

WEB COPY

CrI.A(MD)No.220 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	08.07.2025
Pronounced on	19.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA

CrI.A(MD)No.220 of 2022

N.Chinnadurai

... Appellant/
Sole Accused

vs.

State rep by
The Inspector of Police,
Bodi Taluk Police Station,
Theni District.
Crime No.395 of 2012

... 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 passed in S.C.No.48 of 2013 dated 29.10.2021 by the learned Sessions Judge, Mahila Fast Track Court, Theni, and allow this appeal.

For Appellant : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



WEB COPY

Crl.A(MD)No.220 of 2022



J U D G M E N T

(Delivered by A.D.jAGADISH CHANDIRA,J.)

This Criminal Appeal is filed against the judgment passed by the learned Sessions Judge, Mahila Fast Track Court, Theni, in S.C.No.4 of 2013, dated 29.10.2021 and acquit the appellant herein.

2. By judgment dated 29.10.2021, the trial Court had convicted the accused and sentenced him, as detailed below:

Penal Provisions	Sentence of Imprisonment	Fine Amount
302 IPC	Life imprisonment	Rs.5,000/- in default to undergo one year simple imprisonment
309 IPC	one month simple imprisonment	-
The sentences shall run concurrently		

3.The case of the prosecution in brief:-

In this case, the deceased, Pounthai (wife of the accused Chinnathurai) had been living separately from her husband for about six years prior to the occurrence on 09.11.2012. Out of the wedlock they were blessed with three children, namely, Soundarapandian (P.W.1 – elder son), Selvakumar (P.W.2 – younger son) and Sudha (P.W.15 – daughter). The



WEB COPY

accused was residing in his father's house, whereas the deceased and her children were living in a leased house belonging to Arjunan (P.W.6) at Vinobaji Street, Pottalkulam, within the limits of Bodinayakanur Taluk Police Station. After the marriage of P.W.1 was fixed, he requested a portion of the house where the accused resided for his own accommodation, but the accused refused. Consequently, P.W.1 and the deceased continued living in the leased premises of P.W.6. The marriage of P.W.1 was scheduled for 11.11.2012. On the morning of 09.11.2012, arrangements had been made for the wedding canopy pole ritual (Pandhal Kaal) in front of the house of P.W.6. The deceased, along with her relatives, was present at the venue. At about 9:15 a.m., the accused, harbouring previous enmity towards the deceased and with the intention to kill her, came to the spot armed with a butcher's knife. He stabbed the deceased multiple times on her left jaw, right chest, left chest, left upper arm, left forearm, right side of neck, right side of abdomen, and right side of back causing her instantaneous death. Thereafter, the accused self-inflicted a cut injury on his neck with the same knife in an attempt to commit suicide. Hence the case.

4. After examining various witnesses and collecting reports from the experts, the investigating officer completed the investigation on 28.02.2013 and filed the final report against the accused for the offences



punishable under Sections 302 and 309 IPC, which was taken on file in

P.R.C.No.12 of 2013 before the learned District Munsif and Judicial

Magistrate, Bodi.

5. On appearance of the accused, the provisions of Section 207 of Cr.P.C., were complied with and thereupon, the case was made over to the learned Sessions Judge, Mahila Fast Track Court, Theni, in S.C.No.48 of 2013 for trial. The trial Court framed charges against the accused for the offences punishable under Sections 302 and 309 of IPC.

6. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 20 witnesses and marked 13 exhibits and 7 material objects. On the side of the accused, one witness was examined and no documents was marked.

7. When the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same as false and did not come forward to give any plausible explanation.

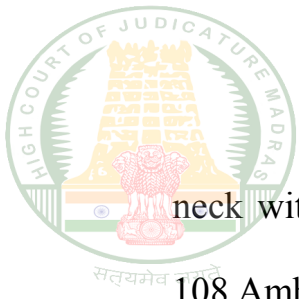


WEB COPY

8. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 29.10.2021, 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.

9. The case of the prosecution as narrated through the prosecution witnesses, is briefly stated as follows:

Soundarapandi (P.W.1), son of the deceased and accused, deposed that there were frequent quarrels between his parents, leading to separation. The deceased stayed in her mother's house, and the accused resided in Pottalkalam. PW2 is the brother of PW1 and PW15 is the sister of PW1 and PW2 and both of them got married and residing in nearby town. The deceased called PW1 regarding alliance for his marriage and therefore, he came to Pottalkalam and the marriage of PW1 was scheduled on 11.11.2012 and marriage invitations were distributed to his relatives. On 09.11.2012 at 09.15 a.m., when Pandhal Kaal ceremony was taking place, the accused had come to the spot and after the ceremony was over, the accused saying that the deceased who disrespected him should not live inflicted injuries on her repeatedly with a knife. The deceased died on the spot. Before PW1 could stop the accused, he had self inflicted a cut on his



WEB COPY

neck with the same knife to commit suicide and immediately PW1 called 108 Ambulance and sent the accused to the hospital and thereafter took the body of the deceased to the Government Hospital, Bodiayakanur, along with Eswaran (PW4) and thereafter lodged a complaint (Ex.P1) to the respondent/Police, in which, PW4 stood as a witness. When police enquired him, PW1 stated that since he did not invite the accused for his marriage and due to existing family problem, the accused murdered the deceased.

10. Selvakumar (PW2) is another son of accused and deceased. He deposed about the manner of occurrence and death of deceased in line with PW1. During his cross examination, he had not supported the case of the prosecution and he was treated hostile.

11. Muniyandi (PW3) is the brother of the deceased. He did not witness the occurrence and he had deposed that on hearing, he had come to the place of occurrence. At that time, his sister/deceased was found dead and he noticed an injury in the neck of the accused. PW3 had seen the M.O. 1 in the place of occurrence and he had identified the same before the Court. He further stated that around 50 relatives were present at the time of occurrence.



12. Easwaran (PW4) is a hearsay witness and he has attested the complaint and his signature is marked as Ex.P2 and he had turned hostile.

13. Lingammal (PW5) is a resident of Pottalkalam Vinobaji street and the accused is her uncle. She narrated the manner of occurrence supporting the prosecution.

14. Arjunan (PW6) is the person who had leased out his house to PW1 and he is a hearsay witness, however, he turned hostile.

15. Malaichamy (PW7) is doing business of putting up temporary structure (panthal) and he had installed Pandhal Kaal for the marriage of PW1 on the date of occurrence, however he turned hostile.

16. Muthuchamy (PW8), a resident of Pottalkalam was invited to the ceremony by the deceased. PW8 handed over bloodstained knife (M.O. 1) to the police and signed the Observation Mahazar (Ex.P3) and Seizure Mahazar (Ex.P4) as a witness.

17. Chinnapavunthai (PW9) is another brother of the deceased. He went to the place of occurrence after hearing the incident.



WEB COPY

CrI.A(MD)No.220 of 2022



18. Palpandi (PW10) is a resident of Pottalkalam and he was known to the accused and the deceased. The deceased invited him for the Pandhal Kaal ceremony of her son and PW10 participated in the ceremony and then went to work. After returning from work he heard about the incident and went to the place of occurrence.

19. Periasamy (PW11) is a resident of Pottalkalam. His residence is situated within 1 km from the place of occurrence. On hearing the occurrence, he went to that place of occurrence. Thereafter when he along with one Chinnapandi went to the police station for their family issue they saw the accused in the police station. At that time the accused gave a voluntarily confession statement, in which he signed as witness. The signature is marked as Ex.P.5.

20. Kumar (PW12) is a Head Constable working in the respondent police station who handed over the copies of FIR to the Judicial Magistrate Court, Theni, and also to the higher police officials.

21. Ramesh (PW13) is a Grade-I Police Constable working in the respondent police station who identified the body of the deceased in



Government Hospital, Bodi, for postmortem. He handed over M.O.2 to M.O.7 to the Judicial Magistrate Court through Form -95.

WEB COPY

22. Dr.Ravindranth (PW14) who conducted postmortem of the body of the deceased. He narrated 12 stab injuries found over the body of the deceased.

- "1. A horizontal stab wound over the front of upper anterior chest wall measuring 5x2 cm chest cavity deep situated 5 cm below medial end of right clavicle and 5 c.m deep upto lungs.
2. A stab wound on the right anterior abdomen wall 5x2 c.m deep upto the liver.
3. A harizontal stab wound in the right chest 5x2x5.
4. A horizontal stab wound 5x5 cm in the right chest left side of the heart pierced the right side of heart.
5. A horizontal stab wound around the left chest(nipil and areaola).
6. A horizontal stab would in the left hand 2x1x4 cm.
7. A horizontal stab wound in the left chest 5x3 cm deep upto the lungs.
8. A cross stab wound in the left forehand 3x2x1 cm with the exposure of bone.
9. A horizontal stab wound in the left elbow 3x2x1 cm.
10. Another horizontal stab wound in the left elbow 3x2x1.



WEB COPY

Cr1.A(MD)No.220 of 2022



11. A horizontal stab wound in the right chest 2x1 cm.

12. A horizontal stab wound in the upper right hip
3x2x2."

PW14 opined that due to stab injuries in her chest and the consequent hemorrhage and shock, the deceased would have died. He issued postmortem report (Ex.P6).

23. Sudha (PW15) is the daughter of the deceased and accused. She has not witnessed the occurrence, but she had come to know about the incident through her father-in-law.

24. Jeyakumar (PW16) is a Head Clerk working in the District Munsif cum Judicial Magistrate Court, Bodi. He received the material objects in respect of Crime No.395 of 12 and sent the same to the Regional Forensic Science Laboratory, Madurai.

25. Dr.Dhanalakshmi (PW17) is an Assistant Surgeon working in Government Medical College Hospital, Theni, who had treated the accused. She stated that when she examined the accused, he was unconscious and there was an injury in his neck and there was bleeding in his mouth. After giving first-aid, she referred the accused for further treatment. She opined



that the accused sustained grievous injury and she issued Ex.P7-accident register.

26. Panjulakshmi (PW18) is the Sub-Inspector of Police of the respondent police station, who received the complaint (Ex.P.1) of PW1 and registered FIR (Ex.P.8).

27. Shanmugasundaram (PW19) is the Inspector of Police(in-charge) of the respondent police station, who conducted initial investigation and recorded the statement of the accused, arrested him and also recorded the statement of some of the witnesses.

28. Chandran (PW20) is the subsequent investigating officer, who had investigated the case, visited the scene of occurrence, prepared the observation mahazar, recovered material objects, prepared seizure mahazar, recorded the statements of the witnesses and after completing the investigation, filed final report.

29..The learned counsel for the appellant would submit that the trial Court failed to take into consideration the contradictions, exaggerations and embellishments in the prosecution case. Though P.W.1 to P.W.3



supported the prosecution in their chief examination, when they were recalled, they turned *volte-face* during cross-examination and did not support the prosecution case. P.W.1 to P.W.3 stated that they had not witnessed the occurrence and had deposed based on information given by others. The prosecution, though treating P.W.2 as hostile and cross-examining him, did not treat P.W.1 and P.W.3 as hostile and did not cross-examine them.

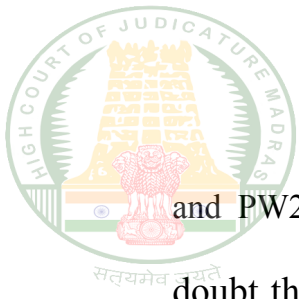
30. In the alternative, the learned counsel for the appellant would submit that, admittedly, even as per the evidence of P.W.1 and P.W.2, who are none other than the sons of the appellant and the deceased and also witnesses to the occurrence, they have categorically deposed that there were repeated quarrels between the appellant and the deceased. The appellant had been repeatedly cornered by all family members as a person of no worth monetarily. He had been distanced by the family and was not invited for festivals and other family functions. Even on the date of occurrence, he was not invited to attend the Pandhal Kaal function of his elder son. Due to continuous cornering and humiliation by the family members, he had conceived sustained provocation, which resulted in the incident. The fact of non-invitation to his own son's wedding had provoked the appellant to take the extreme decision of committing culpable homicide while under loss of



WEB COPY

self-control, when he was not the master of his own mind. The subsequent conduct of showing contrition upon recovering his senses and his attempt to commit suicide by slitting his neck, would bring the case within Exception 4 to Section 300 IPC.

31. Per contra, the learned Additional Public Prosecutor would submit that it is a case where the appellant, on account of not being invited to the Pandhal Kaal function of his son (P.W.1), committed the murder of his wife by inflicting multiple injuries with a knife used for goat shearing, resulting in death. Subsequently, he also attempted to commit suicide by slitting his neck with the same knife. However, he was saved and was therefore charged for offences under Sections 302 and 309 IPC. He would further submit that P.W.1 and P.W.2 sons of the deceased and the appellant during their evidence in chief had vividly deposed about the incident and their evidence is mutually corroborative in nature and they have turned hostile only when recalled after several years and thereby their evidence in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny. In this regard he would rely on the judgment of the Apex Court in ***Goverdhan vs. State of Chattisgarh reported in (2025) 3 SCC 378***. He would further submit that PW3 to PW5 also have corroborated the evidence of the eye witnesses PW1



and PW2. The prosecution, through cogent evidence, has proved beyond doubt that the appellant caused the death of his wife by inflicting multiple injuries. He further submitted that the appellant inflicted multiple injuries in a gruesome manner and therefore, the case cannot be brought under Exception 4 to Section 300 IPC.

32. In reply, the learned counsel for the appellant would submit that the incident happened without any premeditation. During the offence, the appellant was provoked by the act of the family members in not calling him for the Pandhal Kaal function of his own son, which triggered the incident. Further, the Confession Statement of the accused (Ex.P.5) reveals the exact breaking point that triggered him to commit the culpable homicide and his subsequent act of attempting suicide shows contrition. The Inquest Report (Ex.P.10) also substantiates the sustained provocation conceived by the appellant. Though it is well settled in criminal jurisprudence that a confession given before the police shall not be used against the accused, but there is no statutory embargo on using it in favour of the accused to explain the circumstances leading to the offence. In support of the above the learned counsel relied on *Dauvaram Nirmalkar v. State of Chhatisgarh*, reported in (2023) 12 SCC 541.



WEB COPY

33. Further, though the appellant is said to have caused multiple injuries, that by itself cannot be a decisive factor to deny the benefit of Exception 4 to Section 300 IPC and in this regard he would rely on *Atul Thakur v. State of Himachal Pradesh*, reported in **2018 (2) SCC 496**.

34. Now what is to be seen is that, 1) Whether the prosecution has proved the case of homicide beyond reasonable doubt? and if so, 2) Whether the case of the appellant will fall within Exception 4 of Section 300 of IPC, is to be decided.

35. As stated above, the deceased was the wife of the appellant. Due to frequent quarrels, they got separated six years prior to the occurrence, and the deceased was living in her family house at Pottalkulam. P.W.1, the son of the appellant, requested a portion of the appellant's house, which was refused. P.W.1 then took a house from P.W.6 on lease at Vinobaji Street, Pottalkulam. The marriage of P.W.1 was arranged by the deceased and other family members without informing the appellant. On 09.11.2012, the Pandhal Kaal function for the marriage (scheduled on 11.11.2012) was conducted at the temple. The appellant, upon seeing the function of his son being conducted without inviting him, inflicted multiple injuries on his wife using a goat-shearing knife, causing her death. Thereafter, he attempted to

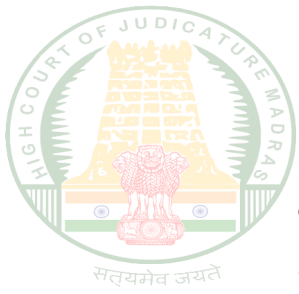


WEB COPY

commit suicide with the same knife. P.W.1 and P.W.2, sons of the appellant and the deceased, vividly deposed about the acts done by the appellant that resulted in the death of their mother. Though they have being recalled and examined they have not supported the case of the prosecution, the fact remains that P.W.1 and P.W.2 have been examined in chief on 13.08.2013 and they have supported the case of the prosecution and P.W.1 was recalled on 12.08.2015 after a lapse of two years and P.W.2 was recalled on 02.12.2015 and cross examined. Again after about four years they had been recalled on 14.12.2019 and 05.12.2020 and they have been examined by the defence during which time they have deposed in favour of the accused.

36. The Hon'ble Apex Court in **Goverdhan vs. State of Chattisgarh** referred above has held as follows:

“ That the evidence of a hostile witness in all eventualities ought not stand effaced altogether and that the same can be accepted to the extent found dependable on a careful scrutiny was reiterated by this Court in [Himanshu \[Himanshu v. State \(NCT of Delhi\)](#), (2011) 2 SCC 36 : (2011) 1 SCC (Cri) 593] by drawing sustenance of the proposition amongst others from [Khujji v. State of M.P. \[Khujji v. State of M.P., \(1991\) 3 SCC 627 : 1991 SCC \(Cri\) 916\]](#) and [Koli Lakhmanbhai Chanabhai v. State of Gujarat \[Koli Lakhmanbhai Chanabhai v. State of Gujarat, \(1999\) 8 SCC 624 : 2000 SCC \(Cri\) 13\]](#) . It was announced that the evidence of a hostile witness remains admissible and is open for a court to rely on the



WEB COPY

dependable part thereof as found acceptable and duly corroborated by other reliable evidence available on record”

37. P.W.1 and P.W.2 have clearly deposed about the incident in their initial examination before Court. Subsequently after several years they have been recalled and they have deposed in favour of the accused their father. Their evidence cannot be effected in totality.

38. As stated above in this case prosecution by the testimonies of ocular witness and corroborative witnesses and by material evidence including the medical evidence has proved that the appellant had caused the death of his wife (Uxoricide).

39. Now, coming to the aspect of whether the case of the appellant falls within Exception 4 to Section 300 IPC.

40. In this regard before adverting to and analysing the facts and circumstances of the case it would be useful to refer to the judgment in ***Dauvaram Nirmalkar v. State of Chhatisgarh***, reported in (2023) 12 SCC 541, wherein the Apex Court while recognizing the theory of sustained provocation has held as under:



WEB COPY



“10. Interpreting Exception 1 to the Section 300 in K.M. Nanavati v. State of Maharashtra, 10 this Court has held that the conditions which have to be satisfied for the exception to be invoked are (a) the deceased must have given provocation to the accused; (b) the provocation must be grave; (c) the provocation must be sudden; (d) the offender, by the reason of the said provocation, should have been deprived of his power of selfcontrol; (e) the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident. For determining 10 1962 Supp (1) SCR 567. whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. K.M. Nanavati (supra) succinctly observes:

“84. Is there any standard of a reasonable man for the application of the doctrine of “grave and sudden” provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is



WEB COPY

CrI.A(MD)No.220 of 2022



neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.”

85. The Indian law, relevant to the present enquiry, may be stated thus: (1) The test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.”

11. K.M. Nanavati (*supra*), has held that the mental background created by the previous act(s) of the deceased may be taken into consideration in ascertaining whether the subsequent act caused sudden and grave



WEB COPY

CrI.A(MD)No.220 of 2022



*provocation for committing the offence. There can be sustained and continuous provocations over a period of time, albeit in such cases Exception 1 to of the IPC applies when preceding the offence, there was a last act, word or gesture in the series of incidents comprising of that conduct, amounting to sudden provocation sufficient for reactive loss of self-control. **K.M. Nanavati** (supra) quotes the definition of 'provocation' given by Goddard, C.J.; in *R. v. Duffy*,¹¹ as :*

““...some act or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of selfcontrol, rendering the accused so subject to passion as to make him or her for the moment not master of his own mind...[I] indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of selfcontrol which is of the essence of provocation...”.

12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be



WEB COPY

Crl.A(MD)No.220 of 2022



proportionate to the provocation.¹² The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court ¹² See the opinion expressed by Goddar, CJ. in R v. Duffy (supra) would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.



WEB COPY



13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth¹³ in the following words: "[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused – and indeed the relation of the retaliation to that act – can be neither understood nor evaluated without reference to previous dealings between the parties." Exception 1 to Section 300 recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.



WEB COPY



14. Following the view expressed in *K.M. Nanavati (supra)*, this Court in observed that in the test for application of Exception 1 to f the IPC, the primary obligation of the court is to examine the circumstances from the point of view of a person of reasonable prudence, if there was such grave and sudden provocation, as to reasonably conclude that a person placed in such circumstances can temporarily lose self-control and commit the offence in the proximity to the time of provocation. A significant observation in (*supra*) is that the provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation. In support of the aforesaid proposition and to convert the conviction from Section 302 to Section 304 Part I of the IPC in **Budhi Singh** (*supra*), the Court also relied upon **Rampal Singh v. State of Uttar Pradesh**”

15. For clarity, it must be stated that the prosecution must prove the guilt of the accused, that is, it must establish all ingredients of the offence with which the accused is charged, but this burden should not be mixed with the burden on the accused of proving that the case falls within an exception. However, to discharge this burden the accused may rely upon the case of the prosecution and the evidence adduced by the prosecution in the court. It is in this context we would refer to the case of the prosecution, which is that



WEB COPY

Crl.A(MD)No.220 of 2022



the deceased was addicted to alcohol and used to constantly torment, abuse and threaten the appellant. On the night of the occurrence, the deceased had consumed alcohol and had told the appellant to leave the house and if not, he would kill the appellant. There was sudden loss of self-control on account of a 'slow burn' reaction followed by the final and immediate provocation. There was temporary loss of self-control as the appellant had tried to kill himself by holding live electrical wires. Therefore, we hold that the acts of provocation on the basis of which the appellant caused the death of his brother, Dashrath Nirmalkar, were both sudden and grave and that there was loss of self-control."

41. As stated above, the appellant who was kept away and disregarded by his own family members further being frustrated and provoked by not being invited to his own son's marriage function, committed the offence. The confession statement shows that he lost self-control and immediately after the occurrence, he had exposed contrition by attempting suicide.

42. The prosecution contended that multiple injuries take the case outside Exception 4, but that alone is not decisive. In ***Atul Thakur v. State of Himachal Pradesh***, reported in ***2018 (2) SCC 496*** it has been held

"... There was no pre-mediation and the act done



WEB COPY

CrI.A(MD)No.220 of 2022



by the appellant was in the heat of passion without the appellant taking any undue advantage or acted in a cruel manner. The number of wounds caused by the appellant, it is a well established position, by itself cannot be a decisive factor. The High Court committed manifest error in being influenced by the said fact. What is relevant is that the occurrence was sudden and not premeditated and the offender acted in the heat of passion. The evidence supports the case of the appellant in this behalf. The fact that the appellant used weapon such as knife, is also not a decisive factor to attract Section 302 of IPC. Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception 4.

13. Dealing with a somewhat similar situation, in the case of **Surain Singh Vs. State of Punjab**, this Court has restated the settled legal position about the purport of Exception 4 to Section 300 IPC. Even in that case, the accused had repeatedly assaulted the deceased with a Kirpan and caused injuries resulting into death. After restating the legal position, the Court converted the offence to one under Section 304 Part-II instead of Section 302 IPC. Following the same legal principle and keeping in mind the factual position as unfolded, the view taken by the Trial Court of convicting the appellant for offence punishable under Section 304 Part-II, is unexceptionable.”

43. Taking into consideration the totality of the circumstances and the manner in which the offence was committed and the act of



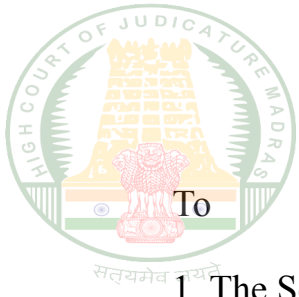
Crl.A(MD)No.220 of 2022

contrition shown by the appellant and also applying the ratio of the aforesaid decision of the Apex Court to the facts of the present case, we are of the opinion that the case of the appellant falls within Exception 4 to Section 300 IPC.

44. Accordingly, the Criminal Appeal is **partly allowed**. In the result while confirming the conviction under Section 309 of IPC the conviction under Section 302 of IPC is set aside. Instead the appellant is convicted under Section 304 (2) of IPC and is sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.5,000/- in default to under one year simple imprisonment. In view of the conviction of seven years for the offence under Section 302 of IPC no separate sentence is awarded for the offence under Section 309 of IPC.

[A.D.J.C., J.] [R.P., J.]
19.08.2025

Index : Yes / No
Neutral Citation : Yes / No
bala/PKN



Crl.A(MD)No.220 of 2022

1. The Sessions Judge,
Mahila Fast Track Court,
Theni.
2. The Inspector of Police,
Bodi Taluk Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer
Criminal (Records) Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.220 of 2022

A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

bala/PKN

PRE-DELIVERY JUDGMENT MADE IN
Crl.A(MD)No.220 of 2022

DATED : 19.08.2025