

**BAIL SLIP**

1 Samivel, S/o. Thangavel, Male, (aged about 52/2015 years) (Accused No.1), 2 Marutha Sundar Raj @ Sundar, S/o. Samivel, Male (aged about 30/2015 years), (Accused No.2), 3. Kanagaraj, S/o. Shanmugam, Male, (aged about 41/2015 years), (Accused No.4) are released on bail vide Court Order dated 10.08.2015 and 17.08.2015 made in CRL MP (MD) Nos.1 and 1 of 2015 in CRL A (MD) No.175 and 187 of 2015 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CRL A (MD) Nos.175 & 187 of 2015

Crl A (MD) No.175 of 2015 :

1. Samivel

2. Marutha Sundar Raj @ Sundar

... Appellants /
Accused Nos.1 & 2

Vs.

The State, rep. by the Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.
(Crime No.120 of 2013)

... Respondent /
Complainant

Prayer : This Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment rendered by the I Additional District and Sessions Judge, Thoothukudi District in SC No.69 of 2014 vide his judgment dated 21.07.2015 and set aside the same and consequently acquit the appellants.

Crl A (MD) No.187 of 2015 :

Kanagaraj

... Appellant /
Accused No.4

Vs.

The State, rep. by the Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.
(Crime No.120 of 2013)

... Respondent /
Complainant

Prayer : This Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment rendered by the I Additional District and Sessions Judge, Thoothukudi District in SC No.69 of 2014 vide his judgment dated 21.07.2015 and set aside the same and consequently acquit the appellants.

For Appellants

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

In Crl A (MD) No.175 of 2015 : Mr. R. Anand



For Appellant
in Crl A(MD)No.187 of 2015 : Mr.C.Christopher

For Respondent
in both the appeals

: Mr.A.Robinson,
Government Advocate (crl.side)

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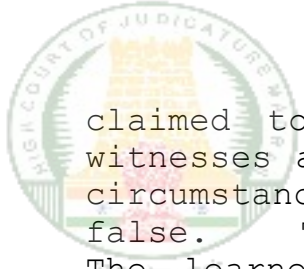
COMMON JUDGMENT

Heard the learned counsel for the appellants and the learned Government Advocate (crl.side) for the prosecution. Both the appeals are taken up together as they arise out of the judgment dated 21.07.2015 passed by the learned I Additional District and Sessions Judge, Thoothukudi District in SC No.69 of 2014. By the impugned judgment, the appellants herein have been convicted and sentenced as follows :

Accused Rank	Conviction	Sentence
A1	Section 294 (b) IPC	3 months simple imprisonment and fine of Rs.5,000/-, in default, 2 months simple imprisonment
	Section 307(2) IPC	10 years rigorous imprisonment and fine of Rs.5,000/-, in default, 2 months simple imprisonment
A2	Section 326 of IPC	5 years rigorous imprisonment and fine of Rs.5,000/-, in default, 2 months simple imprisonment
A4	Section 324 of IPC	3 years rigorous imprisonment and fine of Rs.3,000/-, in default, 2 months simple imprisonment

2.The case of the prosecution is as follows :

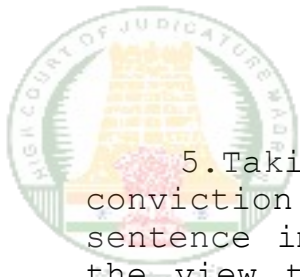
PW.1 Ragavan is the defacto complainant. Arasoor is his native village. He is staying at Gummidipoondi near Chennai. PW.2 and PW.4 are his relatives. PW.1 came down to his native place for attending annual Panguni Uthiram function. The occurrence took place on 29.05.2013 at around 05.00 PM. The accused numbering five are said to have abused the victims and also inflicted stab injuries on them. PW.2 and PW.3 namely Suresh and Dhayanidhi suffered grievous stab injuries. PW.1 and PW.4 Sridhar also suffered injuries. In this regard, PW.1 lodged a complaint before the Thattarmadam Police Station, Thoothukudi District. Crime No.120 of 2013 was registered. The case was taken up for investigation and final report was filed before the Judicial Magistrate, Sathankulam. The case was committed to the Sessions Court in PRC No.14 of 2014 and made over to the I Additional District and Sessions Judge, Tuticorin and taken up for trial in S.C No.69 of 2014. Charges were framed under various heads. The accused denied their guilt and



claimed to be tried. The prosecution examined as many as 14 witnesses and marked Exs.P1 to P14 and MO.1 to MO.3. Incriminating circumstances were put to the accused who characterized them as false. The accused did not adduce any evidence on their side. The learned Trial Judge after consideration of the evidence on record, convicted and sentenced the accused as mentioned above. Challenging the same, these two appeals have been filed. The injured witnesses, namely, PW.2 and PW.3 were examined before the court below and they supported the case of the prosecution. The doctor who examined and treated them was also examined as PW.12. The appellants 1 and 2 had caused stab injuries and they were found to be 3 cms in depth.

3. Having regard to the evidence on record, the learned counsel for the appellants would state that they do not question the finding of guilt. They primarily want substantial modification in the matter of sentence. As regards A4, there will not be any difficulty because he was found to have inflicted only simple injury. A1 and A2 namely, Samivel and Marutha Sundarraaj had caused grievous injuries. The learned counsel for the appellants contended that the occasion in question was a temple festival. The venue is an interior village. When such village festivals take place, a person who is traditionally known as Samiyadi goes into a kind of trance and dances before the deity. When the samiyadi was performing his dance, PW.5 Jeyapal is said to have questioned him. This furnished the cause of occurrence. Provoked by the conduct of PW.5, the accused party got into a scuffle and the occurrence in question was committed in the ensuing clash. The learned counsel for the appellants pointed out that this Court can consider the fact that the appellants were provoked by the conduct of the injured witnesses. They plead guilty before this Court. He wants only modification in the matter of sentence.

4. I find considerable force in the said contention. A1 and A2 are ready to pay a sum of Rs.1.00 lakh to the credit of SC No.69 of 2014 on the file of the I Additional District and Sessions Court, Thoothukudi. Likewise, A4 Kanagaraj is ready to pay a sum of Rs.25,000/-. The learned counsel for the appellants stated that this amount can be apportioned in equal half to the injured witnesses, namely, PW.2 and PW.3. The accused are willing to go one step further. They would also execute an individual affidavits of apology. The affidavits would contain their sincere expression of regret and also seek forgiveness from the injured witnesses, namely, PW.1 to PW.4. The appellants would also make it clear that the amount deposited by them is not by way of compensation. It is only a bonafide expression of atonement on their part. The learned counsel for the appellants states that every year the temple festival is taking place and the prosecution party is also attending them. The appellants give solemn undertaking before this Court that they will not come into contact with the injured persons in future. In other words, if the injured persons are willing to forgive the appellants, the appellants would resume relationship. If not, the appellants would maintain a respectful distance from them.



5. Taking note of these submissions, even while confirming the conviction imposed on the appellants herein, I modify and reduce the sentence imposed on them to the period already undergone. I am of the view that the court below had been unnecessarily harsh in the matter of imposing sentence on them. The case on hand is definitely not one that has to attract the maximum sentence of ten years rigorous imprisonment.

6. The appeals are partly allowed with the following directions :

(i) The conviction and fine imposed on the appellants by the court below is confirmed.

(ii) the substantive sentence of imprisonment imposed on them is modified and reduced to the period already undergone.

(iii) A1, A2 and A4 will deposit a sum of Rs.50,000, Rs.50,000/- and Rs.25,000/- respectively to the credit of S.C No.69 of 2014 on the file of the I Additional District and Sessions Court, Thoothukudi, within a period of six weeks from the date of receipt of a copy of this order.

(iv) the appellants herein will execute affidavits of apology in the lines mentioned above. The affidavits will be prepared in two sets. In both the sets, the appellants will affix their signature and also duly notarize it. One set will be handed over to the respondent and the respondent will arrange to serve the same on PW.1 to PW.4 through appropriate mode and the other set will be handed over to the court below. The respondent also will intimate PW.2 and PW.3 and obtain their bank account details and submit to the court below. The court below on being furnished with the said details, will arrange to transfer a sum of Rs.62,500/- each to the respective accounts of PW.2 and PW.3. In other words, PW.2 and PW.3 need not come to court below and apply for disbursement of the amount.

7. With the aforesaid directions, these criminal appeals are partly allowed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of



the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Inspector of Police, Thattarmadam Police Station,
Thoothukudi District.
- 2.The I Additional District and Sessions Judge,
Thoothukudi District.
- 3.The Principal Sessions Judge, Thoothukudi.
- 4.The Judicial Magistrate, Sathankulam, Thoothukudi District.
- 5.The Chief Judicial Magistrate, Thoothukudi.
- 6.The Superintendent, Central Prison, Palayamkottai
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai (2c)

CRL A (MD) Nos.175 & 187 of 2015
18.12.2020

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