



BAIL SLIP

C.R.L. A. No.291 OF 2018

WEB COPY The Appellants/Accused namely Kolanjinathan, S/o.Karuppaiah (A1), Jeyakumar, S/o.Thirumalai (A2), Chennaiyan @ Rajasekaran, S/o.Kolanjinathan (A3) were directed to be released on bail as per order of this dated 23.09.2019 in Crl.M.P.No.13409 of 2019 in Crl.A.No.291 of 2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

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

Criminal Appeal No.291 of 2018
and
Crl.M.P.No.5221 of 2021

1. Kolanjinathan
S/o.Karuppaiah
 2. Jeyakumar
S/o.Thirumalai
 3. Chennaiyan @ Rajasekaran
S/o.Kolanjinathan
- .. Appellants

Vs.

State represented by
The Inspector of Police,
Kunnam Police Station,
Perambalur.
Crime No.427 of 2015

.. Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 15.03.2018 passed in S.C.No.6 of 2017 on the file of learned Principal District and Sessions Judge, Perambalur.



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For Appellants : Mr.V.Gopinath, Senior Counsel
for Mr.L.Mahendran

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 15.03.2018 passed by the learned Principal District and Sessions Judge, Perambalur, in S.C.No.6 of 2017.

2. The prosecution story runs thus:

2.1. The deceased Elavarasan is the son of Vairam [PW-1], husband of Ambika [PW-2] and, brother of Thirumal [PW-7] and Jayaraman [PW-8]. The family of Elavarasan hailed from Keezhamathur village in Perambalur and they were owning lands nearby. The family of Elavarasan was having a boundary dispute with the family of the accused and civil litigations were pending between the parties.

2.2. While that being so, it is alleged that on 13.09.2015, around 11.00 a.m., when Vairam [PW-1], Ambika [PW-2], Thirumal [PW-7], Jayaraman [PW-8] and the deceased Elavarasan went to their lands, they found the family members of the accused putting up a fence. Therefore, they objected to it by saying that when a civil suit is pending in the Court, they should not put up any fence. Thus, a quarrel ensued, in which, it is alleged that the accused party attacked Elavarasan with sticks and an iron rod that were lying nearby and caused injuries to Elavarasan. It is also alleged that the womenfolk viz., Muthammal [A4] and Ramya [A5] attacked Vairam [PW-1] and Suganthi [PW-5] by pulling their hair.

2.3. After the attack, Jayaraman [PW-8] summoned 108 ambulance and took his injured brother Elavarasan and his mother Vairam [PW-1] to the Government Hospital, Ariyalur, where Elavarasan was examined by Dr.Mohammed Riyaz [PW-12], who issued the Accident Register, marked as Ex.P9. Since there were injuries on Elavarasan's head, after giving some initial first aid, he was sent for advance treatment to Thanjavur Medical College and Hospital on the same day. There, Elavarasan was examined by Dr.Kumarasenthil [PW-13] and was admitted as an inpatient for the head injury. Dr.Muthuraman [PW-14], performed



a surgery, but in vain. Elavarasan succumbed to the injuries on 14.09.2015 at 12.20 p.m.

2.4. In the mean while, after getting intimation from the hospital, Rajasekar [PW-15], Head Constable, from Kunnam Police Station, went to Government Hospital, Thanjavur and recorded the statement of Vairam [PW-1], which has been marked as Ex.P1.

2.5. Based on the statement of Vairam [PW-1], Jayapaul [PW-16], Sub-Inspector of Police, registered a case in Kunnam Police Station Crime No.427 of 2015 on 13.09.2015 at 23.00 hours for the offences u/s.147, 294(b), 323, 324 and 506(II) IPC against Kolanjinathan [A1], Jayakumar [A2], Chinnaiyan [A3], Muthammal [A4] and Ramya [A5] and prepared the printed First Information Report [Ex.P13], which was received by the jurisdictional Magistrate at 10.30 a.m. on 14.09.2015, as could be seen from the endorsement thereon.

2.6. Jayapaul [PW-16], Sub-Inspector of Police went to the place of occurrence and prepared the observation mahazar [Ex.P4] and rough sketch [Ex.P14].

2.7. Investigation of the case was taken over by Prakash [PW-22], Inspector of Police. On receiving the death intimation from the Government Hospital, Thanjavur, the Investigation Officer [PW-22] altered the case to one u/s.302 IPC vide alteration report [Ex.P18]. He went to the place of occurrence and examined the witnesses. The Investigation Officer [PW-22] went to the hospital and conducted inquest over the body of Elavarasan and the inquest report was marked as Ex.P21. On his request, Dr.Tamilmani [PW-19] performed autopsy on the body of Elavarasan and issued the postmortem certificate [Ex.P16]. After obtaining the viscera report, Dr.Tamilmani [PW-19] gave his final opinion in Ex.P17, wherein, he has stated as follows:

'FINAL OPINION:

The deceased would appear to have died of head injury due to injuries over vital organ of brain.'

2.8. The Investigation Officer [PW-22] arrested Kolanjinathan [A1], Jayakumar [A2] and Chinnaiyan [A3] at 06.00 p.m. on 14.09.2015 and based on the disclosure statement of the accused, he recovered two sticks [MOs.1 and 2] and an iron rod [MO-3] under the cover of mahazars [Exs.P2 and P3] in the presence of witnesses Marimuthu [PW-9] and Selvaraj [PW-11]. The Investigation Officer [PW-22] arrested Muthammal [A4] and Ramya [A5] on 15.09.2015 at 16.30 hours.

2.9. After examining various witnesses and collecting the reports of the experts, the Investigation Officer [PW-22] completed the investigation and filed a final report in



P.R.C.No.27 of 2016 in the Court of the Judicial Magistrate, Perambalur, for the offences u/s147, 148, 294(b), 323, 324, 354, 506(II) and 302 IPC against the accused.

2.10. On appearance of the accused (A1 to A5), 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.6 of 2017, for trial.

2.11. The trial Court framed charges u/s.147, 294(b), 323 (2 counts), 302, 302 r/w 149 and 506(II) IPC against the five accused. When questioned, the accused pleaded 'not guilty'.

2.12. To prove the case, the prosecution examined 22 witnesses and marked 22 exhibits and 5 material objects. When the accused were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of accused, Exs.D1 to D4 were marked during the cross-examination of prosecution witnesses. No witness was examined from the side of accused.

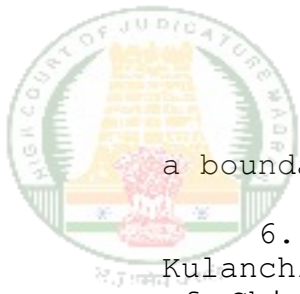
2.13. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.03.2018 in S.C.No.6 of 2017, acquitted Muthammal [A4] and Ramya [A5] of all the charges; Kolanchinathan [A1] of the charges u/s.147, 294(b) and 506(II) IPC and Jayakumar [A2] and Chinnaiyan [A3] of the charge u/s.147 IPC. However, the trial Court convicted Kolanchinathan [A1], Jayakumar [A2] and Chinnaiyan [A3] of the offence u/s.302 IPC and sentenced each of them to undergo life imprisonment and pay fine of Rs.1,000/-, in default, to undergo one year simple imprisonment.

2.14. Challenging the aforesaid conviction and sentences, Kolanchinathan [A1], Jayakumar [A2] and Chinnaiyan [A3] are before this Court in this appeal.

3. Heard Mr.V.Gopinath, learned Senior Counsel appearing for the appellants/accused and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution case rests on the ocular evidences of Vairam [PW-1], Ambika [PW-2], Govindarajan [PW-3], Sengamuthu [PW-4], Suganthi [PW-5], Thirumal [PW-7] and Jayaraman [PW-8].

5. Vairam [PW-1], in her evidence, has stated that she has three sons viz., Thirumal [PW-7] and Jayaraman [PW-8] and Elavarasan (deceased) and a daughter by name Amudha; Ambika [PW-2] is the wife of Elavarasan; Govindarajan [PW-3] is the junior paternal uncle of Elavarasan; Suganthi [PW-5] is the wife of Jayaraman [PW-8]. All these witnesses have stated that there is



a boundary dispute between them and the family of the accused.

6. At this juncture, it may be relevant to state here that Kulanchinathan [A1] is the husband of Muthammal [A4] and father of Chinnaiyan [A3] and Ramya [A5]. Jayakumar [A2] is a close relative of Kulanchinathan [A1]. Thus, all the members of the family of Kulanchinathan [A1] were implicated in this case.

7. As noted in paragraph No.5 (supra), in their evidences, the eyewitnesses have stated that there was a boundary dispute between the family of Vairam [PW-1] and the accused; that being so, on 13.09.2015 around 11.00 a.m., they received information that the family of the accused were putting up a fence in the disputed property and so, they went there and objected to that; at that time, Kulanchinathan [A1] and Chinnaiyan [A3] attacked Elavarasan with sticks [MO-1 and MO-2]; Jayakumar [A2] attacked Elavarasan with an iron rod [MO-3]; Elavarasan fainted and at that time, Muthammal [A4] and Ramya [A5] pulled the hair of Vairam [PW-1] and her daughter-in-law Suganthi [PW-5]; thereafter, 108 ambulance was called, in which, Elavarasan was taken to the hospital, where Vairam [PW-1] gave a statement to the police and the same was marked as Ex.P1.

8. In the cross-examination, Vairam [PW-1] admitted that there was a boundary dispute between her family and the family of the accused and civil cases are pending. Vairam [PW-1] inter se admitted the relationship of the witnesses. She has categorically stated that apart from the five persons, no one else participated in the incident.

9. On similar lines, the other eyewitnesses viz., Ambika [PW-2], Govindarajan [PW-3], Sengamuthu [PW-4], Suganthi [PW-5], Thirumal [PW-7] and Jayaraman [PW-8] have deposed. However, they have stated that it was Kulanchinathan [A1], who hit Elavarasan on his head, which, from the medical records, proved to be a fatal injury. The medical evidence of Dr.Muthuraman [PW-14], who performed surgery on Elavarasan in the Government Hospital, Thanjavur, also indicates the head injury sustained by Elavarasan. However, Jayaraman [PW-8], who had taken Elavarasan to the Government Hospital, Ariyalur, for treatment, stated to Dr.Mohammed Riyaz [PW-12] that about nine persons (5 males and 4 females) attacked Elavarasan with sticks.

10. Placing reliance on the above, Mr.V.Gopinath, learned Senior Counsel, submitted that the family of Elavarasan was wanting to implicate all the members of the family of the accused in the case and hence, they have stated 5 males and 4 females joined the attack. There appears to be some force in the submission of the learned Senior Counsel. That is one of the reasons, why the trial Court had acquitted Muthammal [A4] and



Ramya [A5].

11. From a reading of the evidences, it is seen that while the accused were putting up the fence, the victim party came there and questioned them. A quarrel appears to have ensued there. The accused were not armed with any weapon. Even according to the witnesses, they picked the sticks and iron rod that were lying there and used them to attack.

12. On a reading of all these witnesses, there is no clear evidence with regard to the overt act of Chinnaiyan [A3]. However, the injuries alleged to have been inflicted by Kulanchinathan [A1] with a stick and Jayakumar [A2] with an iron rod, find sufficient corroboration medically.

13. All the eyewitnesses uniformly say that Chinnaiyan [A3] attacked Elavarasan on his forehead, whereas, there is no corroborative medical evidence in this regard. No forehead injury has been noted by any of the doctors, who had examined and treated Elavarasan. Even the postmortem report [Ex.P16] does not speak about the presence of any injury on the forehead. Under such circumstances, we are of the view that the benefit of the same should have to be given to Chinnaiyan [A3].

14. As regards the penal provision, the proved facts do not disclose commission of an offence u/s.302 IPC, inasmuch as, the accused had not gone to the place of occurrence armed with any weapon. As stated above, they were putting up the fence and at that time, the dispute had arisen. Thus, the proved facts disclose commission of an offence u/s.304 (II) IPC r/w 34 IPC as against Kulanchinathan [A1] and Jayakumar [A2], inasmuch as, they had caused the injuries, with a stick and an iron rod, to Elavarasan.

15. In view of the above discussion,
- (i) The conviction and sentence imposed on Kulanchinathan [A1] and Jayakumar [A2] for the offence u/s.302 IPC are set aside. Instead, Kulanchinathan [A1] and Jayakumar [A2] are convicted u/s.304(II) r/w 34 IPC and each of them is sentenced to undergo seven years rigorous imprisonment. The fine imposed by the trial Court is confirmed. The trial Court is directed to secure Kulanchinathan [A1] and Jayakumar [A2] towards serving the remaining period of sentence. Period of incarceration thus far undergone by Kulanchinathan [A1] and Jayakumar [A2] shall be set off in keeping with Section 428 Cr.P.C. and
 - (ii) Chinnaiyan [A3] is acquitted of the charge u/s.302 IPC. The conviction and sentence passed against Chinnaiyan [A3] are set aside. Fine amount, if any, paid by Chinnaiyan [A3] shall be refunded. Bail bond executed shall stand discharged.

In the result, this Criminal Appeal is partly allowed.



Consequently, the connected miscellaneous petition is closed. The trial Court is directed to issue warrant and commit Kulanchinathan [A1] and Jayakumar [A2] in custody to undergo the remaining sentence.

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Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

gm

To

1. The Principal Sessions Judge,
Perambalur.
2. The Inspector of Police,
Kunnam Police Station,
Perambalur.
3. The Superintendent,
Central Prison,
Trichirapalli.
4. The Public Prosecutor,
High Court, Madras.
5. The Judicial Magistrate,
Perambalur.
6. The Chief Judicial Magistrate,
Perambalur.
7. The District Collector,
Perambalur.
8. The Director General of Police,
Mylapore, Chennai.

+1cc to Mr.L.Mahendran, Advocate, S.R.No.38502

Criminal Appeal No.291 of 2018

KV (CO)
SU(06/09/2021)