



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

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19.09.2022	21.09.2022

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THE HONOURABLE Mrs. JUSTICE J.NISHA BANU**AND****THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH**

**Crl. A. (MD)No.314 of 2020 and
Crl.M.P. (MD) No.4541 of 2021**

Pasungili

.. Petitioner/sole Accused

Vs.

State rep by

The Inspector of Police,

T.Kallupatti Circle Police Station,

Madurai District.

(in Crime No.234 of 2014)

.. Respondent/Complainant

Appeal filed under Section 374 of Criminal Procedure Code, against the judgment and order dated 28.04.2017 in S.C.No.221/2015, on the file of the V Additional District and Sessions Judge, Madurai.

For Appellant

: Mr.G.Karuppasamy Pandian

For Respondent

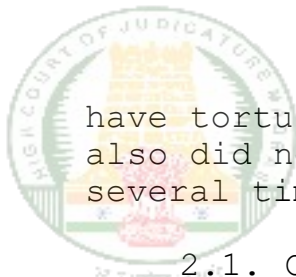
: Mr.A.Thiruvadikumar

Additional Public Prosecutor

JUDGMENT**J.NISHA BANU****AND****N.ANAND VENKATESH**

The appellant, who was convicted for offences under Sections 302 and 294(b) IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.2,500/- (Rupees two thousand five hundred only), in default, to undergo rigorous imprisonment for one month for offence under Section 302 IPC and to undergo simple imprisonment for three months for offence under Section 294((b) IPC, preferred the present criminal appeal against the judgment and order dated 28.04.2017 made in S.C.No.221 of 2015 on the file of the V Additional District and Sessions Judge, Madurai,

2. The case of the prosecution is that the appellant and the deceased Saravanaselvi are husband and wife and they have three daughters. The further case of the prosecution is that the appellant was a drunkard and there used to be regular wordy quarrel between the appellant and the deceased and the appellant is said to



have tortured the deceased by physically abusing her. The deceased also did not go for any work and this was questioned by the deceased several times.

2.1. On 20.06.2014 at about 4.00 p.m., when the deceased was in her house, the accused came to the house and started shouting at the deceased stating that she should not live in that house and he is said to have abused her in a foul language. Thereafter, the appellant is said to have poured kerosene on the body of the deceased and set fire. As a result, the deceased sustained serious burn injuries and was taken to the Government hospital, Virudhunagar. The deceased ultimately succumbed to her injuries on 25.06.2014 at 9.00 p.m.

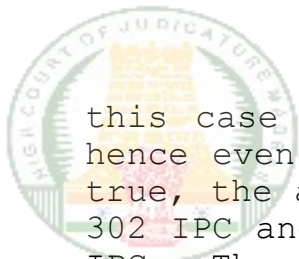
3. The trial Court examined P.W.1 to P.W.12 and marked Exs.P1 to P11 documents and material objects were identified and marked as M.Os.1 and 2. On completion of the evidence on the side of the prosecution, the appellant was questioned under Section 313(1)(b) of Cr.P.C. on the incriminating evidence that was brought-forth by the prosecution and the appellant pleaded innocence and he stated that he has been falsely implicated in this case.

4. The trial Court, on appreciation of the evidence and on considering the facts and circumstances of the case, came to the conclusion that the prosecution has made out a case against the appellant beyond reasonable doubts and thereby convicted and sentenced the appellant as stated supra. Aggrieved by the same, the present criminal appeal has been filed before this Court.

5. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State.

6. The learned counsel for the appellant submitted that the prosecution had examined P.W.2, who was the daughter of the deceased and the appellant, who is said to be an eyewitness to the entire incident. That apart, the prosecution had also relied upon the dying declaration [Ex.P-8] of the deceased and the cause of death as was spoken to by the Doctor [P.W.6] and these were the main materials that were put against the appellant to convict and sentence him for the offence of murder. The learned counsel submitted that P.W.2 could not have been present in the scene of occurrence, since the occurrence is said to have taken place at about 4 p.m. and whereas P.W.2 had gone to the school and she could have reached the house only around 5.15 p.m.

6.1. The learned counsel further submitted that the appellant had also sustained burn injuries and he was admitted in the hospital and it has been spoken to by P.Ws.1 and 3 and also the investigation officer examined as P.W.12 and there is absolutely no investigation as to the cause of the injuries sustained by the appellant. The learned counsel further submitted that all the medical evidence in



this case shows that the deceased died only due to septic and hence even if the evidence put against the appellant is taken to be true, the appellant cannot be convicted for an offence under Section 302 IPC and at the best, he can only be convicted under Section 326 IPC. The learned counsel, in order to substantiate his submissions, relied upon the judgment of the Apex Court in **B.N.Kavatakar and Another v. State of Karnataka** reported in (1994) SCC (Crl) 579 and the Division Bench of this Court in **Sivalingam v. State** in Crl.A. No.679/2010 dated 13.12.2010.

7. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State submitted that the evidence of P.W.2 is cogent and the same has not been discredited in the cross-examination. It was further submitted that Ex.P1, which is the complaint, was given based on the statement made by the deceased and this should also be considered as a dying declaration of the deceased. That apart, the dying declaration of the deceased, which was marked as Ex.P8 also makes it very clear that it is the appellant, who had committed the offence of murder. The mental status of the deceased has been spoken to by P.Ws.7 and 10 and there is absolutely no reason to reject the dying declaration in the present case.

8. The learned Additional Public Prosecutor further submitted that the injuries sustained by the appellant has been properly explained in this case. Admittedly, the injury was sustained in the leg and P.W.2 in her evidence clearly deposed that the mother, who after being lit with fire, attempted to go near the appellant and the appellant had kicked the deceased and as a result of the same, he sustained injuries. The learned Additional Public Prosecutor submitted that the appellant cannot take advantage of septicemia being the cause of death, since the death had taken place within five days from the date of incident and it was caused only by the appellant. Accordingly, the learned Additional Public Prosecutor sought for the dismissal of this appeal.

9. P.W.1, in this case, is the eldest daughter of the deceased and the appellant. She states that she was in the house of her maternal grandmother and she came to know about the incident later through a neighbour. Immediately she rushed to the house, where she saw her mother in flames. She also speaks about the neighbours trying to extinguish the fire and the ambulance that was brought from the Government hospital, Virudhunagar.

10. The most crucial evidence in the present case is the evidence of P.W.2, who is also the daughter of the deceased and the appellant. She is a girl aged about 15 years and she is studying in 10th standard. She deposed that on 20.06.2014, at about 4 p.m., she was present in the house along with her mother and the appellant started abusing the deceased in filthy language and he all of a



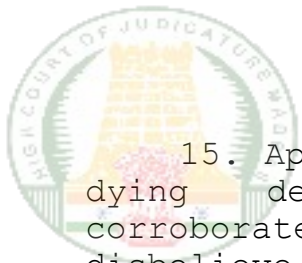
sudden took a can containing kerosene and poured it on the deceased. P.W.2 further states that the first attempt he made to set fire with a match box was stopped by her and she threw away the match box. The appellant is said to have taken another match box from his pocket and he set the deceased on fire. P.W.2 further deposes that the deceased tried to embrace the appellant and he kicked her with the leg and opened the door and ran away.

11. The deceased was thereafter taken in an ambulance to the Government hospital, Virudhunagar and the respondent police, on hearing the news, went to the hospital and took the statement of the deceased and it was reduced to a complaint by P.W.1. The thumb impression of the deceased was also obtained in the complaint. An FIR [Ex.P6] came to be registered by P.W.8. The dying declaration was recorded on the very same day in the presence of the Judicial Magistrate (P.W.10) and P.W.7 Doctor, who certified that the deceased was in a conscious state of mind, even though she sustained 100% burns and was having the orientation to give a statement. The deceased ultimately succumbed to the injuries on 25.06.2014 at 9.00 p.m. and the FIR was altered through the alteration report (Ex.P7).

12. P.W.6 is the Doctor, who conducted the postmortem and issued postmortem certificate [Ex.P3] and he certified that the deceased died of septicemia due to 100% third degree burns.

13. P.W.7 was the Doctor, who treated the deceased on 20.06.2014 when she was taken to the hospital and she speaks about the burns sustained by the deceased and the mental status of the deceased. This Doctor was also present at the time of recording the dying declaration. Ex.P4 - the Accident Register Copy and Ex.P5 - medical record was marked through P.W.7. There is some correction in the accident register, wherein, originally, it was mentioned as suicide and it was scored off and later mentioned as homicide. P.W.7 during cross-examination deposed that the deceased told her that it was an attempt of suicide and later she mentioned that somebody poured kerosene on her.

14. The evidence of P.W.2 is cogent and it has not been discredited on the side of the appellant. Just because there is some doubt as to whether P.W.2 could have reached home from school by 4 p.m., that by itself is not a ground to completely reject the evidence of P.W.2. It must be borne in mind that P.W.2 was the daughter of the appellant and the deceased and there was no need for P.W.2 to make a false allegation against her father. That apart, P.W.2 has properly explained the sequence of events and she also speaks about the attempt made by the deceased to go near the appellant and the appellant had kicked her. This was the reason why the appellant had sustained burn injuries in his leg. This injury has also been spoken to by P.Ws.1 and 3 and also the investigation officer examined as P.W.12. In the considered view of this Court, the injuries sustained by the appellant does not in any way improve the case of the appellant and the reason for the injuries has been properly explained by the prosecution.



15. Apart from the evidence of P.W.2, Ex.P1 complaint and Ex.P8 dying declaration recorded from the deceased clearly corroborates/supports the evidence of P.W.2. There is no reason to disbelieve these documents and it is now well settled that a dying declaration, which does not suffer from any infirmity, has a high probative value and a conviction can be sustained with the help of the dying declaration alone.

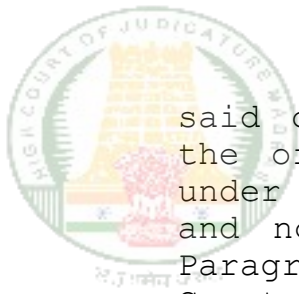
16. In the considered view of this Court, the prosecution has proved the incident and the involvement of the appellant in the crime beyond reasonable doubts and there is no reason to disbelieve the case of the prosecution.

17. As a consequence of the above finding, this Court has to go to the next step of ascertaining whether septicemia as a cause of death will automatically bring the offence under Section 326 IPC. If in case, this Court holds otherwise, it has to be seen whether the conviction can be sustained under Section 300 IPC or on the facts of the case and available evidence, it will fall under any of the exception to Section 300 IPC.

18. It is clear from the medical records that septicemia has been shown to be the cause of death. The learned counsel for the appellant submitted that once septicemia out of burn injuries is shown to be the cause of death, the offence of murder will not be attracted and at the best, the conviction can only be made under Section 326 IPC.

19. It will be appropriate to take note of the judgment of the Division Bench in **N.Chellaiah v. State by the Inspector of Police, Murappanadu Police Station** reported in (2013) 2 MLJ (Crl) 680. The Division Bench was dealing with a case where death was caused due to septicemia infection and all the earlier judgments were taken note of and illustration was given as to cases where conviction can be made under Section 326 or 302 or 304 IPC. The relevant portions in the judgment are extracted hereunder:

"19. The learned Counsel for the Appellant contended that the death of the deceased was only due to septicaemia. In other words, according to him, but for the infection, he would not have died. Thus, his contention is that it is not a murder. In this regard, the learned Counsel relies on a Judgment of the Hon'ble Supreme Court in *B.N. Kavatakar v. State of Karnataka*, 1994 SCC (Crl) 579. In the said case, the deceased was attacked by the Accused with lethal weapons causing several injuries. The deceased died in the hospital after five days. According to the Medical Officer, who conducted autopsy on the body of the deceased therein, the death was as a result of septicemia secondary to injuries and peritonitis. In the

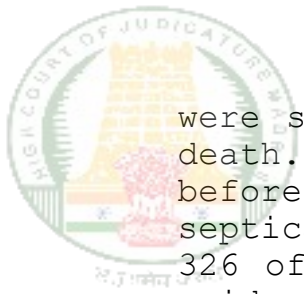


said case, the Hon'ble Supreme Court took the view the offence committed by the Accused therein would fall under Section 326 r/w Section 34 of the Penal Code, 1860 and not under Section 302 of the Penal Code, 1860. In Paragraph No. 9 of the said Judgment, the Hon'ble Supreme Court has held as follows:

"9. The next question that comes up for our consideration is what is the nature of the offence that the Appellants have committed. The Medical Officer who conducted autopsy on the dead body of the deceased has opined that the death was as a result of septicaemia secondary to injuries and peritonitis. As we have indicated above, the deceased died after five days of the occurrence in the hospital. On an overall scrutiny of the facts and circumstances of the case coupled with the opinion of the Medical Officer, we are of the view that the offence would be one punishable under Section 326 read with Section 34, I.P.C."

20. Placing reliance heavily on the said Judgment, the learned Counsel would contend that in the instant case also, since the death was due to infection, the offence committed by the Accused would fall under Section 326 of the Penal Code, 1860. In this regard, we would like to examine the issue in a detailed manner by making reference to various Judgments of the Hon'ble Supreme Court and this Court.

21. During the pre-constitutional era, a Division Bench of this Court, while considering a referred trial matter, in *Doraisamy Servai v. Emperor*, 1943 MWN (Cr.) 185, held that in a case of this nature, the real test is "whether the cause of death is directly associated with the act of the Accused ?" That was a case where there were two Accused. Out of whom the first Accused cut the deceased on the back of the neck with a vettaruval and the second Accused was standing by his side holding a stick. When a witness in the case intervened, the Second Accused cried out "Will you go away or shall I cut you also ?" then the First Accused cut the witness with aruval on his neck. The deceased was removed to the hospital. He underwent treatment as in-patient. The deceased died after 16 days. According to the Doctors who conducted Post-mortem, the death was due to septicaemia and pyaemia resulting from the multiple injuries; none of the injuries could each by itself have caused the death, but cumulatively the injuries should prove necessarily fatal in the case of a normal man. The deceased appeared to have had a physique above the normal; he was well built; so in his case, the injuries need not have been necessarily fatal; but they



were sufficient in the ordinary course of nature to cause death. Relying on the above Medical opinion, it was argued before the Division Bench that since the death was due to septicaemia, the offence would fall either under Section 326 of I.P.C. or Section 304 of I.P.C. While deciding the said question, the Division Bench formulated that the test is whether the cause of death is to be directly associated with the act of the Accused. After having referred to various English cases as well as Indian cases, Justice Mockett (O.C.J), speaking for the Bench, held as follows:

"It would be a strange position if a man who inflicts a wound causing almost immediate death should be guilty of murder, whilst a man who inflicts a very similar wound from which pneumonia supervenes should not. On the facts of this case it is clear to me that the deceased man, in spite of his physique which is said to have been exceptionally robust, died as a direct result of the injuries inflicted upon him by the Appellant; and that the Appellant intended his death is evident from the facts. The result was not as immediate as he intended and not perhaps quite in the manner that he intended. *But in the processes of nature, in spite of medical attention one of the well-known perils from a wound supervened, namely, blood poisoning, and the deceased died. The chain of causation is in my view direct.*" (Emphasis added)

On such view, the Division Bench held the Accused guilty under Section 302, I.P.C. The Division Bench observed that a person who inflicts such injuries, especially upon a feeble old man, must be presumed to know that he is likely to cause death and thus he intended his death. So holding, the Division Bench held the Accused guilty under Section 302 of I.P.C. and accordingly punished him.

22.In *State of Haryana v. Pala*, 1996 (8) SCC 51, the Hon'ble Supreme Court had an occasion to find a fine difference between the primary effect of the injuries and the secondary effect of the injuries. That was a case where the deceased was hit on his head three times and when the deceased had fallen, the other Accused had beaten him thrice on his chest and abdomen. The deceased was taken to the hospital. The deceased died several days later, while in the hospital. The doctor's opinion in respect of the cause of death was as follows:

"Cause of the death was due to septicaemia, which resulted as a result of the head injury and was



sufficient to cause death in ordinary course of nature."

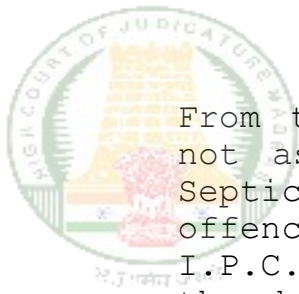
The contention before the Hon'ble Supreme Court was that the offence committed by the Accused would not fall under any of the limbs of Section 300, I.P.C. This question was considered in the light of further information given by the Doctors which is as follows:

"Septicasmie is the direct result of the head-injury. This is not a disease. In other words, head injury is the cause of death."

The Trial Court convicted the Accused, applying Clause (3) of Section 300, I.P.C., under Section 302, I.P.C. On Appeal, the High Court applied Exception 4 to Section 300, I.P.C. and converted the offence of murder into culpable homicide not amounting to murder and convicted the Accused under Section 304 Part II of I.P.C. In the further Appeal to the Hon'ble Supreme Court, in paragraph 3 of the judgment, the Hon'ble Supreme Court has held as follows:

"3.On the other hand he contended that when death was due to septicasmie, it cannot be referable to the cause of the death in the ordinary course of nature due to anti-mortom injuries and that, therefore, the offence of murder has not been made out. In support thereof, he sought to place reliance on *Lyon's Medical Jurisprudence for India* (Tenth Edition) at page 222. It is stated therein that "Danger to life depends, primarily, on the amount of hemorrhage, on the organ wounded, and on the extent of shock; secondarily, on secondary hemorrhage, on the occurrence of septicaemia, erysipelas, tetanus, or other complications. *In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury: Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration.*" Though the learned Counsel had not read the later part of the opinion, the Medical evidence on record do clearly establish that Septicaemia is not the primary cause and the death was due to injuries caused to the deceased and they are sufficient to cause death in the ordinary course of nature. Septicaemia would, therefore, not be taken into account."

(Emphasis added)



From the above judgment, it is crystal clear that it is not as though in every case where the death is due to Septicemia resulting on account of the injuries, the offence would fall outside the scope of Section 300, I.P.C. On the contrary, the distinction lies as to whether the death was due to the primary effects of the injury or due to the secondary effects of the injury. If the injury caused on the deceased itself is either sufficient to cause death or likely to cause death, then depending upon the other circumstances, the offence would fall directly either under the third limb or the Fourth Limb of Section 300, I.P.C.

23. Similarly, in *Jagtar Singh v. State of Punjab*, 1999 (2) SCC 174, the Hon'ble Supreme Court had to decide as to whether the offence would fall within the scope of Section 302, I.P.C. when the death was due to Septicaemia. One of the pleas taken in that case was that Septicaemia had occurred because of improper treatment given. It was further contended that had there been proper treatment, the deceased would not have died. This contention was negatived by the Hon'ble Supreme Court by referring to Explanation-2 to Section 299 of I.P.C. which reads as follows:

"Explanation-2 to Section 299.— Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented."

In paragraph 7 of the Judgment, the Hon'ble Supreme Court held as follows:

"7. Having given our anxious consideration to the first contention of Mr. Gujral we do not find any substance in it. It is true that Naib Singh died 17 days after the incident due to septicemia, but Dr. M.P. Singh (PW1), who held the Post-mortem examination, categorically stated that the septicemia was due to the head injury sustained by Naib Singh and that the injury was sufficient in the ordinary course of nature to cause death. From the impugned judgment we find that the above contention was raised on behalf of the Appellants and in rejecting the same the High Court observed:

"It is well settled that culpable homicide is not murder when the case is brought within the five exceptions to Section 300, Penal Code, 1860. But

Even though none of the said five exceptions is



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pleaded or *prima facie* established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses, Firstly to Fourthly, of Section 300, Penal Code, 1860, to sustain the charge of murder. Injury No. 1 was the fatal injury. When this injury is judged objectively from the nature of it and other evidence including the medical opinion of Dr. M.P. Singh (PW1), we are of the considered view that injury was intended to be caused with the intention of causing such a bodily injury by Harbans Singh-Appellant on the person of Naib Singh which was sufficient in the ordinary course of nature to cause death....."

On perusal of the evidence of PW1 in the light of Explanation-2 to Section 299, I.P.C. We are in complete agreement with the above quoted observations of the High Court."

(Emphasis supplied)

Here it needs to be noted that the death occurred after 16 days of the occurrence due to septicaemia. The injury was on the head. The medical opinion was that the injury itself is sufficient to cause the death of the deceased. Therefore, the Hon'ble Supreme Court did not take into account the secondary effect viz., septicaemia.

24. Then we have yet another judgment of the Hon'ble Supreme Court in *Antram v. State of Maharashtra*, 2007 (13) SCC 356. The Hon'ble Supreme Court while approving the view taken in *Pala* case, cited supra, has held in paragraphs 14 to 17 as follows:

"14. In *State of Haryana v. Pala*, AIR 1996 SC 2962, it was noted as follows:

"In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury. Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration."

15. In *Sudershan Kumar v. State of Delhi*, AIR 1974 SC 2328 it was noted as follows:

"The fact that the deceased lingered for about 12 days would not show that the death was not the direct result of the act of the Accused in throwing acid on her. So also the fact that the

deceased developed symptoms of malaena and



respiratory failure and they also contributed to her death could not in any way affect the conclusion that the injuries caused by the acid burns were the direct cause of her death."

16. As noted above it was emphasized by learned Counsel for the Appellant that with proper medical care the deceased could have survived and therefore Section 302, I.P.C. has no application. The plea clearly overlooks Exception-2 to Section 299, I.P.C., which reads as follows:

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

17. When the background facts are examined on the touchstone of the Principles of law highlighted, the inevitable result is that the appeal is without merit, deserves dismissal, which we direct."

25. In *Veerla Satyanarayana v. State of Andhra Pradesh*, 2009 (16) SCC 316, the Hon'ble Supreme Court was invited to decide a similar question where death was due to septicaemia on account of 60% burn injuries caused by acid. In Paragraphs 4 & 5 the Hon'ble Supreme Court has held as follows:

"4. In our view, this submission is not tenable because of the burn injuries. By throwing of the acid on the deceased who was sleeping, septicemia was caused and he died. PW15 (doctor) has made it clear that even in the cases of proper treatment also there is possibility of septicemia. For this purpose, the High Court has rightly referred to and relied upon the decision of this Court in *Sudershan Kumar v. State of Delhi*. In the said case, the Court confirmed the conviction under Section 302, IPC by considering the fact that there was 35% burn injuries by pouring of acid which according to Doctor's evidence was due to toxemia and septicemia from absorption of toxins. The Court also considered the relevant *Explanation-2* to Section 299, which provides that-where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.



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5. In the present case, the prosecution has established beyond reasonable doubt the motive of the Accused of causing this injury. It is also established that the act of the Appellant in pouring acid on the body of the deceased was pre-planned one; he selected night time when the deceased as well as PW1 were sleeping; he poured the acid which caused 60% burn injuries and as the injuries caused by the Appellant were sufficient in ordinary course of nature to cause death, the Appellant is rightly held to be guilty of offence punishable under Section 302 of I.P.C."

26. Likewise in *Munnawar v. State of Uttar Pradesh*, 2010 (5) SCC 451, there were as many as seven injuries caused on the deceased. The deceased died in the hospital after five days. The Medical opinion was that the death was due to septicaemia on account of the infection caused by the injuries. The doctors had further opined that had the deceased been given proper treatment, he might have survived. It is on the basis of this Medical opinion, it was contended before the Hon'ble Supreme Court that the offence would not fall within the ambit of Section 302, I.P.C. While negating the plea, the Hon'ble Supreme Court, in paragraph 24, held as follows:

"24. We see from the injuries that they had been caused from a very close range as tattooing was present. Dr. Anil Kapoor also pointed that Injury Nos. 1, 3, 6 & 7 were grievous and were fatal to life and all the injuries were sufficient to cause death as they were on sensitive parts of the body and that the injured was under severe shock, and had been given three units of blood at the time of his admission to hospital. In the light of this evidence, we are unable to comprehend as to how the Trial Court could have concluded that it was the negligence on the part of Dr. Anil Kapoor which had led to septicemia and finally to the death of the patient."

27. Very recently in *State of Rajasthan v. Arjun Singh*, 2011 (9) SCC 115, the Hon'ble Supreme Court had to deal with a similar situation where the death occurred after 35 days due to septicaemia on account of gun shot injuries. Speaking for the Bench Hon'ble Mr. Justice P. Sathasivam in paragraph 31 has held as follows:

"31. Finally, learned Senior Counsel for the Accused pointed out that inasmuch as Himmat Raj Singh died after 35 days due to septicemia, the



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Courts below are not justified in convicting the Accused persons for an offence under Section 302, I.P.C. for his death. Considering the medical evidence that Himmat Raj Singh sustained 7 gun shot injuries which were sufficient to cause death in the ordinary course, we are satisfied that the death of Himmat Raj Singh undoubtedly falls within the ambit of 302, I.P.C."

(Emphasis supplied)

28. The judgments, thus far, we have referred to are all cases where the Hon'ble Supreme Court found the Accused guilty under Section 302, I.P.C., though the death was due to septicaemia on account of the injuries.

29. Now let us have a look into some of the decisions of the Hon'ble Supreme Court where the Hon'ble Supreme Court has convicted the Accused under Section 304, I.P.C. where also death was due to septicaemia on account of the injuries. In *Jharmal v. State of Haryana*, 1994 SCC (Crl.) 593, the deceased sustained injuries on the head due to single blow with an iron pipe. He died after 17 days due to septicaemia. The Court below convicted the Accused under Section 302, I.P.C. but the Hon'ble Supreme Court reversed the same and convicted the Accused under Section 304 Part II of I.P.C. In paragraph 6 of the judgement the Hon'ble Supreme Court has held as follows:

"6. We find considerable force in this submission. As stated above the occurrence took place on November 18, 1988 and the deceased died 18 days later on December 5, 1988 due to septicaemia and other complications. The Doctor found only one injury on the head and that was due to single blow inflicted with an iron pipe not with any sharp-edged weapon. Having regard to the circumstances of the case, it is difficult to hold that the Appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardiac failure, etc. Under these circumstances, we set aside the conviction of the Appellant under Section 302, I.P.C. and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part II, IPC and sentence him to undergo six years' RI. The sentence of fine of Rs. 2000 along with default



clause is confirmed. Accordingly the appeal is partly allowed."

30. In *Maniben v. State of Gujarat*, 2009 (8) SCC 796, the deceased died after 8 days of the incident in which the deceased had sustained burn injuries. The Accused had thrown a burning wick made of rags on the deceased and thereby set fire to the terylene clothes put on by the deceased. In paragraph 20 of the judgment it was held as follows:

"20. There is also evidence on record to prove and establish that the action of the Appellant to throw the burning tonsil was preceded by a quarrel between the deceased and the Appellant. From the aforesaid evidence on record it cannot be said that the Appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under Clause (4) of Section 300 of I.P.C. We are, however, of the considered opinion that the case of the Appellant is covered under Section 304 Part II of I.P.C."

31. In *Shanmugam @ Kulandaivelu v. State of Tamil Nadu*, 2002 (10) SCC 4, the doctor who attended the deceased in the hospital stated that the immediate cause of death was infection and also on account of oozing of excreta from the colon and wounds that got infected and became septic. But his evidence did not lead to a definite conclusion that the death could be caused in the ordinary course of nature. The evidence of the Doctor who conducted the post-mortem also was not categorical so as to form a definite opinion that the injuries inflicted on the deceased were sufficient in the ordinary course of nature to cause death. According to the doctor, the death occurred as a result of onset of septicemia because of puss and infection. He further opined that the wounds on the gall bladder were capable of causing death. But during the cross examination, the Doctor stated that it cannot be stated with certainty that the wounds on the gall bladder would result in death. In those circumstances, the Hon'ble Supreme Court held as follows:

"At the same time, the nature of injuries and the medical opinion unmistakably point to the fact that the *bodily injuries inflicted on the deceased were of such nature that they were*



likely to cause death. There can be no doubt that the Accused intended to cause and did cause the injuries. We are, therefore, of the view that the Appellant is liable to be punished under the First Part of Section 304, I.P.C."

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(Emphasis supplied)

32. From these judgments one can easily perceive the difference. In these cases, the Court held there was no intention to cause death. The medical opinion was not certain as to whether the injuries, caused with intention, would have been sufficient to cause the death in the ordinary course of nature or not. But, the medical opinion was to the effect that the injury is likely to cause death. It was because of these reasons, the Hon'ble Supreme Court held that the offence would fall only under Section 304, I.P.C.

33. There are few more cases which need to be looked into, wherein, the Courts have held that the offence would fall under Section 326, I.P.C. where death was due to septicaemia on account of the injuries.

34. In *B.N. Kavatakar v. State of Karnataka*, 1994 SCC (Crl) 579, upon which much reliance has been placed by the learned Counsel for the Appellant, the death occurred in the hospital after five days due to septicaemia. But a reading of the judgment would go to show that it does not reflect the nature of the injury and whether the cause of death was primarily due to the injury or due to the secondary cause, like infection. Therefore, the said judgment cannot be taken to have laid down any guidance on this aspect.

35. A Division Bench of this Court in *Balu @ Balusamy v. State*, 1996 (1) MWN (Cr.) 238, considered the scope of *B.N. Kavatakar v. State of Karnataka*, 1994 SCC (Crl) 579. In the case before the Division Bench, there were as many as four injuries on the body of the deceased, all were caused by knife. There were also blood stains on the body of the deceased. The Doctor, who conducted the autopsy, opined as follows:

"The deceased would appear to have died of septicaemia and shock due to multiple injuries sustained."

In that case, except Injury No. 5, the other injuries were all surgical wounds. The Doctor further opined that the cumulative effect of all the injuries and post-operation shock and septicaemia, resulted in the death of the deceased. In Paragraph No. 15 & 16, the Division Bench

<https://www.mhc.kn.gov.in/judis> was held as follows:



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"15. Medical evidence afforded by PW5 & PW6 corroborates the ocular testimony of PWs. 1 to 3 about infliction of stabs by the Appellant on the deceased, PW1 & PW2. If PW1 was not in the nearness of the deceased he would not have been in a position to prevent the Appellant, when he was attacking his wife and that is one more reason, which highlights that the deceased and PW1 were together or in the vicinity of the other, when the Appellant had arrived at his residence. As rightly pointed out by Mr. T. Sudanthiram, the deceased had died five days later and the cause of death, in the words of PW6, is the cumulative effect of all the injuries and post-operation shock and septicaemia. When he has stated "all the injuries", we have to take it, to include, the surgical injuries as well. If those injuries had also caused shock and septicaemia, ultimately leading to the death of the deceased, it will be unfair and odd to hold that the Accused had the mens rea to murder.

16. On auditing of the totality of facts available, we are satisfied that the Appellant could be held to have had knowledge that by his act, he was likely to cause the death of the deceased. We have said enough and more about the circumstances under which the Appellant had inflicted, for all practical purpose, a single stab. The Appellant, therefore cannot be held to be guilty of murder. In 1994 SCC (Crl.) 579, on the fact perspective before it, the Supreme Court held that when the Medical Officer who conducted autopsy had opined that the death was the result of septicaemia secondary to injuries to peritonitis, the offence committed by the Accused therein would be punishable under Section 326 read with Section 34, I.P.C. In the present prosecution, we have from Exs. P12 & P-15, the statement of the deceased herself, which, we are prepared to accept, that the Appellant had exclaimed that she was cheating him for a long time and he would not leave her. This fact will make all the difference and we satisfied, that properly, in the instant case, the Appellant can be convicted under Section 304 Part II, I.P.C. and not under Section 326, I.P.C. peculiar facts available in each case would have to dictate the nature of offence that could be held to have been committed by the Accused."



36. In yet another judgment in *Chinnathambi Kakkayan v. State*, 1990 (1) MWN (Cr.) 204, the Accused had caused stab injuries on the deceased with a knife. The deceased died after four days in the hospital. The Doctor opined that the death was caused by septicaemia due to peritonitis. But the Doctor would not come forward to say that the single injury found on the body of the deceased was by itself sufficient in the ordinary course of nature to cause death. While considering the said medical opinion, the Division Bench in paragraph 6 of the judgment has held as follows:

"6.... Therefore, there is no sufficient evidence on record to show that the Accused has caused the death of Ramu. However, there is overwhelming evidence to show that the stab injury was inflicted by the Accused on the deceased Ramu on 22.3.1983. In fact, the learned Counsel for the Accused would no longer dispute that fact. Therefore, the Accused would be only guilty of the offence under Section 326, I.P.C..."

(Emphasis supplied)

In this case, the Division Bench did not accept the opinion of the doctors that the death was due to the injuries. Thus holding that the death was not caused by the Accused, the Division Bench convicted the Accused under Section 326 of I.P.C.

37. From the three sets of judgments which we have dealt with herein above, the point of difference is easily decipherable, which is thin but fine. In all these cases referred to above, one common feature is that the death was due to septicaemia on account of the injuries. In this context we would like to mention that there is a general tendency to contend in such cases, that if once it is found that the death is due to septicaemia, the offence would fall either under Section 304 of I.P.C. or under Section 326, I.P.C. and not under Section 302 of I.P.C. We have seen in our experience, in many judgments of the Trial Courts, there is a slight lack of clarity on this subject. That is the reason why, we have undertaken the exercise to refer to all the three sets of judgments. From the above judgments and the discussions we have made supra, we may state that the point of difference is this: "whether the death was primarily due to the injuries or due to the secondary cause namely supervening cause like septicaemia, tetanus etc.?"

38. If it is proved that the injury is fatal and the intention was to cause the death, though the death occurred after several days after septicaemia had



supervened, it is undoubtedly a murder as it falls within the First Limb of Section 300, I.P.C.

39. If it is proved that the injuries by themselves are sufficient to cause death in the ordinary course of nature and if it is established that those injuries were the intended injuries, though the death occurred after septicaemia had supervened, the act of the Accused would squarely fall under the Third Limb of Section 300, I.P.C. and the Accused is therefore liable to be punished under Section 302 of I.P.C.

40. If it is proved that the injuries are imminently dangerous to life, though the death had occurred after septicaemia had supervened, then the act of the Accused would squarely fall under the Fourth Limb of Section 300, I.P.C., provided the other requirements like knowledge on the part of the Accused, etc. are satisfied and so the Accused will be liable to be punished under Section 302 of I.P.C. Here also, the primary cause of the death is the injuries and septicaemia, tetanus, etc. are only the secondary cause.

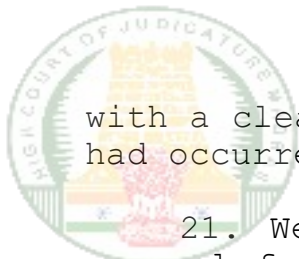
41. On the contrary, if it is clear that the injury is neither fatal nor likely to cause death nor sufficient to cause death or that the injury has nothing to do with the death, then, the offence would fall neither under Section 302, I.P.C. nor under Section 304, I.P.C. Let us illustrate the point of difference as follows:

Illustration – A:

With a small iron pipe, the Accused causes an injury on the tip of the right hand little finger of the deceased. There is an open wound on the tip of the finger and the bone is exposed. The deceased does not take treatment at all and the injury results in infection and septicaemia. The deceased dies of the same after thirty days of the occurrence.

Illustration – B:

The Accused causes an injury with formidable weapon like sickle on the neck. There is huge loss of blood. The deceased is taken to the hospital, where skilled Doctors give treatment in a higher medical institute having all latest equipments. Life saving drugs are given. The injured survives for thirty days and dies due to septicaemia due to injury.



with a clear test to ascertain the offence committed where it had occurred after septicemia.

21. We do not concur with the submission made by the learned counsel for the appellant to the effect that once the death is due to septicemia, the offence would fall only under Section 326 IPC. If this is taken to be an absolute test, it will cause injustice in cases where the death was primarily due to injuries sustained by the deceased.

22. If the injury is fatal and the intention was to cause the death, though the death occurred after sometime due to septicemia, in spite of the same, it will fall under the offence under Section 300 IPC. The same test can be applied when the case falls even within the 2nd, 3rd and 4th limb of Section 300 IPC.

23. Where the injury is neither fatal nor likely to cause death nor is sufficient to cause death or the injury has nothing to do with the death caused, then, the offence will fall under Section 326 IPC.

24. In cases where the offence does not fall under any of the limbs of Section 300 IPC, but it falls under the 3rd limb of Section 299 IPC, those are cases where the punishment can be given under Section 304 IPC.

25. By applying the above test to the facts of the present case, the act of the appellant in pouring kerosene on the deceased and lighting her on fire, clearly falls within the first limb of Section 300 IPC. Therefore, the death that occurred after five days, after the date of incident, after septicemia had supervened, does not bring down the gravity of the offence to Section 326 IPC.

26. The next issue to be taken into consideration is as to whether the facts of the present case will fall under any of the exception to Section 300 IPC. From the evidence of P.W.2, it is very clear that there was a wordy quarrel between the deceased and the appellant for nearly 15 minutes and only thereafter the appellant poured kerosene and lit the deceased on fire. It must also be borne in mind that there was continuous quarrel for a very long time between the deceased and the appellant and the fight between them seems to be a regular affair.

27. Considering the case of the prosecution, there was no premeditation on the part of the appellant and what started as a quarrel aggravated into a heat of passion and reached its crescendo, when the kerosene was poured on the deceased and she was lit on fire. Hence, this Court is of the considered view that the present case will fall within exception 4 to Section 300 IPC.



28. The Apex Court in **Khokan v. State of Chattisgarh** reported in (2021) 3 SCC 365 dealt with a similar issue and held as follows:

"9. Section 300 IPC is in two parts. The first part is when culpable homicide can be said to be the murder and the second part is the exceptions when the culpable homicide is not murder. The relevant part of Section 300 IPC for our purpose would be Clause 4 to Section 300 and Exception 4 to Section 300 IPC. As per Clause 4 to Section 300 IPC, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury, such culpable homicide can be said to be the murder. However, as per Exception 4 to Section 300, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. As per Explanation to Exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault.

10. Coming to the facts of the present case, even as per the case of the prosecution on 8-8-2006 at about 6.30 p.m. when the deceased was in the house of his neighbour, at that very time, the accused had conversation with the deceased regarding money and then the accused quarrelled with him. As per the case of the prosecution, the accused pushed him down and stood up on his abdomen which resulted into the internal injuries.

29. In view of the above, this Court is satisfied that the present case will fall under exception 4 to Section 300 IPC and the accused is liable to be punished under Section 304(I) IPC. To that extent, this Court is inclined to modify the judgment of the trial Court.

30. In the result, this criminal appeal is partly allowed and the conviction of the appellant under Section 302 IPC is modified and the appellant is sentenced to undergo 10 years rigorous imprisonment under Section 304(I) IPC. The fine amount imposed by the Court below is sustained and the conviction and sentence for offence under Section 294(b) is also sustained. The sentences are ordered to run concurrently. The period of sentence already undergone by the appellant is ordered to be set off under Section 428 Cr.P.C. The judgment of the learned V Additional District and



Sessions Judge, Madurai in S.C.No.221 of 2015 dated 28.04 is modified accordingly. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

(*)Corrected as per the order of this Court dated 16.12.2022 in CRL A(MD) No.314 of 2020

Sd/-

Assistant Registrar (CS III)

// True Copy //

/09/2022

Sub Assistant Registrar(CS)

RR

To

To be substituted to the order already despatched on 30.09.2022 for No.7

- 1.The V Additional District and Sessions Judge,
Madurai.
- 2.Do through the Principal District Judge, Madurai.
- 3.The Judicial Magistrate, Peraiyur.
- 4.Do through the Chief Judicial Magistrate, Madurai.
- 5.The District Collector,
Madurai.
- 6.The Director General of Police, Mylapore, Chennai.

(*)7.The Superintendent, Central Prison, Madurai.

- 8.The Inspector of Police,
T.Kallupatti Circle Police Station,
Madurai District.
- 9.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

Copy to:

- 1 The Section Officer,
Criminal Section, (Records)
Madurai Bench of Madras High Court, Madurai.
- 2 The Superintendent, Central Prison, Chennai.

Judgment made in
Crl.A. (MD)No.314 of 2020
21.09.2022

SS/28/09/2022/ 22P 12C

SS/22/12/2022/ 22P 13C

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