WEB COPY

Bail Slip
The Appellant/Accused namely viz., Parthiban, S/o.Velsamy, was released on bail as per order of this Court dated 22.02.2019 made in Crl MP(MD)No.1076 of 2019 in Crl.A.(MD)No.245 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 08.08.2019
CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A.(MD)No.245 of 2012

Parthiban : Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli District.
(Crime No.85 of 2010) : Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in S.C.No.380 of 2010, dated 15.11.2012 on the file of the Mahila Court, Tirunelveli.

For Appellant : Mr.R.Ramachandran

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal is directed against the judgment made in S.C.No.380 of 2010, dated 15.11.2012 on the file of the Mahila Court, Tirunelveli.

2.The case of the prosecution is that on 18.02.2010, the accused, who was working as Assistant Manager in the Anubam Finance India Limited demanded due amount from PW6 towards purchase of auto by him and he has also used filthily language against the deceased Sumathi, who is the wife of PW6 and due to which, the deceased consumed poison and subsequently, she died in the hospital. The Inspector of Police attached to Tirunelveli Town Police Station has filed a final report under Section 306 IPC examining the witnesses.

https://hcservices.ecourts.gov.in/hcservices/

3.In the trial court, 17 witnesses were examined and 10

WEB COPY

Exhibits and 1 material object were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the appellant/accused for the offence under Section 306 IPC and sentenced him to undergo Rigorous Imprisonment for a period of seven years and also imposed a fine of Rs.10,000/-, in default to undergo Rigorous Imprisonment for a period of six months. Aggrieved by the judgment passed by the trial court, the appellant/accused is before this court.

4.The learned counsel appearing for the appellant/accused submitted that since the appellant was working as Assistant Manger in the Anubam Finance Indian Company Limited and PW6 has availed finance to purchase auto and he has failed to pass some dues and the accused has demanded the dues and out of it, the prosecution has created to make out a case under Section 306 IPC and in this case, there must be abetment as per Section 107 Cr.P.C, but here there is no abetment by the appellant to cause death of the deceased and the deceased is the wife of PW6 and in so far as 306 IPC is concerned, there must be mens rea, but here the mens rea has not been proved in this case and the accused only demanding to pay the dues, but as many as contradiction have been elicited during the course of cross examination in the witnesses and it has been carried out to the Investigating Officer and in this case, each witness has deposed in their own way before the court, but those matters have not earlier stated during the course of investigation and the trial court has travelled beyond the scope of the evidence. In view of the above circumstances, the judgment of the trial court has to be set aside and the appeal has to be allowed.

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offence, convicted the appellant and passed proper sentence, which do not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal appeal may be dismissed.

6.Heard both sides and perused the materials available on record.

7.It is mainly argued on the side of the appellant/accused that the appellant and the de-facto complainant as well as the legal heirs of the deceased (daughter of the victim) entered into a compromise in the presence of the elders of the village and the defacto complainant (daughter of the victim) and her legal heirs had agreed to receive the compensation amount that may be given and they have no objection to reduce the sentence and released

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the appellant in this case.

8.Further, the learned counsel appearing for the appellant/accused submitted that the decision reported in *(2007)2 MLJ (Crl) 70 (Raju and another Vs. Inspector of Police, New Hope Police Station)*. In that case, it has been held as follows:-

> *"It is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of 14 months and there is no allegation that he assaulted the deceased."*

9.In AIR 2009 SC 675 (Ishwar Singh Vs. State of Madhaya Pradesh), it has been held as follows:-

> *"13.Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.*
>
> *14.In Jetha Ram Vs. State of Rajasthan, (2006)9 SCC 255, Mrugesan & Ors. V. Ganapathy Velar, (2001)10 SCC 504 and Ishwarlal V. State of M.P., JT 1988(3) SC 366(1), this Court, while taking into account the fact 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, AIR 1988 SC 2111, such offence was ordered to be compounded.*
>
> *15.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."*

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

10.Further, in the judgment reported in **2012 CRL.LJ.667** (Culab Das and others Vs. State of M.P), the Hon'ble Apex Court as follows:-

> *8.Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant nos. 2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs.300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. More so, the appellants have already served substantial part of the sentence awarded to them.*

11.Keeping in mind the above citations and the settlement arrived at between the parties as well as taking into account for determining the quantum of sentence and the accused served substantive part of sentence, it is held that the sentence imposed on the appellant is reduced the sentence to the period already undergone.

12.In the result, this Criminal Appeal is **partly allowed** and punishment imposed on the appellant/accused under Section 307 IPC is reduced the sentence to the period already undergone. The appellant is directed to pay a total compensation of **Rs.1,20,000/-** to the legal heirs of the deceased (each Rs.40,000/-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

to the legal heirs of the deceased) namely G.Sundaraj, Glory and Benjamin).

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

er

To,

1.The Mahila Court,
Tirunelveli.

2.The Inspector of Police
Tirunelveli Town Police Station, Tirunelveli

3.The Judicial Magistrate IV, Tirunelveli

4.The Superintendent , Central Prison
Palayamkottai

5.The Superintendent of Police
Tirunelveli

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

7.The Section Officer,
Criminal Section
Madurai Bench of Madras High Court,
Madurai-2 copies

+1 CC to M/s.V.KARUPPASAMY, Advocate (SR-13870[I] dated 22/08/2019)

Judgement made in
Crl.A.(MD)No.245 of 2012
08.08.2019

KM/(13.12.2019) 5P 10C

https://hcservices.ecourts.gov.in/hcservices/