



**BAIL SLIP**

The Appellant/Sole Accused namely Saravanan, male, aged 42 years, S/o. Nallamuthu was directed to be released on bail as per the order of this court, dated 21/12/2015 in MP(MD).No.1/15 in CRL.A (MD).366/2015 on the file of this court.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 08.02.2021

Pronounced On : 26.04.2021

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

CRL.A(MD).No.366 of 2015

Saravanan

..Appellant/Accused No.1

Vs.

State Inspector of Police,  
Thanjavur Taluk Police Station,  
Thanjavur District.  
Crime No.558 of 2011.

.. Respondent/Complainant

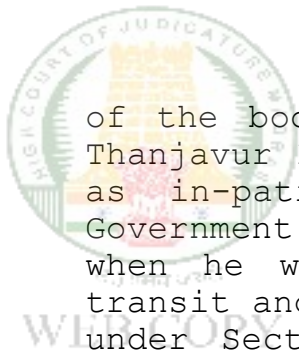
**PRAYER:** Criminal Appeal filed under Section 374 (2) of Cr.P.C, to call for the records in S.C.No.190 of 2012 on the file of the I Additional District and Sessions Judge, (PCR), Thanjavur, dated 19.11.2015 and set aside the same.

|                |                                                     |
|----------------|-----------------------------------------------------|
| For Appellant  | : Mr.R.Sivasubramanian                              |
| For Respondent | : Mr.V.Neelakandan,<br>Additional Public Prosecutor |

**JUDGMENT**

The Criminal Appeal is directed against the judgment of conviction passed in S.C.No.190 of 2012, dated 19.11.2015, on the file of the Ist Additional District and Sessions Court (PCR) Thanjavur.

2.The case of the prosecution is that the deceased Gobi, the appellant, who is the first accused and other accused were residing at Kodikkalmundal Street, Thillai Nagar, Vilar Road, Thanjavur, that there existed enmity between the family of the first accused and the family of the deceased Gopi in getting water from common pipe at Vijaya Lakshmi Colony, that on 11.09.2009 at about 09.00 am, there arose a wordy quarrel between the third accused and one Chitra elder sister of the deceased Gopi, that on 11.09.2009 at about 02.30 pm, when the deceased Gopi had visited the house of the accused, there was some wordy altercation, that thereafter the accused persons with a common intention to kill the deceased, the first accused with a knife, the second to fourth accused with R.S.Pathy wooden logs had gone to the house of the deceased Gopi at about 05.30 pm and picked up quarrel, that the first accused had stabbed the deceased on his upper stomach portion, that the second to fourth accused had attacked the deceased with wooden logs on his head and other parts



of the body indiscriminately, that the injured Gobi was taken to Thanjavur Medical College Hospital at 17.45 hours and was admitted as in-patient, that subsequently the injured was referred to Government Hospital, Chennai for further treatment on 07.10.2011 and when he was taken to Chennai, he succumbed to the injuries in transit and that thereby the first accused had committed the offence under Section 302 IPC and the accused 2 to 4 had committed the offence under Sections 324 and 302 r/w 34 IPC. The Inspector of Police, Taluk Circle Thanjavur has laid the final report against the accused persons.

3.The learned Judicial Magistrate No.II, Thanjavur has taken the case on file in PRC.No.2 of 2012 and furnished the copies of the records under Section 207 Cr.P.C on free of costs. The learned Magistrate finding that the offence under Section 302 IPC is exclusively triable by the Court of Session, after compliance under Section 208 and 209 Cr.P.C, had committed the case to the file of the Principal Sessions Court, Thanjavur and the same was taken on file in S.C.No.190 of 2012 and thereafter, the same was made over to the Court of the Ist Additional District and Sessions Court (PCR) Thanjavur.

4.The learned Sessions Judge, on hearing both sides and on perusal of the records, being satisfied that there existed a *prima facie* case against the accused, framed charges under Section 302 IPC as against the first accused and under Section 302 r/w 34 IPC as against the accused 2 to 4 and the same were read over and explained to the accused and on being questioned, they denied the charges and pleaded not guilty.

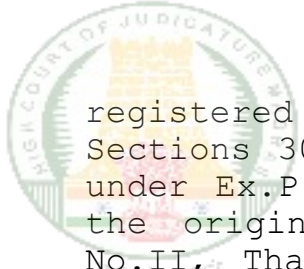
5.The prosecution, in order to prove its case, has examined 15 witnesses as P.W.1 to P.W.15 and exhibited 14 documents as Ex.P.1 to Ex.P.14 and 8 material objects as M.O.1 to M.O.8.

6.The case of the prosecution emerging from the evidence adduced by the prosecution, in brief, is as follows:

(a) P.W.1 Kokila, P.W.2 Sujatha and P.W.3 Bose, who is the father of the deceased Gopi are the residents of Bharmar Colony, Thanjavur. On 11.09.2011 Sunday, P.W.3 after taking meals, went to his shop and directed his son deceased Gopi to go to their house for taking meals. Thereafter, P.W.3 came to know that his son Gopi was attacked by the accused and was admitted in the Government Hospital, Thanjavur.

(b) P.W.13, the then Sub-Inspector of Police at Taluk Police Station, now retired from service, on 12.09.2011, after receipt of the information, he visited the Thanjavur Medical College Hospital and found that the injured Gopi was taking treatment in Ward No.15 and was not in a position to talk and hence, P.W.13 visited the hospital again on the next day and recorded the complaint statement given by the injured Gopi under Ex.P.9. After returning to the

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registered a case in Crime No.558 of 2011 for the offence under Sections 307 and 324 IPC and prepared the First Information Report under Ex.P.8. Thereafter, he sent the First Information Report and the original complaint to the Court of the Judicial Magistrate No.II, Thanjavur and sent the copies of the same to his higher officials.

(c) P.W.14 the then Inspector of Police, Vallam Police Station was in additional charge to the Thanjavur Taluk Police Station, after receiving the copy of the First Information Report, took up the investigation on 12.09.2011 and visited the occurrence place and inspected the scene of occurrence in the presence of P.W.6 Kathiresan and one Murugan, prepared the Observation Mahazar under Ex.P.10 and rough sketch under Ex.P.11. Thereafter, at 02.30 pm, he recovered the blood stained knife under M.O.1 and three blood stained wooden logs under M.O.2 to M.O.4 near the toilet of the first accused, in the presence of the same witnesses through seizure mahazar under Ex.P.12.

(d) P.W.14 has then examined the witnesses Kokila, Vijayalakshmi, Sujatha, Murugan and Kathiresan and thereafter, he arrested the accused, who were taking treatment in the Thanjavur Medical College Hospital and sent them to remand. Thereafter, he examined the witnesses Chitra and Gowri and recorded their statements. He sent the case properties to the Court and he examined the injured Gopi and recorded his statement.

(e) Since P.W.15 had taken charge of Thanjavur Taluk Police Station, P.W.14 had handed over the case records to him. P.W.15 after receiving the case records from P.W.14, has taken up the case for further investigation on 17.09.2011 and examined the witnesses Gopi, Kokila, Vijayalakshmi, Sujatha and Chitra and since they have reiterated the same version as stated before P.W.14, he has not recorded their statement again. Thereafter, examined the witnesses Bose, Ganesan and Anand and recorded their statements. When the injured Gopi was taken to the Government Hospital, Chennai on 07.10.2011, he died in transit near Uluthurpettai and hence, the body of the deceased was taken back to the Thanjavur Medical College Hospital and was kept in mortuary. P.W.15 has then altered the Sections of law from 324 and 307 IPC to 302 IPC and sent the alteration report on 08.10.2011 under Ex.P.14 to the Court of the Judicial Magistrate No.II, Thajanjvur, and on the same day at about 06.00 am, he conducted the inquest on the body of the deceased Gopi in the presence of the panchayathars and the witnesses and prepared the inquest report under Ex.P.14. Thereafter, he sent the body of the deceased for post-mortem.

(f) When P.W.8 Medical Officer was on duty at Thanjavur Medical College Hospital on 11.9.2011 at about 05.45 pm, one Gopi came to the Hospital along with his relative Ranjith Kumar for treatment. He noticed a stab injury over upper abdomen 3x2 cm and depth could not identified and laceration 2x1 cm x skin depth over scalp and admitted him as inpatient.

(g) As per the requisition of P.W.15, P.W.9 Medical Officer has conducted the postmortem on the body of the deceased Gobi and



noticed the following external and internal injuries:

**External Injuries :**

Stab wound (3x2cmxbone depth) with laparotomy wound (laparotomy done) over upper abdomen.

Surgical wound (18cm) from xiphisternum to umbilicus (upper midline incision)

Sutured removed already wound gaping present in the upper part (7x5x1cm)

Healed drainage wound (4x1cm), (5cm) above right anterior superior iliac spine.

Healed lacerated wound- left frontal region.

Yellowish discolourisation seen over both palms, soles, sclera.

**Internal Injuries :**

Laceration (3x2x1cm) over anterior surface of left lobe of liver omentum is adherent to lacerated wound in the liver.

Liver is edematous filled with pus.

Blackish discolouration noted over the greater omentum and mesentery.

Extremities - Cyanosed; Pericardium - Intact ; Heart : Normal in size. All the contain dark coloured fluid blood ; Valves - Intact ; Coronary Vessels - Patent ; Great Vessels - Intact ; Larynx, Hyoid bone - Intact ; Stomach- 200ml of greenish fluid ; Liver- C/s congested. As noted above; Spleen-C/s.congested ; Kidneys - Both C/s congested ; Small intestine- Empty; Bladder - Empty ; Pelvis-Intact ; Bones, Membranes - Intact ; Brain- Normal size ; Spinal column- Intact ;

(h) P.W.9 sent the postmortem certificate under Ex.P.7 giving his opinion that " the deceased would appear to have died, due to complications of stab injury abdomen involving liver, mesentery, which leads to septicaemia and death."

(i) P.W.15 sent a requisition for sending the recovered articles for chemical analysis. P.W.7 the then Scientific Officer attached to the Forensic Laboratory, Thanjavur, has received seven items of property under M.O.1 to M.O.7 and after chemical examination, sent a report under Ex.P.3 stating that human blood was deducted in all the seven articles. They have also sent serological report under Ex.P.4 stating that the human blood belongs to the Group 'A'.



(j) P.W.15 has then examined the Medical Officers, who had treated the deceased Gopi and who had conducted the autopsy on the body of the deceased and also scientific officers and recorded their statements. After completing the investigation, P.W.15 has laid the final report against the accused under Sections 324, 302 r/w 34 IPC. With the examination of P.W.15, the prosecution has closed their evidence.

7. When the accused were examined under Section 313(1) (b) Cr.P.C with regard to the incriminating aspects as against them in the evidence adduced by the prosecution, they denied the same as false and stated that the prosecution side witnesses had only attacked them and that they are not having any evidence. The defence has exhibited the copy of FIR registered in Crime No.558 of 2011 as Ex.D.1 through P.W.13 during cross examination.

8. The learned Sessions Judge, on considering the evidence adduced and on hearing the arguments of both sides, has passed the impugned judgment on 19.11.2015, convicting the first accused for the offence under Section 304 IPC and sentenced him to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months imprisonment and acquitted the accused 2 to 4 under Section 235(1) Cr.P.C. Aggrieved by the judgment of conviction and sentence, the first accused has preferred the appeal, now under consideration.

9. Whether the impugned judgment of conviction and sentence imposed on the accused in S.C.No.190 of 2012, dated 19.11.2015, on the file of the Ist Additional District and Sessions Judge, (PCR), Thanjavur, is liable to be set aside ? is the point for consideration.

10. The learned counsel for the Appellant would submit that all the material witnesses including P.W.1, P.W.2 and P.W.4 turned hostile, that though the occurrence was allegedly held on 11.09.2011, the injured had died on 07.10.2011 and as such the complaint statement recorded on 12.09.2011 cannot be treated as dying declaration, that since the alleged dying declaration has not been corroborated with any other evidence, the same cannot be the sole basis for conviction, that from the evidence of P.W.5 that he saw the appellant and his wife running from the scene of occurrence, could not be assumed that the appellant had committed the crime where there is no other evidence, that the trial Court has failed to consider the evidence of the Doctor, regarding possibilities of death due to not following the Doctors' advice, that the accused cannot be convicted based on mere conjectures and surmises, that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt and that therefore, the appeal is liable to be allowed.



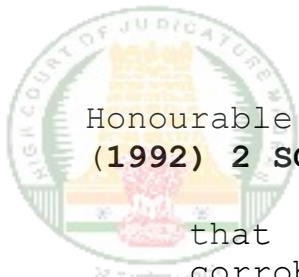
11.The learned Additional Public Prosecutor would submit that though P.W.1, P.W.2 and P.W.4 turned hostile, the prosecution has proved the case through the dying declaration along with medical evidence, that the evidence of P.W.5 has rightly been relied by the trial Court as *res gestae* and that since the dying declaration has clearly implicated the accused, the judgment of the trial Court cannot be found fault with.

12.The prosecution has cited P.W.1, P.W.2, P.W.4, Vijaya Lakshmi and Chithra as occurrence witnesses and they have chosen to examine P.W.1, P.W.2, P.W.4 before the trial Court. Admittedly, P.W.1, P.W.2 and P.W.4 have not supported the case of the prosecution and hence, they were treated as hostile.

13.The Prosecution as well as the trial Court has mainly relied on the complaint statement given by the deceased, while he was taking inpatient treatment at Thanjavur Medical College Hospital by treating the same as dying declaration under Section 32 (1) of Evidence Act. Generally, there is a misconception that the dying declaration recorded by a Judicial Magistrate alone is valid and the declaration recorded by any other person other than the Magistrate is not valid or is having lesser value. Neither the code of Criminal Procedure nor the Evidence Act nor any other law prescribes any particular procedure or the qualification of the person recording the statement or the format to be used for recording the dying declaration.

14.In the present case, the Sub-Inspector of Police P.W.13 has recorded the complaint statement of the deceased and on that basis, he registered the F.I.R. It is pertinent to note that P.W.13 has not recorded the said statement as a dying declaration, but, only as a statement for the purpose of registering the case and setting the law in motion. The concept of dying declaration is based on the maxim "*nemo mariturus praesumitur mentire*" i.e., a man will not meet his maker with lie on his mouth. Our Indian Jurisprudence recognizes the said concept that "a dying man seldom lies" and "truth sits upon the lips of a dying men". As per Section 32 (1) of Indian Evidence Act, dying declaration is a statement written or verbal, of relevant facts made by a person, who is dead. To put it in other way, it is the statement of a person, who had died explaining the circumstances of his death.

15.As rightly pointed out by the learned trial Judge, the Honourable Supreme Court in **Paras Yadav and Others vs. State of Bihar** reported in (1999) 2 SCC 126, has specifically held that a statement of the deceased recorded by a Police Officer in a routine manner as a compliant and not as a dying declaration can also be treated as dying declaration after the death of the injured. The principles relating to dying declarations are summed up by the



Honourable Supreme Court in **Paniben Vs. State of Gujarat** reported in **(1992) 2 SCC 474 :**

"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [**Munnu Raja v. State of M.P., (1976) 3 SCC 104**].

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [**State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164.**]

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. [**K.Ramachandra Reddy v. Public Prosecutor, AIR 1976 S.C. 1994**]

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. [**Rasheed Beg v. State of Madhya Pradesh, [1974] 4 S.C.C. 264.**]

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. [**Kake Singh v. State of M. P., AIR 1982 S.C. 1021**]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [**Ram Manorath v. State of U.P. 1981 SCC (Cr1.) 531**]

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. [**State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617**]

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [**Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505**]

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the



medical opinion cannot prevail. **[Nanahu Ram Vs. State of M.P. AIR 1988 SC 912]**

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [State U.P. v. Madan Mohan, AIR 1989 S.C. 1519]

19) In the light of the above principles, we will consider the three dying declarations in the instant case and we will ascertain the truth with reference to all dying declaration made by the deceased Bai Kanta. This Court in Mohan Lal Gangaram Gehani v. State of Maharashtra [AIR 1982 SC 839] held:

"Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred.

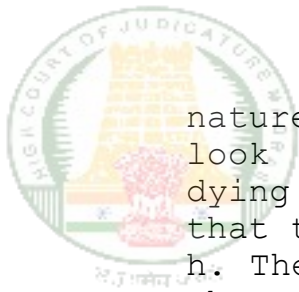
Of course, if the plurality of dying declarations could be held to be truth worthy and reliable, they have to be accepted."

16. In **Jagbir Singh Vs. State of NCT of Delhi** passed in Crl.A.No.967 of 2015, dated 04.09.2019, Hon'ble Apex Court, after undertaking a survey of various decisions, has culled out the principles as follows:

"30. A survey of the decisions would show that the principles can be culled out as follows:

- a. Conviction of a person can be made solely on the basis of a dying declaration which inspires confidence of the court;
- b. If there is nothing suspicious about the declaration, no corroboration may be necessary;
- c. No doubt, the court must be satisfied that there is no tutoring or prompting;
- d. The court must also analyse and come to the conclusion that imagination of the deceased was not at play in making the declaration. In this regard, the court must look to the entirety of the language of the dying declaration;
- e. Considering material before it, both in the form of oral and documentary evidence, the court must be satisfied that the version is compatible with the reality and the truth as can be gleaned from the facts established;
- f. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconciliable.

g. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in



nature as far as the accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

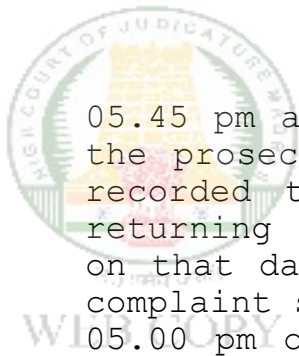
h. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In one dying declaration, the accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two.

i. In the third scenario, what is the duty of the court? Should the court, without looking into anything else, conclude that in view of complete inconsistency, the second or the third dying declaration which is relied on by the prosecution is demolished by the earlier dying declaration or dying declarations or is it the duty of the court to carefully attend to not only the dying declarations but examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon?

17. In our case, there is no problem of multiple dying declarations. In the case before the Honourable Supreme Court, there were three dying declarations, that in the first two dying declarations, the deceased has not implicated her husband, but attributed to an accident and in the statement recorded by the Investigating Officer, she has implicated her husband and narrated the entire incident occurred on that day and the trial Court as well as the High Court have rejected the first two dying declarations and relied on the third one, which was recorded by the Investigating Officer. The Hon'ble Supreme Court has upheld the verdict of the High Court and confirmed the judgment of conviction.

18. In the case on hand, as already pointed out, P.W.13 Sub-Inspector of Police has recorded the statement of the deceased. The main contention of the defence is that the complaint statement under Ex.P.9 was fabricated after the death of the deceased and that therefore, the said complaint statement cannot be treated as dying declaration nor any importance can be given.

19. It is pertinent to mention that the incident was allegedly occurred at 03.30 pm on 11.09.2011. It is evident from Ex.P.5 that the injured was seen by the duty Doctor at

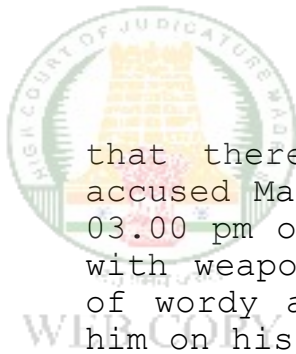


05.45 pm and was admitted as inpatient. It is the specific case of the prosecution that P.W.13 visited the Hospital on 12.09.2011 and recorded the compliant statement of the deceased and that after returning to the Police Station, he registered the FIR at 11.30 am on that day. It is evident from Ex.P.8 FIR that the FIR along with complaint statement was received by the Jurisdictional Magistrate at 05.00 pm on 12.09.2011. Considering the above, the very contention of the defence that the complaint statement was created or fabricated after the death of the complainant is absolutely baseless and is liable to be rejected instantly.

20.As rightly contended by the learned Additional Public Prosecutor, P.W.13 after getting information, visited the Thanjavur Medical College Hospital on 11.09.2011 itself and that since the injured was in the operation theatre and was not in a position to talk, he visited the hospital again on 12.09.2011 and recorded the complaint statement under Ex.P.9. It is pertinent to mention that P.W.3, father of the deceased had identified his son's signature found in the complaint statement and on that basis, the signature has been marked as Ex.P.1. Even the complainant/deceased in his statement under Ex.P.9 has specifically stated that he was in unconscious stage on the previous day and hence, he could not give his statement, that a surgery was conducted on the night of 11.09.2011 and that he has become conscious on 12.09.2011 and gave his statement.

21. It is pertinent to mention that the complainant has also stated that the statement was read over to him and since the same was written as stated by him, he had subscribed his signature. P.W.8 Medical Officer, who had first seen the injured Gopi and admitted him as inpatient, would say in his evidence that he was conscious at the time of admission. When P.W.8 Medical Officer and P.W.13 Sub-Inspector of Police were in witness box, they were not subjected to any cross examination with respect to the fitness of the complainant physically and mentally at the time of recording of Ex.P.9 statement nor even any suggestion was made disputing the fitness of the complainant to give such a statement.

22.The next contention of the defence is that though the incident was alledgedly occurred at 03.30 pm, he was taken to the Medical College Hospital at 05.45 pm and the prosecution has not offered any reason or explanation for the intervening delay. As rightly pointed out by the learned trial Judge, the complainant himself in Ex.P.9 statement, has stated that after the occurrence, he was taken to Rohini and Vinothagan Private Hospitals, but, since they could not deposit any amount, they have refused to admit him and thereafter, he was taken to Thanjavur Medical College Hospital and that the explanation offered is a plausible one and there is nothing on record to doubt the same.



23.The deceased in his complaint under Ex.P.9 has stated that there arose a dispute between his sister Chitra and third accused Maheswai on 11.09.2011 in taking of water and that at about 03.00 pm on that day, when he was in the house all the accused came with weapons and started to quarrel with him, that in continuation of wordy altercation at about 03.30 pm, the appellant had stabbed him on his upper stomach with a knife and that the other accused had attacked with wooden logs indiscriminately on his head, hands and legs.

24.P.W.3 father of the deceased in his evidence before the trial Court would say that after taking meals, he returned to their shop at 02.00 pm and directed his son Gopi to go to house for taking meals and that subsequently, he came to know about the occurrence. As rightly contended by the prosecution, as per the evidence of P.W.3, the deceased was in his house after 02.00 pm on 11.09.2011. As rightly contended by the prosecution, P.W.8 Doctor, who had first attended the deceased Gopi would say in his evidence that at the time of admission, the deceased had informed him that on 11.09.2011 at 02.00 pm he was attacked by a known male and two women with a knife and iron rod.

25.As rightly pointed out by the prosecution, P.W.5 in his evidence would say that on 11.09.2011 at about 03.45 pm, after hearing some sound, ran to that place and that she had seen the appellant Saravanan and his wife were running. In cross examination, he would say that the house of the deceased and the accused were in the same compound and that there was crowd at that time. No doubt, P.W.5 has not deposed about the occurrence, but his evidence that he had seen the appellant and his wife running, was not at all challenged in the cross examination and not even a suggestion was made disputing the same. Whether the above evidence of P.W.5 is admissible in evidence and relevant, under Section 6 of the Indian Evidence Act ? is to be considered. It is necessary to refer Section 6 hereunder :

**Section 6.** Relevancy of facts forming part of same transaction. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations :

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

26.Section 6 of Evidence Act is an exception to the rule of evidence that hearsay evidence is inadmissible. Under Section 6 of the Act, whatever is uttered or done by the deceased or the accused or the bystanders, during the attack made by the accused or so shortly before or after it as to form part of the transaction, is



a relevant fact.

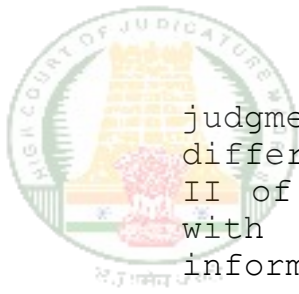
27. In the case on hand, P.W.5 would say that he had seen the appellant and the wife were running from the place of occurrence. Moreover, the defence has not attributed any valid or acceptable motive against P.W.5, specifically, in giving evidence. Considering the above and the proximate of place and time, the evidence of P.W.5 is certainly admissible and is relevant under Section 6 of the Indian Evidence Act as '*Res gestae*'.

28. The next defence of the accused/appellant is that the deceased and other witnesses had attacked the appellant and caused injuries, that they were treated at Thanjavur Medical College Hospital and on that basis of the complaint given by the appellant, FIR came to be registered in Crime No.559 of 2011 under Sections 147, 148 and 307 IPC under Ex.D1, that the respondent Police has not conducted proper investigation and that since the present case in Crime No.558 of 2011 and the case registered in Crime No.559 of 2011 are case and counter case, the Investigating Officer has not followed the procedure contemplated in Police Standing Order (PSO) 558 (A).

29. It is their further case that the respondent police has not produced any material or other records relating to Crime No.559 of 2011 before the trial Court and that therefore, the proceedings of present case stand vitiated. No doubt, as rightly contended by the defence, Ex.D1 FIR came to be registered on the basis of the complaint statement given by the appellant, while he was taking treatment at Thanjavur Medical College Hospital. Though the prosecution has alleged that the final report was filed as 'mistake of fact', they have not chosen to produce the same before the trial Court.

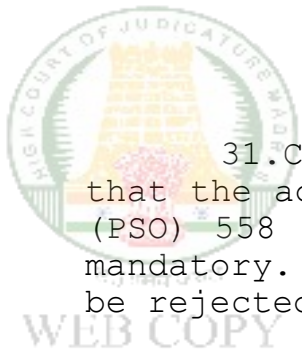
30. It is pertinent to mention that the deceased himself in Ex.P.9 statement has specifically stated that after attack by the accused, himself and other witnesses had attacked the appellant and his family members. Admittedly, the Investigating Officer has not followed the procedure contemplated under Police Standing Order 558 (A) and failed to find out the aggressor. But, the learned trial Judge, by observing that the defence has not offered any explanation as to why they have gone to the house of the deceased, that the defence has not let in any evidence to prove the contents of Ex.D.1 complaint and that the defence has also not taken the plea of self defence, has come to the decision that the accused persons, including the appellant were the aggressors in the case on hand. At this juncture, it is necessary to refer the judgment of this Court passed in **V.Karthikeyan and others Vs. State represented by the Sub Inspector of Police and others** reported in 1992 Cr1. LW 2948 and the relevant passages are extracted hereunder :

" 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 cognizable 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 R. 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 R. 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 S.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 S.12 and S. 7 which dealt with the appointment, dismissal, etc. of inferior officers. This provision appears akin to S. 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 S. 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.

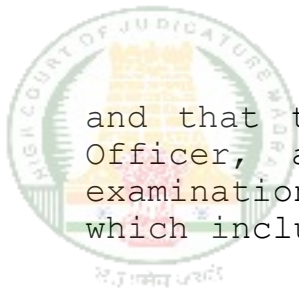
18. Administrative instructions in P.S.O. 588A issued on the basis of the decision of P. N. Ramaswami, J. in *Ramakrishnayya's* case, commend observance, but merely because the provisions of the order have not been followed in a particular case by the Investigating Agency, that would not constitute illegality to quash the prosecutions launched. The decisions rendered by P. N. Ramaswami, J. in *Ramakrishnayya 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."



31.Considering the above, the position of law is well settled that the administrative instructions under the Police Standing Order (PSO) 558 (A) has no statutory force and it is only directory, not mandatory. Hence, the above contention of the defence is liable to be rejected.

32.As rightly observed by the trial Judge, the occurrence as evident from the dying declaration of the deceased stands corroborated by medical evidence. As already pointed out, P.W.8, who attended the deceased at the first instance would say that he noticed the stab injury over upper abdomen 3x2 cm and depth could not be identified and another laceration 2x1 cm x skin depth over the scalp. It is the case of the prosecution that after treating the deceased as inpatient till 07.10.2011 and since the health condition of the deceased has become critical, the hospital authority has referred him to the Government Hospital at Chennai and that while he was taken to Chennai, at the place near Ullunthurpettai, he breathed his last and that therefore, his body was brought back to the Thanjavur Medical College Hospital. As already pointed out, P.W.9 Medical Officer, who conducted the postmortem on the body of the deceased would say that the deceased had stab wound (3x2cm x bone depth) with laparotomy wound (laparotomy done) over upper abdomen; surgical wound (18cm) from xiphisternum to umbilicus (upper midline incision) ; sutured removed already wound gaping present in the upper part (7x5x1cm) and healed drainage wound (4x1cm), (5cm) above right anterior superior iliac spine.

33.Considering the evidence of P.W.8 and P.W.9, Accident Registers Ex.P.5 and Ex.P.6 and Postmortem Certificate Ex.P.7, it is clear that the deceased suffered a stab injury on the upper part of the stomach and that a surgery was performed. P.W.9 in his evidence would say that the upper abdomen injury suffered by the deceased was possible by stabbing with a pointed knife. According to the prosecution, P.W.14 visited the occurrence place at about 02.30 pm on 12.09.2011 and recovered M.O.1 knife and M.O.2 to M.O.4 wooden logs nearby toilet of the appellant in the presence of P.W.6 Kathiresan and one Murugan through seizure mahazar under Ex.P.12. Though P.W.6 had identified M.O.1 knife and M.O.2 to M.O.4 wooden logs, he has not deposed about the recovery of said properties through seizure mahazar and hence, seizure mahazar was not marked through him. He would say that he had subscribed two signatures one in observation mahazar and the other for examining him by the Police. Whatever it is, P.W.14 Investigating Officer would depose about the recovery of M.O.1 to M.O.4 through seizure mahazar under Ex.P.12 and though he was cross examined, the recovery of M.O.1 to M.O.4 was not at all challenged and the general suggestion that all the statements and the documents produced before the Court were not prepared by him and the same were prepared by P.W.15 Investigating Officer had subscribed his signatures by predating the same



and that the said suggestion was denied by him. P.W.7 Scientific Officer, after examining the case property, sent for chemical examination, would say before the Court that in all the items 1 to 7 which includes M.O.1 knife was deducted with human blood.

34.The next main contention of the defence is that the incident was occurred on 11.09.2011 and the injured Gopi had died on 07.10.2011 after lapse of 27 days, that P.W.9 Doctor in cross examination would say that the death was also possible if the deceased failed to follow the Doctor's advice, that he has given opinion that the death was due to septicaemia and that there was no proximity or connection between the injuries and the death.

35.P.W.9 Medical Officer, after conducting postmortem, has given his opinion that the deceased would appear to have died due to complications of stab injury in abdomen involving liver, mesentery, which leads to septicaemia and death. As already pointed out, after the occurrence, the deceased was admitted at Tanjore Medical College Hospital on 11.09.2011 and he was discharged only on 07.10.2011 and that too for taking him to the Higher Centre, Chennai for further treatment. Considering the evidence available, the above contention of the defence, which is devoid of substance, deserves to be rejected.

36.The trial Court, by holding that the present case does not fall in any of the limbs of Section 300 IPC and the action of the accused would squarely fall on the second limb of Section 299 IPC, has convicted the accused under Section 304 IPC. Whether the action of the accused can be termed as culpable homicide or murder ? It is necessary to refer the decision of Hon'ble Supreme Court in **Kaser Singh Vs. State of Haryana** reported in **2008 (15) SCC Criminal 753**, regarding the distinction between the knowledge and intention and the relevant passages are extracted herein.

"20. We must keep in mind the distinction between knowledge and intention. Knowledge in the context of Section 299 would, inter alia, mean consciousness or realization or understanding. The distinction between the terms 'knowledge' and 'intention' again is a difference of degrees. An inference of knowledge that it is likely to cause death must be arrived at keeping in view the fact situation obtaining in each case. The accused must be aware of the consequences of his act.

21. Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself.



This was discussed extensively in *Jai Prakash v. State (Delhi Administration)* [(1991) 2 SCC 32], stating :

"...We may note at this state that 'intention' is different from 'motive' or 'ignorance' or 'negligence'. It is the 'knowledge' or 'intention' with which the act is done that makes difference, in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions...

...The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the, weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end." Kenny in "Outlines of Criminal Law" (17th Edition at page 31) has observed:

Intention: To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connection is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. Thus if one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it: the desire and the foresight will also be the same if a person knowingly leaves a helpless invalid or infant without nourishment or other necessary support until death supervenes. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed.

Again, a man cannot intend to do a thing unless he desires to do it. It may well be a thing that he dislikes doing, but he dislikes still more the consequences of his not doing it. That is to say he desires the lesser of two evils, and therefore has made up his mind to bring about



observed:

"In the present analysis of the mental element in crime the word 'intention' is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims."

It can thus be seen that the 'knowledge' as contrasted with 'intention' signifies a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'intention' is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact."

37. Generally speaking, 'culpable homicide' sans special characteristics of murder is culpable homicide not amounting to murder. To put it in other way, culpable homicide is not murder if it falls under any one of the exceptions given under Section 300 IPC. The trial Court, without considering the distinction between the two provisions 299 and 300 of IPC and without any discussion as to why and how Section 304 was invoked, has vaguely held that the case would fall on the 2nd limb of Section 299 and was liable to be convicted under Section 304 IPC. Probably, the trial Court thought of bringing the case under the 4th exception given under Section 300 IPC, has convicted the 1st accused under the 2nd part of Section 304 IPC. There is no material available on record to prove that the accused had pre-planned to kill the deceased. The prosecution has failed to produce any acceptable material either to infer or to prove that the accused had committed the offence with the intention to cause death or bodily injury likely to cause death. The stab injury caused on the vital part of the body of the victim clearly indicates that the accused had done the act with the knowledge that his action was likely to cause the death of the deceased. It is pertinent to mention that the houses of the deceased and the accused are in the same compound and are adjacent. It is not in dispute that there arose a wordy quarrel in taking of water between the sister of the deceased and 3rd accused on that day morning. As already pointed out, the deceased in his compliant statement has stated that wordy altercation was continuing for nearly 30 minutes and thereafter, the 1st accused had stabbed with the knife. It is not in dispute that the 1st accused had inflicted only one stab injury. It is also not in dispute that the 1st accused had suffered injury in the same occurrence and on the basis of his compliant, FIR came to be registered.

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the deceased had died after 27 days since the occurrence. Moreover, the State has not challenged the acquittal of the accused 2 and 3. Considering the above, this court is of the view that the accused is liable to be convicted under Section 304 part 11, IPC

38. Now turning to the punishment awarded, as already pointed out, the learned trial Judge has imposed 10 years Rigours imprisonment and a fine of Rs.5,000/- in default to undergo 6 months imprisonment. The trial Judge, on considering the fact that the appellant is the first offender and on considering the nature of the offence and the manner in which the offence was committed, decided to award lesser sentence and accordingly awarded 10 years rigorous imprisonment. The Appellant has not shown any special reason or mitigating circumstance to reduce or modify the punishment awarded. Hence, this Court decides that the Criminal Appeal is liable to be dismissed and is dismissed accordingly.

39. In the result, the conviction and sentence dated 19.11.2015 made in S.C.No.190 of 2012, imposed on the appellant by the learned I Additional District and Sessions Judge, (PCR), Thanjavur, is hereby confirmed and the Criminal Appeal is dismissed. The trial Court is directed to take necessary steps to secure the accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The I Additional District and Sessions Judge,  
(PCR), Thanjavur.

2.The Principal Sessions Judge, Thanjavur.

3.The Inspector of Police,  
Thanjavur Taluk Police Station, Thanjavur District.

4.The Superintendent, Central Prison, Trichy.

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

+1 CC to M/s.T.A.EBENEZER, Advocate ( SR-17620[F] dated 27/04/2021 )

CRL.A(MD).No.366 of 2015  
26.04.2021

KB(16.06.2021) 18P 7C

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