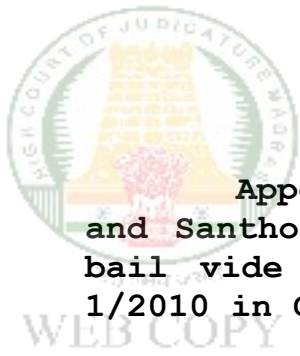




Crl.A.(MD)No.268 of 2010

BAIL SLIP

Appellants/Accused viz., Suyambilingam, S/o. Santhosh Nadar, and Santhosha Nadar, S/o.Kalimuthu Nadar, were already released on bail vide this Court order dated 15.09.2010 and made in MP(MD). 1/2010 in CRL A(MD).268 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.268 of 2010

1.Suyambilingam

2.Santhosha Nadar

... Appellants/Accused No.1 & 2

Vs.

State rep by
The Deputy Superintendent of Police,
Srivaikundam Sub-Division,
On the file of the Sayaerpuram Police Station.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to set aside the judgment and conviction dated 08.06.2010 by the learned II Additional Sessions Judge, Tirunelveli in S.C.No.4 of 2006 and acquit the appellants.

For Appellants : Mr.S.Muthal Raj
For Mr.A.Joseph Jawahar

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl. Side)

J U D G M E N T

The appellants were convicted and sentenced by the learned II Additional Sessions Judge, Tirunelveli as follows:-



Accused	Penal Provisions	Punishment
A1	324 I.P.C.	To pay a fine of Rs.1000/- in default, to undergo one month R.I.
	304(ii) I.P.C.	To undergo imprisonment for seven years R.I with fine of Rs.1,000/-. In default, to undergo six months R.I.
A2	304(ii) I.P.C.	To undergo imprisonment for seven years R.I with fine of Rs.1,000/-. In default, to undergo six months R.I.

2.The case of the prosecution is that on 18.12.2005 at about 10.00 a.m., there was a quarrel between the first accused/suyambilingam and P.W.1/Nagu. The first accused is said to have teased P.W.1's niece/Muruga Valli. Therefore, P.W.1 had taken his niece to the native place. This was objected by the first accused. According to P.W.1, the first accused tried to attack with knife. While warding it up, a minor injury was caused on the left eye brow of P.W.1. Even as this suffle was going on, the second accused joined the fray in support of the first accused. The second accused is none other than the father of the first accused. Hearing the noise, Chokkar, who was a resident of the locality rushed into to separate the two. The ire and anger of the appellants now turned towards Chokkar. The appellants are said to have hit Chokkar with wooden logs. Chookar suffered injuries on his head. He was rushed to Thoothukudi Medical College Hospital. He was subsequently referred to Tirunelveli Medical College Hospital for better treatment but Chokkar succumbed to the injuries in Tirunelveli Medical College Hospital. In this regard, P.W.1/Nagu lodged Ex.P.1/complaint before Sayaerpuram Police Station. Based on the same, Ex.P.20/FIR was registered. Initially it was registered for the offence under Section 307 of I.P.C. but following the death of Chokkar, alteration report Ex.P.26 was submitted and the offence under Section 302 of I.P.C. was also included. Investigation was taken up and after recording of the statements of witnesses and after completing all the usual formalities, final report came to be laid against the appellants for the offences under Sections 302, 307 r/w 34 of I.P.C. and also under Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 against the accused before the learned Judicial Magistrate No.I, Tuticorin. The case was committed to Sessions Court in P.R.C.No.1 of 2006. It was made over to II Additional Sessions Judge, Tirunelveli for trial in S.C.No.4 of 2006. charges were framed against the accused as follows:-



"Charges framed

*against the accused : U/s.294(b), 307, 302 and
also 3(2)(v) of the SC/ST (POA)
Act against A1*

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*: U/s.294(b), 307, 302 and
also 3(2)(v) of the SC/ST (POA)
Act against A2"*

The accused pleaded not guilty to the charges and claimed to be tried.

3.The prosecution examined as many as 20 witnesses and marked Exs.P.1 to P.27. M.O.1 to M.O.7 were also marked. On side of the accused no evidence was adduced.

4.The learned Trial Judge after a detailed consideration of the evidence on record by the impugned judgment dated 08.06.2010, convicted and sentenced the accused as mentioned above. Challenging this criminal appeal came to be filed.

5.When the matter was taken up for hearing, the learned counsel appearing for the appellants on instructions submitted the he is not challenging the conviction imposed on the appellants and that he is only pleading for modification and reduction of sentence.

6.The prosecution rests on the ocular evidence of P.W.1/Nagu, P.W.2/Selvaraj and P.W.3/Archunan. Their testimony remained unshaken in the cross examination. At least P.W.1 can have some motive against the accused but then P.W.3/Archunan is an independent witness. He had clearly stated that there was a fight between the accused on the one hand and Nagu and Raja Desingu on the other hand. Chokkar only intervened to separate the two. Thereupon, the accused are said to have hit Chokkar on his head. P.W.3 had stated that both the father and the son namely., the first accused and the second accused assaulted Chokkar with wooden logs. The prosecution had thus established the involvement of the appellants in the occurrence beyond reasonable doubt. That is why, having regard to the evidence, the appellants are confining their request only for reduction of sentence. This Court made it clear that it would not reduce the sentence of imprisonment below four years rigorous imprisonment. The learned counsel appearing for the appellants submitted that he would be satisfied if the sentence of imprisonment is reduced accordingly. Therefore, even while confirming the conviction imposed on the appellant, the sentence of imprisonment is reduced from seven years rigorous imprisonment to four years rigorous imprisonment. The period of incarceration undergone by the appellants will be set off in terms of Section 428 of Cr.P.C. The sentence of imprisonment imposed on the appellants



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will run concurrently. With this modification in the matter of sentence, the criminal appeal is partly allowed.

Sd/-

Assistant Registrar(Crl Side)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

- 1.The II Additional Sessions Court,
Tirunelveli.
- 2.The Judicial Magistrate No.II, Thoothukudi.
- 3.The Deputy Superintendent of Police,
Srivaikundam Sub-Division,
Sayaerpuram Police Station,
Thoothukudi District.
4. The Superintendent, Central Prison,
Palayamkottai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2 copies)

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26.08.2018

KM(CO)

TR(10.10.2019) 4P 8C