

Ganesan vs The State Of Tamilnadu Rep. By Inspector ... on 7 February, 2025

Author: B.R. Gavai

Bench: B.R. Gavai

2025 INSC 158

Non - re

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 860 OF 2023
(@ SPECIAL LEAVE PETITION (CRL.) NO.11560 OF 2022)

GANESAN

... APPELLANT

-VERSUS-

THE STATE OF TAMILNADU
REP. BY INSPECTOR OF POLICE

... RESPONDENT

J U D G M E N T

K. VINOD CHANDRAN, J.

The appellant, who was working abroad lost his employment and returned to his family, comprising of his wife and three children. Unable to get any employment, he took to the bottle and perpetrated continuous harassment on his wife and children. The wife, thus, left him to live with her mother who had a small business and was capable of looking after the daughter and her children. Enraged by the desertion; which the appellant believed was due to the instigation of the mother-in-law, with clear premeditation, he went to the shop of the mother-in-law with a billhook and attacked her. The wife who tried to save her mother also suffered injuries.

2. The appellant was booked under Sections 498A, 294(b), 307 and 506(II) of the Indian Penal Code, 1860 (for brevity, “the I.P.C.”); the attempt to DEEPAK SINGH Date: 2025.02.07 17:40:44 IST Reason:

murder being levelled on two counts, as committed against the mother and daughter. The trial court convicted the appellant and sentenced him to imprisonment for life under Section 307 as against the mother-in-law, three years rigorous imprisonment (RI) under Section 498A with a fine respectively of Rs. 30,000 and Rs. 20,000, as also three years simple imprisonment (SI) and seven years RI under sections 324 (as

against the wife) and 506(II) respectively. On appeal, the High Court sustained the conviction under Section 307 I.P.C. and the sentence was reduced to 12 years RI from life imprisonment and acquitted the appellant under Section 506(II), I.P.C. while confirming the conviction and sentence under Sections 498A and 324 I.P.C.; with the further direction that the sentences will run concurrent.

3. In the present appeal, before this Court, notice was issued only on the quantum of sentence, by order dated 21.11.2022. The conviction, thus, stands affirmed, as has been found by the High Court, by virtue also of the unshaking testimony of the injured witnesses, which evidence it is trite has to be accorded a special status in law.

4. It cannot be disputed that there was premeditation in so far as the appellant/accused having come to the shop of the mother-in-law, one of the injured, in a scooter carrying a billhook with him. Immediately, on reaching the shop he attacked his mother-in-law and his wife who tried to save her mother also suffered injuries. The doctor who examined both the injured, before court, spoke of the grievous injuries suffered by the mother-in-law but has categorically stated in the chief examination itself that the injuries sustained by the wife of the appellant were simple injuries and the wound certificate issued to the contrary was a mistake.

5. The Trial Court having imposed life imprisonment, the Appellate Court modified it and converted it to 12 years RI. Section 307 with the nominal heading “attempt to murder” provides for a punishment of, either imprisonment for life or imprisonment of either description for a term which may extend to 10 years and fine. The threshold term of imprisonment, if life is avoided, can only be 10 years and not more.

6. In Jagat Bahadur Vs. State of Madhya Pradesh¹ relying on the decisions of various High Courts, it was held that the Appellate Court is not competent to impose a punishment higher than the maximum that could have been imposed by the Trial Court. It was held that an Appellate Court being “a Court of error”, i.e. a Court established for correcting an error, it could not go beyond the competence of the Trial Court and if it does that, it would not be correcting an error. The power of the Appellate Court to pass a sentence has to be measured by the power of the Court from whose judgment an appeal has been brought before it.

7. This Court also in Amit Rana @ Koka Vs. State of Haryana² held that a bare perusal of the second part of Section 307 of I.P.C. would undoubtedly show that it did not prescribe for imposition of punishment more than what is prescribed under the first part thereof. The maximum imprisonment permissible under the first part of Section 307 is 10 years and fine. When the court thinks it fit, not to impose imprisonment for life, the punishment in no circumstance can exceed the punishment prescribed under the first part of Section 307, I.P.C.

8. On the above reasoning, the sentence of 12 years R.I. granted by the Appellate Court cannot be sustained; since the maximum sentence under Section 307, I.P.C., if life is avoided, can only be a maximum of 10 years. (1966) 2 SCR 822 2024 SCC OnLine SC 1763 Considering the entire circumstances, the relationship between the parties and injuries caused, we are of the opinion that a

sentence of 7 years R.I. would suffice under Section 307, IPC. Accordingly, we modify sentence in the Appellate judgment under Section 307, as above. The sentence handed over, under the other penal provisions of the I.P.C. stands confirmed which sentences shall run concurrently as directed by the Appellate Court. The Criminal Appeal stands partly allowed.

....., J.

[B.R. GAVAI], J.

[K. VINOD CHANDRAN] NEW DELHI;

FEBRUARY 07, 2025.