



CrI.A.No.350 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2023

Pronounced on : 05.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.A.No.350 of 2021

H.Shakir

... Appellant/Accused

Vs.

State by
Inspector of Police,
Annur Police Station,
Crime No.339 of 2016,
Coimbatore District.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 19.09.2018, in S.C.No.169 of 2017 on the file of the I Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.A.Gokulakrishnan



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Additional Public Prosecutor
JUDGMENT

S.S. SUNDAR, J.

The above appeal is by the appellant/sole accused challenging the judgment of conviction and sentence, dated 19.09.2018, passed by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.169 of 2017. The appellant was convicted and sentenced by the trial Court as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 302 IPC	Life Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo Imprisonment for three months
Section 449 IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo Imprisonment for three months
Section 309 IPC	Simple Imprisonment for one year
The sentences were ordered to run concurrently	

2.The case of the prosecution is that the accused developed one side love towards the deceased, who is the daughter of the *de facto* complainant; that the deceased did not agree for the same; that the accused approached the parents of the deceased to give their daughter in marriage to him; that



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the deceased, as well as the parents of the deceased, did not agree, as the accused belonged to different community following different religious faith; that the accused threatened the parents of the deceased that their daughter would be done away if he cannot marry her; that the parents of the deceased arranged marriage of the deceased with one Dinesh Kumar; that the marriage engagement function was performed about two weeks prior to the incident; that the would-be husband of the deceased presented the deceased with the marriage ring; that enraged by the same, the accused, with an intention to commit murder, entered into the house of the deceased on 14.09.2016 at about 5.30 p.m., when the parents of the deceased were away to consult a local medical practitioner (country medicine) to give treatment to the father of the deceased (P.W.2), and attacked the deceased with a knife and caused multiple stab/cut injuries on the deceased; that ultimately, the deceased succumbed to the injuries on spot; that when the parents of the deceased returned home at around 7.00 p.m., they found their daughter dead in their house; that the mother of the deceased (P.W.1) saw the accused climbing over the compound wall at the backside of their house with a blood-stained knife in his hands; that the mother of the deceased (P.W.1)



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lodged a complaint before the respondent Police.

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3.After registration of the complaint on 14.09.2016, P.W.16, the Inspector of Police (Investigating Officer) visited the spot along with the Police team and Photographer who took photographs at the scene of occurrence. P.W.16 then prepared the Observation Mahazar and Rough Sketch, marked as Exs.P8 and P19 respectively. He also prepared the Seizure Mahazar (Ex.P9) in the presence of panchayatars and arranged for the autopsy of the body of the deceased. After obtaining the postmortem report (Ex.P3), he handed over the body of the deceased to the relatives of the deceased for burial. P.W.16 received the Seizure Mahazar from the Women Head Constable who sent the blood-stained clothes for chemical analysis.

4.Thereafter, on 16.09.2016, P.W.16 visited the hospital in which the accused was taking treatment for having consumed poisonous substance (sani powder), and monitored him throughout the period of treatment and also made arrangements to get dying declaration from the accused, as the



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accused was, at that time, in serious condition. Thereafter, he examined the Head Constable who made arrangements for bringing sniffer dog and examined the officer who registered the FIR. Thereafter, when he found that the accused was discharged from the Coimbatore Medical College Hospital, Coimbatore, arrested the accused on 26.09.2016 at 3.30 p.m.

5.Since the accused came forward to give a confession statement, the Investigating Officer recorded the same in the presence of witnesses and as disclosed by the accused, he accompanied the accused to the burial ground at Chokkampalayam Village and seized the knife which was the murder weapon from the accused, which was kept by the accused in the nearby bushes, under Seizure Mahazar (Ex.P10). The accused, in his confession, admitted that he would show the place in which his blood-stained shirt was hidden. However, the accused was unable to show the shirt which, according to him, was thrown in the gutter. Thereafter, the accused was produced and was brought under judicial custody.

6.The Investigating Officer examined the Doctor who conducted



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autopsy and obtained blood sample report to confirm that the blood found in the dress of the deceased and in the murder weapon matched the blood of the deceased. After completing the investigation, P.W.16 filed the final report charging the accused for the offences under Sections 302, 449 and 309 IPC.

7.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.169 of 2017 and was made over to the I Additional District and Sessions Court, Coimbatore, for trial. The trial Court framed charges for the offences under Sections 449, 302 and 309 IPC against the accused and when questioned, the appellant pleaded 'not guilty'.

8.To prove the case, the prosecution examined P.W.1 to P.W.16 and marked Exs.P1 to P23, besides M.O.1 to M.O.10. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The accused had not let in any oral or documentary evidence.



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9.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 19.09.2018, found the accused guilty of the offences under Sections 302, 449 and 309 IPC and convicted and sentenced him as stated *supra*.

10.Challenging the conviction and sentence, the accused has preferred this Criminal Appeal.

11.Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent.

12.P.W.1 is the mother of the deceased. P.W.2 is the father of the deceased. P.W.3 is the cousin brother of P.W.1. P.W.4 is the neighbour who had let out a residential portion to the accused and vacated him just prior to the occurrence.



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13.P.W.5 is the Doctor who conducted autopsy and gave postmortem report, which is marked as Ex.P3. As per the report, P.W.5 identified 21 stab/cut injuries caused by the murder weapon. The following are the ante-mortem injuries seen over the body of the deceased :

- i. *Cut injury 1x0.5 cm x scalp deep noted over the right frontal region*
- ii. *Cut injury 0.5x0.25cm x muscle deep noted over outer aspect of right upper lip*
- iii. *Cut injury 2.5 x 1 cm x bone deep noted over the middle of chin*
- iv. *Reddish abrasion 3 x 0.5 cm noted over right side chin*
- v. *Vertical stab injury 3 x 1 x 5 cm noted over top of right shoulder. The lower end is sharp and the upper end is blunt. On dissection the wound passes inwards, downwards and cutting the underlying muscle, vessels, nerves and partially cutting the bone.*
- vi. *Stab injury 4 x 1 x 4 cm muscle deep noted over outer aspect of back of right forearm in its upper 1/3rd, on dissection the wound passes inwards, downwards cutting the underlying muscle, vessels, nerves and comes out on inner aspect of right forearm measuring 3.5 x 1 cm.*



- vii. *Cut injury 3 x 0.5 x 0.5 cm muscle deep noted over back of right forearm in its upper 1/3rd.*
- viii. *Cut injury 6.5 x 4 cm x muscle deep noted over back of right lower arm.*
- ix. *Vertical stab injury 3 x 1.5 x 4 cm noted over left upper chest, 1 cm above left nipple, 1 cm above left nipple. The upper end is sharp and the lower end is blunt. On dissection the wound passes inwards, downwards, and cutting the underlying 4th inter costal muscle, vessels and nerves.*
- x. *Cut injury 5 x 1 cm x muscle deep noted over inner aspect of left palm*
- xi. *Cut injury 2 x 0.5 cm x muscle deep noted over inner aspect of base of left thumb*
- xii. *Cut injury 5 x 2 cm x muscle deep noted over back of left arm in its middle 1/3rd.*
- xiii. *Vertical oblique stab injury 4 x 1 x 7 cm noted over outer aspect of left upper chest, 5 cm below the left axilla. The inner end is sharp and the outer end is blunt. On dissection the wound passes inwards, downwards and cutting the underlying 3rd inter costal muscle, vessels, nerves, and enter into the left plural cavity piercing the lower border of upper lobe of left lung measuring 3 x 1 x 5 cm and piercing the pericardial sac and enter into the pericardial cavity and piercing the left atrium measuring 2 x 1 cm x cardiac cavity deep. Left side*



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- pleural cavity contains about 1000 ml of fluid blood.*
- xiv. *Vertical stab injury 5 x 2 cm x peritoneal cavity deep noted over outer aspect of left side abdomen just below the rib cage. The inner end is sharp and the outer end is blunt. On dissection the wound passes inwards, backward, upwards and cutting the underlying muscle, vessels, nerves, enter into the peritoneal cavity with piercing the diaphragm and enter into the left pleural cavity then passes the base of lower lobe of left lung measuring 2 x 1 x 3 cm.*
- xv. *Horizontally oblique cut injury 6 x 3 cm x muscle deep noted over back of left side chest, 3 cm below lower end of left scapula. On dissection the wound cutting the underlying 8th inter costal muscle, vessels and nerves.*
- xvi. *Inverted “L” shaped stab injury horizontally measuring 6 x 2 cm x cavity deep and vertically measuring 4 x 2 cm x cavity deep noted over front of middle of abdomen just above umbilicus. The upper end is sharp. On dissection of vertical injury passes inwards, backwards, cutting the underlying muscle, vessels, nerves enter into the peritoneum and piercing the upper part of small intestine measuring 2 x 1 cm x lumen deep. On dissection of horizontal injury passes inwards, downwards and cutting the underlying muscle, vessels, nerves and enter into the peritoneal cavity. Peritoneal cavity contains about 500 ml of fluid blood.*



xvii. *Vertically oblique stab injury 2 x 1 x 3 cm muscle deep noted over right lower chest corresponding to 8th inter costal space. The inner end is sharp and outer end is blunt. On dissection the wound passes inwards, downwards, cutting the underlying 8th inter costal muscle, vessels and nerves along with muscle plane.*

xviii. *Stab injury 7 x 3 cm x peritoneal cavity deep noted over outer aspect of right side lower abdomen just above ileac chest. The inner end is sharp and the outer end is blunt. On dissection, the wound passes inwards, downwards, cutting the underlying muscle, vessels, nerves and enter into the peritoneal cavity.*

xix. *Horizontal stab injury 3 x 1 x 4 cm bone deep noted over outer aspect of right side hip, 1 cm below the injury No.18. The inner end is sharp and the outer end is blunt. On dissection the wound passes inwards, downwards, cutting the muscle, vessels, nerves and partially cutting the right side ileum bone.*

xx. *Stab injury 3 x 1 x 5 cm peritoneal cavity deep noted over outer aspect of right side abdomen, 6 cm above mentioned wound no.18. The inner end is sharp and the outer end is blunt. On dissection the wound passes inwards, downwards, cutting the underlying muscle, vessels, nerves and enter into the peritoneal cavity.*

xxi. *Cut injury 4 x 1 cm x muscle deep noted over outer aspect of right lower thigh. On dissection the wound cutting the*



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underlying muscle, vessels and nerves along with the muscle plane.

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P.W.5 gave opinion that the deceased died of multiple stab injuries and its corresponding internal injuries.

14.P.W.6 is a neighbour whose evidence is hearsay. However, he witnessed the Observation Mahazar prepared by P.W.16. P.W.7 belongs to the same Village where the deceased and her parents were living. P.W.7 has witnessed the Seizure Mahazar showing the recovery of the murder weapon which is marked as M.O.9. P.W.8 is the Head Constable and the trainer of sniffer dog which was brought to the scene of occurrence. P.W.9 is the Sub-Inspector of Police who received the complaint from P.W.1 on 14.09.2016 at 8.30 p.m.

15.P.W.10 is the Doctor who has treated the accused when he was found consumed poisonous substance (sani powder) and was admitted in a Hospital in Palakad at 11.15 p.m. on 14.09.2016.



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16.P.W.11 is the Judicial Magistrate No.I, Coimbatore, who was called upon to record the dying declaration of the accused. He deposed to the manner in which the dying declaration was obtained from the accused. The dying declaration recorded by him has been marked as Ex.P16. The document Ex.P15 is the requisition from the Hospital to record dying declaration. Documents Exs.P15 and P16 were marked subject to objection raised by the counsel appearing for the appellant that the two documents were not filed along with final report. P.W.12 is the Assistant Professor in Government Hospital, Salem at Mohankumaramangalam. On the date of occurrence, he was working in the Intensive Care Unit at Coimbatore Medical College Hospital, Coimbatore. He was the one who gave requisition for getting dying declaration from the accused. He was also present along with the learned Judicial Magistrate who recorded the dying declaration of the accused. P.W.13 is also a Doctor who gave treatment to the accused who was in the Intensive Care Unit for about 7 days, after consuming poisonous substance on the date of occurrence, and thereafter,



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shifted to the General Ward.

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17.P.W.14 is the Head Constable of Annur Police Station. P.W.14 deposed regarding the inquest over the body of the deceased and he sent the dead body of the deceased to Government Hospital for autopsy. He also got the personal belongings of the deceased and handed over the same to the Investigating Officer by way of a Special Report marked as Ex.P18.

18.P.W.15 is the Photographer who took photographs which are marked as M.O.10 series. M.O.10 series marked through P.W.15 shows the photographs taken at the crime scene when he was called upon by the Inspector of Police after the complaint.

19.P.W.16 is the Inspector of Police, who conducted the whole investigation.

20.The trial Court, based on the postmortem report and the opinion of the Doctor that the death was caused due to multiple stab injuries caused by



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the murder weapon, came to the conclusion that the death was due to homicidal violence. In this case, the deceased was found dead in her house with multiple stab injuries. From the postmortem report and the evidence of the Doctor who conducted autopsy, it is evident that the deceased was attacked by the knife which is the murder weapon, received 21 stab injuries and the death was caused only due to multiple stab injuries and the corresponding injuries in the internal organs. Therefore, this Court also holds that the murder of the deceased was due to homicidal violence.

21.P.W.1, the mother of the deceased, P.W.2, the father of the deceased, P.W.3, the relative of P.W.1, and P.W.4, the owner of the neighbouring house, who had let out a portion of his property to the accused, have spoken about the motive. The deceased is a B.Sc. (IT) Graduate who was employed in a company. P.W.1 and P.W.2 have deposed to the effect that the accused had approached them earlier to give their daughter in marriage to him. He also threatened them with dire consequences if their daughter is not given in marriage to him. The evidence of P.W.1 and P.W.2 would show that the accused threatened to kill



their daughter and also to commit suicide, if they do not agree for the marriage of their daughter with the accused. It was on account of the inappropriate approach by the accused, the parents of the deceased (P.W.1 and P.W.2) appears to have reported to the neighbours, who instigated the landlord of the portion of building in which the accused was residing, to vacate him. The fact that P.W.1 and P.W.2 have fixed the marriage of their daughter, the deceased, with one Dinesh Kumar, who is working as a Teacher in a reputed School, is not in dispute. This Court has no reason to disbelieve the further statement that the betrothal function was also performed about few days prior to the incident. P.W.1 has also spoken as an eye-witness and had seen the accused with a blood-stained knife leaving the scene of occurrence through the backdoor by jumping over the compound wall of their house.

22.This Court noticed a delay of few hours in registering the complaint in this case and sending the FIR to the jurisdictional Magistrate. The trial Court has found that there was no suggestion put to the Investigating Officer about the reason for the delay and that therefore, no



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prejudice was alleged because of the delay in sending the FIR to the concerned Judicial Magistrate. The occurrence was on 14.09.2016 between 5.30 p.m. and 7 p.m. in the house bearing Door No.272/49, where the deceased was residing along with her parents. The murder took place in this premises and the time and date of death is not disputed. P.W.1 and P.W.2 found their daughter dead when they entered the house after visiting the local medical practitioner, at 7.00 p.m. Therefore, the death of deceased was reported to the Police only at 8.30 p.m. on 14.09.2016 and the complaint under Ex.P1 was lodged. An FIR was registered and copy of the same is marked as Ex.P11. This Court finds that no suggestion was put to P.W.1 or P.W.2 about the probabilities for the delay in lodging the complaint or sending the FIR to the jurisdictional Magistrate. Therefore, this Court is also of the view that the delay in sending FIR in this case is immaterial and does not affect the prosecution case.

23.The only question to be decided in this appeal is whether the prosecution has proved the charges against the appellant beyond reasonable doubt.



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24.From the entire evidence on record, the motive for the accused to commit murder of the deceased is established. In this case, P.W.1 and P.W.2 have spoken about the accused leaving the scene of occurrence with the murder weapon. This is a strong circumstance. The evidence of P.W.1 and P.W.2 cannot be discarded in the absence of any other strong circumstance. The evidence of P.W.1 to P.W.4 establishes strong motive for the accused. P.W.1 has categorically stated in her evidence about the conversation with the accused who had threatened her that the accused would murder the deceased and kill himself if her parents (P.W.1 and P.W.2) did not agree for the marriage of the accused with the deceased. The evidence of P.W.1 that she saw the accused leaving the scene of occurrence with murder weapon is probable having regard to the facts and the attending circumstances.

25.Learned counsel for the appellant submitted that the deceased and the accused were in love with each other and that there is no reason why the accused would kill his lady love. The learned counsel submitted that the



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deceased was not willing to marry the boy by name Dinesh Kumar and that it is the case of honour killing by the parents of the deceased. This Court finds no evidence to show that the deceased and the accused were in love with each other and their love was mutual. There was no independent evidence, love letters, or any evidence to show that the deceased was also in love with the accused. The fact that the deceased was wearing the marriage ring presented by her would-be by name Dinesh Kumar, is spoken to by P.W.16, P.W.1 and P.W.2. Therefore, the case of the accused that the deceased was killed by her parents is nothing but a story woven on behalf of the accused without any basis to save him.

26.Learned counsel appearing for the appellant pointed out that the distance between Annur and Palakkad is about 92 km and that the appellant was admitted in the Hospital at Palakkad at about 8.00 p.m. on the date of occurrence and that the murder was committed between 5.30 p.m. and 7.00 p.m. even as per the prosecution case and that therefore, the presence of the appellant at the scene of occurrence at the time of occurrence, is impossible. He also strongly submitted that the alibi pleaded by the appellant is



established in this case. Quite surprisingly, the Doctor who gave treatment to the accused is examined as P.W.10 and his evidence is specific that the accused got himself admitted at 11.15 p.m. on the date of murder, for consuming poison. The evidence of P.W.10 probabilises the fact that the accused was admitted in the Hospital in Palakkad only at 11.15 p.m. on the date of occurrence, and demolishes the alibi pleaded by the appellant. If really the accused was in Kerala at the time of occurrence, the same could have been proved by examining several witnesses or by producing material evidence. However, the accused has chosen a plea of alibi by stating that he was admitted in a Hospital in Palakkad at 8.00 p.m. and that therefore, the presence of the accused in the scene of occurrence on the same date between 5.30 p.m. and 7.00 p.m. is improbable. However, from the evidence of P.W.10, this Court finds that the appellant has come forward with a false story pleading alibi without any evidence to support his story.

27. Even though the learned counsel appearing for the appellant submitted that there was no previous complaint either by P.W.1 or her husband regarding criminal intimidation by appellant upon P.W.1 or



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members of her family, the evidence of P.W.1 and P.W.2 cannot be discarded. It is not the case of P.W.1 or P.W.2 that they had earlier preferred a criminal complaint when the accused posed a real threat to their daughter. Further, the evidence of P.W.1 and P.W.2 about the inappropriate demands of the accused and his threats are corroborated by examining other witnesses who are P.W.3 and P.W.4.

28.The admitted portion of the confession statement of the accused has led to the recovery of murder weapon which was hidden by the accused. The murder weapon was sent for forensic analysis and the blood group found in the murder weapon matches the blood group of the deceased. The evidence of P.W.5 that the injuries can be caused by the murder weapon which is marked as M.O.9 and the identity of the knife by P.W.1 are material evidence against the accused. The report on the analysis of the blood found in the murder weapon, which is marked as Ex.P23, and the group of blood which are found in the clothes of the deceased, further probabalise the case of the prosecution. The very fact that the accused had made an attempt to commit suicide on 14.09.2016 and was admitted in a Hospital at Palakkad at



11.15 p.m. shows that the occurrence on 14.09.2016 was something which the accused had earlier informed P.W.1 and P.W.2. The fact that the accused was under Intensive Care Unit for more than 3 days and that he was brought to Coimbatore for further treatment justifies the requisition for getting dying declaration. Even though the statement cannot be treated as dying declaration, as the accused survived an attempt to commit suicide, the circumstances are relevant to show the mental state of the accused to connect the incident with the words uttered by the accused to P.W.1 on hearing that the parents of the deceased are arranging marriage of their daughter with another person who is economically well and is commanding good reputation in the local.

29.The deceased was last seen with the accused. The prosecution has established its case by pleading and by bringing forth strong and cogent circumstantial evidence. Even though the onus to prove alibi is on the accused, the plea of alibi has not been proved by him. The case of accused about his alibi is proved to be false by examining P.W.10.



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30.Learned counsel appearing for the appellant then submitted that the prosecution failed to examine the neighbours of the *de facto* complainant and that, in the absence of proper investigation, the conviction of the appellant based on circumstantial evidence, when the chain of circumstances are not wholly connected, is perverse and that the trial Court failed to consider several important facts. The learned counsel also submitted that the prosecution failed to examine the would-be of the deceased and the medical practitioner who gave treatment to P.W.2 on the date of occurrence. The evidence of prosecution is that the marriage between the deceased and the said Dinesh Kumar was arranged and that the engagement function was also performed few days prior to the date of occurrence. The fact that the deceased was engaged to the said Dinesh Kumar, is not disputed by the accused. However, the defence case is that the deceased did not agree to marry the said Dinesh Kumar. Therefore, the examination of Dinesh Kumar to prove the engagement between Dinesh and deceased is not necessary. When P.W.1 and P.W.2 were examined, not even



a suggestion was put to P.W.1 disputing that P.W.1 and P.W.2 had gone to see the medical practitioner (country medicine). Therefore, the appellant cannot now find fault with the prosecution for not examining the country medical practitioner who gave treatment to P.W.2. The prosecution is required to examine all the witnesses whose evidence are relevant and material to prove a fact. In this case, the contention of the appellant that the prosecution failed to examine some of the persons, is not appealing to this Court in the absence of any relevance of their examination, having regard to the nature of evidence already let in by prosecution to prove the offence against the appellant. In this case, as pointed out earlier, the motive is established with cogent evidence. The only explanation offered by the appellant for making attempt to his life is that he was in love with the deceased and that on hearing the death of deceased, he made an attempt to commit suicide. However, the appellant has not let in any evidence to prove the said fact. On the contrary, the material evidence let in by prosecution leads to the only conclusion that the accused is guilty of the offence of committing murder of the deceased. The admissible portion of the confession leading to the disclosure and recovery of murder weapon cannot



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be ignored. Therefore, this Court finds that the prosecution has succeeded in proving its case by cogent evidence. The minor irregularities like delay in sending the FIR to the Court and other discrepancies cannot be considered as material, on which the accused can rely upon to prove his innocence.

31.Learned counsel for the appellant, except making the submissions which are dealt with in this judgment *supra*, has not pointed out any legal issues based on which the findings of the trial Court can be described as improper or unnatural or irregular. This Court finds no reason to interfere with the judgment of the trial Court convicting and sentencing the appellant for the offences under Sections 302, 449 and 309 IPC.

32.As a result, **this Criminal Appeal is dismissed** and the judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.169 of 2017, dated 19.09.2018, is confirmed.



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33.The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining sentence. Bail bond, if any, executed by the appellant, shall stand canceled.

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(S.S.S.R., J.) (S.M., J.)
05.01.2024

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Inspector of Police,
Annur Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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Judgment in
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