



Crl.A.(MD)No.34 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
26.02.2024	19.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

Crl.A.(MD)No.34 of 2020
and
Crl.M.P.(MD)No.13523 of 2022

A.Kalidass
Sub-Inspector of Police,
(Now under suspension)

... Appellant / Sole Accused

vs.

State Rep. by
The Deputy Superintendent of Police,
CB-CID, Madurai Range,
Madurai.
(Crime No.2 / 2014)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C., to call for the judgment dated 14.11.2019, passed in S.C.No.86 of 2015, on the file of the Principal District and Sessions Court, Ramanathapuram, in Crime No.2 of 2014, on the file of the respondent Police, in which, the appellant was convicted and



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sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to undergo two months simple imprisonment for the offence under Section 342 of I.P.C. and also he was convicted and sentenced to undergo life imprisonment and also to a fine of Rs.2,00,000/-, in default, to undergo simple imprisonment for one year for the offence under Section 302 of I.P.C. and set aside the same.

For Appellant : Mr.V.Karthi
Senior Counsel
for Mr.J.Lawrance

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

This appeal is preferred against the judgment of conviction and sentence, dated 14.11.2019, passed in S.C.No.86 of 2015, on the file of the learned Principal District and Sessions Judge, Ramanathapuram.

2. This is a case of custodial death. Kalidass, the appellant/accused at the time of occurrence was the Sub-Inspector of Police attached to S.P.Pattinam



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Police Station, Ramanathapuram. The victim Syed Mohammed, S/o.Kattuva, was the suspect, who was brought to the Police Station in connection with the complaint given by one Aruldoss [P.W.8] a two wheeler mechanic.

3. The complaint of Aruldoss was registered by the accused in Crime No.90 of 2014 on 14.10.2014 at 03.00 p.m. At about 04.00 p.m, the accused while interrogating Syed Mohammed in his room, gun-shot sound heard from the Sub-Inspector's room following scream of the accused. Iyyappan (P.W.1), Head Constable went inside the Sub-Inspector's room and found Syed Mohammed in a pool of blood with bullet injuries and gasping. The appellant/accused came out from the room with torn shirt and bleeding injuries on his hand and abdomen.

4. The prosecution projected the incident as unprovoked attack on the victim with intention to cause the death. Also, he was charged that the appellant/accused had a motive for the murderous assault using service weapon (Revolver M.O.13). Contrarily, the appellant/accused pleaded that, the victim tried to kill him using the Knife (M.O.19) and caused injuries. To save his life, in exercise of self-defence, he fired the victim.



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5. M.O.19 Knife is the weapon alleged to have been used by the victim to cause the injuries noted in Ex.P.14 Accident Register. M.O.13 the Revolver, M.O.8 and M.O.9 the bullets struck inside the body of the victim and M.O.14 the empty bullet shells are the arm and ammunitions used by the accused against the victim to cause bullet injuries found in Ex.P.9 Postmortem Report of the victim.

6. The trial Court on appreciation of evidence held that the prosecution has proved the charge beyond doubt and that the appellant/accused had intentionally caused the death of Syed Mohammed. The contradictions regarding the source of M.O.19 Knife and the opinion of the doctor regarding the injuries found on the appellant/accused were considered by the trial Court to rule out the self-defence theory propounded by the accused. The trial Court held the accused guilty and sentenced the appellant/accused as under:-

Section 342 IPC	Six months simple imprisonment and fine of Rs.1,000/-, in default, to undergo two months simple imprisonment.
Section 302 IPC	Life imprisonment with fine of Rs.2,00,000/-, in default, to undergo one year simple imprisonment.



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7. The learned Senior Counsel representing the appellant submitted that the trial Court has failed to appreciate the evidence collectively. By pick and choose certain facts here and there, had arrived at an erroneous conclusion, The final report filed by P.W.63 after change of investigation to CBCID from local Police with an object to carry on the investigation independently and afresh, not been achieved in this case. For reason apparent, P.W.63 had not chosen to recover important material objects found in the place of occurrence. He did not choose to mark the dress material of the accused in the trial, which was recovered and produced before the trial Court in the course of investigation.

8. The trial Court failed to consider the inconsistencies and infirmities apparently found in the prosecution evidence. The learned Senior Counsel representing the appellant submitted that;

(i) The trial Court failed to consider the evidence of P.W.1, P.W.2, P.W.3, P.W.6 and P.W.8 properly. These witnesses have categorically stated that the deceased was brought to the Police Station for attempt to commit murder of Aruldoss with Knife in a drunken state. He was a suspect in Crime No.90 of 2014. These witnesses had deposed that the deceased failed to co-operate with the



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Police Officials and was abusing them in filthy language. He was behaving very rude and was uncontrollable. There is no evidence to prove the alleged enmity between the deceased and the accused. P.W.18 and P.W.19, who are the friends of the deceased, have also stated that the deceased was fighting with P.W.8 during the forenoon on that day and based upon the complaint given by P.W.8, the deceased was taken to the Police Station.

(ii) The prosecution witnesses P.W.1 P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7 and P.W.8, who were present in the Police Station during the time of occurrence, have uniformly stated that, initially they heard commotion and later, heard firing sound. The trial Court had not given due appreciation to this fact. Further, the trial Court also failed to consider the evidence of the doctor [P.W.47], who examined the accused and stated in his evidence that, the injuries sustained could have been inflicted by a Knife. Hence, the accused has probablised that there was struggle for life inside the room and in order to save his life, the accused fired the deceased.

(iii) The Investigating Officer (P.W.63) had deposed that he is not aware who seized the Knife (M.O.19). The Knife was not subjected to finger print analysis nor sent to biological/serological test to ascertain the presence of blood



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stains. Though the prosecution has not adduced any evidence to prove the injuries sustained by the accused were self-inflicted injuries, the trial Court has presumed that they are self-inflicted injuries.

(iv) The trial Court failed to consider the settled principle of law that for the accused, who pleads exemption under private defence, the decree of proof is not proof beyond doubt, but only the preponderance of probability. Though through cross examination of the prosecution witnesses and through the exhibits relied by the prosecution, the accused had established that he was forced to open fire at the victim, ignoring those portion of material evidence, which clearly eliminate the culpable mental state of the accused, the trial Court has come to the erroneous conclusion.

(v) P.W.17 who is an independent witness had deposed about the character of the deceased. The Investigating Officer [P.W.63] admits that he did not probe into the antecedents of the deceased. Though in the sanction to prosecute, P.W.61 had referred certain incidents prior to the occurrence to infer culpability of the accused, the Investigating Officer had not probed into those facts to ascertain the veracity of those facts. The trial Court also without any evidence, had presumed those incidents as facts proved. For convicting under Section 302 I.P.C. either



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under clause (a) or (b), culpable mental state (*mens rea*) is an essential element. In the absence of *mens rea*, the trial Court ought not to have convicted the accused for the offence under Section 302 I.P.C.

(vi) The trial Court failed to consider the fact that the deceased was under the influence of alcohol. Evidence of the prosecution witnesses and the viscera report proves this fact without any doubt. The victim was seen with a Knife threatening P.W.8 on that day. The witnesses for prosecution had deposed that he refused to come along with the Police and called his community men to prevent the Police from discharging their duty. In the Police Station, he was shouting at the Police and behaving boisterously. This was reported to the accused, who was not in the Station at that time. The trial Court without considering these admitted facts, had convicted the accused for the offence under Section 342 I.P.C. This would clearly show that the trial Court has not appreciated the evidence in proper perspective and had selectively considered evidence, which are only incriminating the accused.

(vii) P.W.59, the Officer, who is superior in rank that of the accused, had deposed that the accused informed him about the complaint given by P.W.8. He advised the accused to secure the deceased. This was corroborated by P.W.40 and



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P.W.52. Therefore, the trial Court ought to have held that the deceased was brought to the Police Station on the instruction of the Senior Officer by other Policemen in duty and not by the accused, who was far away from the Police Station on his pursuit to meet the Superintendent of Police in Ramanathapuram to give representation for transfer.

(viii) There is no evidence to support the story of the prosecution case that the accused out of malice, shot the deceased. Even the close relatives of the deceased had admitted in the cross examination that there was no ill-will or hatred between the accused and the deceased.

(ix) The trial Court failed to consider the principle that, where a person, who is apprehending death or bodily injury, cannot weigh the threat in golden scales to reflect proportionately. In the spur of the moment, one cannot determine the quality and quantity of injuries required to disarm the assailants,

(x) The trial Court failed to consider the evidence placed before it in a holistic manner. Had the trial Court done this exercise, it would have come to the conclusion that the accused had acted in private defence and the same falls within the meaning of private defence under Section 100 of I.P.C.



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9. Per contra, the learned Additional Public Prosecutor submitted that the incriminating evidence spoken through the witnesses establishes the fact that the accused had voluntarily and intentionally caused the death of Syed Mohammed, who was taken into custody by the Police. The multiple injuries found all over the body of the deceased, coupled with the fact that the bullets travelled upside down and pierced the vital organs of the deceased clearly establishes the fact beyond doubt that it is not an act of self-defence, but an intentional violence leashed against the captive victim.

10. The learned Additional Public Prosecutor also submitted that the medical opinion in respect of the injury sustained by the accused is apparently self-inflicted injuries. The accused, who was taken the burden to prove that he has shot the victim in exercise of his private defence, ought to have proved the said fact at least by preponderance of probability. Whereas, in this case, except M.O.19, which is the Knife alleged to have been used by the victim to attack the accused and the Medical Certificate [Ex.P.14], there is no other evidence to probalilise the theory of self-defence.



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11. The source of M.O.19 Knife is highly doubtful and why M.O.19 was kept on his table for the victim to have access also not explained by the accused. Further, the doctor, who treated the accused and given the report Ex.P.14, had opined that the injuries are hesitant injuries. Which means, it is an indication that they are wounds probably self-inflicted.

12. The learned Judicial Magistrate, who conducted the enquiry under Section 174 (1) of Cr.P.C., had given his opinion that it was not a case of self-defence and clear case of murder. P.W.61 had granted sanction to prosecute after considering the materials sufficient to *prima facie* hold the accused has committed the crime of murder while in the course of discharging his duty. The trial Court has considered the evidence holistically and arrived at the right conclusion, which has to be confirmed without any interference.

13. The learned Additional Public Prosecutor strengthened his argument stating the the following unimpeachable incriminating circumstances against the accused calls for confirmation of the trial Court's judgment.



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(i) The Knife, which is alleged to have been used by Syed Mohammed to attack the appellant/accused was in fact produced by Saravanan [P.W.20], who traced it from a bush near a Mechanic Shop of P.W.8 and handed over to the Police. Further, the witnesses for prosecution had stated that the Knife was in the custody of the Sentry duty Police Head Constable. The accused has asked P.W.1 to bring the Knife to his table for interrogation. At about 04.00 p.m., it is contended by the accused that the victim took the Knife kept on his table and attacked him. The damage alleged to have been caused on the table top glass and the injuries on the body of the accused does not correlate with the weapon as per the medical evidence and also the report of the Judicial Magistrate [P.W.50]. Therefore, the theory of self-defence has to be disbelieved.

(ii) The oral complaint from Aruldoss been reduced into writing by the accused for registering the case in Crime No.90 of 2014. After the occurrence, Iyappan, (P.W.1), the Head Police Constable of S.P. Pattinam Police Station, has given a complaint to the in-charge Sub-Inspector Duraipandian about the shooting incident inside the Sub-Inspector's room and the same has been registered in Crime No.91 of 2014. In his complaint, Duraipandian has stated that at about 04.00 p.m. on instruction of Sub-Inspector Kalidass [Accused], the



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Police team went to secure Syed Mohammed, a suspect in Crime No.90 of 2014 and they secured him and produced before the Sub-Inspector of Police. During the body search of Syed Mohammed, they recovered a Knife from him, which the victim carried in his hip. Whereas, before the trial Court, the witnesses have said that the weapon was produced by P.W.20 Saravanan. Thus, after the occurrence, the accused has tried to create record contrary to the true fact, as if he was attacked by the deceased Syed Mohammed with the Knife, which was recovered from him during the body search.

(iii) The expert opinion regarding the bullet injuries sustained by the deceased clearly reveals that the bullets have travelled through the vital part of the deceased from upward, which is not possible unless the shooter is on higher altitude and the target on the lower altitude. Thus, it is clear that at the time when the accused opened fire at the victim, the accused was in a dominant position and victim was not in a position to cause any harm. Apart from bullet injuries, other injuries were found all over the body of the victim. This proves the victim was subjected to custodial violence. The accused as Station House Officer is answerable to these injuries. Though the other injuries was not the cause for the death, it is impossible for the victim to attack the accused with those injuries.



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14. As a reply to the above submission of the learned Additional Public Prosecutor, the learned Senior Counsel for the appellant referring treatise on private defence submitted that when a person is exercising his right of private defence, it is not possible to weigh the force with which the right is exercised. In **Robert B.Brown vs. United States of America (1921) 256 US 335**, it is observed that a person in fear of his life is not expected to modulate his defence step by step or tier by tier. Justice Holmes in the said case, has observed that detached reflection cannot be demanded in the presence of an uplifted knife.

15. The learned Senior Counsel for the appellant would further submit that when the deceased Syed Mohammed, a notorious element had lifted the Knife and caused injury to the accused a Policeman in uniform, a detached reflection cannot be expected. It is not correct to contend that he opened fire without any provocation. From the statement of the accused given to the learned Judicial Magistrate, which forms part of the report Ex.P18, it could be seen that the victim tore the shirt of the accused and took the Knife lying on the table to attack the accused. The first attempt of the victim was missed providentially [by the accused] and the said hit landed on the table and broke the table glass [on the top



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of the table]. The next attempt, caused a cut injury on his right hand ring finger. Then only, the accused used his Revolver capable of firing six rounds [at a time]. The movement of the bullet moving from upward to downwards cannot be the reason for any adverse inference. The trial Court ought to have held that this was due to a random shooting to save the life and not a pointed shooting targeting any particular part of the body. If that was the intention of the accused, then, the bullet would have travelled straight like a bullet hitting bulls eye and not downwards.

16. In response to this argument, the learned Additional Public Prosecutor give a pointed response that the incriminating circumstance enumerated above, proves that it is not a case of self-defence by any stretch of imagination. Such a right is available only when the circumstances clearly justifies it. The circumstances are those that have been elaborated in the Indian Penal Code. It is not a case of sudden confrontation or menacing attack by the victim, who was a person in captive at Police Station, with injuries all over his body. The circumstances does not disclose any apprehension that the death otherwise will be the consequence, if the accused not opened fire. To claim the right of private defence, the accused must be able to demonstrate that the circumstances were



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such that there was a reasonable ground to apprehend he would suffer grievous hurt or death. The necessity of averting and impending danger is the core criteria for exercising such a right. In the absence of such impending danger, one cannot claim protection under Section 100 of I.P.C.

17. The submission made on either side was considered by us carefully. The evidence as placed by the prosecution and the facts spoken through witnesses and elicited through documents and material objects are taken note to weigh the arguments made by the learned Senior Counsel for the appellant and the learned Addition Public Prosecutor for the State.

18. The substance of charges framed against the accused is that, on 14.10.2014 at about 10.00 a.m., the deceased Syed Mohammed and Mohammed Saliq [P.W.18] along with their friends consumed liquor and thereafter, Syed Mohammed went to the workshop of Aruldoss [P.W.8] at about 13.30 hours and asked Aruldoss to give the bike of Mohammed Saliq. When Aruldoss refused to give the bike to Syed Mohammed and told that he will give the bike only to the owner Mohammed Saliq, there was a quarrel between Syed Mohammed and



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Aruldoss. Syed Mohammed attempted to kill Aruldoss with Knife. In this connection, on receiving the information, the Policemen attached to S.P. Pattinam Police Station brought Syed Mohammed to the Station at about 14.00 hours. Syed Mohammed had abused the Policemen in filthy language and also causing ruckus inside the Police Station by hitting himself on the wall. This was informed to the Sub-Inspector of Police [the accused]. The accused, who was not in station, then, told the Policemen in the Police Station to hold Syed Mohammed and wait for his arrival.

19. The facts, which are disputed and warrants deep scrutiny are:-

- (i) The animosity between the accused and the deceased.
- (ii) The chain of custody in respect of the Knife marked as M.O.19.
- (iii) Whether the accused fired at the deceased Syed Mohammed with culpable mental state of mind or it was an act of self defence ?

20. The judgment of the trial Court proceeded with the premise that prior to this incident, on 12.10.2014 in a murder case in Crime No.70 of 2011, one of the absconding accused by name, Syed Abuthagir was secured by Kalidass, Sub-



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Inspector of Police (the accused in this case) executing NBW and brought him to the Police Station. When the accused went to take his food, the said Syed Abuthagir escaped from the Police Station. In this connection, the accused pressurised one Nagoor Kani, the associate of Syed Abuthagir to arrange for the surrender of Syed Abuthagir. Nagoor Kani came to the Police Station and warned the accused not to be very strict with them and to be careful, since Syed Abuthagir is a murder case accused and they have seen many strict Officers like him. Further, on the day of incident, *i.e.*, on 14.10.2014, in the early morning, the associates of Nagoor Kani had gone to the Government Hospital Nurses' Quarters and broken the doors of the room. The Medical Officer of the Hospital reported this matter to the accused over phone.

21. The accused suspected the deceased Syed Mohammed might have been involved in this incident. When the accused received information over phone that Syed Mohammed has threatened the workshop owner by wielding Knife and also creating ruckus in the Police Station, the accused had recollected these incidents and told Dhanapal, Head Constable, who was travelling along with him in the Car while returning after meeting the Superintendent of Police at Ramanathapuram.



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With animosity and ill-will, the accused had reached the Police Station at 16.00 hours, at that time, Syed Mohammed was abusing the Policemen in a very filthy language and also behaving very violently.

22. Infuriated by that, the accused had beaten Syed Mohammed with lathi on the thigh and leg. When Syed Mohamed threatened the accused, "I know who you are and where your family, soon I come out, I will take care" [காளிதாஸ் நீ யாருன்னு தெரியும், உன் குடும்பம் எங்க இருக்கின்னு தெரியும், நான் வெளியில் வந்து பார்த்துக்கிறேன்]. Infuriated by that, the accused had shouted that he will put an end to the rowdyism of S.P. Pattinam people. Then, he went to his residential quarters next to the Police Station to take his food. But, without completing his food, had come back with premeditation carrying a loaded 380 Ruger Revolver went to his room at 04.30 p.m. and asked the Constable to bring Syed Mohammed to his room and prepare documents for arrest of Syed Mohamed. He told Youth Brigade John Ravi to close his room from outside. When Paramasivan [P.W.2], Special Sub-Inspector of Police opened the Sub-Inspector room door and went inside the room to get the signature of the accused in the documents, P.W.2 was asked to bring the Knife recovered from the victim. He brought the Knife from the Sentry



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duty Constable and kept the Knife on the table of the accused. Syed Mohammed did not co-operate for the interrogation and was repeatedly demanding the accused to call Nagoor Kani. Suspecting that Syed Mohammed has come to his place (*i.e.*, the Police Station) and threatening him like Nagoor Kani, the accused fired at Syed Mohammed at close range thrice.

23. According to the Code of Criminal Procedure, the basis for formulating the substance of charges must be on the information available in the records relied by the prosecution filed along with the final report. Like, any other case, in this case also, the trial Court has formulated the substance of charge based on the information fed by the Investigating Officer [P.W.63] in the final report. The documents and statements annexed to the final report include the report of the learned Judicial Magistrate No.II, Ramanathapuram [P.W.50], who conducted enquiry under Section 176(1)(A) of Cr.P.C. and the sanction for prosecution granted by the Deputy Inspector General of Police, Ramanathapuram [P.W.61].

24. To substantiate the charges, the prosecution has examined 63 witnesses, marked 31 documents and 19 material objects. The accused had not disputed the fact that he fired at the deceased with the Revolver [M.O.13].



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25. There are few more facts, which are not controverted by the accused or the prosecution. Those uncontroverted facts are:-

(i) The appellant / accused was the Station House Officer of S.P. Pattinam Police Station at the relevant point of time [P.W.60, Mayilvahanan, Superintendent of Police say so in the cross-examination]

(ii) On the date of occurrence at about 02.00 p.m., the accused met P.W.60 at the Superintendent of Police Office, Ramanathapuram, along with Dhanapal [P.W.4], and gave his application requesting transfer to Madurai.

(iii) Paramasivan [P.W.2], Special Sub-Inspector of Police, informed the accused over phone that the suspect Syed Mohammed was creating ruckus in the Public. On the complaint given by Aruldoss [P.W.8], Syed Moahmmmed was brought to the Police Station. When the accused came to the Police Station, Syed Mohammed was in the Police Station.

(iv) The accused reached S.P. Pattinam Police Station around 03.30 p.m. Then, he left the Police Station to have his lunch. He returned back to the Police Station by 04.00 p.m.

(v) Rough Sketches Exs.P24 and P29 show that the Quarters of the accused is adjacent to the Police Station and the Sub-Inspector of Police room is having a



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attached toilet.

(vi) The deceased Syed Mohammed was driver by profession. During the relevant point of time, he was working in a Prawn Farm as a driver. P.W.25, the mother of the deceased speaks about this fact.

(vii) On 14.10.2014 at about 08.00 a.m. Syed Mohammed left the house to take bath and returned back at 09.00 a.m. Thereafter, at 10.00 a.m., he left his house. P.W.26 and P.W.27, the grandmother and grandfather of the deceased respectively, speak about this fact.

(viii) On that day, at about 11.00 a.m., Syed Mohammed has requested Mohammed Saliq [P.W.18] to lend the bike. P.W.18 told Syed Mohammed that his vehicle is in the mechanic shed of Aruldoss [P.W.8] to attend the fault and asked him to collect the bike from P.W.8.

(ix) Soon thereafter, Syed Mohammed went to P.W.8 workshop and asked for the bike. P.W.8 told Syed Mohammed to come after sometime, since the repair work not completed. After Syed Mohammed left the shop, P.W.8 called P.W.18 over phone to confirm whether he can give the bike to Syed Mohammed. Thereafter, Syed Mohammed came back to P.W.8 workshop and picked up quarrel with P.W.8 for disbelieving him. Syed Mohammed Kicked a two wheeler parked



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in P.W.8 workshop and damaged it. He, then, took out a Knife kept in his hip and tried to attack P.W.8.

(x) P.W.8 ran for his life and took shelter inside the Police Station, which is near to his workshop. He orally informed about the incident. Later, the complaint was reduced into writing by the accused. After lodging the complaint, Aruldoss [P.W.8]; Joseph [P.W.9], father-in-law of P.W.8; Simiyon [P.W.10], father of of P.W.8; Michaeldoss [P.W.11], brother of P.W.8; Arulprakasam [P.W.12], brother-in-law of P.W.8; Arockiasamy [P.W.13]; and Rathinam [P.W.16] were waiting outside the Police Station for the Police to take action against Syed Mohammed under the SC/ST Act, since the complainant [P.W.8] belongs to Christian Pallar Community. At that time, they heard gunshot sound. They saw the accused in his room with torn shirt and bleeding injuries. They heard about the injuries. The accused informed that he was attacked by Syed Mohammed.

(xi) Apart from these witnesses, the Policemen in the Station as well as the other witnesses had also heard the accused shouting he is stabbing, he is stabbing [குத்துரான், குத்துரான்] and coming out from his room with injuries.

(xii) Dr.Thirumalaikumar [P.W.47], who treated the accused had certified that he had seen the following injuries on the accused:-



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"1. Laceration of size 2 x 0.5 x 0.2 c.m. over the right hand ring finger.

2. Liner abrasion of size 4 x 0.5 c.m. over the left forearm

3. Linear abrasion of size 8 x 0.1 c.m. over the left side of abdomen."

(xiii) On hearing the news about the shoot out inside the Police Station, public gathered. Particularly, those who came for evening prayer in the Mosque near the Police Station along with the Jamath leaders, were agitating and allowed the ambulance to carry the body of Syed Mohammed only after extracting assurance from Deputy Superintendent of Police that action will be taken against the Sub-Inspector.

(xiv) The doctor, who had conducted autopsy of the deceased Syed Mohammed, had found the following injuries on the body of Syed Mohammed.

"(1) Gun-shot wound circular in shape 1x1 c.m. in the left supra clavicular area. 1 c.m. above the left clavicle and 1 c.m. lateral to the left sterno clavicular joint with inverted edges 2mm block ring around the wound margin with 5mm contusion around the wound margin. Clot over the wound present.(Entry wound). The wound run obliquely piercing the right middle lobe of the lung causing lacerated injury in the lung 6 x 1.5x 2 c.ms. along with contusion around that wound. That injury penetrate the diaphragm and causing liver laceration at the left lobe 2 x 1 c.m. size



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entry wound and 3 x 2 c.m. exit wound in the lower surface then it pierces the upper part of the right kidney piercing medial to lateral side that bullet recovered near right kidney. 1 Itr. of fluid blood present in the right thoracic cavity and 750ml fluid blood in the peritoneal cavity.

(2) Gun shot-wound Left mammary region 1 x 1 c.m. circular inverted edges 2mm block margin 3mm contusion margin. 2cm medial to nipple and 12 cm from the clavicle. That wound penetrate into the thoracic cavity runs obliquely causing injury to the left ventricle of the heart anterior surface 1x.5c.ms. penetrating the ventricle comes out as exit 2 x 2 c.m. wound on the posterior surface of the ventricle that bullet recovered from the posterior surface of the chest cavity near, and 1cm medial to the inferior angle of the scapula. Clotted blood and fluid blood in the thoracic cavity 1.5 ltrs.

(3) Gun-shot wound 1 x 1 c.m. circular in shape inverted edges in the middle of the left upper arm on anterior aspect 17 cms from the tip of the shoulder 12cm from the elbow, entry wound runs obliquely piercing the muscles comes as exit wound medial aspect of the left arms 7 cms from elbow, 10 cm from the axillary mid-point with everted edges 2 x 1 c.m. exit wound.

(4) Gun Shot wound 1 x 1 c.m. circular with blood clot around the wound and dorsal aspect of the hand below the right ring finger 7 cm from right wrist joint with inverted edges runs obliquely 4 cm depth comes out at the hypothenar area of the right hand 2 x 1 c.m. with everted edges. With fracture right 5th metacarpal bone.



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- (5) *Aberration 1 x 1 c.m. in the left orbital area.*
- (6) *Aberration .5 x .5 c.m. near the left nipple of the chest.*
- (7) *Contusion 1.5 x 3 c.ms. at medial aspect of the right thigh*
- (8) *Contusion 7 x .5 c.ms. at the lateral aspect of the right thigh.*
- (9) *Contusion 2.5 x 1 c.m. near and above the right thigh No.8 injury.*
- (10) *3 linear contusions each size 3 x .5 c.m. at left thigh above 7 c.m. from knee joint left.*
- (11) *Contusion 3 x 1 c.m. over the left knee joint.*
- (12) *Contusion 3 x 1 c.m. at the right shoulder.*
- (13) *Contusion 2 x .5 c.m. at the left side lateral aspect of the left 5 c.m. from knee joint.*
- (14) *Contusion 7 x 1 c.m. at the back of the right thigh 15cms from right popliteal fossa., Eye open no bleeding from mouth, nose and ear. Dentition completed, tongue inside, no injury tooth and gum, hyoid bone intact. Stomach empty. Spleen, liver, kidney are normal weight and pale on cut section. Intestines are pale. Pancreas pale on cut section. No fracture skull. Membrane intact. Brain normal weight. Pale on cut section. No fracture pelvis, no long bone fracture."*

Let us now consider those facts, which are controverted.

26. Chain of custody of Knife [M.O.19]:-

- (i) The Knife [M.O.19] was marked through P.W.57 Head Clerk attached to



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Judicial Magistrate Court No.II, Ramanathapuram, who had received the material objects under Form - 91, signed by P.W.63. In the cross-examination, P.W.57 admits that in the Form - 91, there is a column from whom the material object was recovered. In that column, M.O.13 Revolver, M.O.14 Bullet shells and M.O.15 and M.O.16 seven live cartridges and M.O.19 Knife were produced under Form-91 No.F088318 by Duraipandian [P.W.53] S.P. Patinam Police Station in connection with Crime No.91 of 2014. The said Duraipandian, who was examined as P.W.53, in his chief examination, has deposed that the said Revolver [M.O.13] as well as the Knife [M.O.19] were recovered by the Superintendent of Police. This witness has not identified the Knife, Revolver, the bullet shells and the live bullets.

(ii) Mayilvahanan, who was examined as P.W.60, had deposed that after receiving information about the incident, he visited the S.P. Pattinam Police Station and instructed the Police to take further course of investigation. He pacified the crowd, who gathered in front of the Police Station, assuring them action will be taken against the accused for murder and proceeded further to his Office at Ramanathapuram, but had not whispered anything about the recovery of these material objects, particularly, M.O.19 Knife.

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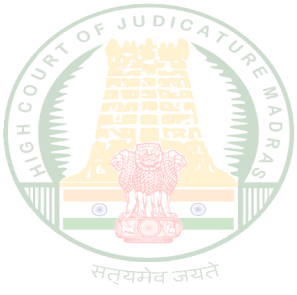
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(iii) Strangely, the said M.O.19 Knife was also not sent for biological or serological test to ascertain whether there was any blood stains in it. If yes, whether it matches the blood group of the accused or the victim.

(iv) The first person, who had seen the deceased Syed Mohammed carrying Knife is Aruldoss [P.W.8]. He, in his chief examination, had stated that Syed Mohammed took the Knife from his hip and tried to attack him. He evaded the hit by moving here and there. The neighbouring Saloon Shop Owner Saravanan intervened Syed Mohammed. On seeing public rushing to the spot, Syed Mohammed thrown the Knife near the bush. Saravanan [P.W.20] and Satheesh [P.W.21] along with Aruldoss [P.W.8] traced the Knife and handed over to one Paramasivan [P.W.2], Special Sub-Inspector of Police in the Station. The evidence of P.W.8 is corroborated with the evidence of Saravanan [P.W.20] as well as Satheesh [P.W.21] regarding the Knife used by the deceased Syed Mohammed to threaten Aruldoss and the recovery of it from the bush and later, handing it over to Paramasivan, Special Sub-Inspector of Police.

(v) Paramasivan [P.W.2], Special Sub-Inspector of Police, in his evidence, had deposed that Syed Mohammed in a drunken state had threatened Aruldoss [P.W.8] wielding Knife and when owners of the neighbouring shops gathered,



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Syed Mohammed threw the Knife and ran away. When he along with Mahalingam [P.W.5] Grade – II Police Constable went to the workshop of Aruldoss for enquiry on hearing the incident, Syed Mohammed was not there. After instructing Aruldoss [P.W.8] whenever Syed Mohammed come back, to inform him and returned to the Police Station. After half an hour, Aruldoss traced the Knife and came to the Police Station along with his uncle and informed that Syed Mohammed has again come to the workshop and creating trouble in drunken state.

(vi) P.W.2 Special Sub-Inspector of Police had further deposed that the accused, who came to the Police Station at about 04.00 p.m., received the Knife from the Writer and examined it. He has further stated that after hearing gunshot sound inside the Sub-Inspector room, he went inside the Sub-Inspector room saw the accused with injuries and when he enquired, the accused told that when Syed Mohammed took the Knife and attacked him, having no other alternate, except to shot Syed Mohammed to save his life. He saw Syed Mohammed lying on the floor struggling for his life and the Knife near him. In the cross-examination, P.W. 2 had also deposed that he heard the scream of the accused screaming 'he is stabbing, he is stabbing' (குத்துரான் குத்துரான்) and he saw the accused coming



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out from the Sub-Inspector room shirt torn.

(vii) The evidence further reveals that the accused before leaving to the hospital for treatment to his injuries, he gave the Knife as well the Revolver in the custody of the Head Constable.

(viii) The chain of custody of the Knife had been explained and probalised by the accused through the chief and cross examination of the prosecution witnesses P.W.1 to P.W.3 and P.W.6 . The prosecution has failed to disprove the defence version about the custody of Knife. Whether the Knife was carried by the victim along with him when he was brought to the Police Station or it was thrown by the victim in a bush and later, traced and handed over by Saravanan (P.W.20) and P.W.1. Either way, the fact remains undisputed that the Knife was in the Police Station when the accused came to the station by about 03.30 p.m.

27. Previous animosity:-

Animosity as projected by the prosecution is based on the documents like, sanction order and the report of the learned Judicial Magistrate.

(i) The sanction order given by P.W.61, which was marked as Ex.P26,



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speaks about the animosity between the accused and the deceased. The said sanction order is dated 04.04.2015. Mr.Anand Kumar Somani, I.P.S., [P.W.61], who has accorded sanction, admits in the cross-examination that he has issued Ex.P26 after perusing the records and consulting the Investigating Officer. In the cross-examination, the contradiction in the documents and his reasoning for according sanction been highlighted, particularly, the contradictions between the number of bullet injuries and the number of rounds fired by the accused from M.O.13 Revolver. The sanctioning authority [P.W.61] had mentioned that there were four entry wounds on the deceased. Whereas, in the document such as, the Postmortem report, it has been mentioned only three entry wounds and one exit wound. Being a Police Officer of I.P.S. rank, he was not able to comprehend the record and reasoning while according sanction and therefore, the application of mind is highly doubtful.

(ii) That apart, this Court also finds that in Ex.P26, he had stated certain incidents to infer pre-existing animosity between the accused and the deceased Syed Mohammed. Paragraphs 14 to 16 of the sanction order are relevant, which need to be examined in accordance with law, since this is the basis for the trial Court to formulate an opinion about the case and frame charges. This Court finds



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that misinformation fed by this witness and the misleading report of Mr.Velusamy, learned Judicial Magistrate No.II, Ramanathapuram, examined as P.W.50, had caused grave miscarriage of justice. Therefore, it is to be examined whether the animosity projected in the sanction order [Ex.P26] had really been proved through the evidence during trial. For the said purpose, Paragraphs 14 to 16 of the sanction order is extracted below:-

"14.Whereas, investigation revealed that Sub Inspector of Police Tr.A. Kalidass has earlier acquaintance with the deceased Syed Mohamed as an informer to him. Most of the information given by Syed Mohamed was found false and in the name of giving information, the deceased had posed himself as a close friend of Sub Inspector of Police Tr.A.Kalidass to the general public. Investigation further revealed that on the day of this incident, the Medical Officer of SP Pattinam Hospital had communicated an incident of attempt of house breaking at the nurses' quarters in SP Pattinam on the previous night to Sub Inspector of Police Tr.A.Kalidass over phone. The Sub Inspector of Police Tr.A.Kalidass suspected that the deceased Syed Mohamed could have involved in that occurrence. Moreover, Sub Inspector of Police Tr.A.Kalidass had presumed that Syed Mohamed might have been sent by local person Tr. Nagoor Kani, who had threatened the Sub Inspector of Police of dire consequences on the issue of executing an NBW against Syed Ibrahim, who is the brother of Nagoor Kani. Based on these perceptions and the



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abusive words of Syed Mohamed towards Police, Sub Inspector of Police, Tr.A.Kalidass got angry against Syed Mohamed which in turn tempted Sub Inspector of Police Tr.A.Kalidass to open fire at a close range against the deceased Syed Mohamed and caused his death, thereby committing his murder.

15.Whereas, the ballistic expert report has been obtained and it clearly states that the bullet recovered from the body of the deceased are fired from the revolver seized from the Sub Inspector of Police Tr. A.Kalidass. The records seized from the station corroborate the fact that the revolver was being used by Sub Inspector of Police Tr.A. Kalidass. All the other records of the police station were also seized and from them and it could be understood that the deceased was not even shown arrest in SP Patinam PS Cr. No. 90/14.

16.Whereas, the Judicial Magistrate No.II, Ramanathapuram, Tr.N.Velluchamy who conducted enquiry u/s 176(1) Cr.P.C. with regard to the cause of death of Syed Mohamed, had come to the conclusions that the deceased Syed Mohamed had died due to gunshot injuries on vital organ and of haemorrhages shock. The other injuries found on the deceased might have been caused by beating with Lathi or Hand. The explanation of Sub Inspector of Police Tr.A.Kalidass and the injuries on his body are not acceptable as an act of private defense."

(iii) This Court is conscious of the trite principle of law, which had been repeatedly reiterated through judicial pronouncements that the sanction to



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prosecute is only a check value to prevent malicious prosecution. The sanction order is the expression of the satisfaction arrived by the sanctioning authority that there is *prima facie* case to prosecute and such satisfaction arrived based on the materials collected and placed before him by the Investigating Officer.

(iv) In the instant case, the order granting sanction refers certain facts, which does not form part of the investigation material. The incident had happened inside the Police Station. The victim is a suspect. Whereas, the accused is a Police Officer. The sanctioning authority is an I.P.S. Rank Officer. There cannot be any doubt that, as a person from the Department he will be in a position to have access to the crime records. He had extensively spoken in his sanction order about the information found in those crime records. He admits that the sanction order was prepared in consultation with the Investigating Officer. While so, it is not clear whether he shared the information which he relied in his sanction order with the Investigating Officer or whether those informations were placed before him by the Investigating Officer while seeking sanction. Either ways, not placing those information before the Court is a strong reason for this Court to hold Ex.P26 is perverse and without proper application of mind.

(v) It is a case where the investigation was transferred from the local



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Police to CBCIB. Within two days of the occurrence, the CBCID has taken up the investigation and P.W.63 is the Investigating Officer. On completion of investigation, he filed the final report. It is admitted by P.W.61 that he prepared the sanction order [Ex.P26], dated 04.04.2015, in consultation with the Investigating Officer, six months after the occurrence.

(vi) P.W.63 Investigating Officer had deposed that after obtaining the sanction order, he laid the final report on 09.04.2015 altering the case of 176(1) Cr.P.C. to Sections 323, 342 and 302 of I.P.C. It is pertinent to take note of the fact that while according sanction, P.W.61 had referred the incident of attempt of house breaking at the Nurses' Quarters in S.P. Pattinam on the early hours of the previous night. According to the sanction order, this incident was communicated through the Medical Officer of S.P. Pattinam Hospital to the accused over phone. In this connection, the accused suspected the deceased and also presumed that the deceased might have been sent by Nagoor Kani, who had threatened the accused on an earlier occasion of dire consequences for executing NBW against Syed Ibrahim, who is the brother of Nagoor Kani.

(vii) It is the further inference of the sanctioning authority that on the said perception coupled with the abusive words used by the deceased, the accused got



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angry and tempted to open fire at close range to cause death. The Investigating Officer had not collected any material to substantiate the above averments found in the sanction order. He had neither examined the Medical Officer of S.P. Pattinam Hospital, who alleged to have given a complaint over phone about the house breaking at the Nurses' Quarters nor examined Syed Ibrahim, the brother of Nagoor Kani. In his chief-examination, the Investigating Officer had mentioned the name of Nagoor Kani as one of the witnesses, he examined and recorded the statement. However, he has not marshalled the said Nagoor Kani before the Court to give evidence. Neither Syed Ibrahim, the brother of Nagoor Kani was examined as a witness for presumption found in the sanctioning order. The other reason stated in the sanctioning order is that, the seizure of Knife M.O.19 and the arrest of the deceased in Crime No.90 of 2014 not been recorded. Being a Police Officer of a high rank, had totally ignored the circumstances under which, the deceased was brought to the Police Station and the instruction given by the accused to his subordinates to prepare arrest procedure after getting complaint from Aruldoss [P.W.8]. Before completion of the process, the untoward incident has taken place. Having referred about Crime No.90 of 2014 in the sanctioning order, the Investigating Officer in all fairness, ought to have placed the F.I.R. in



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Crime No.90 of 2014. The failure to file this document, which is very vital for the prosecution case, for which, the accused cannot be penalized.

28. Whether the plea of self defence probabalised by the accused:-

(i) This Court finds from the record that the uniform dress of the accused torn and with blood stains were recovered from him on 20.10.2014 while he was in the hospital. The dress materials were produced before the Magistrate Court along with Form - 91 marked as Ex.P.30 (series). The said dress materials been sent for biological/serological test by the Forensic Science Laboratory and the lab report had confirmed presence of blood in the uniform dress of the accused. However, the torn shirt, pant and the banian not marked as material objects. No explanation by Investigating Officer for the omission to mark the material objects. Before presuming that the injury on the abdomen was a self-inflicted injury, the Investigating Officer must have compared the torn portion of the shirt and banian with the 3rd injury site for any man of prudence to believe that the said injury is a self-inflicted injury. The prosecution is bound to place all the evidence collected in the course of investigation, which will be necessary for the Court to appreciate the evidence without any error or omission.

(ii) In this case, to ascertain whether the plea of self-defence is genuine or



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not the dress worn by the accused at the time of the incident is a vital piece of evidence, since the consistent plea of the accused is that that he was attacked by the deceased using the Knife marked as M.O.19 and had shown certain tell tale evidence like, torn shirt, broken table top glass and his injuries. The forensic expert after examining the glass pieces had opined that the glass would have broken on hit by a sharp object like, a Knife. The defence of the accused is that the damage to the table glass top was caused while the victim tried to attack the accused with the Knife and the injuries found on his body was caused by the victim using a Knife. The torn shirt and inner garment of the accused and the blood stains found on his dress is relied by the accused as proof of his plea of private defence. For the reason best known, the prosecution though had recovered the uniform of the accused and produced before the learned Judicial Magistrate under Form - 91, had not chosen to mark it as material objects. Without adequate material evidence, the trial Court has unfortunately on surmises, but contrary to the opinion of the doctor, had held that these injuries are self-inflicted injuries.

(iii) P.W.49, who had given Wound Certificate for the accused, had opined that the 2nd and 3rd injuries are superficial injuries. The third injury on the abdomen might have caused by a sharp edged weapon and the first injury, which



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is a lacerated injury, might not have been caused when a person tried to defend an attack with weapon. Injury Nos.2 and 3 might have been self-inflicted injuries, if the person is a right hander. The opinion of P.W.49 that the lacerated injury over the right hand ring finger might have caused while defending the attack by the weapon not considered by the trial Court while appreciating the medical evidence.

(iv) In the cross-examination, P.W.49 Dr.Jameen Bharath, who has treated the accused admits that the Police did not enquire him showing the Knife. Taking note of the answer in the re-examination of P.W.49, the trial Court had arrived at the conclusion that the injuries found on the body of the accused would have been self-inflicted injuries. This opinion has been given without seeing the weapon, which was marked as M.O.19 and this opinion is only in respect of second and third injuries, but not the first injury.

(v) This Court after going through the portion of this evidence, wanted to ascertain whether these three injuries could have been caused by using M.O.19 Knife. Hence, called for the material objects and examined the weapon. On examination, it is seen that M.O.19 Knife is a heavy bladed Knife with bend sharp end.



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(vi) The opinion of P.W.49 that the 2nd and 3rd injuries might be self-inflicted injuries ought not to have rejected by the trial Court, since P.W.49 had not seen the knife M.O.19 and examined it before giving his opinion about the injuries. Also, the trial Court had not taken note of the fact that for the reason best known, the prosecution tried to avoid marking the weapon alleged to have been used by the deceased to attack. If Knife been marked through the Court staff, who received the objects, the witnesses were deprived of the opportunity to identify the Knife during their examination on oath. This omission cannot be pitted against the accused to infer that the presence of M.O.19 on the table of the accused is doubtful and the injuries of the accused as found in Ex.P14 are self-inflicted injuries.

(vii) The torn shirt and the torn inner garment of the accused also not marked as Material Object, though it was produced under Form-91 and available in the Court. Suppressing the material evidence gathered in the course of investigation, is the fault of the prosecution. The said omission has deprived the accused to establish his theory of self-defence. Therefore, the benefit of doubt has to go in favour of the accused.

(viii) This Court also note that the omission to mark the complaint of



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Aruldoss as exhibit is a deliberate act of omission to support the lopsided investigation conducted by the CBCID. The antecedents of the deceased Syed Mohammed not been probed by P.W.63. From the evidence, it appears that the Investigating Officer was forced not to conduct investigation in an unbiased manner.

(ix) This Court records the above view with all firmness, since the mob gathered before the Police Station had prevented the Police from acting further in this case till the Senior Police Officials promised the mob that the accused will be prosecuted for murder. Only after the said assurance, the mob had disbursed from the Police Station. Even thereafter, the body of the deceased was not collected by the relatives of the deceased soon after the postmortem. They waited for three days and only obtaining assurance from the Police to accede their demands, which include compensation, they have received the body. Therefore, it is obvious that only under the pressure, the unfair and lopsided investigation been conducted and in the trial also, material evidence were screened.

(x) The testimony witnesses placed before this Court indicate that M.O.19 was not identified by any of the witnesses, except the Staff of the Judicial Magistrate Court, to whom, it was submitted under Form - 91. M.O.19 was not



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sent for serological test. This lapse on the part of the investigation, materially affects the accused, who had pleaded self-defence.

(xi) The fact remains that the deceased threatened Aruldoss [P.W.8] with a Knife. It was later produced before the S.P. Pattinam Police Station and it was given to the custody of the Writer before it was collected and given to the accused for the purpose of interrogation. The trial Court suspected the very presence of M.O.19 at the time of occurrence and also had relied upon the portion of the complaint given by P.W.8, which resulted in registering the F.I.R. in Crime No.90 of 2014. The trial Court, however, erred to note that the prosecution has not marked the copy of the F.I.R. registered in Crime No.90 of 2014. The learned trial Judge had relied upon the report of the learned Judicial Magistrate No.II, Ramanathapuram [P.W.50], which refers selective portion of the content in Crime No.90 of 2014.

(xii) The trial Court ought to have taken note that the prosecution for the reason best known, had not produced the F.I.R., registered in Crime No.90 of 2014 and the learned Judicial Magistrate No.II, Ramanathapuram, in his report, had considered only the incriminating portion against the accused for tracking custody of the Knife, but had miserably failed to take note of the conduct of the



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deceased Syed Mohammed, who had been in riotous mood, causing life threat to Aruldoss [P.W.8] and visited his workshop again and again making him to run for his life and get shelter in the Police Station. Also, the trial Court has failed to take note of the fact about the provocative and abusive language used by the deceased and his violent behaviour in the Police Station spoken by P.W.1 to P.W.3, P.W.6 and P.W.7. Their evidence shows that he was uncontrollable even after handcuffed and was put leading chain and made to in the middle of the room.

(xiii) Again, reverting back to the sanctioning order, we find P.W.61 had relied upon the enquiry report of Mr.N.Velusamy [P.W.50], learned Judicial Magistrate No.II, Ramanathapuram, which is marked as Ex.P18 to rule out the theory of self-defence.

(xiv) At this juncture, it is necessary to examine the enquiry report of the learned Judicial Magistrate No.II, Ramathapuram, which is marked as Ex.P18. After the proceedings of the learned Chief Judicial Magistrate, P.W.50 Mr.Velusamy, learned Judicial Magistrate No.II, Ramanathapuram, taken up the enquiry. He has recorded the statements of several persons in the course of his enquiry. He at first enquired the batch of witnesses, who are related to the deceased and thereafter, recorded the statements of Aruldoss [P.W.8], who laid a



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complaint against the deceased for his life threat and the other persons, who know about the incident. Lastly, he has examined the official witnesses, like the doctors and the Police officials, who had knowledge about the incident or connected with the incident. The enquiry been conducted for several months from October, 2014 till February, 2015. The accused also been examined by P.W.50, who had narrated how the incident has taken place. It is to be noted that there is no eyewitnesses to the occurrence. It has happened in the room of the accused. The accused had stated to P.W.50 that when he was interrogating the deceased in his room, the deceased requested to use the rest room. So, the deceased was taken to the rest room and came back. Paramasivan [P.W.2], Special Sub-Inspector of Police brought the Knife from the Writer and kept it on the table of the accused. When he asked the deceased from where he purchased the Knife, the deceased sought permission to use the room to spit. He permitted him to do so through window. Meanwhile, he turned back to take paper to record the statement, at that time, the deceased took the Knife and attacked him. The table top glass got damaged when he successfully escaped from the attack. Again, the second and third attempts of the deceased, caused injury on the accused's ring finger and stomach. Thereafter, he opened three rounds fire to cripple the deceased. The learned Judicial



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Magistrate No.II, Ramanathapuram [P.W.50] taking note of the nature of gunshot injuries and other injuries found on the deceased, had arrived at two specific conclusions to eliminate the theory of self-defence. Firstly, the presence of the Knife on the table of the accused is doubtful, since there is contradiction in the statement of Aruldoss, Saravanan and Kalidass [accused]. The second reasoning is that the bullet has travelled from upward to downward. If a person sitting in a chair and shot, the bullet will travel only upward and not downward. Further, the first bullet injury itself crippled the assailant. Whereas, the accused has admitted that he fired three rounds, since the deceased repeatedly tried to attack him with the Knife.

(xv) It is not the case of the accused as found in his statement to P.W.50 that he was attacked while he was sitting in the chair. He has specifically stated that when he turns around to collect paper for recording the statement of the deceased, he attacked him. Furthermore, when a person in panic, fired at random, one cannot expect that the bullet should travel only upward and not otherwise. The presumption of P.W.50 based on the direction of the bullets is in fact contrary to the opinion of the ballistic expert, who was examined as P.W.51. He had categorically stated that the direction and angle of the bullet travels based on the



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position of the user and the target. Being a Revolver, a change in angle, may cause injuries as found in the body of the deceased. Therefore, the opinion of P.W.50 to disbelieve the theory of self-defence is only on the assumption that the downward movement of the bullet could not have been caused by a person, who was sitting in the chair, is very hypothetical and imaginary conclusion and contrary to the evidence of P.W.51, who is ballistic expert in the field and known for his knowledge as a seasoned forensic expert for several decades and was serving as Joint Director in the Forensic Department at the relevant point of time.

(xvi) Further, the trial Court being carried away by the sanction order and opinion of the learned Judicial Magistrate No.II, Ramanathapuram, found in Ex.P18, had not tested those facts in the manner known to law with the evidence available and marshalled by the prosecution. As pointed out earlier, for animosity and motive, examination of Nagoor Kani, his brother Syed Ibbrahim and the Medical Officer of the S.P. Pattinam Hospital is essential and material. Having failed to examine them as witnesses, the trial Court ought not to have believed the case of the prosecution about the animosity.

(xvii) The above observation of the Court is well fortified by not only on the failure of the prosecution to produce positive evidence in this connection, but



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also from the evidence of P.W.25, the mother of the deceased; P.W.26, the grandmother of the deceased; P.W.27, the grandfather of the deceased, who have categorically admitted in the cross-examination that there was no animosity or ill-will between the accused the deceased.

29. Did the accused premeditated the crime and fired with intention to cause death?

(i) The case of the prosecution is that the incident has taken place due to premeditation, since the accused was provoked by certain utterance of the deceased, he came to the Police Station with loaded Revolver and fired the deceased with intention to kill.

(ii) The evidence of Mr.Mayilvahanan [P.W.60], Superintendent of Police, is very relevant to test whether it was an act of premeditation as alleged by the prosecution. The Revolver [M.O.13] is a service weapon allotted to S.P. Pattinam Police Station. The accused being the Station House Officer, was in-charge of the weapon. It is not the weapon given to him personally, but allotted to the Station, The stocks of armed ammunition maintained by Armed Reserve Police and the same will be periodically inspected by the Officers of the Armed Reserve Police.



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In normal course, the weapons used to be under the control of the Writer, who is a rank of Head Constable. In this case, none of the witnesses for the prosecution had deposed that the accused was carrying his Revolver when he came to the Station after taking his lunch. The relatives of Aruldoss were all waiting outside the Police Station after lodging the complaint against the deceased. P.W.3 in his evidence had deposed that Aruldoss and his relatives were insisting to register the case against the deceased under the SC/ST Act apart from attempt to murder. The accused not being convinced that it is an offence attracting the provisions of SC/ST Act, had registered the case only for an attempt to murder under Section 307 I.P.C. and minor offence like, Section 294(b) I.P.C. The conversation alleged to have been taken place between the deceased and the accused as spoken by Paramasivan [P.W.2], Special Sub-Inspector of Police and other Police Constables, who were present in the Police Station would show that there was no element of animosity or premeditation in the mind of the accused to cause any harm to the deceased. The other injuries found in the body of the deceased were not caused by the accused and both P.W.50 as well as the Investigating Officer P.W.63 admit that there is no evidence to attribute the accused for the cause of other injuries found on the body of the deceased.



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(iii) What this Court finds is that most of the witnesses, who either relative to the deceased or belong to his community, had deposed that the deceased was killed in the Police Station. They are not witnesses to the occurrence. They are members of mob, who had gathered in front of the Police Station after hearing the news about the shot out inside the Police Station. In fact, P.W.25 and P.W.26, who are the mother and grandmother of the deceased, respectively, had deposed that in the 5 O'clock T.V. News, the shot out incident was telecasted. The veracity of this statement not been tested. However, the evidence of other witnesses would show that the members of particular community, who came for evening prayer, had gathered before the Police Station after the incident. They were forcing the Police to take severe action against the person responsible for shooting Syed Mohammed. P.W.25, P.W.28 and P.W.29 to P.W.32, the Members of that Community gathered before the Police Station on hearing the news, had invariably deposed that they demanded for swift action and prosecution of the person responsible for shooting Syed Mohammed. They refused to collect the body of Syed Mohammed and went for Hartal. They collected the body only on 17.10.2014 after assurance on filing a Petition before the High Court that there will be transfer of investigation and compensation for the custodial death.



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(iv) Mr.Mayilvahanan [P.W.60], the Superintendent of Police of the District, had deposed that on getting information about the shot out in the Police Station, he went to the Police Station and saw the mob before the Police Station. After his assurance that suitable action will be taken, the Mob dispersed. This evidence corroborates with the evidence mentioned above, who had stated that there was an announcement in the mike from the Jamath to disperse on the assurance given by the Police that there will be suitable action. Then, thereafter, the relatives refused to collect the body of Syed Mohammed. P.W.60 had further deposed that the relatives insisted on registering a murder case against Kalidass, Sub-Inspector of Police and to transfer the case to CBI and thereafter, the Director General of Police issued proceedings to transfer cases registered in Crime Nos.91 of 2014 and 92 of 2014 to CBCID and only thereafter, the relatives collected the body of Syed Mohammed. So, it is apparent that there was a pressure from a group to register the case against the accused for offence under Section 302 I.P.C., P.W.60 has assured them that case will be registered against the accused for offence under Section 302 I.P.C. With the said promise, he had purchased peace with the mob. As a consequence, case has been registered against the accused under Section 302 I.P.C.



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(v) In this context, it is also to be taken note of one particular fact that the deceased was apprehended by the Police and taken to the Police Station during forenoon and on that fateful day, he had been shouting at the members of his community calling for help by saying, why they are not preventing the Police from taking him into custody [டே துளுக்கப் பயலுகளா வாங்கடா என்னை பிடித்துப் போறாங்கா. நீங்க கேட்க மாட்டிங்களாடா]. This has been spoken by P.W.2 and P.W.6. A truncated investigation on transfer from local Police to CBCID and omission of producing all the evidence collected in the course of investigation could be seen apparently in this case.

30. The appellant, in the course of pending appeal, has taken an application in Crl.M.P.(MD)No.13523 of 2022 to receive additional documents, such as, F.I.R. registered in Crime No.90 of 2014 pertaining to the complaint given by Aruldoss against the deceased and the final report filed by E.5 Cholavaram Police Station, Tiruvallur District, in Crime No.771 of 2012, in which the deceased is arrayed as one of the accused, to show that the deceased was a notorious person and the prosecution had deliberately suppressed the said fact. It is also stated in the Petition that the deceased was a juvenile in conflict with law and he was in the Observation Home for some time.



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31. This Court is of the view that the additional documents sought to be produced now are not necessary just to attack the conduct of the deceased, who is not in a position to defend. However, with the available materials, this Court is of the view that the investigation ought to have been done in a better manner, it is not only defective, but it is a lopsided investigation screening the vital material facts like, the F.I.R. in Crime No.90 of 2014, the apparels of the accused, non-examination of Nagoor Kani, who allegedly to be the person behind the deceased to provoke the accused, put together probabilise the case of the accused that he exercise his right of self-defence to save his life.

32. As per Section 105 of the Indian Evidence Act, 1872, the burden of proof rests with the accused, who takes up the plea of self-defence. In the absence of proof, the Court will not be in a position to assume that there is any truth in the plea of self-defence. However, the said burden is not such onerous, as the one which lies on the prosecution, which required to prove it's case beyond reasonable doubt. The accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities. For the said purpose, the accused may either adduce positive evidence or extract



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necessary information from the witnesses produced by the prosecution and place any other material on record to establish his plea of self-defence.

33. In James Martin vs. State of Kerala reported in **(2004) 2 SCC 203**, the Hon'ble Supreme Court has finely explained the above principle in the following words:-

"15. Sections 102 and 105 IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In Jai Dev v. State of Punjab [AIR 1963 SC 612 : (1963) 1 Cri LJ 495] it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

16. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this



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Court in Biran Singh v. State of Bihar [(1975) 4 SCC 161 : 1975 SCC (Cri) 454 : AIR 1975 SC 87] . (See Wassan Singh v. State of Punjab [(1996) 1 SCC 458 : 1996 SCC (Cri) 119] and Sekar v. State [(2002) 8 SCC 354 : 2003 SCC (Cri) 16] .)

17. As noted in Buta Singh v. State of Punjab [(1991) 2 SCC 612 : 1991 SCC (Cri) 494 : AIR 1991 SC 1316], a person who is apprehending death or bodily injury cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him. Where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hypertechnical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be



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negatived. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

18. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (See Vidhya Singh v. State of M.P. [(1971) 3 SCC 244 : 1971 SCC (Cri) 469 : AIR 1971 SC 1857]) Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot, it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a courtroom, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

34. In **James Martin's case** (cited supra), the Hon'ble Supreme Court has also observed that, the right of private defence is essentially a defensive right

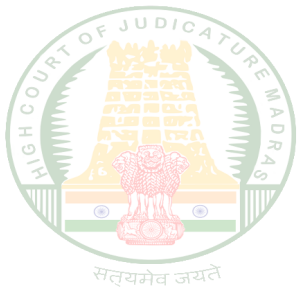


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circumscribed by the governing statute *i.e.* the I.P.C., available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defense, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.

35. As already observed, the trial in this case been conducted on the premise and presumption that the shot out was a premeditated, unprovoked and retaliatory act. However, from the prosecution evidence, there was no evidence to show that there was any animosity between the accused and deceased. Except the unproved version of the sanctioning authority mention in Ex.P26, nothing to suppose that the accused had a grudge over the deceased for being a stooge of Nagoor Kani, who earlier threatened the accused for securing his brother involved in a murder case.



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36. The prejudged approach of the trial Court based on the truncated facts fed by the prosecution witnesses coupled with shocking omission to adduce evidence collected during the investigation has led to miscarriage of justice and same is demonstrated through the following incidents:- .

(i) During the Judicial Magistrate's enquiry, the learned Judicial Magistrate (P.W.50) had inspected the S.P. Pattinam Police Station. He had perused records maintained in the Police Station, including the copy of the F.I.R. registered in Crime No.90 of 2014 on the complaint given by Aruldoss (P.W.8). In his enquiry report (Ex.P18), he had stated that, Sub-Inspector Kalidass on hearing Syed Mohammed is back again to the workshop of Aruldoss and creating nuisance, sent Iyyappan, Head Constable (P.W.1), Youth Brigade John Ravi (P.W.6), Duraikannu, Head Constable (P.W.3) to secure Syed Mohammed and bring him to the Police Station. When they brought Syed Mohammed to the Police Station, recovered the 1 foot Knife kept in his hip concealed in the lungi during the physical search.

(ii) Before the Court, witnesses had deposed that the Knife was produced by the complainant Aruldoss. It was given to the custody of the Head Constable. From him, on the instruction of the accused, the Knife was given to him, who

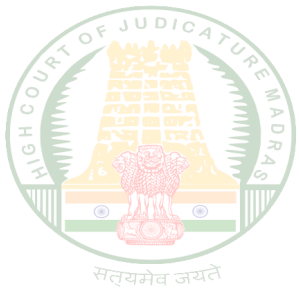


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examined it and started his interrogation with the Syed Mohammed showing the Knife to him.

(iii) Recovery of the Knife after the occurrence also, there is doubt and contradictions. There are two Observation Mahazars for the scene of crime (Ex.P2 and Ex.P3) and two Rough Sketches (Ex.P24 and Ex.P29). There is no reference about the Knife in these four documents. There are also two Recovery Mahazars. One on 14.10.2014 at 21.00 hours prepared by P.W.59, Tr.Sekar, Deputy Superintendent of Police, Thiruvadanai Division and another on 19.10.2014 at 10.00 a.m. prepared by Mr.Manmatha Pandian (P.W.63), the Deputy Superintendent of Police, CBCID, who took up the investigation on transfer of investigating agency. In both the Recovery Mahazars, Mr.Chidambaram, Village Administrative Officer [P.W.14] and Subramani, Village Assistant [P.W.15] are the witnesses. In the first Recovery Mahazar (Ex.P4), the broken glass pieces from the table top glass alone recovered. In the second Recovery Mahazar (Ex.P5), the tiles with blood stains from 6 different parts of the Sub-Inspector room were cut and collected for examination. These materials were marked as M.O.1 to M.O.7.



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(iv) Ex.P30 series is the Form – 91, bearing numbers 0211053 to 0211059 sent to the Court along with case properties. All these Form – 91, signed by P.W.63. Form - 91 bearing No.0211053, signed by P.W.63, contains 4 case properties. They are,

- (i) Revolver, bearing - RM27 body No.01968
- (ii) Spent bullet shells – 3 Nos.
- (iii) Live bullets - 7 Nos.; and
- (iv) Knife - 25 c.m. blade and 9 c.m. wooden handle.

From the Court's seal and initial, it appears that the properties were forwarded to the Court on 17.10.2014. In the Form - 91 bearing No.0211053, it is mentioned that these four properties were recovered by Durai Pandian, Inspector, Thondi Police Station, on 16.10.2014 at 23.45 hours. He had handed it over to P.W.63 along with the case records after transfer of the investigation to CBCID.

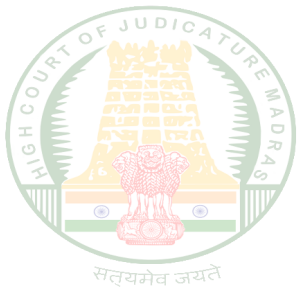
(v) P.W.63, who took up the investigation, had deposed that he received the case records and properties in Crime No.91 of 2014 on 17.10.2014 at 00.30 hours and registered fresh CBCID F.I.R. in Crime No.2 of 2014 (Ex.P28). In this regard, the evidence of Tr.Sekar Desputy Superintendent of Police of Thirvadanai



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[P.W.59], who is the first Investigating Officer in this case gains significance, since he had deposed that on receiving intimation about the incident, he reached the S.P. Pattinam Police Station and took up the investigation. He recovered the Revolver, bullets and the Knife under the seizure Mahazar in the presence of witnesses. They were handed over by the accused Kalidass to the Guard Police before he left the Police Station. On the transfer of investigation to CBCID, vide proceedings of Ramanathapuram Superintendent of Police, in C1/29191/14, dated 16.10.2014, he handed over the case records pertaining to Crime No.90 of 2014 and Crime No.91 of 2014 to CBCID. In the cross examination of P.W.59, he had admitted that in Form – 91 (Ex.P30), it is mentioned that these objects were recovered by Duraikannu, Inspector of Police. (P.W.3). Whereas, on scrutiny of the testimony of P.W.3, we find his evidence is totally silent about this aspect. It is very interesting to note that not only the presence of the Knife (M.O.19) and it's recovery, even for the recovery of the Revolver [M.O.13], there is no clear evidence. To add, neither in the Observation Mahazar (Ex.P3), prepared on 14.10.2014 at 20.00 hours nor in the Rough Sketch (Ex.P24), both prepared by P.W.59, there is no whisper about these four Material Objects, which were marked as M.O.13 (Revolver), M.O.14 (spent bullet shells), M.O.15 (live bullets) and



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M.O.19 (Knife).

(vi) The trial Court, however, on relying upon the enquiry report Ex.P18, which in turn relies upon the F.I.R. in Crime No.90 of 2014 (not marked in this case) and the Observation Mahazars [Ex.P2 and Ex.P3] prepared by P.W.63 and P.W.59 respectively, had concluded that the presence of the Knife on the table of the accused giving the deceased the opportunity to take and attack the accused itself not believable and the injuries found on the body of the accused are self-inflicted.

(vii) If the recovery of the Knife alleged to have been used by the deceased is to be doubted for the reasons stated in the report of P.W.50 and in the judgment, the same doubt has to be extended to M.O.13 Revolver also, which is alleged to have used by the accused. Just because he had admitted the assault and pleaded self defence, Court cannot proceed on the presumption that he was the user of the Revolver. The Court has a duty to ensure that the admission is not only voluntary, but also possible and believable. Court should satisfy itself that the said admission/confession is not made falsely to save somebody else whom the maker is interested.

(viii) In the instant case, the Revolver (M.O.13) is not given to the accused



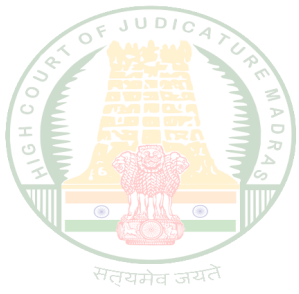
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exclusively. It was allotted to the Station in common and the accused being an officer in the rank of Sub-Inspector of Police also the Station House Officer at that time, been carrying that Revolver. The failure of the investigation to recover one spent bullet from the scene of crime and the recovery of 7 live bullets along with three empty cartridges of spent bullets when the capacity of the Revolver (M.O.13) is only six rounds, creates a substantial doubt about the prosecution case as it is projected through its witnesses.

(ix) To crown it all, the clothing (uniform Khaki shirt, uniform Khaki pant and white colour banian all stained with blood) of the accused were recovered by P.W.63 from the accused on 20.10.2014 when he was in Government Rajaji Hospital, Madurai, for treatment. The objects were forwarded to the Court on 27.10.2014 along with Form - 91 bearing No.0211059. P.W.63 the Investigating Officer in this case had deposed that he arranged for sending the clothing of the accused for biological test through Court and got the report from the State Forensic Science Laboratory.

(x) The report of the Forensic Department, which is marked as Ex.P23, proves the fact that the shirt and the banian were torn and on examination in Lab, blood detected. Though the shirt, pant and banian were not marked as material



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objects, the biological report of State Forensic Science Laboratory, dated 14.11.2014 probabilises the case of the accused that he sustained the injuries found in the Accident Register marked as Ex.P14, when the deceased attempted to kill him with the Knife. To save himself, he fired three rounds at the deceased Syed Mohammed.

(xi) Apart from, three injuries on the body of the accused, there was also damage to the glass top of the table, which is attributed as a missed attack on the accused landed on the table causing damage to the glass. Mr.Thirunavukkarasu [P.W.41], the Joint Director of State Forensic Lab, Chennai, had examined the glass pieces and had opined that the damage to the glass top would have caused by a sharp edged weapon like, Knife when it is hit with force. The accused in his statement to the learned Magistrate [P.W.50], during the enquiry, had stated that when the deceased first attacked with the Knife, he avoided the attack by moving. The said hit landed on the glass top and broke it.

(xii) The trial Court has declined to accept the said defence, since the occurrence was inside the Police Station. The assailant was a man in uniform well armed, whereas, the victim was a captive inside the Police Station and unarmed. The registers maintained in the Police Station does not find place of the arrest of



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the deceased or recovery of the Knife. The trial Court has disbelieved the evidence available to show the Knife [M.O.19] was used by the accused to attack the accused. The trial Court has gone to the extent that there is no possibility of the Knife [M.O.19] coming to the table of the accused. Also, had made an observation that the injuries on the accused body are self-inflicted. The damage to the table top glass is on the side of the accused, so it might not have caused by the deceased. The bullets have travelled upside down through the body of the deceased. When fired sitting in the chair, the bullet would have travelled straight and not from upward to downward.

(xiii) These observations are in total contradiction to the evidence of prosecution witnesses, P.W.1 and P.W.2. These two witnesses had deposed that the accused after coming to the Police Station at about 04.00 p.m., asked for the Knife recovered from the deceased and same was handed over to the accused. During the enquiry of the learned Judicial Magistrate, the accused had explained the circumstance how the injuries caused by the deceased. It is borne by evidence that the deceased had been behaving very violently throughout the day and even after he was brought to the Police Station and chained, he was uncontrollable. He had become more violent when the accused decided to remand him and directed



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P.W.1 to prepare remand report. Before the formalities of documentation could be completed, the deceased had taken the Knife kept on the table and tried to attack the accused taking advantage when his attention was to get the paper to write down the statement of the accused. If the deceased has aimed at the accused and attacked him, then, the damage of the glass top would naturally be on the side of the accused. Therefore, none of the reasoning given by the trial Court to disbelieve the self-defence theory appears to be logic or backed by evidence. In the contrary, they are against the oral evidence of the witnesses and the opinion of the expert.

(xiv) Since there is no eyewitness to the occurrence and only based on the circumstances, one has to visualise what would have happened in the Sub-Inspector room. The cry of the accused "he is stabbing, he is stabbing" [குத்துரான், குத்துரான்] from the Sub-Inspector room before the gunshot sound and the accused coming out from the room with torn shirt and bleeding on his hand and stomach are *res gestae* evidence admissible under Section 6 of the Indian Evidence Act. They are in support of the accused plea of private defence.

(xv) Though there are some contradictions and missing link to prove the chain of custody of the weapon, the lapse to provide the link is attributable to



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prosecution and it only add more credence to the accused theory that the investigation was not neutral, but bent to pacify the mob, which demanded foisting case under Section 302 I.P.C. against the accused. The allegation also appears to be correct in view of the admission by many of the public witnesses, who gathered before the Police Station after hearing the news and also the evidence of P.W.59 and P.W.63.

(xvi) Thus, from evidence of the witnesses for prosecution, there can be no doubt that the Knife [M.O.19] was used by the deceased to attack the accused and Revolver [M.O13] was used by the accused to shot the deceased. After the occurrence, the accused had handed over both the weapons (Revolver and the Knife) to the duty Guard and left to the Hospital along with P.W.4. On the same day, P.W.59 collected those weapons and other case records for investigation. Strangely, both the weapons were not identified or marked through the witnesses, who had seen in possession of the accused or the deceased respectively. The Revolver is marked as M.O.13 through P.W.51 the ballistic expert, who examined the weapon, when it was forwarded by the Court to get his opinion. The Knife is marked as M.O.19 through the Head Clerk of the Magistrate Court, who received it under Form - 91.



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(xvii) Private defence is one of the exception mentioned in I.P.C. Section 100 of I.P.C. throws light on the circumstances in which the right of private defence of body can be stretched to the extent of voluntarily causing death. To avail this exemption, there must existence of a reasonable ground to apprehend death or grievous injury will otherwise be the consequence of such assault. In the instant case, the evidence provides enough material to lean in favour of the accused/appellant to extend the benefit of private defence to the accused/appellant for the reasons stated above.

37. Having concluded that the danger apprehended by the accused is not a self-creation and the trial Court failed to consider the material evidence, which probabilise the self-defence theory, the next question remains to be answered by this Court is whether three rounds of firing hitting the vital part of the body is necessary and proportionate to disarm or cripple the assailant wielding Knife causing apprehension of death.

38. In **Darshan Singh vs. State of Punjab and others** reported in (2010) 2 SCC 333, the Hon'ble Supreme Court referring all the important cases on the scope of self defence, had enumerated ten principles when the right of self efence/private defence can be invoked. Few among them relevant to the facts of



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the case under consideration are:-

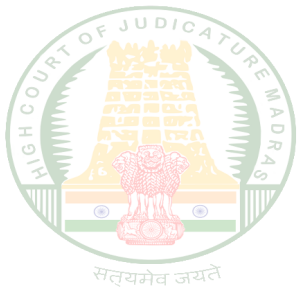
(i) A mere reasonable apprehension is enough to put the right of self defence into operation and it commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(ii) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(iii) In private defence the force used by the accused ought not be wholly disproportionate or much greater than necessary for protection of the person.

39. To decide whether the defensive attack was reasonably proportionate, it will be profitable to rely on the judgment of the Hon'ble Supreme Court rendered in **Mahadev vs. The Director General, Border Security Force and others** reported in **2022 (8) SCC 502**.

40. In the case [cited supra], the accused, who was serving in Border Security Force, was tried under Section 46 of the Border Security Force Act, 1968, for murdering a civilian using the service rifle. His oral plea of self-defence was rejected by the General Security Force Court (GSFC). The appeal petition to



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the Union Government was also rejected. The High Court confirmed the rejection order of the Union Government. The High Court relied on the evidence of the postmortem doctor, who had deposed that the death has caused due to the bullet injuries, which had travelled from upward to downward and then backward. The position of the firer as against that of the deceased was such that the one who would have fired the shot, must have been on an elevated position compared to the victim, since the direction of the bullets were from above the chest, going downwards and backward. The accused then, preferred Writ Petition before the Supreme Court.

41. The Hon'ble Supreme Court accepted the argument of the counsel for the appellant/accused that when the accused suddenly confronted by intruders armed with weapons coming menacingly close to him, the accused positioned on the higher level vis-a-vis the deceased, the path of the bullet travelling towards downward is probable.

42. In **Mahadev's case** [cited supra], the Hon'ble Supreme Court has observed that the instinct of self-preservation is embedded in the DNA of every person. The doctrine of self-defence is founded on the very same instinct of self-preservation. Under the I.P.C., to claim such a right, the accused must be able to

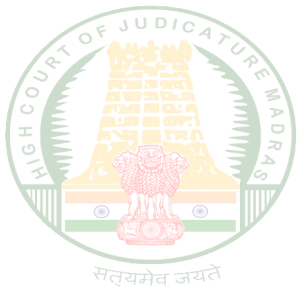


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demonstrate that the circumstances were such that there existed a reasonable ground to apprehend that he would suffer grievous hurt that would even cause death. The right of private defence commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, continues as long as such an apprehension of danger to the body continues. (Para 10 and Para 11 of the judgment).

43. The trial Court after extracting the judgment of this Court rendered in **Esakkiammal vs. State, Rep. by Inspector of Police, CBCID, Tirunelveli (2016 (1) CTC 726 : 2016 (1) MLJ (Cri) 168)**, *in extenso*, had held that the enquiry report of P.W.50 under section 176(1)(A) of Cr.P.C. is admissible in evidence. There is no dispute about the admissibility of the Enquiry Report (Ex.P18). Nonetheless, the trial Court ought to have known that the opinion of the Judicial Magistrate in his enquiry report is not a conclusive proof. The statements of the persons whom the Judicial Magistrate examined are also not substantive piece of evidence. The witnesses, who made the statement should have been testified before the trial Court on oath and the accused ought to have been given opportunity to cross examine those witnesses.



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44. Likewise, the trial Court has extensively extracted the judgments of the Hon'ble Supreme Court rendered in **Virsa Singh vs. State of Punjab (1958 AIR (SC) 465)** and **Budhi Lal vs. State of Uttarakhand (2009 AIR SC 87)** and the judgment of this Court in **Ganesan, Virudhunagar District vs. State** reported in **2012 (2) LW (Cri.) 733**, for the purpose of explaining the difference between culpable homicide amounting to murder and culpable homicide not amounting to murder. To bring the point that the act of the appellant/accused was intentional murder and will fall under clause (ii) of Section 300 I.P.C. Here again, the trial Court has miserably failed to do proper and adequate exercise of assessing the evidence to find out whether the act of the accused fall under the exception (2) or (3) under Section 300 of I.P.C.

45. The delay of one hour in lifting the injured is taken note very seriously by the trial Court and attribute the said delay on the accused. In this regard, the trial Court ought to have taken into consideration the evidence of P.W.1 to P.W.4, who had categorically deposed that after the incident, the accused instructed them to arrange for ambulance to lift the injured Syed Mohammed to the hospital and



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then, left the Station to the hospital to get treatment for his injuries. He had also informed his Superior Officer over phone immediately to take necessary follow up action. On receiving the information, the Deputy Superintendent Police, Thiruvadanai, had rushed to the Police Station and took charge of the investigation. By the time, mob had gathered in front of the Police Station and agitating. While so, the trial Court has drawn an adverse inference against the accused that after the incident, the accused had not made any attempt to admit the injured Syed Mohammed in the hospital. It has also ignored the evidence of Paramsivan, Special Sub-Inspector of Police (P.W.2), who had called ambulance and P.W.34 to reach the Police Station immediately. The said delay spoken by witness P.W.34 is due to the reason that the members of Muslim community, who had come for evening prayer, had gathered before the Police Station and started agitating to take immediate action against the accused and not ready to disburse. Only after members of the Jamath got satisfied on the assurance given by P.W.60 that case will be registered against the accused for murder, same was announced in the public address system from the Mosque, the crowd had dispersed for the vehicle to have ingress to the Police Station.

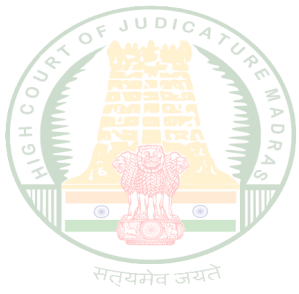


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46. The disturbing factor in this case, the accused by placing the Knife on his table had given an opportunity to the deceased to get access to the Knife and attack the accused. The accused being a trained Police Officer ought to have displayed more alacrity and diligence. From the evidence of P.W.51, the ballistic expert and his opinion Ex.P19, we understand that the Revolver [M.O.13], which the accused used to fire at the deceased is 0.380 inch calibre, 6 chambered Revolver. It's effective range is 1 to 50 yards. In other words, the Revolver has the capacity to fire six rounds continuously without releasing the safety gauge and hit the target ranging between 1 and 50 yards.

47. According to the prosecution, the accused fired three rounds. However, the sanctioning order and postmortem certificates indicates 4 gunshot wounds. The prosecution has produced 3 empty cartridges. Two spend bullets, which were struck inside the body of the deceased, were recovered during the postmortem. The angle of the bullets, which caused the Injury Nos.1 and 2, is from upward towards downward. When the ballistic expert [P.W.51] was shown the postmortem report and sought for clarification, he had deposed that the direction of the bullet travelled depends on the position of the user and the target. The trial



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Court based on the angle of the bullet journey, on assumption that the user was sitting in his chair has held that the injuries 1 and 2 might have caused in close range the user on an elevated range.

48. This finding on assumption to be ignored in the light of the explanation given by P.W.51. Since there is contradictions about the number of bullet injuries and number of bullets fired at the deceased, this Court played the CD and scrutinised the photographs (M.O.10 to M.O.12) to understand and correlate the nature of injuries with the postmortem report. The four gunshot wounds noted in the postmortem report are all found in the body of the deceased as seen from the photograph. Those four wounds are distinct separate wounds at different parts of the body. One on the left supra clavicular region, another on the left mammary region - 2 c.m. medial to nipple, the third wound in the middle of the left upper arm and the fourth wound on the dorsal aspect of the hand below the right hand ring finger.

49. The injuries on four different parts of the body would go to show that it was not aimed at any fixed point, but was fired at random. A person, who wants to save himself from a menacing attack, cannot expect to fire at a particular target in



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a precise manner. The contention that the accused cannot measure step by step to react to the assault and apprehension faced by him warrants a spontaneous act of self preservation, the appellant is entitled for the protection under Section 100 of I.P.C. and it fall under the second exception to Section 300 of I.P.C.

50. Section 100 of I.P.C. reads as under:-

"100. When the right of private defence of the body extends to causing death.-

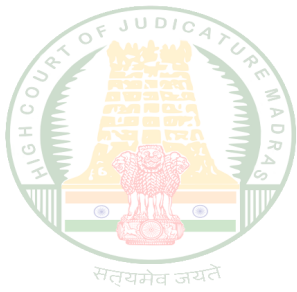
The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First.- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.- An assault with the intention of committing rape;

Fourthly.- An assault with the intention of gratifying unnatural lust;



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Fifthly.- An assault with the intention of kidnapping or abducting;

Sixthly.- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly.- An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."

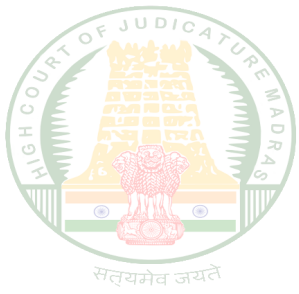
51. Exception (2) to Section 300 I.P.C. and the illustration reads as below:

"300. Murder.

Exception 2.- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself



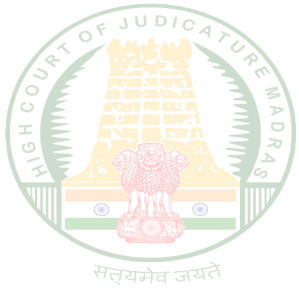
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from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide."

52. In view of the facts discussed above and in the light of the judgments cited supra, this Court holds that the appellant had probalised the plea of self defence through the cross examination of the prosecution witnesses' evidences and had also proved that he had reasonable apprehension of get hurt grievously in the hands of the deceased. The degree of his apprehension cannot be tested with any straightjacket formula. The weapon used, the manner and nature of assault and other surrounding circumstances would limpidly and indubitably demonstrate that this case falls within the scope of second exception of Section 300 I.P.C. read with Section 100 I.P.C.

53. As a result, the judgment of the trial Court, dated 14.11.2019, in S.C.No.86 of 2015, is set aside and the appellant is acquitted from all the charges. Bail bonds stand cancelled. Fine amount already paid, if any, shall be refunded to the appellant.



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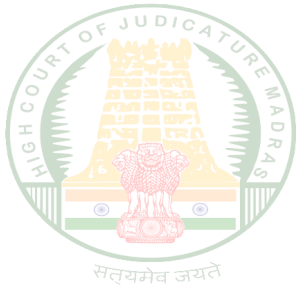
54. In fine, this Criminal Appeal is allowed. Consequently, connected Miscellaneous Petition is closed.

Index : Yes
NCC : Yes
smn2

[G.J., J.] & [C.K., J.]
19.03.2024

To

- 1.The Principal District and Sessions Judge,
Ramanathapuram.
- 2.The Deputy Superintendent of Police,
CB-CID, Madurai Range,
Madurai.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

smn2

PRE-DELIVERY JUDGMENT MADE IN
Crl.A.(MD)No.34 of 2020

19.03.2024

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