

State Vs. Rathinam and ors.

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Court : Chennai

Decided On : Sep-08-2000

Reported in : 2001CriLJ1052

Judge : N. Dhinakar and R. Balasubramaniam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 302 and 304; ;Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 377 of 1991

Appellant : State

Respondent : Rathinam and ors.

Advocate for Def. : K.V. Sridharan, Adv.

Advocate for Pet/Ap. : V.R. Balasubramanian, Adv.

Judgement :

R. Balasubramanian, J.

1. The respondents in this appeal are accused 1 to 3 in Sessions Case No. 187 of 1989 on the file of the II Additional Sessions Judge, Salem and they were tried for the following offences:

Accused 1 and 2 were charged for an offence punishable under Section 148 of the Indian Penal Code as well as for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and against the third accused there was a charge for the offence punishable under Section 147 of the Indian Penal Code and also for the offence punishable under Section 302 read with Section 34 of the Indian Penal code. The learned Sessions Judge by judgment dated 30-3-1990 acquitted all the accused of the offences. The State has challenged that judgment of acquittal in this appeal. Heard Mr. V.R. Balasubramanian, the learned Government Advocate appearing for the appellant/State and Mr. K.V. Sridharan, learned counsel for the respondents/accused.

2. The brief facts of the prosecution case can be summarised as hereunder :

P.W. 1 is the mother of the deceased in this case whose name is Murugan. The deceased was employed as a driver in Anna Transport Corporation, Salem. P.W.1, the deceased and the other family members are residents of a village called Saminaickenpatty in Omalur Taluk. Accused 1 and 2 are brothers. The third accused is the wife of the first accused. The third accused had two young children called Senthil and Subash. They are aged about eight and seven years respectively. P.W. 1 and her son Murugan, the deceased in this case were in possession and enjoyment of a poramboke 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. Later on, though deceased Murugan had given up his claim in respect of that land, yet there was a misunderstanding and enmity between the accused and the family members of the deceased including P.W. 1. Six months prior to the occurrence there was a quarrel in the school, where the children of accused 1 and 3 and the children of the deceased were studying. The matter was taken up to the police and was sorted out. Thereafter, ten days prior to the date of occurrence proper in this case there was an incident in the village. In that incident some of the relatives of the accused sustained injuries, which resulted in a complaint against the deceased in this case and others. On 17-5-1988 i.e. a day prior to the date of occurrence proper in this case there was another incident in the village Saminaickenpatty. In that incident also the relatives of the accused sustained injuries and a complaint was lodged with the police

against the deceased and others. The occurrence proper in this case had taken place on 18-5-1988 in the evening. Even on that morning there was an incident in which the parents of accused 1 and 2 and the wife of the second accused by name Palaniammal sustained injuries, which had resulted in a complaint against the deceased and others before the police. P.W. 1 Palaniammal (mother of the deceased) had sustained fracture in her leg when she accidentally fell down. She was admitted as an in-patient in the Government Hospital at Salem and she was in the hospital on 18-5- 1988 in the Female Surgical Ward. As already stated in the incident that took place on the morning of 18-5-1988 some of the persons in (from) the accused side were injured. They were taken to the Government Hospital, Omalur, where they were initially treated by P.W. 8, the Civil Assistant Surgeon. The wound certificates for those injured are Exs. P. 10 to P. 12 issued by P.W. 8. Since P.W. 8 was of the opinion that the injured deserved better treatment, all the injured in that case were transferred to the Headquarters Hospital at Salem. P.W. 9, the Duty Medical Officer at the Government Hospital, Salem admitted those injured persons in the hospital as in-patients at 12.00 noon on that day, namely on 18-5-1988. Therefore it is clear that on 18-5-1988 P.W. 1 was in the Female Surgical Ward, Government Hospital, Salem and the injured belonging to the accused group were also admitted in the very same hospital, but in a different ward. At 4.45 p.m. on 18-5-1988 Murugan, the deceased in this case, had come to see his mother, P.W. 1. He was talking with her sitting on the bed side. Accused 1 and 2 entered that ward with knife. Accused 1 stabbed the deceased on his stomach resulting in a bleeding injury. Murugan, after sustaining that injury raising an alarm tried to escape from that place by running away. However, as he was running away 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 overpowered him and repeatedly attacked on his face and hands. The third accused is stated to have caught hold of the head of the deceased while the juvenile accused Subash and Senthil are stated to have caught hold of the legs of the deceased-Murugan by pressing them with their hands. P.W. 2 is the grand-son of P.W. 1. He was also on a courtesy visit to the hospital in the evening. As he was entering into the ward he saw his uncle, namely Murugan, coming running in the opposite direction with bleeding injuries. He also saw Murugan falling down at the

steps and accused 1 and 2, thereafter, stabbing him indiscriminately. He would also state that the third accused and the juvenile accused Subash and Senthil participated in the occurrence as mentioned earlier. After inflicting the injuries all the accused ran away. P.W. 2 went near his uncle, who was lying with injuries. The hospital staff carried the injured to the emergency ward. However, the doctor on seeing him pronounced him dead and thereafter the body was taken to the mortuary. P.W. 2, thereafter, went to P.W. 1 and told her as to what he had seen. P.W. 3 is an Assistant Trainee Nurse of the Government Headquarters Hospital at Salem. She was on duty in the Female Surgical Ward at the relevant time. She saw a commotion in front of the ward, however, she was not able to identify either the assailants or the injured. Therefore she was treated as hostile. P.W. 4 is a resident of Kannankurichi village. His evidence also shows that he was admitted as an in-patient in the same hospital in connection with a medico-legal case. He was admitted as an in-patient in the Male Surgical Ward, which is situated just opposite to the Female Surgical Ward, where P.W. 1 was admitted as an in-patient. At 4.45 p.m. on 18-5-1988 he was returning to the ward after taking tea from a tea stall and while he was coming near the Female Surgical Ward, he saw Murugan, the deceased in this case, whose name he came to know subsequently, running away from the Female Surgical Ward and while running he fell down on the steps of the Female Surgical Ward. He saw the injured Murugan being stabbed repeatedly with knife by accused 1 and 2. His evidence also shows that a lady (third accused) caught hold of the deceased and two young boys were holding the legs of the deceased.

3. P.W. 12 is the Sub-Inspector of Police in the Police Outpost Government Head Quarters' Hospital at Salem. At about 5.00 p.m. on 18-5-1988 he received a telephone message about the occurrence and immediately rushed to the scene of occurrence to find that a person, who had been assaulted by the assailants with knife, had been taken to the emergency ward. He proceeded to the bed of P.W. 1 on being informed that she is the mother of the victim in this case. He sent the Head Constable to secure the accused and the Head Constable returned stating that he was not able to catch any of the accused. P.W. 12 obtained a statement from P.W. 1 with regard to what happened and Ex. P. 1 is the statement recorded by P.W. 12 from P.W. 1. That statement was registered in Crime No. 9/88 at his

police station for an offence punishable under Section 302 of the Indian Penal Code. Thereafter, P.W. 13, the Inspector of Police was informed. P.W. 13, after receipt of the information, proceeded to the scene of occurrence at 6.00 p.m. and reached the Female Surgical Ward. At 6.15 p.m. he examined P.W. 1. He found the dead body in the mortuary. P.W. 13 found bloodstains on the ground and also on the tar portion of the road. He prepared Ex. P. 3 observation mahazar. He also recovered two pairs of chappals, blood-stained tar portion of the road and sample earth, M.Os. 3 and 4 under Ex. P. 2 mahazar attested by P.W. 5 and another. He also conducted inquest over the dead body of the deceased, during which he examined P.Ws. 2, 3 and others. Ex. P. 18 is the inquest report. P.W. 11 is the Sub-Inspector of Police, Omalur Police Station. He knew the accused, P.W. 1 and the deceased. According to him there was some misunderstanding between the family of the accused on the one side and the family of the deceased on the other side and petitions were given by both sides against each other on a number of occasions and they were enquired into and dealt with in accordance with law. According to him even on the previous night to the date of occurrence in this case there was an incident in which some of the relatives of the accused have sustained injuries and a case has been registered against the deceased and others. Hence P.W. 11 was investigating the crime in that incident. Even on the morning of 18-5- 1988, there was an incident in which the parents of accused 1 and 2 and the wife of the second accused were all injured. The injured in that incident were treated by P.W. 8, the doctor at the Government Hospital, Omalur and thereafter, they were referred to the Government Hospital, Salem for further and better treatment. That case has been registered against the deceased and others.

4. P.W. 19 is the Civil Assistant Surgeon attached to the Government Hospital, Salem. He, on receipt of Ex. P. 13, requisition, for conducting post-mortem over the dead body of the deceased Murugan, conducted postmortem and during post-mortem he found the following injuries :

1. Laceration 2 cms x .5 cm x .5 cm on the right side of the lower lip.

2. A stab wound 2 cms x 1 cm x 2 cms over the right side of the face at the angle of middle.
3. An incised wound 2 cms x 5 cms x 5 cms over the right side of the face 3 cms 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 cms medial to the nipple.
5. A stab wound 2 cms x 1 cm x 4 cms over the right side of the chest, 2 cms away from injury No. 4.
6. A stab wound 2 cms x 2 cms 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 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.
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 cm x .5 cm over the left side of the abdomen on the mid antillary line, 15 cms above the iliac crest.
11. An abrasion 6 cms x 8 cms over the right front of the left knee joint.
12. An abrasin 6 cms x .5 cm 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.
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.

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.

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

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

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

20. Laceration 5 cms x 2 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.

Lungs : Right-

1. Laceration 4 cms x 2 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.

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.

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.

Liver : C.S. Pale. All other internal organs congested. Bladder : Empty.

Ex. P. 14 is the post-mortem certificate. The doctor was of the opinion that the deceased would appear 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 also of the opinion that the injuries could have been caused with a weapon like M.O.1 and death must have occurred instantaneously. P.W. 6 is the police constable, who was present during the post-mortem. After post-mortem he handed over the dead body to the relatives. P.W. 7 is the Head Clerk attached to the concerned Judicial Magistrate Court, Salem. The printed first information report, namely Ex. P. 4 had been received by the Court at 3.30 p.m. on 19-5-1988. Ex. P. 18, the inquest report was also received at about the same time. On receipt of the case properties with requisition Ex. P. 5, the case properties were sent for chemical analysis as enclosures to the Court's letter, Ex. P. 6. Ex. P. 7 is the chemical analysis report relating to the case properties, except the sample earth. Ex. P. 8 is the Chemical Analysis Report for the tarred earth and Ex. P. 9 is the Serologist Report. P.W. 13 examined P.W. 4, the other witnesses and recorded their statements. He came to know that accused 1 and 2 surrendered before the Judicial II Class Magistrate's Court, Athur on 20-5-1988. He examined the doctors and P.W. 11 the Sub-Inspector of Police, Omalur. After completing the investigation he filed the final report against the accused as well as the juvenile accused on 1-8-1988. We are informed that the juvenile accused were tried in a separate Sessions Case and were acquitted, though we do not find any reference to that in the judgment under challenge.

5. When questioned under Section 313 of the Code of Criminal Procedure the second accused came out with a statement that the deceased attempted to murder him with the knife in the Government Hospital premises; there was a struggle in regard thereto between the deceased and the second accused, during which the second accused sustained some injuries; the second accused also was beaten by the deceased; Manickam, brother-in-law of the second accused stabbed the deceased in this case in private defence; the second accused has given a petition to Judicial II Class Magistrate, Athur, when he surrendered before him along with the first accused and on the order of the said Magistrate, the second accused was sent to the Government Hospital from the prison and he was examined and treated for the injuries sustained by him during the course of the occurrence. On the side of the defence, the doctor, who treated the second accused was examined as D.W. 1. D.W.1 in his oral evidence would state that at

4.45 p.m. on 20-5- 1988 he examined the second accused, who was referred to him by the II Class Judicial Magistrate, Athur, to report as to whether the injuries were due to stab with knife, bitten with teeth and kicked by legs by one known person on 18-5-1988 at 4.45 p.m. in the Male Surgical Ward of the Government Hospital, Salem. D.W.I found the following injuries on the second accused, while he was examined :

1. Multiple linear abrasions of varying sizes seen over the chest wall.
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.
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 right side of the front of neck and on the left side of the front of neck.

The patient complained of pain on the left side of the scrotum.

D.W. 1 did not find any external marks of violence. The doctor was of the opinion that the injuries are simple in nature and injuries 2, 3 and 4 could have been caused due to biting and the injuries on both sides of the neck could have been caused due to strangulation. The doctor also was of the opinion that strangulation could have caused pain without leaving any external marks.

6. The learned Government Advocate appearing for the State would contend that the learned Sessions Judge had committed an error in law as well as on facts in acquitting the accused when the prosecution had established the guilt of the accused beyond all reasonable doubts. It is also contended by him that the reasons given by the learned Sessions Judge in acquitting the accused cannot be sustained in law. He would also submit that in any event, in the context of his statement under Section 313 of the Code of Criminal Procedure and on the basis of the evidence of D.W. 1 examined on the side of the second accused, there is no scope at all for acquitting the second accused. He would elaborate his arguments

by stating that his statement under Section 313 of the Code of Criminal Procedure and the evidence of D.W. 1 would clinchingly show that the second accused was present at the scene of occurrence at the time when the deceased in this case was done to death. It is also established from the statement of the second accused under Section 313 of the Code of Criminal Procedure as well as the evidence of D.W. 1 that the second accused had sustained injuries in the course of the same transaction and according to the statement of the second accused, it is his brother-in-law by name Manickam, who in self-defence had inflicted one injury on the deceased in this case. Therefore, the learned Government Advocate would contend that though something may be said in favour of accused 1 and 3 from the materials available on record, on which the learned Sessions Judge had applied his mind and gave an acquittal, yet the materials on record clinchingly establish the presence of the second accused at the scene of occurrence; the second accused and the deceased involving themselves in a scuffle; the second accused having received certain injuries in the struggle and in the course of the same transaction the deceased was done to death. The statement of the second accused is that the deceased was attacked by his brother-in-law. If this is not accepted, then from the materials available the only conclusion that may be arrived at is that the second accused and he alone is definitely guilty of the offence of murder.

7. Mr. K.V. Sridharan, learned counsel for the respondents invited our attention to the judgments of the Supreme Court of India in *Ramesh Babulal Doshi v. State of Gujarat*, : 1996 CriLJ2867 and *Dhanna v. State of Madhya Pradesh*, 1996 SCC (Cri) 1192 dealing with the power of this Court while hearing an appeal against acquittal. The learned counsel would submit that from the evidence available on record, if two conclusions are possible one in favour of the prosecution and the other in favour of the accused and if the learned Sessions Judge had chosen to conclude in favour of the accused, then this Court would not interfere in the appeal against acquittal, though this Court may be in a position to take a different view on the same set of facts. The respondents' counsel tried to sustain the findings of the learned Sessions Judge by pointing out to us that there is an inordinate delay in sending Exs. P. 1 and P. 4 to the Court though the Court is within a stonethrowing distance from the police station. The learned counsel would also contend that

inasmuch as Ex. P. 1 is found to contain exaggerated versions, it would not be safe to accept the prosecution case as it is. The learned counsel would also contend that Ex. P. 1 is not the earliest information placed before the police and from the evidence of P.W. 1 it can easily be inferred that there was an earlier information, which had been suppressed. Under these circumstances, the learned counsel for the respondents would submit that the learned Sessions Judge had rightly taken into account the totality of the circumstances available in this case to hold that the prosecution had not established its case beyond all reasonable doubts. Under these circumstances, the learned counsel would contend that from the evidence available on record no conclusion pointing out the guilt of the accused can be arrived at and therefore no interference is called for in this appeal.

8. We applied our mind to the arguments advanced by the learned counsel on either side. We are also aware that we are hearing an appeal against an acquittal and we are fully conscious about the settled position in law that if two views from the same set of evidence are possible, simply because this Court can arrive at a different conclusion, than the one arrived at by the trial Judge, that would not be a ground to interfere in an appeal against acquittal with the settled position of law in our mind, we witnesses. It is in evidence that there was a deep seated enmity between the two groups, namely the defence group and the prosecution group. Even on the day prior to the date of occurrence, i.e. on 17-5-1988, there was an incident, where the relative of the accused have been injured. A complaint was lodged with P.W. 11, the Sub-Inspector of Police against the deceased and others and the injured have been referred to the Government Hospital, Omalur and after being given treatment by P.W. 8 they were sent to the Government Head Quarters Hospital, Salem. P.W. 9 is the Casualty Medical Officer, who had admitted the injured in that incident at the Government Head Quarters Hospital, Salem. The evidence available on record also establishes that P.W. 1 has sustained a fracture by falling down and she had been undergoing treatment as an inpatient in the Female Surgical Ward at Salem Government Hospital. The deceased is the son of P.W. 1 and P.W. 2 is the grandson of P.W. 1. Accused 1 and 2 are brothers and the third accused is the wife of the first accused. It may also be noticed here that in the earlier incident on 17-5-1988 the second accused's wife was also injured. Therefore, the wife of the second accused was also transferred from the

Government Hospital, Omalur to the Government Hospital, Salem. Under these circumstances, we are inclined to hold that on the date of occurrence, not only P.W. 1 was treated as an inpatient in the Government Hospital, Salem, but also the relatives of the accused, which includes the wife of the second accused were also admitted in the Government Hospital Salem.

9. The evidence of P.W. 1 shows that the deceased came to see her in the evening of 18-5-1988 around 4.45 p.m. and he was talking to her by standing near her bed side. Her evidence would show that at that time accused 1 and 2 entered the ward armed with weapons and the first accused gave a stab on her son, the deceased on his stomach, which resulted in a bleeding injury and the deceased attempted to escape by running out of the ward. P.W. 2, the grandson of P.W. 1 was also entering the ward to see his grandmother. There is nothing unusual in P.W. 2 visiting the hospital at that time to see his grandmother. As he was entering the ward, he saw his uncle, namely the deceased coming running in the opposite direction with a bleeding injury. His evidence also shows that his uncle tumbled while running and fell on the floor; accused 1 and 2 chasing his uncle and accused 1 and 2 indiscriminately stabbing his uncle in various parts of his body. Therefore from the evidence we could see P.W. 1 saw the first attack on the life of the deceased in this case by the first accused and P.W. 2 saw the remaining portion of the incident during which the injured had sustained as many as 19 injuries on his body. The evidence of P.W. 2 would further show that the injured was taken to the emergency ward, where he was pronounced dead.

10. The question is whether we should believe the evidence of P.Ws. 1 and 2 regarding the overt acts attributed to the accused vis-a-vis the deceased. The information marked in this case as Ex. P. 1, had come to be registered at 6.15 p.m. As per the evidence of P.W. 1 she gave the information to P.W. 12, the Sub-Inspector of Police at the Government Head Quarters Hospital Police Outpost situated in the hospital premises, Salem. The evidence of P.W. 7, the Court Clerk shows that Exs. P. 1 and P. 4 had reached the Court at 3.30 a.m. on 19-5- 1988. When the Court is only at a stonethrowing distance from the police station, we are really surprised as to why the Investigating Agency had taken such a long time to send Exs. P. 1 and P. 4 to the Court. There appears to be no explanation at all for

the delay in sending Exs. P. 1 and P. 4 to the Court. Therefore having that delay in our mind, namely the delay in sending Exs. P. 1 and P. 4, we applied our mind to the entire records, in the backdrop of the deep seated enmity between the two groups. We also went through the reasons given by the learned Sessions Judge in this aspect as well. The learned Sessions Judge, on the evidence, found that though accused 1 and 2 are stated to have come into the Female Surgical Ward when the deceased was standing near the bed side of P.W. 1, it would be highly impossible to believe and accept the case of the prosecution that the third accused was also following accused 1 and 2 along with her young children, who are juvenile accused. The learned Sessions Judge, therefore, rightly found that the overt acts attributed to the third accused are not established beyond all reasonable doubts. Taking into account that there was a delay in sending Exs. P. 1 and P. 4 to the Court and the broad probabilities of the accused coming to the hospital to see their injured relatives in this case, the learned Sessions Judge thought it fit to hold that the implication of the third accused and the juvenile accused also in the complaint appears to be after due deliberation. We are inclined to agree with the reasons given by the learned Sessions Judge in this regard, namely as far as the involvement of the third accused and the juvenile accused in the crime is concerned as they are sound and reasonable. Therefore to that extent we are in agreement with the learned Sessions Judge that there is an exaggeration in Ex. P. 1 with reference to the overt acts attributed to the third accused and the Juvenile accused. Equally we find that the involvement of the first accused appears to be after due deliberation. In this context it may be worthwhile to notice the evidence of the Investigating Officer, when he was examined with reference to the contradiction in the statements recorded under Section 161 of the Code of Criminal Procedure. The Investigating Officer had categorically admitted that P.W. 2 did not tell him when he was examined under Section 161 of the Code of Criminal Procedure that when he (P.W. 2) saw P.W. 1 for the first time she did not tell him (P.W. 2) about the first accused causing a stab injury on the person of Murugan. Therefore this omission as noticed above in the statement of P.W. 2 under Section 161 of the Code of Criminal Procedure, leads us to hold that the name of the first accused might have been implicated in Ex. P. 1 only after due deliberation. On the totality of the circumstances available in this case and in the

backdrop of the deep-seated enmity between the two groups, we are of the considered opinion that it may not be safe to interfere in this appeal to convict the first accused, in view of the fact that the learned Sessions Judge had applied his mind to the facts and decided to acquit the first accused. We are in entire agreement with the reasons given by the learned Sessions Judge for acquitting the first accused as well and therefore no interference is called for in the judgment under challenge so far as the first accused is also concerned. Under these circumstances the acquittal of the first accused and the third accused by the learned Sessions Judge in Sessions Case No. 187 of 1989 is not to be legally interfered with and accordingly, we sustain the said finding of the learned Sessions Judge.

11. Coming to the acquittal of the second accused, we are of the opinion that the materials available on record easily establish the guilt of the second accused, especially when the second accused had admitted his involvement in the occurrence that took place in the hospital at 4.45 p.m. on 18-5-1988 when Murugan, the deceased in this case had sustained injuries to which he later on succumbed. The argument of the learned counsel for the respondents is that the second accused cannot be convicted on the basis of the stand taken by him while answering when he was questioned under Section 313 of the Code of Criminal Procedure. Even then the facts established would only show that the second accused had acted in self-defence or in excess of his right of private defence. The learned counsel for the respondents would contend that the second accused 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. In this context, the judgment of the Supreme Court reported in *State of U.P. v. Lakhmi* : 1998 CriLJ1411 brought to our notice by the learned Government Advocate is of considerable help to us in deciding the controversy. The Supreme Court had held as follows :

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 the accused would offer some explanations to incriminative circumstances. In very rare instances the accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised 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.

In view of this judgment the stand taken by the accused when he was questioned under Section 313 of the Code of Criminal Procedure shall not be altogether ignored. In this case, it is contended by the learned counsel for the respondents that the stand of the second accused when questioned under Section 313 of the Code of Criminal Procedure alone is not a legal and substantive material. But the second accused did not stop with that stand alone; but he had chosen to examine the doctor, who treated him for the injuries sustained by him as D.W. 1. The evidence of D.W. 1 clearly establishes that the second 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. According to the evidence of the doctor, the second accused told him and that he sustained injuries at the hands of a known person.

12. Having this piece of evidence, i.e., the stand of the second accused in his statement under Section 313 of the Code of Criminal Procedure and the evidence of D.W. 1, we perused the oral evidence of P.Ws. 2, 3 and 4. P.W. 2 is an eye witness to the occurrence. His evidence is clear to the effect that he was entering the Female Surgical Ward and he saw his maternal uncle, the deceased in this case coming in the opposite direction with bleeding injuries. His evidence also shows that the deceased tumbled at that time and accused 1 and 2

indiscriminately cut him on various parts of his body resulting in his death a little later. P.W. 4 is another inpatient in the Government Hospital. He would also admit that there was commotion and an incident took place opposite to the Female Surgical Ward in the Government Hospital, Salem. P.W. 3 is a Trainee Staff Nurse. Her evidence also shows that there was an incident, as spoken to by the prosecution, though she did not identify the assailants. Under these circumstances, P.W. 3 was treated as hostile. However her evidence before she turned hostile shows that there was an incident before the Female Surgical Ward at 4.45 p.m. on 18-5-1988. The evidence of P.W. 2 and P.W. 4 in the context of the evidence of P.W. 3 before she was treated as hostile would show that there was an incident at 4.45 p.m. on 18-5-1998 just opposite to the Female Surgical Ward in the Government Hospital, Salem. The defence taken by the second accused in his statement under Section 313 of the Code of Criminal Procedure is that the deceased attempted to murder him and he was struggling for life. In that struggle, according to the second accused he had sustained certain injuries. It is also his further stand that while he was struggling for his life at the hands of the deceased in this case, his brother-in-law Manickam caused a stab injury on the deceased to save the struggling second accused and thereafter, they escaped from the scene of occurrence. According to the second accused only one stab injury was given by the said Manickam on the person of the deceased. The medical evidence shows that the deceased had sustained as many as 20 injuries. Except the stand taken by the second accused that it is his brother-in-law, who caused the stab injury on the deceased to save the struggling second accused and thereafter, they escaped from the scene of occurrence, there is no other material to substantiate his stand. The second accused had not even chosen to go to the police station and lodge an information against the deceased at whose hands he is stated to have sustained injuries. But it is seen that he surrendered before the Judicial Magistrate I, Athur two days after the occurrence. This conduct on the part of the second accused in not lodging an information immediately with the police station located in the hospital compound itself or in any other police station creates a considerable doubt about the stand taken by him in his statement under Section 313 of the Code of Criminal Procedure that it is his brother-in-law, who caused the injury and not he. The conduct of the second accused as noticed

above, would be a relevant conduct to decide his role in the crime. Under these circumstances, we are not inclined to accept the stand of the second accused that it is his brother-in-law, who caused the stab injury on the deceased in this case. The totality of the circumstances available in this case coupled with the oral evidence of P.Ws. 1 and 2, clearly shows that the second accused participated in the occurrence and he was directly involved in a scuffle with the deceased in this case. As already stated the oral evidence clearly establishes that it is the second accused, who caused the injuries on the deceased in this case. We have already agreed with the learned Sessions Judge that the delay in sending Exs. P. 1 and P. 4 shall ensure to the benefit of accused 1 and 3. Being an appeal against acquittal, we do not want to set aside the finding of the learned trial Judge in giving the benefit of doubt to accused 1 and 3. It is brought to our notice that the first accused had been murdered as a retaliatory action by the prosecution group. We record this. Even if the prosecution case can be doubted with reference to accused 1 and 3, yet we find that the evidence available against the second accused is overwhelming in nature and it stands apart, head and shoulder high from the rest of the evidence as far as the other accused are concerned. The evidence against the second accused is distinct and separable from the materials and the same is unassailable.

13. Under these circumstances, we are of the opinion that the prosecution had clearly established the involvement of the second accused with the overt acts attributed against him vis-a-vis the deceased. The question that is left to be decided is for what offence the second accused could be convicted. The medical evidence shows that there was an attempt to strangle him by another person as deposed by D.W. 1 and the other person, on the own showing of the second accused, is the deceased in this case. The evidence of P.W. 2 shows that the deceased and the second accused were at the scene of occurrence at the time, when both are stated to have sustained injuries. Therefore, it is clear that the second accused should have entertained an apprehension in his mind about his personal safety. We have already held that it is the second accused, who had caused the injuries on the deceased. Accepting the case of self-defence we, from the materials available on record, find that the second accused has acted in excess of self-defence. Therefore it is not possible to convict him for the offence of

murder and he is liable to be convicted for an offence punishable under Section 304, Part I of the Indian Penal Code. The injuries noticed on the body of the deceased are incised and stab wounds. Therefore it is clear that the second accused had acted in such a manner warranting his conviction under Section 304, Part I of the Indian Penal Code. Since we are interfering with the judgment of acquittal and convicting the second accused before this Court for the first time, we are bound to question him on the sentence. For that purpose, the hearing in this case stands adjourned to 11-9-2000.

14. We questioned the second accused on the sentence and he stated as follows :

I have an unmarried daughter aged about 21 years. I have also an old mother, who is blind. I have to maintain my father also. I have to look after my sister-in-law and their children also. My son is doing post-graduation (M.Sc. (Maths)) through correspondence Course in Annamalai University. I am no longer staying in the occurrence village and I have left the place. I do not have any house or any other property of my own. Please show me some mercy.

15. Adjourned to 25-9-2000 for deciding the sentence.

16. The second respondent/second accused is present in Court. After giving our anxious consideration to the submission of the second accused/second respondent on the sentence, we feel that interest of justice will be met if the second accused/second respondent is imposed a sentence of rigorous imprisonment for a period of seven years for the offence punishable under Section 304, Part I of the Indian Penal Code. Accordingly, the second accused/second petitioner is directed to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 304, Part I of the Indian Penal Code for which offence he is convicted by this Court.

17. Mr. K.V. Sridharan, the learned counsel appearing for the respondents/accused submits that since the sentence is imposed by this Court, the second accused/ second respondent is likely to be lodged in Central Prison, Madras and it will cause hardship to the members of his family. Therefore, he prays that directions may be issued to lodge him in the Central Prison, Salem. We,

therefore, direct that the second accused/second respondent be lodged in the Central Prison, Salem enabling his relatives to visit him as per the prison rules. Mr. Kader Basha, the Sub-Inspector of Police, Sevvapet Police Station is directed to take the second accused/second respondent into custody and lodge him in the Central Prison, Salem.

18. The criminal appeal is partly allowed.

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