



Bail Slip

Raja, S/o.Muthu Karuppan, M/40/2017 sole Accused was released on bail vide order of the this Court, dated 19.09.2017 made in CrI.MP(MD)No.6775 of 2017 in CrI.A(MD)No.78 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
27.02.2019	14.03.2019

CORAM:

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

CRL.A[MD].No.78 of 2017

Raja : Appellant/Sole Accused

Vs.

State,
Rep by the Inspector of Police,
Dindigul Taluk Circle,
Thadikombu Police Station,
Dindigul District.
Crime No.155 of 2016.

: Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 10.01.2017, made in S.C.No.53 of 2016, on the file of the learned Principal Sessions Judge, Dindigul.

For Appellant : Mr.S.Mahendrapathy

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

The appellant is the sole accused in S.C.No.53 of 2016, on the file of the learned Principal Sessions Judge, Dindigul. He stood charged for the offences punishable under Sections 302 and 506(II) IPC.

2. By Judgment dated 10.01.2017, the Trial Court has convicted the accused and sentenced him, as detailed below:-



Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.5,000/- in default to undergo simple imprisonment for one year.
506(II) IPC	To undergo rigorous imprisonment for two years.	Rs.1,000/- in default to undergo simple imprisonment for six months.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:-

3.1. The appellant, who is the nephew of the deceased, was having property dispute with the deceased - Annakodi Thevar, pursuant to which, on 23.04.2016, around 10.00 PM, he attacked the deceased and caused his death. On the complaint [EX-P1] given by Chandrasekaran [PW-1], Lakshmipraba [PW-13], Sub-Inspector of Police, registered a case in Crime No.155 of 2016, for the offence under Section 302 IPC, at 02.00 AM, on 24.04.2016 and prepared the printed First Information Report [EX-P11], which reached the jurisdictional Magistrate at 08.00 AM, on 24.04.2016, at her residence, as could be seen from the endorsement made therein.

3.2. The investigation of the case was taken over by Murugan [PW-14], [who, hereinafter, shall be referred to as "the I.O"]. The I.O came to the place of occurrence and in the presence of - witnesses, Rajapandi [PW-6] and Ramasamy [not examined], prepared the Observation Mahazar [EX-P2] and Rough Sketch [EX-P12]. From the place of occurrence, he also seized bloodstained soil [MO-3] and soil without bloodstain [MO-4] under the cover of mahazar [EX-P3]. The I.O went to the Mortuary at the Government Hospital, Dindigul, where the body of the deceased was kept and conducted inquest in the presence of the panchayatdars and the inquest report was marked as EX-P13. Thereafter, he forwarded the dead body through Venkatakrishnan [PW-12], Head Constable - 1228, for postmortem.

3.3. Dr.N.Thangaraj, [PW-7], conducted autopsy on the body of the deceased and in his evidence as well in the postmortem certificate [EX-P5], he has stated as follows:-

"1)1. Cut injury 6 X 2 CM X muscle depth over left parietal region.

2. Cut injury 7 X 2 CM X muscle depth over left Temporo parietal Region.

3. Cut injury 3 X 1 CM over left ear lobule.

4. Cut injury 5 X 2 CM X muscle depth over left occipital Region.

5. Cut injury 3 X 2 CM X bone depth over left



forearm with fracture ulan present. ".

OPINION:-

" The deceased would appear to have died of head injury and multiple injuries sustained and death could have been occurred about 10 to 14 hours prior to autopsy".

3.4. The I.O arrested the accused at 12.30 PM, on 24.04.2016 and based on the confession statement given by the accused, he recovered a billhook with bloodstain [MO-1] in the presence of witnesses - Loganathan [PW-11] and Perumal [not examined]. The I.O examined the witnesses and recorded their statements and sent the seized articles in Form No.95 to the jurisdictional Magistrate. On completion of autopsy, the I.O collected the bloodstained dhoti [MO-2] worn by the deceased, through Venkatakrishnan [PW-12]. He sent the bloodstained billhook [MO-1], bloodstained dhoti [MO-2] and soil with bloodstain [MO-3] through the jurisdictional Magistrate No.II, Dindigul to the Tamil Nadu Forensic Laboratory for examination and report.

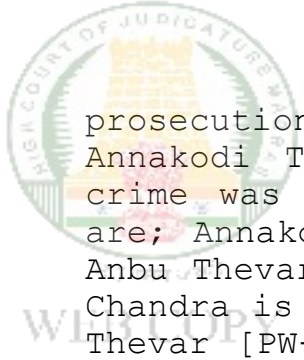
3.5. Vijayaendran [PW-8], the Scientific Officer, who examined the above material objects, in his evidence as well in the Biology Report [EX-P7], has detected the presence of human blood in billhook [MO-1], dhoti [MO-2] and soil with bloodstain [MO-3]. Vijayaendran [PW-8] conducted further test and issued the Serology Report [EX-P8], which states that the human blood of 'B' group was found in billhook [MO-1], dhoti [MO-2] and soil with bloodstain [MO-3].

3.6. After completing the investigation, Murugan [PW-14] filed final report in PRC.No.9 of 2016 before the learned Judicial Magistrate No.II, Dindigul. On the appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.53 of 2016 and made over to the Principal Sessions Judge, Dindigul, for trial. The Trial Court framed charges against the accused, as detailed in Paragraph No.1, supra. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 14 witnesses, marked 16 exhibits and 4 material objects. When the accused was questioned about the incriminating circumstances appearing against him, he denied the same. On the side of the accused, he examined himself as DW-1 and marked a certified copy of the sale deed dated 26.03.2009 [EX-D1]. The Trial Court, after considering the evidence on record and hearing either side, by Judgment dated 10.01.2017, convicted the accused, as detailed in Paragraph No.2 supra. The appellant is, therefore, before this Court.

4. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

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5. At the outset, it may be necessary to state that the



prosecution have proved beyond cavil the fact that the death of Annakodi Thevar was homicidal. Now, the question is whether the crime was committed by the appellant. Some of the admitted facts are; Annakodi Thevar was 67 years old at the time of the incident; Anbu Thevar [PW-5] is his younger brother; The appellant's mother - Chandra is the younger sister of Annakodi Thevar [deceased] and Anbu Thevar [PW-5]; the appellant was given in marriage to the daughter of Anbu Thevar [PW-5] and they got estranged. Chandrasekaran [PW-1] is the son of Annakodi Thevar. Chakkaravarthi [PW-2] is the son of Kamatchi Thevar, who is the younger brother of Annakodi Thevar [deceased]; Karthick [PW-3] is the son of Pounraj, another younger brother of Annakodi Thevar [deceased].

6. Chandrasekaran [PW-1], in his evidence, has stated that after the death of his mother - Chandra, three years prior to the occurrence, his father - Annakodi Thevar continued to live in their ancestral house, located a little away in EB Colony, Kappiliyapatti, Dindigul District; his brother and he [PW-1] used to carry dinner almost every day for their father; on 23.04.2016, around 09.30 PM, he went to his father's house carrying dinner, where he saw his two cousins - Chakkaravarthi [PW-2] and Pounraj [PW-3] talking to his father; he also joined them in the conversation; while so, they heard someone calling around 10.00 PM; the appellant called out his father; his [PW-1's] father went out of the house and they followed him; the appellant abused his father and with a billhook [MO-1] in his hand, demanded settlement of the property in his favour; when his father asked him not to shout, the appellant hacked his father on his right hand and head; he and the others shouted at him to stop; when they went near him, he brandished the billhook [MO-1] and threatened that he would attack them also; therefore, they were not able to go near him; the appellant ran away and his father was lying dead; he informed his relatives and called 108 Ambulance; the paramedics in the Ambulance checked the pulse and declared that he was dead; so, Chandrasekaran [PW-1] went to the police station and lodged a complaint [EX-P1]; he identified the billhook [MO-1] that was used by the appellant to attack his father.

7. In the cross-examination, Chandrasekaran [PW-1] was asked as to why his father was living separately, for which he stated that after the death of his mother - Chandra, Annakodi Thevar decided to live in the family ancestral house, as it was very convenient to him. He also admitted that his father was respected by the villagers and they would seek his help for settling disputes. It was suggested to him that he did not go to his father's house on that night and that his father had several enemies in the village, who had caused his death and in order to grab the properties of the appellant, the case has been foisted on him, which suggestion Chandrasekaran [PW-1] denied. Chandrasekaran [PW-1] also admitted that the appellant is the son-in-law of Anbu Thevar [PW-5] and the appellant had HIV Positive. He also admitted that his wife got separated from him because of HIV Positive and was living with her father - Anbu Thevar [PW-5]. He denied the suggestion that the appellant was cured of HIV



positive, despite which, he was not being allowed to rejoin his wife and children by the family of the deceased.

8. Chakkaravarthi [PW-2] has stated that Annakodi Thevar was his senior paternal uncle and used to visit him on and off while returning from work; similarly, on 23.04.2016, around 09.30 PM, while he was returning home with his cousin - Pounraj [PW-3], the deceased called them and out of courtesy, they went inside the house and were talking to him; a little later, Chandrasekaran [PW-1] came with dinner and also joined in the conversation; while so, he heard the noise of the appellant calling out the deceased, hearing which, the deceased went out; they also followed him; the appellant abused the deceased and took out a billhook [MO-1] and attacked him; the deceased defended the attack with his left hand; the appellant attacked him on his head; others shouted at him to stop the attack, but, in vain; the deceased fell down and when the Ambulance was called, they checked him and stated that he was dead; Chandrasekaran [PW-1] lodged the complaint [EX-P1] to the police. Chakkaravarthi [PW-2] identified the billhook [MO-1] and the Dhoti [MO-2] worn by the deceased at the time of incident.

9. In the cross-examination, Chakkaravarthi [PW-2] has stated that he is working in a Mill and the working hours of the mill is up to 08.00 PM; his cousin - Karthik [PW-3] was also working in the same mill. When he was questioned as to whether he [PW-2] attempted to apprehend the appellant, he stated that when he attempted to catch hold of the the appellant, he brandished the billhook [MO-1] saying that he will hack them also. Ultimately, it was suggested to him that a false case has been put on him in order to grab the property, which suggestion he [PW-2] denied. Karthick [PW-3] has substantially corroborated the evidence of Chandrasekaran [PW-1] and Chakkaravarthi [PW-2]. In the cross-examination, it was suggested to Karthick [PW-3] that the appellant has been falsely implicated for grabbing his [appellant's] property, which suggestion he denied.

10. The learned counsel appearing for the appellant contended that Chakkaravarthi [PW-2] had stated that his working hours are up to 08.00 PM, whereas Karthick [PW-3] had stated that by 04.30 PM, the work will get over and therefore, there is discrepancy in their evidence. It is common knowledge that mill workers work on shift basis and the working hours depend upon the shift timings. However, the fact remains that Chakkaravarthi [PW-2] and Karthick [PW-3] had incidentally come to the house of the deceased just prior to the occurrence on their way back home.

11. The learned counsel further contended that in the complaint [EX-P1], Chandrasekaran [PW-1] has stated that the appellant had attacked the deceased by the handle portion of billhook, whereas, in his evidence, he has not stated so. However, Chandrasekaran [PW-1] was not contradicted with this statement on this aspect, as required under Section 145 of the Indian Evidence Act, 1872. On a careful reading of the complaint, [EX-P1], it is seen that when the deceased



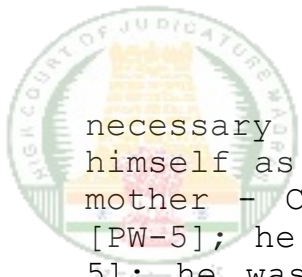
came out of the house, the appellant was standing with a billhook [MO-1]. He attacked the deceased with the handle portion of the billhook first and when the deceased shouted at him, the appellant hacked him on the head.

12. The postmortem certificate [EX-P5] shows that there are five cut injuries, of which two are in the left parietal region. What is more incriminating is the evidence of Vijayaendran [PW-8], the Scientific Officer, Regional Forensic Science Laboratory, Madurai. He has stated that he was working as Scientific Officer in Regional Forensic Science Laboratory, Madurai; on 25.05.2016, he received a parcel from the Court of Judicial Magistrate No.II, Dindigul; after verifying the seals, found on the parcel with the facsimile affixed on the covering letter from the Magistrate, he opened the parcel and found four items, of which two were soil with bloodstain [MO-3] and soil without bloodstain [MO-4] and the other two were dhoti [MO-2] and a billhook [MO-1]. He examined the bloodstained soil [MO-3], dhoti [MO-2] and billhook [MO-1] and found the presence of human blood of 'B' group. He was not cross-examined by the appellant at all. The prosecution have also examined Karnan [PW-10] from the Electricity Department, who has stated that there was no power failure on 23.04.2016 in the area, where the occurrence took place.

13. Anbu Thevar [PW-5] has stated that he gave his daughter in marriage to the appellant and she has a daughter through him; since the conduct of the appellant was not good, as he was getting involved in criminal cases, including murder case, his daughter got separated from the appellant and returned to the parental home; there was a dispute between the appellant and his eldest brother - Annakodi Thevar, in connection with certain properties; he [PW-5] and the other elder brother - Veerapandi Thevar advised the appellant to be patient; but, the appellant did not listen; the appellant was creating problems frequently for the deceased; on 23.04.2016, he heard that the appellant had killed his brother - Annakodi Thevar and on coming to know of it, he came to the place of occurrence and was there till the arrival of the Ambulance. In the cross-examination, Anbu Thevar [PW-5] admitted that the appellant was afflicted with HIV positive and that was also one of the reasons for his wife getting separated from him. Anbu Thevar [PW-5] admitted that the native place of the father of the appellant is Usilampatti and his father owns properties. However, he denied the suggestion that the appellant was the only heir for the said properties and has stated that apart from the appellant, there are sisters for him, who also have share in the property. He denied the suggestion that the appellant was cured of HIV positive and when the appellant wanted to rejoin his wife, Annakodi Thevar and Anbu Thevar [PW-5] insisted that the appellant should settle the properties of his father in favour of his wife and since the appellant did not agree, this case has been foisted on him.

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14. In the teeth of such overwhelming evidence, it may now be



necessary to analyse the evidence of the appellant, who examined himself as DW-1. In his evidence, the appellant has stated that his mother - Chandra is the sister of Annakodi Thevar and Anbu Thevar [PW-5]; he [the appellant] married the daughter of Anbu Thevar [PW-5]; he was afflicted with HIV and so, his wife and children left him; he was cured of HIV Positive, in spite of which, his wife was not willing to join him, because her father - Anbu Thevar [PW-5] and the deceased were not permitting her; he appealed to the deceased and the deceased asked him to wait for some time; on 24.04.2016, while he was sleeping at his home, the police came there and arrested him and foisted the case; there is no dispute between him and the deceased concerning any property; his parents settled one pathway in favour of Adhi Prabhu and in that sale deed, he signed as witness; the said sale deed was marked as [EX-D1]; Annakodi Thevar was killed by some one, because, he was involving himself in disputes in the village. In the cross-examination by the Public Prosecutor, the theory put forwarded by him was suggested to be false, which suggestion he denied.

15. Thus, there are two sets of evidence before us, namely,

- eyewitnesses account of Chandrasekaran [PW-1], Chakkaravarthi [PW-2] and Karthick [PW-3], supported by Anbu Thevar [PW-5], regarding the motive and the scientific evidence, which states that the billhook [Mo-1] that was seized, had human blood of 'B' group, which is that of the deceased;
- and the evidence of the appellant.

16. In the cross-examination of the prosecution witnesses, the appellant had taken a stand that he was not demanding any share in the ancestral property, but, Annakodi Thevar and Anbu Thevar [PW-5] were asking him to settle some properties belonging to his family in favour of his wife and children for permitting them to re-unite, whereas, in the evidence, he has stated that there is absolutely no animosity between him and the deceased - Annakodi Thevar. Anbu Thevar [PW-5] had stated that the conduct and character of the appellant were very bad and that the appellant was involved in several criminal cases, including murder case and that was also one of the reasons, apart from the fact that the appellant was afflicted with HIV positive, for the appellant's wife to get separated from him. The appellant has not denied the evidence given by Anbu Thevar [PW-5], his own father-in-law, that the appellant was involved in several criminal cases, including murder case. It must be borne in mind that the appellant is none other than the sister's son of Annakodi Thevar and Anbu Thevar [PW-5]. That apart, Anbu Thevar [PW-5] had given his daughter in marriage to the appellant. The appellant has not got divorce from his wife, but, was only living away from her.

17. In such view of the matter, we have no reasons to disbelieve the eyewitnesses' account, namely, Chandrasekaran [PW-1], Chakkaravarthi [PW-2] and Karthick [PW-3] and also the evidence of Anbu Thevar [PW-5] and thus, we reject the evidence of DW-1, the



appellant herein. Thus, the conviction recorded by the Trial Court warrants no interference.

18. In the result,

- the Judgment dated 10.01.2017 made in S.C.No.53 of 2016, on the file of the learned Principal Sessions Judge, Dindigul, is upheld.
- The Criminal Appeal is dismissed.
- Suspension of sentence granted by this Court on 19.09.2017 in Crl.MP(MD).No.6775 of 2017 in Crl.A.(M).No.78 of 2017 stands cancelled.
- Since the accused/appellant is on bail, it is directed that the Trial Court shall take steps to secure him and to commit him to prison to serve out the period of sentence.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar

NB

To

- 1.The Judicial Magistrate, No.II, Dindigul.
- 2.-do-through, the Chief Judicial Magistrate, Dindigul.
- 3.The Principal Sessions Judge, Dindigul.
- 4.The Superintendent, Central Prison, Madurai.
5. The Inspector of Police,
Dindigul Taluk Circle,
Thadikombu Police Station, Dindigul District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 7.The Record Keeper,
Criminal Section, (Records)
Madurai Bench of Madras High Court, Madurai. 2Copies.

**JUDGMENT MADE IN
CRL.A[MD].No.78 of 2017**

14.03.2019

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