

Bail Slip:- The Appellant/Petitioner viz., Murugan S/o. Subramani aged 42 years be and hereby directed to be released on bail as per order dated 23.3.2016 made in CrI.M.P.2620/2016 in CrI.A.156/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.156 of 2014

Murugan ... Appellant/ Accused No.2

-Vs-

The State by Inspector of Police  
Veeranam Police Station  
Salem District,  
Crime No.543/2011

... Respondent/ Complainant

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed by judgment dated 14.03.2014 made in S.C.No.266 of 2012 on the file of the Principal Sessions Court, Salem, by allowing this appeal.

For Appellant : Mr.R.Nalliyappan

For Respondent : Mr.M.Maharaja  
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is second accused in S.C.No.266 of 2012 on the file of the learned Principal Sessions Judge, Salem. The first accused was one Subramani. They stood charged for offence under Section 302 IPC. By a judgment dated 14.03.2013, the Trial Court convicted the second accused alone under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default to undergo rigorous imprisonment for six months. The Trial Court acquitted the first accused from the charge. Challenging the said conviction

and sentence, the appellant/second accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:-

The deceased in this case is one Mr. Murugan. The first accused is his father-in-law and the second accused is his brother-in-law. There was some misunderstanding between the accused and the deceased in respect of money transaction. This is stated to be the motive for the occurrence. It is alleged that on the night intervening between 26.07.2011 and 27.07.2011, when the deceased was sleeping near Kaliyamman Koil, the second accused poured kerosene on him and the first accused set fire with match box. The occurrence was not witnessed by anybody. The deceased cried for help.

3. P.W.1 - the wife of the deceased rushed to the place of occurrence and found the deceased in flames. P.W.1 with the help of others put out the fire and took the deceased to the hospital by engaging 108 Ambulance. The deceased was taken to Salem Government Hospital. D.W.1 admitted him at 1.20 a.m. on 27.07.2011. At that time, the deceased was conscious and oriented. He told the Doctor that four known persons poured kerosene and set fire on him. D.W.1 admitted him as inpatient and gave intimation to the Police. On receiving such intimation, P.W.9, the then Sub-Inspector of Police rushed to the hospital. Since the deceased was unconscious, he recorded the statement of P.W.1. On returning to the Police Station, he registered a case in Crime No.543 of 2011 under Section 307 IPC at 4.00 a.m. on 27.07.2011.

4. Taking up the case for investigation, on 27.07.2011 at 6.00 a.m., P.W.11 - the Inspector of Police proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch. He examined P.W.1 and few more witnesses at the place of occurrence.

5. When the investigation was in progress, on intimation from the hospital, P.W.12, the then Judicial Magistrate IV, Salem, went to the hospital and recorded the dying declaration of the deceased at 5.40 a.m. on 27.07.2011. In the said dying declaration, the deceased told the Doctor that the second accused poured kerosene and the first accused set fire.

6. Despite treatment given, the deceased succumbed to injuries. Therefore, the case was altered into one under Section 302 I.P.C. P.W.11., conducted inquest on the body of the deceased and forwarded the same for postmortem. On 31.07.2011 at 11.15 p.m., P.W.10 Dr. Angayarkanni conducted autopsy on the body of the deceased. Ex.P.17 is the post mortem certificate. She opined that the death was due to the extensive burn injuries on the body of the deceased. On completing the investigation, P.W.11 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined; 20 documents were exhibited and 4 Material Objects were marked.

8. Out of the said witnesses, P.W.1. - the wife of the deceased, has stated that she heard the distress call of the deceased and when she went to the place of occurrence, she found the deceased in fumes. She put out the fire with the help of others and then took him to the hospital. P.Ws.2 to 6 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.7 - Dr.P.V.Dhanabalan has stated that he gave opinion to the learned Magistrate that the deceased was conscious and in a fit state of mind to give dying declaration. P.W.8 has turned hostile and has not supported the case of the prosecution. P.W.9 has spoken about the registration of the case. P.W.10 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.11 has spoken about the investigation done and final report filed in this case. P.W.12 has spoken about the judicial dying declaration recorded by her.

9. When the above incriminating materials were put to the accused, he denied the same as false. On the side of the accused, One Dr.R.Ravi was examined as D.W.1. He has stated that he admitted the deceased in the hospital on 27.07.2011 at 1.20 a.m. and at that time, according to him, the deceased was conscious and oriented. The deceased told the Doctor that four known persons poured kerosene and set fire.

10. Having considered all the above, the Trial Court convicted the appellant/second accused alone and that is how, the appellant is before this court with this appeal.

11. We have heard Mr.R.Nalliyappan, learned counsel appearing for the accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. This is a case based on only two dying declarations given by the deceased at two different points of time. There is no eye witness to the occurrence. The earliest dying declaration was made by the deceased to D.W.1 Dr.R.Ravi on 27.07.2011 at 1.20 am., wherein, he told that four known persons poured kerosene and set fire, whereas, in the subsequent dying declaration recorded at 5.40 a.m. by the learned Judicial Magistrate, he told that the first accused poured kerosene and the second accused set fire. There is no other evidence against

the accused. There is no explanation in respect of such material contradiction. The Trial Court itself has disbelieved the judicial dying declaration and that is why the Trial Court acquitted the first accused. It is settled law that when there are multiple dying declarations, unless it is plausible to accept one dying declaration by appreciating the explanation offered in respect of the contradiction, it is not possible to act upon any dying declaration. Here in this case, at the earliest point of time, the deceased has told that four known persons poured kerosene and set fire. In the subsequent dying declaration, the deceased told that the first accused poured kerosene and the second accused set fire. The Trial Court has disbelieved the judicial dying declaration as against the first accused. Thus there is inconsistency between these two dying declarations and thus we are unable to rely on any dying declaration.

13. In such view of the matter, we find it difficult to sustain the conviction. The Criminal Appeal is allowed and the conviction and sentence for the offence u/s.302 IPC imposed on the appellant by the learned Principal Sessions Judge, Salem in SC.No.266 of 2012 by judgment dated 14.03.2013 are hereby set aside.

14. The appellant is acquitted of the charge levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-  
Asst.Registrar (CS VII )

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate  
No.IV Salem
2. The Chief Judicial Magistrate  
Salem (for information)
3. The Principal Sessions Court  
Salem



4. The Inspector of Police  
Veeranam Police Station  
Salem District,

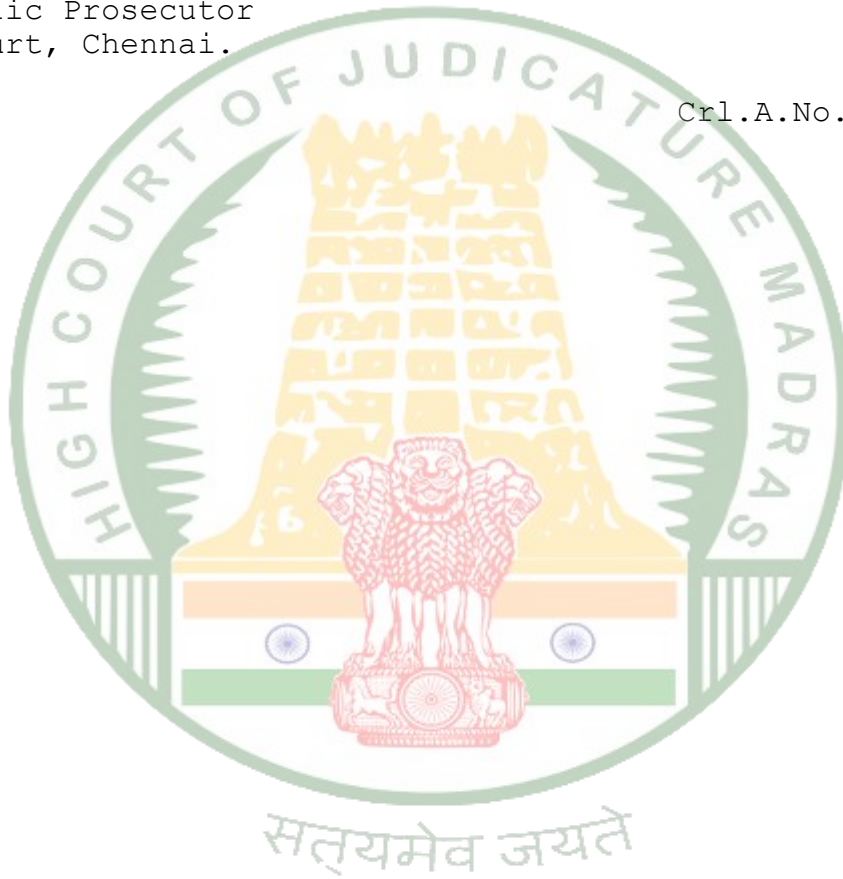
5. The Superintendent  
Central Prison,  
Coimbatore

6. The Section Officer  
Crl.Section,  
High Court, Madras

7.The Public Prosecutor  
High Court, Chennai.

Crl.A.No.156 of 2014

VGT (CO)  
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