

**BAIL SLIP**

Ganapathi @ Senthil, S/o.Kothalam, aged about 60 years was released on bail vide order of MP No.1 of 2010 in Cr1 A(MD)No.412 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A.(MD)No.412 of 2010

Ganapathi @ Senthil

... Appellant /Accused No.1

Vs.

State through
The Inspector of Police,
Karivallamvantha Nallur,
Tirunelveli District.
(Crime No.51 of 2008)

... Respondent /Contempt

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records from the Lower Court hear the appellant and thereby allow this appeal and set aside and revise the judgment of conviction of the learned Additional Sessions Judge, Fast Track Court No.II, Tirunelveli in S.C.No.17 of 2009, dated 11.10.2010 and acquit the appellant/accused No.1 for the charges and order to refund the fine amount which has been deposited by the appellant/accused No.1 in the Lower Court.

For Appellant : Mr.Jegadeesh Pandian

For Respondent : Mrs.S.Bharathi
Government Advocate (Cr1. Side)

J U D G M E N T

The appellant was tried and convicted for the offence under Section 326 of I.P.C. and sentenced to undergo three years rigorous imprisonment and levied with fine of Rs.10,000/- vide judgment dated 11.10.2010 in S.C.No.17 of 2009, on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Tirunelveli.

2. The case of the prosecution is that on 28.03.2008 at about 08.00 a.m., the appellant and one Pannier @ Pannier Selvam had sprayed some fertilizers. The deceased/Chithanathan is said to have



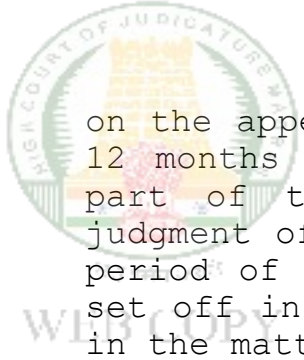
objected to the same as it would prove fatal to poultry. Angered by the objection raised by Chithanathan, the appellant is said to have hacked Chithanathan on his both limbs below knees. Chithanathan lodged Ex.P.1/complaint before Karivallamvanthanallur Police Station. Based on the same Ex.P.5/FIR was registered in Crime No.51 of 2008, for the offence under Section 294(b), 341 and 324 of I.P.C. Investigation was undertaken and final report was filed against the appellant and another before the learned Judicial Magistrate, Sankarankovil for the offence under Section 341, 302, 324 and 302 r/w. 24 of I.P.C. This alteration was necessitated, since both the legs of Chithanathan came to be amputated and he himself passed away on 19.04.2008. After cognizance of the said offence was taken, the matter was committed to Sessions Court in P.R.C.No.46 of 2008. It was made over to the learned Additional Sessions Judge, Fast Track Court No.II, Tirunelveli, in S.C.No.17 of 2009. Charges were framed against the appellant and Pannier @ Pannier Selvam under four heads. The accused denied the charges and claimed to be tried.

3.The prosecution examined as many as 20 witnesses and marked Exs.1 to 11. M.O.1 and M.O.2 were also marked.

4.The learned Trial Judge after detailed consideration of the evidence on record, by judgment dated 11.10.2010 acquitted the second accused but found the appellant guilty of the offence under Section 326 of I.P.C. and sentenced him to undergo three years rigorous imprisonment and a sum of Rs.10,000/- was levied as fine. Questioning the same, this criminal appeal has been filed.

5.When the matter was taken up for hearing, the learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the finding of guilt and he would be satisfied if some leniency is shown in the matter of punishment. The appellant's counsel submitted that the appellant is now said to be aged about around 74 years and that he is suffering from all old age related ailments. The appellant's counsel therefore wanted this Court to take a lenient view.

6.The appellant now comes forward to deposit a sum of Rs.1,00,000/- to the credit of S.C.No17 of 2009, on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the learned Trial Judge shall hand over the same to P.W.2/Perumal Ammal, the wife of Chithanathan. The appellant shall also execute a notarised affidavit of apology expressing his sense of shame, regret and remorse for the act committed by him. The appellant shall convey his apology to P.W.2/Perumal Ammal through the said affidavit. The learned Trial Judge while handing over the compensation amount to P.W.2/wife of the deceased shall also furnish a copy of the affidavit of apology to be executed by the appellant. In view of the undertaking now given by the appellant to deposit a sum of Rs.1,00,000/- as compensation, the sentence of imprisonment imposed



on the appellant is reduced from 36 months rigorous imprisonment to 12 months rigorous imprisonment. In the event of failure on the part of the appellant to deposit the compensation amount, the judgment of the Trial Court will stand automatically restored. The period of imprisonment already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C. 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 Additional Sessions Judge,
Fast Track Court No.II, Tirunelveli .
- 2.The Inspector of Police,
Karivallamvantha Nallur,
Tirunelveli District.

Crl.A. (MD) No.412 of 2010
23.07.2019

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