



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.25 of 2012

Radhakrishnan

... Appellant/Sole Accused

Vs

State through,
The Inspector of Police,
Keelarajakularaman Police Station,
Virudhunagar District.
(In Crime No.263 of 2009)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records connected with Judgment dated 30.10.2010 in S.C.No.204 of 2009 on the file of the Principal Sessions Judge, Virudhunagar at Srivilliputhur and set aside the same and acquit the appellant/sole accused.

For Appellant : Mr.R.Alagumani

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

JUDGMENT

The appellant was convicted for the offence under Section 304 (i) of IPC and sentenced to seven years rigorous imprisonment and also to pay a fine amount of Rs.2000/-.

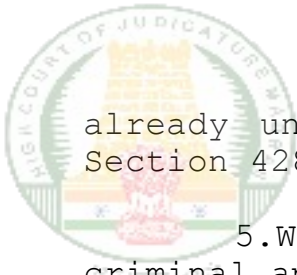
2.The case of the prosecution is that on 23.08.2009 at about 01.00 pm., the appellant went to the house of his father Balakrishnan and demanded a sum of Rs.2,000/- for arranging a driving license for him. Since his father refused, there arose a quarrel between the two. The appellant is the son born through the first wife of Balakrishnan. The appellant's mother died long time back. Thereafter, Bala Krishnan got married to one Lakshmi. Lakshmi also died. Thereafter, the appellant's father got married to P.W.1-Ariyanatchiar. The appellant is said to have abused his father by referring to his marital status and assaulted him and kicked him. His father fell down and suffered a head injury and



died due to haemorrhage. In this regard, P.W.1-third wife of the Bala Krishnan, lodged Ex.P1-Complaint before the Keelarajakularaman Police Station. Crime No.263 of 2009 was registered (Ex.P10) for the offence under Sections 302 of IPC. Investigation was taken up and final report came to be filed before the Judicial Magistrate, Rajapalayam for the offence under Section 302 of IPC. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.38 of 2009 and the case was taken up for trial in S.C.No.204 of 2009 on the file of the Principal Sessions Judge, Virudhunagar District, Srivilliputhur. Charge under Section 302 of IPC was framed. The appellant pleaded not guilty to the charge and claimed to be tried. The prosecution examined 14 witnesses and marked Ex.P1 to Ex.P16. M.O.1 to M.O.4 were also marked. The learned trial Judge came to the conclusion that while the charge of murder was not made out, the appellant was guilty of the offence punishable under Section 304(i) of IPC. He was sentenced to seven years rigorous imprisonment and also levied with fine of Rs.2,000/-. Challenging the same, this appeal came to be filed.

3.When the appeal was taken up for hearing, the learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the finding of guilt. However, he has pleaded for leniency in the matter of sentence. I am of the view that by examining the eye witnesses P.W.1-third wife of Balakrishnan, P.W.2-Maternal Uncle of the deceased and P.W.3-Son born through P.W.1, the prosecution had established beyond reasonable doubt the involvement of the appellant. That is why, the learned counsel appearing for the appellant rightly did not contend that the appellant should be acquitted. The appellant's counsel would point out that the occurrence took place some ten years ago. The appellant did not use any weapon. The appellant is the son born through the first wife. Therefore, the appellant probably did not come to terms with the fact that the father, even at the age of 60, would contract third marriage. The appellant did not demand any money for consuming liquor. He only wanted to arrange for a driving license and that is why, he sought financial assistance from his father. Since the father refused to extend him any financial assistance, the appellant out of sudden provocation had attacked his father with bare hands. This Court can understand the mental condition of the appellant. That is why the Court below also rightly acquitted the appellant of the offence under Section 302 of IPC but found him guilty for the lesser offence under Sections 304 (i) of IPC.

4.Having regard to the mitigating circumstances, particularly, the fact that the appellant did not have any other bad antecedents and that he has not come under adverse notice subsequently, the interest of justice will be served by reducing the sentence of imprisonment from seven years rigorous imprisonment to three years rigorous imprisonment. The period of imprisonment



already undergone by the appellant shall be set off in terms of Section 428 of Cr.P.C.

5. With this modification in the matter of sentence, this criminal appeal is partly allowed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Sessions Judge, Virudhuangar,
Srivilliputhur.

2. The Superintendent, central Prison, Madurai.

3. The Inspector of Police,
Keelarajakularaman Police Station,
Virudhunagar District.

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

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-79549[F] dated 02/08/2019)

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02.08.2019

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