MOORTHY

v.

STATE OF TAMIL NADU

(Criminal Appeal No. 578 of 2001)

NOVEMBER 19, 2008

[DALVEER BHANDARI AND HARJIT SINGH BEDI, JJ.]

Penal Code, 1860: s.304(Part I) – Appellant and other accused persons stabbed deceased resulting in his death – Statement of appellant under s.313 Cr.P.C. that deceased attempted to murder him with knife and during course of struggle even he sustained injuries in self defence – Acquittal by Trial Court – Conviction by High Court under s.304(Part I) – Interference with – Held: Deceased received 20 incised injuries caused on various parts of his body in general and on vital parts of his body in particular – Injuries on appellant were very minor and superficial in nature – Trial Court erred in acquitting accused by relying on testimony of witnesses – Case of false implication also not made out – Interference not called for – Code of Criminal Procedure, 1973 – s.313.

Code of Criminal Procedure, 1973: s.313 – Statement recorded under – Importance of.

Prosecution case was that there was dispute between the accused persons and deceased and his mother PW-1, over a land property. PW-1, mother of deceased sustained a fracture accidentally and was under treatment in Government Hospital. At 4.45 P.M., the deceased visited his mother. While he was talking to his mother, accused 1 and 2 entered in the ward with knives. Accused 1 stabbed deceased on his stomach, resulting in a bleeding injury. Deceased tried to escape from that place but he tumbled and fell down. Accused 1 and 2 over-powered him and repeatedly attacked on his face

A and hands with knives. Accused 3 caught hold of deceased while juvenile accused caught hold of his legs by pressing them with their hands. Doctor after examining deceased declared him dead.

B Appellant-Accused-2 in his statement under s.313 Cr.P.C. stated that the deceased attempted to murder him with a knife in Government hospital and during the course of struggle between the deceased and the accused, even the accused sustained injuries in self defence. The trial Court acquitted the appellant. Before C the High Court, the appellant contended that he cannot be convicted solely on the basis of stand taken by him when he was questioned under s.313 Cr.P.C. The High Court held that the appellant exceeded his right of private defence and convicted him under s.304 Part I IPC. Hence D the instant appeal.

Dismissing the appeal, the Court

HELD:1. It cannot be said that statement of an E appellant-accused recorded under s.313 Cr.P.C. does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. F It has a salutary purpose. It enables the Court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. The Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively G appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were H advanced as a defence strategy. Therefore, the statement

of the appellant under s.313 Cr.P.C. cannot altogether be ignored. [Paras 8 and 9] [280-A-F]

State of U.P. v. Lakhmi **(1998) SCC 4 336, relied on.**

2. The deceased had received 20 incised injuries caused on various parts of the body in general and on vital parts of the body in particular. On examination of the injuries on the accused, it is clearly borne out that those injuries were very minor and superficial in nature whereas twenty incised injuries inflicted on the deceased were of very serious nature and character. The Sessions Court gravely erred in acquitting the accused on the face of the testimony of the witnesses. There was no reason as to why ordinarily PW1, mother of the deceased and PW2, nephew of the deceased would falsely implicate the accused and let off the real assailant and falsely name the accused. [Paras 10 and 12] [281-C, F-H]

Case Law Reference:

(1998) SCC 4 336	**relied on**	**Para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 578 of 2001.

From the final Judgment and Order dated 8th, 11th, and 25th September, 2000 of the High Court of Judicature at Madras in Criminal Appeal No. 377 of 1991.

V. Krishnamurthy, P.R. Kovilan Poongkuntran and Naresh Kumar for the Appellant.

S. Gowtham and S. Thananjayan for the Respondent.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. This appeal is filed by Moorthy son of Kuppan against the judgment of the High Court of judicature at Madras in Criminal Appeal No. 377 of 1991 by

A which the appellant was convicted under section 304 Part I IPC and sentenced to seven years of imprisonment.

2. Brief facts of the case which are necessary to dispose of this appeal are as under:-

B PW1, Palaniammal and her son, Murugan, the deceased in this case were in possession and enjoyment of a porambok land and regarding that there was a dispute at the instance of the accused claiming a right to enjoyment and possession to the said property. Accused 1 and 2 are brothers and the 3rd C accused has two young children called Senthil and Subhash. The incident had taken place on 18.5.1988 in the evening at about 4.30 p.m. Even on that morning there was an incident in which the parents of accused 1 and 2 and the wife of the 2nd accused sustained injuries which resulted in a complaint D against the deceased and others before the police. PW1, Palaniammal (mother of the deceased) sustained a fracture in her leg when she accidentally fell down. She was admitted as an inpatient in the Government hospital at Salem in the Female Surgical Ward. At 4.45 p.m. on 18.5.1988, the deceased E Murugan had visited his mother in the hospital. When he was talking to his mother, accused 1 (Rathinam) and accused 2 (Moorthy) entered that Ward with knives. Accused 1 stabbed Murugan on his stomach resulting in a bleeding injury. Murugan, after sustaining an injury raised an alarm and tried to escape F from that place by running away. However, while he was running, he tumbled over the steps and fell down in front of the Ward. Accused 1 and 2 chased him and after Murugan fell down, accused 1 and 2 over-powered him and repeatedly attacked on his face and hands by knives. The 3rd accused (Kuppayee) G is stated to have caught hold of Murugan while the juvenile accused Senthil and Subhash stated to have caught hold of his legs by pressing them with their hands. At that time, PW2, who is grand-son of PW1 was there. He had also come to the hospital for a courtesy visit. PW1, in her testimony stated that accused 1 and 2 stabbed her son many a times simultaneously. H

Doctor after examining Murugan declared him dead. A

3. Thereafter, his body was taken to the mortuary. PW2, the Sub-Inspector of Police in the Police Outpost Government Headquarters Hospital at Salem at about 5 p.m. on 18.5.1988 received a telephonic message about the incident and immediately rushed to the scene of occurrence. PW12 recorded statement from PW1 with regard to what had happened and exhibited as P1. Thereafter PW13, the Inspector of Police was informed. PW13, after receipt of the information proceeded to the scene of occurrence at 6 p.m. and reached the Female Surgical Ward. He examined PW1. He found the dead body in the mortuary. PW13 found blood-stains on the ground and also on the tar portion of the road. PW10 is the Assistant Civil Surgeon attached to the Government hospital, Salem. He conducted post-mortem and found the following injuries. B C D

"1. Lacerated 2 cm x .5 cm x.5 cm on the right side of the lower lip.

2. A stab wound 2 cm x 1 cm x 2 cms over the right side of the face at the angle of middle. E

3. An incised wound 2 cm x 5 cm x 5 cms over the right side of the face 3 cm below the right eye.

4. A stab wound 3 cms x 1.5 cm x 6 cms over the right side of chest 10 cms below the right collar bone 6 cm medial top the nipple. F

5. A stab wound 2 cm x 1 cm x 4 cms over the right side of the chest 2 cm away from injury no.4. G

6. A stab wound 2 cm x 2 cm x 6 cms over the right side of the chest 3 cms away from midline and 1 cm below the right nipple.

7. An incised wound 2 cms x 1 cm x .5 cm over the H

A right side of the chest on the mid antillary line 6 cms below and away from right nipple.

8. A stab wound 4 cms x 4 cms x 4 cms over the left side of the abdomen 4 cms above and away from umbilicus.

B

9. A stab wound 4 cms x 3 cms x 5 cms at the spot of right axilla.

10. An incised wound 2 cms x .5 cms x .5 cms over the left side of the abdomen on the mid antillary line 15 cms above the iliac crest.

C

11. An abrasion 6 cms x 8 cms over the right front of the left keen joint.

D 12. An abrasion 6 cms x .5 cms over the right front of the neck, 6 cms above the suprasternal notch.

13. A stab wound 4 cms x 2 cms x 7 cms over the back of the left side of chest 32 cms above the posterior iliac spine.

E

14. A stab wound 4 cms x 2 cms x 4 cms over the centre of the back and below the nape of the neck.

15. A stab wound 3 cms x 2 cms x 6 cms over the centre of back 7 cms below injury no.14.

F

16. A stab wound 3 cms x 2 cms x 6 cms over the back of the right side of the chest 6 cms away from injury no.14.

G 17. An incised wound 8 cms x 3 cms x 2 cms over the back of the right side of the chest 6 cms away from injury no.15.

18. Laceration 8 cms x 4 cms x 2 cm over the inner side of the left elbow.

H

19. Laceration 4 x 3 x 1 cm over inner side of left palm. A

20. Laceration 5 cms x cms x 1 cm over the dorsal aspect of the left palm.

Heart : Chambers empty. On opening thorax cavity 200 ml. of dark fluid blood present. B

Lungs : Right -

1. Laceration 4 cms x 2 cms on the lower lobe.

2. A stab wound 3 cms x 2 cms x 2 cms on the lower lobe 2 cms below injury no.1. C

3. A stab wound 2 cms x 2 cms x 3 cms on the middle lobe.

4. He found a stab wound 3 cms x 2 cms x 3 cms found on the middle lobe 1 cm below injury no.3. D

Left : Laceration 2 cms x 2 cms x 1 cm on the upper lobe. Cut section congested.

Stomach: Contained 100 gms of partially digested; cooked food particles. Stomach was also congested. No smell of alcohol. E

4. The doctor was of the opinion that the deceased appeared to have died of shock and haemorrhage, as a result of the injuries sustained by him about 10 to 11 hours prior to the post-mortem. The doctor was of the opinion that the injuries could have been caused with a weapon like material object No.1 - knife and death must have occurred instantaneously. F

5. The appellant in his statement under section 313 of the Code of Criminal Procedure stated that the deceased attempted to murder him with a knife in the Government hospital and during the course of struggle between the deceased and the accused, even the accused sustained injuries and G H

A according to him he was also beaten by the deceased and the brother-in-law of the second accused stabbed the deceased in self defence. It may be pertinent to mention that the statement under section 313 is not corroborated by the medical evidence. The deceased had received multiple injuries on the vital parts
B of the body which led to his death. The appellant was examined in the government hospital, Salem and the following minor and superficial injuries were found on him:

"1. Multiple linear abreasions of varying sizes seen over the chest wall.
C

2. A lacerated injury 0.5 cm x 0.5 cm seen over the right little finger.

3. A lacerated injury 0.5 cm x 0.5. cm seen over the tip of the right thumb.
D

4. Two abrasions with dull black colour seen over the left thumb near the root of the right terminal phalanx.

5. Two abrasions dull black in colour seen over the
E right side of the front of neck and on the left side of the front of neck."

6. PW2 is the grand-son of PW1. He was also examined in the case. In his statement he stated as under:-

F "PW1 Palaniammal is my grand mother and my mother's mother. The deceased Murugan is my maternal uncle. On 28.5.1988, my grand-mother PW1 was taking treatment for her injury in the Head Quarters Hospital at Salem. On that day, at 4.45 p.m., I went to Salem for seeing my grand-
G mother PW1 Palaniammal. When I was going into the ward where my grand-mother was lying, my maternal uncle Murugan came running from the ward with a stab injury on his stomach and crying "Ayo, Appah, Amma". At that time the first accused Rathinam and the second accused
H Moorthy, each of them having a knife in their hands, ran

chasing my maternal uncle Murugan. The 3rd accused Kuppayee and the two juvenile accused also ran behind them. A

On seeing the accused coming with knife in their hands, I got out of the way. My uncle who was chased by the accused fell down due to tripping on the steps. My uncle Murugan fell down on face downwards. The first accused Rathinam and the second accused Moorthy stabbed on his back repeatedly and simultaneously. My uncle rolled turning his face upwards. At that time a stab fell on his hand. I did not notice correctly who had stabbed. Both the accused had stabbed my uncle simultaneously on his chest, breast and the stomach." B C

7. PW3 is the trained nurse on duty. PW4 is admitted as inpatient in Male Surgical Ward. PW5 is the Sub-Inspector. D

8. The Trial Court vide judgment dated 30th March, 1990 acquitted the accused. The respondent-State of Tamil Nadu filed an appeal against the said judgment of acquittal before the High Court of Madras. The High Court re-examined and re-evaluated the entire evidence on record and came to a definite conclusion that acquittal of the appellant is unsustainable and because according to the Trial Court the material available on record established the guilt of the appellant particularly when the appellant in a statement under section 313 Cr.P.C. admitted his involvement in the occurrence which took place at 4.45 p.m. on 18.5.1988 in the hospital. The High Court had observed that even according to the case of the appellant he caused those injuries in his self-defence. The appellant has stated before the High Court that he cannot be convicted solely on the basis of the stand taken by him when he was questioned under section 313 of the Code of Criminal Procedure. The High Court has placed reliance on the judgment of this court in *State of U.P. v. Lakhmi* 1998 SCC 4 SCC 336. The relevant portion of the judgment which was relied on by the High Court reads as E F G H

A under:-

> "It cannot be said that statement of an accused recorded under section 313 of the Code does not deserve any value or utility if it contains inculpatory admissions. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognized defences. In all such cases the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy."

9. Therefore, the statement of the appellant under section 313 cannot altogether be ignored. DW1 clearly stated in his testimony that 2nd accused told him that he sustained injuries when he was involved in the incident at 4.45 p.m. on 18.5.1988 in the Government hospital at Salem. The High Court on the basis of the evidence on record reached at the definite conclusion that the medical evidence clearly establishes that it is the 2nd accused who caused number of injuries on the deceased which proved fatal. In this view of the matter, according to the High Court, the prosecution has clearly

established the involvement of the 2nd accused with the overt act attributed against him vis-a-vis the deceased. According to the High Court, the Trial Court seriously erred in acquitting the appellant on the basis of overwhelming evidence on record. According to the High Court, the appellant had exceeded his right of private defence, therefore the appellant is liable to be convicted for an offence under section 304 Part I IPC for exceeding the right of private defence. The High Court in this case while setting aside the Trial Court judgment convicted the appellant under section 304 Part I IPC and sentenced him to seven years of rigorous imprisonment.

10. We have heard learned counsel for the parties at length and perused the judgments and depositions on record. The deceased had received 20 incised injuries caused on various parts of the body in general and on vital parts of the body in particular. The deceased was killed mercilessly by inflicting twenty incised injuries and mostly on the vital parts of the body.

11. Even if we accept the version of the High Court that the accused had the right of private defence, in the facts and circumstances of the case, but he had exceeded his right so he was convicted under section 304 Part I IPC.

12. On examination of the injuries on the accused it is clearly borne out that those injuries are very minor and superficial in nature whereas twenty incised injuries inflicted on the deceased were of very serious nature and character. The Sessions Court has gravely erred in acquitting the accused on the face of the testimony of the witnesses in the case. We have to examine the evidence in proper perspective - why should ordinarily PW1, mother of the deceased would falsely implicate the accused and let off the real assailant? Similarly, why PW2, nephew of the deceased would save the real assailant and falsely name the accused?. The High Court in the impugned judgment while reversing the judgment of the Sessions Court convicted the accused under section 304 Part I IPC.

A 13. We have not examined whether in the facts and circumstances, the High Court was justified in converting the sentence from section 302 IPC to section 304 Part I IPC because there is no appeal by the State.

B 14. The appellant must be convicted at least under section 304 Part I IPC. No interference is called for. The appeal being devoid of any merit is accordingly dismissed.

D.G. Appeal dismissed.