



Bail Slip

Mthivanan,

Appellant/Accused

That the above said appellant/Accused was directed to be released on bail as per order of this court dated 16.04.2003 made in MP No.1 of 2013 in Crl.Appeal No.74/2013 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.74/2013

Mathivanan

..Appellant/sole accused

Vs

State by
The Inspector of Police,
Vanur Police Station,
Vanur Taluk,
Villupuram.

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Tindivanam, in S.C.No.192 of 2011 dated 16.11.2012.

For Appellant : Mr.J.Kumaran

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor



JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

WEB COPY

The appellant is the sole accused in S.C.No.192 of 2011 on the file of the learned II Additional District and Sessions Judge, Tindivanam. He stood charged for offences under Sections 323 and 302 of IPC. By judgment dated 16.11.2012, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life under Section 302 of IPC and he was also sentenced to undergo rigorous imprisonment for 3 months for the offence under Section 323 of IPC and no fine was imposed for any of the offences. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

2. The case of the prosecution in brief, is as follows:-

(a) The deceased in this case was one Mr.Jallanthar. He was a resident of Nemili Village. On 17.07.2011, at about 11.00 a.m., the deceased had gone to the arrack shop at Chettiput village in Puducherry Union Territory. P.W.13, a resident of Nemili Village, had also gone to the said arrack shop for drinking. P.W.13 purchased a packet of arrack and also mixture. The accused also came to the said shop at the same time. He snatched away the mixture packet and the arrack packet from P.W.13. This resulted in a petty quarrel between P.W.13 and the accused. The deceased was witnessing the above and he questioned the accused for his behaviour. This, in turn, resulted in a quarrel between the accused and the deceased. The accused, it is alleged, manhandled the deceased. Then, the deceased was returning to his village by bus. The accused also travelled in the same bus. By about 3.00 p.m., the bus came to the bus stop at Nemili Village and stopped. The deceased got down from the bus followed by the accused. At the bus stop also, there was a quarrel between them in connection with the earlier occurrence. In that, the accused and the deceased had attacked each other. P.W.14, who was standing near the bus stop separated them, persuaded them. Thereafter, they left the place.

(b) On returning to the house, it is alleged that the deceased told his wife Jothi-P.W.1 about the said incident. P.W.1 and the deceased wanted to question the accused about his act. Therefore, P.W.1 and the deceased went to the house of the accused. The accused was found standing in front of his house. P.W.1 questioned the accused as to why he attacked her husband both in the arrack shop as well as in the bus stop. Infuriated over the same, it is alleged that the accused attacked P.W.1



with a wooden log on her head and shoulder. Immediately, the deceased intervened and questioned the accused. The accused with the same wooden log attacked the deceased on his head and another attack near his left ear. P.W.1 and the deceased sustained injuries. The accused ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.2 to 5 who are the neighbours and also P.Ws.8 to 11. P.W.11 is the father of the deceased. Thus, P.Ws.2 to 5 and P.Ws.8 to 11 claim that they were present at the scene of occurrence and witnessed the entire occurrence.

(c) Then, P.W.3 rang up to Ambulance to take P.W.1 and the deceased to the hospital for treatment. Accordingly, they were taken to Jipmer Hospital at Puducherry. P.W.20 Doctor Kanagarathinam examined P.W.1 at 05.22 p.m. on 17.07.2011 at Jipmer Hospital. P.W.1 told him that she was attacked by a known person at 4.00 p.m. on 17.07.2011 with a wooden log. He found the following injuries on the body of P.W.1.

- '1. Deformity left clavicle present;
- 2. Deep laceration in left chin;
- 3. Laceration left frontal region 5 c.m.;
- 4. Left knee tender present.'

Ex.P.15 is the Accident Register and Ex.P.16 is the Case Sheet of P.W.1.

(d) On the same day at 05.24 p.m., P.W.20 examined the deceased. The deceased was conscious. He told that he was attacked by a known person with a wooden log at 4.00 p.m. He found the following injuries on the body of the deceased:

- '1. Right cheek 5 x 5 c.m. contusion;
- 2. Laceration vertex 5 c.m.;
- 3. Right ear bleed present.'

Ex.P.17 is the Wound Certificate and Ex.P.18 is the Case Sheet pertaining to the deceased. He gave intimation to the police regarding the same.

(e) On intimation from the hospital, one Mr.Selvaraj, the then Sub-Inspector of Police (who is now no more) proceeded to the hospital and recorded the statement of P.W.1 at 08.30 p.m. on 17.07.2011. Ex.P.1 is the said statement. On returning to the police station, at 9.15 p.m., he registered a case in Cr.No.122 of 2011, for the offences under Sections 323, and 307 of IPC. Ex.P.19 is the First Information Report. He forwarded both the documents to court which were received by the learned Judicial Magistrate at 11.20 a.m. on 18.07.2011.



(f) The investigation was taken up by the Inspector of Police-P.W.21. On 18.07.2011 at 01.15 a.m., he received information from the hospital that the deceased had died due to the injuries sustained by him. Therefore, he altered the case into one under Section 302 of IPC and submitted an alternative report under Ex.P.20 to the court at 6.30 p.m. on 18.07.2011. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. He recovered blood stained earth and sample earth from the place of occurrence under a Mahazar. Then, on coming over to the Jipmer Hospital, between 9.30 p.m. and 10.45 p.m., he conducted inquest on the body of the deceased and forwarded the dead body for postmortem.

(g) P.W.15 conducted autopsy on the body of the deceased on 18.07.2011 at 11.30 a.m.. He found the following injuries on the body of the deceased :

'Rigor Mortis was present in the neck and upper limbs only. Post Mortem staining was not appreciable. Scalp hair closely cropped and black. Axillary hair - 2.8 cms. Pubic hair - 1.9 cms. Teeth were normal. Tongue was behind the jaws. Cornea - hazy. Conjunctive - congested. Clotted blood was present in the nose, mouth and both ears. Other natural orifices normal. Cadaver was kept in the cold storage prior to autopsy.

Injuries (Antemortem) : Following recent injuries were present in the Cadaver:

a. A lacerated wound, antero posteriorly placed measuring 5.3 x 0.8 cms. Was present in the vertex, bone deep;

b. A contusion 4.7 cms. In diameter was present in the right cheek;

c. An abrasion measuring 1.9 x 0.7 cms. was present anterior to the right ear. The ear lobe was edematous;

d. An abrasion measuring 1.8 x 1.5 cms. was present anterior to the left ear. The ear lobe was edematous.

Internal Examination :

Scalp : Recent pericranial hemorrhage was present over the calvarium.

Skull : A recent curvilinear fissured fracture 21.5 cms in length was present transversely across the vault of the skull with extension into both parietal bones and frontal bones. The right mandibular condyle was also fractured.

Brain and meninges : The brain weighted 1470 gms and showed diffuse cerebral edema. Recent subdural



WEB COPY

hemorrhage was present over the right temporo parietal and left parietal lobes. Multiple (18) contusions ranging in size from 1.7 x 1.9 x 1.2 x 0.8 cms. were present throughout the cerebrum.

10. All neck structures including hyoid bone - Clotted blood was present in the pharynx. Other neck structures including hyoid bone were normal.

- 11. Thorax : Normal
- 12. Abdomen and Pelvis:
 - a. Abdominal Wall : Normal
 - b. Peritoneum : Normal
 - c. Stomach : Empty with no particular odour. Mucosa
 - d. Small intestine : Congested
 - e. Large intestine : Congested
 - f. Liver and Gall Bladder: Congested
 - g. Spleen : Congested
 - h. Pancreas : Congested
 - i. Kidneys, ureters and: Congested
adrenals
 - j. Urinary bladder : Contained 20 ml of
urine, Normal
 - k. Genital organs : Normal
- 13. Muscles and bone : Normal
- 14. Spine : Normal''

Ex.P.8 is the Postmortem Certificate. He gave opinion that the injuries on the body of the deceased would have been caused by a weapon like M.O.1 Wooden Log. He further opined that the deceased would have died of shock and hemorrhage due to the head injury.

(h) Continuing the investigation, P.W.21, arrested the accused on the same day in the presence of P.W.6 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden the wooden log. In pursuance of the said disclosure statement, he took the appellant and the witnesses to the place of hide out and produced the M.O.1 stick. P.W.21 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to court for remand and handed over the material object also to court. He made a request to the court to forward the material object for chemical examination. The report revealed that there were blood stains on the material objects including the wooden log. He has further stated that at the time when the accused was arrested, he was found with injuries and he was taken for treatment. Thereafter, as he was transferred, the investigation was taken up by his successor. On completing the



investigation, his successor laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined and 23 documents and 5 material objects were also marked.

4. Out of the said witnesses, P.W.1-the wife of the deceased, P.Ws.2 to 5-the neighbours and P.Ws.8 to 11 have spoken about the entire occurrence as eye-witnesses. P.W.6 has spoken about the preparation of Observation Mahazar and Rough Sketch and the recovery of blood stained earth and sample earth from the place of occurrence by P.W.21. He has also spoken about the arrest of the accused on 18.07.2011, disclosure statement and the consequential recovery of M.O.1 Wooden log at his instant. P.W.7, the Village Administrative Officer has also spoken about the preparation of Observation Mahazar and Rough Sketch. P.Ws.12 and 13 have spoken about the quarrel and scuffle between the accused and the deceased in the arrack shop. P.W.14 has spoken about the scuffle between the accused and the deceased at the bus stop. P.W.15 has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.16 is the Head Clerk of the Judicial Magistrate Court who has spoken about the forwarding of the material objects for chemical examination and the report received. P.W.19 has spoken about the chemical analysis done on the material objects which revealed that there were human blood in the material objects including the wooden log. P.W.20 has spoken about the examination of P.W.1 as well as the deceased, then they have brought to the hospital and the treatment given to them. P.W.21 has spoken about the registration of the case, investigation done by him and the final report filed by his Successor.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. On his side, he examined two witnesses as D.Ws.1 and 2. D.W.1 is one Mr.Shanmugasundaram, the Superintendent of Central Prison, Cuddalore, where the accused was lodged. He has been examined to speak about the injuries found on the accused, when he was sent for lodging in the prison in pursuant to the remand warrant issued by the jurisdictional Magistrate. D.W.2 Dr.Padmavathi has spoken about the injuries found on the body of the accused. It is the defence of the accused that the deceased came to his house and attacked him and he did not attack the deceased as well as P.W.1.



6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

WEB COPY

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In this case, as we have already narrated, the occurrence had taken place just in front of the house of the accused. P.W.1 had accompanied the deceased to the house of the accused in the said occurrence. P.W.1 had also sustained injuries. Therefore, the presence of P.W.1 cannot be doubted. Similarly, P.Ws.2 to 5 and 8 to 11 also claimed to have witnessed the occurrence. P.W.11 is the father of the deceased who has stated that he was standing near the Mariamman Temple Street where the occurrence had taken place. The others are also villagers who claim that they have witnessed the occurrence. All these eye-witnesses have spoken vividly about the entire occurrence, more particularly, the attack made by the accused on P.W.1 and the deceased with a wooden log. The medical evidence also corroborates the eye-witness account of these witnesses. Therefore, from these evidences, the prosecution has established that the occurrence had taken place just in front of the house of the accused wherein the accused had attacked P.W.1 and the deceased and the deceased, later on, succumbed to the injuries. Thus, in our considered view, the prosecution has succeeded in proving that the death of the deceased was, because, only, by this accused.

9. But, at the same time, the evidence of D.W.1 and D.W.2 would go to show that the accused had sustained injuries in the very same occurrence. The accused had taken a consistent stand that P.W.1 and the deceased had come to his house with a wooden log with a number of people and attacked him. At the earliest point of time, when he was produced before the Doctor, the accused had told that he was attacked by four known persons on 17.07.2011 at 3.10 p.m. near Mariamman Koil Street at Eraiyur Village. There were number of injuries found on the body of the accused and there was also a fracture on his left fore arm. But, unfortunately, the Investigating Officer had not investigated in respect of the injuries sustained by the accused at the place of occurrence and the injuries sustained by the accused are not simple in nature. He was taken to the Jipmer Hospital for treatment. The medical report has not been seized by the Investigating Officer. It is not explained to this court as to why no investigation had been done in respect of the injuries sustained by the accused. From the evidences available



on record, it is crystal clear that the accused was also attacked in the very same occurrence just in front of his house.

10. Now let us examine whether by causing injury on P.W.1 and causing the death of the deceased, the accused has committed any offence punishable under the Indian Penal Code. Though the accused had not explicitly pleaded that he attacked the deceased and P.W.1, in exercise of right of private defence, the learned Counsel for the appellant made submissions to this Court that from the evidences available on record, it could be gathered that the accused had acted in exercise of right of private defence. It is the settled law that even if the accused does not explicitly plead self-defence, it is open for the court to consider such a plea, if the same arises from the materials available on record. The burden of establishing such a plea is on the accused and the said burden can be discharged by preponderance of probabilities in favour of that plea on the basis of the materials available on record vide *Munsiram and others vs. Delhi Administration* reported in 1968 (2) SCR 455. Therefore, in this case, though the accused had not pleaded right of private defence, going by the settled position of law, let us now examine whether the accused had exercised his right of private defence and whether he had exceeded in the same.

11. As we have already pointed out, P.W.1 and all the eye-witnesses belong to Nemili Village. The occurrence had taken place at Eraiyur Village, just in front of the house of the accused. We have already concluded that the prosecution has succeeded in proving that in the arrack shop as well as in the bus stop, there were quarrel between the accused and the deceased in which the accused manhandled the deceased. It is in the evidence of P.W.1 that the deceased came to her house at about 3.00 p.m. and informed her about the said occurrence. Thereafter, P.W.1, the deceased and others had gone to the village of the accused. At the time, when they reached the house of the accused, the accused was standing just in front of his house and at that time, he was not having any weapon.

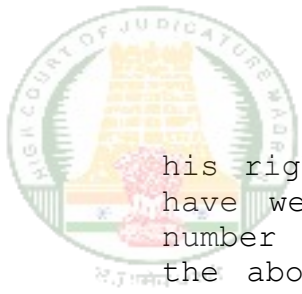
12. According to the case of the prosecution, when P.W.1 questioned the accused as to why he had attacked the deceased in the arrack shop as well as in the bus stop, he took out the M.O.1 and attacked both of them indiscriminately. But in the evidence of D.Ws.1 and 2, it is seen that the accused had sustained serious injuries on his body in the very same occurrence. D.W.2, the Doctor has stated about the number of injuries found on the body of the deceased and the treatment given to him. He has produced the medical records also. Thereafter, the accused was taken to Jipmer Hospital at Puducherry. But, P.W.24 the Investigating Officer had not cared



to investigate the case by taking into account these injuries sustained by the accused, the nature of the injuries and the treatment given to him. It is not explained to this Court as to why no case was registered on the statement of the accused wherein he alleged that the deceased, P.W.1 and a group of people came to his house and attacked him with a wooden log. At the earliest point of time, though the accused had told D.W.2 that he was attacked in front of his house by four known persons and 10 unknown persons by wooden logs, it is not explained to this Court as to why there was no investigation done by P.W.23 in respect of the said version of the accused. From these evidences, it is crystal clear that the accused sustained injury in the very same occurrence.

13. Now going by the fact that the deceased had come all the way from Eraiyur Village to Nemili Village i.e. from different village, developed quarrel in which the accused was also attacked would go to probablise the defence theory that the deceased, P.W.1 and her men were the aggressors who had come all the way from Nemili Village to Eraiyur Village to the house of the accused. The possibilities of this accused attacking P.W.1, the deceased, after having received the injuries at the hands of the deceased, cannot be ruled out. Therefore, the defence of the accused that the deceased party came, attacked him and out of apprehension that they would kill him, in exercise of right of private defence, to protect his life, he took out the stick lying there and gave a blow on P.W.1 and the deceased is very probable. The accused had not acted in any cruel manner.

14. In this regard, we may refer to a judgment of the Hon'ble Supreme Court in *Kashmiri Lal Vs. State of Punjab* reported in 1996 (10) SCC 471 wherein the Hon'ble Supreme Court has reiterated that a person, who is unlawfully attacked, has every right to counter act and attack upon his assailant and cause such injury as may be necessary to ward off the apprehending danger or threat. In *James Martin Vs. State of Kerala* reported in 2004 (2) SCC 203, the Hon'ble Supreme Court has reiterated the principle that the accused need not prove the existence of the right of private defence beyond reasonable doubts. It is enough for him to show that the preponderance of probabilities is in favour of his plea. In *Gotipulla Venkatasiva Subbrayanam and others Vs. State of Andhra Pradesh and others* reported in 1970 (1) SCC 235, the Supreme Court has held that the right of private defence is a very valuable right and it has been recognised in all civilized and democratic society with certain reasonable limits. In *Buta Singh Vs. State of Punjab* reported in 1991 (2) SCC 612, the Hon'ble Supreme Court has held that a person who is in apprehension of death, in exercise of his private defence, cannot be said that he exceeded



his right of private defence as it was not possible for him to have weighed in golden scales in the heat of the moment the number of injuries required to disarm his assailants. Applying the above broadly settled principles to the facts of the case and applying the principles of preponderance of probabilities, we find that the deceased party had come to the house of the accused because on the earlier occurrence and had attacked the accused. When they attacked the accused, he was just standing in front of his house unarmed. He had taken the wooden log lying there and in exercise of right of private defence caused injuries on P.W.1 and on the deceased. We also hold that he has not exceeded his right of private defence.

15. In such view of the matter, though we have concluded that the injuries on P.W.1 and the deceased were caused by this accused, the said act of the accused is not an offence in view of the general exception under Section 100 of the I.P.C. Therefore, the appellant is entitled for acquittal.

16. In the result, the appeal is allowed and the appellant/sole accused is acquitted from all the charges. The bail bond, if any, executed by him, shall stand discharged. The fine amount, if any, paid, shall be refunded to the accused.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi

To

1. The Inspector of Police,
Vanur Police Station,
Vanur Taluk, Villupuram.

2. The II Additional District and Sessions Judge, Tindivanam.

3. The Public Prosecutor, High Court, Chennai.

4. The Judicial Magistrate, Vanur.

5. The Chief Judicial Magistrate, Villupuram.

6. The Superintendent, Central Prison, Cuddalore.

+1 cc to Mr.J.Kumaran, Advocate, sr.15911.

Cr1.A.No.74/2013

ks co

kra 28.04.2016