

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.775 of 2015

AND

CRL.MP.NO.1/2015

Subramanian

.. Appellant/Accused

Vs.

State rep. by
Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District (Crime No.408 of 2013)

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence passed by the Sessions Court / Fast Track Mahila Court, Nagapattinam, dated 10.08.2015 in S.C.No.50 of 2014.

For Appellant : Mr.M.Govindaraju

For Respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

JUDGMENT

Though the petition of the appellant/accused, seeking suspension of sentence in M.P.No.1 of 2015 is listed for disposal, in view of settlement arrived at between parties and on the consent of the learned counsel appearing on both sides, the appeal itself is taken up for disposal.

2. This Criminal Appeal is filed against the judgment dated 10.08.2015 in S.C.No.50 of 2014 on the file of the Sessions Court / Fast Track Mahila Court, Nagapattinam, convicting the appellant/accused for the offence under Section 307 IPC and sentencing him to undergo rigorous imprisonment for four years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months. He was acquitted by the trial Court in respect of the charge under Section 294(b) IPC.

3. The gist of the prosecution case is that the de-facto complainant/P.W.1 (Shanthi), who was living in Nagapattinam, Akkaraipettai, Salt Road, Kamarajar Nagar, fell in love with the accused and married him and out of their wedlock, they have six children. The appellant/accused suspected the conduct of the de-facto complainant and harassed her and hence, she was living in her mother's house at Karaikkal in Chinnoorpettai. On 30.09.2013 at about 2.45 p.m., when the de-facto complainant returned from the meeting of self-aided group and walked on the Salt Road at Nagapattinam along with P.W.5 Vasanthi, the appellant/accused rushed to the place and scolded the de-facto complainant in filthy language and stabbed her with knife on her neck, below the right ear. Hence, for the said act, charges were framed against the appellant/accused for the offences punishable under Sections 294(b) and 307 IPC and based on the charge sheet filed before the trial Court, the case was taken on file in Sessions Case No.50 of 2014 and he was tried for those offences and convicted and sentenced as stated supra.

4. In order to prove their case, during the course of trial, the prosecution has examined seven witnesses, exhibited eleven documents and produced one material object, i.e. blood stained knife.

5. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He did not examine any witness, nor marked any document.

6. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, the trial Court convicted and sentenced the appellant/accused as stated supra. Challenging the same, the accused has filed this appeal.

7. Learned counsel for the appellant/accused submitted that during the pendency of this appeal, the de-facto complainant/P.W.1/Shanthi who is the wife of the appellant/accused and the appellant/accused have entered into a compromise and arrived at an amicable settlement. P.W.1 / Shanthi is present in Court today and she is identified by the learned counsel for the appellant/accused. She has filed an affidavit, dated 27.05.2016, stating that herself and the accused are husband and wife and they have five female children and residing in Uppalalm (Salt) Road, Nagapattinam; that due to difference of opinion, there was quarrel between them; that next month, she has fixed marriage for her elder daughter and hence, her husband's presence is very much necessary; that in view of advise of both the family elders, she has come forward with the affidavit to withdraw her complaint against her husband (appellant/accused) for the sake of the future of their children. She has further stated that it was only a family

dispute between them and they have settled their difference of opinion amicably and have decided to lead the life peacefully. She prayed for recording the compromise. In support of his contentions, learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2011 (10) SCC 765 (Gulab Das Vs. State of M.P.).

8. Heard the submissions of the learned Additional Public Prosecutor appearing for the respondent-Police on the above points and in support of his submissions, he relied on a judgment of the Supreme Court reported in 2011 (13) SCC 311 (Rajendra Harakchand Bhandari Vs. State of Maharashtra).

9. Heard both sides. Pursuant to the above said compromise between the de-facto complainant/P.W.1/Shanthi and the appellant/accused, the de-facto complainant/Shanthi (P.W.1) addressed a letter, dated 07.06.2016 to the respondent/Police stating that considering the future and welfare of their children, she has decided to live with her husband who is in jail. The said request/letter, dated 07.06.2016 of the de-facto complainant is signed by two witnesses, namely Mahalakshmi and M.K.Jeevanandham. The said letter, dated 07.06.2016 is also endorsed by the respondent/Police, which is evident from the request of the police in the form of letter, dated 07.06.2016, signed by the Inspector of Police, Nagapattinam Town Police Station.

10. It has to be noted that the offence under Section 307 IPC is not compoundable under Section 320 Cr.P.C., even though there is settlement between the parties. On this point, both the counsel relied on the above decisions of the Supreme Court. In those decisions, the Supreme Court though held that the offence alleged therein is not compoundable under Section 320 Cr.P.C., took a lenient view by reducing the period of sentence to the one already undergone by the accused therein. In the case on hand, the settlement now arrived at by the parties herein is a sensible step, which will not only benefit them, but also the future of their children, thereby giving a quietus to the dispute between them and that they will rehabilitate and normalise the relationship between them.

11. Hence, since there is an embargo for compounding the offence in this case, taking into consideration the totality of the entire facts and circumstances of the case, as the parties have become cordial due to reconciliation between them and forgot the past incidents and decided to lead a peaceful life taking into account the future of their children and also to avoid unnecessary proceedings against them, this Court takes a lenient view and feels it appropriate to modify the sentence and reduce the period of sentence to the one already undergone by him.

12. Therefore, while upholding the conviction imposed on the appellant/accused under Section 307 IPC by the trial Court, this Court modifies the sentence awarded to him by reducing the period of sentence to the one already undergone by him. With this modification in the sentence alone, the appeal is partly allowed. The appellant/accused shall be set at liberty forthwith, unless he is required in connection with any other case.

cs

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Copy to

1. The Sessions Judge/Fast Track Mahila Court, Nagapattinam.
 2. The Judicial Magistrate No.I, Nagapattinam.
 3. The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District. (Crime No.408 of 2013)
 4. The Superintendent, Central Prison, Cuddalore.
 5. The Public Prosecutor, High Court, Madras.
 6. The District Collector, Nagapattinam District.
 7. The Director General of Police, Chennai-4.
 8. The Section Officer, Crl.Section, High Court, Madras.
- + 1 cc to Mr.M.Govindaraju, Advocate Sr 30983

KR/9/6/16

WEB COPY

Cr1.A.No.775 of 2015