



Crl.A(MD)No.540 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.04.2025

Pronounced on : 25.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.540 of 2021

Durairaj

... Appellant

Vs.

State Represented by

The Inspector of Police,

Sivagangai Town Police Station,

Sivagangai District.

(Crime No.266/2014)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.06 of 2016 on the file of the Principal District and Sessions Court, Sivagangai, Sivagangai District, dated 20.11.2021 and set aside the same by acquitting the accused by allowing the Criminal Appeal.



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Crl.A(MD)No.540 of 2021

For Appellant : Mr.V.Kathirvelu

Senior Counsel

for Mr.K.Prabu

For Respondent : Mr. S. Ravi

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/sole accused in the judgment dated 20.11.2021 passed by the learned Principal District and Sessions Court, Sivagangai, in S.C.No.06 of 2016 by convicting and sentencing the appellant for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.10,000/- in default, to undergo three months Simple imprisonment.

2. The case of the prosecution in brief is as follows:

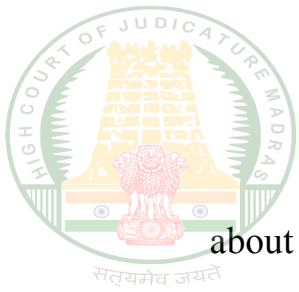
a) The complaint statement was recorded by P.W.6 Thiru.Boominathan, Sub Inspector of Police from the victim Tmt.Uma Maheshwari, she stated that she was married to one Kalimuthu 8 years



Crl.A(MD)No.540 of 2021

back, but due to misunderstanding, he separated from her. After separation, she began residing at her paternal house. Later she made acquaintance with the accused and eventually married him. They lived together at Madurai. Subsequently, she discovered that the accused was already married. She became pregnant, but when she informed him about the pregnancy, the accused caused problem by questioning her fidelity. Therefore, she went to her mother's house. Later, she gave birth to a female child. Subsequently, she rented a house near her parents home and started living with her daughter. The accused then came to her and requested permission to stay with her and she accepted his request.

b) On 27.04.2014, she and her daughter attended a house warming ceremony of one Karuna and returned home at 1.30 p.m. The accused who was in an inebriated condition picked up a quarrel with her, abused her verbally and said that her being alive was an insult to him. He then took a knife and stabbed below her left chest, left side of her stomach, left side of her back, left buttock and left elbow indiscriminately. She sustained severe injuries and raised an alarm. The neighbours Malar and Mangai came and rescued her, while the accused fled away with a knife weapon. She was taken in 108 Ambulance and admitted in the Government Hospital for treatment. On 27.04.2014, at



Crl.A(MD)No.540 of 2021

about 16.30 hours, Mr.Boominathan, Sub Inspector of Police (P.W.6)

recorded the statement of victim (deceased) and registered FIR in Crime No.266 of 2014 under Section 307 of IPC and forwarded the complaint (Ex.P2) and FIR (Ex.P3) to the Judicial Magistrate Court.

c) Mr.Senthilkumar, the Inspector of Police (P.W.16), took up the case for investigation, went to the place of occurrence at about 17.30 hours, prepared observation Mahazar (Ex.P5) and rough sketch (Ex.P15) in the presence of witnesses Sivakumar and Kaleeswaran. He recovered blood stained earth (M.O.1), ordinary earth (M.O.2) under a recovery mahazar (Ex.P6). He went to Sivagangai Government Hospital, examined victim Uma maheswari and witnesses Mangai and Malar and recorded their statements.

d) Mr.Velayutham, Sub-Inspector of Police (P.W.11) sent a requisition to the Judicial Magistrate, Sivagangai with a request to record the statement of victim.

e) On 30.04.2014 at about 01.00 p.m, the victim Uma Maheswari died. P.W.20, Investigating Officer altered the Section of Law from 307 IPC to 302 of IPC and prepared Section Alteration Report (Ex.P16) sent the same to the Judicial Magistrate through Pakkiam, Grade I Police Constable on the same date at about 15.00 hours.



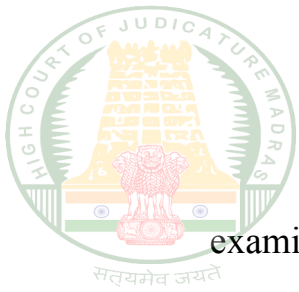
Crl.A(MD)No.540 of 2021

f) He conducted inquest on the dead body of victim Uma

WEB COM Maheswari at Sivagangai Government Hospital between 15.00 hours and 18.00 hours and prepared inquest report (Ex.P17). He sent a request to the Medical Officer to collect blood sample from the dead body. He examined the witnesses and recorded their statements.

g) On 01.05.2014, he deputed Grade-I Police Constable Mr.Kottaisamy, (P.W.14) for postmortem of the dead body. The said Constable after postmortem, handed over the dresses worn by the deceased namely, Orange Colour Blouse (M.O.4) and Saree (M.O.5) and the same was received under form-95 and forwarded the same to the Judicial Magistrate Court.

h) The accused surrendered before the Judicial Magistrate, Tirunelveli on 12.05.2014, at about 3.00 p.m., he was taken into Police custody. The Investigation Officer took him to the Police Station and recorded his confession statement (Ex.P18) in the presence of Velayutham (P.W.8) and Elango and recovered his dresses namely, blood stained full hand shirt (M.O.7) and Blood stained Lungi (M.O.6), Knife (M.O.3) under a recovery mahazar-Ex.P19. Thereafter, he handed over accused for judicial custody. He sent a requisition letter to the Judicial Magistrate to forward the material objects for chemical analysis. He



Crl.A(MD)No.540 of 2021

examined Dr.Suriyanarayanan (P.W.9) who had conducted postmortem and collected postmortem report (Ex.P11).

i) Dr.Suriyanarayanan, who had conducted postmortem found the following injuries on the dead body :

"Injuries

External :

" 1) A vertical sutured wound of length of 20cm in the midline extending from Xiphisternum upto umblicus. On removal of the suture the wound gap is 1cm in breadth, edges are clean cut. On dissection of abdomen the omnetum is muddy and inflammed, abdominal cavity contains 25ml of blood stained fluid.

2) An oblique sutured wound of length 2cm on the front of left side of upper part of abdomen, on removal of the suture the wound gap is 2cm and 100ml of dirty white fluid is evacuated. Both the edges are sharp.

3) An oblique sutured wound of length of 7cm on the back of left arm above the elbow joint, on removal of the suture the wound gap is 1.5.cm in breadth. Edges clean cut.

4) An oblique sutured wound of length 2cm on the left gluteal region, on removal of the suture the wound gap is 1cm in breadth. Edges clean cut.

5) An oblique sutured wound of length 2cm on the back of left side of abdomen, on removal of the



WEB COPY



CrI.A(MD)No.540 of 2021

suture the wound gap is 2cm in breadth, depth is muscularity.

Brain : No thrombi or emboli noted in the cerebral vessels. No scalp hematoma. No Skull fractures.

Face : No nasal bone fracture. Bilateral eyes normal.

Thorax and neck : No rib fracture. No thoracic cavity collection. Hyoid bone intact. Trachea empty and normal.

Lungs : Both the lungs pale in colour normal in size, shape and contour. No abnormality noted on cross section.

Heart : Heart appears normal. No plaques seen. No cardiac insult noted. All the chambers filled with dark red colour blood. Pericardial cavity filed with 10ml of normal straw colour fluid.

Liver : Brown pale in colour, Normal in Size, shape and contour. No abnormality noted on C.S.

Gall bladder : Contains 10ml of greenish bile

Stomach : Empty, A sutured wound of length of 4cm over the greater curvature, on removal of the suture the wound gap is 1cm in breadth. Sub-mucosa normal.

Duodenum : Empty

Spleen : Normal in size, no injury noted

Intestine: Normal and no perforation/ischemia noted

Kidneys : Both kidneys normal in size, shape and contour. Cortico-medullary differentiation is obliterated on C.S.



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CrI.A(MD)No.540 of 2021

Uterus ad Ovary : Uterus empty, both ovaries normal in shape and size, No abnormality noted on both the ovaries.

Spinal Column : Normal and no injury noted.

Opinion as to cause of death :

The deceased would appear to have died of stab injury abdomen and its corresponding internal wounds.

Since, he had been transferred from the Sivagangai Police Station, he handed over the case to Mr.Malaichami, the Inspector of Police.

j) Mr.Malaichami, the Inspector of Police (P.W.20) took up the case for further investigation and recorded the statement of witnesses and he received biological report, serology report and after completing the investigation, he filed a final report against the accused for the offence punishable under Section 302 of IPC.

3) On receipt of the records, the Judicial Magistrate-I, Sivagangai took up the case in P.R.C.No.12 of 2015 and issued summons to the accused. After appearance of the accused, copies of the entire records were furnished to him free of cost under Section 207 Cr.P.C.



Crl.A(MD)No.540 of 2021

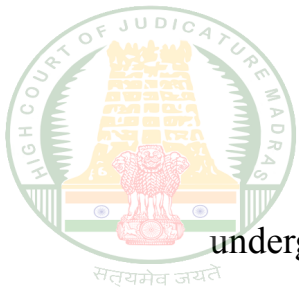
4) Since the offence was exclusively triable by the Sessions

Court, the learned Judicial Magistrate committed the case records to the learned Principal District and Sessions Judge, Sivagangai, under Section 209(A) Cr.P.C. for further action.

5) The Principal District Judge, Sivagangai received the case records, numbered it as S.C.No.6 of 2016 and took up the case for disposal according to law. After receipt of the case records, the learned Principal District and Sessions Judge, Sivagangai framed charges against the accused under Section 302 IPC. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

6) On the side of the prosecution, P.W.1 to P.W.20 were examined and Ex.P1 to Ex.P.24 were marked. Material Objects M.O.1 to M.O.7 were produced. On the side of the accused, no witness was examined.

7) After a full trial, the trial Court convicted the accused for the offence punishable under Section 302 IPC, and sentenced him to



Crl.A(MD)No.540 of 2021

undergo imprisonment for life and to pay a sum of Rs.10,000/- in default,

to undergo three months simple imprisonment, against which, the present

Criminal Appeal has been filed on the following among other grounds :-

a) That the judgement of the trial court has to be set aside since the place of occurrence according to the eye witnesses and dying declaration of the deceased is inside the house but in the observation mahazar it is disclosed as outside of the house. The entire case of the prosecution is collapsed in view of the contradiction between the place of occurrence.

b) That the judgement of the trial court has to be set aside since the P.W.17 who is the learned Judicial Magistrate-I, Sivaganagi recorded the dying declaration from the injured person on 27.04.2014 at about 04.00p.m. The occurrence happened on 27.04.2014 at 01.30p.m. Hence at the time of recording dying declaration before the Magistrate all the neighbours and relatives were available with the deceased and there are every possibilities for tutoring the deceased to give dying declaration as against the appellant and further the contention of the dying declaration also not proved in this case.

c) That the judgment of the trial court has to be set aside since the dying declaration is not corroborated with the material particulars and further the arrest confession, recovery also is doubtful in this case.



Crl.A(MD)No.540 of 2021

8) Heard the learned counsel on either side and perused the materials available on record.

9) Now this court has to decide whether the judgement rendered by the trial Court is proper or liable to be set aside ?

10. The learned counsel for the appellant argued that the eyewitnesses who are neighbours deposed before the Court that they saw the deceased only after the occurrence with injuries. None of the neighbours mentioned about the presence of appellant at the place of occurrence. They deposed that they never seen the accused in the company of the deceased before the occurrence.

11. He also further argued that the deceased Uma Maheswari was married to one Kalimuthu and she has not divorced him. Further the accused also married one Selvi and there is no divorce taken place between them. The deceased on 27.04.2014 stated before the judicial magistrate that she was deserted by her husband, her husband is Kalimuthu. But she has not stated that she was deserted by the accused.



Crl.A(MD)No.540 of 2021

WEB COPY

12. Upon close scrutiny, it is evident from the dying declaration of Uma Maheswari she affirmed that she married the accused and blessed with a female child. On the date occurrence, the accused Durairaj intoxicated state confronted her. He inquired her whereabouts to which she responded that she had attended a function along with her daughter. But he repeatedly questioned her, for which she told him to leave her and that she would stay in her parental house. When he slapped her, she contacted the Police by using her cell phone. The accused pushed her down, and assaulted her. As she hold his neck, he immediately took a knife from under the bureau and stabbed her in her ribs, back, buttocks and hands, when she screamed in pain, he fled away from the scene. She further stated that the accused is to be punished, as he spoiled the lives of several life. The victim clearly stated before the Judicial Magistrate about the relationship with the accused.

13. The relationship between the accused and the deceased spoken by P.W.1 to P.W.4. P.W.1 Malar, P.W.2 Mangai and P.W.4 Pitchaiyandi @ Venkatesapandi are all neighbours of the deceased. They all stated in their evidence that the accused is the husband of the deceased and was residing with the deceased in her house at the time of



Crl.A(MD)No.540 of 2021

occurrence.

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14. Soon after the occurrence the victim was admitted for treatment at Sivagangai Government Medical College Hospital. P.W.12 treated her. The victim clearly stated to the Doctor P.W.12 who had treated her that she was attacked by her husband. Before the Judicial Magistrate, she pointed out the name of the accused that he alone committed the offence.

15. P.W.19 Tmt.Selvi, Inspector of Police also supported the testimonies of P.W.1, P.W.2 and P.W.4 by stating that on 18.03.2014, one Selvi (1st wife of accused) filed a complaint against the accused by alleging that he was having affair with the deceased. On the same day, she called Durairaj/accused for enquiry and he accepted the relationship with the deceased Uma Maheswari.

16. Therefore, the prosecution proved that the deceased was originally married to Kalimuthu and subsequently, married the accused. From the wedlock, a female child was born and both the accused and the deceased were living together at the time of occurrence. Thus, there is no ambiguity in the relationship between the deceased and the accused, as



Crl.A(MD)No.540 of 2021

argued by the learned counsel for the appellant.

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17. The learned counsel for the appellant further stated that the dying declaration was recorded at 4.00 p.m., the neighbours were available with the deceased and there is a possibility of tutoring the deceased to give the dying declaration.

18. P.W.17 Thiru.Satheesh, the then Judicial Magistrate of Sivagangai clearly stated in his testimony that at the time of recording the dying declaration, no one was present near the deceased. Ex.P20 is the dying declaration, he also noted that apart from duty doctor no one permitted near the victim. This affirms that the learned Judicial Magistrate, ensured that the dying declaration was recorded without any external affairs.

19. P.W.6 who had recorded the complaint statement of the deceased on 27.04.2014 at about 15.30 hours in the Government hospital, Sivagangai, did so prior to the recording of the dying declaration. In that statement, the victim clearly identified the accused as her assailant. Both the complainant and the dying declaration are consistent with each other which would indicate that the victim did not alter her version of events



Crl.A(MD)No.540 of 2021

even after arrival of her relatives / neighbours to the hospital as stated by

the learned counsel for the appellant.

20. In addition, the prosecution established that the victim's statement was recorded at about 15.30 hours under Ex.P2, wherein, she clearly narrated the incident. Immediately, thereafter without any delay, the FIR Ex.P.3 was registered at about 16.30 hours in Crime No.266 of 2014 for the offence under Section 307 IPC. The learned Judicial Magistrate also recorded her confession statement on the same day at about 16.00 hours.

21. P.W.1 and P.W.2 were cited as eyewitnesses, however, during the trial, they did not stated that they witnessed the occurrence. P.W.1 in her evidence stated that she heard noise from the house of the deceased, and she thought that both the husband and wife were fighting, she entered the house of the victim after hearing her screaming, saw the deceased in a pool of blood and took her to the hospital. P.W.2 corroborated the evidence of P.W.1 but added that soon after the occurrence, she saw the accused who was running from the place, which proves that, P.W.1 and P.W.2 heard disturbance from the house of the



Crl.A(MD)No.540 of 2021

victim, entered and find the victim in a pool of blood and observed the accused fleeing away from the place of occurrence.

22. The learned counsel for the appellant further argued that the occurrence took place inside the house but in the observation mahazar it was disclosed that the place of occurrence was outside of the house. Both are contradictory.

23. The argument advanced by the learned counsel for the appellant is not correct. P.W.1 and P.W.2 clearly stated that they saw the deceased in a pool of blood inside the house. In the statement of P.W.1 and the dying declaration also it was clearly stated that the occurrence took place inside the house. In the rough sketch Ex.P15 also it was properly mentioned that the place of occurrence was inside the house. Although in the observation of Mahazar it was noted the presence of blood stains were found outside of the house, but it is not serious lacuna as there is possibility of oozing blood when the victim was taken to hospital, in front of her house.

24. The prosecution proved in this case that at the time of



Crl.A(MD)No.540 of 2021

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occurrence, both the accused and the deceased were living together at the place of occurrence. It is also proved that prior to the incident P.W.1, P.W.2 neighbours heard a quarrel between the accused and the deceased inside the house. Thereafter, they found the victim alone lying down in a pool of blood with injuries and witnessed the accused fleeing away from the place of occurrence with the weapon. Immediately, the victim was taken to the hospital for treatment at about 2.00 p.m., P.W.12 Doctor who admitted the victim to the Sivagangai Government Hospital at about 2'o clock. Upon enquiry, the victim stated that she had been stabbed by her husband at about 1.30 p.m. The Doctor then informed the Police Outpost to make arrangement to record her statement. The complaint statement of the victim was recorded by the P.W.6 Sub-Inspector of Police, immediately without any delay to whom the victim stated that the accused was solely responsible for her injuries. Subsequently, her dying declaration was recorded by the Judicial Magistrate with whom also, she clearly stated that the accused attacked her discriminately. P.W.13 Dr.Krithiga also spoke about injuries sustained by the victim and about the certificate issued to the victim. She confirmed that the learned Judicial Magistrate came at about 4.30 p.m., and she certified her fit state of mind to give a dying declaration.



Crl.A(MD)No.540 of 2021

WEB COPY

25. A dying declaration is a statement made by a person who believes they are about to die regarding the cause or circumstances of what they believe to be their impending death. It holds a special status and is treated as an exception to the hear-say rule. Section 32 (1) of Indian Evidence Act, dying declaration is admissible in court, because it is presumed that a person on the verge of death is unlikely to lie.

26. The statement of the victim corroborated with medical evidence and ocular evidence Ex.P11 Postmortem certificate issued by P.W.9, explained the injuries sustained by the victim, and he opined that the deceased would appear to have died from stab injury and its corresponding internal wounds.

27. The confession, arrest and recovery of the weapon from the accused was spoken by P.W.8, the Village Administrative Officer. Further, the bloodstained earth, ordinary earth, torn silken orange colour saree, and orange colour blouse worn by the deceased were recovered. Likewise, a bloodstained knife, a white colour lungi with green and blue



Crl.A(MD)No.540 of 2021

WEB COPY

colour stripes, and a silken sandal colour full sleeve shirt with white colour stripes which were worn by the accused at the time of occurrence, were recovered from the accused. In all the material objects were found with bloodstains. The serology report Ex.P.24 indicates that the blood group found on all these items belongs to 'A' group, thereby connecting the accused in the crime.

28. The prosecution established the guilt of the accused beyond all reasonable doubt. The trial Court, after taking into consideration the materials available on record, held that the accused was guilty of the offence under Section 302 IPC.

29. The Judgement of the trial Court is proper and there is no strong ground available to interfere with the judgement rendered by the trial Court.

30. On careful perusal of entire records, we conclude that there is no material available to interfere with the judgment of the trial Court. The Criminal Appeal has no merit, and hence, the Criminal Appeal is liable to be dismissed.



Crl.A(MD)No.540 of 2021

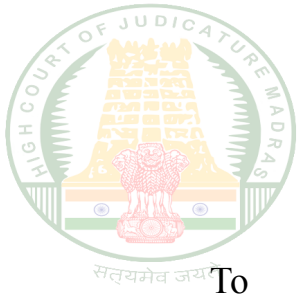
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31. Accordingly, the Criminal Appeal stands dismissed and the judgment passed in S.C.No.06 of 2016 on the file of the Principal District and Sessions Court, Sivagangai, Sivagangai District, dated 20.11.2021 is hereby confirmed.

(G.J., J.) & (R.P., J.)
25.04.2025

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

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Crl.A(MD)No.540 of 2021

To
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1.The Principal District and Sessions Judge,
Sivagangai District.

2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
(Cr.No.266 of 2014)

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

4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A(MD)No.540 of 2021

G.JAYACHANDRAN J.
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Judgment in
Crl.A(MD)No.540 of 2021

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