



Crl.A(MD)No.628 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Velankanni @ Mathi

... Appellant/Petitioner

Vs.

The State represented by,
The Inspector of Police,
Ilupur Police Station,
Pudukkottai District.
(In Crime No.350 of 2021).

... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C.,
to call for the records and to allow the appeal and acquit the accused
by setting aside the Judgment dated 03.08.2022 in S.C.No.108 of
2021 on the file of the learned Principal District and Sessions Judge,
Pudukkottai.



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For Appellant : Mr.P.Ganapathi Subramanian

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor

JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This appeal is directed as against the Judgment passed in S.C.No.108 of 2021, dated 03.08.2022, on the file of the learned Principal District and Sessions Judge, Pudukkottai, thereby convicting the appellant for the offence punishable under Section 302 of I.P.C.

2.The case of the prosecution is that the deceased is the wife of the accused. Both of them had been residing under the same roof for 15 years. There was no offspring out of the matrimonial bond. The accused had illegal intimacy with another woman, who happened to be his second wife. While being so, on 31.07.2021, after completing their work under the 100-days work project, the

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accused and the deceased returned home. On that day, the accused 's relatives came to their house to attend a festival celebration and the accused left to drop them off. Thereafter, the accused did not return home till 07.00 p.m. When the accused returned home, the deceased questioned him about his relationship with the second wife. Feeling humiliated, the accused scolded her using filthy language. At that juncture, the accused poured kerosene on her and set her on fire. Therefore, the deceased sustained severe burn injuries and was taken to the hospital, but she ultimately succumbed to her injuries.

3.On the basis of the complaint, the respondent registered an F.I.R in Crime No.350 of 2021 for the offence punishable under Section 302 of I.P.C. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court.



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4.On the side of the prosecution, in order to bring the charges to home, they examined P.W.1 to P.W.12 and Exs.P1 to P19 were marked. The prosecution also produced Material Objects M.O. 1 to M.O.10. The Court examined witness No.1 as C.W.1 and marked Ex.C.1 and Ex.C.2. On the side of the accused, no witnesses were examined and no documents were produced before the Trial Court.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 302 of I.P.C and he was sentenced to undergo life imprisonment and imposed a fine of Rs.10,000/- in default, to undergo five years Rigorous Imprisonment for the offence punishable under Section 302 of I.P.C. Aggrieved by the same, the present appeal has been filed by the appellant.



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6.The learned counsel appearing for the appellant submitted that the prosecution mainly relied upon P.W.1 to prove the charges. However, P.W.1 did not support the case of the prosecution and as the sole eyewitness, her evidence in fact established the innocence of the accused. Further, P.W.2 and P.W.3 also did not support the case of the prosecution. The alleged confession statement of the accused and recovery were not satisfactorily proved by the prosecution. There was a material contradiction with regard to time of the confession and recovery between P.W.6 and P.W.11.

7.The evidence of P.W.6 reveals that the accused was arrested on 01.08.2021 at about 06.15 a.m., when he received a phone call from the Investigating Officer. Apart from this, P.W.2 deposed a completely different version stating that the accused was arrested by the police on the date of occurrence itself. That apart, even according to the case of the prosecution, the accused allegedly committed the offence only after being assaulted by the accused.



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Therefore, the accused had absolutely no motive to do away with the life of the deceased and even then, the Trial Court mechanically convicted the appellant for the offence punishable under Section 302 of I.P.C.

8.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the accused murdered his wife by pouring kerosene on her and set fire on her, causing grievous burn injuries, which ultimately resulted in her death. When the deceased was taken to hospital, the accident register was recorded and the same was marked as Ex.P.11. The dying declaration was marked as Ex.P.12. Though the other witnesses turned hostile, the Trial Court rightly convicted the appellant on the basis of the dying declaration. Hence, it does not require any interference of this Court.



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9.Heard the learned counsel appearing on either side and perused the materials placed on record.

10.P.W.1 is the son of the accused's elder brother. However, she turned hostile and did not support the case of the prosecution. Immediately, after the occurrence, the deceased was taken to P.W.2's house. Thereafter, she was brought to the Government Hospital, Iluppur by ambulance and subsequently referred to the Medical College Hospital, Pudukkottai. The accident register was recorded and the same was marked as Ex.P.11. It clearly shows that the deceased was brought to the hospital by P.W.2, who is the father of the deceased and he stated that the deceased had sustained burn injuries caused by her husband by pouring kerosene. The deceased had burn injuries covering 60% to 80% of her body.

11.Thereafter, her dying declaration was recorded and marked as Ex.P.12. In the said dying declaration, she deposed that



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she questioned the accused with regard to his illegal intimacy with another woman. Therefore, the accused poured kerosene on her and set fire on her. Even after setting her on fire, he had beaten the deceased and also scolded her with filthy language.

12.It is also revealed that the deceased questioned the accused about his illegal intimacy and she had taken a sickle and also assaulted the accused. Only thereafter, the deceased taken kerosene from the house and pour it on her, subsequently setting her on fire. As a result, the deceased sustained injuries and was brought to the hospital. The Doctor, who examined the accused had deposed as P.W.8. He recorded the accident register which was marked as Ex.P.10. It revealed that the accused was brought to the hospital by police and had been assaulted by his wife with a sickle, sustaining injuries. Only thereafter, he poured kerosene on the deceased and set fire on her. Thus, it appears the deceased provoked the accused to pour kerosene on her and set fire on her. This is corroborated by the



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evidence of P.W.8, who examined the accused. The relevant portion of his deposition is as follows:

“அவரை பரிசோதித்தபோது, அவர் தன்னை அதற்கு முந்திய நாள் மாலை 6.30 மணியளவில் தன் மனைவி அருவாள் கொண்டு தாக்கியதாக கூறினார். பரிசோதனையின் போது அவர் கயநினைவுடன் இருந்தார். சுவாசத்தில் மது வாசனை இருந்தது. நாடிதுடிப்பு இரத்த அழுத்தமும் சீராக இருந்தது. மேலும் அவருக்கு இருந்த காயங்கள் பின்வருமாறு,

1. 6 X 4 அளவிலான ஒரு சிராயப்பு காயம் அவரது இடது காலில் இருந்து.

2. 0.4 X 0.2 அளவிலான ஒரு சிராயப்பு காயம் இடது காலில் இருந்தது.

அவரை வெளிநோயாளியாக சிகிச்சை அளித்து காவலருடன் அனுப்பி வைத்தேன். நான் கொடுத்த காயச்சான்று அ.சா.ஆ.10 ஆகும்.”

13.It is also corroborated by the dying declaration which was marked as Ex.P.12. The relevant portion of the dying declaration of the deceased is as follows:



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“இன்று திருவிழாவுக்கு விருந்தாளி வந்திருந்தாங்க, என் வீட்டுக்காரரிடம் இலுப்பூரில் விட்டுவிட்டு வர சொன்னேன். அவர் நேர போய்டாங்க, மணப்பாறைக்கு 3.30 மணிக்கு திரும்ப போன் செய்தேன். வர்றேன் அப்படின்னு சொன்னாங்க, சின்ன பொண்டாட்டிய பார்க்க போனியா என கேட்டேன். நான் எப்ப வேணா போவேன், வருவேன். அப்படினு கேட்டு நான் அடிக்க அவர் அடித்தார். நீ இருந்த தானே கேட்பா, மண்ணெண்ணையை எடுத்து ஊத்திவிட்டார். நான் வெளியே ஓடி வந்தேன். சாத்தியுட்டாறு, செல்வம் மக என்ன காப்பத்துசு, அவர் அது சாகட்டும் இருக்க வேண்டாம் என அடிச்சாறு அக்கம்பக்கத்தில் உள்ளவங்க இந்த புள்ளை கொல்லனும்னு நினைச்சிய என திட்டினார்கள், அவ்வளவு தான் என்ன கூட்டி வந்து விட்டார்கள்.”

14.It was further certified by the Doctor that the patient was conscious, oriented and in a fixed state of mind throughout the recording of the dying declaration.



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15. Thus, it is clear that before pouring kerosene and setting the deceased on fire, the deceased had attacked the accused with a sickle and caused injuries. Therefore, the accused was provoked to pour kerosene and set fire on her. Hence, the prosecution failed to prove the charge under Section 302 of I.P.C, since the accused had no intention to do away with the life of the deceased. The accused was provoked by the deceased into committing the crime. Hence, the prosecution has miserably failed to prove the charge under Section 302 of I.P.C. However, the act clearly attracts the offence under Section 304 Part II of I.P.C.

16. In this regard, it is relevant to reply upon judgement of the Hon'ble Supreme Court of India in the case of ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P [2007 (1) SCC (CRI) 500]***, wherein it has been observed as follows:

“18. Therefore, the court should proceed to decide the pivotal question of intention, with care and



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caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters like plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances :

(i) nature of the weapon used;



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(ii) whether the weapon was carried by the accused or was picked up from the spot;

(iii) whether the blow is aimed at a vital part of the body;

(iv) the amount of force employed in causing injury;

(v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;

(vi) whether the incident occurs by chance or whether there was any pre- meditation;

(vii) whether there was any prior enmity or whether the deceased was a stranger;

(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other



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special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

17.In view of the above, the conviction and sentence imposed on the appellant in S.C.No.108 of 2021, dated 03.08.2022, on the file of the learned Principal District and Sessions Judge, Pudukkottai, for the offence punishable under Section 302 of I.P.C are set aside. The appellant is convicted for the offence punishable under Section 304 Part II of I.P.C and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo six months Simple Imprisonment.

18.With the above modification, the Criminal Appeal is partly allowed. It is made clear that if the appellant has already paid any fine, the same shall be adjusted towards the fine amount imposed by this Court. The sentences of imprisonment shall run



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concurrently. The period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C. Consequently, connected Miscellaneous Petition is closed.

[G.K.I.J.] & [R.P.J.]
10.02.2026

NCC :Yes/No
Index :Yes/No
Internet :Yes
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- 1.The Principal District and Sessions Judge,
Pudukkottai.
- 2.The Inspector of Police,
Ilupur Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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