IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12..12..2013

CORAM:

THE HONOURABLE MR . JUSTICE S.RAJESWARAN
AND
THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Criminal Appeal No.301 of 2012

K.Ramaraj ... Appellant

-Vs-

State By
Inspector of Police
CBCID, Guindy Estate
Chennai. ... Respondent

This Criminal Appeal has been preferred against the sentence and order passed in S.C.No.339 of 2011 on 20.04.2012, by the learned Additional Sessions Judge, Fast Track Court No.V, Chennai and seeks to set aside the same.

For Appellant : Mr.A.Natarajan,
Senior Counsel
for Mr.R.Gopinath
For Respondent : Mr.Shanmugavelayutham,
Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by Justice P.N.PRAKASH)

Adam ate the forbidden apple and he was expelled from Heaven. Dilshan, a lad of 13, yearned for almonds and got expelled from Earth!!

2. The sole accused Lt.Col.Ramaraj was tried for offences u/s 302, 201 r/w 302 IPC and u/s 3 r/w 25(1-B)(a), 27, 25(I-B)(h) of Arms Act in S.C.No.339 of 2011 by the learned Additional Sessions Judge/Fast Track Court–5, Chennai and convicted for the said offences by judgment dated 20.04.2012 and sentenced to undergo imprisonment for life and pay a fine of Rs.50,000/-, in default to undergo rigorous imprisonment of six months for the offence u/s 302 IPC; one year simple imprisonment and also pay a fine of Rs.2,000/-, in default three months simple imprisonment for the offence u/s 3 r/w 25(1-B)(a) of the Indian Arms Act, 1959; three years simple imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment for the offence u/s 27 of the Arms Act, 1959; and one year simple imprisonment and pay a fine of Rs.3,000/-, in default to undergo three months simple imprisonment for the offence u/s 25(1-B)(h) of the Arms Act. Out of the total fine amount of Rs.60,000/-, a sum of Rs.50,000/- was directed to be paid as compensation u/s 357 Cr.P.C. to P.W.1., the unfortunate mother of Dilshan.

3. It is the case of the prosecution that the appellant, an Ex-Serviceman, lived in Door No.11/4, OEG Officers Enclave, Flag Staff House Road, Fort St.George, Chennai, though he retired from service on 30.04.2011, as he was permitted to occupy the house for a period of three months thereafter. The Army men's enclave is abound with fruit bearing trees, which attracts the urchins

who live across the road in the hutments called 'Indira Nagar Colony'. At around 1.30 p.m. on 03.07.2011, a Sunday, Dilshan and three of his friends Sanjay [P.W.2], Praveen [P.W.3] and Vignesh [P.W.7] ventured into the Army men's enclave to hunt for almonds. The lads were testing their marksmanship by flinging stones at their targets (Mangoes and Almonds). When they suddenly heard a bang, Sanjay [P.W.2], Praveen [P.W.3] and Vignesh [P.W.7] saw Dilshan falling on the ground and they took to heels. They went to their colony and informed Kalaivani [P.W.1], the mother of Dilshan about the mishap that occurred to Dilshan. It is a bone of contention as to what exactly the children told P.W.1. Nevertheless, P.W.1 and other elders in the colony went over to the enclave and found Dilshan lying inside the compound with bleeding injuries on his head. P.W.1, P.W.9 and others immediately took Dilshan by an autorickshaw to the nearby Government General Hospital, where Dr.C.Sasidharan [P.W.30] who was the duty Doctor in the emergency ward, saw the child unconscious at 1.45 p.m. In the Accident Register [Ex.P14], P.W.30 has entered:

> "Alleged H/o fall from tree at 1.30 p.m. near kodimaraisalai, Old Fort Officers quarters."

He has noticed two head injuries, one on the left temple and the other on the right temple. He admitted him as an inpatient in the hospital and further treatment was taken over by Dr.Sahayam [P.W.31]. The boy was unconscious

and so P.W.31 requisitioned the services of a Neuro surgeon and CT scan was taken on his advice. CT Scan disclosed an injury in the brain. While the doctors were trying to give him the best possible treatment, the child succumbed to injuries at 5.20 p.m. on 03.07.2011 and the Death Intimation [Ex.P.15] was sent to the police. In the meantime, news that Dilshan was hurt because of firing from inside the Army men's compound excited the hut dwellers who started a siege of the army compound. Hence, the army authorities also started enquiries realising that something had gone wrong in their campus. Muthuraj, Inspector of Police, B3 Fort Police Station [P.W.53] took up the investigation of the case. He went to the hospital and obtained a complaint [Ex.P1] from P.W.1 and he returned to the B3 Police Station at 2.30 p.m. and registered a case in B3 Fort Police Station, Crime No.80 of 2011 under Section 307 IPC. The printed copy of the First Information Report is Ex.P44. At 3.15 p.m. he went to the place of occurrence and in the presence of witnesses Vijaykumar (not examined) and Senthil Kumar [P.W.4] prepared the Observation Mahazar [Ex.P2] and drew two rough sketches [Exs.P45 and 46] . He also collected samples of earth with and without blood stains [M.O.13 and M.O.14 respectively] from the place of occurrence under the cover of Mahazar [Ex.P3]. Bharathan [P.W.24] Forensic Science Officer attached to the Mobile Unit of the Tamil Nadu Forensic Sciences Department came to the place of occurrence and found a cavity (or a marked dent) on the inner side of the compound wall near to the spot where Dilshan had

fallen and he collected specimen samples from the cavity and also dry leaves with blood stains [M.Os.6 to 10] for examination. Muthuraj [P.W.53] examined Kalaivani [P.W.1] and other witnesses and on receipt of the Death Report [Ex.P15], he altered the case into one of Section 302 IPC and sent a special report [Ex.P47] to the Court. He conducted the inquest over the body of Dilshan from 6.00 to 7.00 p.m. on that day in the presence of witnesses and the Inquest Report is [Ex.P48]. In the Inquest Report the height of the boy is shown as 4-1/2 feet. He despatched the body for postmortem. Dr.Shanthakumar [P.W.39] conducted autopsy on the body of Dilshan. In the postmortem report [Ex.P26] he has noted as follows:

> "**Entry Wound**: Roughly circular perforating wound 0.7 x 0.6 cm on the right temporal region of the scalp with 1mm wide abrasion collar on all the sides except the anterior margin of the entry wound; the wound was 3cm above and 2cm to the right of the outer end of the right eye brow, and was 5cm in front and 2cm above the level of the upper margin of the right ear lobe; the edges of the wound were contused and inverted; on reflection of the scalp: dark red scalp deep diffuse contusion of the right fronto temporal and the right parietal region of the scalp; dark red scalp deep diffuse contusion of the right fronto temporal and the right parietal region of the scalp; dark red diffuse contusion of the right

temporalis muscle; 1.5 x 1 cm roughly oval shaped hold – perforating fracture – on the underlying part of the calvarium to the junction of the right temporal bone, upper and posterior end of the right greater wing of sphenoid bone and the right lateral margin part of the frontal bone; the posterior margin of the hole on the bone was regular and the other margins were irregular, the edges of the perforating fracture on the bone were irregularly bevelled on the inner aspect of the bone with multiple chips of bone fragments embedded in the underlying brain tissue; oblique curved fissured fracture 11cm, was radiating from the upper margin of the perforating fracture on the right parietal bone; oblique curved fissured fracture 8.5cm, was radiating from the anterior margin of the perforating fracture; 2cm oblique fissured fracture, was radiating from the lower part of the anterior margin of the perforating fracture, on the right greater wing of sphenoid bone.

Exit Wound: Roughly circular perforating lacerated wound 1.8 x 1 cm, on the left temporal region of the scalp; the edges of the wound were contused and everted; the anterior margin of the wound was 3.5cm lateral to the outer end of the left eye brow, and was 1.8 cm in front of the upper end of the root of the left ear lobe; dark red, scalp deep, diffuse contusion on the left temporal region of the

scalp; dark red diffuse contusion of the left temporalis muscle; 1.5 x 1 cm roughly oval shaped hole-perforating fracture with irregular margins on the underlying anterior part of left temporal bone with irregular margins; the edge of the perforating fracture of the exit wound showed bevelled margins on the outer table of the left temporal bone; 14.5 cm oblique curved fissured fracture on the left temporal bone and the left parietal bone.

OPINON:

The deceased would appear to have died of shock and haemorrhage due to perforating, rifled firearm injury to the head.

The deceased would appear to have died about 2 to 4 hours prior to autopsy."

4. After sending the body for postmortem, P.W.53 continued with the investigation and at 11.30 p.m. on 03.07.2011, he received from Col.Sekar [P.W.32], a Senior Officer attached to the Army Unit in that campus, two pieces of metals [M.O.12 series], one of brass/copper and the other of lead, alleged to have been recovered from the area about five feet from the incident spot. This was received under the cover of a letter dated 03.07.2011 [Ex.P17] signed by Col.L.Sekar [P.W.32] addressed to the Police. P.W.53 sent M.O.12 series in Form 95 [Ex.P.49] to the jurisdictional Magistrate along with the covering letter

[Ex.P17] given by Col.Sekar and the same were received by the learned Magistrate on 04.07.2011, as could be seen from the endorsements and court seals found therein. On 06.07.2011 these two metal pieces reached the Forensic Sciences Department through Court. This incident had generated so much of heat between the army authorities and the civilians, that the Director General of Police directed transfer of investigation from the file of B3 Fort Police Station to the CBCID and therefore, P.W.53 handed over the case to Sankarasubramaniam [P.W.55], the Inspector of Police, CBCID on 04.07.2011. [P.W55 would hereinafter be referred to as the I.O.] Rajan [P.W.48], Deputy Director of Forensic Sciences Department, went to the place of occurrence for inspection at the instance of the I.O. He also observed the cavity in the inner wall and after examining it he was of the opinion that the cavity could be due to the impact of a bullet fired from the nearby quarters within the compound. The I.O. prepared a Rough Sketch [Ex.P51] showing the topography of the place of occurrence. The sketch [Ex.P51] shows the existence of almond trees, mango trees and a banyan tree. The sketch [Ex.P51] also shows a pair of twin houses, each having ground and first floor bearing Door Nos.11/1, 11/2, 11/3 and 11/4 inside the Enclave. The house bearing Door No.11/1 which is in the ground floor is in occupation of Lt.Col.Ajay Singh Berwal [P.W.41]. The first floor, D.No.11/3 is the house of Shri Indu Nayar, an Army Officer. These two houses are shown to be 112 feet away from the dent on the compound wall. Door No.11/2 is again a

ground floor portion, which is vacant and the first floor house is D.No.11/4 which was in the occupation of the appellant. The I.O. organised to have the places to be photographed by Ashokan [P.W.45]. The photographs were marked as Ex.P28 series. The I.O. made an application before the 7th Metropolitan Magistrate, George Town, Chennai [Jurisdictional Magistrate] for obtaining search warrants to search the four houses, namely 11/1, 11/2, 11/3 and 11/4 and warrants were issued by the learned Magistrate by her order dated 05.07.2011 [Ex.P52]. On 06.07.2011, the I.O. searched the premises accompanied by Ravikumar and Subbiah, the Inspectors of Police and independent witnesses. Nothing incriminating was recovered from any of the houses. The I.O. continued with the investigation by examining several witnesses and on 09.07.2011, he went to the place of occurrence again with Jayanthi, Sub Inspector of Police [P.W.43] and Mr.Rajendran, Inspector of Police [P.W.14], who is an expert in bomb detection. During the search by Rajendran [P.W.14] and Jayanthi [P.W.43], they found a 1.3 cm metal piece [M.O.1.] which was recovered under the cover of Mahazar [Ex.P5] and was handed over to the I.O., who sent the same under Form 95 [Ex.P54] to the Magistrate. In the meantime, the I.O. had directed the appellant to come over to his office for the purpose of enquiry. According to the I.O., the appellant came to his office around 11.30 a.m. on 09.07.2011 and in the course of sustained interrogation, he started giving contradictory versions and ultimately, let the cat out of the bag. The I.O. requistioned the services of Kanikainathan [P.W.16] Revenue Inspector, from the local Tahsildar office and in his presence he effected the arrest of the appellant at 3.00 p.m. on 09.07.2011. Thereafter, the I.O. recorded the confession statement of the appellant in the presence of Kanikainathan [P.W.16] and one Saravana Babu [not examined] and based on the information provided by the appellant, organized for seizing the Maruthi car used by the appellant under the cover of Mahazar [Ex.P8]. The I.O. once again went to the place of occurrence and made an observatory sketch [Ex.P57] and also an Observation Mahazar (Ex.P7) by asking the Appellant to action re-play about which we will discuss later. There is not much of a difference between the rough sketch [Ex.P51] and the rough sketch [Ex.P57], except that in Ex.P57 the distance from the balcony of the house No.11/4 to the referral point, namely the place where Dilshan had fallen evidenced by blood stains on the ground, is shown as 100 feet, whereas, in Ex.P51, the measurement has been taken from the ground floor, viz., No.11/2 and is shown as 90 feet. The appellant in his confession statement to the police [admissible portion marked as Ex.P6] disclosed the fact that he had dropped the rifle [M.O.2] in the Coovam river at the Napier bridge point and had thrown the unused cartridges in the river little away near the MLA's Hostel side. The accused had also disclosed that he had thrown the bullet pouch [M.O.4] in the rear side compound of the MLA's Hostel abutting Sivananada Road.

5. The I.O. had instructed Prabaharan, DSP, CBCID [P.W.50] to fetch the Fire Service personnel, divers and boatmen, to search for the rifle in the Coovam river bed at the place shown by the appellant. A team of fire service personnel comprising Thirumurugan [P.W.17] and Ravanan [P.W.42] and others came with rubber boats and other equipments including anchor like multiple hook. P.W.17 and three others boarded the rubber boat which was fastened to a rope that was held by Ravanan [P.W.42] and other Fire service personnel standing in the shore, so as to prevent the boat from drifting into the Bay of Bengal where the Coovam river joins. The fire personnel team lowered the multiple hook into the river bed and retrieved the rifle [M.O.2] at around 7.30 p.m. on 09.07.2011. The rifle was seized under the cover of Mahazar [Ex.P9] in the presence of witnesses Kanikainathan [P.W.16] and Sara Babu [not examined]. The description of the rifle with its distinctive number 329154 is also given in Ex.P9. Since darkness had fallen, the search operation for retrieving the bullet was

suspended and the team returned. A special report [Ex.P10] dated 12.07.2011 was given by Mr.Velayutham Nair, District Fire Officer [P.W.21] to the I.O. relating to the search operations that were undertaken by the fire personnel, at the request of the police. The I.O. instructed Kumar, Inspector of Police, CBCID [P.W.54] to make enquiries with the Commissioner of Police, Chennai city relating to the issuance of gun licence to the appellant. P.W.54 obtained the particulars relating to the application submitted by the appellant to the Commissioner of Police for renewal of his gun licence and handed over the same to the I.O. for further investigation. On 10.07.2011, the appellant was produced before the 7th Metropolitan Magistrate, George Town, Chennai and was sent to judicial custody. On 10.07.2011 the I.O. instructed Ravikumar, Inspector of Police, CBCID [P.W.44] to search for the cartridges and other things that were thrown by the appellant in the MLA Hostel, compound. Ravikumar [P.W.44] requisitioned the services of fire service personnel Maveeran [P.W.19], Bharath Kumar [P.W.20] to assist him in the search. Together they searched and recovered the wooden box [M.O.3], green colour cotton bullet pouch [M.O.4] and a plastic box with the words 'Lellier and Ballot' [M.O.5] under the cover of Mahazar [Ex.P.11] and handed over the same to the I.O., who sent it to the Court under Form 95 [EX.P59]. On 12.07.2011 at around 12 noon, the I.O. and Prabakaran , DSP, CBCID [P.W.50] went to the Coovam river bank abutting Sivanandasalai and requisitioned the services of a group of fishermen to dive into the river and search for the cartridges. Accordingly, a group of 17 fishermen headed by one Arumugam [P.W.25], commenced the search operations in the presence of witnesses Mohammed Ismail [P.W.28] and one Manikandan [not examined]. In the course of the diving expedition, one Kumar [P.W.25] retrieved seven cartridges and one Chittibabu [P.W.26] recovered one cartridge from the river bed. These eight cartridges [M.O.11 series] were seized under the cover of Mahazar [Ex.P13]. On 13.07.2011, eight cartridges were sent to the Court along with the Rifle [M.O.2] for forwarding the same for examination by the Ballistic experts attached to the Tamil Nadu Forensic Sciences Laboratory. On the same day i.e. on 13.07.2011 the Rifle [M.O.2] and the 8 cartidges [M.O.11 series] were received by the Tamil Nadu Forensic Sciences Laboratory for ballistic opinion.

6. The I.O. made arrangements to obtain the particulars about the sale of the weapon [M.O.2] by the Directorate General of Ordnance Services, Jabalpur, Madhyapradesh and accordingly he sent Mr.Kumar, Inspector of Police, CBCID [P.W.54] to Jabalpur and collect the original records from the concerned Department. The I.O. took the appellant into police custody on 19.07.2011 through the orders of the Court and conducted further investigation and obtained particulars about the purchase of bullets by him. The I.O. examined various experts like the Doctors who attended on the deceased, the postmortem Doctor, the Ballistic experts, on various dates and obtained copies of the reports given by them. He arranged to apply to the Commissioner of Police, Sub-Urban Police for according sanction under the Arms Act and accordingly, Mr.Karan Singha, IPS [P.W.49] accorded the sanction [Ex.P39] on 29.07.2011 under Section 39 of the Arms Act, 1959 for prosecuting the appellant. He completed his investigation and filed the final report on 03.08.2011 before the jurisdictional Magistrate against the appellant for offence offence u/s 302, 201 IPC and u/s 3 r/w 25(1-B)(a), 25(I-B)(h) and 27 of the Arms Act, 1959.

7. On appearance of the appellant before the committal court, the provisions of Section 207 Cr.P.C. were complied with in committal proceedings, PRC No.101/2011, and the case was committed to the Court of Sessions, Chennai and later transferred to the Court of Additional Sessions Judge, Fast Track Court No.5, Chennai for trial.

8. The trial Court framed the following five charges:

(1) Causing the death of Dilshan on 03.07.2011 at around 1.30 p.m. by opening fire, punishable u/s 302 IPC.

(2) Covering up the place of occurrence with leaves on 03.07.2011 after Dilshan was shifted to the hospital, punishable u/s 201 r/w 302 IPC.

(3) For possession of a Rifle without licence, punishable u/s 25[1-B] r/w Section 3 of the Arms Act, 1959.

(4) For causing the death of Dilshan with firearm, punishable u/s 27 of the Arms Act, 1959.

(5) For not depositing the Rifle in the armoury after expiry of the licence on 12.03.2008, punishable u/s 25(1-B)(h) r/w 21 of the Arms Act 1959.

9. The prosecution examined 55 witnesses, marked 60 exhibits and 14 material objects to establish their case. When the appellant was questioned about the incriminating circumstances against him under Section 313 Cr.P.C, he denied the same. On his behalf one defense witness was examined and two documents were marked. The trial Court convicted and sentenced the appellant as aforesaid and therefore, he is now before us in this appeal.

10. There are no eye witnesses in this case and the entire case hinges on circumstantial evidence. A Five Judge Bench of the Supreme Court in Govinda Reddy and anothers v. State of Mysore [AIR 1960 SC 29] has held:

> "In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn would in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

Before adverting to the disputed facts in this case, it would be appropriate to enumerate admitted facts over which there is no dispute.

(1) Lt.Col.Ramaraj retired from service and was living in the army quarters, D.No.11/4 in the first floor, Officers Enclave, Old Fort, Chennai.

(2) The deceased boy Dilshan is the son of Kalaivani [P.W.1] and they lived on the opposite side of the Army Quarters in the hutments called 'Indira Nagar Colony'.

11. We shall now proceed to determine the cause for the boy's death, namely, whether it was a natural death, suicide or

homicide.

CAUSE OF DEATH:

12. It was strenuously contended by Mr.A.Natarajan, learned Senior Counsel for the appellant that the evidence on record shows that Dilshan had fallen from a tree. In support of his contention, he drew our attention to the copy of the Accident Register [Ex.P14] wherein, it is noted that the boy had fallen from the tree. He also took us through the complaint [Ex.P1] supposed to have been given by Kalaivani [P.W.1] to the police and submitted that this complaint could not have been given by her at 2.30 p.m. on 03.07.2011 as stated by the Inspector of Police, [P.W.53], B3 Police Station, because Kalaivani [P.W.1] was under the impression that her son had sustained injuries on account of falling from the tree and the doctors especially Dr.Sasidharan [P.W.30] and Dr.Sahayam [P.W.31] were absolutely clueless about the nature of injury. There is sufficient force in the contention of the learned Senior Counsel for the appellant. The four boys Dilshan, Sanjay [P.W.2], Praveen [P.W.3] and Vignesh [P.W.7] jumped into the Officers Enclave for picking almonds and when they heard the bursting sound, if they had known that Dilshan had fallen on the ground on account of gun fire, they would have so informed to P.W.1. P.W.1 along with some others in the colony rushed to the Officers Quarters and they carried the unconscious boy to the hospital believing that he had fallen from the tree. That is why they had stated so to Dr.Sasidharan [P.W.30]. P.W.1 was throughout in the hospital and therefore, she could not have been aware of what was happening around her house. Apart from this, P.W.1 has stated in the cross examination that she had not written the complaint [Ex.P1] and she does not know who had written Ex.P1. In the complaint [Ex.P1] it is stated that on 03.07.2011 at 13.00 hrs when Dilshan was playing inside the compound of the Army Officers Enclave and picking almonds, he was shot by an unknown army man and that was informed to her at around 13.30 hrs by his two friends. Indira Nagar colony is just across the road from the Army Officers Enclave and it will take hardly a few minutes for the boys to dart across the road to tell P.W.1.

13. To cap all these, ordinary folks do not use the Police and Railway method of referring to timings and they would colloquially say in vernacular "afternoon 1 o'clock or 1.30" and definitely not 13.00 hrs and 13.30 hrs as stated in the complaint [Ex.P1]. Had Kalaivani [P.W.1] known that her son was shot at, the first thing is she would have informed the doctors, who would have accordingly registered the case as Medico Legal Case and would have intimated the Government Hospital outpost police for sending information to the jurisdictional police station. This is the time immemorial practice in this State. The case became a Medico Legal Case only at 5.30 p.m. on 03.07.2011, when the boy succumbed to injuries, as could be seen from the Death intimation [Ex.P15]. As stated above, the doctors P.W.30 and P.W.31 were groping in the dark as to the cause of the injuries, which they would not have, had they been made aware that the injuries were due to gun shot.

14. The learned Senior Counsel Mr.A.Natarajan, took us through the postmortem report [Ex.P26], and drew our attention to the following observation therein:

> "Appearance of the body at the time of postmortem was :Moderately nourished male body with pale finger and toe nails; pale conjunctivae and clear cornea; the scalp hair had been shaven off; the head was covered with surgical bandage; there were no clothes worn on the body."

Thereafter he took us through the Inquest Report [Ex.P48], where it is stated in column 7 that there are gun shot injuries in the right and

left temple of the deceased. The question raised by him was, the postmortem report succeeds the Inquest Report. If in the postmortem report it is stated that the head was covered with surgical bandage, it would not have been possible for the Inspector of Police [P.W.53] to note in the Inquest Report that he saw entry and exit wounds. The prosecution has no explanation for this lapse. We also agree with the learned Senior Counsel for the appellant on this aspect.

15. The learned Senior Counsel for the appellant further submitted that the complaint and the First Information Report in this case has reached the Magistrate only at 12.45 a.m. (midnight) on 04.07.2011. The death alteration report did not accompany the FIR. All these circumstances cumulatively makes us to conclude that the complaint in this case was obtained much later from P.W.1 to make out a case of death due to firing.

16. The next question to be answered is, does the ante-timing of the complaint leads to the conclusion that Dilshan died of fall from the tree? The answer is an emphatic 'No'.

17. From the medical evidence available in this case, it is crystal clear that Dilshan was taken to the Rajiv Gandhi Government Hospital by his mother Kalaivani [P.W.1], where he was examined by Dr.Sasidharan [P.W.30], who has noted two injuries on the either side of the boy's temple region in the Accident Register [Ex.P14]. Dr.Sahayam, [P.W.31] who gave further treatment also observed from the CT scan report that there was serious internal skull injury. They had to arrest the flow of blood. The doctors have put bandage over the boy's head and were doing their best to save him. The boy was unconscious throughout. He succumbed to injuries at 5.20 p.m. on 03.07.2011 and thereafter, when Dr.Shanthakumar [P.W.39] performed the autopsy, he has noted the entry and exit wound and has given a graphic description of the same. In his opinion extracted above, Dr.Shanthakumar [P.W.39] has opined that the cause of death was due to shock and haemorrhage due to perforating, rifle firearm injury to the head.

18. The defense has not seriously challenged the injuries noted by the doctors, the treatment given by them and ultimately the opinion relating to cause of death given by P.W.39, except by putting a vague suggestion to P.W.39 that from the two injuries on the temples it cannot be stated that the boy died of gun shot injuries, which of course was denied by P.W.39. Therefore, we have no hesitation in concluding that Dilshan died of gun shot injuries and not on account of any other reason, much less falling from a tree. It is clear that the nature of injuries noted by the doctors cannot happen on account of a person falling from a tree. We hold that Dilshan's death was a homicide and the death is due to gun shot injury.

19. The next line of enquiry is, who perpetrated the offence? In order to prove this aspect, the prosecution has relied upon the following circumstances:

MOTIVE:

20. It is the prosecution case that the motive for the offence is the intolerance of the appellant to the activities of the urchins of

that area in pelting stones for felling ripe mangoes and almonds. It is common knowledge that fruit bearing trees attract young lads, who would perforce indulge in target practice with stones to prove their marksmanship. From the evidence of Jaya [P.W.5], the servant lady residing in the house of Lt.Col.Ajay Singh [P.W.41], it has been established that the appellant is a person of angry disposition and he would chase the boys who jump into the compound to pick almonds. She also further deposed that on one occasion the boys had damaged the windshield of the appellant's car. There has not been any serious cross examination on this aspect. It was submitted before us that no reliance can be placed on the evidence of P.W.5, because bad character of the accused is irrelevant under Section 54 of the Indian Evidence Act. We have no quarrel with the proposition that the bad character of accused is not relevant in criminal proceedings against an accused. The evidence of P.W.5 is primarily to establish the mental make up of the appellant and not to show that he was a bad character. Under Section 14 of the Indian Evidence Act, facts showing existence of any state of mind are relevant. Explanation 1 to section 14 clinches the issue.

> "A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question."

21. By virtue of this explanation, the general state of mind of a person is not relevant, but what is relevant is, a state of mind in reference to the particular matter in question. Here the matter in question is his intolerance to the activities of boys jumping into the compound, pelting stones to fell mangoes and almonds etc. P.W.5 seeks to prove this mental disposition of the appellant, which if proved, would throw light on the motive behind the crime, which is relevant under Section 8 of the Indian Evidence Act.

22. Yet another singular question that will rise in anyone's mind is, however intolerant a man would be towards the activities of lads, would he go to the extent of taking out a rifle and firing at them. The answer may be found in the classic words of Brian LJ, who said, "Devil knoweth what passes in one's mind".

23. Therefore, we hold that though the motive of the appellant as projected by the prosecution may look frail, nevertheless, we do not discount it in the teeth of the evidence of Jaya [P.W.5].

BURST SOUND, BOY FALLING AND OTHER BOYS FLEEING:

24. The second circumstance which the prosecution seeks to press into service is the fact that while the four children, Dilshan [deceased], Sanjay [P.W.2], Praveen [P.W.3] and Vignesh [P.W.7] were picking almonds, they heard a loud sound as if that of a tyre burst and thereafter, they saw Dilshan falling.

25. The fact that there was a loud noise as if a tyre had burst has been spoken to by Sanjay [P.W.2], Praveen [P.W.3], Jaya [P.W.5], Vignesh [P.W.7], Karthikeyan [P.W.8] a Police Constable and Devadoss [P.W.12] a Security Guard, who was on duty around that time in Flag Staff Road. It is in the evidence of P.W.8 that he saw three boys running across the road after the burst. Therefore, the nexus or contemporaneity between the burst, Dilshan falling and the other three boys running away are relevant under Section 6 of the Indian Evidence Act, which says "Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction,

are relevant, whether they occurred at the same time and place or at different times and places."

26. The hearing of a loud burst is a fact as defined in Section 3 of the Indian Evidence Act. The illustration (b) to the definition of the word "fact" says: "That a man heard or saw something is a fact". Here the fact in issue is not the hearing of the noise or the fall of Dilshan or the running of three boys. The fact in issue is whether Dilshan fell down because somebody opened fire at him from inside the compound around 1.30 p.m. on 03.07.2011. Since the burst like noise, fall of Dilshan and the three boys running away are transactions which are so connected with the fact in issue and since they had occurred at the same time and place, they become relevant under Section 6 of the Evidence Act. We are not employing the expression "res gestate" which is normally associated with Section 6 because even in English Law, there is so much of confusion in its meaning that Dr.V.Nageswara Rao, the author of the treatise "The Indian Evidence Act – A Critical Commentary Covering Emerging issues and International developments" quotes R.N.Goderson's words "When man finds no way of getting a fact admitted in a Court of Law, he can always plead that it is relevant as "Res Gestae" (page 49). By a process of intelligible deduction trailing backwards from the effect to cause, in the backdrop of the opinion of the postmortem Doctor that Dilshan died due to firearm injury 2 to 4 hrs prior to autopsy, we can safely infer that Dilshan was shot inside the Army Quarters compound. On 03.07.2011 itself Muthusamy [P.W.53] the first Investigating Officer of B-3 Police Station in the Observation Mahazar [Ex.P2] has observed the presence of (a) 4 feet compound wall and 1.26 feet wire fence over it; (b) a cavity (dent) in the inner side of the compound wall at 3 feet 20cms from the ground; (c) blood stained earth 5 feet from the compound wall. Ex.P2 has gone to the Court on 04.07.2011. These observations in Ex.P2 are relevant under Section 7 of the Evidence Act and they are *res ipsa loquitor*. The two Ballistic Experts, P.W.24 and P.W.48 who inspected the place of occurrence have also noticed the said cavity. This fortifies the above inference. Therefore, it is crystal clear that the firing had taken place from inside the Army Officers Enclave and could be possibly from one of the four houses, namely 11/1, 11/2, 11/3 and 11/4 as shown in Ex.P.57. The observation mahazar (Ex.P2) rough sketches and photographs of the place of occurrence are all relevant under Section 7 of the Indian Evidence Act, as they show the state of things under which the event in question has happened. The Rough Sketch [Ex.P57] shows the presence of almond trees, mango trees, EB transformer and Door Nos.11/1 to 11/4 located at a distance of 100 ft. from the place of occurrence. The other houses in the Enclave are situated little away from the place of occurrence and the vegetation is thick. There is a banyan tree, two almond trees and a coconut tree between the place of occurrence and Block no.10 and therefore, the possibility of anyone firing from Block no.10 has been ruled out.

27. Yet another incidental question that may crop up in one's mind is, What if the rifle had been fitted with a silencer?, in which case, Burst theory could have been a police concoction. Rule 3 read with Entry I(d) of Schedule I of Arms Rules 1962 states that accessories for any firearms designed or adapted to diminish the noise or only flash caused by the firing thereof is also classified as Arms and requires a licence for it. In other words, if a person wants to have a silencer, he should obtain a separate licence for it from the licensing authority. In this case, the appellant has applied only for licence for his weapon and has not applied for any licence for silencer. Ownership of the Rifle and Licence is elaborately discussed in the subsequent paragraphs. Had the appellant set up a claim that he had an unlicensed silencer, then the burden is on him to prove that fact u/w 106 of the Evidence Act.

CONDUCT OF COVERING THE PLACE OF OCCURRENCE WITH LEAVES:

28. Yet another circumstance which the prosecution wants to press into service is the conduct of the Appellant in trying to cover up the place of occurrence with leaves after Dilshan was shifted to the hospital. In this regard a separate charge u/s 201 r/w 302 IPC has been framed against the appellant. In order to establish this fact, the prosecution relied upon the evidence of Vignesh [P.W.7], who in his evidence, has stated that he saw the appellant coming to the place of occurrence ten minutes after Dilshan was taken to the hospital and was covering the blood stains on the earth with dry leaves. On seeing him [P.W.7], the appellant asked him to go away. It is also in the evidence of P.W.7 that thereafter, he saw the appellant carrying a long article covered with cloth, to his car, and taking it with him towards the beach area. We are not able to appreciate the evidence of this witness in the perspective in which the prosecution wants us to apprise it. No doubt, Vignesh [P.W.7] was also with Dilshan and other two at that time when they were picking almonds. When the loud sound was heard, these three lads left Dilshan and ran away, which is clear from the evidence of Karthikeyan [P.W.8], a duty constable who was there. From the evidence of Devadoss [P.W.12], it appears that within ten minutes after the exploding noise, he saw the appellant going out in his Maruthi car. Therefore, we are not able to give any credence to this part of the evidence of Vignesh [P.W.7] and we hold that this circumstance has not been proved by the prosecution.

29. It is apparent that after boys reported to their elders about the fall of Dilshan, a big crowd from the colony gathered at the place and there was lot of commotion. In fact, Karuppusamy [P.W.11] an Army Guard, in his evidence has stated that around 2 p.m. on 03.07.2011, he received instructions from the Army control room not to let outsiders enter into the compound and accordingly, when he went there, he found an irate crowd which even started pelting stones at the army men. This clearly shows that after Dilshan was taken to the hospital by his mother [P.W.1] and others, the colony people became very restive because they would have correlated the banging sound with the fall of Dilshan and would have directed their ire at the army men by pelting stones at them. In such a charged atmosphere, it would have been nigh impossible for the appellant to come to the place of occurrence and attempt to cover up the place with leaves.

30. Yet another reason why we are disbelieving Vignesh [P.W.7] is that in his evidence he has stated that he knows the appellant well, because he used to accompany him to the golf course as a ball picker. Unlike Tennis there are no ball pickers in Golf. A Caddy, who carries the Kit, will follow the Golfer religiously. P.W.7 has further stated that on 09.07.2011, he had taken the CBCID police to the Army quarters and identified the appellant. His statement was recorded by the police only on 08.07.2011 and it was sent to the Court only 15.07.2011. Further, from the evidence of the Investigating Officer [P.W.55], it is clear that the Police, on a reasonable surmise that fire must have been opened from one of the houses in the vicinity, picked up both Lt.Col.Ajay Singh [P.W.41] and the appellant for enquiry on 09.07.2011. There was no necessity for them to requisition the services of Vignesh [P.W.7] to know about the appellant. Applying the 'chaff and grain' theory and conceding the inapplicability of "*falsus in uno, falsus in omnibus*" principle to Indian conditions, we accept only one portion of Vignesh's [P.W.7] evidence and reject the rest. Therefore we hold that the charge u/s 201 r/w 302 IPC against the appellant not proved. Even then trial Court has not given any finding as to the conviction and sentence for this charge.

RECOVERY OF RIFLE:

31. The most powerful circumstance in this case is the recovery of the rifle [M.O.2] from the Coovam river bed on 09.07.2011

by the police at the instance of the appellant. The fact that the appellant was taken to the CBCID office on 09.07.2011 on suspicion for interrogation, has been satisfactorily established through the evidence of the I.O. During the course of interrogation when the appellant started confessing to the police, Kanikainathan [P.W.16] - Revenue Inspector in the office of the Tahsildar was requested by the I.O. to come to the CBCID office and in his presence the confession statement of the appellant was recorded. It has been satisfactorily proved by the prosecution that the appellant had divulged certain facts relating to the weapon which were to his exclusive knowledge. Pursuant to his disclosure, the I.O. made arrangements with the fire service personnel to conduct a search operation in the river bed. It is argued by Mr.A.Natarajan, the learned Senior Counsel for the appellant that the I.O. had organized the search only after dusk in order to surreptitiously plant the weapon in the darkness. This argument requires to be stated only to be rejected. If the police had waited for the next day to dawn for conducting the search, then that would also be severely criticized for failure to act with alacrity.

32. The Supreme Court way back in 1956 in **Aher Rajakhima vs. State of Sourashtra [AIR (1956) SC 217]** has held:

> "The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the Magistracy nor good to the public. It can only run down the prestige of the police administration."

These classic words in the dissenting judgment of Justice T.L.Venkatarama Aiyyar was quoted with approval by the Supreme Court in **Jameel Ahmed v. State of Rajasthan 2003 AIR SCW 6078**. Instead of being critical, we laud the efforts of the I.O. in taking immediate steps by requisitioning the services of Fire Service personnel to retrieve the weapon from the river bed.

33. The learned counsel for the appellant further submitted that the alleged recovery of the weapon from the river bed is a myth. In order to buttress this contention, he drew our attention to the evidence of the police photographer Mr.Asokan [P.W.45], who in his evidence stated that on 09.07.2011 he was called by the I.O. to the CBCID Office to take photographs of the appellant. We propose to deal with this aspect separately and on a different plane. It is the further evidence of P.W.45 that he accompanied the Police team to the Napier bridge, where he was asked to take photographs of the search operation and the recovery of the rifle [M.O.2] from the Coovam river. He has marked 44 photographs as Ex.P.30 series and two Compact Discs as Ex.P31 series as his was a digital camera. The defense has successfully demolished his evidence and has broken it into smithereens by showing the enlarged version of the photographs taken from the C.Ds. [Ex.P31]. P.W.45 in his cross examination admitted that images IMG 1498 to 1550 were taken by him in seriatum on 09.07.2011. He has further admitted that Image 1498 was taken at 7.33 p.m. and Image 1499 was taken at 7.33.32 seconds; Image 1550 was taken at 7.33.34 seconds; and Image 1502 was taken at 7.34.01 seconds. He admitted that in Image 1498, the rifle [M.O.2] is seen lying inside the Boat. Whereas, in the subsequent image 1499, it appears as if the fire service personnel are taking the rifle out of the Coovam river. Therefore, Mr.A.Natarajan, learned Senior Counsel resolutely submitted that, from the prosecution evidence itself the alleged recovery of the weapon M.O.2 has been falsified and that it has been planted in this case in order to fix the appellant. At the first blush, we were too impressed with his argument and we had entertained genuine doubts about the recovery, but on looking at image 1498, it is obvious to us that the characters in the boat are giving pose to the photographer. Similarly in the image 1499 the characters are enacting a drama as if they are pulling out the weapon straightaway from the Coovam river. This is impossible because the weapon could

not have been floating in the river for the fire servicemen to take it straightaway from the water surface. Such goofs creep into investigation on account of the over zealousness of police officers to produce fool proof evidence. Obviously, the entire search operation was done after sunset and the fire servicemen have ferried out the weapon with the help of the anchor like multiple hook. After they have recovered, it must have been the brain child of the I.O. to have asked P.W.45 to take photographs of them. Otherwise, there is no reason for all the fire servicemen in image 1498 to look up at the camera, which is a normal tendency exhibited by any human being when told that he is going to be photographed. The three fire servicemen in the boat have displayed a natural conduct of looking above when P.W.45 was asked to take photographs. The other photograph image 1499 is clearly a pose. We do not approve of such over zealousness on the part of Investigating officers, as that will only result in 'hara-kiri' of prosecution case. Said Justice Krishna Iyer in **Inder Singh and another v. State (Delhi Administration) [AIR (1978) SC 1091]:**

> " Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic."

34. On the contrary, we place reliance on the testimonies of the fire servicemen Thirumurugan [P.W.17] and Ravanan [P.W.42], who have no personal axe to grind vis-a-vis the police, as they hail from a different and independent agency. Therefore, we reject the argument of the defense that the Rifle [M.O.2] was planted and we hold that M.O.2 was recovered from the Coovam river bed on the disclosure statement of the appellant herein, which is admissible under Section 27 of the Indian Evidence Act.

PHOTOGRAPHING THE ACCUSED:

35. We find from the evidence of the Photographer [P.W.45] that he had taken photographs of the Appellant after his arrest in the Police Station and the same has been marked as Ex.P.12. Similarly in the photographs taken at the Coovum River bank – Ex.P30 series, we find the accused touching the Rifle and giving pose along with the Policemen. What is the relevency of these photographs? Absolutely irrelevant.

36. The source of power to take photographs of an accused during the course of investigation flows from Section 5 of the Identification of Prisoners Act, 1920, and not from the Code of Criminal Procedure. Section 5 reads as under:

> "5. Power of Magistrate to order a person to be measured or photographed.-- If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to the effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:
>
> Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:
>
> Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding."

37. Police Standing Order 646 clearly states that :

> "(1) The photographing of under–trial prisoners is generally forbidden. However, photographing of under-trial prisoners is permitted under certain condition as laid down in sections 4 and 5 of the Identification of Prisoners Act, 1920."

38. There is no specific provision in the Cr.P.C. authorising the Police to take photograph because the Special law referred to supra takes care of it. Here, we are not deciding on the power of Police to videograph the confession statement of an accused under the proviso to Section 161 of the Code of Criminal Procedure, 1973 which was included by Central Act 5 of 2009 with effect from 31.12.2009 and we leave it open to be decided in an appropriate case where the Police have done that. Can the Police be allowed to take photographs of the accused in the Police Station without Magisterial sanction? If we concede that power, what will be the plight of women-accused? Can the Police take the accused to the scene of crime or anywhere else and take photographs of him? If the photographs leak to the Press will it not affect the evidentiary value of identification in the Test Identification Parade and Court?

39. Taking into consideration all this, we hold that photograph of an accused can be taken only in terms of Section 5 of the Identification of Prisoners Act, 1920 and the Police have no authority to do it on their own. We also deprecate the practice of taking the accused to the place of occurrence or place of discovery and taking photographs of him.

40. We are also conscious of the fact that the photographs of accused prisoners are essential for myriad reasons. A Division Bench of the Gujarat High Court in **Mahendra Urjeevan Luhar v. State [(CDJ) 199 GHC 034]** and the Madhya Pradesh High Court in **Devendra v. JMFC Indore [2002 (3) MPLJ 337]** have observed that there is rampant impersonation of accused during trial and even after conviction. Therefore, these Courts have directed that photographs of the accused should be filed along with the final report so that the menace of impersonation can be tackled. We are also agreeing with the view of these two High Courts and we suggest to the Investigating Agencies to take photographs of accused involved in serious cases by resorting to Section 5 of the Identification of Prisoners Act, 1920 after identification parades, if required, are held. This will ensure that the State also has record of persons and the mischief of impersonation can also be controlled.

41. Adverting to the Observation Mahazar [Ex.P7] prepared by the Investigating Officer, we are shocked to know from the said Observation Mahazar that the appellant has been taken to the place of occurrence and has been asked to re-enact the scene. An Observation Mahazar can be relevent under Section 7 of the Evidence Act only if it states as to what the Police Officer sees and notes at the place of occurrence. A Police Officer cannot import into the Observation Mahazar and Rough Sketch the knowledge gained by him from witnesses much less from the accused because they are hit by Section 162 Cr.P.C. It is also not a healthy practice to draw such Observation Mahazars and take videograph of accused while asking him to re-enact the drama. Therefore, the Observation Mahazar [Ex.P7] is an inadmissible piece of evidence.

SEIZURE OF THE RIFLE:

42. The rifle [M.O.2] was seized by P.W.55 on 09.07.2011 under the cover of Mahazar [Ex.P9], in the presence of Kanikainathan [P.W.16] and Saran Babu [not examined]. In Ex.P9-Mahazar, the description of the rifle is given as US Rifle CAL .30 M1 Springfield Armory No.329154, measuring 110cm with sling. The rifle was despatched to the Court on 12.07.2011 and it was later forwarded to the Forensic Sciences Laboratory for examination by Ballistic experts on the same day and it was received by them on 13.07.2011.

RECOVERY OF 8 CARTRIDGES:

43. Coming to the recovery of 8 cartridges [M.O.11 series] on 12.07.2011, the I.O. requisitioned the services of 17 fishermen headed by Arumugam [P.W.25]. These people dived into the river and started a combing operation in the river bed, pursuant to which Kumar [P.W.26] retrieved 7 cartridges and Chittibabu [P.W.27] retrieved one cartridge. The I.O. Seized them under the cover of Mahazar [Ex.P.13] in the presence of independent witnesses, Ismail [P.W.28] and Manikandan [not examined] and sent them to the Court on 12.07.2011 itself for onward transmission to the Ballistic Experts, who received them on 13.07.2011. These cartridges [M.O.8 series] were identified by the fishermen Kumar [P.W.26] and Chittibabu [P.W.27] in their evidence, which is relevant under Section 9 of the Evidence Act.

44. Mr.A.Natarajan, learned Senior Counsel for the appellant very strongly urged that the recovery of the cartridges becomes doubtful, on the ground that the appellant was not taken to the place of recovery and further P.W.55 had not requisitioned the services of Fire Service personnel to dive into the Coovam river. It is not necessary that the accused should be physically taken for the discovery of a fact. Section 27 of the Indian Evidence Act states that the information supplied by the accused which leads to the discovery of a hitherto unknown fact, is relevant. This provision is an exception to the ban imposed by Section 25 of the Indian Evidence Act and Section 162 of Cr.P.C. To say that the accused should accompany the officers to point out the place where he has hidden the material object, would be doing violence to Section 27 of the Indian Evidence Act. For example, if during interrogation of an accused in Chennai, he discloses that he has kept a bomb at a particular spot in Madurai railway station, it will be ludicrous to say that the police should have taken the accused along with them from Chennai to Madurai for effecting the recovery of the bomb. If we ordain the police to work like this, results would be disastrous. On the information provided by the accused in Chennai, if the Madurai police are able to discover the bomb and diffuse it immediately, the information supplied by the accused is very much admissible in evidence and is relevant under Section 27 of the Indian Evidence Act. Therefore, we reject this contention of the learned Senior Counsel for the appellant.

45. As regards the next line of attack by Mr.A.Natarajan, learned Senior Counsel for the appellant, that the I.O. should not have requested the fishermen but should have utilised the services of Fire Service personnel, this Court under section 57 of the Indian Evidence Act can take judicial note of certain notorious facts which require no proof, because Section 57 of the Indian Evidence Act is not exhaustive as held by the Supreme Court in **Onkar Nath and others vs. The Delhi Administration [AIR (1977) SC 1108]**. Hence, we take judicial note of the fact that the Coovam River has reverse flow of sea water a little away from the Napier Bridge where it meets the Bay of Bengal and that makes that stretch little dangerous to venture. Local fishermen will have better capability to dive deep for searching in the

river bed than Fire Service Personnel. That apart, there is no law or rule which says that the police shoud take only the services of Fire Service Personnel for such operation. An Investigating Officer will have to take serveral spot decisions over which we, sitting in arm chair, cannot subject them to Judicial review. We cannot and should not step into the shoes of the Investigating Officer and analyse his decision, unless it is a colourable or mala fide exercise of power. In this case, the recovery of the Cartridge is not merely on the ipsi dixit of the Investigating Officer but these fishermen were examined in the Court as P.W.25, P.W.26 and P.W.27 to prove the recovery and they subjected themselves to cross examination by the defence. Therefore, we find nothing intriguing in the I.O. placing reliance on the capability of local fishermen, who know the dangerous spots in the river, than to request the fire servicemen for searching in river bed.

OPINION OF BALLISTIC EXPERTS:

46. Reverting to the recoveries of metal pieces at the scene of occurrence, we may now recapitulate that Col.Sekar [P.W.32] handed over the two metal pieces [M.O.12 series] on the very date of incident, i.e. on 03.07.2011 to Muthuraj [P.W.53]-the Inspector of Police, B2 Fort Police Station. This was sent to the Court on the very next day i.e. on 04.07.2011 under Ex.P.49 and the same was forwarded to the Forensic Sciences Department on 06.07.2011. These two metal pieces [M.O.12 series] were examined by P.Rajan [P.W.48], Deputy Director and Firearms Expert attached to the Ballistic Division of the Tamil Nadu Forensic Sciences Department and in his Report dated 07.07.2011 [Ex.P36] he has given the following opinion:

> "(i) Items 1 & 2 fragmented portions of a bullet; they do not constitute all the broken pieces of the bullet; since all the portions of the bullet are not recovered the caliber of the bullet could not be determined;
>
> (ii) The examination of the metal jacket item 1 indicated the presence of 2 grooves and 3 land impressions of the rifling of the fire arm from which it was fired; the measurement of width of the lands and grooves on item 1 and the presence of pointed nose tip on item 1 indicate that the probable weapon from which item 1 was fired is 7.62 x 51 mm caliber self loading rifle or any other rifle with similar class characteristics."

47. This report is dated 07.07.2011. It may be relevant to state here that P.W.48 was able to give an opinion that, from the lands and grooves in the metal piece item no.1 it can be probably said that it is a bullet fired from a 7.62 x 51 mm caliber self loading rifle or any other rifle with similar class characteristics. A firearm, except smooth bore weapons, will have lands and grooves in the barrel. As the bullet passes through the lands and grooves it will get striations over its body, which is called the signature of the weapon on the body of the bullet. 7.62 mm refers to the distance between two opposite lands in the weapon and 51mm refers to the length of the cartridge. To determine whether a particular bullet has been fired from a particular weapon, the Ballistic Expert will do test fire in the lab with the weapon in question, and compare the striations in the questioned bullet with the test fired bullet under a microscope and study the signature on the body of both the bullets. If the signature tallies then it follows that the questioned bullet has been fired from that particular weapon. It must be remembered that on 07.07.2011, the rifle in question [M.O.2] was not recovered. It was recovered only on 09.07.2011. Therefore, P.W.48 being an expert in fire arms was able to determine from the striations on the metal items that it could have emanated from a self loading rifle as stated above. The rifle [M.O.2] was received by the Forensic Sciences Department on 13.07.2011 from the Court. In the Ballistic Report dated 21.07.2011 [Ex.P38] given by P.Rajan [P.W.48], the description of the rifle is stated as follows:

"A long cloth parcel marked "B.No.580/11 CBCID B3 PS Cr.No.80/11 item 2" and containing a .30 inch (7.62 x 63mm) caliber self loading rifle bearing No.329154 and markings "U.S.RIFLE CAL .30 MI SPRING FIELD ARMORY" with nylon sling was received here on 13.07.2011 through Special Sub-Inspector Tr.Gopalakrishnan under unbroken seals which correspond with the sample sent."

48. It is in the evidence of Rajan [P.W.48] that he used two of the eight cartridges [M.O.8 series] for test firing the rifle [M.O.2] in their laboratory and the test bullets used therein were compared with item no.1 [M.O.12 series], which was already with them and in connection with which he had already made the report dated 07.07.2011 [Ex.P.36]. After comparing the test bullets with item no.1 of M.O.12 series, Mr.Rajan [P.W.48] has given the following opinion in the Ballistic Report [Ex.P38].

" The class characteristics of rifling viz., the width of land and groove and direction of twist on the metal jacket item 1 described in the office report 4th cited are similar to those of the test bullets obtained from the above rifle, the striation pattern found on the metal jacket item 1 referred to above are similar to the striation pattern on some of the lands and grooves of the test bullet obtained from above rifle, hence the metal jacket item 1 described in this office report 4th cited was probably fired in the above rifle."

49. This evidence of P.W.48 clearly shows that the item no.1 in M.O.12 series is a broken bullet that would have probably emanated from the rifle [M.O.2]. Apart from this, the metal composition of the eight cartridges that were picked up by the fishermen were compared with the metal composition of item no.1 of M.O.12 series by Rajan [P.W.48] and in his report dated 21.07.2011 [Ex.P37] he has stated as follows:

"We examined the above cartridges and we are of opinion that,

They are of.30-06 inch Springfield (7.62 x 63 mm) caliber, they can be used for firing in the rifle described in this office report 4th cited.

The bullets of the above cartridge and the metal jacket item 1 described in this office report 3rd cited were examined in EDXRF (Energy Dispersive X ray fluorescence) Spectrometer and the metal composition of them were found to be similar indicating that they are of same origin.

Please note that two of the above cartridges were used for test firing in the rifle described in this office report 4th cited."

50. We hold that the prosecution has proved beyond pale of any doubt that:

(i) Two metal pieces [M.O.12 series] were found at the scene of occurrence by the army men who handed them over through Col.Sekar [P.W.32] on 03.07.2011 to P.W.53-Inspector of Police, B2 Police Station, which was sent to the Court on 04.07.2011 and in turn, sent to the Forensic Science Department on 06.07.2011.

(ii) One rifle [M.O.2] was recovered pursuant to the disclosure made by the appellant from coovam river bed on 09.07.2011 and was sent to the Court on 12.07.2011 and in turn, was received by the Forensic Sciences Department on 13.07.2011.

(iii) The eight bullets [M.O.8 series] were fished out from the Coovam river bed by the fishermen on 12.07.2011 and they were sent to the Court on 13.07.2011 and in turn, was received by the Forensic Science Department on the very same day.

51. Therefore, we have no iota of doubt in our mind that whatever was seized was subjected to Forensic Science Examination by Rajan [P.W.48] and through his reports [Exs.P36 to 38], it has been satisfactorily established that the rifle [M.O.2] was used for firing the fatal bullet which is item no.1 of M.O.12 series. Evidence of Bharathan [P.W.24] and Rajan [P.W.48] are opinion evidence, relevant u/s 45 of the Evidence Act. Though the Ballistic Reports, Exs.P.36, 37 and 38 issued under the hand and seal of the Assistant Director of the State Forensic Sciences Department are admissible u/s 293 Cr.P.C. without examining the Expert, the Prosecution has rightly chosen to examine the Ballistic Experts in the given facts and circumstances of this case.

52. One another argument that was advanced before us was that item no.1 is not a full bullet, but a metal piece and therefore, it cannot be construed as having been the fatal bullet. To answer this question, it may be necessary to look into the fire power of M.O.2. Rajan [P.W.48] in his report [Ex.P38] has stated:

"As per literature, the effective range of the above rifle is 440 yards".

440 yards will be approximately 1320 feet. The distance from the balcony of the residence of the appellant to the place where the dent on the compound wall was found is hardly 100 ft. as could be seen from the Rough Sketch. When a bullet is fired from such a high power rifle from a distance of 100 feet it would pierce through the human skull and after hitting on the compound wall, it will naturally break into pieces. This is not a great rocket science, but simple commonsense inference which this Court under Section 114 of the Indian Evidence Act can safely draw.

53. The learned Senior Counsel for the appellant took us meticulously through the entire evidence of Rajan [P.W.48] and the Ballistic Reports [Exs.P36, 37 and 38] and contended that what was examined by the expert was a self loading rifle and what is before the Court is M.O.2, a bolt action mechanical weapon and therefore, the entire evidence of the Ballistic Expert falls like a pack of cards in the light of the Prosecution case that the Ordnance Factory, Jabalpur had sold a .30 Bolt Action weapon under Ex.P42 to the Appellant. To substantiate this argument, he brought to our attention, observations in the Expert's report [Ex.P.38], which has already been extracted

above, wherein it is stated that they received a 7.62 x 63 mm caliber self loading rifle. He also contended that nowhere in his report [Ex.P38], Rajan has stated anything about the conversion of a Self loading rifle into that of a Bolt Action rifle. This argument sounded very attractive especially in the light of the evidence of one Packiam [D.W.1], an Ex-Serviceman and a self proclaimed expert in firearms. It is in the evidence of D.W.1 that M.O.2 is a bolt action weapon and it is not an automatic self loading weapon.

54. At this juncture it may be relevant to discuss about the evidence of Pakiam [D.W.1] who was examined by the appellant as defense witness. D.W.1 is an Ex-serviceman and in his evidence he has stated that he has handled all sorts of weapons and firearms during his service and that he has got good knowledge about weapons and their method of handling. He further stated that the rifle [M.O.2] is a Bolt Action rifle and it is not a Semi automatic rifle. He was primarily examined by the appellant in order to contradict the report of Rajan [P.W.48], wherein it is stated that a Self loading weapon was received from the Court by the Tamil Nadu Forensic Sciences Department. The evidence of D.W.1 is relevant under Section 9 of the Evidence Act since it seeks to rebut an inference suggested by a relevant fact, namely the opinion of the Ballistic expert which is relevant under Section 45 of the Evidence Act. As held by the Supreme Court in **State of Uttar Pradesh vs. Babu Ram [2000 AIR SCW 1798]** the evidence of defense witness should not be viewed with suspicion but should find equal treatment at the hands of the Court. There is no doubt that the weapon [M.O.2] is not a Self loading rifle, but a Bolt Action one. The question is, can a Self loading type be converted into a Bolt Action weapon? To the specific question in the cross examination, D.W.1 has stated that, "It is possible to convert a Semi Automatic weapon into a Bolt Action weapon, but that can be done only in the factory and not by any individual." He has further stated in the cross examination that if the cavity in the barrel of the weapon is sealed it will cease to be a Semi automatic weapon. Thereafter, it can be used only by manually pulling the bolt for loading the cartridge in the chamber each time after firing. This witness does not say that a Semi automatic weapon can never be converted into a Bolt action weapon. Therefore, his evidence does not in any way improve the case of the defense. It is in tune with Rajan's [P.W.48] evidence that the semi-automatic weapon has been converted into a Bolt Action weapon.

55. It may be relevant to state here the distinction between bolt action weapon and self loading weapon. Firearms are broadly classified into Automatic, Semi-Automatic [Self Loading] and Bolt Action [Or Pump Action/Lever Action] weapons under the Arms Act. Automatic weapon means, when the trigger is pulled once the bullets get fired automatically till the stock in the magazine gets exhausted. In a semi automatic weapon, after a shot is fired the next cartridge would automatically go and settle in the chamber and get ready for being fired, but the trigger must be pulled each time for firing. In a bolt action weapon, the handler should mechanically load the cartridge in the chamber after each firing by pulling the bolt backwards and locking it. Only thereafter he can press the trigger for firing.

56. P.W.48-Rajan has clearly stated in his evidence that though the weapon description is shown as self loading weapon in Ex.P38, he had to actually conduct the test firing by mechanically loading the bolt each time, because the weapon has been converted from a semi automatic one to bolt action weapon. It is the grievance of the learned Senior Counsel for the appellant that P.W.48 has improved his version in his evidence and there is no reference to such version in his report Ex.P38. An Expert will always give answers to the questions that are posed to him by the investigating agency through the Court. The I.O. in his evidence has stated that he had posed the following questions to the Expert for his opinion:

(1) What is the type of the weapon?

(2) What is the caliber of the weapon?

(3) Is it in a working condition?

(4) What is its range?

(5) What is its Country of origin?

57. For all these questions, P.W.48 has given his answer in Ex.P38, wherein, he has stated that the type of the weapon is self loading rifle manufactured in the USA. There was no question put by the I.O. as to the nature of the weapon. Type of weapon is different from nature of weapon. Had that question been asked, P.W.48 would have probably opined in Ex.P38 that, though the weapon is categorised as self loading, they had to actually use the bolt each time to load the cartridge. Had the Appellant been confident that the weapon [M.O.2] is a self-loading weapon and not a Bolt Action one he could have also prayed to the trial Court for re-examination of the weapon under Court supervision. At the time of seizure it would not have been possible for the I.O. to frame such a question to the expert, because after the recovery of the weapon from the river bed, he would not and should not have handled it. Therefore, there would not have been a necessity to frame a question relating to the nature of the weapon at that point of time. In any event, the serial number of the weapon namely 329154 which is referred to by the appellant himself in his gun licence renewal application [Ex.P4] finds place in the seizure mahazar Ex.P.9 as well in Ballistic report [Ex.P38]. The Prosecution cannot be expected to gather evidence to rebut all sorts of defences that may be raised by the accused.

OWNERSHIP OF THE RIFLE:

58. In order to establish this fact, the prosecution examined Mr.Y.S.Chauhan [P.W.51], who was the officer incharge of the Ordnance Branch at Jabalpur, Madhya Pradesh under the Director General of Ordnance Services. He proved the records [Ex.P42] relating to the sale of M.O.2 to the appellant. From Ex.P42 it is clear that a rifle bearing registration no.329154 was sold to Lt.Col.K.Ramaraj on 16.04.2005. The prosecution also examined Lt.Col.S.C.Pandy [P.W.52], who deposed about the sale of eight rounds of bullets under Ex.P43 series to Lt.Col.Ramaraj.

59. From the evidence of P.Ws.51 and 52, we conclude that one Lt.Col.Ramaraj had purchased a rifle .30 BA, Mechanical bearing registration no.329154 Springfield make and eight rounds of ammunition from the Government of India on 16.04.2005.

60. Can the rifle [M.O.2] available in the court be linked to the rifle sold by the Government to one LT.Col.Ramaraj? The answer to this question is in the cross examination of Y.S.Chauhan [P.W.51], who was shown M.O.2 while he was in the witness box and he answered thus:

> "Witness after comparing the M.O.2 with the voucher marked as Ex.P42 series stated that this is the weapon issued under the voucher."

61. The trial Court has put a court question and the answer given by Y.S.Chauhan [P.W.51] deserves to be extracted:

> "Court: There will be one registration No. for each weapon which cannot be changed and in this document, the registration number of the weapon is 30592.
>
> What I have stated the registration No. above is not the registration of the weapon. It is the no. of application form submitted by the concerned officer for allotment of riffle. The weapon registration No. is 329154. The above said no. mentioned in the voucher which is also marked as Ex.P42."

62. It is mandatory in the light of Rule 25 of Arms Rules, 1962 that:

> "**25. Identification marks on firearms**.-- A manufacture of firearms shall get every firearm manufactured by him stamped so as to show distinctly--
>
> (a) the maker's name and registered trade mark, if any;
>
> (b) the serial number of the weapon as entered in his register and the year of stamping; and
>
> (c) proof-mark."

63. To clinch the ownership issue the Prosecution has relied upon the Application [Ex.P4] dated 11.10.2010 signed and submitted by the appellant to the Commissioner of Police, Chennai – Sub Urban for renewal of his gun licence which expired on 12th March 2008. Ex.P4 has been proved by Dravidamani [P.W.13], who was working as an Armour in the Army Camp under the appellant. In Ex.P4 the Appellant has admitted that he is the owner of a springfield make rifle 0.30 BA bearing registration no.329154 issued by the COD, Jabalpur, under voucher no.B1/1307/2004-05 NSP dated 25.08.2004. This is an admission made by the appellant way back in 2010 and is relevant under Section 21 of the Evidence Act. Mrs.Sasikala working as a Superintendent in the office of the Commissioner of Police, was examined as P.W.31. In her evidence, she stated that she received the application (Ex.P.4] and had processed the same by calling for remarks from the Jabalpur Collectorate with regard to the expiry of the gun licence. She was

not cross examined. Therefore, we hold that the prosecution has proved that the Appellant is the owner of M.O.2 weapon.

CONDUCT OF THE APPELLANT:

64. The conduct of the appellant which is relevant under Section 8 of the Indian Evidence Act can be discussed under two sub headings.

(i) THE CONDUCT OF THE APPELLANT IN THROWING THE M.O. INTO COOVUM RIVER:

There is no direct evidence to prove this fact. The prosecution made a vain attempt through the evidence of Vignesh [P.W.7] to show that the accused was taking a long object covered with cloth from his house to the car after Dilshan was shifted to the hospital. We have disbelieved the testimony of Vignesh [P.W.7] on this aspect. It is not necessary that the conduct of the appellant should have to be established only through direct evidence. It could be established through circumstantial evidence also. The prosecution has satisfactorily established that the appellant was the owner of the weapon [M.O.2]. The prosecution has also established that the weapon was retrieved from the Coovum river based on the disclosure statement of the appellant. When a recovery is made on the disclosure statement of an accused, which is

relevant under Section 27 of the Evidence Act, three hypothesis follow:

1. The accused had hidden it.
2. The accused has seen someone hiding it.
3. The accused was told by someone about it.

As stated above, the prosecution has proved that the weapon [M.O.2] owned by the appellant had found its place into the Coovum river. Therefore, it is for the appellant to show as to how a weapon owned by him was not available with him, but was found in the river bed. In **State of Maharastra v. Suresh [2000(1)SCC 471]**, the Supreme Court while dealing with recovery effected under Section 27 of the Indian Evidence Act has held:

> "Three possibilities are there when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from

> telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

Applying this principle we will be justified in concluding that it was the appellant who had thrown the rifle in the Coovum for the purpose of effacing evidence. Since no charge for offence under Section 201 r/w 302 IPC for this overtact was framed, the appellant cannot be convicted now. Nevertheless his conduct in throwing the weapon [M.O.2] in the river is relevant and admissible and stands proved from the aforesaid circumstances.

(ii) **THE CONDUCT OF THE APPELLANT IN TAKING THE POLICE FOR EFFECTING RECOVERY:**

When an accused take the police and points out to the place which is to his exclusive knowledge and if the police are able to discover a fact, consequently, this conduct is also relevant under Section 8 of the Evidence Act as held by the Supreme Court in Prakash Chand vs. State [AIR (1979) SC 400] and **State NCT v. Navjot Sandhu [2005 AIR SCW 4148]**. Applying the principle laid down in the said judgment, the conduct of the appellant taking the Police and showing the place where he had thrown the rifle [M.O.2] is relevant

under Section 8 of the Evidence Act and is indeed an incriminating circumstance.

We have discussed in detail the evidence adduced by the prosecution and the defence in this case.

65. Now we propose to discuss the various judgments cited by the learned Senior Counsel for the appellant in support of his case:

(i) **Mahendra Pratap Singh v. State of Uttar Pradesh [(2009) 3 SCC Crl 1352].**

This is a case in which the trial Court acquitted the accused and the appellate Court had reversed the acquittal. This judgment was cited to show that the rifle examined by the Ballistic Expert was a .30 Bore one, whereas the rifle used was .315 Bore one. In that case it is alleged that by a single shot four persons were injured, out of which one of them died. There is no cogent evidence to show that what was seized from the accused was only sent to the Ballistic Expert for examination. In the facts of this case, the prosecution has adduced cogent evidence to show that the rifle bearing No.329154 was sold to the appellant; it was fished out from the river, sent to the Court and was received by the Ballistic Expert. Therefore, the above said ruling has no application to the facts of this case.

(ii)**Mujeeb and another vs. State of Kerala [2000(10) SCC 315]**

This Ruling was cited to support the proposition that in a case resting on

circumstantial evidence, such evidence must be cogently and firmly established. There is no quarrel with this proposition because we ourselves have analysed the evidence on the dictum of the five Judge Bench of the Supreme Court cited supra.

(iii) **S.K.Yusuf v. State of West Bengal [2012(1)MLJ (Crl) 127 SC]**

This Ruling was cited in order to show that merely by discovery of the weapon from the information provided by the accused it cannot link the weapon with the crime. We agree with this proposition and on facts of this case, we hold that there is sufficient material to show that the appellant had used this weapon to commit the crime.

(iv) **Lakhwinder Singh and others v. State of Punjab [2002(10) SCC 295]**

In this case it appears from the Ballistic Expert's opinion that the bullet recovered from the place of incident was a carbine bullet, but whereas it is the case of the prosecution that the accused had used a AK-47 rifle. The facts of this case also does not support the appellant because in this case the metal pieces [M.O.12 series] had been compared with the test bullet fired with the rifle [M.O.2] and they were found to tally.

(v) **Brijpal Singh v. State of Madhya Pradesh [2003(11) SCC 219]**

In this case, the eye witnesses stated that the accused had fired from a Mauser Rifle from a close range of the deceased, but the Ballistic Expert's report stated that the discharged cartridge found near the dead body was not fired from Mauser Rifle. In the case on hand, the Ballistic Expert's Report clearly shows that item 1 of M.O.12 series must have been fired from M.O.2-Rifle.

(vi) **Puran Singh v. State of Uttaranchal [(2008) 2 SCC (Cri) 155]**

In this case, the Supreme Court acquitted the accused based on the Ballistic Expert's opinion that the cartridge which caused injury was not fired from the single-barrelled 12 Bore gun said to have been used by the accused. This judgment also does not support the defense since the Ballistic Expert's opinion supports the theory that M.O.2-Rifle was used.

Has the prosecution proved their case?

The word "proved" as defined in Section 3 of the Evidence Act is:

> "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

In the said definition, Sir Stephens, the author of the Act has used the

word "matters" and not "evidence", though the word "evidence" has been defined in the Act. In other words, the Court should arrive at a supposition from the matters before it and its analysis cannot be confined only to the evidence before it. The expression "matters" has wider connotation than the word "Evidence" because the word Evidence has been defined in the Act thereby limitng its operation. We hasten to add that this does not mean that the Court can look into anything and everything by bringing it within the contours of the word "matter". The word "matter" has been used because the Court has been empowered by the Evidence Act to raise some presumptions as in Section 114 of the Act, which permits the Court to presume the existence of any fact which it thinks likely to have happened in their relation to the facts of the particular case. Therefore, the word "proved" in Section 3 of the Evidence Act should be read conjointly with Section 114 of the Evidence Act, for the Court to apply its judicial wisdom in determining whether a case has been proved. The quality of proof should satisfy the ordinary prudent man and nothing more. The concept of adducing proof beyond reasonable doubt was propounded by Sir Stephens himself in his book "The Indian Evidence Act with an introduction on the Principles of Judicial Evidence "[Macmillan Publication 1872], He says at page 36:

> "It is commonly said in reference to judicial inquiries; that in criminal cases guilt ought to be proved 'beyond all reasonable doubt'."

This principle was reiterated by the House of Lords in **Woolmington vs. Director of Public Prosecutions [1935 All England Law Reports 1]**. Subsequently in **Jayasena v. Reginam [1970(1)All England Report 219],** the Privy Council had to deal with a judgment given by the Supreme Court of the Island Ceylon [present Srilanka] in its criminal jurisdiction. In that case, their Lordships of the Privy Council referred to Woolmington's case and said that it was a decision on the common law of England and that they preferred to go by the definition of the word "proved" in Section 3 of the Ceylon Evidence Ordinance, which is *pari materia* to the definition of the word "proved" in Section 3 of the Indian Evidence Act, 1872, since both were fathered by Sir James Stephens. The concept of 'proof beyond reasonable doubt' is relatable to the quality of evidence which prosecution should adduce in a criminal case, but the test laid down by Sir Stephens for giving an ultimate verdict in a criminal case from the stand point of a Judge is moral certainty test. In Stephens' own words,

> "The only point in its worth noticing is what is commonly called moral certainty, and this means simply such a degree of probability as a prudent man would act upon under the circumstances in which he happens to be placed in reference to the matter of which he is said to be morally certain. What constitutes moral certainty is thus a question of

prudence, and not a question of calculation."
(Page No.36 of his book referred to above)

'Moral Certainity' propounded by Sir Stephens should not be confused with 'Moral Conviction'. Moral conviction has no place in our crimnal jurisprudence. Moral Conviction means, the Judge convicting an accused based on his subjective belief that the accused must have committed the offence though there is no legal evidence for it. Since Moral Certainity has been explained by Sir Stephens himself which is given above, we do not want to expatiate on it further. Applying the moral certainty test of Sir Stephens, we conclude that the prosecution has proved beyond all reasonable doubt that the appellant had fired at Dilshan with his rifle [M.O.2] at around 1.30 p.m. on 03.07.2011 resulting in Dilshan's death. Therefore, the charge under section 302 IPC stands proved.

66. Coming to the charge of possessing unlicensed arm under Section 25(1-B) r/w Sec.3 of the Arms Act, we find that the prosecution has proved from the evidence of P.W.13 and P.W.35 and from Ex.P4 that the gun licence had expired and the accused had not deposited the same in the armory as mandated by law. In the light of this evidence by the prosecution, the burden shifts on the accused under Section 106 of the Indian Evidence Act to show that he had a valid and subsisting licence to hold a weapon which he had failed to discharge.

67. The prosecution examined Col.Raymond [P.W.34] who has stated in his evidence that there is no record in the register of Arms in any of the kotes to show that the Appellant had deposited his weapon or ammunition which requires to be done if the licence expires. Thus the prosecution has also established that the appellant had not deposited the rifle in the armoury after expiry of the licence on 12.03.2008 and therefore, he is punishable u/s 25(1-B)(h) r/w 21 of the Arms Act, 1959. Since we have concluded that it was the appellant who had caused the death of Dilshan on 03.07.2011 by opening fire attempt with rifle [M.O.2] with his unlicensed rifle, the conviction of the appellant u/s 27 of the Arms Act, 1959 is justified. Therefore, we conclude that the prosecution has proved the above charges framed against the appellant beyond reasonable doubt and we confirm the conviction and sentence imposed upon the appellant by the trial Court.

68. As regards the charge under Section 201 r/w 302 IPC, the trial Court has held the accused guilty of this charge, but has not imposed any sentence because the appellant is being convicted for life imprisonment for the main charge under Section 302 IPC. Since we have held that there is no material to show that the accused had tried to cover up the place of occurrence with leaves as held by the prosecution, we are acquitting the appellant of the charge under

Section 201 r/w 302 IPC.

69. Before parting with this case, we wish to place on record our appreciation to:

1. the Army authorities for rendering their best assistance to the Police and promptly handing over the metal pieces [M.O.2 series] to the Investigating Officer.

2. the trial Judge, who appears to have taken an active part in the trial by exercising her powers under Section 165 of the Indian Evidence Act and putting relevant questions to various witnesses instead of remaining like a cricket umpire. While bidding aideu to this case, we also appreceiate for the manner in which this case was presented and argued before us by Mr.A.Natarajan, learned Senior Counsel for the Appellant and Mr.Shanmughavelayutham, the learned Public Prosecutor for the State.

In fine, the appeal is dismissed with the above said modification. The conviction and sentences imposed by the trial Court except the conviction under Section 201 r/w 302 IPC, are confirmed. The compensation amount payable to P.W.1 ordered by the trial Court is also confirmed.

[S.R.,J.] [P.N.P.,J.]
12.12.2013

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Index : Yes/No
Internet : Yes/No

To

1.The Additional Sessions Judge,
Fast Track Court No.V, Chennai.

2. The Inspector of Police
CBCID, Guindy Estate
Chennai.

3.The Public Prosecutor
High Court, Chennai.

4.The Administrative Commandant, CDR
Station Head Quarters
Fort St.George,
Chennai 600 009.

S.RAJESWARAN, J.

AND

P.N.PRAKASH, J.

Crl.A.No.301 of 2012

12.12.2013