & Brain: Normal, c/s. Congested.

Small Intestine: Contains 50gms of partially digested food particles, no specific smell and mucosa congested.

Bladder: Contains 20ml of urine.

OPINION AS TO THE CAUSE OF DEATH:

THE DECEASED WOULD APPEAR TO HAVE DIED OF ASPHYXIA DUE TO ASPIRATION OF BLOOD AS A CONSEQUENCE OF FACIAL INJURY.

DEATH WOULD HAVE OCCURRED 12 TO 24 HOURS PRIOR TO AUTOPSY.”

6.12. From the above report, it is clear that the deceased died due to homicidal death.

6.13. The learned counsel for the accused drew attention of this Court to the evidence of P.W.14 and contended that P.W.1, P.W.3 and P.W.4 would not have witnessed the incident as, if really they were present in the scene of occurrence, they would have been to the Hospital.



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6.14. As already alluded to *supra*, the evidence of P.W.1 to P.W.4 are clear, cogent and trustworthy. It is quite natural that when a person seriously injured is admitted in the Hospital, only the relatives would act as a fore-frontier in the admission process and other formalities in the Hospital. Merely because P.W.14 was not able to identify P.W.1, P.W.3 and P.W.4 among the crowd, the trustworthiness of the ocular witnesses (P.W.1, P.W.3 and P.W.4) cannot be questioned or impeached.

Place of occurrence

7. Investigation Officer (P.W.19) deposed that he rushed to the spot and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.11) in the presence of the witnesses Chelladurai (P.W.10) and Ganesan (P.W. 11); and that then he collected blood-stained Soil (M.O.2), sample Soil without blood stains (M.O.3) and blood-stained Black Stone (கருங்கல்) (M.O.1) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of the same witnesses. The evidence of P.W.10 & P.W.11 has reinforced the said fact. Further, the blood of the deceased matches with the blood stains found in M.O.1 & M.O.2 [vide Chemical Report (Ex.P.15) and Serology Report (Ex.P.16)]. Moreover, the evidence of the ocular witnesses (P.W.1, P.W.3 and P.W.4) clearly proves the place



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of occurrence. Hence, in view of the above reasons, this court concludes that the prosecution has proved the place of occurrence.

Arrest, Confession and Recovery

8. Investigation Officer (P.W.19) deposed that at 08.00 hours on August 12th, 2017, he arrested the accused at Kattalangulam in the presence of the witnesses Velladurai (L.W.15) and Shanmugapandi (P.W. 12); that then the accused voluntarily gave a confession, the admissible portion of which is marked as Ex.P.22; that pursuant to the confession, he seized from the accused M.O.4 and M.O.5 and sent the same to Judicial Custody. The evidence of Shanmugapandi (P.W.12) corroborates the said fact. Moreover, the blood stains found in M.O.4 and M.O.5 (clothes worn by the accused during the incident) matched with the blood of the deceased [*vide* Chemical Report (Ex.P.15) and Serology Report (Ex.P. 16)]. Therefore, this Court is of the view that the prosecution proved the arrest, admissible portion of confession and the pursuant recovery.

Motive

9. In general, motive is a thing primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited the accused to commit a particular crime. It



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is a settled legal position that even if the absence of motive as alleged is accepted, it is of no consequences and pales into insignificance when direct evidence establishes the crime. Likewise, if motive is however strong, in the absence of convincing ocular-witnesses, the accused can't be convicted [vide ***State of U.P. v. KishanPal reported in (2008) 16 SCC 73***].

9.1. In this case, the evidence of P.W.1 to P.W.7 proves that the accused was in unrequited love with the Meena who is P.W.6-Malliga's cousin (பெரியப்பா மகள்); that since the conduct and attitude of the accused were not good, Meena's father-Chelladurai decided not to marry Meena to accused; that the deceased as Panchayat President warned the accused to stop pursuing his love for Meena; that erroneously attributing Meena's family's decision to the deceased, the accused harboured enmity against the deceased and verbally abused and threaten the deceased over phone; that then a complaint was lodged as alluded to *supra*; that from then on, accused's enmity against the deceased intensified and the accused began verbally abusing the deceased over phone and he also once threatened to kill the deceased. Hence, this Court is of the view that the prosecution has clearly established the motive behind the crime. Further,



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as discussed in the paragraphs above, the evidence of ocular witnesses is convincing and satisfactory. Thus, in this case, there is both convincing evidence of witnesses and well-established motive which strengthens the case of the prosecution.

9.2. Though the evidence of ocular witnesses (P.W.1 to P.W.4) have contradictions among them, they are minor and negligible in nature. Further, their evidence has been corroborated by medical evidence. Furthermore, Chemical Report (Ex.P.15) and Serology Report (Ex.P.16) connect the accused with the crime. Moreover, there is nothing to raise doubts on the arrest, confession and recovery and the same is believable and reliable and the prosecution has established the motive. Considering the facts and circumstances of the case and the above reasons, this Court is of the view that the clear and cogent evidence of the ocular witnesses, clearly establishes the case of the prosecution beyond reasonable doubt.

Alternative plea

10. As an alternative plea, the learned counsel for the accused pleaded that the act of the accused would attract *Exception 1* of Section 300 of IPC. He contended that the accused conceived the deceased as a barrier to his love and hence, he had sustained provocation in his mind



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against the deceased which culminated into the incident. He further submitted that the accused had no intention to kill the deceased.

10.1. Considering the fact that the accused dropped the stone on the deceased's face for the second time declaring his intent to kill the deceased and the overall facts and circumstances of the case, this Court finds no grave or sudden provocation and is of the view that the accused took an undue advantage of the situation and caused brutal injuries to the deceased with an intention to kill the deceased. Hence, the act of the accused does not fall under *Exception 1* of Section 300 of IPC. On the other hand, it clearly falls under Section 300 of IPC which is punishable under Section 302 of IPC.

11. Therefore, the Trial Court after considering the evidence has come to a conclusion that the accused has committed murder which is punishable under Section 302 of IPC. There is no warrant to interfere with the findings of the Trial Court and Point Nos.(i) & (ii) are answered accordingly against the accused and in favour of the prosecution. Hence, this Criminal Appeal is liable to be dismissed.



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12. Resultantly,

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- i. This Criminal Appeal is dismissed.
- ii. The conviction and sentence imposed upon the accused by the Trial Court is confirmed.
- iii. The accused is on bail vide order dated October 22nd, 2021 passed in Crl.M.P.(MD) No.7914 of 2021 in Crl.A.(MD) No. 67 of 2020. Hence, the Trial Court shall take steps to commit the accused to Jail to undergo the remaining period of sentence.

(M.S., J.) (R.S.V., J.)

22.12.2023

Index: Yes

Neutral Citation: Yes

Internet: Yes

Speaking order

JEN

To

1.The I Additional District and Sessions Judge,
Thoothukudi.

2.The Inspector of Police,
Kayathar Police Station,
Kayathar,
Thoothukudi District.

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



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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Pre-Delivery Judgment made
in
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