

BAIL SLIP

Dhanam, Appellant herein (Accused in S.C.No.359 of 2009 on the file of the Principal Sessions Judge, Villupuram) was released on bail by the order of this Court dated 20.03.2012 and made in M.P.No.1 of 2012 in Crl.A.No.532 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Appeal No.532 of 2011

Mrs.Dhanam

.... Appellant

Vs

State Represented by
The Deputy Superintendent of Police,
Kottakuppam Sub Division,
Vaanur, Villupuram District
(Crime No.47 of 2008)

.... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order passed on the appellant/accused by the learned Principal Sessions Judge, Villupuram, made in S.C.No.359 of 2009 dated 03.08.2011 convicting the appellant/accused under Section 302 I.P.C., and sentenced to undergo life imprisonment and to acquit her.

For Appellant : Mr.S.Ashok Kumar, Senior Counsel
for Mr.D.S.Thirumalavan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.532 of 2011 on the file of the learned Principal Sessions Judge, Villupuram. He stood charged for offence under Section 302 I.P.C., and for offence under Section 3(2)(V) of S.C/S.T (P.O.A) Act, 1989. Though the accused was convicted for both

the offences, he was sentenced only under Section 302 I.P.C, to undergo life imprisonment and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for six month and no separate sentence was imposed on the accused for offence under Section 3(2)(V) of S.C/S.T (P.O.A) Act, 1989. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Miss.Shenbagam aged 11 years old at the time of her death. P.Ws.1 and 2 are the mother and father respectively of the deceased. They were all residing in the house bearing Door No.105, 2nd Cross Street, Mahalakshmi Nagar, Thiruchitrambalam Kootroad. The accused is their neighbour. P.Ws.1 and 2 had a minor son also. The deceased and her brother (P.W.10) were studying in a local school. The accused was residing in the opposite house of the deceased with her family members. It is alleged that the accused used to extract some sundry works from the deceased and her brother. On 14.03.2008, at about 9.00 a.m., the deceased and her brother had gone to the school. P.W.1 had gone for some coolie work and P.W.2 had gone for driving auto. It is further alleged that at about 5.00 p.m., the deceased returned to her house. At that time, it is alleged that the accused wanted her to remove a cycle which was parked just on the entrance of the house and park it at a different place. When the deceased tried to remove the cycle, accidentally, the cycle fell down which resulted in a slight damage to it. This infuriated the accused. The accused scolded the deceased. The deceased was frustrated over the same and after having told the accused that she would tell about the above incident to her father, she returned to her house and started weeping. The accused followed her and tried to console her. At that time, suddenly, the accused pushed the deceased into the bathroom, poured kerosene on her and set fire on the deceased. The deceased cried for help. On hearing the alarm raised by the deceased, the brother of the deceased rushed to the house. But, he could not see the deceased. Then, when he made further search, he found the deceased lying in the bathroom in a half burnt condition. Soon thereafter, P.Ws.1 and 2 returned to the house. Immediately, P.Ws.1 and 2 took the deceased in an auto to Puducherry and admitted her in the Government JIPMER Hospital.

3.At the time of admission into hospital, P.W.6 - Dr.Hema Devi, Medical Officer, JIPMER Hospital, Puducherry examined the deceased and at that time, the deceased was conscious and she was able to speak. She told P.W.6, that while she was working in the kitchen, the kerosene stove suddenly burst and as a result, she accidentally sustained burn injuries. P.W.7

recorded the same in the medical records and then, gave intimation to the police regarding the same.

4. On receiving the said intimation, P.W.8 - the then Sub Inspector of Police, Auroville Police Station rushed to the Government JIPMER Hospital, Puducherry. At that time, he found the deceased in a conscious state. One Dr. Ranjith was on duty. After having ascertained from Dr. Ranjith about her mental condition, P.W.8 recorded the statement of the deceased. On returning to the police station, he registered a case in Crime No.47 of 2008 for offence under Sections 341 & 307 I.P.C. Ex.P.7 is the statement of the deceased and Ex.P.8 is the F.I.R. He forwarded both the documents to Court and handed over the case diary to P.W.9 - Mr. Sabibullah, Inspector of Police, for investigation.

5. Taking up the case for investigation, P.W.9 proceeded to the place of occurrence and prepared an observation mahazar at 6.00 am on 15.03.2008. He also prepared a rough sketch showing the place of occurrence (vide Ex.P.9- Observation Mahazar and Ex.P.10 - Rough Sketch). Then, from the place of occurrence, he recovered the Material Objects such as a Kerosene Can, Match Box and a half burnt shirt under a mahazar, in the presence of P.Ws.3 and 4. Then, he examined P.Ws.1 to 3 and a few more witnesses. He arrested the accused on the same day at 9.00 am at Tiruchitrambalam Koot Road and forwarded him to the Court for judicial remand. He obtained certificate from P.W.5, the then Tahsildar to the effect that the deceased belonged to Schedule Caste. Then, he forwarded the case diary to the Deputy Superintendent of police for further investigation.

6. P.W.12, the Deputy Superintendent of Police took up the case for further investigation. While the case was under investigation, the deceased died in the hospital succumbing to the burn injuries on 06.05.2008. P.W.12 altered the case into one under Section 302 I.P.C., and Section 3(2)(V) of S.C/S.T (P.O.A) Act. He conducted inquest on the body of the deceased, in the presence of the witnesses and then, forwarded the body for post mortem.

7. P.W.7 Dr. R.N. Shagu, conducted autopsy on the body of the deceased. He found the following injuries on the body of the deceased :-

"Superficial and deep burns were seen present on the following parts of the body:-

a) Front of the face below the eyes, front and back of the neck.

b) Front of the chest and abdominal wall, leaving the suprapubic region.

c) Whole of the back extending to both

the gluteal regions and involving both the upper thighs.

d)Whole of the left upper limb excluding the hand.

e)Inner aspect of the arm and forearm of right upper limb.

f)Front of the genital region, extending on to the inner aspect of both the thighs.

Yellow coloured necrotic pus (foul smelling) was seen present over the burnt areas.

Area of the skin involved by burns was approximately 60%."

8.P.W.7 gave opinion that the death was due to septicemia due to burn injuries. P.W.12 - the then Deputy Superintendent of Police, Kottakuppam Police Station collected the medical records, examined a few more witnesses and finally laid charge sheet against the accused.

9.Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 13 documents were exhibited, besides 3 material objects.

10.Out of the said witnesses, P.Ws.1 and 2 are the mother and father respectively of the deceased and they have stated that when they returned to their house in the evening after 5.00 p.m., they found the deceased in half burnt condition and then, they took her to the Government JIPMER Hospital, Puducherry and they have also spoken about the death of the deceased. P.W.3, was examined to speak about the observation mahazar but, he has turned hostile and he has not supported the case of the prosecution, in any manner. P.W.4, the then Village Administrative Officer of the Tiruchitrambalam has spoken about the preparation of the observation mahazar, rough sketch and also the recovery of material objects at the place of occurrence. P.W.5, the then Tahsildar has spoken about the community of the deceased that she belonged to Schedule Caste and he has spoken about the community certificate issued by him. P.W.6, the Medical Officer of the Government JIPMER Hospital, Puducherry has spoken about the statement made by the deceased at the time of admission into the hospital and she has further spoken about the treatment given to the deceased. P.W.7 - Dr.R.N.Shagu has spoken about the post mortem conducted on the body of the deceased. P.W.8, the then Sub Inspector has spoken about the statement recorded by him from the deceased under Ex.P.7 and the case registered by him.

P.W.9, the Inspector of Police has spoken about the investigation done by him. P.W.10 is the brother of the deceased. He has stated that on the date of occurrence, the deceased was scolded by the accused and he has also stated that at about 5.00 pm, on hearing the alarm raised by the deceased, when he rushed into the house, he found the deceased in flames and he extinguished fire. P.W.11 is the Doctor who treated the deceased in the hospital and P.W.12 - the then Deputy Superintendent of Police, has spoken about the further investigation done by him and the final report filed.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any of the witnesses on her side. Her defence was that while the deceased was working in the kitchen, due to the bursting of the kerosene stove, accidentally, she sustained burn injuries. In short, her defence was a total denial of the charges framed against her.

12. Having considered all the above, the trial Court found the accused guilty under both the charges i.e., and accordingly sentenced her to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

13. We have heard the learned Senior Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. The learned Senior Counsel appearing for the appellant would submit that absolutely, there is no evidence in this case so as to hold that the accused is guilty of the offences punishable under Section 302 I.P.C., and Section 3(2)(V) of S.C/S.T (P.O.A) Act. He would further submit that the case is based on circumstantial evidence and the trial Court has convicted the accused solely based on Ex.P.7, the statement said to have been made by the deceased to P.W.7. He would further submit that the Doctor who treated the deceased and who gave certificate was not examined. He would further submit that at the earliest point of time, when the deceased was admitted in the hospital, she herself gave statement to the Doctor that she sustained burn injuries when she was cooking in the kitchen and due to the bursting of kerosene stove. Thus, according to the learned Senior Counsel, the conviction and sentence imposed on the accused in this case is not sustainable.

15. The learned Additional Public Prosecutor appearing for the State would however oppose this appeal. According to him, though, it is true that the deceased had told P.W.6 - Dr.Hema

Devi, at the earliest point of time that she sustained injuries accidentally while cooking in the kitchen due to the bursting of stove, the same cannot be believed because, there were no symptoms of bursting of stove as it is noticed in the observation mahazar. He would further submit that there is no reason to reject the evidence of P.W.8, the Sub Inspector of Police and Ex.P.7 - the statement recorded by him from the deceased. The said statement is a dying declaration which does not require any corroboration, he contended. He would further submit that evidence of P.W.10, the brother of the deceased also duly corroborates Ex.P.7. Thus, according to the learned Additional Public Prosecutor, the trial Court was right in convicting the accused on both the charges.

16. We have considered the above submissions.

17. Admittedly, there is no eye witness to the occurrence. The prosecution relies mainly on Ex.P.7, the statement said to have been given by the deceased to P.W.8. We find it difficult to accept Ex.P.8 containing the true version of the occurrence, as it is projected by the prosecution, for more than one reason. First of all, at the earliest point of time, when the deceased was in the company of her parents viz., P.Ws.1 and 2, she told the Doctor that she sustained burn injuries while cooking in the kitchen due to accidental bursting of the kerosene stove. It is not as though the deceased was under the clutches of either the accused or any third party right from her village to Puducherry where she was admitted in the hospital. For such a long time, the deceased was only under the influence of P.Ws.1 and 2. Therefore, the deceased would have no reason to give a wrong information to the Doctor. Had it been true that the accused had set her on fire, absolutely, there is no explanation as to why the deceased, that too in the presence of P.Ws.1 and 2, had told the Doctor that she sustained injuries while she was cooking in the kitchen due to bursting of kerosene stove.

18. Had it been true that the deceased was set on fire by the accused atleast, P.Ws.1 and 2, who were very much present by the side of the deceased, would have informed the Doctor about the same. The very fact that the deceased had told the Doctor that she sustained injuries in an accident while she was cooking in the kitchen due to bursting of kerosene stove and the very fact that P.Ws.1 and 2 did not controvert the said statement made by the deceased would go to show that the said statement made to the Doctor being the earliest information deserves acceptance as the same is a dying declaration falling under Section 32 of the Indian Evidence Act.

19. Now, turning to Ex.P.7, it is shrouded with lot of suspicions. First of all, Dr. Ranjith - P.W.8 who gave opinion

about the mental condition of the deceased to P.W.8, the then Sub Inspector of Police has not been examined. Secondly, there is nothing stated in Ex.P.7 as to why the deceased made a different statement to the Doctor (P.W.6). Above all, though, the deceased was alive for 52 days, no effort was taken by the Police to get the services of a learned Judicial Magistrate concerned to record dying declaration. Apart from that, Ex.P.7 is a very long statement containing even the minute details. We have got every reason to suspect that Ex.P.7 would not have been consciously made by the deceased at all. Assuming that Ex.P.7 was really and consciously made by the deceased, on account of the contradictory statement made at the earliest point of time to the Doctor, Ex.P.7 deserves only to be rejected. If once Ex.P.7 is rejected, absolutely, there is no evidence against the accused to sustain the conviction.

20. Though, reliance is sought to be made on the evidence of P.W.10, he himself is not a witness to the occurrence. On hearing the alarm raised by the deceased, P.W.10 rushed to the house and on a search, he found the deceased in a half burnt condition in the bathroom. Had it been true that the accused had set fire on the deceased, P.W.10 would have certainly seen her either in the house or while she was moving out of the house. The very fact that the deceased alone was found, that too in the bathroom with half burnt injuries and when there is no evidence that the accused was seen anywhere in the house of the deceased or moving out of the house of the deceased by P.W.10, would go to show that the deceased would not have been set on fire by the accused. At any rate, in our considered view, the evidence of P.W.10 would not help even to make out a prima facie case that the accused set fire to the deceased.

21. Above all, absolutely, there is no motive for the accused to commit murder of the deceased. For all these reasons, we find it difficult to confirm the conviction and sentence passed by the trial Court. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

22. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused is set aside and the appellant is acquitted of all the charges. Fine amount, if any paid by the appellant, shall be refunded to him. Bail bond if any executed, shall stand discharged.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

jbm

To

1.The Principal Sessions Judge,
Villupuram.

2.The Deputy Superintendent of Police,
Kottakuppam Sub Division,
Vaanur, Villupuram District.

3.The Public Prosecutor,
High Court, Madras.

4.The District Munsif - cum - Judicial Magistrate,
Vaanur.

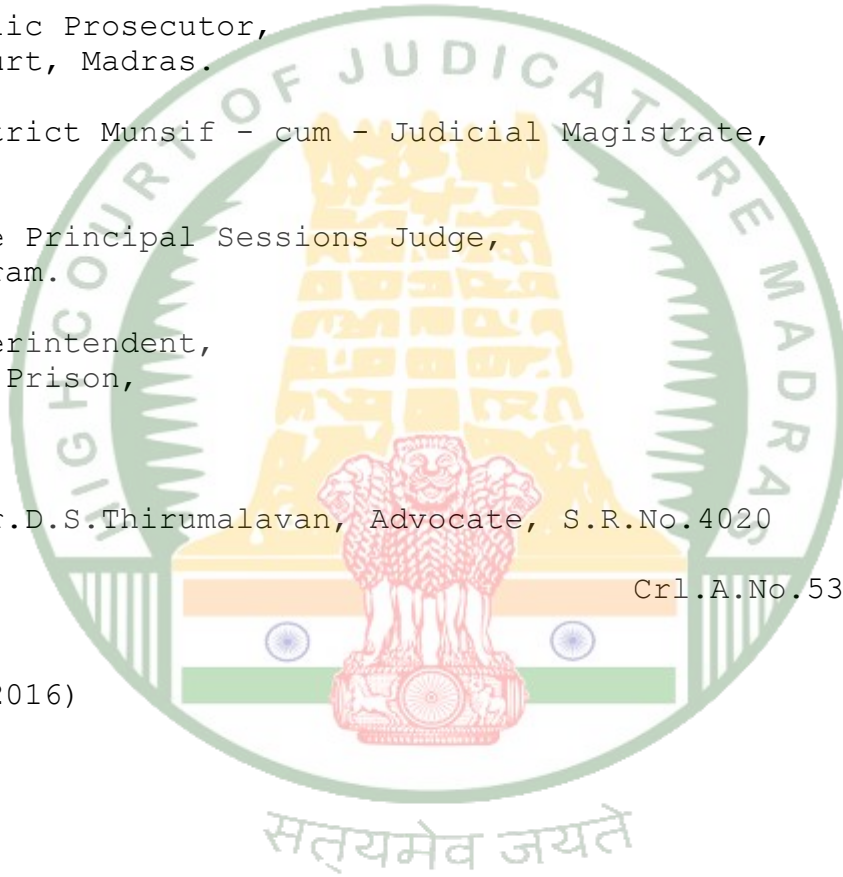
5.-DO- The Principal Sessions Judge,
Villupuram.

6.The Superintendent,
Central Prison,
Vellore.

+1cc to Mr.D.S.Thirumalavan, Advocate, S.R.No.4020

Crl.A.No.532 of 2011

KSJ(CO)
CA(11/02/2016)



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