

**Petitioner Vs. Respondent**

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**Court : Chennai**

**Decided On : Dec-19-2016**

**Judge : M. Venugopal**

**Appeal No. : Crl.M.P.No. 13425 of 2016 In Crl.A.No. 826 of 2016**

**Appellant : Petitioner**

**Respondent : Respondent**

**Judgement :**

**M. Venugopal, J.**

1. Heard Mr.D.Ashok Kumar, Learned counsel for the Petitioner/ Appellant and Mr.R.Ravichandran, Learned Government Advocate (Crl. Side) for the Respondent/Complainant.
2. The Petitioner/Appellant/Accused has preferred the instant Criminal Appeal before this Court, as against the Judgment dated 04.11.2016 in S.C.No.279 of 2015 passed by the Learned I Additional District and Sessions Judge, Coimbatore.
3. The Learned I Additional District and Sessions Judge, Coimbatore, while passing the impugne Judgment in S.C.No.279 of 2015, at paragraph 18, had, among other things, observed as under:

18. .... Hence, the accused said to have seen the wife with another man in a compromising position, it is natural that the man could get a wild angry. In this case also, the P.W.1 has given a complaint stating that the accused got angry and scolded her wife and also slapped her cheek. In that impact she felled down by hitting on the pillar.

4. Also, in the aforesaid Judgment, at paragraph 19, it is observed as follows:

19. So as per the first information given P.W.1 also discloses that under sudden provocation the accused has slapped the deceased on her cheek. Further, from the case of prosecution, the accused did not have any prior motive or plan to commit the murder of his wife. He has suspected the character and according to the accused he saw her with another person in a compromising position. Hence, he has assaulted. The injured has died due to the assault. No weapon has been used in this case to cause the injury. Under the circumstances the case would be come under the exception to Section 300 IPC. Hence this court found that the accused in this case has committed an offence of culpable homicide not amounting to murder. Hence, he was liable to be punished under Section 304(II) IPC.

5. It transpires that the Petitioner/Appellant/Accused was found guilty under Section 304(II) I.P.C. and was convicted and sentenced to undergo Rigorous Imprisonment for a period of five years and further, he was directed to pay a fine of Rs.5,000/-, in default of payment of fine, he was directed to undergo Simple Imprisonment for a period of three months.

6. Being dissatisfied with the Judgment of the trial Court dated 04.11.2016 in S.C.No.279 of 2015, the Petitioner/Appellant/Accused (as an aggrieved person), has filed the instant Criminal Appeal by exercising his right as envisaged under the Criminal Procedure Code.

7. It is to be noted that in Law, an 'Appeal' is a continuation of Original Proceedings viz., that of the trial Court. In the instant case, the Petitioner/Appellant/Accused has filed the present Criminal Appeal raising numerous grounds as set out in the 'Memorandum of Grounds of Appeal'. It is

represented that the Petitioner/Appellant/ Accused had remitted a fine of Rs.5,000/- before the trial Court, on the date of Judgment itself.

8. At this stage, this Court, on perusal of the various Grounds raised in the Criminal Appeal, is of the considered view that the Petitioner/Appellant/Accused has raised some arguable/substantial points which require detail adjudication at the time of final hearing of the main case.

9. Before the trial Court in the main case on behalf of the Respondent/Prosecution, witnesses P.W.1 to P.W.14 were examined and D.W.1 (Minor Daughter of the Appellant/Accused) was examined. Exs.P1 to P10 were marked and also M.O.1 and M.O.2 were marked.

10. In view of the fact that the Petitioner/Appellant/Accused has preferred the instant Criminal Appeal before this Court and also this Court taking note of a primordial fact that the present 'Appeal' is a continuation of Original Proceedings viz., S.C.No.279 of 2015 on the file of the trial Court and also this Court, keeping in mind yet another fact that the present Criminal Appeal is not likely to be disposed of in the near future and also, this Court, considering the attendant facts and circumstances of the present case in an encircling manner, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioner/Appellant/Accused on his executing a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with two sureties each for a like sum to the satisfaction of the Learned I Additional District and Sessions Judge, Coimbatore and on further condition that he shall appear before the said Court on every Wednesday and Friday at 10.30 a.m. without fail till the disposal of the Criminal Appeal.

11. Accordingly, the Crl.M.P.No.13425 of 2016 is ordered, on above terms.

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