



Bail Slip

1.R.Kumar, S/o.Raman, Male, aged about 34/2013 years (Accused No.5), 2. S.Balu, S/o.Sankaralingam, Male, aged about 34/2013 years (Accused No.8), 3.Muthuraj S/o.Periyasamy, Male, aged about 39/2013 years (Accused No.3), 4.Senthilmurugan, S/o.Murugan, Male, aged about 37/2013 years (Accused No.4), 5.Nalliah, S/o.Ramaiah, Male, aged about 37/2013 years (Accused No.6) 6.Antony S/o.Pitchaiya, Male, aged about 40/2013 years (Accused No.7), 7.Murugan S/o.Shanmugam, Male, aged about 40/2013 years (Accused No.9), 8.Kannan S/o.Abiraham, Male aged about 45/2013 years (Accused No.10), 9.Munusamy, S/o.Sathan, Male, aged about 42/2013 years (Accused No.13), 10.Raju S/o.Muniyandi, Male, aged about 45/2013 years (Accused No.14), 11. Raja, S/o.Krishnan, Male, aged about 40/2013 years (Accused No.1), 12.Navaneethan, S/o.Chenthurpandi, Male, aged about 38/2013 years (Accused No.2) 13.Pitchumani, S/o.Seeralan, Male, aged about 36/2013 years (Accused No.11), 14. S.Shanmugaraj, S/o.Shanmugam, Male, aged about not known (Accused No.12) was released on bail vide Court Order dated 04.02.2013, 23/01/2013 and 12/02/2013 made in MP(MD)Nos.1,1,1,1 and 1 of 2013 in Crl. A(MD)Nos.20, 22, 23, 30 and 44 of 2013 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)Nos.20, 22, 23, 30 and 44 of 2013

1.R.Kumar

2.S.Balu

... Appellants in Crl.A. (MD)No.20 of 2013

1.Muthuraj

2.Senthilmurugan

3.Nalliah

4.Antony

5.Murugan



1.Raja
WEB COPY

2.Navaneethan

S.Pitchumani

S.Shanmugaraj

... Appellants in Crl.A.(MD)No.22 of 2013

... Appellants in Crl.A.(MD)No.23 of 2013

... Appellant in Crl.A.(MD)No.30 of 2013

... Appellant in Crl.A.(MD)No.44 of 2013

Vs.

The State of Tamil Nadu
Represented by its
The Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.
(Crime No.75 of 1998)

... Respondent in all Crl.As

Common Prayer: Criminal Appeals filed under Section 374 of Cr.P.C, to call for the records pertaining to the judgment passed by the I Additional District and Sessions Court, Thoothukudi, dated 11.01.2013 in S.C.No.137 of 2012 and set aside the same.

For Appellant : Mr.P.Rajkumar
(in Crl.A.(MD)No.20 of 2013)

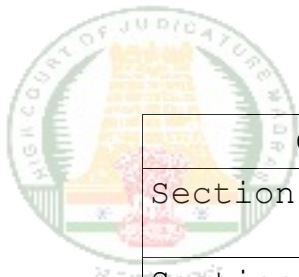
For Appellant : Mr.P.Rajkumar
(in Crl.A.(MD)No.22 of 2013)

For Appellant : Mr.P.Rajkumar
(in Crl.A.(MD)No.23 of 2013)

For Appellant : Mr.T.Senthil Kumar
(in Crl.A.(MD)No.30 of 2013)

For Appellant : Mr.P.Pethu Rajesh
(in Crl.A.(MD)No.44 of 2013)

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



Charges	Accused	Sentence
Section 148 IPC	A1 to A14	1 Year RI + Rs.500/-
Section 25(1-A) of Arms Act	A5, A6 and A14	5 Years RI + Rs.1000/-
Section 25(1-B) of Arms Act	A1, A2	2 Years RI + Rs.1000/-
Section 5(a) of Explosives Substances Act	A3 to A13	7 Years RI + Rs.1000/-

Aggrieved by the same, these criminal appeals have been filed.

5.The learned counsel appearing for the appellants reiterated the contentions set out in appeal memorandum and wanted this Court to reverse the impugned judgment.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss the appeal.

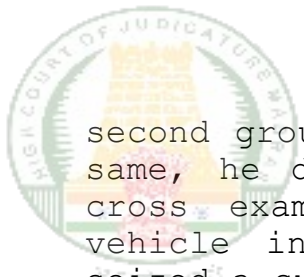
7.I carefully considered the rival contentions and perused the evidence on record.

8.The offending items seized in this case are two pistols, two numbers of aruval, one knife, ten bullets and one country made hand grenade.

9.The prosecution case is that the accused were travelling in a Mahindra Van bearing Registration No.TN 69 A 5280 at around 01.00 a.m. on 26.03.1998. When they were intercepted at Theivasealpuram-Poovani Road junction by the police, the arms and ammunition were said to have been seized at the time of inspection.

10.Now the question that arises for consideration is whether the recovery claimed to have been made from the accused can be believed or not.

11.The learned counsel appearing for the appellants submitted that the appellants herein were followers of one Pasupathi Pandian, who was founder/leader of Devendrakula Vellalar Sangam. He was going with his followers in a vehicle in front and the appellants were following the said vehicle. Both the vehicles were stopped by the respondent police and cases were registered against the inmates of both the vehicles. Crime No.74 of 1998 was registered against Thiru.Pasupathi Pandian and others whereas Crime No.75 of 1998 was registered against the appellants herein. The appellants' counsel would contend that the appellants were not at all armed and that what was recovered from the first group was foisted against the



second group. This in substance is his contention. To make out the same, he drew my attention to the answers given by P.W.1 in his cross examination. P.W.1 admitted that apart from seizing the vehicle in which the appellants were travelling, they had also seized a sumo van that was going in front. He would claim that hand grenade and pistols were recovered from the sumo vehicle also and Crime No.74 of 1998 was registered. To a pointed question as to whether the said case ended in acquittal, P.W.1 feigned ignorance. He admitted that in Ex.P.1/recovery mahazer, there was a correction of the crime number from 74 to 75. The occurrence had taken place at 01.00 a.m./night hours. But then, the recovered items were not separately bagged and sealed. Shockingly, he was not even able to assert which item was recovered from whom. No one had affixed as attesting witnesses in the said mahazer. These answers given by P.W.1 are sufficiently damaging and fatal to the prosecution case. However, to satisfy the conscience of this Court, this Court examined the original records. In Ex.P.1, there is an alteration as far as the crime number is concerned. When the witness is unable to say from whom there was recovery of the offending items, it would be most unsafe to fasten guilt on all the accused.

12.The appellants were following their political leader in a group. That by itself cannot constitute an unlawful assembly. Be that as it may, Even if an offending article was found in the vehicle, it would not be fair or proper to make everyone guilty.

13.The occurrence had taken place some 21 years ago. The FIR was admittedly registered only at 03.30 a.m. Ex.P.1 was prepared at 01.00 a.m. But then, in Ex.P.1 crime number is found mentioned. This throws considerable doubt on the prosecution case. In fact, P.W.2 had admitted in cross examination that crime number was written only in the station. But then, the appellants' counsel would allege that the entire athatchi was prepared only in the station. In these circumstances, I am of the view that the benefit of doubt should go to the accused. The impugned judgment is set aside, the appellants are acquitted and these criminal appeals are allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



To:

- 1.The Judicial Magistrate No.I,
Thoothukudi.
- 2.The Chief Judicial Magistrate,
Thoothukudi.
- 3.The I Additional District and Sessions Court,
Thoothukudi.
- 4.The Principal District and Sessions Judge,
Thoothukudi.
- 5.The Superintendent,
Central Prison,
Palayamkottai.
- 6.The Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.T.Senthilkumar, Advocate, SR.No.79071.

Crl.A. (MD) Nos.20, 22, 23, 30 and 44 of 2013
01.08.2019

CS(13.09.2019) 6P 11C