



BAIL SLIP

Krishnamoorthy @ Singh, Petitioner/Accused No.1 was released on bail vide order of this court dated 03.02.2010 made in MP(MD)No.1 of 2010 Crl.A (MD)NO.3 of 2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.3 of 2010

Krishnamoorthy @ Singh

... Appellant/Accused No.1

Vs.

State rep. by
The Inspector of Police,
Aruvdaiyarkovil Police Station,
Pudukkottai District.
(Crime No.117 of 2006

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C, to call for the records from the Lower Court and set aside the judgment passed by the Assistant Sessions Court, Pudukkottai in S.C.No.165 of 2008, dated 31.08.2009, by allowing this appeal.

For Appellant : Mr.J.Maria Rubit
Legal Aid Counsel

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 307 and sentenced to undergo 10 years rigorous imprisonment in S.C.No.165 of 2008, on the file of the learned Assistant Sessions Judge, Pudukkottai.

2.The case of the prosecution is that the accused, who are four in number had inimical motive towards the victim/P.W.1. A3/Marimuthu was having a shop in the site belonging to Arulmighu Athamanathar Temple, Avudaiyarkovil. The Devasthanam management insisted that the said shop should be removed. The victim/Swamy Niyamanantha was a member of the temple committee. On the occurrence date i.e., 30.06.2006, at about 10.15 a.m., the temple chariot was taken in procession. Swamy Niyamanantha was leading the procession. At that stage, A2 and A3 are said to have pointed at Swamy Niyamanantha and told him that it was he who was spoiling their



livelihood. Thereupon, A1/ Krishnamoorthy is said to have drawn Aruval and hacked the victim on his forehead.

3.The victim was rushed to the hospital. His statement was recorded by the Sub Inspector of Police attached to Avudaiyarkovil Police Station vide Ex.P.1. Ex.P.9/FIR in Crime No.117 of 2006 was registered against all the four accused for the offence under Section 307 of I.P.C. Investigation was taken up and after completing all the usual formalities, final report was laid against them for the offence under Section 307 r/w 109 of I.P.C. before the learned Judicial Magistrate, Aranthangi. The case was committed to Sessions Court vide P.R.C.No.14 of 2007. It was made over to Assistant Sessions Judge, Pudukkottai, for trial in S.C.No.165 of 2008. Charge under Section 307 r/w. 109 of I.P.C was framed against all the four accused. The accused pleaded not guilty to the charge and claimed to be tried.

4.The prosecution examined as many as 15 witnesses and marked Exs.P.1 to P.10. M.O.1 was also marked. On the side of the accused no evidence was marked.

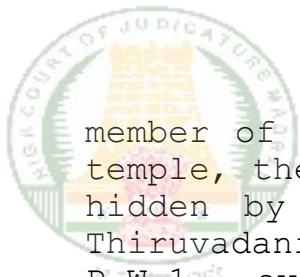
5.The learned Trial Judge after a detailed consideration of the evidence on record, by the impugned judgment acquitted A2 to A4 but convicted and sentenced the appellant as mentioned above. Challenging the same, the criminal appeal has been filed.

6.When the appeal was listed for hearing, there was no representation for the appellant. Therefore, this Court directed the Registry to appoint a legal aid counsel to represent the appellant. Today when the appeal was taken up for hearing, the learned legal aid counsel appeared and reiterated all the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned judgment and acquit the appellant.

7.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not call for any interference and wanted this Court to dismiss the appeal.

8.I carefully considered the rival contentions and perused the evidence on record.

9.P.W.1/Swamy Niyamanatha is the victim. He deposed that on 30.06.2006 at about 10.15 a.m., he took part in the temple of Avudaiyarkovil procession. He was standing in front of chariot. At that time, the accused raising their voice came to the spot. He clearly and categorically deposed that it was the appellant/Krishnamoorthy, who picked M.O.1 from A4/Pandian and hacked him on his forehead. He was rushed to the Government Hospital at Aranthangi. He testified that since renovation works for the temple were going on, he was also associated with same as a



member of the Thiruppani Committee. Since in the hall in front of temple, there are rare sculptures and that their appearance is being hidden by the shops, he suggested to the Executive Officer one Thiruvadani to remove the same. Based on the suggestion given by P.W.1, eviction notice was issued. Though many of the shop owners vacated their shops, A3/Marimuthu refused to vacate his shop. Since P.W.1 had insisted that A3 should vacate his shop, he developed enmity towards P.W.1. That is the background motive for the occurrence in question. P.W.1 admitted that Ex.P.1 was his complaint. He also identified M.O.1/Aruval, as the one used in the occurrence. His testimony could not be shaken in the cross examination. P.W.2 was also engaged in the temple service and he deposed that he was present during the procession and that the appellant hacked the victim on his forehead on the occurrence date and time. P.W.3 is another eye witness, who corroborated the evidence of P.W.1 and P.W.2. P.W.4, P.W.5 and P.W.6 witnessed the preparation of mahazers/confession. P.W.7 and P.W.8 are eye witnesses, who corroborated the testimony of P.W.1. P.W.9 was the temple staff, who deposed that A3 was called upon to vacate his shop and that he did not vacate the shop in spite of the demand by the temple management. He categorically deposed in this regard there arose a dispute between A3 and the temple management. P.W.10 signed in the recovery mahazer. P.W.11 is Doctor, who treated the victim. He issued Ex.P.7/C.T.Scan Report. He clearly deposed that the victim suffered fracture in the skull. P.W.12 gave initial treatment to P.W.1 at Aranthangi Government Hospital. He had spoken about the injuries found on the head of the victim. He issued Ex.P.8/wound certificate. P.W.13 is the Doctor who spoke about the fracture suffered by the victim on the head. Ex.P.9 is the certificate issued by him. P.W.14 recorded the statement of the victim and based on the same registered the FIR. P.W.15 is the investigating officer.

10. When the incriminating circumstances under Section 313 of Cr.P.C. were put to the accused, the accused merely denied the same as false.

11. I carefully went through the evidence on record. One can clearly come to the conclusion that the motive for the occurrence has been proved and the involvement of the appellant in the occurrence has also been established beyond reasonable doubt by the prosecution. Even according to the appellant, there is no prior motive between the appellant and the victim. The motive was only between the temple management and A3. The prosecution case is that at the instance of A3, the appellant hacked the victim with M.O.1/Aruval. The victim was examined as P.W.1. He is an injured witness. He clearly identified the appellant as the person who attacked him. The attack took place in an open place when the temple procession was in progress. The testimony of P.W.1 has been more than corroborated by the other prosecution witnesses. The



Doctors, who treated the victim have also stated that the head injury on victim by the appellant resulted in fracture also. Therefore, the conviction imposed by the Court below is sustained.

12. At this stage, the learned counsel appearing for the appellant submitted that this Court can show some leniency in the matter of punishment. She pointed that the appellant did not stand to gain and that he appears to have been instigated by others. The appellant did not have any bad antecedent. He has not come under the adverse notice of the respondent thereafter. Of course, there was one case under Section 392 of I.P.C. booked against the appellant in the same year but that appears to be on the very face of it a put up case. Taking note of the lapse of time and the fact that from the year 2007 to 2019, appellant has not come under any adverse notice, she wanted this Court to modify the sentence. I find the submission of the learned legal aid counsel appearing for the appellant to be having considerable force and substance. Therefore, even while sustaining the conviction, the sentence of imprisonment is modified and reduced from 10 years rigorous imprisonment to 5 years rigorous imprisonment. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of I.P.C. With this modification in the matter of sentence, this criminal appeal is partly allowed. The jurisdictional magistrate will take steps to enforce this order.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

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To:

- 1.The Assistant Sessions Judge,
Pudukkottai.
- 2.The Principal Sessions Judge, Pudukkottai.
- 3.The Judicial Magistrate, Aranthangi.
- 4.the Chief Judicial Magistrate, Pudukkottai.
- 5.The Superintendent, Central Prison, Trichy.



6.The Inspector of Police,
Aruvdaiyarkovil Police Station,
Pudukkottai District.

7 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to Mr.J.MARIA RUBIT, Advocate (SR-84255[F] dated 29/08/2019)

Crl.A. (MD)No.3 of 2010
29.08.2019

VB(07.02.2020) 5P 9C