

CrI.A(MD)No.42 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	01.09.2025
Pronounced on	09.09.2025

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CrI.A(MD)No.42 of 2022

Chandrasekar

: Appellant/Sole Accused

Vs.

The State Rep. By its

The Inspector of Police,

Somarasampetti Police Station,

Trichy District

: Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the judgment of conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Trichy made in S.C. No.101 of 2018 dated 03.12.2021 and allow the Criminal appeal.

For Appellant : Mr.B. Jammal Arasu

For Respondent : Mr.B.Nambi Selvan

Additional Public Prosecutor



J U D G M E N T

P.VELMURUGAN, J.,

This Criminal Appeal is filed against the judgment of conviction and sentence passed by the Mahila Court, Trichy, in SC No. 101 of 2018, dated 03.12.2021.

2. By the above judgment the trial Court had convicted the appellant and sentenced him, as detailed below:

Penal Provisions	Sentence of Imprisonment	Fine Amount
498(A) of IPC	Two years Rigorous Imprisonment	Rs.1000/- i/d to undergo two months simple imprisonment
302 of IPC	Life Imprisonment	Rs.5000/- i/d to under go six months simple imprisonment
The sentences shall run concurrently		

3.The case of the prosecution in brief:-

3.1 The deceased is the wife of the appellant and he used to quarrel with his wife suspecting her fidelity, and on the date of occurrence i.e., on 13.12.2017, he had assaulted his wife with a mason scale, which resulted in her death. A case was originally registered against the appellant for the offence punishable under Section 302 of IPC in Crime No.432 of 2017. During investigation, charges were altered to those under Sections 498(A) and 302 of IPC.



WEB COPY

3.2 After completion of investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No.V, Trichy, and the same was taken on file as PRC No.17 of 2018.

3.3 On appearance of the accused, the provisions of Section 207 of Cr.P.C. were complied with, and the case was committed to the Court of Sessions and made over to the Mahila Court, Tiruchirapalli, in S.C.No.101 of 2018 for trial under Section 209(A) of Cr.P.C.,. The trial Court framed charges against the appellant for the offences punishable under Sections 498(A) and 302 of IPC.

3.3 In order to substantiate the case of the prosecution, the prosecution examined 33 witnesses and marked 27 exhibits and 9 material objects.

3.4 After examination of witnesses, when the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the charges. No witness was examined on the side of the accused, nor was any document marked.



WEB COPY

4. The trial court, after considering the evidence on record and hearing either side, by judgment and order dated 03.12.2021, convicted and sentenced the accused as detailed in Paragraph No.2 supra. Challenging the above said conviction and sentence, the accused has filed the present appeal.

5. The learned counsel appearing for the appellant would submit that though P.W.1, who is the brother of the deceased, was cited as a witness, he is not an eye witness to the occurrence. P.Ws.3 to 5 are the children of the appellant and the deceased, and they have not stated anything about the presence of P.W.1 at the time of occurrence. Further, there is a material contradiction that P.W.1 is said to have brought the deceased to the hospital, whereas even the accident register and medical evidence show that only the deceased's brother took her to the hospital. The trial court failed to take into consideration those contradictions, which are material and would go to the root of the prosecution case. The deceased fell down in the bathroom, due to which she sustained injuries, and there is no material to show that the deceased died only because of the attack. Further, P.Ws.3 to 5, the children of both the appellant and the deceased, had also stated that they were studying in another room, and there was frequent quarrelling between their parents.



WEB COPY

Subsequently, their mother went to take a bath. Thereafter, they searched and later found the body of the deceased in the bathroom of their neighbour namely Vidhya since there was no bathroom in their house. P.Ws.6 to 14 and P.W.16 turned hostile and did not support the case of the prosecution. P.Ws.1 to 5 are related witnesses and therefore interested witnesses. Since the evidence is from related witnesses, it cannot be recorded that their evidence is reliable. P.W.1 is said to be a witness to the occurrence and claimed he saw it and took his sister to the hospital, whereas other witnesses have stated that only the brother of the appellant took the deceased to the hospital. Though P.Ws.3 to 5 have stated that their mother was attacked by the appellant (father) with a mason scale on her head, the doctor deposed that she died due to blunt injuries to the stomach. There are material contradictions, and further, the recovery of the material object is also doubtful. Though P.W.1 stated that the investigating officer had come to the place of occurrence at the residence of the deceased and the weapon (mason scale) was at the occurrence place, the investigating officer deposed that it was recovered based on the confession statement given by the accused in the well of the Sivan temple. Therefore, the recovery of the material object is highly doubtful. There are material contradictions between the evidence of P.W.1 and P.W.2, which also vitiates the case. Further, P.Ws.3 to 5, the children of the deceased and the appellant, at the time of giving evidence during trial,



were living in the house of P.W.1, their maternal uncle, and they were tutored by P.W.1. Therefore, their evidence cannot be accepted. The trial court failed to consider the discrepancies in the evidence of P.Ws.3 to 5 and, by accepting their evidence, convicted the appellant. Other witnesses, P.W.15 and P.W.17, the parents of the deceased, and P.W.1, the brother of the deceased, are all interested witnesses, and their evidence cannot be accepted. Further, there are material contradictions in the evidence of the mahazar witness and the investigating officer. The trial court failed to consider these material contradictions, and the prosecution failed to prove the case beyond reasonable doubt. Further, there was a five-hour delay in registering the complaint, and the reason for the delay was not explained by the prosecution. He would further submit that the deceased is the mother of P.Ws.3 to 5, who are now left without their mother, while the appellant, their father, is in prison, and now there is nobody to take care of the children. Therefore, he would pray for acquittal.

6. The learned Additional Public Prosecutor would submit that the appellant is the husband of the deceased and he doubted her character. As a result, there used to be frequent quarrels between them, and on the date of occurrence, when the deceased returned from her workplace, the appellant started quarrelling with her, slapped her with a mason scale, and attacked her in the stomach, due to which



WEB COPY

she sustained injuries. P.Ws.3 to 5, the children of the deceased, who were present in the house at the time of occurrence, have clearly spoken about the quarrel and taking their mother to the hospital, where the doctor declared her brought dead. He would further submit that P.Ws.3 to 5 are the children of the deceased, aged between 9 and 14. On receiving information from the spot, P.W.1 went to the place of occurrence and thereafter lodged a complaint (Ex.P.1). Based on the complaint, the respondent police registered a case and, after completing the investigation, filed a charge sheet, and thereafter the case was posted for trial. Though P.Ws.3 to 5 are the children of the deceased, their evidence cannot be discarded. Though they are eye witnesses to the occurrence, the appellant has not examined any witness. The prosecution relied on the evidence of P.Ws.3 to 5, who were present at the time of occurrence and spoke about it. The appellant has taken a defence of tutoring, and therefore it is for the appellant to prove the same. The evidence of P.Ws.3 to 5 clearly shows that at the time of occurrence, they were not present at the scene, but studying in a nearby room. They deposed that their father attacked their mother with a mason scale, after which she went to a nearby house bathroom, since there was no bathroom in their own house. Subsequently, after a search, they found the body of the deceased at their neighbour Vidhya's bathroom. Thereafter she was taken to the hospital. Subsequently, the police came to the spot and conducted an



investigation. He also placed reliance on the judgment of the Hon'ble Apex Court in the case State of **Madhya Pradesh v. Balveer Singh**, reported in **2025 SCC Online SC 390**, wherein it was held as follows:

58. We summarize our conclusion as under: -

(I) *The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*

(II) *As per [Section 118](#) of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*

(III) *Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*

(IV) *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.*

(V) *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and*



able to give coherent and rational answers would be admissible in evidence.

WEB COPY

(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child



has been tutored or not, can be drawn from the contents of his deposition.

WEB COPY

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of [Section 11](#) of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

- Opportunity of Tutoring of the Child Witness in question whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established.



WEB COPY

This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

- *Reasonable likelihood of tutoring wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.*

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.



(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.

He would further submit that the charge against the appellant has been proved and thereby he seeks dismissal of the appeal.

7. We have considered the submissions of the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and have consciously gone through the evidence and materials on record.

8. P.W.1 is the complainant and he spoke about the motive. P.W.15 is the father of the deceased and P.W.17 is the mother of the deceased and they have also spoken about the motive. From the evidence of P.W.3 to P.W.5, it is seen that their father used to suspect the character of their mother and there were frequent quarrels between the mother and the father. On the date of occurrence, when the deceased came from the workplace, the appellant shouted at her using unparliamentary words and kicked her in the stomach, thereby causing injuries which resulted in her death. The doctor who



conducted the autopsy was examined as P.W.25 and the post-mortem certificate was also marked as Ex.P.11. A reading of the evidence of P.W.25 and Ex.P.11/Post-Mortem Certificate shows that the deceased died due to haemorrhagic shock as a result of blunt injuries in the abdomen.

9. The reading of the entire evidence of P.W.25 and Ex.P.11 shows that the cause of death was multiple injuries sustained by the deceased. Therefore, a reading of the entire evidence of P.W.1, P.W.15 and P.W.17 shows the motive that the husband had suspected the character of the wife, as established from their evidence. P.W.3 to P.W.5 are the children of the deceased and the appellant and they deposed that there were quarrels between their father and mother and that their father had also suspected the character of the mother. Further, on the date of occurrence, the appellant attacked their mother with a mason stick.

10. The main defence taken by the appellant is that P.W.3 to P.W.5 are the children of the appellant and during the trial they were with P.W.1, who is the maternal uncle of the children, and he had tutored them. From a reading of the charge sheet and the statement recorded under Section 161(3) of Cr.P.C., it is seen that P.W.3 to P.W.5, who are the children of the appellant and the deceased, clearly spoke



WEB COPY

about the occurrence and, according to their evidence, they were alone in the house at the time of occurrence. After registering the case, the police came to the place of occurrence and at that time the children told them about the incident. The learned counsel argued that there are material contradictions in the evidence of P.W.3 to P.W.5 and, as such, they are tutored witnesses and their evidence is not trustworthy. But, in the view of this court, all the three children have clearly spoken about the occurrence in which the appellant attacked his wife with a mason scale. Further, all the children have spoken about the frequent quarrels between the deceased and the appellant. This court could not find any material contradictions in the evidence of P.W.3 to P.W.5 with regard to the occurrence. It is true that there are some contradictions in the evidence of P.W.3 to P.W.5. But those contradictions do not take away the credibility of the evidence of the children of the deceased who were examined as P.W.3 to P.W.5. Though the mother died and the father has to take care of them, at this juncture the children would not have stated that their father had committed the offence unless it were true.

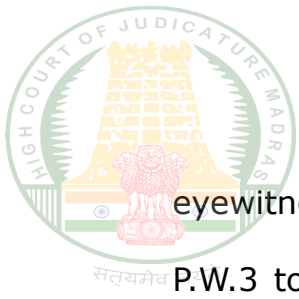
11. It is a settled proposition of law that since witnesses are relatives, that alone cannot be the sole ground to discard their evidence and they cannot be treated as interested witnesses, even if they are child witnesses. Further, the evidence of child witnesses has



to be taken with care and caution. The evidence of P.W.3 to P.W.5 is clear and cogent. From the inception of the crime till the trial, their stand was the same and they have clearly spoken about the crime and their evidence remained cogent and clear.

12. Further, the parents of the deceased, P.W.15 and P.W.17, have also corroborated the motive, deposing that the appellant often expressed suspicion about the character of the deceased and even asked them to take her back. Their evidence supports that of P.W.3 to P.W.5. The evidence of P.W.1, P.W.15 and P.W.17 also corroborated the motive of the appellant. However, P.W.1 and P.W.2 are not eyewitnesses to the occurrence and they have not seen the incident. P.W.3 to P.W.5, who are the children of the appellant and the deceased, were the only persons present at the scene of occurrence in the appellant's house and they also witnessed the occurrence.

13. Further, the medical evidence also corroborates the ocular testimony. The minor contradictions highlighted by the defence are immaterial. It is also a well-settled law that defective investigation alone cannot be a ground to discard otherwise credible evidence, and the appellant is not entitled to acquittal on a technical ground. This case is not based on circumstantial evidence where the prosecution failed to prove the chain of circumstances; rather, it is based on



eyewitnesses namely, the children of the appellant and the deceased, P.W.3 to P.W.5. The children would not give adverse evidence against their own father merely due to tutoring on the other hand, they have clearly spoken about the occurrence.

14. This court, being the appellate court the final fact-finding court, has to re-appreciate the entire evidence independently and give an independent finding.

15. The evidence of P.Ws. 3 to 5, supported by the medical and other corroborative evidence, establishes that the appellant attacked his wife during a quarrel, which resulted in her death.

16. From a careful perusal of the materials such as complaint, First Information Report, charge sheet, and the evidence of P.W.3 to P.W.5, the children of the appellant and the deceased, who are eyewitnesses to the occurrence, P.W.1, the brother of the deceased, P.W.15, the father of the deceased and P.W.17, the mother of the deceased, though they are related witnesses, this court is of the view that they have clearly spoken about the motive behind the occurrence. Further, the evidence of P.W.3 to P.W.5 corroborated that there used to be frequent quarrels between the father and mother and that the appellant used to suspect the character of the mother. From



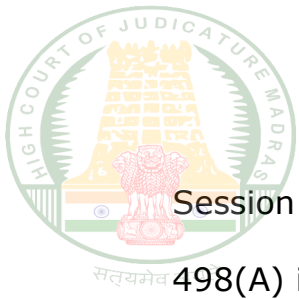
the reading of the material, this Court is of the opinion that the prosecution has proved the case beyond reasonable doubt. Hence the appellant may be convicted under Section 304(ii) of IPC instead of 302 of IPC.

17. However, considering the facts and circumstances of the case, and also considering the fact that there were frequent quarrels between the appellant and the deceased, on the date of occurrence, due to sudden provocation, the appellant hit the deceased and she died, causing the children to lose their mother. As stated above while looking into the facts and circumstances of the case it is seen that the appellant had suddenly stabbed the deceased during heated verbal quarrel argument and not a pre planned attack which is carried out with the sole intention of causing death of the deceased

18. Therefore, taking into consideration the mitigating circumstances, the benefit of Exception 4 under Section 300 of IPC is attracted to the fact situation, and the appellant is entitled to this benefit.

19. In the result:

- i) This Criminal Appeal is partly allowed.
- ii) The conviction and sentenced imposed by the Court of



CrI.A(MD)No.42 of 2022

Session against the appellant in respect of charge under Section 498(A) is confirmed.

WEB COPY

ii) The conviction under Section 302 of IPC passed by the Mahila Court, Tiruchirapalli, in SC No.101 of 2018, dated 03.12.2021 is modified into one under Section 304(ii) of IPC and the appellant is sentenced to undergo 10 years rigorous imprisonment thereof with a fine of Rs.5000/- in default to undergo six month simple imprisonment.

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

iv) The trial Court is directed to take steps to secure the accused to serve the remaining portion of sentence.

(P.V.,J.) (L.V.G.J.,)

09.09.2025

Index : Yes/No
Internet : Yes/No
aav

To:

1.The Sessions Judge,
Mahila Court,
Tiruchirapalli

2.The Inspector of Police,
Somarasampetti Police Station,
Trichy District

18/20



Cr1.A(MD)No.42 of 2022

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.A(MD)No.42 of 2022

P.VELMURUGAN,J.
and
L.VICTORIA GOWRI,J.

aav

CrI.A(MD)No.42 of 2022

09.09.2025