



Crl.A.(MD)No.20 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

Orders Reserved On 10.08.2023	Orders Pronounced On 29.09.2023
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**Crl.A.(MD)No.20 of 2021
and
CRL MP(MD)No.12845 of 2022**

Sankar

... Appellant / Accused

Vs.

State through Inspector of Police,
SIPCOT Police Station,
Tuticorin,
Tuticorin District
(Crime No.211 of 2014)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the Judgment, dated 01.12.2020, passed by the learned Sessions Judge / Magalir Neethimandram, Tuticorin, Tuticorin District in S.C.No.79 of 2016 and set the accused at liberty.

For Appellant : Mr.R.Venkatesan
(Legal Aid Counsel)

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



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JUDGMENT

M.NIRMAL KUMAR, J.

This appeal has been filed by the appellant / accused as against the conviction and sentence, dated 01.12.2020, made in S.C.No.79 of 2016, by the learned Sessions Judge / Magalir Neethimandram, Tuticorin, Tuticorin District.

2. The appellant / accused stood convicted and sentenced to undergo imprisonment as detailed hereunder:-

Conviction under Section	Sentence	Fine amount
u/s.302 I.P.C. (2 counts)	To undergo imprisonment for life	To pay a fine of Rs.1,000/-, (for each count) in default, to undergo six months R.I. (for each count)

3. The Trial Court has acquitted the appellant/accused for the commission of the offence under Section 307(5 counts). The Trial Court further ordered the sentences to run concurrently and also granted set-off under Section 428 Cr.P.C.



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4. Challenging the legality of the conviction and sentence awarded by the Trial Court vide impugned judgment, the appellant / accused has filed this Criminal Appeal.

5. The facts leading to the filing of this appeal, necessary for the disposal of this criminal appeal, are as follows:-

(i) The Appellant / Accused married, the deceased Kokila on 19.08.2010, they were blessed with a child, by name, Bhuvana alias Atchaya. During their marriage, parents of the deceased Kokila, gave Rs.35,000/- cash and 25 sovereigns of jewels and household articles to them, as 'Sridhana'. Later on, the deceased tortured his wife Kokila physically and mentally, maltreated and demanded cash from her. In this regard, an FIR registered against the accused before the All Women Police Station, Nagercoil, in the year 2013, later it was closed, on the basis of the compromise arrived at between the parties. Thereafter, the accused, his wife (the deceased), and their daughter (the deceased) shifted to Thoothukudi and resided in a rental house in Vijayalakshmi Compound, bearing Door No. 2F/1473 in P&T Colony, in Madathur Main Road. A grocery shop was run by the accused at P&T Colony, Thoothukudi and there also, accused maltreated and



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mentally tortured his wife. The deceased Kokila intimated the same then and there to her mother, her brother and also to the witnesses, by name, Muthuraman and Saravanan by phone. The appellant suspected her cellphone talking by saying that, “எவனோடு போனில் கொஞ்சுகிறாய்”.

(ii) While so, on 29.05.2014, at about 07.30 a.m., the deceased Kokila called her mother as usual in her cellphone and while she was talking with her mother, by name Bhavani, the accused came there, over heard their talking by hiding himself. On seeing this, the deceased Kokila questioned her, about his act. The accused questioned her, with whom and what she talked. She refused to reply for the same. Annoyed over this, the accused quarrelled with her, assaulted her with grinder stone repeatedly on her head, brutally by shouting that, “என்னையே எதிர்த்து பேசுகிறாயா”. Further, the accused assaulted his 3-1/2 years old daughter, by name, Bhuvana alias Atchaya, by holding her leg and dashed her head on the wall with heavy force and thereby, caused severe injuries to her.



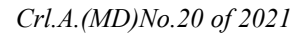
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(iii) Hearing hue and cry, of the deceased Kokila, the witnesses

by name, Mangaleshwari alias Mangalam, Vasanthi, Murugananthi Murugesapandi, Vasuki and Illaiyaraja came there, shouted and scolded the accused. The accused threatened them by saying that, நீங்களெல்லாம் தான் கோகிலாவுக்கு சப்போர்ட்டா உங்களையும், கோகிலாவை அடித்து கொன்றது போல கொன்றால் தான் சரியாகும், இத்தோடு செத்து ஒழியுங்கள்” and attempted to murder them. Further, he made criminal intimidation against the witnesses by saying that, “இப்ப தப்பிச்சிட்டிங்க? ஆனால் உங்களை கொலை செய்யாமல் விட மாட்டேன்”.

6. Based on the complaint given by P.W.1 / Mangaleshwari alias Mangalam, a neighbour of the deceased, a case has been registered in Crime No.211 of 2014, on the file of the Inspector of Police, Sipcot Police Station, Thoothukudi, for the offence under Section 302 of I.P.C., against the accused.

7. P.W.1 / Mangaleshwari alias Mangalam, who is the defacto complainant, deposed that she is a resident of Vijayalakshmi Compound. The deceased Kokila, her daughter Bhuvana alias Atchaya and the accused resided in the same compound. On the date of occurrence on 29.05.2014, while she was returning to her home





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7.3. P.W.4 / Murugesu Pandi, witness to the occurrence, deposed, that 2 years prior, during the month of May, at about 8.00 a.m., he heard the sound “ஐய்யோ, ஐய்யோ” from the ground floor, he came down, found Kokila and her daughter lying with blood injuries.

7.4. P.W.5 / Vasuki, witness to the occurrence, turned hostile.

7.5. P.W.6. / Balamurugan, witness to the occurrence deposed, that he was a resident of Thiru.Vee.Kaa. Nagar. The accused and their family were the resident of Vijayalakshmi Compound. Two years prior to his evidence, while he was in his office at about 08.00 a.m., on hearing the sound and seeing the crowd before Vijayalakshmi Compound. He went there, found the wife and daughter of the accused in pool of blood inside the house, took the child and admitted her in the Government Hospital at Thoothukudi.

7.6. P.W.7 / Bhavani, Mother of the deceased and P.W.8, brother of the deceased, deposed that marriage between her daughter Kokila, the deceased and the accused took place at Nagercoil, during 2010. After their marriage, they resided at Nagercoil and at Bhavani for 2



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years. As the business was not prosperous, they returned to Nagercoil. Her daughter was tortured by the accused, demanding money for his business. They lived in a separate rental house at Nagercoil. Her daughter was subjected to torture and harassment by the accused for money constantly. The accused went to Bhavani, leaving her daughter lonely. The accused had suspicion and harassed her daughter and therefore a complaint was given, later compromised. She sent her daughter with the accused to Thoothukudi and at that time, the accused ran a grocery shop at Thoothukudi in P&T Colony, they resided in a rental house in Vijayalakshmi Compound and her daughter used to call her by phone daily. The accused made quarrel with her daughter by suspecting her phone calls. On 29.05.2014, in the morning hours, her daughter and the granddaughter spoke with her through cellphone. After 15 minutes, one Mangalam, called her and informed the accused murdered his wife with grinder stone and assaulted his daughter by hitting the child's head on the wall and on hearing this, she came to Thoothukudi with his son.



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7.7. P.W.9, is the Observation Mahazar witness, deposed that two years prior, during the month of Vaikasi, in the morning hours, the Inspector of Police attached with Sipcot Police, visited scene of occurrence, prepared the Rough Sketch, Observation Mahazar in his presence.

7.8. P.W.10, house owner of Vijayalakshmi Compound, deposed that accused and his family resided in his house in Vijayalakshmi Compound on rental basis and the alleged occurrence took place on 29.05 2014.

7.9. P.W.11, Doctor, deposed that the child by name, Bhuvana alias Atchaya, was brought before him by one Balamurugan on 29.05.2014 at about 08:20 a.m., with head injuries. He admitted the child and it was unconscious at the time of admission. There was bleedings from ears and nose of the child. As per the history of the case, the child was assaulted on 29.05.2014 at about 07.45 am., at her house. He issued the Accident Register Copy and it was marked as Ex.P4.



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7.10. PW.12 / Doctor deposed that on 29.05.2014 at about 09.00 a.m., the child by name Bhuvana, aged 3-1/2 years, died due to the head injuries, shock and haemorrhage and non-functioning of heart. The death intimation was marked as Ex.P.5.

7.11. P.W.13 / Doctor, deposed that he conducted the autopsy on the dead body of Kokila at about 10.15 a.m., on 30.05.2014. He found the following injuries:-

Appearance found at the postmortem:-

Moderately nourished body of a female. Finger and toe nails are blue. Bleeding from nose, mouth and left ear noted.

On dissection of Scalp, Skull and Dura:-

Scalp contusion of size 7 cms x 5 cms seen in the right frontal region and another scalp contusion of size 15 cms x 8 cms seen in the occipital region. A linear fracture of length 10 cms seen in the frontal bone. Another linear fracture of length 8 cms seen over the occipital bone. Sub arachnoid haemorrhage seen over the left parietal, temporal, occipital lobes. A linear fracture of length 7 cms seen in the middle cranial fossa.



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Other findings:-

Peritoneal cavity-normal pleural cavity normal. Pericardium-contained 10 ml of straw colored fluid. Heart-normal and chamber empty. Coronaries-patent. Larynx and Trachea-normal. Hyoid bone-intact, Lungs, Liver, Spleen and Kidneys- normal and cut section congested Stomach-contained about 100ml of white colored liquid, nil specific smell, mucosa-pale. Small intestine-contained about 30 ml of white coloured liquid, nil specific smell, mucosa-pale. Bladder-empty. Brain-normal and cut section normal Uterus-infantile. External genitalia-normal.

Note : Blood preserved for biological analysis.

OPINION:

The deceased would appear to have died of shock and haemorrhage due to blunt injury to the head.

He has issued the Postmortem Report and it was marked as EX.P.7. wherein he has opined that the deceased would have appeared to have died due to shock and haemorrhage due to blunt injury to the head.

7.12. P.W.14 / Village Administrative Officer, deposed that the accused was arrested by the Inspector of Police, Sipcot Police Station near Madathur diversion Arch, at about 07:00 p.m., on 29.05.2014.



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The accused gave voluntary confession statement and it was recorded by the Inspector of Police. As per the confession statement, the grinder stone was seized under Atthachi Ex.P.9. The admitted portion of the confession statement was marked Ex.P.8. The seized grinder stone was marked as M.O.3. The accused produced the bloodstained Pant, T-Shirt from his residence. On the same day at about 09.15 p.m., the blood stained Pant seized, marked as M.O.4 and the T-Shirt, marked as M.O.5.

7.13. P.W.15 / Illaiyaraj, resident of Vijayalakshmi Compound deposed that he is doing cellphone recharge business. The accused and his family resided on the back side of his house and the accused is running the grocery shop in P& TColony. On 29.05.2014 at about 07.30 am., he heard the hue and cry from the house of the accused, went there, found the accused brutally and repeatedly assaulting his wife on her head with grinder stone. Further, the accused assaulted his daughter by holding her legs and by hitting/dashing her head with the wall. On seeing the pathetic scenario, he and one Bala entered into the house, took the child and admitted in the Government Hospital, Thoothukudi.



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7.14. P.W.20, the then Sub Inspector of Police, Sipcot Police Station, deposed that on 29.05.2014 at about 10.30 am., while he was on duty, one Mangalam alias Mangala Eswari appeared before him, gave complaint, FIR registered, in Crime No. 211/2014, u/s. 302 IPC. The FIR registered was marked as Ex.P.14. He sent the express FIR to Judicial Magistrate No.I, Thoothukudi and submitted a copy of the FIR for investigation by the Inspector of Police.

7.15. PW.21. then Inspector of Police, attached to Nagercoil All Women Police Station deposed about the previous harassment given by the accused to his wife. On 23.05.2013, she received the complaint from the deceased by name, Kokila, by court order u/s. 156(3) Cr.P.C and registered the case in Crime No. 29/2013, u/s. 294(b), 498(A), 406 and 506(1) IPC., against the accused. Later, the complaint was closed, based on the compromise between them. The xerox copies of FIR and the files relating to Crime No. 29/2013 in All Women Police Station, Nagercoil was marked as Ex.P.15.

7.16 P.W.22, Scientific Officer, attached to Tirunelveli Forensic Science Laboratory deposed, that he received the items 1 to 11 from the then Sub Inspector of Police, by name Muthusamy, with the letter



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from the Judicial Magistrate Court, marked as Ex.P.16. As per the examination done on the items, blood was detected in all the 11 items. The report marked as Ex.P.17. The letter sent from the Assistant Director, Regional Forensic Science Laboratory at Tirunelveli to the Regional Forensic Science Laboratory at Madurai marked as Ex.P.18. For grouping test report materials sent to the Regional Forensic Science Laboratory, Tirunelveli, it is reported that all the 11 items were subjected to grouping test and it is human blood found, identified as 'O' group. The Report marked as Ex.P.19. Similarly, grouping test Report over the blood samples collected, preserved and sent to Regional Forensic Science Laboratory, Madurai and it was found to be with human blood and identified as "O" group. The report marked as Ex.P.20. As per the above said report the blood samples taken from the dead bodies were found to be 'O' group.

7.17. P.W.23, the Inspector of Police, Puthiamputhur Police Station, on receipt of FIR from P.W.20, visited the scene of occurrence, prepared observation mahazar, rough sketch, collected the articles present in the scene of occurrence and examined the witnesses present in the scene of occurrence. Thereafter, conducted inquest over the body of the deceased and sent the body to mortuary



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at Government Hospital, Thoothukudi. Requisition was sent to the Doctor for postmortem. After postmortem, the bodies were handed over to the relatives. Accused was arrested, on his confession material objects collected. The blood stained articles and material objects collected from the scene of occurrence were sent for Forensic examination and for grouping of blood. The Scientific Officer, Forensic Science Department, and serologist given report confirming the presence of blood and grouping of blood as 'O'. The deceased blood grouping was 'O' confirming that the deceased had been attacked by M.O.3 and the articles collected from the scene of occurrence confirm the blood grouping. Thereafter, P.W.23 was transferred. P.W.24, the other Investigating Officer continued the investigation, collected the report, recorded the statement of some of the witnesses, filed an alteration report, for offence under Sections 302, 307 and 506(ii) IPC. On conclusion of investigation, charge sheet fled before the jurisdictional Court, latter, the case was committed to the Court of Sessions.

7.18. P.W.24, then Inspector of Police attached with Sipcot Police Station, took up the case for further investigation, he altered the Section of law from Section 302 IPC to u/s 302, 307, and 506(ii)



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8. Thereafter, the learned Sessions Judge, Magalir Neethimandram, Tuticorin District, took the case on file in S.C.No.79 of 2016, issued summons to the appellant/accused and on his appearance, framed charges under Sections 302, 307 and 506(ii) of I.P.C. The appellant/accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false.

9. The prosecution, in order to prove their case, examined 24 witnesses, namely, P.Ws.1 to 24, and marked Exs.P. to P.176 as well as M.Os.1 to 11. On the defence side, D.W.1 to D.W.6 were examined and marked Exs.D1 to D7.

10. The Trial Court, on consideration and appreciation of oral and documentary evidences and other materials, convicted and sentenced the appellant/accused as stated above and hence, this appeal.



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11. Mr.R.Venkatesan, Legal Aid Counsel, for the appellant submitted that the Trial Court ought not to have accepted Ex.P1, Complaint, as it is not proved before the Court since P.W.1 did not support Ex.P1. The trial Court finding that the evidence of PW.15, corroboration with evidence of P.W.2 to P.W.5 not proper, when the trial Court not believed the evidence of witnesses P.W2 to P.W.5 found them not eye-witnesses to the occurrence. Further the version of P.W. 15, he witnessed the occurrence through a window of the accused house, kitchen room found on the eastern wall of the accused house, is not proper. From the rough sketch, Ex.P24, it is seen, there is no such window in the kitchen room of the accused house, admitted by P.W.23 and P.W.24, the Investigating Officers. Further, as per the version of P.W.15, the accused attacked the deceased wife repeatedly on the head with the grinder stone, if it is so, the face will get disfigured, but P.W.13, Doctor says that only one injury is found on the deceased wife. There is contradiction between ocular and medical evidence. Further, in Ex.P1 it is narrated that all the eye witnesses saw the occurrence through front door of the accused house, which was found opened, which is contrary to the evidence of P.W.15.



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12. The learned Legal Aid Counsel for the appellant would further submit that the trial Court ought to have ignored the evidence of P.W.6, which is an exaggerated version. The evidence of P.W.12 and Ex.P5 is that cause of death of the child could not be ascertained. Ex.P5 establishes that the child was alive till 11.15 a.m, on the alleged date, but FIR registered at 10.30 a.m, for offence under Section 302 IPC.,(2 counts). Further, P.W.11 specifically stated that there is no external injury found on the child, which is admitted by P.W.13, Postmortem Doctor, no explanation given to prove how the death of the child could be due to haemorrhage.

13. The learned counsel further submitted that P.W.2 to P.W.5 are not witnesses to the alleged offences. P.W.7, P.W.8 mother and brother of the deceased are interested witnesses. P.W.15 is not credible witness. Further, P.W.23 and P.W.24 contradict with regard to receipt of complaint, commencement of investigation, arrest and recovery of M.Os from the scene of occurrence. The evidence of P.W. 14 and P.W.15 would confirm that witnesses are planted in this case. Further, according to the prosecution, the head of the child was dashed against the wall, but no blood stains found or recovered from the wall. The trial Court self contradicted its own Judgment that



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P.W.2 to P.W.5 saw the accused inside the occurrence house, and accused taken to Police Station, then how is that the trial Court confirms the arrest of accused and recovery through P.W.14.

14. The trial Court ought to have considered that as per Ex.P1, the accused attacked the deceased with the grinder stone, witnessed by P.W.1 to P.W.5. The evidence of P.W.9 is that the Investigating Officer came to the occurrence place, prepared observation magazar and rough sketch, and seized the grinder stone, MO.3, available and recorded in the mahazar, but earlier, the Investigating Officers not recovered the grinder stone, available while preparing Ex.P2 and Ex.P3, which causes doubt in recovery of M.O.3. Further, the prosecution admit that there was no motive and only sudden provocation. The evidence of D.W.1 to D.W.6 along with Ex.D1 to Ex.D6, clearly establish, legal insanity of the accused. P.W.7, specifically admit that the accused was suffering from mental illness and the trial Court should have taken into account the same, given the benefit of exception, and acquitted the appellant.

15. The learned Legal Aid counsel appearing for the appellant, in support of his contention, relied on the Judgment the Honourable



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Supreme in ***Devadas Loka Rathod Vs. State of Maharashtra*** reported in ***(2018) 7 Supreme Court Cases 718***, wherein, paragraphs 11 to 13 it has been held as follows:-

“11. Section 84 of the Indian Penal Code carves out an exception, that an act will not be an offence, if done by a person, who at the time of doing the same, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or what he is doing is either wrong or contrary to law. But this onus on the accused, Under Section 105 of the Evidence Act is not as stringent as on the prosecution to be established beyond all reasonable doubts. The Accused has only to establish his defence on a preponderance of probability, as observed in *Surendra Mishra v. State of Jharkhand*, (2011) 11 SCC 495, after which the onus shall shift on the prosecution to establish the inapplicability of the exception. But, it is not every and any plea of unsoundness of mind that will suffice. The standard of test to be applied shall be of legal insanity and not medical insanity, as observed in *State of Rajasthan v. Shera Ram*, (2012) 1 SCC 602, as follows:

19.Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit



hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.

12. The crucial point of time for considering the defence plea of unsoundness of mind has to be with regard to the mental state of the Accused at the time the offence was committed collated from evidence of conduct which preceded, attended and followed the crime as observed in *Ratan Lal v. State of Madhya Pradesh*, (1970) 3 SCC 533, as follows:

2. It is now well-settled that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused. In *D.G. Thakker v. State of Gujarat* it was laid down that "there is a rebuttable presumption that the Accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code, the Accused may rebut it by placing before the Court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which rests upon a party to civil proceedings.



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13. If from the materials placed on record, a reasonable doubt is created in the mind of the Court with regard to the mental condition of the Accused at the time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in *Vijayee Singh v. State of U.P.*, (1990) 3 SCC 190.

16. The learned Legal Aid counsel appearing for the appellant, in support of his contention, relied on the Judgment the Honourable Supreme in ***State of Rajasthan Vs. Shera Ram Alias Vishnu Dutta*** reported in ***(2012) 1 Supreme Court Cases 602***, wherein it has been held, whether an injury was sufficient to cause death or not is a question of fact and the same has to be determined by the Court in light of evidence adduced by the prosecution and other facts of the case.

17. The learned Legal Aid counsel further relied on the Judgment the Honourable Supreme in *Prakash Nayi @ Sen Vs. State of Goa* reported in (2023) 5 SCC 673, wherein it has been held as follows:-

"15. Chapter XXV of the Code of Criminal Procedure 1973 (hereinafter 'Cr.P.C.'), though



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procedural in nature, also becomes substantive when it deals with an accused person of unsound mind. A well-laid procedure is contemplated under Sections 328 to 339 of Cr. P.C. There is not even a need for an application under Section 329 of Cr. P.C. in finding out as to whether an accused would be sound enough to stand a trial, rather it is the mandatory duty of the Court. Under Section 330, the Court can even go to the extent of discharging such a person if his inability to stand trial continues with a rigid chance of improvement. As per Section 334 of Cr. P.C., the judgment of the Court shall include a specific finding that the act was committed due to unsoundness of mind, though it was actually done. The reason is simple as there cannot be an acquittal on the ground of unsoundness of mind unless the act is actually done.

16. The whole idea under the provisions discussed is to facilitate a person of unsound mind to stand trial, not only because of his reasoning capacity, but also to treat him as the one who is having a disability. The role of the Court is to find the remedial measures and do complete justice."

18. *Per contra*, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor would submit that the evidence of P.W.2 to P.W.6



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and P.W.15 clearly establishes the fact that the accused committed murder. Further, it is proved by the evidence of P.W.6, who was present at the time of occurrence, who took the injured Bhuvana, rushed to the Government Hospital, Thoothukudi. P.W.11, casualty Medical Doctor, admitted the injured Bhuvana and given Ex.P4, Accident Register. In the Accident Register, P.W.6 name is recorded. The fact of P.W.6 taking the injured Bhuvana to hospital confirmed from the evidence of P.W.15, an eye-witness to the occurrence. Thus, the evidence of these witnesses clearly establish the fact that the accused committed murder. P.W.1 to P.W.5 confirm the presence of P.W.6 and P.W.15. Thus the evidence of eye-witnesses and witnesses present in the scene of occurrence is corroborated by the evidence of Doctors, PW.12 and PW.13. The accused is the only person available at the time of occurrence, inside the house. No evidence produced and appellant failed to give any explanation. The motive of the accused clearly established from the evidence of PW.7 and PW.8 and PW.21. There is no delay in lodging the complaint and sending the FIR to the Judicial Magistrate Court. Further, the place, date and time of occurrence admitted by the accused and he failed to give any explanation regarding his defence during the questioning u/s. 313 Cr.P.C. The accused failed to prove the plea of insanity and therefore,



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he has to be dealt with according to law, as he murdered his wife and daughter mercilessly. The Trial Court, on cogent and convincing reasons and based on oral and documentary evidence, has found the appellant/accused guilty of the charges levelled against him and rightly convicted and sentenced him and, therefore, no interference is called for with the conviction and sentence recorded by the Court below.

19. The learned Additional Public Prosecutor, in support of his contention, relied on the Judgment of the Hon'ble Apex Court in ***Prem Singh Vs. State of NCT of Delhi*** reported in ***(2023) 3 SCC 372*** and would contend that when motive is proved in a case based on circumstantial evidence, it supplies additional link in the chain of circumstances. Further, the learned Additional Public Prosecutor relied on the Judgment of the Hon'ble Apex Court in ***Mariappan Vs. State of Tamil Nadu*** reported in ***(2013 (12) SCC 270)*** wherein it has been held that, while seeking protection under Section 84 I.P.C., the accused should prove that he is mentally insane at the relevant point of time. That apart, to consider the case under Section 84 I.P.C., the totality of the circumstance should be examined, and if the Court found that if the crime was committed under anger and not



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as a result of unsoundness of mind, then, the accused is not entitled to the protection under Section 84 I.P.C.

20. Further, the learned Additional Public Prosecutor relied on the Judgment of this Court in ***Vellapandi Vs. State through the Inspector of Police, Srivaikundam Police Station, Tuticorin*** reported in ***(2020) 2 MLJ (Crl) 233***, wherein this Court elaborately discussed the scope of Section 84 of IPC. Further, relied on the Judgment of this Court in ***Madesh Vs. State by the Inspector of Police, Salem District*** reported in ***(2014) 2 RCR (Cri) 253***.

21. This Court carefully considered the submissions made on either side and also perused the oral and documentary evidence, to which its attention was drawn.

22. In this case, P.W.1 to P.W.6 and P.W.15 are projected eye-witnesses. P.W.1, P.W.5 not supported the case of the prosecution. The witnesses P.W.2 to P.W.4, P.W.6 and P.W.15 are the local residents, which is not in dispute. P.W.10, is the house owner. From the evidence of P.W.10, it is seen that Vijayalakshmi Compound has 6 houses and 3 shops and one of the house, rented to the appellant and



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the other houses were occupied by P.W.1 to P.W.6, residents in the said compound and P.W.15 was residing on the rear side of the compound.

23. On the fateful day, hearing the cry of Kokila(D1), P.W.1 to P.W.6 and P.W.15 rushed to the scene of occurrence. The door was locked and it was forcibly opened and found that the appellant hitting his wife with M.O.3, grinder stone. Though there is some doubt how P.W.1 to P.W.6 and P.W.15 could have seen the accused attacking both D1 and D2, but their presence in the scene of occurrence at the relevant time is not in dispute. P.W.15, categorically stated that he had seen, appellant hitting his wife with M.O.3, through the window. Though a defence taken that there was no window in the rough sketch, Ex.P24, and hence, P.W.15 could not have witnessed the assault, cannot be countenanced, P.W.23 has given an explanation that it was an mistake, which is acceptable. P.W.15, clearly states about the assault and P.W.6, bravely entering into the house, finding that the appellant's daughter Bhuvana still breathing, took the baby, rushed to the hospital, produced before P.W.11, Causality Doctor. In the accident Register, Ex.P.4, P.W.6 name recorded. P.W.15 confirms this fact of assault. The evidence of P.W.15 have been considered and



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analysed by the trial Court in detail, in its Judgment.

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24. As per Section 134 of the Evidence Act, it is not the number of witness, which is required to prove a fact, even in case of solitary witness found to be truthful, gains confidence, the conviction can be based on the sole witness. In this case, the evidence of P.W.15 and the evidence of P.W.1 to P.W.6 on combined analysis would confirm that all the witnesses present in the scene of occurrence, heard the cry, found the appellant assaulting his wife and daughter. The witnesses breaking open the door, entering into the house, taking injured daughter for treatment and the appellant entering into the pooja room, locking himself, thereafter, appellant was dragged out by the public, given beating, are all established and proved, by the cogent evidence of PW.1 to P.W.6.

25. Admittedly, the occurrence took place inside the house of the appellant where, the appellant, his wife D1 and his daughter D2 alone were staying. The appellant could not give any reason for the injury and death of his wife and daughter inside the home. The appellant has the exclusive knowledge of the same, but gave no reason. Further, from the evidence of P.W.7 and P.W.8, mother and



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brother of D1 confirms that P.W.7 normally speaks to her daughter on a daily basis, on the fateful day 15 minutes prior to the occurrence, she spoke to her daughter D1 and granddaughter D2. From the evidence of P.W.7 and P.W.8, it is seen that the marriage between the appellant and D1 had taken place in the year 2010. After the marriage, the appellant and D1 were residing at Bavani for two years and thereafter, since the appellant could not succeed in his business there, he shifted to Thoothukudi. At that time, the appellant made a demand of Rs.1,00,000/- for starting his new business. The appellant's wife was harassed, tortured in demand of money. Due to which, for six months, D1 lived separately. D1, Kokila had also lodged a complaint to the All Women Police, for cruelty and harassment. P.W.21, the Inspector of Police, All Women Police Station, Nagercoil, registered a case in Crime No.29 of 2013, for the offence under Section 294(b), 498-A, 406 and 506(i) IPC., on 01.07.2013. Later, during investigation, the appellant appeared before the Police, given an undertaking that henceforth, he would not subject his wife and daughter, of any cruelty and he would take care of them properly without any harassment. On the undertaking given by the appellant and his family members, the case was closed, thereafter, the appellant and his wife and daughter had set up a home at Thoothukudi and



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were living there happily for three months. Thereafter, again the harassment continued and finally the appellant brutally killed P.W.7's daughter and granddaughter. Thus, the constant harassment, cruelty by the appellant towards his wife and daughter is confirmed from the evidence of P.W.7, P.W.8 and P.W.21 and Ex.P15.

26. P.W.11, is the causality Doctor, who admitted the appellant's daughter Bhuvana for treatment and issued AR copy, Ex.P4. P.W.12 is the other Doctor, who declared Bhuvana dead and issued Death Intimation, Ex.P5. P.W.13 is the Postmortem Doctor, who conducted the postmortem on both D1 and D2 and issued postmortem certificates, Ex.P6 and P7, confirming "The deceased would appear to have died of shock and haemorrhage due to blunt injury to the head".

27. The confession and recovery proved by the evidence of P.W. 14, VAO. P.W.22 is the Scientific Officer, Forensic Department, who confirms the presence of Blood in M.Os. In this case, P.W.20 received the complaint and registered the FIR, thereafter, P.W.23, took up the investigation, examined the witnesses, prepared the observation



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mahazar, rough sketch, collected the material objects, sent the same for Forensic examination, conducted inquest, sent body for postmortem. The postmortem certificates Ex.P6 and Ex.P7 confirms that the death of both D1 and D2 was due to shock and haemorrhage caused by blunt injury to the head, which is in conformity to the evidence of P.W.1 to P.W.6 and P.W.15.

28. An attempt has been made by the appellant stating that the appellant was of unsound mind and he would come under exception, as per Section 84 of IPC., and prayed for acquittal. In this case, D.W. 1 to D.W.6 have been examined on the side of the defence and Ex.D1 to D7 marked. D.W.1 is the Doctor, a Neurologist, who had treated the appellant during the period 24.12.1998 to 31.12.1998 for nervous problem. Further, he was treated for psychological problem and through him Ex.D2 and D3 marked. It is seen that the treatment was much prior to the marriage, after treatment and regaining to normalcy and good health, the marriage was in the year 2010. As regards D.W.2, who treated the appellant on 14.03.2013 and 22.03.2013, as outpatient, prescribed certain medicines for physiological problem, sleeplessness and unnecessarily getting emotional. This is for a short period, during the matrimonial period.



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The appellant took treatment on two occasions, as outpatient and he was prescribed medicines, through D.W.2, Ex.D4, has been marked. Thereafter, the condition of the patient got improved, he had not come for further treatment.

29. D.W.3 is the Doctor, attached to the Government Hospital, Thoothukudi, who used to visit the prison weekly once. On one such occasion, on 04.06.2014, he examined the appellant and his treatment sheet marked as Ex.D5. This examination is after the occurrence, (i.e. on 29.05.2014). During his confinement as under Trial Prisoner, the appellant is said to have shown, suicidal symptom and also sleeplessness. D.W.4 is the Central Prison Doctor, who examined the appellant during July and August 2014 and he was under medication. The appellant himself had stated that he wanted to be in the normal cell than to be under treatment and thereafter, he was in the normal cell along with others. D.W.5 and D.W.6 are the brother and local Municipal Councillor, examined to show that the appellant was behaving abnormally and having some mental disorder. The trial Court considered the evidence and materials produced in this regard. It is seen that D.W.1 is the Doctor, who treated the appellant much



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before his marriage for two days. D.W.3 and D.W.4 are the Doctors, who treated the appellant after the occurrence.

30. The primary concern of this Court is to find out what was the mental condition of the accused, during the occurrence, for which, the evidence, D.W.2, who treated the appellant as outpatient on 14.03.2013 and 22.03.2013, for sleeplessness, agitated mood, and unnecessary speaking, to be considered. It is seen, D.W.2 given medicine on 14.03.2013, and thereafter, appellant came for review on 22.03.2013, D.W.2 found vast improvement in appellant's health and behaviour conditions, reduced the dosage of medicine and thereafter, appellant, had not visited D.W.2. Thus, this treatment would not come into the fold of mental disorder or unsoundness of mind and hence, claiming the offence committed by the appellant would fall under any of the exception does not arise. The trial Court in detail had gone into these aspects and rightly convicted the appellant. The Judgment of the trial Court is a well reasoned one, answering all the points raised by the appellant and after proper careful analysis had convicted the appellant. This court had called for a report from the Superintendent, Central Prison, Palayamkottai, who by his Report, dated 05.12.2023 and 01.08.2023, had reported that, "At present the prisoner is taking



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regular oral medications till date under Supervision and health and mental condition is stable”.

31. In view of the above discussion, we find absolutely no grounds to interfere with the Judgment passed by the trial Court and we hereby confirm the Judgment of conviction and sentence passed against the appellant and accordingly, this Criminal appeal is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

32. We appreciate the services rendered by the learned Legal Aid Counsel, Mr.R.Venkatesan, who has appeared for the appellant. We direct the Legal Aid Services Authority to pay his remuneration.

(M.S.R.,J.) (M.N.K., J.)
29.09.2023

Index : Yes / No
Internet : Yes / No

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To
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1. The Sessions Judge / Magalir Neethimandram,
Tuticorin, Tuticorin District.
2. The Inspector of Police,
SIPCOT Police Station,
Tuticorin,
Tuticorin District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**M.S.RAMESH, J.
AND
M.NIRMAL KUMAR, J.**

Pre-Delivery Judgment made in

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29.09.2023