

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2015

CORAM :

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.A.No.412 of 2014

1. Mani @ Subramani

2. Kannammal ... Appellant / A1&A2

vs.

State, Rep. by
Inspector of Police,
Town Central Police Station,
Udhagamandalam
Crime No.366/2006

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment of Conviction, dated 28.06.2006 made in S.C.No.43 of 2006 on the file of the learned Sessions Judge of The Nilgiris at Uthagamandalam.

For Appellants : Mr.J.Franklin

For Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

JUDGMENT

The Criminal Appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure, by the appellants / A1 and A2 against the judgment of conviction, dated 28.11.2006 made in S.C.No.43 of 2006 on the file of the Sessions Judge of The Nilgiris at Uthagamandalam.

2.The appellants / A1 and A2 stand convicted and sentenced by the learned Judge thus:-

Accused	Conviction under section	Sentence awarded
A1	Section 302 IPC	Life imprisonment

Accused	Conviction under section	Sentence awarded
	Section 452 IPC	1 year R.I and to pay a fine of Rs.1000/-, in default to undergo six months simple imprisonment
A2	Section 302 r/w.34 IPC	Life imprisonment
	Section 452 IPC	1 year R.I and to pay a fine of Rs.1000/-, in default to undergo six months simple imprisonment

All the sentences were ordered to run concurrently.

3.The case of the prosecution, in nut shell, is as follows:-

[a] A1 is the son of A2. PW1, Pushpa is the mother of deceased Shanthi. PW2, Mayilsamy is an Auto Driver, PW3, Kannan is the father of deceased Shanthi. PW1, PW3 and deceased Shanthi were residing in one portion of the building called Bombay Castle, belonging to A2. PW9, Shakila was residing in another portion of the said Bombay Castle. On the fateful day, 08.04.2006, at about 10.30 a.m., the said Shanthi was sitting in front of her house. The second accused abused her by stating "பிராத்தல் கேசில் ஜெயிலுக்கு போனவ தானே நீ, நீ அங்கு சும்மா இருந்திருப்பியா எவன் கூட போனியோ", for which the deceased Shanthi replied "உன் பேத்தி இப்பதானே வயசுக்கு வந்திருக்கா அவ என்ன பன்றான்னு பாரு". Then, immediately, A1 trespassed into the house of Shanthi and tore her nighty, A2 brought kerosene-can and poured kerosene on Shanthi and A1 set fire on her. When Shanthi was in flame, the accused poured water on her and fled from the scene of crime. PW2, Auto Driver at ATC Auto Stand, on hearing the scream of the deceased, ran towards the place. P.W.1, after completion of work, while returning to her house at about 10.00 a.m., could hear the scream of the deceased nearby her house and at that time, both the accused were found running out from her house. Thereafter, the deceased informed PW1 that A2 had poured kerosene and A1 set fire on her. PW1 and PW2 took her to the hospital and on the way, PW9, Shakila, also accompanied them. PW6, Mr.G.Thenendran, Judicial Magistrate recorded dying declaration from her on 08.04.2006. However, said Shanthi died only on 15.04.2006, nearly 7 days after giving her dying declaration.

[b] Dr.Gowthaman, PW7 examined the victim Shanthi at about 12.45 p.m. on 08.04.2006 and he noted the smell of kerosene emanated from the body of the deceased Shanthi. The Doctor has assessed 80% burn injuries, Ex.P6 is the copy of the Accident Register issued by PW7. PW14, Sub-Inspector of Police recorded the statement of the deceased.

[c] It is seen that the prosecution witnesses, by their statements and evidence have implicated the accused persons in this case and the material documents have also been furnished to that effect.

[d] In order to bring home the guilt of the accused, the prosecution has examined P.Ws.1 to 15, marked Exs.P.1 to 33 and material objects, M.Os.1 to 4.

4. When the accused were questioned u/s.313 Cr.P.C., in respect of the incriminating circumstances appearing against them, based on the evidence adduced by the prosecution, they denied each and every circumstance as contrary to the facts and stated that they have been falsely implicated in the case.

5. Upon consideration of the oral and documentary evidence, the Trial Court convicted and sentenced the accused as stated supra, aggrieved by which, the present appeal has been preferred by the appellants / A1 & A2.

6. Learned counsel for the appellants, though raised many grounds in the appeal, he submits that it is a fit case, restrict to the question of modifying the conviction and sentence alone. In this regard, learned counsel for the appellants drew the attention of this Court to Section 304 Part II IPC and argued that the conviction of the appellants / A1 & A2 under Section 302 IPC was improper.

7. Learned Additional Public Prosecutor appearing for the respondent has not raised any objection, to decide the quantum of sentence, as contended by the learned counsel for the appellants.

8. Learned counsel appearing for the appellants / A1 & A2 argued that as per the prosecution case, there had been a quarrel between the deceased and the second accused, while so, A2 had allegedly pointed out that the deceased had been arrested in a case of prostitution registered under Immoral Traffic (Prevention) Act, 1956. On hearing the words of the second accused, the deceased allegedly said that the grand daughter of

the second accused Kannammal would also commit the very same offence of prostitution and hence, being grand mother / A2 and being the father / A1, the appellants said to have harassed the deceased. According to the learned counsel for the appellants, A1 and A2 would have no motive to commit murder of the deceased, in order to punish them under Section 302 IPC, even as per the prosecution case. As per the evidence of the prosecution witnesses, we are of the view that there could be no personal enmity established against the appellants / A1 & A2, to kill the deceased. Having considered the evidence, we are of the view that the occurrence could have taken place, only on a sudden provocation, since the deceased had raised allegation against the daughter of A1 and the grand daughter of A2, that she might be committing offence of prostitution in future.

9. Learned counsel appearing for the appellants / A1 & A2 further argued that the prosecution case, raising allegation that the appellants / A1 & A2 had poured kerosene and set fire on the deceased cannot be believed and it could have been committing of suicide by the deceased herself, as she had undergone imprisonment, in a case under Immoral Traffic Act and that was pointed out by the appellants herein. Even in case the appellants / A1 & A2 are convicted under Section 304 Part II IPC, for causing death due to sudden provocation, the sentence already undergone for about 9 years could be construed sufficient on the gravity of the offence.

10. Having considered the facts and circumstances, arguments and the evidence available on record, we are of the view that it is a fit case to modify the conviction and sentence, for which there is no tenable objection from the learned Additional Public Prosecutor appearing for the respondent.

11. It is seen that the alleged offence could be an act of culpable homicide not amounting to murder, as per Section 299 IPC and we are of the view that the same would fall under the penal provision of Section 304 Part II IPC and it is also not in dispute that the appellants / A1 and A2 have already undergone each 9 years imprisonment, on account of the conviction and sentence imposed by the trial court.

12. On the proved facts and circumstances, this Court is of the view that the appellants / A1 and A2 are not guilty of the offences punishable under Section 302 IPC, to undergo life imprisonment and as such, the conviction and sentence of life imprisonment are exorbitant and disproportionate.

13. Instead of convicting the appellants / A1 and A2 under Section 302 IPC and sentencing to life imprisonment for the alleged offence, we hold, to meet the ends of justice, to modify

the conviction and sentence, punishable under Section 304 Part II IPC and impose the sentence already undergone, as the sentence undergone is undisputedly about 9 years including the default sentence imposed by the trial court. Accordingly, this Court find it reasonable that it would be suffice to modify the sentence from that of life imprisonment, to one of the period of sentence already undergone by the appellants, as the same is about 9 years each.

In the result, the Criminal Appeal is partly allowed, the conviction by the trial Court under Section 302 IPC is modified under Section 304 Part II IPC and the sentence imposed is modified to that of the period already undergone by each of the appellants / accused, as they have already undergone nearly 9 years imprisonment. The fine amount, if any paid already is ordered to be refunded to the appellants. The bail bond if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Nilgiris at Udagamandalam.
- 2.-Do- Thro The Principal Sessions Judge,
Nilgiris at Udagamandalam.
- 3.The Director General of Police,
Mylapore, Chennai-4.
- 4.The District Collector,
Coimbatore District.
- 5.The Superintendent,
Central Prison,
Coimbatore(For A1)

6.The Superintendent of Central Prison
(For Women) Vellore (For A2).

7. The Inspector of Police,
Town Central Police Station,
Udhagamandalam

8. The Public Prosecutor,
High Court, Madras.

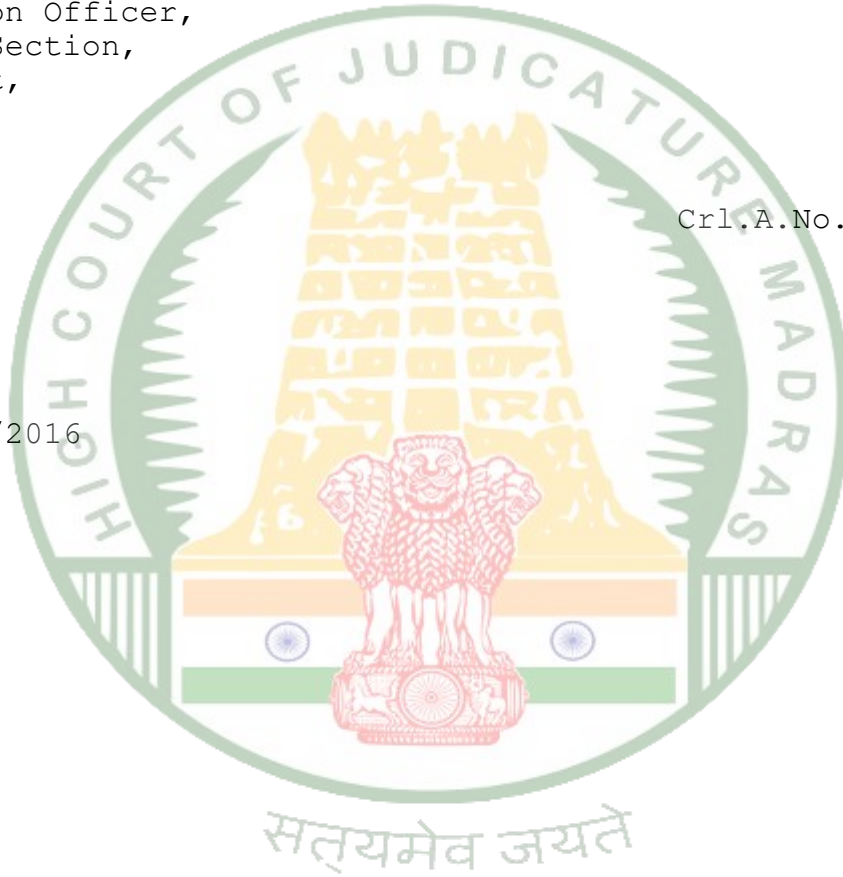
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The Section Officer,
Criminal Section,
High Court,
Madras.

Crl.A.No.412 of 2014

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srg 04/02/2016



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