

Bail Slip

The appellant/accused, namely Ravi S/o Muthu was Released on bail as per order of this Court dated 12.01.2009 in MP.NO.1/08 IN CRL A.NO.845/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.845 of 2008

Ravi
S/o.Muthu ... Appellant/Accused

Vs.

State rep. by,
The Inspector of Police,
Perumanallur Police Station,
Coimbatore District,
(Crime No.221 of 2007) ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, against the Judgment and Order of conviction passed in S.C.No.185 of 2008 by order dated 05.12.2008 on the file of the learned Additional District Sessions Judge (Fast Track Court No.IV) Coimbatore at Tiruppur and prays that the same may be set aside.

For Petitioner : Mr.N.Arunkumar

For Respondent : Ms.V.Saratha Devi,
Government Advocate [Crl. Side]

WEB COPY
J U D G M E N T

The appellant has been convicted by Judgement dated 05.12.2008 made in S.C.No.185 of 2008 passed by the learned Additional District Sessions Judge (Fast Track Court No.IV) Coimbatore at Tiruppur for the offence under Section 307 of Indian Penal Code and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- against which the above Criminal Appeal has been filed.

2. In the above case, the prosecution has examined PW1 to PW10 and marked Ex.P1 to Ex.P9 and M.O.1 to M.O.3.

3. The case of the prosecution is that the accused and PW1 are close friends residing in the Santhayapalayam, Perumanallur, Coimbatore District. PW1 used to chat with the wife of the accused daily, which was not to the liking of the appellant and the appellant warned PW1 about the same and asked PW1 not to come to his house. On 16.08.2007, at about 10.45 p.m., PW1 was speaking to appellant's wife for around 1½ hours, at that time, the appellant had returned and questioned about the same and chased him out. Thereafter, during the night at about 02.30 a.m. on 17.08.2007, PW1 had again come to the house of the appellant informing his brother, PW5 and his wife, PW2 that he is proceeding to the appellant's house, the appellant had questioned PW1 about his coming at that point of time again to his house and attacked PW1 uttering "you would be finished off" with "Arruval" which fell on the left hand wrist of PW1 and it was severed. On seeing this, the appellant ran away. PW1's brother and his neighbour Ramesh had taken PW1 to the hospital along with the severed hand. PW4 is the doctor, who had given treatment carrying out surgery, the severed portion of the hand was fixed, Ex.P4 is the Photograph and Ex.P5 is the wound certificate issued by him. PW2, wife of PW1 states about she being besides with her husband in the hospital during the treatment. She also confirms about her husband's attitude of constantly talking with the wife of the appellant. PW5 is the brother of PW1, who on hearing the shout of PW2 had woken up and taken his brother to the Ganga Hospital, Coimbatore. PW6 corroborates the version of PW.5. PW.7, is the witness for the Observation Mahazar. PW.8, speaks about the arrest of the appellant and recovery of the materials on 18.08.2007 at about 06.00 p.m. PW.9 is the Sub-Inspector of Police, who had received the complaint, registered Ex.P7-First Information Report and Ex.P8-Observation Mahazar and Ex.P9 admitted portion of the confession of the appellant. PW.10-Somasundharam, Sub-Inspector of Police, who subsequently taken up the investigation after obtaining the Wound Certificate and filed the charge sheet.

4. PW.4 is the Doctor, who had conducted the surgery fixed the severed left wrist of PW.1 and had issued Ex.P4 photograph and Ex.P5 the wound certificate. He further states that PW.1 was taking treatment for 22 days

from 17.08.2007 to 07.09.2007 as In-patient and about eight hours after the surgery the severed wrist joined and had become active and functional.

5.The learned Government Advocate submits that on the evidence of the case the lower Court had rightly convicted the appellant under Section 307 of the Indian Penal Code and there is no infirmity to be interfered with.

6.On the contrary, the learned counsel for the appellant submits that PW.1 is the aggressor and who had been often disturbing his wife and due to which the peace in the family has been lost, the villagers were going around spreading the message, that the appellant's wife and PW.1 were having illegal relationship, which caused mental agony, despite, the appellant warning PW1 on 16.08.2007 at about 10.30 p.m. and chased him out from the house of the appellant at about 02.30 a.m. PW.1 again came to the appellant's house, which caused sudden provocation. The appellant losing his balance had attacked PW1 and due to which PW1 had sustained injury. Further, submits that PW1 injury has been treated and he is now active and prayed that the offence would not fall under Section 307 of the Indian Penal Code. It is submitted that now the appellant's wife had left him and the appellant has become a vagabond sleeping in the temple and his entire family life is shattered. There is no evidence to show that the injury sustained by PW1 would lead to death and the appellant had the knowledge of the same.

7.Considering the fact that, PW1, who despite ascertaining of the appellant to restrain from talking constantly with the wife of the appellant at horizons, despite the appellant warning PW1 to desist from such acts and on the same day, it is in the late night at about 02.30 p.m, PW1 had came to the house of the appellant, which provoked the appellant to attack PW1. Thereby, the appellant attacked PW1 due to the grave and sudden provocation caused by PW1. Hence, it would be appropriate that, the act of the appellant would fall under Section 335 of the Indian Penal Code and not under Section 307 of the Indian Penal Code. Hence, this Criminal Appeal is to be modified and the sentence imposed for the above period has already undergone.

8.Considering the submission of the learned counsel appearing for the appellant and the materials available on record, this Court feels that the sentence is modified

and in the result, this Criminal Appeal is Partly Allowed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vv2

To

- 1.The Judicial Magistrate No.II,Tiruppur.
- 2.Do thro the Chief Judicial Magistrate ,Coimbatore.
3. The Additional District Sessions Judge
(Fast Track Court No.IV),
Coimbatore at Tiruppur.
- 4.The Superintendent of Central Prison,Coimbatore
- 5.The Superintendent of Police,Coimbatore.
6. The Inspector of Police,
Perumanallur Police Station,
Coimbatore District.
- 7.The District Collector,Coimbatore District.
8. The section officer,
Criminal Section,
High court,Madras
- 9.The Public Prosecutor,
High Court, Madras.

Cr1.A.No.845 of 2008

ASK(02/01/2019)

WEB COPY