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CRL A No. 701 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 701 of 2019

D.Moorthy
S/o.Durai, No.11, V.O.C.Street,
Sorakkapalayam, Avadi,
Chennai-600 054.

..Appellant

Vs

State Rep.By
The Inspector Of Police,
T-8, Avadi Police Station,
Chennai-600 054.
(Cr.No.657/2017)

..Respondent

Prayer: Criminal appeal filed under Section 374 of Cr.P.C. to set-aside the judgment of conviction and sentence passed against the appellant/accused on 21.06.2019 in S.C.No.126 of 2017 by the learned II Additional District Sessions Judge Tiruvallur at Poonamallee and acquit him from all the charges.

For Appellant: Ms.S.Sridevi,
Legal Aid Counsel and
Mr.T.V.G.Kartheeban



WEB COPY



CRL A No. 701 of 2019

For Respondent: Mr.S.Raja Kumar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by Sunder Mohan J.)

This Criminal Appeal has been filed by the accused, challenging the judgment dated 21.06.2019 in S.C.No.126 of 2017 on the file of the learned II Additional District Sessions Judge, Tiruvallur, Poonamallee, by which he was convicted for the offences under Sections 302 and 324 of the IPC and sentenced as follows:

Offence under Section	Sentence imposed
302 IPC	To undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for one year.
324 IPC	To undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months.
The sentences were ordered to run concurrently.	

2.(i) The case of the prosecution is that the accused and the deceased were known to each other; that on 02.04.2017 at about 5.15 p.m., the accused, the deceased and three of their friends assembled near the butcher shop of PW5 to consume liquor; that a wordy altercation took



place between the accused and the deceased, when the deceased is said to have told the accused to bring his wife to him; that thereafter the deceased is said to have slapped the accused; that the accused went to his house to fetch a knife and after returning to the place of occurrence, attacked the deceased indiscriminately with a knife on his chest, hands and other parts of the body; and that the deceased succumbed to the said injuries.

(ii). PW1/the brother of the deceased, on coming to know of the occurrence from PW2/an injured eyewitness, lodged a complaint [Ex.P1], which was registered as an FIR [Ex.P11] in Crime No.657 of 2017 by the Investigating Officer [PW16], for the offences under Sections 294 (b), 324, 302 and 506(ii) of the IPC.

(iii) PW16 commenced the investigation, went to the place of occurrence and prepared the observation mahazar [Ex.P2] and the rough sketch [Ex.P12]. He examined the witnesses PW2 to PW5. Thereafter conducted an inquest over the dead body of the deceased and prepared a report [Ex.P13]. He seized the bloodstained clothes of the deceased [M.O.5], bloodstained earth [M.O.2] and the earth which was not bloodstained [M.O.3] and sent it for forensic examination. He handed



over the body of the deceased for a postmortem. Thereafter, he arrested the accused and on his confession, recovered knife/M.O.1, which is said to have been used for causing the death of the deceased. After examination of the remaining witnesses, he filed the final report against the accused for the offences under Sections 324 and 302 of the IPC before the learned Judicial Magistrate No.II, Poonamallee.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, committed to the Court of Sessions i.e., Principal District Court, Tiruvallur and was made over to the learned II Additional District and Sessions Court, Tiruvallur @ Poonamallee, for trial, which was taken on file as S.C.No.126 of 2017. The trial Court framed two charges against the accused under Sections 302 and 324 IPC and when questioned, the accused pleaded 'not guilty'.

(v). The prosecution examined 16 witnesses as PW1 to PW16 and marked 13 documents as Ex.P1 to Ex.P13 to prove its case, besides marking 7 material objects as M.O.1 to M.O.7. The accused neither examined any witness nor marked any document on his side.



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(vi) On appreciation of oral and documentary evidence, the trial Court found the accused guilty of both the offences and sentenced him as stated above. Aggrieved by the said conviction and sentence, the accused had preferred the instant appeal.

3. Since there was no representation for the appellant, this Court, vide order dated 09.01.2026 had appointed Ms.S.Sridevi, learned Counsel, as legal aid counsel.

4. (i) Today, Mr.T.V.G.Kartheeban, learned counsel who had originally filed the appeal and the learned legal aid counsel were present. Both the learned counsels submitted that the witnesses cannot be believed and that even assuming that the witnesses can be believed, the charge and the evidence of the witnesses would only suggest that the appellant is liable for the offence of culpable homicide, as the act of the deceased caused grave and sudden provocation to the appellant, which had led to the occurrence.

(ii) The learned counsel read through the evidence of the witnesses examined by the prosecution and prayed for acquittal or for modification of the sentence, as the offence of murder is not made out.



(iii) Ms.Sridevi, learned legal aid counsel relied upon the decision of the Hon'ble Supreme Court in *Vijay @ Vijayakumar V. State Represented by Inspector of Police*¹.

5. Mr.S.Raja Kumar, learned Additional Public Prosecutor, *per contra*, submitted that the eyewitnesses cannot be disbelieved; that the cross-examination of those witnesses by the defence has not discredited them in any manner; that Exception 1 to Section 300 of the IPC would not be applicable to the facts of the instant case as the provocation stated above cannot be said to be sudden; that in any case, the occurrence did not take place while the appellant was deprived of his self-control as could be seen from the evidence of PW3 and PW5; and that the appellant had sufficient time to calm down and hence, he is guilty of the offence of murder.

6 (i). As stated above, the prosecution examined 16 witnesses. PW1 is the brother of the deceased and the de-facto complainant. He came to know of the occurrence from PW2, who is an injured eyewitness. PW2 had sustained injuries on his back, which is corroborated by PW11, the doctor who had examined and treated him. PW3 to PW5 are the other

¹ Criminal Appeal No.1049 of 2021 dated 16.01.2025



eyewitnesses to the occurrence who corroborate the evidence of PW2.

PW6 is the mother of the deceased and is a hearsay witness. PW7 and PW8 are neighbours and also are hearsay witnesses who came to know about the occurrence from PW1. PW9 is a witness to the observation mahazar, the seizure mahazar and the rough sketch, which were marked as Ex.P2, Ex.P3 and Ex.P12, respectively. PW10 is the witness to the confession of the appellant and had also signed the seizure mahazar. He had marked the knife/M.O.4 and the shirt of the deceased/M.O.5.

(ii) PW11 is the doctor, as stated above, who had treated PW2 and had made entries in the Accident Register [Ex.P6]. PW12 is the postmortem doctor who had opined that the deceased died due to haemorrhage and shock due to the injuries sustained by him. He had also listed out the injuries sustained by the deceased in his postmortem certificate [Ex.P8]. PW13 is the Constable who has assisted the Investigating Officer in the investigation. PW14 is the Scientific Officer in the Forensic Science Department who found blood stains in the dress materials of the deceased and the knife/M.O.1. PW15 is the Scientific Officer, who has issued the Toxicology Report [Ex.P10], wherein he has



stated that no alcohol or poison was detected in the internal organs of the deceased. PW16, as stated above, was the Investigating Officer.

7. From the above narration, it could be seen that the prosecution seeks to establish its case by the evidence of the eyewitnesses. PW1 is the de-facto complainant who had lodged the FIR on the information given by PW2. PW2, in his deposition, has stated that he attempted to prevent the attack made by the appellant on the deceased and he sustained injuries. The evidence of PW3 to PW5, who are the friends of the deceased and the appellant and eyewitnesses to the occurrence, also corroborated the evidence of PW2 as regards the manner in which the occurrence took place. According to the witnesses, viz., PW2 to PW5, the appellant and the deceased met near the butcher shop of PW5 on 02.04.2017 at about 5.00 p.m., and in the wordy altercation, the deceased had humiliated the appellant's wife and subsequently slapped the appellant. They have deposed that thereafter the appellant went to his house and brought a knife and attacked the deceased. Nothing has been elicited in the cross-examination of these witnesses to discredit their testimony. We find that PW2 to PW5 are reliable witnesses whose evidence inspires confidence. In fact, the presence of PW2/injured



eyewitness has been referred to by PW1 in his complaint, which was given immediately after occurrence on 02.04.2017, at about 6.00 p.m.

8. The prosecution has established from the evidence of PW12, the postmortem doctor, that the deceased suffered a homicidal death. The deceased had sustained grievous injuries on his chest, namely, an oblique cut injury of the size of 15 x 4 cms which is cavity deep over the upper one-third of centre of chest with left lung protruding out. The deceased also sustained an oblique cut injury of size 8 x 3 cms x muscle deep over the back of lower one-third of right fore-arm with surrounding soft tissue contusion. PW12 had opined that the deceased died of haemorrhage and shock due to the cut injury to the chest as mentioned above. The evidence of the Forensic Science expert also suggests that the occurrence took place in the place alleged by the prosecution, as the earth that was seized contained blood stains.

9. Therefore, this Court is of the view that the prosecution had established that the deceased was done to death by the appellant. The question is whether the appellant is guilty of the offence of murder or culpable homicide. It is not in dispute that the deceased had humiliated the wife of the appellant during the conversation and had also slapped the



appellant. Therefore, the defence has established that the deceased offered provocation. However, in order to bring the case within Exception 1 to Section 300 IPC, it is well settled that the following six conditions have to be satisfied:

‘(i) The deceased must have given provocation to the accused;

(ii) The provocation must be grave;

(iii) The provocation must be sudden;

(iv) The offender, by reason of the said provocation, shall have been deprived of his power of self-control;

(v) He should have killed the deceased during the continuance of the deprivation of the power of self-control; and

(vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.’

10. The provocation must not only be grave but also must be sudden. The accused, by the reason of the said provocation, should have been deprived of the power of self-control and should have caused the death of the deceased during the continuance of the deprivation of the power of his self-control.

11. The evidence of eyewitnesses would suggest that after the provocation offered by the deceased, the appellant went to his house; that



he fetched the knife [M.O.1] meant for cutting coconuts; and that he returned 10 minutes later and attacked the deceased. PW5, however, would state that he took five minutes to return.

12. Neither the prosecution nor the defence has established the distance between the place of occurrence and the house of the appellant. But all the witnesses have stated that the appellant left the place of occurrence and had returned with the knife. Even assuming that it had taken five minutes as stated by PW5, it cannot be said that the appellant had committed offence whilst he was deprived of the power of self-control, even assuming that he had initially lost the power of self-control.

13. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in *Vijay @ Vijayakumar's case* [supra] to impress upon us that the act of the appellant would only fall within Exception 1 to Section 300 IPC. The Hon'ble Supreme Court in the facts of that case, found that after the provocation offered by the deceased, the accused therein picked up a cement stone that was lying nearby and hit the deceased on the head with it. In this case, it is not so. The appellant/accused had enough time to go to his house to bring the knife



CRL A No. 701 of 2019

and attack the deceased. Therefore, it cannot be said that the attack was made while the appellant was deprived of his self-control.

14. Therefore, we are of the view that the act of the appellant would not fall within Exception 1 to Section 300 IPC. There is no infirmity in the finding of the trial Court holding the appellant guilty of the offences under Sections 302 and 324 of the IPC and we consequently confirm the conviction and sentence. The appellant shall be secured forthwith to serve the remaining part of the sentence. The Criminal Appeal stands dismissed, accordingly.

15. We record our appreciation for the valuable assistance rendered by Ms.S.Sridevi, the learned legal aid counsel, in the matter.

(A.S.M.,J.) (S.M.,J.)
11-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

Note:

The High Court Legal Services Committee is directed to pay the scheduled fees to Ms.S.Sridevi, legal-aid counsel appointed by this Court, to assist this Court on behalf of the appellant.

mpl/ars



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DR.ANITA SUMANTH J.

AND

SUNDER MOHAN J.

mpl/ars

To

1. The Inspector Of Police,
T-8, Avadi Police Station,
Chennai-600 054.
2. The Public Prosecutor,
High Court of Madras.
3. The II Additional District and Sessions Court,
Tiruvallur at Poonamallee.

CRL A No. 701 of 2019

11-03-2026

Page 13 of 13