Kumaravel Vs. State

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Court : Chennai

Decided On : Jun-16-2008

Reported in : 2009CriLJ262

Judge : P.D. Dinakaran and ;K.N. Basha, JJ.

Acts : Evidence Act, 1872 - Sections 24, 25, 26 and 27; Indian Penal Code (IPC) - Sections 201, 300, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 174 and 313

Appeal No. : Cri. Appeal No. 567 of 2006

Appellant : Kumaravel

Respondent : State

Advocate for Def. : N.R. Elango, Addl. Public Prosecutor

Advocate for Pet/Ap. : R. John Sathyan, Adv. for ;V. Nicholas, Adv.

Judgement :

P.D. Dinakaran, J.

1. Totally two persons were tried in S.C. No. 29 of 2005 on the file of Additional Court of Sessions (Fast Track Court) Dharmapuri under Sections 302 and 201 I.P.C. A.2 was acquitted by the learned Trial Judge for the charge under Section

201 I.P.C. However A.1 was convicted under Sections 302 and 201 I.P.C, for which he stands sentenced to undergo imprisonment for life together with a fine of Rs. 1,000/- carrying a default sentence for the offence of murder and for causing disappearance of evidence of offence, he stands sentenced to undergo two years rigorous imprisonment with a fine of Rs. 1,000/- in default to undergo three months simple imprisonment. Therefore A.1 alone is before this Court in this appeal. The State has not challenged the acquittal of A.2 till date.

2. A.1 and A.2 are the husband and mother-in-law of the deceased Valarmathi respectively. The charge against the accused is that on 25.9.2002 at about 9.00 p.m. at the matrimonial home at Kottrapatti Kottai, A.1, suspecting the fidelity of his wife Valarmathi, cut her with M.O.4 aruvamanai over the left side of her neck and caused her death instantaneously and thereafter, in order to cause disappearance of evidence of offence, both the accused placed the body of the deceased in a gunny bag, took it in a bicycle and placed it on the railway track nearby Chinthalpadi periapalam near Thonganoor railway station, thereby A.1 committed the offences punishable under Sections 302 and 201, I.P.C. and A.2 committed the offence punishable under Section 201 I.P.C.

3. The case of the prosecution, as discerned from the evidence of prosecution witnesses, is as follows.

(i) A. 1 and A.2 are the husband and mother-in-law of the deceased respectively. P.W.3 Mooka Gounder and P.W.4 Adhimoolam are the father and brother of the deceased respectively.

(ii) P.W. 1 Shaji, who is the Assistant Station Master, Morappur, had deposed that on 26.9.2002 at about 9.15 a.m., P.W.2 Kaveri, who is working as Gang Mestri, had informed him that a female dead body was found on the railway track near Sinthalpadi periapalam and that he lodged a complaint to the railway police.

(iii) P.W. 14 Vijayakumar, Head Constable, Morappur Outpost Police Station, on receipt of written complaint from P.W. 1, registered a case in Salem Railway Police Crime No. 285 of 2002 under Section 174 Cr.P.C, prepared Ex.P6 First Information Report and sent the same to the Tahsildar, Aroor and to the higher

officials. He took up the case for investigation and went to the scene of accident along with P.W. 13, Alagesan, Constable, and as nobody claimed the body, he sent the same to the mortuary at Salem Government Hospital. However, on 27.9.2002, P.W.3 informed him that the deceased is his daughter Valarmathi.

(iv) P.W.3, father of the deceased, had deposed that the marriage between A1 and the deceased took place ten months prior to the occurrence and both of them lived in their matrimonial home along with A.2, that the deceased complained that A. 1 neglected the family and spent his earnings for alcohol, that on one day prior to the date of occurrence, the deceased came to her parental house and after doing agricultural work, she went home at about 8.30 a.m. on the next day stating that she had to go to her field for weeding, that on 26.9.2002 at about 7.00 p.m., the first accused came to his house and asked whether the deceased had come to their house and he replied that she had not come, that thereafter, he along with P.W.4 went in search of the deceased at various places and that on coming to know that a dead body was seen near Thonganoor and it was taken to the mortuary at Salem Government Hospital, he went to the hospital and identified the deceased as his daughter.

(v) P.W.4, brother of the deceased, had deposed that since A. 1 suspected the fidelity of the deceased, there were frequent quarrels between A. 1 and the deceased and panchayat was also convened, that on 24.9.2002, he went and brought the deceased to his house and the deceased went home on the next day i.e. on 25.9.2002 at 8.30 a.m. after doing agricultural work, that there was quarrel between A. 1 and the deceased on that night and that thereafter, he had not seen the deceased and then he along with P.W.3 searched for the deceased and identified the deceased only at the hospital.

(vi) P.W.8 Sankar, nephew of P.W.3, had deposed that on 25.9.2002 at about 1.30 a.m. while he was coming from Kadathur, he saw the first accused was carrying a gunny bag in the cycle carrier and when he questioned the same, the first accused replied that the gunny bag has groundnuts meant for the market. He had also deposed that the first accused was wearing bloodstained shirt and lungi and when he enquired the same, he replied that it was because of plucking of groundnuts.

He also added that two days thereafter, he heard that a female body was found at the railway track near Periapalam and A. 1 murdered his wife.

(vii) P.W. 17 Nallusamy, Special Sub Inspector took up the case for further investigation. Since the deceased died within ten months from the date of marriage and as P.W.3, father of the deceased, made a complaint suspecting the death of the deceased, he gave a requisition to the Revenue Divisional Officer for conducting inquest over the body of the deceased.

(viii) On receipt of requisition from P.W. 17, P.W. 19, Revenue Divisional Officer, Salem, conducted inquest over the dead body in the presence of panchayatdars on 28.9.2002 and prepared Ex. P.14 inquest report and Ex. P. 15 special report sent by him to the Judicial Magistrate No. III, Salem. He gave Ex.P. 11 requisition for conducting postmortem.

(ix) P.W. 16 Dr. Ravi Sankar attached to Government Hospital, Salem, on 29.9.2002 conducted autopsy over the dead body and found the following injuries:

1. Obliquely placed, widely gaping cut injury with sharp margins and acute ends over the left side of forehead from the inner end of left eyebrow extending upwards and outwards 3.5 cms x 1 cm bone deep.

2. Obliquely placed widely gaping cut injury with sharp margins and acute end over the left side of forehead from the outer end of left eye brow extending upwards inwards 3.5 cms x 1 cm bone deep.

3. Obliquely placed widely gaping cut injury with sharp margins and acute ends over the right side of chin 3 x 1 cm bone deep.

4. Obliquely placed widely gaping cut injury with sharp margins and acute ends over the left side of chin 3 x 1 cm bone deep.

5. Transversely placed widely gaping deep cut injury with sharp margins over the upper part of right side of neck 1.5 cms below the angle of lower jaw 3.5 cms x 1 cm, deeper at the back portion and with tailing at the front portion.

6. Transversely placed widely gaping deep cut injury with sharp margins over the upper part of left side of neck 1.5 cms below the angle of lower jaw 3.5 cms x 1 cm, deeper at the back portion and with tailing at the front portion.

7. Obliquely placed, widely gaping cut injury with sharp margins over the front and inner aspect of right upper arm deeper at the front and with tailing at the inner side muscle deep.

8. Obliquely placed widely gaping cut injury with sharp margins and acute ends over the back of upper 1/3rd of left forearm. 5 X 2 cms muscle deep.

9. Obliquely placed widely gaping cut injury with sharp margins 24 x 6 cms thoracic cavity deep over the front of chest on the right side, 2 cms below the level of right nipple involving the right 4th intercostal muscle. The wound deeper on the outer side and with tailing on the inner side.

Corresponding to the above mentioned injury Nos. 1 to 9.

(a) Extraction of blood into the deep subcutaneous tissues and muscle over the whole of left half of frontal region of scalp.

(b) The lower jaw was found cut through and through corresponding to the internal injuries with loosening of teeth and infiltration of blood into the surrounding muscles and soft tissues.

(c) Over the upper part of both sides of neck the muscles were cut through and through, the common carotid artery, jugular vein were cut through and through and all other structures in that area were clean cut and there was evidence of massive haemorrhage from the cut major vessels and other statures.

(d) The right 4th (sic) ic muscle was found cut through and correspondingly upper part of middle lobe and front aspect of right lung were found cut entirely with evidence of infiltration of blood into the surrounding tissues and massive drainal of blood from the right side of thoracic cavity out side. Thus indicating that injury Nos. 1 to 9 were ante-mortem.

10. Abrasions seen over (a) outer aspect of upper 1/3rd of right thigh 4 x 3 cms. (b) front of right knee 2x1 cms and (c) front of left knee 3 x 2 cms. The following injuries were seen with no evidence whatsoever of any vital tissue reaction with the involved tissues dry, pale and bitreless.

11. Head and face were found crushed from side to side with communicated fracture involving all the bones of vault and base of skull and facial bones.

12. Decapitation at the level of C6-C7 with crushing of all tissues, shattering of left collar bone crushing of left collor bone crushing of left shoulder joint, pulping of upper lobe of left lung total crushing of tissues and shattering of bone of upper half of theft upper arm, the rest hanging by means of crushed tages skin and subcutaneous tissues.

The Doctor opined that the deceased would appear to have died of shock and haemorrhage due to multiple cut injuries. Ex.P12 is the post-mortem certificate issued by him. After completion of the post mortem, blood stained clothing of the deceased were recovered.

(x) P.W. 18, Inspector, Railway Police, Salem, on receipt of the case particulars from the Deputy Superintendent of Police, Railway Police, Salem, altered the offence to one under Sections 302 and 201 I.P.C. and prepared Ex.P13 alteration report and sent the same to the Judicial Magistrate No. III, Salem and handed over the case records for further investigation to P.W.20.

(xi) P.W.20, Inspector of Police, Morappur Police Station, on 6.11.2002 received the case in Crime No. 285 of 2002 from the Superintendent of Police, Dharmapuri and registered a case in Crime No. 404 of 2002 under Sections 302 and 201 I.P.C. and prepared Ex.P16 First Information Report. He took up the case for further investigation, went to the place where the body of the deceased was found, examined P.Ws. 1 and 2 and others and recorded their statements and seized Ex.P17 Rough Sketch which had already been prepared by railway police. Thereafter, he went to the matrimonial home of the deceased at 12.30 p.m. and prepared Ex.P18 Observation Mahazar and Ex.P19 Rough Sketch in the presence of P.W.6 Rajendran and P.W.7 Kalvendran. At about 2.00 p.m., he seized M.O.8

bloodstained pillow cover, M.O.9 a piece of bloodstained cloth and M.O.10 sample cloth under Ex.P1 Mahazar in the presence of the same witnesses and Exs.P2 and P3 are the signatures of P.Ws.6 and 7 in Ex.P1 Mahazar. On the same day, he examined P.Ws.3, 4, 5, 6 and 7 and recorded their statements. On 7.11.2002 at 6.00 a.m., he arrested A1 and recorded his voluntary confession in the presence of P.W. 12 Thanikachalam, Village Administrative Officer and another. Ex.P4 is the admissible portion of the confession statement. Pursuant to the confession, A1 took P.W.20 and witnesses to his house and produced M.O.4 aruvamanai, M.O.5 bloodstained shirt, M.O.6 bloodstained lungi and M.O.7 cycle and the same were recovered under Ex.P5 mahazar. On the same day, he had also arrested the second accused. On 25.11.2002, he gave Ex.P7 requisition to the Judicial Magistrate's Court to send the case properties for chemical examination.

(xii) P.W. 15 is the Court Clerk, who received the material objects from P.W.20 and on the direction of the learned Magistrate, sent the same to the Forensic Lab for chemical examination. Exs.P9 and P10 are the Chemical Analysis Report and Serology report respectively.

(xiii) P.W.20 completed the investigation and after following all the legal formalities, filed the final report in the court against the accused under Sections 302 and 201, IPC on 31.12.2002.

4. After the case was committed to Court of Sessions, the accused were questioned and they denied their complicity. Hence, the trial commenced. To substantiate the charge against the accused, the prosecution examined 20 witnesses, marked 20 exhibits and produced 10 material objects. On completion of evidence on the side of prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating materials, for which the accused made a total denial. Neither any witness was examined nor any document was marked on his side.

5. The trial Court, on scrutiny of materials placed and on hearing the arguments of both sides, found the appellant/first accused guilty of the charges under Sections 302 and 201 I.P.C. and accordingly, convicted and sentenced him as referred to

earlier and acquitted the second accused of the charge under Section 201 I.P.C. Hence, the present appeal by the first accused.

6. Mr. John Sathyan learned Counsel for the appellant assailing the judgment of the trial Court, made the following submissions:

(i) the entire prosecution case rests on the circumstantial evidence and the prosecution has not produced any clinching circumstance implicating the appellant in the crime and there are several missing links and as such, the chain of circumstances is not completed;

(ii) the prosecution failed to establish the motive part of the occurrence, which is vital in the case of circumstantial evidence, as no independent witness was examined to speak about the frequent quarrel between the appellant and the deceased though the house of the appellant was surrounded by number of houses;

(iii) there is absolutely no circumstance or any evidence available on record to show that both the accused and the deceased were seen together, as the evidence of P.Ws.3 and 4 only shows that the deceased left the house on 25.9.2002 morning to the field for weeding and the evidence of P.W.8 shows that he saw the accused with bloodstained shirt, but nobody had stated anything about the seeing of the accused with the deceased prior to the occurrence;

(iv) if the occurrence took place as alleged by the prosecution, there would have been more blood on the floor of the house, but no blood was found as per the observation mahazar, except the seizure M.O.10, a small piece of bed sheet containing bloodstains and therefore the prosecution has miserably failed to prove the place of occurrence as that of the house of the appellant;

(v) though the headless body and head of the deceased were found in different place, P.W. 16, post-mortem Doctor, had not conducted autopsy over the headless body and head separately and therefore, his evidence could not be relied upon to come to the conclusion that he has conducted autopsy on the body of the deceased; and

(vi) the arrest and recovery of material objects were not substantiated through the acceptable evidence and therefore, the circumstances relied on by the prosecution are not at all sufficient to connect the appellant with the crime.

7. Per contra, Mr. N.R. Elango, learned Additional Public Prosecutor submits that the prosecution has put forward clinching and consistent circumstances to implicate the accused; that the motive put forward by the prosecution is proved through the evidence of P.Ws.3 and 4, who had categorically stated about the frequent quarrel between the appellant and the deceased and as per the evidence of P.W.4, the appellant suspected the fidelity of the deceased; the last seen theory is also proved through the evidence of P.Ws.3, 4 and 8, as P.Ws.3 and 4 had stated that the deceased left their house prior to the occurrence and on the next day, the appellant came to their house and enquired as to whether the deceased had come to their house and P.W.8 had stated that he saw the accused after the occurrence with the bloodstained cloth; that the recovery of M.O.10 bloodstained piece of bed from the house of the appellant clearly shows that the incident could have taken place inside the house; that the suspicious conduct of the appellant in not lodging any complaint to the police and in not seeing the body of the deceased at the hospital and absconding till his arrest; and that the prosecution has proved the arrest and recovery of weapon through the evidence of P.W.12, Village Administrative Officer and that therefore, the conviction and sentence are sustainable in law.

8. We have perused the entire materials available on record, heard the submission of both sides and considered each and every circumstance put forward by the prosecution.

9. It is not in dispute that the deceased Valarmathi died on account of homicidal violence. A perusal of the evidence of the doctor, P.W. 16 and Ex.P12, post-mortem certificate would reveal that the deceased died on account of shock and haemorrhage due to multiple cut injuries. The doctor has specifically stated in his evidence that 1 to 9 injuries could have been caused with M.0.4 aruvamanai. Therefore, we have no hesitation to hold that the death of the deceased was due to homicidal violence.

10. The point for consideration in this appeal is whether the prosecution has brought home the guilt of the accused beyond all reasonable doubts?

11. The prosecution case hinges upon circumstantial evidence, as the occurrence was not witnessed by anyone. Before delving into the issue, it is apt to refer the ruling on the circumstantial evidence.

12.1. In Sharad Birdhichand Sarda v. State of Maharashtra : 1984 CriLJ1738 it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established and they are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12.2. Again, in Padala Veera Reddy v. State of A.P. : AIR 1990 SC79 it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

12.3. The above judgments were quoted with approval by the Apex Court in the judgment in Manjunath Chennabasapa Mudalli v. State of Karnataka : 2007 CriLJ2964 .

12.4. It is, therefore, clear that the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime.

13.1. Now, let us analyse the circumstances put forward by the prosecution in the light of the settled principle of law laid down by the Apex Court in the decision cited supra.

13.2. In the case on hand, the prosecution placed reliance on the following circumstances:

(i) Motive as spoken to by P.Ws.3 and 4, the father and brother of the deceased;

(ii) Last seen theory as spoken to by P.Ws.3, 4 and 8;

(iii) Recovery of bloodstained bed sheet from the house of the accused to establish that the occurrence took place inside the house;

(iv) The arrest and recovery as spoken to by P.W.20 Investigating Officer as well as P.W. 12 Village Administrative Officer; and

(v) The conduct of the accused in not lodging any complaint to the police and in absconding till the date of his arrest i.e. on 7.11.2002.

13.3. As regards motive, we have no hesitation to conclude that the prosecution has proved it through the evidence of P.Ws.3 and 4. P.W.3 had stated that the appellant neglected the family and used his income for alcohol and P.W.4 had specifically stated that the appellant suspected the fidelity of the deceased, due to which there were frequent quarrels between them and panchayat was also convened. Their evidence is not shattered by the defence during the course of cross examination in respect of the alleged motive of the appellant suspecting the fidelity of the deceased and the frequent quarrel between them.

13.4. The next incriminating circumstance viz., the last seen theory, is also proved by the prosecution beyond reasonable doubt through the evidence of P.Ws.3, 4 and 8. P.Ws.3 and 4 in their evidence have stated that the deceased left their house prior to the occurrence i.e. on 25.9.2002 morning and the occurrence is said to have taken place in the night at 9.00 p.m. It is their further evidence that on the next day i.e. on 26.9.2002 at 7.00 p.m., the appellant came to their house and asked him about the whereabouts of the deceased. The evidence of P.W.8 is also very vital to prove that he saw the appellant with the bloodstained cloth and for that no proper explanation was given by the appellant. Therefore, the contention of the learned Counsel that the prosecution failed to establish the last seen theory is rejected.

13.5. Yet another clinching circumstance is to the effect that the occurrence took place in the house of the appellant for which prosecution has rightly placed reliance on the seizure of a piece of bloodstained bed sheet from the house of the appellant. Though it is stated by P.W.6 in the cross examination that he signed the mahazar only at the police station, the fact remains that his version of seizing the said bloodstained piece of bed sheet M.O.10 from the house of the appellant remains unchallenged by the defence. Therefore, it is quite clear that the occurrence could have taken place inside the house of the appellant and as such, it is for the appellant to give proper explanation for the death of the deceased.

13.6. The prosecution has convincingly proved the next circumstance viz., the arrest and the recovery of weapon from the appellant, as the evidence of P.W.20, Investigating Officer is corroborated by the evidence of P.W. 12, Village Administrative Officer and his evidence is not shattered during the cross examination by the defence.

13.7. Yet another factor to be borne in mind is the conduct of the appellant which is also relevant while considering the circumstances relied upon by the prosecution to prove the guilt of the accused. It is already pointed out by us that the appellant had not given any report to the police, he had not even gone to the hospital to see the body of the deceased and he was absconding till the date of his arrest i.e. on 7.11.2002. Therefore, the conduct of the appellant is one of the clinching and incriminating circumstance against him pointing out his guilt.

13.8. The contention that since P.W. 16 had not conducted autopsy over the headless body and head separately, his evidence could not be relied upon is rejected, as he had categorically stated that though the head was severed, the head and sequence of other part of the body were found to be together to some extent from the body and therefore, the same was not sent for chemical examination. We are of the view that merely because the head was found to be severed, the medical evidence cannot be rejected.

13.9. Therefore, we are of the opinion that the prosecution has proved each and every link in a complete manner so as to complete the chain of circumstance. Thus, all the circumstances narrated above, put together, would lead to the conclusion that it is only the accused who committed the offence without giving room to any other hypothesis.

14.1. Now, we are left with the question of considering the nature of the offence said to have been committed by the accused. In order to find out whether the appellant had intention to cause the death of the deceased or he cut the deceased due to grave and sudden provocation, we have to consider the several circumstances available on record. It is seen that the appellant suspected the fidelity of the deceased. P.W.4, brother of the deceased, had categorically stated that the appellant suspected the fidelity of his wife and on that ground, there were

frequent quarrels between them. P.W.3, father of the deceased, had stated that there were frequent quarrels between the appellant and the deceased and he used to pacify them. Therefore, it is clear that the appellant was nurturing sustained provocation in view of the suspicion of fidelity of the deceased.

14.2. To substantiate the said sustained provocation, we have to scrutinise the other materials available on record. A perusal of the entire statement recorded under Section 27 of the Evidence Act leading to the recovery of weapon and bloodstained cloth etc. clearly shows that the appellant had nurturing sustained provocation in view of the conduct of the deceased having illicit intimacy with other persons. It is evident from the abovesaid statement that even on the fateful time of occurrence, there was a wordy quarrel between the appellant and the deceased, the deceased went to the extent of kicking the appellant, the appellant scolded the deceased stating that she was having illicit intimacy with other persons and aggrieved by the same, the deceased took out M.O.4 iron aruvamanai and attacked the appellant and while preventing the same, the appellant sustained a cut injury on his left hand thumb finger and being provoked by such conduct of the deceased, the appellant snatched the aruvamanai and cut the deceased on her left side of the neck and the deceased fell down and died instantaneously. Therefore, it is clear that the appellant had nurturing sustained provocation over the conduct of the deceased.

14.3. Though P.W.5 turned hostile, he had supported the inadmissible portion of the confession of the appellant with regard to the injury sustained by him, in his cross examination by the prosecution. P.W.5 had admitted in his cross examination that on 26.9.2002, he questioned the appellant about the deceased and the appellant told him that the deceased left for her mother's house and at that time, he saw a cut injury on his left hand thumb finger and it was informed by the appellant that he sustained such injury while his wife/deceased attempted to cut him with M.O.4 aruvamanai.

14.4. It is well settled that the evidence of the hostile witness cannot be rejected in toto and any portion either in favour of the prosecution or in favour of the defence could be relied on. Therefore, the version of P.W.5 probablises the defence

version of the appellant in the statement recorded under Section 27 of the Evidence Act.

14.5. It is well settled that the inadmissible as well as admissible portion of the statement recorded under Section 27 of the Evidence Act could very well be placed reliance in the interest of justice to decide the nature of the offence committed by the accused. This Court in Ganesan, In re: , has held as follows:

3. The evidence shows that the appellant went straight to the police station at 9.15 a.m. and made a statement. In fact, that is the first information report in the case. It contains the confession that the appellant inflected cuts on his wife. The learned Sessions Judge has excluded this portion and marked the rest of the statement, as Ex.P. 6. This, however, is not correct. In Aghnoo Nagesia v. State of Bihar : 1966 CriLJ100 it has been observed:

Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement, partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

Little substance and content would be left in Sections 24, 25 and 26, if proof of admissions of incriminating facts in a confessional statement is permitted.

Some of the decided cases took the view that if a part of the report is properly sever-able from the strict confessional part, then the severable part could be tendered in evidence. We think that the separability test is misleading, and the

entire confessional statement is hit by Section 25, and save and except as provided by Section 27, and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

The above decision has been followed in Khatri Hemraj Amulkah v. State of Gujarat : 1972 CriLJ626 . According to these decisions (of this Court and the Hon'ble Apex Court), the only portion of the statement, which could be admitted is the initial portion that he was making the statement, which would not be of any use to the prosecution. But there is no bar to the appellant using the statement in his favour see also Mottai Theva, In re: : AIR1952 Mad586 . We are referring to this at this stage itself, because Ex. P.6 contains statements favourable to the appellant. It is a long statement, but for our purpose, it is enough to give a brief summary. Ever since the marriage, the wife has been refusing to have conjugal relationship with him. On the other hands, he had good reason to believe that she had been carrying on with P.W.6, her elder sisters husband. On one night, Kamala and P.W.6 had gone out for the ostensible purpose of answering calls of nature, but evidently for having sexual relationship. On the night previous to the day of occurrence also she refused him conjugal felicity. On the morning of the day of occurrence according to Ex.P.6, the appellant gave ten paise to P.W. 1 and asked her to get onions. But his wife, Kamala said that she should not go out. He pointed out that P.W. 1 was rendering service for all, and sundry in the village, but why not for them. In reply to that, Kamala abused him, (you silly-fellow, you run away) and buried a vegatable-cutter on him. He warded it off with his left hand. It fell down. But she threw it on him again with force. He warded it off with his right hand. This time it caused an injury on the palmer aspect of his right little finger. It was about 8-30 a.m. He could not control his anger. He therefore took cut the koduval and inflicted cuts on her. He came out with a rope with the idea of hanging himself that day. But on nearing Manonmanis house he thought that it was not proper to do so and threw it aside. There used to be frequent quarrels between him and his wife, and Andalammal (P.W.2) and Devaraja Pillai (P.W.7) knew about it. So runs Ex.P-6.

Taking all these circumstances together we hold that Kamala threw the vegetable cutter on the appellant and caused injury on the right little finger. In our opinion,

this cannot afford a ground for self defence under Exception II because after throwing it at her husband, Kamala, did not try to attack him with it and it was not justifiable for the appellant to inflict cuts on Kamala. But at the same time it seems to us that her act in throwing the vegetable cutter at him constituted grave and sudden provocation which deprived him of the power of self-control within the meaning of Exception I.

(Emphasis supplied).

14.6. In K.M. Nanavati v. State of Maharashtra : AIR 1962 SC605 , the Supreme Court has laid down the following principles regarding the Exception 1 to Section 300 I.P.C.:

1. The test of grave sudden provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in situation in which the accused was placed would be provoked as to lose his self-control.

2. In India, words and gestures may also, under certain circumstances, cause gave and sudden provocation to an accused so as to bring his act with the first Exception of Section 300 I.P.C.

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 has cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

14.7. The above well settled principle of law laid down by the Apex Court as well as this Court is squarely applicable to the facts of the instant case. In the instant case, as already pointed out, there were frequent quarrels between the appellant and the deceased as the appellant suspected her fidelity and as per the entire confession recorded under Section 27 of the Evidence Act, it is crystal clear that the appellant scolded the deceased for having illicit intimacy with other persons and the deceased cut the appellant with aruvamanai and as a result, the appellant

sustained a cut injury on his left hand thumb finger, which added fuel to the fire as the appellant was already nurturing sustained provocation, lost his self control and due to such grave and sudden provocation, the appellant snatched the weapon viz., aruvamanai from the deceased and cut the deceased on her left side of neck, which resulted in her death. Thus, as could be seen from the sequence of events, there is no difficulty in holding that the accused had a sudden provocation due to previous conduct of the deceased and that he totally lost his self-control and in a heat of anger, he inflicted injuries on the deceased.

15. For the aforesaid reasons, we are of the considered view that the appellant is entitled to Exception 1 to Section 300 I.P.C. and as such, he is liable to be convicted under Section 304. Part I. I.P.C.

16. Accordingly, the appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence under Section 302 I.P.C. is hereby set aside and instead the appellant is convicted under Section 304, Part-I, I.P.C. and sentenced to undergo seven years rigorous imprisonment and the conviction and sentence under Section 201, I.P.C. are confirmed. As the appellant is reported to be on bail, the bail bonds shall stand cancelled and the learned Sessions Judge shall take steps to commit him to jail to undergo the remaining period of sentence.