



Bail Slip

The Petitioners / Appellants / Accused No 3 & 4 Viz namely
1) Sivamani aged about 28 years S/O Egambaram 2) Dineshkumar aged
about 26 years S/O Sundaresan will released on bail
dated:01/06/2015 made in MP 1/2015 in CrI.A.No.228/2015 on the
file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.04.2021

JUDGMENT DELIVERED ON : 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.228 of 2015

1. Sivamani

2. Dinesh Kumar

... Appellants/Accused Nos.3 & 4

..Vs..

State represented by the
Inspector of Police,
Vellore Taluk Police Station,
Vellore District.
[Crime No.409 of 2012]

... Respondent/Complainant

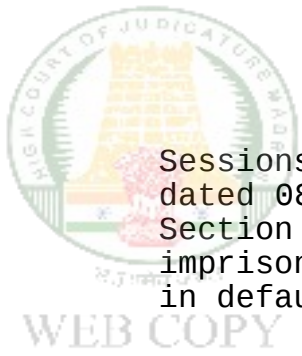
PRAYER: Criminal Appeal filed under Section 374(2) of the
Criminal Procedure Code, as against the judgment and sentence
passed by the learned (District Sessions Judge Training),
Additional Assistant Sessions Judge, Vellore, Vellore District,
in S.C.No.84 of 2013, dated 08.04.2015, convicting the appellants
under Section 307 IPC and sentenced to undergo rigorous
imprisonment for 10 years and to pay a fine of Rs.1000/- each, in
default, to undergo simple imprisonment for two months.

For Appellants : Mr.E.Kannadasan

For Respondent : Mr.R.Surya Prakash
Government Advocate (CrI.Side)

JUDGMENT

The convicted accused viz., A.3 and A.4 have preferred
this criminal appeal as against the judgment passed by the
learned (District Sessions Judge Training), Additional Assistant



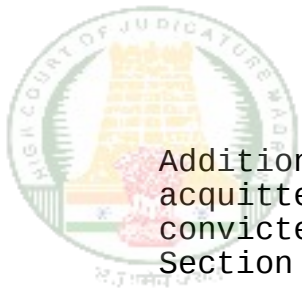
Sessions Judge, Vellore, Vellore District, in S.C.No.84 of 2013, dated 08.04.2015, convicting the appellants for the offence under Section 307 IPC and sentencing them to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/- each, in default, to undergo simple imprisonment for two months.

2 [i]. The case of the prosecution as could be seen from the records is that there was previous enmity between P.W.1 and A.1/Thilagaraj, regarding lane dispute and civil suit is also pending between them. During the pendency of the civil suit, an Advocate Commissioner was appointed; out of 78 feet lane, 30 feet were allotted to P.W.1/Prakash @ Chinnaraj and he fixed fencing around his land and due to that A.1 having vengeance over him and 15 days prior to the occurrence, wordy altercation arose between A.1 and P.W.1. In continuation of the quarrel, A.1 decided to do away P.W.1 with the help of the accused 2 to 5 and they were conspired together; due to the conspiracy, on 15.09.2012 at about 03.15 p.m., when P.W.1 was in his Grocery Shop, on the instigation of A.1/Thilagaraj, A.2/Santhosh @ Santhosh Kumar and the appellants viz., A.3/Sivamani and A.4/Dinesh Kumar and A.5/Jegan @ Jegannathan were went there; A.2 abused P.W.1 with filthy language and also beaten him on his chin with hand and these appellants/A.3 and A.4 tried to attack P.W.1 with knife; P.W.1 escaped from their attack and caught hold their hands and as a result of which, P.W.1 sustained abrasion injuries on his left thumb and on hearing his alarm, P.W.2 mother of P.W.1 came and rescued and at that time, A.5 namely, Jegan @ Jegannathan attacked her with cool drinks bottle on her back and thereby caused simple injury.

[ii]. In the meanwhile, the neighbours came to the scene of occurrence and tried to save P.W.1 and on seeing them, the accused 2 and 5 escaped in an Auto and these appellants were caught red handed by the villagers and they were tied in a Pillor post and thereafter, they were produced before the respondent police.

[iii]. On receipt of the complaint/Ex.P.1 from P.W.1, the respondent police has registered a case in Crime No.409 of 2012 for the offences under Sections 294(b), 323, 324, 452 and 307 r/w. 109 of IPC and after completion of investigation, the respondent police has filed final report before the learned Judicial Magistrate No.I, Vellore, for the offences under Sections 120(B), 294(b), 323, 324 and 307 r/w. 115 of IPC.

[iv]. After observing the formalities, the case was committed to the Court of Sessions and thereafter, the learned Principal Sessions Judge made over the same to the learned [District Sessions Judge Training], Additional Assistant Sessions Judge, Vellore, Vellore District, for disposal. After completion of trial, the learned [District Sessions Judge Training]



Additional Assistant Sessions Judge, Vellore, Vellore District acquitted the accused Nos.1, 2 and 5 from all the charges and convicted the appellants/A.3 and A.4 for the offence under Section 307 of IPC alone and acquitted them from other charges.

WEB COPY [v]. Pending appeal, the appellants have granted suspension of sentence by this Court in CrI.M.P.No.1 of 2015, dated 01.06.2015.

3. Learned counsel for the appellants/A.3 and A.4 would contend that as per the evidence of P.W.13-Dr.M.V.Pradeep Anand, P.W.2 had complained of pain on her back and there is no evidence excepting the alleged commission of the offence under Section 307 IPC. Besides, the learned counsel has submitted that there is a delay in dispatching the FIR to the Court and the earlier complaint is burked by the prosecution.

4. In order to substantiate the charges, the prosecution has examined P.Ws.1 to 14, marked Exs.P.1 to P.15 and produced M.O.1 [two knives]. P.W.1/Prakash @ Chinnaraj and P.W.2/Indirani are the injured witnesses. P.W.2 is the mother of P.W.1. P.W.3 is the sister of P.W.1. P.Ws.4 and 5 are the attestors of the confession statement and arrest while P.W.5 turned hostile so also P.Ws.6 and 7. The attestors of Ex.P.4-observation mahazar are P.Ws.8 and 9. P.Ws.10 and 11 are the hostile witnesses. P.W.12 is the police witness, who could depose regarding the registration of Ex.P.7-FIR and arrest of the accused produced by the general public and recovery of M.O.1 [two knives]. P.W.13 is the Doctor, who had given treatment to P.Ws.1 and 2 and issued Ex.P.8-Wound certificate to P.W.2 and Ex.P.9-Wound Certificate to P.W.1.

5. Though charges have been framed as against all the five accused for the offences under Sections 120 (B), 294(b), 323, 324 and 307 r/w. 115 IPC, after trial, except the appellants viz., A.3 and A.4, all other accused viz., A.1, A.2 and A.5 were acquitted from all the charges by the learned [District Sessions Judge Training], Additional Assistant Sessions Judge, Vellore. As against the order of acquittal, the State has not preferred any appeal.

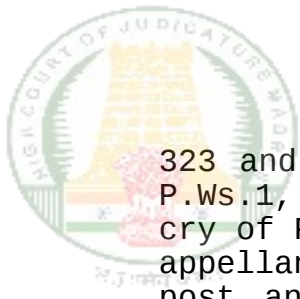
6. The motive for the attack and assault on P.W.1 and P.W.2 is said to be previous enmity in connection with lane dispute. Regarding the lane dispute, civil suit is also pending and in the Civil Suit, an Advocate Commissioner was appointed to inspect the land over which P.W.1 and the first accused had dispute. As per the Advocate Commissioner's report, out of 78 feet lane, 30 feet lane has to go to P.W.1 and 48 feet lane has to go to the first accused. Based upon the evidence of P.W.1 and P.W.2, the learned Sessions Judge, has come to the conclusion that there existence of previous enmity between P.W.1 and the first accused and due to the previous enmity, P.W.1 and P.W.2 are



exaggerating the facts alleged to have taken place on the fateful day.

7. For the reasons recorded therein, A.1, A.2 and A.5 were acquitted from all the charges and the appellants herein/A.3 and A.4 were convicted by the learned Sessions Judge. As to the act of A.3 and A.4 on the body of P.W.1, it is categorically deposed by P.W.1 that both A.3 and A.4 have attacked him with knife and when he prevented the attack, he sustained injury on his forearm. The said evidence is duly corroborated by the medical evidence of P.W.13-Doctor, who had issued Exs.P.8 and P.9-wound certificates. During the course of the occurrence, on hearing hue and cry, P.W.2, who is inside the shop, came out to rescue P.W.1. At that time, A.5 also attacked P.W.2 with soda bottle and as a result of which, she sustained abrasion injury in the back of the body and thus, the presence of P.W.2 is also duly proved by the medical evidence of Doctor. The medical evidence of the Doctor is to the effect that both P.Ws.1 and 2 have sustained injury due to the assault on 15.09.2012 also assumes significance and lends support to the prosecution theory. In view of the fact that the appellants/A.3 and A.4 were caught red handed by the general public and there is no dispute about the identification of the accused also assumes significance.

8. P.W.3, in the chief examination, has categorically stated that in view of the smart action of P.W.1, A.3 and A.4 were caught hold of by P.W.1 and P.W.2 and on hearing the hue and cry, P.W.3 went to the shop of P.W.1 and A.3 and A.4 were caught red handed with the help of the village people and taken custody of those accused and tied them in the public street light lamp and after intervention, P.W.3, who is the Secretary of the Panchayat level federation association, has intimated to the police and handed over the appellants/A.3 and A.4 along with the weapons used by them. In view of the specific evidence of P.Ws.1 and 2 and P.W.4 [independent witness] coupled with the fact that the complaint was lodged by P.W.1 along with the weapons which have been detained by the general public and the appellants/A.3 and A.4 were tied in the public street light lamp clearly lends support to the prosecution theory and hence, the learned Sessions Judge has rightly come to the conclusion that had not P.W.1 was diligent and smart enough to the act of the appellants/A.3 and A.4 on the body of P.W.1 could have been fatal to the life of P.W.1. In view of the smart act of P.W.1, he has sustained injury on his forehead which is duly corroborated by the medical evidence of P.W.13-Doctor and Exs.P.8 and P.9-wound certificates. P.Ws.3 and 4 are the independent witnesses. P.W.3, the Secretary of the Panchayat level federation association had informed the police regarding the assault made by the appellants on P.W.1 and hence, I find that the conviction laid by the trial Court is just and proper in respect of the charge under Section 307 IPC and thus, with regard to the charge under Sections 120(B), 294(b),



323 and 324 IPC against A.3 and A.4, basing upon the version of P.Ws.1, 4, 5, 6 and 10 goes to show that on hearing the hue and cry of P.W.1, P.W.2 and P.W.3 went there and caught hold of these appellants/A.3 and A.4 and tied them in the public street lamp post and on arrival of P.W.3, an intimation was given to the police and P.W.12, Sub Inspector of Police registered FIR and arrested the accused and also recovered M.O.1 handed over by P.W.1, P.W.2 and P.W.3 and thus, I find that these appellants/A.3 and A.4 were caught red handed by the village peoples. The appellants/A.3 and A.4 were caught hold of by the general public and subsequently, an observation mahazar and seizure mahazar as per law were executed by the police witness and hence, the conviction laid by the learned [District Sessions Judge Training] Additional Assistant Sessions Judge, Vellore, for the offence under Section 307 IPC is just and proper and the same does not suffer from any irregularity or illegality warranting interference by this Court at this appellate stage.

9. The presence of the appellants/A.3 and A.4 in the shop of P.W.1 along with weapons is clearly demonstrated by the evidence of P.Ws.1, 2 and 3 and these appellants/A.3 and A.4 were caught red handed; tied in the public street lamp post and handed over to the police by the Village people cannot be brushed aside slightly.

10. On the point of quantum of sentence, the learned counsel for the appellants/A.3 and A.4 was heard.

11. The learned counsel for the appellants/A.3 and A.4 would contend that P.W.1 has not sustained any grievous injury on his vital parts and without any medical evidence, the learned Sessions Judge has awarded maximum punishment against the appellants/A.3 and A.4 and the same is against the principles of law laid down by the Hon'ble Apex Court. The said contention of the learned counsel for the appellants/A.3 and A.4 has been considered.

12 (a). An offence under Section 307 IPC is in essence equal to Section 302 IPC, less death. Thus, to constitute an offence under Section 307 IPC, the evidence must have all the ingredients of offence under Section 302 IPC. But the victim must escape death. In other words, if the victim survives the injuries, it will be a charge for the offence under Section 307 IPC and if he succumbed to injury, it will be a charge under Section 302 IPC and thus, for the charge under Section 307 IPC, the victim survives of the injury and sans death.

12 (b). On the point of quantum of punishment, the seat of the injury; size of the injury on the vital part of the body; type of the weapons used and the manner of using the weapons are the factors, which fall under Section 307 IPC.



12 (c). In the instant case, the seat of the injury and size of the injury is minor in nature and not on the vital part. However, the type of the weapons and the manner of using the weapons as deposed by P.W.1 could certainly amounts to satisfy the ingredients of the offence under Section 307 IPC and hence, the conviction imposed by the learned [District Sessions Judge Training], Additional Assistant Sessions Judge, Vellore, for the offence under Section 307 IPC is hereby confirmed.

13. However, taking note of the incidental factors, such as seat of the injury and size of the injury, I find that P.W.1 had survived the attack and the injury sustained is simple in nature as indicated in the medical evidence of the Doctor and hence, on the facts and circumstances of the case and in view of the evidence of the prosecution witnesses as mentioned in the preceding paragraphs, the sentence of ten years rigorous imprisonment awarded by the learned [District Sessions Judge Training], Additional Assistant Sessions Judge, Vellore, is hereby reduced to five years rigorous imprisonment. However, the fine shall be kept intact.

14. With the above modification, this Criminal Appeal is allowed in part to the extent indicated above.

15. The learned [District Sessions Judge Training], Additional Assistant Sessions Judge, Vellore, is hereby required to issue Non-bailable Warrant to secure the convicted appellants/A.3 and A.4 to undergo the remaining period of sentence in accordance with law.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Jr1

To

- 1.The Judicial Magistrate No-I, Vellore.
- 2.The Chief Judicial Magistrate, Vellore
- 3.The District Sessions Judge Training,
Additional Assistant Sessions Judge,
Vellore, Vellore District.
- 4.The Superintendent
Central Prison, Vellore.



5.The Inspector of Police,
Vellore Taluk Police Station,
Vellore District.

6.The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.38675

Cr1.A.No.228 of 2015

SR(CO)
SB(27/08/2021)