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Senthilkumar Vs. the Inspector

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Court : Chennai

Decided On : Jun-21-2013

Judge : S.Rajeswaran

Appellant : Senthilkumar

Respondent : The Inspector

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

21. 06/2013 CORAM THE HONOURABLE MR.JUSTICE S.RAJESWARAN AND THE HONOURABLE MR.JUSTICE T.MATHIVANAN Criminal Appeal No.9 of 2013 Senthilkumar ... Appellant Vs The Inspector of Police Uppiliapuram Police Station Trihy District ... Respondent Prayer Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment dated 09.03.2012 and made in S.C.No.47 of 2011, on the file of the learned Additional District and Sessions Judge (Fast Track Court No.I), Trichy. !For Appellant .. Mr.W.Peter Ramesh Kumar ^For Respondent .. Mr.C.Ramesh Addl. Public Prosecutor :

JUDGMENT
(Judgment of the Court was made by T.MATHIVANAN, J.) This memorandum of criminal appeal is directed against the Judgment dated 09.03.2012 and made in the Sessions Case in S.C.No.47 of 2011, on the file of the learned Additional District and Sessions Judge (Fast Track Court No.I), Trichy finding the

appellant/accused guilty under Section 302 I.P.C., convicting thereunder and sentencing to suffer the imprisonment of life and also to pay a fine of Rs.2,000/- in default to suffer rigorous imprisonment for a further period of six months.

2. Brief Summary 2.1. That on 27.06.2010, at about 12.00 noon at Sobanapuram Village, the appellant/accused had cut the deceased Murugesan over his head, hip and stomach indiscriminately with an Aruval on account of previous enmity prevailing between them over a bore-well, which is erected in the common cart track lying in between their lands, which resulted in his death in the hospital. 2.2. P.W.14, the Inspector of Police attached to Uppilapuram Police Station had therefore laid a final report against the appellant/accused on 01.10.2010 before the learned Judicial Magistrate, Thuraiyur. After taking cognizance of the offence and on completion of the preliminary enquiry, the learned Judicial Magistrate, Thuraiyur had committed the case to the Court of Sessions under Section 209(a) Cr.P.C., and subsequently, the case was made over to the learned Additional Sessions Judge (Fast Track Court No.I), Trichy for trial. 2.3. After the appearance of the appellant/accused and on hearing the learned counsel appearing for the defense as well as the learned Public Prosecutor for the State, the learned Additional Sessions Judge had framed a charge under Section 302 I.P.C., as against the appellant/accused. When the ingredients of the charge were explained and questioned, the appellant/accused had pleaded innocent and claimed to be tried. Therefore, he was put on trial. 2.4. The prosecution in order to substantiate it's case has totally examined as nearly as 15 witnesses. During the course of their examination Exs.P1 to P9 and the material objects in M.Os.1 to 5 were marked.

3. Excerpts of the case of prosecution:

3. 1. The deceased Murugesan is the father of P.W.1 Dhanapal and the husband of P.W.2 Chellammal. The appellant/accused Senthilkumar is none other than the elder brother's son of the deceased Murugesan. The deceased Murugesan and the appellant/accused are the adjoining land owners in Sobanapuram, Karunguttai Village. The land belonging to the appellant/accused is lying on the western side of the land belonging to the deceased. There is a common cart track lying on the middle, to have access to both of their lands. In the said common cart track, a bore

well was previously erected by the deceased Murugesan and thereafter it was sold to the appellant/accused's father Duraisamy under a registered sale deed and the registered copy of the said sale deed has been marked under Ex.D1. 3.2. With a stone had blocked the bore well, the appellant/accused wanted to lift the submersible motor, which was installed in the bore well. He therefore, wanted to dig a Well around the bore well as he was not able to lift the submersible motor. For this purpose, the appellant/accused had been demanding the deceased Murugesan to give the original deed in respect of the bore well. Since he had refused to part with the document, the appellant/deceased had developed grudge upon him and on account of this reason, an enmity was prevailing between them. Keeping this enmity in mind, the appellant/accused had often been picking up quarrel with P.W.1 and his father Murugesan. 3.3. That on 27.06.2010, at about 12 noon, while the deceased Murugesan was working in his land, P.W.1 was shaving the ridge of their other land. P.W.3 Kandasamy and one Sekar (not examined) were also working in their respective lands. 3.4. Whileso, the appellant/accused came to the place where the deceased Murugesan was working and asked him to part with the document for digging the Well. For which, the deceased Murugesan had refused. Got enraged with this, the appellant/accused had declared that ".When the bore well was installed you had picked up quarrel and even now you have refused to give the document for digging the well and therefore 'I will not leave you without killing". by saying so, he had cut the deceased Murugesan over his head indiscriminately with Aruval. He had also cut Murugesan above the right ear as well as over his hip and stomach. On seeing this, P.W.1 had rushed there for the rescue of his father. But, the appellant/accused had threatened him with dire consequence. P.W.3 Kandasamy and one Sekar had raised hue and cry and they had also rushed towards the place of occurrence. After receiving the cut injuries, the deceased Murugesan had lost his balance and in consequent thereof slided down. Then the appellant/accused had fled away from that place with the crime weapon. 3.5. Immediately, the injured Murugesan was taken to Thuraiur Balaji Hospital in 108 Ambulance. He was accompanied by P.W.1 to P.W.3. At about 01.15 p.m., P.W.11 Dr.K.Prabhakar had examined the injured. Whileso, he had found the following injuries on his person: i. 20x5x5 cm cut injury (curved) over the right parietal region of the scalp with brain mater protruding, ii. 7x3x2 cm

cut injury over the top of the scalp, iii. 3x2x1 cm lacerated wound over the left side of the abdomen. Resuscitation with endo-tracheal intubate with artificial respiration was given. But, the respiration and the heart beat were ceased at 01.45 p.m., and due to this reason, the injured was declared dead. In this connection, P.W.11 had issued an accident register and the copy of the same has been marked as Ex.P7. 3.6. With reference to the occurrence, P.W.1 had lodged a complaint (Ex.P1) before P.W.13 Mr.Manivel, Head-Constable attached to Uppiliapuram Police Station. On receipt of the complaint, at about 02.00 p.m., P.W.13 had registered a case in Crime No.163 of 2010 under Section 302 I.P.C., The printed first information report has been marked as Ex.P9. Thereafter, the express first information report along with the complaint was sent to the learned Judicial Magistrate, Thuraiyur through P.W.9 Head Constable and the copies of the same were also forwarded to the Police higher officials including P.W.15 Inspector of Police, who was placed in additional charge of Uppiliapuram Police Station. 3.7. P.W.15 the Inspector of Police had taken up the case for investigation and proceeded to the place of occurrence at 03.00 p.m., on the same day, examined the witnesses and recorded their respective statements. He had also prepared an observation mahazar and a rough sketch in respect of the place of occurrence in the presence of P.W.6 and P.W.7. Besides this, he had also collected some blood stained earth as well as some un-blood stained earth from the scene of occurrence, which are marked as M.Os.2 and 3 respectively under the cover of a seizure mahazar (Ex.P3). The observation mahazar has been marked as Ex.P2. Thereafter, he had been to Thuraiur Government Hospital and conducted inquest on the dead body of the deceased Murugesan. 3.8. Then the body was sent to postmortem examination through P.W.10 Head Constable attached to Uppiliapuram Police Station. On receipt of the requisition through P.W.10, P.W.12 Dr.Anitha had started conducting of postmortem examination at 07.00 p.m., on 28.06.2010. During the course of his examination, he had found the following external as well as internal injuries on the dead body External Examination i. Cut injuries measuring 5 x 2 x 2 c.m. and 6 x 1 x 2 c.m. over the left temporal region ii. Three cut wounds measuring 15 x 1 x 2 c.m., 7 x 2 x 3 c.m. & 8 x 2 x 3 c.m., over the right side of the occipital bone; iii. Cut injury measuring 2 x 1 x 1 c.m. on the right side of the abdomen; iv. Cut injury measuring 3 x 1 x 2 c.m. just below the

right ear; v. Fracture of right side of the occipital bone; vi. Fracture of left temporal bone Internal Examination: Haemotoma left temporal lobe and occipital lobe, Stomach .. Contains 100 ml of semi digested food particle, Small Intestine .. Empty Heart & Lung .. Normal Liver & Kidney .. Normal P.W.12 Dr.Anitha had opined that the death could have been occurred 20-24 hrs prior to the time of autopsy. Based on her examination, she had also opined that the deceased would appear to have died of shock and haemorrahage due to injury to vital organ (head injury). She had also issued a certificate to that effect, which has been marked as Ex.P8. 3.9. That on 28.06.2010, at about 01.00 p.m., near Kancheri Bus stand, P.W.15 the Investigating Officer had arrested the appellant/accused Senthilkumar in the presence of P.W.8 Sobanapuram Village Administrative Officer and his Assistant one Duraisami. On interrogation, the appellant/accused had voluntarily given a confessional statement, which was reduced into writing by P.W.15 in the presence of the above witnesses. Based on his disclosure statement (Ex.P4), the appellant/accused had produced the crime weapon i.e., a blood stained Aruval before P.W.15, which was recovered by him at 02.15 p.m., under the cover of the seizure mahazar Ex.P5 in the presence of the above witnesses. Thereafter, P.W.15 came down to the Police Station and sent the appellant/accused to the concerned Judicial Magistrate's Court for being remanded to judicial custody along with the material objects. 3.10. Then he had entrusted the case records with P.W.14 for further investigation. After receiving the case records, P.W.14 had examined the witnesses including P.W.12 Dr.Anitha, who had conducted the postmortem examination and recorded their respective statements. After the completion of his investigation he had laid a final report against the appellant/accused before the learned Judicial Magistrate, Thuraiur on 01.10.2010 under Section 302 I.P.C., 3.11. When the incriminating circumstances, arising out of the testimonies of the prosecution witnesses, were put to the appellant/accused to explain as contemplated under Section 313(i)(b) Cr.P.C., he had replied that this case was foisted against him and he had also submitted a written statement, which was received and recorded. In his written statement, he has stated that the charges levelled against him in the case in Crime No.163 of 2010, on the file of the Uppiliapuram Police Station were false and that he had not committed any such offence as alleged in the charge sheet. 3.12. Further, he has stated that he was

ready to submit himself for brain mapping test and that the offence, which was said to have been committed by him in the place of occurrence was fallacious and that the said Dhanapal P.W.1 had wantonly and willfully lodged a false complaint and the Uppiliapuram Police had also concocted this case as if he had committed the offence of murder. Excepting Ex.D1 sale deed in respect of the bore-well, no other oral evidence was adduced on the part of the appellant/accused.

4. On evaluating the evidences both oral and documentary, the learned Trial Judge has found the appellant/accused guilty under Section 302 I.P.C., convicted him thereunder and sentenced as afore-stated.

5. Heard Mr.W.Peter Ramesh Kumar, learned counsel appearing for the appellant/accused and Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the respondent Police.

6. Mr.W.Peter Ramesh Kumar, learned counsel appearing for the appellant/accused has mainly based his arguments on the following four grounds: I. The appellant/accused is a person of unsound mind and at the time of occurrence or even prior to the occurrence, he was taking treatment for his mental ailment and therefore nothing was an offence, which was said to have been done by the appellant/accused by reason of his unsoundness of his mind as he was incapable of knowing the nature of the act. He was also not under the capacity of knowing the nature of the act what is either wrong or contrary to law. II. The testimonies of P.W.1 and P.W.3 have been contradicted with each other and therefore the presence of P.W.1 at the place of occurrence is highly suspected. III. The injuries specified in Ex.P7 accident register by P.W.11 Dr.Prabhakaran, who had attended the deceased when he was brought to Thuraiyur Balaji Hospital and the injuries specified in Ex.P8 postmortem report issued by P.W.12 Dr.Anitha are not fit in fair congruence and as such the testimonies of P.W.11 and P.W.12 shall have to be discarded as they being untrust worthy. IV. The evidence adduced by P.W.3 would go to probablize the fact that he was only an eye-witness to the occurrence and since he is closely related to the deceased and P.W.1 Dhanapal much weight could not be attached to his evidence as there might be a chance of embellishment and therefore his evidence has to be brushed aside on the ground

of interested and related witness. Ground No.I7 When P.Ws.3, 4, 5 and 7 were in the box a suggestion was put to them in their cross-examination saying as to whether they were knowing the fact that the appellant/accused was taking medicine for his mental ailment. The suggestions were simply denied by the above said witnesses. Another suggestion was also put to P.W.4 in his cross-examination saying that on account of his unsound mind, the appellant/accused had been trying thrice to commit suicide. This suggestion was also denied by P.W.4.

8. The learned counsel, who was appearing for the appellant/accused before the Trial Court had also put yet another suggestion to P.W.5 in his cross- examination saying that the appellant/accused was not having the mental capacity of adjustment and that he was trying several times to kill his own father. Even on one occasion, the appellant/accused had stripped off his own dress and wandering in the street in nudity. This was also denied by P.W.5.

9. A similar suggestion was also put to P.W.7 saying that the appellant/accused would shout like a mentally retarded person and that he was trying to commit suicide thrice by swallowing sleeping-pills. These suggestions were effectively denied by the witnesses viz., P.Ws.3, 4, 5 and 7.

10. Having been taken out a plea of unsoundness of mind, it is the prime obligation on the part of the appellant/accused to substantiate his contention. In the absence of legally authenticated evidence, it cannot be regarded for a moment that at the time of commission of crime, the appellant/accused was a person of unsoundness of mind.

11. In this connection, it is imperative on the part of this Court to extract the provisions of Section 84 of the Indian Penal Code. It reads as follows: ".84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.".

12. The scope of Section 84 I.P.C., is that nothing is an offence, which is done by a person, at the time of doing it, by reason of unsoundness of mind, is incapable of

knowing the nature of the act or that he is doing what is either wrong or contrary to law. This section falls in Chapter-IV I.P.C., which deals with general exceptions. The reading of this section will not be complete unless it is read with Section 105, Indian Evidence Act, 1872 and particularly illustration (a) to that section. Section 105, Indian Evidence Act, 1872 enacts as under: ".105.Burden of proving that case of accused comes within exceptions.- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.". Illustration-(a): A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

13. In this connection, we would like to place reliance upon a classical decision in State of M.P. v. Ahamadullah, reported in AIR 1961 SC998: (1961) 2 CrLJ43 In this decision while speaking on behalf of the Division Bench, N.RAJAGOPALA AYYANGAR, J., in paragraph No.3 has observed as under: ".(3) Section 84 of the Indian Penal Code which was invoked by the respondent successfully in the Courts below runs in these terms: 'Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law' It is not in dispute that the burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by this section lies on the accused who claims the benefit of this exemption (vide S.105, Indian Evidence Act, Illustration (a).".

14. In an another decision i.e., Nathu Bapu Mhaskar vs. State of Maharashtra, reported in 1996 Cri.L.J.

2120, a Division Bench of Bombay High Court, in paragraph No.54, has held that: ".54.To conclude, therefore, we do not find any merits in this appeal. The complicity of the appellant in the offence being the subject matter of this matter as held earlier stands established clearly and beyond any reasonable doubt. The plea

set forth by the appellant of unsoundness of mind claiming benefit under Section 84 of Indian Penal Code has not been convincingly established and therefore it is held that he fails to bring his case under exception of the said provision. The appeal therefore fails. We do not find any merits in this appeal....".

15. On coming to the instant case on hand, the learned Trial Judge has also, in paragraph No.23 of his Judgment, observed that the plea of unsoundness of mind taken by the appellant/accused has not been substantiated beyond all reasonable doubts either through oral or documentary evidence.

16. In the absence of clinching proof for the plea of unsoundness of mind, we find that the benefit of general exceptions under Chapter-IV I.P.C., particularly under Section 84 cannot be extended to the appellant/accused. Because, as envisaged under Illustration (a) to Section 105 of the Indian Evidence Act, 1872, the burden to prove the unsoundness of mind is on the appellant/accused. Ground Nos.II and IV17 P.W.1 in his evidence says that on the date of occurrence i.e., on 27.06.2010, at about 12.00 noon, when he was shaving the ridge of their land, his father (since deceased) was also working there. Whileso, the appellant/accused came to the place where the deceased Murugesan was working and asked him to part with the document for digging a Well around the bore-well, for which the deceased Murugesan had refused. Whileso, the appellant/accused had told that when the bore-well was installed, ".you had picked-up quarrel and even now you are refusing to give the document for digging the Well and therefore I will not leave you without killing.". By saying so, the appellant/accused had cut the deceased Murugesan over his head indiscriminately and also inflicted cut injuries over his hip and stomach. According to the evidence of P.W.1, he has claimed that he had witnessed the occurrence directly.

18. On the other hand, P.W.3 Kandasamy has claimed in his evidence as if he had alone witnessed the occurrence directly and excepting him, none had seen the occurrence. He has also claimed that even P.W.1 Dhanapal being the son of the deceased Murugesan had not witnessed the occurrence.

19. In this connection, he would depose that on 27.06.2010, at about 12.00 noon, when he was working in his land, the deceased Murugesan was also working in

his land. Whileso, P.W.1 Dhanapal came to their land. At that time, the appellant/accused came to the place, where the deceased Murugesan was working and asked him to part with the document for digging the Well, for which the deceased Murugesan had refused. Got enraged with this, the appellant/accused had declared that if the document was not given, he would cut him.

20. In this connection, a verbal altercation was erupted between them (between the appellant/accused and the deceased Murugesan), which resulted in scuffling. On seeing this, he had intervened, pacified and separated them and he had also advised them that their dispute could be resolved tomorrow.

21. According to P.W.3, the deceased Murugesan had thereafter moved aside and stood in the cart-track. The appellant/accused Senthilkumar had also proceeded towards western side. Suddenly, the appellant/accused came running with Aruval in his hand and cut the deceased Murugesan over his head indiscriminately.

22. In regard to this, P.W.3 has specifically claimed that he had alone witnessed the occurrence and even P.W.1 had not seen the occurrence. The claim made by P.W.3 does not mean that the appellant/accused was not involving in the criminality. It is implied from the testimony of P.W.3 that he has ratified the occurrence as well as the overt act of the appellant/accused. P.W.1 has specifically stated that the appellant/accused had cut his father Murugesan indiscriminately on the middle of his dead, above the right ear, hip and stomach. When he had raised hue and cry and rushed there, the appellant/accused had threatened him saying that if he comes nearer, he would cut him also and thereafter the appellant has sped away from that place.

23. P.W.2 Chellammal, who is none other than the wife of the deceased and mother of P.W.1, has fairly admitted in her cross-examination that she did not witness the occurrence.

24. With regard to this, the learned counsel appearing for the appellant/accused has argued that there was a confliction between the testimonies of P.W.1 and P.W.3 with regard to their witnessing of the occurrence and therefore the presence

of P.W.1 at the time of occurrence was shrouded with moon shine. This portion of argument is not able to be countenanced. Because, the complicity of the appellant/accused has been clinchingly and unambiguously substantiated by P.W.3. Contradiction in the testimony of P.Ws.1 and 3 about their witnessing of the occurrence is of no consequence and can be ignored as P.W.4 has given a supporting hand. Though he is related to the deceased as well as P.W.1, his evidence cannot be discarded on this ground alone. P.W.4 and P.W.5 have also spoken to about the motive for the occurrence.

25. However, it is settled proposition of law that the evidence of a related witness shall not be discarded mainly on this ground if it is reliable and trustworthiness. But, it shall have to be tested with the test stone of thorough scrutiny (Chanduhari Ranjii Bhai Narasanang Bhai vs. State of Gujarath, AIR 2004 SC313:

2004. SCC (Crl) 269). This view has also been endorsed by the learned Additional Public Prosecutor and in this connection he would submit that there was no inconsistency between the testimonies of P.W.1 and P.W.3 and they both had spoken to about the overt act of the appellant/accused and therefore the evidence of P.W.3 was having potentiality of truthfulness and it could be trusted to prove the case of prosecution.

26. In this regard, we would like to seek the assistance of the provisions of Section 134 of the Indian Evidence Act, 1872. It envisages that: ".134. Number of witnesses.- No particular number of witnesses shall in any case be required for the proof of any fact.".

27. In Josephy v. State of Kerala, reported in 2003 SCC (Cri) 356, it is observed that: ".Section 134 provides that no particular umber of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a Court to record and sustain a conviction on the evidence of a solitary eye-witness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspired implicit confidence.".

28. On deep delve of the evidence of P.W.3, we are of considered opinion that the evidence given by P.W.3 is cogent, convincing, reliable and also in tune with probabilities and inspired implicit confidence.

29. In Kartick v. State, reported in (1996) 1 SCC614:

1996. SCC (Cri) 188 :

1996. Cr LJ889 the Apex Court has held that: ".The Court can convict the accused persons on the basis of solitary witness provided his credibility is not shaken by any adverse circumstance and the Court, at the same time, is convinced that he is a truthful witness.".

30. In Namdeo v. State of Maharashtra, reported in 2007 Cri.L.J.

1819, the Apex Court has also held that: ".Neither the Legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of solitary eye-witness, therefore, has no force and must be negatived.".

31. In sofar as the evidence of P.W.3 is concerned, he has admitted in his evidence in chief that even prior to the occurrence P.W.1 Dhanapal had come to his land and this piece of evidence would go to probablise the presence of P.W.1 in the place of occurrence. Even if it is presumed, as argued by the learned counsel appearing for the appellant/accused that P.W.1 could not have witnessed the occurrence, it cannot be construed that the case of the prosecution has gone to gallows.

32. It is pertinent to note here that P.W.3 is not hiding himself, but he has voluntarily deposed that he had witnessed the occurrence. He has also stated

about the verbal altercation and the scuffling, which took place between the accused and the deceased Murugesan prior to the incident. Therefore, we do not find any reason to discard the evidence of P.W.3 and we are of in firm view that the conviction could very well be maintained on the testimony of P.W.3 (solitary eye-witness). Ground No.IV33 Ex.P7 is the accident register issued by P.W.11 Dr.Prabhakaran. He says that on 27.06.2010, at about 01.15 p.m., when he was on duty at Balaji Hospital at Thuraiyur, the injured Murugesan was brought to him by his son with bleeding injuries. During the course of his examination, he had found the following injuries on the person of Murugesan: i. 20x5x5 cm cut injury (curved) over the right parietal region of the scalp with brain mater protruding, ii. 7x3x2 cm cut injury over the top of the scalp, iii. 3x2x1 cm lacerated wound over the left side of the abdomen.

34. As it is revealed from Ex.P7 accident register issued by P.W.11, only three injuries were found on the person of the deceased Murugesan i.e.,two injuries on the scalp and one laceration on the left side of the abdomen. When P.W.12 Dr.Anitha had conducted postmortem examination on the dead body of the deceased, she had found the following external as well as internal injuries. According to Ex.P8, as nearly as nine injuries were found on the person of the deceased. The injuries specified in Ex.P8 postmortem report are extracted as under: External Examination: i. Cut injuries measuring 5 x 2 x 2 c.m. and 6 x 1 x 2 c.m. over the left temporal region; ii. Three cut wounds measuring 15 x 1 x 2 c.m., 7 x 2 x 3 c.m. & 8 x 2 x 3 c.m., over the right side of the occipital bone; iii. Cut injury measuring 2 x 1 x 1 c.m. on the right side of the abdomen; iv. Cut injury measuring 3 x 1 x 2 c.m. just below right ear; v. Fracture of right side of the occipital bone; vi. Fracture of left temporal bone Internal Examination: Haemotoma left temporal lobe and occipital lobe, 35. The injuries specified by P.W.11 in Ex.P7 accident register and the injuries specified in Ex.P8 postmortem certificate by P.W.12 are not having material contradiction. The variation in the counting specified by P.W.11 and P.W.12 may not create any disqualification or falsity over the case of the prosecution. But, the core-question is as to whether the injuries caused to the deceased over the scalp are sufficient in the ordinary course of nature to cause his death.

36. Even according to P.W.11 Dr.Prabhakaran, the first injury specified in Ex.P7 i.e., a curved cut injury measuring 20X5X5 c.m., over the right parietal region of the scalp with brain mater protruding and the other cut injury viz., 7x3x2 c.m. over the top of the scalp are very much sufficient to cause the immediate death of the deceased.

37. P.W.12 Dr.Anitha has also stated in her postmortem certificate that the deceased would appear to have died of shock and haemorrahage due to injury to vital organ (head injury) and therefore the variations in the number of injuries specified in Exs.P7 and P8 would not create any confusion or would not by itself the case of the prosecution be falsified.

38. On coming to the conclusion of the learned Trial Judge, it is apparent from the Judgment that he had found the appellant/accused guilty under Section 302 I.P.C., convicted him thereunder and sentenced to suffer the life imprisonment and also to pay a fine of Rs.2,000/-, in default to suffer a further period of six months of rigorous imprisonment. Having been aggrieved by the order of conviction and sentence, the appellant/accused stands before this Court.

39. Section 299 I.P.C., defines the phrase 'Culpable Homicide'. It envisages that: ".Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such to cause death, commits the offence of culpable homicide.".

40. Section 300 I.P.C., defines the term 'Murder' as under: ".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 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.- 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.".

41. On coming to the instant case on hand, we feel that the ends of the justice would be served in a better way, if the act of the appellant/accused is brought under Exception-1 to Section 300 I.P.C., The reason why is, as deposed by P.W.3, the appellant/accused had first come to the place where the deceased Murugesan was working and asked him to part with the document relating to the bore-well, which is erected in the common cart track.

42. It is also established from the testimonies of P.W.1, P.W.3 and other witnesses viz., P.W.4 and P.W.5 that even prior to the occurrence, the appellant/accused had been demanding the deceased Murugesan to give the document, but, he had been refusing. Even on the date of occurrence i.e., on 27.06.2010, at 12.00 noon, he came there and asked the deceased to give the document. If he was having criminal mens rea or pre-meditation in his mind to kill the deceased Murugesan, he would not have asked him to part with the document, instead taking advantage of his loneliness he would have cut him immediately after his arrival. But, he had not done so.

43. As it is revealed from P.W.3, at the first instance a verbal altercation was erupted between them and subsequently it ended in scuffling. On seeing this, P.W.3 had intervened and pacified them and also separated them and he would go one step further to say that he had also advised them to resolve their dispute on the next day. Thereafter, the deceased Murugesan had moved aside and stood in the cart track. The appellant/accused had also proceeded towards western side. Only thereafter, the appellant/accused came running with the Aruval in his hand and cut the deceased Murugesan over his head as narrated by P.W.3. This would show that the deceased's continuous refusal to part with the document had been nurturing the appellant/accused and also lingering in his mind for a long period and on account of this reason the appellant/accused had entertained a sustained provocation.

44. The theory of sustained provocation has been applied by the Division Bench of this Court in Chandran, Inre, 1988 Mad.L.W (Cri) 113. This is the earliest case to apply the theory of sustained provocation. While referring this decision, the another Division Bench of this Court in Rajeswari v. District Magistrate, Salem, reported in 1997 Cri.L.J.

439 has observed that this decision only briefly refers to the defence plea that the accused had entertained a sustained provocation and the final act of inflicting fatal injuries was the result of a further provocation given just before the offence. It is worthwhile to remember that in that case a further provocation just before the offence was given by the deceased and the Court accepted the same as a 'sudden and grave provocation caused by the deceased.' The Court added that the sudden and grave provocation was on account of 'sustained provocation' that the accused was nurturing for a long period because of the conduct of the deceased in having illicit intimacy with his wife.

45. The Division Bench has also made reference to another case in Suyambukkani v. State of Tamil Nadu, reported in 1989 Mad LW (Cri) 86. In this case, an attempt has been made to trace the history of the Indian Penal Code and the need for understanding the Code according to the changing circumstances and conditions of life prevailing in India. The Division Bench has also observed further that while we accept the proposition that Courts should not be static in the interpretation of law we are also aware of our limitations in adding to the law of the land. In our opinion that is an exercise which should be undertaken by the Parliament on the basis of an extensive study. While we do agree that the fact and circumstances of each case can be studied deeply to see whether they can be brought under one or other exceptions contained in Section 300 I.P.C., we will not subscribe to the view that Courts can travel beyond the provisions of Sections 299, 300 and 304 I.P.C., for reducing the gravity of the offence.

46. In Suyambukkani's case (cited supra), the Division Bench has observed that: ".What Exception 1 contemplates is a grave and sudden provocation, whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the

camel's back may even be a very trifling one. We are therefore far from grave and sudden provocation contemplated under Exception 1 to S.300 I.P.C. Sustained provocation is undoubtedly an addition by Courts, as anticipated by the architects of the Indian Penal Code.".

47. The theory of sustained provocation has been applied by our Court in Ayyanar and other vs. State of Tamil Nadu, reported in 2005 (4) CTC174and in Kumaravel v. State, reported in 2008(2) MWN (Cr.) 233 (DB).

48. Keeping in view of the above fact, we feel that it is the duty of the Court to analyse the materials in order to find out whether provocation was sudden and grave. Based on the principle laid down in Suyambukkani's case (cited supra), the Division Bench of this Court in Ayyanar's case has held as follows ".37.There is a cardinal difference between provocation as defined under Exception 1 to Section 300 and sustained provocation. The only word which is common is 'provocation'. What Exception 1 contemplates is, a grave and sudden provocation, whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back. The last incident may even be a trifling one. Therefore, while considering whether there are materials to indicate that there is a grave and sudden provocation as contemplated under Exception 1 to Section 300, I.P.C., the sustained provocation, on account of a series of acts more or less grave spread over a certain period of time, would be undoubtedly considered as an addition to Exception 1 to Section 300, I.P.C.,".

49. In view of Section 300 I.P.C., even when an act of a person entailing death of another is accompanied by any of the mens rea detailed in any of the four clauses of Section 300, it is not murder if there is grave and sudden provocation emanating from the victim. The charge of murder by the presence of grave and sudden provocation from the victim reduces the charge of murder to culpable homicide not amounting to murder.

50. As explained in HALSBURY'S Laws of England, 4th ed., Vol.11, para 1163, p.619, provocation may reduce a charge of murder to one of manslaughter. It consists of something done which would cause in any reasonable person, and

actually causes in the defendant, a sudden and temporary loss of self-control, making him so subject to passing that he is not the master of his mind. Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked, whether by things done or said, to lose his self- control, the question whether the provocation was enough to make a reasonable man do as he did must be left to be determined by the jury. In determining that question the jury must take into account everything both done and said according to the effect which, in the jury's opinion, it would have on a reasonable man.

51. Having been considered the testimonies of the prosecution witnesses cumulatively, we are of the view particularly based on the evidence given by P.W.3 that the act of the appellant/accused would not be brought to the amplitude of Section 302 I.P.C., But, it could very well be brought under the amplitude of Exception-1 to Section 300 I.P.C., and therefore instead of punishing the accused under Section 302 I.P.C., the appellant/accused can be punished under Section 304 Part-1 I.P.C., giving the benefit of reduction of sentence.

52. Accordingly, we allow the criminal appeal partly. The conviction and sentence of life imprisonment under Section 302 I.P.C., are set aside and the appellant/accused is acquitted of charge under Section 302 I.P.C., found guilty under Section 304(i) I.P.C., convicted thereunder and sentenced to suffer seven (7) years of rigorous imprisonment. The fine amount of Rs.2,000/- imposed by the Trial Court is maintained. In default of payment of fine, the appellant/accused shall undergo rigorous imprisonment for a further period of six months. The period sofar undergone shall be given set-off against the sentence of imprisonment under Section 428 Cr.P.C., Consequently, connected miscellaneous petitions are closed. krk To 1.The Inspector of Police Uppiliapuram Police Station Trichy District 2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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