



Crl.A(MD)No.661 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.12.2024

CORAM:

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

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Saravanan

... Appellant/sole accused

Vs.

The State rep. By its

The Inspector of Police,

Kumbakonam West Police Station,

Thanjavur District.

(in Cr.No.181 of 2014)

...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.112 of 2015 on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thanjavur, Thanjavur District, dated 26.04.2024 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.S.Ramasamy

For Respondent : Mr.T.Senthil 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/sole appellant in the judgment dated 26.04.2024 passed by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thanjavur, in S.C.No.112 of 2015 by convicting and sentencing the appellant for the offence punishable under Section 294(b) of IPC and sentenced to undergo three months rigorous imprisonment and to pay a sum of Rs.500/- in default, to undergo two weeks rigorous imprisonment and for the offence under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo six months rigorous imprisonment.

2. The case of the prosecution are as follows :

(a) The complainant is a resident of Bharathiyar Street,



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Madulampettai. Her husband was doing tea business. Her husband's brother Krishna Kumar was unwell and unmarried. The said Krishnakumar written a letter to one Manjula wife of Suresh Kumar, who is neighbour of the complainant and gave it to Susheela wife of Saravanan, the accused, to give to Smt.Manjula. Smt.Susheela informed the same to her husband and to her mother-in-law, Thiru.Krishna Kumar was cautioned by the family members.

(b) On 25.06.2014, evening 9.15 p.m., Thiru.Saravanan, the accused abused the family members of the complainant by stating that “என்னடி குச்சிக்காரி, தேவடியா செருக்கீங்களா” against which her mother-in-law, the deceased, questioned him why he used such abusive language, for which he assaulted her with hands. The complainant also questioned the same, the accused slapped her.

(c) Again, her mother-in-law questioned him, accused took a knife from his hip and stabbed on her left neck. Her mother-in-law lay in a pool of blood. Smt.Geetha, Smt.Amudha also witnessed the occurrence. After information, her husband, husband's brother Senthil Kumar came and took her mother-in-law in 108 ambulance to



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Kumbakonam Hospital. The hospital authorities referred her for further treatment to Thanjavur Medical College Hospital. Since her mother-in-law was not in a position to speak, on 26.06.2014 the complainant narrated the incident to the Police and requested them to take action.

(d) P.W.10 Thiru.Gurumurthy, Sub Inspector of Police, went to the Thanjavur Medical College Hospital and recorded the statement of PW1 Mariammal, and registered FIR in crime No.181 of 2014 under section 294(b), 323, 307 IPC. The FIR was marked as Ex.P6 and the complaint was marked as Ex.P1. The same was sent to the Inspector of Police Thiru.Rajasekar for investigation.

(e) P.W.14 the Inspector of Police, Kumbakonam West Police Station, took up the case for investigation. He went to the place of occurrence on 26.06.2014 at 7.30 a.m., and prepared observation mahazar Ex.P8, rough sketch Ex.P9 in the presence of witnesses Ganesh, Shanmuganathan. He recovered blood stained cement earth – M.O.5, ordinary cement - MO2 under recovery Mahazar Ex.P.10.



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(f) He examined the witnesses Geetha, Amutha, Udaya Kumar, Senthil Kumar, Ganesh, Shanmuganathan and recorded their statements.

(g) Subsequently, he received message that injured TamilSelvi, died in the hospital. He altered the section of law from Sections 294(b), 323, 307 IPC to Section 302 IPC under Ex.P.11 and forwarded the same to the Judicial Magistrate through Grade-II Police Constable, Govindaraj. Thereafter, he went to Thanjavur Medical College Hospital received death intimation through Grade-I Constable Malliga. The same was marked as Ex.P12.

(h) Thereafter, in the presence of Panchayatars and witnesses he had prepared inquest report from 16.00–18.30 hours under Ex.P13. In order to find out the real cause of death, he sent a request to the hospital through Head Constable Arulanandam, for autopsy. Thereafter, he examined Doctor Vanadhi, recorded her statement and received Death summary.

(i) On 27.06.2014 at about 11.30 p.m., he arrested the



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accused in the presence of witness Udaya Kumar and recorded his confession statement Ex.P14 in the presence of Ashok Kumar, Siva Gurunathan and recovered the blood stained dresses of the accused - M.O.1 and knife-M.O.2 at 12.45 p.m., under recovery Mahazar Ex.P2.

(j) He examined the witnesses Ashok Kumar, Shiva Gurunathan, and recorded their statements. The accused was sent to remand, the material objects were sent to the Court under Form-91. He received the dresses of the deceased, viz., red colour inskirt-M.O.3, blood stained white colour Dhoti-M.O.4 under Form-91 and send the same to the Judicial Magistrate Court. He kept the file for further investigation.

(k) P.W.15 Thiru.Mahadevan, Inspector of Police took up the case for further investigation, he inspected the place of occurrence, examined all the witnesses and sent the material objects to the Court under Form 91.

(l) On 23.07.2014 he sent a requisition letter to the Judicial Magistrate to hand over the material objects for chemical analysis. On



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04.08.2014, he submitted a letter to the Judicial Magistrate to examine the witnesses, Geetha, Amudha under section 164(5) Cr.P.C.

(m) He then examined the Scientific Officer, Dr.Tamil Mani and recorded his statement. On 14.08.2014 he had produced the witnesses Maria, Amudha before the Judicial Magistrate, Papanasam for recording their statements under section 164(5) Cr.P.C.

(n) On 25.09.2014 he had completed the investigation and filed charge sheet.

3. After perusing the records, the Judicial Magistrate Kumbakonam took up the case in P.R.C.No.61 of 2014 and issued summons to the accused. After appearance of the accused, copies of all the prosecution documents were furnished to him, free of cost under Section 207 Cr.P.C. Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District Judge, Thanjavur, under Section 209(A) Cr.P.C. for further action.



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4. The Principal District Judge, Thanjavur received the case records and numbered as S.C.No.112 of 2015 and made over the case to the Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court) Thanjavur for trial.

5. After receipt of the case, the learned Sessions Judge, after perusing the records, framed charges against the accused under Sections 294(b), 352 and 302 IPC, read over the same and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

6. In order to prove the case of the prosecution, on the side of the prosecution, P.W.1 to P.W.15 were examined and Ex.P1 to Ex.P19 were marked and Material Objects M.O.1 to M.O.6 were produced. On the side of the accused, no witness was examined.

7. After full trial, the trial Court convicted the accused under Sections 294(b) and 302 IPC, for the offence punishable under Section 294(b) of IPC, sentenced to undergo three months rigorous imprisonment and to pay a sum of Rs.500/- in default, to undergo two weeks rigorous



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imprisonment and for the offence under Section 302 IPC, sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo six months rigorous imprisonment, against which, the present Criminal Appeal is filed on the following among other grounds:-

(i) That the nature of act committed by the appellant herein on the date of occurrence comes under the culpable of homicide and not under section 302 IPC.

(ii) That the specific case of the prosecution as well as the accused in his answer in 313(1)(b) questioning shows that at the moment, out of loss of control, the deceased attacked the appellant with broomstick, and thereafter, the appellant lost his control and due to sudden provocation assaulted the deceased.

(iii) That the deceased died after a day after the occurrence and the nature of act done by the accused on the fateful day shows that he has no intention to murder.

(iv) That there are vital contradiction among the eye witnesses, viz., PW1, PW2 and PW3. The other reason for conviction is not sound



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and unsustainable.

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8. The learned counsel appearing for the appellant during his argument, clearly stated that he is only arguing for reduction of sentence and not for acquittal.

9. The learned Additional Public Prosecutor appearing for the respondent states that both the accused and deceased had quarrel and the accused inflicted injury on the neck of deceased. The eyewitnesses and the medical evidence supported the prosecution case. The prosecution proved the case beyond all reasonable doubt that the accused committed the offence and prayed to pass orders accordingly.

10. On careful perusal of the entire records, the prosecution case unfolded from the evidence of P.W.1 to P.W.15 are as follows:

(a) PW1, deposed that the deceased Tamil Selvi is her mother-in-law. Her brother-in-law Thiru.Krishna Kumar had given a love letter to the wife of accused. Since the wife of the accused informed the same to her husband, the accused, abused the complainant and her family



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members in an inebriated condition. The same was questioned by her mother-in-law at 9.15 hours, the accused stabbed her mother-in-law with a knife. Herself, Geetha, Amudha witnessed the occurrence, they took her mother-in-law to the hospital through 108 ambulance. The Hospital authorities advised them to take her to Thanjavur Hospital. She was admitted in Thanjavur hospital. After two days, she succumbed to death due to injury.

(b) During cross-examination, she admitted that her mother-in-law went to the house of the accused and had a quarrel with accused, took a broomstick and attacked the accused. She also admitted that if the deceased had not assaulted the accused with broomstick, the occurrence would not have occurred. She also admitted that the accused had not used any abusive language and she did not notice the weapon used by the accused.

(c) Smt.Geetha alleged to be an eyewitness has been examined as PW2. She deposed that Thiru.Krishna Kumar, son of the deceased handed over a love letter to the wife of the accused to be given to one Mrs.Manjula wife of Suresh. Therefore, they had problem. On



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25.07.2016 at 9.15 p.m., Tamil Selvi came to the house of the accused, assaulted the accused with a broomstick. Immediately, the accused stabbed on her neck. Her evidence is corroborated by P.W.3.

(d) P.W.4, son of deceased Tamil Selvi during chief examination stated that both accused and himself were neighbours. He is hearsay witness. P.W.5, another son of the accused who is also hearsay witness supported the version of P.W.4.

(e) PW6 before whom the accused confessed about the crime and handed over the material object had spoken about the same.

(f) The Doctor PW8 in his evidence stated that the victim Tamilselvi brought by Thiru.Senthil Kumar PW2 at 9.30 p.m. During enquiry, she informed him that at 9.15 p.m. a known person stabbed on her neck, he found two injuries measuring 2 x 3 x 1 c.m., stabbed on her neck, the accident register-Ex.P.3, it was mentioned as follows:

“Injury :

Cut injury in the left side of the neck
approximately 2 x 3x 1 cm. Injury neck with



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thrombus of carotid artery.”

(g) In the Postmortem report-Ex.P.4 the following injuries were noted :

“THE FOLLOWING ANTE MORTEM INJURIES
WERE NOTED :

EXTERNAL INJURIES:

1)A vertical surgical sutured stab wound of length 8cm seen over right side of neck. It lies 4cm below right Jaw. On removal of suture, It was found depth 3.5cm. Underlying soft tissue, Major vessels found stabbed of size 1.5x0.5x1cm and it was sutured.

2)An oblique sutured stab wound of size 3x0.5x1cm seen over upper part of left side of neck. It lies 2cm outer to injury no. (1). It stab underlying soft tissues.

3) An oblique sutured stab wound of size 3x0.5x1cm seen over middle part of neck. It lies 3cm below injury no. (2). It stab underlying soft tissues.

ON DISSECTION OF NECK:



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Extravasated blood noted entire surface of neck, & upper part of chest. Larynx, Hyoid bone, Thyroid, Cartilage found normal. Left side internal carotid artery, Jugular vein found stabbed and sutured. Gauze pieces of size 3x3cm noted over left side of neck.

OTHER FINDINGS:

Heart: Normal. and Coronary vessels: Patent. Hyoid bone: Intact. Stomach: Contains 50ml of dark brown coloured fluid, no specific smell, mucosa pale. Lungs, Liver, Spleen, & Kidneys: Normal, c/s pale. Small Intestine: Contains 20ml of bile stained fluid, no specific smell, mucosa-pale. Bladder: Contains 20ml of urine. Uterus: Normal, c/s pale. Brain: Normal, c/s edematous. Spinal column: Intact.

OPINION AS TO THE CAUSE OF DEATH:

RESERVED PENDING CHEMICAL ANALYSIS REPORT.”

(h) The evidence, documents and records clearly established that the prosecution has proved the case beyond all reasonable doubt that the



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offence was committed by the accused.

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(i) On careful perusal of the entire records, all the witnesses clearly stated that Krishna Kumar, son of the deceased and brother-in-law of the complainant handed over a love letter to the wife of the accused and asked her to give to another married woman viz., Manjula wife of one Suresh. The wife of the accused therefore complained about the same to him. He abused the said Thiru.Krishna Kumar. He has absolutely no enmity against the deceased.

(j) The evidence of witnesses clearly prove that on the date of occurrence, the deceased alone went to the house of the accused and had quarrel. The deceased not stopping with quarrel, took a broom stick and attacked him. The original culprit is the son of the deceased who had handed over a love letter to a married women, wife of the accused. The deceased instead of cautioning her son went and quarrelled with the accused and attacked the accused with broom stick for no fault of him. The accused in turn due to sudden provocation and anger attacked her with knife, as a result of which she died. It is not proved that he had preplan or motive to commit the murder. But it is proved that it happened



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in a spur of the moment and due to sudden provocation. PW1 clearly admitted during cross examination that the accused would not have attacked the deceased if she had not attacked him with broom stick.

11. The learned counsel appearing for the appellant argued that the offence committed by the accused would not fall under section 300 IPC but it would fall under section 299 IPC culpable homicide not amounting to murder.

12. This Court need 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. Normally Murder, under Section 300 of the IPC, requires intention, knowledge, and premeditation to cause death. Culpable homicide, as defined under Section 299 of the IPC, involves killing without the specific intent to cause death, but the act is done with the knowledge that it is likely to cause death or serious harm. The distinguishing factors between culpable homicide and murder are as follows :



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“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.”

13. 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—



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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.”

14. 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



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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 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>



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	<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>

15. In the case of *Anda v. State of Rajasthan*, reported in *AIR 1966 SC 148*, the two relevant Sections 299 and 300 respectively are brilliantly analysed and the relevant observations are made at page 151 in para 7. Before we refer to those observations, we would refer to certain observations made earlier. They are as under:-

“The offence of culpable homicide involves the doing of an act (which term includes illegal omissions) (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death or (c) with the knowledge that the act is likely to cause death. If the death is caused in any of these three circumstances, the offence of culpable homicide is said to be committed..... Intent and



knowledge in the ingredients of the section postulate the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the death of the person.

Sec. 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Sec. 300 begins by setting out the circumstances when culpable homicide turns out into murder which is punishable under sec. 302 and the exceptions in the same section tell us when offence is not murder but culpable homicide not amounting to murder punishable under sec. 304. Murder is an aggravated form of culpable homicide. The existence of one of four conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder.”

(Emphasis supplied)

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder; will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case



falling within any of those exceptions, the offence would be culpable homicide not amounting to murder; falling within Part I of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC. (3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'. (4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the



ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.”

16. In this case, it is clearly established that the accused had no intention to commit murder and also had no preplan to commit the murder, but committed the murder when he was provoked by the deceased when she attacked him with a broom broomstick which deprived his self control by grave and sudden provocation caused the death of person who gave such provocation, which would come under the exception, part two of section 304 IPC.

17. We therefore hold that the offence committed by the appellant falls under culpable homicide not amounting to murder and is punishable under the second part of section 304 IPC. The first part of section 304 would apply when there is such intention, whereas the second part could apply when there is no such intention, but there is knowledge.

18. Relying on the ratio laid on the above judgments, we hold that the offence committed by the accused is not attracted by



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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 five (5) years rigorous imprisonment with fine of Rs.5,000/- (Rupees Five Thousand only) in default, to undergo three months simple imprisonment.

19. As far as offence alleged to be committed by the accused under Section 294(b) IPC In this case, as per complaint Ex.P.1, P.W.1 contended that the accused abused their family members “என்னடி குச்சிக்காரி, தேவடியா செருக்கீங்களா” at that time, her mother-in-law questioned the same and the occurrence occurred but during chief examination P.W.1 deposed that “எதிரி குடித்துவிட்டு வந்து என்னையும் ஊரில் உள்ளவர்களையும் தேவடியா, குச்சிக்காரி என்று அசிங்கமான கெட்ட வார்த்தையால் திட்டினார்.” But she has not stated that the accused abused the family members of the complainant. But she stated that he abused the complainant and other villagers with abusive language whereas P.W.2 another eye witness, has not stated what is the exact word uttered by the accused but she stated that he used abusive words against the deceased. P.W.3 another eyewitness has not stated that the accused uttered abusive



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words against the deceased or any other person. So the evidence adduced by P.W.1 to P.W.3 are contrary to each other. They have not properly spoken about the abusive words used by the accused. But P.W.1 during cross examination admitted that “எதிரி சம்பவ சமயத்தில் இத்தோடு தொலைந்து போடி குச்சிக்காரி, தேவடியா, என்ற வார்த்தைகளை பயன்படுத்தவில்லை.” Therefore, we hold that the prosecution had not proved the charge under Section 294(b) beyond reasonable doubt as against the appellant.

20. Section 294(b) IPC reads as follows:

Obscene acts and songs.- Whoever, to the annoyance of others -

(a) Does any obscene act in any public place, or

(b) Sings, recites or utters any obscene song, ballad or words, in or near any public place, Shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

COMMENTS

Ingredients of offence under section 294, I.P.Code. In order to secure a conviction the provisions of section 294, I.P.Code require two particulars to be proved by the prosecution, namely: (i) the offender has



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done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered in or near any public place or that it causes no annoyance to others, no offence is committed - Pawan Kumar Vs. State of Haryana (1996) 4 SCC 17: 1997 SCC (Cri) 583.)

Therefore, we hold that the prosecution had not proved the charge under Section 294(b) beyond reasonable doubt as against the appellant and hence, the appellant is acquitted from the charge under Section 294(b) IPC.

21. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) In so far as the charge under Section 294(b) is concerned the appellant is acquitted from the said charge.

(iii) The conviction under Section 302 IPC passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thanjavur, dated 26.04.2024, in S.C.No.112 of 2015, is set aside and the conviction is modified to Section 304(ii) IPC.



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(iv) Accordingly, the sentence of Life Imprisonment passed

by the Court below is set aside and the appellant is sentenced to undergo Rigorous Imprisonment for five (5) 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 three months.

(v) 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.

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

(G.R.S., J.) & (R.P., J.)
02.12.2024

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

RM



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To
WEB COPY

- 1.The Sessions Judge,
Mahalir Neethimandram
(Fast Track Mahila Court)
Thanjavur,
- 2.The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur 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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CrI.A(MD)No.661 of 2024

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

RM

Judgment in
CrI.A(MD)No.661 of 2024

02.12.2024