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CrI.A.No.1305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024

DELIVERED ON : 03.09.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CrI.A.No.1305 of 2023

Pavithra

... Petitioner

Vs.

State rep. by

The Inspector of Police (Law and Order),

D-5, Marina Police Station,

Chennai.

(Crime No.483 of 2019)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the judgment dated 17.10.2023 in S.C.No.86 of 2021 by the learned Sessions Judge, Mahalir Neethi Mandram, Allikulam, Chennai – 600 003 and acquit her in the above case.

For Petitioner : Mr.T.S.Srinivasan
Mr.G.S.Mahesh

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

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This appeal filed to set aside the judgment dated 17.10.2023 in S.C.No.86 of 2021 delivered by the learned Sessions Judge, Mahalir Neethi Mandram, Allikulam, Chennai and acquit the appellant from the above case.

2.The appellant/accused in S.C.No.86 of 2021 was convicted by the trial Court by judgment dated 17.10.2023 and sentenced to undergo 7 years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two months simple imprisonment for offence under Section 304(i) of I.P.C. and one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment for offence under Section 334 of I.P.C., against which, the present appeal.

3.The case of the prosecution is that PW1, a horse rider in Marina Beach, on 09.10.2019 at about 6.00 p.m., saw appellant sitting in the Beach along with two kids one female child aged about six years and male child



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aged about three years, crying. When he enquired the reason he was asked to leave the place. Thereafter he left 15 minutes later PW1 was come to the same place, saw appellant shouting in pain having M.O.1/blade, slitting the throat of both daughter, son and herself. PW1 snatched the blade from the appellant and threw it on a near by boat, called for help. PW5 on patrol duty in ATV vehicle in the beach sand came to the spot, somebody in the crowd by then informed 108 Ambulance and Ambulance was coming to the main road near Kannagi statue, all three injured taken in ATV vehicle to the main road, they were shifted to the Ambulance and taken to hospital. The de-facto complainant followed and visited the injured in the Gosha Hospital, Triplicane, on coming to know female child died and the appellant and her son sent to Children Hospital and Rajiv Ghandhi Government Hospital for treatment, PW1 lodged a complaint/Ex.P1 at about 7.30 p.m. with PW11, who registered a case in Crime No.483 of 2019 for offence under Sections 302, 307 and 309 of I.P.C. PW11 visited the scene of occurrence, prepared



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mahazar, enquired witnesses, visited hospital, enquired Doctors, collected medical records, conducted inquest on the body of the girl child and on conclusion of the investigation charge sheet filed.

4.During trial, on the side of the prosecution PW1 to PW11 examined, Exs.P1 to P21 marked and M.O.1 to M.O.6 produced. On the side of the defence no witnesses examined and no documents marked. On conclusion of trial, the trial Court convicted the appellant as above.

5.The contention of the appellant is that the presence of PW1 in the scene of occurrence and lodging Ex.P1/complaint highly doubtful, unbelievable. PW1 admits his signature in Ex.P1/complaint, but the occurrence narrated in the complaint recorded in F.I.R. are in variance to his deposition. In this case, Ex.P1/complaint becomes doubtful. Hence, the case to be thrown out on that score. PW1 in his evidence states that he does not know the name of the appellant and her two kids. But in the complaint/Ex.P1,



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the names of the appellant and her children given. It is also to be seen that the occurrence place is far away from the road. On the sand towards the water, there is no light in the scene of occurrence. The trial Court on its own gives reasoning, since PW1 a horse rider familiar to the beach, could have seen in the dim light which is subjective without materials.

5.1. From the rough sketch it is seen that the lights available in the service road, far away from the scene of occurrence and throw of the light is only upto 100 to 150 meters, but the scene of occurrence is more than 600 to 700 meters away. In this case, projected eye witnesses are PW1 and PW2. PW1 does not state about presence of PW2 and PW2 does not refer to PW1. Thus the presence of both PW1 and PW2 becomes doubtful. He further submitted that PW5/Patrol constable, who came in the AVT vehicle not mentioned presence of PW1 and PW2. The names of the appellant and her kids not known to anyone. It is not in the evidence that appellant gave details but in Ex.P2/Accident Register, her son's name Paramesh recorded and the



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address of Karaikudi found. In this case, PW5 attached to the respondent police who reached the scene of occurrence even before the complaint by PW1, who took the appellant and her two kids in his vehicle to the Ambulance, not informed the respondent police about the incident, on the other hand, PW1, a horse rider, who is at the mercy of the police, in the nature of stock witness lodges complaint and unfolds the case to the respondent. PW1 further submits that he followed the victims to Gosha Hospital, Triplicane to see the injured and thereafter he came to the police station. In this case, no one from Gosha Hospital examined as witnesses. PW1 admits his signature in the complaint but signatures found in FIR and in the deposition are in total variance, hence, the complaint Ex.P1 is a created document and the foundational fact of the case becomes doubtful and shaky.

5.2. PW10/Casualty Doctor at Government Omandurar Multi Speciality Hospital issued Ex.P7/Accident Register recording that a female girl brought dead with cut injury on the throat from Marina Beach opposite to



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Vivekananda House on 09.10.2019 at about 7.00 p.m, Ex.P8 Accident Register of the son, and Ex.P9 Accident Register of the appellant all issued by PW10. In the accident register it is recorded all three injured brought in 108 Ambulance. After first aid the injured boy referred to Government Children Hospital, Egmore, Chennai. The appellant referred to Rajiv Gandhi General Hospital and the female child, who was brought dead sent to Mortuary. Thus the presence of PW1 on 09.10.2019 at the relevant point of time witnessing the occurrence, following the ambulance, visiting Gosha Hospital and thereafter lodging the complaint becomes doubtful. But the trial Court solely relying on the evidence of PW1, convicted the appellant. He further submitted that 108 Ambulance Driver not examined as witness and fortifies the contention doubting the presence of PW1. Further PW1 a total stranger for the first time identifies the appellant in the Court. In this case, no Test Identification Parade conducted. The evidence of PW2 is in the nature of hearsay, a vendor in the Beach, who is also at the mercy of the police. PW3



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and PW4 horse riders in the Beach, witness to the observation mahazar and seizure mahazar and PW6 a freelance photographer in Marina Beach. All three not supported the case of the prosecution.

5.3. PW7 husband of the appellant and father of the victim children, his evidence is that the marriage between PW7 and appellant was on 08.04.2012 in Karaikudi. Out of their marriage, a girl baby Dhanushyasri was born on 02.03.2013 and a boy baby named Paramesh was born on 22.02.2017 to them. On 09.10.2019, he sent the appellant and his two children to Chennai to attend a function, during the evening hours at about 7.00 p.m. or 8.00 p.m. he received a phone call from the respondent police that his wife and children got hurt, taking treatment in the hospital. On enquiry, he came to know that somebody caused injury and snatched away gold chain from his wife and daughter. PW7 was treated hostile.



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5.4. PW8 Doctor attached to the Government Children Hospital, Egmore, who treated boy child Paramesh. PW9 Post-mortem Doctor confirms several injuries found on the body of Dhanushyasri and accepts suggestion it is possible the injury found could have been caused by using more than one weapon and by more than one person. He admits that he has not measured the injury but confirms there was multiple injuries. When the Court had put a question to the Post-mortem Doctor, he confirms his earlier statement that multiple injuries is not possible with MO1 and by one person.

6.He further submitted that the trial Court on the sole evidence of PW1, convicted the appellant. The trial Court observed that statement of the appellant recorded during treatment cannot be taken as dying declaration under Section 32 of Evidence Act or as statement under Section 164 of Cr.P.C but places reliance on the statement and convicted the appellant. Further reasons that as per Section 106 of the Evidence Act it is for the appellant to prove that no such occurrence took place, which is contrary to



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the legal principles. It is for the prosecution to prove existence of any fact and burden of proof lies with the prosecution. The non examination of anyone from Gosha Hospital and the Ambulance Driver is fatal to the case of the prosecution. The M.O.1 recovered from the scene of occurrence on the next day not proved in the manner known to law. In the observation mahazar though there is reference to M.O.1, P.W.3 and P.W.4, the witnesses to the observation mahazar not supported the case of the prosecution. Neither in the observation mahazar nor in Form 95, the size of the blade, its sharpness on which side and its physical features not recorded. PW9/Post-mortem Doctor confirm, the injury found cannot be caused with one weapon and by one person. In view of the above, prosecution failed to prove the case beyond all reasonable doubt and conviction of the appellant not sustainable and proper. He further submitted that the appellant/pathetic mother lost one child and now the surviving child is in care and custody of the appellant, should not become orphan and denied love and care of mother. Hence, prayed for



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allowing this appeal.

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7.The learned Additional Public Prosecutor opposed the contention of the appellant and submitted that on 09.10.2019 at about 6.00 p.m. the appellant along with her two children Dhanushyasri and Paramesh sitting on the sand in Marina Beach. At that time PW1, a horse rider who normally enquires the beach visitors whether they are willing for a ride in the horse, found the appellant sitting, crying along with her kids, PW1 enquired them, the appellant asked PW1 to move away and he left. Later when he came back to the spot, found the appellant raising her voice shouting and saw the appellant using a blade cutting the throat of her children and herself. Immediately, he rushed there snatched the blade from her and threw it in the nearby boat and called for help and public gathered. One of them informed 108 Ambulance. In the meanwhile PW5/Police Constable on patrol duty in his AVT vehicle, saw the crowd, enquired, took three injured in his vehicle to



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the main road, shifted them to the Ambulance, the driver of the Ambulance took the injured to the hospital. PW1 followed them to Gosha Hospital, Triplicane and on coming to know that one of the injured namely daughter of the appellant died, PW1 went to the respondent police, lodged a complaint to PW11, who received complaint at about 7.30 p.m., registered F.I.R., visited the scene of occurrence, enquired the witnesses, recorded statement and thereafter went to the Government Omanthurar Hospital, conducted inquest. Since it was dark, he visited the scene of occurrence on the next day morning, prepared Observation Mahazar (Ex.P12), Rough Sketch (Ex.P11) and seized the blade/M.O.1, plain sand and blood stained sand. PW10 Doctor attached to Omanthurar Government Multi Speciality Hospital received all three injured, issued Accident Registers (Exs.P7 to P9), gave first aid to the injured namely, the appellant and sent her to the Rajiv Gandhi Government Hospital and injured son to Egmore Children's hospital, finding the daughter brought dead, recorded in the Accident Register and the body was sent to the mortuary.



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PW9, the Doctor, who conducted the post-mortem and gave post-mortem report (Ex.P3) and final opinion (Ex.P4) that the deceased died of haemorrhage & shock due to cut throat injury. In the Post-mortem certificate he records, deceased child suffered multiple incised wound of varying sizes all over the front and sides of neck, incised wounds cuts the trachea in front carotid artery and jugular vein on the right side sparing the left side carotid artery and jugular vein and trachea is cut below the thyroid cartilage. On collection of medical records and examining Doctors, charge sheet filed before the Lower Court.

8.He further submitted that before the Lower Court, PW1 to PW11 examined and Exs.P1 to P21 marked and M.O.1 to M.O.6 marked. The trial Court on the evidence finding appellant brought her daughter and son from Bangalore, present in the Marina Beach, confirmed by PW7, her husband. Further, PW1 a total stranger having nothing to grind against the appellant, finding the appellant inflicting injury to the kids as well as to herself rushed



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to help her and attempted to save all the three and lodged complaint, PW1 identified appellant and M.O.1 in the Court. The trial Court finding the evidence of PW1 natural trustworthy, hence on the solitary evidence convicted the appellant. The appellant is unable to give any reason as to how occurrence took place and how all three sustained injuries. The appellant failed to discharge the burden exclusively within her knowledge. The Trial Court taking into the circumstances that the appellant, mother of children caused injuries due to sustained provocation which would fall under Section 304(1) IPC not under Section 302 IPC, convicted the appellant. Hence, prayed for dismissal of the appeal.

9.This Court considered the rival submissions and perused the materials available on record.

10.It is a case of mother, her two children sustaining injuries on their throat on 09.10.2019 in Marina Beach at about 6.00 p.m. PW5, Police



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Constable on patrol duty patrolling the beach in ATV vehicle, saw a crowd, enquired, found three injured gasping, took all the three in AVT vehicle from the beach sand to the main road, where 108 Ambulance on receipt of emergency call had come to the main road, all three shifted to the Ambulance, sent for emergency medical treatment. The appellant and her two children with injuries secured from Marina Beach at the relevant time, rushed to the Hospital in 108 Ambulance, reached Government Omandurar Multispeciality Hospital. The injured were received by PW10 who examined them, recorded the particulars about the place of incident, injuries found on them.

11.The injured when brought to Government Omandurar Hospital, PW10/Casualty Medical Doctor attended the three injured, issued Accident Register/Ex.P7 pertaining to girl child, Ex.P8 for the minor son and Ex.P9 for the appellant. From these documents, it is seen that all three got injured in Marina Beach on 09.10.2019 at about 6.00 p.m. The evidence of PW10 is



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that the injured minor son referred to Egmore Children Hospital for further treatment. PW8 the Doctor, who treated the minor son issued Ex.P2. The appellant referred to Government Rajiv Gandhi Hospital for treatment. The appellant and minor son survived, but unfortunately the fate of minor daughter was otherwise, she succumbed to injury. PW9 Doctor attached to Omandurar Government Hospital conducted post-mortem, issued post-mortem report/Ex.P3. Final opinion certificate/Ex.P4 confirming the death due to cut injury to the throat. Thus from the evidence of PW5, PW7, PW8, PW9 and PW10 it is confirmed the presence of appellant with two minor children in Marina Beach, opposite to Vivekananda Memorial on 09.10.2019 at about 6.00 p.m all three injury, transported in a AVT vehicle to 108 Ambulance, thereafter, taken to Omandurar Government Hospital. Injured appellant and her minor son, referred to Government Rajaji Hospital and Children's Hospital, Egmore for further treatment, both survived, as regards minor daughter, she was declared dead on arrival to the hospital, referred to



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Mortuary. Thereafter, post-mortem conducted, final opinion recorded that “The deceased would appear to have died of haemorrhage and shock due to cut throat injury”. Ex.P4 issued is confirmed by the Post-mortem Doctor/PW9. The deceased minor girl and injured minor son and injured mother/appellant were found together in Marina Beach is confirmed, all three rescued rushed to hospital, immediately attended by Doctors proved. The appellant/mother of the children could give no reason how injuries sustained by her including her minor children. The circumstances and chain of events leads to irresistible conclusion that the appellant mother is the cause and reason for the injuries and death. Whether the act of the appellant would amount to sustained provocation is the issue to be considered and to find whether Nallathangal's syndrome can be applied to the facts and circumstances of the case.

12.In this case, the appellant/mother along with two minor kids, a girl and boy aged about 6 years and 3 years all with cut throat injury found in



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Beach sand, rushed to hospital for treatment. The minor girl succumbed to throat cut injury and the mother and minor son survived, and now mother is convicted and in gallows.

13.It is seen that the occurrence had taken place due to domestic problems and psychological outburst. The minor boy is under the care and custody of his mother. The Division Bench of this Court in the celebrated case in *Suyambukkani* had carved off one more exception, “sustained provocation”. It would be apposite to extract the following paragraphs of *Suyambukkani* judgment.

“21. It is clear from the opinion of the important architects of the Indian codification that Anglo-Indian Codes, which were the first experiments in English language in the art of codification, in spite of their immense value, are far from being perfect and were intended to be overhauled from time to time. Therefore, though technically the exceptions to S. 300, I.P.C.. appear to be limitative they can no longer be considered so, after the efflux of time. In fact, Courts have added one more exception known as "sustained



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provocation", The leading decision in that field is the well known Nana-vati's case, A.I.R. 1962 S.C. 605. That decision is not the first one to take into consideration the situation of sustained provocation. There are previous decisions, which are reviewed in that case are: The Empress v. Khagayi, IL.R 2 Mad. 122; Boya Muni-gadu v. The Queen, ILR 3 Mad. 33; Murugien, In re AIR 1957 Mad. 541; Chervirala Narayan, In re, AIR 1958 A.P 235: 1958 1 A.W.R. 189 Balku Vs. Emperor, Thereafter several decisions have been pronounced and recently this Court dealt with the same subject in the following unreported cases; C.A. No. 70 of 1981 dated 15th December, 1982, C.A. No. 417 of 1983 dated 10th February, 1986, C.A. No. 184 of 1983 dated 6th February 1983 and C.A. No. 301 of 1984 dated 4th August, 1988. Though there has been here and there attempts in those decisions to bring the sustained provocation under Exception 1 to Section 300. I.P.C, there is a cardinal difference between provocation as defined under Exception 1 and sustained provocation. The only word which is common is "provocation". What Exception 1 contemplates is a grave and sudden provocation, whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back may even be a very trifling one. We are therefore far from grave and sudden



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provocation contemplated under Exception 1 to Section 300, I.P.C.

Sustained provocation is undoubtedly an addition by Courts, as anticipated by the architects of the Indian Penal Code.

22. Now that it is clear that the exceptions u/s 300, I.P.C, are not limitative, we have to examine whether Nallathangal's syndrome can be considered as one of the exceptions. Since the Code in its structure makes the Exceptions limitative, Courts have to show restraint on circumspection in adding Exceptions and such additions should be ejusdem generis. In this connection, it is necessary to examine what is the true nature of the Exceptions. The Exceptions are in the nature of important excusing circumstances and they have the following characteristics:

<i>Nature of the excusing circumstance</i>	<i>Premeditation</i>	<i>Ill-will towards the victim</i>
<i>Sudden provocation</i>	<i>No</i>	<i>Yes</i>
<i>Exception 2</i>		
<i>Private defence</i>	<i>No</i>	<i>Yes</i>
<i>Exception 3</i>		
<i>Discharge of public duty</i>	<i>Yes</i>	<i>No</i>
<i>Exception 4</i>		
<i>Sudden fight</i>	<i>No</i>	<i>Yes</i>
<i>Exception 5</i>		
<i>Consent of the victim</i>	<i>Yes</i>	<i>No</i>



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One thing is clear from the above analysis viz., in all the Exceptions either premeditation or ill-will is absent. Therefore, when both are present, it will be impossible to counter the matter as an exception.

27. As pointed out earlier, ill-will and premeditation should be both present in a case of murder. The absence of one of them coupled with an important excusing circumstance would transform the offence into a culpable homicide. In the present case, there is of course premeditation, but obviously no ill-will. The extreme course of family suicide, the mother along with her children, is clearly in our opinion an excusing circumstance equivalent to those enumerated in the Exceptions to Section 300. I.P.C. and will be therefore in the nature of an Exception, when the mother escapes and children die, bringing the offence to one punishable u/s 304, Part I, I.P.C.”

14. On the facts of the above case, it is clear and obvious that there is no ill-will in the minds of the appellant. The mother and son survived but daughter died. The appellant got persuaded that after her death the children



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will be uncared of and would suffer innumerable torments and she could not

reconcile with that idea. So, she decided to follow the Nallathangal's way.

Thus it is obvious that an act like that of appellant would not come within the meaning of murder, as contemplated in the Indian Penal Code. The appellant made a pathetic appeal for clemency, having seen death at close quarters.

After 10 months and 15 days spent in prison after conviction and 11 months and 20 days including the period of remand and during investigation, has overcome her deep aversion for her life and she is in the process of resettling and reconciling herself with her present life condition. The circumstances of the case are very sad and touching. The trial Court invoking Section 115 of the Mental Healthcare Act, 2017 had drawn a presumption that the appellant was under severe stress and hence, acquitted the appellant from charge under Section 309 of I.P.C. Thus the appellant under mental stress without ill-will taken the extreme step. Considering the state of mind and mental stress, the Trial Court convicted the appellant under Section 304(1) IPC and 334 IPC.



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15. On considering the facts and circumstances of the case and the efflux of time between the occurrence and denying the love and care of the appellant would make the minor son orphan, this Court is of the view that sentencing the appellant to the period already undergone would meet the ends of justice. In view of the above discussion taking cue from the *Suyambukanni* case, this Court finds that real and substantial justice would be done to the appellant and to minor son though sustaining conviction but sentencing the appellant to the period already undergone by her.

16. In the result, the appeal is allowed in part, the appellant found guilty of an offence under Sections 304(i) and 334 of I.P.C and is sentenced to imprisonment for the period already undergone by her. The appellant is hereby directed to be released forthwith.

03.09.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

rsi

Note: Issue order copy on 04.09.2024.



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- 1.The Inspector of Police (Law and Order),
D-5, Marina Police Station,
Chennai.
- 2.The Sessions Judge,
Mahalir Neethi Mandram,
Allikulam, Chennai.
- 3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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**Pre-delivery order in
Crl.A.No.1305 of 2023**

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