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CRL A No. 471 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.471 of 2021

Murugesan

Appellant(s)

Vs

State By
The Inspector Of Police,
Palladam Police Station,
Tirupur District.
Cr No.891/2012

Respondent(s)

Criminal Appeal filed under Section 374(2) of Cr.P.C. to call for the entire records in connection with S.C.No.139 of 2015 on the file of the Mahalir Neethi Mandram (Fast Track Court), Tiruppur and set aside the conviction and sentence imposed by the Mahalir Neethi Mandram (Fast Track Court), Tiruppur by judgment dated 26.12.2019 in S.C.No.139 of 2015.

For Appellant(s): Mr.V.Parthiban

For Respondent(s): Mr. A.Damodaran,
Addl. Public Prosecutor
assisted by Ms.M.Arifa Thasneem



J U D G M E N T

(Judgment was delivered by **N. Sathish Kumar J.**)

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Challenging the sentence of life imprisonment and fine imposed for the offence under Section 302 IPC, the appeal has been filed by the sole accused.

2.The brief facts of the prosecution case are as follows:-

2.1.The accused and the deceased are husband and wife. They were residing as tenants under P.W.1. P.Ws.2 and 3 are the father and mother of the deceased. The deceased was working in Star Line Banian Company along with P.W.6.

2.2.On 13.07.2012, at about 2.00 p.m., while the deceased was in the company, the accused came to the company and demanded money to buy liquor. As the deceased did not give the amount, a quarrel arose, and the accused took the deceased to her house. Thereafter, at around 4.00 p.m., on hearing the sound from the ground floor, P.W.1, the house owner, who was residing on the first floor, came out from her house and saw that the accused ran from his house. On entering his house, P.W.1 saw the deceased was injured on her forehead, right thigh, and left chest. Immediately, P.W.1 informed her husband,



and thereafter went to the police station.

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2.3.P.W.5, who was residing near the deceased's house, also saw the accused running from his house with a knife. P.W.8 gave information to the ambulance and they took the deceased to the hospital.

2.4.On receipt of the complaint (Ex.P.1) from P.W.1, the Special Sub-Inspector of Police, P.W.9, registered the case in crime No.891 of 2012 under Section 302 IPC and registered the First Information Report(Ex.P.5) and forwarded the same to the Court and copy to the Investigation Officer.

2.5.P.W.10, the Investigation Officer, took up the investigation and went to the place of occurrence. He prepared the Observation Mahazar(Ex.P.2) in the presence of P.W.4 and one Ravi Kumar, and also drew the Rough Sketch (Ex.P.6). He conducted an inquest over the body of the deceased in the presence of panchayatdars and prepared Inquest Report (Ex.P.7). Thereafter, he sent the body of the deceased to the Government Hospital, Palladam, along with a requisition for autopsy. He further seized a small portion of blood-stained cement floor(M.O.1) and ordinary cement floor(M.O.2) from the place of occurrence and recorded the statement of the witnesses.



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2.6.P.W.7 the Medical Officer attached to the Government Hospital, Palladam, on receipt of the request from the Investigation Officer, conducted Autopsy and found the following external injuries:-

1. *9 x 3 x 2.5 cm incised wound over middle of lateral side of (L) thigh.*
2. *6 x 2.5 x 4 cm incised wound over (L) loin area.*
3. *3.5 x 2 x 1 cm incised wound over (L) forearm near (L) wrist.*
4. *1 x 0.5 x 7 cm incised wound 6 cm below ® breast nipple over ® lower quadrant of ® breast.*
5. *3.5 x 0.5 x 4 cm incised wound just below ® breast, 8 cm from lower part of sternum towards right.*
6. *3.5 x 0.5 x 0.5 cm incised wound over midline of forehead, just 2 cm above root of nose.*

He issued Post Mortem Certificate (Ex.P.4) and opined that the deceased died would have died due to shock and haemorrhage as a result of multiple injuries and injury to the right lung. The death would have occurred 16 to 20 hours prior to the post-mortem examination.

2.7.In continuation of the investigation, P.W.10 arrested the accused on 14.07.2012 and recorded his confession statement, the admissible portion of which is marked as Ex.P.8. Pursuant to the said confession, he recovered M.O.3, knife, under the cover of Ex.P.9 Seizure Mahazar. Subsequently, the



accused was remanded to judicial custody and the material objects were forwarded to the Court. After completing the investigation and recording the statements of all witnesses and the Medical Officer, P.W.10 filed the final report against the accused under Section 302 IPC in P.R.C.No.78 of 2014 before the Judicial Magistrate Court, Palladam.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.139 of 2015 and was made over to the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

4.Based on the above materials, the trial Court framed a charge against the accused for offence under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as ten witnesses were examined as P.Ws.1 to 10 and nine documents were marked as Ex.Ps.P.1 to 9. Besides, three Material Objects were marked as M.Os.1 to 3.

5.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to



examine any witnesses nor did he mark any documents on his side.

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6. Based on the evidence on record, the Trial Court found the accused guilty of the offence under Section 302 of IPC, convicted and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the present appeal has been filed.

7. The learned counsel for the petitioner would submit that the prosecution has relied only on the circumstantial evidence. According to him, there were no eye witnesses. The learned counsel further pointed out that only the last-seen circumstances alone have been established. He would also submit that what transpired inside the house is not supported by any evidence. Hence, according to the learned counsel, as there is no evidence to find out what had transpired inside the house, confession of the accused given before the police can be used for extending the benefit in his favour.

8. Hence, it is his contention that, if the benefit is extended pursuant to his confession, the act of the accused would squarely fall within the ambit of Section 304(1) of IPC and not under Section 302 IPC. To strengthen his



submission that the confession of the accused given to the police could be relied upon to extend the said benefit, he has relied upon the following judgments:-

1. *Venkatesan v. State by Inspector of Police [1997 (2) LW Criminal 532]*
2. *Muthuvel and others v. State [2004 (1) LW CrL.67 (Mad.)]*
3. *Selvam v. State [Crl.A.No.226 of 2019, dated 06.06.2024]*
4. *Mottai Thevan v. State [1951 MWN Cr 274]*

9. Whereas, learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution had clearly established the case beyond all reasonable doubt.

10. According to the learned Additional Public Prosecutor, once the guilt has been proved, it is for the accused to explain as to what transpired inside the house. The accused has not discharged this burden by giving any explanation. Further, the contention that the very confession of the accused can be used for extending benefit of doubt to the accused is untenable. There is a clear bar under Section 162 Cr.P.C. His contention that the judgment of this Court in *Mottai Devan v. State* reported in (1951) MWN Cr 274, followed in other cases cannot be countenanced, as certain judgments in later years, including



Vokkaligara Yengtappa v. State reported in ***1952 MWN Cr 286*** and the Division Bench Judgment of this Court in ***Sudalaimani v. State*** reported in ***2014 (3) MLJ (Cri) 385***, took a different view.

11.The learned Additional Public Prosecutor further would submit that when there is a clear bar under law to use the confession statement, the confession of the accused cannot be relied upon to extend any benefit to the accused.

12.In the light of the above submission, the following points arise for consideration:

- i) Whether the prosecution has proved the guilt of the accused beyond reasonable doubt ?*
- ii) Whether the confession of the accused given during the investigation can be used to extend any benefit to the accused ?*

13.Admittedly, there is no eyewitness to the occurrence. However, the entire case is based on the circumstances relied upon by the prosecution. P.W.1 is the house owner and landlady. In her building, the accused and his wife(deceased) were residing as tenants. This fact is clearly established by



PW1. In fact, it is not even disputed by the accused.

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14. It is also not disputed that both the husband and wife were residing in the same house. It is further not disputed that the deceased died only inside the house due to multiple stab injuries caused by a knife. P.W.7, the Medical Officer, who conducted the autopsy, noted several external injuries caused by the weapon, knife(M.O.1). He had also found that there were ruptures in the right lung and that the death was due to the shock and hemorrhage resulting from those injuries. The Post-Mortem certificate was also filed in support of the same. Hence, it has been clearly established that the deceased died due to the stab injuries on the date of occurrence, i.e. on 13.07.2012. P.W.5, who was residing in the same vicinity, rushed to the spot on hearing the commotion from the accused's house. P.W.1 and P.W.5 both witnessed the accused running away from the house with a knife immediately after the incident. P.Ws.1, 5 and 8 also saw the deceased lying in a pool of blood with severe injuries. Their evidence clearly establish that the accused ran away from the place of occurrence with the blood-stained knife. Immediately thereafter, they saw the deceased lying inside the house. These aspects also clearly proved.



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15.It is to be noted that there is no motive whatsoever for the P.Ws.1, 5, and 7 to falsely implicate the accused, as they are totally independent witnesses and they have no axe to grind against the accused. Their evidence clearly shows that it was only the accused who caused the death of the deceased. The FIR was also lodged by P.W.1 on the same day at about 16.45 hours, and since it was registered within a short time, there was no delay in filing the FIR.

16.Therefore, we are of the view that the evidence of these three witnesses, who saw the accused running from the house where the dead body of his wife was found with severe injuries, clearly establishes the involvement of the accused in the crime. It is not the case of the accused that he was not in the house at the relevant point of time. In his examination under Section 313 Cr.P.C., he has not given any explanation as to what transpired inside the house or how his wife sustained such grievous injuries.

17.From the conduct of the accused in running away from the scene with a knife and being secured by the Investigation Officer only on the next day , i.e. on 14.07.2021, complicity of the accused stands proved. Further, there is no explanation whatsoever from the accused as to what transpired inside the house



that resulted in such a brutal attack on his wife.

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18. In such circumstances, when the accused and the deceased were the only two persons living together in the same house, and the wife was found dead with multiple injuries caused by a knife, and when the accused has failed to disclose the facts which are specially within his knowledge, it must be held that, only the accused is responsible for the murder. Particularly, in the absence of any explanation from the accused, it can be concluded that he alone caused the said injuries, leading to the death of his wife.

19. The nature of the injuries, as noted in Ex.P.4 and established through the evidence of P.W.7, the Medical Officer, clearly shows that the accused had repeatedly attacked his wife with a knife, causing several injuries. Therefore, the prosecution had proved beyond reasonable doubt that the accused caused the death of his wife.

20. In the light of the above facts, it now has to be seen whether the act of the accused would fall within the ambit of Section 300 IPC or whether any benefit can be extended to him under his alleged confession before the police.



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21. According to the learned counsel for the accused, the confession given to the police clearly indicates that the accused was provoked by his wife, as she had removed her thali. This act, according to the counsel, resulted in sudden provocation, wherein the accused lost self control and inflicted injuries upon his wife in a heat of passion. Therefore, it is contended that leniency should be shown, and the offence ought to be altered to section 304 IPC instead of 302 IPC.

22. In a nutshell, it is the contention of the learned counsel that the confession of the accused, given before the police, can be considered in favour of the accused to establish that the act was committed under sudden provocation. According to him, what is prohibited under law is the use of the confession only against the accused, and not in favour of the accused. In this regard, the learned counsel has also relied upon several judgments as stated *supra*.

23. A Division Bench of this Court in *Venkatesan v. State by Inspector of Police* reported in (1997) 2 LW (Crl) 532, has held that, though the statement recorded by the Police Officer is not admissible in evidence under Section 25 of



the Indian Evidence Act to prove against the accused, there is no impediment for the Court to consider the relevant portion of the statement made by the accused if it is in favour of the accused. The said Division Bench has also relied upon the confession of the accused therein to extend the benefit of doubt to the accused and converted the offence under Section 302 IPC to 304(ii) IPC in the said case.

24. Much reliance was placed by the learned counsel for the accused on the recent judgment of yet another Division Bench of this Court in ***Selvam v. State represented by the Inspector of Police [Crl.A.No.226 of 2019, dated 06.06.2024]*** has also held that the confession of the accused recorded by the Police officer can be used in favour of the accused, since Section 25 of the Evidence Act bars only usage of confession as against the accused and there is no bar under law to prove the same in favour of the accused. The Division Bench has taken note of the earliest judgment of a Division Bench of Court reported in ***Mottai Theven v. State*** reported in ***AIR 1952 Mad 586 : 1951 MWN Cr 574***, wherein, Hon'ble Mr. Justice Mack has held as follows :

“...We have no doubt at all that the appellant, after spearing deceased at the shandy, went straight to the police station with the blood-stained spear and there made a clean breast of the offence and that this was the first information received in the case. Even



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assuming that he was caught by a constable going off with the blood-stained spear and taken to the police station, the statement he made there should certainly be considered in his favour. It is obvious that the learned Sessions Judge did not peruse the case diary as he was entitled to do under Section 172 (2), Cr. P. C. The result of our perusal of the confession recorded from him at the police station is that not only do we find mitigating circumstances to justify the imposition of the lesser punishment but we also feel justified in making a recommendation to the Government for commutation of the sentence.”

Hon'ble Mr. Justice Somasundaram, has observed as follows :

“.... Section 25, Indian Evidence Act says that "no confession made to a police officer shall be proved as 'against' a person accused, of any offence". (I underline there in single quotation) the word 'against'. The confession does not therefore prohibit the use of it in favour of the accused. In the majority of cases the confessions are sought to be used only against the accused. The cases in which such confessions would or can be used in favour of the accused will be very few and they will be the exceptions to the general rule. The section therefore ought not to be repealed or modified for the sake of the few or the exceptions.”

25. The judgment in ***Mottai Thevan's case*** was followed later by various Division Benches of this Court. It is relevant to note that ***Mottai Thevan's case*** was decided on 6th September, 1951. However, within one month, on 22nd



October, 1951, the Division Bench consisting of the same Judges viz., Hon'ble

Mr. Justice Mack and Hon'ble Mr. Justice Somasundaram, in ***Vokkaligara***

Yengtappa v. State reported in ***1952 MWN Cr 286*** held that the statement made

by the accused during investigation cannot be used for any purpose except

provided under Section 162 Cr.P.C. unless and until the law is changed and in

fact, the Bench has suggested that Section 162 Cr.P.C. needs to be amended so

as to enable the statement of the accused to be used in their favour, particularly

if they happen to be in explanation of the recovery of incriminating articles

from their possession. The relevant portion of the judgment in ***Vokkaligara***

Yengtappa's case is extracted hereunder :

“It is most regrettable in the present state of the law that even a Public Prosecutor although he may know that there is something in a statement made by an accused when examined at the commencement of great help to him, is precluded from bringing it openly to Court notice by way of evidence. But this is the present state of the law under Section 162 Cr.P.C. and Ss.25 to 27 of the Evidence Act and until the law is changed, it is extremely difficult to utilise material in a case diary even in favour of an accused person.”

Hon'ble Mr. Justice Somasundaram has observed as follows :

“So far as Ss.25 to 27 of the Indian Evidence Act are concerned, I have already stated in another case, that they only prohibit the use of the confession against the accused and that there is no



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prohibition of their use in favour of the accused. But as regards S.162, Criminal Procedure Code, it prohibits the use of the statement made by any person (which includes the statement of the accused) for any purpose. There is therefore a prohibition to use the statement of the accused if made in the course of investigation even if it is in favour of the accused. This section needs to be amended so as to enable the statements of the accused to be used if they are in their favour, particularly if they happen to be in explanation of the recovery of incriminating articles from their possession.”

26.However, the latter judgment in ***Vokkaligara Yengtappa's case*** was never cited later. Whereas, the former judgment in ***Mottai Thevan's case*** was cited later before various Benches.

27.The Division Bench, in ***Selvam's case*** was also of the view that the confession of the accused comes within the parameters of “matters before the Court” and that the word “matters before the Court” employed in Section 3 of the Evidence Act covers “confession” in proof of certain facts. We are, with great respect, unable to support that view for the simple reason that the word “matters before the Court” is not defined anywhere under the Indian Evidence Act. In this regard, the Hon'ble Supreme Court, in ***Rajesh Yadav and another v. State of U.P.*** reported in ***(2022) LiveLaw (SC) 137***, has held as follows :



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“14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be “matters” but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court’s sojourn in deciphering the truth. Thus, the definition of “matters” is exhaustive, and therefore, much wider than that of “evidence”. However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.”

The word “matters” has a wide connotation. It includes evidence. Apart from evidence, it also includes admissions, inferences, presumption of law, presumption of facts, human conduct, natural course of events and all those stated in the Evidence Act, but not more than that. The confession and documents relied upon by the prosecution are classified as evidence, i.e., direct or primary evidence. Such evidence may be either oral or documentary. Once the prosecution relies upon a confession recorded during investigation and reduced into writing, it is classified as documentary evidence. It is relevant to note that the confession recorded under Section 161 Cr.P.C. during the investigation is not entirely marked as document before the Court of Law. Only the portion of the confession leading to discovery of the fact which falls within the ambit of Section 27 of the Evidence Act alone, is treated as evidence.



Therefore, when the entire document itself is inadmissible in evidence, we are of the view that, bringing the entire confession of the accused within the ambit of the word “matters before the Court”, in fact, amounts to making an inadmissible document an admissible one. Be that as it may.

28. Section 25 of the Evidence Act totally prohibits use of confession recorded by the Police officer as against the accused. Section 24 of the Evidence Act also prohibits the use of confession, if the same is caused by inducement, threat or promise. Similarly, Section 26 of the Evidence Act also prohibits the use of confession of the accused while he is in the custody of the Police officer, save in the cases where it is made in the presence of Magistrate. Only exception is Section 27, which is a proviso to Section 26, which provides use of such statement where any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered.

29. In *Aghnoo Nagesia v. State of Bihar* reported in *AIR 1966 SCC 119*, the Hon'ble Supreme Court, referring to different views adopted by various High Courts to separate confession statements from non-confession ones, held



that the statement containing admission of an offence as well as every other admission of an incriminating fact contained in the statement should form part of the confession and fall within the bar under Section 25 of the Evidence Act. The above judgment makes it clear that the ban is in total, except if such statement is provable under Section 27 of the Evidence Act.

30.A Division Bench of this Court, in ***Sudalaimani v. State*** reported in ***(2014) 3 MLJ (Cri) 385***, by relying upon the judgment of the Hon'ble Supreme Court in ***Aghnoo Nagesia's case (supra)***, has held that the confession of the accused recorded after commencement of investigation, cannot be used for any purpose, even if it is in favour of the accused, as the same is barred under Section 162 Cr.P.C. The said view of this Court in ***Sudalaimani's case*** was challenged before Hon'ble Supreme Court in ***S.L.P. (Crl.) Diary No.30988 of 2021***, however, the same was dismissed on 04.03.2022 and the judgment of this Court in ***Sudalaimani's case*** was followed by subsequent Division Benches in cases reported in ***Sathiyaraj vs. State rep. by the Inspector of Police*** reported in ***2019 (2) MWN (Cri) 121*** and ***State rep. by the Deputy Superintendent of Police Vs. Kamaraj & Elangovan*** reported in ***2017 SCC OnLine (Mad) 33010***.



31. The confession in the given case is one under Section 25 of the Evidence Act, i.e., confession recorded during investigation. Section 25 of the Evidence Act is contained in Chapter-II of the said Act which deals with “Relevancy of facts”. The provisions under the Chapter do not declare a confession made to the Police officer, irrelevant or relevant. It is like an absolute bar to prove the same against the accused. Sections 24 to 27 of the Evidence Act have been incorporated from the Code of Criminal Procedure, 1861. Later, in Code of Criminal Procedure, 1898, these provisions were omitted. Now, under the present Code of Criminal Procedure, Section 161 reads as follows :

“161.Examination of witnesses by police - (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section;



and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.”

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32. Section 162 Cr.P.C. states that no statement made during the course of an investigation shall be used for any purpose in enquiry or trial except for the purpose of contradicting the maker thereof, when such maker is examined as witness of the prosecution side. However, as per Section 162(2) Cr.P.C., the bar contained under Section 162 Cr.P.C. will not apply to the statement falling under the provisions of Clause (1) of Section 32 of the Evidence Act or to affect the provision of Section 27 of the Evidence Act.

33. In *Nandhini Satpathy v. Dani (P.L.) and another* reported in (1978) 2 SCC 424, the Hon'ble Supreme Court has held that the phrase “*any person supposed to be acquainted with the facts and circumstances of the case*” contained in Section 161 Cr.P.C. includes even the accused person. Therefore, all the confessions are normally recorded only under Section 161 Cr.P.C./Section 180 BNSS. There is no separate provision or procedure provided under the Code to record the confession of the accused persons. Even to record a judicial confession, only the procedure contemplated under Section 164 Cr.P.C./Section 183 BNSS has to be followed. Therefore, the confession recorded by the Police during the investigation, is recorded only under Section



161(3) Cr.P.C./Section 180(3) BNSS. Therefore, any statement recorded under Section 161 Cr.P.C./Section 180 BNSS, whether in the form of statement or confession, has to be proved in the manner known to law as stipulated under Section 162 Cr.P.C./Section 181 BNSS, provided the same can be used by the accused to contradict the witnesses called for by the prosecution. However, for any statement recorded under Section 161 Cr.P.C./Section 180 BNSS falling within the ambit of dying declaration or Section 27 of Evidence Act, there is a clear exception provided under Section 162(2) Cr.P.C./Section 181(2) BNSS. Except under these three scenarios as stated under Section 162 Cr.P.C./Section 181 BNSS, no statement recorded by the Investigating Officer, including the confession, can be used for any purpose.

34.The Hon'ble Supreme Court in *Malkiat Singh v. State of Punjab* reported in (1991) 4 SCC 341, has held as follows :

“12.It is settled law that Section 162 was conceived to protect an accused creating an absolute bar against the previous statement made before the police officer being used for any purpose whatsoever. The obvious reason is that the previous statement under the circumstances was not made inspiring confidence. It enables the accused to rely thereon only to contradict the witnesses in the manner provided by Section 145 drawing attention of the witness to that part of the statement



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intended to be used for contradiction. It cannot be used for corroboration of a prosecution or defence witness or even a court witness, nor can it be used for contradicting a defence or a court witness. The investigating officer is enjoined to forward the inquest report to the Magistrate along with the statement recorded at the inquest, so that the court would see the record, at the earliest of the circumstances leading to the cause of the death of the deceased and the witness examined during the inquest. Therefore, the statement of PW 3 recorded during inquest is not evidence. It is a previous statement reduced to writing under Section 162 of the Code and enclosed with the inquest report and cannot be used by the prosecution for any purpose including to show the names of the accused except to contradict the maker thereof, or to explain the same by prosecution.”

35.It is pertinent to note that the Hon'ble Judges, who delivered the judgment in ***Mottai Thevan's case***, realising the bar under Section 162 Cr.P.C., in their later judgment in ***Vokkaligara Yengtappa's case***, within one month after ***Mottai Thevan's case***, have clearly held that there is a bar under Section 162 Cr.P.C. and therefore, the statement made by the accused is inadmissible and in fact, the Division Bench has suggested for amending the provisions of law, which has not been taken note by the other Division Benches later. However, the judgment in ***Vokkaligara Yengtappa's case*** was not brought to the notice of the Division Bench of this Court while deciding ***Selvam's case***.



Be that as it may.

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36. In another judgment in ***Ganesan and another v. State*** reported in **(2024) 3 MLJ (Crl) 382**, a Division Bench of this Court has held that Section 25 of the Evidence Act, which prohibits the proof of confession only against the accused would prevail over the general rule contained in Section 162 Cr.P.C. We do not find any repugnancy or conflict between two Sections. Section 25 of the Evidence Act totally prohibits the use of confession made to the Police officer against the accused, whereas, Section 162 Cr.P.C. prohibits use of any statement of the accused, including the confession, made during the course of investigation. In this regard, it is pertinent to refer to the judgment of the Apex Court in ***Dipakbhai Jagdishchandra Patel v. State of Gujarat and another*** reported in **(2019) 16 SCC 547**, wherein, it is held as follows :

“44. Such a person viz. person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned and the statement is taken by the police officer. A confession, which is made to a police officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible. A confession unless it fulfils the test laid down in Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66 :



*AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. **Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC.***

45. Bar under Section 162 CrPC, no doubt, operates in regard to the statement made to a police officer in between two points of time viz. from the beginning of the investigation till the termination of the same. In a case where statement containing not a confession but admission, which is otherwise relevant and which is made before the investigation commences, may be admissible. We need not, however, say anything more.”

(emphasis supplied)

The above judgment of the Apex Court makes it clear that the provision under Section 21 of the Evidence Act is subject to the bar of admissibility of the statement under Section 161 Cr.P.C. Therefore, even if the statement contains admission, the statement being one under Section 161 Cr.P.C./Section 180 BNSS, it would immediately attract the bar under Section 162 Cr.P.C./Section 181 BNSS.



37. Similarly, the Hon'ble Supreme Court, in the above judgment, has further held as follows :

*“50. From the statement of the law contained in V.C. Shukla [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406], it becomes clear as to what constitutes confession and how if it does not constitute confession, it may still be an admission. Being an admission, it may be admissible under the Evidence Act provided that it meets the requirements of admission as defined in Section 17 of the Evidence Act. **However, even if it is an admission, if it is made in the course of investigation under the CrPC to a police officer, then, it will not be admissible under Section 162 CrPC as it clearly prohibits the use of statement made to a police officer under Section 161 CrPC except for the purpose which is mentioned therein. Statement given under Section 161, even if relevant, as it contains an admission, would not be admissible, though an admission falling short of a confession which may be made otherwise, may become substantive evidence.***

51. A confession made to a police officer is clearly inadmissible. The statement relied on by the respondent is dated 11-4-1996 and the appellant was arrested on 11-4-1996. This is pursuant to the FIR registered on 10-4-1996. The statement dated 11-4-1996 is made to a police officer. This is clear from the statement as also the letter dated 10-8-1996 (Annexure R-6) produced by the respondent. It is clearly during the course of the



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investigation. Even if it does contain admissions by virtue of Section 162 and as interpreted by this Court in *V.C. Shukla [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761 : AIR 1998 SC 1406]* , such admissions are clearly inadmissible.”

38.The above judgment makes it clear that the confession made before the Police is not admissible and even if such statement is a mere admission in the course of investigation by the Police officer, still it will not be admissible, as the use of any statement made to a police officer under Section 161 Cr.P.C./Section 180 BNSS is prohibited under Section 162 Cr.P.C./Section 181 BNSS except for the purpose which is mentioned therein. Therefore, from a reading of the above judgment, it is clear that, as regards use of confession recorded by the Police under Section 161 Cr.P.C./Section 180 BNSS, the provisions contained in the Code of Criminal Procedure will prevail over the provisions under the Indian Evidence Act in this regard.

39.Further, in ***Ganesan's case***, the Division Bench was of the view that the Privy Council, in ***Pakala Narayana Swamy v. King Emperor*** reported in ***AIR 1939 PC 47***, has held that Sections 24 to 27 of the Evidence Act have to be a special law within the meaning of Section 1(2) of the Code of Criminal Procedure, 1898 and the same will prevail over Section 162 Cr.P.C. However,



we are respectfully unable to persuade ourselves. In fact, in ***Pakala Narayana Swamy's case***, the Privy Council has held that Section 27 of the Evidence Act alone has to be special law within the meaning of Section 1(2) of Code of Criminal Procedure, 1898, and not the other sections. Section 27 makes a statement admissible in evidence particularly with regard to discovery of fact. Therefore, only that is held to be special law. Whereas, on the contrary, the entire confession recorded by the Police including the incriminating statements, cannot be held to be brought under the special law to say that Evidence Act will prevail over Section 162 Cr.P.C. Further, the judgment in ***Ganesan's case*** is contrary to the view taken by the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel's case***. Therefore, in the light of the judgment of the Apex Court in ***Dipakbhai Jagdishchandra Patel's case***, we respectfully disagree with the view of the Division Bench of this Court in ***Ganesan's case***.

40. Though in the judicial discipline, when coordinate Benches take two different views, normally the matter will be referred to the Full Bench, since the judgment of the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel's case*** has not been brought to the notice of the Hon'ble Division Bench while deciding ***Selvam's case*** and when the Apex Court's judgment is already to the



point and has held that any statement recorded during the investigation under Section 161 Cr.P.C/Section 180 BNSS is governed by Section 162 Cr.P.C./Section 181 BNSS and inadmissible and even the confession recorded by the Police officer during investigation is always subject to the bar contained under Section 162 Cr.P.C, this issue need not be referred to a larger Bench in view of the authoritative pronouncement already made by the Apex Court.

41. In the light of the above legal position, as there is total bar for use of confession of the accused in favour of the accused, as discussed above, we are not in a position to accept the submission made by the learned counsel for the appellant/accused. In the given case, the fact that the accused and deceased were together in the house has been clearly established. The accused has run away from the house immediately after the occurrence with blood stained knife which has been clearly proved by the prosecution. Though it is urged before this Court as if such occurrence was due to sudden provocation, it is relevant to note that it is for the accused to explain as to what had transpired inside the house. Only for the purpose of explaining the circumstances under which the incriminating materials have come against him, an opportunity is given to the accused under Section 313 Cr.P.C. However, the accused had been a mute spectator during the questioning under Section 313 Cr.P.C. and had not offered



any explanation. The burden of proving the fact is on the accused. When the accused has not discharged his burden to explain the facts which are only within his knowledge, in the absence of any explanation, the presumption under Section 106 of Evidence Act has to be applied as against the accused.

42. Further, the manner in which the injuries are inflicted on the deceased body is clearly established by the medical evidence. P.W.7 (Medical Officer) has noted the following injuries on the body of the deceased :

1. *9 x 3 x 2.5 cm incised wound over middle of lateral side of (L) thigh.*
2. *6 x 2.5 x 4 cm incised wound over (L) loin area.*
3. *3.5 x 2 x 1 cm incised wound over (L) forearm near (L) wrist.*
4. *1 x 0.5 x 7 cm incised wound 6 cm below ® breast nipple over ® lower quadrant of ® breast.*
5. *3.5 x 0.5 x 4 cm incised wound just below ® breast, 8 cm from lower part of sternum towards right.*
6. *3.5 x 0.5 x 0.5 cm incised wound over midline of forehead, just 2 cm above root of nose.*

The above clearly shows that the accused has caused several injuries and lungs have ruptured which has caused death, as per the Post-mortem Certificate (Ex.P4). Therefore, it cannot be construed that the accused had committed such an act only on provocation, which fact, the accused has failed to prove. We do



not find any substance in the argument of the learned counsel for the appellant.

Therefore, we find that the act of the accused will certainly fall within the ambit of Section 300 IPC. Accordingly, the conviction and sentence imposed by the trial Court does not warrant interference.

43. In fine, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court, is confirmed.

(N.S.K., J.) (M.J.R., J.)
04.11.2025

mrp/mkn

Index: Yes/No

Speaking/Non-speaking order

Internet : Yes

Neutral Citation: Yes



To

1. The Mahalir Needhi Mandram,
Fast Track Mahila Court,
Tiruppur.
2. The Inspector Of Police,
Palladam Police Station,
Tirupur District.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court of Madras,
Chennai.



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**N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.**

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