

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Oct-06-2016

Judge : M. Venugopal

Appeal No. : Crl.M.P.No. 10565 of 2016 in Crl.A.No. 720 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. Heard Mr.N.Anand Venkatesh, Learned counsel for the Petitioner/Appellant and Mr.B.Ramesh Babu, Learned Public Prosecutor for the Respondent/Complainant.
2. The Petitioner/Appellant/Accused has preferred the present Criminal Appeal before this Court, as against the Judgment dated 28.09.2016 in S.C.No.162 of 2015 passed by the Learned I Additional District and Sessions Judge, Coimbatore.
3. It transpires that the Petitioner/Appellant/Accused was found guilty under Section 304(ii) I.P.C. although he was charged under Section 302 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.5000/-, in default of payment of fine, he was also required to undergo Simple Imprisonment for a period of three

months.

4. Before the trial Court, in the main case, on behalf of the Prosecution, witnesses P.W.1 to P.W.12 were examined and Exs.P.1 to P.16 were marked. Also, Exs.M.O.1 to M.O.10 were marked. On the side of the Appellant/Defence/Accused, no one was examined as a witness and no document was marked.

5. Being dissatisfied with the Judgment of the trial Court dated 28.09.2016 in S.C.No.165 of 2015, the Appellant/Accused has focused the instant Criminal Appeal basically contending that the conviction and sentence passed by the trial Court in S.C.No.165 of 2015 is against Law, weight of Evidence and probabilities of the case.

6. The Learned Counsel for the Petitioner/Appellant urges before this Court that the trial Court had failed to appreciate that it was the categorical evidence of P.W.1 that there was no strained relationship between the deceased and the Petitioner/Appellant.

7. The Learned Counsel for the Petitioner/Appellant proceeds to state that the trial Court had rendered an erroneous finding to the effect that there was a wordy quarrel between the Appellant/ Accused and the deceased at the time of incident and that the Appellant got angry and caused injury to the dead person with a stone lying nearby due to the grave and sudden provocation.

8. The other plea taken on behalf of the Petitioner/Appellant is that the trial Court cannot take the deposition of P.W.1, P.W.2 and P.W.4 on its face value, since they are interested witnesses and except for their ipsi dixit in the main case, there was no other evidence to show that there was previous enmity between the Appellant and the deceased person.

9. It is represented on behalf of the Petitioner/Appellant that the Petitioner/Appellant/Accused had remitted a sum of Rs.5000/- as fine amount, to the credit of S.C.No.162 of 2015 on the file of the trial Court on 28.09.2016 itself.

10. In response, the Learned Public Prosecutor for the Respondent/Complainant submits that the trial Court, on an appreciation of oral and available documentary evidence on record, found that the Petitioner/Appellant/Accused guilty under Section 304(ii) and sentenced him to undergo five years Rigorous Imprisonment etc. and the same does not suffer from any serious material irregularity or legal infirmity in Law.

11. It is an axiomatic principle in Law that an 'Appeal' is a continuation of Original Proceedings i.e. S.C.No.162 of 2015 on the file of the trial Court. At this juncture, on a perusal of the grounds projected by the Petitioner/Appellant in the Memorandum of Grounds of Appeal, this Court is of the earnest view that the Petitioner/Appellant/Accused has raised some tangible/arguable points which require detail ruminations/deliberations at the time of final hearing of the main Criminal Appeal. Also, this Court is alive to the fact that the present main Criminal Appeal is not likely to be taken up in the near future.

12. In as much as the Petitioner/Appellant, as an aggrieved person, has filed the instant Criminal Appeal before this Court and this Court on going through the entire conspectus of the attendant facts and circumstances of the present case in an encircling fashion and also, on perusal of the numerous Grounds set out by the Petitioner/Appellant/Accused in the 'Grounds of Appeal', at this stage, this Court 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 the First Working day of every English calendar month at 11.00 a.m. without fail till the disposal of the Criminal Appeal.

13. Accordingly, the Crl.M.P.No.10565 of 2016 is ordered.

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