

**BAIL SLIP**

Iyyappan, Male, S/o.Sundaram, Appellant/Accused No.3 is released on Bail vide Court order dated 08.12.2010 made in MP (MD)No.1 of 2010 in CrI A(MD)No.467 of 2010.

Vincent @ Wilson, Appellant/Accused No.5, Male, S/o. Manas is released on Bail vide Court Order dated 09.12.2010 made in MP (MD)No.1 of 2010 in CrI A(MD)No.468 of 2010.

Jegan, Appellant/Accused No.4 is released on Bail vide Court order dated 09.12.2010 made in MP(MD)No.2 of 2010 in CrI A (MD)No.468 of 2010.

R.Issac, Appellant/Accused No.1, S/o.Rajaiyan, Thasamma, Appellant/Accused No.2, W/o.R.Issac is released on Bail vide Court order dated 13.12.2010 made in MP(MD)No.1 of 2010 in CrI A(MD)No.475 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A.(MD)Nos.467, 468 and 475 of 2010

Iyyappan

... Appellant/3rd Accused in
CrI.A.(MD)No.467 of 2010

1.Jegan

2.Vincent @ Wilson

... Appellants/A4&A5 in
CrI.A.(MD)No.468 of 2010

1.R.Issac

2.Thasamma

... Appellants/Accused 1 &2 in
CrI.A.(MD)No.475 of 2010

Vs.

State of Tamil Nadu Rep. by,
The Inspector of Police,
Tuckalay Town Police Station,
Tuckalay,
Kanyakumari District.
(Crime No.494 of 2005)

... Respondent / Complainant
in all CrI.As

Common Prayer: Criminal Appeals filed under Section 374(2) of Cr.P.C, to set aside the judgment of the learned Sessions Judge, Kanyakumari District at Nagercoil, dated 02.12.2010 in S.C.No.121 of 2006 and acquit the accused of all charges.

For Appellant : Mr.J.John Jayakumar
(in CrI.A.(MD)No.467 of 2010)

For Appellants : Mr.M.Suri
(in CrI.A.(MD)No.468 of 2010)



For Appellants : Mr.N.Dilip Kumar
(in Crl.A. (MD)No.475 of 2010)

For Respondent : Mr.A.Robinson
(in all Crl.As.) Government Advocate (Crl. Side)

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

Issac and four others were tried, convicted and sentenced vide judgment dated 02.12.2010 in S.C.No.121 of 2006, on the file of the learned Sessions Court, Kanayakumari District at Nagercoil as follows:-

Accused	Penal Provisions	Punishment
A1, A3, A4 and A5	147 IPC	To undergo one year simple imprisonment
	323 IPC	To undergo one year simple imprisonment
	304(ii) r/w. 149 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-. In default to undergo 3 months simple imprisonment
A2	147 IPC	To undergo one year simple imprisonment
	304(ii) r/w. 149 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-. In default to undergo 3 months simple imprisonment

2.The prosecution case in brief is under:-

2.(i).One Permalatha, daughter of one Iyyappan eloped with Sundaraj. The parties belonged to Padappakulam village. This gave rise to some tension between the accused party and that of the defacto complainant. P.W.1 and P.W.2 are the wife and husband respectively. On 18.05.2005, there was a quarrel between the accused party and P.W.1. As a result of which, A2/Thasammal lodged a complaint against P.W.1 and P.W.2 before Kotticode Police Station. This furnished the motive for the late evening quarrel between the same parties. The accused are said to have attacked both P.W.1 and P.W.2. This was witnessed by the mother of P.W.1/Chidambaram. Seeing her daughter and son-in-law being attacked, the old lady rushed to separate the warring groups. She got injured in the melee and the accused are said to have rained



blows on her. She fell down and got injured. She was rushed to Government Hospital, Thuckalay. The Doctor announced that she was brought dead.

2.(ii).P.W.1 lodged information before Thuckalay Police Station at about 11.30 p.m vide Ex.P.1. Based on the same, Ex.P.15/FIR in Crime No.494 of 2005, was registered for the offence under Sections 147, 323 and 302 of I.P.C. Investigation was undertaken and final report came to be filed before the learned Judicial Magistrate, Padmanabhapuram. Cognizance of the offence was taken and since they were exclusively triable by the Sessions Court, committal to the Sessions Court was made vide P.R.C.No.49 of 2005. The case was taken up for trial in S.C.No.121 of 2006. Charges were framed against the five accused as follows:-

'Charges framed
against the accused : 1st accused - u/s 147,
323, 302 r/w 149 IPC.
: 2nd accused - u/s 147,
323, 302 r/w 149 IPC.
: 3rd accused - u/s 147,
323, 302 r/w 149 IPC.
: 4th accused - u/s 147,
323(2 counts), 302 r/w
149 IPC.
: 5th accused - u/s 147,
323, 302 r/w 149 IPC.'

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

3.The prosecution examined as many 14 witnesses and marked Exs.1 to 21. M.O.1 to M.O.3 were also marked. On the side of the accused no evidence was adduced. The incriminating circumstances were put to the accused under Section 313 of Cr.P.C.

4.The learned Trial Judge after detailed consideration of the evidence on record convicted and sentenced the accused as mentioned above. Challenging the same, these criminal appeals have been filed.

5.The first accused/Issac and the fifth accused/Vincent @ Wilson have passed away in the meanwhile. Therefore, the proceedings against them stand abated. Criminal appeal is dismissed as far as they are concerned.

6.That leaves us with the remaining three accused namely., A2 to A4. From the evidence on record, it is seen that A2/Thasammal fisted the deceased on the back, A3/Iyyapan gave blow on her neck while A4/Jegan gave blow on the left shoulder and pushed her down.



7. It is seen that A5 had stamped the deceased viciously on her chest and abdomen. P.W.12 is the Doctor, who had conducted the postmortem on the body of the deceased and issued Exs.11 and 14. He had certified that the injuries found on the body of the deceased were simple in nature. In his testimony before the Court, he had not specifically stated about the cause of death. This Court can safely assume that as a result of fall, the deceased had suffered an internal injury in the head. This is essence of the medical opinion.

8. The motive between the parties was rather trivial in nature. The accused did not have any intention to attack the deceased/Chidambaravadiwoo. She was only a chance interventionist. The quarrel was primarily between the accused on the one hand and P.W.1 and P.W.2 on the other hand. Since the deceased came to separate the two groups, the anger and fury of the accused was directed towards the deceased. The accused have not employed any dangerous weapon. They had used only their bare hands. Of course, serious allegations have been made against the fifth accused. But then, fifth accused is no more.

9. I am of the view that the Court below could not have convicted the accused for the offence under Section 304(ii) of I.P.C. Likewise the assembling of a small group of people in a village cannot be said to have constituted unlawful assembly. As already pointed out the accused did not have the unlawful object of causing the death of Chidambaravadiwoo. Therefore I am of the view that conviction of the accused for the offence under Sections 147, 149 and 304(ii) of I.P.C. is also not warranted.

10. The learned counsel appearing for the accused submitted that they would not challenge the conviction of the appellants for the offence under Section 323 of I.P.C. The learned counsel appearing for the appellants would agree that all the three remaining accused namely., A2, A3 and A5 can be found guilty of the offence under Section 323 of I.P.C. It is seen that all the three accused namely., A2, A3, A4 were in incarceration for about 60 days at the remand stage and that post conviction, they had spent 15 days in prison. The occurrence itself had taken place way back in the year 2005. A2/Thasammal had already lost his husband also. Taking note of all these aspects, the sentence of imprisonment for the offence under Section 323 of I.P.C. can be modified and reduced to the period already undergone. However, each of the accused shall pay a sum of Rs.10,000/- as fine. They are directed to deposit the said amount to the credit of S.C.No.121 of 2006, on the file of the learned Sessions Court, Kanayakumari District at Nagercoil within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the same shall be handed over to P.W.1/Ponnu by the learned Trial Judge. A2, A3 and A4 shall also individually execute a notarised affidavit of apology expressing their sense of regret for having attacked a old lady against whom they could not have had any motive whatsoever. When the Trial Judge



hands over the compensation amount to P.W.1, copies of the affidavit of apology shall also be given to her. With this modification in the matter of conviction as well as sentence, these criminal appeals are partly allowed.

WEB COPY

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Judicial Magistrate,
Padmanabhapuram
2. The chief Judicial Magistrate,
Kanyakumari at Nagercoil
3. The Sessions Judge,
Kanniyakumari District,
Nagercoil.
4. The Superintendent,
Central Prison,
Palayamkottai
5. The Officer In-charge,
Special Prison for Women,
Trichy District
6. The Inspector of Police,
Tuckalay Town Police Station,
Tuckalay,
Kanyakumari District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.JOHN JEYAKUMAR, Advocate (SR-77137[F] dated 24/07/2019)

+1 CC to Mr.M.SURI, Advocate (SR-77136[F] dated 24/07/2019)

+1 CC to Mr.N.DILIPKUMAR, Advocate (SR-77591[F] dated 25/07/2019)

Cr1.A. (MD) Nos.467, 468 and 475 of 2010
24.07.2019