

BAIL SLIP

Anthonyysamy @ Karathai Anthonyysamy, S/o.Rayar, Male, Aged about 50 years was released on bail vide order made in MP No.1 of 2011 in C.A(MD)No.116/2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.116 of 2011

Anthonyysamy @ Karathai Anthonyysamy ... Appellant/Sole Accused
Vs.

State represented by,
The Inspector of Police,
Samayapuram Police Station,
Thiruchirappalli District.
(Crime No.218 of 2008)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the judgment passed by learned Additional District Judge, Fast Track Court No.I, Tiruchirapalli, in S.C.No.1 of 2009, dated 29.03.2011.

For Appellant : Mr.T.Senthil Kumar

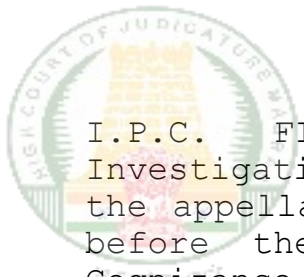
For Respondent : Mrs.S.Bharathi
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted and sentenced by the Court below as follows:-

Accused	Penal Provisions	Punishment
Sole Accused	451 IPC	To undergo seven years simple imprisonment
	304(ii) IPC	To undergo seven years simple imprisonment and to pay a fine of Rs.500/-.

2.The prosecution case is that on 25.05.2008 at about 3.30 p.m., the deceased/Selvaraj in a drunken condition was abusing his son namely., P.W.1. The appellant herein under the impression that the deceased/Selvaraj was referring to him took M.O.3/Aruval and hacked the deceased on the back side of his neck. Selvaraj died on the spot. P.W.1, the son of the deceased lodged Ex.P.1/complaint before Samayapuram police station. The complaint was received by P.W.10/Sub Inspector of Police and registered as FIR/Ex.P.9 in Crime No.218 of 2008 for the offences under Sections 302 and 506(ii) of



I.P.C. FIR was registered on the same day at about 04.15 p.m. Investigation was taken up and final report came to be filed against the appellant for the offence under Sections 450 and 302 of I.P.C. before the learned Judicial Magistrate No.III, Trichirappalli. Cognizance of the offence was taken and committed to Sessions Court in P.R.C.No.29 of 2010. The case was made over to the learned Additional District Court, Fast Track Court No.I, Tiruchirappalli, in S.C.No.1 of 2009. Charges were framed under Sections 450 and 302 of I.P.C. The appellant pleaded not guilty and claimed to be tried.

3.The prosecution examined as many as 11 witnesses and marked Exs.1 to 15. M.O.1 to M.O.6 were also marked. On the side of the accused no evidence was adduced.

4.The learned Trial Judge by the impugned judgment found the appellant guilty of the offences under Sections 451 and 304(ii) of I.P.C. and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

5.P.W.1 is none other than the son of the deceased. He had categorically stated that it was the appellant, who had hacked his father with M.O.3/Aruval. It is seen that the appellant surrendered before the police even before the complaint was lodged. The testimony of P.W.1 inspires the confidence of this Court. The prosecution established the involvement of the appellant beyond reasonable doubt. But then, there are mitigating circumstances. The occurrence took place some 11 years ago. The appellant is a milk vendor and his entire family is depending on him. The deceased was drunk at the relevant time. The postmortem certificate/Ex.P.7 clearly mentions the presence of alcohol in the stomach of the deceased. The appellant had acted under the erroneous impression that the deceased was abusing him.

6.The learned counsel for the appellant submitted that the Court below could not have sentenced the appellant to seven years for the offence under Section 451 of I.P.C. The said provision provides for awarding imprisonment for a term which may extend to two years. Only if the offence was intended to be committed is theft, the term of imprisonment may be extended to seven years. Therefore, I am of the view that the Court below erred in awarding the sentence of seven years for the offence under Section 451 of I.P.C. Therefore, even while sustaining the conviction for the offence under Section 451 of I.P.C., the sentence of imprisonment is reduced to two years.

7.The learned counsel for the appellant submitted that having regard to the evidence on record, he would not challenge the finding of guilt in respect of the offence under Section 304(ii) of I.P.C. He would only plead for substantial reduction by taking note of the



mitigating circumstances set out above. Therefore, the sentence of imprisonment imposed on the appellant for the offence under Section 304(ii) of I.P.C. is reduced from seven years rigorous imprisonment to three years rigorous imprisonment. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C. The sentence under Section 451 of I.P.C. and the one under Section 304(ii) of I.P.C. will run concurrently. This criminal appeal is partly allowed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Additional District Judge,
Fast Track Court No.I,
Tiruchirapalli.
- 2.The Inspector of Police,
Samayapuram Police Station,
Thiruchirappalli District.
- 3.The Judicial Magistrate,
Trichy.
- 4.The Superintendent,
Central Prison, Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-78930[F] dated
31/07/2019)

CrI.A. (MD)No.116 of 2011

31.07.2019

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