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**Ganesan Vs. State Represented by Circle Inspector of Police (Law and Order), Tiruppur (Crime No. 673 of 1989) of Tirupur North Police Station**

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**SooperKanoon Citation : [sooperkanoon.com/780306](http://sooperkanoon.com/780306)**

**Court : Chennai**

**Decided On : Oct-04-1999**

**Reported in : 2000(1)CTC620**

**Judge : N. Dhinakar and; V. Kanagaraj, JJ.**

**Acts : Indian Penal Code (IPC), 1868 -- Sections 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) -- Sections 313; [Evidence Act, 1872](#) -- Sections 104 and 105**

**Appeal No. : C.A. No. 385 of 1990**

**Appellant : Ganesan**

**Respondent : State Represented by Circle Inspector of Police (Law and Order), Tiruppur (Crime No. 673 of 1989)**

**Advocate for Def. : Mr. M. Babu Muthu Meeran, Government Adv. (Criminal Side)**

**Advocate for Pet/Ap. : Mr. N. Doraiswamy, Adv.**

**Judgement :**

**ORDER**

**Judgement Pronounced by N. Dhinakar, J.**

1. The appellant, who hereinafter will be referred to as the accused in this judgment, was tried before I Additional Sessions Judge, Coimbatore, in Sessions Case No. 14 of 1990, on a charge of murder with an allegation that at 10.00 a.m. on 9.6.1989, as Stabbed Pandian, the deceased in the case in the middle of his chest with a knife, M.O.I., as a result of which, the said Pandian died on his way to a private nursing home run by P.W.6.

2. To prove the case, the prosecution, before the trial court, examined P.Ws.1 to 13 and marked Exs.P-1 to P-16 as well as M.Os.1 to 9.

3. The learned Sessions Judge, on the evidence adduced, came to the conclusion that the accused has to be convicted as charged and accordingly, convicted and sentenced him to imprisonment for life. Hence, the present appeal.

4. The case of the prosecution can be briefly summarised as follows:

5. P.W.1 and the deceased along with P.W.2 were working in a printing press run by the father of P.W.3 at Thirumalainagar in Tiruppur. The accused was also working in the said printing press. Most of the employees including the deceased and the accused were the paying guests of P.W.4, who and her husband were employed by the father of P.W.3 in the same printing press, 4 days prior to the date of incident, the accused pulled the saree of P.W.4 and put her to shame. Though P.W.4 did not mention about this incident to her husband immediately, later told him on 8.6.1989. Her husband questioned her as to why she did not apprise him of the incident which took place earlier. The deceased, who was standing by the side of her husband, also told P.W.4 that he will question the accused and take him to task on the next day. On 9.6.1989 at about 9.00 a.m. the deceased, along with P.W. and others, was Working in the printing press and at that time, the accused came there. The deceased questioned him as to why he pulled the saree of P.W.4 to which, the accused retorted by saying that 'Who are you to question me?'. The deceased slapped him and kicked him. P.W.1, who was present, intervened and separated them. The accused left the scene by saying, I will see to it. You will know as to what would happen. After some time, P.W.3, the son of the owner of the printing press, came there and he was informed of what transpired earlier. P.W.3 told them that the matter can be looked into after the

arrival of his father. At about 10 am, the accused went to the place where the deceased and P.W.I were working. The deceased then went to the office room and the accused followed him and called him outside. The deceased came out of the room. On seeing the deceased come out of the room, the accused took out a knife, M.O.I, which he had in his hand, and stabbed him on the chest. The deceased raised an alarm. The accused ran from the scene and the deceased attempted to catch him. Others present at the scene also raised an alarm shouting that the accused be caught. The accused ran towards east. The deceased, who ran to some distance, fell down on the road in front of a shop. An autorickshaw was thereafter brought and the deceased was taken to a private nursing home run by P.W.6, where the doctor, on examining Pandian, pronounced him dead.

6. P.W.I then left the private nursing home and reached Tiruppur North Police Station, where he gave a complaint, Ex.P-1 to P.W.11, the Head Constable, who on the basis of which, registered a case in Crime No.673 of 1989 under Section 302 IPC against the accused at about 11.30 a.m. He prepared the First Information Reports and Ex.P-13 is one of the copies. The F.I.R. and Ex.P-1 were despatched to the court and the higher officials were also informed.

7. On receipt of the information about the registration of a grave crime at about noon, P.W.12, the Circle Inspector of Police, Tiruppur Circle, took up investigation in the case and reached the scene of occurrence at 12.15 p.m. He prepared Ex.P-2, the observation mahazar, and drew a rough sketch, Ex.P-14, attested by P.W.7. He also seized M.OS.2 to 4 under mahazar Ex.P-3 as well as M.O.6 under mahazar Ex.P-4 attested by P.W.7, P.W.12 then left the scene at occurrence and reached the private nursing home of P.W.6, where in the presence of panchayatdars, he conducted inquest over the dead body of Pandian between 2.00 p.m. and 6.00 p.m. during which, he questioned P.Ws.1 to 4 and recorded their statements. He prepared Ex.P-15, the inquest report. After the inquest was over, the dead body was sent with a requisition for conducting autopsy through a police constable.

9. On receipt of the requisition and the dead body, P.W.9, the Civil Assistant Surgeon attached to Government Headquarters Hospital, Tiruppur, conducted

autopsy on the dead body of Pandian and found the following external injuries.

1. A penetrating injury centre of the chest just above the xiphisternum 4cm x 1 1/2cm x 9cm with probe in situ dissected. There is fracture lower end of sternum. The injury dissected back and towards right side obliquely injuring the underlying deep tissues and medial side of the RL, lung. A hole of 1cm diameter and 1cm depth seen on medial aspect of the right lung. Thoracic cavity contain about 2.5 liters of fluid blood with clots.
2. Abrasion over the right knee 1 cm x 1/2 cm.
3. Abrasion over the left knee 1 cm x 1/2 cm.
4. Abrasion over the left side of the face 3 in numbers. 1/2 cm x 1/2 cm, 1/2 cm x 1 cm, 1/2 cm x 1 cm, one below the other.
5. Abrasion over dorsum of foot 1/2 cm x 1/2 cm Rt. leg.

He issued Ex.P-8, the post-mortem certificate, with his opinion that the deceased would have died of hemorrhage and shock due to the injury sustained.

10. P.W.12 continued his investigations and questioned P.Ws. 4 and 5. He recorded their statements. On an information received P.W.12 proceeded with his police party and near the Central Bus Stand at Tiruppur, arrested the accused at 4.30 a.m. on 10.6.1989. When questioned, the accused came out with a statement and the admissible portion of the same is marked as Ex.P-5 in the case. It was attested by P.W.6. In pursuance of the said statement the accused took the police party to a bush near a theatre from where, he produced M.O.I, the knife, which was then seized under mahazar Ex.P-6 attested by P.W.6. The accused was brought to the police station and later, sent for remand. He also questioned P.W.9, the post-mortem doctor, by showing him the knife and recorded his statement. M.Os.7 to 9, the clothes of the deceased, which were produced by the police constable after the post-mortem, were also seized. The material objects in the case were sent to the court with a request to forward them for analysis and the court by forwarding them, obtained the report of the chemical analyst, Ex.P-11, and the report of the serologist, Ex.P.-12. As per the reports, the knife, M.O.I,

contained human blood of 'O' Group tallying with the blood group of the deceased. P.W.12 later handed over the investigation to his successor in office, P.W.13. P.W.13 look up investigation in the case on 25-06-1989 and after verifying the investigation conducted by his predecessor in office, laid the final report against the accused.

11. When questioned under Section 313 Cr.P.C., while denying the incriminating circumstances, the accused has stated that on the date of incident at about 9.30 a.m., while he was attending to his job, the deceased questioned him as to way he pulled the saree of P.W.4. According to him, the deceased slapped him and also kicked him and later, took a knife and attempted to stab him. He has further stated that he snatched the knife from the hands of the deceased and when the deceased attempted to snatch back the knife from his hands, he left the knife at the scene and ran away and that he did not know on which part of the body the deceased sustained the injury. In short, by implication, he had taken a plea of self-defence.

12. The case of the prosecution that Pandian died on account of homicidal violence stands proved through P.W.9, the post-mortem doctor, and the certificate, Ex.P-3, issued by him. The doctor has, in his evidence, stated that injury No.1 found on the deceased is sufficient in the ordinary course of nature to cause death and that injuries No.2 to 5 could have been on account of the deceased falling on the ground. This fact also is not disputed by the defence. On the medical evidence, we hold that Pandian died on account of homicidal violence.

13. The prosecution, before the trial court, produced P.Ws.1 and 2 as eye-witnesses, who are the co-employees of the accused in the printing press run by the father of P.W.3. P.W.1, has, in his evidence, stated that the accused pulled the saree of P.W.4 some time prior to the date of incident and at about 9.00 a.m. on 09-06-1989, the deceased questioned the accused as to why he misbehaved with P.W.4 for which, the accused resorted in an arrogant manner by saying that he will only do like that. The deceased then slapped the accused and kicked him and thereafter, the accused left saying that he would take care of the deceased. According to both P.Ws.1 and 2 the accused returned at about 10.00 a.m carrying

a knife with him and then asked the deceased to come out of the office room and when the deceased came out, the accused stabbed him on the chest as a result of which, the deceased ran to some distance and fell down. This evidence of P.Ws. 1 and 2 is not shaken in the cross-examination except for making a suggestion to them that the deceased attempted to stab and in that process, he sustained the injury. Even in the statement recorded under Section 313 Cr.P.C., the accused has admitted by implication that he has stabbed the deceased but, he would say that he did it in the exercise of his right of self-defence.

14. Under Section 105 of the Evidence Act., a rule of burden of proof is prescribed that the burden is on the accused to prove the existence of circumstances bringing the case within any of the exceptions 'and the Court shall presume the absence of such circumstances'. Of course, it is true that the said rule does not whittle down the axiomatic rule of burden (indicated in Section 101) that the prosecution must prove that the accused has committed the offence charged against. The traditional rule that it is for prosecution to prove the offence beyond reasonable doubt applies in all criminal cases except where any particular statute prescribes otherwise. The legal presumption created in Section 105 with the words 'the Court shall presume the absence of such circumstances' is not intended to displace the aforesaid traditional burden of the prosecution. It is only where the prosecution has proved its case with reasonable certainty that the court can rest on the presumption regarding the absence of circumstances bringing the case within any of the exceptions. This presumption helps the court to determine on whom is the burden to prove facts necessary to attract the exception and an accused can discharge the burden by preponderance of probabilities' unlike the prosecution. But, there is no presumption that an accused is the aggressor in every case of homicide. If there is any reasonable doubt, even from the prosecution evidence, that the aggressor in the occurrence was not the accused but would have been the deceased party, then the benefit of that reasonable doubt has to be extended to the accused, no matter that he did not adduce any evidence in that direction. *Periasamy v. State of Tamil Nadu*, 1997 SCC (Cri.) 121.

15. We will keep the above principles in mind to find out whether the prosecution has proved its case and whether the court can presume the absence of

circumstances as contemplated under section 105 of Indian Evidence Act.

16. As we discussed earlier, the evidence of P.Ws.1 and 2 clearly shows that the accused stabbed the deceased at about 10.00 a.m. on 9.6.1989. It is their evidence that at about 9.00 a.m. the deceased questioned the accused as to why he misbehaved with P.W.4 and the accused retorted in an arrogant manner and also left the printing press where he was working, after threatening the deceased that he would take care of him. According to these witnesses, at about 10.00 a.m., the accused went to the printing press, called the deceased out of the office room, and then stabbed him on the chest. The accused also admits that he stabbed. We have no hesitation to accepting the evidence of P.Ws.1 and 2. Further, their evidence is fully supported by P.W.3, who has, in his evidence, stated that on hearing the noise, he came and saw the accused running from the scene carrying with him the knife. P.W.3 has, in his evidence, specifically stated that he saw the accused running towards east carrying the knife with him. This evidence of P.W.3 was not challenged by the defence before the trial court. On the above facts, it is clear that the deceased was stabbed by the accused.

17. The question whether the accused stabbed in the exercise of his right of self-defence has to be decided. In the statement recorded under section 313, Cr.P.C., the accused has stated that knife from the hands of the deceased and when the deceased tried to take back the knife from him, he ran away from the scene leaving the knife at the scene of occurrence. This statement recorded under section 313, Cr.P.C. cannot be accepted in view of the evidence of P.W.3 that he saw the accused running from the scene carrying the knife, which remains unchallenged.

18. Further, it is the case of the prosecution that the accused was arrested by the investigating officer at about 4.30 a.m. on 10.6.1989 in the presence of P.W.8 and when questioned, he came out with a statement leading to the recovery of M.O.I. If the knife was in the hands of the deceased and was at the scene of occurrence, then the investigating officer, who reached the scene of occurrence after taking up the investigation, would have noticed the knife at the scene. The absence of knife at the scene and its subsequent recovery on the basis of the statement given by the accused clearly show that the accused had gone to the scene of occurrence

carrying a knife with him,stabbed the deceased and then ran away from the place carrying with him theknife.

19. On the discussion made above, it can be safely said that the burden caused on the accused under section 105 of Indian Evidence Act to prove the existence of circumstances had not been discharged and we can presume the absence of such circumstances. We are unable to accept the defence theory that he acted in the exercise of his right of self-defence. The trial court was justified in convicting and sentencing the accused as charged.

20. In the result, the appeal deserves to be dismissed and it is, accordingly, dismissed.

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