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CrI.A(MD) No.468 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	11.08.2026
Pronounced on	01.09.2026

CORAM

THE HONOURABLE MR. JUSTICE A. D. JAGADISH CHANDIRA
and
THE HONOURABLE MR. JUSTICE B.MURUGESAN

CrI.A(MD) No.468 of 2024

Karuppaiah

... Appellant

vs.

The Inspector of Police,
Watrap Police Station,
Virudhunagar District

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment dated 20.11.2023 made in S.C.No.52 of 2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur and set aside the conviction and sentence imposed as against the appellant/accused and allow the above appeal.

For Appellant	:	Mr.S.Vairamuthu For Mr.R.Vignesh
For Respondent	:	Mr.D.Venkatesh Counsel for State of Tamil Nadu (CrI.Side)



J U D G M E N T

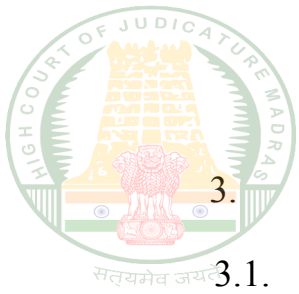
A.D.JAGADISH CHANDIRA,J.

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The instant criminal appeal is filed by the sole accused (hereinafter respectively referred to as “the appellant”) seeking to set aside the judgment of conviction and sentence dated 20.11.2023 passed by the learned Sessions Judge, Fast Track Mahila Court, Srivilliputhur (hereinafter referred to as “the Trial Court”) in S.C.No.52 of 2019 (hereinafter referred to as “the impugned judgment”).

2. *Vide* the impugned judgment, the Trial Court convicted the appellant and sentenced him as tabulated below:

Penal Provision	Imprisonment	Fine amount
449 of IPC	Seven years Rigorous Imprisonment	Rs.1,000/- in default of which to undergo three months rigorous imprisonment
326 of IPC	Ten years Rigorous Imprisonment	Rs.2,000/- in default of which to undergo four months rigorous imprisonment
324 of IPC	Three years Rigorous Imprisonment	Rs.1,000/- in default of which to undergo three months rigorous imprisonment
506(ii) of IPC	Seven years Rigorous Imprisonment	Rs.1,000/- in default of which to undergo three months rigorous imprisonment
302 of IPC	Life Imprisonment	Rs.3,000/- in default of which to undergo six months rigorous imprisonment
Period of detention already undergone by the appellant was ordered to be set off and the sentences were ordered to run concurrently.		

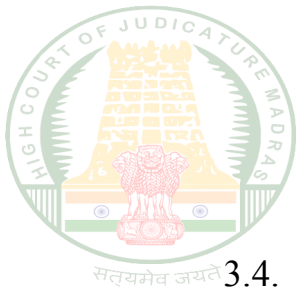


3. The case of the prosecution, in a nutshell, is as follows:

3.1. The deceased Kausalya is the wife of the appellant and their marriage was solemnized two years prior to the occurrence. Through their wedlock, a male child, namely, Kavinesh, was born to them. The appellant used to pick up quarrels with the deceased by suspecting her fidelity.

3.2. While so, on 24.09.2018, the appellant quarrelled with the deceased, suspecting her character. Hence, the parents of the deceased, P.W.1 (cousin of the deceased) and the family members of the appellant, along with the village elders, conducted a Panchayat (mediation talk) at the house of the appellant at Eravakkadu. The elders advised the appellant to lead a peaceful matrimonial life without harassing the deceased.

3.3. On 26.09.2018, the deceased purchased milk for her mother, who was also residing in the same village. After giving the milk, she was talking with her mother. On seeing this, the appellant shouted at her and warned her that if she goes to her mother's house again, he would chop her leg. Fearing the appellant's conduct, the deceased, along with her child, informed her parents about the threat made by the appellant.



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3.4. On 27.09.2018, at about 10.00 a.m., the elders again conducted a Panchayat/mediation at the house of the appellant, during which the deceased informed them that since the appellant had humiliated her mother, she was not inclined to live with him. She further informed them that her parents were searching for a house at Sivakasi and that she intended to reside with her parents for some time and thereafter, return to her husband's house when he calls her to lead a matrimonial life. Hence, the elders accepted the same and advised the deceased to live with her parents for some time.

3.5. Thereafter, the deceased requested P.W.1 that she would stay at her house until her parents arranged a house at Viswanatham. P.W.1 accepted the same and took the deceased and her child to her house. Enraged by the deceased's decision to go to Viswanatham Village, the appellant decided to do away with the deceased.

3.6. On 01.10.2018, at about 1.45 p.m., P.W.1, her two children, P.W. 3/Mareeswari and the deceased were sleeping in the inner hall of the house of P.W.1, the deceased's senior paternal uncle, Thangamudi/P.W.2 was sleeping in the kitchen; at that time, the appellant, with an intention to murder the deceased, armed with an aruval, unlawfully entered the house of P.W.1. On seeing the appellant entering with an aruval, Thangamudi/P.W.2, restrained the appellant from entering the house. The



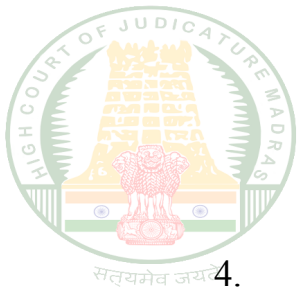
appellant attacked P.W.2 with the aruval on his left wrist and caused injuries to him.

Due to pain, P.W.2 raised an alarm. On hearing his cries, P.W.1 and P.W.3 woke up.

At that time, the appellant shouted at the deceased saying that she is a whore and that his problem will get solved if only she dies and forcibly attacked her with the aruval on her left chest. When P.W.1 tried to prevent the appellant from attacking the deceased, the appellant threatened P.W.1 to run away, otherwise he would kill her also. However, when P.W.1 attempted to snatch the aruval from the appellant, the appellant attacked P.W.1 with the aruval on her left upper arm and left forearm, causing injuries to her. Subsequently, the appellant again attacked the deceased on her left back and inflicted grievous injuries.

3.7. Immediately thereafter, when P.W.1 and P.W.3 raised alarm by screaming, the appellant ran away from the house. Subsequently, P.W.1, P.W.2 and the deceased were taken to the hospital. However, the deceased succumbed to the injuries on her way to hospital due to severe bleeding caused owing to the injuries inflicted by the appellant. Hence, the case.

3.8. Based on a complaint (Ex.P.1) given by P.W.1, a case was registered by Selvakumar (P.W.18), Sub Inspector of Police, in Watrap P.S.Cr.No.314 of 2018 against the appellant for the offences under Sections 294(b), 324, 302 and 506(II) IPC.



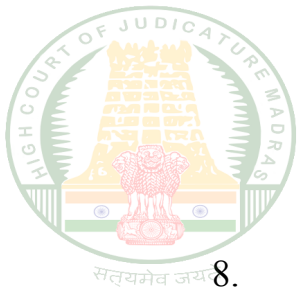
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4. After examining various witnesses and collecting reports from the experts, the Investigation Officer (PW23) completed the investigation and filed a final report against the appellant for the offences under Sections 449, 326, 324, 506(ii) and 302 of IPC which was taken on file in P.R.C. No. 03 of 2019 before the learned Judicial Magistrate No.I, Srivilliputhur.

5. On appearance of the appellant and compliance of provisions of Section 207, Cr.P.C., the learned Judicial Magistrate No.I, Srivilliputhur, committed the case to the Court of Session, Virudhunagar District at Srivilliputhur, which made over the case to the Trial Court where the case was taken up as S.C. No.52 of 2019.

6. After hearing the appellant, the Trial Court framed charges against the appellant for having committed the offences under Sections 449, 326, 506(ii), 324 and 302 of IPC. When the charges were read over and explained to the appellant, he pleaded not guilty and sought to be tried.

7. In order to prove the case, the prosecution examined 23 witnesses and marked 16 exhibits and 9 material objects.



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8. After examination of the prosecution witnesses, when the appellant was questioned under Section 313 of Cr.P.C. on the incriminating circumstances appearing against him, he denied the same as false without offering any explanation whatsoever and he did not examine any witness or mark any document on his side.

9. The Trial Court, after hearing the arguments on both sides, found the appellant guilty and convicted and sentenced him as tabulated at paragraph 2, *supra*, *vide* the impugned judgment and challenging the conviction and sentence, the instant criminal appeal has been filed by the appellant.

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

10.1. Sindhu @ Chinnammal (PW1) deposed that she is the cousin of the deceased; ever since the deceased was married to the appellant, he has been continuously causing trouble. A panchayat was conducted twice to resolve the issues between the appellant and the deceased; however, even after the panchayat, the appellant did not give heed to the wise words of the panchayatars ; On 30.09.2018, the appellant doubted the deceased for her adulterous conduct and hence, he quarrelled with the deceased; during the quarrel, he threatened to chop her leg if she



goes to her mother's house; when the deceased asked him as to why she must refrain from going to her mother's house, the appellant informed her that it was her mother who was enabling the act of adultery; hence, at about 3:30 p.m., the deceased came to her house along with her children; on 01.10.2018 at about 1:45 a.m., when her uncle Thangamuni was sleeping in the kitchen and when she, her two children, the deceased, and the deceased's mother were sleeping in the hall, the appellant burst open the doors and attacked Thangamuni P.W.2 on his wrist and further attacked the deceased on her left chest stating that only if he kills her, the problem would come to an end. When she attempted to stop the appellant, he asked her to leave by threatening that he would kill her also but as she persisted in her attempt, the appellant cut her left elbow. Seeing them screaming in pain, their neighbours contacted the ambulance and they were taken to the Vathirairupu Government Hospital. The doctor, on examining the deceased, concluded that she was dead and thereafter, the deceased was sent to the mortuary. She gave her nighty (M.O.1) to the police and identified the deceased's clothes and the weapon.

10.2. Arumugam (PW.13), Village Administrative Officer of Ilanthaikulam, deposed that on 01.10.2018 while he was on duty, at about 04.00 p.m., the Deputy Superintendent of Police, Rajapalayam, sent a person and called him; he was taken to the coconut grove and the Deputy Superintendent of Police was present there; the appellant took out and handed over one aruval, one knife and one shirt near the teak



tree; seizure mahazhar was prepared and he attested in the seizure mahazhar. The signature in the seizure mahazhar is marked as Ex.P.4.

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10.3. Dr. Beno Augustine Raja (PW.15), Assistant Surgeon, deposed that while he was working as an Assistant Director in Thoothukudi ESI Hospital, he conducted postmortem on the body of the deceased and noted down the following injuries:

“1) a deep laceration in left chest below the clavicle between 1st inter costal muscle (length -9 cm, depth 11cm, width-3 cm)

2) Laceration in the back just above left scapula (length 3 cm, width - 1cm, depth -5cm) stomach- 100 ml-undigested food, Kidney, liver,spleen- Pale; small intestine - no content.

and issued postmortem certificate (Ex.P.6) opining that the deceased would appeared to have died of haemorrhagic shock due to large artery injury and the deceased would have died before 12- 15 hrs. from the time of post mortem.

10.4. Dr.Mohan Kumar (PW.16) deposed that he was working as Senior Assistant Surgeon; on 01.10.2018, while he was on duty in Watrap Government Hospital, at about 2.55 a.m., Kausalya was brought in an ambulance; she sustained injuries on her left side chest, left side shoulder and she was brought dead; he sent the body of the deceased to mortuary; he issued Accident Register (Ex.P.7); in the same ambulance, one Chinnammal was also brought and she stated that on the same day at about 01.45 a.m., she was assaulted by one person with aruval and the doctor



noted some abrasions in her left hand; he issued Accident Register (Ex.P.8); one Thangamudi also informed that one known person assaulted him at about 3.15 am., and he was referred to Virudhunagar Government Hospital for further treatment; he found fracture of two bones called radis and ulna; he issued Accident Register (Ex.P.9).

10.5. Raja (PW 20), Deputy Superintendent of Police, deposed that he took up the case for further investigation from Selvakumar (PW 18) and went to the place of occurrence and examined Sindhu, Ponnaiah, Arumugam, Senthil Kumar, Sundaravadivel, Selvakumar and recorded their statements; on 05.10.2018, he enquired Seeniammal, Selvaraj, Sankar, Ponraj, Rengasamy Nadar, Kokila, Ramaraj and recorded their statements; on 13.11.2018, he enquired the Revenue Divisional Officer, Sivakasi and recorded his statement; he submitted a report stating that there is no dowry demand.

10.6. Dr.Ishwarya (PW22) Assistant Surgeon, Kovilpatti, deposed that on 01.10.2018, while she was on duty, one Thangamudi was brought to the hospital and he stated that at about 1.45 a.m., a known person had assaulted him with an aruval on his hand; he was initially treated in Watrap Government Hospital and thereafter, referred to Virudhunagar Government Hospital for further treatment; he issued Accident Register (Ex.P.13)



10.7.

Marichamy (PW23), Inspector of Police, deposed that in the year 2018,

while he was serving in the Police Department, a case was registered in connection with the death of one Kausalya for the offences punishable under Sections 294(b), 324, 302 and 506(2) IPC; the Revenue Divisional Officer, Sivakasi, conducted an enquiry into the death of the deceased and submitted a report; thereafter, the investigation was taken over by the Deputy Superintendent of Police, Srivilliputhur Sub-Division; during the course of investigation, the witnesses were examined and their statements were recorded; based on the materials collected during investigation, an alteration report was prepared on 05.12.2018, altering the offences from Sections 294(b), 324, 302 and 506(ii) IPC to Sections 449, 324, 326, 302 and 506(2) IPC, and the same was forwarded to the jurisdictional Court; the relevant material objects connected with the occurrence were recovered and sent for scientific examination; the forensic examination reports were subsequently received; after completion of the investigation and after collecting the oral, documentary and scientific evidence, the final report was filed before the jurisdictional Court against the accused for the aforesaid offences.

11. The sum and substance of the submissions made by the learned counsel for the appellants are as follows:

i) The prosecution has miserably failed to prove its case beyond reasonable doubt and the trial Court, without taking into consideration the



contradictions, improvements and embellishments in the evidence of witnesses, erred in convicting the appellant.

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ii) Except PW.1, all the other independent witnesses have turned hostile, especially PW.2, the alleged injured witness who is none other than the senior paternal uncle of the deceased and PW.3, mother of the deceased who are projected as eye witnesses to the occurrence, have not supported the case of prosecution; in such circumstances, the trial Court erred in convicting the appellant based on the evidence of PW.1 which is totally unreliable. When P.W 2 has not supported the case of the prosecution with regard to the alleged assault by the appellant on him, the trial court erred in convicting the appellant for the charge under Section 326 of IPC.

iii) When admittedly the prosecution has failed to recover the clothes of PW1 said to be stained by blood at the time of occurrence, her presence at the place of occurrence is highly doubtful and thereby the trial court erred in convicting the appellant based on her solitary evidence which is totally unreliable.

iv) The arrest, recovery and confession are doubtful and further the delay in sending the FIR to the Court had resulted in embellishments and improvements.

v) In the alternative, even as per the prosecution, there used to be constant fight and quarrel between the appellant and the deceased due to the appellant suspecting the fidelity of the deceased and the appellant coming to know that the victim was staying in his cousin P.W.1's house had gone there in search of her during which time the incident had happened and the injury on the chest below the clavicle



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has resulted in a cut to the artery and the death is due to that . Further since the death had happened within seven years of marriage, enquiry regarding the death was conducted by the Revenue Divisional Officer who concluded that the death was not on account of demand of dowry and that the witnesses who have been examined have also deposed that there used to be frequent quarrels due to suspicion of fidelity and that on the date of occurrence, the appellant coming to know that his wife was staying along with the child in her cousin (PW1's) house along with her mother and uncle, had gone to the house while returning from work and a quarrel ensued during which time the incident had happened. The appellant had not taken undue advantage. Further strangely, in this case, finding that the appellant is not at fault, PW3/mother of the victim and PW.2/Senior paternal uncle of the deceased have not supported the case of the prosecution and they have been treated hostile. The case of criminal trespass and intimidation have also not been proved by legal evidence.

vi) The incident is a result of frustration and provocation and the appellant had committed culpable homicide while under loss of self-control without any premeditation in a sudden fight in the heat of passion upon a sudden quarrel and thus, the act of the appellant will bring the case under the exception 4 of 300 of IPC and would pray for a lesser sentence.

12. Per contra, the learned counsel appearing for the State/respondent would submit that though the other ocular witnesses including PW.2, injured witness



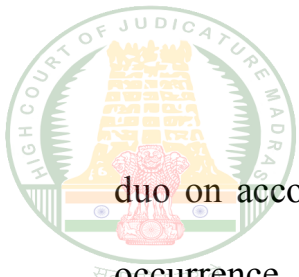
who is the senior paternal uncle of the deceased and PW.3/ mother of the deceased and other independent witnesses have not supported the case of prosecution, the evidence of PW.1 who is a relative of both the deceased and the appellant is cogent and clear. PW1 had vividly deposed about the incident and she is also an injured witness. When the evidence of PW.1 is clear, the non recovery of saree which is the flaw in the investigation will not affect the case of the prosecution. The trial Court, rightly finding that her testimony remained unshattered, had based the conviction, relying on her evidence. Therefore, he would pray for dismissal of the appeal.

13. This Court gave its careful and anxious consideration to the rival contentions and thoroughly scanned through the entire evidence available on record, including the impugned judgment of conviction and sentence.

14. Now what is to be seen is:

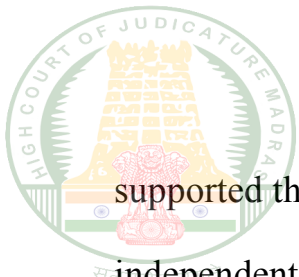
- i) Whether the prosecution has proved the case of uxoricide beyond reasonable doubt? and if so,
- ii) Whether the case of the appellant will fall within Exception 4 of Section 300 of IPC?

15. As could be discerned from the records, the case of the prosecution is that the deceased is the wife of the appellant. Due to frequent quarrels between the



duo on account of suspicion of infidelity, they got separated few days prior to the occurrence and the deceased was living in the house of PW.1 at Viswanatham Village. While so, on 01.10.2018, while the deceased, P.W 1 who is the cousin of the deceased, P.W 2 the paternal uncle of the deceased and P.W3 the mother of the deceased were in the house of P.W1, the appellant is said to have trespassed into the house of PW.1 and when PW.2 who was sleeping in the front room had prevented his entry the appellant had caused grievous injuries on PW.2 and thereafter abused the deceased and when PW.1 had intervened intimidated PW.1 and when PW.1 attempted to snatch the aruval attacked PW.1 and in continuation of the same assaulted the deceased with aruval on her chest and back her resulting in her death.

16. On the side of the prosecution. PW.1, PW.2, paternal uncle of the deceased and PW.3 mother of the deceased are said to be eye witnesses. Strangely PW.2 despite being said to be injured and PW.3 the mother of the deceased have not supported the case of prosecution and they have been treated hostile. Though PW.2 during cross examination spoken about the earlier mediation between the appellant and the deceased he had totally denied having been present at the scene of occurrence and having seen the occurrence. Further PW.3 the mother of the deceased as stated above has not supported the case of the prosecution and nothing worthwhile has been elicited from her during cross examination. Likewise all the independent witnesses namely PW.4 to PW. 11 who are the neighbours have not



supported the case of prosecution and they have been treated hostile. When the other independent witnesses have not supported the case of the prosecution this Court has to carefully analyze the evidence of PW.1 to find out whether the solitary evidence of PW.1 regarding the evidence is reliable. As stated above PW.1 is the relative of the deceased as well as the appellant. She has deposed that on the date of occurrence PW.2, her uncle was sleeping in the front portion and that the appellant entered into the house and assaulted him and the appellant is also said to have quarrelled with the deceased and inflicted a single injury in the left chest and that when she attempted to snatch the aruval she sustained injuries and since he raised alarm the villagers had rushed there. She has also admitted about the dispute between the appellant and his wife and the quarrel on the previous day. Her evidence regarding forced entry into the house / criminal trespass and intimidating her is also not clear.

17. PW.12 has been examined for preparation of observation mahazhar and the recovery mahazhar. PW.13 is the Village Administrative Officer who has deposed about recovery of aruval (M.O.1), blood stained shirt(M.O.8) and lungi (M.O.9) under Athatchi (Ex.P.4). The Village Assistant (PW.14) has deposed about having attested the confession pursuant to which M.Os.5,8 and 9 were recovered and the admitted portion of the confession(Ex.P.5). PW.15 is the doctor who had conducted autopsy. PW.16 is the doctor who has issued accident register(Ex.P.7) regarding the deceased, accident register of PW.1(Ex.P.8) and accident register of PW.2 (Ex.P.9).



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He had in his cross examination admitted that the injuries sustained by PW.1 could be due to fall and the injuries on PW.2 could be due to tripping and falling on thin sheets or glass. PW.17 is the police constable who had assisted in the investigation conducted by the Investigation Officer. PW.18 is the Sub Inspector of Police who has registered First Information Report. PW.19 is the officer who conducted investigation due to the absence of PW.20. PW.20 is the Deputy Superintendent of Police. PW.21 who was examined to prove the purchase of aruval by the appellant has not supported the case of prosecution and he has been treated hostile. PW.22 is the doctor who had given further treatment to PW.2 and issued Ex.P.13 with regard to fractures sustained by PW.2.

18. The prosecution by the evidence of PW.1 had proved that the appellant had inflicted injury on the deceased with aruval and as per Ex.P.12/Post mortem certificate and the evidence of PW.12 it has been proved that the victim succumbed to the injuries sustained in the occurrence.

19. Now this Court has to see whether the act of the appellant will fall within the exception to Section 300 of IPC.

20. In this regard, before 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:

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“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 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. 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 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.

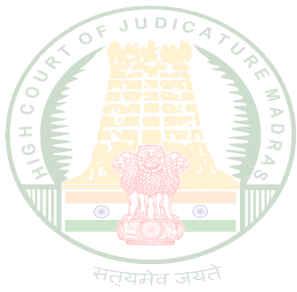
(2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to of the Indian Penal Code.

(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 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, 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 self control, 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



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for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of self control 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 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.

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 Ashworth 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.

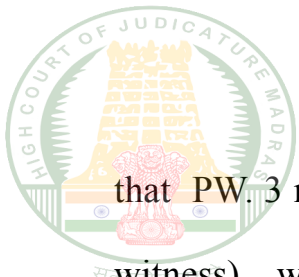
14. Following the view expressed in *K.M. Nanavati (supra)*, this Court in observed that in the test for application of Exception 1 to f the IPC, the primary obligation of the court is to examine the circumstances from the point of view of a person of reasonable prudence, if there was such grave and 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 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."

21. As stated above, though PW.2 and PW.3 uncle and mother of the deceased have not supported the case of prosecution they have spoken about the dispute between the appellant and the deceased on account of suspicion of infidelity by the deceased. The evidence of P.W.1 also corroborates with regard to the same. In such circumstances it is all the more probable that the appellant who was kept away by his wife, would have committed the offence in a fret of anger, frustration and deep depression which is quite a normal human conduct and the reasons for such behaviour being denial of conjugal companionship or forced isolation is very much understandable. It will not be out of place to state here that in a marital bond, the abrupt or systematic withholding of cohabitation can act as a form of severe emotional trauma and the appellant having gone to the house of PW.1 had quarrelled with his wife and the incident had happened during such time. It is also to be noted



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that PW. 3 mother of the deceased and PW. 2 uncle of the deceased(alleged injured witness) who were present have not supported the case of prosecution. The incident had happened during the quarrel when the appellant is said to have had a sudden loss of self control. Since PW.21 has turned hostile the fact of the appellant having brought the weapon along with him has also not been proved. The appellant has also not taken undue advantage. Since PW.2 has not supported the case of the prosecution the charge against the appellant for offence under Section 326 of IPC stands not proved the appellant stands acquitted for the offence under Section 326 of IPC. However since the evidence of PW. 1 with regard to the injuries sustained by her is clear, the appellant is found guilty for offence under Section 324 of IPC. Since there is lack of evidence for the offences under Sections 449 and 506(2) of IPC the appellant stands acquitted for the above said charges.

22. Taking into consideration the totality of the circumstances, the manner in which the offence was committed and by applying the ratio laid down by the Apex Court in ***Dauvaram Nirmalkar, supra***, 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.

23. In view of the above, this criminal appeal stands partly allowed. In the result, the conviction under Section 302 IPC is set aside and instead, the appellant is convicted under Section 304 (II) IPC and sentenced to undergo rigorous



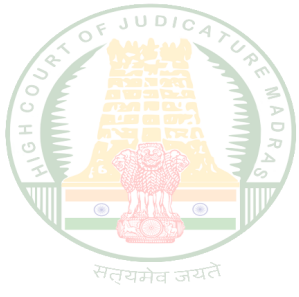
imprisonment for a period of seven years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a period of two months. The appellant is also found guilty for offence under Section 324 of IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs. 1000/- and in default to undergo simple imprisonment for a period of three months. The sentences shall run concurrently and the period of sentence already undergone by the appellant is ordered to set off as per Section 428 of Cr.P.C., The fine amounts, if any, paid in respect of offences under Sections 449,326,506(2) of IPC shall be refunded to the appellant.

[A.D.J.C.,J.] [B.M.,J]
01 .09.2026

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

To

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



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Crl.A(MD) No.468 of 2024

A.D.JAGADISH CHANDIRA, J.
and
B.MURUGESAN, J.

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Pre Delivery Judgment made
in
Crl.A(MD) No.468 of 2024

01.09.2026