



BAIL SLIP

The Appellant/Accused namely Balakrishnan S/o. Aruchamy Gounder was released on bail on 01.11.2019 in CRL.MP./15499/2019 in CRL.A.23/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

Criminal Appeal No.23 of 2018

Balakrishnan
S/o.Aruchamy Gounder

.. Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Anamalai Police Station.
Crime No.414 of 2016

.. Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 21.11.2017 passed in S.C.No.68 of 2017 on the file of learned I Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.A.Sairaman
for M/s.Dass and Viswa Associates

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

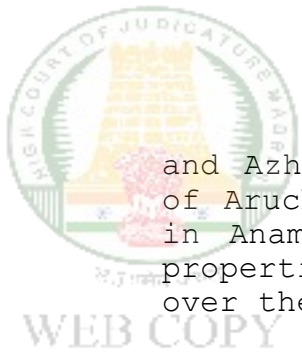
JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

This criminal appeal is directed against the judgment and order of conviction and sentence dated 21.11.2017 passed by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.68 of 2017.

2. The prosecution story runs thus:

2.1. It is a case of parricide. Muthukumarasamy, Vijayaraj, Varadharaj, Jegajeevan Ram [deceased], Balakrishnan [appellant]



and Azhagiya Gounder [PW-1] are brothers and they are the sons of Aruchamy Gounder. They are natives of Kupitchi Pudur Village in Anamalai Taluk, Pollachi. Their father had partitioned the properties amongst the six siblings and appears to have handed over the original title deeds to the appellant.

2.2. Azhagiya Gounder [PW-1] and his wife Selvi [PW-2] are residing in the share allotted to Jegajeevan Ram in Vinayagar Koil Street. There was some bad blood between Jegajeevan Ram and the appellant, in that, Jegajeevan Ram was asking the appellant to give the original title deeds of the property for which the appellant was not agreeing. Therefore, on and off, they used to quarrel.

2.3. On the fateful day, i.e. 09.10.2016 around 08.15 p.m., the appellant and Jegajeevan Ram were quarrelling near a Perumal temple that is located diagonally opposite the house of Azhagiya Gounder [PW-1]. On hearing their quarrel, Azhagiya Gounder [PW-1] and his wife Selvi [PW-2] came out of their house and at that time, they saw the appellant attacking Jegajeevan Ram with a billhook [MO-1]. When Jegajeevan Ram fell down, the appellant dropped a stone on his head. When Azhagiya Gounder [PW-1], Selvi [PW-2] and other villagers tried to intervene, the appellant threatened them of dire consequences and thereafter, ran away.

2.4. On a written complaint [Ex.P1] given by Azhagiya Gounder [PW-1], Valliammal [PW-8], Sub-Inspector of Police, registered a case in Crime No.414 of 2016 for the offence u/s.302 IPC on 09.10.2016 at 21.30 hours against the appellant and prepared the printed First Information Report [Ex.P13], which reached the jurisdictional Magistrate on the same day at 11.45 p.m., as could be seen from the endorsement thereon.

2.5. Investigation of the case was taken over by N.Somasundaram [PW-9], Inspector of Police, who went to the place of occurrence, prepared the observation mahazar [Ex.P4] and rough sketch [Ex.P14]. From the place of occurrence, the Investigation Officer [PW-9] seized soil with bloodstains [MO-4] and soil without bloodstains [MO-5] under the cover of a mahazar [Ex.P3]. The Investigation Officer [PW-9] conducted inquest over the body of Jegajeevan Ram and the inquest report was marked as Ex.P15. The body was sent to Government Hospital, Coimbatore, for postmortem, where Dr.Peranantham [PW-5] conducted autopsy and issued the postmortem certificate [Ex.P6]. After getting the viscera report [Ex.P7], Dr.Peranantham [PW-5] gave his final opinion under Ex.P8, wherein, he has opined as follows:

'OPINION: As to cause of death is already given in Postmortem Certificate. Viscera does not contain any poison'



2.6. The appellant was arrested by the police on 10.10.2016 at 07.00 a.m. and on the disclosure made by him, the Investigation Officer [PW-9] seized the billhook [MO-1] under the cover of a mahazar [Ex.P16] in the presence of witnesses Deenadayalan (not examined) and Muruganantham [PW-7]. That apart, the Investigation Officer [PW-9] seized the stone [MO-2] that was allegedly thrown by the appellant on Jegajeevan Ram's head under the cover of a mahazar [Ex.P17] in the presence of the same witnesses viz., Deenadayalan (not examined) and Muruganantham [PW-7].

2.7. After examining various witnesses and collecting the reports of the experts, the Investigation Officer [PW-9] completed the investigation and filed a final report in P.R.C.No.5 of 2017 in the Court of the Judicial Magistrate I, Pollachi, for the offence u/s.302 IPC against the appellant.

3. On appearance of the appellant, 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.68 of 2017 and was made over to the I Additional District and Sessions Court, Coimbatore, for trial. The trial Court framed charges u/s.302 and 506(II) IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

4. To prove the case, the prosecution examined 9 witnesses and marked 21 exhibits and 7 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.11.2017 in S.C.No.68 of 2017, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
Section 506(II) IPC	One year rigorous imprisonment.

Challenging the aforesaid conviction and sentences, the accused is before this Court in this appeal.



6. Heard Mr.A.Sairaman, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

7. The prosecution has proved beyond a peradventure the relationship between the appellant and Jegajeevan Ram and the fact that the death of the latter was a homicide.

8. To link the appellant with the crime, we have the ocular evidences of Azhagiya Gounder [PW-1] and his wife Selvi [PW-2]. Azhagiya Gounder [PW-1], in his evidence, has stated that the appellant and Jegajeevan Ram are his brothers; their father had partitioned the family properties and had allotted shares to all the six brothers; their father had handed over the original title deeds to the appellant; his brother Jegajeevan Ram was frequently asking the appellant to give him the original title deeds, but the appellant was refusing to give them; on 09.10.2016, while he was watching TV in his house, his wife Selvi [PW-2] told him that the appellant and Jegajeevan Ram were quarrelling outside; so, he went out to see what it was; he saw the appellant attacking Jegajeevan Ram with a billhook [MO-1], which he normally carries as he is a tender coconut seller; thereafter, the appellant dropped a stone on Jegajeevan Ram's head and when they went running towards him, he intimidated them and ran away.

9. In the cross-examination of Azhagiya Gounder [PW-1], he was confronted with an alleged contradiction, in that, he has stated in the chief-examination that after Jegajeevan Ram fell on the ground after he was attacked with the billhook [MO-1], the appellant turned him upside down and thereafter, dropped the stone, which was not found either in the complaint [Ex.P1] or in his police statement.

10. Mr.Sairaman, learned counsel appearing for the appellant, placed great reliance upon this omission and submitted that this does make the evidence of Azhagiya Gounder [PW-1] suspect.

11. We are unable to countenance the said submission. On a perusal of the photographs of the scene of crime, it is seen that Jegajeevan Ram was lying on the ground in a supine position. Just because in the complaint [Ex.P1], Azhagiya Gounder [PW-1] had failed to state that the appellant turned the body and dropped the stone, such failure, could not, by itself, make his evidence suspect, inasmuch as even in the complaint [Ex.P1], Azhagiya Gounder [PW-1] had stated about the fact that the appellant dropped a stone on Jegajeevan Ram's head.

12. The evidence of Azhagiya Gounder [PW-1] was adequately



corroborated by his wife Selvi [PW-2], who had also witnessed the occurrence. Azhagiya Gounder [PW-1] and Selvi [PW-2] were examined in chief on 09.08.2017 and on the same day, they were examined in cross. However, both of them were recalled on 13.09.2017 and they were further cross-examined. Even in the further cross-examination, they have clearly stated that they came out of the house on hearing the quarrel and witnessed the attack. Azhagiya Gounder [PW-1] has clearly stated that the whole attack got over in five minutes. These questions have been elicited by the defence in the cross-examination, which have further strengthened the testimony of these witnesses.

13. We find no reason to disbelieve the evidence of these two witnesses, inasmuch as it is an admitted fact that Azhagiya Gounder [PW-1] is none other than the own brother of Jegajeevan Ram and the appellant and in such circumstances, he has no reason to falsely implicate the appellant.

14. Coming to the penal provision, we find that the appellant is a tender coconut seller for which he is required to carry a billhook. He had not carried the billhook [MO-1] with him deliberately with an intention of attacking his brother Jegajeevan Ram. In such view of the matter, the proved facts do not disclose the commission of an offence u/s.302 IPC but for an offence u/s.304(I) IPC.

15. For the foregoing reasons, the conviction and sentence imposed on the appellant for the offence u/s.302 IPC are set aside. Instead, the appellant is convicted u/s.304(I) IPC and sentenced to ten years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo three months simple imprisonment. If the fine amount has already been paid pursuant to the judgment and order of the trial Court, it is not necessary for the appellant to pay once again. The conviction and sentence for the offence u/s.506(II) IPC stands confirmed. The sentences shall run concurrently. The trial Court is directed to secure the appellant towards serving the remaining period of sentence. Period of incarceration thus far undergone by the appellant shall be set off in keeping with Section 428 Cr.P.C.

In the result, the Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



gm

To

1.The I Additional District and Sessions Judge,
Coimbatore.

2.The Inspector of Police,
Anamalai Police Station.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.Dass & Viswa Associates SR No.38106

Criminal Appeal No.23 of 2018

PVS (CO)
PR (25/08/2021)