

**Judicial Form No. 61
(Cr.R.P 106)
IN THE COURT OF SESSIONS JUDGE, MAHALIR NEETHIMANDRAM
ALLIKULAM, CHENNAI - 600 003.**

Present : **Thiru. T.H. Mohammed Farooq, M.A., M.L.,
Sessions Judge,
Mahalir Neethimandram, Chennai**

Dated Wednesday the 15th day of February, 2023

2053 - திருவள்ளூர் ஆண்டு, சுபகிருது மாசி திங்கள் 3 ஆம் நாள் புதன்கிழமை

JUDGMENT IN SESSIONS CASE No: 03/2020

(CNR NO. TNCH0 - 000239 -2020)

ON TH FILE OF MAHALIR NEETHIMANDRAM, CHENNAI

(P.R.C. No.182/2019 in (Crime No.456/2018 K-6, T.P.Chathiram Police Station, Chennai) on the file of the Learned V Metropolitan Magistrate, Egmore, Chennai, committed to the Court of Principal Judge, Chennai for the offences against the accused under Sections 498A and 302 IPC and made over to this Court for enquiry and trial)

Complainant	The Inspector of Police, K-6, T.P. Chathiram Police Station, Chennai - 600 010. (Crime No. 456/2018)
Name of the Accused	Srinivasan, M/A.34/2018, S/o. Malakondhaiya
Offence charged	Under Sections 498A and 302 IPC
Plea of accused	Not guilty
Finding	In the result, the accused is found not guilty for the offences under Sections 498A and 302 IPC, and

	the accused is found guilty and convicted for the offence under Section 304 Part-I of IPC.
Sentence	Hence, considering all the relevant fact and circumstance, the accused is accordingly convicted and sentenced as below; (i) The accused is convicted under Section 304(Part I) IPC and sentenced to undergo RIGOROUS IMPRISONMENT FOR TEN YEARS and to pay a fine of ₹5000/-, in default to undergo simple imprisonment for SIX MONTHS; (ii) the period already undergone by the accused from 27.08.2018 to 26.11.2018 shall be set-off under Section 428 Cr.P.C.
Order U/s. 452 Cr.P.C.	The case properties in P.M.O.1 to P.M.O.11 are ordered to be destroyed after the expiry of appeal time, if there be any appeal, after the disposal of appeal.
Compensation Order U/s. 357 or 357A Cr.P.C	In fine, recommendation is made under Section 357A(3) Cr.P.C. to the District Legal Services Authority, City Civil Court, Chennai, to award adequate compensation to P.W.2/Selvan.Mohana Krishnan, son of the deceased, after due enquiry U/s 357A(1) Cr.P.C, out of The Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018.

			The Copy of this Judgment is ordered to be sent to the District Legal Services Authority, City Civil Court, Chennai for necessary enquiry and awarding compensation under Section 357(A)(1) CrPC out of The Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018.			
Description of the accused						
Sl. No.	Name	Father's Name	Caste or race	Occupation	Residence	Age
1.	Srinivasan	Malakondhaiya	Hindu	Electrician	No.13/3, V.O.C. Nagar 2nd Street, New Colony, Anna Nagar West, Chennai - 102.	34/2018
Date of	Occurrence		27.08.2018			
	Complaint-Final Report		19.07.2019			
	Apprehension or appearance		27.08.2018			
	Released on bail		26.11.2018 (As per the Order of the V Metropolitan Magistrate Court, Egmore, Chennai in CrI.M.P. No.6290/2018 dated 26.11.2018)			
	Commitment		17.12.2019			
	Commencement of Trial		07.12.2020			
	Close of trial		01.02.2023			
	Sentence or Order		15.02.2023			
	Service of Copy of Judgment or finding on accused		15.02.2023			
	Explanation of delay			Delay in producing witnesses.		

Counsel for the Complainant	Ms.B. Aarathi, B.A., B.L., Special Public Prosecutor.
Counsel for the Accused	M/s.A.Padmanaban, P.Srinivasan and A.Micheal Jacob Dennyson

Sd/- T.H.Mohammed Farooq,
Sessions Judge,
Mahalir Neethimandram,
Chennai.

**IN THE COURT OF SESSIONS JUDGE, MAHALIR
NEETHIMANDRAM
ALLIKULAM, CHENNAI - 600 003.**

CASE SUMMARY

Sessions Case No.03/2020

(i)	The period of remand of the accused :			27.08.2018 to 26.11.2018			
(ii)	The date of filing of the complaint/final report in the Court :			19.07.2019			
(iii)	The date of committal of the case to the Court of Session			17.12.2019			
(iv)	The date of questioning of the accused under Sections 228, 240, 246 and 251 of the Code, as the case maybe;			07.12.2020			
(v)	Filing of all miscellaneous petitions and their results including the results on challenge before superior Courts, except routine petitions like petitions under section 317 of the Code, etc			CrI.M.P.No.	U/s	Result	Appeal
				11169/2020 20887/2022	70(2) 311	Allowed Allowed	Nil Nil
(vi)	Date of examination in-chief and cross-examination of a witness;	Witnesses		Chief		Cross	
		P.W.1 and P.W.2	04.07.2022	04.07.2022			
		P.W.3	14.07.2022	Nil			
		P.W.4 and P.W.5	25.07.2022	25.07.2022			
		P.W.6 and P.W.7	04.08.2022	Nil			
		P.W.8	25.08.2022	Nil			
		P.W.9	07.09.2022	07.09.2022			
		P.W.10	17.10.2022	07.12.2022			
		P.W.11	23.11.2022	Nil			
		P.W.12	23.12.2022	Nil			
(vii)	Date of examination of the accused under section 313 CrPC;			04.01.2023			

(viii)	Details of abscondence of an accused and his appearance/production, as the case may be;	<u>Date of absconding</u> 28.10.2020	<u>Date of appearing</u> 09.11.2020
(ix)	Grant of stay by superior Courts and the results thereof:	Nil	
(x)	Details of victim compensation ordered:	In fine, recommendation is made under Section 357A(3) Cr.P.C. to the District Legal Services Authority, City Civil Court, Chennai, to award adequate compensation to P.W.2/Selvan.Mohana Krishnan, son of the deceased, after due enquiry U/s 357A(1) Cr.P.C, out of The Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018. The Copy of this Judgment is ordered to be sent to the District Legal Services Authority, City Civil Court, Chennai for necessary enquiry and awarding compensation under Section 357(A)(1) CrPC out of The Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018.	

Sd/- T.H.Mohammed Farooq,
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Present : **Thiru.T.H.Mohammed Farooq, M.A., M.L.,
Sessions Judge,
Mahalir Neethimandram, Chennai**

Dated Wednesday, the 15th day of February, 2023
2053 - திருவள்ளூர் ஆண்டு, சுபகிருது மாசி திங்கள் 3 ஆம் நாள்
புதன்கிழமை

JUDGMENT IN SESSIONS CASE No: 03/2020

(CNR NO. TNCH0 - 000239 -2020)

The Inspector of Police,
K-6, T.P. Chathiram Police Station,
Chennai - 600 010.
(Crime No. 456/2018)

... Complainant

- Vs.

Srinivasan, M/A.34/2018,
S/o. Malakondhaiya,
No.13/3, V.O.C. Nagar 2nd Street,
New Colony, Anna Nagar West,
Chennai - 102.

... Accused

This Sessions case is taken on file on 02.01.2020 came up on 01.02.2023 before me for final hearing in the presence of Ms. B. Aarathi, B.A., B.L., Learned Special Public Prosecutor, for the Complainant and M/s.A.Padmanaban, P.Srinivasan and A.Micheal Jacob Dennyson, Learned

Advocates for the Accused and upon hearing the arguments on both sides and perusing the material records, having stood over till this day for consideration, this Court delivered the following:

JUDGMENT

Final Report:

1. The Inspector of Police, K-6, K.P. Chatram Police Station, has laid a Final Report in Cr. No.456/2018, before the committal Court of the Learned V Metropolitan Magistrate, Egmore, Chennai, alleging that on 27.08.2018 at about 5:30 AM at No.13/3, V.O.C. Nagar 2nd Street, New Colony, Anna Nagar West, Chennai, the accused harassed and committed murder of his wife Tmt.Ammu, and thereby it is alleged that the accused has committed the offences punishable under Sections 498A and 302 IPC.

2. It is alleged that on 14.06.2008 the accused loved the deceased Tmt.Ammu and they got married. They have a son, aged 9 years. They were residing at the place of occurrence situated at No.13/3, V.O.C. Nagar 2nd Street, New Colony, Anna Nagar West, Chennai. The deceased Tmt.Ammu was in contact with one Tr.Saravanan, her relation. She used to go with her in motor bike and also they used to meet at her parents house frequently. The accused warned the deceased to sever such contacts. Further the accused would come

drunk and beat the deceased and harassed her. On 25.08.2018 at about 08:00 PM while the accused was at home with his wife and son, the deceased waved and made gesture by hands to said the Tr.Saravanan who had come on the street. On seeing it the accused got enraged that his wife, the deceased, is not listening to his warning and premeditated to murder her and procured a steel knife for committing the murder. On 27.08.2018, while the accused was at home with the deceased and their son Selvan.Mohana Krishnan, the accused quarrel with the deceased regarding her relationship with said Tr.Saravanan and then with the intention to kill her sat over her and stabbed her on her neck and done her to death. Hence the above charge.

3. **Cognizance and Committal:** The Learned V Metropolitan Magistrate, Egmore, Chennai, took cognizance of the offences and on appearance of the accused furnished free copies of all the documents, relied on the side of the prosecution, to the accused in compliance of section 207 Code of Criminal Procedure Code, 1973 (in short Cr.P.C.). Thereafter, as one of the offence alleged to have been committed by the accused is exclusively triable by the Court of Sessions, the Learned Metropolitan Magistrate, vide Order dated 17.12.2019 in P.R.C. No.182/2019, committed the case under Section 209 Cr.P.C. to the Hon'ble Principal Sessions Judge, Chennai, and bound over the accused to appear before the Sessions Court. The same is taken on file as

Sessions case by the Learned Principal Session Judge, Chennai and made over to this Court for trial and disposal in accordance with law.

4. **Appearance of accused and Framing of Charges:** Upon appearance of the accused and his counsel before this Court, the learned Special Public Prosecutor opened the case of the prosecution U/s.226 Cr.P.C. by describing the charge brought against the accused and the evidence based on which the charge is proposed to be proved. After hearing both sides and perusing the material records, as there were grounds for presuming that the accused has committed offence which is exclusively triable by this Court of Sessions, charges were framed against the accused under Sections 498A and 302 IPC. When the charges were read over and explained to the accused and questioned, he pleaded not guilty and chose to be tried. Hence, proceedings were issued for trial.

Prosecution side evidence:

5. In order to prove the charges against the accused, out of 28 witnesses cited, 12 witnesses are examined as P.W.1 to P.W.12 and exhibits Exs-P.1 to P.25 and Material Objects P.M.O.1 to P.M.O.11 are marked on the side of the prosecution.

6. The facts set-out from the oral and documentary evidence produced on the side of the prosecution can be briefly narrated as follows:-

- 6.1. P.W.1, Tmt.Sundari is the mother of the deceased Tmt.Ammu. P.W.2, Selvan Mohana Krishnan is the son of both accused and the deceased. They have identified the deceased as Tmt.Ammu, daughter of P.W.1 and mother of P.W.2. Further they have identified the accused as the husband of the deceased.
- 6.2. The accused and the deceased Tmt.Ammu were married about 10 years prior to the occurrence. They were residing at the place of occurrence situated at V.O.C. 2nd Street. P.W.2/Selvan.Mohana Krishnan is their son. The accused used to take liquor, ganja and cigarette. He was also having contacts with several ladies. He will not come home properly. So, the deceased used to quarrel with him. Once, the accused assaulted the deceased with a stone and a complaint was lodged at T.P.Chatram Police Station. Then, the deceased went to her mother (P.W.1's) house. After a couple of weeks the accused came and pacified the deceased and assured that he will not beat her and would take good care of her and took the deceased with him.

- 6.3. On August 26th Saturday, the deceased came to her mother's (P.W.1) house. She complained that the accused is again beating her. P.W.1/Tmt.Sundari pacified them and again sent her with the accused. Thereafter when P.W.1/Tmt.Sundari called her daughter over mobile phone, she did not answered.
- 6.4. On 26.08.2018 the accused and his wife Tmt.Ammu and P.W.2, Selvan.Mohana Krishnan, their son had dinner and went for sleep. While sleeping P.W.2, Selvan.Mohana Krishnan heard a noise of hammering. When he woke up, he saw his father (accused) sitting over his mother (deceased) and was cutting her. P.W.2 called his mother but the accused asked him to lay down without shouting and sprayed mosquito spray over his face. He got fainted and slept.
- 6.5. As the deceased did not respond for the phone called made by P.W.1/Tmt.Sundari (mother of deceased), on the next day morning at about 5:00 AM P.W.1, Tmt.Sundari, mother of the deceased went to the house of the deceased to see her daughter. When she knocked the door, the accused opened it and he was holding a knife with blood stains. She questioned him what he had done and saw inside the house and found her daughter lying down with her neck cut and the blood was oozing on the floor. Further, she saw cut injuries on her both hands and she was found dead. Further P.W.1/Tmt. Sundari

saw her grandson (P.W.2) Selvan.Mohana Krishnan sleeping near the pool of blood. Immediately she went to T.P.Chathiram police station and lodged a complaint in Ex-P.1/P.W.1. As she doesn't know to write in Tamil, she wrote the complaint with the help of her sister's daughter. When P.W.2/Tmt.Ammu woke up her grandson (P.W.2) he woke up and saw his mother dead.

6.6. P.W.10, Tr.Srinivasan was then working as Inspector of Police at T.P.Chathiram police station. On 27.08.2018 at about 06:15 AM he received the complaint (Ex-P.1) given by P.W.1 Tmt.Sundari and registered a case in Cr.No.456/2018 under Section 302 IPC. Ex-P.11/P.W.10 is the First Information Report (F.I.R.). After sending it to Court, he took up the case for investigation and went to the place of occurrence at 6:45 AM.

6.7. In the presence of witnesses Tr. Johnson and P.W.4/Tr. Imanuvel, inspected the place of occurrence and prepared observation mahazar in Ex-P.12/P.W.10 and rough sketch in Ex-P.13/P.W.10.

6.8. Then at 07:40 AM in the presence of same witnesses P.W.10, Tr.Johnson, Inspector of police seized the blood stained bed sheet (P.M.O.2), blood stained pillow cover (P.M.O.4), blood stained pillow (P.M.O.3) under the cover of mahazar in Ex-P.14/P.W.10. P.W.4, Tr.Imanuvel corroborated the evidence of P.W.10 in this

regard and identified his signature in the observation mahazar and seizure mahazar, which are marked as Ex-P.2/P.W.4 and Ex-P.3/P.W.4 respectively. Both P.W.1, Tmt.Sundari and P.W.4/Tr.Imanuvel have identified the seized case properties in P.M.Os. 2 to 4.

6.9. Then between 08:10 AM to 10:10 A.M. P.W.10, Tr.Srinivasan, the Inspector of Police conducted inquest on the body of the deceased Tmt.Ammu at the place of occurrence in the presence of panchayat witnesses and prepared inquest report in Ex-P.15/P.W.10 and then forwarded the body of the deceased to Government Kilpauk hospital through P.W.8/Tr.Rakesh, head constable.

6.10. Further on the same day at 10:40 AM in the presence of the same witnesses P.W.4/Tr.Imanuvel and Tr.Johnson, P.W.10/Tr.Srinivasan(I.O.) seized the blood stained dresses which P.W.2/Selvan.Mohana Krishnan, son of the deceased was wearing at the time of occurrence under the cover of mahazar in Ex-P.16/P.W.10. P.M.O.8 is the blood stained T-shirt and P.M.O.9 is the white colour dhoti. P.W.4, Tr.Imanuvel has corroborated the recovery of the above items and identified his signature in the seizure mahazar marked as Ex-P.4/P.W.4. Further both P.Ws. 1 and 4 have identified the same in their evidence.

- 6.11. Then, P.W.10, Tr.Srinivasan, Inspector of Police sent the requisition for conducting post-mortem on the body of the deceased through P.W.6/Tr.Sivanesan. Then he examined the witnesses P.W.1, Tmt.Sundari, P.W.2/Selvan.Mohana Krishnan, Tmt.Devi, Tr.Sathyaraj, P.W.3/Tr.Ramkumar (examined and turned hostile for not supporting the prosecution case), Tr.Nithish, Tr.Karthick, Tr.Velmurugan, Tmt.Johnsirani, Tmt.Deepa, Tr.Suresh, Tr.Saravanan and the mahazar witnesses Tr.Johnson and P.W.4/Tr.Imanuval and recorded their statements.
- 6.12. In the meantime, P.W.8, Tr.Rakesh, Head constable as directed by the Investigating Officer took the body of the deceased from the place of occurrence and handed over the same at Government Kilpauk Hospital (KMC Hospital).
- 6.13. P.W.6/Tr.Srinivasan working as Head constable at T.P. Chathiram police station, on 27.08.2018 received the requisition for post-mortem given by the Investigating Officer (P.W.10) and went to Government Kilpauk Medical College (KMC) Hospital and handed over the same to the medical officer, Department of Forensic Medicine and identified the body of the deceased Tmt.Ammu.
- 6.14. P.W.9, Dr.Manikandaraj received the requisition for conducting post-mortem and conducted post-mortem at 04:00 P.M on the body

of the deceased Tmt.Ammu and issued the Post-mortem certificate in Ex-P.9/P.W.9, which reads as below:

"The body was first seen by the undersigned at 04.00 P.M. on 27.08.2018. Its condition then was Rigor Mortis present all over the body. Post-Mortem commenced at 4.00 P.M. on 27.08.2018. Appearance found at the Post-Mortem. Post Mortem Hypostasis is fixed and is present at the back over the dependent areas except over the pressure points. Well-built female dead body lying on its back. Dried blood stains present over the right side of the face.

Injuries:

1. An oblique Incised Wound of 18 cm x 4cm x Cavity Deep over the front and side of middle 1/3 of the neck extending from left to right side of the neck upto the back of the right ear. Its upper border from the centre of the wound is 4 cm vertically upward to the chin. Right upper border is beneath the centre of right ear. Left upper border is 4 cm vertical upwards to the ramus of the left mandible. Its lower border from the centre of the wound is 8 cm vertically downwards to the supra sternal notch. Right lower border is 19 cm vertically downwards to the medical end of right clavicle and left lower border is 15 cm vertically downwards to the medical end of

left clavicle. Right side external, internal jugular veins and the right carotid artery are found severed.

2. Incised wounds of 5 cm x 4 cm x Skin Deep, 2 cm x 1 cm x Skin Deep over the upper aspect of right shoulder.

3. Incised wound of 1 cm x 0.5 cm x Skin Deep over the inner aspect of right shoulder.

4. A stab wound of 2cm x 1 cm x Cavity Deep over the front of middle 1/3 of right side of the neck and is placed downward, upward and backwards.

5. Incised wound of 0.3 cm x 0.3 cm x Skin Deep involving the palmar aspect of upper phalynx of right thumb.

6. Incised wound of 3 cm x 2 cm x Skin Deep involving the palmar aspect of upper and middle phalynx of right index finger.

7. Incised wound of 3 cm x 2 cm x Skin Deep involving the palmar aspect of upper and middle phalynx of right middle finger.

8. Incised wound of 3 cm x 2 cm x Skin Deep involving the palmar aspect of upper and middle phalynx of right ring finger.

9. Incised wound of 3 cm x 2 cm x Skin Deep involving the 2nd right web space.

10. Incised wound of 3 cm x 2 cm x Skin Deep over the back of lower 1/3 of right index finger.

11. Incised wound of 3 cm x 2 cm x Skin Deep over the front of lower 1/3 of left forearm.

12. Incised wound of 4cm x 2cm x Bone Deep over the inner aspect of lower 1/3 of left forearm.

13. Incised wound of 2 cm x 1 cm x Skin Deep over the palmar aspect of base of left thumb.

14. Incised wound of 3 cm x 2 cm x Skin Deep over the front of upper 1/3 of left index finger.

15. Incised wounds of 4 cm x 2 cm x Skin Deep, 3 cm x 2 cm x Skin Deep over the front of upper and middle 1/3 of left middle finger.

16. Reddish abrasion of 2 cm x 1 cm over the outer aspect of middle 1/3 of right arm.

17. Reddish abrasions of 0.8 cm x 0.2 cm, 0.3 cm x 0.2 cm, 0.2 cm x 0.1 cm over the back of lower 1/3 of right arm.

ALL THE ABOVE MENTIONED INJURIES ARE ANTEMORTEM IN NATURE.

On dissection of Head:

Scalp: Intact. Cranial Vault: Intact. Meninges: Intact. Brain: Normal in size. C/s. Pale. Cerebellum: Normal in size. C/s. Pale. Ventricles: Contains few ml of straw coloured fluid. Base of Skull: Intact.

On dissection of Thorax:

Ribs: Intac. Larynx: Nil Particular. Trachea: Contains blood stained frothy fluid. Hyoid: Intact. Pericardial Sac: Intact, contains 10 ml of Pericardial fluid. Heart: Normal in size. C/s: Chambers: Empty. Coronaries: Patent. Valves: patent. Great Vessels: Nil Particular. Lungs: Normal in size. C/s. Pale;

On Dissection of Abdomen:

Stomach: Contains 90 grams of digested food particles. No specific smell smelt. Stomach Mucosa: Normal. Intestines: Yellow Chyme Present. Mucosa: Normal. Liver: Normal in size, C/s: Pale, Spleen: Normal in size, C/s. Pale. Kidneys: Normal in size, C/s: Pale. Bladder: Contains 110 ml of urine. Genitalia: Normal. Uterus: Normal in size. C/s. Menstrual Phase. Pelvis / Spinal Column : Intact.

Viscera Preserved and sent to FSL, Chennai for Chemical Analysis.

Post-Mortem Examination concluded at 05.30 P.M.

The Approximate Time since death is 12 - 24 hours prior to Post-mortem Examination.

Opinion as to the Cause of Death:

(a) Chemical Analysis of Viscera Report: PENDING.

(b) The deceased would appear to have died of SHOCK AND HAEMORRHAGE DUE TO CUT INJURY OVER THE NECK.

6.15. Further, the collected viscera from the body of the deceased was sent to forensic examination to the Forensic Science Laboratory and the Toxicological Report in Ex-P.8/P.W.9 was received with the finding that poisonous substances were not detected. Further, the blood sample was collected and sent for grouping examination to Forensic Science Laboratory and the Serology Report was received in Ex-P.10 with the finding that the blood group of the deceased is that of group "O".

6.16. P.W.10/Tr.Srinivasan, the Investigating Officer in continuation of the investigation on 27.08.2018 at about 15.30 hours arrested the accused near George School, E.V.R. Salai in the presence of witnesses P.W.5/Tr.Sathish and Tr.Vigneshwaran. The accused gave a voluntary confession which was recorded in the presence of said witnesses. He gave a disclosure statement to produce the knife and his blood stained cloths from the place they are hidden by him. Ex-P.17/P.W.10 is the admissible portion of the confession. Accordingly at 16.45 hours based on the disclosure statement the accused identified and produced a blood stained knife (P.M.O.1), blood

stained violet colour half hand shirt (P.M.O.10), and blood stained white colour dhoti (P.M.O.11) from a dilapidated building at Second street, Anna Nagar West New Colony. The same was seized under the cover of mahazar in Ex-P.18/P.W.10 and then the accused was brought to police station and sent for remand. P.W.5, Tr.Sathish corroborated the evidence of P.W.10 in this regard and identified his signature in the confession statement, which is marked as Ex-P.5 and the signature in the seizure mahazar, which is marked as Ex-P.6. He has identified a knife P.M.O.1 and unable to identify the cloths due to passing of time. P.W.1/Tmt.Sundari, mother of the deceased would also identified the knife in P.M.O.1 and the cloths of the accused in P.M.Os. 10 and 11.

6.17. P.W.10/Tr.Srinivasan, the Investigating Officer examined the confession witness Tr.Vigneshwaran and P.W.5/Tr.Sathish, Head constables P.W.6/Tr.Sivanesan and P.W.8/Tr.Rakesh, and Police Constable Tr.Mathiazhagan and Head constable Tr.Gopal and recorded their statements.

6.18. Further, he examined one Dr.Uthesh Ganapathy, who gave treatment to the accused and recorded his statement. Since Dr.Uthesh Ganapathy was working as medical officer at Chennai National Hospital. He left to London and therefore could not be examined as

a witness. P.W.11/Dr.Hariharan who worked along with Dr.Uthesh Ganapathy and acquainted with his handwriting is examined on the side of the prosecution. P.W.11/Dr.Hariharan has identified the accident register as the one issued by Dr.Uthesh Ganapathy, which is marked as Ex-P.22/P.W.11.

6.19. According to the accident register (Ex-P.22/P.W.11), on 27.08.2018 at about 1:56 P.M. the accused/Tr.Srinivasan came to the said hospital for treatment with the history of sustaining injury at his work place. Dr.Uthesh Ganapathy examined him and found that there are bleeding injuries on his left index finger and middle finger. He made stitches and gave treatment to the accused as outpatient. Since it is not a medico legal case accident register was not recorded and instead medical treatment record is entered in Ex-P.22/P.W.11.

6.20. Further, P.W.10, the Investigating Officer examined P.W.9/Dr.Manikanda Raj, who conducted autopsy and issued the post-mortem report and recorded his statement. Further he examined Tmt.Suja Priyadarshini, Scientific Officer, Forensic Science Laboratory who issued the Toxicological and Serology Reports and recorded her statement.

- 6.21. Further the case properties in P.M.Os. 1, 9 and 10 were sent to Court under Form-95 in Ex-P.19/P.W.10, P.M.Os. 2 to 4 under Form-95 in Ex-P.20/P.W.10 and P.M.Os. 5 to 7 under Form-95 in Ex-P.21/P.W.10. Thereafter, as P.W.10, Tr.Srinivasan, Inspector of Police got transferred he handed over the investigation to his successor.
- 6.22. P.W.12, Tr.Vinayagam succeeded P.W.10/Tr.Srinivasan, as Inspector of Police at T.P.Chathiram Police station. On 22.02.2019 he took up the case for further investigation. He once again inspected the place of occurrence to verify the observation mahazar. Further he examined the witnesses and they all reiterated the statement as given to the previous investigating officer. Therefore, he did not record the further statements.
- 6.23. Further, P.W.12/Tr.Tr.Vinayagam gave a requisition to send the case properties to Forensic examination and the same was accordingly sent and the reports were received in Court. He examined the Scientific Officers Tr.Tharani and Tmt.Vijayalakshmi regarding the forensic reports given by them and recorded their statements. Ex-P.23/P.W.12 is the serology report for conducting blood grouping. Ex-P.24/P.W.12 is the biology report and Ex-P.25/P.W.12 is the serology report for the examination done on the material objects

seized during investigation. Further he examined the property clerk, of the Metropolitan Magistrate's Court and recorded his statement.

6.24. With the collection of above materials P.W.11/Tr.Vinayagam, investigating officer completed the investigation and filed a final report against the accused for the offences under Sections 498A and 302 I.P.C.

Examination of Accused U/s 313 Cr.P.C. and his defence:

7. Upon closing the prosecution evidence, the incriminating circumstances found in the prosecution side evidence against the accused were put to him and examined U/s.313(1)(b) Cr.P.C. During such examination, the accused admitted the relationship with the deceased. However, denied the implicating evidence against him. Further, he would admit that the evidence of P.W.11, Dr.Hariharan regarding the treatment given to him by Dr.Uthesh Ganapathy and the injuries sustained by him. Further, when a question was put to him whether he wants to make any statement about the case, the accused chose to make a statement as below:

"இதுபோல் சம்பவம் நடக்கவில்லை. என் மனைவிக்கு இன்னொருவருடன் தொடர்பு இருந்தது. அவர் பெயர் சரவணன். அதை ஏற்கனவே கேட்டேன். இதுபோல் பண்ண வேண்டாம் என்று சொன்னேன். சரவணன் என் மாமியாருடன் ஒரே வீட்டில் வேலை

செய்கிறார். அதுமூலம் என் மனைவி மாமியார் வீட்டுக்கு போகும்போது அவனும் வந்துள்ளான். அப்போது பழக்கம் ஆகியுள்ளது. நான் வேண்டாம் அந்த பழக்கத்தை விட சொன்னேன். சம்பவம் அன்று சந்தோஷமாக இருக்க கூப்பிட்டேன். செக்ஸ் வைக்க கூப்பிட்டேன். வரமாட்டேன் என்று சொல்லி என்னை தள்ளிவிட்டார். இனி உன்கூட படுக்கமாட்டேன் என்று சொன்னார். அவனோடுதான் இருப்பேன் என்று சொன்னார். என்னை கிட்டே சேர்க்காமல் என் மனைவி என்னை வேகமாக தள்ளியதால் நான் விழுந்துவிட்டேன். விழுந்து எழுந்த வேகத்தில் பக்கத்தில் இருந்த கத்தியை எடுத்து நான்தான் வேகமாக என் மனைவியை குத்திவிட்டேன். எனக்கு தெரிந்த வக்கீலிடம் போய் சொன்னேன். பச்சயப்பன் பஸ் நிறுத்தம் அருகில் சீனிவாசன் சாரிடம் என்னை ஒப்படைத்தார். அதன்பிறகு என்னை காவல்நிலையத்தில் உட்கார வைத்தார்கள். பிறகு ஜெயிலுக்கு அழைத்துபோனார்கள். என் வக்கீல் பெயர் S.P.Suresh Kumar. தற்போது அவர் இறந்துவிட்டார். ஆரம்பத்தில் இந்த வழக்கை அவர்தான் நடத்தினார்."

8. Thus from the above statement made by the accused under Section 313(1)(b) CrPC, he would admit his complicity in causing the death of his wife by stabbing her with knife. However, he has given explanation under what circumstances he killed his wife, thereby setting up his defence of culpable homicidal not amounting to murder. Further the

accused has further filed his statement of defence under Section 313(5) Cr.P.C. reiterating the above statement. The accused closed his defence without examining any witnesses on his side.

Point for determination:

9. Now the point that arise for determination in this case is;

Whether the prosecution has proved the guilt of the accused, Under Sections 498(A) and 302 IPC., beyond all reasonable doubt or not?

On the Point :

10. Heard the arguments submitted on the side of the prosecution and on the side of the accused. Written arguments also submitted on the side of accused.

Identity of deceased, relationship with accused and cause of death:

11. On perusing the oral and documentary evidence and the rival contentions submitted on either side, there is no dispute regarding the identity of the deceased and her relationship with the accused. Further, the cause of death is also not disputed. The prosecution has examined P.Ws. 1 and 2, the mother and son of the deceased. They are the occurrence witnesses. They have identified the

deceased as Tmt.Ammu as well as the accused as the husband of the deceased, which is not denied on the side of the accused.

12. Further, the medical evidence produced through P.W.9, Dr.Manikandaraj and the post-mortem report in Ex-P.9/P.W.9 would unequivocally corroborate the eye-witnesses and establish that the deceased has died due to multiple cut injuries on her neck. Thus, the ocular and medical evidence at the out set would clearly establish and prove that the death of the deceased Tmt.Ammu is completely homicidal in nature.

13. The evidence of P.W.2/Selvan.Mohana Krishnan, the son of the deceased would candidly proved that the accused had caused the fatal injuries to the deceased. Further the evidence of P.W.1/Tmt.Sundari, the mother of the deceased would also prove that when she went to the house of the deceased on the date of occurrence, she found the accused holding a blood stained knife and the deceased was found dead with her neck cut. Immediately, P.W.1/Tmt.Sundari, went to the police station and lodged a complaint/ Ex-P.1/P.W.1 setting the criminal law into motion.

14. P.W.10/Tr.Srinivasan, the investigating officer after registering the FIR/Ex-P.11/P.W.10 at 06:15 AM, has gone to the place of occurrence and commenced the investigation. The observation mahazar (Ex-P.12/P.W.10) and

rough-sketch (Ex-P.13/P.W.10) and the seizure of blood stained material from the place of occurrence along with the inquest report (Ex-P.15/P.W.10) would all corroborated and prove the place of occurrence and the cause of death. Thus, the above materials would clearly established the complicity of the accused in killing his wife. The accused would also admit that he stabbed his wife and caused her death during his examination under Section 313(1)(b) CrPC. Thus, the prosecution has prove the death of the deceased is proved as homicidal in nature.

Culpability of the accused for the Charge under Section 302 IPC:

15. During the arguments the Learned counsel for the accused conceded to the guilt of the accused in causing the death of the deceased. However, he confined his arguments to the extent that the act of accused in the facts and circumstances will not amount to murder, but, it will fall under the exemption (1) under Section 300 of IPC, an offence of culpable homicidal not amounting to murder.

16. The Learned Special Public Prosecutor submitted that considering the gruesome manner in which the accused has ventured to kill the deceased by causing multiple cut injuries is a premeditated act and therefore the act of the accused would fall within the definition of murder. It is submitted

that considering the manner of occurrence and the gravity it will not fall within the exceptions provided under Section 300 of IPC. So, it is submitted that murder is proved.

17. Per contra the Learned counsel for the accused submitted that there are no eye witness to prove the motive and under what circumstances the occurrence took place. He submitted that as the occurrence took place inside the house the version given by the accused need to be given equal consideration to understand the gravity of the offence. Further, it is submitted that even as per the prosecution case the wife of the accused was having contacts with her relation namely, one Saravanan, which was frequently warned by the accused. In spite of it the deceased continued to have relationship with the said Saravanan, which acted as a sustained provocation. It is further submitted that on the date of occurrence when the accused called his wife to have intimate relationship, she refused his request and stated that she exposed her intention to sleep with her paramour. This act of the deceased is sufficient to give grave and sudden provocation to the husband and that due to such sudden and sustain provocation the accused lost his self control and committed the act. He submitted that the act of the accused would pass the test of reasonableness. He further submitted that the accused is a best person to explain the circumstances in which he killed his wife in the absence of other materials and the same has to

be taken in to consideration like any other evidence and that it is sufficient to bring the case under Exception (1) of Section 300 IPC, to attract the offence of culpable homicidal and not amounting to murder.

18. The Learned counsel for the accused relied upon the decision reported in **1997 Cr.L.J 3854 (Venkatesan Vs. State)** in support of his contention that the sustained provocation created by the previous act of the victim must be taken into consideration. Further, he cited the decision in **AIR 1953 S.C. 468 (Hate Singh Bhagat Vs. State of Madhya Bharat)**, in support of his contention that the statement of accused under Section 313 Cr.P.C. must be treated like any other piece of evidence and that his version should be accepted if it is reasonable and accords with probabilities. Further, the learned Counsel for accused relied upon the decision reported in **CDJ 2008 MHC 3014 (N.Nagarajan Vs. State) and 1998 SCC (Crl) 929 (State of UP Vs. Lakhmi)** in support of his contentions that fact of this case would attract the Exception (1) under Section 300 of IPC and that the facts of the case would attract the offence of lessor gravity punishable under Section 304(Part-II) IPC.

19. This Court gave careful consideration to the above rival contentions and the evidence place on records. As discussed supra there is no dispute as to the occurrence and the death of the deceased as a result of infliction of injuries by the accused. All that has to be examined by this Court is

whether the offence would fall within the purview of Section 302 or Section 304 Part II IPC.

20. So, the evidence has to be examined whether the nature of the offence would fall within the purview of culpable homicide not amounting to murder or not. In prosecuting the accused for the charge the burden is always upon the prosecution to prove the guilt of the accused beyond reasonable doubt. In this case the prosecution has discharged its burden by proving that accused caused the death of the deceased with the necessary intention to kill her. The nature of injuries found on the deceased would unequivocally prove that the accused has the clear intention that his act will take away the life of the deceased.

21. Section 299 of IPC defines Culpable Homicide and Section 300 of IPC defines Murder. The Exceptions given to Section 300 of IPC provides when culpable homicide does not amount to murder. As the accused has taken a defence under Exception (1) of Section 300 IPC, it is alone extracted below for better understanding and appreciating the case;

Exception 1.—When culpable homicide is not murder.—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.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

22. Then, when the accused takes umbrage under the exceptions provided under Section 300 of IPC, then the burden is upon the accused to prove that his act falls within the exception. Section 105 of Indian Evidence Act read as below:

Sec.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.*

Illustrations

(a)

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

23. Thus, as per Section 105 Evidence Act the Court shall presume absence of such circumstances and the burden of proof is upon the accused to prove the existence of such circumstance that would attract the Exception (1) of Section 300 of IPC. It is a legal provision that standard of proof is not the same as that of the prosecution. While the standard of proof for the prosecution is that of beyond reasonable doubt, the standard of proof for the accused is only that of proof by preponderance of probabilities. Further, it is also not necessary for the

accused to letting oral and documentary evidence to discharge his burden. It is sufficient that he is able to establish his defence through materials produced on the side of the prosecution and on such other facts which are elicited during the cross-examination of the prosecution witnesses.

24. In the back ground of the above legal position, on scrutinizing the case on hand, the accused has not chosen to let-in evidence. He relies upon certain materials produced by prosecution, his confession and his statement made before this Court under Section 313(1)(b) CrPC to prove that his case will fall within the Exception (1) provided under Section 300 of IPC.

25. The defence of the accused is that he was warning his wife (deceased) to correct herself and cut off her contacts with the Tr.Saravanan, but the deceased was continuing to have contact with him, that on the date of occurrence when he approached his wife for having sexual relationship she refused for the same and pushed him away telling that she will sleep only with her paramour Tr.Saravanan, and so, the accused who fell down got enraged and picked up a knife nearby and stabbed the deceased. That being the case, it has to be first of all examined whether there was some reasonable material for the accused to doubt her in fidelity and then the existence of such circumstances that deprived him of his self control.

26. As rightly pointed out on the side of the accused a cue can be taken from the case projected by prosecution itself. As per the prosecution version there was a discord between the accused and his wife (the deceased) regarding her close acquaintance and contacts with the said Tr.Saravanan. In the final report the prosecution has set-out the motive for the occurrence by stating that the deceased was going out with Saravanan in motorcycle and she used to meet Saravanan in her parents house and was continued to have contacts with him inspite of the accused asking her to correct herself and cut of her relationship with the said Saravanan. It is also mentioned that on 25.08.2018 at about 08:00 PM when the accused was at home with the deceased and his kid, the said Saravanan came to the street and the deceased secretly made gesture and waived her hands. So, it is the case of the prosecution that since the deceased was not correcting herself in spite of his warning the accused was premeditated to do away with the deceased and that on 27.08.2018 at about 5:30 A.M. the accused questioned the deceased about her conduct, contact and relationship with the said Saravanan, in which a quarrel took place between them and in such state the accused done her to death by cutting her with knife.

27. Thus, even as per the prosecution case there is material to show that there was sustained provocation due to the previous conduct of the deceased in continuing her contact with Tr.Saravanan in spite of the accused

warning her. However, the witnesses examined on the side of the prosecution didn't support this version. P.W.1/Tmt.Sundari, mother of the deceased who deposed about the accused harassing her daughter had denied that the suggestion that the deceased had contact with Tr.Saravanan. There is no material in the evidence of the mother of the deceased (P.W.1/Tmt.Sundari) to prove such relationship with Tr.Saravanan. May be because P.W.1/Tmt.Sundari being the mother of the deceased she might have refrained to support this version feeling that it may bring disgrace to her deceased daughter.

28. But, the evidence P.W.2/Selvan.Mohana Krishnan, son of the accused and the deceased assumes significance. It is established during cross-examination that he has given earlier statement recorded under Section 161(3) Cr.P.C. regarding the deceased having contacts with Tr.Saravanan and the quarrel that would occur between the accused and deceased in that regard.

29. P.W.2/Selvan.Mohana Krishnan is 12 years old when he is examined before this Court on 04.07.2022. As on the date of occurrence i.e.,27.08.2018, he was 8 years old. He is able to remember what has happened and is able to narrate the incident which he witnessed 4 years ago on the night of occurrence and deposed that he woke up hearing a thumping sound and saw his father stabbing his mother and then his father sprayed mosquito spray on his face and he fainted. It is consistent with his earlier statement under Section

161(3) Cr.P.C. But, he didn't chose to narrate the facts involving his mother and Tr.Saravanan, though it finds place in his earlier statement. He would fail to support the prosecution theory regarding the motive for the crime. He would only state that the accused was come drunken and quarrel with his mother. He did not choose to state in his chief examination why the quarrel would take place or the said conduct of the deceased having contact with Tr.Saravanan. When P.W.2/Selvan.Mohana Krishnan is confronted by bringing to his notice his earlier statement made to the police recorded under Section 161(3) Cr.P.C. as required under Section 145 of Evidence Act, regarding the contact the deceased had with the said Tr.Saravanan, which he would deny the same. In his cross-examination P.W.2/Selvan.Mohana Krishnan has answered as below:

"சரவணன் யார் என்று தெரியாது. என் அம்மா சரவணன் அங்கிள் உடன் பைக்கில் அடிக்கடி வெளியே சென்று வருவார் என்று போலீசார் விசாரணையில் சொல்லியுள்ளேன் என்றால் சரியல்ல.

மேலும் அடிக்கடி சரவணன் அங்கிள் என் ஆயா வீட்டுக்கு வருவார், அங்கு சரவணன் அங்கிள் என்னிடமும் என் அம்மாவிடமும் ஜாலியா பேசுவார் என்று போலீசார் விசாரணையில் சொல்லியுள்ளேன் என்றால் சரியல்ல.

மேலும் அதனால் என் அப்பா என் அம்மாவிடம் ஏன் சரவணன் அங்கிள் உடன் சிரித்து பேசுகிறாய் என்று சண்டை போடுவார் என்று போலீசார் விசாரணையில் சொல்லியுள்ளேன் என்றால் சரியல்ல."

30. The above contradiction made by P.W.2/Selvan.Mohana Krishnan, are proved through P.W.10/Tr.Srinivasan, Investigating Officer. When P.W.10/Tr.Srinivasan was cross examined in this context he would deposed that;

"அ.சா.2 என் விசாரணையின்போது என் அம்மா சரவணன் அங்கிள் உடன் பைக்கில் அடிக்கடி வெளியே சென்று வருவார் என்று சொல்லியுள்ளார்.

மேலும், அடிக்கடி சரவணன் அங்கிள் என் ஆயா வீட்டுக்கு வருவார், அங்கு சரவணன் அங்கிள் என்னிடமும் என் அம்மாவிடமும் ஜாலியா பேசுவார், என்று சொல்லியுள்ளார்.

மேலும் அ.சா.2 என் விசாரணையின்போது, என் அப்பா அம்மாவிடம் ஏன் சரவணன் அங்கிளுடன் சிரித்து பேசுகிறாய் என்று சண்டை போடுவார், என்று என் விசாரணையின்போது சொல்லியுள்ளார் என்றால் சரிதான்."

31. Therefore, it is proved through P.W.10/Tr.Srinivasan, the investigation that P.W.2/Selvan.Mohana Krishnan, son of the deceased has given an earlier statement which reveals that the deceased Tmt.Ammu was having close association with one Tr.Saravanan which was not to the liking of

the accused and he had been quarrelling with the deceased to sever her contact with the said Tr.Saravanan. P.W.2/Selvan.Mohana Krishnan at his tender age has spoken what he has perceived to the investigating officer which is the real motive for the occurrence. But, for reasons best known to him he has conveniently suppressed the same.

32. P.W.1, Tmt.Sundari being the mother of the deceased would have conveniently suppressed this facts because deceased is her daughter. However she would deposed that her daughter would come and complaint that the accused was suspecting her fidelity and quarrelling with her. These facts elicited through the prosecution witnesses would prima facie establish that there was a fire burning between the accused and the deceased regarding her association with one Tr.Saravanan.

33. As referred by the Learned counsel for the accused in the decision reported in *1997 Crl.L.J 3854 (Venkatesan Vs. State)* in support of his contention that the sustained provocation created by the previous act of the victim must be taken into consideration, referring to the land mark decision it is observed;

“27. While interpreting the section, various salient features were taken into consideration for deciding this question by

the Apex Court while dealing with the case in [K. M. Nanavati v. State of Maharashtra](#), the relevant portion reads as follows (para 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 [S. 300, IPC](#).

(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."

34. Applying the above dictum, the mental background created by the victim in causing a sustained provocation when taken into consideration would also prove that there was reasons for the accused to suspect the infidelity of his wife, the deceased.

35. Next material available is the confession statement given by the accused to the investigating officer. In ***Balu v. State [2013 MWN (CR) (1)***

331/, the Hon'ble Division Bench while dealing with the reliability confession statement in favour of the accused has held as below;

“27. As regards the incriminating aspects contained in a Confessional Statement there is total embargo to use it against the Accused (see Section 25, Evidence Act). It cannot be used to record a finding of guilty against the Accused. Such usage will also militate against certain basic postulates of penal law, namely, ‘presumption of innocence of the Accused’ and ‘Rule against self- incrimination’. But, this embargo is only for using the incriminating aspects in a Confessional Statement as against the Accused. There is no embargo or prohibition in using such incriminating part in the Confessional Statement in favour of the Accused. It can be referred to, to find out under what circumstances, the offence has been committed.”

36. Applying the above ruling, on perusing the confession statement given by the accused to the Police Officer it would reveal that the deceased was going in the motor cycle with her relation one Tr.Saravanan and in spite of the warning given by the accused she was having contact with Tr.Saravanan and that the said Saravanan used come to her mother's house and the deceased would go there whenever the Tr.Saravanan comes to her mother's house and that the accused had also warned her not to have such contact with the said Saravanan. This version given by the accused finds corroboration for the earlier

statement given by his son P.W.2/Selvan.Mohana Krishnan. This confession statement of the accused would also prove that there was an issue boiling between the deceased and the accused in respect of the deceased having contact with Tr.Saravanan and there used to be frequent quarrel between them. This would prove that there is material to show that the accused was nurturing or having a sustained provocation due to the misconduct of the deceased.

37. Now, the accused during examination under Section 313(1)(b) Cr.P.C. as well as in his statement of defence filed under Section 313(5) Cr.P.C. has made a statement that is consistent with the above facts regarding the deceased was having contacts with Tr.Saravanan and in spite of his advise and warning she did not mend his ways. This as resulted his frequent discords and quarrel between them. On the fact full night of occurrence the accused has approached the deceased to have sexual relationship with him. She has emphatically denied to cooperate for the same and pushed him away and told him that she will not sleep with him and she would do so only with her paramour (Saravanan). The accused would further state the his wife pushed him and he fell down, then he got up enraged and took a knife and stabbed his wife. But, the fact that he approached his wife for sexual assault and she refused that lead to the occurrence is not stated in the confession statement. But, it is found

that he has stated that a quarrel took place when he asked the deceased about her conduct having contact with Tr.Saravana, which resulted in the occurrence.

38. Though there seems to be inconsistency, as referred by the learned Counsel for the accused to the decision in **1998 Supreme Court Cases (Criminal) 929 (State of U.P. Vs. Lakshmi)**, it is held that mere fact that the accused adopted another alternative defence during his examination under Section 313 of IPC without referring to Exception I of Section 300 of IPC is not enough to deny him of the benefit of the exception, if the Court can cull out materials from evidence pointing to the existence of circumstances leading to the exception. It is further observed that, it is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability. Further in para 8 of the judgment it is held that;

“8. As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the Code does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the court to be apprised of what the indicted person has to say

about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases the accused would offer some explanations to incriminative circumstances. In very rare instances the accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.”

39. Further in ***AIR 1953 SC 468 (Hate Singh Bhagat Singh Vs. State of Madhya Bharat)*** , it is held that the statement of the accused have to be received in evidence and treated as evidence and be duly considered at the trial. It is held further held that;

This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him Nay more. Because of the presumption of

innocence in his favour even when he is not in a position to prove the truth of his story, this version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false. We feel that this fundamental approach has been ignored in this case."

40. Thus, the statement made by the accused under Section 313 Cr.P.C. cannot be altogether ignored and proper weight is to be given to the answers given by the accused. Therefore while considering the answer given to the accused under Section 313(1)(b) Cr.P.C. and his statement of defence there is material to prove that sustained provocation that was nurturing due to the conduct of the deceased having contacts with one Tr.Saravanan, that has busted into a grave and sudden provocation on the date of occurrence when the deceased refused to have sexual relationship and telling to him that she would sleep only with the other man.

41. At this juncture it has to be examined whether the refusal by the deceased to sleep with the accused and telling that she would sleep with her paramour is sufficient to give grave and sudden provocation that deprived the accused of his self control and logical thinking. The test as held in the landmark decision in *K. M. Nanavati v. State of Maharashtra*, the test for "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.

42. In the decision referred on the side of the accused in **1998 Supreme Court Case (Criminal) 929 (State of U.P. Vs. Lakshmi)** where the accused has killed his wife on seeing something lascivious between her and another person when he returned home from the field, it was held to be an instance that is covered under exemption (1) of 300 IPC and thereby the accused was convicted under Section 304(1) IPC.

43. In **CDJ 2008 MHC 3014 (Nagarajan Vs. State)**, referred on the side of the accused, the Hon'ble Division Bench of the High Court of Madras has held that, whether there was frequent quarrel between the accused and the deceased as the accused suspected her fidelity and the deceased continued to indulge in the activities of the illicit intimacy with another person and even prior to a week to the occurrence she was found along with one K coming along with bicycle and added to all these factors, just prior to the occurrence there was a wordly quarrel between the accused and the deceased which lasted nearly for an hours and as such it is quite possible for the accused to lose his self control due to grave and sudden provocation for committing the offence. Therefore it is held that the accused is entitled to invoke the benefit of Exception-1 of Section 300 IPC.

44. In another case rendered by the Hon'ble High Court of Madras in **1997 Crl.L.J 3854 (Venkatesan Vs. State)** is a core where on the fateful occurrence date when the accused returned home at finishing his work at 11.00 P.M. the deceased was not found in the house and the house was found open, after short while the deceased came from a neighbouring house, when the accused asked her as to where she has gone in the night, she replied "I would go anywhere and come back at anytime, who are you to question me?", so saying she went inside the house and took bed in a mat. Then the accused in that case got up and then took out a stone found near the house and threw it on her head and done her on death. In the case of such facts and circumstances the Hon'ble Division Bench has held that the fact and circumstances definitely attract Exception-1 of Section 300 IPC, and thereby held him liable to be convicted under Section 304 Part-II IPC.

45. In **Sankarlal alias Sankarayee v. State , 1989 LW (Crl.) 468**, the Hon'ble Division Bench of the Madras High Court has held that the term 'self control' in Section 300, I.P.C is a subjective phenomenon and it can be inferred from the surrounding circumstances of a given case. So, in order to find out whether the last act of provocation upon which the offender caused the death was sufficiently grave as to deprive him of the power of self control, the Court has to take into consideration the previous act of provocation caused by the

deceased person. This principle of sustained provocation has been considered in various decision following the observations of the Hon'ble Supreme Court in K.M Nanvati v. State of Maharashtra.

46. Therefore applying the above dictum to the facts and circumstances of the case on hand, there was a burning issue between the accused and the deceased regarding the deceased having contact with one Tr.Saravanan. In spite of the accused repeatedly warning her she continued to have the contact. Even two days prior to the occurrence the said Tr.Saravanan has come to the street in which the accused is residing with the deceased. On seeing him the deceased has made gesture with her hands and the accused was made to believe that in spite of his warning the deceased was not mending herself and continued to have contact with the said Tr.Saravanan. So, 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.

47. As far as the instant case is concerned, as already pointed out, regarding the sequence of events took place prior to the actual commission of the offence by the accused which culminated into the accused doing away with the deceased is tell - tale of the grave and sudden provocation. Therefore, in view of the above said reason and in view of the settled principle of law laid

down in the various decisions cited above, this Court has no hesitation to hold that the accused has stabbed the deceased on account of the grave and sudden provocation caused by the deceased by pushing him down and refused to co-operate for having sexual intercourse and asserting that she will do so only with the other man which resulted in the quarrel due to which, the accused who was already nurturing sustained provocation, is sufficient to give grave and sudden provocation, that would pass the test of reasonable man. There is no contra evidence on the side of the prosecution to dislodge the defence put forth by the accused. Hence this Court hold that the accused is entitled to the Exception-1 to Section 300, I.P.C. Therefore, the prosecution has failed to prove the charge under Section 302 IPC, instead, the materials on records would go to prove an offence of culpable homicide not amounting to murder punishable under Section 304 Part-I of IPC.

Culpability of the accused for the Charge under Section 498A IPC:

48. The only evidence available to prove the charge under Section 498A of IPC is that of P.W.1/Tmt.Sundari, mother of the deceased. Except for the ipse dixi evidence of P.W1/Tmt.Sundari, there is no reliable evidence to prove that the accused treated the deceased with cruelty that would fall within the definition of Cruelty given in the Explanations (a) and (b) under Section 498A IPC, which reads as below;

Explanation: For the purposes of this section, "cruelty" means

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

49. There is no material in the evidence of P.W.1/Tmt.Sundari or the evidence of P.W.2/Selvan.Mohana Krishnan, to prove the requirement to attract cruelty under Section 498A IPC. Hence, the prosecution has failed to prove the charge under Section 498A IPC.

50. **Conclusion:** In view of the foregoing discussion it is concluded that the prosecution has failed to prove the charges under Section 498A and 302 IPC. Instead, the prosecution has proved that a lesser offence of culpable homicide not amounting to murder punishable under Section 304 Part-I of IPC is committed by the accused. Therefore, the point for determination is answered accordingly.

51. **Result:** In the result, the accused is found not guilty for the offences under Sections 498A and 302 IPC, and the accused is found guilty and convicted for the offence under Section 304 Part-I of IPC.

52. For hearing the accused under Section 235(2) Cr.P.C. on the question of sentence and passing sentence as per Section 354(3) Cr.P.C., the case stands passed over to 3:30 P.M. today 15.02.2023. Call at 3:30 P.M.

//Directly typed to my dictation in Computer, printed out, corrected and then pronounced by me in the open Court, on this the 15th day of February, 2023/

Sd/- T.H.Mohammed Farooq,
Sessions Judge,
Mahalir Neethimandram,
Chennai.

S.C. No.03/2020

DATED: 15.02.2023

Examination u/s 235(2) Cr.P.C. Date: 15.02.2023 at 3.30 P.M.

53. Accused present. The accused was found guilty and convicted under Section 304(Part I) I.P.C. viz. judgment dated 15.02.2023. Accused is examined under Section 235(2) Cr.P.C. regarding the question of sentence. The accused pleaded as below;

தண்டனை குறைத்து தரவேண்டும். என் அப்பா அம்மா வயதானவர்கள். அவர்களை பார்க்க யாரும் இல்லை.

54. Recorded the plea of the accused. Heard both sides on the question of sentence. Passover for orders on sentence. Call at 04.30 PM today 15.02.2023.

Pronounced by me in open Court on this 15th day of February, 2023.

Sd/- T.H.Mohammed Farooq,
Sessions Judge,
Mahalir Neethimandram,
Chennai.

ORDER OF SENTENCE IN S.C. No.03/2020 DATED: 15.02.2023 04:30**P.M.**

55. Heard both sides on the question of sentence and considered the plea of the accused. The learned Special Public Prosecution submitted that considering the heinous nature of the crime committed by the accused in killing his wife he may be given deterrent punishment. The learned Counsel for accused submitted that this case will not fall in the category of rarest of rare case and considering the circumstances in which the offence is committed and the age, social background, antecedents and the possibility of reformation, submitted that lenient view may be taken.

56. Upon considering the contentions and the plea of the accused and the facts and circumstances of this case, the occurrence has taken place in a quarrel with the wife of the accused suspecting her infidelity. He may remorse for his ghastly act and the probability of reformation are the mitigating circumstances. Further, the offence does not fall in the case of rarest of rare case to invoke severe punishment. It has occurred in a heat of grave and sudden provocation. Hence, considering all the relevant fact and circumstance, the accused is accordingly convicted and sentenced as below;

- (i) the accused is convicted under Section 304(Part I) IPC and sentenced to undergo RIGOROUS IMPRISONMENT FOR TEN YEARS and to pay a fine of ₹5000/-, in default to undergo simple imprisonment for SIX MONTHS;
- (ii) the period already undergone by the accused from 27.08.2018 to 26.11.2018 shall be set-off under Section 428 Cr.P.C.

Order under Section 452 Cr.P.C.:

57. The case properties in P.M.O.1 to P.M.O.11 are ordered to be destroyed after the expiry of appeal time, if there be any appeal, after the disposal of appeal.

Compensation Order U/s 357 or 357A Cr.P.C.: -

58. Perused the oral and documentary evidence and examined the facts and circumstance. The evidence of P.W.2/Selvan.Mohana Krishnan is the son of the deceased Tmt.Ammu. He is a boy aged 8 years at the time of occurrence. He is a dependent on his parents. Due to the offence committed P.W.2 has lost his mother. Further lost the love, care and affection from deceased. He has suffered mental loss and injury. His father being the offender he is found guilt and sentence in this case. So, it is evident that

P.W.2/Selvan.Mohana Krishnan has suffered loss and injury and he is in need of rehabilitation. It is the duty and responsibility of the state to restitute him. Hence, considering the loss and suffering, this Court finds that this is a fit case to award compensation.

59. The accused convicted in this case is a collie and not having sufficient means. So, to meet the ends of justice, this Court is inclined to make recommendation for adequate compensation under Section 357A(3) CrPC, to the District Legal Service Authority, City Civil Court, Chennai, to conduct enquiry and award suitable compensation to P.W.2/Selvan.Mohana Krishnan, son of the deceased Tmt.Ammu.

60. In fine, recommendation is made under Section 357A(3) Cr.P.C. to the District Legal Services Authority, City Civil Court, Chennai, to award adequate compensation to P.W.2/Selvan.Mohana Krishnan, son of the deceased, after due enquiry U/s 357A(1) Cr.P.C, out of The Tamil Nadu Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018.

61. The Copy of this Judgment is ordered to be sent to the District Legal Services Authority, City Civil Court, Chennai for necessary enquiry and awarding compensation under Section 357(A)(1) CrPC out of The Tamil Nadu

Victim Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018.

//Directly typed to my dictation in Computer, printed out, corrected and then pronounced by me in the open Court, on this the 15th day of February, 2023//

Sd/- T.H.Mohammed Farooq,
Sessions Judge,
Mahalir Neethimandram,
Chennai.

Annexure:

List of Witnesses examined:

On the side of the prosecution:-

P.W.1	::	Tmt.Sundari (Mother of the deceased)
P.W.2	::	Selvan. Mohana Krishnan (Son of the deceased)
P.W.3	::	Tr.Ramkumar
P.W.4	::	Tr.Imanuvel
P.W.5	::	Tr.Sathish
P.W.6	::	Tr.Sivanesan (Police head constable)
P.W.7	::	Tr.Gopal (Police head constable)
P.W.8	::	Tr.Rakesh (Grade-I police constable)
P.W.9	::	Dr.Manikandaraj (Post-mortem doctor)
P.W.10	::	Tr.Srinivasan (Investigating Officer)
P.W.11	::	Tr.Dr.Harikaran

P.W.12	::	Tr.Vinayagam (Inspector of Police)
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On the side of the accused : Nil

List of Exhibits Marked:

On the side of the prosecution :

Exhibit No.	Date	Particulars
Ex-P.1/P.W.1	27.08.2018	Complaint given by P.W.1
Ex-P.2/P.W.4	27.08.2018	P.W.4's signature in the observation mahazar
Ex-P.3/P.W.4	27.08.2018	P.W.4's signature in the Seizure mahazar
Ex-P.4/P.W.4	27.08.2018	P.W.4's signature in the Seizure mahazar
Ex-P.5/P.W.5	27.08.2018	P.W.5's signature in the confession statement given by the accused
Ex-P.6/P.W.5	27.08.2018	P.W.5's signature in the seizure mahazar
Ex-P.7/P.W.6	27.08.2018	Form-95 ((2) Red colour with black and white colour flowered nightie-1 (2) Rose colour inskirt-1 (3) Sandal colour bra-1)
Ex-P.8/P.W.9	19.09.2018	Toxicological Report (TOX.H.No.2460/2018)
Ex-P.9/P.W.9	27.08.2018	Post-mortem Report (PM No.1857/2018)
Ex-P.10/P.W.9	22.05.2019	Serology Report (SER'C'/152/2018)
Ex-P.11/P.W.10	27.08.2018	First Information Report (C 8727715)
Ex-P.12/P.W.10	27.08.2018	Observation mahazar
Ex-P.13/P.W.10	27.08.2018	Rough sketch

Ex-P.14/P.W.10	27.08.2018	Seizure mahazar ((1) Blood stained red colour with white colour flowered bed sheet-1 (2) Blood stained white colour pillow cover-1 (3) Blood stained pillow -1)
Ex-P.15/P.W.10	27.08.2018	Inquest Report
Ex-P.16/P.W.10	27.08.2018	Seizure mahazar ((1) Blood stained red and sandal colour T-Shirt-1 (2) Blood stained white colour dhoti-1)
Ex-P.17/P.W.10	27.08.2018	Admissible portion of the confession statement given by the accused
Ex-P.18/P.W.10	27.08.2018	Seizure mahazar ((1) Blood stained knife with black colour handle-1, (2) Blood stained violet colour half hand shirt-1 (3) Blood stained white colour dhoti-1)
Ex-P.19/P.W.10	27.08.2018	Form-95 ((1) Blood stained knife with black colour handle-1, (2) Blood stained violet colour half hand shirt-1 (3) Blood stained white colour dhoti-1)
Ex-P.20/P.W.10	27.08.2018	Form-95 ((1) Blood stained red colour with white colour flowered bed sheet-1 (2) Blood stained white colour pillow cover-1 (3) Blood stained pillow-1)
Ex-P.21/P.W.10	27.08.2018	Form-95 ((1) Blood stained red and sandal colour T-Shirt-1 (2) Blood stained white colour dhoti-1)

Ex-P.22/P.W.11	27.08.2018	OP Case Sheet (Chennai National Hospital)
Ex-P.23/P.W.12	22.05.2019	Serology Report (SER'C'/152/2018)
Ex-P.24/P.W.12	24.01.2019	Biological Report (BIOL 529/2018)
Ex-P.25/P.W.12	22.05.2019	Serology Report (SER/55/2019)

On the side of accused: Nil

List of Material Objects Marked:

On the side of Prosecution:

Exhibit No.	Particulars
P.M.O.1	Blood stained knife with black colour handle-1,
P.M.O.2	Blood stained red colour with white colour flowered bed sheet-1
P.M.O.3	Blood stained Pillow-1
P.M.O.4	Blood stained flowered white colour Pillow cover-1
P.M.O.5	Blood stained Red colour with black and white colour flowered nightie-1
P.M.O.6	Blood stained Rose colour inskirt-1
P.M.O.7	Blood stained Sandal colour bra-1
P.M.O.8	Blood stained Red and sandal colour T-Shirt-1
P.M.O.9	Blood stained white colour dhoti-1

P.M.O.10	Blood stained violet colour half hand shirt-1
P.M.O.11	Blood stained white colour dhoti

On the side of the Accused: Nil

Sd/- T.H.Mohammed Farooq,
Sessions Judge,
Mahalir Neethimandram,
Chennai.

// E-COURT WEB COPY //

Sessions Judge,
Mahalir Neethimandram,
Chennai.