

(2013) 07 MAD CK 0211
In the Madras High Court
Case No : H.C.P. No. 1265 of 2013

Ramesh	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Constitution of India, 1950 — Article 17
Penal Code, 1860 (IPC) — Section 366

Citation : (2013) 3 MLJ(Cri) 288

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for R. Sankarasubbu, for the Appellant;
Shanmugavelayutham, Public Prosecutor, Assisted by I.S. Inbadurai, Special
Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

C.T. Selvam, J.—Pursuant to the filing of the above Habeas Corpus Petition, the petitioner came up with a miscellaneous petition in M.P. No. 1 of 2013. On 10.7.2013, we passed the following order in M.P. No. 1 of 2013 in H.C.P. No. 1265 of 2013:

Despite this State being the forerunner in social reforms, despite its boasting of the tallest leaders in support of the cause, the infamous "Dharmapuri incidents" have demonstrated that we still are to rid our minds of the cobwebs of caste and communal prejudice. The death of Elavarasan is a sad sequel.

2. This Habeas Corpus Petition has been moved by the petitioner, who informed of being a friend of the deceased Elavarasan. As originally filed, the prayer sought was for:

directing the first respondent to conduct the postmortem of the deceased Elavarasan body now kept at Government Hospital, Dharmapuri, either at Government Hospital, Chennai or Government Hospital, Coimbatore by a team of

Doctors and among the team one Dr. Dekal, Anna Nagar, Chennai, the choice of victim family and the postmortem proceedings may be videographed as per the guidelines of National Human Rights Commission to secure the ends of justice.

3. The matter was mentioned before us at 10.30 a.m. on 5.7.2013. Then, we were given to understand that the Superintendent of Police, Dharmapuri, had assured Mr. R. Sankarasubbu, learned counsel for the petitioner, that he would withhold the postmortem till 11.30 a.m. so as to enable the petitioner to obtain orders upon the original petition. On our permission, the matter was brought and taken up for hearing at 12.15 p.m. on such date. At such instance, we were informed by learned Public Prosecutor that the postmortem had been commenced at 7.00 a.m. and completed by 11.15 a.m. Hence, M.P. No. 1 of 2013 in H.C.P. No. 1265 of 2013 came to be filed seeking the following relief:

directing the first respondent to conduct re-postmortem of the deceased Elavarasan, son of Elango, now kept at Government Hospital, Dharmapuri, by a team of Doctors along with Doctor Dekal, Forensic Expert, Anna Nagar, Chennai, the choice of victim family and to permit videograph the postmortem at petitioner's choice as per the guidelines of National Human Rights Commission to secure the ends of justice, pending disposal of the Habeas Corpus Petition.

4. The deceased Elavarasan and a girl, by name Divya, belonged to different communities. Being in love, they had eloped. The father of the girl committed suicide. This led to a huge communal backlash as a result of which several houses of members of the other community were damaged as also set ablaze. The incident presently is, infamously referred to as the "Dharmapuri incidents". The mother of the girl preferred a complaint against the deceased complaining of offence u/s 366 IPC. Divya was produced before learned Judicial Magistrate I, Dharmapuri and she expressed her desire to live with Elavarasan informing that both of them were married and that she left her parental home on her own accord. She was permitted to go along with Elavarasan. H.C.P. No. 421 of 2013 came to be filed by the mother before this Court. In proceedings therein, Divya was produced and she informed that she was neither kidnapped nor illegally detained. The matter was adjourned and directed to be posted before a different Division Bench. The production of the girl was required on 6.6.2013. On 4.6.2013, Divya left her matrimonial home to visit her mother and thereafter, did not return. She appeared before this Court on 6.6.2013 and expressed her desire to live with her mother. It is in such scenario that the body of the deceased Elavarasan was found near Arts College Railway Track, Dharmapuri, on 4.7.2013 at 3.00 p.m.

5. His postmortem report reads as follows:

Post-Mortem Certificate

P.M. No. 332 of 2013

Dated: 5.7.2013

Regarding the body of a male aged about 20 years, named E. Elavarasan, S/o. Elango, requisition received at 6.00 a.m. on 5.7.2013 from the Deputy Superintendent of Police of Coimbatore Railway Division with Crime No. 96 of 2013 of Dharmapuri Railway Police Station, dated 4.7.2013. Body in charge Police Constable: Gr I PC 1189 named Tr. V. Raman.

Identification and Caste Marks:

- 1) A black mole on front of lower part of right side of Chest.
- 2) A black mole on right side of neck.
- 3) A black mole on front of upper part of left side of abdomen.

The body was first seen by the undersigned at 7.00 a.m. on 5.7.2013.

Its condition then was Rigor mortis present all over the body.

Post-Mortem commenced at 7.00 a.m. on 5.7.2013.

Appearances found at the Post-mortem of moderately nourished male dead body.

Post Mortem Changes:

Hypostasis on dependent unsupported part fixed.

External Injuries:

- 1) 22 x 4 cm black grease mark on the inner aspect of left forearm.
- 2) 4.5 x 4.5-2 cm black grease mark on inner aspect of left wrist.
- 3) 5 x 2.5 cm black grease mark on front of left wrist.

Irregular reddish abrasion on following sites:

- 1) 2 x 0.3 cm on the right shoulder.
- 2) 1 x.6-0.2 cm on the outer aspect of upper part of right arm.
- 3) 0.6 x 0.4 cm on the outer aspect of right arm 2 cm behind previous wound (No. 2).
- 4) 0.7 x 0.4 cm on the back of left mid forearm.
- 5) Multiple irregular reddish abrasions on back of left index, middle, ring and little finger measuring 3 x 0.5 cm to 0.6 x 0.2 cm.
- 6) 8.5 x 8 cm on front of lower half of left forearm.
- 7) 3.5 x 0.2 cm scratch abrasion on the inner aspect of right mid foot.

Lacerations:

- 1) 15 x 8 cm x cavity deep laceration on left nasal, forehead, frontal and parietal region exposing fractured pieces of vault bone, irregularly lacerated duramater

and part of cerebellum.

2) 7 x 2 cm x bone deep laceration on the back of left elbow with surrounding irregular black grease mark. The wound exposes fractured ends of upper part of ulna bone.

Deformity:

1) Swelling deformity of left mid forearm, on dis-Section radius bone fractured radius at its mid 3rd with surrounding contusion and ulna bone fractured at its upper 3rd with surrounding reddish contusion.

Dissection of Thorax and Abdomen:

Rib cage was intact.

Heart was normal in size, left ventricle and atrial chambers were empty. Right ventricle and atrial chambers contained clotted blood. Valves, great vessels and coronaries were normal.

Lungs were normal in size, cut Section was pale.

Stomach contained 30 ml of brownish yellow thick fluid with no specific odour. Mucosa was pale.

Liver was normal in size, cut Section: Pale

Spleen and Kidneys were normal in size, cut Section was normal.

Urinary bladder contained 150 ml of clear urine.

pelvic bone was intact.

Dissection of Head and Neck:

Scalp: 6 x 1.5 cm x scalp deep reddish contusion on the right parietal region.

Vault: 22 x 15 cm comminuted fracture involving right fronto parieto occipital bone. 9 cm fissured fracture in the left parieto occipital bone.

Duramater: Torn irregularly over right and left fronto parieto temporal region. Both cerebral hemispheres were oozed out from the cranial cavity.

Both cerebellum and part of brain stem was in its position. Cut Section was pale.

Base: Both right and left anterior cranial fossa, right middle cranial fossa were fractured into multiple pieces, exposing left eye ball and its surrounding tissues and nasal bone.

7 cm fissured fracture in the left posterior cranial fossa which is in continuous with the vault fracture.

The oozed brain matter at the crime scene was recovered along with blue metals in two separate plastic cover, and the brain matter was in semi-liquefied state.

Hyoid bone was intact.

Spinal column was intact.

Viscera preserved for chemical analysis.

Control blood collected in gauze.

The post mortem examination was stopped at 8.15 a.m. on request from the Superintendent of Police, Dharmapuri. The postmortem examination was restarted at 10.50 a.m. and concluded at 11.15 a.m.

Opinion as to cause of death:

(a) Reserved pending report of

(b) The deceased would appear to have died of head injury. The death would have occurred 12 to 24 hours prior to autopsy.

6. Pursuant to the earlier orders of this Court, this Court has viewed the videograph of the postmortem along with the following persons:

Doctors:

(1) Dr. M.J.E. Ambrose Additional Medical Superintendent & In-Charge MLC-Autopsy Wing, JIPMER, Puducherry-6.

(2) Dr. K.K. Shaha Associate Professor, Department of Forensic Medicine, JIPMER, Puducherry-6.

(3) Dr. M.N. Rajamani Bheem Rao, Associate Professor, Forensic Medicines, Madras Medical College, Chennai-3.

(4) Dr. V. Dekal, Associate Professor, Saveetha Medical College, Chennai.

(5) Dr. K. Thunder Chief, 1st Medical Officer of the Team Assistant Professor, Department of Forensic Medicines, Government Dharmapuri Medical College, Dharmapuri.

(6) Dr. R. Sathish Kumar, 2nd Medical Officer of the Team, Tutor in Forensic Medicine, Government Dharmapuri Medical College, Dharmapuri.

(7) Dr. G. Ravi Kumar 3rd Medical Officer of the Team, Assistant Professor, Government Dharmapuri Medical College, Dharmapuri.

Advocates:

(1) Mr. R. Sankarasubbu, learned counsel for the petitioner;

(2) Mr. S. Shanmuga Velayutham, learned Public Prosecutor assisted by Mr. A.N. Thambidurai, learned Additional Public Prosecutor;

(3) Mr. Inbadurai, learned Special Government Pleader; and

(4) Mr. P. Wilson, learned Additional Solicitor General of India assisted by Mr. C.

Kanagaraj, learned Central Government Standing Panel counsel.

7. We have required the Doctors to inform us their views by way of independent reports and the same stand obtained. We, for the purpose of convenience, reproduce the reports of the Doctors:

(1) Report of The Doctors From Jipmer, Pondicherry

The following Doctors from JIPMER, Puducherry were present on 9.7.2013 in the High Court of Madras, Chennai-104, during the scrutiny of the videograph of the post-mortem conducted on the deceased Ilavarasan.

(1) Dr. M.J.E. Ambrose, Additional Medical Superintendent & In-Charge MLC-Autopsy Wing, JIPMER, Puducherry-6.

(2) Dr. K.K. Shaha, Associate Professor, Department of Forensic Medicine, JIPMER, Puducherry-6.

Following are the defects, which were observed during the performance of the autopsy:

(1) There was a continuous stream of visitors, including lawyers, politicians and police personnel inside the mortuary; apart from the personnel authorised for recording the post-mortem, it was observed that other police constables were also recording the procedure in their cell phones.

(2) There were some defects in the performance of the autopsy:

(a) collection of blood for chemical analysis was unsatisfactory;

(b) none of the organs had been weighed as per the standard protocol;

(c) lighting was not sufficient during the autopsy;

(d) a requisition for post-mortem has been issued by the Deputy Superintendent of Police, Coimbatore Railway Division. But, on the conclusion of the Report, it was mentioned that the post-mortem was stopped in the middle for two-and-half hours on the re-quest of the Superintendent of Police, Dharmapuri.

In our view, a second post-mortem is not necessary, as the main injuries have already been covered extensively in the video.

(2) Report of Dr. V. Dekal, Associate Professor, Saveetha Medical College, Chennai

There are lot of deficiencies in conducting the postmortem. To name a few, none of the organs have been washed, examined before dis-Section. Dis-Section of the heart was not done in the routine advisable manner which is usually followed and coronaries were not examined. But all these deficiencies are not much related to the case. Hence, I would like to highlight the reasons why a re-postmortem is necessary.

(i) The injury on the left forearm has not been clearly dissected and examined.

The abrasion on the right foot in spite of the foot wearing being intact. The dissected tissues on the back of the right heel have not been sent for Histo Pathological Examination to find out whether it is an abrasion, contusion or a mole;

(ii) Thoracic cage examination have not been done properly as the thoracic cage muscles have not properly visualized in the videograph;

(iii) The head has not been shaved, the margin of the wound has not been examined even with a hand lens. The isolated contusion on the upper part of the right occipital region has not been examined for corresponding abrasions, if any, by shaving the hair. The fragments of bones and the remains of the tissue matter of the brain have not been examined properly;

(iv) The scrotum and genitalia have not been dissected to rule out any internal contusions or injuries.

(v) None of the tissues have been subjected to Histo Pathological Examination to find out the antemortem nature of the injuries and to find the timing of the injuries as to which could have occurred first.

(vi) Multiple incisions all over the body had not been done to rule out deep-sheeted internal contusions which is commonly expected in cases of assault and would not be evident to the eyes especially when the victim is a dark-skinned individual.

(vii) Grease marks that were present on the injuries on the left forearm are not visible properly in the videograph as they have been taken in the early day morning and the grease present on the tissues have not been sent for Forensic Science Laboratory for comparison to that which is present in the scene of occurrence.

(viii) The fragments of brain tissues which were recovered from the scene of crime has not been examined to check the presence of foreign matters and to find out the nature of the injury.

To conclude, it looks the autopsy is not a much deficient autopsy for a routine case like accident or murder. But to answer a few crucial questions in a highly suspicious case like this, it is not a reasonably good autopsy. Autopsy surgeon may not be able to tell whether it could be a suicide or homicide from the way the documentations have been done. So, a second autopsy will definitely help to correct these deficiencies. Better correlation of autopsy findings, which will help the investigation team and the Court to arrive at the near truth.

(3) Report of Dr. M.N. Rajamani Bheem Rao, Associate Professor, Forensic Medicines, Madras Medical College, Chennai-3.

I may be permitted to submit the following points:

After viewing the video presentation:

(i) I am of the opinion that standard methods/procedures were followed as is done in other medical colleges;

(ii) Autopsy room was clean, well ventilated and with sufficient natural light;

(iii) Since major portion of brain was spilled out at the scene of crime and the skull appeared shattered (multiple fractures) in the video, the cause of death is obvious and consistent with the post-mortem certificate.

(iv) Hence, II/Re-post-mortem will not be necessary.

(4) Report of Dr. K. Thunder Chief, Assistant Professor, Department of Forensic Medicines, Government Dharmapuri Medical College, Dharmapuri.

Though there are some lacunae in the post-mortem examination, pre-post-mortem procedural (presence of unauthorised person in the mortuary hall during post-mortem examination), otherwise, this case is a direct case with severe head injury and with that injury, it is incompatible with life. In such situation, we (team of Doctors) have done postmortem examination in accordance with the case (injury sustained by the deceased). The re-postmortem examination is not going to serve any further information in regards to the cause of death.

(5) Report of Dr. R. Sathish Kumar, Tutor in Forensic Medicine, Government Dharmapuri Medical College, Dharmapuri.

To

The Registrar General High Court of Madras, Chennai 600 104.

Respected Sir,

Sub: My Opinion and Views about the post-mortem conducted on the deceased Ilavarasan-regarding.

I agree fully about the findings on the post-mortem Report of the deceased Ilavarasan and the injuries and the wound on the deceased body conducted by Dr. Thunder, Chief.

In my opinion, as a Forensic Department Tutor, the cause of death is due to extensive head injury.

There is no need for any second post-mortem, as the injuries are very obvious and the Brain Matter had come out.

(6) Report of The Dr. G. Ravi Kumar, 3rd Medical Officer of The Team, Assistant Professor, Government Dharmapuri Medical College, Dharmapuri.

To

The Registrar General High Court of Madras, Chennai 600 104.

Respected Sir,

Sub: My Opinion and Views about the post-mortem conducted on the deceased Ilavarasan-regarding

Through our post-mortem examination, we concluded (Team of Doctors) that the cause of death in this case is due to Head injury, with the help of our post-mortem examination findings.

In my opinion, re-post mortem will not serve any purpose in finding out the cause of death.

8. Mr. R. Sankarasubbu, learned counsel for the petitioner submitted that Dr. Thunder Chief, Head of the postmortem team was from Salem. He had been required to come to Dharmapuri and stay overnight there towards hasty conduct of the postmortem.

The requisition of postmortem has been handed over to him at 6.00 a.m. and the postmortem had commenced at 7.00 a.m. Though the Superintendent of Police had undertaken to hold his hands towards affording an opportunity to the petitioner to obtain directions which would enable the petitioner to suggest the presence of a Doctor of his choice at the postmortem, at 10.50 a.m. the same had been continued without waiting for any direction from this Court. After starting the postmortem at 7.00 a.m., the same had been discontinued at 8.15 a.m. and thereafter it had again re-commenced at 10.50 a.m. and was completed by 11.15 a.m. This was enough reason to suspect the investigation. Referring to an order of this Court made in CrI. O.P. No. 874 of 2000 dated 12.1.2000, learned counsel submitted that in a case of custodial death, this Court had ordered re-postmortem on the very same day of moving the petition. Learned counsel referred to a decision of the Apex Court reported in Lingala Vijay Kumar and Others Vs. The Public Prosecutor, to inform as follows:

9. What do we mean by "the ends of justice"? Hans Kelson in a farewell lecture in Berkeley, way back in 1952, raised the question and said:

When Jesus of Nazareth was brought before Pilate and admitted that he was a king he said: "It was for this that I was born, and for this that I came to the world, to give testimony for truth." Whereupon Pilate asked, "What is truth?" The Roman procurator did not expect, and Jesus did not give, an answer to this question; for to give testimony for truth was not the essence of his mission as Messianic King. He was born to give testimony for justice, the justice to be realised in the Kingdom of God, and for this justice he died on the cross. Thus, behind the question of Pilate, "What is truth?" arises, out of the blood of Christ, another still more important question, the eternal question of mankind, What is Justice?

No other question has been discussed so passionately; no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the object of so much intensive thinking by the most illustrious from Plato to Kant; and yet, this question is today as unanswered as it

ever was. It seems that it is one of those questions to which the resigned wisdom applies that man cannot find a definitive answer, but can only try improve the question.

It fairly follows that Christian justice was not Roman justice, and social justice hardly squares with "Haves" justice. To enhance the sentence to seven years" RI by merely saying the "ends of justice" demand it is to continue the question, as Prof. Kelson put it, not to meet it. We find no speaking order in the High Court's substantial enhancement and restore the sentence of the Sessions Court imposed for stated reasons none of which have been expressly dissented from by the High Court or can be called impertinent.

9. Lamenting that Article 17 of the Constitution of India which provided against untouchability was even today observed in the breach, learned counsel contended that as the postmortem was hurriedly closed, the same was incomplete. The petitioner wanted postmortem to be conducted at the Government Hospital, Chennai or Government Hospital, Coimbatore, but the same has been done at Dharmapuri and by an incompetent Doctor. This was reflective of bias. Referring to the postmortem report, learned counsel informs that the Doctors had not cared to examine the plastic cover containing brain matter and such was an act of carelessness.

10. Learned counsel contended that this is a case of honour killing which amounts to first degree murder. There had been as many as 30 honour killings in the State this year and 90% of those killed, were Dalits. Therefore, enormous care ought to have been taken in the conduct of postmortem. Dr. Thunder Chief, Head of the postmortem team, has hardly one year experience. He is merely an Assistant Professor. He and the two others, could hardly be informed to be a team, since the other Doctors belonged to disciplines other than Forensic Science and hence, were not competent. Learned counsel would also attack the report of Doctors belonging to JIPMER, Puducherry, informing that they never had conducted any postmortem and it was only since the Doctor who conduct postmortems at JIPMER was not available, that the two Doctors came to be sent from JIPMER. Even while stating so, he would require this Court to take judicial notice of the fact that Doctors of JIPMER, Puducherry have informed that postmortem normally would be commenced at 10.30 a.m. Informing that Dr. V. Dekal, who had appeared at the instance of the petitioner is a man of great expertise having worked at the Royapettah Government Hospital, Stanley and Government General Hospital, learned counsel would state that his opinion regards the need for a further postmortem is to be accepted and a valuable opportunity to find out the truth ought not to be missed.

11. Supporting the submissions of Mr. R. Sankarasubbu, learned counsel for the petitioner, Mr. N.G.R. Prasad, learned counsel, would submit that untouchability was a matter of concern for society and constitutional sensitivity ought to be taken into account towards winning the confidence of people. Learned counsel would also inform of bias and of the postmortem report being incomplete by

placing submissions similar to such addressed by Mr. R. Sankarasubbu. In support of his contentions, learned counsel points out that the report of the Doctors from JIPMER, Puducherry, informed of insufficiency of light whereas, Dr. Rajamani Bheem Rao, Madras Medical College, has stated otherwise. Informing that Dr. V. Dekal, had pointed out various defects, learned counsel submits that cultural prejudice was writ large and therefore, it logically would follow that a second autopsy is to be conducted to find out whether the case is one of homicide. An order to such effect would be one of exhibition of communal concern. Learned counsel further submits that autopsy earlier done was not befitting of the term. Informing that the State wanted to make out a case of suicide and that the parties were victims of an unequal society, learned counsel submits that a further autopsy is required to remove doubts in the minds of the people.

12. Mr. S. Shanmugavelayutham, learned Public Prosecutor, refers this Court to the prayers in the petitions and submits that the same were not maintainable. He would submit that investigation is the premise of the police and permitting others to partake in the postmortem, which also is a part of the investigation process, would amount to permitting interference therewith. He would contend that only a friend of the deceased has filed the present petition and not his family members or immediate relatives. He would contend that the postmortem report is in the usual format and as the present is a sensitive case, a team of three Doctors had been required to undertake the postmortem. Dr. Thunder Chief, Assistant Professor, has conducted approximately 1550 postmortems. Presently, there is no Head of Forensic Department at Dharmapuri Hospital and it is expected that Dr. Thunder Chief would be appointed as such.

13. Learned Public Prosecutor would contend that the requirement of the law is that postmortem be conducted between sunrise and sunset. It was only owing to intervention of the petitioner party that the postmortem had been stopped for a while. The contentions regarding the postmortem being incomplete, careless or of being tainted by bias, were erroneous. He would rely upon the report of the Doctors from JIPMER, Puducherry, to the effect that no further postmortem was necessary. He would also attack the report of Dr. V. Dekal, who appeared at the instance of the petitioner, informing that he was not attached to any Government Hospital, he having earlier lost his job and as a party aggrieved, his report is not acceptable in any manner. He also pointed out that several flaws informed in the report of Dr. V. Dekal actually are matters for pathological examination, which arise subsequent to postmortem. Learned Public Prosecutor refers to a decision of this Court reported in *The Government of Tamil Nadu and Others Vs. Mrs. Muthulakshmi and The Joint Director, Central Bureau of Investigation*, to inform that unless material deficiencies in the postmortem were pointed out, a further postmortem would not serve any purpose.

14. Before proceeding upon the merits of the case, we are to state that we cannot, but take adverse notice of the fact that several police personnel as also

others were permitted to be present during the postmortem. In the normal course, subsequent to inquest, the body is to be placed in charge of a police constable (formally referred to as "body constable") towards forwarding the same for postmortem purposes. During the postmortem the body constable would have to wait outside the postmortem hall. It is only after completion thereof that the body as also any wearing apparels and other properties of the deceased would be handed over to the body constable. None, but the postmortem Doctor and his team are to be present in the postmortem area. The exception would be that with the advent of videography, it would be permissible for the postmortem Doctor to permit only a videographer authorised by the investigating officer into the postmortem hall. The above observations are to be read as directions of this Court and accordingly, a copy of this order shall be forwarded to the Director General of Police for appropriate action. A lay man may well ask, "Why not a second postmortem, if there be nothing to hide why should the State oppose it?". Judicial discipline requires us to resist the temptation of pandering to the public will. The harm to Government reputation by ordering a second postmortem merely for the asking, is to be borne in mind. Further, respect is to be shown to the dead. In particular cases, postmortem becomes a legal necessity. A second postmortem is undesirable. This is not to say that a second postmortem never is to be conducted, only that it easily is not to be entered upon.

15. Subsequent to their filing reports, we have, in Chambers, enquired of the Doctors. Importantly, though certain discrepancies in the conduct of postmortem proceedings have been informed, six of the Doctors viz., Dr. M.J.E. Ambrose, Additional Medical Superintendent & Incharge MLC-Autopsy Wing, JIPMER, Puducherry; Dr. K.K. Shaha, Associate Professor, Department of Forensic Medicine, JIPMER, Puducherry; Dr. M.N. Rajamani Bheem Rao, Associate Professor, Forensic Medicines, Madras Medical College, Chennai; Dr. K. Thunder Chief, M.D., Assistant Professor, Department of Forensic Medicines, Government Dharmapuri Medical College, Dharmapuri; Dr. R. Sathish Kumar, Tutor in Forensic Medicine, Government Dharmapuri Medical College, Dharmapuri and Dr. G. Ravi Kumar, 3rd Medical Officer of the Team, Assistant Professor, Government Dharmapuri Medical College, Dharmapuri, have opined that there is no need for a re-postmortem. They have also stated that the same would not serve any purpose. However, Dr. V. Dekal, Associate Professor, Saveetha Medical College, who has been present at the instance of the petitioner, held a different view as is discernible from his report. Major areas of complaint informed of by Dr. V. Dekal are in relation to non-removal of hair in the skull towards examining the skull for other injuries, non-examination of the rib cage by cutting between ribs towards ascertaining if there were any other injuries and the failure to look for internal injuries upon the body of the deceased. On our enquiry, of Dr. K. Thunder Chief, the person who headed the postmortem, we, having had the benefit of also viewing the videograph, are satisfied with his answers regards two of the three aspects. As regards the non-shaving of the head for purpose of examination of

skull, the Doctor has informed that he has cut through the scalp and studied the surface on either side to satisfy himself that there were no other injuries. As regards the rib cage, he has informed that he has exerted pressure from both sides of the rib cage and also run his hands through the inner wall thereof to make sure that there were no injuries. It is in such circumstances he has reported that the rib cage was normal. Both Dr. K. Thunder Chief as also Dr. M.J.E. Ambroise have informed us that where an arm has been folded in front of the chest while taking a fall, the same is likely to act as a cushion resulting in avoidance of injury to the rib cage. To repeat ourselves, having had the benefit of viewing the videograph, we find ourselves fully satisfied on these aspects.

16. Our above discussion leaves us with the concern regarding the statement of Dr. V. Dekal of no attempt having been made to ascertain if there were any internal injuries, particularly, whether abrasions have been noticed. According to him, this would require multiple incisions all over the body towards ruling out deep-sheeted internal contusions which is commonly expected in cases of assault and would not be evident to the eyes especially when the victim is a dark-skinned individual.

17. We note that the postmortem report is silent as to any change in the skin texture, of course, Dr. K. Thunder Chief, who headed the postmortem team, had explained that if there were any such changes, then they would have been informed in the postmortem report. Though, in the circumstances we have no reason to suspect any wrong doing in the conduct of the postmortem, we are conscious that it is not the intention of the petitioner to pursue before us an unjust cause. It is a cry for justice by the downtrodden and the oppressed. Thus, we would consider it proper that such a cry go not unheard and that this Court appropriately respond thereto. It is thus, that though it is in the rarest of rare instances and where the Court has reason to believe that the postmortem was incomplete, careless or biased, that a re-postmortem may be ordered though it might amount to playing havoc with the cadaver, towards securing the ends of justice, this Court would consider the present petition to a limited extent.

18. Accordingly, we direct (1) Dr. Thangaraj, Head of the Department, Forensic Medicine, SRM Medical College and Research Centre, Potheri, Kattankolathur, Kancheepuram District and (2) Dr. P. Sampath Kumar, Professor of Forensic Medicine and Police Surgeon Vice-Principal, Sri Ramachandra Medical College, Porur, Chennai-600 116, to examine the body of the deceased Elavarasan, cause x-rays thereof, if found necessary and frame an opinion as to the likelihood or otherwise of any internal injuries. If they consider the same likely, it would be open for them to conduct further clinical or surgical examination of the body as considered necessary and inform the position ascertained, by way of a report. The said direction is to be complied with by the concerned Doctors on 11.7.2013 and the report is to be made available to this Court on 12.7.2013 at 10.30 a.m. Till such time, the body of the deceased shall be preserved. The copy of the postmortem report, copy of the videograph as also Opinions of the above

mentioned Doctors shall form part of the record.

19. Registry is directed to forward copies of Opinions of the above mentioned Doctors, to (1) Dr. Thangaraj, Head of the Department, Forensic Medicine, SRM Medical College and Research Centre, Potheri, Kattankolathur, Kancheepuram District and (2) Dr. P. Sampath Kumar, Professor of Forensic Medicine and Police Surgeon Vice-Principal, Sri Ramachandra Medical College, Porur, Chennai-600 116. The above as also a copy of this order shall forthwith be handed over to the office of the Public Prosecutor towards enabling service thereof upon the above named Doctors in the course of the day.

20. The respondent State/Superintendent of Police, Dharmapuri, shall make available to the said Doctors, copies of the videograph as also the postmortem report.

21. The respondent State shall make necessary arrangements for conveyance and accommodation of the Doctors towards implementation of the present order. The respondent State is directed to pay a sum of Rs. 30,000/- (Rupees Thirty Thousand only) to each of the above Doctors as a token of appreciation for the service rendered by them to the State.

Accordingly, this Miscellaneous Petition is ordered.

Pursuant to the above order, Dr. Thangaraj, Head of the Department, Forensic Medicine, SRM Medical College and Research Centre, Potheri, Kattankolathur, Kancheepuram District and (2) Dr. P. Sampath Kumar, Professor of Forensic Medicine and Police Surgeon Vice-Principal, Sri Ramachandra Medical College, Porur, Chennai-600 116, have examined the body of the deceased Elavarasan on 11.7.2013, visited the scene, carried out the task assigned to them and submitted their independent reports.

2. The two reports are reproduced here under:

(1) Opinion of Dr. K. Thangaraj, M.D., Professor and HOD of Forensic Medicine, SRM Medical College, Potheri, Kattankolathur, Kanchipuram District, on re-postmortem of the body of the deceased Elavarasan, dated 11.7.2013

With reference to R.O.C. In H.C.P. No. 1265 of 2013, dated, 10.7.2013, as per the direction of the Hon'ble Division Bench of Madras High Court, I have humbly submitted my independent opinion for your kind perusal.

On Thursday, 11th day of July 2013, I have examined the body of deceased Elavarasan, 20 years male at the Mortuary of Government Dharmapuri Medical College, Dharmapuri in the presence of Dr. P. Sampath Kumar, M.D. Professor of Forensic Medicine, Sri Ramachandra Medical College, Porur, Chennai between 9.50 a.m. and 1.30 p.m. During our examination, X-ray of skull, cervical vertebra, both shoulder joints, pelvis and left upper limb have been taken (9 films). I have also examined the head after removing the postmortem sutures which shows shattered fragments of vault of skull bones with connected fracture

over skull base. No injuries found over the cervical vertebral column and the surrounding soft tissue. The upper part of left forearm shows an external lacerated wound with compound comminuted fracture of both bones. Apart from open wounds of head and left forearm, multiple abrasions on left forearm and back of left hand fingers. All the above said injuries are ante mortem in nature, which are inconsistent with the injuries mentioned in the 1st postmortem certificate and also consistent with the alleged manner. The whole process in the mortuary was videographed and photographed. We together have visited the crime scene.

On comparison of external injuries mentioned in the postmortem certificate with the examination of the body found correct. Of these the mortal injury is the laceration over the head extending obliquely upwards from left side of root of nose to mid parietal region across the left eye-brow, left side of forehead and left frontal and parietal region associated with compound comminuted fracture of frontal, both parietal, both temporal bones of the vault and oblique fissured fracture over left posterior cranial fossa. The frontal bone found shattered into fragments along with both anterior and left middle cranial fossa over the base of skull.

This external gaping laceration of the scalp and the corresponding internal fracture of vault and base could have been caused by a forcible impact of protruding part of fast moving rail engine.

The position of the deceased during the time of impact could be bending forward so that the frontal part of the head alone was hit forcibly by the bumper of the engine resulting in oblique gaping laceration of the scalp shattering of the underlying vault and base of skull. Through this gap the bits of lacerated brain ejected in different direction which were found in the crime scene.

Because of this severe extensive injury death could have occurred instantly so that scalp contusion is not present extensively.

The left fore-arm also sustained comminuted fracture of both the bones by forcible impact by the bumper resulting in an oblique laceration externally with associated minimal contusion around the fracture site.

On examination four horizontal healed linear scars found over the front of lower third of left fore-arm (Tell tale scar-sign of suicidal gesture).

On observation of crime scene, it is an open space with a mud road frequented with pedestrians and two wheelers. On looking the photo of crime scene there was no sign of struggle.

Corroborating all the mentioned observations the cause of death is consistent with the alleged time and manner. In view of the above facts, I humbly submitting my opinion that no re-postmortem is required.

From thorough analysis of findings on the body, videograph of 1st postmortem

and observation of crime scene, I am hereby humbly opinion that re-postmortem is not mandatory.

Enclosure:

(1) 9 X-ray films

(2) Memory Card of still photos

(3) Memory Card of videograph

"(2) Opinion of Dr. Sampath Kumar M.D., Professor & head, Dept of forensic medicine & Vice Principal, Sri Ramachandra medical college & RI, Chennai 116, in respect of the body of the deceased Elavarasan, dated 12.7.2013

Respectable Lordships,

Sub: Dr. P. Sampath Kumar, M.D. professor & Head, dept of forensic medicine, SRMC, Chennai.

Submitting the medical report as directed by the Honourable Judges of Madras High Court-reg.

Ref: M.P. No. 1 of 2013 in H.C.P. No 1265 of 2013 in the High Court of judicature of madras dated 10.7.2013

As per your Honourable Court direction myself and Dr. Thankaraj examined the body of the deceased Mr. Elavarasan and also visited the scene of crime on 11.7.2013. We started the examination at 9.50 a.m. and completed by 1.30 p.m. We have also perused the postmortem certificate, postmortem videographs and photographs.

I am submitting my opinion individually on my behalf for your kind perusal.

I am also submitting the two computer memory card containing the entire videograph showing our visit and nine original x-ray films taken on the body of Mr. Elavarasan.

I sincerely thank the Honourable Lordship for the opportunity given and the confidence reposed on me.

Examination Report on the Body of the Deceased Mr. Elavarasan

1) Body was found closed to the track with a distance of 1.7m with only external injuries over head and left fore arm. Usually in railway extensive injuries are seen all over the body like multiple lacerations, contusions and abrasions.

2) In suicidal deaths complete severing of the head from the body at the level of neck or severance of arm and forearm or severance of thighs or legs seen.

3) In accidents with persons hit by the side parts of the train he will be thrown away with extensive injuries all over the body. Both type of injuries namely injury due to impact of the train & injury due to fall on the floor or any hard object are

seen.

4) Except the injury over the head and left fore arm, no other injuries were seen in other areas of the body. In head injuries due to speeding train, associated spinal injuries are seen. In this case we have taken x-rays to look for spinal fractures and mandible, we dissected the neck area to check for any bruising, to our surprise there were no cervical spine fracture and no bruising anywhere in the neck

5) If the deceased person was hit by the train on the sides along with head injury he would have sustained severe injuries over his shoulder, rib fractures, chest injuries and other injuries on the side of impact will be seen. In this case no such injuries are seen on the side of impact. Since the shoulders is the most protruding part of the body it will definitely show severe injuries. In this case forearm injuries is seen, no shoulder injuries are present.

6) Extensive laceration with fracture of skull seen but bruising of the scalp is minimal, which is not consistent with to the extent of injury.

7) As per postmortem report black grease marks seen over left arm, left forearm and left wrist, which was not seen in photographs, videographs or over the body when we inspected. The grease marks cannot be washed easily with water.

8) While examining the body during our visit to the mortuary we made 2 minimal incisions on either side of the body which showed contusion on one side and normal on the other side. Internal bruising can be ruled out only by doing complete re-postmortem.

9) The following articles of the deceased were not made available for our examination:

(a) clothings

(b) foot wear

(c) wrist watch

10) I strongly believe that a meticulous study of crime scene would have revealed more information regarding the events leading to death.

Conclusion:

Taking into the considerations all the above mentioned scientific reasonings I humbly request you to form a team of experts for conducting re-postmortem which will bring into light any other internal injuries which is not consistent with railway accidents and also it will clear the doubts surrounding the circumstances of death.

3. Though a reading of our order passed on 10.7.2013 might indicate that the Doctors appointed may be found to have exceeded their brief, we would not take offence, since it is apparent that they have been driven only by the cause of

serving justice and nothing else.

4. We have given our anxious consideration to the reports of the two Doctors. We find that they are at variance as to the manner in which the death of Elavarasan may have been occasioned. In these circumstances and at the cost of repetition of our views informed in our order dated 10.7.2013, we firmly express that we do not find any reason to suspect any wrong doing in the conduct of first postmortem. Even so, when two experts appointed by us are at variance, it only would be appropriate to permit a second postmortem. We add that the course we are adopting is not to be seen as any blemish upon the State.

5. We have heard learned counsels for the petitioner as also learned Public Prosecutor and learned Advocate General.

6. Learned counsels for the petitioner would submit that it is absolutely necessary for a Doctor of their choice and preferably, Dr. V. Dekal, Associate Professor, Saveetha Medical College, to be present in the course of second postmortem. Mr. N.G.R. Prasad, learned counsel, would contend that permitting the same would advance social justice. Mr. S. Prabhakaran, learned counsel intervened and sought to have the presence of Dr. Chandrasekaran, a Forensic Expert.

7. On the other hand, learned Public Prosecutor would submit that proper postmortem stands completed and that there is no justification for ordering a second postmortem.

8. On consideration of the rival submissions, we are of the view that it is important to exclude such Doctors, who thus far have informed a position and view on the matter. It also is necessary that the second postmortem be conducted by a team of Doctors who are absolutely independent and neutral.

9. In view of the above observations and considerations, we direct the Director of All India Institute of Medical Sciences (AIIMS), New Delhi, to depute a team of three Forensic Experts, well experienced in conducting postmortems, for the purpose of conducting the second postmortem on the body of the deceased Elavarasan, which now lies at the mortuary of Government General Hospital, Dharmapuri.

10. Registry is directed to communicate this order as an urgent one to the Director of All India Institute of Medical Sciences (AIIMS), New Delhi, through telephone as well as through Fax, for the purpose of conducting second postmortem on 13.7.2013 itself.

11. The State shall make special and necessary arrangements for the deputed Doctors travel by Air, their travel and accommodation at Dharmapuri and Chennai as also their return to New Delhi. It shall be the duty of the State to make all necessary security arrangements towards avoiding anything untoward during the period of presence of the Doctors at Dharmapuri. All necessary expenses shall be borne by the State.

12. The respondent State is directed to pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) to each of the above Doctors as a token of appreciation for the service rendered by them to the State. The earlier direction to preserve the body, shall continue and after the conduct of the postmortem, it shall open to the State to hand over the body of the deceased Elavarasan to his fat her Elangovan.

With the above direction, this Habeas Corpus Petition is disposed of.