



Crl.A(MD)No.263 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Shanmugaraj

... Appellant/sole accused

Vs.

The State rep. by
The Inspector of Police,
Tuticorin North Police Station,
Tuticorin District.

(in Cr.No.150 of 2015)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.461 of 2015 on the file of the I Additional District and Sessions Court, Tuticorin, dated 04.12.2019 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.C.Mayilvahana Rajendran

For Respondent : Mr.E.Antony Sahaya Prabahar,

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/sole accused in the judgment dated 04.12.2019 passed by the I Additional District and Sessions Court, Tuticorin in S.C.No.461 of 2015 by convicting and sentencing the appellant for the offence punishable under Section 449 IPC and sentenced to undergo seven (7) years months rigorous imprisonment and to pay a sum of Rs.5000/- in default, to undergo one year rigorous imprisonment and for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo one year rigorous imprisonment.

2. The case of the prosecution in brief are as follows

(i) The complainant is the wife of the deceased. Deceased



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was having three sisters and two brothers. His sister Boopathy was married to one Shanmugaraj, the accused, four years back. Smt.Boopathy and her husband, the accused had misunderstanding, she came to her parental home and was residing with her mother in the adjacent house of the deceased for the past two weeks. The accused often came to the house of the deceased and requested him to send his wife back and quarrelled with him. Her husband and others shouted at him and sent him back.

(ii) Her husband was the eldest son of the family. The accused threatened her husband to reunite him with his wife, or he will go to any extent. Since the wife of the accused was not ready to go with him, he was annoyed and had animosity with her husband.

(iii) On 20.3.15, at 2:45 PM, accused came to take back his wife, Smt.Bhoopathi. He stood outside the residence of the deceased and asked her whereabouts, for which the deceased replied that he is unaware about her whereabouts, for which the accused abused the deceased as

“ஏல புண்ட மவனே, நீ உயிரோடு இருந்தால் நான் என் பொண்டாட்டியுடன்



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வாழ்முடியாது” and took a billhook from his hip and chased him with intention to kill him.

(iv) The complainant's husband due to fear ran into his bedroom, and the complainant was screaming for help, after hearing the same, her mother-in-law Parvathi, her brother-in-law Balakrishnan, her nephew Ramesh and relative rushed to her house.

(v) The accused entered into the bedroom and shouted at the deceased “இத்தோடு செத்து ஒழில் கூதிமவனே.” and inflicted injuries, on his right side face, right side chest, right neck and right shoulder. When her husband tried to warned off the attack, his wrist got severed. The accused further attacked on his right ear, chin region, right elbow joint, right knee joint and all other parts indiscriminately. Her husband was lying in a pool of blood. All of them froze in shock. The accused threatened them with dire consequences and ran away on the western side. Thereafter, she found that her husband was dead and hence, she lodged the complaint.



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(vi) P.W.14, Thiru Babu Lal, Sub Inspector of Police

Tuticorin Central Police Station, received the complaint on 20.03.2015 at 15.30 hours and registered FIR in Crime No.150/2015 under Sections 294(b), 449, 302, 506(ii) IPC, which was marked as Ex.P9. He forwarded the complainant and the FIR to the Judicial Magistrate Court No.II, Tuticorin, through women Constable Subathra and forwarded copies to the higher officials and to the Inspector of Police through Head Constable Sankaran for further course of action.

(vii) P.W.16 Thiru.Suresh Kumar, Inspector of Police after receipt of the FIR, went to the place of occurrence and prepared observation mahazar-EX.P2. In the presence of same witness, he recovered blood stains in a cotton.

(viii) Thereafter, he conducted inquest on the dead body in the presence of Panchayathar and prepared inquest report - Ex.P14. He had sent the dead body for postmortem through Head Constable Sankaran at about 8.00 a.m., to the Tuticorin Government Medical College, mortuary.



(viii) P.W.15 Dr.Uday Kumar conducted autopsy and found the following injuries on the dead body :

Following ante mortem injuries are noted on the body:-

1) A cut injury of size 3cms x 1cm x bone deep seen in the right wrist joint.

2) A cut injury of size 2cms x 1cm x soft tissue deep seen in the right forearm.

3) A cut injury of size 5cms x 3cms x bone deep seen in the right elbow joint.

4) A cut injury of size 8cms x 4cms x bone deep seen in the right side of neck.

5) A cut injury of size 18cms x 3cms x cranial cavity deep of face seen extending from right parietal to right side.

6) A cut injury of size 6cms x 2cms x cranial cavity deep seen in the right side of head.

7) A cut injury of size 7cms x 3cms x cranial cavity deep seen in the right temporal region.

8) A cut injury of size 6cms x 4cms x soft tissue deep seen in the back of neck.

9) A cut injury of size 5cms x 3cms x soft tissue deep seen in the right knee joint.



10) *A cut injury of size 8cms x 2cms x soft tissue deep seen in the vertex.*

11) *A punctured wound of size 4cms x 2cm x bone deep seen in the right upper arm.*

12) *An abrasive contusion of size 8cms x 1cm x soft tissue deep seen in the back of right shoulder.*

13) *A laceration of size 12cms x 4cms x soft tissue deep seen in the left lower forearm.*

Right hand amputated at the level of wrist joint.

On dissection of Scalp, Skull, Dura and Brain:-

A comminuted fracture seen extending from left parietal passing through right frontal bone and right zygoma. A parietal bone of length 3cms found missing on the right side. Dural tear of length 10cms seen in the right parietal and frontal region. Sub arachnoid haemorrhage seen over the Left parietal, frontal, temporal and right temporal lobes. Right frontal lobe lacerated. Right anterior cranial fossa showed comminuted fracture.

Other findings:-

Peritoneal cavity-normal. Pleural cavity-normal. Pericardium contained about 10ml of straw colored fluid. Heart-normal and chambers empty. Coronaries patent. Larynx and trachea normal. Hyoid bone-intact. Lungs, Liver, Spleen and Kidneys-normal and cut section pale.



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Stomach-contained about 200ml of partially digested food particles, nil specific smell, mucosa pale. Small intestine-contained about 60ml of digested food particles, nil specific smell, mucosa pale. Bladder-empty. External genitals normal.

Note:- Viscera sent for chemical analysis and blood preserved for biological analysis.

OPINION:-

The deceased would appear to have died of shock and haemorrhage due to multiple cut injuries sustained by him. Death would have occurred 12-24hrs prior to the autopsy. However, the final opinion reserved due to pending chemical examiner's report.

(ix) P.W.16 Thiru.Sureshkumar, Investigating Officer examined witnesses Shanta, Ramesh, Parvathi, Balakrishnan, Madhurakani, Sandhanaraj, Pitchaiammal, Thiru.Babu Lal-Sub Inspector of Police, Thiru.Shankararn - Head Constable 632, Sandanaraj and Nixon and recorded their statements.

(x) He recovered the dresses worn by the deceased viz., white and blue striped full hand shirt, blue and white flowered Lungi,



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Jackie brief under form 91 and sent the same to the Judicial Magistrate for chemical analysis.

(xi) The accused surrendered before the Judicial Magistrate No.II on 23.03.2015. The Investigating Office filed an application before the Judicial Magistrate with a request for police interrogation on 26.03.2015 and took the accused to the Police Station, recorded his confession statement in the presence of Village Administrative Officer-Thiru.Balasubramanian, Village Assistant-Sundar, and recorded his confession statement under Ex.P.15 and recovered the billhook – M.O.1 under recovery Mahazar Ex.P4. He examined witnesses Balasubramanian, Sundar and recorded their statements.

(xii) On 31.03.2015, he sent a request letter to the Magistrate to send the material objects for chemical analysis. He had examined Dr.Suhantha Kumar, Thiru.Balamurugan - Forensic Officer, Thiru.Kasi Viswanathan, Head Clerk, Judicial Magistrate Court No.2, Tuticorin, Thiru.Shankaran, Head Constable and recorded their statements. The chemical analysis report was marked as Ex.P17. He completed his investigation and filed charge sheet under sections 294(b), 449,



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302 and 506(ii) IPC.

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3. On receipt of the records, the Judicial Magistrate No.II, Tuticorin took up the case in P.R.C.No.17 of 2015 and issued summons to the accused. After appearance of the accused, copies of all the prosecution documents and witnesses were furnished to him free of cost under Section 207 Cr.P.C. Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District Judge, Tuticorin, under Section 209(A) Cr.P.C. for further action.

4. The Principal District Judge, Tuticorin received the case records and made over the case to the I Additional District and Sessions Judge, Tuticorin for disposal according to law.

5. After receipt of the case records, the learned I Additional Sessions Judge, Tuticorin framed charges against the accused under Sections 294(b), 449, 302 and 506(ii) IPC, read over the same and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.



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6. In order to prove the case of the prosecution, on the side of the prosecution, P.W.1 to P.W.16 were examined and Ex.P1 to Ex.P19 were marked and Material Objects M.O.1 to M.O.5 were produced. On the side of the accused, no witness was examined.

7. After full trial, the trial Court convicted the accused under Sections 449 and 302 IPC, for the offence punishable under Section 449 of IPC, sentenced to undergo seven years rigorous imprisonment and to pay a sum of Rs.500/- in default, to undergo one year rigorous imprisonment and for the offence under Section 302 IPC, sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo one year rigorous imprisonment, against which, the present Criminal Appeal is filed on the following among other grounds:-

(a) That both PW1 and PW2, who are wife and mother of the deceased, both are interested witnesses. However, the evidence of the above witnesses not collaborated with each other. PW2 admitted that she was not residing in the current place and she was a chance, her evidence could not be rejected on the sole ground of chance witness but she should to explain under what circumstances she was present in the place



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of occurrence, but she failed to explain. Hence, her presence is highly doubtful.

(b) That both PW1 to PW4 and PW8 are interested witnesses. The occurrence said to have been taken place in the house of the deceased house which was surrounded with residential houses. But the prosecution failed to examine independent businesses.

(c) PW4 admitted that he arrived to the place of occurrence only after the occurrence, he is a chance witness and his evidence could not be relied upon by the prosecution.

(d) That the wife of the accused Boopathy was present in the occurrence which was admitted by PW2. But the prosecution failed to examine her and not cited as a witness. She is a material witness who could speak about the real occurrence, but the prosecution suppressed her evidence.



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(e) He further argued that P.W.1 in her cross examination admitted that P.W.2's saree's contain blood stains, but the same was not recovered. As they were not present in the place of occurrence, their saree did not contain blood stain, hence, not recovered by the investigating agency. The prosecution has not come to the court with clean hands.

(f) That P.W.2 admitted that before registering the FIR, the investigating officer arrived to the place of occurrence and recorded statement from wife of the appellant which is the first information and the same was suppressed by the prosecution. Ex.P1 is hit by 162 Cr.P.C.

(g) That there is a delay in sending the FIR to the learned Judicial Magistrate No.2, Tuticorin and the same was not properly explained by the prosecution.

(h) He further argued that Even assuming that the case of the prosecution is accepted as projected by the prosecution, the appellant could not be convicted under section 302 IPC, he may be convicted



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under section 304(ii) IPC. As per the prosecution, the appellant had repeatedly requested the deceased to send her wife to lead peaceful matrimonial life. But he was abused by the deceased and was assaulted by the deceased prior to the occurrence. On the date of occurrence also, there was a quarrel between appellant and the deceased. Thereafter only the appellant said to have assaulted the deceased. The occurrence had taken place without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel.

(i) He further argued that the prosecution has failed to prove the case beyond all reasonable doubt and the witnesses have not given clear evidence. They are inconsistent with each other. There are material contradictions and improvement in the version of the prosecution case and hence, the judgment of the trial Court is liable to be set aside.

8. The learned Additional Public prosecutor appearing for the respondent argued that P.W.1 to P.W.4 are eye witnesses and all of them clearly proved that on the date of occurrence, the accused came with an intention to attack the deceased. The evidence of eyewitnesses is supported by medical evidence. The blood stains on the clothes worn by



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the deceased were found as 'O' blood group. The confession and recovery were also proved. The accused and his wife were living separately due to misunderstanding between each other. The wife of the accused was staying in her parental house and therefore, the accused had quarrel with the deceased to send her back, since she has not returned, attacked the deceased with knife and caused multiple injuries. The prosecution proved the case beyond all reasonable doubt that the accused committed the offence and therefore, prayed that no interference is required and the Criminal Appeal is liable to be dismissed.

9. Heard the learned counsel on either side and perused the materials available on record.

10. Now this court has to decide whether the prosecution has proved the offence against the accused beyond all reasonable doubt, if so, whether the offence committed by the accused falls under Section 302 IPC or 304(ii) IPC.

11. On careful perusal of the entire records, the prosecution



case unfolded from the evidence of P.W.1 to P.W.15 is as follows:

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(a) P.W.1, the complainant and an eyewitness to the occurrence deposed that the marriage between accused and the sister of her husband held four years back and they blessed with a boy baby. Due to misunderstanding Smt.Boopathy, wife of the accused and sister of the deceased came to her parent's house, which is situated adjacent to her house. Both her husband and accused often had quarrel with regard to family problem. Her husband supported his sister.

(b) On 20.03.2015at 2.45 p.m., herself, her husband and mother-in-law were sitting in front of her house, at that time, accused came and questioned about the whereabouts of his wife. Her husband informed that she was not available in the residence. The accused abused him with filthy language and stated that if he did away with her husband, his family will be united. Her husband due to fear ran into the bedroom, the accused chased him attacked on his chin, ear, head, chest, etc., when the deceased tried to prevent the attack, his wrist was severed. Thereafter, due to injury her husband was lying in a blood. She was shocked and unable to do anything. The accused ran away with the knife



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and she lodged the complaint Ex.P1, she identified the weapon which was marked as M.O.1.

(c) P.W.2 is the mother of the deceased. She also supported the version of P.W.1. She stated that the accused, her son-in-law came to the house of P.W.1 and questioned about the whereabouts of his wife for which the deceased Murugan stated that he is not aware about her whereabouts. The accused shouted at the deceased that he was the reason for not sending his wife and if he killed him, he can take his wife with him. Immediately, out of fear, his son ran inside the bedroom. The accused chased him and inflicted injuries all over the body. They raised hue and cry. The accused threatened them and fled away from the place of occurrence.

(d) P.W.3, another eyewitness also supported the version of P.W.1 and P.W.2.

(e) P.W.4, another eyewitness stated that on 20.03.2015 at about 02.45 p.m., she went to the house of Murugan, the deceased. At



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that time, P.W.1 to P.W.3 and deceased were present. The accused asked the deceased Murugan to send his wife with him, for that Murugan told him that he will speak. The accused shouted at him that he would not able to rejoin with his wife till Murugan was alive and chased him with a billhook. Murugan ran into the bed room, the accused chased him and attacked the deceased indiscriminately with billhook all over the body and threatened them and fled away.

(f) P.W.8 Deposed that on 20.03.2015 at about 2.45 p.m., he went to the residence of Murugan, both the accused and deceased had quarrel. Suddenly, he heard screams. The accused came out of the residence. He only attacked Murugan.

(g) P.W.6 one of eyewitness did not support the prosecution case and turned hostile.

(h) P.W.7 deposed about the preparation of observation mahazar and rough sketch.



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(i) P.W.9 Village Administrative Officer spoke about the arrest, confession and recovery. He stated that on 26.03.2015 at about 3.00 p.m., as per the request of the Inspector of Police, Vadapagam, himself, and his Assistant went to the Police Station. He found the accused in the Police Station and the Inspector examined him and the accused confessed about the crime and the same was recorded by the Inspector of Police and he had recovered the billhook in a recovery mahazar.

(j) P.W.10 Thiru.Balamurugan in his evidence stated that he received material objects, namely, blood stained cotton, blue colour full hand shirt, blue colour Lungi, green colour brief, billhook ad-measuring 43 c.m., and after chemical examination, found blood stains in all the material objects. The forensic report has been marked as Ex.P6. The above materials were sent to serology Department for grouping test and item Nos.2 to 4 were found with human blood 'B' group and in item Nos.1 and 5 result of grouping test is inconclusive and the report was marked as Ex.P7



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(k) P.W.14 Thiru.Babulal, Sub Inspector of Police spoke

about the registration of FIR.

(l) P.W.15 Dr.Uday Kumar spoken about the injuries found

on the dead body.

(m) P.W.16, Thiru.Suresh Kumar, Inspector of Police

deposed about the investigation.

12. It is the contention of the learned counsel for the appellant that P.W.1 and P.W.2 are close relatives of the deceased. P.W.2, is not a resident of occurrence place; she admitted that she was residing in another place. Therefore, P.W.2 is a chance witness and she has to explain her presence in the place of occurrence.

13. P.W.1, who is the wife of the deceased, the occurrence to took place in their bedroom. Both herself and the deceased were living in the same house. A suggestion was put forth by the appellant counsel during the cross-examination of P.W.1 that on the date of occurrence she



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went to a flower company for work. The same was denied by P.W.1. The learned counsel for the appellant failed to prove that at the time of occurrence, P.W.1 was employed in a flower company. The presence of P.W.1 is quite normal as the occurrence took place in her house and the deceased is her husband. Therefore, the contention of the appellant counsel that presence of P.W.1 is doubtful is rejected.

14. As far as the presence of PW2 is concerned, PW1 in her complaint Ex.P1 clearly mentioned in the complaint that at the time of occurrence P.W.1 was present, in her evidence also she categorically stated that when the accused attempted to attack her husband, she screamed for help, her mother-in-law Parvathi, her brother-in-law, her sister's, son Ramesh, relatives, Madurakani and others came inside her house. Further, it is proved that P.W.2 was residing, next to the house of the deceased. In the rough Sketch Ex.P13, also it was clearly mentioned that P.W.2's house is situated next to the house of the deceased and her presence could not be doubted.

15. Further P.W.2 is the mother-in-law of the accused, and she has no reason to falsely implicate her son-in-law in the crime after



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knowing well that her daughter's life would be affected. The evidence of P.W.1, P.W.2 are clear, cogent, corroborated, consistent, and there is no ground to suspect their presence in the place of occurrence. Except minor contradiction, which is quite natural, no major contradiction is available in their evidence apart from PW1 and PW2. Therefore, the contention of the appellant's counsel that she is a chance witness is not acceptable.

16. The appellant counsel further argued that P.W.3, P.W.4, and P.W.8 were not residing, in the place of occurrence and their presence create suspicious. We are unable to accept the contention urged in this behalf. Infact the above witnesses during cross examination admitted that they were not residing nearby the place of occurrence.

17. However, their evidence could not be rejected on the sole ground that they were not neighbours. It is to be noted that P.W.1 in her complaint which is the first information report categorically mentioned the name of eye witnesses who were present at the time of occurrence. The occurrence took place at 14.45 hours and the complaint was lodged at 15.30 hours within 40 minutes, FIR was also registered at 16.00 hours and despatched to the court on the same day at 22.30 hours.



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The object of the first information report from the point of view of the informant is to set the criminal law in motion, and from the point of view of the Investigating Authorities to obtain information about the alleged criminal activity, so as to enable to take suitable steps to trace and bring the guilty to book.

18. We rely on the judgment in Thulia kali Vs. The State of Tamil Nadu reported in AIR 1973 Supreme Court 501, in which the Supreme Court held as follows :-

“The first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as, the names of eye witnesses present at there scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a Creature of afterthought. It is therefore essential that the delay in lodging the report should be satisfactorily explained.”



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19. In this case, the FIR has been registered within short period of occurrence, the deceased is none other than her husband, and in that FIR the informant set out name of the eye witnesses, if the witnesses were not present, it could not be possible for her to mention those names when she was in utter shock.

20. The second point raised by the appellant that the witnesses are relatives and interested witnesses. Though the house of the deceased is surrounded by several houses, no independent witnesses were examined.

21. We hold that evidence of interested witnesses cannot be discarded. However, it should be examined with care, A close relative who is a natural witness cannot be considered as interested witness.

22. We rely on the judgment in Seeman @ Veeranam vs State, rep. by Inspector of Police reported in AIR 2005 SUPREME COURT 2503, it was held as follows:

“It is now well settled that the evidence of



witness cannot be discarded merely on the ground that he is a related witness or the sole witness, or both, if otherwise the same is found credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness.”

23. In Jayabalan vs. U.T. of Pondicherry [(2010)1 SCC 199],
the Hon'ble Supreme Court has held as follows :

“That a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim.”



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24. The learned counsel for the appellant further argued that during cross examination, PW2 admitted that PW1's saree contained blood stains, but the same was not recovered by the Investigating Officer due to the fact that they were not present and their saree did not contain blood stain. Non-recovery of blood stained saree of the complainant is not fatal to the prosecution case, if the evidence of witness inspires the confidence of the Court. The learned counsel argued that on the date of occurrence the deceased consumed alcohol and created problem with accused and also attacked him for which no evidence available. In this regard we rely on the evidence of eyewitnesses, corroborated with medical evidence. P.W.15, Dr Uday Kumar who conducted autopsy, noted the following injuries on the dead body :

“Following ante mortem injuries are noted on the body:-

1) A cut injury of size 3cms x 1cm x bone deep seen in the right wrist joint.

2) A cut injury of size 2cms x 1cm x soft tissue deep seen in the right forearm.

3) A cut injury of size 5cms x 3cms x bone deep seen in the right elbow joint.



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4) *A cut injury of size 8cms x 4cms x bone deep seen in the right side of neck.*

5) *A cut injury of size 18cms x 3cms x cranial cavity deep of face seen extending from right parietal to right side.*

6) *A cut injury of size 6cms x 2cms x cranial cavity deep seen in the right side of head.*

7) *A cut injury of size 7cms x 3cms x cranial cavity deep seen in the right temporal region.*

8) *A cut injury of size 6cms x 4cms x soft tissue deep seen in the back of neck.*

9) *A cut injury of size 5cms x 3cms x soft tissue deep seen in the right knee joint.*

10) *A cut injury of size 8cms x 2cms x soft tissue deep seen in the vertex.*

11) *A punctured wound of size 4cms x 2cm x bone deep seen in the right upper arm.*

12) *An abrasive contusion of size 8cms x 1cm x soft tissue deep seen in the back of right shoulder.*

13) *A laceration of size 12cms x 4cms x soft tissue deep seen in the left lower forearm”*

This corroborates the evidence of P.W.1 and other eyewitnesses. The doctor clearly stated that there is no poison or other substance found in



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internal organ of the deceased. If he had consumed alcohol it would have been referred in the viscera report. The evidence of eyewitness is corroborated by the medical evidence. The accused inflicted 14 injuries, the injuries mentioned in serial Nos.4, 5, 7, 8, 10 were found in the vital part of the body. Other injuries are also grievous in nature. The cause of death was mentioned as due to multiple injuries and bleeding from the injuries. The accused attacked the deceased indiscriminately and caused the death.

25. The learned counsel for the appellant stated that it is admitted by P.W.2 in her cross examination that at the time of occurrence, the wife of the accused Smt.Boopathy was available in the residence of P.W.2, but she was not examined, who is a vital witness. The Investigating officer clearly stated that she was not found in the place of occurrence. P.W.1 also clearly stated that in her complaint as well in her evidence that on the date of occurrence since the wife of the accused was not found in her home and came to the residence of the deceased and asked the deceased about her whereabouts. When deceased stated that he is not aware, thereafter he became wild and attacked the deceased. Therefore, it is not proved that the wife of the deceased was available in



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the place of occurrence and that she was not examined by the Investigating Officer.

26. On a careful perusal of the entire records and evidence, it is revealed that the prosecution has clearly proved beyond reasonable doubt that the offence was committed by the accused.

27. The learned counsel for the appellant argued that the appellant could not be convicted under section 302 IPC and he may be convicted under section 304(ii) IPC because, as per prosecution accused repeatedly requested the deceased to send her wife to lead peaceful matrimonial life, but he was abused by the deceased and he was assaulted by the deceased. On the date of occurrence, also there was a quarrel between the appellant and the deceased, thereafter, only appellant assaulted the deceased. The occurrence was said to have taken place without premeditation but occurred in a sudden fight in the heat of passion upon a sudden quarrel.

28. On the side of the appellant /accused, no evidence was



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adduced to prove that there was a fight between the accused and the deceased on the date of occurrence.

29. All the eye witnesses in one voice stated that the accused alone quarrelled with the deceased and nobody stated that the deceased and the accused had a fight or quarrel with each other. Further, it is proved that the accused had previous enmity with the deceased for not sending his wife with him. Further, on the date of occurrence, the accused came with a weapon viz., billhook with intention to attack the deceased. He had shouted at the deceased that he will do away the deceased; when the deceased due to fear ran inside the bedroom in order to escape from the attack, the accused chased him and inflicted multiple injuries viz., 13 injuries all over the body of the victim. The medical evidence proves that the deceased died only due to the excess bleeding.

30. For better appreciation, it is relevant to extract Section 299 IPC :-

“299. Culpable homicide.— Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily



injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide”.

31. For better appreciation, it is relevant to extract Section 300 IPC :-

“300.Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

Exception to Section 300 IPC

Exception 1- When culpable homicide is not murder-



Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing. or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defense

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding. a public servant acting for the advancement of public justice, exceeds the



powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

32. In this case, the act of the accused does not fall under any exception. It has been proved that he had an intention to commit the offence, brought a knife, chased the accused with weapon, inflicted number of injuries with knowledge that if he inflicted injury on vital part, it would be sufficient to cause the death of victim, and inflicted injuries all over bodies which is sufficient in all probabilities to cause death and caused death. Therefore, the act of accused does not come under the purview of any exception under Section 300 IPC. It is not possible to



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hold that the appellant did not commit the offence under Section 300 IPC but committed the offence under Section 299 IPC culpable homicide not amounting to murder. The argument advanced by the learned counsel for the appellant is rejected by us.

33. On careful perusal of entire records, we conclude that there is no material available to interfere with the judgment of the trial Court. The Criminal Appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.

34. Accordingly, the Criminal Appeal stands dismissed and the judgment passed in S.C.No.461 of 2015 on the file of the I Additional District and Sessions Court, Tuticorin, dated 04.12.2019 is hereby confirmed.

(G.R.S., J.) & (R.P., J.)
06.12.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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To
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- 1.The I Additional District and Sessions Judge,
Tuticorin.
- 2.The Inspector of Police,
Tuticorin North Police Station,
Tuticorin District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

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Judgment in
CrI.A(MD)No.263 of 2020

06.12.2024