

(1994) 10 MAD CK 0048

In the Madras High Court

Case No : Criminal Appeal No. 399 of 1987

Adhimoolam and others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-10-1994

Acts Referred:

Arms Act, 1959 — Section 4
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 105
Penal Code, 1860 (IPC) — Section 103, 147, 148, 300, 302

Citation : (1994) 10 MAD CK 0048

Hon'ble Judges : Thangamani, J;Janarthanam, J

Bench : Division Bench

Advocate : S. Ashok Kumar, for the Appellant; R. Regupathy, Assistant Public Prosecutor, for the Respondent

Judgement

Thangamani, J.—Appeal against the conviction and sentence passed by the Second Additional Sessions Judge, Tirunelveli Division in S.C.

No. 293 of 1986 on his file.

2. Appellants are accused 1 to 4 before the trial Court. They along with three others were charged as under for having formed themselves into an

unlawful assembly, some armed with deadly weapons and committing criminal trespass in the lease-hold land of P.W. 5 Ramaswami Thevar,

bearing S. No. 96/1 of Manaparanallur and causing the death of Meenakshi Sundaram at about 9 a.m. on 25-11-85 and causing simple and

grievous hurts to P.W. 1 Subbaya, and P.W. 2 Chandran alias Chandrasekaran.

Charge Accused number Substance of the charge Section No.

1. 2. 3. 4.

1. Accused 1 to 7 Causing criminal trespass

447 I.P.C. in the leasehold land of P.W. 5 Ramaswami Thevar, bearing S. No. 96/1 of Manaparanallur village.

2. Accused 1 to 5 Rioting armed with deadly

148 I.P.C. weapon. Accused 6 and 7 Rioting.

147 I.P.C.

3. Second accused Causing the death of

302 I.P.C. Meenakshisundaram

4. Accused 1 and 3 Members of an unlawful

302 read to 7 assembly with the common

with object of causing the death 149

I.P.C. of Meenakshisundaram.

5. First accused Causing grievous hurt to

326 I.P.C. P.W. 1 Subbayya.

6. Accused 2 to 7 Members of an unlawful

326 read assembly with the common with object of causing grievous

149 I.P.C. hurt to P.W. 1 Subbayya.

7. Accused 2 and 3 Causing hurt to P.W. 1

324 I.P.C. Subbayya with dangerous weapon.

8. Accused 1, 4 Causing hurt to P.W. 2

324 I.P.C. and 5 Chandran alias Chandrasekaran with dangerous weapon.

9. Accused 6 and 7 Wrongfully restraining the

341 I.P.C. deceased.

10. Accused 1 to 5 Using M.O. 4, Vel Kambu at

25(1)(B) r/w the time of occurrence.

S. 4 of Indian Arms Act and G.O. No. 336 dt. 14-2-1981.

3. The prosecution examined 49 witnesses, filed 33 Exhibits and marked 15 Material Objects to substantiate the charges. Of the witnesses

examined, P.W. 4 Subbayya turned hostile. The accused filed Exhibits D. 1 to D. 3 on their side. The evidence on record discloses these facts.

Deceased Meenakshisundaram, P.W. 1 Subbayya, P.W. 2 Chandran alias Chandrasekaran and P.W. 3 Sathyandran are the sons of P.W. 5

Ramaswami Thevar. They were cultivating on lease an extent of 2 Acres 4 cents of wet land, bearing S. No. 96/1 in Manaparanallur village

belonging to one Paramasiva Nadar and Ramachandra Nadar. About three years prior to the occurrence, Ramachandra Nadar died. Thereafter,

his son Subramania Nadar wanted P.W. 5 Ramaswami Thevar to surrender possession of the land, P.W. 5 did not oblige. Three days later,

Subramania Nadar brought first accused Adhimoolam, who is his friend and the other accused to the land and obstructed the cultivation of land by

P.W. 5 Ramaswami Thevar. Thereupon, 26-2-1982, P.W. 5 Ramaswami Thevar instituted O.S. 178/82 in the Court of the District Munsif of

Ambasamudram against the said Subramania Nadar, first accused Adhimoolam, third accused Murugan and 5th accused Durai. Exhibit P. 1 is the

copy of the plaint therein. He also obtained ad-interim injunction pending suit against them as per Exhibits P. 2 and P. 3. Aggrieved over this,

Subramania Nadar, accused 1, 3 and 5 filed another suit O.S. 329/82 in respect of the same property claiming that one Shanmugha Nadar was

cultivating the land on lease and obtained an ad-interim injunction on 26-8-1982 against P.W. 5 Ramaswami Thevar. Exhibit D. 3 is the copy of

the order in the injunction application. Thereafter, P.W. 5 Ramaswami Thevar did not go near the disputed land. Instead, accused 1 to 7 alone

were cultivating the same. However, P.W. 5 Ramaswami Thevar sought Police protection pursuant to the injunction order obtained by him in O.S.

178/82. The accused also claimed for Police protection in their suit. On 24-11-85 The Civil Court enquired both the applications, dismissed the

petition filed by the accused and accorded Police protection to P.W. 5 Ramaswami Thever. Thereafter, as per the directions of P.W. 5

Ramaswami Thever, his sons started cultivating the land. In the meanwhile, on 27-9-1982 Subramanian, son of Ramachandra Nadar entered into

Exhibit P. 26 agreement with first accused Adhimoolam for the sale of 1 acre 58 cents in the disputed land, SF 96/1 and other lands. P.W. 14

Ramasubramania Pillai is the scribe of the unregistered agreement, Exhibit P. 26.

4. On 25-11-1985, after P.W. 5 Ramaswami Thevar left for Ambasamudra, P.W. 1 Subbayya and P.W. 2 Chandran alias Chandrasekaran

started ploughing the abovesaid land. P.W. 3 Sathyandran was watering the field. Deceased Meenakshisundaram was mending the ridges. At

about 9.00 a.m., first accused Adhimoolam, second accused Chellaswami alias Duraisami, third accused Murugan, fourth accused Paulsami, and

accused 5 to 7 entered the field. Accused 1 and 3 were armed with Aruval and accused 2, 4 and 5 were armed with Velkambu. First accused

obstructed P.W. 1 Subbayya and P.W. 2 Chandran alias Chandrasekaran from ploughing the field. P.W. 1 protested saying that only as per the

right conferred in the pending civil suit, he was cultivating the land. Stating that doing away with him is the only remedy, first accused Adhimoolam

cut P.W. 1 on his hand. The cut fell on his left fore hand when P.W. 1 tried to ward off the same. Second accused Chellaswami alias Duraisami

stabbed with Velkambu on the pitty of P.W. 1 Third accused Murugan snatched the Velkambu from the hand of 5th accused and beat on the head

of P.W. 1 Subbayya. First accused Adhimoolam cut P.W. 2 Chandran alias Chandrasekaran on his left thigh. Fourth accused Paulsami beat on

the head of P.W. 2 Chandran alias Chandrasekaran with Velkambu. Fifth accused also beat P.W. 2 on his head. On seeing this, deceased

Meenakshisundaram came there running. While sixth accused caught hold of Meenakshisundaram, second accused Chellaswami alias Duraisami

stabbed on the right flank of Meenakshisundaram with Velkambu. First accused Adhimoolam snatched the Velkambu from the hands of fourth

accused and beat on the head of Meenakshisundaram. P.W. 3 Sathyendran shouted and came near. Seventh accused prevented P.Ws. 1 and 2

from going near. When P.W. 4 Subbayya and others came from the neighbouring fields, the accused ran away with their weapons.

5. P.Ws. 1 to 3 took Meenakshisundaram in a cart to Veeravanallur Police Station. On 25-11-1985 at 10 a.m. P.W. 17 Sub Inspector found

Meenakshisundaram unable to talk. So, he recorded the statement given by P.W. 1 Subbayya, i.e., Exhibit P. 4. P.W. 2 Chandran alias

Chandrasekaran attested the same. The Sub Inspector registered it as his Station Crime No. 160/85 under sections 147, 148, 341, 324 and 307

I.P.C. He prepared Exhibit P. 28 First Information Report and sent the originals to Judicial Second Class Magistrate Court through P.W. 15

Police Constable. These documents reached the Court at 1.00 p.m. on that day. The Sub Inspector sent the three injured to Veeravanallur

Government Hospital through P.W. 16 Constable.

6. On 25-11-1985 at 10.30 a.m. P.W. 6 Doctor examined Meenakshisundaram and found he was unconscious. Since his condition was bad, he

sent him to Tirunelveli Medical College Hospital for further treatment. Exhibit P. 9 is the office copy of the relevant accident register.

7. On the same day at 10.45 a.m. P.W. 6 Doctor examined P.W. 1 Subbayya for certain injuries said to have been caused on that day and to be

due to attack with Vel stick and Aruval by known persons. P.W. 6 found the following injuries on him :-

(1) An incised wound on the back of the left fore arm 6 cm. x 4 cm. x 3 cm.

(2) An incised wound on the left side of scalp 2 cm. x 2 cm.

(3) A lacerated injury on the left side of buttock 4 cm. x 3 cm. x 2 cm.

(4) Fracture ulna left fore arm.

The Doctor is of opinion that injury No. 1 is grievous, while injuries 2 and 3 are simple in nature. Exhibit P. 7 is the wound certificate issued by

him. Exhibit P. 10 is the report of P.W. 7 Radiologist. Exhibit P. 13 is the copy of the accident registered extract.

8. At 11.00 a.m. on that day, P.W. 6 Doctor examined P.W. 2 Chandran alias Chandrasekaran for certain injuries said to have been caused on

that day due to attack with Vel stick and Aruval by known person. He noticed these injuries on him.

(1) An incised wound on the centre of left thigh 5 cm. x 3 cm. x 3 cm.

(2) An incised wound on the left side of abdomen 3 cm. x 3 cm. x 2 cm.

In the opinion of the Doctor both the injuries are simple. Exhibit P. 8 is the wound certificate issued by him. Exhibit P. 11 is the report of P.W. 7

Radiologist. Exhibit P. 14 is the copy of the accident register extract P.W. 6 is of opinion that the injuries to all the three could have been caused at

the time and in the manner alleged.

9. On returning from Ambasamudram, P.W. 5 Ramaswami Thever learned about the incident and came to Veeravanallur Government Hospital.

Since the condition of Meenakshisundaram was serious, he took him in a taxi to Tirunelveli Medical College Hospital along with P.W. 16 Police

Constable. At 12 Noon P.W. 8 Doctor examined Meenakshisundaram at Medical College hospital and found he was dead. He sent Exhibit P. 12

death intimation to Police Out Post there. P.W. 10 Police Constable registered the death intimation in the Out Post general diary and sent message

to Veeravanallur Police Station through V.H.F. At 12.30 p.m. P.W. 8 Doctor had admitted P.W. 1 Subbayya and P.W. 2 Chandran alias

Chandrasekeran as in-patients in the hospital.

10. In the meanwhile on 25-11-1985 at 10.30 a.m. P.W. 18 Inspector received the first V.H.F. message from P.W. 17 Sub Inspector regarding

the occurrence. At 11.30 a.m. he visited the scene of occurrence along with the copy of First Information Report and took up investigation. At 12

Noon he inspected the scene of crime and prepared Exhibit P. 20 observation mahazar and Exhibit P. 29 rough sketch. P.W. 11 Nagarajan had

attested the mahazar. At 1.00 p.m. P.W. 18 Inspector recovered M.O. 11 blood stained earth, M.O. 12 sample earth, M.O. 13 Sattai Kambu,

and M.O. 14 broken under Exhibit P. 21 Mahazar. P.W. 11 Nagarjan had attested this mahazar also.

11. At 1.30 p.m. on receipt of V.H.F. message regarding the death of Meenakshisundaram, the Inspector altered the crime to one u/s 302 I.P.C.

and prepared Exhibit P. 30 Express First Information Report and sent the same to Judicial Second Class Magistrate, Ambasamudram. He

proceeded to Tirunelveli Medical College Hospital and held inquest over the dead body of Meenakshi Sundaram from 5.30 p.m. to 9.30 p.m. At

that time, he examined P.Ws. 1 to 5. Exhibit P. 31 is the inquest report. During inquest he recovered M.O. 2 blood stained lungi from P.W. 1,

M.O. 5 blood stained slack shirt and M.O. 6 blood stained lungi from P.W. 2, and M.O. 8 blood stained banian from P.W. 3. Thereafter, he

handed over the dead body to P.W. 16 Constable with Exhibit P. 27 requisition for post mortem. The Inspector returned to Veeravanallur and

examined P.Ws. 11 and 12. On the next day, he examined P.Ws. 10, 15 and 16 and sent the blood stained article to court. The Inspector also

examined one Mukkudal Subramania Nadar and recovered Exhibits P. 26 and P. 32 sale agreements from him.

12. On 26-11-1985, at 10.45 a.m. one Dr. Chandra Sekaran, who was the then Tutor in Forensic Medicine, Tirunelveli Medical College

Hospital, conducted the autopsy on the body of Meenakshisundaram. Exhibit P. 33 is the post mortem certificate issued by him, containing the injuries found on the dead body. Since the said Chandrasekaran is not in a position to give evidence in Court, P.W. 19 Balakrisnan, who was serving with him and who was acquainted with his hand-writing and signature, has spoken about the issuance of Exhibit P. 33. P.W. 16 Constable, who was incharge of the body, removed M.O. 7 bed sheet, M.O. 1 blood stained lungi and M.O. 15 waist card from the dead body and handed over them in the Police Station.

13. On 29-11-1985, first accused surrendered in the Court of Judicial Second Class Magistrate No. 2, Tirunelveli. On 3-12-1985 third accused surrendered in the Court of Judicial Second Class Magistrate, Sattur. On 9-12-1985 accused 4 and 6 surrendered before the Chief Judicial Magistrate, Tirunelveli. On 11-12-1985, P.W. 18 Inspector obtained Police custody for first accused Adhimoolam. On 12-12-1985 when interrogated first accused, he gave a confession statement, the admissible portion of which is Exhibit P. 22 Pursuant to the same, he took the Police party to his house and produced M.O. 3 Aruval concealed in the eve of the house roof. The Inspector recovered the same under Exhibit P. 23 mahazar. On the next day, he handed over first accused and M.O. 23 in Court. P.W. 12 Village Thalayari attested Exhibit P. 22 and P. 23.

14. On the same day at 7.00 p.m. P.W. 18 Inspector arrested accused 2, 5 and 7 in the bus stop of Veeravanallur More Madam. Second accused gave a confession statement, the admissible portion of which is Exhibit P. 24, in the presence of P.W. 13 Village Administrative Officer.

Pursuant to the confession, he took the Police party to Siva temple and produced M.O. 4 Velkambu from the northern wall. The Inspector recovered the same under Exhibit P. 25 mahazar, P.W. 13 Village Administrative Officer has attested Exhibit P. 24 as well as Ex. P. 25. After sending the accused and the properties recovered to the Police Station, the Inspector examined P.W. 5 again.

At that time, he produced Exhibits P. 1 to P. 3, P. 5 and P. 6 documents. On the subsequent days the Inspector examined P.Ws. 12, 13, 7 and 8.

15. On 2-1-1986, the Inspector sent Exhibit P. 16 requisition to Judicial Second Class Magistrate's Court, Ambasamudram to send the Material

Objects for chemical examination. P.W. 9 Head Clerk of that Court arranged to send them for chemical examination under the original of Exhibit

P. 17, the officer copy of the communication. Exhibits P. 18 and P. 19 are the reports of the Chemical Examiner and Serologist. On completion of investigation, the Inspector laid charge sheet on 9-5-1986.

16. When examined u/s 313 of Criminal Procedure Code, while admitting the relationship among deceased and P.Ws. 1 to 3 and 5, the accused denied the allegations against them. They did not examine any defence witness. However, they marked Exhibits D. 1 to D. 3 on their side.

17. The trial Court found that the charges against accused 5, 6 and 7 were not proved and accordingly acquitted them. However, it held accused 1 to 4 guilty, convicted and sentenced them as described below :-

Charge No.	Accused No.	Section	Sentence
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1.	2.	3.	4.
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Charge No. 1	Accused 1 to 4	447 I.P.C.	
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			each three months R.I.
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Charge No. 3	Second accused	302 I.P.C.	
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			Imprisonment for life.
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Charge No. 4	First accused	302 read with	
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			Imprisonment for S. 341 I.P.C. life.
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Charge No. 5	First accused	326 I.P.C. for	
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			3 years R.I. causing hurt to P.W. 1 Subbayya
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Charge No. 7	Accused 2 and 3	324 I.P.C. for	
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			Each One year causing hurt to R.I. P.W. 1 Subbayya
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Charge No. 8	Accused 1 and 4	324, I.P.C. for	
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			Each one year causing hurt R.I. to P.W. 2 Chandran alias Chandrasekaran
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Charge No. 10	Accused 1 to 4	Section 25(1)(B)	
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			Each Six months of Indian Arms R.I. Act.
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The Court further directed that the sentences are to run concurrently and this appeal is directed against the said conviction and sentence.

18. P.Ws. 1 to 3 in this case are eye witnesses to the occurrence. Of them, the first two had sustained injuries during the incident. Though they are the brothers of the deceased, on that account their evidence cannot be discarded. We must scrutinise the same with more care and caution. No doubt, P.W. 4, who is also stated to be an eye witness, is a neighbouring land owner and an independent witness. He has turned hostile. So, we are left only with the testimonies of P.Ws. 1 to 3. It is significant to note that soon after occurrence at 10.00 a.m. they along with the deceased went to the Police Station and there since the deceased was not able to speak P.W. 1 Subbayya has preferred Exhibit P. 4 complaint. P.W. 2 has affixed his signature to the complaint as an attestor. The original First Information Report has reached the Magistrate at 1.00 p.m. on the same day. It defines besides the injured P.Ws. 1 and 2 were produced before P.W. 6 Doctor at 10.45 a.m. and 11.00 a.m. on that day. They have informed the Medical Officer that the injuries were due to attack with Vel stick and Aruval by known persons. The fact that these two had sustained injuries would at least permit reasonable inference that they were present at the time of occurrence and the post mortem certificate Exhibit P. 33 goes to show that Meenakshisundaram dies on account of stab injury sustained by him on his right side back. So, in view of the longstanding land dispute between the parties, we have no hesitation in concluding that the appellants herein were responsible for the death of Meenakshisundaram in the incident that took place at 9.00 a.m. in the disputed wet land, bearing S. No. 96/1 in Manaparanallur village.

19. Learned counsel for the appellants did not dispute the participation of the appellants in the incident. His contention is that his clients had acted only in the exercise of their right of private defence of their property. It is true that the appellants in the statement u/s 313 Cr.P.C. had not taken the plea of private defence and there is no suggestion in cross-examination of P.Ws. 1, 2, 3 and 5 to this effect. The stand taken during cross-examination was that deceased and P.Ws. 1 to 3 were attacked by the some assailants at the instigation of the landlord at Mukkudal and since the names of the assailants were not known, on account of enmity, the appellants have been falsely implicated in the complaint. However, it is well settled that even if an accused does not plead self defence, it is open to the Court to consider such a plea if the same arises from the materials 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 that plea on the basis of the material on record. Section 96 of the Indian Penal Code provide that nothing is an offence which is done in the exercise of the right of private defence. Section 97 of Indian Penal Code authorises every person subject to the restrictions contained in Section 99, to defend the properties of himself or of any other person against any act which is an offence falling under the definition of criminal trespass or which is an attempt to commit criminal trespass and Section 105 of the Evidence Act stipulates that when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code or within any special exception or proviso contained in any other part of the same code or in any law defining the offence is upon him and the Court shall presume the absence of such circumstances. But the onus which rests on an accused person u/s 105 of the Evidence Act to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged beyond reasonable doubt.

20. Mr. Ashok Kumar, learned defence counsel took us through the evidence of P.Ws. 1 to 3 and pointed out these features. It is admitted by

P.W. 5 Ramaswami Thever that the field wherein the occurrence took place belonged to one Paramasiva Nadar of Mukkudal. This witness was

cultivating the same. After the death of Paramasiva Nadar, his son Subramanian wanted P.W. 5 to surrender the lease. This witness was not

prepared to do so. Thereupon, he obstructed him from cultivating the land along with the appellants. So, this witness filed O.S. No. 178/82 in the

Court of the District Munsif, Ambasamudram and obtained an order of injunction. First accused and Subramania Nadar set up one Shanmugha

Nadar of Mukkudal as a lessee and caused a suit to be filed against this witness and his sons. They obtained an order of injunction on 26-8-1992

in O.S. No. 329/82 in the same court. Thereafter P.Ws. 1 to 3 and 5 never went to the field. Appellants alone were cultivating the land for one

year. Both parties applied for Police protection from the court. Only on 24-11-1985, one day prior to the occurrence, the petition filed by the

accused party was dismissed and the court granted Police protection in favour of P.W. 5. On that basis, P.W. 5 directed his sons to plough the

land. From this, it is evident that actual possession of the "land remained only with the accused party on the date of occurrence. P.W. 11

Subbayya also concedes in his evidence that accused 2 and 4 cultivated the land for one year prior to the occurrence. He categorically states that

only on the date of occurrence they ploughed the disputed land. Prior to the date of occurrence, they had ploughed their other fields. P.W. 2

Chandran alias Chandrasekaran states even in his chief examination. His version in cross-examination is PW. 3 is more categorical when he

testified. This would indicate that P.Ws. 1 to 3 are the aggressors and the settled possession of the land remained only with the appellants when the incident commenced.

21. Even a trespasser in settled possession can act in right of private defence of property. In *Puran Singh and Others Vs. The State of Punjab*, ,

the Apex Court has pointed out that the expression "settled possession" has been used in *Munshi Ram and Others Vs. Delhi Administration*, , to

mean such clear and effective possession of a person even if he is a trespasser, who gets the right under the criminal law to defend his property

against attack even by the true owner. In this case we find that admittedly, the accused persons were in settled possession until prior to the date of

occurrence and only on the strength of the Police protection ordered on the previous day, deceased and P.Ws. 1 to 3 went to the field on 25-11-

1985 and started ploughing the same. In such circumstances, law permits the accused to act in exercise of their right of private defence. It is not the

law that a person when called upon to face an assault must run away to the Police Station and not protect himself or when his property has been

the subject matter of trespass and mischief he should allow the aggressor to take possession of the property while he should run to the Public

authorities. Where there is an element of invasion or aggression on the property by a person, who has no right to possession, then there is

obviously no room to have recourse to the public authorities, and the accused has the undoubted right to resist the attack and use even force if

necessary.

22. In the case on hand, under the first charge, appellants 1 to 4 are convicted

and sentenced to, undergo 3 months R.I. each u/s 447, I.P.C. for criminal trespass. Since we have found that the appellants alone were in settled possession of the disputed land and it is P.Ws. 1 to 3, who are the aggressors evidently this charged cannot stand.

23. The second appellant Chellaswami alias Duraisami is convicted and sentenced to undergo imprisonment for life under S. 302, I.P.C. in charge

No. 3. As per Section 99, I.P.C. the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for

purpose of defence. Section 103, I.P.C. enumerates the circumstances whereunder the right of private defence of property extends to the

voluntarily causing of death, and the present is not one of the instances enumerated in that Section. So, it necessarily follows that the second

appellant has exceeded his rights in the exercise of private defence of property when he caused the death of Meenakshisundaram, and his act will

fall under Exception 2 to Section 300, I.P.C., which reads that culpable homicide is not murder if the offender, in the exercise in good faith of the

right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is

exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such

defence. So the act of the second appellant is punishable u/s 304, Part I, I.P.C. and this offence alone is made out against second appellant.

24. In the fourth charge the first appellant is convicted and sentenced to undergo imprisonment for life u/s 302 read with Section 34, I.P.C. The

overt act attributed to him is that he snatched Vel Kambu from the hands of 4th accused and beat on the head of Meenakshisundaram. The post

mortem certificate Exhibit P. 33 discloses that there was an incised wound of 2 x 0.5 cm. muscle deep on the left side of frontal region 7 cm.

above the eye brow. P.W. 19 Doctor is of opinion that it is possible to inflict this injury with cutting weapon of sharp edge. There is no clear

evidence as to with which part of the Vel Kambu this accused dealt the blow. Besides, as per the evidence of P.W. 1, first accused was armed

with an aruval when he entered the scene of occurrence. The fact that this accused did not choose to use aruval and instead, merely attacked with

Vel Kambu and that too once rules out the possibility of any intention on his part

to cause the death of Meenakshisundaram. It cannot be said that this accused has caused more harm than it is necessary to inflict for the purpose of defence. The question whether a person having a right of private defence has used more force than is necessary would depend on the facts and circumstances of a particular case. As the adage goes one is not expected to weigh in ""golden scales"" the precise force needed to repeal the danger. Even if he had at the heat of the moment carried his defence, a little further than what would be necessary when calculated with precision and exactitude by a common and unruffled mind, the law makes due allowance for it. So, under the fourth charge the finding of guilt of this accused is unsustainable.

25. Under charge No. 5 the first accused is convicted and sentenced to undergo R.I. for 3 years u/s 326, I.P.C. for causing hurt to P.W. 1

Subbayya. In this connection, it is the evidence of P.W. 1 Subbayya that first accused cut him with aruval. When he warded off the same, the blow

fell on his left fore arm. P.W. 5 Doctor has found that there was a cut injury of 6 cm. x 4 cm. x 3 cm. and fracture in the left fore arm. Undercharge

No. 7, accused 2 and 3 are convicted u/s 324, I.P.C. and sentenced to undergo R.I. for one year for causing hurt to P.W. 1 Subbayya. The

evidence on this aspect is that second accused stabbed with Vel Kathi on the left pitty of P.W. 1 and third accused beat on his head with Vel

Kambu. Under charge No. 8 all the four accused are convicted u/s 324, I.P.C. and each was sentenced to undergo R.I. for one year for causing

hurt to P.W. 2 Chandran alias Chandrasekaran. While first accused is stated to have cut on the left thigh of P.W. 2, fourth accused is stated to

have stabbed on his left flank. However, P.Ws. 1 and 2 have not spoken anything about the assault on them by accused 2 and 3. In any event, it

cannot be said that by inflicting these injuries, the accused have caused more harm than is necessary in the circumstances of the case. So, these

charges are also unsustainable.

26. Under charge No. 9 all the accused are found guilty u/s 25(IB)(b) read with Section 4 of Indian Arms Act, 1959 and G.O. No. 336 dated 14-

2-1981, convicted and sentenced each to undergo R.I. for six months for possession of Vel kambu. Section 25(IB)(b) reads that whoever

acquires or has in his possession or carries in any place specified by notification

u/s 4 any arms of such class or description as has been specified in that notification in contravention of that section shall be punishable with imprisonment for a term of not less than one year, but which may extend to three years and shall also be liable to fine, the relevant Notification u/s 4 reads that from the date of publication of the G.O. on 4-3-1981, Section 4 shall apply throughout the State of Tamil Nadu in respect of the arms known in the State of Tamil Nadu as Vel sticks of all sizes and shapes.

Under Sections 4 of the Arms Act, on publication of G.O., no person shall acquire, have in his possession or carry in Tamil Nadu a Vel stick, unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the Rules made thereunder and it is not the case of the appellants that they are in possession of any such licence. No doubt, initially only accused 2, 4 and 5 were armed with Vel Kambu. However, as per the evidence of P.W. 1, during the course of the occurrence, first accused had snatched the Vel Kambu from the hands of fourth accused and beat on the head of deceased Meenakshisundaram. Third accused snatched the Vel kambu from fifth accused and beat on the left side head of P.W. 1 So, all the four accused are guilty under this charge as found by the trial court and it cannot be said the sentence passed is excessive.

27. In the result, the conviction and the sentence of imprisonment for life passed on 2nd accused u/s 302, I.P.C. under charge No. 3 are modified to one u/s 304, Part 1, I.P.C. and to undergo R.I. for 7 years. The conviction of each of the appellants u/s 25(IB) read with Section 4 of the Indian Arms Act and G.C. No. 336 dated 14-2-1981 and the sentence to undergo R.I. for six months to each of the accused are confirmed. The sentence of 2nd accused are to run concurrently. The appellants are found not guilty on the remaining charges and the conviction and sentences thereunder are set aside. The appeal is ordered accordingly.

28. Order accordingly.