

Bail Slip

The Appellant/Accused Viz., Thangamani, was already granted bail vide order of this Court dated 14.03.2012 and made in MP(MD). No.3/2011 in Crl.A. (MD) .No.371/2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A (MD)No.371 of 2011

Thangamani

... Appellant

Vs

State through
Inspector of Police,
Usilampatti Taluk Police Station,
Usilampatti, Madurai District,
Crime No.218 of 2009

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records of learned Additional Sessions Judge, Fast Track Court No.1, Madurai in S.C.No.349 of 2009, dated 30.03.2011 and to set aside the conviction and sentence order dated 30.03.2011 by acquitting the appellant herein.

For Appellant : Mr.G.Sundaram

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

JUDGMENT

The appellant was convicted for the offence under Section 304 (ii) of IPC and sentenced to seven years rigorous imprisonment, vide Judgment dated 30.03.2011 in S.C.No.349 of 2009 on the file of the Additional Sessions Judge/Fast Track Court No.1, Madurai.

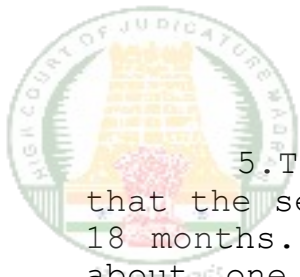
2.The prosecution case is that on 09.07.2009, at about 1.00 p.m., the appellant was having a flirtations conversation with P.W.1 Pothumani at her house at Poothipuram West Colony, Usilampatti. At that time, her father-in-law namely Periya Mayan @ Perumal came and strongly objected to the words uttered by the appellant and asked him to get out. Angered by the same, the appellant is said to have



hit Periya Mayan @ Perumal with his own walking stick on his head. Periya Mayan @ Perumal suffered head injury and was rushed to the Usilampatty Government Hospital. Since his condition was serious, he was referred to Madurai Rajaji Hospital. The statement of Periya Mayan @ Perumal was recorded by the Usilampatti Police vide Ex.P1 and based on the same, Crime No.218 of 2009 was registered for the offences under Sections 341, 323 and 506(i) of IPC on the same day at about 1.45 p.m. Subsequently, the said Periya Mayan @ Perumal died on 22.07.2009. Therefore, FIR was altered and final report came to be filed against the appellant for the offences under Sections 341 and 302 of IPC. The Judicial Magistrate No.1, Usilampatti, took cognizance of the offences and committed the case to the Sessions Court in P.R.C.No.31 of 2009. The case was made over to the Additional Sessions Judge/Fast Track Court No.1, Madurai, in S.C.No.349 of 2009. Charges were framed against the appellant under Sections 341 and 302 of IPC. The appellant denied the charges and claimed to be tried. The prosecution examined 19 witnesses and marked Ex.P1 to Ex.P12. M.O.1 to M.O.3 were also marked. P.W.1 is the daughter-in-law of the deceased Periya Mayan @ Perumal. She had deposed that when the appellant was conversing with her, her father-in-law came to the spot and objected to the appellant talking to her. She had clearly stated that the appellant hit her father-in-law with M.O.3-Bamboo Stick on his head. Of-course, Periya Mayan @ Perumal did not die immediately. He died some 13 days later.

3.The learned counsel appearing for the appellant also drew my attention to the fact that Periya Mayan @ Perumal had already undergone two surgeries. He was aged about 75 years old. It appears that the accused gave only a single blow on the head of Periya Mayan @ Perumal. As rightly pointed out by the learned counsel appearing for the appellant, the appellant would not have intended to cause the death of Periya Mayan @ Perumal. He was only having a chat with P.W.1. Since it was objected by the deceased, out of sudden provocation, the appellant had hit the deceased on his head with M.O.3-Bamboo stick. But then, the question that arises for consideration is whether the appellant deserves to be fastened with guilt under Section 304 (ii) of IPC.

4.I am of the view that in the facts and circumstances of the case, the offence under Section 325 of IPC is rather attracted. In fact, the deceased was having a walking stick and the same was seized by the appellant to attack him. At this stage, the learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the conviction of the appellant under Section 325 of IPC. The appellant's counsel only submitted that he would only plead for modification in the matter of punishment. The occurrence had taken place some 10 years ago. The appellant is eking out his livelihood as a load man and he is having two children.



5.Taking note of these mitigating aspects, I am of the view that the sentence of imprisonment can be reduced from seven years to 18 months. The appellant appears to have been spent in prison for about one year. The period of incarceration undergone by the appellant shall be set off in terms of Section 428 of Cr.P.C. With this modification, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Additional Sessions Judge,
Fast Track Court No.1, Madurai.
- 2.The Principal Sessions Judge, Madurai.
- 3.The Inspector of Police, Usilampatti Taluk Police Station,
Usilampatti, Madurai District.
- 4.The Superintendent, Central Prison, Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section officer (2 Copies)
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.SUNDARAM, Advocate (SR-78964[F] dated 31/07/2019)

Crl.A(MD)No.371 of 2011
31.07.2019

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