

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.No.296 of 1997
(Without EB)

Maharajan

Appellant/Accused

Vs.

The State, represented by The Inspector of Police,
Kallavi Police Station, Krishnagiri District
Respondent

PRAYER: This Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, against the Judgment of Conviction and Sentence, dated 04.07.1997 made in SC.No.89 of 1994, by the First Additional District Judge, Dharmapuri-cum-Chief Judicial Magistrate at Krishnagiri.

For Appellant : Mr.Velmurugan

For Respondent : Mr.K.Prabakar,APP

JUDGMENT

- 1.This Criminal Appeal has been filed, against the Judgment of Conviction and Sentence, dated 04.07.1997, made in SC.No.89 of 1994, by the First Additional District Judge, Dharmapuri-cum-Chief Judicial Magistrate at Krishnagiri, whereby the Appellant was found guilty for the offence under Section 304(ii) of IPC and convicted and sentenced him to undergo simple imprisonment for five years.
- 2.The case of the prosecution is that on 03.03.1993 at 10.00 a.m, due to previous enmity the appellant/accused, with an intention to cause death of his elder brother, Sivaraj (deceased) throw a stone on the head of his elder brother, due to which, the deceased fell in the well and died. The Respondent Police, after completing investigation, had filed the final report, against the appellant/accused for the offence under Section 302 IPC.
- 3.The case was taken on file in SC.No.89 of 1994, by the First Additional District Judge, Dharmapuri-cum-Chief Judicial Magistrate at Krishnakiri. The accused had denied the charges and sought for trial. In order to bring home the charges

against the accused, the Prosecution had examined PW.1 to PW.13 and also marked Exs.P1 to P16 and MO.1 to MO.9.

4. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.
5. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, had found the Appellant/ accused guilty for the offence under Section 304(ii) of IPC guilty and awarded punishments as stated above, by the impugned judgement of conviction and sentence, which is challenged in this Criminal Appeal.
6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.
7. The learned counsel or the Appellant would submit that the Appellant/Accused and the deceased are own brothers and that except PW.1, who is the wife of the deceased and sister in law of the Appellant/Accused, all the other witnesses had turned hostile. Though there are arguable points in this case, he would submit that during the pendency of the appeal, the parties, who are relatives, have compromised the matter and after the death of his elder brother, the Appellant has been taking care of the entire family of the his deceased brother and that due to intervention of the elders, relatives and well wishers in the family, the parties have also forgotten about the past incident and that PW.1 and her children have also pardoned and that they are all living as a joint family. He would further submit that during the time of investigation and after conviction, the Appellant/Accused has suffered a total incarceration for a period of six months and that it was an unfortunate incident and that the Appellant/Accused did not have any intention to cause the death of his own brother.
8. The learned counsel for the Appellant/Accused would further submit that to show his bona fide, the Appellant/Accused has also transferred his entire share in the joint family properties, measuring about 55 $\frac{3}{4}$ cents in S.Nos.73/1A, 72/4B and 72/3A, Onnakarai (Soolakarai) Village, Uthangarai, Krishnagiri District , in favour of PW.1, who is the wife of the deceased and that the paraties have also entered into a Compromise and that the deceased, Sivaraj, has two daughters, who are also present before this Court and that they have also pardoned their paternal uncle and they have also filed necessary affidavits in support of the same and would pray that compounding may be recorded.

9. On the other hand, the learned Additional Public Prosecutor would submit that the Appellant/Accused was originally charged for the offence under Section 302 of IPC and after trial, the Trial Court had found the Appellant/Accused guilty for the offence under Section 304(ii) of IPC and convicted and sentenced him to undergo Simple Imprisonment for five years. He would further submit that the offence under Section 304(ii) of IPC is non compoundable and thereby, compounding cannot be recorded.
10. At this stage, the learned counsel for the Appellant would submit that though the offence under Section 304(ii) of IPC is not compoundable and though permission cannot be granted to record a compromise between the parties, the Honourable Supreme Court had taken into consideration the compromise entered into between the parties as a relevant circumstance for considering the quantum of sentence. He would further submit that the same view has been taken in 2008 [15] SCC 667 (Ishwar Singh Vs. State of MP).
11. The learned counsel for the Appellant/Accused would further submit that in a recent decision of the Honourable Supreme Court, reported in 2019 SCC Online SC 896 (Manjit Singh Vs. State of Punjab and another), the Honourable Supreme Court, placing reliance on its earlier judgements, while confirming the conviction, had taken the compromise entered into between the parties, as a relevant circumstance and reduced the period of sentence to the period already undergone and that the Appellant/Accused herein is suffering other ailments and would pray that the period of sentence may be modified to one already undergone.
12. The Appellant/Accused was charged for having committed the offence of murder of his own brother during a dispute. Before the Trial Court, except, PW.1, who is the wife of the deceased, all other eye witnesses had turned hostile. The Trial Court had convicted the Appellant/Accused for the offence under Section 304(ii) of IPC and sentenced him to undergo five years Simple Imprisonment.
13. During the pendency of the appeal, the parties have entered into a compromise. The Appellant/Accused has also transferred his entire shares in the property, measuring about 55 $\frac{3}{4}$ cents in S.Nos.73/1A, 72/4B and 72/3A, Onnakarai (Soolakarai) Village, Uthangarai, Krishnagiri District, in favour of PW.1, who is none other than the wife of his deceased brother, by a registered sale deed dated, 02.08.2019, bearing Doc.No.3931 of 2019, on the file of the Sub Registrar, Uthangarai, Krishnagiri District.
14. Today, PW.1 and her two daughters have also present before this Court and they have also filed necessary affidavits, stating that the Appellant/Accused has been taking care of them and that they are living as a joint family. This Court has

enquired PW.1 and her two daughters present before this Court and they have stated that after the death of the deceased, the Appellant has been taking care of them and that the Appellant/Accused had also transferred his entire share in the joint family properties, in favour of PW.1.

15. In (2019) 5 SCC 166 [Shankar and others Vs. State of Maharashtra and another] the Honourable Supreme Court, following the earlier decisions, while convicting the appellant, had reduced the sentence to the period already undergone. It would be relevant to refer to the following paragraphs of the above judgment:-

"10. In *Ishwar Singh v. State of M.P.* [Ishwar Singh v. State of M.P., (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153], this Court held that in a non-compoundable offence the compromise between the parties is a relevant factor to be taken into consideration in considering the quantum of sentence. In paras 13 and 14 of *Ishwar Singh v. State of M.P.*, (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] it was held as under: (SCC p. 670)

"13. In *Jetha Ram v. State of Rajasthan* [Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561], *Murugesan v. Ganapathy Velar* [Murugesan v. Ganapathy Velar, (2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and *Ishwarlal v. State of M.P.* [Ishwarlal v. State of M.P., (2008) 15 SCC 671 : (2009) 3 SCC (Cri) 1156] this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in *Mahesh Chand v. State of Rajasthan* [Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681 : 1991 SCC (Cri) 159] such offence was ordered to be compounded."

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

16. In a recent decision of the Honourable Supreme Court, reported in 2019 SCC Online SC 896 (*Manjit Singh Vs. State of Punjab and another*), it was held as under:-

"6. Section 307 I.P.C. is a non-compoundable offence. No permission can be granted to record the compromise between the parties. In *Ishwar Singh v. State of Madhya Pradesh*, (2008) 15 SCC 667, the Supreme Court of India has held that in a noncompoundable offence the compromise entered into between the parties is indeed a relevant circumstance which the Court may keep in mind for considering the quantum of sentence. In Paras (13) and (14) of the judgment in *Ishwar Singh* (supra) this Court has held as under:

"13. In *Jetha Ram v. State of Rajasthan*, (2006) 9 SCC 255, *Murugesan v. Ganapathy Velar*, (2001) 10 SCC 504 and *Ishwarlal v. State of M.P.*, (2008) 15 SCC 671, this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in *Mahesh Chand v. State of Rajasthan*, 1990 Supp SCC 681 such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

7. As noted earlier, in the present case the appellant-accused, *Manjit Singh*, has been sentenced to undergo imprisonment for five years. The appellant is said to have served seventeen months of imprisonment. Taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the appellant-accused, the sentence of imprisonment imposed upon the appellant under Sections 307 and 324 I.P.C. is reduced from five years/two years to the period already undergone by him. The appellant is ordered to be released forthwith unless his presence is required in any other case. In view of the compromise entered into between the parties, the fine amount of Rs. 50,000/- imposed upon the appellant is set aside. If the said fine amount has already been paid, the same shall be refunded to the appellant-*Manjit Singh*."

17. Though a compromise entered into between the parties cannot be taken into consideration as a circumstance for acquitting the accused for compounding non compoundable offences, in the light of the decisions of the Honourable Supreme Court cited supra, taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the appellant-accused, in this case, this Court, while confirming the conviction imposed on the Appellant/Accused for the offence under Section 304(ii) of IPC, modifies the period of sentence imposed on the Appellants to undergo five years Simple Imprisonment alone to the period already undergone. The Appellant/Accused shall not surrender and affidavits filed on behalf of the parties are taken on record.

18. In the result, this Criminal Appeal is partly allowed to the extent indicated above.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

jrs/srcm

To

1. The First Additional District Judge,
Dharmapuri-cum-Chief Judicial Magistrate at Krishnagiri.

2. The Inspector of Police, Kallavi Police Station,
Krishnagiri District.

3. The Additional Public Prosecutor,
Madras High Court.

4. The Judicial Magistrate
Uthangarai Dharmapuri District

5. -do- The Chief Judicial Magistrate
Dharmapuri

6. The Principal Sessions Judge
Dharmapuri

7.The Judicial Magistrate
Palacode

8.The Public Prosecutor
High Court Madras

9.The District Collector
Dharmapuri District

10.The Superintendent
Central Prison,
Vellore,

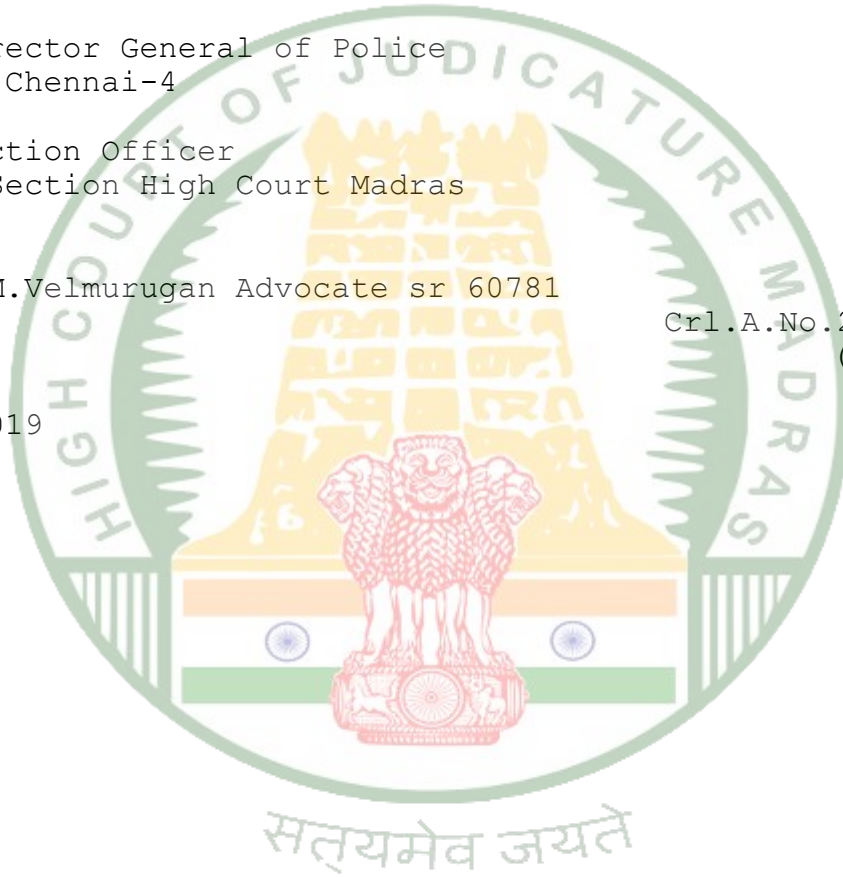
11.The Director General of Police
Mylapore, Chennai-4

12.The Section Officer
Criminal Section High Court Madras

+1 to Mr.M.Velmurugan Advocate sr 60781

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