

**Bail Slip****CRL.A(MD)No.330 of 2010**

1. Muthu, S/o Muthiah, aged about 25/2010
2. High Court Durai, S/o Muthiah, aged about 32/2010

Accused Nos.6 & 8 were released on bail vide order of this Court in dated 13.09.2010 in MP(MD)No.1 of 2010 CRL.A(MD)No.330 of 2010.

Bail Slip**CRL.A(MD)No.339 of 2010**

1. Murugesan S/o. Muthaiah, aged about 58/2010,
2. Uthiram, S/o. Madasamy, aged about 44/2010,
3. Saravanan, S/o. Murugesan, aged about 30/2010
4. Shanmuganathan, S/o. Murugesan, aged about 27/2010
5. Muthumari @ Muthumariappan, S/o. Parthiban, aged about

25/2010

6. Mariammal W/o. Shanmugasundaram, aged about 50/2010
7. Vasanthi W/o. Saravanan, aged about 26/2010,
8. Jothi @ Maharajothi D/o Murugesan, aged about 25/2010,

Accused Nos.A1 to A5 and A9 to A11 were released on Bail Vide order of this Court in dated 15.09.2010 in MP(MD)No.1 of 2010 in CRL.A(MD)No.330 of 2010.

Bail Slip**CRL.A(MD)No.340 of 2010**

High Court Durai, s/o Dhamaraj, aged about 27/2010, Accused No.7, was released on Bail vide order of this Court in Dated 16.09.2019, in MP(MD)No.1 of 2010 in CRL.A(MD)No.340 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)Nos.330, 339 and 340 of 2010

1.Muthu

2.High Court Durai ... Appellants in Crl.A.(MD)No.330 of 2010/
Accused No.6 & 8

1.Murugesan

2.Uthiram

3.Saravanan

<https://hcservices.ecourts.gov.in/hcservices/>

4.Shanmuganathan



5.Muthumari @ Muthumariappan

6.Mariammal

7.Vasanthi

8.Jothi @ Maharajothi ... Appellants in CrI.A.(MD)No.339 of 2010/
Accused NO.1 to 5 and 9 to 11

High Court Durai ... Appellant in CrI.A.(MD)No.340 of 2010/
Accused No.7

Vs.

The State represented by,
The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
(Crime No.240 of 2008)

... Respondent/ Complainant
in all Criminal Appeals

Common Prayer: Criminal Appeals filed under Section 374(2) of Cr.P.C, to call for the records in S.C.No.277 of 2009, on the file of the learned Additional Sessions Court, Fast Track Court No.I, Thoothukudi, and set aside the judgment in S.C.No.277 of 2009, dated 04.09.2010 and allow this appeal.

For Appellants : Mr.C.Mayil Vahana Rajendran
(in CrI.A.(MD)No.330 of 2010)

For Appellants : Mr.G.R.Edmund
(in CrI.A.(MD)No.339 of 2010)

For Appellant : Mr.R.Anand
(in CrI.A.(MD)No.340 of 2010)

For Respondent : Mr.A.Robinson
(in all Criminal Appeals) Government Advocate (CrI. Side)

C O M M O N J U D G M E N T

The appellants in these appeals were prosecuted for various offences in S.C.No.277 of 2009, on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi, vide judgment dated 04.09.2010. The learned Trial Judge convicted and sentenced the accused as follows:-



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Accused	Penal Provisions	Punishment
A1 to A4 and A6 to A11	147 of I.P.C.	To undergo six months rigorous imprisonment and to pay a fine of Rs.500/-. In default, to undergo one week simple imprisonment.
	448 of I.P.C.	To undergo three months rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo one week simple imprisonment.
	323 of I.P.C.	To undergo six months rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo one week simple imprisonment.
	427 of I.P.C.	To pay a fine of Rs.500/-. In default, to undergo one week simple imprisonment.
	3 of T.N.P.P.D.L. Act	To undergo one year rigorous imprisonment and to pay a fine of Rs.500/-. In default, to undergo one month simple imprisonment.
A5	147 of I.P.C.	To undergo six months rigorous imprisonment and to pay a fine of Rs.500/-. In default, to undergo one week simple imprisonment.
	448 of I.P.C.	To undergo three months rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo one week simple imprisonment.
	323 of I.P.C.	To undergo six months rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo one week simple imprisonment.



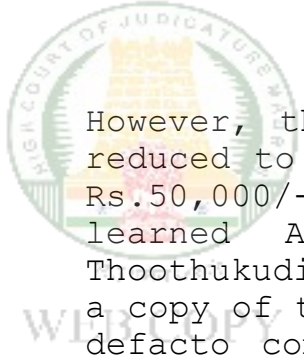
8. It is evident from the records that there was prior enmity between the accused and P.W.1. This was because a rumor appears to have spread in the locality that there was intimacy between P.W.1's daughter-in-law and A3. A3 is none other than the son of A1. In this regard, on the occurrence date i.e., 20.07.2008 at about 03.00 p.m., the sons of P.W.1 went to the house of A1 and there arose a quarrel. In fact a criminal case was registered against the family of P.W.1 in this regard. One Selvam a third party was said to have suffered cut injury but the appellants' counsel would submit that since the appellants herein turned hostile, the accused in the said case namely., the sons of P.W.1 got an acquittal. This is admitted by P.W.1 herself in her chief examination. Thus it appears that as retaliation. The occurrence in question had taken place at around 05.30 p.m.

9. P.W.1 admittedly had suffered only simple injuries. But then, information was lodged before the Police only on the next day i.e., 21.07.2008 at about 08.30 a.m. There has been a delay of more than 15 hours and there is no proper explanation forthcoming from P.W.1 in this regard. Even the FIR registered before the police reached the Court only on 22.07.2008 at 10.30 a.m. Thus there has been a delay of 26 hours and the prosecution has not properly explained the delay.

10. As rightly pointed out by the appellants' counsel in Ex.P.8/accident register which is the earliest document, P.W.1 had stated that she was assaulted by two female and six male persons. But in her testimony before the Court, she had implicated all the accused and also claimed that she was beaten with stick and she was pushed and kicked.

11. Taking note of all these aspects and that the occurrence in question is a retaliation and that in the earlier occurrence the family of P.W.1 was implicated, this Court can safely come to the conclusion that the defacto complainant had not come out with the actual version. She wanted to ensure that the witnesses in her sons' case turn hostile ultimately. This submission of the appellants' counsel gains credence because A3, A4, A7 and A9 are government servants. However the fact remains that the hut belonging to P.W.1 was set fire. In the FIR, it was mentioned that the value of damage is Rs.50,000/-

12. It is also seen that the accused were in prison for about 21 days. The learned counsel for the appellants submitted that having regard to the evidence on record, they would press for acquittal only in respect of the accused other than A5. The occurrence had taken place on 20.07.2008. More than 11 years have gone by. A5 agrees to compensate P.W.1 fully. According to FIR, the value of the damage is Rs.50,000/-. He is ready to deposit the compensation amount immediately. Therefore, this Court sustains the conviction only in respect of A5 and acquits all other accused.



However, the period of imprisonment imposed on A5 is modified and reduced to the period already undergone. A5 shall deposit a sum of Rs.50,000/- to the credit of S.C.No.277 of 2009, on the file of learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi, within a period of one week from the date of receipt of a copy of this judgment. The learned Trial Judge shall intimate the defacto complainant/P.W.1 that she is at liberty to withdraw the said sum as her compensation. With this modification in the matter of sentence, CrI.A.(MD)No.339 of 2010 is partly allowed sofar as A5 only as regards A1 to A4 and A9 to 11, this criminal appeal is allowed. CrI.A.(MD)Nos.330 and 340 of 2010 are allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To:

- 1.The Additional Sessions Judge- cum- F.T.C No.1, Thoothukudi.
- 2.Through The Principal District Judge, Thoothukudi.
- 3.The Judicial Magistrate, Tiruchendur.
- 4.Through the Chief Judicial Magistrate, Thoothukudi.
5. The Superintendent, Central Prison,
Palayamkottai, Tirunelveli.
6. The Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
7. The Inspector of Police, Arumuganeri Police Station,
Thoothukudi District.

+1CC TO Mr.ANTONY.S.PRABAHAR, Advocate, Sr No.76235

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-76448[F] dated 19/07/2019)

CrI.A.(MD)Nos.330, 339 and 340 of 2010
18.07.2019

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