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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.10.2026

PRONOUNCED ON : 30.10.2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

AND

THE HON'BLE MR.JUSTICE N.GUNASEKARAN

CRL A(MD) No. 869 of 2023

CNR:{HCMD010962702023}

Gopal

… Appellant / Accused

Vs

The State of Tamil Nadu rep by its,
The Inspector of Police,
Seithur Police Station,
Virudhunagar District.
(Crime No.48 of 2019)

… Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the conviction and sentence imposed on the appellant in S.C.No.135 of 2019 vide; judgment dated; 30.06.2023 on the file of the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur.

For Appellant : Mr.M.J.Riaz Ahamed

For Respondent : Mr.G.Karuppasamy Pandiyan,
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by N.GUNASEKARAN,J.)

The appellant / sole accused in S.C.No.135 of 2019 on the file of the learned Principal District and Sessions Judge, Virudhunagar at

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Srivilliputhur has filed this appeal challenging the following conviction and sentence imposed against him in the impugned judgment dated 30.06.2023.

Sentence of law	***Sentence of imprisonment***	***Fine***
Section 341 of IPC	-	*Rs.100/- i/d to undergo one week simple imprisonment*
Section 506 (ii) of IPC	*To undergo one year of imprisonment*	*Rs.1000/- i/d to undergo three months simple imprisonment*
Section 302 of IPC	*To undergo life imprisonment*	*Rs.5,000/- i/d to undergo six months simple imprisonment*
Period of detention already undergone by the appellant was ordered to be set off and the sentences were ordered to run concurrently.		

2). **Case of the prosecution in brief reads as follows:**

Baymalai / Defacto Complainant / P.W.1 and Ganesan were the husband and wife, and Malaiyarasi / P.W.2 is their only daughter. She got married to Malaiyarasan, who is the son of Gopal / accused herein. The said Malaiyarasan died eight months prior to the occurrence after being bitten by a stray dog. The accused being the father-in-law of Malaiyarasi / P.W.2 had suspected that the cause of such death of his son was due to sorcery of her father viz; Ganesan and insisted her to transfer the title of the house standing in the name of his son and her and to pay him a sum of Rs.30,000/- out of the balance sale proceeds of the livestock being reared by his son. Further case of the prosecution is that on 09.02.2019, at about

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07.00 p.m., the aforesaid Ganesan along with other male members of the village went to worship the deity of Karumalaiyan temple having located on the western side of Seithur and returned home by early hours of 10.02.2019 at about 01:15 a.m. and on a urge to defecate, he informed his wife and daughter viz; P.W.1 and P.W.2 and went to canal side and while he was proceeding four houses away from his residence, Gopal / accused had waylaid and wrongfully restrained the Ganesan nearby the house of Krishnan in the Valaiyar Street with an intention to murder him and inflicted injuries with an aid of knife and criminally intimidated Baymalai / P.W.1 and Malaiyarasi / P.W.2 when they attempted to rescue him on witnessing the occurrence and he fled away. Immediately, the injured was admitted to the Government Hospital at Rajapalayam for treatment by P.W.1 and P.W.2 with the help of Mariyappan / P.W.3 who being the brother of the defacto complainant / P.W.1 with an aid of auto rickshaw of Vijayakumar / P.W.4. On such admission, Thangamarimuthu / P.W.7, being a duty doctor had prepared an accident register in Ex.P8 and gave first aid treatment. On very same day, on intimation, the Venkatesh / P.W.8, Sub-Inspector of police, Seithur police station had visited the Government Hospital at Rajapalayam, at about 02:30 a.m and received a complaint statement in Ex.P1 from the Baymalai / P.W.1 and returned back to police station and registered the first information report in Ex.P9

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at about 04.00 a.m in Crime No. 48 of 2019 under Sections 341, 307 read with 506(ii) of the Indian Penal Code and sent the original complaint statement in Ex.P1 along with the first information report in Ex.P9 to the concerned Judicial Magistrate Court at Rajapalayam. Kumaravel / P.W.10 who being the Circle Inspector of Police, Seithur had took the investigation of the case on 10.02.2019 at about 05.00 a.m. and visited the scene of occurrence in North Valaiyar Street, Seithur at about 05:30 a.m. and prepared observation mahazar in Ex.P4 and rough sketch in Ex.P11 and lifted blood-stain in a piece of gauze cloth in M.O.2 under seizure mahazar in Ex.P5 in the presence of the witnesses viz; Ramar / P.W.5 and Vadakkasi and examined the witnesses and recorded their statement. On the very same day, at about 13:30 hours, the investigation officer / P.W.10 had arrested the Gopal / accused nearby the Bharat Petrol Bank at Seithur and recorded his confession statement in the presence of Devaraj / P.W.6 and Ramar and seized the knife in M.O.1 at about 14:45 hours from the thorn bushes behind EPS Theatre, Seithur under seizure mahazar in Ex.P7 in the presence of the aforesaid witnesses. In the meantime, the injured namely Ganesan had died on 11.02.2019 at about 12:15 hours when he was in further treatment at Government Hospital, Tirunelveli and as a result, the investigation officer / P.W.10 had altered the sections of the offences from 341, 307 and

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506(ii) of IPC to 341, 302 and 506(ii) of IPC, as per the alteration report in Ex.P12, and conducted inquest at about 10.00 a.m. on the very same day in the presence of Panchayathars and prepared the inquest report in Ex.P13 and submitted a request to conduct postmortem. On such request, on 12.02.2019 at about 12.20 p.m., Dr.A.Selvamurugan / P.W.9, Associate Professor in Forensic Medicine, Tirunelveli Medical College, Tirunelveli had conducted postmortem and submitted a postmortem report in Ex.P10 with the opinion that the deceased would have died due to complication of stab injury. On completion of postmortem, the white colour dhoti in M.O.3 was seized from the body of Ganesan under Form 95. On 27.02.2019, the statement of witnesses namely P.W.1 and P.W.2 were recorded under Section 164 of the Criminal Procedure Code by the Judicial Magistrate Court No.II, Srivilliputhur in Ex.P2 and P3, respectively. Later, the investigation officer / P.W.10 had received biological and serological report in Ex.P14 and P15, respectively, in addition to certificate from the Section Grade Town Panchayat, Seithur in Ex.P16 to show the illumination of street light during the relevant time of occurrence and on completion of investigation, he had laid final report against the accused for an offence punishable under Sections 341, 302 read with Section 506(ii) of IPC. On such final report, the Judicial Magistrate Court at Rajapalayam took the cognizance of the case in

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Preliminary Registration Case No. 12 of 2019 and furnished the copy of relevant record to the accused as per Section 207 of Criminal Procedure Code and committed the case to the Court of Sessions under Section 209(a) of the Criminal Procedure Code. On such committal, the Principal District Sessions Court, Virudhunagar District at Srivilliputhur had took the case on file in Sessions Case No. 135 of 2019 and ordered for trial since the accused had denied the charges levelled against him and claimed to be tried.

3). On trial, the prosecution had examined 10 number of witnesses viz; P.W. 1 to P.W. 10 and marked documentary evidence in Ex.P1 to P16 along with material objects in M.O. 1 to M.O. 3. On conclusion of recording of evidence on behalf of the prosecution, the accused had denied all the incriminating circumstances appearing against him in such evidence as false when he was questioned under Section 313(1)(b) of the Criminal Procedure Code and he neither let in oral nor documentary evidence. Upon the appreciation of evidence, the trial court had found the accused being guilty for an offence punishable under Section 341, 302 read with Section 506(2) of IPC and convicted him to undergo sentence. Aggrieved over the same, the accused had preferred the Appeal under judgment.

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4). **Submission of the learned counsel appearing for the appellant / accused is as follows:**

He would submit that P.W.1 and P.W.2 are the the wife and daughter of the deceased and are claimed to be witnesses to the occurrence and that being so, the Investigating Officer had failed to seize and produce their blood-stained clothes and such failure to do so, creates serious doubt about their presence at the scene of occurrence. He would further submit that according to the evidence of P.W.1, the neighbours were standing outside their respective houses and had witnessed the occurrence and however, P.W.10 / the Investigating Officer had admitted that he had not recorded the statements of the persons residing in Krishnan's house in front of which the occurrence was alleged to have taken place. He would contend that the Investigating Officer had neither examined nor cited any independent eye witnesses despite their alleged presence at the scene of occurrence. Therefore, the non-examination of such natural witnesses according to him would cast serious doubt over the case of prosecution. He would also submit that the deceased was the aggressor as could be inferred from the evidence of P.W.1 and contend that the deceased was armed and was waiting for the arrival of the accused in an open area and the accused had neither premeditated the occurrence nor made any preparation to attack the deceased. He would

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further submit that the act of the accused did not amount to the use of excessive force and that the circumstances of the case would fall within the ambit of Section 100 of the Indian Penal Code. Accordingly, he would contend that the accused was entitled to exercise the right of private defence to protect his life. On the above grounds, the learned counsel would seek to set aside the conviction and sentence imposed by the trial Court.

5). **Submission of the learned Additional Public Prosecutor is as follows:**

He would submit that the contentions raised by the learned counsel for the appellant regarding the non-recovery of the blood-stained clothes of P.W.1 and P.W.2 and the non-examination of independent eyewitnesses do not by themselves warrant interference with the judgment of the trial Court. He would contend that the evidence of P.W.1 and P.W.2 must be assessed in its entirety together with the other oral and documentary evidence adduced by the prosecution. He would deny the contention of the deceased being the aggressor and the appellant had exercised his right of private defence since it is not supported by the evidence. He would contend that the testimony of P.W.1 along with the medical evidence of P.W.9 in addition to other materials on record would support the case of prosecution. He would further submit that the

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appellant has not established the factual circumstances necessary to justify the exercise of the right of private defence under Section 100 of the Indian Penal Code. Accordingly, he would contend that the case law relied upon by the learned counsel for the appellant are distinguishable on their facts and would not advance the case of appellant herein. He would also submit that the evidence of Doctor / P.W.9 who conducted the post-mortem examination would corroborate the case of prosecution regarding the nature of the injuries sustained by the deceased and would point out that the post-mortem report marked as Ex.P10 and the evidence concerning the recovery of the weapon marked as M.O.1 would support to the prosecution version regarding the injuries sustained by the deceased. He would therefore contend that the medical evidence read along with the testimony of the eyewitnesses supports the case put forth by the prosecution. He would further submit that the learned trial Judge had carefully considered the oral and documentary evidence and rightly found the appellant guilty of the offences punishable under Sections 341, 302 and 506(ii) of the Indian Penal Code. Therefore, he would contend that the judgment of the Trial Court does not warrant interference and seek to dismiss the Criminal Appeal.

6). On careful consideration of rival submissions made on behalf of either side and perusal of records, this Court noticed that the points for

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consideration in the Appeal is as follows:

(i) Whether the prosecution has established the guilt of the accused beyond reasonable doubt for the offences punishable under Sections 341, 302 and 506(ii) of the Indian Penal Code?

(ii) Whether the conviction and sentence imposed by the Trial Court upon the accused is sustainable under law?

7). **Discussion and Findings**:

7.1. Both side heard. Records perused. Baymalai / P.W.1 and the deceased in the case viz; Ganesan were the husband and wife, and Malaiyarasi / P.W.2 is their only daughter. She got married to Malaiyarasan, who is the son of Gopal / accused herein. The aforesaid Malaiyarasan died about eight months prior to the date of occurrence and it is the case of prosecution that he had died after being bitten by a stray dog. It is also alleged that the accused had suspected the death of his son was attributable to sorcery of Ganesan and insisted her to transfer the title of the house standing in the name of his son and her, and to pay him a sum of rupees 30,000 out of the balance sale proceeds of the livestock being reared by his son. Further case of the prosecution is that on 09.02.2019, at about 07.00 p.m., the aforesaid Ganesan along with other male members of the village went to worship the deity of Karumalaiyan temple having located on the western side of Seithur and returned home

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by early hours on 10.02.2019 at about 1:15 a.m. and on a urge to defecate, he informed his wife and daughter viz; P.W.1 and P.W.2 and went to canal side and while he was proceeding four houses away from his residence, the accused had waylaid and wrongfully restrained him nearby the house of Krishnan in the Valaiyar Street with the intention to murder him and inflicted injuries with an aid of knife and criminally intimidated Baymalai / P.W.1 and Malaiyarasi / P.W.2 when they attempted to rescue him on witnessing the occurrence and he fled away and later, Ganesan was succumbed to the injuries. The factum of the relationship between the parties namely P.W.1 to P.W.3 and the accused, the death of Malaiyarasan being the son of the accused and husband of Malayarasi / P.W.2, are not in dispute.

7.2. It is to reiterate that the Malaiyarasi / P.W.2 is the daughter-in-law of the accused and is the daughter of Baymalai / defacto complainant / P.W.1. The motive of the accused such that his suspicion of the sorcery of Ganesan being the cause of the death of his son viz; Malaiyarasan and his persistent demand to transfer the title of the house standing in the name of his son and daughter-in-law / P.W.2 and to pay him a sum of Rs.30,000/- being the balance sale proceeds of the livestock having reared by his son are established from the cogent and credible oral evidence of P.W.1 to P.W.3 having been corroborated by the statement of

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P.W.1 and P.W.2 recorded under Section 164 of the Criminal Procedure Code by the concerned Judicial Magistrate in Ex.P2 and P3, respectively, in addition to Inquest Report in Ex.P13. The defacto complainant / Baymalai / P.W.1 and Mariyappan / P.W.3 are coolie workers and shown to be a rustic witnesses. The date and time of occurrence is on 10.02.2019 during odd hours i.e. at about 1:15 a.m. and the place of occurrence is within the area of Selection Grade Town Panchayat, Seithur and that being so, the movement of the public at large during such odd hours cannot be expected to witness the occurrence. Moreover, the scene of occurrence is located nearby the house of Krishnan which is four number of house away from the place of the residence of the defacto complainant / P.W.1 in the straight Valaiyar street as per the observation mahazar in Ex.P4 and rough sketch in Ex.P11 and therefore, the P.W.1 and P.W.2 being the natural and ocular witness to the occurrence cannot be ruled out. Moreover, their oral evidence were corroborated by the complaint statement in Ex.P1 and also substantiated by their statement before the concerned Judicial Magistrate under Section 164 of the Criminal Procedure Code having corroborated by the evidence of P.W.3 who being the brother of the defacto complainant. Mariyappan / P.W.3 would depose that he had immediately rushed to the place of occurrence on receiving information from the Malayarasi / P.W.2 over a phone and

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they admitted the injured to the Hospital for treatment with an aid of the auto rickshaw being driven by Vijayakumar / P.W.4. The said factum of the injured viz. Ganesan being brought to the hospital by P.W.3 is established from the entry found in the accident register in Ex.P8.

7.3. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove / disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act as per the principle laid down by the ***Hon'ble Supreme Court of India reported in (2014) 3 SCC 401 in Gulam Sarbar -vs- State of Bihar***. If the testimony of single witness is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof.

7.4. Kumaravel / P.W.10 in his evidence deposed that he had lifted the bloodstain from the place of occurrence under Seizure Mahazar in

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Ex.P5 in the presence of the witnesses in gauze of cloth in M.O.2 and subjected for forensic examination. Such factum of lifting the blood-stain was ascertained by the Ramar / P.W.5 in his evidence. Moreover, the scene of occurrence is proved from the evidence of occurrence witnesses viz; P.W.1 to P.W.3 having corroborated by the evidence of P.W.5 in whose presence the relevant observation mahazar and rough sketch were prepared by the investigation officer. The weapon involved in the offence is a knife in M.O.1 and the same was shown to have recovered and seized at the instance of the confession from the accused and the same is established with an evidence of Devaraj / P.W.6.

7.5. The accused is the cause of death of Ganesan as per the version of panchayathars according to the inquest report of the investigation officer in Ex.P13. The prosecution was also able to produce a certificate from the selection grade town panchayat, Seithur to show that the occurrence had taken place in the illuminating street light at the place of occurrence which enabled the P.W.1 and P.W.2 to witness the occurrence. On cumulative analysis, it is noticed that the evidence of P.W.1 and P.W.2 who being cited as ocular witnesses to the occurrence is found to be intrinsically reliable, inherently probable and trustworthy even though they are close relatives of the deceased. It is to note that close relationship of witnesses with the deceased or victim is no ground

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to reject their evidence and on contrary, their evidence would normally be most reluctant to spare the real culprit and falsely implicate an innocent one as per the decision of ***Hon'ble Supreme Court of India reported in (2007) 14 SCC 150 in Namdeo -vs- State of Maharashtra.*** Moreover, the accused was identified by the P.W.1 and P.W.2 before the Court and had deposed evidence in a cogent manner to the effect that he had criminally intimidated them after stabbing the Ganesan with knife.

7.6. It is to reiterate that the occurrence had taken place on 10.02.2019 at about 1:15 a.m and the complaint statement from the Baymalai / P.W.1 was received by Venkatesh / P.W.8, at about 2:30 a.m and he returned back to the police station and registered first information report at about 4 a.m and forwarded the complaint statement along with the first information report to the concerned Judicial Magistrate Court and the same had reached it at 19:45 hours as per the endorsement of the concerned Judicial Magistrate having found in the same. Therefore, it is revealed that the first information report was registered in time and the same was sent to the concerned Judicial Magistrate Court within 24 hours as required under the law and the mere delay in reaching the Court cannot be termed as inordinate or fatal to the case of prosecution in the absence of the sub-inspector of police, Seithur police station / P.W.8, who registered the FIR, being a competent person, was not confronted in this

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regard by the defence side as per the decision of Hon'ble Supreme Court of India reported in ***2022 INSC 266*** in ***M.Nageswara Reddy -vs- The State of Andhra Pradesh and Others***.

7.7. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court can come to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. In the case on hand, it is to reiterate that the evidence of P.W.1 and P.W.2 in whole reliable and inspires the confidence of the Court by implicating the accused having wrongfully restrained the deceased had murdered him by inflicting injuries with armed knife and criminally intimidated them and therefore, their evidence cannot be brushed aside on the sole ground of being close relative of the deceased as per the principle laid down by the Hon'ble Supreme Court of India reported in ***(2022) 12 SCC 200 in***

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Rajesh Yadav and Another -vs- State of Uttar Pradesh.

7.8. The main defence of the appellant / accused is that the death was caused to the Ganesan / deceased as an outcome of his private defence. Such plea of defence is mutually destructive in nature and would infer the acceptance of occurrence from the side of defence. It is noticed that the accused had not sustained any injury in the alleged grappling in the occurrence, whereas, the deceased had sustained injuries including stab and cut injury as per the oral evidence of the doctors viz; P.W.7 and PW9 in addition to the documentary evidence of accident register in Ex.P8 and postmortem certificate in exhibit P10. The doctor / P.W.9 who conducted post mortem is of opine that the deceased would have died of the complication of stab injury to the region of chest. From the evidence of Doctor / P.W.7 who registered the accident register in Ex.P8 and rendered first aid to the injured would disclose that one among such injury is on the chest through which the intestine was protruding. It is to reiterate that the blood-stained portion was lifted under M.O.2 and subjected to forensic examination as per the biological report in Ex.P14. Therefore, omission to seize the blood-stained cloth from the P.W.1 and P.W.2 alone is not fatal to the case of the prosecution, though it may be flaw in the investigation, as their evidence is found to be credible, cogent and trustworthy to affirm they being the eyewitness to the occurrence and

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therefore, the facts and circumstance of the case on hand is not applicable to the cited case law of the Hon'ble Supreme Court on behalf of the defence reported in ***AIR 2003 SC 1326 in Khima Vikamshi v. State of Gujarat***.

7.9. The perusal of records including the arrest memo of the accused would reveal the lack of injury to him in the occurrence. It is the specific case of the prosecution is that the accused having armed with knife had waylaid and wrongfully restrained the Ganesan / deceased and inflicted multiple injuries including stab and cut injury and as a result, he succumbed to it.

7.10. Under law, the right of private defence of body commences, as soon as, a reasonable apprehension of the danger to the body arises from an attempt or threat to commit the offence, although the offence may not have been committed and lasts till such reasonable apprehension lasts. The right of private of defence is a question of fact, determined by the circumstances surrounding the case and the burden of proof lies upon the accused to establish a reasonable and probable version of self defence as per Section 105 of the Indian Evidence of Act [Section 108 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA)]. It is to be noted that a disproportionate number of injuries sustained by the victim, contrasted with no injuries on the accused, undermines the private defence claim.

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The lack of injuries on the accused suggest an unprovoked aggression rather than a necessary defensive act. The Hon'ble Supreme Court of India, in the following case laws (i) ***Hanumantappa Bhimappa Dalavai And Anr -vs- State Of Karnataka*** reported in ***2009 AIR SCW 3675*** (ii) ***Ananta Deb Singha Mahapatra & Ors -vs- State Of West Bengal*** reported in ***AIR 2007 SUPREME COURT 2524*** and (iii) ***Sekar @ Raja Sekharan -vs- State Rep.By Inspector of Police, T.Nadu*** in ***Appeal (crl.) 155 of 2002*** had dealt the plea of private defence as follows:

" *Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression `right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same*

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is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872, the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities is favour of that plea on the basis of the material on record.

(See Munshi Ram and Ors. v. Delhi Administration: AIR 1968 SC

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702: State of Gujarat v. Bai Fatima: AIR 1975 SC 1478: State of U.P. v. Mohd. Musheer Khan: AIR 1977 SC 2226: and Mohinder Pal Jolly v. State of Punjab: AIR 1979 SC 577).

Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P. (AIR 1979 SC 391), runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal

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rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

[See Lakshmi Singh v. State of Bihar (AIR 1976 SC 2263)]. In this case, as the Courts below found there was not even a single injury on the accused persons, while P.W.2 sustained large number of injuries and was hospitalized for more than a month. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is

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available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must shows that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.

Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or

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commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In Jai Dev. v. State of Punjab (AIR 1963 SC 612), it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. ……"

7.11. Further the Hon'ble Supreme Court of India in the case law reported in ***2007 AIR SCW 2123*** in ***Shahjajhan and others vs State Of Kerala and another*** has further held as follows:

" 24. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not

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devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived."

7.12. In the case on hand, the weapon viz; knife in MO1 was seized on the basis of confession from the accused leading to recovery as per the evidence of Devaraj / P.W.6 corroborated by the investigation officer / P.W.10 and the admissible portion of such confession and the seizure mahazar of MO1 is marked through Devaraj / P.W.6 as Exhibit P6 and P7, respectively. Notably, the accused had not sustained injury in the occurrence but the deceased including the stab and cut injury. It is to reiterate that the P.W.1 is a rustic witness and perusal of her evidence in addition to the evidence of P.W.2 in entirety would negative the contention of the accused in respect of his private defence. It is to reiterate that the evidence of the occurrence witnesses viz; P.W.1 to P.W.3 are cogent, reliable and trustworthy to inspire the confidence of the Court in implicating the accused being armed with knife had wrongfully restrained the deceased and inflicted multiple injuries to him and caused criminal intimidation. Upon consideration of the evidence on record, this Court finds that the appellant has not established the circumstances giving rise to a reasonable apprehension of death or grievous hurt warranting the exercise of the right of private defence extending to

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causing death. Accordingly, the plea of private defence raised by the appellant is found to be baseless in the facts and circumstances of the case. That being so, the facts and circumstances of the cited case law of the Delhi High Court reported in ***2007 Supreme (Del.) 105*** in ***Dharam Pal v. State of Delhi*** on behalf of defence side is not applicable to the facts and circumstances of the case on hand.

8. **Conclusion**:

In view of the foregoing discussion and perusal of records, this Court finds that the prosecution has established the guilt of the appellant / accused beyond reasonable doubt for the offences punishable under Sections 341, 302 and 506(ii) of the Indian Penal Code and the conviction and sentence passed against him vide judgment dated; 30.06.2023 in S.C.No.135 of 2019 on the file of the Principal District and Sessions Court, Virudhunagar at Srivilliputhur is sustainable under law and accordingly, the Criminal Appeal is dismissed. The bail bonds executed by the appellant / accused shall stand cancelled and the Trial Court is directed to secure the accused to undergo the remaining period of sentence as per law.

(M.N.K.,J.) (N.G.N.,J.)
30-10-2026

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Principal District and Sessions Judge,
Virudhunagar at Srivilliputhur.

2.The Inspector of Police,
Seithur Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

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M.NIRMAL KUMAR, J.
AND
N.GUNASEKARAN, J.

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Pre-delivery order made in
CRL.A(MD).No.869 of 2023

30-10-2026

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