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NAGARATHINAM

v.

STATE THROUGH THE INSPECTOR OF POLICE

(Criminal Appeal No. 1389 of 2023)

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MAY 04, 2023

[AJAY RASTOGI AND AHSANUDDIN AMANULLAH, JJ.]

- Premature Release – Appellant had an affair with ‘S’, who threatened her often – Appellant took decision to commit suicide along with her children – Appellant survived – Children died – Trial Court convicted appellant u/ss. 302 and 309 IPC – High Court partly allowed appeal, acquitted appellant u/s. 309 and upheld the conviction u/s. 302 IPC – After undergoing imprisonment for 20 years, appellant applied for premature release – However, same was rejected by the State – Held: Appellant was in tremendous mental stress when she administered poison to her children – Application for premature release was rejected by the State on the ground that the appellant had administered poison to murder her two sons to continue her illicit relationship without any hinderance, which act was cruel and brutal in nature – However, the Court would note that the appellant never tried to murder her sons with a view to continue her illicit relationship – On the contrary, she had tried to commit suicide herself along with her children not with a view to continue her illicit relationship with her paramour but rather, in disappointment and frustration over the quarrel picked up by her paramour – Appellant herself was trying to end her life but was prevented by her niece in the nick of time – There is no valid reason/justifiable ground for the State not accepting the recommendation of the State Level Committee for premature release of the appellant – Thus, order of the State set aside – Appellant entitled to the benefit of premature release – Appellant directed to be released – Penal Code, 1860 – ss. 302 and 309.*

Disposing of the appeal, the Court

- HELD:** 1. On the issue of premature release, it is not in dispute that the benefit of premature release to prisoners in case of life convicts is minimum completion of ten years of incarceration

as on 25.02.2018, and for such purpose in G.O.(Ms) No. 64 dated 01.02.2018, there is a State Level Committee empowered to make such recommendations. In the present case, the positive recommendation of the State Level Committee for premature release of the Appellant, has been rejected by the State on the ground that the Appellant had administered poison to murder her two sons to continue her illicit relationship without any hinderance, which act was cruel and brutal in nature. [Para 16][1135-A-B]

2. Pausing here, the Court would note that the Appellant never tried to murder her sons with a view to continue her illicit relationship. On the contrary, she had tried to commit suicide herself along with her children not with a view to continue her illicit relationship with her paramour but rather, in disappointment and frustration over the quarrel picked up by her paramour. This Court is not an institution to sermonise society on morality and ethics and cannot say further on this score, as is bound, by the brooding presence of the rule of law. [Para 17][1135-C-D]

3. That said, it cannot be simply bracketed as a '*cruel and brutal*' offence as the Appellant herself was trying to end her life but was prevented by her niece in the nick of time. Moreover, the recommendation of the State Level Committee conveyed by the Additional Director General of Police/Inspector General of Prisons by way of Letter No.4369/PS1/2018 dated 16.02.2018 also notes her undisputed reflective conduct as also the long period of incarceration already undergone. [Para 18][1135-E]

4. Thus, this Court feels that there is no valid reason/justifiable ground for the State not accepting the recommendation of the State Level Committee for premature release of the Appellant. The Court is not oblivious to the crime and to the fact that the Appellant (mother) has already suffered at the cruel hands of fate. The reason thereof is an arena this Court would avoid entering. [Para 19][1135-F]

5. The order of the State of Tamil Nadu as contained in G.O. (D) No. 1127 dated 24.09.2019 issued by the Home (Prison-

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- A **IV) Department, under the signature of Additional Chief Secretary to Government, rejecting the prayer for premature release of the Appellant, is set aside. [Para 20][1135-G-H]**

State of Andhra Pradesh v Rayavarapu Punnayya, (1976) 4 SCC 382 : [1977] 1 SCR 601; State of

- B ***Uttarakhand v Sachendra Singh Rawat, (2022) 4 SCC 227 – referred to.***

Guruswami Pillai v State, 1991 (1) MWN (Cr.) 153; Suyambukkani v State, 1989 SCC OnLine Mad 481 – referred to.

- C **Case Law Reference**

[1977] 1 SCR 601	referred to	Para 14
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1389 of 2023.

- D From the Judgment and Order dated 05.08.2019 of the High Court of Judicature at Madras at Madurai in CRLAMD No. 186 of 2019.

Nagamuthu, Sr. Adv., S. Prabu Rama Subramanian, Raghunatha Sethupathy B, Bharathimohan M, Ms. Priya R, S. Sabari Bala Pandian, Avinash Kumar, Vairawan, Sudhakar, Vikas, Advs. for the Appellant.

- E Dr. Joseph Aristotle S., Ms. Vaidehi Rastogi, Advs. for the Respondent.

The Judgment of the Court was delivered by

AHSANUDDIN AMANULLAH, J.

- F Leave granted.

2. The present Appeal is directed against the Final Judgment and Order dated 05.08.2019 (hereinafter referred to as the “Impugned Judgment”) passed by the Madurai Bench of the Madras High Court G partly allowing Criminal Appeal (MD) No. 186 of 2019 (hereinafter referred to as the “High Court”) filed by the Appellant.

THE FACTUAL PRISM:

3. The Appellant is stated to have had an affair with one Suresh, who used to threaten her often. This led her to take the decision to H

commit suicide along with her children. Pursuant to her decision to adopt such a course of action, she bought pesticides meant for plants and administered poison to her two children, twins named Ramar and Laxmanan. Thereafter, when the appellant poured the pesticide in a tumbler to consume it herself, her niece pushed it down. However, unfortunately, the two children were declared dead on arrival in the hospital leading to the institution of FIR No.115 of 2003 dated 28.03.2003 at Sempatty Police Station under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”).

4. Upon trial, the learned Additional District and Sessions Judge (Fast Track Court), Dindigul by Judgment and Order in Sessions Case No. 92 of 2004 dated 10.01.2005 convicted the appellant under Sections 302 and 309 of the IPC and sentenced her to undergo life imprisonment. It also imposed a fine of Rs.5,000/- for each offence totalling Rs.10,000/- and for the offence of attempting to commit suicide, she was ordered to undergo simple imprisonment for a period of one year and fined Rs.1,000/-, failing which she would undergo simple imprisonment for a further period of three months under Section 309, IPC.

5. In appeal, the High Court partly allowed the Appellant’s plea by acquitting the Appellant under Section 309, IPC while upholding the conviction under Section 302, IPC.

6. The Appellant having suffered imprisonment for almost 20 years applied for premature release. However, the recommendation of the State Level Committee was rejected by the State of Tamil Nadu *vide* G.O.(D) No. 1127 dated 24.09.2019, considering the cruel and brutal nature of the offence(s) committed by her.

SUBMISSIONS BY THE APPELLANT:

7. Learned senior counsel for the Appellant submitted that even if it is assumed that she had tried to commit suicide along with her children by consuming poison, the same was due to sudden provocation which falls under Exception 1 to Section 300 of the IPC. Furthermore, the Appellant being the mother taking the extreme course of family suicide, alongwith her two sons is an extenuating circumstance covered under Exception 1 to Section 300 of the IPC. And, when the mother had survived/ escaped and the children died, it would be punishable under Section 304 Part I of the IPC. In this connection, reliance was placed on the decisions

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- A of learned Division Benches of the Madras High Court in *Guruswami Pillai v State, 1991 (1) MWN (Cr.) 153* and *Suyambukkani v State, 1989 SCC OnLine Mad 481*.
 - 8. In the alternative, learned senior counsel vehemently canvassed that the Appellant should, at least, be given the benefit of
- B G.O.(Ms) No. 64 of the Home (Prison-IV) Department dated 01.02.2018, in view of the long period of incarceration and the fact that the State Level Committee comprising the District Authorities and Prison Department on 16.02.2018 [reference seems to be to the Additional Director General of Police/Inspector General of Prisons
- C Letter No.4369/PS1/2018] had recommended release of the appellant on account of her undisputed affirmative conduct and long incarceration and thus, the order of rejection of release dated 24.09.2019 by the State of Tamil Nadu *vide* G.O.(D) No. 1127, on the ground of cruel and brutal nature of the offence, be considered erroneous and needs to be interfered with by this Court.
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SUBMISSIONS OF THE RESPONDENT-STATE:

- 9. Learned counsel for the sole Respondent-State opposing the prayers forcefully urged that the act(s) committed by the Appellant was cruel and brutal as young children were administered poison and put to death and rightly, the premature release of the Appellant had been refused by the State. On merits, it was submitted that both the Trial Court and the High Court had carefully considered all aspects of the matter, and not finding any merit, the High Court had upheld the conviction under Section 302 of the IPC.
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F ANALYSIS, REASONING AND CONCLUSION:

- 10. Having considered the matter in detail, this Court finds that the circumstances in which the Appellant is said to have administered poison to her two sons is clearly reflective of her being under a state of tremendous mental stress. However, despite the best efforts of learned senior counsel for the Appellant, it is difficult to grant the benefit of bringing the case under the ambit of pable homicide not amounting to murder.
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11. It would be useful to reproduce Sections 299, 300, 302 and 304 of the IPC, which read as under, before proceeding further:

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“299. *Culpable homicide*- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

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(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

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(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

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(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

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*Explanation 1.—*A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

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*Explanation 2.—*Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

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*Explanation 3.—*The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

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A **300. Murder-** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

B *Secondly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -*

B *Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or -*

C *Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

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Illustrations

(a) *A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.*

E *(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.*

F *(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A, is guilty of murder, although he may not have intended to cause Z's death.*

H *(d) A without any excuse fires a loaded can- non into a crowd of persons and kills one of them. A is guilty of murder;*

although he may not have had a premeditated design to kill A any particular individual.

Exception 1.—When culpable homicide is not murder.—
Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or B causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

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

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

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

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

Illustrations

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(a) *A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.* F

(b) *Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.* G

(c) *A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.* H

- A *(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.*
- B *(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.*
- C *(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.*
- D ***Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.***
- E ***Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.***

Illustration

- F *Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.*
- G ***Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.***
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Exception 4.—*Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the fender having taken undue advantage or acted in a cruel or unusual manner.* A

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault. B

Exception 5.—*Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.* C

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder. D

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302. Punishment for murder - *Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.* E

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304. Punishment for culpable homicide not amounting to murder- *Whoever commits culpable homicide not amounting to murder shall be punished with (imprisonment for life), or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”* F G

12. In the facts and circumstance of the present case, we find the scenarios put forth by the Appellant not covered under the exceptions H

- A enumerated under Section 300 of the IPC. More so, when there was no consent from the persons who were fed and died upon consuming the pesticide administered by the Appellant. In *Guruswami Pillai (supra)*, the father had caused the death of his minor daughter by cutting her throat with a blade and had also attempted to commit suicide. During the trial, it had emerged that both the father and the daughter had taken a joint decision that they should end their lives. And thus, in that background, both with regard to mental status, social status, financial status and the attending circumstances, the High Court therein had found it prudent to give a benefit by converting the conviction from Section 302, IPC to one under Section 304 Part I, IPC.
- B 13. Similarly, in the case of *Suyambukkani (supra)* immediately before the incident which led to his wife drowning herself with two children, besides there being a history of her being abused and beaten up by the accused therein, the immediate provocation was that she was beaten up just a day prior to the fateful incident, and also in the
- C morning and at lunch time, which provoked her to immediately try to take her life along with her two children by jumping into a well from where they were taken out. But the two children died, and she was saved and convicted on two counts under Section 302 IPC as also under Section 309 IPC by the trial court. It is noteworthy that even the
- D children were abused by their father as during the postmortem of the two children, several abrasions were found on their dead bodies and the medical examination of the accused revealed injuries on her body and the stand taken on her behalf was that as a mother she wanted to commit suicide and thought it her duty not to abandon her progeny as she could not reconcile herself with the idea of dying alone, leaving
- E her children behind.
- F 14. As such, both cases pressed into service by the Appellant turned on their own facts. Indeed, they were also noted by the High Court. They need not detain us further. Even on the anvil of *State of Andhra Pradesh v Rayavarapu Punnayya, (1976) 4 SCC 382*, the
- G Appellant is not benefitted. We have also factored in *State of Uttarakhand v Sachendra Singh Rawat, (2022) 4 SCC 227*.
- H 15. Be that as it may, the Court is not persuaded to convert the conviction from Section 302, IPC to one under Section 304 Part I, IPC.

16. However, on the issue of premature release, it is not in dispute A that the benefit of premature release to prisoners in case of life convicts is minimum completion of ten years of incarceration as on 25.02.2018, and for such purpose in G.O.(Ms) No. 64 dated 01.02.2018, there is a State Level Committee empowered to make such recommendations. In the present case, the positive recommendation of the State Level Committee for premature release of the Appellant, has been rejected by the State on the ground that the Appellant had administered poison to murder her two sons to continue her illicit relationship without any hinderance, which act was cruel and brutal in nature.

17. Pausing here, the Court would note that the Appellant never tried to murder her sons with a view to continue her illicit relationship. On the contrary, she had tried to commit suicide herself along with her children not with a view to continue her illicit relationship with her paramour but rather, in disappointment and frustration over the quarrel picked up by her paramour. This Court is not an institution to sermonise society on morality and ethics and we say no further on this score, bound as we are, by the brooding presence of the rule of law. C

18. That said, it cannot be simply bracketed as a '*cruel and brutal*' offence as the Appellant herself was trying to end her life but was prevented by her niece in the nick of time. Moreover, the recommendation of the State Level Committee conveyed by the Additional Director General of Police/Inspector General of Prisons by way of Letter No.4369/ PS1/2018 dated 16.02.2018 also notes her undisputed reflective conduct as also the long period of incarceration already undergone. E

19. Thus, this Court feels that there is no valid reason/justifiable ground for the State not accepting the recommendation of the State Level Committee for premature release of the Appellant. We are not oblivious to the crime but we are equally not oblivious to the fact that the Appellant (mother) has already suffered at the cruel hands of fate. The reason thereof is an arena this Court would avoid entering. F

20. For reasons aforesaid, the order of the State of Tamil Nadu as contained in G.O. (D) No. 1127 dated 24.09.2019 issued by the Home (Prison-IV) Department, under the signature of Additional Chief Secretary to Government, rejecting the prayer for premature release of the Appellant, is set aside. G

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- A 21. The Appellant is held entitled to the benefit of premature release as per G.O.(Ms) No. 64 dated 01.02.2018 issued by the Home (Prison-IV) Department, under the signature of Additional Chief Secretary to Government.
- B 22. Accordingly, the Appellant is directed to be released forthwith, if not required in any other case.
23. The Appeal stands disposed of in the aforementioned terms.

Ankit Gyan

Appeal disposed of.