

CrI.A.(MD)No.312 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.10.2024

PRONOUNCED ON : 30.10.2024

CORAM

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

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Martin Montrique Mansoor

... Petitioner

Vs

The Inspector of Police,
Thirunagar Police Station,
Madurai District, Cr.No.173/2012.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the Judgment and order, dated 11.09.2020 in S.C.No.109/2013, on the file of the Sessions Judge, Mahalir Neethimandram, Madurai.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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JUDGMENT

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(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The accused in S.C.No.109 of 2013 on the file of Sessions Court, Mahalir Neethimandram, Madurai, who suffered conviction for offence punishable under Section 302 IPC and was sentenced to undergo life imprisonment and fine of Rs.5,000/- in default to undergo simple imprisonment for six months and also convicted for offence punishable under Section 201 IPC and was sentenced to undergo 5 years rigorous imprisonment and fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months by Judgment, dated 11.09.2020 has filed the present criminal appeal.

2.It is the case of the prosecution that the Village Administrative Officer, Santhanalakshmi at Thoppur had given a complaint that on 11.04.2012 in the morning at 06.00 a.m., she had received an information from Vadivel, the husband of Thoppur Panchayat President, that at Thoppur Kanmai, a burnt dead body was present. She went to the spot at around 07.00 a.m. She found a dead body in a burnt state. She did



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not know whether it was a male or female body. There was a small spare part of a motor Car. She also noticed blood stains in that place. She was not able to identify the body. In this connection, she gave a complaint before the Austinpatti Police Station (Thirunagar Police Station).

3.On the basis of said complaint, FIR in Cr.No.173 of 2012 was registered under Sections 302 and 201 IPC on 11.04.2012 at around 08.00 a.m. Thereafter, the body was sent for conducting Postmortem on 14.04.2012 and the Postmortem was also conducted. In the Postmortem, extensive deep burn wounds were noted in the front and back of chest and practically all the portions of the body.

4.Independently, on 15.04.2012, the accused had appeared before the Krishnankovil Police Station and lodged a complaint that the mother of his daughter had come to Kalasalingam University on 04.04.2012 and stayed till 09.04.2012 and at 12.00 noon in the afternoon, he had sent her in a bus to Kerala, where she was studying Mohini Aattam at Kalamandalam University. He tried to contact her on 11.04.2012. But the phone was picked by a male person and later, it was switched off. He sent

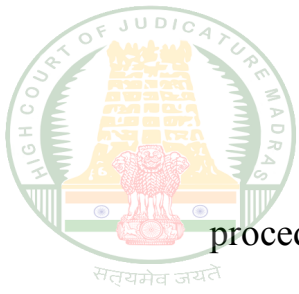


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e-mails to her on 12.4.2012 and 13.04.2012 and there was no reply. He contacted the house owner, where she was staying at Kerala on 14.04.2012 and he informed that she had not returned back. On the basis of the complaint, FIR in Cr.No.70 of 2012 had been registered by Krishnankovil Police Station.

5.The registration of the FIR in Cr.No.70 of 2012 came to the knowledge of Inspector of Police at Thirunagar Police Station. During enquiry, it came to be known that the accused also owned a Ford Fusion Car and the spare part, which had been recovered in the scene of crime was the Gearbox of a Ford fusion Car. Thereafter, on 17.04.2012, the accused was arrested and the Car was seized. He confirmed the identity of the dead body. DNA fingerprinting test was conducted with the blood sample of the child. The DNA result proved that the deceased was actually the mother of the child. It was under those circumstances that the accused stood charged for the offence punishable under Sections 302 and 201 IPC.

6.The final report had been taken cognizance as PRC No.94 of 2012 by the Judicial Magistrate No.6, Madurai. After following due



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procedure, the case was committed to the Court of Sessions and made over to the Sessions Court, Mahalir Neethimandram, Madurai and taken on file as S.C.No.109 of 2013.

7.The trial Court had framed charges under Sections 302 and 201 IPC and under Section 4(A) of TNPHW Act, 1998. It had been charged that the accused Martin Montrique Mansoor and the deceased Cecile Denise Acosta Reynaud had a live-in relationship and a child Adela Berenise Manricque Acosta was born to them. It was stated that there was a strained relationship on account of the custody of child. It was alleged that there was a wordy quarrel on 09.04.2012 at 12.00 noon at the house, where the accused resided, Staff Quarters, Kalasalingam University at Krishnankovil.

8.The accused was charged with commission of offence of murder. It was further alleged that with intention to screen the evidence of the dead body, the accused had taken the body in his Ford Fusion Car, M.O. 1 bearing registration No.TN 01 Z 4389 and burnt the body on 10.04.2012 at 10.30 a.m at Thoppur Kanmai, within the jurisdiction of Thirunagar Police Station. Therefore, it had been charged that the accused had



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committed offence punishable under Sections 302 and 201 IPC. It was further alleged that the accused had subjected the deceased to harassment.

Therefore, it was charged that the accused had committed the offence punishable under Section 4(A) of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 (hereinafter referred to 'TNPHW Act'). The accused denied the charges and claimed to be tried.

9.To prove the charges, the prosecution has examined P.W.1 to P.W.40 witnesses and marked exhibits Ex.P.1 to Ex.P.40. They also produced material objects M.O.1 to M.O.21. On conclusion of the evidence of the prosecution, the incriminating portion of evidence were put to the accused under Section 313(1)(b) of Cr.P.C and his statements were recorded. The accused examined one witness and marked Ex.D1 to Ex.D3. On conclusion of trial, by judgment dated 11.09.2020, the learned Sessions Judge, Mahalir Neethimandram, Madurai convicted the accused for the offence punishable under Sections 302 and 201 IPC and sentenced him to undergo life imprisonment for the substantial offence under Section 302 IPC. The accused was acquitted for the offence under Section 4(A) of TNPHW Act.



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10.Questioning the Judgment of conviction, the present appeal

had been filed. It would only be appropriate that the facts are narrated in detail with relation to witnesses and exhibits produced on behalf of the prosecution.

11.P.W.39, Cecile Mireille Reynaud Pulido was the mother of the deceased. It must be stated that both the accused and the deceased were citizens of Mexico. P.W.39 is also a Mexican citizen. She stated that a relationship started between the accused and the deceased in the year 2003 and the daughter Adela was born in the year 2005. However, there were continuous issues between the accused and the deceased and sometimes it escalated into violence. It was stated that initially an arrangement was made that the child should live with the accused and the deceased alternatively for 3 ½ days every week. Thereafter, further accusations had been made by each other against each other. In the year 2010, the accused had raised allegations against P.W.39 and her husband that the child was subjected to sexual abuse. It was claimed by P.W.39 that the said proceedings were closed for lack of evidence.



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12.P.W.39 further stated that finally, proceedings were also initiated before the family Court at Mexico relating to the custody of the child. It was then directed that the child would remain with the accused for a period of 14 months and then with the deceased for the next period of 14 months and the turn will continue in a similar manner. P.W.39 further stated that the accused took custody of the child and finally came to Kalasalingam University near Srivalliputhur. After getting to know this information, the deceased came over to Kalamandalam University in Kerala to study Mohini Aattam. She used to visit the accused once in every 15 days. It was stated that the custody of the child was to be handed over to the deceased on 06.08.2012.

13.In the interregnum period, the deceased had purchased tickets for herself and her daughter to go from Kochin to Barcelona to visit her brother. She then went over to meet the accused on 09.04.2012 at his residence in the Staff Quarters at Kalasalingam University. She did not return back to Kerala.



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14.P.W.39 further stated that on 17.04.2012 she was informed about the death of her daughter and she and her son and another person came to Madurai and stayed for about 7 days. They also met Antoine Vantelon, who was a friend of her daughter and who informed that her daughter had gone to Madurai on 04.04.2012 and planned to stay till 09.04.2012 and to come back to Kerala along with her daughter to spend time during the summer vacation. He informed that her daughter did not return back to Kerala. He further stated that he went and asked the accused, who informed that the daughter of P.W.39 had already returned back to Kerala on 09.04.2012.

15.Independent of all these events, on 10.04.2012, P.W.16 and P.W.17, who were Security Guards on the main entrance of Kalasalingam University had stated in their evidence that they had seen the accused leaving the campus on 10.04.2012 along with his child and did not return back till their duty ended.

16.P.W.3 Selvam, who was having a Company at Austinpatti saw a Car at around 11.00 p.m., on 10.04.2012 coming to a place, where



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burnt dead body was subsequently found near Thoppur Kanmai. The Car proceeded for a short distance turned and came back and stopped. There was a fire in that place and then the Car left the place. Then P.W.3 went to the place, where the Car had been parked and saw the burnt body. In the morning at about 05.00 a.m., he informed this fact to P.W.4, Mayathevar.

17.P.W.4 informed this fact to P.W.5, Vadivel, the husband of the Village Panchayat President. At about 05.30 a.m., P.W.3 and P.W.4 proceeded to the spot and found the dead body in a burnt condition. The also saw a Travel Bag near the dead body.

18.P.W.5, Vadivel informed this fact to P.W.1, Village Administrative Officer of Thoppur. He also informed it to the Police Station at Austinpatti Police Station, which is actually Thirunagar Police Station.

19.P.W.1, Santhanalakshmi went to the spot at 7.00 a.m., on 11.04.2012 and saw the dead body. She noticed a spare part of a Car and droppings of blood and also saw a drag mark of the bag and tyre marks of a



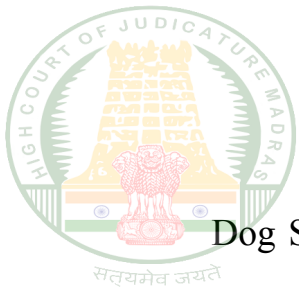
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Car. She lodged a complaint, Ex.P.1 at 8.00 a.m., before the (Austinpatti) Thirunagar Police Station in Madurai on 11.04.2012. On the basis of the complaint, FIR in Cr.No.173 of 2012 had been registered for the offence under Sections 302 under 201 IPC.

20.The FIR was registered by the Sub-Inspector of police, Ramakrishnan, P.W. 34. In his evidence, P.W.34 stated that after registration of FIR he had forwarded the original complaint and FIR by express Tapal to the Judicial Magistrate No.6, Madurai. He then informed the Inspector of Police at about 08.30 a.m.

21.P.W.24, Megha Rajan, Special Sub Inspector in his evidence stated that he received the express Tapal at 09.00 a.m., and handed over the same over to Judicial Magistrate No.6, Madurai at 12.10 p.m., in the afternoon.

22.The investigation in the case was then taken up by P.W. 40, Senthumani Madhavan. In his evidence he stated that on receipt of information he informed the Forensic Experts, photographer and Sniffer



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Dog Squad and went to the scene of occurrence along with the Constable, P.W.37, Murugesan at 8.30 a.m., in the morning. In the presence of witnesses Ganesan, P.W.7 and Shankar (not examined), he prepared Observation Mahazar, Ex.P.20 and Rough Sketch, Ex.P.21. In the presence of witnesses and Panchayatars, he conducted inquest on the dead body. The Inquest Report was marked as Ex.P.22. Thereafter, he seized the burnt hair of the deceased, M.O 14, the clothes worn by the deceased, M.O.15, the ash of the deceased, M.O.16, the iron piece of travel bag, M.O.17, from the scene of crime in the presence of witnesses under Seizure Mahazar, Ex.P.23. From the scene of crime, he also collected soil with blood, M.O. 18 and soil without blood, M.O.19 and the Gearbox spare parts (blue color), M.O.5, with the marking Ford and a serial number given there.

23.P.W.40, with the help of Forensic Expert, Meenakshi, P.W. 27, lifted the tyre marks impression found on the soil by Plaster of Paris and forwarded the same to Court under Form 95, Ex.P24. The Tyre marks taken by Plaster of Paris was produced as M.O.20.



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24.P.W.40 then kept the dead body in the Mortuary for a period of 3 days. He thereafter, recorded the statements of PW1 Santhanalakshmi, P.W.2, Shanmugam presumably Shanmugavel, P.W.4, Mayathevar, P.W.3, Selvam and P.W.7 Shankar. He also formed a special team to determine the identity of the dead body, He then addressed a letter to the Ford Car Dealer, Akshaya Ford at Madurai. He then recorded the evidence of Vadivel (P.W.5) and Periyakaruppan (P.W.6). He was not able to get any information from the District Crime Bureau relating to the deceased. He then forwarded the body for Postmortem to Madurai Government Hospital through Sushindran (P.W.25).

25.P.W.25 in his evidence stated that on 14.04.2012, he had taken the body for conducting Postmortem. The Post-mortem was conducted by Dr. Rajavelu, P.W. 23. In his evidence, he stated that he had conducted the Postmortem at around 01.00 p.m., on 14.04.2012, on a decomposed burnt female body aged between 25 to 30 years, He had issued Postmortem Certificate Ex.P.8. He had noticed the following Postmortem injuries on the body:



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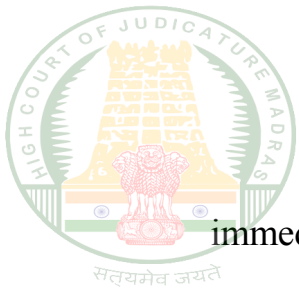


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“Extensive deep burns noted over the following areas, head exposing the bony parts, front and back of chest exposing the ribs, front and back of the whole abdomen exposing the abdominal viscera in partly cooked condition and loops of intestine in partly cooked condition, back of the whole of left leg, front of upper half of the left thigh, right lower limb and perineal region. Head split noted in the front of left lower thigh, Superficial burns noted over remaining areas. Peeling and blackening of the skin noted all over the burnt area in patches. The base of the burnt area is pale in colour.

He had preserved the Skull with mandible for superimposition and also preserved the Thigh bone for DNA Fingerprinting. In Ex.P.9, final opinion, he had stated that no definite opinion can be given due to cause of death due to decomposed.

26.P.W.40 in his evidence further stated that he saw a Newspaper item in a Dinamalar on 16.04.2012 that a 36 year old lady had come to a Private University, Kalasalingam University to meet a Research Scholar and that she was missing and had not reached Kerala. P.W.40



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immediately gave information to the Superintendent of Police and getting permission, went to Krishnankovil Police Station and examined the FIR in Cr.No.70 of 2012 registered under the category of Woman Missing. He examined the Investigating Officer, Mookan, P.W.38 and recorded his statement.

27.P.W.38, Mookan in his evidence stated that the accused, Martin Montrique Mansoor had given a complaint on 15.04.2012 at around 03.00 p.m., consequent to which, FIR in Cr.No.70 of 2012 had been registered under the category of Woman Missing. The complainant is a Mexican national. In the complaint it had been stated that the complainant was working as a Research Assistant in the Kalasalingam University and that the mother of his daughter, had come down from Mexico and was studying Mohini Aattam at Kalamandalam University, Kerala. She had come down to the University to meet her daughter on 03.04.2012. She was at Kalasalingam University from 04.04.2012 till 09.04.2012 and was staying in the Staff Quarters. On 09.04.2012 at 12 noon, he had put her in a bus to go to Kerala. She normally used to go to Kerala through Krishnankovil, Madurai, Palani, Pollachi, Trichur and Shoranur. The



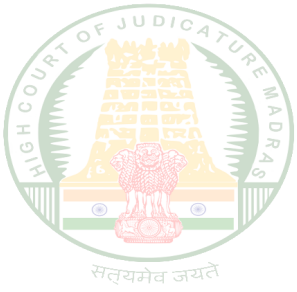
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complainant further stated that when he had telephoned her phone on 11.04.2012, a male voice answered and the phone got switched off.

Thereafter, there was no reply. He then sent e-mails on 12.04.2012 and again on 13.04.2012 and on 14.04.2012 he had telephoned the house owner, where she was staying at Kerala. He was informed that she did not come back to Kerala, Since he did not get any information about her, he had come back to the University and prepared the complaint in Tamil on 15.04.2012 and lodged the complaint.

28.This complaint was received by K.Balu, (P.W.33), Sub Inspector of Police, Krishnankovil Police Station. In his evidence, he stated about registering of FIR in Cr.No.70 of 2012,

29.P.W. 38, Inspector of Police, Mookan in his evidence stated that he had examined the accused and also recorded the statement of his friend Karuppasamy, (P.W.36). He also came to know that the accused owned a Ford Fusion Car. He had also noticed the spare part, found at the scene of occurrence at Thoppur Kanmai when shown to him by P.W.40 .

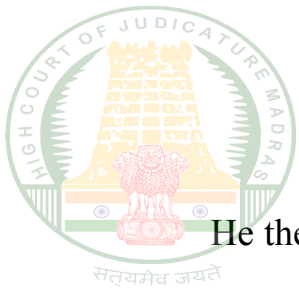


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30.P.W. 40 in his evidence further stated that after coming to know about this fact of registration of FIR at Krishnankovil Police Station, he went over to the residence of the accused at Kalasalingam University. The accused was not there. He then recorded the statement of Vijaya Karthik, P.W. 8, Karuppasamy, P.W. 36 and Arumugam (not examined). From the statement of Vijay Karthik, P.W.8, he came to know that the accused had purchased a Ford Fusion Car from him.

31.P.W.40, tried to contact the mobile phone of the accused, but the phone was switched off. He then came to Madurai in search of the accused. On 17.04.2012, in the morning at 10.00 a.m, he arrested the accused near Thirupurankundram Park, when he noticed the parked Ford Car bearing registration number TN 01 Z 4389. He then recorded the confession statement of accused in the presence of Subbaiah (P.W.9) and Village Assistant, Sonai (P.W.10).

32.On the basis of the admissible portion of confession (Ex.P. 25), he seized the Ford Fusion Car (M.O.1) and the Cell Phone (M.O.2) of the accused and forwarded the same to the Court under Form 95 (Ex.P.26).



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He then went over to the residence of the accused along with the witnesses P.W.9 and P.W.10 and prepared Observation Mahazar (Ex.P.20) and Rough Sketch (Ex.P21). From the residence, he seized the knife M.O.3, his passport M.O.4 under Seizure Mahazar, Ex.P.5. He also seized the photographs of the deceased, M.O.21 series (2 photographs). He then took the accused to identify the Petrol Bank from where he purchased petrol and collected the details of persons, who gave petrol to the accused. He then took the accused to the scene of crime.

33.P.W.40 then informed the arrest of the accused to the Sub Inspector of Police to inform the same to the Indian Embassy and Mexican Embassy. He then admitted the daughter Adela in Vidiyal Home at Muthupatti, Madurai. He then forwarded the seized material objects under Form 95 to the Court in Ex.P28 and Ex.P29 and sent the same for chemical examination. He then identified the dead body as Cecile Denise Acosta Reynaud, mother of Adela. He also took the blood samples from the child for DNA Finger printing. He then took the tyre marks of the Car from the scene of crime, which was marked as M.O.20. The tyre marks of the accused Car were marked as M.O.8 to M.O.13.



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34.P.W.40 also gave a requisition for skull Superimposition test to the Judicial Magistrate No. 6, Madurai for test at Forensic Science Laboratory at Chennai. He then recorded the statement of Sekaran, P.W.11, who had cleaned the Car and found that there was a bad smell in it. He then recorded the statement of Sub-Inspector of Police Ramakrishnan, P.W.34, who had registered the FIR and other Police Constables, who had assisted him in the investigation. He also recorded the statement of P.W.12, Ragul, who was an employee of Petrol Bank and sold petrol to the accused. He then informed the mother of the deceased and after she had come, he also recorded her statement. He also collected the call detail records of the accused (Ex.P.18). He then recorded the statement of Sridhar, P.W.21, who was working in the Akshaya Ford, Madurai.

35.P.W.21 stated that he was shown M.O.5 Gearbox spare part and he compared the same with the missing Car Gearbox of vehicle bearing number TN 01 Z 4389 and they matched.



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36.P.W.40 recorded the statement of Dr.Rajavelu, P.W.23, who had conducted the Postmortem. He also recorded the statement of P.W. 29, Dr. Kamakshi Krishnamoorthy, who conducted DNA test and issued Ex.P.13 Certificate.

37.In her evidence, P.W.29 stated that from the comparison of the sample recovered from the deceased and the blood sample from the daughter, it was evident the deceased was the mother of Adela and the percentage of correctness was 99.9999999%.

38.P.W.40 recorded the statements of Radhika Balachandran, (P.W.31), who gave the Biological Report, Ex.P.15, Serological Report, Ex.P.16 and the Chemical Report, Ex.P.14. He also obtained the report of Skull Superimposition Test, Ex.P.12 from the Anthropologist Division of Forensic Science Department. A report was given that when photographs, where compared with the skull it clearly showed that they were of the same person. He also recorded the statement of P.W.13, who had compared the tyre marks and had issued certificate Ex.P.14.



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39.P.W.40, thereafter, on 28.06.2012 recorded the statement of Kanagamani, (P.W.16), Murugesan, (P.W.17), Jaul Mallika (P.W.18) and Vairamuthuswamy (P.W.19). They were the Security Watchmen in the main gate of Kalasalingam University. P.W.16 and P.W.17 had spoken about the accused going out at 03.00 p.m., on 10.04.2012 and P.W.18 and P.W.19 had spoken about the accused coming back late night at 12.00 p.m. P.W.40 thereafter, filed final report charging the accused with commission of offence punishable under Sections 302 and 201 IPC and under Section 4(A) of TNPHW Act.

40.As stated above, the final report was taken cognizance as P.R.C.No. 94 of 2012 by the Judicial Magistrate No. 6 Madurai. Since the offence under Section 302 was triable exclusively by the Sessions Court, he committed the same to the Principal Sessions Court, Madurai, where it was taken on file as S.C.No. 109 of 2013 and made over to the Mahalir Neethimandram, Madurai.

41.On conclusion of evidence on the side of prosecution, the statement of accused was recorded under Section 313(1)(b) of Cr.P.C. The



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accused examined D.W.1, Kathirvel, who was working as Public Relations Officer in V.P.M.M. Matriculation Higher Secondary School, Krishnankovil, where Adela was a student. He produced Ex.D.1, Ex.D.2 and Ex.D.3.

42.On analysis of oral and documentary evidence, the learned Sessions Judge, Mahalir Neethimandram, Madurai by judgment dated 11.09.2020 convicted the accused for offence under Sections 302 and 201 IPC and had acquitted him for offence punishable under Section 4(A) of TNPHW Act. The accused was convicted and sentenced to undergo life imprisonment for the offence punishable under Section 302 and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment and the accused was convicted and sentenced to undergo 5 years rigorous imprisonment and fine of Rs.5,000/- in default to undergo simple imprisonment for the offence under Section 201 IPC.

43.The present criminal appeal had been filed questioning such conviction and sentence.



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44. Heard arguments of Mr. V.Kathirvelu, learned Senior Counsel on behalf of the appellant and Mr. A.Thiruvadi Kumar, learned Additional Public Prosecutor on behalf of the respondents.

45. Mr. V.Kathirvelu, the learned Senior Counsel, on behalf of the appellant/accused, took the Court through the facts of the case.

(i). The learned Senior Counsel pointed out that it is the case of P.W. 39, mother of the deceased, that her daughter, the deceased and the appellant had a sentimental relationship. Later, by a Court order at Mexico, the custody of the child was determined. It was provided that they would each retain custody of the child for 14 months.

(ii). The learned Senior Counsel for the appellant then pointed out that the appellant had come down to Kalasalingam University for educational purposes. He had also brought his daughter. He was staying in the Staff Quarters. He then pointed out that the deceased had also come down to learn Mohini Aattam in Kalamandalam University in Kerala. He stated that the daughter was under the custody of the appellant. The period of custody was to end only in August, 2012. On 04.04.2012, the deceased



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had come down to the Staff Quarters of the appellant. He pointed out that there was no animosity between the deceased and the appellant. She stayed there till 09.04.2012.

(iii).The learned Senior Counsel stated that the evidence of P.W. 16 and P.W. 17 cannot be believed by this Court. Similarly, the evidence of P.W. 18 and P.W. 19 should also be rejected. These witnesses were said to be Security men in the gate of Kalasalingam University. However, the prosecution had not shown any document to show that they were actually working in that place. Their statements had been recorded by the Investigating Officer only on 28.06.2012, i.e., more than two months after the alleged incident. They had stated that they had seen the accused going out by car at 03.00 p.m., and coming back late at night. The learned Senior Counsel stated that no inference could be drawn by the appellant going out and coming back. He was residing in the Staff Quarters. He went out and he came back. It was just a natural circumstance.

(iv).The learned Senior Counsel stated that it had been the consistent case of the appellant that the deceased stayed till 09.04.2012 and



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then she left to Kerala. He had taken steps to find out whether she had reached that place. He had contacted her over phone, but a male voice replied and the phone got switched off. Later, he sent two e-mails to her and he had then contacted the house owner, where she was staying. Thereafter, he had given a complaint to the Police Station.

(v).The learned Senior Counsel pointed out that no evidence had been produced with respect to the offence under Section 302 IPC. The daughter, who is staying along with the appellant and the deceased was not examined as a witness. The sentimental friend of the deceased, with whom she was in a relationship was not examined as a witness.

(vi).The learned Senior Counsel therefore asserted that the appellant cannot be inferred to be the perpetrator of the offence, which took place at Thoppur in the outskirts of Madurai. Even with respect to that incident, he pointed out that the only evidence brought by the prosecution connecting the accused with the burnt body is the recovery of spare parts of the Gearbox of a Ford Car. He pointed out that the said spare part fitted with every Ford Car, which had been manufactured. He then pointed out the



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contradiction in the evidence of Sridhar, P.W.21. The Investigation Officer stated that he was asked to come to the Police Station to fit the spare part in the Car of the appellant, whereas, the witness has stated that the Car was taken to company, where he was given the spare part and asked to see whether it matched. Even in chief-examination, he had stated that Car was brought to the outside of Akshaya Ford and he had fitted the part. The learned Senior Counsel criticised this evidence and stated out that the Court should not place reliance on the same.

(vii).He further pointed out the improbability of the evidence of P.W.11. He stated that he was a paid employee of the University. It is the case of the prosecution that when the Car of the appellant was given for washing, the said witness stated that he found a strange smell in the Car. The learned Senior Counsel pointed out that this could be for any reason, and there cannot be any interference that a dead body was transported in the Car.

(viii).The learned Senior Counsel questioned the evidence of P.W.1 Village Administrative Officer, Santana Lakshmi who stated that



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when she went to the scene of crime, she saw various objects and then she came back without recovering any of them. He stated that the recovery of the spare part of Ford Car from the scene of crime itself is suspect. He also pointed out that no other reliable witness had been examined to show that the accused was actually present at the scene of occurrence, where the half burnt body was found.

(ix).The learned Senior Counsel stated that there were separate incidents. One was the missing of deceased from the residence of the appellant. The appellant did not know what happened to her. The other was that her dead body was found at Thoppur Kanmai near the outskirts of Madurai. The only evidence linking the appellant with that particular incident was the spare part of the Car, which the learned Senior Counsel was based on extremely unreliable evidence of P.W.21, Sridhar. He also pointed out that the registration of the Car was not in the name of the accused.

(x).The learned Senior Counsel further pointed out that the prosecution had not adduced proper evidence by examining the child to



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speak about what happened in the Staff Quarters of the accused/appellant.

The learned senior counsel stated that the only reason why the child was not examined was because nothing had happened in the house of the appellant. The deceased had come there on 04.04.2012 and left on 09.04.2012. Thereafter, if a body had been found in Thoppur Kanmai, the appellant cannot be held responsible for that happening. In this connection, the learned senior counsel pointed out that very significantly the person, with whom the deceased was in sentimental relationship was not examined as a witness and there could be a possibility of his involvement of also.

(xi).Pointing out all these aspects the learned senior counsel stated that the Judgment convicting the appellant should be set aside and the appellant must be acquitted of all charges.

46.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor contested all the arguments put forth by the learned senior counsel on behalf of the appellant.

(i).According to him, a half burnt dead body was originally found by P.W.3, who saw the Car being parked, the Car leaving the place at



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Austinpatti and a burnt body in that particular place. This was at 11.00 p.m., on 10.4.2012. He went over to see what had happened. He then saw a burnt body in that place. In the morning, he informed this incident to P.W.4. Then, P.W.4 informed to P.W.5, the husband of Village Panchayat President. Thereafter, P.W.3 and P.W.4 again went to the spot at 6.30 a.m., and saw a travel bag near the dead body.

(ii).P.W.5 thereafter informed to P.W.1, Village Administrative Officer. P.W.1 went to the spot at 06.00 a.m., and she saw a spare part in that place. The learned Additional Public Prosecutor submitted that this spare part was later matched with the missing part in the Car of the accused.

(iii).The learned Additional Public Prosecutor pointed out the improbability of the very same spare part being found missing in the Car of the accused and the same spare part being found lying next to the dead body of the accused. The only inference, which could be drawn was that the Car of the appellant was near the dead body and while going, the spare part had fallen away from the Car.

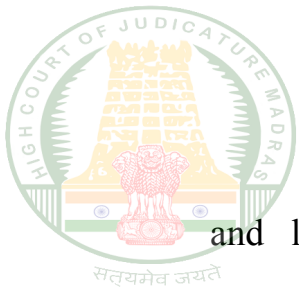


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(iv). He then pointed out that P.W.16, P.W.17, had seen the accused leaving Kalasalingam University at 03.00 p.m., on 10.04.2012. The Car did not come back immediately. But the Car came back at 12.00 in the night. This was witnessed by P.W.18 and P.W.19. Thus, the vehicle had gone out of Kalasalingam University and had come back at 12.00 in the night. The gearbox part of the Car was missing. That particular spare part was recovered near the dead body.

(v).Drawing a chain among all these events, the learned Additional Public Prosecutor argued that the only interference which could be drawn is that the accused had driven the Car, gone to Thoppur Kanmai, burnt the body and had come back at 12.00 in the night. No other view can be taken in this chain of events.

(vi).The learned Additional Public Prosecutor then pointed out the conduct of the accused. He stated that the accused had claimed that he telephoned the number of the deceased and a male voice answered and later the connection was cut. He pointed out that the accused had not lodged any complaint immediately. He claimed that he sent two e-mails to the deceased



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and later, had lodged a complaint. The learned Additional Public Prosecutor pointed out that all these steps were taken to screen the main offence.

(vii).The learned Additional Public Prosecutor then pointed out the evidence of Sekaran, P.W.11. He was known to the accused. He did not have any hostility against the accused. He stated that when he cleaned the vehicle of the accused, a very bad smell emanated from it. The learned Additional Public Prosecutor stated that this was the Car, which left the University and which came back late in the night. A part of the Car was found near the dead body and the next day when it was cleaned, a bad smell emanated from it. Once again, the learned Additional Public Prosecutor pointed out that the chain of events point to only one aspect, namely the guilt of accused herein.

(viii).The learned Additional Public Prosecutor further pointed out the evidence of Sridhar, P.W.21 from Akshaya Ford, who very emphatically stated that specific spare part found near the dead body fitted exactly with the Ford Car of the appellant. That particular spare part was



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missing in the Ford Car of the appellant. Therefore, the learned Additional Public Prosecutor stated that this is yet another link in the chain, linking the accused with the offence.

(ix).The learned Additional Public Prosecutor stated that the respondent had taken all efforts during the course of investigation. From the spot they had lifted the tyre marks. Thereafter, the tyre marks of the appellant's Car were independently taken. The two marks were matched together. He therefore stated that this is yet another link in the chain to show that the Car of the appellant was at the place, where the burnt body of deceased was found. He relied on the evidence of P.W.27 in this connection.

(x).The learned Additional Public Prosecutor then pointed out the DNA Fingerprinting test done and pointed out that the identity of the deceased was conclusively established through DNA Fingerprinting and through skull superimposition.

(xi).The learned Additional Public Prosecutor stated that only after information came to the knowledge of the Investigation Officer, he had



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recorded the statements of P.W.16 to P.W.19. He pointed out that no ground had been made to reject the evidence of these witnesses.

(xii).The learned Additional Public Prosecutor also pointed out the evidence of P.W.39. The said witness was the mother of the deceased. She had spoken about the strain in the relationship between the deceased and the appellant. He further pointed out that the Court at Mexico had passed orders relating to the custody of the child. He pointed out that on the date of the incident, the child was in the custody of the accused. He stated that P.W.39 had very clearly deposed about the various differences between the appellant and the deceased. She had also stated that the deceased had purchased tickets to go abroad along with the child, during the summer vacation.

(xiii). The learned Additional Public Prosecutor placed reliance on Section 106 of Indian Evidence Act and stated that since the appellant and the deceased was alone in the house, the appellant will have to explain how she went missing. He brushed aside the complaint given by the accused as given belatedly to protect himself. He pointed out that the



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prosecution had established the motive and had also established that it was the appellant, who was involved in the burning of his wife.

(ivx).Pointing out all these facts, the learned Additional Public Prosecutor stated that the conviction passed against the appellant must be confirmed by this Court.

47.We have carefully considered the arguments advanced by both sides and perused the materials on records.

48.The narration of the facts in this criminal appeal would involve narration of two separate complaints leading to registration of two separate First Information Reports and then examining, whether there is a connection between the two sets of facts.

F.I.R in Crime No.173 of 2012 (Thirunagar Police Station, Madurai):

49. P.W.1, Santhana Lakshmi, Village Administrative Officer of Thoppur had given a complaint to the Police Station at Austinpatti (Thirunagar Police Station) on 11.04.2012, consequent to which, F.I.R in



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Crime No. 173 of 2012 had been registered at 08.00 a.m., for offence punishable under Sections 302 and 201 IPC. In her complaint, she had stated that she received an information from P.W.5, Vadivel, the husband of Village Panchayat President about the presence of a burnt dead body at Thoppur Kanmai. She went to the spot at 7.00 a.m. She saw the dead body of a person about aged of 35, whose gender was not able to be determined, burnt from head to leg and the internal parts coming out. She was accompanied by the Village Assistant, Shanmugavel (P.W.2). She formed an opinion that the body should have been killed somewhere else and brought to this place by Car and burnt. It was also noticed that there was a travel bag near the place. There were also blood spots in the ground. She also found a spare part of a Car was there in that place. It had a marking of Ford 5N11-A060AA2AAWPP+ EPDM-TD25RM>RM and gliter in white marking 82/10/12. There were also tyre marks in that place.

50.The FIR was registered by Ramakrishnan, Sub Inspector of Police, P.W.34. He had completed the formalities of forwarding the FIR to the Jurisdictional Magistrate, who received the same at 12.20 p.m., on the same day. Thereafter, the investigation was taken over by P.W.40,



Sethumani Mathavan.

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51. P.W.40 went over to the scene of crime and prepared Observation Mahazar, Ex.P.20 and Rough Sketch, Ex.P.21. A perusal of Ex.P.21 would show that the body was found 5 meters away from the road and in a deserted place. The identity of the body was not known. P.W.40 thereafter, conducted inquest and forwarded the body for conducting Postmortem. The Postmortem was conducted by Dr. Rajavelu, P.W.23. He issued Ex.P..8 and Ex.P..9, Postmortem certificate and final opinion.

52.In Ex.P.8, he had noted the following Postmortem injuries:

“Extensive deep burns noted over the following areas, head exposing the bony parts, front and back of chest exposing the ribs, front and back of the whole abdomen exposing the abdominal viscera in partly cooked condition and loops of intestine in partly cooked condition, back of the whole of left leg, front of upper half of the left thigh, right lower limb and perineal region. Head split noted in the front of left lower thigh, Superficial burns noted over remaining areas. Peeling and blackening of the skin noted all over the burnt area



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in patches. The base of the burnt area is pale in colour.

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53.The body was completely burnt and it was also decomposed, The Postmortem was done on 14.04.2012. In the final opinion, it was stated that a definite opinion could not be given regarding the cause of death owing to decomposition.

54. P.W.40 further proceeded with the investigation and recorded the statements of P.W.1 and P.W.2. He also recorded the statement of P.W.3, who when recalled for further chief examination had stated that on 10.04.2012 at 11.00 p.m., he had seen a Car coming across the road near the scene of occurrence. The Car went forward to a little extent and then took a U-turn and came back and it stopped. Thereafter, there was a fire near that place and the Car then left. It is his evidence that he saw a burnt body in that place. He informed this information to his uncle, P.W.4, Mayathevar at 5.00 a.m., on the next day. They both went over to the scene of crime again in the morning and saw the burnt body. Thereafter, they informed P.W.5 Vadivel, the husband of Village Panchayat President.



55. P.W.4 in his evidence stated that he was informed by P.W.3

about a vehicle coming across the pathway and leaving after some time and at the place where it was stopped, there was a burnt dead body.

56. P.W.5, Vadivel in his evidence had stated about the information received by him in this regard from P.W.4. He had further informed to P.W.1 about the presence of a burnt dead body near Thoppur Kanmai.

57. From the evidence narrated above, the following facts are discernible:

- 1. A dead body was brought in a Car;*
- 2. It was brought late night at 11.00 p.m., to a deserted place, Thoppur Kanmai;*
- 3. There was a fire near the place where the Car was stopped;*
- 4. The Car left that place;*
- 5. When P.W.3 went there he saw a burnt dead body at the place where the Car had stopped.*



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58.This information slowly trickled through P.W.4 and P.W.5 to P.W.1, Santhana Lakshmi, Village Administrative Officer. She went to the spot on 11.04.2012 at 6.00 a.m., along with P.W.2. She saw very specifically two items namely a travel bag and a spare part of a Car with marking Ford and the numbers given there. She had stated about the presence of these two objects at the scene of crime in her complaint Ex.P.1.

59.Therefore, it can be safely concluded that the body found there had a direct connection with the Car, which came there and left and the travel bag and the spare part of a Car found in that place. The spare part of a Car and the travel bag were later seized by P.W.40, during the course of his investigation and produced as M.O.5 (spare part of the Car) and M.O.17 (travel bag iron piece).

60.When P.W.40 commenced his investigation he did not have any clue about the identity of the body. He had therefore forwarded the body for conducting postmortem. Very significantly, as is seen from the postmortem certificate, Ex.P.8, the Doctor, Dr.Rajavelu, who conducted



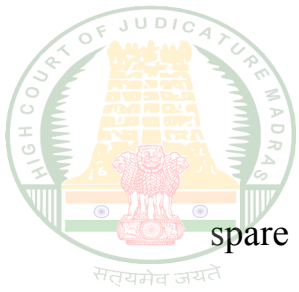
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postmortem had retained 1) *skull with mandible preserved, sent for superimposition*, 2) *thigh bone preserved, sent for DNA fingerprinting*.

61.The Court must place its appreciation for the foresight of Dr. Rajavelu, Assistant Professor, Forensic Department of Madurai, Government Rajaji Hospital, Madurai, in preserving the aforementioned skull and thigh bone for further investigation.

62. P.W.40 further continued with his investigation and preserved the skull for superimposition. He had taken the impression of the tyre mark in Plaster of Paris, which was produced as M.O.20. He also collected soil with blood and soil without blood, M.O.18 and M.O.19. He also collected burnt hair and burnt clothes of the deceased, M.Os.14 and 15. He also preserved the ash, M.O.16.

63. P.W.40 then continued to record the statements of the witnesses, who had seen the dead body namely P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5. He formed a special team to identify the dead body. He also made enquiries with Akshaya Ford, Madurai with respect to M.O.5, the



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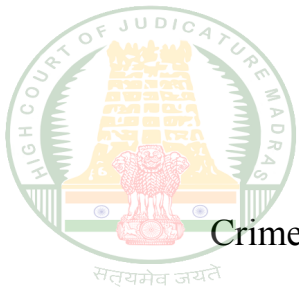
spare part found at the scene of occurrence near Thoppur Kanmai. He continued to record the evidence of recovery witnesses. He also forwarded the details to determine whether any information could be obtained from the District Crime Branch. But he could not make any progress.

64. On 16.04.2012, P.W.40 got a small hint of a breakthrough by a news item in Dinamalar daily paper, wherein, it had been reported that a 36-year-old Mexican lady, Cecile Denise Acosta Reynaud, had been missing, after she came to meet another Mexican citizen at a Private University at Krishnankovil to meet her daughter, Adela and that she had gone to Kerala, but had not reached her place of residence.

65.P.W.40, then took permission from the Superintendent of Police to pursue investigation on the basis of that particular information.

FIR in Crime No. 70 of 2012, (Krishnankovil Police Station, Virudhunagar District)-

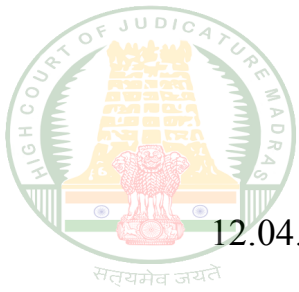
66. On the basis of a complaint given by the accused, the Krishnankovil Police Station at Virudhunagar District had registered FIR in



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Crime No.70 of 2012 under Woman Missing category, which was registered at 3.00 p.m. The copy of the same was received by the Jurisdictional Magistrate on 16.04.2012 at 12.10 p.m.

67.The de-facto complaint was the accused herein. In the complaint, which was dated 15.04.2012, he stated that he was doing Post Doctorate Research at Kalasalingam University in Krishnankovil and was residing in the Staff Quarters. He had a daughter called Adela, aged about 6 years who was under his custody. Her mother was Cecile Denise Acosta Reynaud, aged about 36 years. He stated that Cecile Denise Acosta Reynaud was studying Mohini Aattam at Kalamandalam University in Kerala. She used to come over to meet her daughter Adela once or twice in every month. In the same manner, she had come on 03.04.2012 to meet her daughter. She stayed at Kalasalingam University with her daughter from 04.04.2012 till 08.04.2012. Thereafter, on 09.04.2012 in the afternoon at 12.00 noon, the accused had taken her to the bus stand to go to Kerala. On Wednesday, 11.04.2012, the accused had contacted her through phone. He received reply from a male voice and the phone was immediately switched off. Thereafter, though he tried to contact her, he could not do so. On



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12.04.2012 and 13.04.2012, he sent e-mails to her. On 14.04.2012, he contacted the house owner, where she was staying at Kerala and he was informed that she had not come back to Kerala. He further stated that he tried to contact all known persons and did not receive any information. Therefore, he had given a complaint under woman missing category on 15.04.2012 before the Krishnankovil Police Station.

68. P.W.40, the Investigating Officer of Cr.No.173 of 2012, Thirunagar Police Station came over to Krishnankovil Police Station and recorded the statement of K.Balu, who had registered the FIR in crime number 70 of 2012 (P.W.33). He also recorded the statement of Mookan, Inspector of Police (P.W.38).

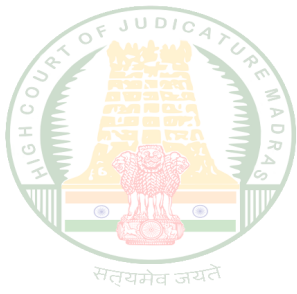
69. In his evidence, P.W.40 stated that thereafter he had made further inquiries. He went over to Kalasalingam University and tried to contact the accused. He was not there. He then recorded the statement of his friend Vijaya Karthi (P.W.8) and Arumugam (not examined). He then came to know from the evidence of P.W.8 that he had sold his Ford Car to the accused. P.W.40 stated that the accused had a Ford Car, which originally



belonged to P.W.8. P.W.40 then recorded the statement of Raghunath P.W.

20, who had earlier sold the Car to P.W.8. He then understood that the spare part, which was recovered at the scene of occurrence at Thoppur Kanmai belonged to a Ford Car and that the accused was the owner of the Ford Car.

70. The efforts of P.W.40 to contact the accused proved futile, since the cell phone was switched off. However, P.W.40 pursued in his efforts and was able to intercept the accused at Thiruparangundram park, where he found the vehicle TN01 Z 4389 Ford Car. He then brought him over to the Police Station. Thereafter, in the presence of witnesses, P.W.9, Subbaiah and P.W.10, Sonai he recorded the confession statement. The admissible portion of which was marked as Ex.P.9. He also seized the Ford fusion Car and the cell phone. They were produced during the course of trial as M.O.1 and M.O.2 respectively. He then went over to the residence of the accused. He prepared observation mahazar, Ex.P.7 and rough sketch Ex.P. 27. From the house, he had recovered M.O.3, knife, M.O.4, passport and M.O.21 photographs of the deceased (2 numbers). He then identified the petrol bunk, where the petrol was purchased by the accused and took the accused to the scene of crime at Thoppur Kanmai.



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71. Having satisfied himself that it was the accused, who had burnt the body at Thoppur Kanmai, he arrested the accused after giving information to Indian Embassy and Mexico Embassy. Thereafter, he sent the daughter of the accused to Vidiyal Home at Muthupatti, Madurai. He then forwarded the material objects to the court. He then forwarded the photographs of the deceased for skull superimposition. The report was obtained stating that the photographs matched with the skull, which had been preserved by Dr. Rajavelu, at the time of conducting postmortem.

72. Thus, a primary identification was arrived that the dead body was that of the mother of Adela and that missing lady was Cecile Denise Acosta Reynaud. Thereafter, after getting permission from the Judicial Magistrate, he also obtained blood samples from Adela and forwarded it for DNA fingerprinting with the Thigh bone of the deceased, preserved at the time of postmortem. He received the DNA report, which confirmed that the deceased was the mother of Adela and the percentage is 99.9999999%. By this time, P.W.40 had also confirmed the identity of the dead body.

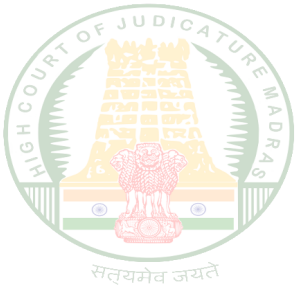


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73. Thereafter, on 27.04.2012, he took the Car to Akshaya Ford Company and recorded the evidence of Sridhar, P.W.21, who was the Manager there, who fitted the spare part in the Car of the accused and it fitted perfectly. It must be pointed out that in the Car of the accused that particular spare part was not available.

74. P.W.40 also recorded the statement of P.W.11, Sekaran, who came up with an information that he was asked to clean the Car by the accused on 12.04.2012 and found a very strong odour coming from the Car.

75. Thereafter, on 29.04.2012, P.W.40, examined the Gatekeepers of Kalasalingam University, who worked in the two shifts, in the morning and night. P.W. 16 and P.W. 17 were the Gatekeepers working in the morning. They stated that they saw the accused at 03.00 p.m., on 10.04.2012. He then recorded the statements of P.W.18 and P.W.19, who stated that the accused came back late in the night at around 12.00 p.m., in the middle of night, between 10.04.2012 and 11.04.2012.

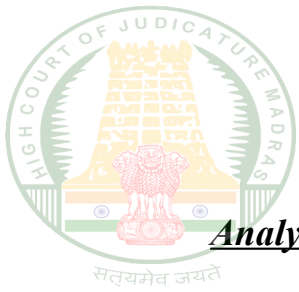


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76.P.W.40, thereafter, took the tyre impression from the Car of the accused to compare with the tyre impression taken from the scene of occurrence. The tyre impression from the Car were produced as M.O.8 to M.O.13 and tyre impression taken from the scene of occurrence was marked as M.O.20. The report was received that the both tyre marks matched.

77. P.W.40 also recorded the statement of the mother of the deceased, P.W.39. She informed about the quarrel between the deceased and the accused over the custody of the child.

78. P.W.40, therefore, concluded that it was the accused, who had committed the murder of the deceased and to screen evidence, had taken the body all the way from Krishnankovil, Virudhunagar District to Thoppur Kanmai in Madurai District and burnt the body. He then filed final report charging the accused with commission of offence under Sections 302 and 201 IPC and 4(A) of TNPHW Act.



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Analysis of facts established:

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79. The evidence linking the facts in FIR in crime No.173 of 2012 Thirunagar Police Station Madurai District with the facts in FIR in Cr.No.70 of 2012 Krishnankovil Police Station, Virudhunagar District establish the following:

- The burnt body recovered at Thoppur Kanmai and first noticed by P.W.3 Selvam and then by P.W.4 Mayathevar and later, P.W.1 Santhana Lakshmi, along with P.W.2 Shanmugavel is that of Cecile Denise Acosta Reynaud.
- At the time of postmortem:
 - Skull with mandible had been preserved for superimposition
 - Thigh bone had been preserved and sent for DNA fingerprinting
 - The superimposition was done with the skull image and the photo images, M.O.21 of the deceased recovered from the house of the accused and report Ex.P.12 establishes that the skull is of the person in the photograph (Cecile Denise Acosta Reynaud).



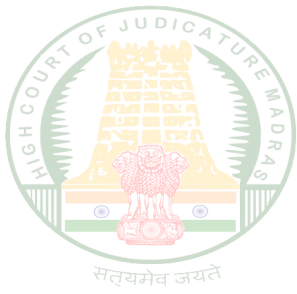
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- This test was done by super imposing the image of the skull on the image of the facial photograph of the deceased using computer aided video superimposition device for demonstrating the fitness of the former in the later. The following was the technique used in the superimposition test:

“The flexion extension factor (forward/backward tilt) and the rotation factor were calculated from the 'life size' enlargement of the face of the female (deceased) and were used for proper orientation of the skull. After orienting the skull in accordance with the posture of the face in the photograph, the skull and the 'life size' enlargement of the photograph were focused using two different CCD Video Cameras. The life size image of the skull and the face of the female (deceased) were brought out on the computer and T.V. monitors and



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super imposed by mixing and fading the images.

During superimposition the following observation were made:

a) The anthroposcopic landmarks in the face, item 2 and those on the skull, item 1 fitted well.

b) The outline of the face in item 2 and the outline of the skull, item 1 were found to be in fair congruence with due allowance for flesh thickness.

The following was the final opinion:

The skull, item 1 could very well have belonged to the female individual (deceased) seen in the photograph, item2.

This opinion had been given by Assistant Director, Anthropologist Department and the Junior Scientific Officer, Anthropologist Department and countersigned by Deputy Director of Forensic Department, Chennai.



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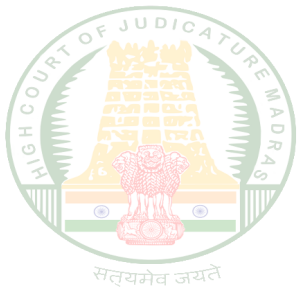


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- P.W.40 had also collected blood sample from Adela. The thigh bone preserved from the dead body of the deceased by P.W.23, who conducted the Postmortem was used for DNA fingerprinting with the blood sample of Adela. The report was filed as Ex.P.13. The report was as follows:

From the comprehensive analysis of the test results as show in the annexure III, it is found that the person to whom the femur bone in item 1 belongs (deceased) is not found excluded from the maternity of the child M.Adela under any of the 15 STR loci tested. Hence the cumulative probability of maternity of the person to whom the femur bone in item 1 (deceased) belongs for being the mother of the child M.Adela and the cumulative chance of exclusion of any random woman from the maternity of the child M.Adela were computed:

1.the cumulative probability of maternity of the person to whom the femur bone in item 1 belongs (deceased) for being the mother of the child M.Adela



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is found to be 99.9999999%.

2.the cumulative chance of exclusion of any random woman from the maternity of the child M.Adela is 99.99999999999999%.

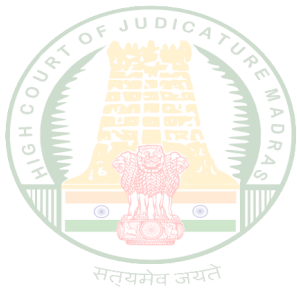
The final conclusion was as follows:

From the DNA typing results of the above samples, it is found that

(i)the femur bone in Item 1 belongs to a human female individual (deceased) ;

(ii) the person to whom the femur bone in item 1 belongs (deceased - Cecile Denise Acosta Reynaud) was the biological mother of the child M.Adela.

- From the call detail records of the accused, Ex.P.18, collected by the Investigating Officer it is revealed that on 10.04.2012 at 21.00:57 hours, the accused's telephone was located at Valluvar Colony, at 21:21:14 hours, it was located at Collector Bungalow and at 21:22:49 hours, it was located at Valluvar Colony, which indicates that the accused has moved away from his normal place of residence at Staff Quarters in Kalasalingam



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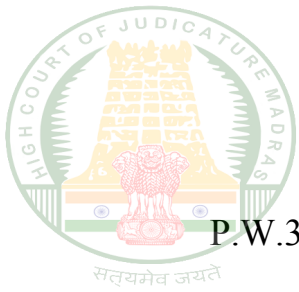
University at Krishnankovil to Madurai.

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80.A cumulative analysis of the aforementioned evidence, which has not been dented or disputed conclusively proves that the deceased was the mother of Adela, the accused was the father of Adela and as stated by P.W.39, there was a dispute between the accused and the deceased relating to the custody of Adela.

81.Even in the complaint given by the accused, consequent to which, FIR in Cr.No.70 of 2012 had been registered by Krishnankovil Police Station he had admitted that the deceased used to come over to the Staff Quarters at Kalasalingam University, once or twice every month, where he and Adela were staying.

82.He further admitted that the deceased came lastly on 04.04.2012 and she left the place on 09.04.2012. But the Car was seen going out only on 10.04.2012 at 3.00 p.m. The spare part of the Car was found at Thoppur Kanmai at around 5.00 a.m., on 11.04.2012. The Car was noticed and the burning body of Cecile Denise Acosta Reynaud was seen by



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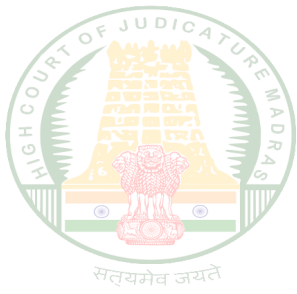
P.W.3 at Thoppur Kanmai at 11.00 p.m. The Car returned back to Kalasalingam University at around 12.00 p.m., as stated by P.W.18 and P.W.19. The Car was washed by P.W.11, Sekaran on 12.04.2012, who noticed a strong odour coming from the same. The spare part recovered was fitted on the Ford Car by Sridhar, P.W.21 the Manager of Akshaya Ford and the part was perfectly fitted. Incidentally that particular spare part was found missing in the Car of the accused. That the accused was owner of the Car was spoken to by P.W.8 and that P.W.8 was the owner of the Car was spoken to by P.W.20 Raghunath. That the Car had also been at the scene of crime at Thoppur Kanmai was further established by comparison of tyre marks namely M.O.20 with M.O.8 – M.O.13. Thus, a direct and a strong chain with perfect unbroken links has been established that the deceased was Cecile Denise Acosta Reynaud, the mother of Adela and former partner of the accused and that her dead body had been taken by the accused in his Car from Staff Quarters Kalasalingam University to Thoppur Kanmai and burnt there.

83. The only aspect now to be examined is whether the accused had committed the offence punishable under Section 302 IPC. From his own



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admission as seen from the complaint given by him to the Krishnankovil Police Station, the deceased had come over to the Staff Quarters at Kalasalingam University on 04.04.2012. He had lodged the complaint stating that he had tried to contact her over phone on 11.04.2012 and that a male voice spoke and cut off the line and later, switched off phone. He further stated that on 12.04.2012 and 13.04.2012 he sent e-mails to her, He further stated that he tried to contact the house owner at Kerala and then received information that she had not come back to Kerala at all. This information provided by the accused himself shows that he had created a false story proclaiming innocence and ignorance about her whereabouts, when he had burnt her dead body on 10.04.2012 at around 11.00 p.m., at Thoppur Kanmai. The dead body was recovered on 11.04.2012 early in the morning. Therefore the statement given by him in his complaint that he had made a telephone call on 11.04.2012 and sent e-mails on 12.04.2012 and 13.04.2012 and made another phone call on 14.04.2012 to the house owner are all statements made knowing them to be made to screen the offence of murder. His conduct speaks for himself. He had given false information and created a false image of being concerned when he had burnt her dead body far away from his place of residence.



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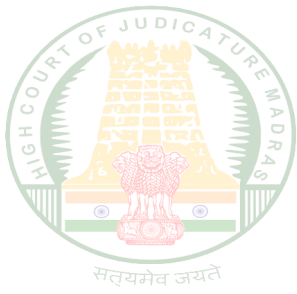
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84. Section 201 IPC is as follows:

201. Causing disappearance of evidence of offence, or giving false information to screen offender —

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

85. In the instant case, the accused had caused disappearance of evidence by burning the dead body. He had done that to screen the offence of homicide. He had deliberately given false information. The case of the prosecution so far as charge under Section 302 IPC rests on circumstantial evidence. On the basis of his confession, the prosecution had recovered the knife from the residence of the accused. The admissible portion of his confession was marked as Ex.P.25.



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86.The prosecution had thus established the following;

- that the accused and the deceased were earlier in relationship at Mexico;
- that the daughter Adela was born to them;
- that owing to differences, a judicial Order was passed relating to custody of the daughter;
- that on 04.04.2012 the daughter was in the custody of the accused;
- that the deceased came visiting the accused and her daughter on 04.04.2012;
- that the deceased actually stayed in the Staff Quarters at Kalasalingam University;
- that later, the burnt body of the deceased was found at Thoppur Kanmai;
- that it had been transported in the Car of the accused by the accused.

87.The only inference, which could be drawn from the aforementioned circumstance is that it was the accused, who has to explain



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how Cecile Denise Acosta Reynaud died.

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88. Section 101 of Indian Evidence Act, casts a burden of proving a fact on the party, who asserts that fact. Section 106 is an exception. It does not relieve the person of that duty or burden. On the contrary, it provides that when a fact, is within the knowledge of a person, it is for him to prove it.

89. In the instance case, Cecile Denise Acosta Reynaud came as a live person to the residence of the accused on 04.04.2012 and was taken out dead on 10.04.2012 by the accused in his Car. Nobody else except the daughter, Adela lived in that house. The accused will have to explain how the live person died and how he came to be in possession of the dead body and why he burnt the dead body at a far off place.

90. In *Trimukh Maroti Kirkan vs State Of Maharashtra (2006 (10) SCC 681)*, the Hon'ble Supreme Court, while examining the scope of 106 of Indian Evidence Act, had held as follows:



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“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this Section throws some



light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

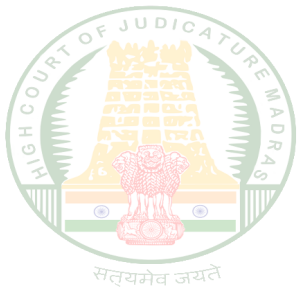
15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

...

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the



offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of Himachal Pradesh AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 the medical

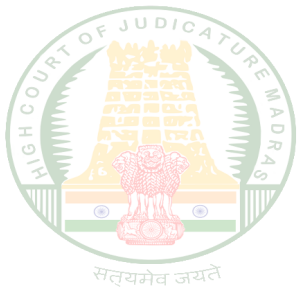


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*evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In **State of Tamil Nadu v. Rajendran (1999) 8 SCC 679** the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was*



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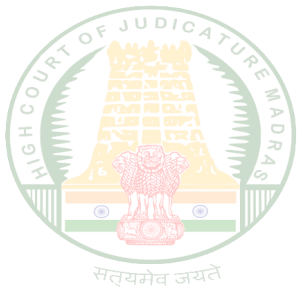


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the accused (husband) who was the perpetrator of the crime. (Emphasis supplied)

91. In *Tulshiram Sahadu Suryawanshi & Anr vs State Of Maharashtra (2012 (10) SCC 373)*, the Hon'ble Supreme Court, while examining the scope of 106 of Indian Evidence Act, had held as follows:

*“23.It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. **It empowers the Court to presume the existence of any fact which it thinks likely to have happened.** In that process, the Courts shall have regard to the common course of natural events, human conduct etc in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. We make it clear that this Section is not intended*



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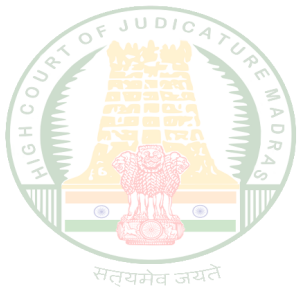


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to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. It is useful to quote the following observation in State of West Bengal vs.Mir Mohammed Omar, (2000) 8 SCC 382:

“38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambhu Nath Mehra v. State of Ajmer the learned Judge has stated the legal principle thus:

“11.This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at



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any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience.

*The word 'especially' stresses that. **It means facts that are pre- eminently or exceptionally within his knowledge.**" (Emphasis supplied)*

92. In the instant case, as pointed out above, the fact that the deceased came to the house of the accused on 04.04.2012 is a fact known only to the accused. The circumstances how the burnt dead body was later found at Thoppur Kanmai on 10.04.2012 at 11.00 p.m., is a fact that only the accused has to explain. He has to explain the circumstance under which she was murdered and burnt, since the dead body was transported by him in his Car.

93. That she came to the residence of the accused is a fact proved. That her dead body was transported in the Car of the accused is a fact proved. That the dead body recovered at Thoppur Kanmai is Cecile Denise Acosta Reynaud, his former partner is a fact proved. Therefore in the



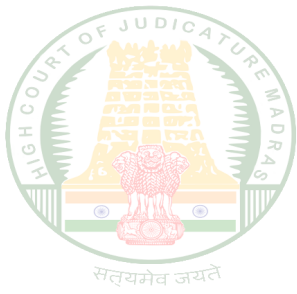
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absence of any explanation by the accused, we conclusively hold that it is the accused, who had caused the death of deceased. That the deceased died of homicidal death has been established by the prosecution.

94. The only further aspect, which we must examine is the effect of the evidence of P.W.39, mother of the deceased that there were frequent quarrels between the deceased and the accused over the custody of child. Even in her evidence, P.W.39 had stated that the deceased wanted to take custody of the child, during the summer vacation. Her turn for custody would commence only from August, 2012, but she had booked tickets to go over to Spain and wanted her daughter to accompany her. It is in the charge against the accused that owing to this arrangements there was a quarrel and in the quarrel, the accused had committed the murder of the deceased.

95. The failure of the accused to explain how the deceased died makes him fallible under Section 106 of Indian Evidence Act.

96. However, it has to be examined whether the accused could fall back on any of the exceptions to Section 300 IPC.



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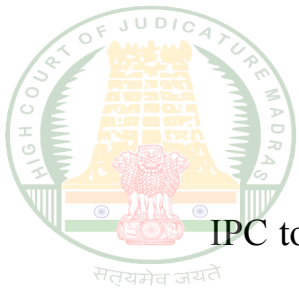
97.Exception 4 of Section 300 IPC is as follows:

“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.”

98. The quarrel over the custody of the child, which has been ongoing for years is an aggravating circumstance, particularly between estranged partners. It must also be kept in mind that the deceased was not murdered immediately on coming to the residence of the accused on 04.04.2012.

99. We would therefore take an over all view of the fact that there are two separate offences, namely the offence of homicide and the offence of screening. They are distinct.

100. We would grant the benefit of Exception 4 to Section 300



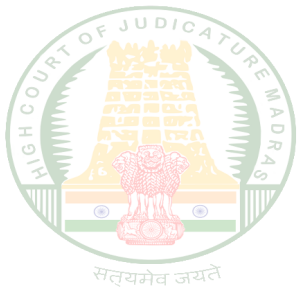
IPC to the accused and bring the case under the fold of Section 304(Part II)

IPC.

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101.The prosecution had proved by distinct and unbroken chain that the deceased entered into the house of the accused, when she was alive and came out as a dead body and ended up as a burnt body. The efforts taken by the accused to screen the evidence would also be indicative of the fact that he was quite agitated over the homicidal death of the deceased. This would also indicate that there was no intention to cause death, but the death did happen.

102.The accused is the only person culpable for the homicide, but intention is a fact presumed and therefore we are justified in falling back to Exception 4 of Section 300 IPC. It did not happen immediately on her entering his house but after nearly 5 days. The quarrels over custody could have escalated to violence. It is an inference which any person would arrive out. There must have been sustained quarrel over the custody of the child leading to an act of violence on the spur of the moment. There was no pre-planning. The death must have been a shock to the accused also.



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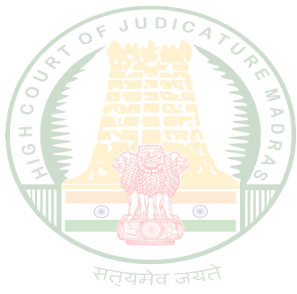
103. Therefore, we would set aside the conviction under

Section 302 IPC and instead convict the accused for the offence punishable under Section 304(Part II) IPC. We would however confirm the conviction under Section 201 IPC.

104. With respect to sentence for the offence 304(Part II)IPC, we would sentence the accused to undergo 4 years rigorous imprisonment and confirm the fine amount already imposed by the trial Court.

105. With respect to the sentence to be imposed for the offence punishable under Section 201 IPC, we would modify the sentence imposed by the trial Court from 5 years rigorous imprisonment to 1 year rigorous imprisonment and maintain the fine amount already imposed by the trial Court.

106. We further direct that both the sentences which have we now imposed shall run concurrently. We further direct that any duration of sentence already undergone by the accused shall be set off under Section 428 of Cr.P.C.



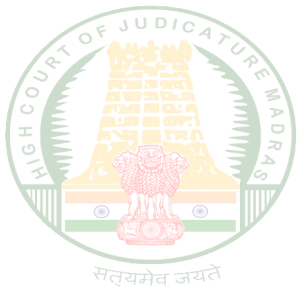
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107.In the result,

- 1. this appeal is partly allowed;*
- 2. the conviction of the accused for the offence punishable under Section 302 IPC is set aside. Instead he is convicted for the offence punishable under Section 304(Part II) IPC;*
- 3. the conviction of the accused for the offence punishable under Section 201 IPC is confirmed;*
- 4. the accused is sentenced to undergo rigorous imprisonment for four (4) years, for the offence punishable under Section 304(Part II) IPC. The fine amount imposed for offence punishable under Section 302 IPC by the trial Court is maintained by us; We are informed that the fine had been paid;*
- 5. the accused is sentenced to undergo rigorous imprisonment for one (1) year for the offence punishable under Section 201 IPC. The fine amount imposed by the trial Court for the offence under Section 201 IPC is maintained by us. We are informed that the fine had*



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been paid;

6. both the sentence periods are ordered to run concurrently;

7. the period of sentence already undergone either during the period of remand or after conviction by the trial Court shall be given set off under Section 428 of Cr.P.C;

8. if any application is filed, the trial Court may return M.O.16, Ash of the deceased on proper adjudication and verification of such application and the applicant therein;

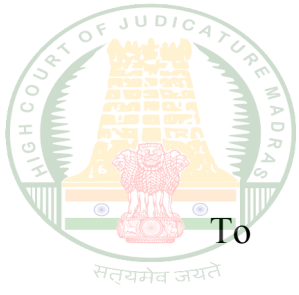
9. The trial Court is directed to take the accused into custody to serve the remaining portion of the sentence;

10. We place on record our appreciation for the meticulous investigation done by P.W.40, Sethumani Mathavan, then Inspector of Police, Thirunagar Police Station.

[C.V.K., J.] & [R.P., J.]
30.10.2024

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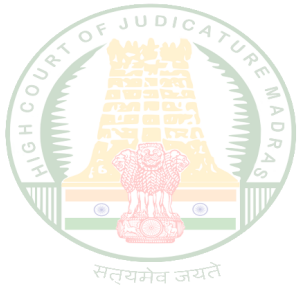


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To

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- 1.The Sessions Judge, Mahalir Neethimandram, Madurai
- 2.The Superintendent, Central Prison, Puzhal, Chennai
- 3.The Inspector of Police,
Thirunagar Police Station, Madurai District, Cr.No.173/2012.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.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.

PNM

**Pre-delivery Judgment made in
Crl.A(MD)No.312 of 2020**

30.10.2024