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Bail Slip

Irulayee, W/o. Packiyam, aged about 45 years was released on bail vide the order of this Court dated 6.4.2009 made in MP.(MD) No.1/2020 IN Crl.A(MD)No.115/2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.115 of 2010

Irulayee ... Appellant / 1st Accused

Vs.

The State Rep. by
The Inspector of Police,
Palayanoor Police Station,
Sivagangai District. ... Respondent/ Complainant
(Crime No.77 of 2004)

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to set aside the judgment and conviction dated 19.02.2010 by the file learned District and Sessions Judge, Sivagangai in S.C.No.140 of 2007 and acquit the appellant.

For Appellant : Mr.P.Pethu Rajesh
For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

JUDGMENT

The appellant was convicted for the offence under Sections 304(ii) and 201 of I.P.C. and sentenced to undergo five years rigorous imprisonment and three years rigorous imprisonment respectively vide judgment dated 19.02.2010 in S.C.No.140 of 2007, on the file of the learned Sessions Court, Sivagangai. Questioning the same, this criminal appeal has been filed.

2.The learned counsel appearing for the appellant submitted that having regard to the evidence on record, he would not challenge the finding of guilt and that he would be satisfied if the sentence imposed on the appellant is modified and reduced to the period already undergone.

3.The case of the prosecution is that the appellant is the wife of the deceased/Packiyam. According to the prosecution, on 29.11.2004 during midnight hours, the deceased suspected the fidelity of the appellant and using abusive and filthy language came to attack the appellant with M.O.1/Aruval. The appellant angered by the aggression exhibited by the deceased, snatched the Aruval from his hand and hit him with the same weapon. The deceased was grievously injured and died on the spot. In order to cover up the crime, the appellant and her daughter along with another minor daughter by name Sumathi removed the body of the deceased and buried the same in the backyard of the house. Later they removed some body parts such as skull bones and put the same in a gunny bag and threw

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it in a nearby pond. After about 1 ½ months, the appellant made an extra-judicial confession to P.W.1/VAO. Based on Ex.P.1/extra-judicial confession, P.W.1/VAO lodged a complaint/Ex.P.4 before Palayanoor Police Station. On that basis, Crime No.77 of 2004 was registered (Ex.P.18) for the offence under Sections 302 and 201 of I.P.C. Since in this case the body had been dismembered, vide Ex.P.19 superimposition was made. DNA samples of the daughters were also taken. Finally, it was conclusively established that the parts of the dead body belonged to none other than the deceased/Packiyam, the husband of the appellant herein.

4. Final report was filed. Since the case was exclusively triable by the Sessions Court, the case was committed to Sessions Court in P.R.C.No.32 of 2007 and it was taken on file in S.C.No.140 of 2007, by the learned Sessions Judge, Sivagangai. Since one accused was a juvenile, the case was split up as far as she was concerned and referred to Juvenile Justice Board. It is submitted that the proceedings ended in her favour. In S.C.No.140 of 2007, the appellant and her elder daughter faced the trial. When charges were framed under Sections 302 and 201 of I.P.C., both of them pleaded not guilty and claimed to be tried.

5.The prosecution examined as many as 13 witnesses and marked Exs.1 to 34. M.O.1 to M.O.3 were also marked. On the side of the accused no evidence was adduced.

6.The learned Trial Judge after a detailed consideration of the evidence on record found the accused guilty of the offence under Section 304(ii) of I.P.C. and acquitted the second accused/Kadambavalli and convicted the appellant/Irulayee for the offence under Section 304(ii) of I.P.C. and sentenced her as mentioned above. Questioning the same, this criminal appeal has been filed.

7.I am of the view that the prosecution had convincingly and carefully established the charges against the appellant beyond any reasonable doubt. It is not as if the case of the prosecution rests only on extra-judicial confession made by the appellant. P.W.1 is the Village Administrative Officer before whom the extra-judicial confession was made. Of course interestingly in this case P.W.1 turned hostile. As rightly pointed out by the learned Government Advocate (Crl. Side) based on Ex.P.1, P.W.1 had given Ex.P.2/complaint. Thereafter, the appellant was taken to custody and following the confession made by her, the dismembered parts of the body were recovered. In this case the recovery was established beyond reasonable doubt. Since the appellant's counsel himself submitted that he is not challenging the conviction, I refrain from discussing the case elaborately. But then, as rightly contended by the appellant's counsel that even the case of the prosecution is that the deceased came to attack the appellant with M.O.1/Aruval. It is also seen from the evidence that the deceased suspected the fidelity of the appellant as well as the daughters. P.W.3 is none

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other than the brother of the deceased. He deposed in the cross examination that the deceased hacked his own son-in-law, as a result of which, he died. Therefore, when the deceased armed with M.O.1/Aruval with aggressive intent came towards the appellant, the appellant justifiably snatched the same from the hand of the deceased and hacked him and saved herself. But then, the appellant ought to have informed the respondent police immediately after the occurrence. In this case, even though the occurrence had taken place on 29.11.2004, for almost 1 ½ months, the appellant did not give any information to the police that she had screened the commission of crime by burying the body of the deceased in the backyard of the house. Therefore, I am of the view that the Court below rightly found the accused guilty of the offence under Section 304(ii) of I.P.C.

8.The deceased was working as a mason. The appellant belongs to an economically poor category. She appears to be a victim of tragic circumstances. Her son-in-law appears to have met with death at the hands of her own husband. The appellant was only taking care of the widowed daughter. The appellant was in prison for about three months during investigation and for about few moths after the conviction. The appellant is not having any other case to her credit. The appellant is a lady, aged about 60 years. Taking note of all these mitigating circumstances, I am of the view that even while confirming the conviction imposed on the appellant, the sentence imposed on her can be modified and reduced to the period already undergone. With this modification in the matter of sentence, the criminal appeal is partly allowed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1. THE DISTRICT AND SESSIONS JUDGE, SIVAGANGAI
2. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, SIVAGANGAI
3. THE JUDICIAL MAGISTRATE, MANAMADURAI
4. THE CHIEF JUDICIAL MAGISTRATE,SIVAGANGAI
5. THE INSPECTOR OF POLICE
   PALAYANOOR POLICE STATION, SIVAGANGAI DISTRICT,
6. THE SUPERINTENDENT,CENTRAL PRISON, TRICHY
7. THE ADDITIONAL PUBLIC PROSECUTOR,
   MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-75314[F] dated 15/07/2019

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SMA/22/01/2020/3P/9C