



Bail Slip

1.Senthil Kumar, Male, S/o.Silamban@Chidambaram, 2.Vaithi@Sekar, Male, S/o.Silamban@Chidambaram, were released on bail vide order made in MP(MD)No.1/2013, in Crl.A(MD)No.227 of 2013 dt.25.07.2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.227 of 2013

1.Senthil Kumar
2.Vaithi @ Sekar

... Appellants /Accused Nos.1&2

Vs

State represented by
The Inspector of Police,
Navalpattu Cricle,
Manikanam Police Station,
Trichy District.
(Crime No.236 of 2011)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the Judgment dated 06.07.2013 made in S.C.No.84 of 2012 on the file of the First Additional District Judge (PCR), Trichy and set aside the same.

For Appellants : Mr.T.Senthil Kumar
For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellants were convicted and sentenced by the First Additional District Judge (PCR), Thiruchirapalli, by the impugned Judgment. The particulars regarding the conviction and sentence are as follows:-

Accused	Penal Provisions	Punishment
A1 & A2	506(i) IPC	No separate sentence
A1	304(i) IPC	To undergo eight years rigorous imprisonment and to pay a fine of Rs.2,000/-.



A2	304(i) r/w 34 IPC	To undergo eight years rigorous imprisonment and to pay a fine of Rs.2,000/-.
A2 COPY	307 IPC	To undergo seven years rigorous imprisonment and to pay a fine of Rs.2,000/-.
A1	307 r/w 34 IPC	To undergo seven years rigorous imprisonment and to pay a fine of Rs.2,000/-.

2. The prosecution case is that there was a land dispute between the appellants and the family of the deceased. On 01.11.2011, at about 6.45 a.m., the deceased Chinnaswamy and his brother Velayutham came to their agricultural land with an agricultural implement(spade). The appellants are said to have threatened Chinnaswamy that if he went ahead with his work, he will be murdered. There arose a scuffle between the two. The first appellant is said to have grabbed the spade from the hand of Chinnaswamy and attacked him on the back of his head. Chinnaswamy fell down. The second appellant is said to have used the very same weapon for attacking Velayutham. Both Chinnaswamy and Velayutham were rushed to the Hospital. Chinnasamy died three days later that is on 04.11.2011. In this regard, P.W.1-Pitchai, lodged Information before the Manikandam Police Station vide Ex.P1. Based on the same, Ex.P8-FIR in Crime No.236 of 2011 was registered for the offences under Sections 506(i), 324 and 307 of IPC. Following the demise of Chinnaswamy, Ex.P17-Alteration Report was submitted for the offence under Section 302 of IPC was also included. Investigation was conducted. The statements of the witnesses were recorded. After completing all the usual formalities, the Investigating Officer filed final report before the Judicial Magistrate No.4, Tiruchirapalli against the appellants herein for the offences under Sections 302, 307 and 506 (i) of IPC. The case was committed to the Sessions Court in P.R.C.No.9 of 2012. It was made over to the First Additional District Judge (PCR), Thiruchirpalli for trial in S.C.No.84 of 2012. Charges were framed against the appellant as follows:-

Accused	Charges
First Accused	under Sections 302, 307 r/w 34 and 506(i) of IPC



Second Accused

under Sections 307, 304(i) r/w
34 and 506(i) of IPC

The appellants pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 18 witnesses and marked Ex.P1 to Ex.P17 and M.O.1 to M.O.3. On the side of the accused, no evidence was adduced. The learned trial Judge, by the impugned Judgment dated 06.07.2013 in S.C.No.84 of 2012, convicted and sentenced the appellants as mentioned above. Challenging the same, this appeal came to be filed.

3. The learned counsel appearing for the appellants submitted that he would confine the scope of his argument. He would submit that according to him, the learned trial Judge, ought not to have invoked Section 34 of IPC, while framing the charges against the appellants herein. He submitted that he would not challenge the involvement of the appellants in the occurrence and that he would only plead for leniency to be shown in the matter of punishment.

4. The learned Government Advocate (Crl.side) submitted that the impugned Judgment does not call for any interference and wanted this Court to dismiss this appeal.

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

6. It is not in dispute that the deceased Chinnaswamy and P.W.2-Velayutham who are brothers, came to the spot only on being informed by P.W.3-Marimuthu. P.W.3 was the lessee of the agricultural land belonging to the deceased. It appears that the appellants had prevented Marimuthu from causing a breach in the bund. According to him, if the bund is breached, the water will flow into their field. Marimuthu, therefore, complained to the deceased on the fateful day that is 30.10.2011. Therefore, on the next day, that is 01.11.2011 in the morning, Chinnaswamy as well as P.W.2-Velayutham came to the field, so that, they themselves can open the bund. It is the admitted case of the prosecution that both the appellants were not armed with any weapon. It was only Chinnaswamy who was carrying an agricultural implement (spade). Obviously, wordy quarrel ensued between the two. Since Chinna swamy wanted to go ahead with his work, the first appellant is said to have forcibly grabbed the said agricultural implement and attacked him. With the very same implement, the second appellant attacked P.W.2 and it is seen that both the accused inflicted only a single blow on their respective targets.

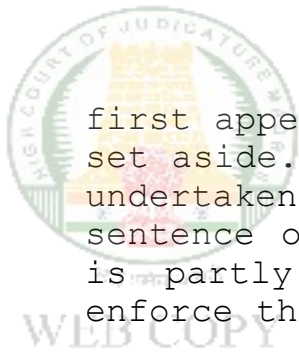
7. From a careful reading of the entire evidence on record, I am able to come to the conclusion that the incident took place



more on the spur of the moment. In any event, the second appellant could not have any intention to cause the death of Chinnaswamy. It is seen from the evidence that Chinnaswamy died only three days later. When he was admitted to the hospital on 01.11.2011, he was quiet conscious. To reiterate, A1 inflicted a single blow on Chinnaswamy, while A2 inflicted a single blow on P.W.2-Velayutham. From this one can come to the safe conclusion that the accused did not have any intention to cause the death of Chinnaswamy. I am, therefore, of the view that invocation of Section 34 of I.P.C., while framing the charges against the accused, was not warranted. Once Section 34 of IPC is out of the picture, the first appellant alone will stand convicted for the offences under Sections 304(i) and 506(i) of IPC, while the second accused will stand convicted only for the offences under Sections 307 and 506(i) of IPC. This is because, the appellants will have to bear the consequence only for their individual acts.

8. The learned counsel appearing for the appellants submitted that he is not challenging the conviction of the appellants for the aforesaid offences. He however points out that the appellants are brothers and if both of them are sent to prison, their families will be ruined. He also pleaded that both the children of the first appellant are no more and that he alone has to take care of his wife and the aged mother. Since P.W.2 has resumed his normal avocation and has not suffered any permanent disability, this Court can consider reducing the sentence of imprisonment to the period already undergone by him. He pointed out that both the appellants were in prison for about 120 days. The second appellant is willing to deposit a sum of Rs.25,000/- as compensation to be paid to P.W.2.-Velayutham.

9. Taking note of these mitigating factors, the sentence of imprisonment imposed on the first appellant for the offence under Section 304(i) IPC is reduced from eight years to four years rigorous imprisonment. The period of incarceration already undergone by him will be set off in terms of Section 428 of Cr.P.C. The conviction and sentence imposed on the second accused for the offence under Section 304(i) r/w 34 of IPC is set aside. The sentence of imprisonment imposed on the second appellant for the offence under Section 307 of IPC is reduced from seven years rigorous imprisonment to the period already undergone by him. The second accused is however directed to deposit a sum of Rs.25,000/- to the credit of S.C.No.84 of 2012 on the file of the First Additional District Judge (PCR), Thiruchirappalli, within a period of four weeks from the date of receipt of a copy of this order. The second appellant is also directed to execute an affidavit expressing his regret and remorse for his act. On such deposit, the learned trial Judge shall arrange and hand over the same to P.W.2-Velayutham. The conviction and sentence imposed on the



first appellant for the offence under Section 307 r/w 34 of IPC is set aside. If the second appellant fails to deposit the amount as undertaken before this Court, he will have to undergo the default sentence of one year rigorous imprisonment. This criminal appeal is partly allowed. The concerned Court shall take steps to enforce this order.

Sd/-

Assistant Registrar (co)

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/ /2020

Sub Assistant Registrar(CS)

Rmi

To

1.The Ist Additional District Judge(PCR), Trichy.

2.Do Thro'

The Principal District Judge, Trichy.

3.The Judicial Magistrate No.IV, Trichy.

4.Do Thro'

The Chief Judicial Magistrate, Tricy.

5.The Superintendent, Central Prison, Trichy.

6.The Inspector of Police,
Navalpattu Cricle,
Manikanam Police Station,
Trichy District.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.T. SENTHIL KUMAR, Advocate (SR-83291[F] dated 26/08/2019)

Crl.A(MD)No.227 of 2013
26.07.2018

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