**BAIL SLIP**

Soman alias Somasundaram, Appellant/Accused No.1, S/o.Rajamanickam is released on Bail vide the order of this Court dated 24.03.2010 made in MP(MD)No.1 of 2010 in Cr1 A(MD)No.102 of 2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A(MD)No.102 of 2010

Soman alias Somasundaram ... Appellant/Accused No.1

Vs

State through
The Inspector of Police,
SIPCOT Police Station,
Sivagangai District.
(Crime No.158 of 2007)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside and reverse the conviction and Judgment passed by the learned Sessions Court, Sivagangai, dated 18.03.2010 and made in S.C.No.55 of 2008 and acquit the appellant/Accused No.1 and order to refund the fine amount to the appellant/accused.

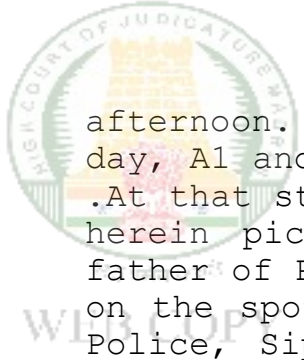
For Appellant : Mr.M.Subash Babu
For Mr.M.Mohana Sundaram

For Respondent : Mr.A.Robinson
Government Advocate (Cr1.side)

JUDGMENT

The appellant was convicted for the offence under Sections 294(b) and 304(II) of IPC and sentenced to undergo three months simple imprisonment and five years rigorous imprisonment respectively, vide Judgment dated 18.03.2010 in S.C.No.55 of 2008 on the file of the Sessions Court, Sivagangai. Questioning the same, this appeal has been filed.

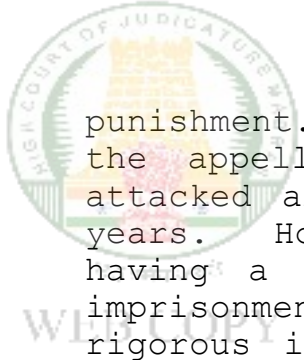
2.The case of the prosecution is that the second accused Thennarasu had invited the appellant herein for Diwali Feast. P.W.1 and A2 are neighbours. After coming out of the house of A2, the appellant herein was standing outside the house of P.W.1. In the house of P.W.1, there was a pet dog. It appears that the dog had barked and given provocation to the appellant. The appellant had thrown stones at the dog. This was seriously objected to by the aunt and uncle of P.W.1. This happened on 08.11.2007 in the



afternoon. Angered by the same, at around 6.30 p.m., on the same day, A1 and A2 got into quarrel with P.W.1. They also assaulted him. At that stage, the grand father of P.W.1 intervened. The appellant herein picked up a gravel stone lying nearby and hit the grand father of P.W.1 Veeriah on his left eye brow and nose. Veeriah died on the spot. P.W.1 lodged Ex.P1 complaint before the Inspector of Police, Sipcot Police Station, Sivagangai District. Based on the same, Ex.P1-FIR in Crime No.158 of 2007 was registered for the offences under Sections 294(b) and 302 r/w 109 of IPC. Investigation was undertaken and after completing the usual formalities, the investigation officer filed final report before the Judicial Magistrate, Manamadurai against the appellant and A2 for the offences under Sections 120B, 294B, 302 and 302 r/w 109 of IPC. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in P.R.C.No.16 of 2008. The case was taken up for trial in S.C.No.55 of 2008 on the file of the Principal Sessions Judge, Sivagangai. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P14. On the side of the accused, no evidence was adduced. The learned trial Judge, after a detailed consideration of the evidence on record, chose to acquit the second accused Thennarasu, but then, found the appellant herein guilty of the offences 294(b) and 304(ii) of IPC and sentenced him as mentioned above. Questioning the same, this appeal has been filed.

3. In this case, there are two eye witnesses. P.W.1 is the grand son of the deceased Veeriah. P.W.2 is the daughter of the deceased and mother of P.W.1. P.W.1 is not only an eye witness but also an injured witness. Information was given by P.W.1 at about 08.00 p.m. It is seen from the evidence on record that the deceased Veeriah was initially rushed to the hospital and that is why, FIR came to be registered at 8.00 p.m., But then, by no stretch of imagination can this be said to constitute delay. P.W.1 as well as P.W.2 have clearly spoken about the role played by the appellant herein. P.W.1 in his testimony has stated that the appellant herein picked up a gravel stone lying on the road and hit his grandfather on his left eye brow as well as nose. The region above the eye brow is a sensitive spot. The testimony of P.W.1 could not be shaken in the cross examination also. P.W.2 is the mother of P.W.1 and the daughter of the deceased and she has also corroborated P.W.1's testimony. The medical evidence of P.W.10 is also in tune with the testimony of P.W.1. Ex.P10 is the postmortem certificate issued by the Doctor. In his certificate, the Doctor had stated that there was a Intracranial Haemorrhage. From this one can infer that the appellant had hit the deceased so hard that it caused Intracranial Haemorrhage. Therefore, the Court below rightly found the appellant guilty of the offence under Section 304(II) of IPC.

4. In fact, having regard to the evidence on record, the learned counsel appearing for the appellant does not challenge the conviction. He is only pleading for leniency in the matter of



punishment. I am unable to show indulgence beyond a point because the appellant who was aged about 33 years, had unjustifiably attacked an elderly person who was elder to him by more than 40 years. However, taking note of the fact that the appellant is also having a family and two children to support, the sentence of imprisonment imposed on the appellant is reduced from five years rigorous imprisonment to three years rigorous imprisonment. The appellant is said to have spent some time in prison. The period of incarceration already undergone by him shall be set off in terms of Section 428 of Cr.P.C. The sentence for both the offences will run concurrently.

5. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sessions Court, Sivagangai, .

2. The Judicial Magistrate,
Sivagangai.

3. The Inspector of Police,
SIPCOT Police Station,
Sivagangai District.

4. The Officer in charge,
Sub Jail, Trichy.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.MOHANA SUNTHARAM, Advocate (SR-76508[F] dated 19/07/2019)

Cr1.A(MD) No.102 of 2010
18.07.2019