



Bail Slip

The Appellant / Accused Sankar @ Jeyasankar @ Sivasankaran, S/o.Mookan, was released on bail order dated 02.04.2018 made in Crl.MP(MD)No.1670 of 2018 in Crl.A(MD)No.109/2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **27.02.2020**

Pronounced on : **22.07.2020**

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.109 of 2018

Sankar @ Jeyasankar @ Sivasankaran ... Appellant / Sole Accused
Vs.

State rep. by
The Inspector of Police,
Udaiyalipatti Police Station,
Pudukkottai District.
Cr.No.75 of 2012

... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.122 of 2013 on the file of the learned Additional District and Sessions Judge, Pudukkottai, dated 20.12.2017 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.MA.Karunanithi
for Mr.K.Baalasundharam

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J.,

This Criminal Appeal is preferred by the appellant / accused as against the conviction and sentence imposed by the learned Additional District and Sessions Judge, Pudukkottai, in S.C.No.122 of 2013, dated 20.12.2017. The appellant was charged for the offence under Sections 341, 302 & 307 IPC. The trial Court, in conclusion of the trial, though acquitted him for the offence under Sections 341 & 307 IPC, has found him guilty for the offence under Section 302 IPC, convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for three months. Aggrieved over the conviction and sentence imposed, the appellant has preferred the instant appeal.

2. The brief facts of the case, in a nutshell, are as follows:

2.1. The defacto complainant in this case, namely, Suresh [PW1], is the brother of the deceased, namely, Sathishkumar and also an injured witness. PW1, the deceased and their mother, namely, Chandra [PW10] are all residents of Paravayal village. The accused

February,

2.3. On 14.05.2012, the deceased lodged a complaint before Udaiyalipatti Police Station as against PW2's family seeking police protection. Thiru Mohan, then Sub-Inspector of Police [PW17], received the complaint and issued a receipt. He has also called the families of both the deceased and PW2 and advised them and also got an undertaking that they would not cause damage to each other. While so, on the same day, at about 12 noon, when the deceased was playing Dhayam outside their house along with witnesses Madhubala [PW3], Pandipraba @ Suganya [PW4], Madhudhiya @ Madhisiya [PW5] and Gangadevi, the accused came there with a knife [MO1] and dragged the deceased to the entrance of the house. At that time, PW1 was having his lunch inside the house and PW2 was serving him food. Hearing the hue and cry, both of them came out of the house and the accused saying that 'how can you elope with my niece, I won't allow you to live', stabbed the deceased in his left stomach, due to which, the intestine came out. He also stabbed the deceased in his chest. When PW1 attempted to save his brother, the accused saying that 'you too die', stabbed him in his left stomach and teared till the left thigh. PW1 managed to have his intestine inside the stomach by tightening his lungi. When the neighbours and witnesses attempted to prevent the accused, he criminally intimidated everyone and has also stabbed his own hand using the knife [MO1] and thereafter, fled away from the scene of occurrence.

<https://hcservices.courts.gov.in/Drcsr/Meed/>



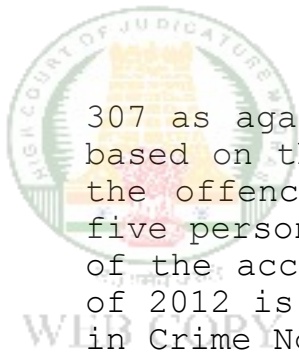
attended PW1 at about 01.50 pm. PW1 told him that he was attacked by five known persons at about 12 noon. According to PW13, PW1 was conscious and there was a deep stab injury in the left side abdomen, from which, the bowel came outside and by tightening a cloth, it was managed to be kept inside. PW13 gave first aid treatment to PW1 and referred him to Government Medical College Hospital, Thanjavur, for further treatment. The Accident Register issued by PW13 to PW1 is marked as Ex.P4. According to PW13, the injury sustained by PW1 is a grievous one and he has also issued a Wound Certificate marked as Ex.P5.

2.5. On the same day, one Amutha, wife of the accused, brought the accused to Government Hospital, Andakulam, Pudukkottai and PW13 attended the accused also. The accused told PW13 that he was attacked by five known persons at about 12 noon. According to PW13, there was a smell of alcohol on the accused and he sustained a lacerated injury of 10 x 4 x 2 cm in the left forearm; a lacerated injury of 3 x 2 x 1 cm in the right side head; a lacerated injury of 1 x 1 cm in the right hand; and swelling in left side head above the ear. The Accident Register cum Wound Certificate issued by PW13 is marked as Ex.P6.

2.6. Dr.Rayappan Kumar of Pudukottai Government Hospital [PW14], attended the deceased at about 01.35 pm on 14.03.2012 and according to him, the deceased was conscious but disoriented. PW7-Kannan brought him to the hospital and told that the deceased was attacked by six persons. According to PW14, the deceased sustained a deep lacerated injury of 5 x 4 x 3 cm in the left side stomach and the bowel came outside and it also has lacerated wounds. PW14 gave first aid treatment to the deceased and referred him to Government Medical College Hospital, Thanjavur, for further treatment. The Accident Register issued by PW14 to the deceased is marked as Ex.P7.

2.7. Dr.Marimuthu, Government Medical College Hospital, Thanjavur [PW19] issued the discharge certificate for PW1 on 27.05.2012. According to him, due to the stab injury in the stomach, about 50 cm of bowel decomposed and therefore, it was removed and the remaining portion was joined. According to him, the nature of injury is grievous and if the injury is irregular and if no proper treatment was provided, then PW1 would have died.

2.8. Thiru Sahul Hameed [PW18], then Sub-Inspector of Police, Udaiyalipatti Police Station, when he returned Pudukottai after attending the Court work on 14.05.2012, received a message from the station through his cell phone about the intimation from the Government Hospital, Pudukottai and went to the Hospital. He enquired PW1 in the ICU and recorded his statement [Ex.P1] and has also recorded the statement of the accused who was taking treatment as inpatient in Ward No.41 of the same Hospital. Thereafter, PW18 returned to Udaiyalipatti Police Station and registered a case in



307 as against the appellant / accused and five others (in all six) based on the complaint of PW1 and a case in Crime No.76 of 2012 for the offence under Sections 147, 148, 324 & 506(ii) IPC as against five persons, including the deceased and PW1, based on the complaint of the accused. The printed First Information Report in Crime No.75 of 2012 is marked as Ex.P11 and the printed First Information Report in Crime No.76 of 2012 is marked as Ex.D1. PW18 was also examined as DW2, on the side of defence.

2.9. Thiru Manoharan, Inspector of Police, Udaiyalipatti Police Station [PW21], on receipt of the intimation about the registration of the FIR in Crime No.75 of 2012, went to the place of occurrence at about 05.00 pm and prepared an observation mahazar [Ex.P8] and rough sketch [Ex.P13], in the presence of one Jothiprakash, Village Administrative Officer [PW15] and Veeramani. He also recovered earth with and without bloodstain [MOs.4 & 5 respectively], from the scene of occurrence and commenced the investigation. In the interregnum period, the deceased Sathishkumar died in the Hospital at about 04.50 pm and on receipt of intimation from the Government Medical College Hospital, Thanjavur, at about 08.00 pm, he prepared and submitted an express report [Ex.P14] to the learned Judicial Magistrate, Keeranur to alter the Sections. Based on the orders passed by the learned Magistrate, he altered the Sections of Law, thereby, included Section 302 IPC.

2.10. On the same day, between 09.00 pm and 12.15 am, PW21 conducted inquest on the body of the deceased in the presence of panchayatars. The inquest report is marked as Ex.P15. He also made a requisition for conducting postmortem on the body of the deceased.

2.11. Dr.Rajkumar, Government Medical College Hospital, Thanjavur [PW20] conducted postmortem on the body of the deceased. According to PW20, the postmortem was commenced at 11.40 am on 15.05.2012 and he found the following injuries:

"External Injuries:

i) Stab wound over left hypochondrial region - bowel seen outside the wound measuring (stab wound - 7x2cmxomental depth); and

ii) Another stab wound - over epigastric region - (4x2x5cmxomental depth).

Internal Injuries:

iii) On opening the scalp skin: Intact;

iv) On opening the skull cap : Intact;

v) On opening the abdomen : Haemorrhagic contusion over the mesentery of small intestine with 1500 ml of blood stained fluid present;

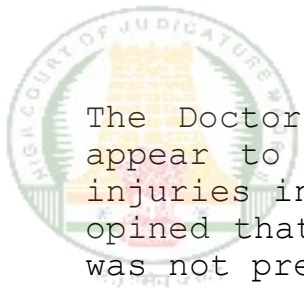
vi) Laceration of (3x2x2cm) present over the greater omentum right side;

vii) Laceration (4x2x3cm) over right lobe of liver;

and

viii) Laceration (3x2x6cm) over anterior aspect of

spleen."



The Doctor [PW20] gave his final opinion that the deceased would appear to have died due to effects and complications of multiple injuries involving vital organ, namely, liver and spleen. He further opined that since there was no doubt in the cause of death, Viscera was not preserved. The postmortem report is marked as Ex.P12.

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2.12. After the completion of postmortem, the dress worn by the deceased [MO6 - Jatti & MO7 - bloodstained Dhoti] were recovered by one Iyappan, Constable and submitted before the investigation officer [PW21] vide report in Ex.P16.

2.13. During the course of investigation, PW21 found that the appellant alone committed the offence and the rest of the persons were wrongly arrayed as accused, since 10 days before the occurrence, all the six of them have assaulted PW10. Therefore, PW21 made an alteration report [Ex.P23] arraying the appellant alone as accused in Crime No.75 of 2012. He arrested the accused on 16.05.2012 at about 03.30 pm near Lakshmi Theatre Bus Stop, Keeranur, in the presence of one Mohamed Rafiq [PW16] and Siril Raj [PW12] and the accused gave a voluntary confession statement. Based on the admissible portion of the confession statement [Ex.P10], the investigation officer recovered the knife [MO1], a lungi [MO2] and a shirt [MO3] in the presence of the same witnesses.

2.14. Thereafter, PW21 took steps to record the statement of the witnesses under Section 164 Cr.P.C. Based on the orders of the Chief Judicial Magistrate, Pudukottai in Ex.P21, the District Munsif cum Judicial Magistrate, Thirumayam [PW23] recorded the statement of the witnesses. PW21, in conclusion of the investigation, laid the final report as against the appellant / accused for the commission of offence under Sections 341, 302 & 307 IPC.

2.15. During the trial, on the side of the prosecution, 23 witnesses were examined and 23 documents were marked, besides 7 material objects.

3. The available evidences from the prosecution witness are as follows:

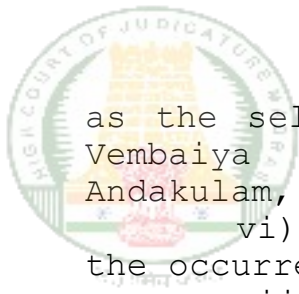
i) PW1, Suresh, is the brother of the deceased and also an injured witness. He speaks about the motive as well as the lodging of the complaint [Ex.P1].

ii) PW2, Pandeewari, is the wife of the deceased and niece of the accused. She speaks about the motive as well as the occurrence.

iii) PW3, Madhubala; PW4, Pandipraba @ Suganya; PW5, Madhudhiya @ Madhisiya are examined as eye witnesses to the occurrence. PW5 also speaks about the self inflicted injuries by the accused after the commission of offence.

iv) PW6, Indira Gandhi, speaks about the motive as well as the occurrence.

<https://hcservices.ecourts.gov.in/Pw5ServicesK> Kannan, speaks about the motive, occurrence as well



as the self inflicted injuries by the accused. He along with one Vembaiya took the deceased and PW1 to Government Hospital, Andakulam, Pudukottai.

vi) PW8, Valarmathi; and PW9, Mangaiyarkarasi, speaks about the occurrence.

vii) PW10, Chandra, is the mother of the deceased and PW1. She speaks about the motive as well as the occurrence.

viii) PW11, Abdul Kadhar, is a vendor of Flowers and Fertilizers, from whom, the accused purchased the knife [MO1] for Rs.25/-.

ix) PW12, Siril Raj; and PW16, Mohamed Rafiq, are examined as witnesses to the arrest and recovery.

x) PW13, Dr.Nallaperumal, attended both PW1 and the accused in Pudukottai Government Hospital and gave first aid treatment to both of them. The Accident Register and the Wound Certificate issued by PW13 to PW1 is marked as Ex.P4 and Ex.P5, respectively. The Wound Certificate issued by PW13 to the accused is marked as Ex.P6.

xi) PW14, Dr.Rayappan Kumar, attended the deceased in Pudukottai Government Hospital and gave first aid treatment to him. The Accident Register issued by PW14 to the deceased is marked as Ex.P7.

xii) PW15, Thiru Jothiprakash, Village Administrative Officer, is the mahazar witness.

xiii) PW17, Thiru Mohan, then Sub-Inspector of Police, Udaiyalipatti Police Station, speaks about the complaint of the deceased on 14.05.2012 as against PW2's family seeking police protection.

xiv) PW18, Thiru Sahul Hameed, then Sub-Inspector of Police, Udaiyalipatti Police Station, speaks about the recording of statement from PW1 [Ex.P1] and the accused as well as registration of Crime Nos.75 & 76 of 2012. He was also examined as DW2, on the side of defence.

xv) PW19, Dr.Marimuthu, Government Medical College Hospital, Thanjavur issued the discharge certificate for PW1 on 27.05.2012.

xvi) PW20, Dr.Rajkumar, Government Medical College Hospital, Thanjavur, conducted postmortem on the body of the deceased. The postmortem certificate is marked as Ex.P12.

xvii) PW21, Thiru Manoharan, is the then Inspector of Police, Udaiyalipatti Police Station, who conducted the investigation and filed the final report.

xviii) PW22, Tmt.Jeya, is the Scientific Analyst. The chemical analysis report is marked as Ex.P19.

xix) PW23, Thiru Sakthivel Kannan, is the then District Munsif cum Judicial Magistrate, Thirumayam, who recorded the statement of the witnesses under Section 164 Cr.P.C.

4. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. On the side of the defence, one Rasu, brother-in-law of the accused, was examined as DW1 and PW18, Thiru Sahul Hameed, then Sub-Inspector of Police, Udaiyalipatti Police Station, was examined as DW2. The First Information Report registered in



Crime No.76 of 2012, based on the complaint of the accused, is marked as Ex.D1.

5. In conclusion of the trial, the trial Court, though acquitted the appellant / accused for the offence under Sections 341 & 307 IPC, has found him guilty for the offence under Section 302 IPC, convicted and sentenced him as stated supra. As against the same, the appellant has preferred the instant appeal.

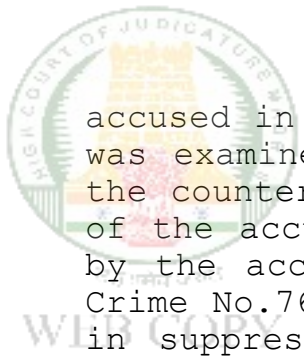
6. Heard Mr.MA.Karunanithi, learned Counsel for Mr.K.Baalasundharam, learned Counsel on record appearing for the appellant / accused and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent / State.

7. Mr.MA.Karunanithi, learned Counsel for the appellant made his submissions on the following lines:

7.1. By relying upon the accident register of the deceased in Ex.P7 and accident register of PW1 in Ex.P4, the learned Counsel would submit that in the earliest documents, it is referred that the occurrence was committed by five known persons. Similarly, in the complaint [Ex.P1] also, five named persons are mentioned as assailants for the occurrence. But, there is no explanation by the prosecution for deleting the other accused and prosecuting this appellant alone for the commission of the offence. The case was originally registered in Crime No.75 of 2012 on 14.05.2012 at about 03.45 pm as against this appellant and five others for the offence under Sections 147, 148, 324 and 307 IPC. Since the deceased died in the hospital on 14.05.2012 at 04.50 pm, alteration report was made by the Inspector of Police, Manoharan [PW21] in Ex.P14 for the offence under Sections 147, 148, 324, 307 and 302 IPC. But, the final report was filed as against this appellant alone and there is no explanation, whatsoever, by the prosecution for omitting the other accused.

7.2. PW1 during his evidence admitted that the other accused have intimidated their family 10 days prior to the occurrence and therefore, he named the other accused also in the complaint Ex.P1. Whereas, the Inspector of Police [PW21] in his cross examination has admitted that no such explanation was offered by PW1 when he was examined under Section 161 CrPC.

7.3. Relying upon the evidence of Thiru Sahul Hameed [PW18], Special Sub Inspector of Police, who registered the case in Crime No.75 of 2012, the learned Counsel would submit that the prosecution has deliberately suppressed the complaint lodged by the accused in Crime No.76 of 2012. The deceased and the accused were taken to the Government Head Quarters Hospital, Pudukottai immediately after the occurrence and on the medical intimation from the Hospital, the Special Sub Inspector of Police, Shaul Hameed [PW18] registered the complaint in Crime No.75 of 2012 and the complaint of the



accused in Crime No.76 of 2012. But the said Sahul Hameed, while he was examined as PW18 during the trial, has deliberately suppressed the counter case registered in Crime No. 76 of 2012 at the instance of the accused. However, the said Sahul Hameed was examined as DW2 by the accused and through him, the certified copy of the FIR in Crime No.76 of 2012 was marked. The attempt made by the prosecution in suppressing the complaint of the accused would show that the *false in uno false in omnibus*.

7.4. He has also relied upon the Accident Register cum Wound Certificate issued for the accused by Dr.Nalla Perumal [PW13], Government Head Quarters Hospital Pudukottai, in Exp6 and would submit that the accused has sustained three lacerated injuries on the elbow, head and right hand and also admitted in the hospital and on medical intimation, this complaint was registered in Crime No.76 of 2012. But there is no investigation in Crime No.76 of 2012. The place and time of occurrence in both Crime No.75 of 2012 and Crime No.76 of 2012 are one and the same and as per the provision under PSO 588A of the Police Standing Orders, the investigation in both the cases ought to have been conducted by the same investigating officer and the investigating officer ought to have arrived at a conclusion, who is the aggressor in the incident and ought to have closed the complaint of the other. But, in this case there is no investigation on the counter complaint lodged by the accused and there was a deliberate attempt by the prosecution to suppress the counter complaint and the counter complaint was marked only by the accused and the investigating officer has not placed the final report on the counter complaint in Crime No.76 of 2012 before the Court.

7.5. He would further submit that the place of occurrence has not been established properly in view of the contradictory statements between the eye witnesses. Moreover, according to PW2, a separate statement was recorded from her by the Police, but, the same was also suppressed by the Police. He also disputed the arrest that the accused was taking treatment in the Government Hospital, Pudukottai as an inpatient and while so, the arrest card shown as if the accused was arrested on 16.05.2012 at 03.30 pm, near the Keeranur Bus Stop is highly doubtful.

7.6. In support of his contentions, the learned Counsel for the appellant has also relied upon the following judgments:

- i) 2019 (1) SCC Cr1. 701;
- ii) AIR 2011 SC 1736;
- iii) 1990 LW Cr1. 175;
- iv) 2001 (2) SCC 688;
- v) (1976) 4 SCC 394;
- vi) AIR 1957 SC 614;
- vii) 2013 (3) MLJ Cr1. 481;
- viii) 2019 (3) SCC Cr1. 309;
- ix) 2019 (7) SCC 781;



- x) 2004 Crl. L.J. 1904;
- xi) 2008 (3) MLJ Crl. 257;
- xii) Crl.A.No.524 of 2016, arising out of SLP(Crl.)No.2496 of 2016;
- xiii) 2016 (1) MWN (Cr.) 292 (DB); and
- xiv) 1997 MLJ Crl. 257.

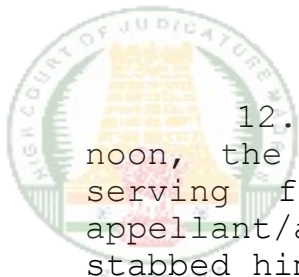
8. Per contra, the learned Additional Public Prosecutor by referring the evidence of the prosecution witnesses would submit that the prosecution has established its case beyond reasonable doubt. PW1 is an injured witness and PW2 is none other than the sister's daughter of the accused and the evidence of PW1 and PW2 was corroborated by the evidence of PWs.3 to 6.

9. The counter complaint referred to by the defence has also been explained by the prosecution through the evidence of PW7 and PW8 that after the commission of offence, the accused threatened the general public by showing knife and also self inflicted the injuries. The evidence of PW7 and PW8 is also corroborated by PW9. In order to escape from the commission of offence, the accused foisted this false complaint and the inclusion of other accused in complaint-Ex.P1; Accident Register-Ex.P4; and Wound Certificate-Ex.P5 was also explained by PW1 during his evidence. Apart from his evidence, there are five other eye witnesses in this case and all the eye witnesses have uniformly stated the manner of the occurrence committed by this appellant and therefore, there is no reason to disbelieve the case of the prosecution. He has also relied upon the following decisions in support of his contention:

- i) (1990) 3 SCC 190;
- ii) (2000) 4 SCC 298;
- iii) (2001) 6 SCC 158;
- iv) (1998) 7 SCC 365; and
- v) (2013) 12 SCC 721.

10. This court has paid its best attention and anxious consideration to the rival submission and also perused the available records.

11. The occurrence was taken place on 14.05.2012 at 12.00 noon at the residence of the deceased. The motive shown by the prosecution is that there was a previous enmity between the deceased and the accused since the deceased married PW2. The deceased and PW2 belong to the same community and were also neighbours. They developed love and married on 03.04.2012 in a Sub Registrar Office at Bangalore against the wishes of PW2's family. When the parents of Pandeewari [PW2] made arrangements for her marriage with another person, PW2 eloped with the deceased and on the complaint of PW2's brother, one Pandiyarajan, before the Udaiyarpatti Police Station, both were secured. The Police, after ascertaining that they were majors, let them free and advised PW2's family. The parents of Pandeewari [PW2] have collected all her belongings from the Police Station. Even at that time, this appellant/accused is said to have



12. On the date of occurrence on 14.05.2012, around 12.00 noon, the deceased was playing Thayam in their Pial and PW2 was serving food to PW1 inside the house. At that time, this appellant/accused trespassed, raised problem with the deceased and stabbed him on his Chest. PW1, who was having food inside the house, rushed in rescue of his brother and he was also attacked by the accused on his Stomach. PW2 and others took the deceased and PW1 to the Government Head Quarters Hospital, Pudukottai and Dr.Nallaperumal [PW13] treated PW1 and the deceased and recorded their injuries in the Accident Registers in Ex.P4 & Ex.P7, respectively.

13. The Doctor [PW13] has noted down a deep lacerated wound over the Intestine on the deceased and referred him for further treatment to Thanjavur Medical College Hospital. On the medical intimation from the Hospital, Thiru Sahul Hameed [PW18], Special Sub Inspector of Police, went to the Government Hospital, Pudukottai and recorded a statement from PW1 and registered the case in Crime No.75 of 2012 at 03.45 pm.

14. In the same course of incident, this appellant/accused has also sustained injuries and he was also taken to the Government Headquarters Hospital, Pudukottai and the Doctor [PW13], who treated PW1 and the deceased, has also treated the accused and issued an Accident Register in Ex.P6, wherein, he has noted down the following injuries:

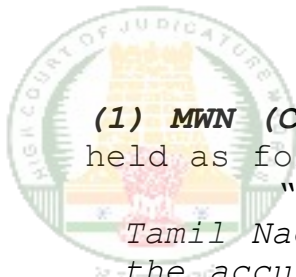
1. a lacerated injury of 10 x 4 x 2 cm in the left forearm;
2. a lacerated injury of 3 x 2 x 1 cm in the parietal region;
3. a lacerated injury of 1 x 1 cm in the right hand; and
4. swelling in the left side head above the ear.

The Doctor has also recorded smell of alcohol and further deposed that the injuries are simple in nature.

15. While the accused was taking treatment in the Government Hospital, Pudukottai, the Sub-Inspector of Police, Sahul Hameed [PW18], who recorded the statement of PW1 and registered the case in Crime No.75 of 2012, has also recorded the statement from the accused and registered a case in Crime No.76 of 2012 as against the deceased, PW1, PW6 and two others, for the offence under Sections 147, 148, 324, 506(ii) IPC. The date, time and place of occurrence shown in Crime Nos.75 and 76 of 2012 are one and the same.

16. The learned Counsel for the appellant has relied upon the provisions under the Police Standing Order-588A and made his submissions that both cases are registered as case and counter, whereas, the case registered in Crime No.76 of 2012 has not been enquired into and the final report, if any filed in Crime No.76 of 2012, was not at all placed before the trial Court.

17. In this regard, the learned Counsel for the appellant has
<https://hcservicescourts.gov.in/hcservices/> decision in ***R.Velladurai and Others v. State [2016]***



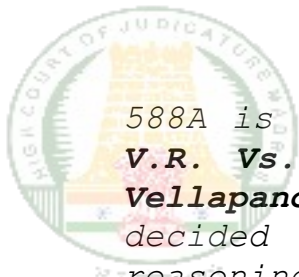
(1) **MWN (Cr.) 292 (DB)]**, wherein a Division Bench of this Court has held as follows:

"13. It is not uncommon that the provision contained in Tamil Nadu Police Standing Orders - PSO 588-A is taken handy by the accused before the courts of law to get out of the clutches of law by making a prayer that the failure to follow PSO 588-A is an illegality rendering prosecution vitiated. As a matter of fact, PSO 588-A was introduced based on certain observations made by **Hon'ble Justice P.N.Ramaswami in Thota Ramakrishnayya, Vs State**, reported in 1954 MWN (Cr.) 9.

14. Before proceeding further let us have a quick look into PSO 588-A which reads thus:-

"In a complaint and counter complaint arising out of a same transaction, the Investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

15. After the introduction of PSO 588A, there were number of judgments out of which one line of thinking was that the failure to follow PSO 588A is an illegality vitiating the conviction. The other line of thinking was that PSO 588-A is only a directory and so the question of prejudice is a matter to be considered on account of the failure to follow PSO 588A. In some cases, analogy was drawn between PSOs 145 and 588A. The Hon'ble Supreme Court in **State of Andhra Pradesh Vs. Venugopal**, reported in AIR 1964 SC 33 held that PSO 145 is nothing more than administrative instructions and it cannot have the force of law. In an attempt to distinguish PSO 145 from 588A in order to get over the judgement of the Hon'ble Supreme Court insofar as PSO 588A is concerned, it was argued before this court in a number of cases that since PSO 145 was not marked with asterisk and it could be safely held that it was not issued under Section 9 of the Madras District Police Act whereas PSO 588A has been issued under Section 9 of the Madras District Police Act and therefore, PSO 588A has got statutory force. In **Vellapandy Thevar v. State**, reported in 1984 LW Cri 257, a learned Judge of this Court held that the course adopted by the investigating officer without following the procedure contemplated in Section



588A is not only improper, but also bad in law. In **Ranganathan V.R. Vs. State** (1985 LW Cri 86), the above said judgement in **Vellapandy Thevar's** case was quoted. But, the learned Judge who decided the **Ranganathan's** case declined to agree with the reasoning of the former. In **Ranganathan's** case the learned Judge held that the Police Standing Orders cannot be said to be a statute but only a set of rules framed for the guidance of the investigating officers and, therefore, a violation of a Standing Order in the matter of investigation will not constitute an illegality. In other words, a defect or an irregularity in investigation, however serious, had no direct bearing on the competence or the procedure relating to the cognizance of the trial. The same question again came up for consideration before yet another Hon'ble Judge of this court in **Justin v. The State Represented by the Inspector of Police**, 1988 LW Cri 467. In that case again following the view expressed in **Vellapandy Thevar's** case, it was held as follows:-

"The Investigating Officer in this case has evidently contravened the express provisions of PSO 588A of the Madras Police Standing orders in charge- sheeting both the cases. The result is that there are now two prosecutions in respect of the same matter against opposite parties. The course adopted by the Investigating Officer is not only improper, but also bad in law."

16. In yet another case in **Ekambaram v. Sundarmurthy**, 1989 (1) Crimes 458, the same question came up for consideration before yet another Hon'ble Judge of this Court. In that case, the learned Judge took a contrary view.

17. Finally, it came up before **Justice Arunachalam** sitting single in **V.Karthikeyan and others v. State by S.I. of Police and others**, 1992 Crl.L.J. 2948. After having a thorough survey of all the above judgments including the judgement of the Hon'ble Supreme Court cited supra, the learned Judge in para 17 & 18 has held as follows:-

"17. Once this conclusion is arrived at, the judgment of the Apex Court steps in and there could be no difference then between P.S.O. 145 and P.S.O. 588A. Chapter II of the Code of Criminal Procedure invests the police with the statutory rights to receive and record information of the commission of a cognisable crime and carry on investigation, before a prosecution is launched. Police Standing Orders cannot override the provision of the Code of Criminal Procedure. In **State of Punjab v. Rajkumar**, after considering the nature and purpose of Rule 16.38 of the Punjab Police Rules, the Supreme Court held:

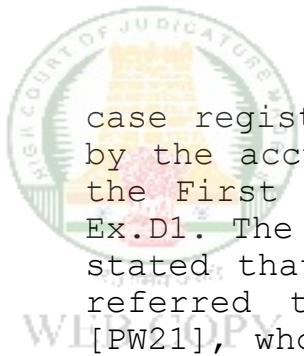


"The rules were not intended to replace and cannot certainly override the provisions of the Criminal Procedure Code. In *State Of Punjab v. Charan Singh* ., 1981 SCC Cri 407 : (1981 Cri LJ 712) it was declared that Rule 16.38 cannot govern criminal prosecution, against the members of the police as it could not override the provisions of the Code of Criminal Procedure. The Punjab Police Act, under Section 12, made a provision for the Inspector General of Police, subject to the approval of the State Government to frame such Orders and Rules, as stated in the said section, and the Punjab Police Rules were framed in the exercise of the powers conferred under Section 1 and Section 7, which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to Section 9 of the Madras District Police Act. The net result is that P.S.O. 588A will have to be held as only directory and not mandatory. P.S.O. 588A is nothing more than administrative instructions and it cannot have the force of law. The non-following of the procedure prescribed under P.S.O. 588A will not constitute an illegality to quash the impugned prosecutions. The law laid down by the Supreme Court, coupled with the lack of power under Section 9 of the Tamil Nadu District Police Act to issue P.S.O. 588A as a statutory mandate, would answer the question involved and here reference to a Division Bench, does not arise."

18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in **Ramakrishnaya's** case, commend observance, but merely because the provisions of the order have not been followed in a particular case by the Investigating Agency, that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in **Ramakrishnaya v. State**, 1954 MWN Cr 9; David Annoussamy, J. in **Ekambaram v. Sundaramurthy**, 1989 (1) Crimes 458 and S. T. Ramalingam, J. in **Pandurangan v. State by Inspector of Police, Thirukazhukundaram**, 1987 LW Cri 400 have dealt with the procedure to be followed in cases and counter, taken on file either on the basis of two final reports or one final report and not her private complaint."

18. From the above Judgments, the law now remains well settled that it is not an illegality to file final report in both the case and the counter case. What is to be tested is only the question of prejudice for the accused."

18. Both the cases in Crime Nos.75 & 76 of 2012 were registered by the Sub-Inspector of Police, Sahul Hameed [PW18].
PW18, while examining by the prosecution, has not referred about the



case registered in Crime No.76 of 2012. But, while he was examined by the accused as a defence witness [DW2], the certificate copy of the First Information Report in Crime No.76 of 2012 was marked as Ex.D1. The Sub-Inspector of Police, in his evidence as DW2, has also stated that after registering the case in Crime No.76 of 2012, he referred the same to the Inspector of Police, Thiru Manoharan [PW21], who conducted the investigation in Crime No.75 of 2012. The Sub-Inspector further stated that the case in Crime No.76 of 2012 was referred as mistake of fact, but those documents were not placed before the trial Court. The Investigation Officer [PW21] has not referred about the case registered in Crime No.76 of 2012 and the investigation carried out in that case in any place. No doubt, the accused has also sustained injuries in the course of the incident and was treated by the Doctor [PW13] and was also issued with an Accident Register [Ex.P6]. According to the Doctor [PW13], the injuries are simple in nature.

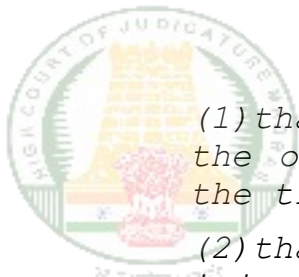
19. In the decision relied upon by the learned Counsel for the appellant in **Lakshmi Singh and Others v. State of Bihar**, reported in (1976) 4 SCC 394, which also deals with the non-explanation of grievous injuries sustained by the accused by the prosecution, the Hon'ble Supreme Court, in paragraph No.12, after dealing with the facts of the case, has taken note of its earlier judgment in **Mohar Ravi Vs State of Bihar**, reported in AIR (1968) SC 1281, wherein, it is observed as follows:

"The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W.15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabalised. Under these circumstances the prosecution had a duty to explain those injuries.... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabalise the plea taken by the appellants."

20. In the aforesaid decision, the Hon'ble Supreme Court had also placed reliance upon another judgment in **Puran Singh Vs State of Punjab**, reported in (1975) 4 SCC 518 and observed in Paragraph No.12 as follows:

"12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance

the Court can draw the following inferences:



(1)that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

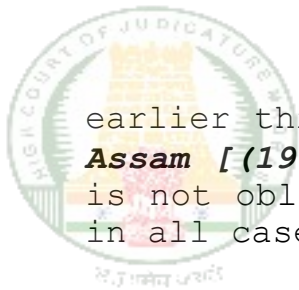
(2)that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3)that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs.1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [Criminal Appeal No. 67 of 1971 decided on March 19, 1975], there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises".

21. But, it is the contention of the learned Additional Public Prosecutor that failure to explain the injuries sustained by the accused by itself is not fatal to the prosecution case.

22. In this regard, in the decision relied upon by the learned Additional Public Prosecutor reported in **(1998) 7 SCC 365**, in the case of **Ram Sunder Yadav and Others v. State of Bihar**, a three-Judge Bench of the Hon'ble Supreme Court has taken note of an



earlier three-Judge Bench decision in **Bhaba Nanda Sarma v. State of Assam [(1977) 4 SCC 396]**, wherein, it was held that the prosecution is not obliged to explain the injuries on the person of the accused in all cases and in all circumstances.

23. In the aforesaid decision, the Hon'ble Supreme Court has also taken note of another three-Judge Bench in **Vijayee Singh v. State of U.P. [(1990) 3 SCC 190]**, wherein, at paragraph no.10, it has been held as follows:

"... In Mohar Rai case [(1968) 3 SCR 525 : AIR 1968 SC 1281 : 1968 Cri LJ 1479], it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh case [(1976) 4 SCC 394 : 1976 SCC (Cri) 671] also it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case."

24. The aforesaid decisions of the Hon'ble Supreme Court were subsequently followed by the Hon'ble Supreme Court in **Rajender Singh and Others v. State of Bihar [(2000) 4 SCC 298]** and in **Takhaji Hiraji v. Thakore Kubersing Chamansing and Others [(2001) 6 SCC 145]** and it was held that prosecution's failure to explain injuries on the accused itself is not fatal to their case, if the evidence led by the prosecution is otherwise clear, cogent and trustworthy. However, if the injuries sustained by the accused are grievous, non-explanation of the same would render the prosecution case suspicious.

25. But, in this case, when the accused was questioned under Section 313 Cr.P.C., on the evidence of the Doctor [PW13], who treated him and issued the Accident Register [Ex.P6], the accused denied it as false. When the accused denied the evidence of the Doctor [PW13] and the marking of the Accident Register [Ex.P6] as false, the accused cannot take advantage of the injury sustained by him and the non-examination of the complaint registered pursuant to that injuries.

26. Even accepting the injuries, as stated supra, as per the evidence of the Doctor [PW13], the injuries sustained by the

<https://hccasesearch.gov.in/hccsportal/Ex.P6-Accident Register cum Wound Certificate, are>



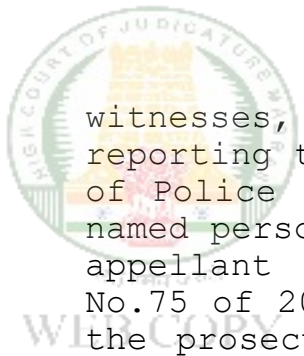
simple in nature and therefore, this ground raised by the appellant / accused as to the non-explanation of injuries by the prosecution, in view of the aforesaid decisions of the Hon'ble Supreme Court, lacks merit.

27. The contention raised by Mr.MA.Karunanithi, learned counsel for the appellant that the prosecution witnesses were closely related to one another and no independent witness, who had seen the crime, was examined does not cut much ice with this Court, because, the law does not lay down any separate parameter for appreciating the evidence of a relative, vis-a-vis, the evidence of a person not related to the victim. In **State of Andhra Pradesh Vs. S.Rayappa**, [2006 AIR SCW 929], the Hon'ble Supreme Court has observed as follows:-

"On the contrary, it has now almost become a fashion that the public is reluctant to appear and depose before the Court, especially, in criminal case, because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all, they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased, they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. The High Court has brushed aside the testimony of PW-1 and PW-2 on the sole ground that they are interested witnesses being relatives of the deceased".

28. In **Chakali Maddilety and others, Vs. State of Andhra Pradesh**, [2010 (12) SCC 72], the Hon'ble Supreme Court has held that the depositions of close relatives cannot be discarded, merely because they are relatives, but, their evidence has to be considered with due care and caution.

29. The prosecution has examined PWs.1 to 6 as eye witnesses. Among these witnesses, the evidence of PW2, the wife of the deceased, is very important. PW2 is none other than the Sister's daughter of the accused. PW2, in her evidence, has clearly stated about the occurrence. PW2 has stated about her affair with the deceased and the objections by her parents for the marriage and the solemnisation of their marriage in the Sub-Registrar's Office at Bangalore against their wishes and about the police complaint lodged by her brother, on which, they have been secured and the commission of offence on 14.05.2012 in her house. This evidence of PW2 has been corroborated by the other eye witnesses and among the other eye

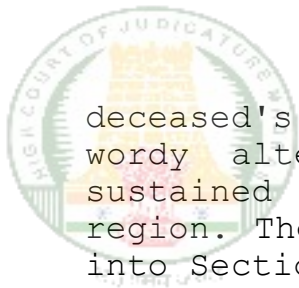


witnesses, PW1 is also an injured eye witness. However, PW1, while reporting the incident to the Doctor [PW13] and to the Sub-Inspector of Police [PW18] has stated that the offence was committed by five named persons. The complaint [Ex.P1] was also lodged as against this appellant and five others. The First Information Report in Crime No.75 of 2012 was also registered as against six named persons. But the prosecution has proceeded as against this appellant alone and excepting PW1, all other eye witnesses have stated in their evidence that this appellant alone has committed the offence. Even discarding the evidence of PW1, the evidence of other witnesses, more particularly, the evidence of PW2 repose confidence of this Court to find this appellant guilty of the offence.

30. The marriage between the deceased and PW2 is shown as the cause for the commission of offence. PW2 and the deceased were living as neighbours, developed affair and married against the wishes of the parents of PW2. The accused is the Uncle of PW2. He is said to have intimidated the deceased in the Police Station on the earlier occasion, when the couples were secured on the police complaint of PW2's brother. Admittedly, the accused is not a resident of the occurrence village. He came to his Sister's house on the occurrence date. The occurrence is not due to any Honour Killing, as both the accused family and the deceased family belong to the same community and also close relatives. At the time of occurrence, the deceased was playing Thayam in the Pial and PW1 was taking food inside the house and PW2 was serving him food. Both PWs.1 & 2 came out of the house and witnessed the occurrence and at that time, the accused said to have stabbed the deceased on his Stomach. But, according to the evidence of the other eye witnesses, namely, PWs.3 to 5, while they were playing Thayam, the accused was abusing the deceased with filthy words from his Sister's house 12 feet away from the deceased's house.

31. Though the accused denied the evidence of the Doctor [PW13] and the Accident Register [Ex.P6] issued by the Doctor for the injuries sustained by him, the Doctor has clearly stated that on the same day, this accused was also brought to the Hospital with injuries by his wife and he has treated him and issued the Accident Register [Ex.P6] and on the medical intimation, the Sub-Inspector of Police [PW18] has recorded the statement of the accused on the same day and registered the case in Crime No.76 of 2012. As per the statement of the accused in Crime No.76 of 2012, on the date of occurrence, when he went to his Sister's house, the deceased party abused him with filthy words and assaulted him. As per the evidence of PWs.3 to 5, prior to the occurrence, the accused has abused the deceased with filthy words.

32. Though the occurrence was projected as a consequence of the marriage between PW2 and the deceased, the occurrence was taken place much after the marriage and the accused, who was residing in
<https://hcmr.courts.gov.in/hcmr/esw> went to his sister's house, which is adjacent to the



deceased's house and the occurrence had taken place pursuant to a wordy altercation and the fact remains the accused has also sustained lacerated injuries, one of which is in the parietal region. Therefore, this Court deems it fit to modify the conviction into Section 304(i) IPC instead of Section 302 IPC.

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33. Accordingly,

- The appellant / accused is found guilty of the offence under Section 304(i) IPC, convicted and sentenced to undergo rigorous imprisonment for seven years.

- The fine amount and the default sentence ordered by the trial Court stand confirmed.

- The period of imprisonment already undergone, if any, shall be set off under Section 428 Cr.P.C.

- Since the appellant / accused is in bail, the learned trial Judge is directed to secure the appellant and confine him in prison. Bail bonds, if any, executed by the appellant stands cancelled.

34. With the above modifications, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

To

1)The Additional District and Sessions Judge, Pudukkottai.

2)The Judicial Magistrate, Keeranur

3)Do-thro' The District Cum Judicial Magistrate,
Keeranur,Pudukottai District.

4)The Superintendent, Central Prison, Trichy

5)The Inspector of Police,
Udaiyalipatti Police Station,Pudukkottai District.

6)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Copy to

The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court,Madurai.

Judgment made in

Crl.A. (MD)No.109 of 2018

22.07.2020

sma/28/07/2020/19p/9c