

BAIL SLIP

The Appellant/Accused namely ***P.Prabhu**, was directed to be released on bail as per order dated 19.12.2011 on this Court made in Crl.MP.No.1/11 in Crl.A.No.768 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.04.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL NO.768 OF 2011

***P.Prabhu**

.. Appellant

/versus/

The State rep.by
The Inspector of Police,
Mailaduthurai Police Station,
Nagapattinam District
Crime No.3 of 2008)

... Respondent

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the conviction and sentence made in S.C.No.208 of 2008 dated 22.11.2011 on the file of the District and Sessions Judge, Nagapattinam District.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mrs.Kritika Kamal
Government Advocate(Crl.side)

J U D G M E N T

This Criminal Appeal is filed against the conviction and sentence imposed by the District and Sessions Judge, Nagapattinam in S.C.No.208 of 2008 dated 22.11.2011.

2. It is the case where the appellant and two others were charged for offence under Section 302 r/w 34 IPC. The Trial Court after considering the evidence let in by the prosecution has acquitted A2 and A3, whereas convicted A1 for offence under

Section 304(I) IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5000/-; in default sentenced to undergo one year Simple Imprisonment.

3. The Lower Appellate Court has considered the evidence as spoken by the prosecution witnesses and has found that the testimony of PW.1, PW.3 and PW.4 are not sufficient to infer the guilt against A2 and A3 for common intention, since A1 removed the Aruval from the deceased and attacked him as a reflect action for which there was no sharing of intention between him, A2 and A3. So far as the act of A1 is concerned, the Trial Court has considered the evidence of PW.1, PW.2 and PW.4, who were present at the time of occurrence and has held that the weapon was brought by the deceased, he wielded the same at A1. He was also got injured. Thereafter, A1 snatched the Aruval from the deceased and had cut him causing injuries which later led to his death.

4. The Lower Appellate Court has considered this proven act of evidence as an act of private defence but excessive, therefore, held guilty of offence under Section 304 (I) IPC.

5. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.side) for the State and after perusing the evidence, this Court finds that it is not an excessive act of private defence on the part of A1. It is an admitted case that the deceased feared of A2 giving complaint against him to the police about the dispute between him and Sivakumar A2 on the eve of New Year, a day prior to the incident.

6. The quarrel on 31.12.2007 in connection with playing the tape recorder with high decibel by him, the deceased has anticipated retaliation by Sivakumar and others. Therefore, he has gone to the house of his friends Rajesh and Iyyappan [PW.2] and informed them about the happening and called them to be with him, so that they can do away Sivakumar. On the next day at 9.30 a.m., Sivakumar was found in company with Prabhu and Sureshkumar. It was the deceased who went to his house took the knife and attacked Prabhu, who has sustained injury while snatching the knife. These are all admitted facts even by the deceased in his statement to police at the hospital as well as the eye-witnesses. While so, applying the principle of excessive private defence to hold the accused (A1) guilty of offence under Section 304(I) IPC is not available when the sequence of events have happened in a very close proximity of time and the weapon used to attack the deceased was not possessed by the accused but it was brought by the deceased himself to attack Sivakumar [A2] the friend of the accused [A1].

7. From the complaint given by the deceased and recorded by the police, it is clear that the deceased had the intention to kill Sivakumar and went to the spot carrying the weapon. His statement to the police, since he is died, should be taken as piece of evidence. The appreciation of the First Information Report and the complaint given to the police gives information about the reason for death. The very fact that the appellant and the other accused were not armed with weapons and it was the deceased, who carried the weapon and tried to attack Prabhu. While seizing the weapon, Prabhu sustained injury. It is quite natural to prevent further attack as a defence, the accused had retaliated back using the knife snatched from the deceased.

8. This Court finds that the private defence exercised by the appellant is not excessive. The trial Court though has rightly found that the private defence is exercised, in the light of the evidence and the narration of the facts by the witnesses, this Court finds that it is not an excessive act on the part of the A1. while exercising his right private defence against a person carrying knife and the accused armless, when the person attack with knife snatching it and attacking the assailant with knife is not an excessive defence. It is adequate and he cannot be held guilty for offence under Section 304(I) IPC.

9. In the result, the appeal is allowed. The Judgment of conviction and sentence passed by the trial Court in S.C.No.208 of 2008 dated 22.11.2011 is set aside. The appellant is set at liberty. Bail bond if any executed by the appellant shall be cancelled. Fine amount if any paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar(CS III)

Dated:14/05/2019

*Corrected as per order of this
Court dated 09/01/2020 made in
Crl.A.No.768 of 2011

Sd/-

Assistant Registrar(CS III)

Dated:21/01/2020

//True Copy//

Sub Assistant Registrar

rpl

To

1. The District and Sessions Judge,
Nagapattinam District.
2. The Inspector of Police,
Mauiladuthurai Police Station,
Nagapattinam District
3. The Judicial Magistrate No.I,
Mayiladuthurai.
4. The Chief Judicial Magistrate,
Nagapattinam
5. The Superintendent Central Prison,
Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

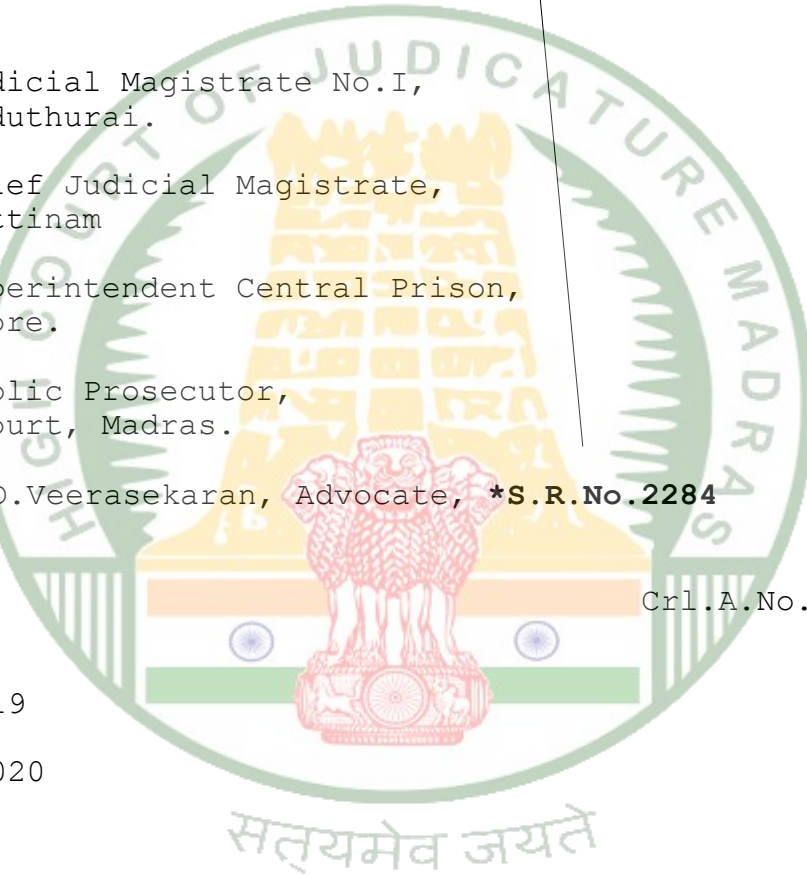
To be substituted to the
Order already despatched
on 09/07/2019

+1cc to Mr.D.Veerasekaran, Advocate, ***S.R.No.2284**

Crl.A.No.768 of 2011

KS (CO)
CS/23/05/2019

srg 21/01/2020



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