



Crl.A.(MD)No.342 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.10.2024

PRONOUNCED ON : 04.12.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Ponvandu @ Ponraj

... Appellant/sole accused

Vs.

**The State rep. By
The Inspector of Police,
Thalaimuthu Nagar Police Station,
Thoothukudi District.**

(in Cr.No.481 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.3 of 2017 on the file of the II Additional District and Sessions



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Court, Thoothukudi, dated 19.08.2019 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.G.Thiruvartselvan

For Respondent : Mr.A.Thiruvadi Kumar,

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 accused/appellant in the judgment dated 19.08.2019 by the II Additional District and Sessions Judge, Thoothukudi, in S.C.No.03 of 2017 convicting and sentencing the appellant for the offence punishable under Section 302 to undergo imprisonment for life and to pay a sum of Rs.1,000/- and in default to undergo six months simple imprisonment.

2. The appellant submitted that originally the respondent herein registered a case in Crime No.481 of 2015 dated 24.07.2015 for the alleged



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offence under Section 302 IPC. After completion of investigation, the respondent Police filed a charge sheet before the learned Judicial Magistrate No.II, Thoothukudi, in PRC.No.47 of 2016. Subsequently, he committed the case to the II Additional District and Sessions Judge, Thoothukudi and the same was taken on file in S.C.No.03 of 2017. The learned II Additional District and Sessions Judge, Thoothukudi, framed a charge against the appellant for the offence of murder. The trial Court examined 12 prosecution witnesses and marked 10 exhibits. After that trial Court convicted the appellant for the offence under Section 302 IPC. Aggrieved over the said judgment, the appellant has filed this Criminal Appeal.

3. The case of the prosecution in brief is as follows:

(a) The complainant, Thiru.Thilak, who is an advocate by profession, on 24.07.2015, was staying in his residence due to 30th death anniversary of his father.

(b) Both Ganesa Boopathy (deceased) and Ponraj (accused) were employed by him. On that date at 11.30 a.m., he asked Ganesa Boopathy to go out and purchase petrol for his father's two wheeler and



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gave Rs.100/- to Ganesa Boopathy for purchase of petrol. He returned back at 9.00 p.m., with petrol in a plastic bottle. P.W.1 asked him why he had come late, for which he replied that he went to purchase petrol at Swamy Petrol Bunk situated at Ettayapuram Road at 7.30 p.m., and at that time, he was attacked by four unknown persons. He was taken to a nearby plot situated near Sankarapery and the said persons questioned him as to who had handed over the bike to him.

(c) Immediately, P.W.1 along with Ganesa Boopathy (deceased), Ponraj (accused), brother-in-law, Mahesh (P.W.2) went to the said place, but found nobody there. Then they came back to the residence.

(d) At 10.25 p.m., he parked his car in front of his house and entered into the house. At that time, Ponraj attacked Ganesa Boopathy with a bill-hook on his left hand, left chest, right index finger, thumb finger, left side occipital region, right elbow, etc., and indiscriminately inflicted injuries and committed murder.

(e) Both the complainant, P.W.1 and his brother-in-law, P.W.2



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held the accused tightly and prevented him from escaping and thereafter, he called the Police and handed him over to them. Then, P.W.1 lodged a complaint Ex.P.1.

(f) P.W.10 Thiru.Shiyam Sundar, Sub Inspector of Police of Thalamuthu Nagar Police Station registered FIR/Ex.P.10 in Crime No.481 of 2015 for the offence under Section 302 IPC.

(g) Thereafter, P.W.11 Thiru.Felix Suresh Peter, Inspector of Police, Thallamuthu Nagar Police Station received the FIR went to the place of occurrence at 00.45 hours, prepared observation Mahazar-Ex.P.2 and rough sketch-Ex.P.11 in the presence of witnesses Antony Raj, Rajesh and also recovered blood stained cement pieces, ordinary cement pieces - M.O.2 and M.O.3 by a recovery mahazar - Ex.P.3.

(h) P.W.11 examined the witnesses Thilak, Mahesh, Antony Raj and Rajesh and then recorded their statements.

(i) Thereafter, on 25.07.2015 at 4.30 a.m., P.W.11 arrested the



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accused in the presence of Constable Raj, Village Administrative Officer, Karthick and the Village Assistant and recorded his confession statement and recovered bill-hook – M.O.1 by a recovery mahazar Ex.P.7. Thereafter, he handed over the accused for custody.

(j) On 25.07.2015, P.W.11 went to Thoothukudi Government Hospital Mortuary and conducted inquest on the dead body in the presence of witnesses between 7.00 a.m., to 9.00a.m., and prepared inquest report- Ex.P.13. Thereafter, he handed over a requisition letter through Grade-I constable Chandramohan to the Dean, Government Hospital to conduct postmortem, on the dead body.

(k) P.W.11 then examined the witnesses Subramanian, Kovilpitchai, Etturaj-Village Administrative Officer, his Assistant-Karthick, Grade-I Constable-Solai Perumal, 2372 Grade-I Police Manickam-2375, Sub Inspector of Police, Sundar and recorded their statements and then sent the material objects to the Court under Form-91.

(l) On 27.07.2015, he examined Chandramohan Grade-I Police



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375. The said constable handed over the dresses recovered from the dead body of the deceased and the same were received and sent to the Court under Form-91.

(m) On 13.08.2015 he sent a request to the judicial Magistrate No.II, with a request to send the material objects recovered by him for chemical analysis.

(n) On 17.08.2015, he examined Head Clerk-Kasi Vishwanathan, Doctor-Ganapathy and recorded their statements. Thereafter, he handed over the file to the control room Inspector for further investigation.

(o) P.W.12 Thiru Muthu, Inspector of Police continued the further investigation. He received the Chemical Analysis report-Ex.P.14. He examined Thiru.Gajendra Varadhan, Director of Forensic Science Department and recorded his statement and also received Serology report-Ex.P.15 and control blood samples-Ex.P.16.



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(p) He examined the witnesses, Constable 1322-Muthuraj, 848-Balamurugan, Thiru.Mani, Forensic Assistant Director, Thiru.Shiyam Sundar, Sub Inspector of Police and recorded their statements. Thereafter, he filed final report under Section 302 IPC before the learned Judicial Magistrate No.II, Thoothukudi.

4. After perusing the records, Judicial Magistrate No.II, Thoothukudi took up the case in PRC.No.47 of 2016 and issued summons to the accused and supplied copies of the case records free of costs 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, Thoothukudi, under Section 209(A) Cr.P.C. for further extent.

5. The Principal District Judge, Thoothukudi received the case records and numbered them as S.C.No.3 of 2017 and made over the same to the II Additional District and Sessions Judge for trial.



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6. After receipt of the case, the learned II Additional District Judge, after perusing the records, framed charges under Section 302 IPC and read over the same and explained the same to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

6. In order to prove the case of the prosecution, on the side of the prosecution, P.W.1 to P.W.12 were examined and Ex.P1 to Ex.P16 were marked and Material Objects M.O.1 to M.O.8 were produced. On the side of the accused, no witness was examined.

7. After full trial, the trial Court convicted the accused under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a sum of Rs.1,000/- as fine, in default, to undergo six months simple imprisonment. Against which, the present Criminal Appeal is filed on the following among other grounds:-

(1). In this case, the accused is the sole accused and the prosecution side had not established the motive for the offence. The



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prosecution failed to examine the mother and sister of the complainant who are important eyewitness to the occurrence. P.W.1 and P.W.2 are not eyewitnesses to the occurrence. They are hearsay witnesses as they deposed that after hearing the hue and cry of his mother and sister of P.W.1, both came out and therefore, it is clear that they are not eyewitnesses to the occurrence. Even though the original eyewitnesses were very much available, the prosecution side did not produced them and establish the case beyond all reasonable doubt.

(2) Further as per the prosecution case, the occurrence took place on 24.07.2015 at 10.45 p.m., and the FIR was registered only at 23.30 hours. There is a delay in lodging the FIR and the same was received by the concerned Court at 4.30 a.m.

(3) The recovery of the weapons was not properly proved. As per P.W.1, he only snatched the weapons from the accused and handed over the accused to the Police. But the weapon was not recovered at the time when accused was arrested. P.W.1 stated that subsequently, the Investigation Officer, came to the place of occurrence and recovered the



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same, after arrest of the accused. The recovery was not properly proved.

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(4) The Investigating Officer admitted that before registration of FIR he had not received any information and the Station House Officer has not received any intimation, but on the other hand P.W.1 stated that he had informed about the incident to the Police Station. Both statements are contradictory to each other. It is not proved by the prosecution who had sent the dead body to the hospital. This was not spoken by the prosecution witness.

5. The Trial Court ought to have seen that the deceased was involved in several criminal cases and there would have been chances for murder by the persons affected by the deceased.

6. The trial Court erroneously convicted the accused without considering the contradictions between the witnesses.

7. The evidence of P.W.1 and P.W.2 had not inspired the confidence of the Court and the trial Court failed to take into consideration



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the fact that the accused had no intention or motive to commit the murder.

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8. The learned Additional Public Prosecutor appeared on behalf of the prosecution argued that P.W.1 and P.W.2 are eyewitnesses to the occurrence and their evidences are clear, cogent and without any contradictions.

(1) The FIR was registered soon after the occurrence and the Investigation Officer visited the place of occurrence, prepared observation mahazar and rough sketch without any delay.

(2) The accused was caught hold red handed by none other than P.W.1 and P.W.2 and immediately after the occurrence, he was handed over to the Police. The Police had also arrested the accused and remanded him into custody. The arrest, confession and recovery also proved.

(3) The ocular evidence supported by Medical evidence. The Chemical analysis report also supported the case.



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(4) The accused did not state anything in his 313 questioning that P.W.1 and P.W.2 were not present at the place of occurrence and did not establish that he was not present in the place of occurrence. He was arrested by the Police and the weapon was recovered.

(5) The prosecution clearly proved the case, but it is for the Court to decide whether the murder committed by the accused would attract Section 302 IPC or Section 304(ii) IPC.

9. Heard both sides.

10. Now the Court has to decide whether the judgment of the trial Court is sustainable or liable to be set aside. ?

11. The prosecution case rests on the eyewitnesses. The complainant P.W.1 is the eyewitness to the occurrence. The occurrence took place in front of his residence. The accused was caught red handed by P.W.1 and another eyewitness and was handed over to the Police.



12. The evidence of P.W.1 read as follows :

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(1) He knew both accused and the deceased. He is a practising Advocate. Both the accused and the deceased were using TVS 50 belongs to his sister for the purpose of 30th anniversary of his father. Therefore, he had requested the deceased-Ganesa Boopathy to purchase petrol for his father's two wheeler which was kept idle and handed over a sum of Rs.100/- to him for purchase of petrol. Another sum of Rs.100/- was also given to him for his expenditure.

(2) After receipt of the money, the deceased-Ganesa Boopathy came with petrol in a plastic bottle at 9.00 p.m. Both the deceased Ganesa Boopathy and accused Ponraj were under the influence of alcohol. When P.W.1 questioned Ganesa Boopathy why there was a delay in purchasing the petrol, Ganesa Boopathy told him that he went to purchase petrol at 7.30 p.m, and at that time, four unknown persons came in two (2) two-wheelers and assaulted him and also took him into a forest and questioned him why he was roaming with P.W.1.



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(3) Therefore, himself (PW1), his brother-in-law P.W.2-Mahesh, Accused-Ponraj, Deceased-Ganesa Boopathy had gone to the place where he was alleged to be assaulted. He found tyre marks of car and therefore, shouted at Ganesa Boopathy and informed that he should not come to work if he were to drink and then went to his residence and parked his car outside the house and kept the bike, which was handed over by Ganesa Boopathy, inside the compound.

(4) At that time, he heard a noise. Both Ponraj and Ganesa Boopathy were fighting with each other. His sister also informed about this. He and his brother-in-law went there and witnessed accused Ponraj inflicting cut injuries on Ganesa Boopathy. His brother-in-law Mahesh, caught hold of the accused. He snatched the knife and threw it down.

(5) Both his mother and sister were screaming. The neighbours also gathered. He requested the neighbours and Mahesh (brother-in-law) to take the victim to the hospital. He called the Thalavadi Police Station and informed about the occurrence. The incident occurred between 10.20 p.m. to 10.25 p.m. Within 5 minutes the police came to the spot. He handed over



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the accused and also gave a written complaint. The complaint was marked as Ex.P.1. He identified the weapon namely, billhook in the Court and it was marked as M.O.1.

13. Though there were certain improvements found in the evidence of P.W.1, it did not materially affect his testimony as inaccurate or erroneous. During cross examination, the defence counsel was not able to establish anything to suspect his credibility.

14. The defence counsel pointed out that P.W.1 in his evidence deposed that his sister and mother tried to save the deceased, and only on hearing the alarm raised by them, he came out from the house and then both his mother and sister informed him that the accused had attacked the deceased. P.W.1 admitted that it was only after such information, he came out and witnessed the occurrence. The defence counsel therefore argued that P.W.1 was not an eyewitness to the occurrence and that the mother and sister alone were witnesses to the occurrence. It was argued that the prosecution failed to cite them as witnesses on the apprehension that they would speak truth.



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15. It is true that both P.W.1 and P.W.2 deposed that when the occurrence took place, both the mother and sister were available in the place of occurrence and then informed P.W.1 that both the accused and deceased were fighting and only due to the alarm raised by them, P.W.1 came out and the neighbours also came out. In the complaint P.W.1 had not stated about the presence of his mother and sister.

16. The Investigating Officer had not cited both the mother and sister of P.W.1 as witnesses. However, mere non-examination of the above witnesses would in no way affect the prosecution case. Further, in order to prove the guilt of accused it is not necessary to examine a number of witnesses.

17. Section 134 of the Indian Evidence Act, clearly stipulates that many number of witnesses shall in be required for proof of any fact.

18. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is



important, as there is no requirement in the law of evidence that a particular number of witnesses have to be examined to prove /disprove a fact. It is a time honoured principle that evidence must be weighed and not counted.

19. In the case of ***Joseph Vs. State of Kerala*** reported in ***2003 (1) SCC 465***, the Hon'ble Supreme Court had held as follows :

“...this Court has stated that the principle that where there is a sole witness to the incident, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of evidence tendered by other witnesses or the material evidence placed on record. This Court further stated that Section 134 of the Evidence Act does not provide for any particular number of witnesses and it would be permissible for the Court to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if evidence tendered by such a witness is credible, reliable, in tune with the case of the prosecution and inspires implicit confidence.

In the case of Inder Singh [(2002) 9 SCC 537 : 2003 SCC (Cri) 1239] the Court held that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The



testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.”

20. This Court is satisfied with the evidence of P.W.1 which was corroborated by P.W.2, another eyewitness to the occurrence. Both the eyewitnesses clearly narrated the incident without any contradiction.

21. Both P.W.1 and P.W.2 stated that the mother of P.W.1 and sister were also present in the place of occurrence. But they were not cited as witnesses. We hold that non-examination of such witness had not affected the prosecution case. There is no motive or ill-will for P.W.1 and P.W.2 to speak against the accused. Mere non-examination of some of the witnesses would not affect the prosecution case. In fact both the deceased and accused were employed under P.W.1. There are minor omissions and discrepancies, but such minor discrepancies and omissions in the testimony of the witnesses would not affect the prosecution case. It should be established by the defence that such discrepancies and omissions are relevant and significant. In this case, we hold that the case of the prosecution is not affected by non-examination of the mother and sister of



P.W.1 as the incident took place in front of the house of P.W.1.

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22. Further, the medical evidence corroborated the ocular evidence. P.W.5 Dr.Ganapathy, had conducted autopsy. He noted the injuries in Ex.P.5 which are as follows :

“The following ante mortem injuries were noted in the body:-

- 1. A cut injury of size 3cms x 1.5cms x muscle deep seen in the front of right arm.*
- 2. A cut injury of size 3cms x 2cms x bone deep seen in the dorsum of right hand.*
- 3. A cut injury of size 3cms x 2cms x bone deep seen in the web between right thumb and index finger.*
- 4. A cut injury of size 2cms x 1cm x muscle deep seen in the front of left arm.*
- 5. A cut injury of size 16cms x 5cms x 5cms seen in the left side of neck. The underlying major vessels, nerves and muscles found cut.*
- 6. A cut injury of size 12cms x 2cms x muscle deep seen 1cm above the injury no.5.*
- 7. A cut injury of size 8cms x 3cms x bone deep seen in the left occipital region.*
- 8. A cut injury of size 3cms x 1cm x bone deep seen*



2cms above the injury no.7.

9. A cut injury of size 5cms x 2cms x bone deep seen in the left side of lower jaw.

10. An incised wound of length 4cms seen in the back of neck.

11. An incised wound of length 3cms seen in the back of abdomen.”

23. The witness Doctor in his final opinion clearly opined that the deceased would appear to have died of shock and haemorrhage, due to multiple cut injuries. The death would have occurred 12 to 24 hours prior to the autopsy. The weapon was shown to the witness and he stated that there is a every possibility of inflicting the injuries with such weapon.

24. It was further pointed out by the defence counsel that as per P.W.1 and P.W.2 both the accused and deceased were under the influence of alcohol. But no such medical report had been produced by the prosecution. It is true that P.W.1 and P.W.2 deposed that both the accused and deceased were under the influence of alcohol. However, P.W.5 who had conducted autopsy had not spoken about the same. The viscera report of the dead



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person was also not produced, to show that the deceased had consumed alcohol. There is no evidence available to show that the accused was under the influence of alcohol.

25. In the absence of the above requirements, we hold that the case of the prosecution was in no way affected. The evidence of the eyewitness are clear, cogent and without any contradictions.

26. Further, soon after the occurrence, the accused was caught red handed by P.W.1 and P.W.2. He was handed over to the police on the same day. This was spoken by P.W.1 and P.W.2 and P.W.7 Head Constable, Madasamy.

27.P.W.7 in his evidence deposed that on 24.07.2015 at 10.35 hours, he had received intimation from Thallamuthu Nagar Police Station, and he and Balamurugan, Constable-842 went to the house of the complainant and witnessed the dead body and also noticed that the accused had been caught red handed by P.W.1 and P.W.2. As per the direction of the Inspector of Police, he took the accused to the Police Station at 00.45



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hours. The dead body was taken by Balamurugan to the Government Hospital for post mortem.

28. The evidence of the above witnesses has been corroborated by P.W.6-Etturaj, Village Administrative Officer, who stated that as per the request made by Investigating Officer, he (P.W.6) and his Assistant had gone to the Police Station at 4.30 a.m. and in their presence the accused was arrested. P.W.10 also recorded his confession and seized the bill-hook from the accused under a recovery mahazar. P.W.6 further stated that the blood stained dresses worn by the accused, namely, blood stained full hand shirt and blue colour pant were also recovered from the accused by the Investigating Officer-P.W.10 under Form-95.

29. P.W.11, Investigation Officer in his evidence deposed that he had recovered the following items from the place of occurrence (i) Blood stained cement concrete (earth) (ii) Ordinary cement concrete (earth)—M.O.2 and M.O.3. under seizure mahazar and (iii) Blood stained bill hook—M.O.1. He further stated that he had also seized the dresses of the deceased



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30. In support of his evidence, the records reveal that the material objects recovered from the dead body of the deceased, accused and from the place of occurrence were sent for chemical analysis. The requisition letter-Ex.P.13 sent by the Investigating Officer clearly revealed that all the items were sent for chemical analysis. Ex.P.14 is the acknowledgement by the Forensic Science Department and it shows that an envelope marked, “Ganesa Boopathy, 25/Male, P.M.No.429/2015, dated 25.07.2015, Thalamuthu Nagar Police Station, Crime No.481/2015 Blood Sample” and containing a piece of gauze cloth with control blood was received on 17.08.2015 through Police Constable No.TUT.662 Thiru.Chellappa. The blood gauze clothes were sent to identify the grouping of blood of the deceased.

31. Ex.P.15 is the result of the grouping test which shows that the report on control sample revealed that the blood sample collected from the deceased belonged to ' B' group. It was further revealed that the blood stain found in the cement pieces (earth), shirt, banian pieces, trousers, jatti (Item Nos.1, 4, 6, 7 and 8) also belonged to Group ‘B’.



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32. The Village Administrative Officer, Etturaj-P.W.6 stated that P.W.10 recovered the blood stained full hand shirt and blue jeans pant from the accused. In Ex.P.12, in Column No.7, the Investigating Officer had described the dresses found in the dead body namely, blue colour jeans pant, green colour jatti, violet colour banian. Therefore, the item Nos.6,7,8 are proved to be the dresses worn by the deceased and item Nos.4 and 5 are the dresses worn by the accused in which in the shirt worn by the accused was found with blood stains and the grouping test showed that it also belonged to 'B' group. The determination of the blood group in the billhook-M.O.1 and on the trouser worn by accused was inconclusive. However, it is clearly proved that the blood group of the deceased was 'B' group and in the blood stains found in the shirt of the accused 'B' group blood was also found and in the concrete earth in which the blood stains were found also was 'B' group, which clearly proves that at the time of occurrence, the blood stains of the deceased were detected in the dresses worn by the accused. This fact has not denied by the defence.

33. During cross examination of P.W.1, it was suggested by the defence counsel that while P.W.1 came from his residence, he saw the dead



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body and he lifted the dead body and therefore, P.W.1 had suspicion and lodged the complaint. But the suggestion put forth by the defence counsel was denied. During the arguments, he had not stated anything about the presence of blood stains in the dresses worn by the accused.

34. The blood group test confirmed that the occurrence happened in the place as stated by the complainant, since blood stained cement pieces were recovered from the place of occurrence.

35. Further, P.W.3 father of the deceased clearly stated that soon after the occurrence, he was informed about the death of his son. Immediately, he had visited the place of occurrence and found the dead body of his son at the place of occurrence.

36. The contention raised by the defence counsel in the arguments that the eyewitnesses P.W.1 and P.W.2 were not present in the occurrence place and that both were only hear-say witnesses, is disproved as the evidence of the eyewitness was corroborated with medical evidence. Further the defence counsel put forth a defence that there was a chance for



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murder of the deceased by some other person the deceased as he was involved in many cases. But the said allegation had not been established.

There is no substance in such contention raised by the defence counsel. He had made only a feeble attempt to disprove the prosecution case. The evidence and documents and records clearly established that the prosecution has proved the case beyond all reasonable doubt and that the accused is guilty of the offence.

37. This Court has to analyse whether the offence committed by the accused falls within the definition of culpable homicide amounting to murder or culpable homicide not amounting to murder. The distinguishing factors between culpable homicide and murder are as follows :

“What distinguish these two offences is the presence of a special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These four mental attitudes are stated in Section 300 IPC as distinguishing murder from culpable homicide. Unless the offence can be said to involve at least one such mental attitude it cannot be murder.”



38. For better appreciation, it is relevant to extract Section 300 IPC along with its comments from the Indian Penal Code, by Ratanlal and Dhirajlal (32nd enlarged edition)):-

“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 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's having taken undue advantage or acted in a cruel or unusual manner.



Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.”

39. As per penal provision under S.300 IPC except the following exceptions culpable homicide is murder.

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.

.....

The distinction between these two offences is very ably set forth by MELVILL, J., in Govinda's case and by SARKARIA, J., in Punnaya's case the relevant passages from Punnayya's case are reproduced below.



"In the scheme of the Penal Code, 'culpable homicide' is genus and murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally 'culpable homicide sans 'special characteristics of murder' is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in Section 300 as 'murder. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the 1st part of Section 304. Then, there is 'culpable homicide of the third degree. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the Second Part of Section 304."

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the Courts for more than a century. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of



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these provisions seems to be, keep in focus the key words used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
<i>A person commits culpable homicide if the act by which the death is caused is done.....</i>	<i>Subject to certain exceptions Culpable homicide is murder if the act by which death is caused is done...</i>
INTENTION	
<i>(a) With the intention of causing death; or</i>	<i>(1) With the intention of causing death; or</i>
<i>(b) With the intention of causing such bodily injury as is likely to cause death; or</i>	<i>(2) With the intention of causing such bodily injury as the offender known to be likely to cause the death of the person to whom the harm is caused; or</i>
	<i>(3) 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</i>
KNOWLEDGE	
<i>(c) with the knowledge that act is likely to cause death.</i>	<i>(4) With the knowledge that the Act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.</i>



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40. In this case, it has not been established that the accused had previous enmity or pre-planned to commit murder. Rather it is proved that the deceased Ganesa Boopathy and the accused Ponraj were both employed under P.W.1. On the date of occurrence, the deceased was sent to purchase petrol by P.W.1 in the morning, but he returned late in the night at 9'0 clock and gave evasive answers, when the same was questioned by P.W.1. He stated that he was assaulted by unknown person, but that was proved as a false statement. Therefore, P.W.1 had shouted at both of them. Both the accused and deceased had a fight which was spoken by P.W.1 and P.W.2. During the fighting the accused, due to sudden provocation had taken a weapon from the car of P.W.1 and had attacked the deceased. It is therefore proved that only due to sudden provocation he had attacked the deceased and had caused his death. Therefore, we hold that he had no intention or plan to commit murder. He had no previous enmity to kill the deceased and was not holding any weapon with him with intention to attack and to cause injuries to the deceased.

41. Therefore, the first three limbs of Section 300 IPC are not attracted for the offence committed by the accused as it is proved that he



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had not intended to cause the injuries. However, so far as the 4th limb of Section 300 IPC is concerned the accused would have knowledge that the act was so imminently dangerous that it must, in all probability, cause death or such bodily injury as it is likely to cause death.

42. In this case, the 5th and 6th injuries noticed in the postmortem report are grievous in nature and they were caused to the vital parts of the body. The accused had inflicted 11 injuries. It is to be explained whether such act of the accused would attract under Section 300 IPC or not.

43. The Hon'ble Supreme Court discussed the issue in ***Atul Thakur Vs. State of Himachal Pradesh*** reported in ***2018(2) SCC 496***, wherein, the Hon'ble Supreme Court dealt with a similar matter and discussed the same in detail and had held as follows:

“A. Penal Code, 1860 S. 302 or S. 304 Pt. II [S. 300 Exception 41 Repeated six knife-blows by accused to different body parts of deceased. resulting in death of deceased, inflicted without premeditation in sudden fight in heat of passion- No evidence present to suggest



that accused had assaulted deceased with intention to cause his death - Moreover, accused showing some contrition upon recovering his senses and taking deceased to hospital, etc. Neither fact i.e. merely using knife in commission of offence nor factum of multiple injuries given by accused, sufficient in present case to deny him benefit of S. 300 Exception 4 - Conviction under S. 304 Pt. 11. restored Sentence, however, enhanced from 5 yrs' RI to 10 yrs' RI.'

.....

16. The next question is whether the appellant is right in his persuasive argument to restore and revive the decision of the Trial Court on the quantum of sentence. The Trial Court awarded the sentence of rigorous imprisonment for five years only for offence under Section 304 Part-II of IPC and fine of Rs. 10,000/- and in default, to undergo rigorous imprisonment for a further period of one year. For that no special reason has been recorded by the Trial Court. Considering the nature of offence and the trivial reason for which the appellant got enraged and assaulted Hitesh Thakur, that too by a knife and also gave multiple blows, does not warrant a light punishment. We would, however, accept the argument of the respondents that in the fact situation of the



present case, the sentence period should not be less than 10 years imprisonment with fine. That would meet the ends of justice.

17. Accordingly, we partly allow these Criminal Appeal Nos.75 and 227 of 2015 filed by original accused No.1 Atul Thakur. We modify the impugned judgment of the High Court against the appellant in respect of nature of offence and instead restore the order of the Trial Court in that behalf. The appellant is held guilty for an offence punishable under Section 304 Part-II of IPC and is sentenced to undergo rigorous imprisonment for a period of 10 (Ten) years with fine of Rs.10,000/- (Rupees Ten Thousand), in default to undergo further imprisonment for one year. Needless to mention that the appellant shall be entitled to set off under Section 428 of the Code of Criminal Procedure.”

44. The reasoning in the above judgment squarely applies to this case. In the above case, it was held that even if the accused had caused multiple injuries without any premeditation and if it is proved that it had happened in the heat of passion without taking any undue advantage or



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acting in a cruel manner, it would attract the conviction under Section 304(ii) IPC.

45. Relying on the ratio laid on the above judgment, we also hold that the offence committed by the accused is not attracted by Section 300 IPC, but falls under Section 304(ii) IPC. Therefore, we modify the conviction of the accused from Section 302 IPC to Section 304(ii) IPC and also modify the sentence of life imprisonment and sentence the accused to undergo imprisonment for seven (7) years rigorous imprisonment with fine of Rs.5,000/- (Rupees Five Thousand only) in default, to undergo six months simple imprisonment.

46. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) The conviction under Section 302 IPC passed by the learned II Additional District and Sessions Judge, Thoothukudi, dated 19.08.2019, in S.C.No.03 of 2017, is set aside and the conviction is modified to Section 304(ii) IPC.

(iii) Accordingly, the sentence of Life Imprisonment passed by



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the Court below is set aside and the appellant is sentenced to undergo Rigorous Imprisonment for seven (7) years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) and in default to pay the fine amount, to undergo Simple Imprisonment for six months.

(iv) The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence.

(v) The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence.

[C.V.K., J.] & [R.P., J.]
04.12.2024

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



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To

1. The II Additional District and Sessions Court,
Thoothukudi,
2. The Inspector of Police,
Thalaimuthu Nagar Police Station,
Thoothukudi 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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C.V.KARTHIKEYAN, J.
AND
R.POORNIMA, J.

RM

Pre delivery Judgment in
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04.12.2024