

**BAIL SLIP**

Appellants/Accused namely,

1. Ramesh, S/o.Kaliyapillai, Aged about 32 years
2. Ramchandran, S/o.Elangovan, Aged about 29 years
3. Raju @ Rajeev Gandhi, S/o.Elangovan, Aged about 26 years

were directed to be released on bail vide order of this Court dated 03.08.2017 made in Crl.M.P(MD)No.6674/2017 in Crl.A.(MD) No.146/2017.

and the Appellants/Accused, namely,

1. Bhaskar, S/o.Kaliyapillai, Aged about 38 years
2. Elangovan, S/o.Ganesan Pillai, Aged about 52 years

were directed to be released on bail vide order of this Court dated 08.02.2018 made in Crl.M.P(MD)No.7871/2017 in Crl.A.(MD) No.146/2017.

and the Appellants/Accused, namely,

Kamala, W/o.Elangovan, Aged about 48 years,

was directed to be released on bail vide order of this Court dated 13.07.2017 in Crl.M.P(MD)No.5971/2017 in Crl.A.(MD)No.146/2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 06.03.2019  | 26.03.2019    |

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL. A. (MD) No.146 of 2017

- 1 Bhaskar
- 2 Elangovan
- 3 Ramesh
- 4 Ramchandran
- 5 Raju @ Rajeev Gandhi
- 6 Kamala

: Appellants/Accused



State represented by the  
Inspector of Police  
Maruvur Police Station  
Thanjavur  
(Cr. No.13 of 2015)

: Respondent/Complainant

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Criminal Appeal filed under Section 374 (2) Cr.P.C. seeking to set aside the judgment dated 17.04.2017 passed by the II Additional District and Sessions Judge, Thanjavur in S.C. No.108 of 2016.

|                |                                                        |
|----------------|--------------------------------------------------------|
| For appellants | M. N. Anantha Padmanaban<br>for Mr. A. Sivasubramanian |
| For respondent | Mr. R. Anandharaj<br>Additional Public Prosecutor      |

### JUDGMENT

**P.N. PRAKASH, J.**

This Criminal Appeal is focussed against the judgment dated 17.04.2017 passed by the II Additional District and Sessions Judge, Thanjavur in S.C. No.108 of 2016.

2 To appreciate the case of the prosecution, first, it may be necessary to have a glance of the relationship between the parties, the location of their house and also the pendency of *inter se* litigation between them.

- The deceased in this case is one Usharani.
- Baskar (A1) and Ramesh (A3) are brothers and they are the cousins of Pandurangan (P.W.2), who is the husband of Usharani.
- The house of Baskar (A1) and Ramesh (A3) is behind the house of Usharani.
- Elangovan (A2), Ramachandran (A4), Raju (A5) and Kamala (A6) are members of one family, *i.e.*, Kamala (A6) is the wife of Elangovan (A2); Ramachandran (A4) and Raju (A5) are the sons of Elangovan (A2) and Kamala (A6) and their house is on the eastern side of the house of Usharani.
- A case is pending between the family of Usharani and the family of Baskar (A1) and Ramesh (A3) concerning boundary dispute in a Civil Court in Thiruvaiyaru.
- Usharani's family was having boundary dispute with the family of Elangovan (A2), Ramachandran (A4), Raju (A5) and Kamala (A6).



3 The facts leading to the filing of this criminal appeal, including the prosecution story, are succinctly stated as under:

3.1 Elangovan (A2) had arranged the Surveyor and Village Administrative Officer of the village to measure his property on 20.02.2015. Accordingly, the Surveyor and the Village Administrative Officer measured the property and said that the Poovarasan tree (portia tree) found on the boundary, should be removed by Elangovan (A2) and only thereafter, his boundary can be properly determined. Ignoring the directions of the Surveyor, when Elangovan (A2) and his family members were laying the boundary stones, Usharani insisted that the portia tree should be removed first and only thereafter, the boundary stones shall be fixed. During this melee, Baskar (A1) and Ramesh (A3) who were already having grievance with the family of Usharani, joined the fray.

3.2 While so, it is alleged that Kamala (A6) exhorted the others to hack Usharani, pursuant to which, Baskar (A1), Elangovan (A2) and Ramesh (A3) attacked Usharani. When her husband (Pandurangan-P.W.2) and son (Mahendran-P.W.1) rushed to her rescue, they were prevented by Ramachandran (A4) and Raju (A5). Usharani was hacked to death at the place of occurrence by Baskar (A1), Elangovan (A2) and Ramesh (A3) and Ramachandran (A4) and Raju (A5) attacked Mahendran (P.W.1) and Pandurangan (P.W.2) and caused injuries to them.

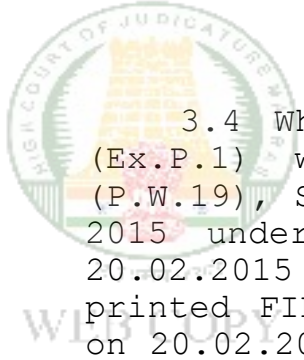
3.3 Usharani and the two injured, viz., Mahendran (P.W.1) and Pandurangan (P.W.2) were carried by 108 ambulance to the Government Hospital, Thanjavur, where, they were examined by Dr.J.Sudhakaran (P.W.16), on 20.02.2015 between 3.55 p.m. and 4.05 p.m., who, in his evidence as well in the accident register copy (Exs.P.23 and 24 pertaining to Mahendran-P.W.2 and Pandurangan-P.W.1 respectively), noted the following injuries:

**Ex.P.23 pertaining to Pandurangan (PW2):**

- 1 Laceration 3 x 0.5 x 0.5 cm right shoulder
- 2 Laceration 3 cm x 0.5 cm x 0.5 cm right forearm
- 3 Punctured wound right forearm
- 4 Laceration 4 x 2 cm x 0.5 cm. occipital region of scalp.  
Admt. ETW/Wd S5  
O/E Conscious oriented

**Ex.P.24 pertaining to Mahendran (PW1):**

- 1 Laceration 3 x 0.5 x bone depth over parietal region of scalp
- 2 Laceration 3 x 2 skin depth left shoulder
- 3 Avulsed laceration 2 x 1cm over right middle 2 index finger
- 4 Linear abrasion 1 x 0.5 cm right arm
- 5 Laceration 2 x 0.5 cm skin depth left knee
- 6 Laceration 2 x 0.5 cm skin depth right ankle
- 7 Multiple skin avulsion right foot.  
Admt. ETW/Wd5 S5  
O/E Conscious oriented"



3.4 While Mahendran (P.W.1) was under treatment, his statement (Ex.P.1) was recorded by the police, based on which, Baskar (P.W.19), Sub Inspector of Police, registered a case in Cr. No.13 of 2015 under Sections 147,148, 294(b), 341, 324 and 302 IPC on 20.02.2015 at 19.00 hrs. against the accused and prepared the printed FIR (Ex.P.28), which reached the jurisdictional Magistrate on 20.02.2015 at 11.50 p.m. at his residence, as could be seen from the endorsement made therein.

3.5 The investigation of the case was taken over by Natarajan (P.W.23), Inspector of Police (who would be referred to as "the I.O." for the sake of brevity), who went to the place of occurrence and prepared the observation mahazar and rough sketch (Exs.P.30 and P.31 respectively), in the presence of witnesses Rajkumar (P.W.8) and Samuel Johnson (P.W.9). From the place of occurrence, he seized soil with blood (M.O.13), soil without blood (M.O.14), a pair of slippers (M.O.8) and a bundle of thread (M.O.9) under the cover of mahazar (Ex.P.32).

3.6 The I.O. arrested the accused on 23.02.2015 and based on the statement of Baskar (A1) and Ramesh (A3), he recovered two billhooks (M.Os. 3 & 4) under the cover of mahazar (Ex.P.14). Similarly, on the confession statement of Elangovan (A2), Ramachandran (A4) and Raju (A5), he recovered two billhooks (M.Os. 5 & 6) and a crowbar (M.O.7) under the cover of mahazar (Ex.P.13). He conducted inquest over the body of Usharani and the inquest report was marked as Ex.P.33. He despatched the body for postmortem.

3.7 Dr. Saranya Devi (P.W.22) performed autopsy on the body of the deceased and in her evidence as well in the postmortem report (Ex.P.29), she has stated as follows:

**"External injuries:**

- Cut wound involving entire neck. Sparing anterior skin fold hyoid bone extending from the right side
- 3 x 3 x 2 cm laceration in the left thigh
- Laceration 2 x 2 x 1 cm in the right cheek
- Laceration 3 x 2 x 1 cm left palm eyes closed tongue within mouth. Mouth closed.

**Internal examination:**

Stomach empty, congested. Intestine empty congested. Skull opened brain appear pale, lungs congested, Uterus - normal.

**Opinion as to cause of death**

The deceased would appear to have died of shock and haemorrhage due to injury to major vessels."



3.8 After examining witnesses, collecting various reports and completing the investigation, the I.O. filed final report in P.R.C. No.41 of 2015 before the Judicial Magistrate, Tiruvaiyaru.

3.9 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.108 of 2016 and was made over to the II Additional District and Sessions Judge, Thanjavur, for trial. The Trial Court framed the following charges:

| Charge No. | Array of accused | Provision of law under which charged |
|------------|------------------|--------------------------------------|
| 1          | A1 to A5         | S. 148 IPC                           |
| 1          | A6               | S.147 IPC                            |
| 2          | A1 to A3 & A6    | S.294 (b) IPC                        |
| 3          | A1               | S.302 IPC                            |
| 3          | A2, A3 & A6      | S.302 read with S.149 IPC            |
| 4          | A4 & A5          | S.302 read with S.149 IPC            |
| 5          | A4 & A5          | S.341 IPC                            |
| 6          | A4 & A5          | S.324 r/w 326 IPC (2 counts)         |

When questioned, the accused pleaded "not guilty".

3.10 To prove their case, the prosecution examined 23 witnesses, marked 43 exhibits and 14 material objects. On behalf of the accused, neither any witness was examined nor any document marked. When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same.

3.11 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 17.04.2017, acquitted Baskar (A1), Elangovan (A2), Ramesh (A3) and Kamala (A6) of the charge under Section 294(b) IPC and Ramachandran (A4) and Raju (A5) of the charge under Sections 324 and 326 IPC, however, convicted and sentenced the accused as under:

| Name of the accused | Provision of law under which convicted | Sentence                                                                                        |
|---------------------|----------------------------------------|-------------------------------------------------------------------------------------------------|
| Baskar (A1)         | S.148 IPC                              | 1 year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months imprisonment |
|                     | S.302 IPC                              | Life imprisonment and fine of Rs.10,000/- in default to undergo 1 year imprisonment.            |



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|----------------|-----------|-------------------------------------------------------------------------------------------------|
| Elangovan (A2) | S.148 IPC | 1 year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months imprisonment |
|                | S.302 IPC | Life imprisonment and fine of Rs.10,000/- in default to undergo 1 year imprisonment.            |

| Name of the accused | Provision of law under which convicted | Sentence                                                                                              |
|---------------------|----------------------------------------|-------------------------------------------------------------------------------------------------------|
| Ramesh (A3)         | S.148 IPC                              | 1 year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months imprisonment       |
|                     | S.302 IPC                              | Life imprisonment and fine of Rs.10,000/- in default to undergo 1 year imprisonment.                  |
| Ramachandran (A4)   | S. 148 IPC                             | 1 year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months imprisonment       |
|                     | S. 341 IPC                             | Fine of Rs.500 in default to undergo 1 month simple imprisonment                                      |
|                     | S. 324 IPC                             | 1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo, imprisonment for 3 months |
|                     | S.302 r/w 149 IPC                      | Life imprisonment and fine of Rs.5,000/-, in default to undergo imprisonment for 1 year               |



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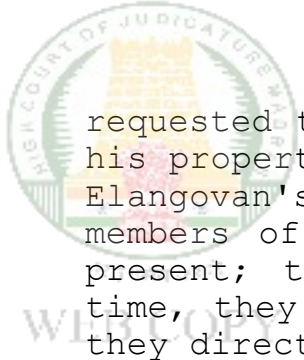
|           |                   |                                                                                                       |
|-----------|-------------------|-------------------------------------------------------------------------------------------------------|
| Raju (A5) | S. 148 IPC        | 1 year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months imprisonment       |
|           | S.341 IPC         | Fine of Rs.500 in default to undergo 1 month simple imprisonment                                      |
|           | S.324 IPC         | 1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo, imprisonment for 3 months |
|           | S.302 r/w 149 IPC | Life imprisonment and fine of Rs.5,000/-, in default to undergo imprisonment for 1 year               |

| Name of the accused | Provision of law under which convicted | Sentence                                                                                          |
|---------------------|----------------------------------------|---------------------------------------------------------------------------------------------------|
| Kamala (A6)         | S.147 IPC                              | 6 months simple imprisonment and fine of Rs.500/- in default to undergo imprisonment for 3 months |
|                     | S.302 r/w 149 IPC                      | Life imprisonment and fine of Rs.5,000/-, in default to undergo imprisonment for 1 year           |

3.12 The aforementioned sentences were ordered to run concurrently. Challenging the said judgment, all the six accused are before this Court.

4 Heard Mr. N. Anantha Padmanaban, learned counsel representing Mr. A. Sivasubramanian, learned counsel on record for the appellants and Mr. R. Anandharaj, learned Additional Public Prosecutor appearing for the respondent-State.

5 Poyyamozhi (P.W.10), Taluk Surveyor and Murali Kumar (P.W.11), Village Administrative Officer, Perumbuliyur Village, where, the occurrence had taken place, have stated in their evidence that Elangovan (A2) submitted an application to the District Collector on the Grievance Day stating that there is boundary dispute between him and his neighbour Pandurangan (P.W.2) and



requested the Revenue authorities to come to the spot for measuring his property and for fixing the boundary stones; hence, they came to Elangovan's (A2's) property on 20.02.2015; at that time, the family members of Elangovan (A2) and the family members of Usharani were present; they measured the land in Survey No.269/28 and at that time, they found a portia tree in the boundary of the land and so, they directed removal of the said tree and advised Elangovan (A2) to lay the boundary stones thereafter. The incident took place after Poyyamozhi (P.W.10) and Muralikumar (P.W.11) left the place around 1 p.m.

6 As regards the incident in question, we have the evidence of Mahendran (P.W.1), Pandurangan (P.W.2), Prabhu (P.W.3), Vignesh (P.W.4) and Mathi (P.W.5).

7 Mahendran (P.W.1) has stated in his evidence that after the Surveyor and the Village Administrative Officer left, Ramachandran (A4) and Raju (A5), sons of Elangovan (A2), started laying the boundary stones without cutting the portia tree; on seeing this, his (P.W.1's) mother Usharani objected to it; at that time, Kamala (A6), the mother of Ramachandran (A4) and Raju (A5) and the wife of Elangovan (A2), abused Usharani and exhorted her sons to attack her (Usharani), pursuant to which, Baskar (A1) and his brother Ramesh (A3) who are the owners of the adjacent property and against whom, their (P.W.1's family) have been waging a litigation, joined the fray; Baskar (A1) and Ramesh (A3) brought a billhook each from their house and saying "Why should the tree be removed just because this woman says?", came to attack his (P.W.1's) mother Usharani; Elangovan (A2) said that only if that lady (Usharani) is got rid of, everything will be alright; then, he took a billhook that was already lying there and attacked Usharani on her right cheek; when Usharani tried to defend the attack, she sustained injuries in her left hand and cheek; Ramesh (A3) hacked her on her back; Baskar (A1) hacked her on her left neck; when he (P.W.1) and his father Pandurangan (P.W.2) were rushing to the rescue of Usharani, Raju (A5) held him (P.W.1) and Ramachandran (A4) held his father Pandurangan (P.W.2) and restrained them; Raju (A5) attacked him (P.W.1) with a billhook and he (P.W.1) sustained injuries on his left shoulder, left leg, right leg and head; Ramachandran (A4) hacked his father Pandurangan (P.W.2) with a billhook on his head, nose and fore arm; thereafter, all the accused fled and his mother (Usharani) was lying dead; so, 108 ambulance was called and they were taken to the hospital; while he was at the hospital, the police came there and recorded his statement. The statement given by him was marked as Ex.P.1. He identified the blood-stained shirt and lungi (M.O.1 series) that were worn by him and the blood-stained lungi (M.O.2) that was worn by his father Pandurangan (P.W.2). He also identified the billhook (M.O.3) used by Baskar (A1), billhook (M.O.4) used by Ramachandran (A4), billhook (M.O.5) used by Ramesh (A3), billhook (M.O.6) used by Elangovan (A2), crowbar (M.O.7) that was found in the place of occurrence, one pair of slippers (M.O.8) used by his mother Usharani, a bundle of thread (M.O.9) found in the

place of occurrence used for marking boundary and saree (M.O. 10), jacket (M.O.11) and inskirt (M.O.12) worn by his mother Usharani. He also stated that he gave a statement to the Magistrate and the said statement was marked as Ex.P.2.

8 Pandurangan (P.W.2), the father of Mahendran (P.W.1) and the husband of Usharani, has stated in his evidence that Baskar (A1) and Ramesh (A3) are living behind his house; Elangovan (A2) is living in the eastern side of his house; he (P.W.2) had boundary disputes with the accused; on 20.02.2015, the Surveyor and the Village Administrative Officer came to the place of occurrence for measuring Elangovan's (A2's) land; after measuring, they directed Elangovan (A2) to remove the portia tree on the boundary and thereafter, lay the boundary stones; however, after they left, the sons of Elangovan (A2), viz., Ramachandran (A4) and Raju (A5), tied the measuring thread and started laying the boundary stones; at that time, his wife (P.W.2's wife) Usharani objected saying that they should first remove the portia tree and then only, lay the boundary stones in that place, for which, Kamala (A6), the wife of Elangovan (A2), abused Usharani and asked her sons to attack her (Usharani); at her instance, Baskar (A1) and Ramesh (A3), who also had boundary disputes with him (P.W.2), jumped into the fray armed with billhooks by saying "Why should the tree be felled at the instance of these people" and rushed towards his (P.W.2's) wife; at that time, Elangovan (A2) hacked Usharani on her right cheek with a billhook; Ramesh (A3) cut her on her back with a billhook; Baskar (A1) attacked her with a billhook; when he (P.W. 2) went to prevent the attack, Ramachandran (A4) and his brother Raju (A5) prevented him and his son (P.W.1) from going to the rescue of Usharani and they also started attacking them with billhooks; Usharani died on the spot; thereafter, all the accused ran away as the incident was witnessed by his neighbours Kannan, Prabhu (P.W.3), Vignesh (P.W.4) and Mathi (P.W.5); he (P.W. 2) was taken along with his son (P.W.1) by ambulance to the hospital by Muruganandham and Kaliyamurthy. He identified his lungi (M.O.2). He also identified the billhooks (M.Os. 3,4 and 5) used by Baskar (A1), Raju (A5) and Ramesh (A3) respectively.

9 Prabhu (P.W.3), Vignesh (P.W.4) and Mathi (P.W.5) who are the other eyewitnesses to the incident, have also corroborated the evidence of Mahendran (P.W.1) and Pandurangan (P.W.2).

10 Mr. Anantha Padmanaban, learned counsel for the appellants made the following two principal submissions:

- Mahendran (P.W.1) has not implicated Kamala (A6) in the complaint (Ex.P.1) given by him, which formed the basis of registration of the FIR; in other words, in the complaint (Ex.P.1), he has not stated that Kamala (A6) had exhorted her husband Elangovan (A2) and their sons Ramachandran (A4) and Raju (A5) to attack Usharani, though he has clearly stated about the overt acts of the other accused; in the closing lines



of his complaint (Ex.P.1), he has merely stated that action should be taken against Baskar (A1), Elangovan (A2), Ramesh (A3), Ramachandran (A4), Raju (A5) and Kamala (A6).

➤ All the witnesses, viz., P.W. 1 to P.W.5, who are all closely related, have stated that Ramesh (A3) hacked Usharani with a billhook on her back, but, there is absolutely no injury on the backside of Usharani and therefore, the evidence of all the eyewitnesses on this aspect is unreliable.

11 Admittedly, the family of Usharani was having boundary disputes with their neighbours. Mahendran (P.W.1) and Pandurangan (P.W. 2) have admitted that a civil case is pending between them and the family of Baskar (A1) and his brother Ramesh (A3). Similarly, they also had boundary disputes with the family of Elangovan (A2). Motive is a double edged weapon, inasmuch as, it can be the basis for false implication and it can also be the basis for the commission of the offence. Had Kamala (A6) exhorted her sons to attack Usharani, that would have found place in the complaint (Ex.P.1). Though an FIR is not the encyclopaedia of the prosecution case, yet, in a case of this nature, the absence of mentioning of the overt act of Kamala (A6) does arouse a reasonable doubt in the mind of this Court that she has been falsely roped in. She might have been present at the place of occurrence, but, her mere presence, without anything more, cannot lead to the inference that she either shared the common object of the unlawful assembly or shared the common intention with the actual assailants. Hence, we extend the benefit of this doubt to Kamala (A6) and acquit her of all charges.

12 Similarly, all the witnesses have uniformly stated that Ramesh (A3) hacked Usharani with a billhook on her back, whereas, in the evidence of Dr. Saranya Devi (P.W.22) and in the postmortem certificate (Ex.P.29) issued by her, there is absolutely no reference to any injury on the backside of Usharani. In fact, Dr. Saranya Devi (P.W.22) has been specifically asked in the cross-examination as to whether she noticed any other injury on Usharani's body apart from the four injuries in her body, for which, she has answered in the negative. When an unlawful assembly mounts a physical attack, it is not necessary for the eyewitnesses to say with precision, as to who all attacked and where they attacked. Had the five eyewitnesses not stated specifically about the attack by Ramesh (A3), things could be viewed differently. But, when they have all uniformly deposed that Ramesh (A3) used a billhook to hack Usharani on her back and when no injury on her back has been noted at the time of postmortem, then, a conflict between ocular evidence and medical evidence arises. It is always open to the Court to accept the ocular testimony if it is in variance with the medical evidence under certain circumstances. However, in the instant case, when five witnesses have deposed that Ramesh (A3) hacked Usharani on her back with a billhook, but, when there is no injury on her back, then, their testimony on this aspect becomes suspect. If a billhook



had been used by Ramesh (A3) to hack Usharani on her back, definitely, there would have been an injury on her back. In this regard, the Trial Court has given the following reasoning which does not cut much ice with this Court:

"However, on perusal of Ex.P.29, postmortem certificate, it is found that the body was lying on its back and therefore, the doctor has failed to note the injuries on the back of deceased."

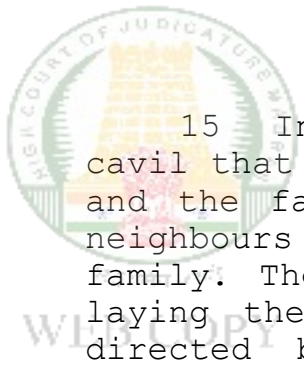
It must be presumed that the doctor who conducted the postmortem would have looked for injuries all over the dead body at the time of postmortem. To say that since the body was lying on the back on the postmortem table, the injury would have been missed by the doctor, appears unacceptable. Therefore, we extend the benefit of this doubt to Ramesh (A3) and acquit him of all charges.

13 Now, the question that emerges for consideration of this Court is when the number of assailants has dwindled from 6 to 4, can the accused be convicted with the aid of Section 149 IPC. Though the answer for this question is in the negative, yet, the other accused cannot be let off, especially in the light of the injuries suffered by Usharani, Mahendran (P.W.1) and Pandurangan (P.W. 2) in the occurrence.

14 Now, it has to be seen whether the remaining accused shared the common intention under Section 34 IPC. Trite it is that Section 34 IPC is not a penal provision and is only a rule of evidence. Therefore, in the absence of a specific charge under Section 302 read with Section 34 IPC, the accused can be convicted with the aid of the said section, if there are materials to show that they shared the common intention, as held by the Supreme Court in **Nallabothu Venkaiah vs. State of Andhra Pradesh**<sup>1</sup>:

"24. On an analytical reading of a catena of decisions of this Court, the following broad proposition of law clearly emerges: (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstances would not impede the conviction of the appellant under Section 302 read with Section 149 IPC; (c) charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 read with Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved."

(emphasis supplied)

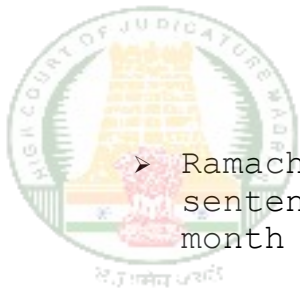


15 In the instant case, the prosecution have proved beyond cavil that the family of Baskar (A1) and Ramesh (A3) on the one hand and the family of Elangovan (A2) on the other hand, who are all neighbours of Usharani, had boundary disputes with Usharani's family. The trouble started when Elangovan (A2) and party started laying the boundary stones without removing the portia tree, as directed by the Surveyor and Village Administrative Officer. Usharani strongly objected to that, seeing which, Baskar (A1) went inside his house and brought a billhook and joined issues with Elangovan (A2) on the premise "My enemy's enemy is my friend" by saying "Why should the tree be felled at the instance of these people" and both Elangovan (A2) and Baskar (A1) hacked Usharani with billhooks. When Mahendran (P.W.1) and Pandurangan (P.W.2) attempted to go to her rescue, Ramachandran (A4) and Raju (A5) not only prevented them from going to the rescue of Usharani, but also attacked them with billhooks, resulting in serious injuries to them. Therefore, the removal of the portia tree became a prestige issue for all the four and it provided the rallying point to share the common intention to get rid of Usharani. That is why, Ramachandran (A4) and Raju (A5) not only held Mahendran (P.W.1) and Pandurangan (P.W.2), but also attacked them with billhooks, so that Usharani is not saved. In the quarrel, none of the accused suffered any injury. The following passage of *Vivian Bose, J.* in **Pandurang and others vs. State of Hyderabad**<sup>2</sup>, would throw light on the contours of Section 34 IPC.

"34. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose."

16 In view of the foregoing discussion, we hold as under:

- The conviction and sentence slapped by the Trial Court on Ramesh (A3) and Kamala (A6) are set aside and they are acquitted of all the charges levelled against them.
- Baskar (A1), Elangovan (A2), Ramachandran (A4) and Raju (A5) are acquitted of the charge under Section 148 IPC.
- Baskar (A1) and Elangovan (A2) are convicted under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.10,000/- each, in default to undergo one year simple imprisonment.



- Ramachandran (A4) is convicted under Section 341 IPC and sentenced to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment.
- Ramachandran (A4) is convicted under Section 324 IPC and sentenced to undergo one year rigorous imprisonment and pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
- Ramachandran (A4) is convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year.
- Raju (A5) is convicted under Section 341 IPC and sentenced to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment.
- Raju (A5) is convicted under Section 324 IPC and sentenced to undergo one year rigorous imprisonment and pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
- Raju (A5) is convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year.
- The aforesaid sentences shall run concurrently.

In fine, this criminal appeal is partly allowed. Bail bonds and sureties executed by Ramesh (A3) and Kamala (A6) stand terminated. Fine amount, if any, paid by Ramesh (A3) and Kamala (A6) shall be refunded. The Trial Court is directed to secure the presence of Baskar (A1), Elangovan (A2), Ramachandran (A4) and Raju (A5) and commit them to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-I)

/ True Copy /

Sub Assistant Registrar (CS)

To

1 The II Additional District and Sessions Judge  
Thanjavur  
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2 The Inspector of Police  
Maruvur Police Station  
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( SR-57125[F] dated 27/03/2019 )

CRL.A. [MD] No.146 of 2017  
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