

**BAIL SLIP**

Mrs.Muthuselvi, D/o.Gopal, age 24 years is released on bail vide Court order dated 17.03.2011 in MP(MD)No.1/2011 in CrI RC(MD) No.134 of 2011 and Mr.Gopal, S/o.Arumugam, age 50 years is released on bail vide Court order dated 19/4/2011 made in MP(MD) No.4/2011 in CrI RC(MD)No.134 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C. (MD)No.134 of 2011

1.Muthuselvi

2.Gopal

... Petitioners/Appellants/
Accused Nos.1 and 2

Vs.

The State rep by,
The Inspector of Police,
Vijayanarayanam,
Tirunelveli District.
(Crime No.102 of 2006)

... Respondent

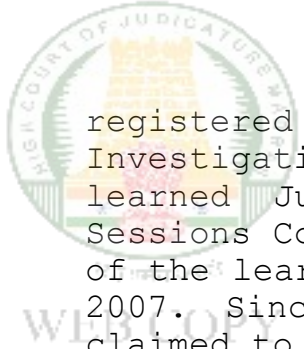
Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to set aside the order passed in CrI.A.No.236 of 2007, dated 20.01.2011, on the file of the learned Additional Sessions Court, (FTC No.I), Tirunelveli, confirming the conviction and sentence imposed in S.C.No.135 of 2007, dated 12.12.2007, on the file of the learned Assistant Sessions Judge, Valliyoor as against the 1st petitioner and modified the sentence and conviction imposed by the learned Assistant Sessions Judge, Valliyoor, dated 12.12.2007 as against the 2nd petitioner.

For Petitioners : Mr.M.Sathiya Moorthy
Legal Aid Counsel

For Respondent : Mr.A.Robinson
Government Advocate (CrI. Side)

O R D E R

The petitioners were concurrently convicted and sentenced by the Courts below. The petitioners herein, who are A1 and A2 were doing some earth works behind the house of P.W.1. Since there was a prior dispute between the accused and P.W.1, this gave rise to quarrel. P.W.1 and P.W.2 came to the spot and called upon the accused not to continue the earth work. A1/Muthuselvi is said to have inflicted a cut injury on P.W.1/Murugan and caused grievous injury on his shoulder. Murugan also suffered injuries on his fingers. When P.W.2/Mrs.Perumal/Mother of Murugan intervened, A2/Gopal also caused her cut injury. As per Ex.P1/complaint apart from the petitioners herein one Arumuga Nainar was also involved. Based on Ex.P.1/complaint, Crime No.102 of 2006 was



registered on the file of Vijayanarayanam Police Station (Ex.P.9). Investigation was undertaken and final report was filed before the learned Judicial Magistrate, Nanguneri. It was committed to Sessions Court in P.R.C.No.66 of 2006 and then made over to the file of the learned Assistant Sessions Judge, Valliyoor, in S.C.No.135 of 2007. Since the accused pleaded not guilty to the charges and claimed to be tried, trial was conducted.

2.The prosecution examined as many as 11 witnesses and marked Exs.1 to 12. M.O.1 to M.O.8 were also marked. On the side of the accused no evidence was adduced.

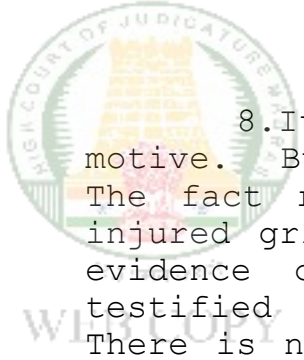
3.The learned Trial Magistrate after a detailed and elaborate consideration, acquitted A3/Arumuga Nainar but convicted A1 for the offence under Section 307 of I.P.C. and sentenced to undergo five years rigorous imprisonment and levied with fine of Rs.1,000/-. Default sentence was also imposed. A2 was found guilty of the offence under Section 307 r/w. 34 of I.P.C. and sentenced to undergo five years rigorous imprisonment and levied with fine of Rs.1,000/-, vide judgment dated 12.12.2007. Challenging the same, the petitioners herein filed C.A.No.236 of 2007, before the learned Additional District and Sessions Judge, Fast Track Court No.I, Tirunelveli. The Appellate Court by judgment dated 20.01.2011, dismissed the appeal as regards A1 but it was partly allowed as regards A2. A2 was found guilty of the offence under Section 326 of I.P.C. But then, there was no modification of sentence imposed by the Trial Court. Challenging the same, this criminal revision case has been filed.

4.When the matter was taken up for hearing, there was no representation for the petitioners. Therefore, this Court appointed a legal aid counsel to represent the revision petitioners.

5.Today when the matter was taken up for hearing, the learned legal aid counsel appearing for the revision petitioners submitted the motive attributed by the prosecution has not at all been established. He would contend that it is not as if the witnesses injured sustained any amputation. There was only a deep laceration. The learned legal aid counsel would further submit that more than 13 years have lapsed, since the occurrence took place. A2/Gopal is aged about 63 years. In these circumstances, the learned legal aid counsel appearing for the revision petitioners submitted that this Court can adopt an indulgent attitude instead of sending the petitioners to prison.

6.Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the judgment passed by the Courts below do not warrant any interference.

7.I carefully considered the rival contentions and perused the evidence on record.



8. It may be true that the prosecution did not establish the motive. But then, in a case of this nature, motive is irrelevant. The fact remains that P.W.1 and P.W.2 were injured. P.W.1 was injured grievously. The same has been clearly established by the evidence of P.W.6, P.W.7 and P.W.8. Injured witnesses have testified before the Court in support of the prosecution case. There is no need even for corroboration. In any event, when both the Courts below have concurrently found the petitioners guilty, I am of the view that no interference is called for in exercise of my revisional jurisdiction. Therefore, this Court confirms the conviction imposed by the Courts below. However, taking note of the mitigating circumstances projected by the legal aid counsel, this Court reduces the period of sentence imposed on the petitioners to the period already undergone. However, the fine of Rs.1,000/- is enhanced to Rs.5,000/- each, totalling a sum of Rs.10,000/-. Since the petitioners have not been appeared before this Court through their counsel, steps will be taken by the learned Trial Judge to intimate the petitioners about the enhancement of fine. After they are so intimated, the petitioners will have to remit the fine amount within a period of eight weeks from thereafter. Once the enhancement fine amount is remitted, the same shall be paid as compensation to P.W.1. If the petitioners fail to do so, the petitioners will have to undergo the default sentence of six months simple imprisonment. With this modification in the matter of sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Additional Sessions Court,
Fast Track Court No.I,
Tirunelveli.

2.The Assistant Sessions Judge,
Valliyoor.

3.The Inspector of Police,
Vijayanarayanam,
Tirunelveli District.

+1 CC to M/s.M.SATHIAMOORTHY, Advocate (SR-74726[F] dated 11/07/2019)

Cr1.R.C. (MD) No.134 of 2011
11.07.2019