



Bail Slip

Mr.M.Mohan S/o.P.Manickam aged 51 years was released on bail vide order dated 09.03.2009 in MP(MD)No.1/2010 in Crl.A.(MD)No.81 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.81 of 2010

and

Crl.R.C.(MD)No.319 of 2010

Crl.A.(MD)No.81 of 2010:

M.Mohan

... Appellant/Accused

Vs.

State through
Inspector of Police,
CBCID Madurai City,
Karimedu Police Station.
(Crime No.261 of 1996

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records from the Lower Court and set aside the judgment of the Lower Court passed by the learned Special Court Sessions Judge, (Mahila Court), Madurai in S.C.No.405 of 2007, dated 27.01.2010 by allowing this appeal.

For Appellant : Mr.Balakrishnan
Legal Aid Counsel

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

Crl.R.C.(MD)No.319 of 2010:

V.Gowri

... Petitioner/PW3

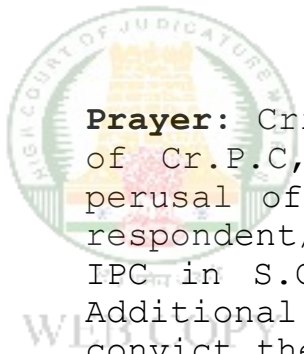
Vs.

1.M.Mohan

...1st Respondent/Accused

2.The Inspector of Police,
CBCID, Madurai City,
Karimedu Police Station,
Madurai.

...2nd Respondent/Complainant



Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records of the Court below and on perusal of the record set aside the judgment of acquittal of the respondent/accused for the offence charged under Section 304 of IPC in S.C.No.405 of 2007, dated 27.01.2010 on the file of the Additional District Sessions Judge (Mahila Court), Madurai and convict the respondent/accused from the above case.

For Petitioner : Mr.Balasubramanian

For Respondents : Mr.Balakrishnan
Legal Aid Counsel for R1

: Mr.A.Robinson
Govt. Advocate (Crl. Side) for R2

C O M M O N J U D G M E N T

The appellant/Mohan was convicted for the offences under Section 498(A) of I.P.C. and sentenced to undergo three years rigorous imprisonment and levied with fine of Rs.500/-, vide judgment dated 27.01.2010 in S.C.No.405 of 2007, on the file of the learned Sessions Judge, Mahila Court, Madurai and he was however acquitted in respect of the charge under Section 304 of I.P.C. Challenging his conviction and sentence, the accused had filed Crl.A.(MD)No.81 of 2010. Challenging the acquittal in respect of the offence under Section 304 of I.P.C., P.W.3/Gowri had filed Crl.R.C.No.319 of 2010. Since both the criminal revision case as well as the appeal arise out the same judgment, they are heard together and disposed of by a common judgment.

2.The case of the prosecution in brief is this:-

2(i).The appellant namely., Mohan got married to the deceased/Usha in the year 1987 and two children namely., Gowri and Rahavanthiran was born. Thiru.Mohan was addicted to the habit of drinking and treated his wife cruelly. On 03.03.1996 at about 03.00 p.m., came home drunk and picked up quarrel with his wife. During the said quarrel, Usha caught fire and died on 11.03.1996.

2(ii).After the occurrence, Usha was admitted to Madurai Rajaji Government Hospital at about 05.05 p.m. Intimation to the police to the police was sent vide Ex.P.1. Since the victim was very much alive, no FIR was registered. However, her statement was recorded by the learned Judicial Magistrate No.I, Madurai, on 03.03.1996 at about 11.30 p.m. In her statement, Usha specifically stated that she caught fire only accidentally and her husband/Mohan tried to save her by covering her with the bedsheet. Usha died on 11.03.1996. Thereafter Ex.P.6/FIR was registered in Crime No.261 of 1996, on the file of G2, Karimedu Police Station



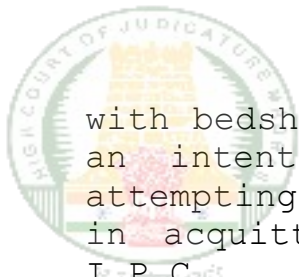
under Section 174 of Cr.P.C. It appears that at the instance of the father of the deceased, Investigation was transferred to CBCID. Investigation was continued and final report came to be laid against the appellant under Sections 304 and 498(A) of I.P.C., before the learned Judicial Magistrate No.V, Madurai. Cognizance of the offences was taken and the case was committed to Sessions Court in P.R.C.No.39 of 2007. The case was made over to the file of the learned Mahila Court, Madurai, for trial in S.C.No.405 of 2007. Charges were framed against the appellant under both these provisions namely., Sections 304 as well as 498 (A) of I.P.C. The accused pleaded not guilty to the charges and claimed to be tried.

3.The prosecution examined as many as 13 witnesses and marked Exs.1 to 11. On the side of the accused, four witnesses were examined and Ex.D.1 to Ex.D.5 were marked.

4.The learned Trial Judge by the impugned judgment dated 27.01.2010 acquitted the accused of the offence under Section 304 of I.P.C. but found him guilty of the offence under Section 498(A) of I.P.C. and sentenced to three years rigorous imprisonment.

5.Now the question that arises for consideration is whether the conviction for the offence under Section 498(A) of I.P.C. is to be confirmed or whether the appellant should be additionally found guilty for the offence under Section 304 of I.P.C.

6.The prosecution examined the parents and brother as well as the children of the deceased. It is true that the daughter of the deceased namely., Gowri, who is the petitioner in the criminal revision case had deposed against the appellant. However, as rightly pointed out by the learned Legal Aid Counsel appearing for the appellant, the son had deposed in favour of the accused/appellant. During the occurrence, apart from the accused and the deceased only the children were present. One speaks in favour of the accused while the other speaks against the accused. It is not in dispute that after the occurrence both the children were under the care and custody of the grandparents. The trial took place in the year 2006 i.e., after about 12 years. Therefore, the anger of the daughter against the father can very well be understood. This Court cannot rule out the possibility of her having been tutored by grandparents. Instead, this Court can as well go by the dying declaration given by the deceased herself. P.W.7/Dr.Ramanathan had issued a certificate stating that Usha was in a fit state of mind to give dying declaration. The dying declaration of Usha was recorded by the learned Judicial Magistrate. She had categorically stated that during the fight between her and her husband, she caught fire accidentally. She had clearly stated that the accused tried to save her by covering her



with bedsheet and that he also suffered burns. If the accused had an intention to cause the death of Usha, he would not be attempting to save her. Therefore, the Court below was justified in acquitting the accused of the charge under Section 304 of I.P.C. A reading of the dying declaration namely., Ex.P.3 can lead only to the said conclusion and to no other conclusion. I therefore confirm the acquittal of the appellant for the offence under Section 304 of I.P.C. and the Crl.R.C.(MD)No.319 of 2010 stands dismissed.

7.Now the question that arises for consideration is as to whether the appellant deserves to be acquitted in respect of Section 498(A) of I.P.C. Exs.P.3 and 8, the dying declaration of Usha, which forms the basis for acquittal of the accused will also form the basis for sustaining his conviction under Section 498(A) of I.P.C. In her dying declaration, the deceased had clearly stated that the appellant came home drunk and beat her up and quarreled with her. It was, he who poured Kerosene and set fire to the clothes. P.W.1 and P.W.2 are the parents of the deceased. They had stated that the appellant was addicted to drinking and he was incorrigible. They had further stated that the accused would not even buy proper provisions for the family. It is further seen that they had earlier given a complaint against the accused and that instead of registering an FIR only CSR was issued by P.W.8. P.W.3, the daughter had also stated as far as she could remember her father used to come home drunk daily and beat up her mother. On the occurrence date, the accused had sent out the children and locked the door. P.W.8 had also deposed that when he was working as Sub Inspector of Police on 25.01.1996, the deceased/Usha appeared before him and lodged a complaint stating that she is being physically tortured and that accused is not even giving anything for buying provisions and that he is not also funding the education of children. P.W.8 has issued C.S.R.No.17 of 1996. Since it is a matrimonial dispute and since the accused gave an assurance that he would give up drinking, after warning the accused, he had closed the complaint. From a careful reading of the evidence on record, one can come to the conclusion that the accused/appellant namely., Mohan had subjected the deceased/Usha to cruelty. It can be further seen that it was a case of willful conduct on his part. The Court below was justified in coming to the conclusion that the acts attributed to the appellant would fall squarely within the meaning of Section 498(A) of I.P.C. I see no ground to interfere with the judgment of the Court below convicting the appellant/Mohan for the offence under Section 498 (A) of I.P.C.

8.Now comes the question of sentence. The accused is now aged about 61 years. The occurrence had taken place some 23 years ago. The impugned judgment itself was passed on 27.01.2010.



Therefore, I am of the view that interest of justice will be served by reducing the sentence of imprisonment from 3 years rigorous imprisonment to 1 ½ years rigorous imprisonment. With this modification in the matter of sentence , this criminal appeal is partly allowed.

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Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

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To:

- 1.The Special Court Sessions Judge,
Mahila Court, Madurai.
- 2.The Inspector of Police,
CBCID, Madurai City,
Karimedu Police Station,
Madurai.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

copy to
The Section officer-2 copies
Criminal Record Section
Madurai Bench of Madras High Court,
Madurai

+2 CC to M/s.M.BALAKRISHNAN, Advocate (SR-82037,82369[F] dated
16/08/2019)

Cr1.A. (MD)No.81 of 2010

and

Cr1.R.C. (MD)No.319 of 2010

16.08.2019

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