

Bail Slip.

The Appellant/Accused namely Gandhi @ Rajiv Gandhi, S/o. Selvam aged 26 years (Sole Accused in S.C. 8/2011 dated 26.08.2011 by the District and Sessions Judge, Thiruvavur was released on bail by this Hon'ble Court order dated 31.10.2011 in CrI.M.P. 1/2011 in CrI.A. 663/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.02.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. APPEAL NO. 663 OF 2011

Gandhi @ Rajiv Gandhi ... Appellant/Accused

- Vs -

The State, rep. By
The Inspector of Police
Koradacheri Police Station
Thiruvavur District. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 26.08.2011 passed by the District & Sessions Judge, Thiruvavur, in S.C. No.8 of 2011.

For Appellant : Mr.K.Sendhilnaathan, Legal Aid Counsel

For Respondent : Ms.Kritika Kamal.P., GA (Crl. Side)

JUDGMENT

The present appeal has been preferred by the appellant challenging the conviction and sentence passed by the learned District & Sessions Judge, Tiruvavur, in S.C. No.8 of 2011.

2. It is the case of the prosecution that the deceased Mohammed Ali, aged about 55 years and the appellant were neighbours and were sharing a common boundary. On 23.6.10, Mohammed Ali had engaged workers for clearing the thorny bush near the boundary that he shared with the appellant for the purpose of putting a fence; the appellant objected to it and a quarrel ensued; the deceased went to bring one Veeramani (P.W.2) for mediation; it is alleged that the appellant pushed him from behind with a brick (M.O.1) due to which Mohammed Ali fell down

and he was taken to the hospital for treatment where he was declared "brought dead".

3. On the complaint (Ex.P-1), lodged by Regina Begum (P.W.1), the wife of the deceased, Rajasekaran (P.W.12), the Inspector of Police, registered a case in Crime No.168/10 on 23.6.10 under the head 'suspicious death' and prepared printed FIR (Ex.P-14), wherein the appellant has been shown only as a suspect. The investigating officer (P.W.12) took up investigation of the case and went to the place of occurrence and prepared the observation mahazar (Ex.P-4) and rough sketch (Ex.P-15) in the presence of Najimuddin (P.W.6) and one Shahjahan (not examined). The investigating officer conducted inquest over the body of the deceased and prepared inquest report (Ex.P-16). Thereafter, he despatched the body through the Head Constable for conducting post-mortem.

4. The Doctor, Ezhilavan (P.W.8) conducted autopsy on the body of the deceased and after obtaining viscera report (Ex.P-13) and serology reports (Exs.P-11 & P-12), issued post-mortem certificate (Ex.P-8). In his evidence as well as in the post-mortem certificate (Ex.P-8), P.W.8 has stated that the deceased would appear to have died of 'cardiac rupture'.

5. The appellant surrendered before the Court on 2.7.10. Custody of the appellant was taken and based on his disclosure statement, the brick (M.O.1), was seized under the cover of mahazar (Ex.P-6) in the presence of Selladurai (P.W.7) and one Thiagarajan (not examined). After examining witnesses and obtaining the post-mortem report and other reports, the investigating officer filed the final report in P.R.C. No.24/10 before the Judicial Magistrate, Thiruvavur, for the offence u/s 302 IPC.

6. On appearance of the accused, he was furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Court of Session in S.C. No.8/2011.

7. The trial court framed charge u/s 302 IPC against the appellant. When questioned, the appellant pleaded not guilty. To prove the case, the prosecution examined 12 witnesses (P.W.s 1 to 12), marked 17 exhibits (Exs.P-1 to P-17) and four material objects (M.O.s 1 to 4). When the accused was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on behalf of the accused. After hearing either side and considering the evidence on record, the trial court, by judgment dated 26.8.11 in S.C. No.8/11 acquitted the accused of the charge u/s 302 IPC, however, convicted the appellant u/s 304 (II) IPC and sentenced him as under :-

S. No.	Section	Sentence
1	U/s 304 (II) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of six months.

Challenging the above conviction and sentence, the appellant has preferred the present appeal.

8. There was no representation for the appellant continuously, which has been recorded by this Court in its order dated 16.7.2018 and 30.07.2018. Even on 29.1.2019, there was no representation for the appellant. Therefore, this Court appointed Mr.Sendhilnaathan, Advocate (Enrl. No.558/2002) as Legal Aid Counsel to represent the case of the appellant and adjourned the case to 31.1.19.

9. Heard Mr.Sendhilnaathan, learned counsel appearing for the appellant and Ms.Kirtika Kamal, learned Government Advocate (Crl. Side), appearing for the respondent and perused the materials available on record.

10. Regina Begum (P.W.1), the widow of the deceased, has stated that she knows the appellant; that the property of the appellant is situate adjacent to their property; on 23.6.10 her husband wanted to remove the thorny bush for the purpose of fencing their property, which was objected to by the appellant; at that time, Veeramani (P.W.2) came there; on seeing Veeramani (P.W.2), her husband went towards him; the appellant took a brick and hit her husband on the back and pushed him down; he was taken by an autorickshaw to the hospital, where he was declared "brought dead".

11. In the cross examination she (P.W.1) stated that in the complaint (Ex.P-1) given by her, she has stated that she heard about the incident from others. Thus, it is the evident that P.W.1 had not witnessed the occurrence.

12. However, Veeramani (P.W.2), Rajendran (P.W.4) and Subramanian (P.W.5) had witnessed the occurrence. Rajendran (P.W.4) and Subramanian (P.W.5) were engaged by the deceased for clearing the bush and for fencing the property and, therefore, they were there when the incident took place. Veeramani (P.W.2) had come to the place at the request of the deceased to settle the quarrel between the deceased and the appellant.

13. Veeramani (P.W.2) has stated that he is a member of the Communist Party of India and he was sent for by the deceased to mediate in the boundary dispute. While P.W.2 was coming to the land of the deceased, he saw the appellant hitting the deceased on the back with a brick resulting in the deceased falling down. Veeramani (P.W.2) has further stated that the deceased was taken to the hospital where he was declared "brought dead".

14. The sum and substance of the deposition of Rajendran (P.W.4) and Subramani (P.W.5) with regard to the occurrence are similar to the deposition of Veeramani (P.W.2). It is pertinent to point out that the defence have not been able to make any serious dent in the cross-examination of Veeramani (P.W.2), Rajendran (P.W.4) and Subramani (P.W.5).

15. Dr.Ezhilavan (P.W.8), who conducted autopsy on the body of the deceased, in his evidence, has clearly stated that he did not find any external injury on the body of the deceased except an abrasion in the right hand. During post-mortem, the doctor (P.W.8) has deposed that he found a 3 x 3 cm blood clot behind the heart. In the examination in chief, P.W.8 has clearly stated as follows:-

"////// கல்லால் பின்பக்கம் அடித்தால் இதயத்தில் இது போன்ற காயங்கள் ஏற்பட வாய்ப்பில்லை. ஒரு நபரை வேகமாக கீழே தள்ளிவிடும்போது அவர் ஏற்கெனவே இதய நோயாளியாக இருந்தால் அவருக்கு ஏற்படும் மன அழுத்தத்தின் காரணமாக இரத்த அழுத்தம் கூடி இந்த காயங்கள் ஏற்பட வாய்ப்புண்டு."

(Free English Translation - If a person is hit on the back with stone, there is no possibility of injuries such as this to occur. If a person is pushed down forcefully and if the person is a heart patient, due to mental pressure, there is possibility of increase in blood pressure leading to such injuries.)"

16. From the evidence available on record it is evident that the eye witnesses have not deposed that the appellant had thrown the brick at the deceased. It is the specific case of the prosecution, through the deposition of the witnesses that the appellant had used the brick to hit the deceased on the back side due to which the deceased fell forward. That is the reason there is no external injury on the back of the deceased except an abrasion on the right hand, which he would have sustained when he fell down. The above act of the appellant clearly shows that the appellant did not intend to cause the death of the deceased nor could knowledge be attributed to the appellant that the push given by him would result in death. It is not the case of the prosecution that the appellant had hit the deceased on any vital part of the body of the deceased like head.

17. Learned counsel for the appellant placed strong reliance on the judgment of the Supreme Court in Jani Gulab Shaikh - Vs - State of Maharashtra (1970 SCC Cri. 532), in support of his contention that on the facts proved in this case, the appellant cannot be convicted u/s 304 (II) IPC.

18. The contention advanced by the learned counsel for the petitioner merits acceptance. Reading the deposition of the witnesses as a whole, this Court is of the view that the conviction and sentence u/s 304 (II) IPC cannot be sustained. However, the facts disclose the commission of the offence u/s 324 IPC.

19. In the result, the criminal appeal is allowed in part and the conviction and sentence imposed on the appellant u/s 304 (II) IPC is set aside and instead the appellant is convicted for the offence u/s 324 IPC and sentenced to rigorous imprisonment for a period of two years along with a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of six months. Fine amount, if any, paid by the appellant pursuant to the judgment of the trial court shall stand adjusted towards the fine imposed by this Court. It is seen from the record that the appellant is on bail. The trial court shall take all steps to secure the presence of the appellant and commit him to prison to serve the balance portion of sentence imposed on him as above

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

GLN

To

1. The District & Sessions Judge
Tiruvarur.

2. The Inspector of Police
Koradacheri Police Station
Tiruvarur District.

3. The Public Prosecutor
High Court, Madras.

4. The Deputy Registrar(CRiminal Side)
High Court, Madras 104

5. The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.K.Sendhilnaathan, Advocate sr 8904.

CRL.A.NO. 663 OF 2011

SJ(CO)
SP(07/03/2019)



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