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Crl.A.(MD)NO. 482 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

Crl.A.(MD)No.482 of 2024

and

Crl.M.P(MD)No.5533 of 2024

M.Mariyappan

... Appellant /
Sole Accused

Vs.

1.The State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.772 of 2020)

... Respondent /
Respondent

2.Thangarasu
*(R.2 is impleaded vide order of
this Court dated 07.11.2024)*

... Respondent

Prayer: Criminal Appeal filed under under Section 374(2) of Cr.P.C, to call for the records and set aside the judgment dated 13.12.2022 made in S.C.No.14 of 2021 in the Court of the learned Principal District and Sessions Judge, Karur and allow this Criminal Appeal.

For Appellant : Mr.S.Ramsundarvijayraj



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For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This Criminal Appeal is directed against the judgment dated 13.12.2022 made in S.C.No.14 of 2021 on the file of learned Principal District and Sessions Judge, Karur. By the impugned judgment, the appellant was convicted and sentenced as follows::

Convicted U/S.	Sentenced	Fine amount
302 of IPC 3(2)(v) of SC/ST Act	To undergo imprisonment of life	and to pay a fine of Rs.2,000/- in default to undergo S.I. for 1 Year

2.The learned counsel appearing for the appellant / convict at the very outset submitted that he is pleading only for modification of the judgment finding him guilty for the offence under Section 302 of IPC and reduction of sentence.



3.Per contra, the learned Additional Public Prosecutor representing the State submitted that the impugned judgment is well reasoned and that it does not call for interference.

4.We carefully considered the rival contentions and went through the evidence on record.

5.The case of the prosecution is as follows:

The appellant Mariyappan and Saravanan (deceased) were friends. The appellant is a butcher by avocation and he is running a mutton stall. On 05.10.2020 in the afternoon, Saravanan (the deceased) approached the appellant and asked him to lend a sum of Rs.30,000/-. He further told the appellant that since he is rearing goats, the appellant can come to his house the following day and take goats corresponding to the amount of Rs.30,000/- already paid by him. On 06.10.2020 at about 04.30 p.m, the appellant went to the house of the victim and requested him to hand over a certain number of goats for the already paid consideration. The victim is said to have resisted the demand. The victim took the stand that what was received by him was towards hand loan, and the said amount did not represent the sale consideration for



goats maintained by the victim. The appellant thereafter pulled out his butcher knife / cleaver (R+hp fj;jp MO1) and inflicted multiple stab injuries on the person of the deceased. This was witnessed by as many as 7 persons (PW1 to Pw6 and PW8). PW8 rushed to the house of PW9 who is an auto driver. PW9 brought the auto to the place of occurrence and Saravanan was taken in the said auto by PW1 to the Government Hospital, Kulithalai at about 05.15 p.m. PW7 Dr.Bharathi Karthiga administered first-aid to Saravanan and referred him to Mahatma Gandhi Memorial Government Hospital, Trichy for intensive treatment. Saravanan was admitted in the said hospital at about 07.05 p.m by PW11.

6.In the meanwhile, medico-legal intimation was given from Government Hospital, Kulithalai to PW12, Sub Inspector of Police, Kulithalai Police Station at about 05.45 p.m. PW12 rushed to the Government Hospital, Kulithalai. By then, the victim was being prepared to be taken to the Government Hospital, Trichy for intensive treatment.

7.Since the victim was unconscious, the Sub-Inspector of Police (PW12) obtained complaint from PW1. PW12 thereupon returned



to the Police Station and based on PW1's complaint, Crime No.772 of 2020 was registered for the offence under Section 307 of IPC. PW17 the Inspector of Police, Kulithalai Police Station took up investigation. He went to the occurrence spot at around 06.45 p.m and prepared observation mahazar and rough sketch. He also examined the witnesses and recorded their statements under Section 161 of Cr.P.C. The accused was arrested at 09.30 p.m on the same day. His confession was taken in the presence of PW8. Based on the disclosure statement, MO1 knife was recovered from the person of the accused / appellant.

8.On 08.10.2020, after receiving death intimation of Saravanan at 08.00 a.m from the Government Hospital, Trichy PW17 prepared alteration report (Ex.P15) and altered the offence from Section 307 to that of Section 302 IPC. Thereafter, postmortem was conducted by Dr.Priya (PW15). After ascertaining that the deceased belonged to a Scheduled Caste community, he altered Sections 302 to that of Section 302 read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 vide alteration report (Ex.P17).



9. Investigation was thereafter transferred to CBCID Metro

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Wing, Chennai and PW18 took up investigation. PW18 also examined the witnesses and recorded their statements under Section 161 of Cr.P.C. He filed final report against the appellant herein before the learned Principal Sessions Judge, Karur. Cognizance was taken in S.C.No.14 of 2021. Summon was issued to the appellant. Copies were served on him. Charges were framed under Section 302 of IPC read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused pleaded not guilty and claimed to be tried.

10. PW1 to PW18 were examined and Ex.P1 to Ex.P21 were marked. MO1 butcher knife was also marked. Incriminating circumstances were put to the accused during examination under Section 313 of Cr.P.C. The accused characterised them as false. No evidence was adduced on the side of the accused. The trial Court by the impugned judgment dated 13.12.2022 found the appellant guilty of the offences under Section 302 of IPC read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him in the manner set out above.



11.The question that calls for consideration is whether the

impugned judgment passed by the Special Court deserves to be modified.

Before addressing this question, we entertained a doubt. Since this is a case involving Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, under Section 15(A) notice has to be served to the defacto complainant. The question is if even at the stage of appeal, the defacto complainant has to be heard. Section 15(A)(3) of the said Act is as follows:

“15A. Rights of victims and witnesses

...

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.”

The Hon'ble Supreme Court in the decision reported in **2021 SCC OnLine SC 1010 (Hariram Bhambhi Vs Satyanarayan)** has held that the requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A(3), in order to provide them an opportunity of being heard, is mandatory.



12.In any event, since the statute contemplates hearing the defacto complainant at all stages of the proceedings and an appeal is a continuation of the original proceedings, we are clearly of the view that the defacto complainant ought to be heard before the appeal filed by the convict is disposed of.

13.In this case, the defacto complainant was served and his name is also printed in the cause list. But he has not chosen to enter appearance in support of the impugned judgment. The Hon'ble Division Bench of Calcutta High Court in the decision reported in **2023 SCC OnLine Cal 3780 (Sudip Mondal Vs State of West Bengal)** held that though notice under Section 15A(3) of the Act is mandatory, the presence of the victim or dependent in the course of the proceeding is not mandatory. We are satisfied that the statutory mandate has been met in this case. The appellate Court is not obliged to go in search of the defacto complainant who has chosen not to enter appearance after receipt of notice.

14.As already noted, the occurrence took place in the presence of eyewitnesses. As many as 7 persons are projected as eye-witnesses. It



is not in dispute that the occurrence had taken place in the vicinity of the residence of the victim. Therefore, only persons immediately related to the victim will be present in the spot and they alone can be expected to depose as witnesses in support of the prosecution. Their testimony cannot be rejected as untrustworthy and unreliable merely because they are related witnesses. The Hon'ble Supreme Court in the decision reported in **(1981) 3 SCC 675 (Hari Obula Reddy Vs State of Punjab)** had held as follows:

“13. ...it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

Further the Hon'ble Supreme Court in the decision reported in **(1981) 2 SCC 752 (State of Rajasthan Vs Kalki)** held as follows: ;



“7. ... 'Related' is not equivalent to 'interested'.

A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. ...”

15.PW1 is the father of the victim. PW2 is the sister-in-law of the victim. PW3 is the sister of the victim. PW4 is the neighbour and he is admittedly an independent witness. PW5 is also an independent witness. He is a milk vendor who happened to be present in the spot when he came to supply milk. His presence cannot be characterized as artificial. He is a chance witness. PW6 and PW8 are also neighbours. All these eyewitnesses have convincingly deposed against the appellant. They clearly stated that it was the appellant who inflicted the stab injuries on the victim. The Court below has observed their demeanour and come to the conclusion that the act of stabbing for which the appellant was charged had been proved beyond reasonable doubt. It is seen from Ex.P16 (post-mortem report) that as many as 5 injuries were inflicted on the victim. PW7 Dr.Bharathi Karthiga and PW11 Dr.Mahalakshmi have deposed that the injuries found on the body of the deceased could have been caused by MO1. PW15 Dr.Priya had



performed the post-mortem. Ex.P12 contains the final opinion of the forensic expert. It states that on perusal of the case history of the deceased, hospital records, post-mortem findings and RFSL findings, the deceased would appear to have died due to complications of abdominal injury sustained. The Court below was satisfied that the medical evidence corroborated the ocular evidence.

16.It is not disputed that the deceased belonged to Scheduled Caste community as is evident from Ex.P19. Section 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is as follows:

“8.Presumption as to offences.—In a prosecution for an offence under this Chapter, if it is proved that—

...

(b) ...

(c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved. ”

In this case, the foundational facts had been established by the prosecution by examining the aforesaid 7 eyewitnesses. The appellant



could not rebut the same. The sequence of events has also been convincingly shown. There was a transaction between the appellant and the victim. According to the appellant, the victim had agreed to sell certain number of goats in lieu of Rs.30,000/- that he had taken from the appellant. Since the victim did not honour his commitment, the appellant is said to have drawn his butcher knife and inflicted stab injuries on the victim. We are therefore satisfied that both *actus reus* and *mens rea* have been proved by the prosecution.

17.The next question that calls for consideration is whether the act attributed to the appellant would constitute the offence of murder or would amount to culpable homicide not amounting to murder. Section 300 of IPC reads as follows:

“300.Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury



intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.”

18.The Hon'ble Supreme Court in the decision reported in ***(2009) 17 SCC 433 (Muthu Vs State represented by Inspector of Police)*** observed as follows:

"10. ... there is a clear distinction between a case of pre-meditated attack with intention to cause death and a



case where there was no such pre- meditated intention and death was caused in the heat of the moment or fit of anger during an altercation or quarrel.

11. No doubt, even in the heat of the moment or fit of anger one should not attack somebody since human beings are different from animals inasmuch as they have the power of self-control. Nevertheless, the fact remains that in the heat of the moment and in a fit of anger people some times do acts which may not have been done after premeditation. Hence the law provides that while those who commit acts in the heat of the moment or fit of anger should also be punished, their punishment should be lesser than that of premeditated offences. It is for this reason that Exceptions I and 4 have been inserted in Section 300 IPC."

Further in the decision reported in **(2023) 12 SCC 541 (Dauvaram Nirmalkar Vs State of Chhattisgarh)**, it was held as follows:

"10. Interpreting Exception 1 to the Section 300 in K.M. Nanavati v. State of Maharashtra (1962 Supp (1) SCR 567) 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 self-control;

(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.

11.For determining 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.

...

14.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 Section 300 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.



that the occurrence had taken place at the spur of the moment and the fatal blow can be clearly traced to the influence of passion arising from the provocation that was caused on account of the victim's refusal to part with the goats as promised. There is no evidence to show that there was any premeditation or calculation on the part of the appellant.

20. We are satisfied that the case of the appellant would fall under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. We therefore find the appellant guilty of the offence under Section 304(ii) of IPC r/w Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the interest of justice, the sentence imposed on the appellant is modified to 7 seven years rigorous imprisonment. The impugned judgment of the court below is accordingly modified. The period of incarceration already undergone by the appellant shall be set off under Section 428 of Cr.PC. This Criminal Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [R.P., J.]
08.01.2025

NCC : Yes / No
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Crl.A.(MD)NO. 482 of 2024

G.R.SWAMINATHAN,J.

AND

R.POORNIMA, J.

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To:

- 1.Principal District and Sessions Judge,
Karur.
- 2.The Inspector of Police,
Kulithalai Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.A.(MD)No.482 of 2024

08.01.2025