



Bail Slip

The Appellant/ Sole Accused M.Subbulakshmi, W/o Marichamy was directed to be released on Bail order of this Court dated 17/06/2019 and made in Crl MP.No.5260 of 2019 in Crl.A 225 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2022**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl. A(MD)No.225 of 2019

M.Subbulakshmi : Appellant / Sole Accused

Vs.

The State Rep. by
The Inspector of Police
Tallakulam Police Station,
Madurai.
(Crime No. 491 of 2015)

: Respondent/ Complainant

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 11.02.2019 in S.C.No.145 of 2016 on the file of the Principal District and Sessions Court, Madurai and set aside the same as illegal and acquit the appellant.

For Appellant : Mr.J.Gunaseelan Muthiah

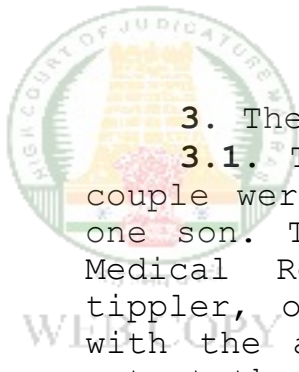
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by P.N.PRAKASH, J)

This criminal appeal is filed against the judgment in S.C.No.145 of 2016 on the file of the Principal District and Sessions Court, Madurai.

2. The trial Court, by judgment dated 11.02.2019, convicted the accused for the offence under Section 302 IPC and sentenced her to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. Challenging the conviction and sentence, Subbulakshmi (accused) is before this Court.



3. The prosecution story runs thus:

3.1. The appellant is the wife of the deceased Marichamy. The couple were blessed with three children, namely, two daughters and one son. The daughters were married and the son was working as a Medical Representative. The deceased Marichamy was a chronic tippler, on account of which, he used to very frequently quarrel with the appellant for money. His addiction had gone to such an extent that he started selling vessels and utensils in the house for satiating his drinking habit.

3.2. On 17.04.2015, the appellant returned from her daughter's house to her house and found Marichamy in a drunken stupor. She also did not find a brass vessel in the house and inferred that her husband has sold it for buying liquor. Therefore when she questioned him, an altercation ensued between them which escalated into an quarrel and in a fit of anger, totally disgusted with life, the appellant took a stick and belabored Marichamy, on account of which, he sustained injuries.

3.3. The appellant informed her son-in-law and together they took Marichamy to the Rajaji Government Hospital, Madurai, where Marichamy was examined by Dr.B.Gowri Sankar (P.W.11) at 00.20 hrs. on 18.04.2015 and lacerated injuries were noted in the Accident Register, a copy of which has been marked as Ex.P-9. Marichamy was admitted as an inpatient, but unfortunately he succumbed to the injuries at 12.30 a.m. on 18.04.2015.

3.4. The appellant appeared before Muthumozhi (P.W.1), the Village Administrative Officer, and gave an extra-judicial confession (Ex.P-1) stating the events in its true perspective. Muthumozhi (P.W.1) prepared a special report (Ex.P-2) and took the appellant to Tallakulam Police Station and produced her there.

3.5. Based on the special report (Ex.P-2), a case in Tallakulam Police Station Crime No.491 of 2015 was registered on 18.04.2015 at 2.15 p.m. under Section 302 IPC against the appellant and the appellant was placed under arrest. Based on her police confession, the stick (M.O.1) that was allegedly used by her which was broken into three pieces was recovered by the Investigating Officer (P.W.-13) under the cover of a Mahazar (Ex.P-7) in the presence of witnesses R.Andichamy (P.W.-8) and Masanam (not examined).

3.6. The Investigating Officer went to the hospital and conducted inquest over the body of the deceased and the inquest report was marked as Ex.P.-12. The body was thereafter sent for postmortem.

3.7. Dr.Ragava Ganesan (P.W.-10) performed autopsy on the body of the deceased and issued postmortem certificate (Ex.P-8). He has opined that the death could have occurred on account of the head



injuries suffered by the deceased.

3.8. The Investigating Officer examined various witnesses, collected reports of the experts, completed the investigation and filed a final report in PRC No. 19 of 15 in the Court of Judicial Magistrate No.II, Madurai, under Section 302 IPC against the appellant.

3.9. On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with and the case was committed to the Court of Session, Madurai, in SC.No.145 of 2016. The Sessions Court framed a charge under Section 302 IPC against the appellant and when questioned, the appellant pleaded not guilty.

4. To prove the case, the prosecution examined 13 witnesses, marked 18 exhibits and 7 material objects.

5. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against her, she denied the same. However, the appellant examined herself as D.W.1 and stated that her husband was addicted to liquor and that he had fallen from the cot, sustained injuries and died.

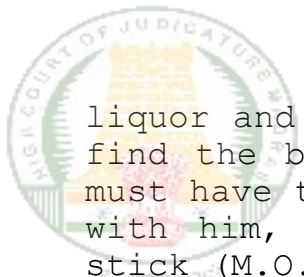
6. After considering the evidence adduced on either side, the trial court by judgment and order dated 11.02.2019 in S.C.No.145 of 2016 has convicted and sentenced the appellant as under:-

<i>Provision under which convicted</i>	<i>Sentence</i>
Sec. 302 of IPC	Life Imprisonment and also to pay a fine of Rs.1,000/- , in default to undergo 3 months simple imprisonment

Challenging the same, the appellant is before this Court.

7. Heard Mr.J.Gunaseelan Muthiah, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State.

8. The case of the prosecution rests on the extra-judicial confession of the appellant and the testimony of Rajesh (P.W.2) and Ranjith (P.W.3). Rajesh (P.W.2) and Ranjith (P.W.3) are brothers and they have stated that they are running a tea shop near the house of the appellant. On 17.04.2015, around 9.30 p.m. in the night, while they were closing their tea shop, they heard a loud noise from the house of the appellant and so out of curiosity, when they peeped into the appellant's house, they found the appellant standing with the stick (M.O.1) and her husband lying on the floor. Of course, the appellant in her extra-judicial confession, has confessed that her husband used to quarrel with her very frequently demanding money for



liquor and on the fateful day, when she returned home, she did not find the brass vessel in the house and therefore inferred that he must have taken it, sold it and bought liquor, so when she quarreled with him, he also retaliated and in anger, she hit him with the stick (M.O.1) resulting in injuries to him. Thereafter, she panicked and carried him to the hospital for treatment. Of course, her evidence that he fallen from the cot, sustained injuries and died on account of it, was rightly disbelieved by the trial court because, the nature of injuries sustained by the deceased do not support the testimony of the appellant.

9. However, we find that the appellant had not attacked her husband with an intention to cause death nor was there any premeditation. The fact remains that, Marichamy was a menace to the appellant inasmuch as he used to sell anything that came into his hand for buying liquor and accordingly, on the fateful day, he seems to have sold the brass vessel that is normally used for storing water which was questioned by the appellant. This had infuriated the deceased Marichamy and he had quarreled with her.

10. In such view of the matter, we are of the view that the case of the appellant would fall within Exception No.4 of Section 300 IPC.

10.1. Therefore, we are inclined to modify the conviction imposed on the appellant from one under Section 302 IPC to one under Section 304(II) IPC.

10.2. Accordingly, this criminal appeal is partly allowed.

10.3. The conviction and sentence imposed on the appellant / accused, by judgment and order dated 11.02.2019 in S.C.No.145 of 2016 on the file of the Principal District and Sessions Court, Madurai, for the offence under Section 302 IPC is hereby set aside. Instead, the appellant / accused is convicted under Section 304(II) IPC.

10.4. The appellant is said to be 60 years old. Taking into consideration the age of the appellant and the fact that she was pushed to the wall on account of her husband's behavior, we are of the opinion that interest of justice would be served if she is sentenced to undergo three years rigorous imprisonment.

10.5. The suspension of sentence granted by this Court on 17.06.2019 in Crl.M.P(MD) No.5260 of 2019 stands cancelled.

10.6. Since the appellant / accused is on bail, it is directed that the trial court shall take steps to secure her and to commit her to prison to serve out the period of sentence.

10.7. The period of sentence already undergone by the appellant



WEB COPY

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/ accused shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pkn

To

1. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
MADURAI.
2. THE JUDICIAL MAGISTRATE NO.2, MADURAI.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
4. THE SUPERINTENDENT, CENTRAL JAIL (SPECIAL PRISON FOR WOMAN),
MADURAI.
5. THE INSPECTOR OF POLICE
TALLAKULAM POLICE STATION, MADURAI.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI. (2 COPIES)

+1 CC to M/s.J.GUNASEELANMUTHAIAH, Advocate (SR-24705[F] dated
09/06/2022)

Crl.A. (MD) No.225 of 2019
07.06.2022

RD(14.06.2022) 5P 10C