

BAIL SLIP

The Appellant/Accused was enlarged on bail as per the order of this court dated 24.03.2010 made in MP.No.1/2010 in Cr1.A.No.149/2010 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.A.No.149 of 2010

Shanmugam

...Appellant/Accused

vs.

State by

The Inspector of Police,
Thirukoilur Police Station,
Thirukoilur,
Villupuram District.

(Crime No.238 of 2003)

...Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 25.01.2010 passed by the learned Principal Sessions Judge, Villupuram, in S.C.No.11 of 2007.

For Appellants : Mr.S.Saravanakumar

For Respondent : Mr.R.Sekar
Government Advocate

JUDGMENT

The first accused, in Sessions Case No.11 of 2007, on the file of the learned Principal Sessions Judge, Villupuram, is the appellant herein. Totally, there are two accused in this case. A-1 stood charged for the offence under Sections 302 and 324 IPC and A-2 charged for the offence under Section 324 and 109 IPC. Earlier, the case was split up in respect of this appellant and separate trial was conducted and the trial Court, after trial, by Judgment dated 25.01.2010, convicted the appellant/accused under Section 324 and 304(ii) IPC and sentenced him to undergo two years rigorous imprisonment for the offence under Section 324 IPC and sentenced him to undergo 10 years rigorous imprisonment for the offence under Section 304(ii) IPC and no fine amount was imposed. Challenging the above said conviction

and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case one Ealumalai is father of P.Ws.2 and 4 and he was residing at Athandamaruthur Village in Thirukoilur Taluk. He was doing tapioca business. In the year,2003, the deceased and his daughter P.W.4 went to a nearby village, namely, Arumanaputhur, for Tapioca business, at that time, a unknown person has beaten his child. While the deceased questioned him, he has scolded him with filthy language and due to the same there was a quarrel between them, at that time, the accused also scolded him with filthy language. Then, the deceased came to his village and informed the same to his villagers, then they went to the accused village and made a complaint to the village head. Thereafter, on the date of occurrence at about 9.00 p.m., the deceased, P.W.2 Govindhan and P.W.3 Arul and another person were went to their agriculture field. At that time, the accused was sleeping in the agriculture field and after seeing them, the deceased questioning them about the previous conduct and due to the same, there was a quarrel between them, at that time, the first accused took a knife and trying to attack the deceased, and while the deceased averting the same, he suffered a cut injury in his neck and left leg and he fell down. Thereafter, the first accused attacked him on his back. After seeing the same, P.W.1 attacked the first accused with wooden log on his head. Then the first accused also attacked P.W.1 with knife, and P.W.1 also suffered injury. Thereafter, they went to their village and after some deliberation they lodged a complaint before the respondent police.

(ii) P.W.13, the Sub Inspector of Police working in the respondent police station, on receipt of the complaint from P.W.2, registered a case in Crime No.238 of 2003 for the offence under Sections 294(b), 324 and 302 IPC, prepared a first information report [Ex.P19], sent the first information report to the jurisdictional Judicial Magistrate, Thirukoilur and copies of the same to the higher officials. Then, he sent P.W.1 to the Government Hospital, Thirukoilur for treatment.

(iii) P.W.15, the Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence at about 6.00 a.m., prepared observation mahazar [Ex.P2], rough sketch [Ex.P22], examined the witnesses and recorded their statements. Then, he collected blood stained mud and sample mud portion in the presence of witnesses under a cover of mahazar and conducted inquest over the dead body in the presence of panchayatars in the scene of occurrence and prepared inquest report [Ex.P23]. Then, he sent the dead body

for postmortem to the Government Hospital, Thirukoilur, through Head Constable with a requisition letter.

(iv) P.W.14, the Doctor, working in the Government Hospital, Thirukoilur conducted postmortem autopsy on the dead body of the deceased and found the following injuries

External Injuries: A lacerated injuries seen on the right side of back from below the right ear to extending up to cortox of back membranes of vessels and intact exposed out.

Internal Examination: On opening of thorax no fracture ribs, Hear empty lungs. Pale right side 450 grams left side 400 grams . Hyoid bone intact.

He has opined that the deceased died due to multiple injuries and he issued postmortem report [Ex.P21].

(v) Then, P.W.15 continued the investigation, arrested the first accused, while he was taking treatment in the Government Hospital. P.W.10, Doctor working in the Government Hospital, Thirukoilur, examined P.W.1 and found two injuries. A lacerated wound 1 x 1 x 1/2 cm and swelling in the left knee, injury on his right side of the head and he issued wound certificate [Ex.P6]. He also examined the first accused and found head injury 3 x 1 x 1 cm, injury on his left knee 3 x 2 cm and he issued wound certificate [Ex.P7]. P.W.15, continued the investigation, examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation he filed the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 15 witnesses were examined and 23 documents were exhibited and 7 material objects were marked.

4.1. Out of the said witnesses examined, P.W.1 is the injured eye witness in this case. According to him, prior to the occurrence, there was a quarrel between the deceased and yet another person, at that time, the first accused scolded the deceased with filthy language, immediately, the deceased informed the same to his villagers and deceased, P.W.1 and other villagers went to the accused village and informed the same to the village head and questioned him. On the next day at about 9.00 p.m., P.Ws.1 to 3 along with the deceased went to the agriculture field. At that time, the accused were sleeping in one Kalivarathan's agriculture field and after seeing them, the deceased questioned them, and there was a quarrel between them, and at that time, the first accused took a knife and trying to attack the deceased and while the deceased averting the same, he suffered cut injury in his neck and he fell down. Thereafter,

the first accused attacked the deceased. After seeing the same, P.W.1 attacked the first accused with wooden log on his head. Then the first accused also attacked P.W.1 with knife, while averting the same, P.W.1 also suffered injury. Then, both the accused ran away from the scene of occurrence. He informed the same to the villagers.

4.2. P.W.2 is known to the deceased and he was residing in the same village. According to him, on 12.03.2003, while the deceased and his daughter were selling Tapioca in Arumana Puthur village, the first accused has beaten his child, while the deceased questioned him, there was a quarrel between them, and the first accused scolded the deceased and his daughter with filthy language. He informed the same to his villages and the villagers went to the accused village and questioned him and subsequently on the date of occurrence, in the night hours, P.W.2 and three other persons including the deceased went to the agriculture field for the purpose of irrigating their land. At that time, both the accused were sleeping in one Kaliyamoorthy's agriculture field, while the deceased questioned the first accused and pushed him down. At that time, the first took a knife and trying to attack the deceased and he fell down. P.W.1 attacked the first accused with wooden log on his head and then they went back and keep quite and on the next day morning they informed the same to the villagers. Then, P.W.1 gave complaint before the respondent police station.

4.3. P.W.3 is the son of the deceased. He also spoke about the previous occurrence. According to him, prior to the occurrence, the deceased and his daughter were selling Tapioca in Arumana Puthur village, at that time the first has beaten his child, while the deceased questioned him, there was a quarrel between them, the first accused scolded the deceased and his daughter with filthy language. He informed the same to his villages and the villages went to the accused village and questioned him. Subsequently, on the next day, P.W.3, the deceased and two other persons were went their agriculture field, where the accused were sleeping, after seeing them, the deceased questioned them, and there was a quarrel, and the deceased pushed him down. At that time the first accused took a knife and trying to attack the deceased and he fell down. At that time P.W.1 attacked the first accused with wooden log on his head and at the instigation of the second accused, the first accused attacked P.W.1 also.

4.4. P.W.4 is the daughter of the deceased. She went along with the deceased on the previous occurrence. According to her, prior to the occurrence, she went along with her father at Puthur Village for the purpose of selling Tapioca, at that time one person attacked his child, when her father questioned him, there was a quarrel between them and he scolded them with filthy language. She did not know about the second accused. P.W.5, a

person said to have beaten the child in the earlier occasion. According to him, when he beaten his child, the deceased questioned him, and he asked him to do his business, and at that time the first accused not present. P.W.6, a person belongs to the deceased village. He along with others went to the accused village and questioned him about the prior occurrence. P.W.7, belongs to the deceased village, he heard about the occurrence, and 30 to 40 village peoples went to the police station and given complaint. P.W.8 is the witness to the mahazar and also recovery of blood stained mud portion and sample mud portion. P.W.9 is the arrest and confession statement of the first accused.

4.5. P.W.10, the Doctor working in the Government Hospital, Thirukoilur. He examined P.W.1 and given wound certificate. He also examined the first accused and issued wound certificate. P.W.11 is Grade-II Head Clerk working in the Judicial Magistrate Court, Thirukoilur. He sent the blood stained material objects for chemical examination. P.W.12 is the photographer who took the photograph of the scene of occurrence. P.W.13 is the Sub Inspector of Police working in the respondent police station. He received the complainant, registered a case in Crime No.238 of 2003 for the offence under Section 294(b) and 302 IPC and prepared first information report, sent the same to the Judicial Magistrate Court, copies of the same to the higher officials. P.W.14 is the Doctor working in the Government Hospital, Thirukoilur. He conducted postmortem autopsy on the dead body of the deceased and given postmortem certificate. P.W.15 is the Inspector of Police working in the respondent police station. He commenced the investigation, proceeded to the scene of occurrence, prepared observation mahazar and rough sketch, conducted inquest over the dead body, prepared inquest report, sent the dead body for postmortem autopsy, arrested the accused, sent them for judicial custody, examined the Doctor who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation laid the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., appellate denied the same as false. His defence was a total denial. The accused did not examine any witnesses nor marked any documents.

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

7. I have heard Mr.S.Saravanakumar, the learned counsel appearing for the appellant and Mr.R.Sekar, learned Government Advocate appearing for the respondent and perused the materials

available on record.

8. Learned counsel appearing for the appellant would contend that it is a case of private defence. From the evidence of P.W.1 to 3, it could be seen that they are all belongs to the deceased village and they have gone to their agricultural field, at that time the accused 1 and 2 were sleeping in the field, and they have only quarrelled with him and tried to attack him, averting an impending danger, Appellant tried to safeguard himself, by showing the knife, at that time the deceased turnaround accidentally and suffered a cut injuries. Apart from that it is a admitted fact that P.W.10, the Doctor examined the first accused in the hospital found multiple injury on his right head 3 x 1 x 1 c.m., swelling on his knee 3 x 2 cm and the Doctor also issued a wound certificate to that effect. Apart from that it is also admitted by the prosecution that all the four persons consumed toddy and they are all in a intoxicated mood, and quarrelled with the accused. So far as the motive is concerned, the prosecution failed to prove that it is the first accused has involved in the previous occurrence. P.W.4 is the daughter of the deceased who said to have accompanied the deceased during the previous occurrence, she did not say any thing about the first accused involvement in the previous occurrence. P.W.5, the persons who said to have beaten the child in the previous occurrence, in his chief examination, has categorically stated that at the time of occurrence, the first accused was not there. In the above circumstances, there is no evidence to show that only the first accused quarrelled with the deceased and others and hence the motive is also not proved by the prosecution.

9. The learned counsel for the appellant further contended that the prosecution has also failed to explain the delay in filing the complaint. Even though the occurrence took place at about 9.00 p.m., the complaint was given in the police station at about 8.00 a.m., in the next day. It is admitted that after the occurrence, P.Ws.1 to 3 went to their village kept quite and slept, thereafter in the morning there was a deliberation in the village, then only the complaint has been given. With all above materials, the prosecution has failed to prove the case and submitted that the accused is entitled for acquittal.

10. Per contra, the learned Government Advocate appearing for the State would submit that P.W.1 is injured eye witness in this case, P.Ws.2 and 3 are other eye witnesses to the occurrence, they have consistently stated that while the deceased has questioned the first accused regarding the previous occurrence, the first accused attacked the deceased with knife and caused injuries on his neck and on the vital parts of the body, and also attacked P.W.1 and caused injuries on him. Since, P.W.1 is injured witness, there is no reason to

disbelieve his evidence as P.Ws.2 and 3 have corroborated his evidence. So far as the evidence of P.W.10 is concerned, it is admitted that after the first accused attacked the deceased, P.W.1 attacked him with wooden log on his head and caused injuries on him and a case has been registered against P.W.1. Subsequently, it was closed as mistake of fact. Apart from that the motive also proved by the prosecution through P.W.4 the daughter of the deceased. Considering all these materials, the trial Court rightly convicted the accused and there is no reason to interfere with the judgment of the Court below.

11. I have considered the rival submissions.

12. It is the contention of the appellant that the appellant was only exercising his right of self defence. The basic principles underlying doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the state machinery is not readily available, that individual is entitled to protect himself and his property. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. The necessary corollary is that the violence which the citizen defending himself or his property is entitled to use force not unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. It is also settled law that while a person exercising his right of private defence, it is not possible to weigh the force with which the right is exercised. The Honourable Supreme Court in DARSHAN SINGH Vs. STATE OF PUNJAB AND ANOTHER reported in 2012(2) SCC 333, it has held as follows:-

"It is a settled position of law that in order to justify the act of causing death of the assailant, the accused has simply to satisfy the court that he was faced with an assault which caused a reasonable apprehension of death or grievous hurt. The question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no straitjacket formula can be prescribed on this regard. The weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluation whether the apprehension was justified or not."

13. In the same judgment, the Honourable Supreme Court elaborately considered the principles on the right of private defence, in para 58 of the said judgment which is extracted hereunder:-

"58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is contemporaneous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death of his assailant either when the assault is attempted or directly threatened.

14. Apart from that it is well settled principle law that even if the accused does not plead self defence, it is open to the court to consider such a plea if the same arises from the

material on record, the Hon'ble Supreme Court in MUNSHI RAM Vs. DELHI ADMN reported in AIR 1968 SC 702, it has held as follows:-

"51... It is well settled that even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of the plea on the basis of [material available] on record"

15. Keeping the above principle in mind we have to consider the instant case. From the evidence of P.Ws.2 and 3, it could be seen that on the date of occurrence at about 9.00 p.m., the deceased and three persons went to their agricultural field to irrigate their lands, there the accused were sleeping. According to P.W.1, the deceased questioned the first accused regarding the earlier quarrel and due to the same there was a wordy quarrel between the deceased and first accused, and the deceased pushed down the first accused. Immediately, the first accused took a knife which was available in the scene of occurrence and trying to attack the deceased, but suddenly the deceased turnaround, and by that he suffered a cut injuries on his neck and fell down. Apart from that P.W.1 also admitted that on the way to agricultural field all the four persons have consumed toddy, only after consuming toddy, they went to the agricultural field and the deceased questioned the first accused. P.W.2, the another eye witness to occurrence deposed that they went to the scene of occurrence, where the accused were sleeping and the deceased started the quarrel with the first accused, and the deceased pushed him down, immediately the first accused trying to attack the deceased and at that time P.W.1 also attacked the first accused with wooden log on his head. In his cross examination also, P.W.2 admitted that the deceased only started the quarrel with the first accused and due to the quarrel, deceased pushed him down. P.W.3, the another eye witness to the occurrence has deposed that it is only the deceased had started quarrel with the first accused and pushed him down. From their evidence, it could be clearly seen that it is only the deceased and other three prosecution witnesses went to the scene of occurrence, where the accused were sleeping, and the deceased started the quarrel, and pushed him down, and then only, the first accused took a knife and accidentally caused injuries on the deceased, and at that time P.W.1 also attacked the first accused with wooden log on his head and caused injury. P.W.10, the Doctor examined the A-1 and issued wound certificate Ex.P7 and deposed that Appellant has suffered a head injury and also injury on his leg.

16. The occurrence took place at about 9.00 p.m., in the night hours, the deceased and other three prosecution witnesses after consuming toddy went to the place of the first accused, quarrelled with him, and the deceased pushed him down, apprehending a danger, immediately, the accused took a knife and trying to attack the deceased. It is the evidence of P.W.1 that the first accused was only intending to attack the deceased, at the time, the deceased turnaround, by that he suffered injuries on his neck. From the evidence of P.W.1, it could be seen that the deceased suffered injury accidentally. In the said circumstances, I am of the considered view that the first accused only exercised his right of self defence in order to avert the impending danger to his life.

17. Sofar as the motive for the occurrence, it is the case of the prosecution that prior to the present occurrence there was a quarrel between the deceased and the first accused, in which P.W.5, said to have beaten his child, and when the deceased questioned P.W.5, P.W.5 scolded him with filthy language and the first accused also joined P.W.5 scolded the deceased with filthy language. P.W.4, the daughter of the deceased who accompanied the deceased at the time of the earlier occurrence. She has stated that P.W.5, is the person who has beaten his child, when the deceased questioned the same, P.W.5 only scolded the deceased with filthy language, and there were no quarrel between the first accused and the deceased. Apart from P.W.4, there is no other evidence available to prove that there was a quarrel between the deceased and accused prior to the present occurrence. Even, P.W.1, the injured eye witness also did not say anything about the earlier occurrence. In the above circumstances, I am of the considered view that the prosecution has failed to prove the motive also.

18. The next contention is that there is a delay in filing the complaint. The occurrence said to have taken place between 9.00 to 10.00 p.m., It is the evidence of P.Ws.1 to 3 that after the occurrence they went to their house and kept quite and sleeping only on the next day morning at about 8.00 a.m., there was a deliberation in the village, then only they have given the complaint before the police station. It is the evidence of P.W.3 that after the occurrence they have kept quite in the night hours and informed the same to the village head only on the next day. P.W.1 is the injured witness in this case. P.W.3 is the son of the deceased, they have also stated that they have kept quite till next day morning 4.00 a.m., and then lodged a complaint. Apart from that it is also the admitted that only after a deliberation in the village, the complaint has been given before the police station, which is also creates a doubt about the prosecution case. Considering the facts and circumstances of the case, I am of the considered opinion that the prosecution has failed to prove the case beyond any

reasonable doubt. Hence, the accused is entitled for acquittal. But the Court below without considering the case in proper perspective convicted the Appellant and the judgement of the Court below is liable to be set aside.

19. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.11 of 2007 by the learned Principal Sessions Judge, Villupuram, is set aside and the appellant/first accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Villupuram District, Villupuram.

2.The Inspector of Police,
Thirukoilur Police Station,
Thirukoilur, Villupuram District.

3.The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate No.I
Thirukoilur
Villupuram District

5.Do-Thro The Chief Judicial Magistrate
Villupuram

6.The Superintendent
Central Prison
Cuddalore

7.The Director General of Police
Mylapore
Chennai

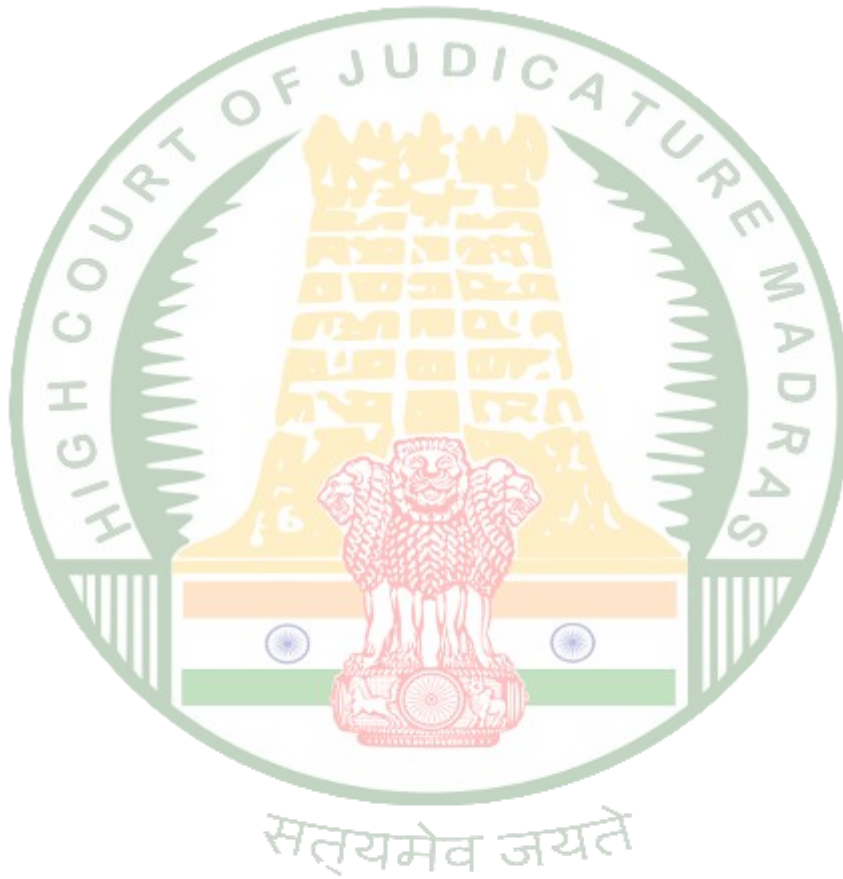
8.The District Collector
Villupuram District

9.The Section Officer
Criminal Section
High Court Madras

+1 cc to M/s.S.Saravanakumar Advocate sr 92037

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