



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 07.01.2015  
CORAM

**THE HONOURABLE MR.JUSTICE A.SELVAM**  
**and**  
**THE HONOURABLE MR.JUSTICE T.MATHIVANAN**

Crl.A.(MD)No.278 of 2014

Anandh

.. Appellant/Sole Accused

Vs.

State rep.by  
The Inspector of Police,  
Palavoor Police Station,  
Crime No.206 of 2012  
Tirunelveli District.

.. Respondent/Complainant

Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 25.09.2014 passed in Sessions Case No.491 of 2013 by the Principal District and Sessions Court, Tirunelveli.

For Appellant : Mr.S.Palanivelayutham

For Respondent : Mr.C.Ramesh  
Addl.Public Prosecutor

### **JUDGMENT**

(Judgment of the Court was delivered by **A.SELVAM, J.**)

Challenge in this Criminal Appeal is to the conviction and sentence dated 25<sup>th</sup> day of September, 2014 passed in Sessions Case No.491 of 2013 by the Principal District and Sessions Court, Tirunelveli.

2. The crux of the case of the prosecution is that the accused is the son of the deceased by name Pushpa. On 11.11.2012 at about 08.00 am, with an intention to murder the deceased, while the deceased has proceeded towards toilet, the accused has doused kerosene and set her ablaze and subsequently the then injured (deceased) has been taken to hospital, wherein she succumbed to injuries on 16.11.2012. The Sub Inspector of Police (PW1) Vijayakumari has recorded a statement from the deceased and the same has been registered in Crime No.206 of 2012. The statement of the deceased has been marked as Ex.P1.

3. On receipt of Ex.P1, the Inspector of Police, (PW14) has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and PW12, Dr.Rajesh has conducted autopsy and found the following injuries:



#### Ante-mortem injuries:

Infected epidermo-dermal burn seen all over the body except scalp, upper half of face, front of right thigh, both legs, both feet and external genitalia. Peeling and blackening of the skin noted over the burnt area in a scattered manner. Singeing of axillary hair noted. Base of the burnt area is reddish in colour and at many places it is covered with infected pus materials.

4. The postmortem report has been marked as Ex.P9. After completing investigation, PW14 has laid a final report on the file of the Judicial Magistrate Court, Valliyoor and the same has been taken on file in PRC No.34 of 2013.

5. The Judicial Magistrate, Valliyoor after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.491 of 2013.

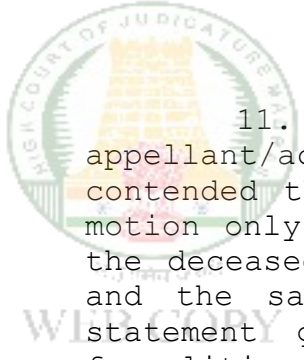
6. The trial court after hearing both sides and upon perusing relevant records has framed a charge against the accused under Section 302 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

7. On the side of the prosecution, PWs.1 to 14 have been examined and Exs.P1 to P18 and M.Os.1 to 3 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court after perpending the available evidence on record has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.5,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The learned counsel appearing for the appellant/accused has contended that the occurrence has taken place on 11.11.2012 at about 08.00 am and that too in the house of the deceased and accused and immediately after occurrence she has been admitted in Government hospital, Asaripallam. But PW1 concerned Sub Inspector of Police has recorded a statement (Ex.P1) from the deceased at about 04.00 pm and likewise, PW10, Judicial Magistrate has also recorded a dying declaration at about 03.35 pm, on the same day. Under the said circumstances, Ex.P1, statement of the deceased and Ex.P6, dying declaration alleged to have been given by her cannot be a basis for inviting conviction and sentence against the appellant/accused and the trial Court without considering the vital infirmities found in the case of the prosecution has erroneously invited conviction and sentence against the appellant /accused and therefore, the same are liable to be set aside.



11. In order to resile the contention put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has sparingly contended that in the instant case, the prosecution has set the law in motion only on the basis of the statement alleged to have been given by the deceased and the said statement can be treated as dying declaration and the same does not require any corroboration and apart from the statement given by the deceased to PW1, PW10 after observing due formalities has recorded a dying declaration (Ex.P6) and the trial Court after considering the evidentiary value of Exs.P1 and P6 has rightly invited conviction and sentence against the appellant/accused and therefore, the same do not require any interference.

12. It is seen from the records that the occurrence has taken place near the house of both the deceased and accused. The specific case put forth on the side of the prosecution is that while the deceased proceeded towards toilet, with an intention to murder her, the accused has doused kerosene and set her ablaze and immediately after occurrence, she has been admitted in Government hospital, Asaripallam by PW11, Dr.Raju.

13. As rightly pointed out on the side of the prosecution, the prosecution has set the law in motion only on the basis of Ex.P1, statement alleged to have been given by the deceased. Since the deceased herself has given a statement to PW1, wherein it has been clinchingly stated about the details of occurrence and subsequently she passed away, as per Section 32(1) of the Indian Evidence Act, 1872, Ex.P1 can be treated as dying declaration and the same does not require any corroborative evidence. Apart from Ex.P1, PW10 after observing due formalities has recorded dying declaration and the same has been marked as Ex.P6. In Ex.P6 also it has been clearly stated about the details of occurrence and specific overtacts made by the accused on the body of the deceased. Since Exs.P1 and P6 can be treated as dying declarations and the same do not require any corroborative evidence, the Court can very well rely upon the same.

14. In the instant case, except time factor, no other arguments have been advanced on the side of the appellant/accused.

15. It is an admitted fact that the occurrence has taken place on 11.11.2012 at about 08.00 am and immediately after occurrence, the deceased has been admitted in Government hospital, Asaripallam. Before recording Ex.P1, PW10, concerned Judicial Magistrate has recorded a dying declaration (Ex.P6) on the same day at about 03.35 pm and subsequently PW1 has recorded a statement (Ex.P1) on the same day at about 04.00 pm. Simply because both Exs.P1 and P6 have been recorded belatedly the same would not pave the way for disbelieving the version of the prosecution.

16. It is seen from the records that immediately after occurrence, PW11 Dr.Raju has admitted the deceased in Government hospital, Asaripallam and through him, Ex.P7, Accident Register has been marked, wherein it is stated that the deceased herself doused kerosene and set fire on her.

17. It is an archaic and also settled principle of law that Doctor is not a witness of truth. In the instant case, except a flimsy infirmity



found in the evidence of PW11 and in Ex.P7, as pointed out earlier, no other serious infirmities are found place in the case of the prosecution.

18. It has already been pointed out that as per Section 32(1) of the Indian Evidence Act, 1872, Ex.P1 can be treated as dying declaration and the same does not require any corroborative evidence and apart from Ex.P1, Ex.P6 dying declaration is available and in both documents the deceased has clearly narrated the details of occurrence and also overtacts alleged to have been committed by the accused and therefore, this Court is of the view that there is no infirmity in the case of the prosecution.

19. The trial Court after considering the evidentiary value of Exs.P1 and P6 has clearly found the accused guilty under Section 302 of the Indian Penal Code. In view of the foregoing enunciation of both the factual and legal aspects, this Court has not found any force in the contention put forth on the side of the appellant/accused and altogether the present Criminal Appeal deserves to be dismissed.

20. In fine, this Criminal Appeal is dismissed. The conviction and sentence passed in Sessions Case No.491 of 2013 by the Principal District and Sessions Court, Tirunelveli are confirmed.

Sd/-

Assistant Registrar(AS)

\\True copy\\

Sub Assistant Registrar

To

1. THE PRINCIPAL DISTRICT AND SESSIONS COURT, TIRUNELVELI
  2. THE JUDICIAL MAGISTRATE, VALLIYOOR, TIRUNELVELI DISTRICT
  3. THE DISTRICT COLLECTOR TIRUNELVELI DISTRICT, TIRUNELVELI
  4. THE SUPERINTENDENT OF POLICE TIRUNELVELI DISTRICT TIRUNELVELI
  5. THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI  
(TWO COPIES ONE COPY TO BE RECORD ON THE APPELLANT)
  6. THE DIRECTOR GENERAL OF POLICE TAMIL NADU CHENNAI
  7. THE INSPECTOR OF POLICE PALAVOOR POLICE STATION, TIRUNELVELI DT.
  8. THE ADDL. PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
- +1CC TO MR.S.PALANIVELAYUTHAM, ADVOCATE SR.NO.897

Cr1.A. (MD) No.278 of 2014  
07.01.2015