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RT.No.1/2022 & Crl.A.No.532 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.11.2025

Delivered on: 27.11.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

Referred Trial No.1 of 2022

&

Crl.A.No.532 of 2022

and Crl.M.P.No.20702 of 2025

Referred Trial No.1 of 2022

The State rep by
Inspector of Police,
Attur Police Station,
Crime No.547/2018

... Complainant

vs.

Dineshkumar

... Accused

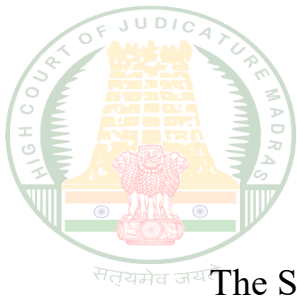
Prayer in R.T.No.1 of 2022 : Referred Trial under Section 366 CrPC on the judgment of the Trial Court dated 26.04.2022 made in Old Spl.S.C.No.1 of 2019 / New Spl.S.C.No.204/2019 on the file of the Principal POCSO Court, Salem in Crime No.547 of 2018.

Crl.A.No.532 of 2022

Dinesh Kumar

... Appellant / Accused

Vs



RT.No.1/2022 & Crl.A.No.532 of 2022

The State, represented by
Inspector of Police,
Attur Town Police Station, Salem District.
(Crime No.547 of 2018) ... Respondent / Complainant.

Prayer in Crl.A.No.532 of 2022 : Criminal Appeal preferred under Section 374(2) CrPC against the judgment of conviction and sentence imposed in Spl.S.C.No.204 of 2019 dated 26.04.2022 on the file of the Special Court under POCSO Act, 2012, Salem to secure the ends of justice.

For Petitioner / Appellant

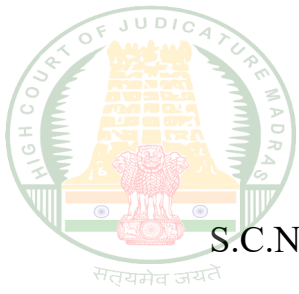
Petitioner in RT
and Respondent in Crl.A. : Mr.Hasan Mohmed Jinnah
State Public Prosecutor
assisted by
Mr.A.Damodaran,
Additional Public Prosecutor and
Mr.S.Santhosh, Government Advocate and
Ms.M.Sumai Arnica and
Ms.S.Arun Pandi

Respondent in RT
and Appellant in Crl.A. : Mr.R.Sankarasubbu

COMMON JUDGMENT

M.JOTHIRAMAN, J.

Referred Trial in R.T.No.1/2022 has been filed under Section 366 CrPC on the judgment of the Trial Court dated 26.04.2022 in Special



RT.No.1/2022 & CrI.A.No.532 of 2022

S.C.No.204/2019 (Old Special S.C.No.1/2019) on the file of the Special

WEB COURT for exclusive trial of cases under Protection of Children from Sexual

Offences Act, 2012 [in short “POCSO Act”], Salem. CrI.A.No.532 of 2022

has been filed by the accused under Section 374 CrPC against the very same

judgment and conviction in and by which the accused / appellant was

convicted and sentenced as under:

<i>Sl. No.</i>	<i>Charged Under Section</i>	<i>Convicted under Section</i>	<i>Sentenced under Section</i>
1	12 r/w. 11(iv) of the POCSO Act, 2012	12 r/w. 11(iv) of the POCSO Act, 2012	3 years rigorous imprisonment with a fine of Rs.10,000/- in default to undergo 3 months simple imprisonment.
2	450, 294(b) Indian Penal Code [in short "IPC"]	450 IPC 294 (b) IPC	10 years rigorous imprisonment with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment 3 months rigorous imprisonment with a fine of Rs.1,000/- in default to undergo one months simple imprisonment.
3	302 IPC	302 IPC	Death Sentence with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment.



Sl. No.	Charged Under Section	Convicted under Section	Sentenced under Section
4	302 IPC r/w. 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 [In short SC/ST (POA) Act, 2015]	302 IPC r/w. 3(2)(v) of SC & ST (POA) Act	Life Imprisonment with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment
5	3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Act, 2015	3(1)(r), 3(1)(s) of SC & ST (POA) Act, 2015	Acquitted

The death sentence awarded to Dineshkumar / Sole accused in Spl.S.C.No.204 of 2019 by the learned Special Court for Trial of Cases under the POCSO Act, dated 26.04.2022 is now before us for confirmation under Section 366 CrPC. The Accused Dineshkumar has also filed Crl.A.No.532 of 2022, challenging the very same judgment of conviction and sentence.

2. The case of the prosecution as culled out from the materials is as follows:

2.1. This is a case of murder of a minor female child aged about 12



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years. PW1-Chinnaponnu and PW4-Swamivel are the parents of the minor deceased child [hereinafter referred as “XXX”]. PW5-Sathgurunathan and PW19-Tmt.Aruljothi are also the children of PW1 and PW4. PW4 and PW5 are running own Tata Ace vehicle. PW1 and PW4 have agricultural lands of 80 cents. PW19, Aruljothi – elder daughter of PW1 was married and she is residing and living at A.Karadipatti. Younger daughter / XXX was studying 8th standard in Panchayat Union Middle School at Thalavaipatti. They belong to Scheduled Caste community. The accused is working as a Driver in paddy harvester and residing in neighbourhood. He belongs to Mudaliyar community.

2.2. The accused has come to his home during the festival of Ayudha Pooja. The accused family and PW1's family are known to them for generations. Before the occurrence on Friday (19.10.2018), the wife of the accused, namely Saradha / DW1 had informed XXX that the Jasmine Flowers in her house are decaying and told PW1 to ask XXX to pluck those flowers. So, the younger daughter XXX on the same day at about 6.00 p.m. went to the house of the accused to pluck jasmine flowers and at that time,

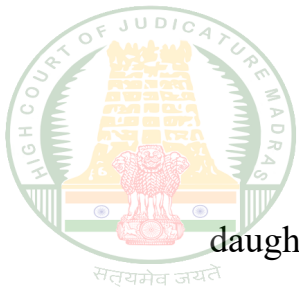


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the accused grabbed her hands, pulled her skirt, abused in filthy language and also asked her to have sexual intercourse with disgusting words.

2.3. The said incident was informed by XXX to her mother/PW1. Similarly on the next day (20.10.2018) also, XXX went to the house of the accused to pluck flowers. The accused grabbed the hands of XXX and abused with unparliamentary words. Since the accused family was known to them from ancestral times and the same should not be disclosed to anyone, PW1 informed to XXX to keep it confidential and also instructed XXX not to go to the house of the accused. Similarly, on 20.10.2018 also the accused called XXX and abused with unparliamentary words and the same was again informed by XXX to PW1 and PW1 informed XXX that she should not go to the accused house. Thereafter, XXX stopped to visit the house of the accused.

2.4. On 22.10.2018 at 5.00 p.m., the wife of the accused DW1/Saradha had come to the house of PW1 and questioned PW1 that PW1 and her



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daughter XXX used to come her garden to pluck flowers daily and why you both have not come to pluck flowers today. Therefore, PW1 and XXX went to the backyard of the house of the accused at 5.30 p.m to pluck flowers. After plucking the flowers, PW1 and XXX have returned home. Thereafter XXX went to the house of the accused again by informing PW1 to get thread to tie the flowers from DW1. DW1 was not there. The accused alone was in the house. The accused asked XXX as to why she had come, for which XXX replied that she has come to get thread from DW1/wife of the accused. The accused replied in explicit language by stating that if you come to share the bed with him, he would give thread to him. Upon hearing the same, XXX ran to PW1's house by crying.

2.5. PW1 asked XXX several times as to the reason for crying. XXX did not say anything. Thereafter, XXX narrated the same to PW1. PW1 pacified XXX and informed her that since we are female alone in home now, we will wait till PW4 / father and PW5 / brother arrive and then we will ask about the incident with the accused and consoled XXX. PW1 also stated that since they belong to Scheduled Caste community, advised XXX not to



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go to the house of the accused. When PW1 and XXX were tying flowers at their home, PW1 gave flowers to XXX, and XXX tying the same. Front entrance was facing South. XXX was sitting towards North. PW1 was sitting towards east at 7.30 p.m. The accused came to the house of PW1 with M.O.1 - Billhook and PW1 questioned as to why the accused has come here since we are female alone in the home. The accused scolded PW1 in filthy language, pushed her with his hands by using M.O.1 – Billhook and the accused inflicted a cut on the backside neck of XXX. PW1 questioned the accused saying why you are cutting my daughter / deceased. While so, the accused dragged XXX, took her in front of PW1's house and severed XXX head separately from her body. PW1 shouted with hue and cry. Upon hearing the same, PW2 and PW3 rushed to the place and at that time, the accused was holding the head of XXX and M.O.1 and proceeded towards his house on the eastern side.

2.6. Upon seeing the same, PWs.2 and 3 were shocked. The head part of XXX was dropped by the accused at Thalavaipatti-Eachampatti road on the eastern side and fled away from the place of occurrence with M.O.1 on the



northern side. People gathered in front of PW1's house. PW1 narrated the occurrence to PW2. PW2 informed PW4 / XXX's father and PW5 / XXX's brother over phone. PWs.4 and 5 arrived to the place subsequently within half an hour. PW1 narrated the same to PW4. They went to Attur Town Police Station and before that, based on oral instructions, a complaint was typed in a nearby shop where PW1 affixed her thumb impression and lodged the complaint – Ex.P1 before PW16.

2.7. PW2- Lakshmanan is the brother of PW4. On 22.10.2018 at about 7.30 p.m., while he was playing with his grandchildren, he heard the hue and cry of PW1 that her daughter was attacked by accused and there was no one to save her. He informed his wife PW3 as to why PW1 is shouting, asked her to go and see and finally PWs.2 and 3 ran to the occurrence place. When they reached PW1's house, the accused after chopping the head of the deceased, held the same in his left hand, holding M.O.1 in his right hand and left the place. Immediately, PW2 rushed towards the accused. The accused gave threat to PW2 that if he comes close, he would also kill him. PW2 took a stone and said that “how dare are you to threaten me” and while so, the accused dropped the head of the deceased in the road and fled away in the

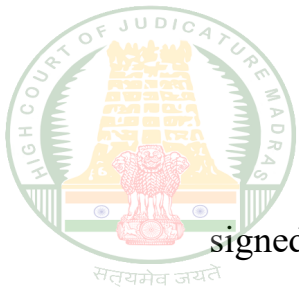


northern side.

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2.8. When PW2 enquired PW1 on the incident. PW1 narrated the entire occurrence. PW3 – Palaniammal is the wife of PW2. PW3 also seen the occurrence along with her husband / PW2, when the accused was chopping the head of XXX.

2.9. PW4 – Swamivel, father of XXX states that on 22.10.2018, PW4 and his son PW5 went to Narasinghapuram to run an hired TATA Ace vehicle at 11.a.m. In the evening, around 7.45 p.m., he received intimation about the occurrence from his brother PW2 over phone. PW2 informed him that the accused has chopped the head of XXX. Immediately, PWs.4 and 5 rushed to their house at about 8.15 p.m.. PWs.4 and 5 saw that XXX head was found at Thalavaipatti – Eachampatti Tar road and the body of XXX was found in front of their house. PW1 narrated the entire occurrence to PWs.4 and 5. PW4, PW1 and PW5 went to the police station and upon instructions given by PW1, the complaint was prepared, in which PW5



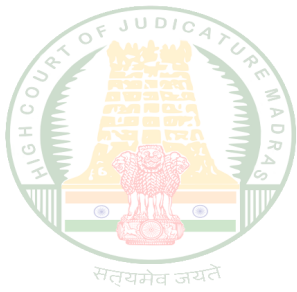
signed as a witness.

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2.10. PW5-Satgurunathan, is the son of PWs.1 and 4. He had also reiterated the very same version of PW4. PW5 signed as a witness in Ex.P1-Complaint and his signature is Ex.P4. Upon instructions given by his mother / PW1, the complaint was prepared, PW5 read over the same to his mother / PW1 and thereafter, PW1 affixed her thumb impression, in which PW5 signed as witness.

2.11. PW6-Tmt.Ilavarasi is the relative of PW1 and she is residing 150 feet away from the house of PW1. On 22.10.2018 at 7.30 p.m., she heard the crying noise of PW1. PW6 is the daughter-in-law of PWs.2 and 3. She has also repeated the very same version of PWs.2 and 3.

2.12. PW7- Hariharasudan is the niece of PW4. On 22.10.2018 around 7.30 p.m., he heard the voice of PW1 to shouting as to anyone there to save her child. He rushed to the scene of occurrence and saw that XXX's body alone was found in front of PW1's house.



WEB COPY 2.13. PW8- Rajaram is a coolie worker residing in Thalavaipatti village, deposed that he knows the deceased. On 22.10.2018 at 6.00 p.m., when he returned back to his house from Seeliyampatti after attending his sister's family marriage, he saw that XXX was running from the house of the accused and the accused also chased XXX. PW8 asked XXX as to why she was running for which she told that the accused was chasing her and also questioned the accused as to why he was chasing XXX, for which the accused scolded PW8 to shut up and go. Thereafter, PW8 went to his house. After two hours, he came to know that the accused had chopped the head of XXX. When PW8 went to the house of PW1 and the body was found in front of PW1's house and the head was found in Thalavaipatti-Eachampatti Tar road.

2.14. PW9-Thadhan deposed that on 22.10.2018, when he was returning back to his house after attending a marriage function in Seelampatti at about 7.30 p.m. while returning home on his TVS 50 motorcycle, he saw that accused coming out from XXX's house, holding the head of XXX in one

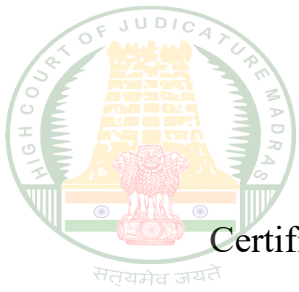


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hand and holding M.O.1 in another hand and the head of XXX was dropped at Thalavaipatti-Eachampatti northern side. He saw them through street light and also through the two wheeler headlight.

2.15. PW10- Nallavar is the Village Administrative Officer. On 22.10.2018, he came to know about the occurrence by 8.00 p.m. and went to PW1's house along with Marimuthu – Village Assistant at about 9.00 p.m. Thereafter, police has visited the occurrence place. On 22.10.2018, PW22 - Deputy Superintendent of Police, visited the occurrence place and prepared Exs.P8 to P12 on 23.10.2018, which was signed by PW10 and Village Assistant as witnesses.

2.16. PW11- Prakash is the Tahsildar who issued the Community Certificate to XXX in Ex.P14, for PW1 in Ex.P15 and for the accused in Ex.P16. PW12- Tmt.Dhanalakshmi is the Headmistress of Panchayat Union Middle School, Thalavaipatti, who states that XXX was studying 8th standard in her school and as per school records, the date of birth of XXX is 20.01.2006 in Admission No.2476 and she has issued the Qualification



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Certificate under Ex.P17 and also issued copy of the Attendance Sheet

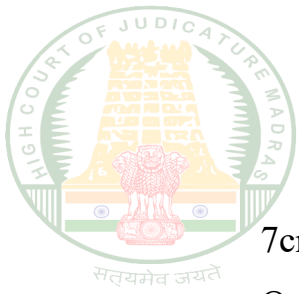
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2.17. PW13, M.Muthuraman, Headmaster of Government Higher Secondary School states that the accused studied in his school and as per the records, the Date of Birth of the accused was 11.06.1993 and he studied 12th standard during the year 2009-2010 and he has issued Qualification Certificate for the accused under Ex.P19.

2.18. PW14- Murugesan, Scientific Officer states that he has received a requisition letter from the Court under Ex.P20 on 09.11.2018 and after examining the material objects, he has issued the Forensic Report under Ex.P21 and also sent intimation to the Court under Ex.P22.

2.19. PW15 – Dr.R.Sangeetha, based on the requisition issued by the police inspector under Ex.P26, conducted autopsy on 23.10.2008 at 2.30 p.m. and found the following external injuries:

1. Cut injury behind the Right Ear M-2.5 x 0.5 x 1 CMS
2. Chop Wound over right shoulder M-9cm x 7 cms x Bonedeeep O/D
Cut Fracture of Head of Right Humerus M-8 Cms Long.
3. Cut injury over right side parieto occipital region of the scalp M.

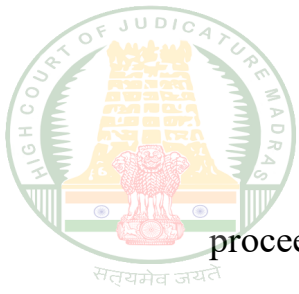


7cms x 1 cm x 0.5 cms o/d. Cut Fracture of underlying Parieto Occipital Bone M-6 CMS Long.

4. Decapitation injury over the neck above the level of thyroid cartilage 6 cms below the both Mastoid process, posteriorly at the junction of C3, C4 Cervical Vertebrae with no marginal abrasion and contusion with severance of underlying neuro vascular bundle and cervical vertebrae hyoid bone was attached with the head portion and was intact. Head aligns with torso in colour and contour.

PW15 issued the Postmortem Report under Ex.P28 and she has also received the Viscera Report under Ex.P27. She has also issued the final opinion under Ex.P29 opining that the deceased appear to have died due to Decapitation.

2.20. PW16- Kesavan is the Inspector of Police attached to Kariyapatti Police Station. On 22.10.2018 at about 10.30 a.m., PW1 has lodged a complaint and after receiving the same, he registered a case in Crime No.547 of 2018 under Sections 294(b), 302 IPC and Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. Ex.P30 is the F.I.R. PW16 sent the F.I.R to the Court and placed the same for further investigation to the Deputy Superintendent of Police [DSP], Attur. On 23.10.2008, as per the



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proceedings issued by DSP, Attur through Ex.P31. PW16 conducted inquest of the body of XXX in the presence of Panchayatdhars and issued the Inquest Report - Ex.P32 and also examined other witnesses.

2.21. PW17- R.Saravanan, then Inspector of Police attached to Attur Police Station, on 23.10.2018, upon receiving the proceedings in Ex.P33 from DSP, Attur, went to the scene of occurrence, conducted inquest over the head of XXX in the presence of Panchayatdars and issued Inquest Report – Ex.P34, examined the inquest witnesses and recorded their statements sand submitted the same to DSP - PW22.

2.22. PW18 – Selvaraj is the Head Constable attached to Attur Town Police Station. On 23.10.2018 at 6.00 a.m., he went to the scene of occurrence, took the head of XXX from Thalavaipatti-Eachampatti Tar Road and attached the same to the body of XXX, as per the instructions of PW22- DSP, Attur,

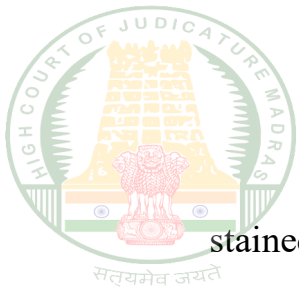
2.23. PW22- R.Ponkarthickumar, the then Deputy Superintendent of



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Police, Attur, on 22.10.2018, he was instructed to conduct investigation in Crime No.547 / 2018 under Ex.P35. He went to the scene of occurrence around night 12.00 a.m. and he issued the proceedings to conduct inquest over the body and head of XXX to Exs.P16 and Exs.P17 under Exs.P32 and P34 respectively. PW22 visited the scene of occurrence, examined the body of XXX and prepared Rough Sketch -Ex.P36 and Observation Mahazar under -Ex.P7 in the presence of PW10 and his Assistant. PW22 again visited the scene of occurrence where the head of XXX was found and prepared Rough Sketch -Ex.P37 and Observation Mahazar under -Ex.P8 in the presence of PW10 and his Assistant.

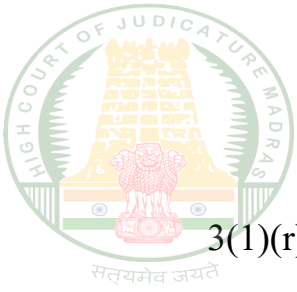
2.24. In continuation of investigation, on 23.10.2018 at 6.00 a.m. he conducted inquest over the body of XXX and prepared Inquest Report Ex.P38. He inquired the witnesses and also collected Blood Stained Cement slab – M.O.4 and plain cement slab – M.O.5 under Mahazar Ex.P9. He also recovered blood stained sand – M.O.6 and plain sand- M.O.7 under Mahazar Ex.P10. He has also went to the place of occurrence where the head was dropped and collected blood stained gravel stones – M.O.8 and non-blood



stained gravel stones – M.O.9 under Mahazar-Ex.P11. In continuation of investigation, PW22, on 23.10.2018 at 3.00 p.m., has issued a requisition to conduct autopsy through PW18-Selvaraj.

2.25. On 24.10.2018, PW22 arrested the accused in the presence of PW10 /VAO and Village assistant – Marimuthu at 3.00 p.m in Thalavaipatti Bustop in Salem to Chennai By Pass Road. The accused gave voluntary confession statement and the same was recorded. The admitted portion of the confession statement is Ex.P12. Pursuant to his confession statement, the accused handed over M.O.1 and also identified the place where he dropped the head of XXX. M.O.1 recovered under Mahazar Exs.P13. Thereafter, he has subjected the accused for judicial custody and also sent the case properties under Form 91 under Exs.P41 to 45 to the court.

2.26. On 25.10.2018, he examined PW8 and PW9 and recorded their statements. Upon examination, he came to know that XXX was aged less than 14 years and therefore, altered the FIR and the sections were altered to



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3(1)(r) and 3(1)(s), 3(2)(va) of SC/ST(POA) Amendment Act, 2016 and

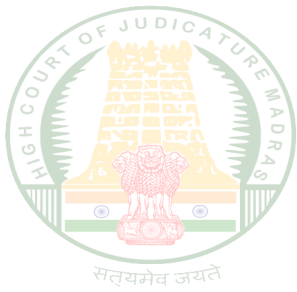
Sections 11(I) & 12 of POCSO Act and Sections 294(b) and 302 IPC. The Alteration Report is Ex.P46. He has also requested PW11 to issue the Community Certificate to XXX, PW1 and the accused and also sent requisition to ascertain the age of the accused to PW12-Headmaster of Panchayat Union Middle School, Thavaipatti.

2.27. After receiving reports from the Forensic Department and examination of witnesses, PW22 had laid the charge sheet / final report. After taking cognizance by the Special Court for exclusive trial of cases under POCSO Act, the following charges were framed against the accused:

“The first charge - Section 12 of the Protection of Children from Sexual Offences Act, 2012 against the accused.

In this case, the complainant and witness Chinnapponnu, wife of Samuvel, who lives with her family at No. 451, Theku Kattu Kottai, Sundarapuram, Thalavaipatti Village, Salem District. Her husband Samuvel and son are engaged in their own business, operating a TATA ACE vehicle. They have married their elder daughter, Aruljyothi. The deceased, Rajalakshmi, was her younger daughter. Rajalakshmi had studied up to the 8th standard at Thalavaipatti Panchayat Union Middle School. Rajalakshmi belongs to the Adi Dravidar caste.

You, Dineshkumar, the accused of this case, live in Theku Kattu Kottai, Sundarapuram, Thalavaipatti Village, P.N. Paanayam ward, Salem District. You are a Hindu Mudaliar.



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You are working as a driver in water harvesting cements. You often travel to other states and districts for work, returning home once a month or once every 15 days.

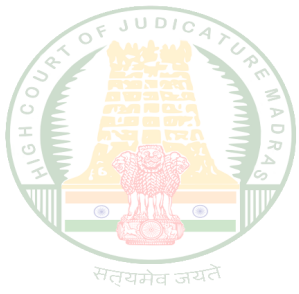
You, the accused, are married to Saratha and have a 2-year-old son. Your home is located opposite to the witness Chinnaponnu's home. Since Witness Chinnaponnu and his daughter Rajalakshmi are your neighbours, they come to your home to pluck flowers. Rajalakshmi and your wife, Saratha, are close friends. Whenever you see Rajalakshmi, you will always have the intention of sexually harassing her.

In this situation, on 19.10.2018 at 6.00 pm, while you were at your house, Rajalakshmi came to your home to pluck flowers. You, the accused, when you saw Rajalakshmi, spoke to her with the intention of sexually harassing her and causing her harm. Knowing your intention, the complainant Chinnaponnu and his daughter Rajalakshmi have stopped coming to your home. In this situation, on 22.10.2018 at 5.00 pm, your wife Saratha came to Chinnaponnu's house and asked, "You and your daughter will come to pick flowers with your daughter. Why don't you come to my yard today?". So Chinnaponnu and Rajalakshmi went to your yard and picked some flowers and brought them to their home.

Then, Rajalakshmi came to your home again to get a thread from your wife. At that time, to insult Rajalakshmi, you told her that "if you sleep with me, I will give you the thread", and even after knowing Rajalakshmi is 14 years old girl, you voluntarily sexually harassed Rajalakshmi by repeatedly touching her body. You, the accused, have committed an offence punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012, and within the cognisance of this Court.

The second charge - under section 450 of the Indian Penal Code.

In continuation of the above incident, on 22:10 2018 at 7.30 pm, the accused, having entered the house of the



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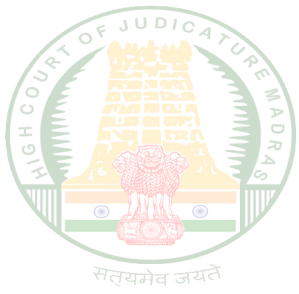
complainant, Chinnaponnu, at No. 451, Theku Kattu Kottai, Sudatharapuram, Thalavaipatti Village, Palaniyapurai Post Office, Pethanaikkanpalayam Taluk, Salem District, with a dangerous weapon, a billhook, with the intention of committing the crime of life imprisonment, have trespassed the home. So you, the accused, have committed an offence punishable under Section 450 of the IPC and within the cognisance of this Court.

The third charge - under section 294(b) of The Indian Penal Code.

In the continuation of the above incident, when the complainant Chinnaponnu was sitting in the hall of the house of the complainant Chinnaponnu, when the complainant was giving flowers and Rajalakshmi was tying the flowers, you, the accused have entered the home with the billhook. When Chinnaponnu asked you, "Why did you come?" and you said insulting words as "Nee nagarudi pera thevidiya munda" in a public place, you, the accused, have committed an offence punishable under Section 294(b) of the Indian Penal Code and within the cognisance of this Court.

The fourth charge - under section 302 of The Indian Penal Code.

On the above date, time and place, in the continuation of the above incident, you, the accused, by pushing the Chinnaponnu down, suddenly knowing that if you cut Rajalakshmi with the billhook, she would die, knowing that would cause death and with the intention to kill her knowing that she belongs to Adi Dravida community, you have cut the back of her neck with the billhook. On seeing this, Chinnaponnu shouted, "You wicked man, why are you cutting my son?", You dragged Rajalakshmi to the front of the home and, with a billhook, you again cut her neck with the billhook, cutting her head separately from her body and murdered her. By throwing her head on the Thalaivaipatti - Ichampetti road, you, the accused, have committed an offence punishable under Section



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302 of the Indian Penal Code, read with Section 3(1)(r) and 3(1)(s) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015 and within the cognisance of this Court.

The fourth charge - under Section 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015

On the above date, time and place, in continuation of the above-mentioned act, you, the accused, who is not a member of the Adi Dravidian caste, by murdering Rajalakshmi, a member of the Adi Dravidian race, you, the accused, have committed an offence punishable under Section 3(2)(va) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015 and within the cognisance of this Court.

By doing so, you, the defendant, have committed an offence cognizable by this Court and punishable under Section 3(2)(va) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015."

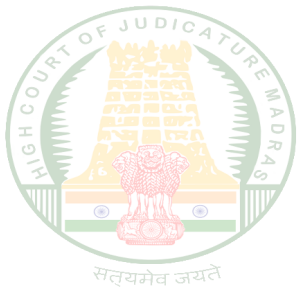
When questioned on the charges, the accused pleaded not guilty to the charges and claimed to be tried.

2.28. The prosecution, in order to bring home the charges, examined 22 witnesses, marked 48 exhibits and produced 9 material objects. When the accused was questioned under Section 313 CrPC, he denied certain evidence against him. The accused, on his side, examined DW1 to DW4, marked one exhibit and no material object was produced. After hearing and considering



the evidences on record, the Trial Court convicted and sentenced the accused as stated above. Since capital punishment of death sentence was imposed by the Trial Court, now the case is before us by way of referred trial for confirmation of the death sentence along with the criminal appeal filed by the accused.

3. During the pendency of referred trial and appeal, the appellant/accused filed Crl.M.P.No.16236 of 2024 under Section 391 Cr.P.C. seeking to permit the appellant/accused to adduce additional evidence by examining the appellant/accused medically to ascertain the mental condition of the appellant/accused on the date of commission of the offence on 22.10.2018 at 7.00 p.m. in Crl.A.No.532 of 2022 and Crl.M.P.No.16237 of 2024 under Section 391 Cr.P.C. seeking to permit the appellant/accused to adduce additional evidence directing the prison authorities/Superintendent of Central Prison, Salem, to produce the medical records of the appellant/accused before this Court to ascertain the mental condition of the appellant/accused in Crl.A.No.532 of 2022.



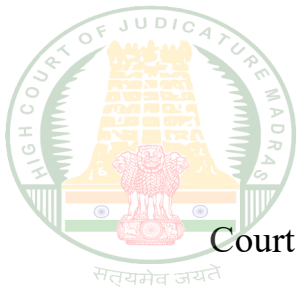
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4. At the same time, the prosecution side filed Crl.M.P.No.16950 of 2024 under Section 391 Cr.P.C. seeking to permit the prosecution to adduce additional evidence by producing the petition mentioned additional evidences, which are available in the Court records to mark it as exhibits in R.T.No.1 of 2022 pending on the file of this Court.

5. Upon hearing either side, this Court *vide* common order dated 09.12.2024 dismissed the applications filed by the appellant/accused in Crl.M.P.No.16236 and 16237 of 2024 and allowed the application filed by the prosecution in Crl.M.P.No.16950 of 2024 by directing the Registry to issue summons to Dr.S.Shankar, M.D. (Psychiatry), Assistant Professor in Psychiatry, Government Mohan Kumaramangalam Medical College and Hospital, Salem and furnish a copy of two documents referred in the petition filed by the prosecution in Crl.M.P.No.16950 of 2024 to the convict prisoner through prison authorities, to counsel for the accused and to the State Public Prosecutor.

6. Pursuant to the aforesaid order, Dr.S.Shankar appeared before this



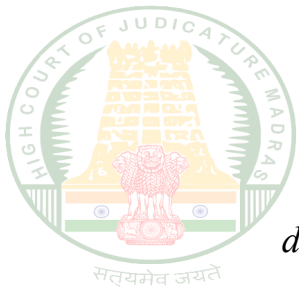
Court and he was examined as CW1 and through him a letter dated 18.01.2019 addressed by him to the learned Sessions Judge, Mahila Court, Salem, was marked as Ex.C1 and the letter dated 03.01.2019 addressed by the learned Sessions Judge, Mahila Court, Salem, to the Superintendent of Central Prison, Salem, was marked as Ex.C2. The learned counsel appearing for the appellant/accused has chosen to cross-examine CW1 in detail. The appellate Court can also exercise its power and question the accused with regard to any incriminating materials that had been left out by the trial Court. *[State (Delhi) Vs. Dharampal [2001 Crl LJ 4748].*

7. At this juncture, it is also relevant to cite the judgment of the Hon'ble Supreme Court in ***Raj Kumar v. State (NCT of Delhi)*** wherein it was observed as under:

"17....(i) It is the duty of the Trial Court to put each material circumstance appearing in evidence against the accused especially, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction ;

(ii) The object of examination of the accused under section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while



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dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

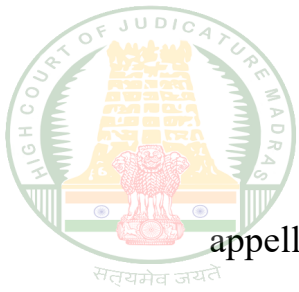
(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

8. In the case on hand, the appellant/accused was examined under section 313 Cr.P.C. on 28.01.2025. Again the appellant/accused filed an application in CrI.M.P.No.1489 of 2025 in CrI.A.No.532 of 2022 under Section 329 r/w 482 Cr.P.C. seeking a direction to the Superintendent of Central Prison, Coimbatore, to produce the appellant/accused to be produced before the Medical Board of Natural Institute of Mental Health and Neuro Science, Bengaluru, Karnataka, to evaluate the mental health of the



appellant/accused prior to 22.10.2018 and as on 22.10.2018 and thereafter.

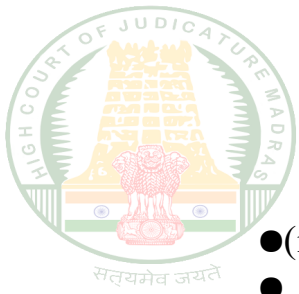
WEB COU Upon hearing either side, the petition was dismissed on 28.01.2025 and the appeal was posted for final hearing.

9. Again the appellant / accused filed the petition under Section 391 r/w. 235(2) CrPC in CrI.M.P.No.20702 of 2025 seeking to hold enquiry into mitigating circumstances against accused under section 235(2) Cr.P.C. and to produce the report before this Court. This Court heard the aforesaid CrI.M.P.No.20702 of 2025 along with the main cases.

10. Heard the learned counsel on both sides and also perused the entire materials available on record.

11. Before going into analysis of the evidence, we hereby catalog the facts not disputed by either side:

- (1) The XXX is aged about twelve years old at the time of occurrence, who is the daughter of PW1 and PW4 and they belong to Scheduled Caste;
-



●(ii) The XXX suffered homicidal death on 22.10.2018.

●

●(iii) The accused belonged to other than SC/ST community.

●

12. It is the case of the prosecution that the accused was sexually harassing the deceased since 19.10.2018 to 22.10.2018, that culminated to the point of beheading XXX on 22.10.2018 at 7.30 p.m. in front of her mother PW1.

13. The learned counsel appearing for the appellant / accused would submit that though the accused was evaluated by the doctors on various occasions and was found to be abnormal and suffering from abnormality suggestive mental illness, which warranted Psychiatrist Expert opinion. There is a procedure and evaluation of non-cooperative patients was not valid in this case. The accused was arrested on 24.10.2018 at 3.00 p.m. near the place of incident viz. Thalavaipatti bus stop. It is highly improbable that the appellant/accused stayed in the same of occurrence two days after committing the crime. This itself speaks about the mental state of the appellant/accused at the time of commission of crime. The accused and his family are further traumatized by the non-compliance of due process of law, as envisaged by the Mental Health Care Act vide Section 25 in accessing



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medical record and Section 105 on how the mentally ill person, during judicial process has to be assessed by the Board. The learned counsel for the accused has relied upon the following judgments to strengthen his contentions:

(i). 2021 SCC Online Mad 14423-S...Vs Superintendent of Prison & another

(ii). 2020 SCC Online Mad 2030 - Kalyappan V State

14. *Per contra*, learned Additional Public Prosecutor would submit that insanity grounds raised by the accused there are no medical records to show that the accused is suffering from mental illness and the state of mind of the accused at the time of occurrence has to be proved by the accused so as to get benefit of the exception and the accused had failed to prove the same. The accused is capable of understanding the nature of his act and knew what he was doing was wrong and the legal insanity is not proved and the protection under Section 84 IPC cannot be applied to this case. The burden of proof of insanity is on the accused, however, that will not discharge the burden of proof on the prosecution to prove all the ingredients including the *mens rea* to the offence beyond reasonable doubt. The legal



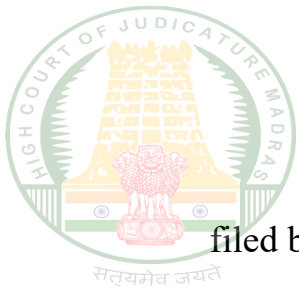
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insanity would come to into play when the accused is not aware of his act and the same is contrary to law and if he is aware of the very nature of the act he does, then plea of insanity is of no avail. To strengthen his contention, he has relied upon following judgments:

- 1.Prakash Nyi @ Sen Vs. State of Goa, (2023) 5 SCC 673***
- 2.Surendra Mishra Vs. State of Jharkhand, (2011) 11 SCC 495***
- 3.Bapu @ Gujuraj Singh Vs. State of Rajasthan, (2007) 8 SCC 66***
- 4.Ramesh @ Ramesh Babu Vs. State represented by Inspector, 2009 (2) LW (Crl) 1025***
- 5.Kuttappan Vs. State of Kerala, 1985 SCC OnLine Ker 256***
- 6.Jai Lal Vs. Delhi Administration, 1968 SCC Online SC 109***
- 7.Mohd. Anwar Vs. State (NCT of Delhi), 2020 (7) SCC 391.***

15. This Court considered the submissions made on either side and perused the records carefully.

16. This Court has to consider the first and foremost defence of the appellant/accused with regard to his mental illness and whether the petition



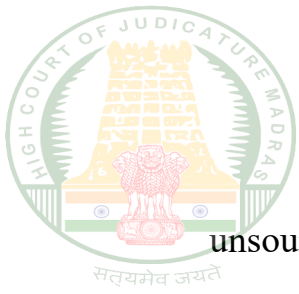
filed by him in CrI.M.P.No.20702 of 2025 is to be allowed ?

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PLEA OF INSANITY

17. It is to be noted that Section 328 of Cr.P.C. deals with the procedure in case of accused being lunatic. When a Magistrate holding an inquiry, has reason to believe that the person against whom inquiry is being held is of unsound mind and consequently incapable of making his defense, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

18. Section 328 (1-A) of Cr.P.C. also deals that if the civil surgeon finds that the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognoses of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from



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unsoundness of mind or mental retardation provided that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board.

19. It is also to be noted that Section 84 IPC lays down the substantive law “nothing is an offence, which is done by a person, who at the time of doing it, by a reason of unsoundness of mind, is incapable to knowing the nature of the act or that he is doing what is either wrong or contrary to law”. Similarly, Section 329 Cr.P.C. deals with the state of mind of the accused at the time of trial. For the purpose of Section 84 IPC, the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such state of mind has to be entitled to the benefit of Section 84 IPC can only be established from the circumstances, which preceded to and followed the crime.

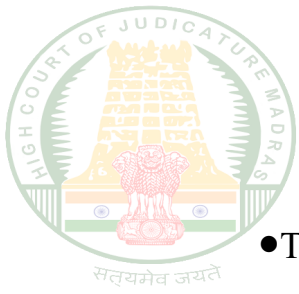
20. It is to be noted that Section 330 Cr.P.C. deals with the release of persons with unsound mind pending investigation or trial- (1) Whenever a



person is found under section 328 or Section 329 to be incapable of entering defence by a reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be shall, order release of such person on bail.

21. By applying the above provisions of law, in this case, it is important to examine the insanity and how it can be taken up as a defence for a crime. The word insanity refers to the mental state of a person who is incapable of understanding the nature and consequences of the act they committed. However, it is to be noted that every person who suffers from a mental illness is not considered a legally insane person. Hence, the law only recognises legal insanity as a valid defence and not medical insanity. The legal insanity has been discussed in the famous case ***R v. Mc’Naghten* [[1843] UKHL J16]**, The English law on insanity is based on the Mc’Naghten rules and the Indian Law that is codified in the Indian Penal Code, 1860, section 84, is also based on the Mc’Naghten rules, laying down the principles such as:

- Every person is presumed to be sane until the contrary is established.



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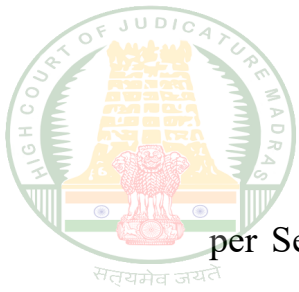


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- To establish the defence of insanity, it must be clearly proved that at the time of committing the crime, the person was so insane as not to know the nature and quality of the act he was doing, or if he did know it, he did not know that what he was doing was wrong.
- The test of wrongfulness of the act is in the power to distinguish between right and wrong, not in the abstract or in general, but regarding the particular act committed.

22. It is well settled that every person who is mentally ill cannot claim the protection of Section 84 IPC. The law distinguishes between “medical insanity” and “legal insanity.” While medical insanity refers to a medically diagnosed disorder, legal insanity requires proof that the accused, at the time of commission of the act, was incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law. The former may exist without attracting legal protection, but only the latter absolves criminal liability. The principle embodied in the section is based upon the maxim *actus non facit reum, nisi mens sit rea* i.e. an act is not criminal unless there is criminal intent.

23. It is also well settled that when the insanity plea is taken by the defence, the burden of proving insanity squarely lies upon the accused, as



per Section 105 of the Indian Evidence Act, 1872. The prosecution's duty ends upon proving the commission of the act beyond a reasonable doubt.

Thereafter, it is for the accused to establish, on a preponderance of probability, that he was incapable of knowing the nature or wrongfulness of the act at the time of its commission.

24. At this juncture, it is relevant to cite the Hon'ble Supreme Court case in the case of ***T.N. Lakshmaiah v. State of Karnataka, (2002) 1 SCC 219***, wherein the Court has held as under:

“9. Under the Evidence Act, the onus of proving any of the exceptions mentioned in the Chapter lies on the accused though the requisite standard of proof is not the same as expected from the prosecution. It is sufficient if an accused is able to bring his case within the ambit of any of the general exceptions by the standard of preponderance of probabilities, as a result of which he may succeed not because that he proves his case to the hilt but because the version given by him casts a doubt on the prosecution case.

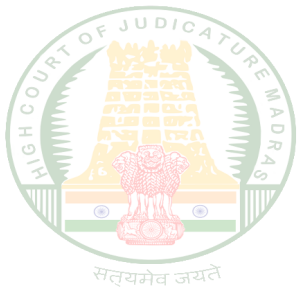
10. In State of M.P. v. Ahmadulla [AIR 1961 SC 998 : (1961) 2 Cri LJ 43] this Court held that the burden of proof that the mental condition of the accused was, at the crucial point of time, such as is described by the section, lies on the accused who claims the benefit of this exemption vide Section 105 of the Evidence Act [Illustration (a)]. The settled position of law is that every man is presumed to be sane and to possess a sufficient



degree of reason to be responsible for his acts unless the contrary is proved. Mere ipse dixit of the accused is not enough for availing of the benefit of the exceptions under Chapter IV.

.....burden of proof, this Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* [AIR 1964 SC 1563 : (1964) 2 Cri LJ 472] held: (AIR pp. 1566-67, para 5)

“It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Penal Code, 1860. This general burden never shifts and it always rests on the prosecution. But, Section 84 of the Penal Code, 1860 provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under Section 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. Under Section 105 of the Evidence Act, read with the definition of ‘shall presume’ in Section 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said



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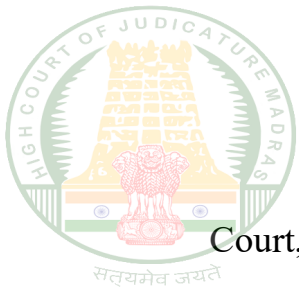


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circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a 'prudent man'. If the material placed before the court, such as oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under Section 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a Judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the Judge whether the accused had the requisite intention laid down in Section 299 of the Penal Code, 1860. If the Judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity."

By applying the ratio laid down in the above ruling that every person is presumed sane unless the contrary is proved. The burden of proving insanity lies on the accused, as per Section 105 Evidence Act. The burden is not as heavy as prosecution if reasonable doubt arises about the sanity of the accused, the benefit goes to the accused.

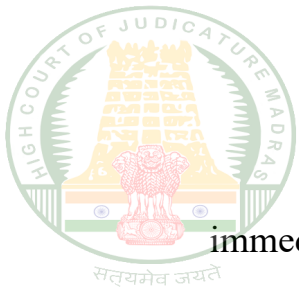
25. It is seen from records that the accused has filed a petition under Section 391 Cr.P.C. during the pendency of this Criminal Appeal before this



Court, alleging mental illness. Sections 328 and 329 of the Code

contemplate the procedure when an accused appears to be of unsound mind and consequently incapable of making his defence. Section 328 of the CrPC is used in the time of inquiry and section 329 of the CrPC is used during the trial by the magistrate or the sessions court. These provisions are procedural in nature and operate at the stage of trial to ensure that no person is tried without understanding the proceedings. However, in the present case, no such petition was filed before the Trial Court, nor was there any contemporaneous material to show that the accused was incapable of understanding the proceedings at that time. The belated plea raised only at the appellate stage, unsupported by contemporaneous medical evidence, cannot retroactively invalidate the trial or bring the case within the purview of Section 84 IPC. The subsequent petition, therefore, does not affect the validity of the conviction or the findings of this Court on the issue of insanity.

26. In the case on hand, after hearing the alarming sound from PW1, the neighbours PW2 and PW3 have rushed to the scene of occurrence

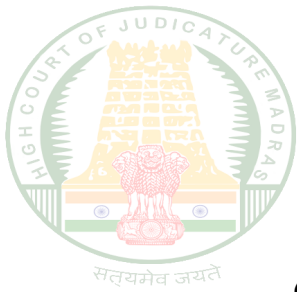


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immediately and witnesses that the accused after chopping the head of XX, he was holding the head in his left hand and M.O.1 in his right hand. While PW2 went near the accused, the accused also threatened him with dire consequences and went to Thalavaipatti – Echampatti Tar road and dropped the head of XX.

27. PW6 also in her evidence stated that the accused was holding the head of XX in one hand and M.O.1 in other hand. Upon information about the occurrence through PW2, PW4 and PW5 immediately rushed to the scene of occurrence and found that the head of XX in Thalavaipatti road and the body of XX in front of her house. PW1 has narrated the motive for the commission of offence by the accused and the sexual harassment by the accused prior to the occurrence to PW2 to PW5.

28. PW22 arrested the accused on 24.10.2018 in presence of PW10 at 3.00 p.m. near Thalavaipatti bus stop. Thereafter, he produced the accused before the learned Judicial Magistrate No.I, Attur, Salem District, at 11.15 p.m., wherein, the learned Magistrate has recorded as follows:



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"The accused has been produced before the Magistrate around 11.15. The reason for the arrest has been explained clearly to the accused. The accused has not made any complaint about the police. There was swelling found in both the hands of the accused. On asking about the reason for swelling, the accused replied that the swelling was due to falling from the motorcycle. From the perusal of case records, it was found that prima facie case has been made out. Thus, on considering the nature of the case and on requisition of the Investigating Officer, the accused has been remanded to judicial custody on 25.10.2018, the accused has been given clear explanation on the legal assistance."

29. Subsequently, the accused was produced before the learned Principal District and Sessions Judge, Salem, on 08.11.2018 and the remand was extended till 22.11.2018. The rights of the accused were also explained by the learned Sessions Judge, Mahila Court, Salem. Periodically the accused was produced before the learned Sessions Judge, Mahila Court, Salem. Neither the accused nor his counsel informed about the mental illness of the accused.

30. It is seen from the records that on 22.09.2021, the accused was released on interim bail for one day as per the order passed in M.P.No.584 of

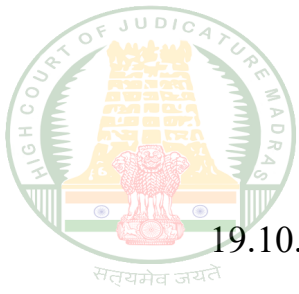


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2021 for attending the accused mother's funeral. Further it is seen from records that an application filed under Section 439 Cr.P.C. by the accused in CrI.M.P.No.584 of 2021 in Spl.S.C.No.204 of 2019, wherein, it has been stated that the accused mother has died due to sudden heart attack at Chinna Salem, Kallakurichi, at her daughter's house. The accused is the only son of the deceased. Hence, except the accused nobody was there to do the funeral ceremony of the accused mother and prayed for interim bail. It is to be noted that there is no mention about anything about mental illness of the accused in that petition. It is seen from the arrest intimation form after arresting the accused, the arrest was informed to the wife of the accused and the signature of the wife of the accused is also found in the arrest intimation form. The Medical Report sent by CW1 to the concerned Courtt in his letter dated 18.01.2019 wherein it has been opined that the accused is not having any symptoms and he is fit to stand trial.

31. According to the appellant / accused, the defence witnesses DW1 to DW4 have coherently deposed that the accused was suffering from serious illness and that he has been treated according to their social strata.

32. In this regard, DW1, Saratha wife of the accused deposed that on



19.10.2018, she received a phone call from DW2 - Krishnamurthy that while they were in Tanjore, the accused was not in a normal state of mind and not feeling well and was not obeying the words of DW2 and DW2 requested to take back the accused. DW1 requested her brother Venkatesan to bring her husband. Accordingly DW1's brother Venkatesan brought the accused through a car to DW1's home on 20.10.2018 morning at 6.00 A.M.

33. DW2 - Krishnamurthy, owns 5 paddy harvesting machine and doing business with it. The accused, who was working as a driver under DW2, who deposed in his cross examination that on 20.10.2018 at evening 6.00 p.m., he sent the accused to his house and they gone through a bus. DW2 deposed that on 20.10.2018, the accused demanded salary. Accordingly, DW2 paid salary and obtained signature from the accused.

34. From the evidence of DW1, the accused brought through a car by his brother Venkatesan and one Sasikumar to DW1's house at 20.10.2018 morning 6.00 a.m., since DW1 has received a phone call from DW2 about the illness of the accused.

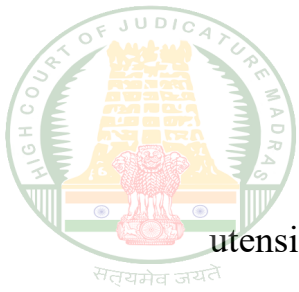
35. From the evidence of DW2, the accused was demandeing his



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salary and DW2 paid the salary, after payment of salary DW2 has obtained the accused signature with salary register on 20.10.2018. Further on 20.10.2018, DW2 sent the accused along with his nephew at evening 6.00 p.m. in the bus. There is a contradiction between the evidence of DW1 and DW2 with regard to when the accused was brought back from DW2 and the mode of transport used for travelling from Tanjore to DW1's house.

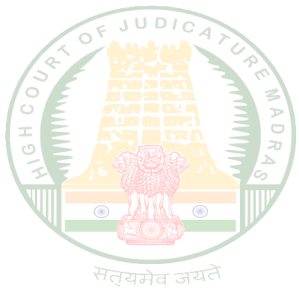
36. DW1 in her cross examination deposed that on the request made by PW1 on 22.10.2018, DW1, her husband and her son gone to the Anandayer Karupayee Temple at 5.00 p.m. At that time PW4, PW1 and PW1's daughter were in the said temple. To eliminate devil, Kettle-Drum “Udukai” was beaten, some of the people are making sound, beaten by whip, some of the people scattered from the temple, that point of time the group of people beat among themselves. PW4 has beaten DW1's husband and DW1 questioned the same. At that point of time, DW1 heard that someone murdered. In this regard, DW1, the accused, the accused's brother Sasikumar went to the office of Deputy Superintendent of Police, Attur. The police have visited the occurrence place at Temple and they seized knife and pooja



utensils. The accused was tortured by the police in the police station by saying whether he committed murder and the police has removed the nail of the accused.

37. DW1, in her cross examination, deposed that before 19.10.2018, there was no mental illness to her husband. Her husband was taken to Dr.Naveneetha Krishnan, who is a Homeopathy doctor, for her husband's mental illness on 22.10.2018. DW1 deposed that the medical prescription given by the said Homeopathy doctor was kept in her house. The said doctor is a child doctor, she has no money to bring her husband to take treatment in Allopathy doctor.

38. DW3- Karunakaran, is the resident of the same village, Thallavaipatti and deposed about the mental condition of the accused. On 15.10.2018, the accused called him over phone and spoke unnecessarily. DW4-Chellamuthu deposed that on 20.10.2018 morning at 6.00 a.m., he saw that accused, while he was travelling in the car along with the brother of the accused. He asked the accused how are you ? The accused relied that how are you?



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39. DW1 herself admits that before 19.10.2018, there was no health issue to her husband, whereas DW3 stated that on 15.10.2018 itself, the accused spoke unnecessarily through phone with DW3. Admittedly, defence side has not chosen to examine the said Doctor Krishnamurthy, who said to have given treatment on 22.10.2018 to the accused. DW1 has not chosen to produce medical records to show that on 22.10.2018, the accused was given treatment to his mental illness. DW1 has not chosen to lodge any complaint with regard to the alleged torture meted out by the accused in the police station on 22.10.2018 itself and also not chosen to produce any medical records to show that the accused had taken treatment, to the alleged torture of removal of nail of the accused. Admittedly, the accused has also not made any allegation against the police while he was remanded to judicial custody on 24.10.2018 by the learned Judicial Magistrate.

40. Accused has an opportunity of personal interaction with the Court on two occasions, one is at the time of questioning the charges and after completion of prosecution evidence, the accused was given an opportunity to explain his case, when incriminating evidence available against him under



Section 313 CrPC. In the instant case, on the above two occasions, the accused has not stated anything about his mental illness rather the accused pleaded not guilty, claimed to be tried. Thereafter, trial Court has conducted the trial and concluded in a manner known to law.

41. At this juncture, while noting the accused conduct before and after the incident as per the records, such as the fact which he had billhook-M.O.1 in his hand when he entered the home of the deceased and when the PW1/deceased minor's mother gave several warnings to the accused as there is not men in this house and you should not entered the home, the accused chosen to ignore the words of the PW1 and abused PW1 in filthy language and proceeded to commit the murder. Even after killing the deceased with the billhook, PW1 had shouted, "Why did you kill my daughter?" Even after that, the accused dragged the deceased to the street and chopped off the deceased's head from the deceased's body and fled away from the scene, hiding his weapon and also avoiding the police. This proves that the accused was completely aware, fully conscious and capable of understanding the nature and the wrongfulness of his act. Due to the commitment of brutal



murder, the accused would have caused serious shock and fear, which may lead to him, keep silence for some days.

42. It is seen from the records that the Trial Court has found the accused guilty under Section 12 r/w. 11(iv) of POCSO Act, 2012, Sections 450, 294(b), 302 IPC and Section 302 IPC r/w. 3(2)(v) of the SC/ST (POA) Act, and questioned the accused under Section 235(2) CrPC on 25.04.2022. In response, the accused has stated that he has no involved in the commission of crime and he and he is staying along with his wife and child and the Court has to decide the sentence. Further, it is seen that upon hearing the learned counsel appearing for the accused, the Trial Court imposed the sentence as above on 26.04.2022. Therefore, the Trial Court having found the guilt of the accused, on the next day upon hearing the accused side alone, has imposed the sentence as per the procedure contemplated under Section 235(2) CrPC.

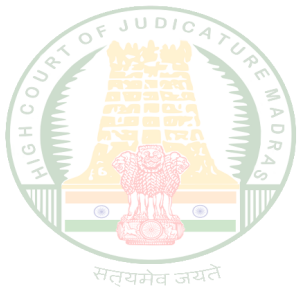
43. The learned counsel appearing for the appellant /accused would submit that the learned Trial Judge was transferred by this Court, vide Notification No.66 of 2022 and he was directed to be relieved on 25.04.2022



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Afternoon, but the learned Trial Judge without obeying the notification of this Court, has pronounced the sentence on 26.04.2022 and therefore, the learned Trial Judge has decided the case in a hurried manner without following the procedure contemplated under Section 235(2) CrPC.

44. It is seen from the records that this Court vide notification dated 66/2022 dated 25.04.2022 transferred the learned Trial Judge to the VI Additional Judge, City Civil Court, Chennai and he was directed to be relieved himself on 25.04.2022, vide Office Memorandum dated 25.04.2022. The learned Trial Judge got himself relieved from his post on 26.04.2022 forenoon instead of 25.04.2022 afternoon in view of the reason that he had pronounced the guilt of the accused and for arguments on the question of sentence, he adjourned the case on the next day and got relieved himself. The said act of the learned Trial Judge was also ratified by this Court vide Office Memorandum dated 17.05.2022 in R.O.C.No.7 of 2022 dated 17.06.2022. In view of the above, the contention of the appellant/accused that the learned Trial Judge, without Quora, had pronounced the sentence, is unsustainable.

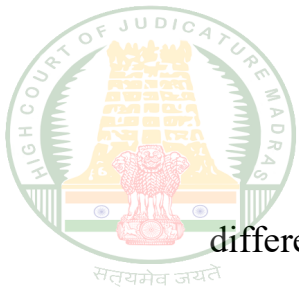


WEB COPY 45. Thus, this Court rejects the plea of insanity raised by the counsel for the appellant and this Court holds that the accused was fully aware and conscious of the act which he committed. ***Therefore, the plea of insanity raised by the appellant is unsustainable.*** In view of the above, there is no merit in the petition filed by the appellant / accused in Crl.M.P.No.20702 of 2025 in Crl.A.No.532 of 2022 and the same is liable to be dismissed. ***In the result, Crl.M.P.No.20702 of 2025 is dismissed.***

CASTE VALUES

46. The learned public prosecutor has stated that the accused has committed this murder on the deceased, knowing that the deceased belongs to the Scheduled Caste community.

47. *Per contra*, the learned counsel for the appellant / accused would submit that there is a cordial relationship between the families since the accused's grandfather's time. PW2 also clearly speaks about the cohesive nature of the neighbourhood by stating that the neighbours are all from



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different castes and there was no question of caste animosity or discrimination done by the accused.

48. It is pertinent to mention that the appellant / accused was convicted under Section 302 IPC r/w. section 3(2)(v) of the SCST (POA) Act and sentenced to life imprisonment with a fine of Rs.5,000/-. The deceased belongs to Schedule Caste as per Ex.P14, whereas the accused belong to backward community as per Ex.P16 issued by PW11. It is relevant to state that the accused had knowledge of the deceased's caste status, as they live in the neighbourhood for a long time, and even as per the PW1 statement, it was clear that the accused spoke filthy language on PW1 about her caste.

49. It is pertinent to mention that when caste comes to the important ingredient, which is that the said act was committed on the grounds that such a person belongs to that community. Mere knowledge of the caste is not sufficient to prove that the case can be made out under this section. The

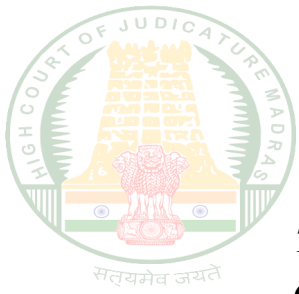


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motive must have arisen from the caste bias, and in the instant case, this element seems to be absent, as this case happened as one of the sexual harassment and lust request, which was denied by the deceased and this led to the subsequent revenge of murder and not the caste animosity. Here in this case, the accused may have known the caste of the deceased as a neighbour, but mere knowledge does not constitute the offence under section 3(2)(va) of the SCST(POA) Act.

50. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in *Masumsha Hasanasha Musalman v. State of Maharashtra*, [(2000) 3 SCC 557] as follows :

“9. Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. ***To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled***



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RT.No.1/2022 & CrI.A.No.532 of 2022

Tribe and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises.”
(emphasis supplied)

51. Again in the case of ***Dinesh v. State of Rajasthan [(2006) 3***

SCC 771], the Supreme Court held as under :

“15. Sine qua non for the application of Section 3(2)(v) is that ***an offence must have been committed against a person on the ground that such person is a member of the Scheduled Castes or the Scheduled Tribes.*** In the instant case no evidence has been led to establish this requirement. It is not the case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

52. In the case of ***Ramdas v. State of Maharashtra, [(2007) 2 SCC***

170], the apex court held that

“11. At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. ***The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not***



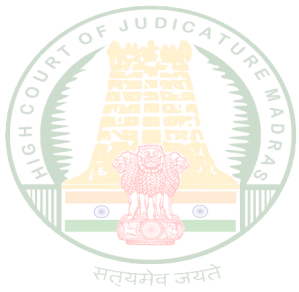
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attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the said enactment.”

53. By keeping in mind the above proposition, the offence must have been committed against the person on the ground that such person is a member of the Scheduled Caste and the Scheduled Tribe. In the instant case on hand, there is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, as the prosecution failed to prove the offence under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015, beyond a reasonable doubt, The conviction of the appellant-accused under Section 302 r/w. 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.

54. Accordingly, the conviction of the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside.

INTERESTED WITNESS

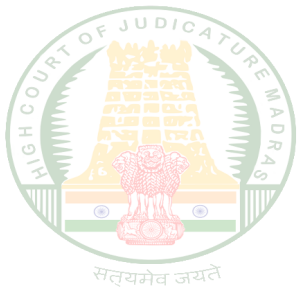


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55. The learned counsel appearing for the appellant/accused would submit that independent witnesses PW1 to PW8 are relatives of the deceased and their evidences are not trustworthy to prove the case of the prosecution with regard to motive and alleged sexual harassment.

56. *Per contra*, learned Public Prosecutor would submit that the close relatives cannot be characterised as interested witnesses. When the evidence of the witnesses is natural, then their evidence must be scrutinised carefully. If, on such scrutiny, their evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the testimony of such witnesses. A close relationship of a witness with the deceased or victim is no ground to reject their evidence. Even if there are some contradictions and discrepancies, the entire evidence cannot be disregarded. To strengthen his contention, he relied upon the following judgments:

- 1. Baban Shankar Daphal and ors Vs. State of Maharashtra, 2025 SCC Online SC 132**
- 2. Karulal Vs. State of MP, 2021 (13) SCC 391**
- 3. Ramji Singh v. State of UP, (2020) 2 SCC 425.**
- 4. Mustak Vs. State of Gujarat, (2020) 7 SCC 237**
- 5. Ramnaresh Vs. State of Chhattisgarh, (2012) 4 SCC 257.**



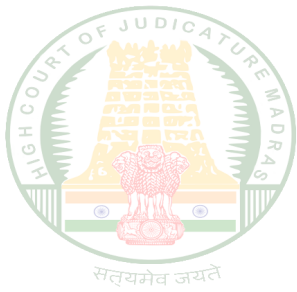
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57. It is relevant to state that witnesses are all close relatives of the deceased does not, by itself, render their evidence untrustworthy.

58. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in *Kartik Malhar v. State of Bihar*, [(1996) 1 SCC 614] wherein it was held as follows:

“15. As to the contention raised on behalf of the appellant that the witness was the widow of the deceased and was, therefore, highly interested and her statement be discarded, we may observe that a close relative who is a natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In *Dalbir Kaur (Mst) v. State of Punjab* [(1976) 4 SCC 158 : 1976 SCC (Cri) 527 : AIR 1977 SC 472] it has been observed as under: (SCC pp. 167-68, para 11)

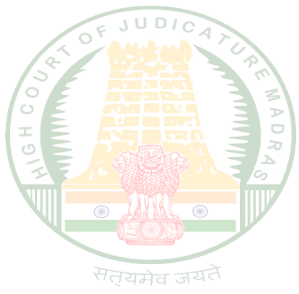
Moreover, a close relative who is a very natural witness cannot be regarded as an interested witness. The term ‘interested’ postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here.” (emphasis supplied)



WEB COPY 59. Keeping in mind the aforesaid principles, in the case on hand, we find that the evidence of the witnesses PW1, PW2, PW3, PW6, PW7, PW8, who are relatives to the deceased has really not coloured or exaggerated the case of the prosecution. They are the most natural witnesses and there is nothing on record to doubt their presence at the place of occurrence. By no stretch of imagination, it can be stated that the presence of the said witnesses at the scene of the crime and at the time of occurrence was improbable.

MOTIVE AND EYE WITNESS

60. According to the appellant / accused, the allegation of sexual harassment was an after thought by the prosecution. There is no statement of PW1 in her complaint and in her evidence. When PW1 was well aware of the harassment of her daughter in the hands of the appellant/accused on 19.10.2018 itself, she would have said about it when the wife of the appellant/accused herself came and enquired as to why they have not visited her house and invited them to pluck flowers.



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61. The learned counsel appearing for the appellant would submit that the Investigating Officer PW22 had not inquired or collected any evidence with regard to the incident of plucking or tying of flowers. PW22 also admitted that there was no investigation done with respect to the complaint of sexual harassment incident before the murder. The two inquest reports, one was done by PW16 and the other was done by PW17. They have not spoken about the sexual harassment allegations as the motive for the murder. There is no element of harassment made by the accused to the deceased and it is all made to color an ordinary person as some criminal.

62. The learned counsel for the appellant further would submit that PW2 and PW3 are also residing near the house of the deceased and they have not witnessed any occurrence of sexual harassment involved by the appellant/accused. It is highly improbable since PW1 had not sought support of any of them from 19.10.2018 till 22.10.2018. PW8, as if he saw the deceased girl being chased by the accused on 22.10.2018 at 5.30 p.m. just two hours before the occurrence. It is highly improbable that PW8 would



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have silently left the place rather than confronting the appellant/accused along with his family members who are all residing very much in the same place.

63. PW1 / mother of the deceased stated in her evidence that on Friday (19.10.2018), XXX / deceased gone to the accused house to pluck flowers at 6.00 P.M. At that time, the accused forcibly grabbed XXX hands, pulled the skirt of the deceased, abused in filthy language and also demanded for sharing the bed. XXX informed the same to PW1 on the same day itself. PW1 consoled the deceased by saying that both the families are cordial to each other, since from their grandfather's times. PW1 instructed the deceased not to go to accused house. Further, on the next day i.e. Saturday (20.10.2018) also, the accused called the deceased and abused in filthy languages. The same was informed by the deceased to PW1, who in turn strictly informed the deceased not to visit the accused house . Thereafter, deceased has not gone to the accused house i.e. on 21.10.2018 Sunday. On 22.10.2018 Monday, DW1 - wife of the accused questioned PW1 as to why the deceased not coming to DW1's house to pluck flowers.



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In view of the request made by DW1, PW1 and her daughter /deceased went to the house of the accused at 5.30 P.M. and they plucked flowers. While returning back to their home, the deceased said to PW1 that there is no thread to tie the flowers, and she will get the thread from DW1. PW1 returned back to her home. When the deceased gone to the accused house, DW1 was not there. The accused asked the deceased as to why she had come to his house. The deceased replied that she wants to get thread from DW1. The accused said to the deceased that if she shares the bed, then he will give thread and also abused in filthy language. Shocking over the same she came back to her home with crying.

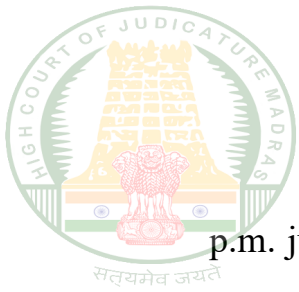
64. PW1 further deposed in her evidence that when PW1 questioned the deceased as to the reason for crying, the deceased did not state any reason for crying. After asking several times by PW1 the xxxx narrated the same to PW1, what was happened in the house of the accused and she also informed that the accused was forcibly grabbing her hand. PW1 consoled the deceased saying that as we female alone in the home, and that they also



belongs to Schedule Caste Community, after arrival of PWs.4 and 5, they

will question the accused about the same. PW1 also advised XXX not to go to the house of the accused. When PW1 and XXX were tying flowers at their home, PW1 gave flowers to XXX, and XXX tying the same. Front entrance was facing South. XXX was sitting towards North. PW1 was sitting towards east at 7.30 p.m. The accused came to the house of PW1 with M.O.1 - Billhook and PW1 questioned as to why the accused has come here since we are female alone in the home. The accused scolded PW1 in filthy language, pushed her with his hands by using M.O.1 – Billhook and the accused inflicted a cut on the backside neck of XXX. PW1 questioned the accused saying why you are cutting my daughter / deceased. While so, the accused dragged XXX, took her in front of PW1's house and severed XXX head separately from her body. PW1 shouted with hue and cry. Upon hearing the same, PW2 and PW3 rushed to the place and at that time, the accused was holding the head of XXX and M.O.1 and proceeded towards the eastern side.

65. PW8 saw XXX being chased by the accused on 22.10.2018 at 5.30



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p.m. just two hours before the murder. PW8 asked XXX as to why she was running for which XXX told that the accused was chasing. PW8, when he questioned the accused, he had asked him to simply go and mind his business.

66. PWs.2 and 3 were just residing 150 feet away from PW1's house, Upon hearing the alarming sound from PW1, they rushed to the house of PW1. PW2 saw the occurrence that the accused was holding the deceased's head in his left hand and holding MO1 in his right hand in front of PW1's house. When PW2 neared the accused to take a stone, then the accused threatened PW2 with dire consequences. PW3 states that she saw the accused severing the head of the deceased with MO1. When PW2 and PW3 inquired with PW1, she narrates the sexual harassment made by the accused to her daughter. After arrival of PW4 and PW5, PW1 narrated the sexual harassment made by the accused.

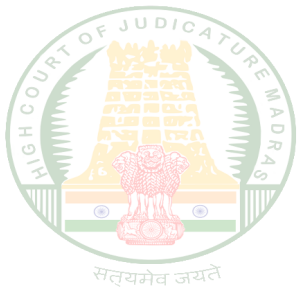
67. The evidence of PW1 is corroborated by the evidence of PW8 eyewitness with regard to the sexual harassment committed by the accused



on 22.10.2018 at 5.30 P.M. The evidence of PW1 and PW8 is natural and believable. There is no reason to disbelieve the evidence of PW1 and PW8.

68. It is to be considered whether the statement made by the deceased XXX to her mother/PW1 is a dying declaration or not?

69. It is to be noted that even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible under Section 32 of the Evidence Act. This principle was elaborately explained in the Privy Council case of ***Pakala Narayana Swami v. Emperor [AIR 1939 PC 47]*** that a statement under Section 32(1) of the Evidence Act need not be made only after the cause of death has arisen or when the declarant is at the point of death. The “circumstances of the transaction” include statements having a proximate relation to the actual occurrence that resulted in death.



70. At this juncture, it is relevant to cite the judgment of the Hon'ble

Supreme Court in the case of ***Kans Raj v. State of Punjab and Others***

[(2000) 5 SCC 207], wherein it was held that

“15. Section 32 does not require that the statement sought to be admitted in evidence should have been made in imminent expectation of death. The words “as to any of the circumstances of the transaction which resulted in his death” appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact.”

71. The Hon'ble Apex Court also in the case of ***State of Haryana v. Mange Ram and Others [(2003) 1 SCC 637]*** have held that under the Indian law, for dying declaration to be admissible in evidence, it is not necessary that the maker of the statement at the time of making the statement should be under the shadow of death and should entertain the belief that his death was imminent. The expectation of imminent death is not the requirement of law.



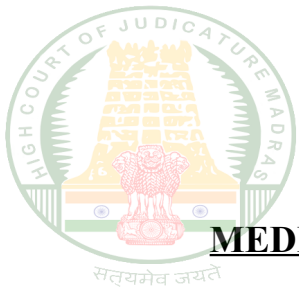
By applying the above ratio laid down in the rulings, the Statement made by

XXX deceased to her mother / PW1 can be considered as Dying Declaration.

ARREST AND RECOVERY

72. PW22- Thiru Ponkarthick Kumar deposed that on 24.10.2018 at 3.00 p.m., he arrested the accused in the presence of PW10- Nallavar / Village Administrative Officer and Village Assistant, one Marimuthu near the bus stop of Salem to Chennai Bye Pass Road. Accused has voluntarily given confession statement and the same was recorded in the presence of PW10 and his assistant. The admissible portion of confession statement is Ex.P12. Based on his confession, the accused identified the place of occurrence, where he left the head of the deceased and where the body of deceased was left. The accused also took PW22 and PW10 near to his house at “Corn Farm” and handed over M.O.1 with blood stains. The same was seized under Mahazar Ex.P13 in the presence of PW10 and his assistant.

73. As per the evidence of PW20 – Scientific Officer, M.O.1 was found with blood group of “B” which is the blood group of XXX deceased (Ex.P24). Therefore, the prosecution has clearly established the nexus between the accused and M.O.1 weapon involved in the offence.

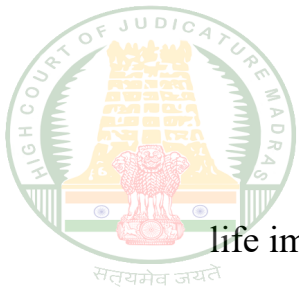


MEDICAL EVIDENCE

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74. The prosecution has relied on the evidence of PW15, doctor who conducted Postmortem and issued the Postmortem Report under Ex.P28 and also gave opinion that the deceased appeared to have died due to Decapitation. In the case on hand, the accused has intentionally committed the murder and the act of the accused was deliberate and committed with full knowledge that the act would result in death of a person. The above act of the accused falls under the definition of "murder" under Section 300 IPC and none of the exceptions to Section 300 IPC are attracted. The prosecution has proved the case beyond reasonable doubt that the accused was sexually harassing XXX 19.10.2018 to 22.10.2018 that culminated to the point of beheading the deceased XXX on 22.10.2018 at 7.30 p.m. in front of her mother / PW1.

75. The learned Trial Court imposed on the accused the capital punishment of death sentence. At this juncture, it is necessary to decide, whether the case at hand is one falling under the "rarest of rare" cases warranting the sentence of death, or whether the alternative punishment of



life imprisonment would meet the ends of justice ?

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76. The law on imposing of sentence of death penalty is now well settled that life imprisonment is the rule and the death sentence is the exception, to be awarded only when the alternative option is unquestionably foreclosed. These principles have been enunciated in ***Bachan Singh case*** [(1980) 2 SCC 684], where the Hon'ble Supreme Court held that:

“209.....for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.....”

77. The principle was further elaborated in ***Machhi Singh v. State of Punjab*** [(1983) 3 SCC 470], wherein the Hon'ble Supreme Court categorised the factors to be weighed while deciding whether the case qualifies as rarest of rare. These include (i) the manner of commission of the crime, (ii) the motive for the crime, (iii) the antisocial or abhorrent nature of the crime, (iv) the magnitude of the offence, and (v) the personality of the

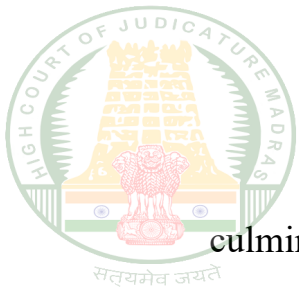


victim. Later in ***Ram Naresh v. State of Chhattisgarh [(2012) 4 SCC 257]***,

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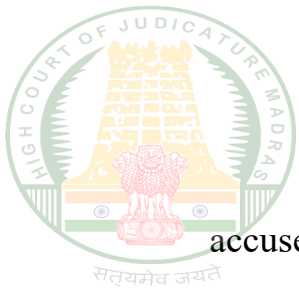
the Hon'ble Supreme Court reiterated that sentencing requires a balance sheet of aggravating and mitigating factors, and that the Court must exercise the highest degree of care and caution before taking a human life through the instrumentality of law. The judgment of Hon'ble Supreme Court in ***Shankar Kisanrao Khade v. State of Maharashtra [(2013) 5 SCC 546]*** further refined the approach by identifying three essential tests such as the Crime Test, the Criminal Test, and the Rarest of Rare Test. The Court must first determine the gravity of the crime, then examine the character and reformation potential of the offender, and finally decide whether life imprisonment would be wholly inadequate to meet the ends of justice.

78. By applying the above principles laid down by the Hon'ble Supreme Court, this Court has taken note of the aggravating factors (Crime Test) in the present case. The victim was a twelve years old girl, a student of the eighth standard, who was earlier subjected to sexual harassment by the accused. The accused, who is a neighbor, known to the deceased family since the accused's grandparents. The accused was sexually harassing XXX



culminated to the point of beheading the deceased with M.O.1 on 22.10.2018 at 7.30 p.m., in front of her mother / PW1. The act was gruesome, deliberate, and devoid of provocation. The brutality of the act and the helplessness of the victim clearly attract strong aggravating factors. The post-crime conduct of the accused in not stopping after the initial fatal blow but dragging the body, severing the head, and throwing the head away before fleeing, reveals a complete absence of remorse and a perverted delight in cruelty.

79. At the same time, this Court cannot lose sight of the mitigating circumstances (Criminal test) that emerge upon a closer scrutiny of the record. The accused has no prior criminal antecedent. He belongs to middle class, young age of 24 (at the time of commission of crime) and having wife and child 3 years (at the time of commission of crime) and was eking out his livelihood as a paddy harvest machine driver. There is no material to suggest that the accused is beyond reformation or that his continued incarceration would pose a future danger to society. In such circumstances, this Court is of the view that the criminal test is not satisfied to the extent of holding that the

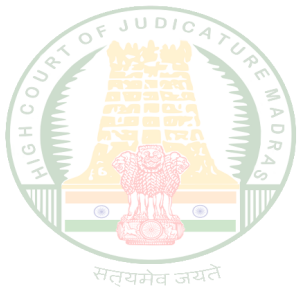


accused is incapable of reform. The principle laid down in ***Bachan Singh (Supra)*** and ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra [(2009) 6 SCC 498]*** requires that such mitigating factors be interpreted liberally, keeping in mind the constitutional concern for the dignity of human life under Article 21.

80. It is to be noted that in the judgment of ***Santhosh Bariyar (Supra)***, the Hon'ble Supreme Court has articulated 2 steps to be followed to determine whether the case deserves the death penalty or not.

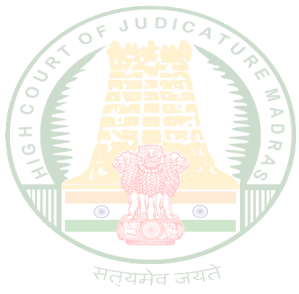
- (i) Whether the case belong to the rarest of rare cases?
- (ii) Whether the option of life imprisonment would not suffice to meet the justice ?

81. While applying the rarest of rare test, which considers whether the alternative punishment of life imprisonment is wholly inadequate, the Court has weighed the aggravating and mitigating factors. The alternative sentence of imprisonment for life would, in the considered opinion of this Court, meet the ends of justice.



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82. Therefore, upon balancing the aggravating and mitigating factors, this Court concludes that the present case in our hand does not fall within the category of the “rarest of rare”, and the extreme penalty of death is unwarranted. Therefore, the sentence of death imposed upon the appellant/accused is modified. Hence, the appellant/accused is hereby sentenced to undergo imprisonment for life with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment for the offence under Section 302 IPC, however, the appellant/accused shall not be entitled for any statutory remission or commutation until he serves the incarceration for a period of twenty (20) years. This direction is issued considering the age of the accused and the possibility of his reformation is higher. Such a course has been held to be permission in the light of the various pronouncements of the Hon’ble Apex Court in *Haru Ghosh v. State of West Bengal [(2009) 15 SCC 551]* on the basis of the law laid down in *Swami Shraddhananda v State of Karnataka [(2008) 13 SCC 767]*, which was reaffirmed in *Manoj v. State of Madhya Pradesh [(2022) 6 SCC 1]* and also in the case of *Sambhubhau Raisingbhai Padhiyar v. State of Gujarat [2024 INSC 987]*.



83. In the light of the above discussions and reasoning, the capital sentence imposed upon the appellant is modified that the appellant / accused is sentenced to undergo imprisonment for life under Section 302 IPC. In the result, the **REFERENCE in RT.No.1 of 2022 IS ANSWERED AS FOLLOWS:-**

(I) The **CRIMINAL APPEAL in CRL.A.NO.532 OF 2022 IS PARTLY ALLOWED** and the conviction and sentence imposed on the appellant / accused vide judgment dated 26.04.2022 made in Old Spl.S.C.No.1 of 2019 / New Spl.S.C.No.204/2019 on the file of the Principal POCSO Court, Salem in Crime No.547 of 2018, is modified and tabulated as under:

<i>Sl. No.</i>	<i>Convicted under Section by the Trial Court</i>	<i>Sentenced imposed by the Trial Court</i>	<i>Conviction and Sentence awarded by this Court.</i>
1	12 r/w. 11(iv) of the POCSO Act, 2012	3 years rigorous imprisonment with a fine of Rs.10,000/- in default to undergo 3 months simple imprisonment.	Judgment of the Trial Court stands confirmed.
2	450 IPC	10 years rigorous imprisonment with a	Judgment of the Trial Court stands confirmed.



Sl. No.	Convicted under Section by the Trial Court	Sentenced imposed by the Trial Court	Conviction and Sentence awarded by this Court.
	294 (b) IPC	fine of Rs.5,000/- in default to undergo 3 months simple imprisonment 3 months rigorous imprisonment with a fine of Rs.1,000/- in default to undergo one months simple imprisonment.	Judgment of the Trial Court stands confirmed.
3	302 IPC	Death Sentence with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment.	Sentence is modified to Life Imprisonment with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment.
4	302 IPC r/w. 3(2)(v) of SC & ST (POA) Act	Life Imprisonment with a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment	Acquitted.
5	3(1)(r), 3(1)(s) of SC & ST (POA) Act, 2015	Acquitted	Judgment of the Trial Court stands confirmed.

(II) The sentence of imprisonment, imposed by this Court as tabulated



RT.No.1/2022 & Crl.A.No.532 of 2022

above, are ordered to run concurrently.

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(III) The Trial Court has directed that the fine amount imposed shall be paid to PW1-mother of XXX as per Section 357(1) CrPC by way of compensation, taking into account the mental and physical agony, hardship and irreparable loss on account of demise of her daughter. The said direction of the Trial Court shall remain unaltered.

(IV) It is reported that the appellant / accused is confined in jail, viz., the Central Prison, Salem. The appellant / accused shall undergo the modified sentence now ordered by this Court.

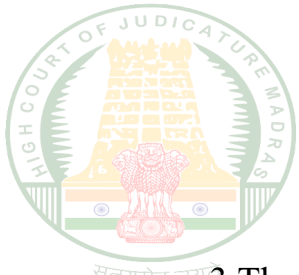
(V) *Crl.M.P.No.20702 of 2025 is also dismissed.*

[N.S.K., J.] [M.J.R., J.]
27.11.2025

Index : Yes
Internet : Yes
Jvm

To

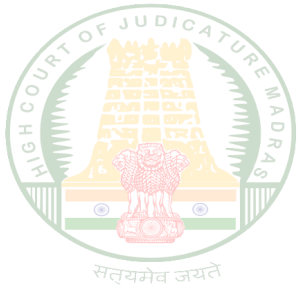
1. Principal POCSO Court,
Salem.
2. The Inspector of Police,
Attur Police Station,
Crime No.547/2018



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3.The Superintendent of Prisons,
Central Prison, Salem.

3.The Public Prosecutor,
High Court, Madras.



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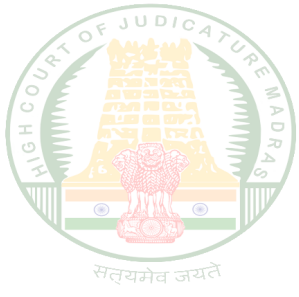


RT.No.1/2022 & Crl.A.No.532 of 2022

**N.SATHISH KUMAR, J.
AND
M.JOTHIRAMAN, J.**

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Common Judgment in
Referred Trial No.1 of 2022
& Crl.A.No.532 of 2022



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27.11.2025