

BAIL SLIP

Crl.A.No.312/2010

The Appellant herein/Accused 1 and 5 namely 1) Karpagam W/o.Subramani and Palani S/o.Kuppusamy (in S.C.No.35 of 2010 on the file of Additional District and Sessions Judge, FTC.No.III, Chennai was directed to be released on bail by order of this court dated 10.06.2010 and made in Crl.MP.No.1 of 2010 in Crl.A.No.312/2010.

Crl.A.No.402/2010

The Appellant herein/Accused 2,3,6 and 9 namely 1) Anand and S/o.Subramani, 2.Basha @ Parthasarathy, 3)Murugan @ Val Murugan S/o.Shanmugam, 4) Manikandan S/o.Thiyagarajan (in S.C.No.35/2010 on the file of Additional District and Sessions Judge, FTC III, Chennai was directed to be released on bail by order of this court dated 07.07.2010 and made in Crl.MP.No.1 of 2010 in Crl.A.402/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.Nos.312 & 402 of 2010
Crl.MP.Nos.12660 & 12654/2019

1.Karpagam
2.Palani

Appellants/A1 &
A5 in Crl.A.312/2010

3.Anand
4.Basha @ Parthasarathy
5.Murugan @ Val Murugan
6.Manikandan

Appellants/A2, A3, A6 & A9
in Crl.A.402/2010

Vs.

State, by Inspector of Police(L & O)
D1, Triplicane Police Station, Chennai
Respondent in both appeals

PRAYER:- These Criminal Appeals have been filed under Section 374 (2) of Criminal Procedure Code, against the common judgement of conviction and sentence, dated 27.04.2010 made in SC.No.35 of 2010, by the Additional District and Sessions Judge, Fast Track Court No.III, Chennai.

For Appellants : Mr.C.Duraipandian-Crl.A.312/2010
Mr.S.N.Sivabharathi-
Crl.A.402/2010

For Respondent : Mr.K.Prabakar, APP-Both Appeals

For Victim, Shabi: Mr.M.Mustaq Ahmed-Both Appeals

COMMON JUDGMENT

1. These Criminal Appeals have been filed, against the common judgement of conviction and sentence, dated 27.04.2010, made in SC.No. 35 of 2010, by the learned Additional District and Sessions Judge, Fast Track Court No.III, Chennai, convicting and sentencing the Appellants/accused, as tabulated below:-

Rank of the Accused	Conviction under Section	Sentence
A-1	U/s.148 of IPC	To undergo Rigorous Imprisonment for a period of One year and to pay a fine of Rs.5000/- and in default, to undergo Simple Imprisonment for a period of 3 months.
	U/s.326 of IPC	
	U/s.307 of IPC	To undergo Rigorous Imprisonment for a period of Five years and to pay a fine of Rs.5000/- and in default, to undergo Simple Imprisonment for a period of 6 months.
		To undergo Rigorous Imprisonment for a period of Five years and to pay a fine of Rs.5000/- and in default, to undergo Simple Imprisonment for a period of 6 months.

Rank of the Accused	Conviction under Section	Sentence
A-2,3,5,6 and 9	U/s.148 of IPC U/s.326 of IPC U/s.307 r/w 34 of IPC	To undergo Rigorous Imprisonment for a period of One year and to pay a fine of Rs.5000/- and in default, to undergo Simple Imprisonment for a period of 3 months. To undergo Rigorous Imprisonment for a period of Five years and to pay a fine of Rs.5000/- and in default, to undergo Simple Imprisonment for a period of 6 months. To undergo Rigorous Imprisonment for a period of Five years and to pay a fine of Rs.5000/- and in default, to undergo Simple Imprisonment for a period of 6 months.
		The sentences were directed to run concurrently. The detention in the remand period is directed to be set off in the sentence period under Section 428 of Cr.P.C. The Accused 4, 8 and 10 were found not guilty for the offence under section 147,148, 323, 326, 307, 506(ii) r/w 34 of IPC and they were acquitted under section 235(1) of Cr.P.C.

2.The case of the prosecution is as follows:-

- a) On 10.09.2009 at 10.00 p.m., when the complainant, Gouse, a resident of Neelam Basha Darga, Dr.Besant Road, Chennai and a Tailor by profession. and his friends, after attending the Palli Vasal, came to a tea stall ,situated nearer to the junction of T.H.Road, Appavu Gramini Street and had placed order for tea in the tea shop, the Accused Nos.1,4,3,2 5, who were standing near the tea shop, after ordering tea, had quarrelled with the complainant and his friends and his brother, in demanding the tea in preference to one another. During the wordy quarrel, A1 had commanded the other accused and some more persons to kill the complainant and his friends. The accused attacked them with the knife and iron rods. Except the victim, Shabi, others ran away. The victim was attacked on his face, head, resulting in bleeding injuries. Thereafter, the accused had threatened the complainant and other injured and his

friends with dire consequences and threatened the public in the road by creating panic, due to which there was a traffic jam. Thereafter, the victim was admitted by the complainant and Basheer, in the Government Hospital, as an inpatient.

- b) On receipt of intimation from the hospital authorities, PW.9, the Sub Inspector of Police, Triplicane Police Station, came around 10.30 p.m. to the Hospital and as the injured was not able to speak and communicate, he recorded the statement given by his Brother Ghouse, who is the complainant and obtained his signature and came to the police station and registered a case as D1 Police Station Cr.No.780/2009 for the offences under Sections 147,148, 323, 326, 306 and 506 (2) of IPC and submitted to PW.10, Inspector of Police for further investigation. PW.10 had conducted further investigation and after completing investigation, had filed the final report for the offences under Sections 109, 147, 148, 326, 307 and 506(2) read with 34 of IPC.
- 3.The case was taken in PRC.No.236 of 2009 by the XII Metropolitan Magistrate, Egmore, Chennai and copies of the records were served to the accused under Section 207 of Cr.PC. Since the case was exclusively triable by the Sessions Court, the case was committed under Section 209 of Cr.PC to the Principal Sessions Court, Chennai-104, which took up the case in SC.No.35 of 2010 and made over to the Trial Court, namely, Additional District Sessions Court (FTC -III), Chennai. Necessary charges were framed under Sections 147, 148, 323, 326, 307, 506(2) read with 34 of IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.10 and also marked Exs.P1 to P11 and Mos.1 and 2.
- 4.On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in the case. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Appellants/A1, A2, A3, A5, A6 and A9 guilty and awarded punishments, as referred to above, which is challenged in these Criminal Appeals.
- 5.This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.
- 6.The learned counsel or the Appellants/ accused would submit that the appellants/ accused and the victim are totally strangers and that it was an unfortunate incident and that the occurrence had occurred in a sudden quarrel in respect of preference in serving tea in the Tea Shop and that after the

incident. The appellants hail from the lower strata of the society and have involved in the occurrence without understanding the consequences. All of them have a large family to take care and after the incident and coming out of jail they have reformed. Further they have expressed their remorse and that they have apologized to the victim and his family members. The victim and his family members have also pardoned the appellants/accused and further, appellants/accused have collectively agreed to pay an amount of Rs.5,00,000/- as compensation to him and accordingly, the victim and the appellants/accused have entered into a Memo of Compromise and filed the above miscellaneous petitions seeking to permit compounding the offences and would pray to dispose of the cases as "compounded". He would further submit that A1 and A5 have suffered total incarceration for 6 months and A2, A3, A6 and A9 have suffered incarceration for 9 months during investigation and after conviction.

7. On the other hand, the learned Additional Public Prosecutor for the Respondent would submit that the Appellants/Accused were originally charged for the offences under Sections 147, 148, 323, 307, 109, 326 under Section 506 (ii) of IPC and after trial, the Trial Court had found the Appellant/A1 guilty for the offences under Sections 109 read with 147, 148, 326 read with 307 of IPC and the Appellant/Accused/A2, A3, A5, A6 and A9 guilty for the offences under Sections 147, 148, 326, 307 read with 34 of IPC and convicted and sentenced them as stated above and that since the offences, under which the appellants/accused were convicted, are not compoundable, compounding of such offences cannot be recorded.
8. At this stage, the learned counsel for the Appellants/ accused would submit that though the offences are not compoundable and though permission cannot be granted to record a compromise between the parties, the Honourable Supreme Court had taken into consideration the compromise entered into between the parties as a relevant circumstance for considering the quantum of sentence and that the same view has been taken in 2008 [15] SCC 667 (Ishwar Singh Vs. State of MP) .
9. The learned counsel for the Appellants/Accused would further submit that in a recent decision of the Honourable Supreme Court, reported in 2019 SCC Online SC 896 (Manjit Singh Vs. State of Punjab and another), the Honourable Supreme Court, placing reliance on its earlier judgements, while confirming the conviction, had taken the compromise entered into between the parties, as a relevant circumstance and reduced the period of sentence to the period already undergone and would pray that the period of sentence may be modified to the period already undergone.
10. The Appellants/ accused were originally charged for the offences under Sections 147, 148, 323, 307, 109, 326 under Section 506 (ii) of IPC and after trial, the Trial Court had

found the Appellant/A1 guilty for the offences under Sections 109 read with 147, 148, 326 read with 307 of IPC and the Appellant/Accused/A2, A3, A5, A6 and A9 guilty for the offences under Sections 147, 148, 326, 307 read with 34 of IPC and convicted and sentenced them as stated above.

11. During the pendency of the appeal, the parties have entered into a Memo of Compromise, dated 30.08.2019, whereby the appellants have offered to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as a compensation for the injuries sustained by the victim and the victim, namely, Hussain, has agreed to accept the same.

12. Today, the complainant and all the accused are present before this Court and they have also filed necessary affidavits. This Court has enquired the victim and his family members who are present before this Court and they have stated that the victim and his family members have pardoned the Appellants/accused and have agreed to accept the compensation amount paid by the appellants /accused.

13. This Court is aware that the Appellants/ accused are convicted for offences, which are non compoundable and in such circumstances, it would not be proper to compound the offences, which are non compoundable ignoring the statutory provisions. However, in several matters, the Honourable Supreme Court as well as this Court had held that the voluntary compromise entered into between the parties can be taken as a relevant factor for consideration of quantum of sentence.

14. In (2019) 5 SCC 166 [Shankar and others Vs. State of Maharashtra and another] the Honourable Supreme Court, following its earlier decisions, while convicting the accused, had reduced the sentence to the period already undergone. It would be relevant to refer to the following paragraphs of the above judgement:-

"10. In *Ishwar Singh v. State of M.P.* [Ishwar Singh v. State of M.P., (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153], this Court held that in a non-compoundable offence the compromise between the parties is a relevant factor to be taken into consideration in considering the quantum of sentence. In paras 13 and 14 of *Ishwar Singh v. State of M.P.*, (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] it was held as under: (SCC p. 670)

"13. In *Jetha Ram v. State of Rajasthan* [Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561], *Murugesan v. Ganapathy Velar* [Murugesan v. Ganapathy Velar, (2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and *Ishwarlal v. State of M.P.* [Ishwarlal v. State of M.P., (2008) 15 SCC 671 : (2009) 3 SCC (Cri) 1156] this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed

on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v.State of Rajasthan [Mahesh Chand v.State of Rajasthan, 1990 Supp SCC 681 : 1991 SCC (Cri) 159] such offence was ordered to be compounded."

14.In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgement, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

15.In a recent decision of the Honourable Supreme Court, reported in 2019 SCC Online SC 896 (Manjit Singh Vs. State of Punjab and another), it was held as under:-

"6. Section 307 I.P.C. is a non-compoundable offence. No permission can be granted to record the compromise between the parties. In Ishwar Singh v. State of Madhya Pradesh, (2008) 15 SCC 667, the Supreme Court of India has held that in a non compoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence. In Paras (13) and (14) of the judgement in Ishwar Singh (supra) this Court has held as under:

"13. In Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255, Murugesan v. Ganapathy Velar, (2001) 10 SCC 504 and Ishwarlal v. State of M.P., (2008) 15 SCC 671, this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681 such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgement, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

7. As noted earlier, in the present case the appellant-accused, Manjit Singh, has been sentenced to undergo imprisonment for five years. The appellant is said to have served seventeen months of imprisonment. Taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the appellant-accused, the sentence of imprisonment imposed upon the appellant under Sections 307 and 324 I.P.C. is reduced from five years/two years to the period already undergone by him. The appellant is ordered to be released forthwith unless his presence is required in any other case. In view of the compromise entered into between the parties, the fine amount of Rs. 50,000/- imposed upon the appellant is set aside. If the said fine amount has already been paid, the same shall be refunded to the appellant-Manjit Singh."

16. Though a compromise entered into between the parties cannot be taken into consideration, as a circumstance for acquitting the accused by allowing compounding of non compoundable offences, in the light of the decisions of the Honourable Supreme Court cited supra, taking note of the compromise entered into between the parties and the facts and circumstances of the case and also the period of sentence undergone by the appellants/accused, in the present cases, this Court, while confirming the conviction and the imposition of fine amount, on the Appellants/ accused by the Trial Court, by the impugned judgement, modifies the period of sentence imposed on the Appellants/ accused alone to the period of sentence already undergone by them. In view of the same the bail bond stands cancelled and the Appellants/Accused need not surrender. The fine amounts paid by the appellants shall be forfeited to the State.

17. In the result, these Criminal Appeals are partly allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Jrs/Srcm

To

1.The Additional District and Sessions Judge,
Fast Track Court No.III, Chennai.

2.The Inspector of Police(L & O),
D1, Triplicane Police Station, Chennai.

3.The Additional Public Prosecutor,
Madras High Court.

4.The XIII Metropolitan Magistrate Egmore
Chennai-8

5.Do-Thro The Chief Metropolitan Magistrate
Egmore Chennai-8

6.The Superintendent Central Prison,
Puzhal Chennai.

copy to

The Section Officer Criminal Section
High Court Madras-104

+4 ccs to Mr.N.SivaBharathi Advocates sr 75727

Crl.A.Nos.402 & 312 of 2010
Crl.MP.Nos.12660 & 12654/2019

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