

**BAIL SLIP**

Arokiyaraj, S/o Jebamani, appellant, Sole Accused was directed to be released on bail by order of this Hon'ble Court dated 02.12.2011 made in MP(MD).No.2./2011 in Cr1.A(MD).No.337/2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 07.10.2015****CORAM:****THE HONOURABLE MR.JUSTICE S.NAGAMUTHU****AND****THE HONOURABLE MR.JUSTICE V.S.RAVI****Cr1.A(MD)No.337 of 2011**

Arockiyaraj

.. Appellant/ Sole accused

Vs.

The State rep. by its.,
The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai.
(Crime No.381 of 2009)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. praying this Court, to set aside the conviction Judgment delivered in S.C.No.109 of 2009 dated 11.03.2011, on the file of the learned Additional District and Sessions Judge, Fast Track Court, Pudukkottai and thus render justice.

For Appellant : Mr.K.P.Narayanakumar, Advocate
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT**(Judgment of the Court was made by V.S.RAVI,J.)**

The appellant is the sole accused in S.C.No.109 of 2009 (Crime No.381 of 2009) on the file of the learned Additional District and Sessions Judge, Fast Track Court, Pudukkottai. He has been charged for the offence under Section 302 I.P.C. The



trial Court, by Judgment dated 11.03.2011, convicted him for the offence under Section 302 I.P.C., and sentenced him to undergo Life Imprisonment and also imposed fine of Rs.25,000/- and, in default, to undergo three years Rigorous Imprisonment. Challenging the conviction Judgment delivered in S.C.No.109 of 2009, the appellant/accused in Crime No.381 of 2009 is before this Court, with this present appeal and he has been enlarged on bail as per the order dated 2.12.2011 passed by this Court.

2. The brief case of the prosecution is as follows;

Accused Arockiaraj is the husband of deceased Leema @ Vasanthamary and the accused is a liquor addict and they have resided in 7th Street Kamarajapuram at Pudukkottai in a house taken on lease and the deceased has received back the lease advance amount of Rs.15,000/- from the house owner, three days prior to the occurrence, to look for a different house on lease. It is alleged that the accused has demanded the said amount from the deceased and the deceased has refused and on 29.07.2009 at 11.30 a.m., due to the torture of the accused, the deceased has poured Kerosene on herself and at that time, the accused has set fire with a match stick and murdered her and the deceased Leema has been admitted in hospital and she has expired due to the burn injuries on the same day at 2.00 p.m. Hence, according to the prosecution, the appellant / accused is liable to be punished under Section 302 I.P.C

2.1. In order to prove the case of the prosecution, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and also marked 12 exhibits as Ex.P.1 to Ex.P.12 and also marked Material Objects as M.O.1 and M.O.2.

2.2. P.W.1 Arul Mary and P.W.2 Arul Samy have stated that they came to know about the occurrence through phone and also they have enquired the deceased in the hospital about the occurrence. P.W.5 Amalorpava Mary has stated that she has gone to the school, at the time of occurrence, as she has studied in the sixth standard at the time of occurrence, and she is the daughter of the deceased and the accused. P.W.6 Mani and one Selvam have signed in the Observation Magazar of Ex.P.1. Further, P.W.7 Dr. Subbu Sivakumar has issued Accident Register as per Ex.P.2. Further, P.W.8 Dr. Indhirani has issued Death Intimation Report as per Ex.P.3. P.W.9 Dr.Saleem Abdul Kuthoos has conducted Postmortem on the dead body of the deceased Leema and issued Postmortem Certificate as per Ex.P.4. Further, P.W.10 Thiru.Muthu, Head Constable has submitted the Offence Alteration Report as per Ex.P.5 to the Court. P.W.11 Thiru.Gansesan, Police Constable has handed over the dead body of the deceased to the hospital, for conducting Postmortem and thereafter, he has handed over the dead body to the relatives.



2.3. P.W.12 Karthika, Sub Inspector of Police has received the Ex.P.6 complaint from the deceased Leema @ Vasanthamary in Pudukkottai Government Hospital and in the said complaint, the deceased has affixed her left thumb impression and she has registered a case in Crime No.381 of 2009 under Section 307 I.P.C and the Ex.P.7 is the First Information Report. P.W.13 Thiru.Padmanaban, learned Judicial Magistrate has recorded the Dying Declaration as per Ex.P.9. P.W.3 Diraviyam and P.W.4 Raja have been treated as hostile witnesses, as they have not supported the case of the prosecution. Further, P.W.14 Thiru.Mukesh Jeyakumar, Inspector of Police has stated that he has taken up the investigation in the present case and also he has enquired P.W.7 Dr.Subbu Sivakumar, who has admitted the deceased in the hospital. Further, P.W.14 has prepared the Observation Magazar and the Rough Sketch as per Ex.P.1 and Ex.P.10 respectively and also he has recovered M.O.1 Plastic Can and M.O.2 Burned Cloth Pieces in the Magazar as per Ex.P.11 and he has prepared Ex.P.5 the Offence Alteration Report and also he has enquired the witnesses and arrested the accused and also he has prepared the Inquest Report as per Ex.P.12 and he has enquired the P.W.9 Postmortem Doctor and received Ex.P.4 Postmortem Certificate and thereafter, he has filed Charge Sheet under Section 302 I.P.C.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent and he is not involved in the case.

4. Having considered all the above materials on record, the trial Court has convicted the appellant / accused and sentenced him as mentioned in the beginning of this judgment and challenging the said conviction and sentence, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the conviction Judgment of the Lower Court is without any substantive evidences and it is highly erroneous and liable to be set aside. The Lower Court has failed to appreciate the evidences of the eyewitnesses properly to believe the prosecution case. The Lower Court has failed to analyse the evidence of proof regarding the injuries sustained by the accused while he tried to save the deceased from the self inflicted immolation. The Lower Court has failed to consider the conduct of the accused after the incident, because, he has taken the deceased to hospital and also taken care of her health, by staying in the hospital premises itself. The Lower Court has failed to have analysed about the antecedents of the deceased with respect to her earlier attempts for suicide as admitted by P.W.1 and P.W.14. The Lower Court has failed to



consider that the Dying Declaration is not a free or voluntary one. The Lower Court has failed to analyze the evidence of P.W.3 father of the deceased, which establishes the death of deceased as suicide. P.W.14 has failed to enquire P.W.7 whom has treated the deceased. The appellant is having three school going children and he is only care taker of his children.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

2) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

7. Analysis, discussions and findings with regard to the above mentioned points:-

The learned counsel for the appellant has submitted that the Trial Court has committed error in convicting the appellant on the basis of highly unbelievable, insufficient and unconvincing evidences of the prosecution. The appellant/accused has been wrongly implicated by the prosecution. Further, the learned counsel appearing for the appellant has submitted that there are no eyewitnesses for the occurrence and the whole case rests on the evidences of P.W.1 and P.W.2 and their evidences are not clear and cogent. Further, the evidences of P.W.1 and P.W.2 have not inspired the confidence to believe the case of the prosecution. There are serious infirmities in the case of the prosecution. Further, the evidences of the prosecution witnesses are not clear and cogent, about the offence alleged to be done by the appellant. There are no believable evidences on record to establish the case of the prosecution and hence the case of the prosecution is unbelievable and unreliable.

8. On the other hand, the learned Additional Public Prosecutor has submitted that P.W.1 and P.W.2 are the natural witnesses, and their evidences, cannot be doubted. There are no vital discrepancies as pointed out on behalf of the appellant. The prosecution has established the case, by producing the appropriate records. Further, the material objects and exhibits have clearly established that the accused has done the said offence. The evidences of the prosecution witnesses are trustworthy and cannot be discarded. Though, there are slight variations, the evidences of the prosecution could not affect the credibility of the



prosecution case. Thus, the learned Additional Public Prosecutor has submitted that the said offence committed by the appellant has been proved beyond reasonable doubts. Hence, the conviction and sentence imposed on the appellant by the Lower Court does not require any interference by this Court.

9. Originally, the deceased, namely, Leema @ Vasanthamary has lodged complaint statement with the police as per Ex.P.6, and the same has been recorded by the P.W.12 Tmt.Karthika, Sub Inspector of Police on 29.07.2009 at 13 hours and registered a case in Crime No.381 of 2009 under Section 307 I.P.C. In the said complaint itself, the deceased has stated that she alone has poured Kerosene on herself and her husband, namely, the appellant has admitted her in the hospital and based upon the said complaint, the original F.I.R., as per Ex.P.7 has been registered under Section 307 I.P.C. However, in the Ex.P.9 Dying Declaration recorded by the P.W.13, Thiru.Padmanaban, learned Judicial Magistrate on 29.07.2009 at 12.55 p.m., the deceased has improved her version by stating that she has poured the Kerosene on her body by herself and her husband, namely, the accused has thrown the 'Kancha' after crushing the same and beaten her and thereafter, the accused has set fire. Thus, it is found that there are vital improvements made in the statements of the deceased.

10. Further, P.W.1 Arulmary has manifestly deposed in her evidence that the deceased is the daughter of her sister and already, the deceased has attempted to commit suicide, by pouring kerosene on her body and she has met the deceased and compromised her. Hence, it is found that the deceased is not having steady state of mind. Further, the P.W.1 herself has undoubtedly admitted in her evidence that at that time of seeing the deceased in the hospital with burn injuries, she has also seen the accused in the hospital. As per Ex.P.2 Accident Register, it is clearly stated that the deceased has been brought by the accused/appellant Arockiaraj and also admitted in the hospital. Further, as per Ex.P.3 Death Intimation, it has been clearly mentioned by the P.W.8 Dr.Indirani, Medical Officer attached to Government Hospital, Pudukkottai that the deceased has been admitted on 29.07.2009 at 11.55 a.m., and expired on 29.07.2009 at 2.00 p.m., itself. Further, in the Ex.P.4 Postmortem Certificate, P.W.9 Dr.Saleem Abdul Kuthoos has stated that the deceased would appear to have died of extensive burns with irreversible shock. But the deceased herself has specifically admitted that she has only poured kerosene on her body and the P.W.1 has particularly admitted that on earlier attempt also, due to family dispute, the deceased has poured Kerosene on her body and attempted to commit the suicide and she has persuaded the deceased, not to do any



11. Further, the crucial point is whether the allegation made on behalf of the prosecution to the effect that, it is only the accused who has set fire to the Kerosene poured by the deceased herself on her body, has to be examined by the Court. In fact, the Lower Court has categorically observed in the impugned Judgment that there is no direct eyewitnesses to the occurrence. In such circumstances, Ex.P.9 Dying Declaration and other statements made by the deceased, have to be examined with care and caution. But, the fact is that the accused himself has admitted the deceased in the hospital to save her life, as clearly stated by the deceased herself in the said Dying Declaration. If in case, the allegation made by the prosecution that the accused has set fire to the body of the deceased, after the deceased herself has poured the Kerosene on her body, the accused would not have admitted the deceased in the hospital and also tried to save the life of the deceased.

12. Further, P.W.1 has undeniably admitted that the deceased and the accused have got two male babies and one female baby. Even, P.W.1 has distinctly deposed that she has enquired the deceased about the incident and the deceased has stated that since the deceased has not handed over the lease amount of Rs.15,000/- to the accused and the accused has poured Kerosene and set fire to the body of the deceased. However, the deceased herself particularly admitted that she herself has poured Kerosene on her body and P.W.1 has also clearly admitted that the earlier incident also, due to the family dispute, the deceased has poured the Kerosene on her body and tried to commit suicide and she has compromised her. Further, P.W.1 has not clearly deposed anything incriminating as against the accused also. Further, P.W.2 Arul Samy, namely, the husband of P.W.1 also, has not deposed about the occurrence and also about witnessing the occurrence directly and P.W.2 has seen the deceased at the hospital only, after the occurrence. Further, P.W.3 Diraviyam, namely, the father of the deceased and P.W.4 Raja, namely, the brother of the deceased, who are the blood relatives of the deceased, have been treated as hostile witnesses, as they have not supported the case of the prosecution. Further, P.W.5 Amalorpava Mary, who is the daughter of the deceased and the accused, aged 11 years has manifestly deposed that she does not know anything about the death of her mother, namely, the deceased. P.W.6 Mani has pointed out that she has signed in Observation Magazar as per Ex.P.1. But, he has deposed that he has no knowledge about the contents of the Ex.P.1 and as the police have directed him and one Selvam to sign in the said Magazar, they have signed in it.

13. Further, P.W.7 Dr.Subbu Sivakumar has evidently <https://hcmis.tn.nic.gov.in/hcmiservices> in the Ex.P.2 Accident Register, he has stated that the accused has brought the deceased to the hospital and the same has been written in the Accident Register of Ex.P.2 and the



accused has also got burn injuries and he does not have any knowledge about the allegation that the accused has set fire to the Kerosene. Further, he has particularly deposed that the deceased has got 95% of burn injuries and P.W.8 Dr.Indirani has issued Ex.P.3 Death Intimation for the deceased. P.W.9 Postmortem Doctor has clearly deposed that if the deceased has poured the Kerosene and set fire to herself, the burn injuries as pointed out in the said Ex.P.4 Postmortem Certificate, could have happened. Further, P.W.12 Sub Inspector of Police has undeniably deposed that she has received the Ex.P.6 complaint from the deceased in the hospital and registered a case in Crime No.381 of 2009 under Section 307 I.P.C only.

14. Further, on a careful scrutiny of the entire records, it is found that the Ex.P.9 Dying Declaration given by the deceased could not be a free and voluntary one and the prosecution has failed to establish the case beyond reasonable doubts and the statements and the said Dying Declaration given by the deceased are not clear and cogent and they also do not inspire the confidence of this Court, to accept the case of the prosecution. Further, on the earlier occasions also the deceased has attempted to commit suicide as undoubtedly admitted by P.W.1 and P.W.14, Thiru.Mukesh Jeyakumar, Investigation Officer also and, hence, the prosecution has failed to establish the case beyond serious doubt. Further, it is pertinent to point out that the accused himself has taken the deceased to the hospital and also taken care to save the life of the deceased by staying in the hospital premises itself. Further, there are every chances that Ex.P.9 Dying Declaration has been given by the deceased, as a result of tutoring and the same has not been a free and voluntary one, for the above mentioned reasons. Further, it is clearly stated in the Ex.P.9 Dying Declaration, the deceased has got burn injuries all through her body and hence, the Left Thumb Impression has been obtained. Furthermore, the injured has to be in a fit state of mind to make a Dying Declaration. The said satisfaction, which is subjective in nature, should be arrived at only on the spot, after examining the injured.

15. Further, if the Court comes to the conclusion that the Dying Declaration, as recorded by the learned Judicial Magistrate is not beyond doubt, then, the same may be liable to be rejected. Further, the materials given in said Dying Declarations are also supported the defense theory of suicide. Furthermore, the said Dying Declaration cannot be said to be voluntary or true disclosures of deceased, for the above mentioned reasons. Also, there are material inconsistencies in the said Dying Declaration. Further, in a case of circumstantial evidence, conclusion of ~~service court has in its service~~ fully established. However, it is seen that the prosecution has not established its case beyond reasonable doubt. Further, the truthfulness of the declarations can be tested on the



basis of other reliable corroborative evidence. In fact, appellant has taken part to save the life of the deceased by admitting her in the hospital and also taking care of health, by staying in the hospital. Further, having regard to the above mentioned conduct of appellant and other evidence, it is seen that the prosecution has failed to prove the guilt of appellant beyond reasonable doubt.

16. Further, in the case reported in **2011 (3) CTC 104, (Inspector of Police, Tamil Nadu V. John David)**, it is clinchingly observed as follows:-

"Each and every incriminating circumstances must be clearly established by reliable and clinching evidence - Circumstances so proved must form chain of events from which only irresistible conclusion that could be drawn is guilt of accused and no other hypothesis against guilt is possible."

17. In the present case on hand also, it is seen that there is no ample and trustworthy evidences and material records to strengthen the case of the prosecution. Further, it is found that there are material deficiency in the evidences of the above mentioned prosecution witnesses. Further, the evidences of P.W.1 and P.W.2 and medical evidences are not credible and the circumstances are inconsistent with the case of the prosecution and the evidences of the prosecution on material objects are very doubtful. Further, on a cumulative consideration of the above mentioned entire evidences of prosecution and also material objects, it is found that the prosecution has not established the case by producing the reliable, trustworthy and credible witnesses in the present case.

18. Moreover, it is found that the prosecution has not produced cogent, natural and trustworthy evidences and material objects to establish the crime committed by the accused, and there are inconsistency in the case of the prosecution and they are found to be material also and therefore, the said discrepancies and contradictions are material and they can be held to go to the root of the case. Hence, the prosecution has not established the case beyond all reasonable doubt by adducing acceptable evidences. The aspects, which have to be taken care of, are the nature of circumstances, time when confession is made and credibility of witnesses, who speak of such confession and these aspects have not been established, in accordance with law, by the prosecution.

19. In view of the above discussion, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellant beyond reasonable doubts and the above



mentioned circumstances also create serious doubt in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellant is entitled to get the benefit of such doubts. Thus, it is found that the prosecution has failed to prove the case beyond all reasonable doubts and the appellant is entitled for acquittal, and the Lower Court has not appreciated the materials available on record, in proper perspective.

20. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court, Pudukkottai, by judgment delivered in S.C.No.109 of 2009 dated 11.03.2011 is set aside and the accused /appellant /Arockiaraj in Crime No.381 of 2009 is acquitted. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him, is to be repaid to him.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, PUDUKKOTTAI
2. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, PUDUKKOTTAI
3. THE JUDICIAL MAGISTRATE, PUDUKKOTTAI
4. THE CHIEF JUDICIAL MAGISTRATE, PUDUKKOTTAI
5. THE INSPECTOR OF POLICE, GANESH NAGAR POLICE STATION, PUDUKOTTAI.
6. THE DISTRICT COLLECTOR, PUDUKKOTTAI DISTRICT
7. THE SUPERINTENDENT OF POLICE, PUDUKKOTTAI DISTRICT
8. THE DIRECTOR GENERAL OF POLICE, CHENNAI-4
9. THE SUPERINTENDENT
CENTRAL PRISON, TRICHIRAPALLI

10. THE ADDITIONAL PUBLIC PROSECUTOR MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

Copy To:

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.K.P.NARAYANAKUMAR, Advocate Sr.No. 59245
PMU

AA/NGM-SS/AR-I/30.11.2015/9p-13c

Cr1.A. (MD) No.337 of 2011
07.10.2015