

Bail Slip

The Petitioners 1 to 8/Accused 1 to 8 namely 1.Suresh, S/o.Ramachandran, aged 49 years (A1) 2.Kumar, S/o.Jayaranab, aged 43 years (A2) 3.Palani, S/o.Kuppan aged 35 years (A3) 4. Raji, S/o.Dakshinamurthy aged 34 years (A4) 5. Kuttari @ Balamurugan, S/o.Velayutham aged 33 years (A5) 6.Durairaj, S/o.Ramanujam aged 48 years (A6) 7.Venkatesan, S/o.Shanmugam aged 28 years (A7) 8.Ravichandran @ Ayyappan S/o.Nagappan aged 42 years (A8) were directed to be released on Bail as per order of this Court dated 23.01.2012 made in Crl.MP.No.1 of 2012 in Crl A No.31 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.31 of 2012

1.Suresh
2.Kumar
3.Palani
4.Raji
5.Kuttari @ Balamurugan
6.Durairaj
7.Venkatesan
8.Ravichandran @ Ayyappan

.. Appellants/
Accused 1 to 8

सत्यमेव जयते
Vs.

State by its
Inspector of Police,
Sethiathope Police Station,
Cuddalore District.
Crime No.283 of 2009

... Respondent/
Complainant

Criminal Appeal filed under Section 374 Cr.P.C., to set aside the judgment and order dated 02.01.2012 passed by the Assistant Sessions Court, Chidambaram in S.C.No.374 of 2010.

For Appellants : Mr.A.Sirajudeen, Sr. Counsel
for Mr.J.Deliban

For Respondent : Mr.G.Ramar, GA (Crl. Side)

J U D G M E N T

Accused 1 to 8 in S.C.No.374 of 2010 on the file of the Assistant Sessions Court, Chennai, have preferred this criminal appeal, challenging the judgment and order dated 02.01.2012 passed therein.

2. It is the case of the prosecution that on 19.10.2009, Suresh (A1), Kumar (A2), Palani (A3), Raji (A4), Kuttari @ Balamurugan (A5), Durairaj (A6), Venkatesan (A7) and Ravichandran @ Ayyappan (A8), were armed with sticks and knives, formed themselves into an unlawful assembly and entered the house of Giri (P.W.1), caused damage to a harvesting machine, tube light, three vehicles parked therein, a fish tank and further threatened Giri (P.W.1) that he will be eliminated and went away in their motorcycles.

2.1. On the written complaint (Ex.P1) lodged by Giri (P.W.1), Thilagavathy (P.W.16), Sub Inspector of Police, registered a case in Crime No.283 of 2009 under Sections 147, 148, 448, 294(b), 427, 506(II) and 307 IPC read with Section 3 of TNPPDL Act, 1992. Investigation of the case was taken over by Senthilkumar (P.W.8), who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and seizure mahazar (Ex.P3, Ex.P5 and Ex.P8). Venkatesan (A7) was arrested and based on his confession, a stick (M.O.7) was recovered. The other appellants were released on anticipatory bail. After completing the investigation, the police filed a final report in P.R.C.No.2 of 2010 before the Judicial Magistrate No.I, Chidambaram, against the appellants.

2.2. On appearance of the appellants, 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.374 of 2010 and was made over to Assistant Sessions Court, Chidambaram, for trial. The trial Court framed charges under Sections 148, 426, 451, 307 (I) and 352 IPC read with Section 3 of TNPPDL Act, 1992. When questioned, the appellants pleaded "not guilty".

2.3. To prove the case, the prosecution examined 19 witnesses, marked 15 exhibits and 9 material objects. When the appellants were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. No witness was examined on behalf of the appellants

nor any document marked.

2.4. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 02.01.2012 in S.C.No.374 of 2010, convicted and sentenced the appellants as under :

Rank of the accused	Provision under which convicted	Sentence
Suresh (A1)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 307(I) IPC	10 years rigorous imprisonment and fine of Rs.1,000/- in default, 2 years simple imprisonment
	Section 352 IPC	3 months rigorous imprisonment and fine of Rs.500/- in default, 2 weeks simple imprisonment
Kumar (A2)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act (3 counts)	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count

Rank of the accused	Provision under which convicted	Sentence
Palani (A3)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act (3 counts)	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count

Rank of the accused	Provision under which convicted	Sentence
Raji (A4)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act (3 counts)	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count

Rank of the accused	Provision under which convicted	Sentence
Balamurugan (A5)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act (3 counts)	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count
Durairaj (A6)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act (3 counts)	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count

Rank of the accused	Provision under which convicted	Sentence
Venkatesan (A7)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count
Ravichandran (A8)	Section 148 IPC	3 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 451 IPC	2 years rigorous imprisonment and fine of Rs.500/- in default, 6 months simple imprisonment
	Section 3 of TNPPDL Act (3 counts)	5 years rigorous imprisonment and fine of Rs.3,000/- for each count in default, 1 year simple imprisonment for each count

The aforesaid substantive sentences of imprisonment were ordered to run concurrently.

2.5. Coming to the sentence of fine, the total fine amount of Rs.2,500/- payable by A1 and out of the total fine amount of Rs.10,000/- each payable by A2 to A8, a sum of Rs.2,000/- each (totally Rs.14,000/-), thus, totally a sum of Rs.16,500/- (Rs.2,500/- + Rs.14,000/-) was ordered to be paid as compensation to Giri (P.W.1). For Ramesh (P.W.3), a sum of Rs.1,000/- each payable by A2 to A8 (totally Rs.7,000/-) was ordered to be paid as compensation.

2.6. Challenging the aforesaid conviction and sentences, this appeal has been filed.

3. Heard Mr.A.Sirajudeen, learned Senior Counsel representing Mr.J.Deliban, learned counsel on record for the appellants and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent State.

4. Mr.Sirajudden, learned Senior Counsel submitted that the police had suppressed the counter case in Crime No.285 of 2009 that was registered against Giri (P.W.1), for having assaulted Suresh's (A1's) mother on the fateful day. He also contended that none of the prosecution witnesses sustained any injury and Giri (P.W.1) being a local advocate, the police had foisted the above case.

5. This Court carefully perused the complaint (Ex.P1) and the evidence of P.W.1 to P.W.6. Giri (P.W.1), Ramadoss (P.W.2), Ramesh (P.W.3), Narayanasamy (P.W.4), Vadivel (P.W.5) and Suresh (P.W.6), in their examination-in-chief have stated that, on 19.10.2009, the appellants came to the house of Giri (P.W.1) around 01.00 p.m. and damaged the fish tank, an electric meter and glass windows; again around 03.00 p.m. on the same day, the appellants came in four motorcycles, entered the house of Giri (P.W.1), Suresh (A1) throttled Giri (P.W.1) and the other accused were armed with sticks and knives, damaged the wind screen of a lorry and a sumo car that was parked there, they also damaged a motorbike and a harvesting machine.; they brandished weapons and threatened Giri (P.W.1) that they will eliminate him, if he interferes in their affairs and left the place; they have also stated that the appellants have assaulted Narayansamay (P.W.4). The evidence of these witnesses are parrotlike. However, in the complaint (Ex.P1), that was given by Giri (P.W.1), he has stated that, the appellants came in four motorcycles, damaged the glass windows, fish tank, Tata sumo, lorry, harvesting machine etc. and after threatening Giri (P.W.1), they left. There is absolutely no mention of the alleged assault on Giri (P.W.1) and Narayansamay (P.W.4). In the cross-examination, Giri (P.W.1) was confronted with the contradiction in his evidence qua the complaint (Ex.P1).

6. Dr.Ramesh (P.W.9), who examined Giri (P.W.1) and Narayanasamy (P.W.4), in his evidence as well in the accident register copies (Ex.P6 and Ex.P7 respectively), has recorded that there was no external injury on Giri (P.W.1) and he found an abrasion measuring 0.2 cms in the neck region of Narayanasamy

(P.W.4) .

7. Even in the complaint (Ex.P1), Giri (P.W.1) has stated that, he is an advocate practising in the District Court. In the cross-examination of both Giri (P.W.1) and Ramadoss (P.W.2), they have admitted that a case was registered against Giri (P.W.1) in Sethiathope Police Station Crime No.285 of 2009 under Sections 294(b), 323, 427, 448 and 506(II) IPC for having assaulted Suresh's (A1's) mother and trial in that case is pending. (Now, it is represented that Giri (P.W.1) has been acquitted in that case). Neither in the complaint (Ex.P1) nor in the chief-examination, Giri (P.W.1) has stated anything about the case in Crime No.285 of 2009 that was registered against him, for having attacked Suresh's (A1's) mother. Even for the incident that is said to have taken place at 03.00 p.m., Giri (P.W.1) lodged a complaint only at 08.00 p.m. on the same day i.e., on 19.10.2009 and the F.I.R. has reached the jurisdictional Magistrate at 01.30 p.m. on 20.10.2009.

8. When Giri (P.W.1) was confronted under Section 145 of the Evidence Act, with regard to the contradictions in the complaint and his testimony, he disowned the complaint (Ex.P1), by stating that someone in the police station had written the complaint.

9. This Court is unable to countenance the said explanation offered by Giri (P.W.1). It should be remembered that Giri (P.W.1) is not an ordinary illiterate peasant, but a practising lawyer. Giri (P.W.1) has further admitted that Suresh (A1) is his uncle's son and there were disputes between the two families, with regard to the usage of the harvesting machine.

10. This Court does not find any satisfactory evidence to confirm the conviction of the appellants under Section 307 IPC and accordingly, the appellants are acquitted of the said charge. As regards the charge for the offence under Section 147 IPC, there is evidence to show that after the attack of Giri (P.W.1) on Suresh's (A1's) mother, Suresh (A1) and his group had caused damage to the vehicles parked in the house of Giri (P.W.1), an electric motor, a fish tank, etc. Therefore, their conviction of the offences under Sections 148, 352, 451 IPC and Section 3 of TNPPDL Act, 1992 is confirmed. But, the substantive sentence of imprisonment is reduced to six months rigorous imprisonment in respect of the said offences. The said sentences shall run concurrently. Each of the appellants shall pay a sum of Rs.10,000/- as compensation to Giri (P.W.1) within two weeks from the date of receipt of a copy of this judgment,

in default, to undergo four weeks simple imprisonment. This compensation is apart from the compensation awarded by the trial Court. The trial Court is directed to secure the appellants and commit them to prison to serve out the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Chidambaram.
2. The Chief Judicial Magistrate,
Cuddalore (For Information)
3. The Superintendent
Central Prison, Cuddalore.
4. The Assistant Sessions Judge,
Chidambaram.
5. The Inspector of Police,
Sethiathope Police Station,
Cuddalore District.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Rajamani, Advocate SR.No.83294

CRL.A.No.31 of 2012

NMI (CO)
GMY (05/11/2019)

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