

Bail Slip

That the appellant/Accused namely Vijai @ Viji, S/o. Subramani, was directed to be released on bail as per order of this Court dated 19.3.2010 and made in MP.No.1/2010 in CrI.A.No.166/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.A.No.166 of 2010

Vijai @ Viji
S/o.Subramani

... Appellant/Accused

vs

State represented by
Inspector of Police,
Sipcot Police Station,
Wallajah, Vellore District.
Crime No.430 of 2008

... Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against judgment of learned Additional Sessions Judge, Fast Track Court II, Ranipet, Vellore District, passed in S.C.No.265 of 2008 on 16.07.2009.

For Appellant : Mr.T.R.Ravi

for Mr.T.Arulraj

For Respondent : Mr.V.Arul

Additional Public Prosecutor

JUDGMENT

This appeal arises against judgment of learned Additional Sessions Judge, Fast Track Court II, Ranipet, Vellore District, passed in S.C.No.265 of 2008 on 16.07.2009.

2. Prosecution case is that on 03.08.2008 at about 12.00 p.m., owing to previous enmity, accused abused PW-2 using filthy

language and assaulted him with an aruval and caused grievous injuries. Accused has also assaulted PW-1 with an aruval and caused simple injuries. A case was registered in Crime No.430 of 2008 on the file of respondent by PW-14, Sub-Inspector of Police, on the basis of Ex.P1, complaint. Printed First Information Report is Ex.P11. PW-14 visited the scene of occurrence, prepared Ex.P12, rough sketch and Ex.P5, observation mahazar in the presence of PWs.9 and 11. PW-14 examined PWs.1, 3 to 7 and others and recorded their statements. PW-14 arrested the accused at 09.00 a.m. and recorded his confession in the presence of PWs.9 and 11. The admissible portion of confession is Ex.P9. Upon identification by accused, PW-14 seized MO-1 - aruval, under Ex.P10, seizure mahazar, in the presence of PWs.9 and 11. PW-14 examined PW-3 and recorded his statement. PW-14 sent the accused to judicial custody. On 05.08.2008, PW-14 examined PW-2, who was taking treatment as inpatient at Government Hospital, Vellore, and recorded his statement. PW-14 examined PW-12, Junior Engineer, to ascertain whether there was electricity supply at the occurrence time and recorded his statement. PW-14 forwarded the seized article to Court under Form-95. PW-14 forwarded MO-2, blood stained shirt, to Court under Form-95. PW-14 handed over the case papers to PW-15, Inspector of Police, for further investigation. PW-15 examined PW-8, Doctor and another Doctor and recorded their statements. PW-15 upon completion of investigation, filed a charge sheet informing commission of offences u/s.294(b), 307 and 324 IPC. The case was tried in S.C.No.265 of 2008 on the file of learned Additional Sessions Judge, Fast Track Court II, Ranipet, Vellore District.

3. Before trial Court, prosecution examined 15 witnesses and marked 12 exhibits and 2 material objects. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 16.07.2009, convicted accused for offences u/s.294(b), 307 and 324 IPC and sentenced him to 3 months R.I. for offence u/s.294 (b) IPC, 7 years R.I. and fine of Rs.1,000/- i/d 3 months R.I. for offence u/s.307 IPC and 1 year R.I. for offence u/s.324 IPC. Trial Court directed that sentences run concurrently. Against such finding, the present appeal has been filed.

4. Heard learned counsel for appellant and learned Additional Public Prosecutor.

5. PWs.1 and 2 had spoken to the manner in which they came to suffer injury and their evidence is corroborated by the examination of PW-8, Doctor, and also marking of Exs.P2 and P4, Accident Registers. While Ex.P3, wound certificate of PW-2,

reflects that he had suffered a nasal fracture, such certificate had been issued by a Civil Assistant Surgeon, Government Vellore Medical College & Hospital, Vellore, who had not been examined. More importantly, the X-ray relating to the said injury has not been marked. In the aforesaid circumstance, even though this Court has no reason to doubt the evidence of PWs.1 and 2 regards the manner in which they suffered injury and thereby the prosecution case of assault and injury having been caused by appellant to them would stand proved, there is no evidence to inform causing of grievous injury by appellant. The evidence pointing to causing of simple injuries both to PWs.1 and 2 by appellant can lead to conviction only for offence u/s.324 IPC (2 counts). It has been brought to notice that appellant was aged 18 years at the time of occurrence and had been in jail for a period 2½ months and thereafter sent to Borstal School where he spent a period of 8 months. It is also brought to notice that appellant is now a married man having to take care of his family and two minor children. The occurrence is of the year 2008. In the circumstances, this Court is of the view that interests of justice would be met by affirming the finding of conviction for offences u/s.294(b) and 324 IPC in respect of simple injuries caused to PW-1 and altering the conviction for offence u/s.307 IPC in respect of injury caused to PW-2 to one u/s.324 IPC. Accordingly, appellant shall stand sentenced to 3 months R.I. for offence u/s.294(b) IPC and 10 months R.I. and fine of Rs.5,000/- i/d 6 months R.I. for each count for offence u/s.324 IPC (2 counts). Accordingly, it shall not be necessary for appellant to undergo any further period of imprisonment. However, in the event of default in payment of fine as presently directed by this Court, appellant shall undergo 6 months R.I.

The Criminal Appeal is disposed of with the above modification.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
No.II, Wallajah, Vellore District.

2. The Chief Judicial Magistrate,
Vellore (for information)

3.The Public Prosecutor,
High Court, Madras.

4.The Inspector of Police,
Sipcot Police Station,
Wallajah, Vellore District.

5. The Superintendent, Central Jail,
Palayamkottai.

6.The Additional Sessions Judge,
Fast Track Court II,
Ranipet, Vellore District.

+ 1 cc to MR. A. Simonraj, Advocate SR.66482

Cr1.A.No.166 of 2010

AD(CO)
EU(04/12/2017)



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